

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
28UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARTY SCOTT FITZGERALD,

Plaintiff,

v.

LPN GREG MARTIN, *et al.*,

Defendants.

Case No. 3:17-cv-00278-MMD-WGC

ORDER

This action is a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

On February 7, 2019, the Court imposed a 90-day stay, and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF No. 21, 23). The Court subsequently extended the stay to May 31, 2019. (ECF No. 24). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 28).

For the foregoing reasons, **IT IS ORDERED** that:

1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In

1 the event that this action is dismissed, the full filing fee must still be paid pursuant to
2 28 U.S.C. § 1915(b)(2).

3 2. The movant herein is permitted to maintain this action to conclusion without
4 the necessity of prepayment of any additional fees or costs or the giving of security
5 therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the
6 issuance and/or service of subpoenas at government expense.

7 3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections
8 shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
9 preceding month's deposits to Plaintiff's account (**Marty Scott Fitzgerald, # 73049**), in
10 the months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid
11 for this action. The Clerk of the Court shall **SEND** a copy of this order to the Finance
12 Division of the Clerk's Office. The Clerk of the Court shall also **SEND** a copy of this order
13 to the attention of the Chief of Inmate Services for the Nevada Department of Corrections,
14 P.O. Box 7011, Carson City, NV 89702.

15 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
16 a copy of Plaintiff's second amended complaint (ECF No 14) on the Office of the Attorney
17 General of the State of Nevada by adding the Attorney General of the State of Nevada to
18 the docket sheet. This does not indicate acceptance of service.

19 5. Service must be perfected within ninety (90) days from the date of this order
20 pursuant to Fed. R. Civ. P. 4(m).

21 6. Subject to the findings of the screening order (ECF No. 21), within twenty-
22 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
23 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
24 accepts service; (b) the names of the defendants for whom it does not accept service,
25 and (c) the names of the defendants for whom it is filing the last-known-address
26 information under seal. As to any of the named defendants for whom the Attorney
27 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
28 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such

1 information. If the last known address of the defendant(s) is a post office box, the Attorney
2 General's Office shall attempt to obtain and provide the last known physical address(es).

3 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
4 shall file a motion identifying the unserved defendant(s), requesting issuance of a
5 summons, and specifying a full name and address for the defendant(s). For the
6 defendant(s) as to which the Attorney General has not provided last-known-address
7 information, Plaintiff shall provide the full name and address for the defendant(s).

8 8. If the Attorney General accepts service of process for any named
9 defendant(s), such defendant(s) shall file and serve an answer or other response to the
10 complaint within sixty (60) days from the date of this order.

11 9. Henceforth, Plaintiff shall serve upon defendant(s) or, if an appearance has
12 been entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
13 document submitted for consideration by the Court. Plaintiff shall include with the original
14 document submitted for filing a certificate stating the date that a true and correct copy of
15 the document was mailed or electronically filed to the defendants or counsel for the
16 defendants. If counsel has entered a notice of appearance, Plaintiff shall direct service
17 to the individual attorney named in the notice of appearance, at the physical or electronic
18 address stated therein. The Court may disregard any document received by a district
19 judge or magistrate judge which has not been filed with the Clerk, and any document
20 received by a district judge, magistrate judge, or the Clerk which fails to include a
21 certificate showing proper service.

22 10. This case is no longer stayed.

23 DATED: June 4, 2019.

24 William G. Cobb
25 UNITED STATES MAGISTRATE JUDGE
26
27
28