

1 Bryan P. Borham  
2 po. Box 650 (HOSP)  
3 Indian Springs, NEV 89070

Electronically Filed  
Sep 02 2021 11:57 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

4  
5 EIGHTH JUDICIAL DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 Bryan P. Borham

CASE NO. A-20-823142-C

9

10 -VS

11 STATE OF NEVADA ex rel

NOTICE OF APPEAL

12

13 TO:

14 Deputy Attorney General

15 KATHY M. BRADY

16 555 E. Washington Ave Ste 3400

17 LV. NV 89101

18 please take notice that the undersigned in the above action gives HIS

19 notice of Appeal of order granting given on August 4, 2021 Granting

20 summary Judgment to Defendants.

21

22 

23 Bryan P. Borham 60575

24 P.O. Box 650 HOSP

25 Indian Springs, NEV 89070

26

27 **RECEIVED**

28 **AUG 30 2021**

**CLERK OF THE COURT**

Reginal Prison 60575  
PO Box 650 NDSP  
Indian Springs, Nevada 89070

LAS VEGAS NV 890  
26 AUG 2021 PM 3 L

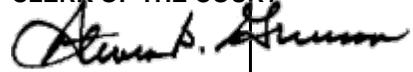
CLERK OF THE COURT  
Reginal Justice Center  
200 Lewis Ave 3rd Floor  
LV NV 89155

Confidential  
Legal Mail **3762**

99107-990000  
Mailed via Brass Slip # 2414384

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HIGH DESERT STATE PRISON  
AUG 16 2021  
LWTS 9



1 ASTA

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5  
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**  
7 **STATE OF NEVADA IN AND FOR**  
8 **THE COUNTY OF CLARK**

9  
10 BRYAN BONHAM,

11 Plaintiff(s),

12 vs.

13 STATE OF NEVADA; NEVADA DEPT OF  
14 CORRECTIONS; CHARLES DANIELS; T.  
GARRETT; C. POTTER,

15 Defendant(s),

Case No: A-20-823142-C

Dept No: XXIX

16  
17  
18 **CASE APPEAL STATEMENT**

19 1. Appellant(s): Bryan Bonham

20 2. Judge: David Barker

21 3. Appellant(s): Bryan Bonham

22 Counsel:

23 Bryan Bonham #60575  
24 P.O. Box 650  
25 Indian Springs, NV 89070

26 4. Respondent (s): State of Nevada; Nevada Dept of Corrections; Charles Daniels; T. Garrett; C.  
Potter

27 Counsel:  
28

1 Aaron D. Ford, Attorney General  
2 555 E. Washington Ave., Ste. 3900  
3 Las Vegas, NV 89101-1068

4 5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
5 Permission Granted: N/A

6 Respondent(s)'s Attorney Licensed in Nevada: Yes  
7 Permission Granted: N/A

8 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

9 7. Appellant Represented by Appointed Counsel On Appeal: N/A

10 8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: Yes, October 20, 2020  
11 \*\*Expires 1 year from date filed  
12 Appellant Filed Application to Proceed in Forma Pauperis: Yes,  
13 Date Application(s) filed: December 8,2020

14 9. Date Commenced in District Court: October 15, 2020

15 10. Brief Description of the Nature of the Action: Unknown

16 Type of Judgment or Order Being Appealed: Summary Judgment

17 11. Previous Appeal: Yes

18 Supreme Court Docket Number(s): 82800, 83033

19 12. Child Custody or Visitation: N/A

20 13. Possibility of Settlement: Unknown

21 Dated This 1 day of September 2021.

22 Steven D. Grierson, Clerk of the Court

23 /s/ Amanda Hampton

24 Amanda Hampton, Deputy Clerk  
25 200 Lewis Ave  
26 PO Box 551601  
27 Las Vegas, Nevada 89155-1601  
28 (702) 671-0512

cc: Bryan Bonham

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-20-823142-C**

**Bryan Bonham, Plaintiff(s)**  
**vs.**  
**Nevada State of, Defendant(s)**

§  
§  
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§

Location: **Department 29**  
 Judicial Officer: **Jones, David M**  
 Filed on: **10/15/2020**  
 Case Number History:  
 Cross-Reference Case Number: **A823142**  
 Supreme Court No.: **82800**  
**83033**

CASE INFORMATION

Case Type: **Other Civil Matters**

Case Status: **10/15/2020 Open**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number	A-20-823142-C
Court	Department 29
Date Assigned	01/04/2021
Judicial Officer	Jones, David M

PARTY INFORMATION

<b>Plaintiff</b>	<b>Bonham, Bryan</b>	<i>Lead Attorneys</i>
		<b>Pro Se</b>
<b>Defendant</b>	<b>Daniels, Charles</b>	
	<b>Garrett, T</b>	
	<b>Nevada Department of Corrections</b>	
	<b>Nevada State of</b>	<b>Ford, Aaron D.</b> <i>Retained</i> 775-684-1100(W)
	<b>Potter, C</b>	

DATE

EVENTS & ORDERS OF THE COURT

INDEX

**EVENTS**

10/15/2020	 Inmate Filed - Complaint With Jury Demand <i>[1] Civil Rights Complaint</i>
10/15/2020	 Application to Proceed in Forma Pauperis <i>[2] Application to Proceed in forma Pauperis</i>
10/15/2020	 Summons Electronically Issued - Service Pending <i>[3] Summons</i>
10/15/2020	 Summons Electronically Issued - Service Pending <i>[4] Summons</i>
10/15/2020	

**CASE SUMMARY**

**CASE NO. A-20-823142-C**

-  Summons Electronically Issued - Service Pending  
*[5] Summons*
- 10/15/2020  Summons Electronically Issued - Service Pending  
*[6] Summons*
- 10/15/2020  Summons Electronically Issued - Service Pending  
*[7] Summons*
- 10/20/2020  Order to Proceed In Forma Pauperis  
*[8] Order to Proceed in Forma Pauperis*
- 11/19/2020  Motion  
Filed By: Plaintiff Bonham, Bryan  
*[9] Plaintiffs Motion to Request and Extension of Time to Serve Defendants or in Alternative Request for Order to Proceed in Forma Pauperis*
- 11/19/2020  Clerk's Notice of Hearing  
*[10] Notice of Hearing*
- 11/19/2020  Notice of Motion  
Filed By: Plaintiff Bonham, Bryan  
*[11] Notice of Motion*
- 12/08/2020  Application to Proceed in Forma Pauperis  
*[12] Judicial Notice & Request for Order to Proceed IFP*
- 12/22/2020  Memorandum  
Filed By: Plaintiff Bonham, Bryan  
*[13] Memorandum in Support of Plaintiff's 42 U.S. C. 1983 Civil Rights Complaint*
- 01/04/2021 Case Reassigned to Department 29  
*Judicial Reassignment to Judge David M. Jones*
- 01/04/2021  Notice of Change of Hearing  
*[14] Notice of Change of Hearing*
- 01/07/2021  Motion for Preliminary Injunction  
Filed By: Plaintiff Bonham, Bryan  
*[15] Plaintiff's Motion for Preliminary Injunction & Protective Order and Brief in Support*
- 01/07/2021  Notice of Motion  
Filed By: Plaintiff Bonham, Bryan  
*[16] Notice of Motion*
- 01/07/2021  Clerk's Notice of Hearing  
*[17] Notice of Hearing*
- 01/13/2021  Declaration  
*[18] Declaration of Service*
- 02/04/2021  Motion  
Filed By: Plaintiff Bonham, Bryan

