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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

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| Timothy P. Olmos, et al.,<br><br>Plaintiffs,<br><br>vs.<br><br>David Stokes, II, et al.,<br><br>Defendants. | No. CV 10-2564-PHX-GMS (MEA)<br><br>**ORDER** |

Pending before the Court are Plaintiff's "Motion For Enlargement Of Time To File First Amended Complaint" (Doc. 19), "Motion For Order To Return Of Documents Not Filed By Clerk" (Doc. 20), First Amended Complaint (Doc. 21), "Affidavit In Support Of Complaint (Vol. II, §§ 47-85)" (Doc. 22), "Motion For Leave To Suspend Enforcement Of Local Rules Upon Pro Se Litigant" (Doc. 23), "Memorandum In Support Of Motion For Leave To Suspend Enforcement Of Local Rules Upon Pro Se Litigant" (Doc. 24), and "Motion For Assistance In Locating Select Defendants For Service Of Pleadings" (Doc. 25).

**I. Procedural Background**

On November 28, 2010, Plaintiff Timothy P. Olmos, who is confined in the Arizona State Prison Complex-Florence (ASPC-Florence), filed "Plaintiffs' Motion For Leave To File Lengthy Complaint And Related Pleadings" (Doc. 1). In conjunction with his Motion, Plaintiff Olmos submitted the following documents which were lodged in this case by the

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Clerk of Court: a *pro se* "Civil Rights Complaint By A Prisoner" (Doc. 2), which included a "Complaint Addendum" (Docs. 2 [part] and 3); a "Notice Of Appearance As Lead Plaintiff" (Doc. 4); an "Application to Proceed *In Forma Pauperis* By A Prisoner Civil (Non-Habeas)" (Doc. 5); a certified "Inmate Bank Account" statement (Doc. 6); an "Affidavit In Support Of Complaint" (Doc. 7); a "Memorandum Establishing Conformance With 42 U.S.C. § 1997e(a)" (Doc. 8), which included "Appendices To Memorandum Establishing Conformance With 42 U.S.C. § 1997e(a)"; and an "Ex Parte Motion To Modify Requirements For Service Of Process" (Doc. 10).

By Order filed February 9, 2011 (Doc. 11), the Court granted "Plaintiffs' Motion For Leave To File Lengthy Complaint And Related Pleadings" (Doc. 1) in part, to the extent that the Court directed the Clerk of Court to file Plaintiff's lodged "Civil Rights Complaint By A Prisoner" (Doc. 2); "Notice Of Appearance As Lead Plaintiff" (Doc. 4); "Application to Proceed *In Forma Pauperis* By A Prisoner Civil (Non-Habeas)" (Doc. 5); certified "Inmate Bank Account" statement (Doc. 6); "Affidavit In Support Of Complaint" (Doc. 7); and "Ex Parte Motion To Modify Requirements For Service Of Process" (Doc. 10). "Plaintiffs' Motion For Leave To File Lengthy Complaint And Related Pleadings" (Doc. 1) was denied in part, to the extent that the Court directed the Clerk of Court not to file Plaintiffs' lodged 556-page "Complaint Addendum" (Docs. 2 [part] and 3) and "Memorandum Establishing Conformance With 42 U.S.C. § 1997e(a)" (Doc. 8).

The Court's Order also directed that this action may not proceed as a class action, denied as moot the "Notice Of Appearance As Lead Plaintiff" and "Ex Parte Motion To Modify Requirements For Service Of Process," granted the "Application to Proceed *In Forma Pauperis* By A Prisoner Civil (Non-Habeas)," assessed an initial partial filing fee, dismissed the "Civil Rights Complaint By A Prisoner" for failure to comply with Rule 8 of the Federal Rules of Civil Procedure, and gave Plaintiff Olmos 30 days from the filing date of the Order to file a first amended complaint in compliance with the Order. Lastly, the Order dismissed Plaintiffs David Stokes, II; James Walker; Jose Ulloa; Roger Clark; William McEnany; and "all others similarly situated" from this action.

## II. Motion for Enlargement of Time to File First Amended Complaint

On February 22, 2011, Plaintiff filed a "Motion For Enlargement Of Time To File First Amended Complaint" (Doc. 19), in which Plaintiff seeks a 30-day enlargement of time to file his First Amended Complaint. Plaintiff's Motion will be granted and Plaintiff's First Amended Complaint (Doc. 21), which was filed on March 14, 2011, will be accepted as being timely filed.

