

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CLIFFORD J. SCHUETT,

Plaintiff,

v.

WARDEN COLLINS et al.

Defendants.

Case No. 2:14-cv-1645-JAD-CWH

Screening Order

Plaintiff, who is an inmate in the custody of the Nevada Southern Detention Center (“NSDC”), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*, a motion to be heard, a motion for writ of habeas corpus, motions to compel, a petition for writ of habeas corpus, motions for protective order, a motion for new information, a motion to stop his move to an Arizona facility, a motion for a hearing, a motion for a court order, a motion for new injuries, and a motion for an order allowing plaintiff to practice his religion. (Doc. 1, 3, 4, 5, 6, 7, 8, 9, 11, 14, 17, 18, 20, 21, 22).

I. IN FORMA PAUPERIS APPLICATION

Turning first to Plaintiff's application to proceed *in forma pauperis*, (Doc. 3): 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.

1 Plaintiff will, however, be required to make monthly payments towards the full \$350.00 filing
2 fee when he has funds available. Because I grant the motion to proceed *informa pauperis* I
3 now screen plaintiff's complaint as required by 28 U.S.C. § 1915A(a).

4 **II. SCREENING STANDARD**

5 Federal courts must conduct a preliminary screening in any case in which a prisoner
6 seeks redress from a governmental entity or officer or employee of a governmental entity. *See*
7 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss
8 any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted,
9 or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.
10 § 1915A(b)(1), (2). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
11 essential elements: (1) that a right secured by the Constitution or laws of the United States was
12 violated, and (2) that the alleged violation was committed by a person acting under color of
13 state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988). In addition to the screening
14 requirements under § 1915A, the Prison Litigation Reform Act (PLRA) requires a federal court
15 to dismiss a prisoner's claim if it "fails to state a claim on which relief may be granted." 28
16 U.S.C. § 1915(e)(2); *accord* FED. R. CIV. PROC. 12(b)(6).

17 Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot
18 prove any set of facts in support of the claim that would entitle him or her to relief. *See Morley*
19 *v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as
20 true all allegations of material fact stated in the complaint and construes them in the light most
21 favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). A
22 reviewing court should "begin by identifying pleadings [allegations] that, because they are no
23 more than mere conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556
24 U.S. 662, 679 (2009). "While legal conclusions can provide the framework of a complaint, they
25 must be supported with factual allegations." *Id.* "Determining whether a complaint states a
26 plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on
27 its judicial experience and common sense." *Id.* The plaintiff must provide more than mere

1 labels and conclusions, and a formulaic recitation of the elements of a cause of action is
2 insufficient. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Papasan v.*
3 *Allain*, 478 U.S. 265, 286 (1986).

4 Although allegations of a pro se complainant like Mr. Schuett are held to less stringent
5 standards than formal pleadings drafted by lawyers, *see Hughes v. Rowe*, 449 U.S. 5, 9
6 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Balistreri v. Pacifica Police Dep’t*, 901
7 F.2d 696, 699 (9th Cir. 1988), all or part of a complaint filed by a prisoner may be dismissed
8 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This includes
9 claims based on legal conclusions that are untenable (e.g., claims against defendants who are
10 immune from suit or claims of infringement of a legal interest which clearly does not exist), as
11 well as claims based on fanciful factual allegations (e.g., fantastic or delusional scenarios).
12 *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d
13 795, 798 (9th Cir. 1991). If it is clear from the face of the complaint that any deficiencies could
14 not be cured by amendment, leave to amend is not required. *See Cato v. United States*, 70
15 F.3d 1103, 1106 (9th Cir. 1995).

16 **III. SCREENING OF COMPLAINT**

17 Plaintiff sues multiple defendants for events that took place during his incarceration at
18 the Nevada Southern Detention Center (“NSDC”), a Corrections Corporation of America
19 (“CCA”) facility, in Pahrump, Nevada.¹ (Doc. 1-1 at 1). Plaintiff sues Defendants Warden
20 Collins, Case Manager Supervisor Delaney, and U.S. Marshal Steven Carpenter. (*Id.* at 2).
21 Plaintiff alleges one count and seeks \$10,000,000 in monetary damages. (*Id.* at 4, 7).

