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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM ANDERSON,
CDCR No. AT-8924

Plaintiff,

v.

STATE OF CALIFORNIA; RICHARD J.
DONOVAN CORRECTIONAL
FACILITY; O'DELL; P. CORTEZ; G.
STRATTON,

Defendant.

Case No.: 3:16-cv-01172-LAB-JLB

**ORDER: (1) GRANTING MOTION
TO PROCEED IN FORMA
PAUPERIS; AND (2) DISMISSING
COMPLAINT FOR FAILING TO
STATE A CLAIM AND FOR
SEEKING MONEY DAMAGES
AGAINST IMMUNE DEFENDANTS**

William Anderson (“Plaintiff”), a state inmate currently incarcerated at Corcoran State Prison, and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (Doc. No. 1).

Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) when he filed his Complaint; instead, he has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (Doc. No. 3).

I. Plaintiff’s Motion to Proceed IFP

All parties instituting any civil action, suit or proceeding in a district court of the

1 United States, except an application for writ of habeas corpus, must pay a filing fee. See
2 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the
3 entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See
4 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the plaintiff is a
5 prisoner and he is granted leave to proceed IFP, he remains obligated to pay the full
6 entire fee in "increments," see *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015),
7 regardless of whether his action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) &
8 (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act
10 ("PLRA"), prisoners seeking leave to proceed IFP must submit a "certified copy of the
11 trust fund account statement (or institutional equivalent) for the . . . six-month period
12 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v.*
13 *King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the
14 Court assesses an initial payment of 20% of (a) the average monthly deposits in the
15 account for the past six months, or (b) the average monthly balance in the account for the
16 past six months, whichever is greater, unless the prisoner has no assets. See 28 U.S.C.
17 § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then
18 collects subsequent payments, assessed at 20% of the preceding month's income, in any
19 month in which the prisoner's account exceeds \$10, and forwards those payments to the
20 Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

21 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust
22 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2. *Andrews*,
23 398 F.3d at 1119. The Court has reviewed Plaintiff's trust account activity which shows
24 he has a current balance of \$0.00. See 28 U.S.C. § 1915(b)(4) (providing that "[i]n no
25 event shall a prisoner be prohibited from bringing a civil action or appealing a civil action
26 or criminal judgment for the reason that the prisoner has no assets and no means by
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1 which to pay [an] initial partial filing fee.”); Taylor, 281 F.3d at 850 (finding that 28
2 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case
3 based solely on a “failure to pay . . . due to the lack of funds available.”).

4 Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP (Doc. No. 3) and
5 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350
6 balance of the filing fee owed must be collected and forwarded to the Clerk of the Court
7 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

8 **II. Initial Screening per 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

9 **A. Standard of Review**

10 Notwithstanding Plaintiff’s IFP status or the payment of any filing fees, the PLRA
11 also requires the Court to review complaints filed by all persons proceeding IFP and by
12 those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of,
13 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
14 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as
15 practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these
16 statutes, the Court must sua sponte dismiss any complaint, or any portion of a complaint,
17 which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
18 who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); Lopez v. Smith, 203
19 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); Rhodes v. Robinson, 621
20 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

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

4 “When there are well-pleaded factual allegations, a court should assume their
5 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
6 *Iqbal*, 556 U.S. at 679; see also *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
7 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
8 allegations of material fact and must construe those facts in the light most favorable to
9 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
10 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

11 However, while the court “ha[s] an obligation where the petitioner is pro se,
12 particularly in civil rights cases, to construe the pleadings liberally and to afford the
13 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
14 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
15 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
16 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and
17 conclusory allegations of official participation in civil rights violations” are simply not
18 “sufficient to withstand a motion to dismiss.” Id.

19 **B. 42 U.S.C. § 1983**

20 “Section 1983 creates a private right of action against individuals who, acting
21 under color of state law, violate federal constitutional or statutory rights.” *Devereaux v.*
22 *Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of
23 substantive rights, but merely provides a method for vindicating federal rights elsewhere
24 conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks
25 and citations omitted). “To establish § 1983 liability, a plaintiff must show both (1)
26 deprivation of a right secured by the Constitution and laws of the United States, and (2)
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1 that the deprivation was committed by a person acting under color of state law.” Tsao v.
2 Desert Palace, Inc., 698 F.3d 1128, 1138 (9th Cir. 2012).

3 **C. Improper Defendant**

4 As an initial matter, the Court finds that to the extent Plaintiff names the State of
5 California or the Richard J. Donovan Correctional Facility (“RJD”) as Defendants, his
6 claims must be dismissed sua sponte pursuant to both 28 U.S.C. § 1915(e)(2) and
7 § 1915A(b) for failing to state a claim and for seeking damages against a defendant who
8 is immune. The State of California’s Department of Corrections and Rehabilitation and
9 any state prison, like RJD, correctional agency, sub-division, or department under its
10 jurisdiction, are not “persons” subject to suit under § 1983. Hale v. State of Arizona, 993
11 F.2d 1387, 1398-99 (9th Cir. 1993) (holding that a state department of corrections is an
12 arm of the state, and thus, not a “person” within the meaning of § 1983). In addition, to
13 the extent that Plaintiff seeks to sue the State of California itself for monetary damages,
14 his claims are clearly barred by the Eleventh Amendment. See Alabama v. Pugh, 438
15 U.S. 781, 782 (1978) (per curiam) (“There can be no doubt . . . that [a] suit against the
16 State and its Board of Corrections is barred by the Eleventh Amendment, unless [the
17 State] has consented to the filing of such a suit.”).