## III. Motion for Order to Suspend Enforcement of Local Rules

On March 21, 2011, Plaintiff filed a "Motion For Leave To Suspend Enforcement Of Local Rules Upon Pro Se Litigant" (Doc. 23) and "Memorandum In Support Of Motion For Leave To Suspend Enforcement Of Local Rules Upon Pro Se Litigant" (Doc. 24). In his Motion, Plaintiff requests that the Court accept his First Amended Complaint (Doc. 21) with "a slight modification to the original forms provided by the Clerk." Plaintiff's Motion will be granted to the extent that Court will accept Plaintiff's First Amended Complaint in the form that it was filed.

## IV. Statutory Screening of Prisoner Complaints

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

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

"[A] complaint must contain sufficient factual matter, accepted as true, to 'state a

claim to relief that is plausible on its face.'" Id. (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. "Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id. at 1950. Thus, although a plaintiff's specific factual allegations may be consistent with a constitutional claim, a court must assess whether there are other "more likely explanations" for a defendant's conduct. Id. at 1951.

But as the United States Court of Appeals for the Ninth Circuit has instructed, courts must "continue to construe *pro se* filings liberally." Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). A "complaint [filed by a *pro se* prisoner] 'must be held to less stringent standards than formal pleadings drafted by lawyers.'" Id. (quoting Erickson v. Pardus, 551 U.S. 89, 94 (2007) (*per curiam*)).

**V. First Amended Complaint**

Plaintiff should take notice that all causes of action alleged in an original complaint which are not alleged in an amended complaint are waived. Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990) ("an amended pleading supersedes the original"); King v. Atiyeh, 814 F.2d 565 (9th Cir. 1987). Accordingly, the Court will consider only those claims specifically asserted in Plaintiff's First Amended Complaint (Doc. 21) with respect to only those Defendants specifically named in the First Amended Complaint.

Named as Defendants in the First Amended Complaint are: (1) Charles L. Ryan, Director of the Arizona Department of Corrections (ADC); (2) GEO Group, Inc. (GEO), Private Prison Contractor – Operator at the Central Arizona Correctional Facility (CACF); (3) Compass Group – North America Division, d.b.a. Canteen Correctional Services (Canteen), Food Services Contractor at all ADC-run prison units; (4) Keefe Group, d.b.a. Keefe Commissary Network (Keefe), Inmate Store Contractor at every prison unit housing ADC inmates; (5) Janice K. Brewer, Governor of Arizona; (6) Ferris D. Ahee, Dentist at the

Winchester Unit of the Arizona State Prison Complex-Tucson (ASPC-Tucson); (7) Daniel Cardoza, Lieutenant at the North Unit of ASPC-Florence; (8) "Unknown ADC Security Officer(s)" at the Mail Room of the Arizona State Prison Complex-Lewis (ASPC-Lewis) and/or the Morey Unit of ASPC-Lewis; (9) "Unknown ADC Administrator(s)"; (10) Eric Hall, Correctional Officer (CO) IV at the Winchester Unit of ASPC-Tucson; (11) Thomas C. Horne, Arizona Attorney General; (12) Allen Ortega, CO II/SSU Officer at ASPC-Florence Complex Administration; and (13) Timothy Brockman, Captain at ASPC-Florence Complex Administration.

Plaintiff alleges 15 counts in the First Amended Complaint and seeks a jury trial, declaratory and injunctive relief, appointment of a special master, all fees and costs, and compensatory and punitive monetary damages, with compound interest.

## VI. Discussion

### A. Count I

In Count I, Plaintiff claims that his Eighth and Fourteenth Amendment rights were violated by Defendant GEO's practice of operating "CACF with constantly-illuminated dorms, including the dorm that Plaintiff was housed in." In support of his claim, Plaintiff contends that "constantly-illuminated dorms impose physical and psychological harm with no legitimate penological justification." Plaintiff alleges that the actions of **Defendant GEO** "posed an unreasonable risk of serious damage to Plaintiff Olmos' future health."