**CASE SUMMARY**

**CASE NO. A-20-823142-C**

*[19] Motion for in Camera Submission (1)*

02/04/2021



Motion

Filed By: Plaintiff Bonham, Bryan

*[20] Motion for in Camera Submissin (2)*

02/04/2021



Motion

Filed By: Plaintiff Bonham, Bryan

*[21] Motion for in Camera Submission (3)*

02/09/2021



Motion for Order Extending Time

Filed by: Defendant Nevada State of; Defendant Nevada Department of Corrections; Defendant Daniels, Charles; Defendant Garrett, T; Defendant Potter, C

*[22] Defendants' Motion for an Extension to File an Answer or Responsive Pleading*

02/09/2021



Clerk's Notice of Hearing

*[23] Notice of Hearing*

03/04/2021



Response

Filed by: Plaintiff Bonham, Bryan

*[24] Plaintiffs Response to Defendant Request for Extension of Time to File an Answer or Responsive Pleading ; Motion for Default for Plaintiff*

03/04/2021



Clerk's Notice of Hearing

*[25] Notice of Hearing*

03/30/2021



Ex Parte Motion

Filed By: Plaintiff Bonham, Bryan

*[26] Ex Parte Motion for Appointment of Counsel and Request for an Evidentiary Hearing*

04/05/2021



Motion to Dismiss

Filed By: Defendant Nevada State of; Defendant Nevada Department of Corrections; Defendant Daniels, Charles; Defendant Garrett, T; Defendant Potter, C

*[27] Defendants' Motion to Dismiss or in the Alternative Motion for Summary Judgment*

04/06/2021



Clerk's Notice of Hearing

*[28] Notice of Hearing*

04/07/2021



Certificate of Service

*[29] Certificate of Service of Notice of Hearing*

04/08/2021



Decision and Order

Filed By: Defendant Nevada State of; Defendant Nevada Department of Corrections; Defendant Daniels, Charles; Defendant Garrett, T; Defendant Potter, C

*[30] Decision and Order*

04/13/2021



Opposition to Motion

Filed By: Defendant Nevada State of; Defendant Nevada Department of Corrections; Defendant Daniels, Charles; Defendant Garrett, T; Defendant Potter, C

*[31] Defendants' Opposition to Plaintiff's Motion for the Appointment of Counsel*

04/14/2021



Notice of Entry of Decision and Order

*[32] Notice of Entry of Decision and Order*

**CASE SUMMARY**

**CASE NO. A-20-823142-C**

- 04/16/2021  Notice of Appeal  
Filed By: Plaintiff Bonham, Bryan  
*[33] Notice of Appeal*
- 04/19/2021  Case Appeal Statement  
Filed By: Plaintiff Bonham, Bryan  
*[34] Case Appeal Statement*
- 05/12/2021  Response  
Filed by: Plaintiff Bonham, Bryan  
*[35] Plaintiff's Response to Defendants Motion to Dismiss or in the Alternative Motion for Summary Judgment*
- 05/27/2021  NV Supreme Court Clerks Certificate/Judgment - Dismissed  
*[36] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed*
- 06/03/2021  Motion  
Filed By: Plaintiff Bonham, Bryan  
*[37] Motion to Withdraw or to Move Case to US Dist Court*
- 06/03/2021  Notice of Motion  
Filed By: Plaintiff Bonham, Bryan  
*[38] Notice of Motion*
- 06/03/2021  Clerk's Notice of Hearing  
*[39] Notice of Hearing*
- 06/03/2021  Notice of Appeal  
Filed By: Plaintiff Bonham, Bryan  
*[40] Notice of Appeal*
- 06/08/2021  Case Appeal Statement  
Filed By: Plaintiff Bonham, Bryan  
*[41] Case Appeal Statement*
- 07/14/2021  NV Supreme Court Clerks Certificate/Judgment - Dismissed  
*[42] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed*
- 07/22/2021  Motion to Amend  
Filed By: Plaintiff Bonham, Bryan  
*[43] Plaintiff's Motion to Amend Pursuant to Fed Rule Civ P 15*
- 08/04/2021  Motion  
Filed By: Plaintiff Bonham, Bryan  
*[44] Motion to Request Order from Last Hearing Date . Notice of Refilling in Fed Court*
- 08/05/2021  Order  
*[45] Proposed Order*
- 08/06/2021  Notice of Entry of Order  
Filed By: Defendant Nevada State of; Defendant Nevada Department of Corrections; Defendant Daniels, Charles; Defendant Garrett, T; Defendant Potter, C  
*[46] Notice of Entry of Proposed Order*

# CASE SUMMARY

## CASE NO. A-20-823142-C

08/30/2021



Notice of Appeal  
*[47] Notice of Appeal*

09/01/2021



Case Appeal Statement  
Filed By: Plaintiff Bonham, Bryan  
*[48] Case Appeal Statement*

### **DISPOSITIONS**

05/27/2021

**Clerk's Certificate** (Judicial Officer: Jones, David M)  
Debtors: Bryan Bonham (Plaintiff)  
Creditors: Nevada State of (Defendant), Nevada Department of Corrections (Defendant), Charles Daniels (Defendant), T Garrett (Defendant), C Potter (Defendant)  
Judgment: 05/27/2021, Docketed: 05/27/2021  
Comment: Supreme Court No. 82800 " Appeal Dismissed"

07/14/2021

**Clerk's Certificate** (Judicial Officer: Jones, David M)  
Debtors: Bryan Bonham (Plaintiff)  
Creditors: Nevada State of (Defendant), Nevada Department of Corrections (Defendant), Charles Daniels (Defendant), T Garrett (Defendant), C Potter (Defendant)  
Judgment: 07/14/2021, Docketed: 07/14/2021  
Comment: Supreme Court No. 83033 " Appeal Dismissed"

08/05/2021

**Summary Judgment** (Judicial Officer: Jones, David M)  
Debtors: Bryan Bonham (Plaintiff)  
Creditors: Nevada State of (Defendant), Nevada Department of Corrections (Defendant), Charles Daniels (Defendant), T Garrett (Defendant), C Potter (Defendant)  
Judgment: 08/05/2021, Docketed: 08/05/2021

### **HEARINGS**

01/20/2021



**Motion (3:00 AM)** (Judicial Officer: Jones, David M)  
*Plaintiffs Motion to Request and Extension of Time to Serve Defendants or in Alternative Request for Order to Proceed in Forma Pauperis*  
Motion Granted;  
Journal Entry Details:  
*No parties present. The Request to Extend time not being appropriate, COURT ORDERED, Motion to Request and Extension of Time to Serve Defendants DENIED; request to proceed in forma pauperis GRANTED. Movant to prepare the order. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;*

02/09/2021



**Motion for Preliminary Injunction (9:00 AM)** (Judicial Officer: Jones, David M)  
*Plaintiff's Motion for Preliminary Injunction & Protective Order and Brief in Support*  
Motion Denied;  
Journal Entry Details:  
*No parties present. COURT FINDS, the motion being incorrect and not sent to the proper authorities, and ORDERED, motion DENIED.;*

03/17/2021



**Motion (3:00 AM)** (Judicial Officer: Jones, David M)  
*Defendants' Motion for an Extension to File an Answer or Responsive Pleading*  
Motion Granted;  
Journal Entry Details:  
*Having reviewed the motion and the opposition, and based on the grounds set forth by the State of Nevada, COURT ORDERED, motion GRANTED. State to prepare the order. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;*

04/06/2021



**Motion (9:00 AM)** (Judicial Officer: Barker, David)  
*Plaintiffs Response to Defendant Request for Extension of Time to File an Answer or Responsive Pleading ; Motion for Default for Plaintiff*

