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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROOSEVELT MAURICE HOGG,
Plaintiff,
v.
NDOC DIRECTOR COX et al.,
Defendants.

3:15-cv-158-RCJ-WGC
SCREENING ORDER

Plaintiff, who is a prisoner in the custody 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*. (ECF No. 1, 1-1). The Court now screens Plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act (PLRA), a federal court must dismiss a prisoner’s claim, if “the allegation

1 of poverty is untrue,” or if the action “is frivolous or malicious, fails to state a claim on which
2 relief may be granted, or seeks monetary relief against a defendant who is immune from such
3 relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which
4 relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court
5 applies the same standard under § 1915 when reviewing the adequacy of a complaint or an
6 amended complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should
7 be given leave to amend the complaint with directions as to curing its deficiencies, unless it
8 is clear from the face of the complaint that the deficiencies could not be cured by amendment.
9 See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel*
11 *v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
12 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the
13 claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
14 1999). In making this determination, the court takes as true all allegations of material fact
15 stated in the complaint, and the court construes them in the light most favorable to the plaintiff.
16 See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se*
17 complainant are held to less stringent standards than formal pleadings drafted by lawyers.
18 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not
19 require detailed factual allegations, a plaintiff must provide more than mere labels and
20 conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
21 of the elements of a cause of action is insufficient. *Id.*

22 Additionally, a reviewing court should “begin by identifying pleadings [allegations] that,
23 because they are no more than mere conclusions, are not entitled to the assumption of truth.”
24 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the
25 framework of a complaint, they must be supported with factual allegations.” *Id.* “When there
26 are well-pleaded factual allegations, a court should assume their veracity and then determine
27 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a
28 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the

1 reviewing court to draw on its judicial experience and common sense.” *Id.*

2 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua*
3 *sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This includes
4 claims based on legal conclusions that are untenable (e.g., claims against defendants who are
5 immune from suit or claims of infringement of a legal interest which clearly does not exist), as
6 well as claims based on fanciful factual allegations (e.g., fantastic or delusional scenarios).
7 See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d
8 795, 798 (9th Cir. 1991).

9 **II. SCREENING OF COMPLAINT**

10 In the complaint, Plaintiff sues multiple defendants for events that took place while
11 Plaintiff was incarcerated at High Desert State Prison (“HDSP”). (ECF No. 1-1 at 1). Plaintiff
12 sues Defendants Corrections Counselor Ritz, Corrections Counselor Russell, NDOC Director
13 Cox, Acting Warden J. Nash, and Warden Nevin. (*Id.* at 2-3). Plaintiff alleges three counts
14 and seeks monetary damages and the removal of his name from any sex offender database.
15 (*Id.* at 6, 9).

16 The complaint alleges the following: On May 13, 2014, Plaintiff was sentenced to
17 prison for possession of the sale of narcotics. (*Id.* at 3). On May 30, 2014, Plaintiff entered
18 the NDOC. (*Id.*). On June 18, 2014, Plaintiff stood before a two-man classification where he
19 was told to sign a form of paper that informed him that he was being classified as a sexual
20 offender for a 1983 arrest for rape by force out of Alameda County, California. (*Id.*). Plaintiff
21 was not convicted of rape and states that he never raped anyone and has never committed
22 a sexual offense crime against anyone. (*Id.*). All of the charges in that case were dismissed.
23 (*Id.*).

24 In Count I, Plaintiff alleges due process violations against Cox because Plaintiff does
25 not have any sex crime convictions. (*Id.* at 4). Nash violated Plaintiff’s due process rights
26 because she approved the illegal classification of sex offender in the database. (*Id.*). Russell
27 and Ritz violated Plaintiff’s due process rights because they illegally entered Plaintiff as a sex
28 offender in the computer database. (*Id.*). In Count II, Plaintiff alleges that Cox, Nash, Russell,

1 and Ritz defamed him by illegally classifying Plaintiff as a sex offender in the computer
2 database. (*Id.* at 5). In Count III, Plaintiff alleges that Cox, Nash, Russell, and Ritz slandered
3 Plaintiff by classifying him and entering him as a sex offender in the computer database. (*Id.*
4 at 6).

