

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 KEVIN RAY HOLMES,

Case No. 3:17-cv-00320-RCJ-WGC

4 Plaintiff,

ORDER

5 v.

6 ISIDRO BACA, *et al.*,

7 Defendants.

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9 This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C.
10 § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma*
11 *pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that
12 Plaintiff is unable to prepay the full filing fee in this matter.

13 The Court entered a screening order on May 21, 2019. (ECF No. 9). The
14 screening order imposed a 90-day stay and the Court entered a subsequent order in
15 which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos.
16 9, 12). The Office of the Attorney General has filed a status report indicating that
17 settlement has not been reached and informing the Court of its intent to proceed with this
18 action. (ECF No. 15).

19 Plaintiff also filed a motion to amend title of case to include the real name of the
20 Director of the NDOC. (ECF No. 10 at 2). Specifically, Plaintiff seeks to identify Doe
21 defendant Director of the NDOC as James Dzurenda in light of the screening order. (*Id.*)
22 The screening order treated Defendant "Director of NDOC" as a Doe defendant and told
23 Plaintiff to move to substitute the true name of the Doe defendant or move to amend his
24 complaint. (ECF No. 9 at 3 n.1). The Court construes the motion to amend the title as a
25 motion to substitute the name of Doe Director of NDOC to James Dzurenda and grants
26 the motion to substitute James Dzurenda as the Doe defendant.

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

2 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is
3 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
4 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
5 U.S.C. § 1915(b)(2).

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

10 3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections
11 shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
12 preceding month's deposits to Plaintiff's account (**Kevin Ray Holmes, #63616**), in the
13 months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid
14 for this action. The Clerk of the Court shall **SEND** a copy of this order to the Finance
15 Division of the Clerk's Office. The Clerk of the Court shall also **SEND** a copy of this order
16 to the attention of the Chief of Inmate Services for the Nevada Department of Corrections,
17 P.O. Box 7011, Carson City, NV 89702.

18 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
19 a copy of Plaintiff's second amended complaint (ECF No. 8) on the Office of the Attorney
20 General of the State of Nevada by adding the Attorney General of the State of Nevada to
21 the docket sheet. This does not indicate acceptance of service.

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

24 6. Subject to the findings of the screening order (ECF No. 9), within twenty-
25 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
26 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
27 accepts service; (b) the names of the defendants for whom it does not accept service,
28 and (c) the names of the defendants for whom it is filing the last-known-address

1 information under seal. As to any of the named defendants for whom the Attorney
2 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
3 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
4 information. If the last known address of the defendant(s) is a post office box, the Attorney
5 General's Office shall attempt to obtain and provide the last known physical address(es).

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

11 8. If the Attorney General accepts service of process for any named
12 defendant(s), such defendant(s) shall file and serve an answer or other response to the
13 second amended complaint (ECF No. 8) within sixty (60) days from the date of this order.

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

25 10. This case is no longer stayed.

26 11. The motion to amend title (ECF No. 10) is construed as a motion to
27 substitute Defendant Doe Director of NDOC to Defendant James Dzurenda. The Clerk
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of the Court is directed to change Defendant Doe Director of NDOC to James Dzurenda on the docket sheet.

12. The portion of Count II, alleging a retaliation claim, will now proceed against Defendant James Dzurenda as well. (See ECF No. 9 at 8).

DATED: August 1, 2019.

William G. Cobb
UNITED STATES MAGISTRATE JUDGE