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-20-823142-C**

Matter Heard;

Journal Entry Details:

*No parties present. COURT FINDS, having reviewed the register of action in Odyssey, the Motion to Dismiss was filed but never set for hearing and ORDERED, matter SET for hearing. 5/11/21 9:00 AM MOTION TO DISMISS CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;*

05/11/2021

 **Motion to Dismiss** (9:00 AM) (Judicial Officer: Jones, David M)

*Defendants' Motion to Dismiss or in the Alternative Motion for Summary Judgment Granted in Part;*

Journal Entry Details:

*Amy Porray present on behalf of the Attorney General's Office. Court noted the appeal was dismissed and there was no opposition to this motion. COURT ORDERED, Motion for Summary Judgment GRANTED. State to prepare the order.;*

07/08/2021

 **Motion** (9:00 AM) (Judicial Officer: Jones, David M)

*Plaintiff's Motion to Withdraw or to Move Case to US Dist Court*

**MINUTES**

Set Status Check;

Journal Entry Details:

*No parties present. The documents being improper and there being no basis, COURT ORDERED, motion DENIED. State to prepare the order. State to prepare the order from the 4/6/21 hearing granting the underlying motion as ordered by the Court. Further, State to prepare the order granting the Motion for Summary Judgment from 5/11/21. FURTHER, matter SET for status check. 8/5/21 9:00 AM STATUS CHECK: ORDERS FILED CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;*

**SCHEDULED HEARINGS**

 **Status Check** (08/05/2021 at 9:00 AM) (Judicial Officer: Barker, David)

*Status Check: Orders Filed*

08/05/2021

 **Status Check** (9:00 AM) (Judicial Officer: Barker, David)

*Status Check: Orders Filed*

Matter Continued;

Proposed order filed

Journal Entry Details:

*Ms. Porray submitted the requested orders on 7/27/21. COURT ORDERED, matter CONTINUED. CONTINUED TO: 9/9/21 9:00 AM;*

08/24/2021

 **Minute Order** (3:00 AM) (Judicial Officer: Jones, David M)

Minute Order - No Hearing Held;

Journal Entry Details:

*The necessary orders having been filed, COURT ORDERED, the status check set for 9/9/21 is VACATED. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;*

DATE

FINANCIAL INFORMATION

**Plaintiff** Bonham, Bryan

Total Charges

270.00

Total Payments and Credits

270.00

**Balance Due as of 9/1/2021**

**0.00**

DISTRICT COURT CIVIL COVER SHEET

CASE NO: A-20-823142-C  
Department 32

County, Nevada

Case No

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

HDSP Bryan Bonham # 60575  
P.O. Box 650  
Indian Springs NV 89070

Defendant(s) (name/address/phone):

State of Nevada  
NDOC  
Charles Daniels  
Garrett etc

Attorney (name/address/phone):

Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)

**Civil Case Filing Types**

<p><b>Real Property</b></p> <p><b>Landlord/Tenant</b></p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p><b>Title to Property</b></p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p><b>Other Real Property</b></p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property		<p><b>Torts</b></p> <p><b>Other Torts</b></p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort	
<p><b>Probate</b> (select case type and estate value)</p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p><b>Estate Value</b></p> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500		<p><b>Construction Defect &amp; Contract</b></p> <p><b>Construction Defect</b></p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p><b>Contract Case</b></p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	
<p><b>Civil Writ</b></p> <p><b>Civil Writ</b></p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum		<p><b>Judicial Review/Appeal</b></p> <p><b>Judicial Review</b></p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p><b>Nevada State Agency Appeal</b></p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p><b>Appeal Other</b></p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal	
<p><b>Other Civil Filing</b></p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters			

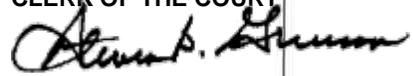
Business Court filings should be filed using the Business Court civil coversheet.

10/13/20  
Date

Prepared by the Clerk

Signature of initiating party or representative

See other side for family-related case filings



1 ORDR  
AARON D. FORD  
2 Attorney General  
KATLYN M. BRADY (Bar No. 14173)  
3 Senior Deputy Attorney General  
State of Nevada  
4 Office of the Attorney General  
555 E. Washington Ave., Ste. 3900  
5 Las Vegas, Nevada 89101  
(702) 486-0661 (phone)  
6 (702) 486-3773 (fax)  
Email: katlynbrady@ag.nv.gov

7 *Attorneys for Defendants Nevada Department*  
8 *of Corrections (NDOC), State of Nevada,*  
9 *Charles Daniels, Tim Garrett, and Carter Potter*

10  
11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 BRYAN BONHAM,

14 Plaintiff,

15 v.

16 STATE OF NEVADA ex rel NEVADA  
17 DEPARTMENT OF CORRECTIONS, *et al.*,

18 Defendants.

Case No. A-20-823142-C

Dept. XXIX

Hearing Date: May 11, 2021

Hearing Time: 9:00 a.m.

19  
20 **PROPOSED ORDER**

21 Defendants, Nevada Department of Corrections (NDOC), State of Nevada, Charles  
22 Daniels, Tim Garrett, and Carter Potter, by and through counsel, Aaron D. Ford, Nevada  
23 Attorney General, and Katlyn M. Brady, Senior Deputy Attorney General, of the State of  
24 Nevada, Office of the Attorney General, submit this proposed order.

25 **FINDINGS OF FACT**

26 Plaintiff Bryan Bonham (Bonham) is an inmate currently incarcerated in the NDOC.  
27 Bonham filed a Complaint alleging the Defendants violated his constitutional rights by

28 ///

1 deducting funds from an outside deposit to pay off debts that Bonham admittedly accrued.  
2 Complaint at 3:7-14.

3 On April 5, 2021, Defendants filed a motion to dismiss or, in the alternative, a motion  
4 for summary judgment. Plaintiff did not file an opposition. This Court held a hearing on  
5 May 11, 2021, and Plaintiff did not appear.<sup>1</sup> Despite the failure to file an opposition, or  
6 appear at the hearing, the Court conducted a full evaluation and analysis of Defendants'  
7 motion.

8 Specifically, Bonham alleges that on January 8, 2020, Bonham's mother deposited  
9 \$150.00 into Bonham's inmate banking account. Complaint at 3:7-8. Bonham concedes that  
10 20% of the deposit was withheld to pay for the filing fee in Bonham's federal civil case. *Id.*  
11 at 3:9-10. Another 10% was deducted and placed into Bonham's inmate savings account.  
12 *Id.* at 3:10. Finally, Bonham alleges 50% was deducted to pay for costs the NDOC incurred  
13 as a result of housing Bonham. *Id.* at 3:11-13. As a result, Bonham alleges he received only  
14 \$14.00 instead of the expected \$30.00. *Id.*

15 Bonham alleges that Director Charles Daniels is responsible for the actions of his  
16 subordinates because he failed to correct the issue after Bonham complained. *Id.* at 2:9-15.  
17 *Id.* at 2:15-28.

18 **A. Findings Regarding The Deposit**

19 On January 8, 2020, an individual named Linda Conry deposited \$150.00 into  
20 Bonham's inmate banking account. NDOC banking records demonstrate the following  
21 deductions:

22 First, thirty dollars (\$30.00) were deducted from the deposit to pay a portion of  
23 Bonham's filing fee for his federal litigation. This reduced the deposit to \$120.00.

