

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 ANGELA ZINNERMAN,

4 Plaintiff,

5 v.

6 HOLIDAY INN SUITES,

7 Defendant.

Case No. 2:22-cv-01555-GMN-EJY

ORDER**and****REPORT and RECOMMENDATION**

8
9 Pending before the Court is Plaintiff's Application to Proceed *in forma pauperis* and civil
10 rights Complaint. ECF Nos. 1, 1-1.

11 **I. Application to Proceed *in forma pauperis***

12 Upon review, Plaintiff's *in forma pauperis* application is complete and granted.

13 **II. Screening the Complaint**

14 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
15 complaint pursuant to 28 U.S.C. § 1915(e). Federal courts are given the authority to dismiss a case
16 if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,
17 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
18 When a court dismisses a complaint under § 1915, 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 the complaint
20 that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103,
21 1106 (9th Cir. 1995).

22 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
23 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially
24 a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000).
25 A properly pled complaint must provide a short and plain statement of the claim showing that the
26 pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
27 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands "more than
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1 labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v.*
2 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must
3 accept as true all well-pled factual allegations contained in the complaint, but the same requirement
4 does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a cause
5 of action, supported only by conclusory allegations, do not suffice. *Id.* at 678. Secondly, where the
6 claims in the complaint have not crossed the line from conceivable to plausible, the complaint should
7 be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se* complaint are held to less stringent
8 standards than formal pleadings drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th
9 Cir. 2010) (finding that liberal construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

10 **III. Analysis of Plaintiff’s Complaint**

11 Liberally construed, Plaintiff alleges one cause of action in her Complaint. She states she
12 was discriminated against by a Holiday Inn Express located in Pahrump, Nevada, in violation of 42
13 U.S.C. § 2000a. “To establish a prima facie case under § 2000a, Title II of the Civil Rights Act, a
14 plaintiff must demonstrate that he: (1) is a member of a protected class; (2) attempted to contract for
15 services and afford himself or herself of the full benefits and enjoyment of a public accommodation;
16 (3) was denied the full benefits or enjoyment of a public accommodation; and (4) such services were
17 available to similarly situated persons outside his or her protected class who received full benefits or
18 were treated better.” *Crumb v. Orthopedic Surgery Med. Grp.*, Case No. 07-cv-6114-GHK-PLAx,
19 2010 WL 11509292, at *3 (C.D. Cal. Aug. 18, 2010), *aff’d*, 479 F. App’x 767 (9th Cir. 2012) (internal
20 alterations and citations omitted).

21 Here, Plaintiff’s Complaint includes a single conclusory sentence unsupported by any facts.
22 ECF No. 1-1 at 3. Plaintiff’s conclusion of discrimination does not establish a prima facie claim
23 under § 2000a.

24 **IV. Order**

25 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s *in forma pauperis* application (ECF
26 No. 1) is GRANTED.

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1 **V. Recommendation**

2 IT IS HEREBY RECOMMENDED that Plaintiff's Complaint be dismissed without
3 prejudice and with leave to amend.

4 IT IS FURTHER RECOMMENDED that Plaintiff be given through and including **October**
5 **21, 2022** to file an amended complaint. An amended complaint must include sufficient factual
6 allegations to state a prima facie claim of discrimination under § 2000a.

7 IT IS FURTHER RECOMMENDED that if Plaintiff fails to file an amended complaint on
8 or before October 21, 2022, this case be dismissed without prejudice.

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10 Dated this 19th day of September, 2022.

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12 _____
13 ELAYNA J. YOUCHAK
14 UNITED STATES MAGISTRATE JUDGE

15 **NOTICE**

16 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
17 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
18 held that the courts of appeal may determine that an appeal has been waived due to the failure to file
19 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
20 held that (1) failure to file objections within the specified time and (2) failure to properly address
21 and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
22 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
23 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).