



1 On August 26, 2016, Plaintiff filed a first amended complaint. (ECF No. 9.) Rather than  
2 challenging the propriety of any restitution order or that he owed restitution, Plaintiff's first  
3 amended complaint alleged that defendants improperly deducted restitution amounts from funds  
4 not subject to such restitution. Plaintiff alleged that only funds from "an outside source" are  
5 available for a deduction. On May 3, 2017, an order was entered, finding that the first amended  
6 complaint also failed to state any claims for relief. This action was then dismissed for failure to  
7 state a cognizable claim. (ECF No. 10.) Plaintiff appealed.

8 On January 25, 2018, this action was vacated and remanded the action to this Court. (ECF  
9 No. 17.) Specifically, the Ninth Circuit reviewed de novo whether the undersigned validly  
10 entered judgment on behalf of the district court. The Ninth Circuit found that because Plaintiff's  
11 action was dismissed before the named defendants had been served, and "all parties, including  
12 unserved defendants, must consent to proceed before the magistrate judge for jurisdiction to vest,  
13 Williams v. King, 875 F.3d 500, 503–04 (9th Cir. 2017)," the undersigned's May 3, 2017 order  
14 was vacated and remanded for further proceedings. (Id. at 2.) The Ninth Circuit issued its  
15 mandate on February 16, 2018. (ECF No. 18.)

16 Based on the foregoing, Plaintiff's first amended complaint, filed on August 26, 2016, is  
17 currently before the Court for screening.

## 18 **II. Screening Requirement and Standard**

19 The Court is required to screen complaints brought by prisoners seeking relief against a  
20 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.  
21 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous  
22 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary  
23 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.  
24 § 1915(e)(2)(B)(ii).

25 A complaint must contain "a short and plain statement of the claim showing that the  
26 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
27 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
28 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell

1 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken  
2 as true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores,  
3 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

4 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings  
5 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,  
6 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff's claims must be facially  
7 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each  
8 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678 (quotation marks  
9 omitted); Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that  
10 a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of  
11 satisfying the plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572  
12 F.3d at 969.

13 **A. Plaintiff's Allegations**

14 Plaintiff is currently incarcerated at the California City Correctional Facility ("CCCF"),  
15 where the events in the complaint are alleged to have occurred. Plaintiff names the following  
16 defendants, all employed at CCCF: (1) K. Washington, Accounting Trainee; (2) Kristina Hill,  
17 Senior Accounting Officer Supervisor; and (3) L. Hartin, Accounting Staff.

18 Plaintiff alleges as follows: On April 27, 2015, Plaintiff left his former institution, the  
19 Tallahatchie County Correctional Facility, in Tutwiler, Mississippi. On April 29, 2015, Plaintiff  
20 was processed at CCCF.

21 On June 9, 2015, funds in the amount of \$205.66 were transferred from Plaintiff's trust  
22 account in Mississippi to his trust account in California. On the same date, a \$102.83 direct order  
23 fee was deducted by defendants. Plaintiff claims that this deduction violated his rights and  
24 deprived him of his liberty interest. Plaintiff asserts that funds already in his prison account are  
25 not subject to any restitution or direct order, and it is only funds that are sent from an outside  
26 source that are subject to any deductions. Plaintiff used the internal request and grievance  
27 procedure without recourse. Plaintiff further claims that he was denied due process when he was  
28 given no way to dispute the action taken by defendants before the funds were deducted from

1 money already deposited in his account.

2 Plaintiff seeks compensatory and punitive damages, plus costs of suit.

3 **B. Discussion**

4 In his amended complaint, Plaintiff is not challenging the propriety of any restitution  
5 order or that he owes restitution. Instead, Plaintiff claims that defendants improperly deducted  
6 restitution amounts from funds not subject to such deduction. Plaintiff asserts that only funds  
7 from “an outside source” are available for a deduction.

8 According to exhibits attached to his complaint, California Penal Code section 2085.5  
9 governs deductions by the California Department of Corrections and Rehabilitation for the  
10 restitution fines at issue. In relevant part, section 2085.5 states:

11 If a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section  
12 13967 of the Government Code, as operative prior to September 29, 1994,  
13 subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or  
14 subdivision (b) of Section 1202.4 of this code, the secretary shall deduct a  
15 minimum of 20 percent or the balance owing on the fine amount, whichever is  
16 less, up to a maximum of 50 percent **from the wages and trust account deposits  
of a prisoner**, unless prohibited by federal law, and shall transfer that amount to  
17 the California Victim Compensation Board for deposit in the Restitution Fund.  
The amount deducted shall be credited against the amount owing on the fine. The  
sentencing court shall be provided a record of the payments.

18 Cal. Penal Code § 2085.5(a) (West 2017) (emphasis added). Based on the language of section  
19 2085.5(a), deductions for restitution fines may be taken from wages and deposits in a prisoner’s  
20 trust account regardless of the source of those funds. Plaintiff therefore cannot maintain a claim  
21 that the funds in his trust account on June 9, 2015, were not subject to deduction for restitution  
22 fines. The Ninth Circuit has held that “California Penal Code § 2085.5, requiring the California  
23 Director of Corrections to make deductions from the wages and trust account deposits of  
24 prisoners for payment of restitution obligations, is rationally related to legitimate state interests in  
25 compensating crime victims.” Craft v. Ahuja, 475 Fed.Appx. 649, 650 (9th Cir. 2012), citing  
26 Turner v. Safley, 482 U.S. 78, 89 (1987) (“[W]hen a prison regulation impinges on inmates’  
27 constitutional rights, the regulation is valid if it is reasonably related to legitimate penological  
28 interests.”)

