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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Harry Elwood Corbin,

Plaintiff,

vs.

Charles Ryan, et al.,

Defendants.

No. CV 09-2677-PHX-JAT (LOA)

ORDER

Plaintiff Harry Elwood Corbin, who is confined in the Arizona State Prison Complex-Tucson, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. On January 22, 2010, the Court denied the Application to Proceed with leave to re-file. On February 8, 2010, Plaintiff filed a new Application to Proceed (Doc. #5). The Court will order Defendants to answer the Complaint.

I. Application to Proceed *In Forma Pauperis* and Filing Fee

Plaintiff's new Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$4.80. The remainder of the fee will be collected monthly in payments of 20% of the previous month's income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate

1 Order requiring the appropriate government agency to collect and forward the fees according
2 to the statutory formula.

3 **II. Statutory Screening of Prisoner Complaints**

4 The Court is required to screen complaints brought by prisoners seeking relief against
5 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
7 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
8 be granted, or that seek monetary relief from a defendant who is immune from such relief.
9 28 U.S.C. § 1915A(b)(1), (2).

10 A pleading must contain a “short and plain statement of the claim *showing* that the
11 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
12 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
13 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
14 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
15 statements, do not suffice.” Id.

16 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
17 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
18 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
19 that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
21 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
22 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
23 allegations may be consistent with a constitutional claim, a court must assess whether there
24 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

25 **III. Complaint**

26 Plaintiff names the following Defendants in the Complaint: Arizona Department of
27 Corrections Director Charles Ryan, Warden Barry Larson, C.O. III Matt J. Shafer, and
28 Deputy Warden Edward White.

1 Plaintiff raises two grounds for relief:

2 (1) Plaintiff's Eight and Fourteenth Amendment rights were violated when he was
3 beaten by other inmates after Defendants placed Plaintiff in a general
4 population unit even though they were aware Plaintiff had a prior conviction
5 for a sex offense; and

6 (2) Plaintiff's Eighth and Fourteenth Amendment rights were violated when, after
7 returning from a 9-day stay in the hospital, Defendants placed him in an
8 outdoor holding cell, without access to a bathroom, from 6:00 a.m. to 9:00
9 p.m for five days.

10 Plaintiff seeks money damages. Liberally construed, Plaintiff's allegations adequately
11 state an Eighth Amendment claim and the Court will require Defendants to answer the
12 Complaint.

13 **IV. Warnings**

14 **A. Release**

15 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.
16 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay
17 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result
18 in dismissal of this action.

19 **B. Address Changes**

20 Plaintiff must file and serve a notice of a change of address in accordance with Rule
21 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
22 relief with a notice of change of address. Failure to comply may result in dismissal of this
23 action.

24 **C. Copies**

25 Plaintiff must serve Defendants, or counsel if an appearance has been entered, a copy
26 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate
27 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit
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1 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply
2 may result in the filing being stricken without further notice to Plaintiff.

3 **D. Possible Dismissal**

4 If Plaintiff fails to timely comply with every provision of this Order, including these
5 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
6 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
7 comply with any order of the Court).

8 **IT IS ORDERED:**

9 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. #5) is **granted**.

10 (2) As required by the accompanying Order to the appropriate government agency,
11 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$4.80.

12 (3) The Clerk of Court must send Plaintiff a service packet including the
13 Complaint (Doc. #1), this Order, and both summons and request for waiver forms for
14 Defendants Ryan, Larson, Shafer, and White.

15 (4) Plaintiff must complete and return the service packet to the Clerk of Court
16 within 20 days of the date of filing of this Order. The United States Marshal will not provide
17 service of process if Plaintiff fails to comply with this Order.

18 (5) If Plaintiff does not either obtain a waiver of service of the summons or
19 complete service of the Summons and Complaint on a Defendant within 120 days of the
20 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the
21 action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv
22 16.2(b)(2)(B)(i).

23 (6) The United States Marshal must retain the Summons, a copy of the Complaint,
24 and a copy of this Order for future use.

25 (7) The United States Marshal must notify Defendants of the commencement of
26 this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal
27 Rules of Civil Procedure. The notice to Defendants must include a copy of this Order. The
28 Marshal must immediately file requests for waivers that were returned as undeliverable and

1 waivers of service of the summons. If a waiver of service of summons is not returned by a
2 Defendant within 30 days from the date the request for waiver was sent by the Marshal, the
3 Marshal must:

4 (a) personally serve copies of the Summons, Complaint, and this Order upon
5 Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and

6 (b) within 10 days after personal service is effected, file the return of service
7 for Defendant, along with evidence of the attempt to secure a waiver of service of the
8 summons and of the costs subsequently incurred in effecting service upon Defendant.
9 The costs of service must be enumerated on the return of service form (USM-285) and
10 must include the costs incurred by the Marshal for photocopying additional copies of
11 the Summons, Complaint, or this Order and for preparing new process receipt and
12 return forms (USM-285), if required. Costs of service will be taxed against the
13 personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
14 Procedure, unless otherwise ordered by the Court.

15 (8) **A Defendant who agrees to waive service of the Summons and Complaint**
16 **must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

17 (9) Defendants must answer the Complaint or otherwise respond by appropriate
18 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal
19 Rules of Civil Procedure.

20 (10) Any answer or response must state the specific Defendant by name on whose
21 behalf it is filed. The Court may strike any answer, response, or other motion or paper that
22 does not identify the specific Defendant by name on whose behalf it is filed.

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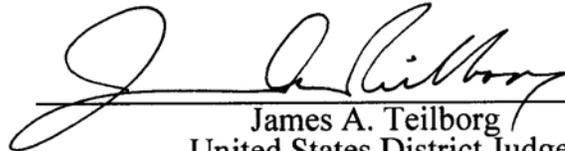
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(11) This matter is referred to Magistrate Judge Lawrence O. Anderson pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized under 28 U.S.C. § 636(b)(1).

DATED this 19th day of March, 2010.


James A. Teilborg
United States District Judge