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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JUAN GUILLEN,  
12 CDCR #T-57240,

13 Plaintiff,

14 vs.

15 CORRECTIONAL OFFICER  
16 MARTINEZ, et al.,

17 Defendant.  
18  
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Case No.: 3:17-cv-0964-CAB-NLS

**ORDER:**

**1) GRANTING MOTIONS TO  
PROCEED IFP PURSUANT TO 28  
U.S.C. § 1915(a)  
[ECF Nos. 8, 13];**

**2) DENYING MOTION FOR  
RECONSIDERATION AS MOOT;  
AND**

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

23 Juan Guillen (“Plaintiff”), is a prisoner at Salinas Valley State Prison (“SVSP”) in  
24 Soledad, California. He initially filed a civil rights Complaint pursuant to 42 U.S.C.  
25 § 1983 (ECF No. 1) in the Northern District of California. However, because the claims  
26 he raised in his Complaint arose while he was incarcerated at the Richard J. Donovan  
27 Correctional Facility (“RJD”), the matter was transferred to the Southern District of  
28

1 California on May 5, 2017. (ECF No. 4.)

2 Initially, this Court dismissed Plaintiff's entire action because he had failed to file  
3 a Motion to Proceed In Forma Pauperis ("IFP") or pay the initial civil filing fee. (ECF  
4 No. 7.) Plaintiff has now filed two Motions to Proceed IFP which has reopened this  
5 matter. (ECF Nos. 8, 13). In addition, Plaintiff has file a "Motion for Reconsideration  
6 and Reopening of Case File." (ECF No. 10.) Because Plaintiff has filed the two IFP  
7 Motions, the Court has reopened the matter and thus, DENIES Plaintiff's Motion for  
8 Reconsideration as moot.

9 **I. Plaintiff's IFP Motions**

10 All parties instituting any civil action, suit or proceeding in a district court of the  
11 United States, except an application for writ of habeas corpus, must pay a filing fee of  
12 \$400.<sup>1</sup> See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to  
13 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
14 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007). However,  
15 prisoners who are granted leave to proceed IFP remain obligated to pay the entire fee in  
16 "increments" or "installments," *Bruce v. Samuels*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 627, 629  
17 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of  
18 whether their action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v.*  
19 *Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

20 Section 1915(a)(2) also requires prisoners seeking leave to proceed IFP to submit a  
21 "certified copy of the trust fund account statement (or institutional equivalent) for ... the  
22 6-month period immediately preceding the filing of the complaint." 28 U.S.C.  
23 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
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25  
26 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative  
27 fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court  
28 Misc. Fee Schedule, § 14 (eff. June 1, 2016). The additional \$50 administrative fee does  
not apply to persons granted leave to proceed IFP. *Id.*

1 trust account statement, the Court assesses an initial payment of 20% of (a) the average  
2 monthly deposits in the account for the past six months, or (b) the average monthly  
3 balance in the account for the past six months, whichever is greater, unless the prisoner  
4 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having  
5 custody of the prisoner then collects subsequent payments, assessed at 20% of the  
6 preceding month's income, in any month in which his account exceeds \$10, and forwards  
7 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);  
8 *Bruce*, 136 S. Ct. at 629.

9 In support of his IFP Motions, Plaintiff has submitted CDCR Inmate Statement  
10 Report dated June 3, 2017, together with a prison certificate completed by a SVSP  
11 accounting official attesting to his trust account activity and balances for the six-months  
12 preceding the filing of his Complaint. *See* ECF No. 8 at 6-8; 28 U.S.C. § 1915(a)(2); S.D.  
13 CAL. CIVLR 3.2; *Andrews*, 398 F.3d at 1119. These statements show that Plaintiff had an  
14 average monthly balance of \$22.77, and average monthly deposits of \$52.50 to his  
15 account over the 6-month period immediately preceding the filing of his Complaint, as  
16 well as an available balance of \$49.00 at the time of filing. *See* ECF No. 8 at 7. Based on  
17 this financial information, the Court GRANTS Plaintiff's Motions to Proceed IFP (ECF  
18 No. 8, 13), and assesses his initial partial filing fee to be \$10.50 pursuant to 28 U.S.C.  
19 § 1915(b)(1).

