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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICHARD MASON,
Plaintiff,
vs.
DOUG GILLESPIE,
Defendant.

Case No. 2:13-cv-01990-APG-VCF
ORDER

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*.

I. In Forma Pauperis Application

Before the Court is plaintiff's application to proceed *in forma pauperis*. Based on the information regarding plaintiff's financial status, the Court finds that plaintiff is not able to pay an initial installment payment towards the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will, however, be required to make monthly payments towards the full \$350.00 filing fee when he has funds available.

II. Screening Standard

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.

1 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims
2 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek
3 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §
4 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica*
5 *Police Dep't*, 901 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a
6 plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of
7 the United States was violated, and (2) that the alleged violation was committed by a person acting
8 under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

9 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation
10 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of
11 poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief
12 may be granted, or seeks monetary relief against a defendant who is immune from such relief." 28
13 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be
14 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same
15 standard under § 1915 when reviewing the adequacy of a complaint or an amended complaint.
16 When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
17 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
18 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
19 F.3d. 1103, 1106 (9th Cir. 1995).

20 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
21 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
22 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the
23 claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
24 1999). In making this determination, the court takes as true all allegations of material fact stated in
25 the complaint, and the court construes them in the light most favorable to the plaintiff. *See*
26 *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are
27 held to less stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449
28 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). While the standard

1 under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than
2 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A
3 formulaic recitation of the elements of a cause of action is insufficient. *Id.*; see *Papasan v. Allain*,
4 478 U.S. 265, 286 (1986).

5 Additionally, a reviewing court should “begin by identifying pleadings [allegations] that,
6 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
7 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the framework
8 of a complaint, they must be supported with factual allegations.” *Id.* “When there are well-pleaded
9 factual allegations, a court should assume their veracity and then determine whether they plausibly
10 give rise to an entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim
11 for relief [is] a context-specific task that requires the reviewing court to draw on its judicial
12 experience and common sense.” *Id.*

13 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte*
14 if the prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on
15 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit or
16 claims of infringement of a legal interest which clearly does not exist), as well as claims based on
17 fanciful factual allegations (e.g., fantastic or delusional scenarios). See *Neitzke v. Williams*, 490
18 U.S. 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

19 **III. Complaint in the Instant Action**

20 Plaintiff alleges that during his incarceration at the Clark County Detention Center’s satellite
21 facility, he was subjected to constant illumination, with the lights on 24 hours a day. Plaintiff, who
22 was a pretrial detainee at the time, alleges that he was subjected to constant illumination from
23 March 16, 2013 through June 4, 2013. Plaintiff alleges that defendant Gillespie failed to provide
24 appropriate lighting and also failed to train his staff to provide appropriate lighting. Plaintiff seeks
25 monetary relief.

26 A pretrial detainee’s right to be free from punishment is grounded in the Due Process
27 Clause, but courts borrow from Eighth Amendment jurisprudence when analyzing the rights of
28 pretrial detainees. See *Pierce v. County of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008);

1 *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002); *Frost v. Agnos*, 152 F.3d 1124,
2 1129 (9th Cir. 1998); *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996); *Anderson v. County of*
3 *Kern*, 45 F.3d 1310, 1312-13 (9th Cir. 1995). “‘Adequate lighting is one of the fundamental
4 attributes of “adequate shelter” required by the Eighth Amendment.’ Moreover, “[t]here is no
5 legitimate penological justification for requiring [inmates] to suffer physical and psychological
6 harm by living in constant illumination.’” *Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996)
7 (citations omitted; brackets in original), *amended by* 135 F.3d 1318 (9th Cir. 1998); *see also*
8 *Grenning v. Miller-Stout*, 739 F.3d 1235, 1238-39 (9th Cir. 2014); *Hoptowit v. Spellman*, 753 F.2d
9 779, 783 (9th Cir. 1985). Accordingly, plaintiff states a colorable claim in alleging that defendant
10 violated his constitutional rights in subjecting him to constant illumination.

11 **IV. Motion for Appointment of Counsel**

12 Plaintiff has filed a motion for the appointment of counsel. (ECF No. 2). A litigant in a
13 civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v.*
14 *Spellman*, 654 F.2d 1349, 13253 (9th Cir. 1981). In very limited circumstances, federal courts are
15 empowered to request an attorney to represent an indigent civil litigant. The circumstances in
16 which a court will make such a request, however, are exceedingly rare, and the court will make the
17 request under only extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d
18 796, 799-800 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In the
19 instant case, the Court does not find exceptional circumstances that warrant the appointment of
20 counsel. The motion for appointment of counsel is denied.

21 **V. Conclusion**

22 **IT IS THEREFORE ORDERED** that plaintiff's application to proceed *in forma pauperis*
23 (ECF No. 1) without having to prepay the full filing fee is **GRANTED**. The Clerk of Court
24 **SHALL FILE** the complaint. (ECF No. 1-1). Plaintiff shall not be required to pay an initial
25 installment fee. Nevertheless, the full filing fee shall still be due, pursuant to 28 U.S.C. § 1915, as
26 amended by the Prisoner Litigation Reform Act of 1996. The movant herein is permitted to
27 maintain this action to conclusion without the necessity of prepayment of fees or costs or the giving
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1 of security therefor. This order granting *in forma pauperis* status shall not extend to the issuance of
2 subpoenas at government expense.

3 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
4 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections shall pay to the
5 Clerk of the United States District Court, District of Nevada, 20% of the preceding month's deposits
6 to the account of **Richard Mason, #1103649** (in months that the account exceeds \$10.00) until the
7 full \$350 filing fee has been paid for this action. The Clerk shall send a copy of this order to the
8 attention of **Albert G. Peralta, Chief of Inmate Services for the Nevada Department of Prisons,**
9 P.O. Box 7011, Carson City, NV 89702.

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

13 **IT IS FURTHER ORDERED** that plaintiff's motion for the appointment of counsel (ECF
14 No. 2) is **DENIED**.

15 **IT IS FURTHER ORDERED** that the complaint **SHALL PROCEED** on plaintiff's claim
16 of being subjected to constant illumination.

17 **IT IS FURTHER ORDERED** that the Clerk of Court **SHALL ISSUE** summons for one
18 (1) defendant, **AND DELIVER THE SAME**, along with the complaint (ECF No. 1-1), to the U.S.
19 Marshal for service. The Clerk also **SHALL SEND** to plaintiff one (1) USM-285 form, one copy
20 of the complaint and a copy of this order. Plaintiff shall have **thirty (30) days** within which to
21 furnish to the U.S. Marshal the required USM-285 forms with relevant information as to each
22 defendant on each form. Within **twenty (20) days** after receiving from the U.S. Marshal a copy of
23 the USM-285 forms showing whether service has been accomplished, plaintiff must file a notice
24 with the Court if defendant was not served. If plaintiff wishes to have service again attempted on
25 an unserved defendant, then a motion must be filed with the Court identifying the unserved
26 defendant and specifying a more detailed name and/or address for said defendant, or whether some
27 other manner of service should be attempted.

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