IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

LEON-MICHAEL: THOLSON, Plaintiff, vs. RONALD TAYLOR, et al., Defendants.	Case No. 3:15-cv-00033-SLG

ORDER PERMITTING AMENDED COMPLAINT AND REQUIRING A RESPONSE TO ORDER TO SHOW CAUSE

Leon-Michael: Tholson, who has filed several pro se prisoner's civil rights cases in this Court,[1] has filed another Prisoner's Civil Rights Complaint under 42 U.S.C. § 1983, with 66 papers attached.[2]

Because Mr. Tholson is a prisoner, the Court is required to "identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

[1] *See Tholson v. Miller, et al.*, 3:13-cv-00043-SLG; *Tholson v. Schmidt, et al.*, 3:14-cv-00216-SLG; *Tholson v. Long, et al*., 3:14-cv-00257-SLG.

[2] Docket 1. Mr. Tholson has also filed a "Supplemental Complaint Class Action," an Application to Waive the Filing Fee under 28 U.S.C. § 1915, an unsigned Declaration claiming to be in imminent danger of physical injury (with 29 papers attached), a Motion for Appointment of Counsel, and a Motion for Class Certification (with 19 papers attached). Dockets 3-7.

(2) seeks monetary relief from a defendant who is immune from such relief."[3]

The Court is mindful that it must liberally construe a self-represented plaintiff's pleadings and give the plaintiff the benefit of the doubt.[4] Before the Court may dismiss Mr. Tholson's Complaint, the Court should provide him with a statement of the deficiencies in the Complaint and an opportunity to amend, unless it is clear that amendment would be futile.[5]

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[3] 28 U.S.C. § 1915A(b); s*ee also* 28 U.S.C. § 1915(e)(2)(B) (required review of in forma pauperis complaints); 42 U.S.C. § 1997e(c)(1) ("The court shall on its own motion . . . dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner . . . if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief."); *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008) ("Because these statutes impose a mandatory duty, we construe a district court's termination of an in forma pauperis complaint during the screening process for a reason enumerated in § 1915A, § 1915(e)(2)(B), or § 1997e(c) as a dismissal pursuant to the applicable section.").

[4] *See Hebbe v. Plier*, 627 F.3d 338, 342 (9th Cir. 2010) ("[O]ur 'obligation' remains [after *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)], 'where the petitioner is *pro se,* particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.'") (citation omitted); *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013) ("Courts in this circuit have an obligation to give a liberal construction to the filings of pro se litigants, especially when they are civil rights claims by inmates. . . . This rule relieves pro se litigants from the strict application of procedural rules and demands that courts not hold missing or inaccurate legal terminology or muddled draftsmanship against them.") (citations omitted).

[5] *See Silva v. Di Vittorio*, 658 F.3d 1090, 1105-06 (9th Cir. 2011) ("[Any] attempt to re-plead this claim would be futile. . . . The district court properly concluded that the deficiencies in Silva's complaint could not be cured by an amendment. We therefore affirm the district court's decision to dismiss [the] claim with prejudice and without leave to amend.").

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute."[6] It is Mr. Tholson's burden, as the plaintiff, to show that the Court has jurisdiction to hear his claims.[7] "Section 1983 . . . creates a private right of action to vindicate violations of 'rights . . . secured by the Constitution and laws' of the United States. Under the terms of the statute," the plaintiff must show that (1) a defendant "act[ed] under color of state law"; to (2) "deprive [the plaintiff] of a constitutional right."[8]

1. A violation of the right to be free from cruel and unusual punishment, involving medical care, requires the deliberate indifference to a plaintiff's serious medical needs.

To state a claim for violations involving medical care, a prisoner must show that a defendant has been deliberately indifferent to his serious medical needs.[9] A "showing of nothing more than 'a difference of medical opinion' as to the need to pursue one course of treatment over another [i]s insufficient, as a matter of law,

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[6] *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (citations omitted); *see also Black's Law Dictionary* (9th ed. 2009) (Jurisdiction is "[a] court's power to decide a case or issue a decree.").