24 Second, the NDOC deducted seventy-five dollars (\$75.00) to pay for the legal copies,  
25 which Bonham requested and authorized payment for. This further reduced Bonham's  
26 ///

27  
28 <sup>1</sup> As Plaintiff is incarcerated, Plaintiff could have appeared by filing a motion for telephonic testimony or hearing. Plaintiff did not do so.

1 deposit to \$45.00. It is undisputed that Bonham requested these copies and thus authorized  
2 payment for them.

3 Third, the NDOC deducted fifteen dollars (\$15.00) and placed it into Bonham's  
4 inmate savings fund. Bonham was then left with \$30.00.

5 Fourth, the NDOC deducted nine dollars (\$9.00) to pay for mail that Bonham wished  
6 to send. Ultimately, Bonham was left with \$21.00. Thus, the total deductions are  
7 summarized below.

8	9	10	11
	TRANSACTION TITLE	AMOUNT	REMAINING BALANCE
10	Initial Deposit	\$150.00	150.00
11	Filing Fee Deduction	\$30.00	\$120.00
12	Legal Copy Work Deduction	\$75.00	\$45.00
13	Savings Account Deduction	\$15.00	\$30.00
14	Postage Deduction	\$9.00	\$21.00

15  
16 It appears to be the additional \$9.00 deduction that Bonham believes violated his  
17 constitutional rights and entitles him to \$85,000.00.

18 **B. Findings Regarding NDOC Procedures**

19 Because the deposit was made in January 2020, it is governed by Administrative  
20 Regulation (AR) 258, effective date May 15, 2018. This regulation was signed by the  
21 previous NDOC Director James Dzurenda and not the current Director Charles Daniels.  
22 Pursuant to AR 258, the NDOC may deduct up to 50% of a deposit to pay for costs incurred  
23 by the NDOC on behalf of the inmate pursuant to NRS 209.246. These costs include postage  
24 and copy work.

25 Inmate deductions are made by individuals assigned to the NDOC's Purchasing and  
26 Inmate Services Division. Director Daniels, Officer Potter, and Officer Garrett are not  
27 involved in the banking division, did not make or approve the identified deductions, and  
28 are otherwise uninvolved in inmate banking.

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## CONCLUSIONS OF LAW

Summary judgment is an important procedural tool by which “factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, (1986). Summary judgment should be granted when there is no genuine issue of material facts. *Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 194, 444 P.3d 436, 439 (2019). To survive summary judgment, the nonmoving party “must do more than simply show there is some metaphysical doubt as to the operative facts.” *Id.* (internal quotation and citation omitted).

### A. The State Of Nevada Is Not A Person

This Court grants summary judgment and to the State of Nevada and the NDOC. “[A] litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983.” *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). “[A] State is not a ‘person’ within the meaning of § 1983[.]” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989); *see also Cuzze v. Univ. & Comm. Coll. Sys. of Nevada*, 123 Nev. 598, 605 (2007).

As both the Nevada Supreme Court and United States Supreme Court have held that states, and their political subdivisions are not persons for the purposes of § 1983 litigation, this Court grants summary judgment on all claims as to these Defendants.

### B. Bonham Failed To Demonstrate Personal Participation

“Prison officials are deliberately indifferent to a prisoner’s serious medical needs when they deny, delay, or intentionally interfere with medical treatment[.]” *Hamilton v. Endell*, 981 F.2d 1062, 1066 (9th Cir. 1992). “In order for a person acting under color of state law to be liable under section 1983, there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability[.]” *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002); *see also Bacon v. Williams*, No. 77135-COA, 2019 WL 4786883, at \*1 (Nev. App. Sept. 27, 2019) (upholding the district court’s dismissal of an inmate complaint for failing to allege how each defendant personally participated in

1 the alleged violation as required by §1983). The Nevada Court of Appeals further held that  
2 denying a grievance is insufficient to demonstrate personal participation. *Id.* (citing cases  
3 demonstrating the denial of a grievance is insufficient to establish personal participation).

4 The evidence presented demonstrates there is no genuine dispute of material fact  
5 regarding the Defendants' lack of personal participation. The uncontroverted evidence  
6 demonstrates the named Defendants do not work in the banking division, did not authorize  
7 any of the deductions, and did not participate in deducting the funds. As these Defendants  
8 are wholly unrelated to the banking division, this Court finds they are entitled to summary  
9 judgment on all claims.

10 **C. Bonham Did Not Show A Constitutional Violation**

11 Even assuming Bonham demonstrated personal participation, he failed to show a  
12 constitutional violation. Bonham bases his constitutional claim on his belief that  
13 Defendants violated NDOC's AR 258. However, a violation of an institutional procedure  
14 does not automatically qualify as a constitutional violation. Bonham attempts to  
15 demonstrate that this was a violation of the Fourth, Fifth, and Fourteenth Amendments.  
16 Although similar, the amendments have differing standards. The Takings Clause of the  
17 Fifth Amendment limits the government's ability to take property without paying for it.<sup>2</sup>  
18 *Vance v. Barrett*, 345 F.3d 1083, 1086 (9th Cir. 2003). Meanwhile, the Due Process Clause  
19 of the Fourteenth Amendment requires appropriate procedural protections when the  
20 government takes property. *Id.*

21 The Ninth Circuit has already held the NDOC may deduct funds to pay for expenses  
22 incurred in maintaining and operating inmate accounts. *Id.* at 1089 (“[w]e have no trouble  
23 concluding that the officials may deduct [expenses relating to inmate accounts]”). Here,  
24 Bonham does not allege the legal copy charges or the legal postage charges were incorrect  
25 or unauthorized. Instead, Bonham simply complains the NDOC deducted too large a

---

26 <sup>2</sup> As a threshold matter, there was no seizure or taking as the money was not taken  
27 for the government but was instead applied to pay debt Bonham admittedly incurred and  
28 authorized. This would be tantamount to a government entity deducting funds to pay for  
the payee's child support. The government does not keep the funds but instead applies it  
to an accrued debt.

1 percentage to pay these debts. As Bonham has not alleged or demonstrated that he did not  
2 authorize these charges, the Defendants are entitled to summary judgment on the Fifth  
3 Amendment claim.

4 Likewise, the Defendants are entitled to summary judgment on the Fourteenth  
5 Amendment clause. The Due Process Clause requires prison officials to create adequate  
6 procedurals governing inmate bank accounts. *Id.* at 1090-91 (discussing that prison  
7 administrators must create procedural safeguards, in compliance with statutory authority  
8 authorizing the deduction). Here, there is no dispute that NDOC has statutory authority  
9 to deduct money from inmate deposits. Specifically, NRS 209.246 states the NDOC  
10 Director, with approval from the Board of Prison Commissioners, may establish regulations  
11 authorizing the deduction of a “reasonable amount” of money from inmate deposits.<sup>3</sup>

12 As NDOC has statutory authorization to deduct money to pay for legal postage and  
13 copies, the next inquiry is whether there are competent procedural safeguards. Here, the  
14 uncontested evidence demonstrates NDOC’s AR’s are competent procedural safeguards  
15 because they provide both pre and post deprivation guidelines and reviews.

