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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JOHN WALKER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WILLIAM MILLER, *et al.*, )  
 )  
 Defendants. )  
\_\_\_\_\_ )

3:15-cv-00608-MMD-WGC

**ORDER**

Re: ECF No. 104

Before the court is Plaintiff’s Motion to Amend (2nd Amend.) Civil Rights Complaint and proposed Second Amended Complaint (SAC). (ECF No. 104.) Defendants filed a response (ECF No. 105), and Plaintiff filed a reply (ECF No. 108).

**I. BACKGROUND**

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. The events giving rise to this action took place while Plaintiff was housed at Northern Nevada Correctional Center (NNCC). Plaintiff’s original complaint was filed on December 14, 2015. (ECF No. 1-1.) The court issued its screening order on April 22, 2016. (ECF No. 4.) Plaintiff was allowed to proceed with a failure to protect claim under the Eighth Amendment against Sergeant Miller, Correctional Officer Case, Food Service Supervisor Scott, Hannah Skulstad, and Caseworker Mears; however, NNCC Warden Isidro Baca and NNCC Associate Warden Lisa Walsh were dismissed. (ECF No. 4.)

The court issued a scheduling order on December 22, 2016, which, among other things, gave Plaintiff until February 20, 2017, to join new parties or file a motion for leave to amend. (ECF No. 32 at 1-2.)

1 On March 1, 2017, Plaintiff filed a motion to join additional parties. (ECF No. 40.) At that time,  
2 Plaintiff stated that investigation revealed new information regarding the responsibility for failing to  
3 protect him while working in the culinary. (ECF No. 40.) He sought to add Associate Warden  
4 Shreckengost and Warden Isidro Baca as defendants because he learned that there was a shortage of  
5 correctional officers within the culinary. (*Id.*) He also asked the court to dismiss defendants Skulstad and  
6 Scott, stating they were not directly responsible for the treatment of Plaintiff. (*Id.*)

7 The court issued a minute order granting Plaintiff leave to file a motion to amend after the  
8 expiration of the deadline, advising Plaintiff that it needed to be accompanied by the proposed amended  
9 pleading. (ECF No. 44.) Plaintiff was given seven days to lodge a proposed amended complaint. (*Id.*)

10 Plaintiff filed a motion to amend and proposed first amended complaint (FAC) which named  
11 Assistant Warden Shreckengost, Warden Baca, Food Services Supervisor Scott Kahler, Caseworker  
12 Mears, William Miller, Justin Case, and Holly Skulstad. (ECF Nos. 49, 49-1.)

13 On March 14, 2017, the court issued a minute order granting Plaintiff's motion to file an  
14 amended complaint, and ordered the FAC filed. (ECF No. 51.) The FAC was filed as ECF No. 52.

15 The deadlines for discovery and dispositive motions were extended, but there was no extension  
16 of the deadline to add parties or file a motion for leave to amend. (ECF No. 63.)

17 Then, on May 9, 2017, Defendants filed a motion for clarification noting that when Plaintiff  
18 sought to amend his complaint, he informed the court he intended to dismiss Scott and Skulstad, but they  
19 were included in the FAC. (ECF No. 70.) In addition, they asserted that Plaintiff did not add new claims  
20 against Baca, but included the same allegations that were previously dismissed with prejudice. (*Id.*)

21 The court held a hearing on May 22, 2017. (ECF No. 73.) After hearing from the parties, the  
22 court ordered that Scott Kahler and Holly Skulstad were dismissed from the action. (*Id.*) With respect  
23 to defendant Baca, the court amended its order to state that leave to amend was not given as to Baca, but  
24 granted Plaintiff leave to file a supplemental pleading to attempt to state a colorable claim as to Baca.  
25 (*Id.*)

26 Plaintiff filed his supplemental pleading on June 2, 2017. (ECF No. 74.) Defendants filed a  
27 response on June 12, 2017. (ECF No. 75.) The supplemental pleading alleged: that Baca was warden at  
28 NNCCC and responsible for staffing of the institution, and if there was a shortage of personnel, he was

1 required to contact the director and obtain necessary officers to run the prison; that Baca was aware of  
2 the lay out of the culinary with fourteen rooms that required inmate workers; that it required twenty-two  
3 inmate workers per shift; that the regulations required direct supervision of medium security inmate  
4 work detail; that the culinary required the use of knives, cleavers, ice picks, choppers, boiling oil, walk-  
5 in ovens and open flames to prepare food; that AR 411 requires direct supervision of the use of those  
6 tools and materials; that Baca toured areas and supervised staffing and knew culinary needed more than  
7 two officers to supervise the workers; and refused to assign necessary personnel; that he was aware,  
8 based on previous incidents, of the risk of serious harm to Plaintiff, and disregarded that risk; that Baca  
9 reduced the number of staff in the culinary, elevating the risk of assault; and, that Baca instituted a policy  
10 of forcing prisoners to work, including those who were physically vulnerable, and placed them in work  
11 assignments with prisoners known to be violent.