20 However, the Court will direct the Secretary of the California Department of  
21 Corrections and Rehabilitation ("CDCR"), or his designee, to collect this initial fee only  
22 if sufficient funds are available in Plaintiff's account at the time this Order is executed.  
23 *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited  
24 from bringing a civil action or appealing a civil action or criminal judgment for the  
25 reason that the prisoner has no assets and no means by which to pay the initial partial  
26 filing fee."); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850. The remaining balance of  
27 the \$350 total fee owed in this case must be collected and forwarded to the Clerk of the  
28 Court pursuant to 28 U.S.C. § 1915(b)(1).

1 **II. Sua Sponte Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

2 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-  
3 Answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these  
4 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of  
5 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants  
6 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
7 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.  
8 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that  
9 the targets of frivolous or malicious suits need not bear the expense of responding.’”  
10 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*  
11 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

12 “The standard for determining whether a plaintiff has failed to state a claim upon  
13 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
14 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668  
15 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th  
16 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard  
17 applied in the context of failure to state a claim under Federal Rule of Civil Procedure  
18 12(b)(6)”). Rule 12(b)(6) requires a complaint to “contain sufficient factual matter,  
19 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,  
20 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

21 Detailed factual allegations are not required, but “[t]hreadbare recitals of the  
22 elements of a cause of action, supported by mere conclusory statements, do not suffice.”  
23 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for  
24 relief [is] . . . a context-specific task that requires the reviewing court to draw on its  
25 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or  
26 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting  
27 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969  
28 (9th Cir. 2009).

1           **1. Plaintiff's Allegations**

2           When Plaintiff was previously housed at RJD, he was charged with a “Rules  
3 Violation Report” for the act of “battery on an inmate with a weapon resulting in serious  
4 bodily injury.” (Compl. at 3.) In August of 2015, Defendant Martinez, as the “Senior  
5 Hearing Officer,” conducted a disciplinary hearing based on this charge. (*Id.* at 5.)  
6 Plaintiff alleges Defendant Martinez allowed the “inmate and alleged victim” to provide  
7 written testimony against the objections of Plaintiff. (*Id.*) Plaintiff claims Defendant  
8 Martinez stated during the hearing that he reviewed Plaintiff’s file and stated “you are a  
9 fighter,” noted that Plaintiff is serving a sentence of life without the possibility of parole,”  
10 and concluded that “I believe you did it so deal with it on appeal.” (*Id.*) Plaintiff was  
11 sentenced to the Security Housing Unit (“SHU”) and claims that he “had to be kept under  
12 psychiatric care.” (*Id.*)

13           **2. Due Process Claims**

14           The Due Process Clause protects prisoners against deprivation or restraint of “a  
15 protected liberty interest” and “atypical and significant hardship on the inmate in relation  
16 to the ordinary incidents of prison life.” *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir.  
17 2003) (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)) (internal quotation marks  
18 omitted). Although the level of the hardship must be determined in a case-by-case  
19 determination, courts look to:

20           1) whether the challenged condition ‘mirrored those conditions imposed upon  
21 inmates in administrative segregation and protective custody,’ and thus  
22 comported with the prison’s discretionary authority; 2) the duration of the  
23 condition, and the degree of restraint imposed; and 3) whether the state’s  
action will invariably affect the duration of the prisoner’s sentence.

24 *Ramirez*, 334 F.3d at 861 (quoting *Sandin*, 515 U.S. at 486-87). Only if an inmate has  
25 alleged facts sufficient to show a protected liberty interest does the court next consider  
26 “whether the procedures used to deprive that liberty satisfied Due Process.” *Ramirez*, 334  
27 F.3d at 860.

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1 As currently pleaded, Plaintiff’s Complaint fails to allege facts which show that the  
2 disciplinary punishment he faced as a result of the RVR subjected him to any “atypical  
3 and significant hardship in relation to the ordinary incidents of prison life.” *Id.*; *Sandin*,  
4 515 U.S. at 584. Plaintiff does not compare the conditions of his confinement before or  
5 after his disciplinary conviction. Nor does he allege the degree of restraint it imposed.  
6 *Ramirez*, 334 F.3d at 861 (quoting *Sandin*, 515 U.S. at 486-87).

