

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

NORMAN SHAW, et al.,

Plaintiffs,

v.

SCOTT DAVIS, et al.,

Defendants.

3:18-cv-00551-MMD-CLB

**SCREENING ORDER ON  
FIRST AMENDED COMPLAINT**

Plaintiffs Norman Shaw, Joseph Cowart, Brian Kamedula, Charles Wirth, and Ansell Jordan (collectively referred to as "Plaintiffs"), who are prisoners in the custody of the Nevada Department of Corrections ("NDOC"), have submitted a first amended complaint ("FAC") under 42 U.S.C. § 1983. (ECF No. 39.) The court now screens Plaintiffs' FAC under 28 U.S.C. § 1915A.

**I. SCREENING STANDARD**

Federal courts must conduct a preliminary screening in 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. § 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 28 U.S.C. § 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. 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).

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

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

24 Additionally, a reviewing court should “begin by identifying pleadings [allegations]  
25 that, because they are no more than mere conclusions, are not entitled to the assumption  
26 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide  
27 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When

1 there are well-pleaded factual allegations, a court should assume their veracity and then  
 2 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining  
 3 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that  
 4 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

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

## 12 **II. PROCEDURAL HISTORY**

13 On November 20, 2018, Plaintiffs submitted their original complaint (ECF No. 1-2,  
 14 filed at ECF No. 12) along with individual applications to proceed *in forma pauperis* (ECF  
 15 Nos. 1, 6-9.) On June 18, 2019, the District Court screened the complaint and allowed  
 16 Plaintiffs to proceed as follows: (1) in Count I, alleging Religious Land Use and  
 17 Institutionalized Persons Act of 2000 (“RLUIPA”) violations against Defendants Davis,  
 18 Carpenter, Wickham, Snyder, K. Thomas, Baker, Ferro, LeGrand, Potter, Doe #1 and Doe  
 19 Prison Administrator; (2) in Count II, alleging Fourteenth Amendment equal protection  
 20 violations against Davis, Carpenter, Wickham, Snyder, Doe #1 and Doe Prison  
 21 Administrator; (3) in Count III, alleging RLUIPA and Fourteenth Amendment equal protection  
 22 violations against Defendants LeGrand, Ferro, Potter, Baker, Carpenter, Thomas, and Doe  
 23 #2; (4) the portion of Count IV alleging First Amendment Establishment Clause violations  
 24 against Defendants Wickham, Snyder, Baker, Carpenter, Davis, Doe #1 and Doe Prison  
 25 Administrator; (5) the portion of Count IV alleging First Amendment Free Exercise Clause  
 26 violations against Defendants Wickham, Snyder, Baker, Carpenter, Davis, Doe #1 and Doe  
 27 Prison Administrator; and (6) the portion of Count IV alleging 42 U.S.C. § 1985(3) conspiracy

1 against Defendants Wickham, Snyder, Baker, Carpenter, Davis, Doe #1 and Doe Prison  
2 Administrator. (ECF No. 11.)

3 The case was stayed for 90-days to provide the parties an opportunity to settle the  
4 case. (*Id.*) An Early Mediation Conference was held on November 26, 2019, however the  
5 parties were unable to reach a settlement at that time. (ECF No. 30.) On January 2, 2020,  
6 the Office of the Attorney General filed a status report indicating that settlement had not  
7 been reached and informing the Court of its intent to proceed with this action. (ECF No. 32.)  
8 Thus, on January 3, 2020, the District Court granted the individual *in forma pauperis*  
9 applications and directed the Clerk of Court to electronically serve the complaint on the  
10 Office of the Attorney General. (ECF No. 33.)

11 On January 21, 2020, Plaintiffs filed the FAC (ECF No. 39), which is now the  
12 operative complaint in this case. On January 23, 2020, Defendants filed their notice of  
13 acceptance of service of the original complaint. (ECF No. 40.) Defendants also filed a  
14 limited non-opposition to Plaintiffs' filing of an amended complaint. (ECF No. 41.) Although  
15 the Plaintiffs did not file a motion for leave to file an amended complaint, it appears the  
16 District Court granted the filing of an amended complaint in its May 12, 2020 order. (See  
17 ECF No. 55 (noting "[t]here is no question that the PLRA [Prison Litigation Reform Act]  
18 requires courts to engage in pre-answer screening of an inmate's complaint." *Olausen v.*  
19 *Murguia*, Case No. 3:13-cv-00388-MMD, 2014 WL 6065622, at \*1 (D. Nev. Nov. 12, 2014)).)  
20 Accordingly, the court will now conduct a screening of Plaintiffs' FAC.

### 21 **III. SCREENING OF THE FAC**

22 In the FAC, Plaintiffs sue multiple defendants for events that took place while Plaintiffs  
23 were incarcerated at the Lovelock Correctional Center ("LCC"). (ECF No. 39 at 1.) Plaintiffs  
24 sue Defendants Chaplain Scott Davis, Associate Warden Tara Carpenter, RRT Committee  
25 Harold Wickham, RRT Committee Richard Snyder, Prison Administration, Caseworker K.  
26 LeGrand, Caseworker J. Ferro, Caseworker C. Potter, Warden Renee Baker, Deputy  
27 Director Kim Thomas, John Doe #1, and John Doe #2. (*Id.* at 1-3.) Plaintiffs allege five

counts and seek declaratory, injunctive, and monetary relief. (*Id.* at 22-23.)

