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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**
5

6 ERIC CHATMAN,

7 Plaintiff,

8 vs.

9 AM/PM, et al.,

10 Defendants.
11

Case No. 2:18-cv-00451-RFB-CWH

SCREENING ORDER AND
REPORT AND
RECOMMENDATION

12 Pro se plaintiff Eric Chatman is a California state-prison inmate. On March 12, 2018, Mr.
13 Chatman submitted a civil rights complaint under 42 U.S.C. § 1983 (ECF No. 1-1) and an
14 application to proceed *in forma pauperis* (ECF No. 1). Mr. Chatman has submitted the declaration
15 required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for
16 them. Accordingly, Mr. Chatman's request to proceed *in forma pauperis* will be granted.

17 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
18 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
19 and dismiss claims that are frivolous, malicious, file to state a claim on which relief may be
20 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
21 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
22 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d
23 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual
24 matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v.*
25 *Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only
26 dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his
27 claim which would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)
28 (quoting *Iqbal*, 556 U.S. at 678).

1 In considering whether the complaint is sufficient to state a claim, all allegations of material
2 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit*
3 *P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although
4 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must
5 provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
6 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is
7 clear the complaint's deficiencies could not be cured through amendment, a pro se plaintiff should
8 be given leave to amend the complaint with notice regarding the complaint's deficiencies. *Cato v.*
9 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 Here, Mr. Chatman alleges that in 2005-06 he was harassed, kidnapped, "dressed to kill,"
11 and robbed at the AM/PM in front of Bally's Casino in Las Vegas, Nevada. (Compl. (ECF No. 1-
12 1) at 1-2.) Mr. Chatman alleges that these incidents took place in a vehicle and that he was targeted
13 because he was homeless. (*Id.* at 2-3.) He further alleges that he was a "handsome guy, beautiful
14 guy" and that he was injured so badly he requires a facelift. (*Id.* at 3.) Mr. Chatman claims that the
15 incident lasted for one hour, that he could have died, and that he will have nightmares of this
16 incident forever. (*Id.* at 3, 5.) Mr. Chatman brings what the court understands to be tort claims for
17 his injuries under 42 U.S.C. § 1983 against AM/PM, Bally's Casino, and Chivas Regal. (*Id.* at 2-
18 6.) Mr. Chatman requests monetary damages in the millions. (*Id.* at 9.)

19 Given that 42 U.S.C. § 1983 does not contain a specific statute of limitations, federal courts
20 borrow state statutes of limitations for personal injury actions in § 1983 suits. *Alameda Books, Inc.*
21 *v. City of Los Angeles*, 631 F.3d 1031, 1041 (9th Cir. 2011) ("The statute of limitations applicable
22 to an action pursuant to 42 U.S.C. § 1983 is the personal injury statute of limitations of the state in
23 which the cause of action arose.") The Nevada limitations period applicable in this case is two
24 years. *See Perez v. Seevers*, 869 F.2d 425, 426 (9th Cir. 1989) (per curiam) (citing Nev. Rev. Stat.
25 11.190(4)).

26 Mr. Chatman's complaint was filed on March 12, 2018. Applying Nevada's two-year
27 limitations period, any acts that occurred more than two years before that date are time-barred.
28 Given that these incidents described in this complaint occurred in 2005-06, which is outside of the

1 two-year limitations period, the court will recommend dismissal with prejudice of Mr. Chatman's
2 claims.

3 IT IS THEREFORE ORDERED that plaintiff's application to proceed *in forma pauperis*
4 (ECF No. 1) is GRANTED.

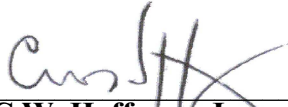
5 IT IS RECOMMENDED that plaintiff's complaint (ECF No. 1-1) be DISMISSED WITH
6 PREJUDICE as time-barred.

7 IT IS FURTHER RECOMMENDED that plaintiff's motion for appointment of counsel
8 (ECF No. 5) be DENIED as moot.

9 **NOTICE**

10 This report and recommendation is submitted to the United States district judge assigned to
11 this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may
12 file a written objection supported by points and authorities within fourteen days of being served
13 with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may
14 waive the right to appeal the District Court's Order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th
15 Cir. 1991).

16
17 DATED: May 25, 2018

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19 
20 **C.W. Hoffman, Jr.**
21 **United States Magistrate Judge**