22 The complaint alleges the following: Plaintiff is a paraplegic who is paralyzed from the
23 waist down and is confined to a wheelchair. (*Id.* at 4). On August 28, 2014, Plaintiff was
24 moved from the G-4 dormitory to a cell in the BB-unit because Plaintiff had injured himself

25 ¹ NSDC contracts with the U.S. Marshal’s service for federal pretrial detention. See
26 CCA at <http://www.cca.com/facilities/nevada-southern-detention-center> (last visited on
27 December 15, 2014); *see also* U.S. Marshals Service at
<http://www.usmarshals.gov/prisoner/index.html> (last visited on December 15, 2014).

1 three times in the G-4 dormitory. (*Id.*). On September 18, 2014, Collins and Delaney ordered
2 plaintiff to move to the F-3 dormitory. (*Id.*).

3 On September 20, 2014, Plaintiff could not use the one handicapped toilet in the
4 dormitory because the toilet was plugged up. (*Id.*). Plaintiff had to use the non-handicapped
5 toilet. (*Id.*). While attempting to transfer himself from the wheelchair to the toilet, plaintiff fell
6 on the floor and injured his lower spine and left arm. (*Id.*). That toilet had no safety rails. (*Id.*).

7 On September 23, 2014, plaintiff fell in the shower of the F-3 dormitory. (*Id.*). Plaintiff's
8 left arm could not hold plaintiff's weight when Plaintiff was attempting to transfer himself to the
9 shower seat. (*Id.*). Plaintiff fell and damaged his left leg. (*Id.*). On that same day, Delaney
10 told plaintiff that Collins had ordered plaintiff's move to the dormitory. (*Id.* at 5). Both Collins
11 and Delaney knew that plaintiff had been previously injured in the G-4 dormitory. (*Id.*). Collins
12 and Delaney told plaintiff that he had to be housed in the dormitory or he would have to go to
13 the hole. (*Id.*). When plaintiff spoke to Carpenter, the U.S. Marshal liaison, about being
14 housed in a dangerous dormitory, Carpenter told plaintiff that he was out of luck and that he
15 was following Collins and Delaney's housing orders. (*Id.*). Plaintiff alleges Eighth Amendment
16 violations. (*Id.* at 4).

17 The Court interprets plaintiff's allegations as Eighth Amendment damages claims for
18 failure to protect. As an initial matter, the court construes the complaint as seeking relief under
19 *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971),
20 rather than under 42 U.S.C. § 1983. *Bivens* established that "compensable injury to a
21 constitutionally protected interest [by federal officials alleged to have acted under color of
22 federal law] could be vindicated by a suit for damages invoking the general federal-question
23 jurisdiction of the federal courts." *Butz v. Economou*, 438 U.S. 478, 486 (1978).

24 **A. Claims against Defendants Collins and Delaney**

25 The Constitution does not mandate comfortable prisons, but neither does it permit
26 inhumane ones. *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981); *Farmer v. Brennan*, 511 U.S.
27 825, 832 (1994). The "treatment a prisoner receives in prison and the conditions under which

1 he is confined are subject to scrutiny under the Eighth Amendment.” *Helling v. McKinney*, 509
2 U.S. 25, 31 (1993). The Eighth Amendment imposes duties on prison officials to take
3 reasonable measures to guarantee the safety of inmates and to ensure that inmates receive
4 adequate food, clothing, shelter, and medical care. *Farmer*, 511 U.S. at 832.

5 To establish violations of these duties, the prisoner must plead facts demonstrating that
6 prison officials were deliberately indifferent to serious threats to the inmate’s safety. *Id.* at 834.
7 To demonstrate that a prison official was deliberately indifferent to a serious threat to the
8 inmate’s safety, the prisoner must show that “the official [knew] of and disregard[ed] an
9 excessive risk to inmate . . . safety; the official must both be aware of facts from which the
10 inference could be drawn that a substantial risk of serious harm exists, and [the official] must
11 also draw the inference.” *Id.* at 837. Prison officials may not escape liability because they
12 cannot, or did not, identify the specific source of the risk; the serious threat can be one to
13 which all prisoners are exposed. *Id.* at 843.

