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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

10 RONALD LEE ALLEN, )  
11 #786489 )  
12 Plaintiff, ) 2:10-cv-00857-RLH-LRL  
13 vs. )  
14 CLARK COUNTY DETENTION )  
15 CENTER, *et al.*, )  
16 Defendants. )  
\_\_\_\_\_ /

**ORDER**

17 This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's  
18 application to proceed *in forma pauperis* is granted. (Docket #1). The court now reviews the complaint  
19 and plaintiff's motion for the appointment of counsel.  
20

**I. Plaintiff's Motion for Appointment of Counsel**

21 Plaintiff has filed a motion seeking the appointment of counsel in this case. (Docket #3).  
22 A litigant in a civil right action does not have a Sixth Amendment right to appointed counsel. *Storseth*  
23 *v. Spellman*, 654 F.2d 1349, 13253 (9<sup>th</sup> Cir. 1981). In very limited circumstances, federal courts are  
24 empowered to request an attorney to represent an indigent civil litigant. The circumstances in which  
25 a court will make such a request, however, are exceedingly rare, and the court will make the request  
26 under only extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800

1 (9<sup>th</sup> Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9<sup>th</sup> Cir. 1986).

2 A finding of such exceptional circumstances requires that the court evaluate both the  
3 likelihood of success on the merits and the plaintiff's ability to articulate his claims in *pro se* in light  
4 of the complexity of the legal issues involved. Neither factor is dispositive, and both must be viewed  
5 together in making a finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9<sup>th</sup> Cir. 1991)(*citing Wilborn*,  
6 *supra*, 789 F.2d at 1331). The district court has considerable discretion in making these findings. The  
7 court will not enter an order directing the appointment of counsel. As set forth below, plaintiff has  
8 demonstrated his ability to articulate his claims in *pro se*. Plaintiff's motion for the appointment of  
9 counsel is denied.

10 **II. Screening Standard**

11 Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a  
12 prisoner's claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious,"  
13 "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant  
14 who is immune from such relief." 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks  
15 an arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may,  
16 therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or  
17 where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a  
18 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. *See Jackson*  
19 *v. Arizona*, 885 F.2d 639, 640 (9<sup>th</sup> Cir. 1989).

20 Dismissal of a complaint for failure to state a claim upon which relief may be granted  
21 is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard  
22 under Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review  
23 under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*  
24 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a "formulaic  
25 recitation of the elements of a cause of action;" it must contain factual allegations sufficient to "raise  
26 a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct.

1 1955, 1965 (2007). “The pleading must contain something more...than...a statement of facts that merely  
2 creates a suspicion [of] a legally cognizable right of action.” *Id.* In reviewing a complaint under this  
3 standard, the court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co.*  
4 *v. Rex Hospital Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable  
5 to plaintiff and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421  
6 (1969).

7 Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings  
8 drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21  
9 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). All  
10 or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the prisoner’s claims  
11 lack an arguable basis either in law or in fact. This includes claims based on legal conclusions that are  
12 untenable (e.g. claims against defendants who are immune from suit or claims of infringement of a legal  
13 interest which clearly does not exist), as well as claims based on fanciful factual allegations (e.g.  
14 fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever v. Block*, 932  
15 F.2d 795, 798 (9th Cir. 1991).

16 To sustain an action under section 1983, a plaintiff must show (1) that the conduct  
17 complained of was committed by a person acting under color of state law; and (2) that the conduct  
18 deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*, 466 F.3d 676, 689  
19 (9<sup>th</sup> Cir. 2006).

20 **III. Instant Complaint**

21 Plaintiff, who is a pretrial detainee in Clark County Detention Center (“CCDC”), has  
22 sued the CCDC, Clark County, Clark County Sheriff Doug Gillespie, Clark County Department of  
23 Social Services Director Nancy McLane, NAPHCARE, and the following CCDC personnel: Medical  
24 Director Dr. Russo, Dr. McGrorey, nurses identified as Does 1-4, Kite Nurse Cornelius, and nurse  
25 Rebecca Newman, alleging deliberate indifference to his serious medical needs in violation of his Eighth  
26 Amendment and Fourteenth Amendment rights.

