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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ALEXANDER OCASIO,

Plaintiff(s),

vs.

OFFICER PEREZ, et al.,

Defendant(s).

Case No. 2:16-cv-00956-GMN-NJK

**ORDER**

Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a Complaint on April 27, 2016. Docket No. 1-1.

**I. In Forma Pauperis Application**

Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Docket No. 1. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Court will now review Plaintiff’s Complaint.

**II. Screening the Complaint**

Upon granting a request to proceed *in forma pauperis*, a Court additionally screens the complaint pursuant to § 1915. Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When

1 a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the  
2 complaint with directions as to curing its deficiencies, unless it is clear from the face of the  
3 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d  
4 1103, 1106 (9th Cir. 1995).

5 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint  
6 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is  
7 essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d  
8 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the  
9 claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v.*  
10 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,  
11 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause  
12 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286  
13 (1986)). The court must accept as true all well-pled factual allegations contained in the complaint,  
14 but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals  
15 of the elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at  
16 678. Secondly, where the claims in the complaint have not crossed the line from conceivable to  
17 plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se*  
18 complaint are held to less stringent standards than formal pleading drafted by lawyers. *Hebbe v.*  
19 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings  
20 is required after *Twombly* and *Iqbal*).

21 Given Plaintiff’s status as a *pro se* litigant, the Court has construed his complaint liberally.  
22 Plaintiff frames his claims as being brought pursuant to 42 U.S.C. § 1983. To state a claim under §  
23 1983, a plaintiff must allege that a right secured by the Constitution or statutory law has been  
24 violated, and the deprivation was committed by a person acting under color of law. *See Anderson*  
25 *v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006). With respect to Defendants Perez and Gribon,  
26 Plaintiff alleges that they acted under color of law as police officers for the College of Southern  
27 Nevada. *See* Docket No. 1-1 at 2. Broadly speaking, Plaintiff alleges that Defendants Perez and  
28 Gribon falsely arrested him without probable cause. *See id.* Allegations that a plaintiff was arrested

1 without probable cause may establish a violation of the Fourth Amendment, which may in turn form  
2 the basis of a § 1983 claim. *See, e.g., Lacey v. Maricopa County*, 693 F.3d 896, 918 (9th Cir. 2012).<sup>1</sup>  
3 While the complaint is short on details, including the lack of probable cause, the Court finds the  
4 complaint sufficient for screening purposes.

5 Plaintiff also brings a claim against Dr. Bradley Gruner, alleging that he refused to process  
6 Plaintiff's complaint that his accuser violated the student code and that he did so on the basis of race.  
7 *See* Docket No. 1-1 at 3. The equal protection clause of the Fourteenth Amendment is designed to  
8 prevent intentional and arbitrary discrimination. *See Engquist v. Or. Dept. of Ag.*, 553 U.S. 591, 611  
9 (2008) (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). The equal protection  
10 clause requires "that all persons similarly situated should be treated alike." *Cleburne v. Cleburne*  
11 *Living Ctr.*, 473 U.S. 432, 439 (1985). "To state a claim under 42 U.S.C. § 1983 for a violation of  
12 the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants  
13 acted with an intent or purpose to discriminate against the plaintiff based upon membership in a  
14 protected class." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.1998). The complaint alleges  
15 that, acting under the color of law through his position at the College of Southern Nevada, Dr.  
16 Gruner refused to allow Plaintiff to process a complaint despite allowing a similarly situated white  
17 student to do so. Once again, the complaint is short on details, but for purposes of screening this *pro*  
18 *se* complaint, the Court finds the allegations sufficient at this stage to allow the case to move  
19 forward.

20 It may be that Plaintiff intended to bring claims in addition to the Fourth Amendment and  
21 Fourteenth Amendment claims outlined above. *See, e.g.,* Docket No. 1-1 at 3 (referring to an alleged  
22 due process violation). Having found that Plaintiff's complaint is sufficient for screening purposes  
23 with respect to at least one claim against each Defendant, however, the Court declines to address any  
24 additional claims that may be present in the complaint. *See, e.g., Jenkins v. Lab. Corp. of Am.*, 2013  
25 U.S. Dist. Lexis 118008, \*6 n.1 (D. Nev. Aug. 20, 2013). Moreover, nothing herein should be  
26 construed as preventing Defendants from filing a motion to dismiss once they have appeared on any  
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28 <sup>1</sup> Plaintiff also alleges that all charges against him were resolved in his favor. *See id.* at 3.

1 grounds they deem appropriate, including whether Plaintiff has sufficiently stated a claim. *See*  
2 *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007); *see also Bem v. Clark County Sch.*  
3 *Dist.*, 2015 U.S. Dist. Lexis 7757, \*6 n.1 (D. Nev. Jan. 21, 2015).

4 **III. Conclusion**

5 Based on the foregoing and good cause appearing, therefore, **IT IS ORDERED** that:

- 6 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not  
7 be required to pay the filing fee. Plaintiff is permitted to maintain this action to  
8 conclusion without the necessity of prepayment of any additional fees or costs or the  
9 giving of a security therefor. This Order granting leave to proceed *in forma pauperis*  
10 shall not extend to the issuance and/or service of subpoenas at government expense.
- 11 2. The Clerk of the Court shall file the Complaint and shall issue Summons to  
12 Defendants, and deliver the same to the U.S. Marshal for service. Plaintiff shall have  
13 twenty days in which to furnish the U.S. Marshal with the required Form USM-285.  
14 Within twenty days after receiving from the U.S. Marshal a copy of the Form USM-  
15 285, showing whether service has been accomplished, Plaintiff must file a notice  
16 with the court identifying whether defendant was served. If Plaintiff wishes to have  
17 service again attempted on an unserved defendant, a motion must be filed with the  
18 court identifying the unserved defendant and specifying a more detailed name and/or  
19 address for said defendant, or whether some other manner of service should be  
20 attempted. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service  
21 must be accomplished within 90 days from the date this order is entered.

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3. From this point forward, Plaintiff shall serve upon Defendants, or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading motion or other document submitted for consideration by the court. Plaintiff shall include with the original papers submitted for filing a certificate stating the date that a true and correct copy of the document was mailed to Defendants or counsel for Defendants. The Court may disregard any paper received by a District Judge or Magistrate Judge that has not been filed with the Clerk, and any paper received by a District Judge, Magistrate Judge, or the Clerk that fails to include a certificate of service.

Dated: June 6, 2016

  
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NANCY J. KOPPE  
United States Magistrate Judge