5 In *Neal v. Shimoda*, 131 F.3d 818 (9th Cir. 1997), the Ninth Circuit detailed what
6 process prison officials must give an inmate when classifying that inmate as a sex offender.
7 *Id.* at 830. The Ninth Circuit held that the prisoner must receive: (1) a prior hearing with the
8 ability to call witnesses and present documentary evidence in his defense; (2) advance written
9 notice of the prior hearing; and (3) a written statement by the fact-finder of the evidence relied
10 on and the reasons for the inmate's classification as a sex offender. *Id.* at 830-31;
11 *Kritenbrink v. Crawford*, 457 F.Supp.2d 1139, 1149-50 (D. Nev. 2006).

12 The Court dismisses the due process claim with prejudice as amendment would be
13 futile. Based on the allegations, Plaintiff was given procedural due process protections before
14 the NDOC classified him as a sex offender. Based on the allegations, Plaintiff had a hearing
15 and was informed of the evidence relied on for classifying Plaintiff as a sex offender. It
16 appears that Plaintiff's true grievance is with the result of the classification hearing and not with
17 the procedural due process protections given at the classification hearing. As such, Plaintiff
18 fails to state a claim for due process violations.

19 The Court dismisses the state law claims for defamation and slander, without prejudice,
20 based on lack of supplemental jurisdiction because Plaintiff has failed to state a federal cause
21 of action. See 28 U.S.C. § 1367(c) (stating that a district court may decline to exercise
22 supplemental jurisdiction over a claim if the district court has dismissed all claims over which
23 it has original jurisdiction).

24 **III. CONCLUSION**

25 For the foregoing reasons, **IT IS ORDERED** that Plaintiff's application to proceed *in*
26 *forma pauperis* (ECF No. 1) without having to prepay the full filing fee is **GRANTED**. Plaintiff
27 shall **not** be required to pay an initial installment fee. Nevertheless, the full filing fee shall still
28 be due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act. The

1 movant herein is permitted to maintain this action to conclusion without the necessity of
2 prepayment of fees or costs or the giving of security therefor. This order granting *in forma*
3 *pauperis* status shall not extend to the issuance and/or service of subpoenas at government
4 expense.

5 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
6 Prisoner Litigation Reform Act, the Nevada Department of Corrections shall pay to the Clerk
7 of the United States District Court, District of Nevada, 20% of the preceding month's deposits
8 to the account of Roosevelt Maurice Hogg, #1121037 (in months that the account exceeds
9 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk shall send a copy
10 of this order to the attention of **Albert G. Peralta, Chief of Inmate Services for the Nevada**
11 **Department of Prisons**, P.O. Box 7011, Carson City, NV 89702.

12 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
13 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by
14 the Prisoner Litigation Reform Act.

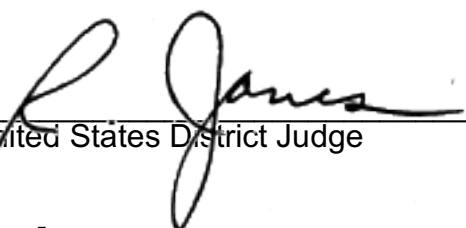
15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the complaint (ECF No.
16 1-1).

17 **IT IS FURTHER ORDERED** that the complaint is dismissed in its entirety for failure to
18 state a claim. Count I, alleging due process violations, is dismissed with prejudice as
19 amendment would be futile. Counts II and III, alleging state law claims, are dismissed for lack
20 of supplemental jurisdiction.

21 **IT IS FURTHER ORDERED** that this Court certifies that any *in forma pauperis* appeal
22 from this order would be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

23 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
24 accordingly.

25 Dated this 6th day of July, 2015.

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United States District Judge