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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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HANK ZABALA,

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Plaintiff,

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vs.

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MIKE HALEY, *et al.*

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Defendants.

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2:13-cv-00393-PMP-PAL

ORDER

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This *pro se* civil rights suit by a former local detainee now in state custody comes before the Court on Plaintiff's two applications (## 1 & 2) to proceed *in forma pauperis* and for initial review of the complaint. The Court finds that Plaintiff is unable to pay a significant initial partial filing fee and therefore will grant the pauper applications subject to the remaining provisions of this order. The Court accordingly turns to screening of the complaint.

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When a "prisoner seeks redress from a governmental entity or officer or employee of a governmental entity," the court must "identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

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In considering whether the plaintiff has stated a claim upon which relief can be granted, all material factual allegations are accepted as true for purposes of initial review and are to be construed in the light most favorable to the plaintiff. *See, e.g., Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, mere legal conclusions unsupported by any actual

1 allegations of fact are not assumed to be true in reviewing the complaint. *Ashcroft v. Iqbal*,
2 556 U.S. 662 (2009). That is, bare and conclusory assertions that constitute merely formulaic
3 recitations of the elements of a cause of action and that are devoid of further factual
4 enhancement are not accepted as true and do not state a claim for relief. *Id.*

5 Further, the factual allegations must state a plausible claim for relief, meaning that the
6 well-pleaded facts must permit the court to infer more than the mere possibility of misconduct:

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8 [A] complaint must contain sufficient factual matter,
9 accepted as true, to “state a claim to relief that is plausible on its
10 face.” [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127
11 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).] A claim has facial
12 plausibility when the plaintiff pleads factual content that allows the
13 court to draw the reasonable inference that the defendant is liable
14 for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The
15 plausibility standard is not akin to a “probability requirement,” but
16 it asks for more than a sheer possibility that a defendant has
17 acted unlawfully. *Ibid.* Where a complaint pleads facts that are
18 “merely consistent with” a defendant’s liability, it “stops short of
19 the line between possibility and plausibility of ‘entitlement to
20 relief.’” *Id.*, at 557, 127 S.Ct. 1955 (brackets omitted).

21 [W]here the well-pleaded facts do not permit the court
22 to infer more than the mere possibility of misconduct, the
23 complaint has alleged - but it has not “show[n]” - “that the pleader
24 is entitled to relief.” Fed. Rule Civ. Proc. 8(a)(2).

25 *Iqbal*, 556 U.S. at 678.

26 Allegations of a *pro se* complainant are held to less stringent standards than formal
27 pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519 (1972).

28 Plaintiff Hank Zabala alleges that he was placed in disciplinary segregation at the
Washoe County Detention Facility (WCDF) as an act of racial bias and discrimination
because he is a Mexican-American with tattoos and also in retaliation for his efforts to file
grievances. He raises claims under the First Amendment, under the Equal Protection Clause
of the Fourteenth Amendment, and for a denial of procedural due process. Plaintiff names
Washoe County Sheriff Mike Haley and Deputies Balaam, Youngblood, Jenkins, and
Christinsen as defendants in their individual and official capacities. He seeks compensatory
and punitive damages along with declaratory relief.

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1 The specific factual allegations of the complaint states claims under the First
2 Amendment, under the Equal Protection Clause, and for a denial of procedural due process.¹

3 The allegations of the current complaint, however, do not state a claim upon which
4 relief may be granted against the defendants in their official capacities. Plaintiff may not
5 pursue an official capacity claim against a municipal government officer absent factual
6 allegations tending to establish that the alleged constitutional violations occurred pursuant to
7 an official policy, custom or practice of the municipality. *See, e.g., Butler v. Elle*, 281 F.3d
8 1014, 1026 n.9 (9th Cir. 2002); *Arpin v. Santa Clara Valley Transportation Agency*, 261 F.3d
9 912, 925 (9th Cir. 2001). The complaint does not contain any such allegations. The complaint
10 accordingly fails to state a claim against the defendants in their official capacity.

11 The complaint further does not state a claim for relief against Sheriff Haley in his
12 individual capacity. There is no *respondeat superior* liability under § 1983. That is, a
13 supervisory official may be held liable in his individual capacity only if he either was personally
14 involved in the constitutional deprivation or a sufficient causal connection existed between his
15 unlawful conduct and the constitutional violation. *See, e.g., Jackson v. City of Bremerton*, 268
16 F.3d 646, 653 (9th Cir. 2001). The complaint does not contain any nonconclusory allegations
17 of personal involvement by Sheriff Haley in the constitutional violations that Plaintiff alleges
18 were directly committed by the remaining defendants.

