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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICHAEL AUNDREYA YOUNG, )  
#93221 )  
Plaintiff, )  
vs. )  
NEVADA DEPARTMENT OF )  
CORRECTIONS, *et al.*, )  
Defendants. )

2:09-cv-02217-KJD-LRL

**ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The Court now reviews the Complaint.

**I. Screening Standard**

Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner’s claims, “if the allegation of poverty is untrue,” or if the action “is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Nietzke v. Williams, 490 U.S. 319, 325 (1989). The Court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Id. at 327. The critical inquiry is whether a constitutional

1 claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885  
2 F.2d 639, 640 (9th Cir. 1989).

3 Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided  
4 for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under Section  
5 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under Rule  
6 12(b)(6) is essentially a ruling on a question of law. See Chappel v. Laboratory Corp. of America, 232  
7 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic recitation of the  
8 elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief  
9 above the speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965  
10 (2007). “The pleading must contain something more . . . than . . . a statement of facts that merely creates  
11 a suspicion [of] a legally cognizable right of action.” Id. In reviewing a complaint under this standard,  
12 the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex  
13 Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to plaintiff  
14 and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).  
15 Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings drafted by  
16 lawyers. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520-21 (1972)  
17 (*per curiam*); see also Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). All or part  
18 of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the prisoner’s claims lack  
19 an arguable basis either in law or in fact. This includes claims based on legal conclusions that are  
20 untenable (e.g. claims against defendants who are immune from suit or claims of infringement of a legal  
21 interest which clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.*  
22 fantastic or delusional scenarios). See Neitzke, 490 U.S. at 327-28; see also McKeever v. Block, 932  
23 F.2d 795, 798 (9th Cir. 1991).

24 To sustain an action under Section 1983, a plaintiff must show (1) that the conduct  
25 complained of was committed by a person acting under color of state law; and (2) that the conduct  
26 deprived the plaintiff of a federal constitutional or statutory right.” Hydrick v. Hunter, 466 F.3d 676,

1 689 (9th Cir. 2006).

2 **II. Instant Complaint**

3 Plaintiff, who is currently incarcerated at Northern Nevada Correctional Center (“NNCC”),  
4 alleges that Defendants were deliberately indifferent to a serious risk of harm in violation of his Eighth  
5 Amendment rights, which led to his assault and serious injury at Southern Desert Correctional Center  
6 (“SDCC”). He has sued the Nevada Department of Corrections (“NDOC”), NDOC Director Howard  
7 Skolnik, SDCC Warden Brian Williams, SDCC Associate Warden of Programs (“AWP”) Cheryl  
8 Burson, as well as Doe correctional officers. Plaintiff alleges that SDCC is chronically understaffed  
9 (particularly in the gym area), that inmates known to be dangerous are not segregated, that because  
10 weapons searches are infrequent inmates are able to obtain or make weapons to use on other inmates,  
11 and that inmate assaults are frequent. Plaintiff claims that just before he was attacked at least five  
12 assaults occurred, including one stabbing, and that Warden Williams and AWP Burson had actual  
13 knowledge of these events and thus the danger to inmates, yet failed to act to protect plaintiff. In August  
14 2007, when plaintiff exited the law library he was attacked by several inmates—apparently in the gym  
15 area—and stabbed multiple times. Plaintiff was flown to a hospital in Las Vegas and underwent  
16 emergency surgery.

17 As an initial matter, while Plaintiff names NDOC as a Defendant, states and any governmental  
18 agency that is an arm of the state are not persons for purposes of Section 1983. See Arizonans for  
19 Official English v. Arizona, 520 U.S. 43, 69 (1997); Will v. Mich. Dep’t of State Police, 491 U.S. 58,  
20 71 (1989); Doe v. Lawrence Livermore Nat’l Lab., 131 F.3d 836, 839 (9th Cir. 1997); Hale v. Arizona,  
21 993 F.2d 1387, 1398–99 (9th Cir. 1993) (en banc); Gilbreath v. Cutter Biological, Inc., 931 F.2d 1320,  
22 1327 (9th Cir. 1991); Howlett v. Rose, 496 U.S. 356, 365 (1990); Flint v. Dennison, 488 F.3d 816,  
23 824–25 (9th Cir. 2007). Section 1983 claims against states or a governmental entity that is an arm of  
24 the state, therefore, are legally frivolous. See Jackson v. Arizona, 885 F.2d 639, 641 (9th Cir. 1989),  
25 superseded by statute on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)  
26 (*en banc*). Because NDOC is one of the arms of the State, it is not a person for the purposes of § 1983.

1 See Doe, 131 F.3d 836; Black v. Nevada Dept. of Corrections, 2010 WL 2545760 at \*2 (D. Nev. June  
2 21, 2010). Accordingly, the claims against NDOC are dismissed with prejudice.