1                   As an initial matter, while plaintiff ostensibly alleges nine separate counts of deliberate  
2 indifference to his serious medical needs, in fact he sets forth a chronology of events related to a single  
3 claim. Thus, the court will construe counts I-IX as a single claim of deliberate indifference to serious  
4 medical needs. Plaintiff alleges that in October 2009, a few days before scheduled hand surgery in  
5 California, he was extradited to CCDC. He claims the planned surgery would have reconstructed two  
6 joints in his left hand and addressed a hairline fracture in his left wrist. He alleges that CCDC and  
7 NAPHCARE, alleged medical provider at the CCDC, have a policy that they are not responsible for  
8 treating non-life-threatening, preexisting injuries, and that the detainee must use his or her own  
9 insurance or secure approval by social services for a medical card and then seek treatment. Plaintiff  
10 asserts that Dr. McGrorey saw him on October 23, 2009 and explained that: “your injury is preexisting  
11 and you won’t die from it, so we are not obligated to fix your hand. If you do not have insurance you  
12 will need to be seen by social services and get approved for a medical card. This could take 6 months,  
13 a year, or longer.” Plaintiff claims that his doctor in California informed him that the surgery needed  
14 to be done soon to avoid more and permanent damage. He alleges that “Nurse Norma” inquired as to  
15 why his appointments with a hand specialist were repeatedly cancelled and relayed to him that medical  
16 administration hopes that plaintiff either is released or imprisoned so that the county would not have to  
17 pay for surgery.

18                   Plaintiff asserts that in April 2010 he was seen by Dr. Russo and a Dr. Zinser. He alleges  
19 the following related to that visit: that Dr. Zinser had a standing order to see plaintiff every two or three  
20 weeks to see if plaintiff finally had surgery, that Dr. Zinser informed Dr. Russo that he had ordered a  
21 30-day referral to a hand specialist at least two or three times, that Dr. Russo examined him and said that  
22 he clearly needed surgery, and that Dr. Russo stated that he would put in a referral right away.

23                   Plaintiff states that he suffers severe pain that makes it difficult to sleep and that the stress  
24 has led him to seek psychological help and medication for anxiety and depression. He alleges that he  
25 has submitted numerous kites and grievances throughout his detention. Plaintiff states that he received  
26 pain medication that was halted without explanation in April, when he was directed to obtain Motrin

1 and Tylenol at the commissary. He also claims that he obtained a social services card, but that his social  
2 services “agent” does not answer the phone or check on him and that his card expired on January 31,  
3 2010, without his being seen by a hand specialist. Plaintiff seeks damages as well as injunctive relief.

4 Such claims by pretrial detainees are analyzed under the Due Process Clause of the  
5 Fourteenth Amendment. *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir.1998). The same standard  
6 applies to a pretrial detainee’s claim of deliberate indifference under the Fourteenth Amendment as to  
7 a prisoner’s claim under the Eighth Amendment. *Id.*

8 The Eighth Amendment prohibits the imposition of cruel and unusual punishments and  
9 “embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency.” *Estelle*  
10 *v. Gamble*, 429 U.S. 97, 102 (1976). A detainee or prisoner’s claim of inadequate medical care does  
11 not constitute cruel and unusual punishment unless the mistreatment rises to the level of “deliberate  
12 indifference to serious medical needs.” *Id.* at 106. In applying this standard, the Ninth Circuit has held  
13 that before it can be said that a prisoner’s civil rights have been abridged, “the indifference to his  
14 medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not  
15 support this cause of action.” *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980),  
16 citing *Estelle*, 429 U.S. at 105-06.

17 Delay of, or interference with, medical treatment can also amount to deliberate  
18 indifference. See *Jett v. Penner*, 439 F.3d 1091, 1096 (9<sup>th</sup> Cir. 2006); *Clement v. Gomez*, 298 F.3d 898,  
19 905 (9<sup>th</sup> Cir. 2002); *Hallett v. Morgan*, 296 F.3d 732, 744 (9<sup>th</sup> Cir. 2002); *Lopez v. Smith*, 203 F.3d 1122,  
20 1131 (9<sup>th</sup> Cir. 1996); *Jackson v. McIntosh*, 90 F.3d 330, 332 (9<sup>th</sup> Cir. 1996); *McGuckin v. Smith*, 974  
21 F.2d 1050, 1059 (9<sup>th</sup> Cir. 1992) *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d  
22 1133, (9<sup>th</sup> Cir. 1997) (en banc); *Hutchinson v. United States*, 838 F.2d 390, 394 (9<sup>th</sup> Cir. 1988).

