

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GRACE ALBANESE,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Defendant.

Case No. 2:17-cv-01285-JCM-VCF

**ORDER AND REPORT &
RECOMMENDATION**

APPLICATION TO PROCEED IN FORMA PAUPERIS
(ECF No.1) AND COMPLAINT (ECF No. 1-1)

Before the Court are Albanese's application to proceed in forma pauperis (ECF No. 1) and complaint (ECF No. 1-1). For the reasons stated below, the Court recommends that Albanese's complaint be dismissed.

I. DISCUSSION

A. In Forma Pauperis

Under 28 U.S.C. § 1914(a), a filing fee is required to commence a civil action in federal court. Courts may authorize the commencement of an action without prepayment of fees and costs or security therefor, by a person who submits an affidavit that includes a statement showing the person is unable to pay such costs. See 28 U.S.C. § 1915(a)(1). The standard governing in forma pauperis eligibility under 28 U.S.C. § 1915(a)(1) is "unable to pay such fees or give security therefor." *Id.* Determining what constitutes "unable to pay" or unable to "give security therefor" and, therefore whether to allow a plaintiff to proceed in forma pauperis, is left to the discretion of the courts, based on the information submitted by the plaintiff. See, e.g., *Dillard v. Liberty Loan Corp.*, 626 F.2d 363, 364 (4th Cir. 1980) ("A district court has discretion to grant or deny an in forma pauperis petition filed under s 1915."); *Fridman v. City of New York*, 195 F. Supp. 2d 534, 536 (S.D.N.Y.), *aff'd*, 52 Fed. Appx. 157 (2nd Cir. 2002).

1 Albanese has requested authority to proceed in forma pauperis and submitted the required
2 affidavit. See ECF No. 1. Other than the small amount Albanese brings in from “panhandling,” she has
3 no income or assets. Id. The Court finds that she is unable to pay fees and costs or give security for them.
4 Based on Albanese’s state of penury, the Court grants her application to proceed in forma pauperis.

5 **B. Screening the Complaint Under 28 U.S.C. § 1915(e)**

6 Upon granting a request to proceed in forma pauperis, the Court must screen a complaint under
7 28 U.S.C. § 1915(e)(2). Federal courts are given the authority to dismiss a case if the action (1) is legally
8 “frivolous or malicious,” (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary
9 relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2). Section 1915 was
10 enacted to conserve judicial resources by empowering courts to dismiss actions, “which fall somewhere
11 between the frivolous and the farcical and so foster disrespect for our laws.” Crawford-El v. Britton, 523
12 U.S. 574, 601 (1998) (Kennedy, J., concurring).

13 Where a pro se litigant is involved, however, courts are directed to hold the litigant to “less
14 stringent standards.” See Haines v. Kerner, 404 U.S. 519, 520 (1972). “Such litigants often lack the
15 resources and freedom necessary to comply with the technical rules of modern litigation.” Mala v. Crown
16 Bay Marina, Inc., 704 F.3d 239, 244-45 (3d Cir. 2013) (citing Moore v. Florida, 703 F.2d 516, 520 (11th
17 Cir. 1983)).

18 If the court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
19 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint
20 that the deficiencies could not be cured by amendment. See Cato v. United States, 70 F.3d 1103, 1106
21 (9th Cir. 1995) (citation omitted). However, pro se litigants “should not be treated more favorably than
22 parties with attorneys of record,” Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir. 1986); rather, they
23 must follow the same rules of procedure that govern other litigants. See Ghazali v. Moran, 46 F.3d 52,
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1 54 (9th Cir. 1995).

2 The Complaint in this matter is a one-page document naming the Las Vegas Metropolitan Police
3 Department (“Metro”) as the defendant. See ECF No. 1-1. Albanese claims a violation of her civil rights
4 under 42 U.S.C. § 1983, obstruction of justice, and a denial of equal protection under the law. *Id.*
5 Albanese’s complaint states in its entirety the following:

6 Denying me equal protection under the law by not informing me 1107 E-
7 Desert Inn # 3 and 9 are observing me in my room. And that listening device
8 is being use by them to spy on me. Obstruction of justice by not informing
law enforcement that Apts. 3 and 9 are observing me in my room and that
Apt 3 has hacked into my phone.

9 *Id.* She seeks \$500,000 in damages. *Id.* For the reasons discussed below, the Court finds that Albanese’s
10 complaint should be dismissed as frivolous because its claims are duplicative of the claims in Albanese’s
11 other pending actions.