**A. Counts I through IV**

The allegations contained in Counts I through IV of the original complaint and the FAC are identical. (*Compare* ECF No. 12 at 5-22, *with* ECF No. 39 at 3-20.) Accordingly, Plaintiffs will be allowed to proceed on Counts I through IV as outlined in the original screening order and as follows:

- Count I, alleging RLUIPA violations, will proceed against Defendants Davis, Carpenter, Wickham, Snyder, K. Thomas, Baker, Ferro, LeGrand, and Potter and against Doe #1 and Doe Prison Administration (when Plaintiffs learn their identities);
- Count II, alleging equal protection violations, will proceed against Defendants Davis, Carpenter, Wickham, and Snyder and Doe #1 and Doe Prison Administration (when Plaintiffs learn their identities);
- Count III, alleging RLUIPA and equal protection violations, will proceed against Defendants LeGrand, Ferro, Potter, Baker, Carpenter, Thomas, and Doe #2 (when Plaintiffs learn his identity);
- the portion of Count IV, alleging First Amendment Establishment Clause violations, will proceed against Defendants Wickham, Snyder, Baker, Carpenter, and Davis and Doe #1 and Doe Prison Administration (when Plaintiffs learn their identities);
- the portion of Count IV, alleging First Amendment Free Exercise Clause violations, will proceed against Defendants Wickham, Snyder, Baker, Carpenter, and Davis and Doe #1 and Doe Prison Administration (when Plaintiffs learn their identities); and
- the portion of Count IV, alleging 42 U.S.C. § 1985(3) conspiracy, will proceed against Defendants Wickham, Snyder, Baker, Carpenter, and Davis and Doe #1 and Doe Prison Administration (when Plaintiffs learn their identities).

1 (See ECF No. 11.)

2 **B. Count V**

3 In Count V, Plaintiffs allege the following: On January 24, 2018, Davis held a meeting  
4 with religious faith group facilitators and Plaintiffs Cowart and Jordan. (ECF No. 39 at 20.)  
5 After disclosing the changes that were being implemented to the Chapel schedule effective  
6 February 1, 2018, Davis informed Plaintiffs that they were only entitled to one-hour per week  
7 for Chapel services and if anyone wanted to file a grievance, he could “make that happen.”  
8 (*Id.*) One inmate complained about the secular Music Appreciation Program being added  
9 after cutting over fifty percent of the religious services and Davis threatened to have all  
10 musical instruments used for religious worship removed from the Chapel. (*Id.*) Davis  
11 concluded his meeting by pointing to himself and saying, “There’s a new sheriff in town.”  
12 (*Id.*)

13 On May 25, 2018, Davis posted a memo in the Chapel relating to the musical  
14 instruments used for religious worship removed from the Chapel. (*Id.*) In this memo, Davis  
15 stated, “The institution is under no legal obligation to provide this equipment for your usage.  
16 It was all donated by outside volunteers... Let’s get our priorities straight and adhere to the  
17 rules or, it will all go ‘bye-bye’.” (*Id.*)

18 On July 19, 2018, Davis had another religious faith group facilitators’ meeting. (*Id.* at  
19 20-21.) During the meeting, Davis threatened to suspend the religious music program, but  
20 not the secular Music Appreciation Program. (*Id.* at 21.) Faith group facilitators complained  
21 about not having equal Chapel time, Davis threatened to reduce all faith groups to one-hour  
22 per week, and do away with divided Chapel time. (*Id.*) The December 2018 Chapel  
23 schedule shows that Davis had removed eleven services from Room 2 with Carpenter’s  
24 approval. (*Id.*)

25 For the month of April 2019, Davis acted on his threat to suspend the religious music  
26 program by taking away all instruments for the religious faith groups. (*Id.*) Davis’ memo  
27 stated,

Effective April 1, 2019 the music department will be shut down for the entire month. The only time slot allowed to checkout instruments will be Friday morning's Education Music Appreciation class. This has been preapproved by the AWP [Carpenter]. Those of you who own your own instruments will NOT be allowed to bring them in the Chapel. Any Chapel time slot that is currently on the schedule for music practice will be blank for the month of April. So let it be written, so let it be done.

(*Id.*)

Plaintiff Shaw met with and tried to reason with Davis regarding the suspension of instruments before the month of April began. (*Id.*) Davis said he was suspending the music program during the entire month of April because he felt too much emphasis was being placed on "music" rather than the "Word." (*Id.*) At the meeting, Davis acknowledged he never attended an Episcopal service wherein he could make such a determination. (*Id.*) Shaw invited Davis to attend an Episcopal service so that he could give his input, but Davis declined because Episcopal services fall during his time-off. (*Id.*) Davis has not only made threats that were designed to chill inmates First Amendment Rights to redress of grievances, but he also acted upon them with Carpenter's approval. (*Id.* at 21-22.) Based on these allegations, Plaintiffs assert a First Amendment retaliation claim against Defendants Davis and Carpenter.