"'An Eighth Amendment claim that a prison official has deprived inmates of humane conditions must meet two requirements, one objective and one subjective.' 'Under the objective requirement, the prison official's acts or omissions must deprive an inmate of the minimal civilized measure of life's necessities.'" Lopez v. Smith, 203 F.3d 1122, 1132-33 (9th Cir. 2000) (internal citations and citations omitted). The subjective prong requires the inmate to demonstrate that the deprivation was a product of "deliberate indifference" by prison personnel. Wilson v. Seiter, 501 U.S. 294, 302-03 (1991). Such indifference can only occur if "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a

substantial risk of serious harm exits, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Although *pro se* pleadings are liberally construed, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), conclusory and vague allegations will not support a cause of action. Ivey v. Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). Further, a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled. Id. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 129 S. Ct. at 1949.

Plaintiff's allegations in Count I are too conclusory and vague to state a claim for relief under the Eighth and Fourteenth Amendments. While subjecting an inmate to constant illumination may, under certain circumstances, rise to the level of an Eighth Amendment violation, see Keenan v. Hall, 83 F.3d 1083, 1091-91 (9th Cir. 1996) (plaintiff alleged "that large florescent lights directly in front of and behind his cell shone into his cell 24 hours a day"), Plaintiff has not alleged enough facts for his claim to rise to the level of a constitutional violation. Plaintiff does not describe the type of illumination at issue and does not explain how he was specifically harmed by the constant illumination.

Accordingly, the Court will dismiss Count I for failure to state a claim upon which relief may be granted.

**B. Count II**

In Count II, Plaintiff claims that his Eighth and Fourteenth Amendment rights to "constitutionally sufficient medical care" and to "freedom from cruel and unusual punishment" were violated by Defendants Ryan, Brewer, Ahee, and Horne.

Plaintiff alleges that the policies of **Defendant Ryan** "served to deny medical care to Plaintiff Olmos when ADC medical staff enforced those policies by (a) refusing to process medical request forms . . . , (b) refusing to provide Plaintiff Olmos medical care with over-the-counter medications and medical remedies . . . and, (c) refusing to treat his flu and the pandemic at Winchester per CDC outlines for prisons." Plaintiff further alleges that "Defendant Ryan's systemwide understaffing of ADC's medical and health care system led

to delays in care for Plaintiff." Plaintiff also alleges that "Defendant Ryan's medical prescription policies led to Plaintiff Olmos being prescribed ineffective allergy medicine as part of the inappropriate treatment he received."

Plaintiff's allegations against Defendant Ryan in Count II are too conclusory and vague to state a claim for relief under the Eighth and Fourteenth Amendments. Although Plaintiff alleges that Defendant Ryan's policies served to deny medical care to Plaintiff and led to being prescribed ineffective allergy medicine, Plaintiff has not described the policies at all. Also, Plaintiff's allegation of systemwide understaffing is not only vague but also insufficient because a mere delay in medical care, without more, is insufficient to state a claim against prison officials for deliberate indifference under the Eighth Amendment. See Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985).

Plaintiff alleges that **Defendant Ahee** "provided Plaintiff Olmos with insufficient pain medication (according to prevailing professional standards) after performing oral surgery on him for an impacted wisdom tooth."

Not every claim by a prisoner relating to inadequate medical treatment states a violation of the Eighth Amendment. To state a § 1983 medical claim, a plaintiff must show that the defendants acted with "deliberate indifference to serious medical needs." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). A plaintiff must show (1) a "serious medical need" by demonstrating that failure to treat the condition could result in further significant injury or the unnecessary and wanton infliction of pain and (2) the defendant's response was deliberately indifferent. Jett, 439 F.3d at 1096 (quotations omitted).

"Deliberate indifference is a high legal standard." Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know of and disregard an excessive risk to inmate health; "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 511 U.S. at 837. Deliberate indifference in the medical context may be shown by a purposeful act or failure to respond to a prisoner's pain

or possible medical need and harm caused by the indifference. Jett, 439 F.3d at 1096.

Medical malpractice or negligence is insufficient to establish a violation. Toguchi, 391 F.3d at 1060. Thus, mere negligence in diagnosing or treating a condition does not violate the Eighth Amendment. Toguchi, 391 F.3d at 1057. Also, an inadvertent failure to provide adequate medical care alone does not rise to the Eighth Amendment level. Jett, 429 F.3d at 1096. A difference in medical opinion also does not amount to deliberate indifference. Toguchi, 391 F.3d at 1058.

