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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DANIEL TRINIDAD, JR.,

Plaintiff,

v.

UNITED PARCEL SERVICE (UPS),

Defendant.

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

ORDER

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.

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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.

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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 and of itself without reference to any previous complaint. Any allegations, parties or requests for relief from prior pleadings that are not carried forward in the amended complaint will no longer be before the court. Plaintiff shall clearly title the amended pleading as "AMENDED COMPLAINT." If Plaintiff fails to file an amended complaint within the time period prescribed, the action may be dismissed.

DATED: June 29, 2017.

William G. Cobb

WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE