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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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APRINTESS WILLIAMS,

Plaintiff,

v.

STATE OF NEVADA et al.,

Defendants.

Case No. 2:16-cv-02319-RFB-PAL

SCREENING ORDER

Plaintiff, a former prisoner 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* for non-prisoners and two motions requesting a referral to the pro bono pilot program. (ECF No. 1, 1-1, 6, 7). The Court now addresses Plaintiff’s application to proceed *in forma pauperis* for non-prisoners, screens Plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915, and addresses the motions.

I. IN FORMA PAUPERIS APPLICATION

Based on the financial information provided in the application to proceed *in forma pauperis* for non-prisoners, Plaintiff is unable to pay the filing fee in this matter. (See ECF No. 1). The Court now grants the application.

II. SCREENING STANDARD

“[T]he court shall dismiss the case at any time if the court determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such

1 relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed *in forma*
2 *pauperis*, whether or not the plaintiff is incarcerated. See *Lopez v. Smith*, 203 F.3d 1122,
3 1129 (9th Cir. 2000); see also *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

4 Dismissal of a complaint for failure to state a claim upon which relief may be
5 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
6 1915(e)(2)(B)(ii) tracks that language. Thus, when reviewing the adequacy of a complaint
7 under 28 U.S.C. § 1915(e)(2)(B)(ii), the court applies the same standard as is applied
8 under Rule 12(b)(6). See *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The
9 standard for determining whether a plaintiff has failed to state a claim upon which relief
10 can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil
11 Procedure 12(b)(6) standard for failure to state a claim.”). Review under 12(b)(6) is
12 essentially a ruling on a question of law. See *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719,
13 723 (9th Cir. 2000).

14 In reviewing the complaint under this standard, the court must accept as true the
15 allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve
16 all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).
17 Allegations in *pro se* complaints are “held to less stringent standards than formal
18 pleadings drafted by lawyers.” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation
19 marks and citation omitted).

20 A complaint must contain more than a “formulaic recitation of the elements of a
21 cause of action,” it must contain factual allegations sufficient to “raise a right to relief
22 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
23 “The pleading must contain something more . . . than . . . a statement of facts that merely
24 creates a suspicion [of] a legally cognizable right of action.” *Id.* (quoting 5 C. Wright & A.
25 Miller, *Federal Practice & Procedure* § 1216, at 235-36 (3d ed. 2004)). At a minimum, a
26 plaintiff should state “enough facts to state a claim to relief that is plausible on its face.”
27 *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

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1 “A *pro se* litigant must be given leave to amend his or her complaint, and some
2 notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint
3 could not be cured by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
4 1995).

5 **III. SCREENING OF COMPLAINT**

6 In the complaint, Plaintiff sues Defendants State of Nevada and the Nevada
7 Department of Corrections for events that took place while Plaintiff was incarcerated at
8 the Wells Conservation Camp (“WCC”) and Ely State Prison (“ESP”). (ECF No. 1-1 at 1-
9 2). Plaintiff appears to allege one count and seeks monetary damages. (*Id.* at 2-4).

10 The complaint alleges the following: On May 8, 2015, while at WCC, Plaintiff filed
11 an emergency grievance. (*Id.* at 2). Prison officials told Plaintiff that there was no dental
12 program for inmates in the State of Nevada’s custody and that he needed to be
13 transferred. (*Id.*) Prison officials told Plaintiff that they were putting him on a list and that
14 he would be provided Tylenol until he reached the top of the list for dental services. (*Id.*)
15 Due to the level of pain and discomfort he experienced, he started the grievance process
16 a week later. (*Id.*) Plaintiff was unable to sleep or eat due to the bad tooth. (*Id.*) On May
17 19, 2016, Plaintiff transferred to ESP for a “non-related incident.” (*Id.*)

18 At ESP, Plaintiff was under the assumption that he would have dental care. (*Id.*)
19 When Plaintiff notified ESP intake about his dental condition, prison officials told him that
20 ESP did not have a dental program and that he would be put on a waiting list. (*Id.*) The
21 NDOC “refused Plaintiff access to write letters” with respect to the dental program
22 request. (*Id.*)

23 On May 29, 2015 the NDOC permitted Plaintiff to submit a letter informing his
24 caseworker about his worsening condition and his need for immediate medical attention.
25 (*Id.*) On June 5, 2015, Plaintiff sent a letter to ESP’s warden informing the warden of
26 Plaintiff’s medical condition. (*Id.* at 3). On June 10, 2015, NDOC medical staff checked
27 Plaintiff’s blood pressure and prescribed Tylenol for the pain. (*Id.*) On June 12, 2015,
28 Plaintiff blacked out from a migraine headache caused by his bad tooth. (*Id.*) A prison

1 guard found Plaintiff passed out on the cell floor. (*Id.*) On June 15, 2015, Plaintiff
2 submitted another emergency grievance for blurred vision, ringing in his ears, blacking
3 out, and for the migraines he was experiencing. (*Id.*) On June 23, 2015, the NDOC
4 refilled Plaintiff's Tylenol prescription and stated that medical could not help Plaintiff with
5 his dental situation. (*Id.*) Plaintiff suffered in extreme pain for 90-plus days before the
6 NDOC released him from custody on July 10, 2015. (*Id.*) Plaintiff never received dental
7 services. (*Id.*)

8 The Court interprets Plaintiff's allegations as a claim for Eighth Amendment
9 deliberate indifference to serious dental needs claim. The Eighth Amendment prohibits
10 the imposition of cruel and unusual punishment and "embodies 'broad and idealistic
11 concepts of dignity, civilized standards, humanity, and decency.'" *Estelle v. Gamble*, 429
12 U.S. 97, 102 (1976). A prison official violates the Eighth Amendment when he acts with
13 "deliberate indifference" to the serious medical needs of an inmate. *Farmer v. Brennan*,
14 511 U.S. 825, 828 (1994). "To establish an Eighth Amendment violation, a plaintiff must
15 satisfy both an objective standard—that the deprivation was serious enough to constitute
16 cruel and unusual punishment—and a subjective standard—deliberate indifference."
17 *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012).

18 To establish the first prong, "the plaintiff must show a serious medical need by
19 demonstrating that failure to treat a prisoner's condition could result in further significant
20 injury or the unnecessary and wanton infliction of pain." *Jett v. Penner*, 439 F.3d 1091,
21 1096 (9th Cir. 2006) (internal quotations omitted). To satisfy the deliberate indifference
22 prong, a plaintiff must show "(a) a purposeful act or failure to respond to a prisoner's pain
23 or possible medical need and (b) harm caused by the indifference." *Id.* "Indifference may
24 appear when prison officials deny, delay or intentionally interfere with medical treatment,
25 or it may be shown by the way in which prison physicians provide medical care." *Id.*
26 (internal quotations omitted). When a prisoner alleges that delay of medical treatment
27 evinces deliberate indifference, the prisoner must show that the delay led to further injury.
28 *See Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985)

1 (holding that “mere delay of surgery, without more, is insufficient to state a claim of
2 deliberate medical indifference”). Prisoners can establish an Eighth Amendment violation
3 with respect to dental care if they can prove that there has been a deliberate indifference
4 to their serious dental needs. *See Hunt v. Dental Dep’t*, 865 F.2d 198, 200 (9th Cir. 1989).

5 As an initial matter, the Court notes that Plaintiff cannot sue Defendants State of
6 Nevada or the NDOC. *See Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989)
7 (holding that states are not persons for purposes of § 1983); *see Brooks v. Sulphur*
8 *Springs Valley Elec. Co-op.*, 951 F.2d 1050, 1053 (9th Cir. 1991) (holding that “[t]he
9 Eleventh Amendment’s jurisdictional bar covers suits naming state agencies and
10 departments as defendants, and applies whether the relief sought is legal or equitable in
11 nature”).

12 The Court finds that Plaintiff could potentially state a colorable claim for deliberate
13 indifference to serious dental needs. However, Plaintiff needs to identify the specific
14 prison officials who violated his rights. In this case, Plaintiff should identify the prison
15 officials who he grieved to about his tooth pain and identify the prison officials who
16 responded to his grievances and continued to delay treatment.

