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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DELASK PITTMAN,
Plaintiff,

v.

STATE OF NEVADA,
Defendant.

3:16-cv-00130-MMD-VPC
ORDER

I. DISCUSSION

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections ("NDOC"), has filed an application to proceed *in forma pauperis* and has submitted a motion for permission to file and a motion to extend prison copy work limit. (ECF No. 1, 1-1, 1-2). Plaintiff has not filed a complaint in this matter.

In the motion for permission to file, it appears that Plaintiff seeks an extension of time to file his complaint. (ECF No. 1-1 at 1). It is unclear to the Court whether Plaintiff seeks an extension of time to file his complaint in order to give Plaintiff more time to exhaust his administrative remedies. (*Id.*).

If Plaintiff is seeking an extension of time to file his complaint in order to give him more time to exhaust his administrative remedies, the Court denies the motion. Under the Prison Litigation Reform Act ("PLRA"), "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997(e)(a). The exhaustion requirement is mandatory. *Booth v. Chumer*, 532 U.S. 731, 741 (2001). The Ninth Circuit has held that prisoners must exhaust their

1 administrative remedies prior to filing suit, not during the pendency of the suit. *McKinney v.*
2 *Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002). The Ninth Circuit has held that when a prisoner
3 files a lawsuit prior to exhausting his administrative remedies, the court must dismiss the
4 complaint without prejudice. *Id.* at 1200-01.

5 If Plaintiff is seeking leave of this Court to submit a complaint, the Court grants
6 Plaintiff's motion and directs Plaintiff to file his complaint within 30 days from the date of this
7 order. Pursuant to Federal Rule of Civil Procedure 3, "[a] civil action is commenced by filing
8 a complaint with the court." Fed. R. Civ. P. 3. The Court will defer a decision on the
9 application to proceed *in forma pauperis* and the motion to extend copy work limit until Plaintiff
10 submits a proper initiating document for this case.

11 **II. CONCLUSION**

12 For the foregoing reasons, IT IS ORDERED that decisions on the application to proceed
13 *in forma pauperis* (ECF No. 1) and motion to extend copy work limit (ECF No. 1-2) are
14 deferred.

15 IT IS FURTHER ORDERED that the motion for permission to file complaint (ECF No.
16 1-1) is granted in part and is denied in part.

17 IT IS FURTHER ORDERED that Plaintiff shall submit a complaint to this Court within
18 thirty (30) days from the date of this order.

19 IT IS FURTHER ORDERED that the Clerk of the Court shall send to Plaintiff the
20 approved form for filing a 42 U.S.C. § 1983 complaint and instructions for the same. Plaintiff
21 shall submit his complaint on the approved form.

22 IT IS FURTHER ORDERED that, if Plaintiff is attempting to delay filing his complaint
23 in order to exhaust his administrative remedies, he shall file a notice informing the Court of his
24 intentions to do so within thirty (30) days from the date of this order. In compliance with Ninth
25 Circuit law, the Court will then enter an order dismissing the case, without prejudice, in order
26 to give Plaintiff an opportunity to exhaust his administrative remedies.

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IT IS FURTHER ORDERED that if Plaintiff does not timely comply with this order,
dismissal of this action may result.

DATED: This 9th day of March, 2016



United States Magistrate Judge