7 And while Plaintiff does claim generally that his disciplinary conviction caused  
8 him “emotional distress, anguish,” his pleading contains no “factual content that allows  
9 the court to draw the reasonable inference,” *Iqbal*, 556 U.S. at 678, that Defendants  
10 actions “presented a dramatic departure from the basic conditions of [Plaintiff’s]  
11 indeterminate sentence,” or caused him to suffer an “atypical” or “significant hardship.”  
12 *Sandin*, 515 U.S. at 584-85; *see also Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir.  
13 1996), *amended by* 135 F.3d 1318 (9th Cir. 1998).

14 Moreover, even if Plaintiff *had* alleged facts sufficient to invoke a protected liberty  
15 interest under *Sandin*, he still fails to plead facts to plausibly show he was denied the  
16 procedural protections the Due Process Clause requires. *See Iqbal*, 556 U.S. at 678;  
17 *Ramirez*, 334 F.3d at 860 (citations omitted); *see also Brown v. Oregon Dep’t of Corr.*,  
18 751 F.3d 983, 987 (9th Cir. 2014). Those procedures include: (1) written notice of the  
19 charges at least 24 hours before the disciplinary hearing; (2) a written statement by the  
20 fact-finder of the evidence relied on and reasons for the disciplinary action; (3) the right  
21 to call witnesses and present documentary evidence if doing so will not jeopardize  
22 institutional safety or correctional goals; (4) the right to appear before an impartial body;  
23 and (5) assistance from fellow inmates or prison staff in complex cases. *Wolff v.*  
24 *McDonnell*, 418 U.S. 539, 563-72 (1974); *Serrano v. Francis*, 345 F.3d 1071, 1079-80  
25 (9th Cir. 2003). Plaintiff claims he “never agreed to waive the presence or agreed to the  
26 stipulated testimony of the requested witness.” (Compl. at 5.) Plaintiff does not allege he  
27 was denied the right to call a witness. He simply objects to the form in which the  
28 testimony from this witness was given which does not violate *Wolff*.

1 Accordingly, the Court finds that Plaintiff's Complaint fails to state a procedural  
2 due process claim as to any Defendant; therefore, his Fourteenth Amendment claims are  
3 also subject to sua sponte dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and  
4 § 1915A(b)(1). *See Lopez*, 203 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004.

### 5 **III. Leave to Amend**

6 A pro se litigant must be given leave to amend his pleading to state a claim unless  
7 it is absolutely clear the deficiencies cannot be cured by amendment. *See Lopez*, 203 F.3d  
8 at 1130 (noting leave to amend should be granted when a complaint is dismissed under  
9 28 U.S.C. § 1915(e) "if it appears at all possible that the plaintiff can correct the defect").  
10 Therefore, while the Court finds Plaintiff's Complaint fails to state a claim upon which  
11 relief can be granted, it will provide him a chance to fix the pleading deficiencies  
12 discussed in this Order. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing  
13 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

### 14 **IV. Conclusion and Order**

15 For all the reasons discussed, the Court:

16 1. **DENIES** Plaintiff's "Motion for Reconsideration and Reopening of Case  
17 File" (ECF No. 10) as moot.

18 2. **GRANTS** Plaintiff's Motions to Proceed IFP pursuant to 28 U.S.C.  
19 § 1915(a) (ECF Nos. 8, 13).

20 3. **ORDERS** the Secretary of the CDCR, or his designee, to collect from  
21 Plaintiff's trust account the \$10.50 initial filing fee assessed, if those funds are available  
22 at the time this Order is executed, and to forward whatever balance remains of the full  
23 \$350 owed in monthly payments in an amount equal to twenty percent (20%) of the  
24 preceding month's income to the Clerk of the Court each time the amount in Plaintiff's  
25 account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST BE**  
26 **CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS**  
27 **ACTION.**

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