Plaintiff's allegation against Defendant Ahee is insufficient to state an Eighth Amendment claim for inadequate medical care. Plaintiff's allegation is conclusory and vague because Plaintiff does not allege what medication he was given and show how it was "insufficient." Moreover, Plaintiff does not allege deliberate indifference on the part of Defendant Ahee.

Plaintiff also alleges that **Defendants Brewer** and **Horne** "are responsible for [state legislation that] served to diminish the medical and health services available to Plaintiff Olmos." Plaintiff further alleges that this state legislation mandated "the privatization of ADC's medical and health care system" at lower funding levels and "a 5% reduction in force for all state departments." Plaintiff asserts that "Defendant Brewer, in her official capacity as head of Arizona's Executive Branch of Government, is responsible for the implementation of these laws" and that "Defendant Horne, in his official capacity as Attorney General of the State of Arizona, is responsible for the enforcement of the foregoing laws."

The roles that Defendants Brewer and Horne play in implementing and enforcing state law in general are simply too attenuated to personally link them to the denial of constitutionally sufficient medical care to Plaintiff in prison. Rizzo v. Goode, 423 U.S. 362, 371-72 (1976). To state a claim against a state official, the civil rights complainant must allege that the official personally participated in the constitutional deprivation, or that a state supervisory official was aware of the widespread abuses and with deliberate indifference to the inmate's constitutional rights failed to take action to prevent further misconduct. King, 814 F.2d at 568; see also Monell v. New York City Department of Social Services, 436 U.S.

658, 691 (1978); Williams v. Cash, 836 F.2d 1318, 1320 (11th Cir. 1988). Plaintiff has done neither.

Accordingly, the Court will dismiss Count II for failure to state a claim upon which relief may be granted.

**C. Count III**

In Count III, Plaintiff claims that his Eighth and Fourteenth Amendment rights were violated by Defendant Ryan when he failed to provide Plaintiff with basic necessities at state expense and by Defendant Canteen when it provided him with constitutionally insufficient food.

Plaintiff alleges that **Defendant Ryan** fails to provide Plaintiff with "sufficient (a) nutrition that meets the U.S. Department of Agriculture's latest Dietary Guidelines for Americans, (b) clothing between launderings, (c) hygiene products . . . , (d) cleaning/sanitation supplies, and (e) living facilities." Plaintiff also alleges that Defendant Ryan "continues to house inmates in overcrowded dorms" and "fails to provide sufficient numbers of security staff" and "a working system at Winchester and South to notify staff of emergencies after all doors are locked." Plaintiff asserts that the "combination of overcrowding and understaffing has led to large increases in violence among inmates."

Liberally construed, Plaintiff has stated an Eighth and Fourteenth Amendment claim in Count III against Defendant Ryan. Accordingly, the Court will required Defendants Ryan to answer Count III.

Plaintiff alleges that **Defendant Canteen** "continues its practice of underfeeding Plaintiff Olmos by either watering down food or serving smaller portions than the contract calls for" and "has also served expired food." Plaintiff's allegations against Defendant Canteen do not rise to the level of constitutional violations. Simply failing "to provide food pursuant to its food service contract" or occasionally serving "expired food" is not sufficient to state a claim under the Eighth and Fourteenth Amendments.

Accordingly, the Court will dismiss Plaintiff's claims in Count III against Defendant Canteen for failure to state a claim upon which relief may be granted.

**D. Count IV**

In Count IV, Plaintiff claims that his First, Fifth, and Fourteenth Amendment rights were violated by **Defendant Ryan** when he "violated Plaintiff Olmos' right to adequate, meaningful access to the courts" by continuing "ADC's longstanding policy of not providing the generalized legal research tools needed by inmates in order to attack their sentences, directly or collaterally, or to challenge the conditions of their confinement."