16 A Court recently found that AR 258, when combined with AR 740’s grievance  
17 procedures, “provide adequate procedural protections” and thus does not violate the Due  
18 Process Clause. *Antonetti v. McDaniels*, No. 3:16-cv-00396-MMD-WGC, 2021 WL 624241,  
19 at \* 21 (D. Nev. Jan. 25, 2021); *see also Beraha v. Nevada*, 3:17-cv-00366-RCJ-CLB, 2020  
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22 <sup>3</sup> The Director shall, with the approval of the Board, establish by regulation criteria  
23 for a reasonable deduction from money credited to the account of an offender to:  
24 2. Defray, as determined by the Director, a portion of the costs paid by the Department for  
25 medical care for the offender, including, but not limited to:  
26 (a) Except as otherwise provided in paragraph (b) of subsection 1, expenses for medical  
27 or dental care, prosthetic devices and pharmaceutical items; and  
28 (b) Expenses for prescribed medicine and supplies.  
3. Repay the costs incurred by the Department on behalf of the offender for:  
(a) Postage for personal items and items related to litigation;  
(b) Photocopying of personal documents and legal documents, for which the offender  
must be charged a reasonable fee not to exceed the actual costs incurred by the Department;  
(c) Legal supplies;

1 As a threshold matter, NDOC's alleged violation of its own policy does not create a  
2 Due Process violation. The Supreme Court has rejected the argument that prison  
3 regulations create a liberty interest and therefore violations of policy violate the Due  
4 Process Clause. *See Sandin v. Conner*, 515 U.S. 472, 482-84 (1995) (rejecting the argument  
5 that a prison regulation creates a liberty interest protected by the Due Process Clause); *see*  
6 *also Machlan v. Neven*, No. 3:13-cv-00337-MMD, 2015 WL 1412748, at \* 12 (D. Nev. Mar.  
7 27, 2015) (*aff'd*, 656 F. App'x 365 (9th Cir. 2016)) ("Stated differently, prison officials do not  
8 offend the Constitution by ignoring prison [regulations]). Thus, the question is not whether  
9 NDOC violated its own regulations, but whether NDOC has appropriate safeguards to  
10 govern deductions.<sup>4</sup> Multiple courts have already answered in the affirmative.

11 Administrative Regulation 258 provides the first safeguard concerning inmate  
12 accounting issues. Inmates with concerns regarding deductions or other banking issues can  
13 submit a fiscal inquiry regarding the issue. The inmate's caseworker first attempts to  
14 address the issue, and if they are unable to, the issue is escalated to Inmate Services  
15 Banking Services (ISBS). Thus, AR 258 creates at least two safeguards for inmate  
16 deductions.

17 Additionally, AR 740, the grievance process, creates yet another safeguard for  
18 inmate deductions. Inmates who believe the banking division made an error may submit a  
19 grievance challenging the action. Grievances go through at least three different levels of  
20 review. **First**, the informal grievance is reviewed by the assigned caseworker. **Second**, the  
21 inmate may appeal and grievance denial to the Warden's office for review. **Third**, the  
22 inmate may appeal the Warden's decision to a Deputy Director for review. The Deputy  
23 Director of Support Services reviews second level grievances concerning banking issues.

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25 ///

26  
27 <sup>4</sup> *See also Brewster v. Dretke*, 587 F.3d 764, 768 (5th Cir. 2009) (noting a prison  
28 official's failure to follow regulations does not violate the Due Process clause so long as the  
constitutional minima is met).

1 Because there is statutory authority authorizing the Director to determine the  
2 appropriate deduction percentage, and there are appropriate procedural safeguards,  
3 Defendants are entitled to summary judgment on all claims.

4 **D. Defendants Are Entitled To Qualified Immunity**

5 Even assuming Defendants violated Plaintiff's constitutional rights, this Court finds  
6 the Defendants are entitled to Qualified Immunity.

7 It is a long-standing principle that governmental officials are shielded from civil  
8 liability under the doctrine of Qualified Immunity. *Harlow v. Fitzgerald*, 457 U.S. 800, 818  
9 (1982).

10 The defense of qualified immunity protects "government officials  
11 . . . from liability for civil damages insofar as their conduct does  
12 not violate clearly established statutory or constitutional rights  
13 of which a reasonable person would have known." The rule of  
14 qualified immunity "provides ample support to all but the  
15 plainly incompetent or those who knowingly violate the law."  
16 "Therefore, *regardless of whether the constitutional violation  
occurred*, the officer should prevail if the right asserted by the  
17 plaintiff was not 'clearly established' or the officer could have  
18 reasonably believed that his particular conduct was lawful."  
19 Furthermore, "[t]he entitlement is an immunity from suit rather  
20 than a mere defense to liability; ... it is effectively lost if a case is  
21 erroneously permitted to go to trial."

22 *Shroeder v. McDonald*, 55 F.3d 454, 461 (9th Cir. 1995) (emphasis in original; internal  
23 citations omitted).

24 When conducting the Qualified Immunity Analysis, courts "ask (1) whether the  
25 official violated a constitutional right and (2) whether the constitutional right was clearly  
26 established." *C.B. v. City of Sorona*, 769 F.3d 1005, 1022 (9th Cir. 2014) (internal citation  
27 omitted).

28 The second inquiry, whether the Constitutional right in question was clearly  
established, is an objective inquiry that turns on whether a reasonable official in the  
position of the defendant knew or should have known at the time of the events in question  
that his or her conduct was Constitutionally infirm. *Anderson v. Creighton*, 483 U.S. 635,  
639-40 (1987); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915 (9th Cir. 2012). Only where a  
governmental official's belief as to the constitutionality of his or her conduct is "plainly

1 incompetent” is Qualified Immunity unavailable. *Stanton v. Sims*, 134 S.Ct. 3, 5 (2013)  
2 (per curiam). Governmental officials are entitled to high deference when making this  
3 determination (*Anderson*, 483 U.S. at 640), requiring the Court to assess whether Qualified  
4 Immunity is appropriate “in light of the specific context of the case.” *Tarabochia v. Adkins*,  
5 766 F.3d 1115, 1121 (9th Cir. 2014) (quoting *Robinson v. York*, 566 F.3d 817, 821 (9th Cir.  
6 2009)). The Ninth Circuit recently clarified that Qualified Immunity applies when “their  
7 conduct does not violate clearly established Statutory or Constitutional rights of which a  
8 reasonable person would have known[.]” *Emmons v. City of Escondido*, 921 F.3d 1172,  
9 1174 (9th Cir. 2019).

10 In determining “whether a [constitutional] right was clearly established,” this Court  
11 is to survey the law within this Circuit and under Supreme Court precedent “at the time of  
12 the alleged act.” *Perez v. United States*, 103 F.Supp. 3d 1180, 1208 (S. D. Cal. 2015)  
13 (quoting *Cnty. House, Inc. v. City of Boise*, 623 F.3d 945, 967 (2010) (citing *Bryan v.*  
14 *MacPherson*, 630 F.3d 805, 933 (9th Cir. 2010)). As such, “liability will not attach unless  
15 there exists a case where an officer acting under similar circumstances . . . was held to have  
16 violated the [Eighth Amendment.]” *Emmons*, 921 F.3d at 1174 (citing *White v. Pauly*, 137  
17 U.S. 548, 551-52 (2017) (per curiam).<sup>5</sup> Although there need not be an identical case,  
18 “existing precedent must have placed the . . . question beyond debate.” *Ashcroft v. al-Kidd*,  
19 563 U.S. 731, 741 (2011).

20 The question presented for this Court’s review is whether there is a clearly  
21 established constitutional right prohibiting prison officials from deducting more than 50%  
22 of an inmate’s deposit to pay for an inmate’s debt. Defendants contend there is not any  
23 authority that clearly establishes the maximum percentage that can be deducted. See  
24 *Loard v. Sorenson*, 561 F. App’x 703, 705 (10th Cir. 2014) (noting Utah deducts 60% of an  
25 inmate’s wages to pay restitution).

