

1
2
3
4
5
6
7
8
9
10
11
12
13

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBIN M. LEE,
Plaintiff,
v.
CITY OF LAS VEGAS et al.,
Defendants.

2:14-cv-214-RCJ-NJK
SCREENING ORDER

Plaintiff, who is currently incarcerated at the Honolulu Federal Detention Center, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*. (ECF No. 1-1, 11). The Court now screens Plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. 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. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison

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

11 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel*
12 *v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
13 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the
14 claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
15 1999). In making this determination, the court takes as true all allegations of material fact
16 stated in the complaint, and the court construes them in the light most favorable to the plaintiff.
17 See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se*
18 complainant are held to less stringent standards than formal pleadings drafted by lawyers.
19 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not
20 require detailed factual allegations, a plaintiff must provide more than mere labels and
21 conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
22 of the elements of a cause of action is insufficient. *Id.*

23 Additionally, a reviewing court should “begin by identifying pleadings [allegations] that,
24 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
25 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the
26 framework of a complaint, they must be supported with factual allegations.” *Id.* “When there
27 are well-pleaded factual allegations, a court should assume their veracity and then determine
28 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a

1 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the
2 reviewing court to draw on its judicial experience and common sense.” *Id.*

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

10 II. SCREENING OF COMPLAINT

11 In the complaint, Plaintiff sues Defendants City of Las Vegas and L.V. Metro Police
12 Chief/Warden for events that took place while Plaintiff was incarcerated at the City of Las
13 Vegas Detention Center. (ECF No. 1-1 at 1). Plaintiff alleges that he was arrested on April
14 17, 2013 and released on April 22, 2013 and then arrested again on June 17, 2013. (*Id.* at
15 3). Plaintiff alleges that the Chief of Las Vegas Metro Police Department and/or Warden and
16 his staff had violated Plaintiff’s Fourth Amendment rights to privacy when they subjected
17 Plaintiff to a strip search. (*Id.* at 4). Plaintiff alleges that he was wrongfully incarcerated and
18 that his Eighth Amendment, Thirteenth Amendment, and Fourteenth Amendment rights were
19 violated. (*Id.*). Plaintiff alleges one count and seeks monetary damages. (*Id.* at 4, 7).

20 The Court finds that Plaintiff fails to state a claim. Generally, strip searches do not
21 violate the Fourth Amendment rights of prisoners. See *Michenfelder v. Sumner*, 860 F.2d 328,
22 332-33 (9th Cir. 1988). However, strip searches that are “excessive, vindictive, harassing, or
23 unrelated to any legitimate penological interest” may be unconstitutional. *Id.* at 332. Based
24 on Plaintiff’s allegations, Plaintiff was strip searched once while at the City of Las Vegas
25 Detention Center. As such, Plaintiff fails to allege a Fourth Amendment violation. To the
26 extent that Plaintiff is attempting to allege Eighth, Thirteenth, and Fourteenth Amendment
27 claims, the Court finds no allegations to support such claims. The Court dismisses this case
28 with prejudice, as amendment would be futile.

1 **III. CONCLUSION**

2 For the foregoing reasons, IT IS ORDERED that the application to proceed *in forma*
3 *pauperis* (ECF No. 11) is denied as moot.

4 IT IS FURTHER ORDERED that the Clerk of the Court shall file the complaint (ECF No.
5 1-1).

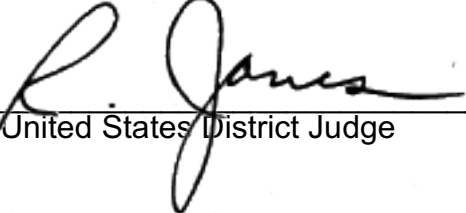
6 IT IS FURTHER ORDERED that the complaint is dismissed with prejudice in its entirety,
7 as amendment would be futile, for failure to state a claim.

8 IT IS FURTHER ORDERED that dismissal of this case constitutes a strike under 28
9 U.S.C. § 1915(g).

10 IT IS FURTHER ORDERED that this Court certifies that any *in forma pauperis* appeal
11 from this order would not be taken “in good faith” pursuant to 28 U.S.C. § 1915(a)(3).

12 The clerk of the court shall enter judgment accordingly.

13
14 Dated this 28th day of May, 2014.

15
16 
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28