

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTOPHER DEGRANDI,

Plaintiff

v.

RENO POLICE DEPARTMENT, R.T.C.
BUS Co.,

Defendants

Case No.: 3:22-cv-00295-MMD-CSD

Order

Re: ECF Nos. 1, 1-1

Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and propose 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).

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)

(quotation marks and citation omitted). 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

“[T]he court shall dismiss the case at any time if the court determines that-- (A) the allegation of poverty is untrue; or (B) 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)(A), (B)(i)-(iii).

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. As such, when reviewing the adequacy of a complaint under this statute, the court applies the same standard as is applied under Rule 12(b)(6). *See e.g. 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 Rule 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).

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

1 stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9
2 (1980) (internal quotation marks 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.* (citation and quotation marks omitted). At a minimum, a
8 plaintiff should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at
9 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

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

14 **B. Plaintiff’s Complaint**

15 Plaintiff’s complaint names the Reno Police Department and R.T.C. Bus Co. as
16 defendants. Plaintiff alleges that on December 18, 2020, the bus driver opened the door to the
17 bus and two passengers threw Plaintiff on the sidewalk. The police arrived ten minutes later and
18 asked Plaintiff for a report, and he said he would give a report, but not at that time. He went to
19 Renown Hospital. (ECF No. 1-1 at 4-5.)

20 Plaintiff does not state a colorable claim against the Reno Police Department or the
21 R.T.C. Bus Co. He alleges that two other passengers assaulted him; however, there are no
22 allegations of wrongdoing or any violations of his rights by the Reno Police Department or the
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1 R.T.C. Bus Co. Therefore, Plaintiff's complaint will be dismissed; however, the court will afford
2 Plaintiff an opportunity to try to amend to state a colorable claim for relief.

3 **III. CONCLUSION**

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

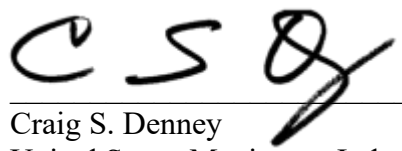
5 (2) The Clerk shall **FILE** the Complaint (ECF No. 1-1).

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

7 (4) Plaintiff has **30 DAYS** from the date of this Order to file an amended complaint
8 correcting the deficiencies noted above. The amended complaint must be complete in and of
9 itself without referring or incorporating by reference any previous complaint. Any allegations,
10 parties, or requests for relief from a prior complaint that are not carried forwarded in the
11 amended complaint will no longer be before the court. Plaintiff shall clearly title the amended
12 pleading as "AMENDED COMPLAINT." If Plaintiff fails to file an amended complaint within
13 the 30 days, the action may be dismissed.

14 **IT IS SO ORDERED.**

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16 Dated: September 15, 2022

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18 Craig S. Denney
19 United States Magistrate Judge
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