[7] *See K2 America Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1027 (9th Cir. 2011) ("We 'presume[ ] that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.'") (quoting *Kokkonen*, 511 U.S. at 377).

[8] *Rehberg v. Paulk*, ___ U.S. ___, 132 S.Ct. 1497, 1501 (2012) (citations and internal quotations omitted).

[9] *Estelle v. Gamble*, 429 U.S. 97, 105 (1976) ("Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983.").

to establish deliberate indifference. In other words, where a defendant has based his actions on a medical judgment that either of two alternative courses of treatment would be medically acceptable under the circumstances, plaintiff has failed to show deliberate indifference, as a matter of law."[10] Thus, a difference of medical opinion regarding medication is not enough to establish a Constitutional violation.[11]

"A medical need is serious if failure to treat it will result in 'significant injury or the unnecessary and wanton infliction of pain.' . . . A prison official is deliberately indifferent to that need if he 'knows of and disregards an excessive risk to inmate health.'"[12]

> To establish an Eighth Amendment violation, a plaintiff must satisfy both an objective standard—that the deprivation was serious enough to constitute cruel and unusual punishment—and a subjective standard—deliberate indifference.
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> To meet the *objective standard*, the denial of a plaintiff's serious medical need must result in the "unnecessary and wanton infliction of pain."
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> The *subjective standard* of deliberate indifference requires "more than ordinary lack of due care for the prisoner's interests or

[10] *Jackson v. McIn*tosh, 90 F.3d 330, 332 (9th Cir.), *cert. denied*, 519 U.S. 1029 (1996) (citing *Estelle*, 429 U.S. at 107-08).

[11] *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) ("The Toguchis argue that Seroquel is superior to Triafon, and therefore should not have been discontinued by Dr. Chung. However, a mere 'difference of medical opinion ... [is] insufficient, as a matter of law, to establish deliberate indifference.'") (quoting *Jackson*, *supra*).

[12] *Peralta v. Dillard,* 744 F.3d 1076, 1081 (9th Cir. 2014) (en banc) (citations and further internal quotation marks omitted).

> safety." . . . The state of mind for deliberate indifference is subjective recklessness.[13]

In his first claim for relief, Mr. Tholson alleges that John Stolpman, a mental health counselor,[14] is personally liable for violating his right to due process[15] and medical care because Mr. Stolpman responded to Mr. Tholson's request for mental health help "by telling [him] that being incarcerated was proper treatment for [his] mental health disorders. Because of the failure to provide [Mr. Tholson with] mental health care, [Mr. Tholson's] mental health got progressively worse until [he] tried to kill [himself] on 8/28/14."[16] Mr. Tholson's allegations against John Stolpman do not meet either the subjective or objective standard because he indicates that Mr. Stolpman has simply asserted his opinion as to Mr. Tholson's mental health.[17] Thus, at most, Mr. Tholson may have a medical malpractice claim under state law against John Stolpman.

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[13] *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012) (quoting *Estelle*, 429 U.S. at 104 and *Farmer v. Brennan*, 511 U.S. 825, 835 (1994)) (internal citation omitted) (emphasis added), *overruled on other grounds*, *Peralta*, 744 F.3d at 1083.

[14] Docket 1 at 2.

[15] *Simmons v. Navajo County, Arizona*, 609 F.3d 1011, 1017 (9th Cir. 2010) ("Although the Fourteenth Amendment's Due Process Clause, rather than the Eighth Amendment's protection against cruel and unusual punishment, applies to pretrial detainees . . . we apply the same standards in both cases . . . under a 'deliberate indifference' standard.") (citing *Bell v. Wolfish*, 441 U.S. 520, 535 n. 16 (1979)) (further citation and internal quotation marks omitted).

[16] Docket 1 at 5.