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21 ¹The constitutional standards for determining whether a protected liberty interest arises from
22 placement of a pretrial detainee in disciplinary segregation are not necessarily the same as the standards
23 pertaining to convicted prisoners. *Cf. Mitchell v. Dupnik*, 75 F.3d 517, 523 (9th Cir. 1996); *see also Valdez v.*
24 *Rosenbaum*, 302 F.3d 1039, 1044 n.3 (9th Cir. 2002); *Carlo v. City of Chino*, 105 F.3d 493, 498-99 & n.1 (9th
25 Cir. 1997). However, the placement of a pretrial detainee in segregation does not necessarily violate
26 procedural due process in all cases. *Cf. Martucci v. Johnson*, 944 F.3d 291, 294-95 (6th Cir. 1991). Under
27 *Bell v. Wolfish*, 441 U.S. 520 (1979), not all restrictions on movement and not all losses of choice and privacy
28 attending pretrial detention violate the Constitution. 441 U.S. at 537. Rather, the plaintiff must demonstrate
that the conditions amount to punishment of the detainee. He may do this by showing an expressed intent to
punish on the part of detention facility officials. Absent such an expressed intent to punish, the court must
determine whether the restriction was imposed for some other legitimate governmental purpose, whether the
restriction is rationally connected to that purpose, and whether the restriction appears excessive in relation to
that purpose. 441 U.S. at 538-39. Provisions of state law also potentially may be relevant to the inquiry. *See*
Valdez, 302 F.3d at 1044 n.3. The specific factual allegations presented in the complaint are sufficient to
state a procedural due process claim.

1 The Court will provide Plaintiff an opportunity to file an amended complaint correcting
2 these deficiencies, to the extent possible.

3 In filing an amended complaint, Plaintiff should note the following.

4 First, in the original complaint, Plaintiff presented extensive allegations of fact in the
5 "Nature of the Case" section rather than in the single count presented. In the "Nature of the
6 Case" portion of the form, Plaintiff instead should give only a brief general overview of the
7 factual basis for the action. Under the instructions, "[t]his is not the place to provide detailed
8 information about what each defendant did to violate your rights – that should be done in" the
9 counts. *Instructions*, at 6. All operative specific allegations of fact should be presented within
10 the count or counts of the complaint.

11 Second, an amended complaint is a "stand-alone" filing that does not carry forward
12 allegations from the original complaint. As discussed herein, the complaint, in the main,
13 states viable federal constitutional claims. Plaintiff therefore should repeat allegations in the
14 amended complaint that state a claim and that he wishes to continue to make. The amended
15 complaint, again, is a "stand-alone" filing, and Plaintiff should restate all of the factual
16 allegations that he seeks to present in the case.

17 IT THEREFORE IS ORDERED that Plaintiff's two applications (## 1& 2) to proceed
18 *in forma pauperis* are GRANTED subject to the remaining provisions of this order. Plaintiff
19 shall not be required to pay an initial partial filing fee. However, even if this action is
20 dismissed, the full \$350.00 filing fee still must be paid pursuant to 28 U.S.C. § 1915(b)(2).

21 IT IS FURTHER ORDERED that Plaintiff is permitted to maintain this action to a
22 conclusion without the necessity of prepayment of any additional fees or costs or the giving
23 of security therefor. This order granting *in forma pauperis* status shall not extend to the
24 issuance of subpoenas at government expense.

25 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada
26 Department of Corrections shall pay to the Clerk of the United States District Court, District
27 of Nevada, 20% of the preceding month's deposits to Plaintiff's account (in the months that
28 the account exceeds \$10.00) until the full \$350.00 filing fee has been paid for this action. The

1 Clerk shall SEND a copy of this order to the Finance Division of the Clerk's Office. **The Clerk**
2 **shall also SEND a copy of this order to the attention of the Chief of Inmate Services for**
3 **the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.**

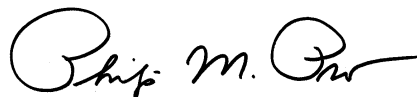
4 IT FURTHER IS ORDERED that the Clerk of the Court shall filed the original complaint
5 and that the following claims are DISMISSED without prejudice for failure to state a claim
6 upon which relief may be granted: (a) all claims against all defendants in their official capacity;
7 and (b) the claims against defendant Haley also in his individual capacity, such that all current
8 claims against defendant Haley are dismissed by this order.

9 IT FURTHER IS ORDERED that Plaintiff shall have **thirty (30) days** within which to
10 mail an amended complaint to the Clerk for filing correcting the deficiencies in the original
11 complaint, if possible. If Plaintiff does not timely mail an amended complaint correcting the
12 deficiencies in the original complaint, the action will proceed forward only on the claims
13 against defendants Balaam, Youngblood, Jenkins, and Christinsen only in their individual
14 capacities.

15 IT FURTHER IS ORDERED that plaintiff shall clearly title any amended complaint filed
16 as an amended complaint by placing the word "AMENDED" immediately above "Civil Rights
17 Complaint" on page 1 in the caption and shall place the docket number,
18 **2:13-cv-00393-PMP-PAL**, above the word "AMENDED" in the space for "Case No." Under
19 Local Rule LR 15-1, any amended complaint filed must be complete in itself without reference
20 to prior filings. Thus, any allegations, parties, or requests for relief from prior papers that are
21 not carried forward in the amended complaint no longer will be before the Court.

22 The Clerk shall SEND Plaintiff with two copies of a blank § 1983 complaint form and
23 one copy of the instructions for same, along with a copy of the original complaint that he
24 submitted.

25 DATED: November 12, 2013.

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28 PHILIP M. PRO
United States District Judge