26  
27 <sup>5</sup> As recently as September 2020, the Ninth Circuit affirmed the importance of  
28 qualified immunity in the prison context. See *Cates v. Stroud*, 2020 WL 5742058 (9th Cir.  
2020) (holding prison officials were entitled to qualified immunity for conducting a strip  
search of a prison visitor).

1 This Court agrees. There is no constitutionally established right preventing prison  
2 officials from deducting more than 50% of an inmate's deposit to pay for an inmate's debt.  
3 Accordingly, Defendants are entitled to qualified immunity.

4 **IT IS SO ORDERED:** Defendants' Motion for Summary Judgment is **GRANTED**.

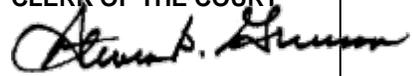
5 DATED this 4 day of <sup>Aug</sup> ~~July~~, 2021.

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\_\_\_\_\_  
DISTRICT JUDGE

9 SUBMITTED BY:

10 AARON D. FORD  
11 Attorney General

12 By /s/ Katlyn M. Brady  
13 KATLYN M. BRADY (Bar No. 14173)  
14 Senior Deputy Attorney General  
15 *Attorneys for Defendants*  
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1 NEOJ  
2 AARON D. FORD  
3 Attorney General  
4 KATLYN M. BRADY (Bar No. 14173)  
5 Senior Deputy Attorney General  
6 State of Nevada  
7 Office of the Attorney General  
8 555 E. Washington Ave., Ste. 3900  
9 Las Vegas, Nevada 89101  
10 (702) 486-0661 (phone)  
11 (702) 486-3773 (fax)  
12 Email: katlynbrady@ag.nv.gov

13 *Attorneys for Defendants Nevada Department*  
14 *of Corrections (NDOC), State of Nevada,*  
15 *Charles Daniels, Tim Garrett, and Carter Potter*

16 **DISTRICT COURT**  
17 **CLARK COUNTY, NEVADA**

18 BRYAN BONHAM,

19 Plaintiff,

20 v.

21 STATE OF NEVADA ex rel NEVADA  
22 DEPARTMENT OF CORRECTIONS, *et al.*,

23 Defendants.

Case No. A-20-823142-C

Dept. XXIX

24 **NOTICE OF ENTRY OF PROPOSED ORDER**

25 TO ALL INTERESTED PARTIES:

26 PLEASE TAKE NOTICE that the **PROPOSED ORDER** was entered in the  
27 above-entitled action on the 5th day of August, 2021, a copy of which is attached hereto.

28 DATED this 6th day of August, 2021.

AARON D. FORD  
Attorney General

By: /s/ Katlyn M. Brady  
KATLYN M. BRADY (Bar No. 14173)  
Senior Deputy Attorney General

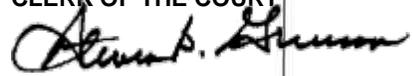
*Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney  
3 General, and that on August 5, 2021, I electronically filed the foregoing **NOTICE OF**  
4 **ENTRY OF PROPOSED ORDER** via this Court’s electronic filing system. Parties who  
5 are registered with this Court’s electronic filing system will be served electronically. For  
6 those parties not registered, service was made by emailing a copy at Las Vegas, Nevada,  
7 addressed to the following:

8 Bryan Bonham, #60575  
9 High Desert State Prison  
10 P.O. Box 650  
11 Indian Springs, Nevada 89070  
12 Email: HDSP\_LawLibrary@doc.nv.gov  
13 *Plaintiff, Pro Se*

14 /s/ Carol A. Knight  
15 CAROL A. KNIGHT, an employee of the  
16 Office of the Nevada Attorney General  
17  
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1 ORDR  
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KATLYN M. BRADY (Bar No. 14173)  
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12 **CLARK COUNTY, NEVADA**

13 BRYAN BONHAM,

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17 DEPARTMENT OF CORRECTIONS, *et al.*,

18 Defendants.

Case No. A-20-823142-C

Dept. XXIX

Hearing Date: May 11, 2021

Hearing Time: 9:00 a.m.

19  
20 **PROPOSED ORDER**

21 Defendants, Nevada Department of Corrections (NDOC), State of Nevada, Charles  
22 Daniels, Tim Garrett, and Carter Potter, by and through counsel, Aaron D. Ford, Nevada  
23 Attorney General, and Katlyn M. Brady, Senior Deputy Attorney General, of the State of  
24 Nevada, Office of the Attorney General, submit this proposed order.

25 **FINDINGS OF FACT**

26 Plaintiff Bryan Bonham (Bonham) is an inmate currently incarcerated in the NDOC.  
27 Bonham filed a Complaint alleging the Defendants violated his constitutional rights by

28 ///

1 deducting funds from an outside deposit to pay off debts that Bonham admittedly accrued.  
2 Complaint at 3:7-14.

3 On April 5, 2021, Defendants filed a motion to dismiss or, in the alternative, a motion  
4 for summary judgment. Plaintiff did not file an opposition. This Court held a hearing on  
5 May 11, 2021, and Plaintiff did not appear.<sup>1</sup> Despite the failure to file an opposition, or  
6 appear at the hearing, the Court conducted a full evaluation and analysis of Defendants'  
7 motion.

8 Specifically, Bonham alleges that on January 8, 2020, Bonham's mother deposited  
9 \$150.00 into Bonham's inmate banking account. Complaint at 3:7-8. Bonham concedes that  
10 20% of the deposit was withheld to pay for the filing fee in Bonham's federal civil case. *Id.*  
11 at 3:9-10. Another 10% was deducted and placed into Bonham's inmate savings account.  
12 *Id.* at 3:10. Finally, Bonham alleges 50% was deducted to pay for costs the NDOC incurred  
13 as a result of housing Bonham. *Id.* at 3:11-13. As a result, Bonham alleges he received only  
14 \$14.00 instead of the expected \$30.00. *Id.*

15 Bonham alleges that Director Charles Daniels is responsible for the actions of his  
16 subordinates because he failed to correct the issue after Bonham complained. *Id.* at 2:9-15.  
17 *Id.* at 2:15-28.

18 **A. Findings Regarding The Deposit**

19 On January 8, 2020, an individual named Linda Conry deposited \$150.00 into  
20 Bonham's inmate banking account. NDOC banking records demonstrate the following  
21 deductions:

22 First, thirty dollars (\$30.00) were deducted from the deposit to pay a portion of  
23 Bonham's filing fee for his federal litigation. This reduced the deposit to \$120.00.

24 Second, the NDOC deducted seventy-five dollars (\$75.00) to pay for the legal copies,  
25 which Bonham requested and authorized payment for. This further reduced Bonham's  
26 ///

27  
28 <sup>1</sup> As Plaintiff is incarcerated, Plaintiff could have appeared by filing a motion for  
telephonic testimony or hearing. Plaintiff did not do so.

1 deposit to \$45.00. It is undisputed that Bonham requested these copies and thus authorized  
2 payment for them.

3 Third, the NDOC deducted fifteen dollars (\$15.00) and placed it into Bonham's  
4 inmate savings fund. Bonham was then left with \$30.00.

5 Fourth, the NDOC deducted nine dollars (\$9.00) to pay for mail that Bonham wished  
6 to send. Ultimately, Bonham was left with \$21.00. Thus, the total deductions are  
7 summarized below.

8	9	10	11
	TRANSACTION TITLE	AMOUNT	REMAINING BALANCE
10	Initial Deposit	\$150.00	150.00
11	Filing Fee Deduction	\$30.00	\$120.00
12	Legal Copy Work Deduction	\$75.00	\$45.00
13	Savings Account Deduction	\$15.00	\$30.00
14	Postage Deduction	\$9.00	\$21.00

15  
16 It appears to be the additional \$9.00 deduction that Bonham believes violated his  
17 constitutional rights and entitles him to \$85,000.00.