3       Next, while Plaintiff names NDOC Director Skolnik as a Defendant, “[l]iability under [§] 1983  
4 arises only upon a showing of personal participation by the Defendant. A supervisor is only liable for  
5 the constitutional violations of . . . subordinates if the supervisor participated in or directed the  
6 violations, or knew of the violations and failed to act to prevent them. There is no respondeat superior  
7 liability under [§] 1983.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citations omitted); see  
8 also Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007); Ortez v. Washington County, State of Or.,  
9 88 F.3d 804, 809 (9th Cir. 1996) (concluding proper to dismiss where no allegations of knowledge of  
10 or participation in alleged violation). Plaintiff does not describe any specific actions by Director  
11 Skolnik, nor does he allege that Director Skolnik had knowledge of or participated in any alleged civil  
12 rights violation. Defendant Skolnik is dismissed from this action.

13       Turning to Plaintiff’s substantive claims, he alleges that Defendants were deliberately indifferent  
14 to serious threats to his safety in contravention of the Eighth Amendment. The Eighth Amendment  
15 prohibits the imposition of cruel and unusual punishments and “embodies broad and idealistic concepts  
16 of dignity, civilized standards, humanity and decency.” Estelle v. Gamble, 429 U.S. 97, 102 (1976).  
17 Under the Eighth Amendment, “[p]rison officials have a duty to take reasonable steps to protect inmates  
18 from physical abuse.” Hoptowit v. Ray, 682 F.2d 1237, 1250 (9th Cir. 1982); see also Farmer v.  
19 Brennan, 511 U.S. 825, 833 (1994); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005); Robinson  
20 v. Prunty, 249 F.3d 862, 866 (9th Cir. 2001). To establish a violation of this duty, the prisoner must  
21 establish that prison officials were “deliberately indifferen[t]” to serious threats to the inmate’s safety.  
22 See Farmer, 511 U.S. at 834. To demonstrate that a prison official was deliberately indifferent to a  
23 serious threat to the inmate’s safety, the prisoner must show that “the official [knew] of and  
24 disregard[ed] an excessive risk to inmate . . . safety; the official must both be aware of facts from which  
25 the inference could be drawn that a substantial risk of serious harm exists, and [the official] must also  
26 draw the inference.” Farmer, 511 U.S. at 837; Gibson v. County of Washoe, Nev., 290 F.3d 1175,

1 1187-88 (9th Cir. 200 2); Jeffers v. Gomez, 267 F.3d 895, 913 (9th Cir. 2001) (*per curiam*); Anderson  
2 v. County of Kern, 45 F.3d 1310, 1313 (9th Cir. 1995). To prove knowledge of the risk, however, the  
3 prisoner may rely on circumstantial evidence; in fact, the very obviousness of the risk may be sufficient  
4 to establish knowledge. See Farmer, 511 U.S. at 842; Wallis v. Baldwin, 70 F.3d 1074, 1077 (9th Cir.  
5 1995). Plaintiff states an Eighth Amendment claim against the remaining defendants.

### 6 **III. Conclusion**

7 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE** the Complaint (docket #1-1).

8 **IT IS FURTHER ORDERED** that all claims against the Nevada Department of Corrections  
9 (“NDOC”) are dismissed with prejudice. NDOC is **DISMISSED** from this action.

10 **IT IS FURTHER ORDERED** that all claims against Howard Skolnik are dismissed with  
11 prejudice. Howard Skolnik is **DISMISSED** from this action.

12 **IT IS FURTHER ORDERED** that plaintiff’s Eighth Amendment claims **MAY PROCEED**  
13 against the remaining Defendants.

14 **IT IS FURTHER ORDERED** that the Clerk shall electronically serve a copy of this Order,  
15 along with a copy of Plaintiff’s Complaint, on the Office of the Attorney General of the State of Nevada,  
16 attention Pamela Sharp.

17 **IT IS FURTHER ORDERED** that henceforth, Plaintiff shall serve upon Defendants, or, if an  
18 appearance has been made by counsel, upon their attorney(s), a copy of every pleading, motion, or other  
19 document submitted for consideration by the court. Plaintiff shall include with the original paper  
20 submitted for filing, a certificate stating the date that a true and correct copy of the document was mailed  
21 to the Defendants or counsel for Defendants. If counsel has entered a notice of appearance, the plaintiff  
22 shall direct service to the individual attorney named in the notice of appearance, at the address stated  
23 therein. The Court may disregard any paper received by a district judge or a magistrate judge that has  
24 not been filed with the Clerk, and any paper which fails to include a certificate showing proper service.

25 **IT IS FURTHER ORDERED** that Plaintiff shall file his Response, if any, to Defendants’  
26 Motion to Dismiss or in the alternative, Motion for Summary Judgment (docket #11) within thirty (30)

1 days of the date of entry of this Order.

2 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Extend Time (#15) is **DENIED** as  
3 moot.

4 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Compel (#23) is **DENIED** without  
5 prejudice as premature. Plaintiff may re-file this Motion, if necessary, during discovery.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Move this case to trial and for review  
7 of complaint (#28) is **DENIED** as moot.

8 DATED: November 23, 2010.

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UNITED STATES DISTRICT JUDGE

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