12 Courts are not required to entertain duplicative or redundant lawsuits and may dismiss them as
13 frivolous or malicious under § 1915(e). See *Cato*, 70 F.3d at 1105 n. 2 (noting that courts may dismiss
14 under § 1915 a complaint that merely repeats pending or previously litigated claims); see also *Aziz v.*
15 *Burrows*, 976 F.2d 1158, 1158 (8th Cir. 1992) (“district courts may dismiss a duplicative complaint raising
16 issues directly related to issues in another pending action brought by the same party”); *Adams v. Cal.*
17 *Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (“Plaintiffs generally have ‘no right to maintain
18 two separate actions involving the same subject matter at the same time in the same court and against the
19 same defendant.”), overruled in part on other grounds by *Taylor v. Sturgell*, 553 U.S. 880 (2008);
20 *McWilliams v. State of Colorado*, 121 F.3d 573, 574 (11th Cir. 1997) (holding that repetitious action may
21 be dismissed as frivolous or malicious).

22 The claims raised in Albanese’s complaint against Metro are directly related to those raised in
23 other actions brought by Albanese. See *Grace Albanese v. Las Vegas Metropolitan Police Department*,
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1 case no. 2:16-cv-00532-RFB-GWF; Grace Albanese v. Homeland Security, case no. 2:16-cv-00531-RFB-
2 VCF; Grace Albanese v. Department of Homeland Security, case no. 2:17-cv-01287-JCM-PAL; Grace
3 Albanese v. Federal Bureau of Investigations, 2:17-cv-01286-JAD-PAL. In Grace Albanese v. Homeland
4 Security, case no. 2:16-cv-00531-RFB-VCF, for example, the complaint states “Homeland Security put a
5 tracking device on my vehicle through the auspices of the Las Vegas Metropolitan Police Department. As
6 well as order that my telephone be ‘bugged’ with a listing device. That I, Grace Albanese be followed by
7 the Las Vegas Police Department to the point of harassment...” In Grace Albanese v. Department of
8 Homeland Security, case no. 2:17-cv-01287-JCM-PAL, another one of Albanese’s pending cases, the
9 complaint states as follows:

10 Denying me equal protection under the law by not informing that 1107 E.
11 Desert Inn #3 and 9 are observing me in my room. Obstruction of justice by
12 not informing any law enforcement that I am being observed in my room
13 and listening device is being used by Apts 3 and 9 to spy on me. Not
informing me Apt 3 has hacked into my phone ...”

14 See Grace Albanese v. Department of Homeland Security, case no. 2:17-cv-01287-JCM-PAL, (ECF No.
15 1-1).¹ The allegations and issues in those cases are directly related—and indeed nearly identical—to the
16 issues raised in the complaint before this Court.² Accordingly, such claims are improperly raised in the
17 complaint, as they are frivolous and should be dismissed with prejudice.

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19 ACCORDINGLY, and for good cause shown,
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22 ¹ See also Grace Albanese v. Department of Homeland Security, case no. 2:17-cv-01286-JAD-PAL, (ECF No. 1-1) (“Denying
23 me equal protection under the law by not informing that 1107 E. Desert Inn Apts 3 and 9 are observing me in my room.
Obstruction of justice by not informing any law enforcement that I am being observed in my room and listening device is being
used by Apts 3 and 9 to spy on me. Not informing me Apt 3 has hacked into my phone ...”). These claims are nearly identical
to those in the case before this Court.

24 ² The instant matter also raises identical legal claims as in Albanese’s other pending actions—violation of Albanese’s civil
25 rights under 42 U.S.C. § 1983, obstruction of justice, and a denial of equal protection under the law. See, e.g., Grace Albanese
v. Las Vegas Metropolitan Police Department, case no. 2:17-cv-00577-GMN-PAL, ECF Nos. 13; 12.

1 IT IS ORDERED that Albanese's Application to Proceed In Forma Pauperis (ECF No. 1) is
2 GRANTED.

3 IT IS FURTHER ORDERED that Albanese is permitted to maintain the action to conclusion
4 without the necessity of prepayment of any additional fees, costs, or security. This order granting in forma
5 pauperis status does not extend to the issuance or service of subpoenas at government expense.

6 IT IS RECOMMENDED that Albanese's Complaint (ECF No. 1) be DISMISSED WITH
7 PREJUDICE.

8 **NOTICE**

9 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
10 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that
11 the courts of appeal may determine that an appeal has been waived due to the failure to file objections
12 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that
13 (1) failure to file objections within the specified time and (2) failure to properly address and brief the
14 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from
15 the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley*
16 *United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

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18 DATED this 25th day of May, 2017.

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21 CAM FERENBACH
22 UNITED STATES MAGISTRATE JUDGE
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