

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7 JOHN L. WILLIAMS-EL,)
8 Plaintiff,)
9 v.)
10 JAMES COX, et al.,)
11 Defendants.)
12)
3:15-cv-00422-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 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 on 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. § 1915(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

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

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

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

1 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the
2 reviewing court to draw on its judicial experience and common sense.” *Id.*

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

10 **II. SCREENING**

11 In the complaint, Plaintiff sues multiple defendants for events that took place while
12 Plaintiff was incarcerated at Lovelock Correctional Center (“LCC”). (ECF No. 1-1 at 1).
13 Plaintiff sues Director of NDOC James Cox, Regional Deputy Director McDaniel, Regional
14 Deputy Director Sheryl Foster, Inspector General Pam Delporto, LCC Warden Legrand,
15 Associate Warden Sandie, and Investigator Keener. (*Id.* at 2-4). Plaintiff alleges one count
16 and seeks monetary and injunctive relief. (*Id.* at 5, 16).

17 Plaintiff alleges the following: Plaintiff he was a member of the Jackson Avenue Crips,
18 a neighborhood youth group. (*Id.* at 7). Plaintiff contends this group shared¹ no affiliation with
19 the criminal gang “the Crips.” (*Id.*). Plaintiff asserts that the similarity in name has resulted
20 in NDOC identifying Plaintiff as a member of the criminal “Crip” gang and, consequently, a
21 member of a security threat group (“STG”), pursuant to Administrative Regulation 446. (*Id.*).
22 Plaintiff has been challenging his STG status since 2007. (*Id.* at 8). On December 19, 2014,
23 Plaintiff appeared before the STG due process hearing panel at LCC and requested that his
24 STG status be removed. (*Id.*). The panel denied Plaintiff’s request. (*Id.*).

25 Plaintiff asserts that he has been subjected to mental and emotional abuse from gang
26 member inmates and contends this abuse demonstrates that he is not a gang member. (*Id.*)

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28 ¹ Plaintiff asserts the Jackson Avenue Crips was disbanded in 1999.

1 at 9). Plaintiff additionally asserts that his eligibility for parole has been affected by his STG
2 status.² (*Id.* at 9). Plaintiff claims his Fifth and Fourteenth Amendment rights have been
3 violated.

4 Plaintiff asserts that he has been deprived of due process and then outlines the
5 process he has been provided. Plaintiff was given a hearing concerning his status as an STG
6 inmate and his request to have that status removed was denied. (*Id.* at 8).

7 Prisoners may . . . not be deprived of life, liberty or property without due
8 process of law. . . . [T]he fact that prisoners retain rights under the Due
9 Process Clause in no way implies that these rights are not subject to
10 restrictions imposed by the nature of the regime to which they have been
lawfully committed. . . . [T]here must be a mutual accommodation between
institutional needs and objectives and the provisions of the Constitution that
are of general application.”

11 *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974) (citations omitted); see also *Sandin v.*
12 *Conner*, 515 U.S. 472, 478 (1995) (“*Wolff*’s contribution . . . derive[s] . . . from its intricate
13 balancing of prison management concerns with prisoners’ liberty in determining the amount
14 of process due.”). Plaintiff was given process, but disputes the legitimacy of the conclusion
15 of that process.

24 ² The Supreme Court has held that a prisoner in state custody cannot use a § 1983
25 action to challenge “the fact or duration of his confinement,” but instead must seek federal
26 habeas corpus relief or the appropriate state relief. *Wilkinson v. Dotson*, 544 U.S. 74, 78
27 (2005). To the extent Plaintiff’s claims question the validity of the denial of parole, they
28 necessarily imply the invalidity of the conviction or sentence and may not proceed.

1 Plaintiff contends that his interest is demonstrated in the prison administrative
2 regulation regarding STG designations. (ECF No. 1-1 at 7). In *Hewitt v. Helms*, the Supreme
3 Court examined whether the language of a state prison regulation was mandatory or
4 discretionary in determining whether it gave rise to a liberty interest. 459 U.S. 460, 471-72
5 (1983). *Sandin* observed that the *Hewitt* test had “led to the involvement of federal courts in
6 the day-to-day management of prisons.” 515 U.S. at 482. Such judicial intervention, held the
7 Court, “r[a]n counter to the view expressed in several of [its] cases that federal courts ought
8 to afford appropriate deference and flexibility to state officials trying to manage a volatile
9 environment.” *Id.* at 483. In *Myron v. Terhune*, the Ninth Circuit found an administrative code
10 did not create a protected liberty interest. 476 F.3d 716 (9th Cir. 2007) (citing *Sandin*, 515
11 U.S. at 483).

12 Accordingly, the Court finds Plaintiff fails to state a colorable claim of a Due Process
13 Clause violation. As such, Plaintiff’s complaint, in its entirety, is dismissed with prejudice for
14 failure to state a claim, as amendment would be futile.

15 **III. CONCLUSION**

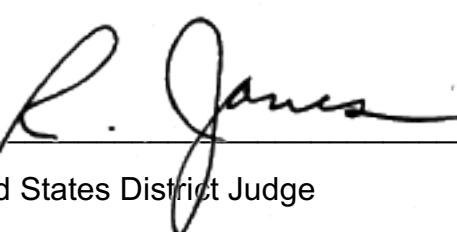
16 For the foregoing reasons, IT IS ORDERED that a decision on the application to
17 proceed *in forma pauperis* (ECF No. 1) is DENIED as moot.

18 IT IS FURTHER ORDERED that the complaint (ECF No. 1-1) is dismissed with
19 prejudice in its entirety, for failure to state a claim.

20 IT IS FURTHER ORDERED that this Court certifies that any *in forma pauperis* appeal
21 from this order would **not** be taken “in good faith” pursuant to 28 U.S.C. § 1915(a)(3).

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

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25 DATED: This 12th day of February, 2016.

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United States District Judge

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