18 **B. Findings Regarding NDOC Procedures**

19 Because the deposit was made in January 2020, it is governed by Administrative  
20 Regulation (AR) 258, effective date May 15, 2018. This regulation was signed by the  
21 previous NDOC Director James Dzurenda and not the current Director Charles Daniels.  
22 Pursuant to AR 258, the NDOC may deduct up to 50% of a deposit to pay for costs incurred  
23 by the NDOC on behalf of the inmate pursuant to NRS 209.246. These costs include postage  
24 and copy work.

25 Inmate deductions are made by individuals assigned to the NDOC's Purchasing and  
26 Inmate Services Division. Director Daniels, Officer Potter, and Officer Garrett are not  
27 involved in the banking division, did not make or approve the identified deductions, and  
28 are otherwise uninvolved in inmate banking.

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## CONCLUSIONS OF LAW

Summary judgment is an important procedural tool by which “factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, (1986). Summary judgment should be granted when there is no genuine issue of material facts. *Boesiger v. Desert Appraisals, LLC*, 135 Nev. 192, 194, 444 P.3d 436, 439 (2019). To survive summary judgment, the nonmoving party “must do more than simply show there is some metaphysical doubt as to the operative facts.” *Id.* (internal quotation and citation omitted).

### A. The State Of Nevada Is Not A Person

This Court grants summary judgment and to the State of Nevada and the NDOC. “[A] litigant complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983.” *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). “[A] State is not a ‘person’ within the meaning of § 1983[.]” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989); *see also Cuzze v. Univ. & Comm. Coll. Sys. of Nevada*, 123 Nev. 598, 605 (2007).

As both the Nevada Supreme Court and United States Supreme Court have held that states, and their political subdivisions are not persons for the purposes of § 1983 litigation, this Court grants summary judgment on all claims as to these Defendants.

### B. Bonham Failed To Demonstrate Personal Participation

“Prison officials are deliberately indifferent to a prisoner’s serious medical needs when they deny, delay, or intentionally interfere with medical treatment[.]” *Hamilton v. Endell*, 981 F.2d 1062, 1066 (9th Cir. 1992). “In order for a person acting under color of state law to be liable under section 1983, there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability[.]” *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002); *see also Bacon v. Williams*, No. 77135-COA, 2019 WL 4786883, at \*1 (Nev. App. Sept. 27, 2019) (upholding the district court’s dismissal of an inmate complaint for failing to allege how each defendant personally participated in

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4 The evidence presented demonstrates there is no genuine dispute of material fact  
5 regarding the Defendants' lack of personal participation. The uncontroverted evidence  
6 demonstrates the named Defendants do not work in the banking division, did not authorize  
7 any of the deductions, and did not participate in deducting the funds. As these Defendants  
8 are wholly unrelated to the banking division, this Court finds they are entitled to summary  
9 judgment on all claims.

10 **C. Bonham Did Not Show A Constitutional Violation**

11 Even assuming Bonham demonstrated personal participation, he failed to show a  
12 constitutional violation. Bonham bases his constitutional claim on his belief that  
13 Defendants violated NDOC's AR 258. However, a violation of an institutional procedure  
14 does not automatically qualify as a constitutional violation. Bonham attempts to  
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16 Although similar, the amendments have differing standards. The Takings Clause of the  
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10 Director, with approval from the Board of Prison Commissioners, may establish regulations  
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15 because they provide both pre and post deprivation guidelines and reviews.

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19 at \* 21 (D. Nev. Jan. 25, 2021); *see also Beraha v. Nevada*, 3:17-cv-00366-RCJ-CLB, 2020  
20 WL 3949223, at \*5 (D. Nev. Apr. 27, 2020).

21 ///

22 <sup>3</sup> The Director shall, with the approval of the Board, establish by regulation criteria  
23 for a reasonable deduction from money credited to the account of an offender to:  
24 2. Defray, as determined by the Director, a portion of the costs paid by the Department for  
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26 (a) Except as otherwise provided in paragraph (b) of subsection 1, expenses for medical  
27 or dental care, prosthetic devices and pharmaceutical items; and  
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3. Repay the costs incurred by the Department on behalf of the offender for:  
(a) Postage for personal items and items related to litigation;  
(b) Photocopying of personal documents and legal documents, for which the offender  
must be charged a reasonable fee not to exceed the actual costs incurred by the Department;  
(c) Legal supplies;

1 As a threshold matter, NDOC's alleged violation of its own policy does not create a  
2 Due Process violation. The Supreme Court has rejected the argument that prison  
3 regulations create a liberty interest and therefore violations of policy violate the Due  
4 Process Clause. *See Sandin v. Conner*, 515 U.S. 472, 482-84 (1995) (rejecting the argument  
5 that a prison regulation creates a liberty interest protected by the Due Process Clause); *see*  
6 *also Machlan v. Neven*, No. 3:13-cv-00337-MMD, 2015 WL 1412748, at \* 12 (D. Nev. Mar.  
7 27, 2015) (*aff'd*, 656 F. App'x 365 (9th Cir. 2016)) ("Stated differently, prison officials do not  
8 offend the Constitution by ignoring prison [regulations]). Thus, the question is not whether  
9 NDOC violated its own regulations, but whether NDOC has appropriate safeguards to  
10 govern deductions.<sup>4</sup> Multiple courts have already answered in the affirmative.

11 Administrative Regulation 258 provides the first safeguard concerning inmate  
12 accounting issues. Inmates with concerns regarding deductions or other banking issues can  
13 submit a fiscal inquiry regarding the issue. The inmate's caseworker first attempts to  
14 address the issue, and if they are unable to, the issue is escalated to Inmate Services  
15 Banking Services (ISBS). Thus, AR 258 creates at least two safeguards for inmate  
16 deductions.

17 Additionally, AR 740, the grievance process, creates yet another safeguard for  
18 inmate deductions. Inmates who believe the banking division made an error may submit a  
19 grievance challenging the action. Grievances go through at least three different levels of  
20 review. **First**, the informal grievance is reviewed by the assigned caseworker. **Second**, the  
21 inmate may appeal and grievance denial to the Warden's office for review. **Third**, the  
22 inmate may appeal the Warden's decision to a Deputy Director for review. The Deputy  
23 Director of Support Services reviews second level grievances concerning banking issues.

24 ///

25 ///

26 \_\_\_\_\_  
27 <sup>4</sup> *See also Brewster v. Dretke*, 587 F.3d 764, 768 (5th Cir. 2009) (noting a prison  
28 official's failure to follow regulations does not violate the Due Process clause so long as the  
constitutional minima is met).

1 Because there is statutory authority authorizing the Director to determine the  
2 appropriate deduction percentage, and there are appropriate procedural safeguards,  
3 Defendants are entitled to summary judgment on all claims.

4 **D. Defendants Are Entitled To Qualified Immunity**

5 Even assuming Defendants violated Plaintiff's constitutional rights, this Court finds  
6 the Defendants are entitled to Qualified Immunity.

7 It is a long-standing principle that governmental officials are shielded from civil  
8 liability under the doctrine of Qualified Immunity. *Harlow v. Fitzgerald*, 457 U.S. 800, 818  
9 (1982).