[17] *See, e.g.* Docket 1-1 at 3 (4/9/14 Letter from John Stolpman to Sgt. McElmurry:

In his second claim for relief, Mr. Tholson asserts as follows:

> John Do[w] [a mental health staffer,] told me to seek therapy from a minister. However John Do[w] refused to aid me in contacting a minister or provide any sort of mental health care at all. . . . I would report symptoms to him regarding my family and abuse I suffered growing up. John Dow told me to write it all on a cop-out and send it to him. I told him that doing that made me flip out and he continued to ignore my request for help. Because of John Dow's failure to respond . . . my mental health got progressively worse unt[il] I tried to kill myself on 8/28/14.[18]

"I have previously informed inmate Tholson that he has been seen many times before by Mental Health Clinicians and our psychiatrist. Each time he has been diagnosed with Malingering symptoms for medications. Additionally he has been diagnosed with an Antisocial Personality Disorder. One of the characteristics of the ASPD is manipulation and deceit for his personal gain.
As part of my assessment of inmate's mental health complaints I also question staff who observe him daily as to his behavior and moods. The comments I hear about this prisoner are consistent with the diagnosis of Antisocial Personality Disorder, which is basically untreatable. As such he is being 'treated' appropriately by simply being incarcerated. He does not warrant mental health services."); *id*. at 6 (John Stolpman's 3/14/14 response to Mr. Tholson's request for help for his PTSD and bipolar disorder: "Mr. Tholson, I received your medical file and found no evidence of you being diagnosed with bipolar or PTSD. Instead, you were found to be malingering or lying about problems for other benefits."); Docket 1-2 at 3 (1/20/06 Parole-Probation letter to State Superior Court Judge Volland, listing Mr. Tholson's "most current diagnosis, as of the filing of this report . . . as follows:
Axis I Adjustment Reaction to Incarceration – Lockdown; Malingering; History of Schlzoaffective Disorder – no symptoms/current evidence; PolysubstanceDependence.
Axis II Antisocial Personality Disorder
Acuity Rating 3, currently (1=acute; 2=unstable; 3=stable)"); *id* at 6-7 ("On November 3, 2005 the PO received notice that the defendant had committed himself to Anchorage Psychiatric Institute (API). The PO responded to API and spoke to Dr. Carrol who stated that they believed the defendant was malingering thus resulting in an Axis l diagnosis of Malingering. . . . As of the submission of this report the defendant has been off any psychotropic medications and doing well. According to DOC Mental Health personnel the defendant has not exhibited any signs of mental illness.").

[18] Docket 1 at 6.

Again, Mr. Tholson has not asserted facts indicating that John Dow had the subjective recklessness to establish deliberate indifference to Mr. Tholson's serious medical needs. As with John Stolpman, at most, Mr. Tholson may have a state law malpractice claim against this Defendant.

In his third claim for relief, Mr. Tholson alleges that Superintendent Jesse Self is personally liable[19] for failing to protect him from self-harm as follows:

> Jesse Self . . . moved me from ACC-West B-Mod to ACC-East max/max with prisoner Jason Barnum who had been moved off the housing unit with me because of his non-stop harassment and instigating me and other[s] to commit suicide. After weeks of Jason Barnun's harassment and not being provided mental health care . . . I tr[ie]d to kill myself by cutting my wrist in the shower on 8/26/14.[20]

But Mr. Tholson asserts no facts showing that Jesse Self actually had "knowledge of a substantial risk of serious harm" by putting the two prisoners in the same mod, so has stated no federal claim for relief.[21]

In his fourth claim for relief, Mr. Tholson alleges as against a mental health counselor, Dorian Slama,[22] as follows:

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[19] *Id*. at 3.

[20] *Id*. at 7.

[21] *Lemire v. California Dept. of Corrections and Rehabilitation*, 726 F.3d 1062, 1074-78 (9th Cir. 2013) ("[T]he inmate must show that prison officials 'kn[e]w [ ] of and disregard[ed]' the substantial risk of harm, but the officials need not have intended any harm to befall the inmate; 'it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.'") (quoting *Farmer v. Brennan*, 511 U.S. 825, 842 (1994)).

[22] Docket 1 at 3.

