

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

REGINALD C. HOWARD,

Case No. 2:17-cv-01002-JAD-BNW

Plaintiff,

ORDER

v.

GREG COX, et al.,

Defendants.

Presently before the court is Defendants' Motion to Strike Plaintiff's in forma pauperis status (ECF No. 22) and Plaintiff's response (ECF No. 23). In addition, Plaintiff filed a Motion requesting he be provided with the unserved defendant's full names and addresses and for the issuance of summonses (ECF No. 24), which the Defendants, in part, opposed. (ECF No. 25.)

This is a prisoner civil rights matter. Plaintiff filed his original Complaint and his accompanying Application to Proceed In Forma Pauperis (IFP) on April 6, 2017. (ECF No. 1.) In that application he stated he only had \$30.00 in his prison account. (Id.) Plaintiff filed an Amended Complaint on April 20, 2018. (ECF No. 5.) In that application, however, he stated he had \$25,700 in his prison account, as he had received a settlement from a civil lawsuit. (Id.) Nevertheless, this court erroneously allowed him to proceed IFP, as the balance in his prison account foreclosed him to proceed under 28 USC 1915(a)(1). (ECF No. 18.) In addition, in his

1 response, Plaintiff acknowledges he can pay the filing fee and the costs of service of process.¹
2 (ECF No. 23.) As a result, the court will revoke Plaintiff's IFP status.

3 Next, Plaintiff requests that he be provided the full names and addresses of those
4 defendants for whom the Attorney General did not accept service and that summonses be issued.
5 (ECF No. 24.) Defendants oppose Plaintiff's request for addresses although they do not oppose
6 the court's issuance of summonses. (Id.)

7 The court will grant the issuance of six blank summonses for the unserved individuals: Jo
8 Gentry, Minor Adams, Conrad Porter, Romeo Aranas, Francisco Sanchez ("Dr. Sanchez") and
9 Joselo Vicuna ("Dr. Vicuna").² (ECF No. 25.) Under Federal Rule of Civil Procedure 4(c)(3), at
10 the Plaintiff's request, "the court may order that service be made by a United States marshal or
11 deputy marshal or by a person specially appointed by the court." The court must so order if the
12 Plaintiff is proceeding under 28 USC 1915. Fed. R. Civ. Pro. 4(c)(3). As stated above, Plaintiff
13 will no longer be proceeding IFP. Nevertheless, in the court's discretion, it will order the U.S.
14 Marshal to serve these individuals. Fed. R. Civ. Pro. 4(c)(3).

15 Defendants request that, given Plaintiff's current financial status, he pay for the service of
16 process. The court agrees and will order Plaintiff to pay for those services.

17 **IT IS THEREFORE ORDERED** that Defendants' motion to revoke Plaintiff's in forma
18 pauperis status (ECF No. 22) is **GRANTED**, and Howard's in forma Pauperis Status shall be
19 immediately revoked.

20 **IT IS FURTHER ORDERED** that Howard pay the full filing fee of \$400.00 within 90
21 days of today's order.

22 **IT IS FURTHER ORDERED** that Howard's motion for issuance of summons (ECF No.
23 24) is **GRANTED**.

24
25
26 ¹ The Defendants have attached documents demonstrating that Plaintiff's prison account has a
27 balance of \$49,909.19 as he received a second civil settlement. (ECF No. 22-1.)

28 ² The Attorney General did not accept service on behalf of "Sgt. Sanchez," as this Defendant could
not be identified from the information provided by Plaintiff. (ECF No. 25.)

1 **IT IS FURTHER ORDERED** that the deadline for service under Rule 4(m) is reset:
2 service must be complete within 90 days from the date that this order is entered.

3 **IT IS FURTHER ORDERED** that the Clerk of Court must **send Howard six blank**
4 **copies** of form USM-285.

5 **IT IS FURTHER ORDERED** that Howard shall have **twenty days** to furnish the United
6 States Marshal with the required USM-285 forms, and he shall **omit** any address information on
7 the forms.

8 **IT IS FURTHER ORDERED** that the Clerk of Court shall issue summonses, under seal,
9 to **JO GENTRY, MINOR ADAMS, CONRAD PORTER, ROMEO ARANAS,**
10 **FRANCISCO SANCHEZ,** and **JOSELO VICUNA** using the addresses that were filed under
11 seal at ECF No. 20.

12 **IT IS FURTHER ORDERED** that the Clerk of Court serve a copy of this order, the issued
13 summonses under seal, and the amended complaint (ECF No. 5) on the United States Marshal.

14 **IT IS FURTHER ORDERED** that the United States Marshal shall, in accordance with
15 Rule 4(c)(3), attempt service on **JO GENTRY, MINOR ADAMS, CONRAD PORTER,**
16 **ROMEO ARANAS, FRANCISCO SANCHEZ, AND JOSELO VICUNA** at their last known
17 addresses, filed under seal at ECF No. 20.

18 **IT IS FURTHER ORDERED** that Howard is to pay the U.S. Marshal \$65 for each of the
19 six summonses for which the U.S. Marshal will be attempting to effectuate service of process.

20 **IT IS FURTHER ORDERED** that the Clerk of the Court shall also SEND a copy of this
21 order to the attention of the **Chief of Inmate Services for Ely State Prison,** P.O. Box 1989 ESP,
22 4569 North State Rd., Ely, NV 89301 so the filing fee of \$400.00 can deducted for Howard's
23 account and paid to the Clerk of the Court and the service of process fee of \$390.00 can be
24 deducted from Howard's account and paid to the U.S. Marshal.

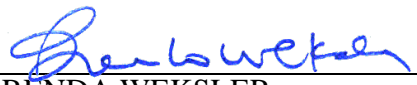
25 **IT IS FURTHER ORDERED** that Howard shall file proof of payment of the filing fee
26 and the fee for service of process within 90 days of today's date or indicate what has prevented
27 him from making the required payment.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that if Howard has information to further identify “Sgt. Sanchez” so that he can be properly served, he must file a motion requesting the issuance of a summons as to that individual.

DATED: March 10, 2020



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE