

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DANIEL TRINIDAD, JR.,

Plaintiff,

Case No. 3:17-cv-00353-MMD-WGC

ORDER

v.

UNITED PARCEL SERVICE (UPS),

Defendant.

Before the court is Plaintiff's Application to Proceed in Forma Pauperis (IFP) (ECF No. 1) and pro se Complaint (ECF No. 1-1).

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

///

“[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some particularity, definiteness and certainty.”” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). A litigant need not “be absolutely destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee; therefore, the application is granted.

II. SCREENING

A. Standard

“The court shall dismiss the case at any time if the court determines that … the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed IFP, whether or not the plaintiff is incarcerated. *See Lopez*, 203 F.3d at 1129; *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks that language. Thus, when reviewing the adequacy of a complaint under 28 U.S.C. § 1915(e)(2)(B)(ii), the court applies the same standard as is applied under Rule 12(b)(6). *See Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

In reviewing the complaint under this standard, the court must accept as true the allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less stringent standards than formal

1 pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation marks
2 and citation omitted).

3 A complaint must contain more than a “formulaic recitation of the elements of a cause of
4 action,” it must contain factual allegations sufficient to “raise a right to relief above the
5 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading
6 must contain something more … than … a statement of facts that merely creates a suspicion [of]
7 a legally cognizable right of action.” *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice &*
8 *Procedure* § 1216, at 235-36 (3d ed. 2004)). At a minimum, a plaintiff should state “enough facts
9 to state a claim to relief that is plausible on its face.” *Id.* at 570; *see also Ashcroft v. Iqbal*,
10 556 U.S. 662, 678 (2009).

11 A dismissal should not be without leave to amend unless it is clear from the face of the
12 complaint that the action is frivolous and could not be amended to state a federal claim, or the
13 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
14 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

15 **B. Plaintiff’s Complaint**

16 Plaintiff brings this action against United Parcel Service (UPS). He alleges that he was
17 employed by UPS since 1996 and experienced harassment and discrimination from 2000 until
18 2017 based on his age and national origin in violation of the Age Discrimination in Employment
19 Act (ADEA) and Title VII of the Civil Rights Act of 1964 (Title VII). (ECF NO. 1-1 at 3.) He
20 provides a list of names including Phillip Cote, Ian Belingheri, Eric Wright, and Canton Cooke.
21 (*Id.* at 4.)

22 While it is clear that Plaintiff seeks relief for alleged harassment and discrimination at his
23 place of employment under the ADEA and Title VII, he includes no *factual* allegations
24 concerning what occurred. As such, the court will dismiss Plaintiff’s Complaint, but with leave
25 to file an amended complaint to include factual allegations in support of his claim that his rights
26 under the ADEA and Title VII were violated.

///

III. CONCLUSION

(1) Plaintiff's IFP application (ECF No. 1) is GRANTED;

(2) The Clerk shall FILE the Complaint (ECF No. 1-1);

(3) The Complaint is **DISMISSED WITH LEAVE TO AMEND**;

(4) Plaintiff has **THIRTY DAYS** from the date of this Order to file an amended complaint correcting the deficiencies noted above. The amended complaint shall be complete in itself without reference to any previous complaint. Any allegations, parties or requests for from prior pleadings that are not carried forward in the amended complaint will no longer before the court. Plaintiff shall clearly title the amended pleading as "AMENDED PLAINT." If Plaintiff fails to file an amended complaint within the time period prescribed, ion may be dismissed.

DATED: June 29, 2017.

Walter G. Cobb

WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE