UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DOMONIC RONALDO MALONE,

Plaintiff,

v.

NEVADA DEPARTMENT OF CORRECTIONS, *et al*.,

Defendants.

Case No. 2:20-CV-0504-GMN-EJY

ORDER ON MOTION TO STAY COLLECTION OF FILING FEES PENDING APPEAL

On May 14, 2021, the Court granted Plaintiff's application to proceed *in forma pauperis*. ECF No. 9 at 8. The Court permitted Plaintiff to proceed without initially paying the filing fee and instead ordered Plaintiff to make monthly partial payments until the full filing fee was paid. *Id.* In addition, the Court ordered the Nevada Department of Corrections (NDOC) to collect this monthly payment from Plaintiff's prison account and to forward that payment to the Court. *Id.* The Court also screened Plaintiff's First Amended Complaint, dismissed certain claims with prejudice and dismissed the remaining claims without prejudice but without leave to amend. *Id.* at 9. Plaintiff has filed a notice of appeal and now moves to stay the NDOC from collecting and forwarding Plaintiff's monthly partial payment of the filing fee. ECF No. 11.

In deciding a motion to stay an order pending appeal, the Court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether

issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434, (2009) (citations omitted). "The first two factors ... are the most critical" and the Court considers the last two only "[o]nce an applicant satisfies the first two factors." *Id*. at 434–35.

The Court applies a flexible, sliding scale approach when considering a motion to stay pending an appeal. *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam). Under this approach, "a stronger showing of one element may offset a weaker showing of another." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

Plaintiff has not offered any argument suggesting that he is likely to succeed on the merits. Plaintiff asserts that he is bringing his appeal to reverse this Court's decision to dismiss certain claims without prejudice but without leave to amend.

Even assuming Plaintiff succeeds in his appeal, and he is permitted to pursue those claims in this action, he will remain obligated to pay the full filing fee he is obligated to pay for initiating this litigation. Plaintiff applied to be permitted to proceed *in forma pauperis*. Because the Court granted his application, Plaintiff was permitted to initiate this litigation without initially paying the full filing fee but instead is permitted to pay that obligation in monthly installments collected and forwarded by the NDOC to the Court. Plaintiff has not offered any argument suggesting the Court erred in granting his application to proceed *in forma pauperis.* Plaintiff has not offered any argument suggesting the Court erred in allowing him to proceed without paying an initial filing fee. Plaintiff has not offered any argument the Court erred in allowing him to pay the full filing fee in monthly partial installments. Similarly, Plaintiff has not offered any argument that he will be irreparably harmed by continuing to pay monthly installments toward the filing

fee that, regardless of whether he is successful on appeal, he will remain obligated to pay. The Court finds that Plaintiff has neither made a strong showing that he is likely to succeed on the merits whether he is obligated to pay the full filing fee in monthly installments nor has he shown he will be irreparably injured absent a stay.

Therefore,

THE COURT **ORDERS** that Plaintiff's motion for stay of collection of the filing fee (ECF No. 11) is **DENIED.**

DATED THIS 3 of June 2021.

Gloria M. Navarro
United States District Judge