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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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EARNEST L. PHILLIPS,
Plaintiff,
v.
DETECTIVE KINSLER, et al.,
Defendants.

Case No. 2:14-cv-01653-RFB-VCF

ORDER

Plaintiff, who was/is an inmate in the custody of the Clark County Detention Center (“CCDC”), 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). The Court now addresses the application to proceed *in forma pauperis*, and screens Plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. IN FORMA PAUPERIS APPLICATION

Before the Court is Plaintiff’s application to proceed *in forma pauperis*. (ECF No. 1). Based on the information regarding Plaintiff’s financial status, the Court finds that Plaintiff is not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will, however, be required to make monthly payments toward 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. 1990). To state a claim under 42 U.S.C. § 1983, a
6 plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution
7 or laws of the United States, 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 (PLRA), a federal court must dismiss a prisoner's claim, if "the allegation of poverty
11 is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may be
12 granted, or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.
13 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted
14 is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard
15 under § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a
16 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
17 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 *Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim is
22 proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that
23 would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In
24 making this determination, the court takes as true all allegations of material fact stated in the
25 complaint, and the court construes them in the light most favorable to the plaintiff. See *Warshaw*
26 *v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are held to
27 less stringent standards than formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S.
28 5, 9 (1980). While the standard under Rule 12(b)(6) does not require detailed factual allegations,

1 a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*,
2 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
3 insufficient. *Id.*

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

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

18 19 **III. SCREENING OF COMPLAINT**

20 In the Complaint, Plaintiff, a pretrial detainee, sues multiple defendants for events that took
21 place during the course of the investigation and prosecution of related state criminal charges.
22 Plaintiff alleges in three different counts that he was unfairly targeted with respect to the filing and
23 prosecution of state criminal charges. He alleges that the defendants in their various respective
24 roles participated in this “targeting” and unfair “prosecution” of his state criminal charges.

25 The Court finds that the Plaintiff’s allegations in the three counts appear to represent a
26 collateral attack on his state criminal prosecution in violation of the precedent set forth in *Heck v.*
27 *Humphrey*, 512 U.S. 477 (1994); *see also Harvey v. Waldron*, 210 F.3d 1008, 1014 (9th Cir.
28 2000)(applying *Heck* to pending criminal charges). As the Complaint is somewhat difficult to

1 fully discern, the Court recognizes the possibility that the allegations might overcome this bar and
2 will allow for amendment.

3 **IT IS ORDERED** that Plaintiff's application to proceed in forma pauperis (ECF No. 1)
4 without having to prepay the full filing fee is GRANTED. Plaintiff shall not be required to pay an
5 initial installment fee. Nevertheless, the full filing fee shall still be due, pursuant to 28 U.S.C. §
6 1915, as amended by the Prisoner Litigation Reform Act. The movant herein is permitted to
7 maintain this action to conclusion without the necessity of prepayment of fees or costs or the giving
8 of security therefor. This order granting in forma pauperis status shall not extend to the issuance
9 and/or service of subpoenas at government expense.

10 It is further ordered that, pursuant to 28 U.S.C. § 1915(b)(2), the Clark County Detention
11 Center shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
12 preceding month's deposits to the account of Ernest Phillips, #1156677 (in months that the account
13 exceeds \$10.00) until the full \$350.00 filing fee has been paid for this action.

14 **IT IS FURTHER ORDERED** that the Clerk of Court shall file the Complaint (ECF No.
15 1-1) in this case.

16 **IT IS FURTHER ORDERED** that Complaint is dismissed without prejudice. The
17 Plaintiff shall have 30 days to file an amended complaint in this case.

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19 DATED: January 8, 2018.



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21 **RICHARD F. BOULWARE, II**
22 **United States District Judge**
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