> When after I was provided with work sheets on depression, I asked for help because I did not understand the information in them. I was denied then provided another workbook with similar information that I did not understand.
> Because I was unable to manage my depression I felt very sad. I wanted to die and I cut my wrist in the shower on 8/28/14. Cutting my wrist caused me pain I did not want.[23]

Likewise, as against a mental health staffer, John Dow (2), in his individual capacity,[24] in the fifth claim for relief, Mr. Tholson alleges as follows:

> When I requested help completing the work sheets I was provided by mental health, I was denied by John Dow (2). Because of John Dow (2)'s failure to help me my mental health has got progressively worse. I often have angry outbursts which I cannot control and hurt myself and/or other people.[25]

To allege a constitutional violation because a counselor provides mental health worksheets which are unhelpful, or that a staff member fails to give assistance in completing the worksheets, borders on the frivolous.[26] And again, Mr. Tholson has failed to state facts indicating that these staff members had the subjective recklessness to establish deliberate indifference to his serious medical needs.

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[23] *Id*. at 8.

[24] *Id*. at 3.

[25] *Id*. at 9.

[26] *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (recognizing that a litigant who proceeds without prepayment of the filing fee may lack the economic incentives to refrain from filing frivolous or repetitive lawsuits).

2. To state a claim against a defendant in his or her official capacity for injunctive relief, a plaintiff must show that a policy or custom under the control of the named official was responsible for the alleged injury.

A request for *injunctive relief* means that a party is seeking an order from the Court that directs or prevents another party from taking a certain action.[27] A state official, who has the authority to enforce an order for injunctive relief,[28] may be sued in his or her *official capacity* for such injunctive relief.[29] In an official capacity suit, a plaintiff must demonstrate that a *policy or custom* of the government entity of which the official is an agent was the moving force behind the violation.[30]

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[27] *Black's Law Dictionary* (an injunction is "[a] court order commanding or preventing an action.").

[28] *National Audubon Society, Inc. v. Douglas*, 307 F.3d 835, 847 (9th Cir. 2002) ("[S]uit is barred against the Governor and the state Secretary of Resources, as there is no showing that they have the requisite enforcement connection to Proposition 4. . . . However, the Eleventh Amendment does not bar suit against the Director of the California Department of Fish & Game, who has direct authority over and principal responsibility for enforcing Proposition 4."); *cf. Burlington Northern & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1093 (9th Cir. 2007) ("Because [the plaintiff] has alleged that [a defendant] has 'direct authority over and principal responsibility for' the tax, the *Ex Parte Young* exception applies and tribal immunity does not bar suit against her.") (quoting *National Audubon Society*, 307 F.3d at 847).

[29] *Kentucky v. Graham,* 473 U.S. at 167 n. 14.

[30] *Id.* at 166; *see also Fogel v. Collins*, 531 F.3d 824 (9th Cir. 2008) (In a § 1983 case arising after police officers arrested plaintiff and impounded his van because of messages painted on his vehicle, summary judgment for defendants was affirmed where: 1) although defendants violated plaintiff's First Amendment rights; 2) defendant-city had not implemented an unconstitutional policy or custom, and defendants-police officers were entitled to qualified immunity.).

Mr. Tholson claims that Commissioner Ronald Taylor, sued in his official capacity, failed to provide him with adequate mental health care while Mr. Tholson was in his care and custody,[31] and he requests that "Ronald Taylor and John Stolpman . . . submit a plan to the Court to be approved by the Court to rectify present inadequate mental health care and provide Plaintiff with adequate mental health care during the time Plaintiff is in the care and custody of the defendants."[32] He also requests that Ronald Taylor "submit a plan to the Court to provid[e] Plaintiff with housing free from assaults by correctional staff and other prisoners."[33] Mr. Tholson must identify the specific policy or custom that he seeks to enjoin.[34]

3. Due process requires a hearing before a pretrial detainee is subject to disciplinary segregation.

In a somewhat unrelated matter, Mr. Tholson alleges in his sixth claim for relief that P.O. Guerra is individually liable[35] for violating his right to due process as follows:

> I was held in max/max segregation for 120 days without a hearing. Finally, we had a hearing on [12/5/14.] I was denied my request for protective custody. Since I've been in jail I've been assaulted a number of times by staff and prisoners. If not provided protective

[31] Docket 1 at 2, 5. John Stolpman, however, is sued only in his individual capacity. *Id*.

