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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHADWICK FABIAN VILLAMOR,

Plaintiff,

v.

OFFICER J. METCALFE, et al.,

Defendants.

Case No. 2:24-cv-00940-APG-NJK

ORDER

11 The Court has now received Plaintiff's initial partial filing fee, Docket No. 8, so it screens
12 his complaint herein as required by 28 U.S.C. § 1915.¹

13 **I. STANDARDS**

14 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
15 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
16 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
17 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
18 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
19 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
20 it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause
21 of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265,
22 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
23 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
24 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
25 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
26 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.

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28 ¹ Plaintiff alleges three claims that each involve different issues, so the Court screens them separately. This order relates only to Plaintiff's claim for excessive force.

1 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
2 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
3 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

4 **II. ANALYSIS**

5 Plaintiff brings a claim for excessive force arising out of his arrest on the night of February
6 21, 2024. *See* Docket No. 1 at 4.

7 A plaintiff states a claim under 42 U.S.C. § 1983 by alleging that a right secured by the
8 United States Constitution or statutory law has been violated, and that the deprivation was
9 committed by a person acting under color of law. *West v. Atkins*, 487 U.S. 42, 48 (1988).
10 Allegations that law enforcement officers used excessive force in arresting a plaintiff may establish
11 a violation of the Fourth Amendment. *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1090 (9th Cir.
12 2013). Whether force used is constitutionally excessive turns on the objective reasonableness of
13 the force used. *Id.*

14 The complaint alleges that Plaintiff was involved in a police chase based on a report of
15 assault and battery with a gun. *See* Docket No. 1 at 4, 5. Plaintiff alleges that he lost control of
16 his car and crashed, at which point he complied with the command to exit his vehicle. *See id.* at
17 4. Plaintiff alleges that he had calmed down and had gone to take a seat on the curb when he was
18 shot in the back three times with “low lethal ammunition” by Officer Metcalfe and tazed by Officer
19 Ketring. *See id.* Taking these allegations as true for screening purposes and liberally construing
20 the complaint, the Court finds that Plaintiff has stated a colorable claim for excessive force.²

21 **III. CONCLUSION**

22 Accordingly, **IT IS ORDERED** that:

- 23 1. The Clerk’s Office is **INSTRUCTED** to file Plaintiff’s complaint (Docket No. 1) on
24 the docket.

27 ² The Court screens the complaint without the benefit of the adversarial process. *Buchheit*
28 *v. Green*, 705 F.3d 1157, 1161 (10th Cir. 2012). Nothing in this order should be construed as
precluding the filing of a motion to dismiss.

