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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 Cliff Adams S. Vicente  
12 F-90685,

13 Plaintiff,

14 v.

15 F. RIVAS; A. GONZALEZ,

16 Defendants.  
17

Case No.: 3:15-cv-02556-GPC-MDD

**ORDER:**

1) **GRANTING PLAINTIFF'S  
MOTION TO PROCEED *IN FORMA  
PAUPERIS* PURSUANT TO 28 U.S.C.  
§ 1915(a) (ECF No. 2)**

**AND**

2) **DISMISSING COMPLAINT FOR  
FAILING TO STATE A CLAIM  
PURSUANT TO 28 U.S.C. § 1915(e)(2)  
& § 1915A**

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23 Cliff Adams S. Vicente ("Plaintiff"), currently incarcerated at Calipatria State  
24 Prison ("CAL") located in Calipatria, California, and proceeding pro se, has filed a civil  
25 rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (ECF No. 1).

26 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a);  
27 instead, he has filed a certified copy of his inmate trust account statement which the

1 Court has liberally construed as a Motion to Proceed In Forma Pauperis (“IFP”) pursuant  
2 to 28 U.S.C. § 1915(a) (ECF No. 2).

3 **I. Plaintiff’s Motion to Proceed IFP**

4 All parties instituting any civil action, suit or proceeding in a district court of the  
5 United States, except an application for writ of habeas corpus, must pay a filing fee of  
6 \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff’s failure to  
7 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. §  
8 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
9 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if a prisoner, like Plaintiff, is  
10 granted leave to proceed IFP, he remains obligated to pay the entire fee in “increments,”  
11 *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his  
12 action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*,  
13 281 F.3d 844, 847 (9th Cir. 2002).

14 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act  
15 (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of the  
16 trust fund account statement (or institutional equivalent) for the prisoner for the six-  
17 month period immediately preceding the filing of the complaint.” 28 U.S.C. §  
18 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
19 trust account statement, the Court assesses an initial payment of 20% of (a) the average  
20 monthly deposits in the account for the past six months, or (b) the average monthly  
21 balance in the account for the past six months, whichever is greater, unless the prisoner  
22 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution  
23 having custody of the prisoner then collects subsequent payments, assessed at 20% of the  
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26 <sup>1</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay  
27 an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees,  
District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative fee  
is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 preceding month's income, in any month in which the prisoner's account exceeds \$10,  
2 and forwards those payments to the Court until the entire filing fee is paid. See 28 U.S.C.  
3 § 1915(b)(2).

4 Plaintiff has submitted a certified copy of his trust account statement pursuant to  
5 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2. *Andrews*, 398 F.3d at 1119. The Court  
6 has reviewed Plaintiff's trust account statement, but it shows that he has a current  
7 available balance of only \$0.01. See 28 U.S.C. § 1915(b)(4) (providing that "[i]n no  
8 event shall a prisoner be prohibited from bringing a civil action or appealing a civil action  
9 or criminal judgment for the reason that the prisoner has no assets and no means by  
10 which to pay the initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28  
11 U.S.C. § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case  
12 based solely on a "failure to pay . . . due to the lack of funds available to him when  
13 payment is ordered.").

14 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (**ECF No. 2**) and  
15 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350  
16 balance of the filing fees mandated will be collected by the California Department of  
17 Corrections and Rehabilitation ("CDCR") and forwarded to the Clerk of the Court  
18 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

## 19 **II. Initial Screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

20 Notwithstanding Plaintiff's IFP status or the payment of any partial filing fees, the  
21 PLRA also obligates the Court to review complaints filed by all persons proceeding IFP  
22 and by those, like Plaintiff, who are "incarcerated or detained in any facility [and]  
23 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the  
24 terms or conditions of parole, probation, pretrial release, or diversionary program," "as  
25 soon as practicable after docketing." See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under  
26 these statutes, the Court must sua sponte dismiss complaints, or any portions thereof,  
27 which are frivolous, malicious, fail to state a claim, or which seek damages from

1 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v.*  
2 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v.*  
3 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

4 All complaints must contain “a short and plain statement of the claim showing that  
5 the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2). Detailed factual allegations are  
6 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by  
7 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
8 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining  
9 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that  
10 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*  
11 The “mere possibility of misconduct” falls short of meeting this plausibility standard.  
12 *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

