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6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
9

10 PATRICK STEPHEN DAVIS,  
11 Plaintiff,  
12 v.  
13 STATE OF NEVADA ET AL.;  
14 Defendants.

Case No.: **3:13-cv-00559-MMD-WGC**

**RESPONSE TO PLAINTIFF'S MOTION  
FOR NOTICE OF DEFICIENCIES**

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Carson City, NV 89711

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16 Defendants the State of Nevada, Nevada Board of Parole Commissioners, Nevada  
17 Department of Public Safety, Nevada Division of Parole and Probation, Connie Bisbee, James  
18 Wright, Bernard Curtis, Claudia Steiber, Natalie Wood, Claudia Cole, Aaron Evans, James  
19 Gothan, James Sackett and Nevada Attorney General Catherine Cortez Masto, through their  
20 attorneys, CATHERINE CORTEZ MASTO, Attorney General, and LORI M. STORY, Deputy  
21 Attorney General, respond to Plaintiff's motion for notice of deficiency (dkt no. 14). The  
22 Defendants' response is made pursuant to Fed. R. Civ. P. 8 and 15 and is based on the  
23 following Points and Authorities and all other papers and pleadings filed therein.

24 **POINTS AND AUTHORITIES IN SUPPORT OF RESPONSE**

25 **I. BACKGROUND**

26 This is an action brought by Plaintiff, Patrick Davis, appearing in *pro se*, claiming  
27 violations of his constitutional rights pursuant to the terms and conditions of his lifetime  
28 supervision imposed by reason of his conviction for a sex offense. Plaintiff claims his rights

1 have been violated by the Defendants, his supervising officers and State officials. He seeks  
2 monetary as well as declaratory and injunctive relief. Defendants moved to dismiss the  
3 complaint on various theories including immunity from suit, expiration of the applicable statute  
4 of limitations, lack of standing to raise certain claims, and failure to state a justiciable claim.  
5 The motion was fully briefed and ready for decision on or about December 4, 2013, when the  
6 reply was filed with this Court (dkt. no. 9).

7 On March 10, 2014, Plaintiff filed the instant motion seeking particular leniency from the  
8 Court in its consideration of his complaint in light of the Defendants' motion to dismiss  
9 because of his status as a *pro se* litigant. The response follows.

10 **II. ARGUMENT**

11 **A. Plaintiff is *Pro Se* by Choice.**

12 Plaintiff seeks consideration from this Court on the basis of his *pro se* status in  
13 identifying deficiencies in his pleadings, specifically deficiencies in the complaint which is the  
14 subject of Defendants' motion to dismiss. Plaintiff has filed a motion to amend the complaint,  
15 but failed to provide the proposed amendment as required by the local rules of civil practice,  
16 LR 15-1.

17 The rules of civil procedure provide that pleadings must be construed so as to "do  
18 justice." Fed. R. Civ. P. 8(e). In order to effect this goal, the courts have determined that *pro*  
19 *se* litigants "must be ensured meaningful access to the courts." *Rand v. Rowland*, 154 F.3d  
20 952, 957 (9th Cir.1998) (*en banc*), *cert. denied*, 527 U.S. 1035 (1999). This is especially true  
21 in the case of incarcerated *pro se* plaintiffs, who have limited access to resources, including  
22 law libraries or attorneys. See *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594 (1972); *Estelle v.*  
23 *Gamble*, 429 U.S. 97, 106 97 S.Ct. 285, 292 (1976), *Eldridge v. Block*, 832 F.3d 1132, 1136  
24 (9<sup>th</sup> Cir. 1987). When faced with a motion to dismiss under Rule 12(b)(6), *pro se* litigants are  
25 entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal  
26 of the action unless it is absolutely clear that the deficiencies could not be cured by  
27 amendment. See *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995); *Lopez v. Smith*,  
28 203 F.3d 1122, 1126 (9th Cir.2000). The Court can and should dismiss claims which are so

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1 flawed that they are not be amenable to revisions to overcome deficiencies in either the  
2 requisite facts or viable legal theory.

3 It must be noted that Plaintiff is not incarcerated. See Dkt. no. 1. Neither is he  
4 proceeding *in forma pauperis*. *Id.* His *pro se* status appears to be by choice rather than  
5 circumstances beyond his control. Furthermore, Defendants contend that the motion to  
6 dismiss gave plaintiff adequate notice of the deficiencies of many of his claims. If a non-  
7 prisoner *pro se* plaintiff has adequate notice of the insufficiencies of his complaint, the court  
8 need not grant leave to amend *sua sponte*. See *Carter v. Commissioner*, 784 F.2d 1006, 1009  
9 (9th Cir.1986) (government's motion was sufficient notice that petitioner's *pro se* complaint  
10 was deficient); *Jacobsen v. Filler*, 790 F.2d 1362, 1365 (9th Cir.1986) (court need not advise  
11 non-prisoner *pro se* plaintiff that evidence must be filed to defeat summary judgment motion).  
12 Plaintiff was entitled to file an amended complaint without leave of the Court or the  
13 Defendants within 21-day of Defendants filing that motion to dismiss. Fed. R. Civ. P. 15(a).  
14 He did not take notice and did not attempt to remedy the deficiencies noted. The Court should  
15 consider this fact in determining whether to expend its limited resources to provide more  
16 specific notice of any deficiencies in his complaint beyond those outlined in the Defendants'  
17 motion to dismiss.

18 **B. Court Should Disregard Unrelated and Repetitive Arguments.**

19 Plaintiff includes arguments that are unrelated to the circumstances in this case or  
20 which have already been made in his other motions. For example, although the motion to  
21 dismiss does not rely on exhibits or attachments which might cause the Court to convert the  
22 motion to dismiss to a motion for summary judgment, Plaintiff makes arguments related to that  
23 possibility. He also reiterates the arguments presented in his motion for joinder and to amend.  
24 These irrelevant arguments should be disregarded when considering whether Plaintiff is  
25 entitled to additional notice of the deficiencies in his complaint due to his voluntary *pro se*  
26 status. Plaintiff's various motions should be required to stand on their own merits.

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