

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

SC

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

Anthony Boteilho,
Plaintiff,
vs.
State of Washington, et al.,
Defendants.

No. CV 10-1881-PHX-MHM (LOA)

ORDER

Plaintiff Anthony Boteilho, who is confined in the Monroe Correctional Complex-Twin Rivers, in Monroe, Washington, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 in the District Court for the Western District of Washington and was granted leave to proceed *in forma pauperis*. (Doc. 4.) Plaintiff subsequently filed a First Amended Complaint, which was ordered served on the Defendants prior to screening pursuant to 28 U.S.C. § 1915. (Doc. 10, 15.) The District Court for the Western District of Washington subsequently denied the Defendants’ motion to dismiss but granted their motion to transfer the case to this District. (Doc. 75.) In an Order filed on November 2, 2010, the Court dismissed the First Amended Complaint with leave to amend within 30 days using this District’s court-approved form complaint. (Doc. 77.) On December 6, 2010, Plaintiff filed a motion for extension of time to file an amended complaint until February 5, 2011. (Doc. 78.)

Plaintiff seeks a two month extension to file a second amended complaint because his typewriter broke and has been sent out of the prison for repair. Plaintiff also seeks the

1 extension because of deadlines pending in other cases filed by him. The Court declines to
2 grant Plaintiff an additional two months to file an amended complaint and instead grants him
3 an additional 45 days within which to comply with the November 2, 2010 Order.

4 **Warnings**

5 **A. Release**

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

10 **B. Address Changes**

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

15 **C. Copies**

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

19 **D. Possible “Strike”**

20 Because the First Amended Complaint has been dismissed with leave to file a
21 amended complaint on the court-approved form, if Plaintiff fails to file an amended
22 complaint correcting the deficiencies identified in the November 2, 2010 Order, the dismissal
23 may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g). Under the
24 3-strikes provision, a prisoner may not bring a civil action or appeal a civil judgment *in*
25 *forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions,
26 while incarcerated or detained in any facility, brought an action or appeal in a court of the
27 United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
28

1 a claim upon which relief may be granted, unless the prisoner is under imminent danger of
2 serious physical injury.” 28 U.S.C. § 1915(g).

3 **E. Possible Dismissal**

4 If Plaintiff fails to timely comply with every provision of this Order, including these
5 warnings, and the November 2, 2010 Order, the Court may dismiss this action without further
6 notice. See Ferdik, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to
7 comply with any order of the Court).

8 **IT IS ORDERED:**

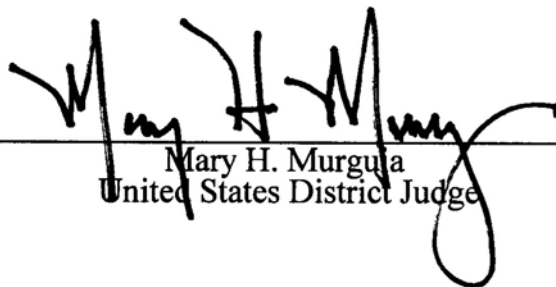
9 (1) Plaintiff’s motion for an extension of time within which to file a second
10 amended complaint is **granted** to the extent stated below. (Doc. 78.)

11 (2) Plaintiff is **granted** an additional 45-days from the filing date of this Order in
12 which to file a second amended complaint in compliance with the November 2, 2010 Order,
13 doc. 77.

14 (3) If Plaintiff fails to file an amended complaint within the extension granted
15 herein, the Clerk of Court must, without further notice, enter a judgment of dismissal of this
16 action with prejudice that states that the dismissal may count as a “strike” under 28 U.S.C.
17 § 1915(g).

18 DATED this 13th day of December, 2010.

19
20
21
22
23
24
25
26
27
28



Mary H. Murgula
United States District Judge