Prisoners have a constitutional right of access to the courts. Lewis v. Casey, 518 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977); Coronet v. Donovan, 51 F.3d 894, 897 (9th Cir. 1995). The constitutional source of the right of access to the courts is not settled. See Lewis, 518 U.S. at 366-67 (Thomas, J., concurring). The Supreme Court in Bounds appears to consider the source to be the Fourteenth Amendment. See Bounds, 430 U.S. at 818. The Ninth Circuit Court of Appeals has stated that "[t]he right of access is grounded in the Due Process and Equal Protection Clauses." Coronet, 51 F.3d at 897. In any event, the right of access to the courts is a "fundamental constitutional right." Bounds, 430 U.S. at 828.

To establish that he was denied meaningful access to the courts, a plaintiff must submit evidence showing that he suffered an "actual injury" as a result of the defendants' actions. Lewis, 518 U.S. at 349. However, "the injury requirement is not satisfied by just any type of frustrated legal claim." Id. at 354. The legal claim must be "an actionable claim" challenging "sentences or conditions of confinement." Id. at 356. "Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." Id. at 355. Also, "the constitutional right of access requires a state to provide a law library or legal assistance only during the pleading stage of a habeas or civil rights action." Coronet, 894 F.3d at 898.

"[A]n inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is sub-par in some theoretical sense." Lewis, 518 U.S. at 351. "[T]he Constitution does not require that prisoners (literate or illiterate) be able to conduct generalized research, but only that they be able to present their grievances

to the courts – a more limited capability that can be produced by a much more limited degree of legal assistance." Id. at 360.

Plaintiff has failed to show in Count IV that he has suffered actual injury by being prevented from filing an actionable claim. Plaintiff's conclusory and vague claim that he has "suffered the loss of legal cases at the federal and state courts" is insufficient.

Accordingly, the Court will dismiss Count IV for failure to state a claim upon which relief may be granted.

**E. Count V**

In Count V, Plaintiff claims that his Fifth and Fourteenth Amendment rights were violated by **Defendant Keefe**, who operates the "inmate store," when Defendant Keefe violated a state statute by "(1) charging inmate store prices that were and still are higher than the prices of similar retail products; and (2) continuing to raise prices on inmate store products after the authorized time frame to do so had expired."

Inmates do not have a constitutional right to "canteen products." Keenan, 83 F.3d at 1092. Because Plaintiff does not have a constitutional right to purchase items from the "inmate store," it follows that he does not have a constitutional right to lower prices.

Accordingly, the Court will dismiss Count V for failure to state a claim upon which relief may be granted.

**F. Count VI**

In Count VI, Plaintiff claims that his Fifth, Eighth, and Fourteenth Amendment rights, as well as his rights under "federal OSHA regulations (codified as 29 CFR §§ 1903, -1904, -1910, -1990)," were violated by Defendants Ryan and Canteen when they failed to provide him with a "safe working environment as an inmate kitchen worker."

The Court will treat Count VI as being brought solely under the Eighth and Fourteenth Amendments because Plaintiff has not explained how any of the actions he complains about in Count VI violated his Fifth Amendment rights and the Court is unable to ascertain a Fifth Amendment right that may be implicated by Plaintiff's allegations..

Plaintiff alleges that **Defendant Ryan**'s "facilities at Winchester violated OSHA

requirements via an undersized workspace that placed Plaintiff Olmos at constant risk of being burned or suffering injuries" and also "violated OSHA requirements by not providing the required number of toilets for the total number of inmates from all shifts that worked there."

As previously noted, the subjective prong needed to show a violation of the Eighth Amendment relating to the denial of humane conditions requires that the inmate demonstrate that the deprivation was a product of "deliberate indifference" by prison personnel. Wilson, 501 U.S. at 302-03. Such indifference can only occur if "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exits, and he must also draw the inference." Farmer, 511 U.S. at 837. However, Plaintiff has failed to show that Defendant Ryan personally knew of the conditions about which Plaintiff complains in Count VI. It is insufficient to allege that these conditions existed at one of "Defendant Ryan's facilities."

Plaintiff alleges that **Defendant Canteen** "violated OSHA requirements by promulgating a rule that excludes inmates from drinking water while working." This claim against Defendant Canteen must fail because Plaintiff does not allege any injury from this rule. Instead, Plaintiff alleges that the "water prohibition did not inflict any physical injuries outside of the attempted imposition of this illegal rule, for Plaintiff Olmos disregarded the rule by sneaking drinks of water anyway." Moreover, the Court notes that "complete compliance with the numerous OSHA regulations" has not been found to be required under the Eighth Amendment. French v. Owens, 777 F.2d 1250, 1257 (7th Cir. 1985); see also Sampson v. King, 693 F.2d 566, 569 (5th Cir. 1982) (citation omitted) ("In operating a prison, . . . the state is not constitutionally required to observe all the safety and health standards applicable to private industry.").

