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# APPENDIX

“A”

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUL 18 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERT C. DENHAM, Jr.,

Plaintiff - Appellant,

v.

JAMES DZURENDA, Director of  
Nevada Department of Corrections,  
individually and in his official capacity;  
et al.,

Defendants - Appellees.

No. 19-16174

D.C. No. 2:18-cv-00163-JCM-VCF  
U.S. District Court for Nevada, Las  
Vegas

**MANDATE**

The judgment of this Court, entered June 26, 2019, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Quy Le  
Deputy Clerk  
Ninth Circuit Rule 27-7

# APPENDIX “B”

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 26 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERT C. DENHAM, Jr.,

Plaintiff-Appellant,

v.

JAMES DZURENDA, Director of Nevada  
Department of Corrections, individually and  
in his official capacity; et al.,

Defendants-Appellees.

No. 19-16174

D.C. No.

2:18-cv-00163-JCM-VCF

District of Nevada,  
Las Vegas

ORDER

Before: CLIFTON, N.R. SMITH, and FRIEDLAND, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the June 7, 2019 notice of appeal was not filed within 30 days after the district court's judgment entered on January 9, 2019, or the post-judgment orders entered on April 5, 2019 and May 7, 2019. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). Consequently, this appeal is dismissed for lack of jurisdiction.

**DISMISSED.**

## APPENDIX “C”

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ROBERT C. DENHAM JR.,

Plaintiff

v.

JAMES DZURENDA et al.,

Defendants

Case No. 2:18-cv-00163-JCM-VCF

ORDER

Presently before the court is plaintiff Robert Denham's ("plaintiff") "motion to process application for leave to proceed *in forma pauperis*." (ECF No. 11). No response has been filed, and the time to do so has passed. Also before the court is plaintiff's "motion for clarification." (ECF No. 14).

On January 9, 2019, the court entered an order dismissing this action, without prejudice, for lack of subject-matter jurisdiction. (ECF No. 7). Accordingly, the clerk entered judgment and closed the case. (ECF No. 9). Now, plaintiff requests that the court process his application for leave to proceed *in forma pauperis* and "clarify" the court's January 9, 2019, order dismissing the action. See (ECF Nos. 11, 14).

However, the court's previous order is clear that this action has been dismissed for lack of subject-matter jurisdiction. (ECF No. 7). Accordingly, this case has been closed, and no further filings shall be entertained by the court pursuant to this action. If plaintiff wishes to proceed on the claims asserted in this matter, he must file a new action that is void of the deficiencies noted by the court in its previous order. Plaintiff's motions are denied.

Accordingly,

IT IS ORDERED THAT plaintiff's motion to process application for leave to proceed *in forma pauperis* (ECF No. 11) be, and the same hereby is, DENIED.



1 IT IS FURTHER ORDERED that plaintiff's motion for clarification (ECF No. 14) be,  
2 and the same hereby is, DENIED.

3 IT IS SO ORDERED.

4 DATED May 7, 2019.

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6 UNITED STATES DISTRICT JUDGE  
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## APPENDIX “C1”

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ROBERT C. DENHAM, JR.,

Plaintiff,

v.

JAMES DZURENDA, *et al.*,

Defendants.

Case No. 2:18-cv-00163-JCM-VCF

ORDER

Presently before the court is plaintiff Robert Denham's ("plaintiff") motion for leave to file an amended complaint. (ECF No. 12).

On January 9, 2019, the court dismissed plaintiff's case for lack of subject-matter jurisdiction and entered judgment accordingly. (ECF Nos. 7, 9). Thereafter, on February 4, 2019, plaintiff filed his motion for leave to file an amended complaint. (ECF No. 12).

However, plaintiff's case has already been closed, and the time to file an amended complaint has passed. Moreover, to the extent that plaintiff is requesting that the court reconsider its previous order dismissing this action, plaintiff has not provided the relevant points and authorities for such a motion. See LR 7-2(d) ("The failure of a moving party to file points and authorities in support of the motion constitutes a consent to the denial of the motion.").

Accordingly,

IT IS ORDERED THAT plaintiff's motion for leave to file an amended complaint (ECF No. 12) be, and the same hereby is, DENIED.

IT IS SO ORDERED:

DATED THIS 5<sup>th</sup> day of April 2019.

  
JAMES C. MAHAN  
UNITED STATES DISTRICT JUDGE

## APPENDIX “C2”

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

Robert C Denham Jr

Plaintiff,

v.

