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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AARON SLEDGE,

Plaintiff,

v.

CHUCK ALLEN, et al.,

Defendants.

Case No. 3:19-cv-00181-MMD-CLB

SCREENING ORDER

Plaintiff, who is incarcerated 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 Nos. 1, 1-1.) The Court now screens Plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. IN FORMA PAUPERIS APPLICATION

Before the Court is Plaintiff’s application to proceed in forma pauperis. (ECF No. 1.) Based on the information he provided regarding Plaintiff’s financial status, the Court finds that Plaintiff is not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Plaintiff will, however, be required to make monthly payments toward the full \$350.00 filing fee when he has funds available.

II. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person 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 *id.* § 1915A(b)(1), (2). Pro se pleadings, however, must be liberally construed. See *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.

1 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
2 elements: (1) the violation of a right secured by the Constitution or laws of the United
3 States, and (2) that the alleged violation was committed by a person acting under color
4 of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

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

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

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1 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
2 insufficient. See *id.*

3 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
4 that, because they are no more than mere conclusions, are not entitled to the assumption
5 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide
6 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When
7 there are well-pleaded factual allegations, a court should assume their veracity and then
8 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining
9 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that
10 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

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

18 **III. SCREENING OF COMPLAINT**

19 In the Complaint, Plaintiff sues multiple defendants for events that took place while
20 Plaintiff was incarcerated at the Washoe County Detention Facility (“WCDF”). (ECF No.
21 1-1 at 1.) Plaintiff sues Defendants Sheriff Chuck Allen and Washoe County
22 Commissioners Marsha Berkbigler, Vaughn Hartung, Jeanne Herman, Kitty Jung, and
23 Bob Lucey. (*Id.* at 2-3.) Plaintiff alleges four counts and seeks declaratory, injunctive, and
24 monetary relief.¹ (*Id.* at 8, 12.)

25 The Complaint alleges the following. While at the WCDF, Plaintiff was a pretrial
26 detainee representing himself during his criminal trial. (*Id.* at 4.) Plaintiff was unable to file
27 a timely motion for mistrial based on legitimate grounds because the WCDF had no legal
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¹Inmate John Quintero helped Plaintiff prepare the Complaint. (ECF No. 1-1 at 13.)

1 materials. (Id. at 5.) Jail officials instructed Plaintiff to access legal materials through
2 Washoe Legal Services but Washoe Legal Services only issues advice on civil matters.
3 (Id.)

4 On November 24, 2017, Plaintiff learned that jail officials provided federal pretrial
5 detainees on ICE holds access to a mobile information station with law library access but
6 would not provide the same information to state pretrial detainees. (Id. at 6.) The county
7 commissioners were in charge of funding. (Id. at 7.) The WCDF had an administrative
8 process that failed to provide any meaningful procedures to remedy complaints and made
9 it difficult for inmates to seek the assistance of non-governmental entities. (Id. at 8.)

10 In Count I, Plaintiff alleges First Amendment violations because there was no law
11 library and Defendants tried to push legal research onto the Washoe County Public
12 Defender's Office without any funding. (Id. at 5.) In Count II, Plaintiff alleges Fourteenth
13 Amendment equal protection violations because jail officials provided federal pretrial
14 detainees access to a law library but did not do the same for state pretrial detainees. (Id.
15 at 6.) In Count III, Plaintiff alleges violations of the U.S. Constitution based on lack of
16 access to the courts. (Id. at 7.) In Count IV, Plaintiff alleges First and Fourteenth
17 Amendment violations based on the right to "redress grievances." (Id. at 8.)