12 On June 27, 2017, the court issued an order finding Plaintiff's supplemental pleading stated a  
13 colorable failure to protect claim against Baca under the Eighth Amendment. (ECF No. 76.)

14 On June 29, 2017, Plaintiff filed a motion to amend the scheduling order. (ECF No. 77.) The  
15 court issued a minute order extending the scheduling order deadlines for discovery, discovery motions,  
16 dispositive motions, and the joint pretrial order. (ECF No. 79.) It did not address or extend the deadline  
17 to add parties, which had already passed.

18 On September 21, 2017, Plaintiff filed another motion to amend the scheduling order, seeking  
19 an extension of the deadlines to complete discovery, discovery motions, dispositive motions and the joint  
20 pretrial order. (ECF No. 94.) The court granted the motion extending those deadlines. (ECF No. 95.)

21 On November 11, 2017, Plaintiff filed his motion to amend and proposed SAC. (ECF No. 104.)

## 22 **II. LEGAL STANDARD**

23 "A party may amend its pleading once as a matter of course within: (A) 21 days after serving it,  
24 or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a  
25 responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is  
26 earlier." Fed. R. Civ. P. 15(a)(1)(A), (B). Otherwise, a party must seek the opposing party's written  
27 consent or leave of court to amend a pleading. Fed. R. Civ. P. 15(a)(2). Here, Plaintiff was required to  
28 seek leave to amend.



1 Plaintiff filed an untimely motion to join parties on March 1, 2017. (ECF No. 40) The court granted him  
2 leave to file a motion for leave to amend after the expiration of the scheduling order deadline, and  
3 ordered Plaintiff to lodge a proposed amended complaint within seven days. (ECF No. 44.) Plaintiff filed  
4 his proposed FAC on March 13, 2017. (ECF Nos. 49, 49-1.) Extensions of the deadlines to complete  
5 discovery and to file dispositive motions were subsequently granted, but there was never a further  
6 extension of the deadline to join parties or file a motion for leave to amend. Therefore, Plaintiff is  
7 required to establish good cause for seeking leave to amend at this juncture.

8         It appears that Plaintiff did not did not seek leave to amend his complaint again until this time  
9 because he did not discover the identity of these new defendants until they were disclosed in discovery  
10 responses. Therefore, the court finds that good cause exists to permit amendment beyond the scheduling  
11 order deadline. The court cautions Plaintiff, however, that there any further attempt to amend at this late  
12 juncture will not be well received. The complaint was filed over two years ago, and a significant amount  
13 of discovery has been conducted. The new defendants will need to appear; the parties will be entitled  
14 to conduct what limited discovery may remain; and, then move forward with the filing of dispositive  
15 motions and/or trial.

16         The Court has reviewed the proposed SAC for screening under 28 U.S.C. § 1915A.

17         Plaintiff names Assistant Warden of Operations Ronald Schreckengost, NNCC Warden Isidro  
18 Baca, NNCC Unit Five Caseworker Robert Meares (Unit 5), NNCC Caseworker Hannah Skulstad  
19 (temporary for Unit 4 in June 2013 and in medical Unit 8), NNCC Caseworker Keith Dillyn (Infirmery  
20 Unit 8 on December 22, 2013), NNCC Caseworker Hughes (temporary for Unit 4 on July 9, 2013),  
21 NNCC Caseworker Brent Pawling (Unit 8 on July 26, 2013), NNCC Caseworker John Buchannan (Unit  
22 7 on April 16, 2015), NDOC Deputy Director E.K. McDaniel, NNCC Sergeant Correctional Officer  
23 William Miller, NNCC Correctional Officer Justin Case, and NNCC Associate Warden Lisa Walsh.  
24 (ECF No. 104 at 4-7.)

25         The basic facts of the original complaint and FAC remain the same. Plaintiff has added several  
26 new defendant caseworkers that he claims were aware of his requests for protection due to his physically  
27 vulnerable status, but did nothing to alleviate his concerns, and he was subsequently attacked in the  
28 culinary. He again includes allegations against Warden Baca concerning the failure to properly staff the

1 culinary and risks posed to Plaintiff that eventually bore themselves out when he was attacked, and  
2 includes allegations implicating Associate Wardens Walsh and Schreckengost, and Deputy Director  
3 McDaniel. The court finds that Plaintiff states colorable Eighth Amendment failure to protect claims  
4 against these defendants, and the SAC may proceed.