James Dzurenda, et al.

Defendant.

**JUDGMENT IN A CIVIL CASE**

Case Number: 2:18-cv-00163-JCM-VCF

       **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

       **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

  X   **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED**  
that judgment has been entered against Plaintiff.

1/9/19

Date

DEBRA K. KEMPI

Clerk



/s/ A. Reyes

Deputy Clerk

# APPENDIX

## “D”

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 ROBERT C. DENHAM JR.,

4 Plaintiff

Case No. 2:18-cv-00163-JCM-VCF

SCREENING ORDER

5 v.

6 JAMES DZURENDA et al.,

7 Defendants

8  
9 Plaintiff, a former Nevada Department of Corrections ("NDOC") inmate, has  
10 submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application  
11 to proceed *in forma pauperis* for non-prisoners. (ECF Nos. 1-1, 5). Plaintiff resides in  
12 Missouri. (See ECF No. 1-1 at 1). The court now screens plaintiff's civil rights complaint  
13 pursuant to 28 U.S.C. § 1915.

14 I. SCREENING STANDARD

15 "[T]he court shall dismiss the case at any time if the court determines that . . . the  
16 action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may  
17 be granted; or (iii) seeks monetary relief against a defendant who is immune from such  
18 relief." 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). This provision applies to all actions filed *in forma*  
19 *pauperis*, whether or not the plaintiff is incarcerated. See *Lopez v. Smith*, 203 F.3d 1122,  
20 1129 (9th Cir. 2000); see also *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam).

21 Dismissal of a complaint for failure to state a claim upon which relief may be  
22 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §  
23 1915(e)(2)(B)(ii) tracks that language. Thus, when reviewing the adequacy of a complaint  
24 under 28 U.S.C. § 1915(e)(2)(B)(ii), the court applies the same standard as is applied  
25 under Rule 12(b)(6). See *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The  
26 standard for determining whether a plaintiff has failed to state a claim upon which relief  
27 can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil  
28 Procedure 12(b)(6) standard for failure to state a claim."). Review under 12(b)(6) is

1 essentially a ruling on a question of law. See *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719,  
2 723 (9th Cir. 2000).

3 In reviewing the complaint under this standard, the court must accept as true the  
4 allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve  
5 all doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).  
6 Allegations in *pro se* complaints are "held to less stringent standards than formal  
7 pleadings drafted by lawyers." *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotation  
8 marks and citation omitted).

9 A complaint must contain more than a "formulaic recitation of the elements of a  
10 cause of action," it must contain factual allegations sufficient to "raise a right to relief  
11 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
12 "The pleading must contain something more . . . than . . . a statement of facts that merely  
13 creates a suspicion [of] a legally cognizable right of action." *Id.* (quoting 5 C. Wright & A.  
14 Miller, *Federal Practice & Procedure* § 1216, at 235-36 (3d ed. 2004)). At a minimum, a  
15 plaintiff should state "enough facts to state a claim to relief that is plausible on its face."  
16 *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

17 "A *pro se* litigant must be given leave to amend his or her complaint, and some  
18 notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint  
19 could not be cured by amendment." *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.  
20 1995).

## 21 II. SCREENING OF COMPLAINT

22 In the complaint, plaintiff sues defendants NDOC employees James Dzurenda,  
23 David Tristan, Dwayne Dell, Shelly Williams, and John Does for events that took place  
24 after plaintiff's release from prison. (ECF No. 1-1 at 1, 3-4). Plaintiff alleges four counts  
25 and seeks monetary damages "in excess of ten thousand dollars." (*Id.* at 16-17).

26 The complaint alleges the following: After release from prison, plaintiff attempted  
27 to seal his criminal records pursuant to Nevada state law. (*Id.* at 7-8). Plaintiff's petition  
28 to seal was heard in state court. (*Id.* at 8). The state court judge provided the parties



1 time to file supplemental briefs on the issue. (*Id.* at 8-9). Plaintiff contacted NDOC  
 2 employees at the offender management division in an attempt to acquire parole discharge  
 3 and sentence expiration documents. (*Id.* at 9). In correspondence with Williams, plaintiff  
 4 specifically told her that he needed the NDOC to provide him with a written document  
 5 explaining his "total statutory credits deduction" as applied to his particular sentence  
 6 structure. (*Id.* at 10). Plaintiff also corresponded with Dell to get the documents  
 7 necessary to seal his criminal record. (*Id.* at 11). Plaintiff was unable to obtain a report  
 8 that contained a numeric analysis of plaintiff's "flat-time, good-time, and meritorious  
 9 credits deduction from the maximum term imposed by the 'judgment of conviction,' for the  
 10 purpose of sealing his criminal record." (*Id.* at 12).