18 In viewing the allegations in the light most favorable to Plaintiff, it appears that
19 Plaintiff was a pretrial detainee who was attempting to represent himself at his criminal
20 trial. The Court finds that Plaintiff's allegations are construed as a Sixth Amendment claim
21 for the right to self-representation in a criminal case rather than a Fourteenth Amendment
22 claim for denial of access to the courts. The right of access to the courts is limited to non-
23 frivolous direct criminal appeals, habeas corpus proceedings, and § 1983 actions. See
24 *Lewis v. Casey*, 518 U.S. 343, 353 n.3, 354-55 (1996). The Court construes Plaintiff's
25 allegations as claims for Sixth Amendment right to self-representation (Counts I, III),
26 Fourteenth Amendment equal protection (Count II), and Fourteenth Amendment due
27 process (Count IV).

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1 **A. Right to Self-Representation (Counts I, III)**

2 The Court interprets Counts I and III as claims for violations of Plaintiff's Sixth
3 Amendment right to self-representation because Plaintiff was a criminal defendant at the
4 time of the events. In *Faretta v. California*, 422 U.S. 806 (1975), the U.S. Supreme Court
5 recognized a criminal defendant's Sixth Amendment right to self-representation. See *id.*
6 at 807. The Ninth Circuit has held that "the right to self-representation necessarily
7 includes and is premised upon the right of the defendant to prepare a defense." See
8 *Taylor v. List*, 880 F.2d 1040, 1047 (9th Cir. 1989). "An incarcerated defendant may not
9 meaningfully exercise his right to represent himself without access to law books,
10 witnesses, or other tools to prepare a defense." *Id.*

11 The Court finds that Plaintiff states a colorable right to self-representation claim.
12 Based on the allegations, while Plaintiff was representing himself,² he was unable to
13 conduct any legal research during his criminal trial because the WCDF did not have a law
14 library. For screening purposes, this claim will proceed against Defendants Allen,
15 Berkbigler, Hartung, Herman, Jung, and Lucey. See *Pouncil v. Tilton*, 704 F.3d 568, 576
16 (9th Cir. 2012) (holding that a supervisor could be a proper defendant for a claim for
17 prospective injunctive relief from a regulation because the supervisor would be
18 responsible for ensuring that injunctive relief was carried out, even if he was not
19 personally involved in the decision giving rise to the plaintiff's claims).

20 **B. Equal Protection (Count II)**

21 The Equal Protection Clause of the Fourteenth Amendment is essentially a
22 direction that all similarly situated persons be treated equally under the law. See *City of*
23 *Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). In order to state an
24 equal protection claim, a plaintiff must allege facts demonstrating that defendants acted
25 with the intent and purpose to discriminate against him based upon membership in a
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27 ²By taking Plaintiff's allegations as true, it appears that Plaintiff was representing
28 himself during his criminal trial. (ECF No. 1-1 at 4.) However, the Court notes that Plaintiff
attaches exhibits to his Complaint that indicate that, at some point during his criminal
proceedings, he had appointed counsel from both the Washoe County Public Defender's
Office and Washoe County Alternate Public Defender's Office. (*Id.* at 21, 29-30.)

1 protected class, or that defendants purposefully treated him differently than similarly
2 situated individuals without any rational basis for the disparate treatment. See *Lee v. City*
3 *of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001); see also *Vill. of Willowbrook v. Olech*,
4 528 U.S. 562, 564 (2000).

5 For screening purposes, the Court finds that Plaintiff states a colorable equal
6 protection claim. Based on the allegations, jail officials treated federal and state pretrial
7 detainees differently with respect to law library access without any rational basis. This
8 claim will proceed against Defendants Allen, Berkbigler, Hartung, Herman, Jung, and
9 Lucey.

10 **C. Due Process (Count IV)**

11 The Court interprets Count IV as attempting to state a due process claim based on
12 how jail officials responded to Plaintiff's grievances. The Court finds that Plaintiff fails to
13 state a claim. Inmates have no stand-alone due process rights related to the
14 administrative grievance process. See *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988)
15 (holding that a state's unpublished policy statements establishing a grievance procedure
16 do not create a constitutionally protected liberty interest); *Ramirez v. Galaza*, 334 F.3d
17 850, 860 (9th Cir. 2003) (holding that there is no liberty interest in the processing of
18 appeals because there is no liberty interest entitling inmates to a specific grievance
19 process). As such, the Court dismisses the due process claim with prejudice as
20 amendment would be futile.

21 **IV. CONCLUSION**

22 It is therefore ordered that Plaintiff's application to proceed in forma pauperis (ECF
23 No. 1) without having to prepay the full filing fee is granted. Plaintiff will not be required to
24 pay an initial installment fee. Nevertheless, the full filing fee will still be due, pursuant to
25 28 U.S.C. § 1915, as amended by the PLRA. The movant herein is permitted to maintain
26 this action to conclusion without the necessity of prepayment of fees or costs or the giving
27 of security therefor. However, this order granting in forma pauperis status will not extend
28 to the issuance and/or service of subpoenas at government expense.

1 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the PLRA,
2 the Nevada Department of Corrections will pay to the Clerk of the United States District
3 Court, District of Nevada, 20% of the preceding month's deposits to the account of **Aaron**
4 **Sledge, #93404** (in months that the account exceeds \$10.00) until the full \$350 filing fee
5 has been paid for this action. The Clerk of Court will send a copy of this order to the
6 Finance Division of the Clerk's Office. The Clerk of Court will also send a copy of this
7 order to the attention of **Chief of Inmate Services for the Nevada Department of**
8 **Prisons**, P.O. Box 7011, Carson City, NV 89702.

9 It is further ordered that, even if this action is dismissed, or is otherwise
10 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. §1915, as amended
11 by the PLRA.

12 The Clerk of Court is further directed to file the Complaint (ECF No. 1-1) and send
13 Plaintiff a courtesy copy.

14 It is further ordered that Counts I and III, alleging violations of the Sixth Amendment
15 right to self-representation, will proceed against Defendants Allen, Berkbigler, Hartung,
16 Herman, Jung, and Lucey.

17 It is further ordered that Count II, alleging Fourteenth Amendment equal protection
18 violations, will proceed against Defendants Allen, Berkbigler, Hartung, Herman, Jung, and
19 Lucey.

20 It is further ordered that Count IV, alleging Fourteenth Amendment due process
21 violations, is dismissed with prejudice as amendment would be futile.

22 It is further ordered that the Clerk of Court will issue summonses for Defendants
23 Chuck Allen, Marsha Berkbigler, Vaughn Hartung, Jeanne Herman, Kitty Jung, and Bob
24 Lucey, and deliver the same, to the U.S. Marshal for service. The Clerk of Court will also
25 send sufficient copies of the Complaint (ECF No. 1-1) and this order to the U.S. Marshal
26 for service on Defendant(s).

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It is further ordered that the Clerk of Court will send to Plaintiff six USM-285 forms. Plaintiff will have 30 days within which to furnish to the U.S. Marshal the required USM-285 forms with relevant information as to each Defendant on each form.

It is further ordered that within 20 days after receiving from the U.S. Marshal a copy of the USM-285 forms showing whether service has been accomplished, Plaintiff must file a notice with the Court identifying which Defendant(s) were served and which were not served, if any. If Plaintiff wishes to have service again attempted on an unserved Defendant(s), then a motion must be filed with the Court identifying the unserved Defendant(s) and specifying a more detailed name and/or address for said Defendant(s), or whether some other manner of service should be attempted.

It is further ordered that henceforth, Plaintiff will serve upon Defendants or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion or other document submitted for consideration by the Court. Plaintiff will include with the original paper submitted for filing a certificate stating the date that a true and correct copy of the document was mailed to the Defendants or counsel for the Defendants. The Court may disregard any paper received by a district judge or magistrate judge which has not been filed with the Clerk of Court, and any paper received by a district judge, magistrate judge or the Clerk of Court which fails to include a certificate of service.

DATED THIS 7th day of January 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE