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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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DANIEL ALFRED FARMER-KIEFE,

Case No. 2:16-cv-01844-APG-NJK

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Plaintiff,

SCREENING ORDER

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v.

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HARRY REID et al.,

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Defendants.

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Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”), 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, 1-1). 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.

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I. IN FORMA PAUPERIS APPLICATION

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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.

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II. SCREENING STANDARD

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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

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

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

22 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
23 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure
24 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
25 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
26 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all
27 allegations of material fact stated in the complaint, and the court construes them in the
28 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th

1 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
2 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
3 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
4 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*,
5 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
6 insufficient. *Id.*

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

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

23 **III. SCREENING OF COMPLAINT**

24 In the complaint, Plaintiff sues Defendants Senator Harry Reid, Governor Brian
25 Sandoval, and Inspector General John Doe in charge of PREA¹ management for events
26 that took place while Plaintiff was incarcerated at the Southern Desert Correctional Center
27 (“SDCC”). (ECF No. 1-1 at 1-2). Plaintiff alleges two counts and seeks monetary

28 ¹ Prison Rape Elimination Act of 2003 (“PREA”), 42 U.S.C. § 15601.

1 damages and injunctive relief. (*Id.* at 12, 18).

2 In the complaint, Plaintiff alleges that he filed several PREA complaints against
3 several correctional officers and was retaliated against in return. (*See id.* at 3-14). Prison
4 officials responded to Plaintiff's PREA complaints by stating that Plaintiff's complaints
5 were "referred to the inspector general's office for investigation." (*Id.* at 5, 7-10, 12).
6 However, the inspector general's office did nothing with Plaintiff's PREA complaints. (*Id.*
7 at 8). Plaintiff's due process and equal protection rights were violated because Senator
8 Reid and Governor Sandoval failed to ensure that PREA, a federal program, was
9 operated properly by state officials. (*Id.* at 10-11). The inspector general's office failed
10 to supervise and train NDOC staff to ensure that prison officials were informed in taking
11 action if a prisoner filed a PREA complaint. (*Id.* at 13). Senator Reid and Governor
12 Sandoval failed to train and supervise. (*Id.* at 14). Plaintiff suffered harm as a result.
13 (*Id.*)

14 As an initial matter, the Court notes that Plaintiff has another pending lawsuit,
15 *Farmer-Kiefe v. Reid et al.*, 2:16-cv-02094-APG-VCF, where he sues the correctional
16 officers and wardens involved with his PREA complaints.² The instant complaint appears
17 to focus solely on the liability of Senator Reid, Governor Sandoval, and Inspector General
18 John Doe.

19 The Court finds that Plaintiff fails to allege a colorable claim against Senator Reid,
20 Governor Sandoval, and Inspector General John Doe. First, PREA was enacted to study
21 the problem of prison rape and to authorize the reporting of incidents of rape but nothing
22 in the Act creates a private right of action enforceable under § 1983. *See Law v. Whitson*,
23 2:08-CV-0291-SPK, 2009 WL 5029564, *4 (E.D. Cal. Dec. 15, 2009); *Trost v. Cox*, 3:14-
24 CV-611-MMD-WGC, ECF No. 3, *9 (D. Nev. April 10, 2015). Thus, to the extent that
25 Plaintiff is attempting to state a claim under PREA, he cannot do so.

26 Second, prisoners have no stand-alone due process rights related to the
27 administrative grievance process. *See Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988)

28 ² The Court has not yet screened the complaint in that case.

1 (holding that a state’s unpublished policy statements establishing a grievance procedure
2 do not create a constitutionally protected liberty interest); *Ramirez v. Galaza*, 334 F.3d
3 850, 860 (9th Cir. 2003) (holding that there is no liberty interest in the processing of
4 appeals because there is no liberty interest entitling inmates to a specific grievance
5 process). As such, Plaintiff fails to state a claim against Defendants for failing to
6 investigate Plaintiff’s PREA complaints because Plaintiff does not have a due process
7 right to have his complaints investigated in a specific way.

8 Third, a defendant is liable under 42 U.S.C. § 1983 “only upon a showing of
9 personal participation by the defendant.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
10 1989). “A supervisor is only liable for constitutional violations of his subordinates if the
11 supervisor participated in or directed the violations, or knew of the violations and failed to
12 act to prevent them. There is no respondeat superior liability under [§]1983.” *Id.*; see also
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (holding that “[b]ecause vicarious liability is
14 inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-
15 official defendant, through the official’s own individual actions, has violated the
16 Constitution”). Plaintiff has made no allegations that Defendants participated in the
17 alleged PREA violations, directed the violations, or knew of the violations and failed to
18 prevent them. As such, the Court dismisses the complaint in its entirety, with prejudice,
19 for failure to state a claim.

20 **IV. CONCLUSION**

21 For the foregoing reasons, IT IS ORDERED that Plaintiff’s application to proceed
22 *in forma pauperis* (ECF No. 1) without having to prepay the full filing fee is granted.
23 Plaintiff shall **not** be required to pay an initial installment fee. Nevertheless, the full filing
24 fee shall still be due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation
25 Reform Act. This order granting *in forma pauperis* status shall not extend to the issuance
26 and/or service of subpoenas at government expense.

27 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915, as amended by
28 the Prisoner Litigation Reform Act, the Nevada Department of Corrections shall pay to

1 the Clerk of the United States District Court, District of Nevada, 20% of the preceding
2 month's deposits to the account of **Daniel Alfred Farmer-Kiefe, #90103** (in months that
3 the account exceeds \$10.00) until the full \$350 filing fee has been paid for this action.
4 The Clerk shall send a copy of this order to the attention of **Albert G. Peralta, Chief of**
5 **Inmate Services for the Nevada Department of Prisons**, P.O. Box 7011, Carson City,
6 NV 89702.

7 IT IS FURTHER ORDERED that, even though this action is being dismissed, the
8 full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the Prisoner
9 Litigation Reform Act.

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

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

14 IT IS FURTHER ORDERED that this Court certifies that any *in forma pauperis*
15 appeal from this order would **not** be taken "in good faith" pursuant to 28 U.S.C. §
16 1915(a)(3).

17 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
18 accordingly.

19 Dated: May 18, 2017.

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23 UNITED STATES DISTRICT JUDGE
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