[32] *Id*. at 14.

[33] *Id*.

[34] In *Black's Law Dictionary* (9th ed. 2009), "enjoin" is defined as follows: "To legally prohibit or restrain by injunction".

[35] Docket 1 at 4.

> custody it is only a matter of time before I am assaulted again. I have also been denied access to appeal the outcome of the hearing because of P.O. Guerra's failure to properly process my appeal.[36]

The Supreme Court has explained that "the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. . . . [O]nce it is determined that the Due Process Clause applies, 'the question remains what process is due.'"[37]

The Court takes judicial notice[38] that Mr. Tholson appears to have pled guilty in September 2014, in a State Superior Court case, *State of Alaska v. Leon Michael Tholson*, 3AN-11-0769CR, but has not yet been sentenced in that case.[39] In

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[36] *Id*. at 10.

[37] *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (citations omitted); *see also Turner v. Safely*, 482 U.S. 78, 89 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.").

[38] Judicial notice is "[a] court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact; the court's power to accept such a fact." *Black's Law Dictionary* (9th ed. 2009); *see also Headwaters Inc. v. U.S. Forest Service*, 399 F.3d 1047, 1051 n. 3 (9th Cir. 2005) ("Materials from a proceeding in another tribunal are appropriate for judicial notice.") (internal quotation marks and citation omitted).

[39] *State of Alaska v. Leon Michael Tholson*, 3AN-11-0769CR (September 2014 event notes: change of plea; March 2015 docket notes: sentencing memoranda and corrected presentence reports), online at http://www.courtrecords.alaska.gov/eservices; *see also Alaska v. Tholson*, 3AN-13-13010CR (pending misdemeanor case).

addition, he may have been incarcerated in separate reopened state cases in which he has been convicted.[40]

"[P]retrial detainees may be subjected to disciplinary segregation only with a due process hearing to determine whether they have in fact violated any rule."[41] But it is unclear whether, in Mr. Tholson's case, he was solely a pretrial detainee at the time of the alleged due process violation and, if so, whether his segregation was for punishment *or* for his protection from assault, as he requests. He must, therefore, explain to the Court whether he was incarcerated solely as a pretrial detainee at the time in question. He must also explain whether he was placed in segregation as a punishment (and for what action or inaction) or for protection.

Amending Complaint

The Civil Rights Complaint will be dismissed without prejudice, and Mr. Tholson will be permitted an opportunity to file an Amended Complaint to state cognizable federal claims against the Defendants in their appropriate capacities. Mr. Tholson should allege facts against *only one defendant for each claim for relief* in the space provided. He must state, specifically, what each state official did or did not do which he believes violated his federal civil rights, and what specific relief

[40] *State of Alaska v. Leon Michael Tholson*, 3AN-09-05138CR, 3AN-10-09807CR, and 3AN-11-03595CR (3/27/15 event: disposition hearing scheduled for all).

[41] *Mitchell v. Dupnik*, 75 F.3d 517, 524 (9th Cir. 1996) (following *Bell v. Wolfish*, 441 U.S. 520 (1979), and discussing *Sandin v. Connor*, 515 U.S. 472 (1995)).

he seeks from the Court – whether in the form of damages or injunctive relief. Mr. Tholson must decide, for each defendant, whether he or she is being sued in his or her individual capacity (requesting money damages for *participating* in *causing his injuries*), or official capacity (requesting injunctive relief to address a *policy or custom* that *resulted in his injuries*).

The Court is sending a form upon which Mr. Tholson must file any amended complaint. In completing this form, Mr. Tholson should state the facts in his own words, as if he were *briefly and concisely* telling someone what happened. The facts provided in support of each separate claim must *specifically* include the name of the *particular defendant*, *what* happened, *how* the particular defendant was involved, *when* the events occurred, *where* those events occurred, *how* he was *hurt*, and what the *injuries* were. In other words, Mr. Tholson must avoid stating conclusions.[42]

A complaint "must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."[43] Later, if Mr. Tholson's claims

[42] *See Iqbal*, 556 U.S. at 678-79.