18 Therefore, to the extent Plaintiff seeks monetary damages against RJD or against
19 the State of California, his Complaint is dismissed pursuant to 28 U.S.C.
20 § 1915(e)(2)(B)(ii), (iii) and 28 U.S.C. § 1915A(b)(1) & (2).

21 **D. Constitutional claims**

22 Plaintiff’s claims are not entirely clear but it appears that he is claiming his due
23 process rights were violated when he was housed in disciplinary segregation for a ten
24 (10) day period. See Compl. at 3-5. “The requirements of procedural due process apply
25 only to the deprivation of interests encompassed by the Fourteenth Amendment’s
26 protection of liberty and property.” Board of Regents v. Roth, 408 U.S. 564, 569 (1972).

1 State statutes and prison regulations may grant prisoners liberty interests sufficient to
2 invoke due process protections. *Meachum v. Fano*, 427 U.S. 215, 223-27 (1976).
3 However, the Supreme Court has significantly limited the instances in which due process
4 can be invoked. Pursuant to *Sandin v. Conner*, 515 U.S. 472, 483 (1995), a prisoner can
5 show a liberty interest under the Due Process Clause of the Fourteenth Amendment only
6 if he alleges a change in confinement that imposes an “atypical and significant hardship
7 . . . in relation to the ordinary incidents of prison life.” *Id.* at 484 (citations omitted);
8 *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir. 1997).

9 In this case, Plaintiff has failed to establish a liberty interest protected by the
10 Constitution because he has not alleged, as he must under *Sandin*, facts related to the
11 conditions or consequences of his housing in disciplinary segregation which show “the
12 type of atypical, significant deprivation [that] might conceivably create a liberty interest.”
13 *Id.* at 486. For example, in *Sandin*, the Supreme Court considered three factors in
14 determining whether the plaintiff possessed a liberty interest in avoiding disciplinary
15 segregation: (1) the disciplinary versus discretionary nature of the segregation; (2) the
16 restricted conditions of the prisoner’s confinement and whether they amounted to a
17 “major disruption in his environment” when compared to those shared by prisoners in the
18 general population; and (3) the possibility of whether the prisoner’s sentence was
19 lengthened by his restricted custody. *Id.* at 486-87.

20 Therefore, to establish a due process violation, Plaintiff must first show the
21 deprivation imposed an atypical and significant hardship on him in relation to the
22 ordinary incidents of prison life. *Sandin*, 515 U.S. at 483-84. Plaintiff has failed to
23 allege any facts from which the Court could find there were atypical and significant
24 hardships imposed upon him as a result of the Defendants’ actions. Plaintiff must allege
25 “a dramatic departure from the basic conditions” of his confinement that would give rise
26 to a liberty interest before he can claim a violation of due process. *Id.* at 485; see also
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1 Keenan v. Hall, 83 F.3d 1083, 1088-89 (9th Cir. 1996), amended by 135 F.3d 1318 (9th
2 Cir. 1998). He has not; therefore the Court finds that Plaintiff has failed to allege a
3 liberty interest in remaining free of disciplinary segregation, and thus, has failed to state a
4 due process claim. See Sandin, 515 U.S. at 486.

5 Accordingly, the Court finds that Plaintiff's Complaint fails to state a section 1983
6 claim upon which relief may be granted, and is therefore subject to dismissal pursuant to
7 28 U.S.C. §§ 1915(e)(2)(b) & 1915A(b).

8 **III. Conclusion and Orders**

9 Good cause appearing, the Court:

10 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
11 (Doc. No. 3).

12 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from
13 Plaintiff's prison trust account the \$350 filing fee owed in this case by garnishing
14 monthly payments from his account in an amount equal to twenty percent (20%) of the
15 preceding month's income and forwarding those payments to the Clerk of the Court each
16 time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL**
17 **PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**
18 **ASSIGNED TO THIS ACTION.**

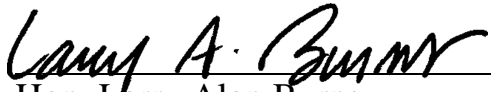
19 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott
20 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001.

21 4. **DISMISSES** Plaintiff's Complaint for failing to state a claim and for
22 seeking monetary damages against immune defendants pursuant to 28 U.S.C.
23 § 1915(e)(2) and § 1915A(b), and **GRANTS** him forty-five (45) days leave from the date
24 of this Order in which to file an Amended Complaint which cures all the deficiencies of
25 pleading noted. Plaintiff's Amended Complaint must be complete in itself without
26 reference to his original pleading. Defendants not named and any claims not re-alleged in
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1 the Amended Complaint will be considered waived. See S.D. Cal. CivLR 15.1; Hal
2 Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1989)
3 (“[A]n amended pleading supersedes the original.”); Lacey v. Maricopa Cnty., 693 F.3d
4 896, 928 (9th Cir. 2012) (noting that claims dismissed with leave to amend which are not
5 re-alleged in an amended pleading may be “considered waived if not repled.”).

6 5. **DIRECTS** the Clerk of Court to mail to Plaintiff, together with this Order, a
7 blank copy of the Court’s form “Complaint under the Civil Rights Act, 42 U.S.C.
8 § 1983” for his use in amending.

9 Dated: June 10, 2016

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12 Hon. Larry Alan Burns
13 United States District Judge
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