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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HERMAN L. BARTON, JR.,
 Plaintiff,

vs.

4 QUEENS HOTEL AND CASINO,
 Defendant.

Case No. 2:11-cv-02096-KJD-CWH

ORDER

Plaintiff Herman L. Barton, Jr., proceeding in this action *pro se*, has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*, and submitted a Complaint (Dkt. #1) on December 28, 2011. This proceeding was referred to this court pursuant to Local Rule IB 1-9.

I. In Forma Pauperis Application

Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The court will now review Plaintiff’s complaint.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
2 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
3 essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d
4 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
5 the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v.*
6 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
7 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
8 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*
9 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
10 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
11 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
12 allegations, do not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not
13 crossed the line from plausible to conceivable, the complaint should be dismissed. *Twombly*, 550
14 U.S. at 570.

15 It appears Plaintiff seeks relief based on his claim that he was assaulted by a security officer
16 working for Defendant 4 Queens Security Officer. Plaintiff, however, however, has not provided
17 any factual support for this claim. To state a claim for relief, “a complaint must contain sufficient
18 factual matter to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678-79.
19 Because Plaintiff has not provided any factual support for his claims, the complaint must be
20 dismissed. The dismissal will be without prejudice to Plaintiff amending his complaint to include
21 sufficient factual allegations to support his claims.

22 Based on the foregoing and good cause appearing therefore,

23 **IT IS HEREBY ORDERED** that Plaintiff’s application to proceed *in forma pauperis* is
24 **granted**. Plaintiff shall not be required to pay the filing fee of three hundred fifty dollars
25 (\$350.00). Plaintiff is permitted to maintain this action to conclusion without the necessity of
26 prepayment of any additional fees or costs or the giving of a security therefor. This Order granting
27 leave to proceed *in forma pauperis* shall not extend to the issuance of subpoenas at government
28 expense.

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IT IS FURTHER ORDERED that the Clerk of the Court shall file Plaintiff's Complaint.

IT IS FURTHER ORDERED that the Complaint is **dismissed without prejudice** for failure to state a claim upon which relief can be granted, with leave to amend. Plaintiff will have **thirty (30)** days from the date that this Order is entered to file an amended complaint correcting the noted deficiencies. Failure to comply with this Order may result in the Court recommending that this action be dismissed.

DATED this 6th day of August, 2012.



C.W. Hoffman, Jr.
United States Magistrate Judge