11 Plaintiff sues defendants for: (1) negligence and the "rights guaranteed by the Fifth  
 12 and Fourteenth Amendments"; (2) breach of employment duty and the "rights guaranteed  
 13 by the Fifth and Fourteenth Amendments"; (3) intentional infliction of emotional distress  
 14 and violations of the Fifth, Eighth, Ninth, and Fourteenth Amendments; and (4) fraud. (*Id.*  
 15 at 7, 12-13, 15-16).

16 As an initial matter, the court will address subject-matter jurisdiction in this case.  
 17 The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28  
 18 U.S.C. §§ 1331 and 1332. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 513 (2006). Section  
 19 1331 provides for federal-question jurisdiction and § 1332 provides for diversity of  
 20 citizenship jurisdiction. *Id.* "A plaintiff properly invokes § 1331 jurisdiction when she  
 21 pleads a colorable claim 'arising under' the Constitution or laws of the United States." *Id.*  
 22 "She invokes § 1332 jurisdiction when she presents a claim between parties of diverse  
 23 citizenship that exceeds the required jurisdictional amount, currently \$75,000." *Id.*  
 24 "[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must  
 25 dismiss the complaint in its entirety." *Id.* at 514. The court now addresses both federal-  
 26 question and diversity jurisdiction in this case.

#### 27 A. Federal-question Jurisdiction

28 Federal district courts have "original jurisdiction of all civil actions arising under the

1 Constitution, laws, or treaties of the United States." 28 U.S.C.A. § 1331. "The presence  
2 or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint  
3 rule,' which provides that federal jurisdiction exists only when a federal question is  
4 presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v.*  
5 *Williams*, 482 U.S. 386, 392 (1987).

6 The court finds that there is no federal-question jurisdiction in this case. Although  
7 plaintiff lists the Fifth, Eighth, Ninth, and Fourteenth Amendments in his complaint, plaintiff  
8 does not allege any facts that would support violations of any of those amendments. (See  
9 ECF No. 1-1 at 12, 15-16). As such, this action lacks federal-question subject-matter  
10 jurisdiction.

11 **B. Diversity Jurisdiction**

12 Federal district courts have "original jurisdiction of all civil actions where the matter  
13 in controversy exceeds the sum or value of \$75,000" and is between citizens of different  
14 states. 28 U.S.C. § 1332(a)(1). When a plaintiff brings a case to federal court, it must  
15 "appear to a legal certainty" that the plaintiff's claim is really for less than the jurisdictional  
16 amount to justify dismissal. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing  
17 *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

18 The court finds that there is no diversity jurisdiction in this case. Even if plaintiff  
19 and defendants are citizens of different states, plaintiff has not satisfied the \$75,000  
20 amount-in-controversy requirement. Plaintiff's complaint only states that this case is  
21 worth "in excess" of \$10,000 which is insufficient to satisfy the amount in controversy.  
22 Moreover, the court finds that, to a legal certainty, plaintiff's claims for being unable to  
23 obtain specific documents from the NDOC will not satisfy the \$75,000 amount-in-  
24 controversy requirement. As such, the court dismisses this case, without prejudice, for  
25 lack of subject-matter jurisdiction. If plaintiff wishes to pursue his state law claims for  
26 negligence, breach of employment duty, intentional infliction of emotional distress, and  
27 fraud, he should file a complaint in state court.

28 ///

### III. CONCLUSION

For the foregoing reasons, it is ordered that the application to proceed *in forma pauperis* for non-prisoners (ECF No. 5) is denied as moot.

**It is further ordered that the clerk of the court file the complaint (ECF No. 1-1).**

It is further ordered that the court dismisses the complaint in its entirety, without prejudice, for lack of subject-matter jurisdiction.

It is further ordered that the clerk of the court close this case and enter judgment accordingly.

**DATED** January 9, 2019.

James C. Mahan  
UNITED STATES DISTRICT JUDGE

**Additional material  
from this filing is  
available in the  
Clerk's Office.**