### **1. First Amendment Retaliation**

It is well established in the Ninth Circuit that prisoners may seek redress for retaliatory conduct by prison officials under § 1983. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). "Prisoners have a First Amendment right to file grievances against prison officials and be free from retaliation for doing so." *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012).

"A prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." *Pell v. Procunier*, 417 U.S. 817, 822 (1974). "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state



1 actor took some adverse action against an inmate (2) because of (3) that prisoner's  
2 protected conduct, and that such action (4) chilled the inmate's exercise of his First  
3 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional  
4 goal." *Rhodes*, 408 F.3d at 567-68. The adverse action must be such that it "would chill or  
5 silence a person of ordinary firmness from future First Amendment activities." *Watison*, 668  
6 F.3d at 1114 (quoting *Rhodes*, 408 F.3d at 568). Further, "the mere threat of harm can be  
7 an adverse action...." *Brodheim*, 584 F.3d at 1270.

8 Federal courts were not created to supervise prisons, but to enforce the constitutional  
9 rights of all persons, including prisoners. "We are not unmindful that prison officials must  
10 be accorded latitude in the administration of prison affairs, and that prisoners necessarily  
11 are subject to appropriate rules and regulations." *Cruz v. Beto*, 405 U.S. 319, 321 (1982).  
12 But prisoners, like other individuals, have the right to petition the government for redress of  
13 grievances, which includes the First Amendment right to file grievances against prison  
14 officials and to be free from retaliation for doing so. *Brodheim*, 584 F.3d at 1269. "Of  
15 fundamental import to prisoners are their First Amendment 'rights to file prison grievances .  
16 .'" *Rhodes*, 408 F.3d at 567 (quoting *Bruce v. Ylst*, 351 F.3d 1283, 1288 (9th Cir. 2003)).  
17 "[B]ecause purely retaliatory actions taken against a prisoner for having exercised those  
18 rights necessarily undermine those protections, such actions violate the Constitution quite  
19 apart from any underlying misconduct they are designed to shield." *Id.*

20 Based on the allegations, Plaintiffs assert that Davis and Carpenter have violated  
21 Plaintiffs' First Amendment rights by threatening and/or taking adverse action, in the form of  
22 limiting their ability to practice their respective religions, against Plaintiffs who exercised or  
23 wished to exercise their First Amendment rights to redress of grievances. For purposes of  
24 screening, the court finds that Plaintiffs state a colorable retaliation claim, which will proceed  
25 against Defendants Davis and Carpenter.

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1 **IV. CONCLUSION**

2 For the reasons articulated above, **IT IS ORDERED** that Plaintiffs' FAC (ECF No. 39)  
3 is the operative complaint in this case;

4 **IT IS FURTHER ORDERED** that Count I, alleging RLUIPA violations, will proceed  
5 against Defendants Davis, Carpenter, Wickham, Snyder, K. Thomas, Baker, Ferro,  
6 LeGrand, and Potter and against Doe #1 and Doe Prison Administration (when Plaintiffs  
7 learn their identities);

8 **IT IS FURTHER ORDERED** that Count II, alleging equal protection violations, will  
9 proceed against Defendants Davis, Carpenter, Wickham, and Snyder and Doe #1 and Doe  
10 Prison Administration (when Plaintiffs learn their identities);

11 **IT IS FURTHER ORDERED** that Count III, alleging RLUIPA and equal protection  
12 violations, will proceed against Defendants LeGrand, Ferro, Potter, Baker, Carpenter,  
13 Thomas, and Doe #2 (when Plaintiffs learn his identity);

14 **IT IS FURTHER ORDERED** that the portion of Count IV, alleging First Amendment  
15 Establishment Clause violations, will proceed against Defendants Wickham, Snyder, Baker,  
16 Carpenter, and Davis and Doe #1 and Doe Prison Administration (when Plaintiffs learn their  
17 identities);

18 **IT IS FURTHER ORDERED** that the portion of Count IV, alleging First Amendment  
19 Free Exercise Clause violations, will proceed against Defendants Wickham, Snyder, Baker,  
20 Carpenter, and Davis and Doe #1 and Doe Prison Administration (when Plaintiffs learn their  
21 identities);

22 **IT IS FURTHER ORDERED** that the portion of Count IV, alleging 42 U.S.C. § 1985(3)  
23 conspiracy, will proceed against Defendants Wickham, Snyder, Baker, Carpenter, and Davis  
24 and Doe #1 and Doe Prison Administration (when Plaintiffs learn their identities);

25 **IT IS FURTHER ORDERED** that Count V, alleging retaliation, will proceed against  
26 Defendants Davis and Carpenter; and

27 **IT IS FURTHER ORDERED** that Defendants must file and serve an answer or other

1 response to the complaint (ECF No. 39) within **thirty (30) days** from the date of this order.

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3 **DATED:** June 12, 2020

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**UNITED STATES MAGISTRATE JUDGE**