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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PAUL McCREARY,

Plaintiff,

v.

BRIAN SANDOVAL, et al.,

Defendants.

Case No. 2:12-cv-00317-MMD-CWH

ORDER

The court determined that the complaint failed to state a claim upon which relief can be granted, and the court directed plaintiff to file an amended complaint to correct the deficiencies of the complaint. Order (dkt. no. 3). Plaintiff has not complied with the court's order within the allotted time. The court will therefore dismiss this action.

Plaintiff's motion to submit into evidence/discovery (dkt. no. 2) is moot because the court is dismissing the action.

Twice, plaintiff has appealed orders of this court. First, plaintiff appealed the court's order (dkt. no. 3) dismissing the complaint and directing plaintiff to file an amended complaint. The court of appeals dismissed (dkt. no. 8) that appeal because the court of appeals lacked jurisdiction. This court then entered an order on the mandate of the court of appeals (dkt. no. 10). Plaintiff has now appealed (dkt. no. 11) that order. Whatever plaintiff's reasons for appealing a clerical order might be, the appeal does not deprive this court of jurisdiction to dispose of the action.

1 IT IS THEREFORE ORDERED that plaintiff's application to proceed in forma
2 pauperis (dkt. no. 1) is **GRANTED**. Plaintiff shall not be required to pay an initial partial
3 filing fee. However, even though this action is to be dismissed, the full filing fee must still
4 be paid pursuant to 28 U.S.C. § 1915(b)(2).

5 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada
6 Department of Corrections shall pay to the Clerk of the United States District Court,
7 District of Nevada, 20% of the preceding month's deposits to plaintiff's account (inmate
8 #78362), in the months that the account exceeds \$10.00, until the full \$350 filing fee has
9 been paid for this action. The clerk shall send a copy of this order to the finance division
10 of the clerk's office. The clerk shall also send a copy of this order to the attention of the
11 chief of inmate services for the Nevada Department of Corrections, P.O. Box 7011,
12 Carson City, NV 89702.

13 IT IS FURTHER ORDERED that plaintiff's motion to submit into evidence/
14 discovery (dkt. no. 2) is **DENIED** as moot.

15 IT IS FURTHER ORDERED that this action is **DISMISSED** for failure to state a
16 claim upon which relief can be granted and for plaintiff's failure to comply with the court's
17 order. The clerk of the court shall enter judgment accordingly.

18 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(a)(3), any appeal
19 from the dismissal of this action is not taken in good faith.

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21 DATED THIS 9th day of July 2012.



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23 _____
24 UNITED STATES DISTRICT JUDGE
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