10 The defense of qualified immunity protects "government officials  
11 . . . from liability for civil damages insofar as their conduct does  
12 not violate clearly established statutory or constitutional rights  
13 of which a reasonable person would have known." The rule of  
14 qualified immunity "provides ample support to all but the  
15 plainly incompetent or those who knowingly violate the law."  
16 "Therefore, *regardless of whether the constitutional violation  
occurred*, the officer should prevail if the right asserted by the  
17 plaintiff was not 'clearly established' or the officer could have  
18 reasonably believed that his particular conduct was lawful."  
19 Furthermore, "[t]he entitlement is an immunity from suit rather  
20 than a mere defense to liability; ... it is effectively lost if a case is  
21 erroneously permitted to go to trial."

22 *Shroeder v. McDonald*, 55 F.3d 454, 461 (9th Cir. 1995) (emphasis in original; internal  
23 citations omitted).

24 When conducting the Qualified Immunity Analysis, courts "ask (1) whether the  
25 official violated a constitutional right and (2) whether the constitutional right was clearly  
26 established." *C.B v. City of Sorona*, 769 F.3d 1005, 1022 (9th Cir. 2014) (internal citation  
27 omitted).

28 The second inquiry, whether the Constitutional right in question was clearly  
established, is an objective inquiry that turns on whether a reasonable official in the  
position of the defendant knew or should have known at the time of the events in question  
that his or her conduct was Constitutionally infirm. *Anderson v. Creighton*, 483 U.S. 635,  
639-40 (1987); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915 (9th Cir. 2012). Only where a  
governmental official's belief as to the constitutionality of his or her conduct is "plainly

1 incompetent” is Qualified Immunity unavailable. *Stanton v. Sims*, 134 S.Ct. 3, 5 (2013)  
2 (per curiam). Governmental officials are entitled to high deference when making this  
3 determination (*Anderson*, 483 U.S. at 640), requiring the Court to assess whether Qualified  
4 Immunity is appropriate “in light of the specific context of the case.” *Tarabochia v. Adkins*,  
5 766 F.3d 1115, 1121 (9th Cir. 2014) (quoting *Robinson v. York*, 566 F.3d 817, 821 (9th Cir.  
6 2009)). The Ninth Circuit recently clarified that Qualified Immunity applies when “their  
7 conduct does not violate clearly established Statutory or Constitutional rights of which a  
8 reasonable person would have known[.]” *Emmons v. City of Escondido*, 921 F.3d 1172,  
9 1174 (9th Cir. 2019).

10 In determining “whether a [constitutional] right was clearly established,” this Court  
11 is to survey the law within this Circuit and under Supreme Court precedent “at the time of  
12 the alleged act.” *Perez v. United States*, 103 F.Supp. 3d 1180, 1208 (S. D. Cal. 2015)  
13 (quoting *Cnty. House, Inc. v. City of Boise*, 623 F.3d 945, 967 (2010) (citing *Bryan v.*  
14 *MacPherson*, 630 F.3d 805, 933 (9th Cir. 2010)). As such, “liability will not attach unless  
15 there exists a case where an officer acting under similar circumstances . . . was held to have  
16 violated the [Eighth Amendment.]” *Emmons*, 921 F.3d at 1174 (citing *White v. Pauly*, 137  
17 U.S. 548, 551-52 (2017) (per curiam).<sup>5</sup> Although there need not be an identical case,  
18 “existing precedent must have placed the . . . question beyond debate.” *Ashcroft v. al-Kidd*,  
19 563 U.S. 731, 741 (2011).

20 The question presented for this Court’s review is whether there is a clearly  
21 established constitutional right prohibiting prison officials from deducting more than 50%  
22 of an inmate’s deposit to pay for an inmate’s debt. Defendants contend there is not any  
23 authority that clearly establishes the maximum percentage that can be deducted. See  
24 *Loard v. Sorenson*, 561 F. App’x 703, 705 (10th Cir. 2014) (noting Utah deducts 60% of an  
25 inmate’s wages to pay restitution).

26  
27 <sup>5</sup> As recently as September 2020, the Ninth Circuit affirmed the importance of  
28 qualified immunity in the prison context. See *Cates v. Stroud*, 2020 WL 5742058 (9th Cir.  
2020) (holding prison officials were entitled to qualified immunity for conducting a strip  
search of a prison visitor).

1 This Court agrees. There is no constitutionally established right preventing prison  
2 officials from deducting more than 50% of an inmate's deposit to pay for an inmate's debt.  
3 Accordingly, Defendants are entitled to qualified immunity.

4 **IT IS SO ORDERED:** Defendants' Motion for Summary Judgment is **GRANTED**.

5 DATED this 4 day of <sup>Aug</sup> ~~July~~, 2021.

6  
7  
8   
\_\_\_\_\_  
DISTRICT JUDGE

9 SUBMITTED BY:

10 AARON D. FORD  
11 Attorney General

12 By /s/ Katlyn M. Brady  
13 KATLYN M. BRADY (Bar No. 14173)  
14 Senior Deputy Attorney General  
15 *Attorneys for Defendants*  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**January 20, 2021**

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A-20-823142-C      Bryan Bonham, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**January 20, 2021      3:00 AM      Motion**

**HEARD BY:** Jones, David M      **COURTROOM:** Chambers

**COURT CLERK:** Michaela Tapia

**RECORDER:** Melissa Delgado-Murphy

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- No parties present.

The Request to Extend time not being appropriate, COURT ORDERED, Motion to Reuquest and Extension of Time to Serve Defendants DENIED; request to proceed in forma pauperis GRANTED. Movant to prepare the order.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**February 09, 2021**

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A-20-823142-C      Bryan Bonham, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**February 09, 2021      9:00 AM      Motion for Preliminary  
Injunction**

**HEARD BY:** Jones, David M

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Michaela Tapia

**RECORDER:** Patti Slattery

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- No parties present.

COURT FINDS, the motion being incorrect and not sent to the proper authorities, and ORDERED, motion DENIED.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**April 06, 2021**

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A-20-823142-C      Bryan Bonham, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**April 06, 2021      9:00 AM      Motion**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Michaela Tapia

**RECORDER:** Melissa Delgado-Murphy

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- No parties present.

COURT FINDS, having reviewed the register of action in Odyssey, the Motion to Dismiss was filed but never set for hearing and ORDERED, matter SET for hearing.

5/11/21 9:00 AM MOTION TO DISMISS

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**May 11, 2021**

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A-20-823142-C      Bryan Bonham, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**May 11, 2021      9:00 AM      Motion to Dismiss**

**HEARD BY:** Jones, David M      **COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Michaela Tapia

**RECORDER:** Melissa Delgado-Murphy

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Amy Porray present on behalf of the Attorney General's Office.

Court noted the appeal was dismissed and there was no opposition to this motion. COURT ORDERED, Motion for Summary Judgment GRANTED. State to prepare the order.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**August 05, 2021**

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A-20-823142-C      Bryan Bonham, Plaintiff(s)  
vs.  
Nevada State of, Defendant(s)

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**August 05, 2021      9:00 AM      Status Check**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Michaela Tapia

**RECORDER:** Melissa Delgado-Murphy

**REPORTER:**

**PARTIES**

**PRESENT:**      Porray, Amy A.      Attorney

**JOURNAL ENTRIES**

- Ms. Porray submitted the requested orders on 7/27/21. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 9/9/21 9:00 AM



# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; PROPOSED ORDER; NOTICE OF ENTRY OF PROPOSED ORDER; DISTRICT COURT MINUTES

BRYAN BONHAM,

Plaintiff(s),

vs.

STATE OF NEVADA; NEVADA DEPT OF CORRECTIONS; CHARLES DANIELS; T. GARRETT; C. POTTER,

Defendant(s),

Case No: A-20-823142-C

Dept No: XXIX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 1 day of September 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

