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

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GUILLERMO VERA,
CDCR #K-73387,

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Plaintiff,

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vs.

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DIRECTOR OF CDCR;
RAFAEL DIAS, Warden;
CLEMENTS OGBUEHY, Nurse
Practitioner; TIMOTHY BYERS, Physician
Assistant,

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Defendants.

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Civil 13cv0247 JLS (BGS)
No.

**ORDER DENYING MOTION TO
PROCEED *IN FORMA*
PAUPERIS
AS MOOT AND DISMISSING
CIVIL ACTION FOR LACK OF
PROPER VENUE PURSUANT
TO 28 U.S.C. § 1406(a)**

[ECF Doc. No. 5]

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Plaintiff, a state prisoner currently incarcerated at California State Prison in Corcoran, California (CSP-COR), and proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 28, 2013.

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In his Complaint, Plaintiff claims the Director of the California Department of Corrections and Rehabilitation (CDCR), and several California Substance Abuse Treatment Facility (SATF) officials, violated his rights to adequate medical care, access to the court, and to be free from cruel and unusual punishments during his incarceration there in 2011 and early 2012. (Compl. at 2-3.)

1 On February 20, 2013, the Court dismissed the action for two reasons. First,
2 Plaintiff failed to prepay the civil filing fees required by 28 U.S.C. § 1914(a) and did
3 not seek leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).
4 See Feb. 20, 2013 Order [ECF Doc. No. 2] at 2, 3. Second, “while the Court would
5 normally grant Plaintiff an opportunity to either submit the full filing fee or file a
6 Motion to Proceed IFP, an initial review of the Complaint further reveal[ed] that
7 [Plaintiff’s] case lacks proper venue.” *Id.* at 2. Specifically, the Court found that:

8 [w]hile Plaintiff is currently incarcerated at CSP-COR, [...] he
9 fails to allege a county of residence for any Defendant, [...] claims the substantial part of the events or omissions giving
10 rise to his claims occurred while he was incarcerated at SATF
11 in Corcoran, California, and the exhibits attached to his
12 Complaint indicate Defendants Dias, Ogbuehy and Byers are
13 CDCR officials employed at SATF.¹ (See Compl. at 2; Exs.
14 [ECF No. 1-1] at 13, 14, 16, 23.) The City of Corcoran is
15 located in Kings County, California. Therefore, venue is
16 proper in the Eastern District of California, pursuant to 28
17 U.S.C. § 84(b), but not in the Southern District of California,
18 pursuant to 28 U.S.C. § 84(d) (“The Southern District [of
19 California] comprises the counties of Imperial and San
20 Diego.”). See 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488.

21 Therefore, the Court dismissed the action sua sponte but without prejudice to
22 Plaintiff’s re-filing it in the proper district. *Id.* at 2-3 (citing 28 U.S.C. § 1914(a); 28
23 U.S.C. § 1406(a)).

24 On June 3, 2013, however, Plaintiff re-opened the case in this Court by filing a
25 Motion to Proceed IFP [ECF Doc. No. 5], without any explanation or amendment
26 which might show how or why venue lies in the Southern District of California.

27 **Conclusion and Order**


28 For the reasons set forth above, the Court hereby DENIES Plaintiff’s Motion to
Proceed IFP [ECF Doc. No. 5] as moot. Plaintiff’s case remains dismissed in this
Court without prejudice for lack of proper venue pursuant to 28 U.S.C. § 1406(a).
Should Plaintiff wish to pursue the claims alleged in his Complaint, he should do so

¹ The only remaining Defendant is the “Director of the CDCR.” (Compl. at 1.) The CDCR is headquartered in Sacramento, California. The City and County of Sacramento are also located in the Eastern District of California. See 28 U.S.C. § 84(b).

1 by filing a civil action in the Eastern District of California, as that district appears to
2 be the only proper venue. *See* 28 U.S.C. §§ 84(b), 1391(b).

3 **IT IS SO ORDERED.**

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5 DATED: June 26, 2013

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7 Honorable Janis L. Sammartino
8 United States District Judge
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