13 “When there are well-pleaded factual allegations, a court should assume their  
14 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”  
15 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)  
16 (“[W]hen determining whether a complaint states a claim, a court must accept as true all  
17 allegations of material fact and must construe those facts in the light most favorable to  
18 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that §  
19 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

20 However, while the court “ha[s] an obligation where the petitioner is pro se,  
21 particularly in civil rights cases, to construe the pleadings liberally and to afford the  
22 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.  
23 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not  
24 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*  
25 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

26 As currently pleaded, the Court finds that Plaintiff’s Complaint fails to state a  
27 cognizable claim under 42 U.S.C. § 1983. Section 1983 imposes two essential proof

1 requirements upon a claimant: (1) that a person acting under color of state law  
2 committed the conduct at issue, and (2) that the conduct deprived the claimant of some  
3 right, privilege, or immunity protected by the Constitution or laws of the United States.  
4 *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), overruled on other  
5 grounds by *Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769  
6 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

7 Plaintiff alleges that Defendants violated his right to due process under the  
8 Fourteenth Amendment during his disciplinary hearings by falsifying a rules violation  
9 report and for terminating him from his prison employment. “The requirements of  
10 procedural due process apply only to the deprivation of interests encompassed by the  
11 Fourteenth Amendment’s protection of liberty and property.” *Board of Regents v. Roth*,  
12 408 U.S. 564, 569 (1972). State statutes and prison regulations may grant prisoners  
13 liberty interests sufficient to invoke due process protections. *Meachum v. Fano*, 427 U.S.  
14 215, 223-27 (1976). However, the Supreme Court has significantly limited the instances  
15 in which due process can be invoked. Pursuant to *Sandin v. Conner*, 515 U.S. 472, 483  
16 (1995), a prisoner can show a liberty interest under the Due Process Clause of the  
17 Fourteenth Amendment only if he alleges a change in confinement that imposes an  
18 “atypical and significant hardship . . . in relation to the ordinary incidents of prison life.”  
19 *Id.* at 484 (citations omitted); *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir. 1997). In  
20 an attempt to show an “atypical and significant hardship,” Plaintiff alleges that he was  
21 removed from his job assignment and he did not receive payment when he was employed  
22 from October 1, 2014 to February 9, 2015. (See Compl. at 4-5.)

23 The Ninth Circuit has consistently held that “the Due Process Clause of the  
24 Fourteenth Amendment ‘does not create a property or liberty interest in prison  
25 employment.’” *Walker v. Gomez*, 370 F.3d 969, 973 (9th Cir. 2004) (quoting *Ingram v.*  
26 *Papalia*, 804 F.2d 595, 596 (10th Cir. 1986), and citing *Baumann v. Arizona Dep’t of*  
27 *Corrections*, 754 F.2d 841, 846 (9th Cir. 1985)); see also *Vignolo v. Miller*, 120 F.3d

1 1075, 1077 (9th Cir. 1997); *Toussaint v. McCarthy*, 801 F.2d 1080, 1094-95 (9th Cir.  
2 1986); *Rizzo v. Dawson*, 778 F.2d 527, 531 (9th Cir. 1985); *see also Hrbek v. Farrier*,  
3 787 F.2d 414, 416 (8th Cir. 1986) (“There is no constitutional right to prison wages and  
4 any such compensation is by the grace of the state.”) Plaintiff is unable to demonstrate  
5 either a liberty or property interest in his prison employment or right to “back pay”  
6 arising directly under the Fourteenth Amendment. In addition, Plaintiff does not identify  
7 any other “atypical and significant hardship” as a result of the allegations that Defendants  
8 falsified the rules violation report.

9 Because Plaintiff is proceeding without counsel, and the Court has now provided  
10 him “notice of the deficiencies in his complaint,” it will grant Plaintiff an opportunity to  
11 amend. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Ferdik v.*  
12 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

### 13 **III. Conclusion and Order**

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

15 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (**ECF No.**  
16 **2**) is **GRANTED**.

17 2. The Secretary of the CDCR, or his designee, shall collect from Plaintiff’s  
18 prison trust account the \$350 filing fee owed in this case by collecting monthly payments  
19 from the account in an amount equal to twenty percent (20%) of the preceding month’s  
20 income and forward payments to the Clerk of the Court each time the amount in the  
21 account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS**  
22 **SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED**  
23 **TO THIS ACTION.**

24 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey A.  
25 Beard, Secretary, California Department of Corrections and Rehabilitation, P.O. Box  
26 942883, Sacramento, California, 94283-0001.

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