23 To state a claim for municipal or county liability, as well as to state a claim against an  
24 arm of the municipality or county, a plaintiff must allege that he suffered a constitutional deprivation  
25 that was the product of a policy or custom of the local government unit. *City of Canton, Ohio, v. Harris*,  
26 489 U.S. 378, 385 (1989); *Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978).

1 Plaintiff has alleged that he has a serious hand injury that requires surgery, but that, citing  
2 a policy of not treating non-life-threatening, preexisting injuries, defendants have refused to treat his  
3 damaged hand, resulting in further damage and causing severe pain, in deliberate indifference to his  
4 serious medical needs. As a pretrial detainee, plaintiff states a Fourteenth Amendment claim.

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

16 Finally, in Count 10 of plaintiff’s complaint, he describes a case he has pending in state  
17 court regarding these issues. However, he sets forth no facts alleging a deprivation of his constitutional  
18 rights. Count 10 is dismissed for failure to state a claim.

19 **IV. Conclusion**

20 **IT IS THEREFORE ORDERED** that plaintiff’s application to proceed *in forma*  
21 *pauperis* (docket #1) without having to prepay the full filing fee is **GRANTED**; plaintiff shall not be  
22 required to pay an initial installment fee. Nevertheless, the full filing fee shall still be due, pursuant to  
23 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act of 1996. The movant herein is  
24 permitted to maintain this action to conclusion without the necessity of prepayment of fees or costs or  
25 the giving of security therefor. This order granting *in forma pauperis* status shall not extend to the  
26 issuance of subpoenas at government expense.

1                   **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915(b)(2), the Clark  
2 County Detention Center shall pay to the Clerk of the United States District Court, District of Nevada,  
3 20% of the preceding month's deposits to plaintiff's (Ronald Lee Allen, Detainee No. 786489) account  
4 (in the months that the account exceeds \$10.00) until the full \$350.00 filing fee has been paid for this  
5 action. If plaintiff should be transferred and become under the care of the Nevada Department of  
6 Corrections, the CCDC Accounting Supervisor is directed to send a copy of this order to the attention  
7 of the Chief of Inmate Services for the Nevada Department of Corrections, P.O. Box 7011, Carson City,  
8 NV 89702, indicating the amount that plaintiff has paid toward his filing fee, so that funds may continue  
9 to be deducted from plaintiffs account. **The Clerk shall send a copy of this order to the CCDC**  
10 **Accounting Supervisor, 330 S. Casino Center Blvd., Las Vegas, NV 89101.**

11                   **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise  
12 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the  
13 Prisoner Litigation Reform Act of 1996.

14                   **IT IS FURTHER ORDERED** that the Clerk of Court shall detach and **FILE** the  
15 complaint. (Docket #1-1).

16                   **IT IS FURTHER ORDERED** that defendant Nancy McLane is **DISMISSED** from this  
17 action.

18                   **IT IS FURTHER ORDERED** that plaintiff's claims of deliberate indifference to his  
19 serious medical needs against all remaining defendants **may proceed**.

20                   **IT IS FURTHER ORDERED** that Count 10 is **DISMISSED**.

21                   **IT IS FURTHER ORDERED** that the Clerk of Court shall issue summons for  
22 defendants Clark County Detention Center, Clark County, Nevada, Dr. McGrorey, NAPHCARE, Kite  
23 Nurse Cornelius, Nurse Norma, Rebecca Newman, Dr. Russo, and Sheriff Gillespie, and deliver same,  
24 along with the complaint, to the U.S. Marshal for service. Plaintiff shall have twenty (20) days in  
25 which to furnish to the U.S. Marshal the required Forms USM-285. Within twenty (20) days after  
26 receiving from the U.S. Marshal a copy of the Form USM-285 showing whether service has been

1 accomplished, plaintiff must file a notice with the court identifying which defendants were served and  
2 which were not served, if any. If plaintiff wishes to have service again attempted on an unserved  
3 defendant(s), then a motion must be filed with the court identifying the unserved defendant(s) and  
4 specifying a more detailed name and/or address for said defendant(s), or whether some other manner  
5 of service should be attempted.

6 **IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel (docket  
7 #3) is **DENIED**.

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

17  
18 DATED : August 2, 2010.

  
19 ROGER L. HUNT  
20 Chief United States District Judge  
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