14 The Supreme Court has held that a prisoner cannot bring a *Bivens* action against an
15 employee of a private entity for damages for alleged Eighth Amendment violations. *Minneci*
16 *v. Pollard*, __ U.S. __, 132 S.Ct. 617, 626 (2012). In *Minneci*, the Supreme Court held that:

17 [W]here . . . a federal prisoner seeks damages from privately employed
18 personnel working at a privately operated federal prison, where the conduct
19 allegedly amounts to a violation of the Eighth Amendment, and where that
conduct is of a kind that typically falls within the scope of traditional state tort
law . . . , the prisoner must seek a remedy under state tort law. We cannot imply
20 a *Bivens* remedy in such a case.

21 *Id.*

22 The court finds that plaintiff fails to state an Eighth Amendment claim for failure to
23 protect. Under Supreme Court law, plaintiff may not sue Collins and Delaney for monetary
24 damages for this Eighth Amendment claim. If plaintiff wants to pursue monetary damages
25 against Collins and Delaney, plaintiff must file a state tort law claim. This claim is dismissed
26 with prejudice, as amendment would be futile, against defendants Collins and Delaney.

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1 **B. Claims against Defendant Carpenter**

2 The court also finds that plaintiff has failed to state an Eighth Amendment claim for
3 failure to protect against defendant Carpenter. Plaintiff alleges he informed Carpenter of his
4 “dangerous” living situation after plaintiff had been moved to the dormitory and had already
5 injured himself. Thus, Carpenter did not know of this alleged risk to plaintiff at the time and did
6 not disregard plaintiff’s safety prior to him allegedly sustaining injuries. This claim is dismissed
7 against defendant Carpenter with prejudice, as amendment would be futile.

8 **IV. MOTIONS FOR PROTECTIVE ORDERS (INJUNCTIVE RELIEF)**

9 Plaintiff has filed eleven motions seeking various forms of injunctive relief from this
10 court. (Doc. 4, 6, 7, 9, 11, 14, 17, 18, 20, 21, 22). Plaintiff does not request injunctive relief
11 in his complaint, but he appears to be seeking this equitable remedy in his subsequently filed
12 motions.

13 Although the Supreme Court has limited an inmate’s ability to bring a *Bivens* damages
14 action against a private entity under contract with the federal government and its employees,
15 the Supreme Court has acknowledged an inmate’s ability to bring a suit in federal court for
16 injunctive relief against the federally contracted private entity. *See Corr. Servs. Corp. v.*
17 *Malesko*, 534 U.S. 61, 74 (2001) (holding that inmates have full access to remedial
18 mechanisms established by the federal agency, including suits in federal court for injunctive
19 relief). Plaintiff has not sued CCA in this action. Accordingly, the court denies plaintiff’s eleven
20 motions for injunctive relief without prejudice. Without prejudging the success of such a claim
21 or future injunctive-relief motion, the court also gives plaintiff leave to file an amended
22 complaint by January 16, 2015, that (1) seeks injunctive relief rather than monetary damages
23 and (2) incorporates the allegations in the motions for injunctive relief into the amended
24 complaint. The court directs plaintiff to specify in the amended complaint precisely what type
25 of injunctive relief he seeks. This relief may include accommodations for plaintiff’s disability.

26 If plaintiff chooses to file an amended complaint, he is advised that an amended
27 complaint supersedes the original complaint and, thus, the amended complaint must be

1 complete in itself. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542,
2 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint
3 is irrelevant; an amended pleading supersedes the original”); *see also Lacey v. Maricopa
4 Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a
5 plaintiff is not required to reallege such claims in a subsequent amended complaint to preserve
6 them for appeal). Plaintiff’s amended complaint must contain all claims, defendants, and
7 factual allegations that plaintiff wishes to pursue in this lawsuit. Moreover, plaintiff must file the
8 amended complaint on this court’s approved prisoner civil rights form and it must be entitled
9 “First Amended Complaint.”

10 The court further directs plaintiff to file no more than one motion for a temporary
11 restraining order or a motion for preliminary injunction that incorporates the allegations in
12 plaintiff’s motions and specifies all of the relief sought in this one document. For plaintiff’s
13 reference, the standard for granting injunctive relief is the following:

14 Injunctive relief, whether temporary or permanent, is an “extraordinary
15 remedy, never awarded as of right.” *Winter v. Natural Res. Defense Council*,
16 555 U.S. 7, 24 (2008). “A plaintiff seeking a preliminary injunction must establish
17 that he is likely to succeed on the merits, that he is likely to suffer irreparable
18 harm in the absence of preliminary relief, that the balance of equities tips in his
19 favor, and that an injunction is in the public interest.” *Am. Trucking Ass’ns, Inc.
v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555
U.S. at 20). Furthermore, under the Prison Litigation Reform Act (“PLRA”),
preliminary injunctive relief must be “narrowly drawn,” must “extend no further
than necessary to correct the harm,” and must be “the least intrusive means
necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

