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

T. Terell Bryan,	)	No. CV 10-1601-PHX-RCB (JRI)
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Defense Technology U.S., et al.,	)	
Defendants.	)	

Plaintiff T. Terell Bryan, who is confined in the Broad River Correctional Institution in Columbia, South Carolina, has filed a *pro se* Complaint and an Application to Proceed *In Forma Pauperis*. The Court will dismiss the Complaint with leave to amend.

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

Plaintiff’s 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 not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). The statutory 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 Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

**II. Failure to File Complaint on Court-Approved Form**

Pursuant to Local Rule of Civil Procedure 3.4(a), “[a]ll complaints and applications to proceed *in forma pauperis* by incarcerated persons shall be signed and legibly written or

1 typewritten on forms approved by the Court.” Plaintiff has not filed his Complaint on the  
2 court-approved form and the Court is unable to determine the precise number and nature of  
3 Plaintiff’s claims. The Court will therefore dismiss the Complaint and grant Plaintiff 30 days  
4 to file an amended complaint on the court-approved form.

5 Plaintiff must clearly designate on the face of the document that it is a “First Amended  
6 Complaint.” Any amended complaint must be retyped or rewritten in its entirety on the  
7 court-approved form and may not incorporate any part of the original Complaint by  
8 reference. Plaintiff may include only one claim per count.

9 An amended complaint supersedes the original Complaint. Ferdik v. Bonzelet, 963  
10 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,  
11 1546 (9th Cir. 1990). After amendment, the original Complaint will be treated as  
12 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original  
13 Complaint is waived if it is not raised in the amended complaint. King v. Atiyeh, 814 F.2d  
14 565, 567 (9th Cir. 1987).

15 Plaintiff should note that pursuant to 28 U.S.C. § 1391(b), a civil action in which  
16 jurisdiction is not based on diversity of citizenship may be brought only in:

17 (1) a judicial district where any defendant resides, if all defendants reside in  
18 the same State, (2) a judicial district in which a substantial part of the events  
19 or omissions giving rise to the claim occurred, or a substantial part of property  
20 that is the subject of the action is situated, or (3) a judicial district in which any  
21 defendant may be found, if there is no district in which the action may  
22 otherwise be brought.

23 Plaintiff names the following Defendants in the Complaint: Defense Technology U.S.;  
24 United States Attorney; Inmate Grievance Coordinator of Perry Correctional Institution  
25 Miriam Cociolone; and Inmate Grievance Administrator James Simmons. Plaintiff appears  
26 to raise claims related to the use of pepper spray or mace. It appears that the incidents about  
27 which Plaintiff complains occurred outside Arizona and that at least three of the named  
28 Defendants reside outside Arizona. To the extent that Plaintiff intends to raise civil right  
claims, venue is not appropriate in this Court. To the extent that Plaintiff may be attempting  
to base his claims in the Court’s diversity jurisdiction, he has not alleged sufficient facts

1 about the citizenship of any Defendant for the Court evaluate whether it has jurisdiction in  
2 this case.

3 **III. Warnings**

4 **A. Release**

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

9 **B. Address Changes**

10 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
11 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
12 relief with a notice of change of address. Failure to comply may result in dismissal of this  
13 action.

14 **C. Copies**

15 Plaintiff must submit an additional copy of every filing for use by the Court. See  
16 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice  
17 to Plaintiff.

18 **D. Possible Dismissal**

19 If Plaintiff fails to timely comply with every provision of this Order, including these  
20 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at  
21 1260-61 (a district court may dismiss an action for failure to comply with any order of the  
22 Court).

23 **IT IS ORDERED:**

24 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 3) is **granted**.

25 (2) As required by the accompanying Order to the appropriate government agency,  
26 Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing fee.  
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1 (3) The Complaint (Doc. 1) is **dismissed** for failure to file on the court-approved  
2 form. Plaintiff has **30 days** from the date this Order is filed to file a first amended complaint  
3 in compliance with this Order.

4 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of  
5 Court must, without further notice, enter a judgment of dismissal of this action without  
6 prejudice.

7 (5) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil  
8 rights complaint by a prisoner.

9 DATED this 31<sup>st</sup> day of August, 2010.

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13 Robert C. Broomfield  
14 Senior United States District Judge