[43] Fed. R. Civ. P. 8(a) ("A pleading that states a claim for relief must contain:
(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.") (emphasis in original).

proceed before the Court on the merits, he may be given an opportunity to file a brief on the issues in which he may more thoroughly argue the case with supporting documentation, such as the 66 pages attached to his initial Complaint.[44]

An Amended Complaint must be complete in itself without reference to any prior pleading.[45] Thus, in an Amended Complaint, Mr. Tholson should make no reference to his initial Complaints or other extraneous documents. And any defendant not named or claim not re-alleged is generally considered waived.[46]

IT IS THEREFORE ORDERED:

1. The Complaint is DISMISSED with leave to amend.

2. On or before **May 8, 2015**, Mr. Tholson may file an Amended Complaint *solely on the form provided* by the Court, with *no attachm*ents. He must state facts against only a *single defendant* in *each claim* for relief. He must make no legal arguments.

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[44] The Court's Scheduling Order sets the briefing and pretrial schedule. A brief is a "written statement setting out the legal contentions of a party in litigation . . . consisting of legal and factual arguments and the authorities in support of them." *Black's Law Dictionary* (9th ed. 2009); *see also, e.g*., Fed. R. Civ. P. 56 (motion for summary judgment), and Fed. R. Civ. P. 12(b) (motion to dismiss).

[45] *See* D.Ak.LR 15.1(3).

[46] *See Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012) ("For claims dismissed with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal. But for any claims voluntarily dismissed, we will consider those claims to be waived if not repled.") (citation omitted).

3. The Clerk of Court is directed to send form PS01, Prisoner's Complaint under the Civil Rights Act, to Mr. Tholson with this Order.

4. On or before **May 8, 2015**, Mr. Tholson must also explain to the Court whether, at the time of the alleged due process violation (in Claim 6, against P.O. Guerra), he was incarcerated *only* as a pretrial detainee or whether he was also (or instead) incarcerated as to any other conviction(s). Mr. Tholson must draft his response *on the enclosed Court form*.

5. The Clerk of Court is directed to send form PS07A, Response to Order to Show Cause, to Mr. Tholson with this Order.

6. In the alternative, Mr. Tholson may file the enclosed Notice of Voluntary Dismissal, without prejudice, on or before **May 8, 2015**.[47]

7. The Clerk of Court is directed to send form PS09, Notice of Voluntary Dismissal, to Mr. Tholson with this Order.

[47] Filing a voluntary dismissal avoids the risk of a "strike" under 28 U.S.C. § 1915(g), which provides that a prisoner who files more than three actions or appeals in any federal court in the United States which are dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, will be prohibited from bringing any other actions without prepayment of fees unless the prisoner can demonstrate that he or she is in "imminent danger of serious physical injury."

8. The Motion for Appointment of Counsel[48] and the Motion for Class Certification,[49] at Dockets 6 and 7, are DENIED.

9. The Court will not address the Application to Proceed without Prepayment of Fees, at Docket 3, and will take no further action in this case, until Mr. Tholson fully complies with this Order.

10. If Mr. Tholson fails to comply with this Order, this action may be dismissed without further notice.

DATED at Anchorage, Alaska, this 6th day of April, 2015.

/s/ SHARON L. GLEASON
United States District Judge

[48] "Generally, a person has no right to counsel in civil actions." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). The decision to request a volunteer attorney for a civil plaintiff is within "the sound discretion of the trial court and is granted only in exceptional circumstances." *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). No such exceptional circumstances exist in this case.

[49] Mr. Tholson has not met the requirements for class certification. *See, e.g.*, Fed. R. Civ. P. 23(a)(4) ("the representative parties will fairly and adequately protect the interests of the class"). Mr. Tholson is not such a representative party, and the Court does not have sufficient reliable information as to the other requirements of Rule 23(a). *See* Dockets 1, 7.