20 **V. HABEAS CORPUS MOTIONS**

21 Plaintiff has filed documents entitled “motion for writ of habeas corpus” and “petition for
22 writ of habeas corpus.” (Doc. 5, 8). The court denies these motions (Doc. 5, 8) without
23 prejudice. If Mr. Schuett wishes to seek habeas corpus relief, he should file his petition for writ
24 of habeas corpus in a new action.

25 **VI. CONCLUSION**

26 For the foregoing reasons,

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1 **IT IS HEREBY ORDERED** that Plaintiff's application to proceed *in forma pauperis* (Doc.
2 3) without having to prepay the full filing fee is granted. The Clerk of Court SHALL FILE the
3 complaint. (Doc. 1-1). Plaintiff shall not be required to pay an initial installment fee.
4 Nevertheless, the full filing fee still must be paid, pursuant to 28 U.S.C. § 1915, as amended
5 by the Prisoner Litigation Reform Act. Plaintiff is permitted to maintain this action to conclusion
6 without the necessity of prepayment of fees or costs or the giving of security therefor. This
7 order granting *in forma pauperis* status shall not extend to the issuance of subpoenas at
8 government expense.

9 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
10 Prisoner Litigation Reform Act, the Nevada Southern Detention Center shall pay to the Clerk
11 of the United States District Court, District of Nevada, 20% of the preceding month's deposits
12 to the account of **Clifford J. Schuett, #01930-046** (in months that the account exceeds
13 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk shall send a copy
14 of this order to the attention of Chief of Inmate Services for the Nevada Southern Detention
15 Center, 2190 East Mesquite Avenue, Pahrump, Nevada 89060.

16 **IT IS FURTHER ORDERED** that, even if this action is dismissed or otherwise
17 unsuccessful, plaintiff will still be responsible for paying the full filing fee, pursuant to 28 U.S.C.
18 §1915, as amended by the Prisoner Litigation Reform Act.

19 **IT IS FURTHER ORDERED** that the complaint is dismissed in its entirety for failure to
20 state a claim. However, plaintiff is granted leave to file an amended complaint that seeks
21 injunctive relief by January 16, 2015.

22 **IT IS FURTHER ORDERED** that the Clerk of Court shall send to plaintiff the approved
23 form for filing a § 1983 complaint, instructions for the same, and a copy of his original
24 complaint (Doc. 1-1). If plaintiff chooses to file an amended complaint, he must use the
25 approved form and he shall write the words "First Amended" above the words "Civil Rights
26 Complaint" in the caption.

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1 **IT IS FURTHER ORDERED** that if plaintiff fails to file an amended complaint by January
2 16, 2015, this action will be dismissed with prejudice.

3 **IT IS FURTHER ORDERED** that the motions for protective orders (Doc. 4, 6, 7, 9, 11,
4 14, 17, 18, 20, 21, 22) are denied without prejudice. If plaintiff files an amended complaint,
5 plaintiff may also file one motion for injunctive relief that incorporates the allegations in these
6 motions and specifies the injunctive relief sought. Plaintiff shall file this motion for injunctive
7 relief by January 16, 2015.

8 **IT IS FURTHER ORDERED** that the Clerk of Court shall send plaintiff a copy of his
9 motions for protective orders (Doc. 4, 6, 7, 9, 11, 14, 17, 18, 20, 21, 22).

10 **IT IS FURTHER ORDERED** that the motion for writ of habeas corpus (Doc. 5) and the
11 petition for writ of habeas corpus (Doc. 8) are dismissed without prejudice. Plaintiff may file
12 a petition for writ of habeas corpus and an *in forma pauperis* application in a new action, but
13 he may not file further habeas corpus documents in this action.

14 **IT IS FURTHER ORDERED** that the Clerk of Court shall send plaintiff two copies of an
15 *in forma pauperis* application form for a prisoner, one copy of the instructions for same, two
16 copies of a blank 28 U.S.C. § 2254 habeas corpus form, and one copy of instructions for the
17 same.

18 DATED this 17th day of December, 2014.


Jennifer Dorsey
United States District Judge