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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HOANG MINH TRAN,
CDCR #AA-5994,

Plaintiff,

vs.

E. SCHROEDER; OMAR ORTEGA;
MICHAEL DALBRATT;
NICHOLAS RAMIREZ,

Defendants.

Civil No. 10cv2457 BTM (WVG)

ORDER:

**(1) DISMISSING DEFENDANT
WILLIAM D. GORE; and**

**(2) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE OF AMENDED
COMPLAINT PURSUANT
TO FED.R.CIV.P. 4(c)(3)
& 28 U.S.C. § 1915(d)**

I.

PROCEDURAL HISTORY

On November 29, 2010, Plaintiff, Hoang Minh Tran, a state prisoner currently incarcerated at California Men's Colony located in San Luis Obispo, California and proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff also filed a Motion to Proceed In Forma Pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). On May 2, 2011, the Court granted Plaintiff's Motion to Proceed IFP and sua sponte dismissed his Complaint for failing to state a claim. *See* May 2, 2011 Order at 5-6. On June 29, 2011, Plaintiff filed his First Amended Complaint ("FAC").

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II.

SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2) AND § 1915A

As the Court stated in its previous Order, the Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any portion thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages from defendants who are immune. See 28 U.S.C. § 1915(e)(2)(B) and § 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

The Court finds that Plaintiff’s claims are now sufficiently pleaded to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Therefore, Plaintiff is entitled to U.S. Marshal service on his behalf. See *Lopez*, 203 F.3d at 1126-27; 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3). Plaintiff is cautioned, however, that “the sua sponte screening and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

III.

CONCLUSION AND ORDER

Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

1. Defendant William D. Gore is **DISMISSED** from this action. See *King v. Atiyeh* (814 F.2d 565, 567 (9th Cir. 1987) (Defendants not named and all claims not re-alleged in the Amended Complaint will be deemed to be waived.) The Clerk of Court is directed to terminate this Defendant from the Court’s docket.

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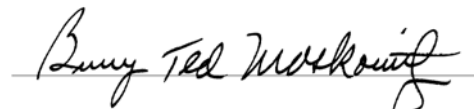
1 **IT IS FURTHER ORDERED** that:

2 2. The Clerk shall issue a summons as to Plaintiff's First Amended Complaint [ECF
3 No. 7] upon the remaining Defendants and shall forward it to Plaintiff along with a blank U.S.
4 Marshal Form 285 for each of these Defendants. In addition, the Clerk shall provide Plaintiff
5 with a certified copy of this Order, the Court's May 2, 2011 Order granting Plaintiff leave to
6 proceed IFP [ECF No. 4], and certified copies of his First Amended Complaint and the summons
7 for purposes of serving each Defendant. Upon receipt of this "IFP Package," Plaintiff is directed
8 to complete the Form 285s as completely and accurately as possible, and to return them to the
9 United States Marshal according to the instructions provided by the Clerk in the letter
10 accompanying his IFP package. Thereafter, the U.S. Marshal shall serve a copy of the First
11 Amended Complaint and summons upon each Defendant as directed by Plaintiff on each Form
12 285. All costs of service shall be advanced by the United States. *See* 28 U.S.C. § 1915(d);
13 FED.R.CIV.P. 4(c)(3).

14 3. Plaintiff shall serve upon Defendants or, if appearance has been entered by
15 counsel, upon Defendants' counsel, a copy of every further pleading or other document
16 submitted for consideration of the Court. Plaintiff shall include with the original paper to be
17 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy
18 of any document was served on Defendants, or counsel for Defendants, and the date of service.
19 Any paper received by the Court which has not been filed with the Clerk or which fails to
20 include a Certificate of Service will be disregarded.

21 **IT IS SO ORDERED.**

22 DATED: September 19, 2011

23 

24 Honorable Barry Ted Moskowitz
25 United States District Judge