5         There is one issue, however, that needs clarification. The original complaint named *Hannah*  
6 Skulstad, and the body referred to *Hannah* Skulstad. (ECF No. 5 at 3, 7.) Following screening, the  
7 Attorney General’s Office accepted service and filed an answer on behalf of *Holly* Skulstad. (ECF Nos.  
8 12, 23.) Plaintiff subsequently stated that he wanted to dismiss Skulstad (not using a first name), stating  
9 that he believed she violated his rights, but that he could not prove it. (ECF No. 40.) The court gave  
10 Plaintiff leave to file a proposed FAC. (ECF No. 44.) In the proposed FAC, which was eventually filed,  
11 he nevertheless named *Holly* Skulstad (ECF No. 49-1 at 3, ECF No. 52 at 3), but the body of the FAC  
12 referred to *Hannah* Skulstad (ECF No. 49-1 at 8, ECF No. 52 at 8).

13         Defendants addressed the contradiction between Plaintiff’s earlier statement that he wished to  
14 dismiss Skulstad, and the inclusion of Skulstad in the FAC in a motion for clarification. (ECF No. 70.)  
15 The court hearing on May 22, 2017, and after holding a discussion with the parties, it was noted that  
16 *Holly* Skulstad was dismissed from the action. (ECF No. 73.) No one, including the court, raised the  
17 issue of Ms. Skulstad’s first name.

18         The proposed SAC once again names Caseworker *Hannah* Skulstad, whom Plaintiff identifies  
19 as a temporary caseworker in Unit 4 in June 2013, and a caseworker in Unit 8. (ECF No. 104 at 4.) The  
20 body of the SAC, however, references *Holly* Skulstad. (ECF No. 104 at 13.) The court finds that the  
21 SAC includes sufficient allegations to state a claim against Ms. Skulstad, and presumes that Plaintiff  
22 intends to proceed against Ms. Skulstad since the SAC states more allegations against her than the  
23 previous two iterations of the complaint. If this is not the case, Plaintiff shall immediately submit a filing  
24 making his position clear. If the court is correct that Plaintiff does intend to proceed against Ms. Skulstad  
25 in the SAC, the parties shall meet and confer either telephonically or in writing to determine whether  
26 Plaintiff is proceeding against *Hannah* or *Holly* Skulstad, and within **FOURTEEN** days of this Order  
27 shall submit a filing to the court indicating the correct name of defendant Skulstad.

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1 **IV. CONCLUSION**

2 (1) Plaintiff's Amended Motion for Leave to Amend (ECF No. 104) is **GRANTED**.

3 (2) The Clerk shall **FILE** the SAC (ECF No. 104 at 3-26).

4 (3) Plaintiff may proceed with the claims and defendants asserted in the SAC.

5 (4) Within **FOURTEEN (14) DAYS** of the date of this Order, the Attorney General's Office  
6 shall file a notice advising the court whether it will accept service on behalf of the defendants named in  
7 the SAC. If it does not accept service for any of those defendants, it shall file their last known address  
8 under seal (and not serve the inmate plaintiff). If the last known address is a post office box, the Attorney  
9 General's Office shall attempt to obtain and provide the last known physical address(es). If service is  
10 not accepted for any of the new defendants, Plaintiff shall file a motion identifying the unserved  
11 defendant(s) and requesting issuance of a summons and service of the summons and complaint.

12 (5) If the court is correct that Plaintiff does intend to proceed against Ms. Skulstad in the SAC,  
13 the parties shall meet and confer either telephonically or in writing to determine whether Plaintiff is  
14 proceeding against *Hannah* or *Holly* Skulstad, and within **FOURTEEN** days of this Order shall submit  
15 a filing to the court indicating the correct name of defendant Skulstad.

16 (6) For those defendants on whose behalf the Attorney General has accepted service, the  
17 defendants shall file and serve an answer or other responsive pleading within **TWENTY-ONE (21)** days  
18 of the date a notice of acceptance of service is filed.

19 (7) The current discovery and dispositive motion deadlines are **VACATED**. Once a responsive  
20 pleading is filed as to the SAC, the court will issue new deadlines, or set a status conference, if  
21 necessary, to extend the discovery and dispositive motion deadlines.

22 **IT IS SO ORDERED.**

23 DATED: January 26, 2018.

24   
25 WILLIAM G. COBB  
26 UNITED STATES MAGISTRATE JUDGE  
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