17 Plaintiff is granted leave to file an amended complaint to cure the deficiencies of
18 the complaint. If Plaintiff chooses to file an amended complaint he is advised that an
19 amended complaint supersedes (replaces) the original complaint and, thus, the amended
20 complaint must be complete in itself. *See Hal Roach Studios, Inc. v. Richard Feiner &*
21 *Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was
22 named in the original complaint is irrelevant; an amended pleading supersedes the
23 original”); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding
24 that for claims dismissed with prejudice, a plaintiff is not required to reallege such claims
25 in a subsequent amended complaint to preserve them for appeal). Plaintiff’s amended
26 complaint must contain all claims, defendants, and factual allegations that Plaintiff wishes
27 to pursue in this lawsuit. Moreover, Plaintiff must file the amended complaint on this

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1 Court's approved prisoner civil rights form and it must be entitled "First Amended
2 Complaint."

3 The Court notes that if Plaintiff chooses to file an amended complaint curing the
4 deficiencies, as outlined in this order, Plaintiff shall file the amended complaint within 30
5 days from the date of entry of this order. If Plaintiff chooses not to file an amended
6 complaint curing the stated deficiencies, this action shall be dismissed, with prejudice, for
7 failure to state a claim.

8 **IV. MOTIONS FOR REFERRAL TO PRO BONO PROGRAM**

9 Plaintiff seeks a referral to the pro bono pilot program because he is proceeding *in*
10 *forma pauperis* and cannot afford an attorney. (ECF No. 6 at 1; ECF No. 7). A litigant
11 does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights
12 claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C.
13 § 1915(e)(1), "[t]he court may request an attorney to represent any person unable to
14 afford counsel." However, the court will appoint counsel for indigent civil litigants only in
15 "exceptional circumstances." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983
16 action). "When determining whether 'exceptional circumstances' exist, a court must
17 consider 'the likelihood of success on the merits as well as the ability of the petitioner to
18 articulate his claims *pro se* in light of the complexity of the legal issues involved." *Id.*
19 "Neither of these considerations is dispositive and instead must be viewed together." *Id.*
20 A referral to the pro bono program is essentially a directive to appointment counsel. In
21 the instant case, the Court does not find exceptional circumstances that warrant the
22 appointment of counsel. As such, the Court denies the request for a referral to the pro
23 bono program.

24 **V. CONCLUSION**

25 For the foregoing reasons, it is ordered that Plaintiff's application to proceed *in*
26 *forma pauperis* for non-prisoners (ECF No. 1) is granted. Plaintiff herein is permitted to
27 maintain this action to conclusion without the necessity of prepayment of fees or costs or

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1 the giving of security therefor. This order granting *in forma pauperis* status shall not
2 extend to the issuance and/or service of subpoenas at government expense.

3 It is further ordered that the Clerk of the Court shall file the complaint (ECF No. 1-
4 1).

5 It is further ordered that the complaint is dismissed in its entirety, without prejudice,
6 with leave to amend.

7 It is further ordered that the motions for referral to pro bono pilot program (ECF No.
8 6, 7) are denied.

9 It is further ordered that, if Plaintiff chooses to file an amended complaint curing
10 the deficiencies of his complaint, as outlined in this order, Plaintiff shall file the amended
11 complaint within 30 days from the date of entry of this order.

12 It is further ordered that the Clerk of the Court shall send to Plaintiff the approved
13 form for filing a § 1983 complaint, instructions for the same, and a copy of his original
14 complaint (ECF No. 1-1). If Plaintiff chooses to file an amended complaint, he must use
15 the approved form and he shall write the words "First Amended" above the words "Civil
16 Rights Complaint" in the caption.

17 It is further ordered that, if Plaintiff fails to file an amended complaint curing the
18 deficiencies outlined in this order, this action shall be dismissed, with prejudice, for failure
19 to state a claim.

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21 DATED THIS 26th day of September, 2017.

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23 
24 UNITED STATES MAGISTRATE JUDGE