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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH MIZZONI,)	3:15-cv-00499-MMD-WGC
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
STATE OF NEVADA, <i>et al.</i> ,)	
)	
Defendants.)	

Before the court is Plaintiff’s Motion to Respond to Defendant Supplemental Notice of Acceptance of Service and File a Default of Judgment under Rule 55(a) for Failing to Plead or Otherwise Defend on C. Smith (ECF No. 51). Plaintiff’s motion reflects it was served by mail on the “Office of the Attorney General, Nevada” on April 23, 2017. (ECF No. 51 at 11.) A Notice of Electronic Filing (NEF) of Plaintiff’s motion was entered by the Clerk of the Court on May 1, 2017. (ECF No. 51, NEF.)

Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC), proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Pl.’s Am. Compl., ECF No. 7.) On screening, the court allowed Plaintiff to proceed with a due process claim against Ira Brannon based on the allegations that Brannon denied him evidence and witnesses during the disciplinary hearing, and was punished for prior acts. (ECF No. 10 at 6.) He was also allowed to proceed with a due process claim against Christopher Smith based on the allegation that Smith made a false disciplinary report. (*Id.*)

Pursuant to the court’s order of December 12, 2016 (ECF No. 18), the court instructed the Attorney General’s Office to file a notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it accepts service; (b) the names of the defendants for whom it does not accept service, and (c) the names of the defendants for whom it is filing the last-known-address information

1 under seal. As to any of the named defendants for whom the Attorney General's Office could not accept
2 service, the Office was instructed to file, *under seal*, the last known address(es) of those defendant(s)
3 for whom it has such information. (ECF No. 18 at 2.)

4 On December 30, 2016, the Attorney General's Office filed its Acceptance of Service on behalf
5 of Defendant Ira Brannon. (ECF No. 19.) On January 30, 2017, Plaintiff filed a motion to respond to
6 Defendant's notice of acceptance of service seeking clarification whether as the Attorney General's
7 Office only accepted service on behalf of Defendant Brannon, and did not include Defendant C. Smith.
8 (ECF No. 21.) The court granted Plaintiff's motion and ordered the Attorney General's Office to advise
9 within ten (10) days of the date of the order whether it would accept service on behalf of Defendant C.
10 Smith. (ECF No. 24 at 2.) The court further ordered that if the Attorney General's Office could not
11 accept service, the Office should file Defendant Smith's last known address under seal. (*Id.*)

12 On February 9, 2017, the Attorney General's Office filed Defendant Smith's last known address
13 under seal. (ECF No. 27.) Pursuant to that filing, the court issued its order instructing the Clerk to issue
14 a summons for Defendant Smith and provided Plaintiff with instructions as to effecting service on the
15 Defendant. (ECF No. 33.)

16 On March 29, 2017, the U.S. Marshal filed the return of the summons indicating that service of
17 process was completed as to Defendant Smith on March 22, 2017. (ECF No. 43.)

18 Although the Attorney General's Office filed a Supplemental Notice of Acceptance of Service
19 (ECF No. 48) on April 19, 2017, indicating it would accept service on behalf of Defendant Smith, an
20 answer or other response to Plaintiff's amended complaint has never been filed on behalf of this
21 Defendant as is required by Fed. R. Civ. P. 12(a).

22 Plaintiff's Motion to Respond to Defendant Supplemental Notice of Acceptance of Service and
23 File a Default of Judgment under Rule 55(a) for Failing to Plead or Otherwise Defend on C. Smith
24 (ECF No. 51) is **GRANTED** to the extent Plaintiff seeks to have a default entered against Defendant
25 Smith.

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1 In accordance with Fed. R. Civ. P. 55(b), Plaintiff must make a separate application for entry of
2 a default *judgment* against Defendant Smith. To the extent Plaintiff's motion seeks to have a default
3 *judgment* entered as to Defendant Smith, Plaintiff's motion is denied.

4 **IT IS SO ORDERED.**

5 DATED: May 16, 2017.

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WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE

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