Plaintiff also alleges that while he was "working at the kitchen facilities at Morey and Winchester" he "was not provided proper personal protection equipment for the hands, face, body, and feet," and "he witnessed that the vermin control program for the Winchester

Kitchen was inadequate to control its problem with mice and roaches." Plaintiff further alleges that he "does not know whether it is the responsibility of Defendant Ryan or Defendant Canteen" to "fulfill personal protection equipment requirements" or "to control kitchen vermin." These allegations fail to state claim under the Eighth Amendment because the are conclusory and vague and not only has Plaintiff failed to link them to the actions of either Defendant Ryan or Defendant Canteen, but also Plaintiff has failed to allege any deliberate indifference by either Defendant.

Accordingly, the Court will dismiss Count VI for failure to state a claim upon which relief may be granted.

**G. Count VII**

In Count VII, Plaintiff claims that his Fifth and Fourteenth Amendment rights to "due process, equal protection, and freedom from unconstitutional takings" were violated by Defendants Ryan, Brewer, and Horne when "illegal deductions" were made from Plaintiff's "prisoner spendable account."

Plaintiff alleges that **Defendant Ryan** "violated Plaintiff Olmos' right to be free from paying assessments and fees that have not been authorized by the legislature via a properly enacted statute," as required by the Arizona Constitution, by "promulgating ADC policies that charge inmates for photocopies, legal phone calls, legal supplies (paper, pens, etc.), legal mail postage, repayment for positive urinalysis tests, uneaten special diets, follow-up visits and prescription renewals for chronic diseases in violation of A.R.S. § 31-201.01(I)(12), replacement ID cards and ID clips, and GED testing." Plaintiff alleges that none of these charges is "grounded by a properly-enacted statute."

Liberally construed, Plaintiff has stated a due process against Defendant Ryan. Accordingly, the Court will required Defendant Ryan to answer Plaintiff's due process claim in Count VII. However, the Court will not require Defendant Ryan to answer Plaintiff's equal protection and "unconstitutional takings" claims in Count VII.

Generally, "[t]o state a claim . . . for a violation of the Equal Protection Clause . . . [,] a plaintiff must show that the defendants acted with an intent or purpose to discriminate

against the plaintiff based upon membership in a protected class." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiff has not alleged he is a member of a protected class.

The United States Supreme Court has also recognized "successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that [he] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); see also SeaRiver Maritime Financial Holdings, Inc. v. Mineta, 309 F.3d 662, 679 (9th Cir. 2002). Even under this standard, Plaintiff has failed to state a claim. Plaintiff has failed to allege that he is being treated differently than other similarly situated individuals and that there was no rational basis for treating him differently. Therefore, Plaintiff has failed to state an equal protection claim against Defendant Ryan in Count VII.

The Fifth Amendment Takings Clause prohibits the taking of private property for public use without just compensation. "In order to state a claim under the Takings Clause, a plaintiff must first demonstrate that he possesses a 'property interest' that is constitutionally protected." Schneider v. California Dept. of Corrections, 151 F.3d 1194, 1198 (9th Cir. 1998). Additionally, a prisoner cannot establish a taking under the Fifth Amendment absent a showing that his property was taken for public use. Allen v. Wood, 970 F. Supp. 824, 831 (E.D. Wash. 1997). Plaintiff has not alleged that Defendant Ryan took his property and converted it for public use. Therefore, Plaintiff has failed to state a Takings Clause claim against Defendant Ryan in Count VII.

Plaintiff alleges that **Defendant Brewer** is "responsible for the implementation" of state laws "to fund a transition program" and that **Defendant Horne** "is responsible for the enforcement" of the these laws. Plaintiff further alleges that these state laws "order[] a 5% deduction from an inmate's gross wages to fund a transition program, even if the inmate is statutorily excluded form participating in said program." Plaintiff asserts that Defendants Brewer and Horn have violated his constitutional rights "by the implementation and enforcement of statutes that serve to make illegal deductions from Plaintiff Olmos' prisoner

spendable account, for Plaintiff Olmos is statutorily excluded from participating in the transition program."

Plaintiff's allegations against Defendants Brewer and Horn are conclusory and vague. Plaintiff does not allege how the statute requiring a 5% deduction from his wages is "illegal." Moreover, the roles that Defendants Brewer and Horne play in implementing and enforcing state law in general are too attenuated to personally link them to the denial of any constitutional rights Plaintiff may have in not having deductions made from his wages in prison. Rizzo, 423 U.S. at 371-72.

As previously noted, to state a claim against a state official, the civil rights complainant must allege that the official personally participated in the constitutional deprivation, or that a state supervisory official was aware of the widespread abuses and with deliberate indifference to the inmate's constitutional rights failed to take action to prevent further misconduct. King, 814 F.2d 5at 568; see also Monell, 436 U.S. at 691; Williams, 836 F.2d at 1320. Plaintiff has done neither.

Accordingly, the Court will dismiss Plaintiff's claims in Count VII against Defendants Brewer and Horne for failure to state a claim upon which relief may be granted.

**H. Count VIII**

In Count VIII, Plaintiff claims that his Fifth and Fourteenth Amendment rights were violated by **Defendant Ryan** when he "failed to pay either actual or constructive interest on moneys that have been held in Plaintiff Olmos' prisoner spendable account and dedicated discharge account." Plaintiff alleges that this amounts to "an unconstitutional taking of his property."

Liberally construed, Plaintiff has stated a Fifth and Fourteenth Amendment claim in Count VIII. See Schneider v. California Dep't of Corrections, 151 F.3d 1194 (9th Cir. 1998) (despite California statute to the contrary, inmate possesses constitutionally cognizable property interest in interest earned on funds in inmate's personal account); see also Tellis v. Godinez, 5 F.3d 1314 (9th Cir. 1993) (under provisions of Nevada statute, inmates had property interest in interest earned on funds in inmate's personal account).

Accordingly, the Court will required Defendant Ryan to answer Count VIII.

**I. Count IX**

In Count IX, Plaintiff claims that his Fifth and Fourteenth Amendment rights to "due process, equal protection, and freedom from unconstitutional takings" were violated by Defendants Ryan and Hall when they abridged his "state-created property interests."

Plaintiff alleges that **Defendant Ryan** "violated the inmate compensation requirements of A.R.S. § 31-254(A) and A.R.S. § 41-1624.01(A)-(B)," that he "downgraded the skill level of education aides . . . from skilled to semi-skilled when an automated system (called TOSS) was rolled out without changing any of the duties of the position to reflect the lowered skill level, resulting in a 5¢ per hour decrease in compensation," and that he has "continued the ADC's policy of not paying kitchen and inmate store workers (who perform labor or services for Defendants Canteen and Keefe, who are private contractors) a minimum of $2.00 per hour." Plaintiff further alleges that Defendant Ryan "financially injured" him "by underpaying him 5¢/hour in his current position as an education aide."

Liberally construed, Plaintiff has stated a due process against Defendant Ryan. See Piatt v. MacDougall, 773 F.2d 1032 (9th Cir. 1985) (en banc) (where state statute provides inmates right to compensation, state cannot deny compensation without due process).

Accordingly, the Court will required Defendant Ryan to answer Plaintiff's due process claim in Count IX. However, as explained in more detail below, the Court will not require Defendant Ryan to answer Plaintiff's equal protection and "unconstitutional takings" claims in Count IX.

Plaintiff alleges that **Defendant Hall** "refused to pay Winchester inmates pursuant to ADC's pay scale outlined in DO 903, in violation of his duties as the inmate pay coordinator." Plaintiff further alleges that Defendant Hall "financially injured" him "by underpaying him for his past work as a Winchester kitchen worker."

A state employee who intentionally and without authorization deprives a person of his property does not violate the Due Process Clause if a meaningful post-deprivation remedy for the loss is available. Hudson v. Palmer, 468 U.S. 517, 533 (1984). A prison grievance

procedure for property loss claims can provide an adequate post-deprivation remedy. See Al-Ra'id v. Ingle, 69 F.3d 28, 32 (5th Cir. 1995); see also Wright v. Riveland, 219 F.3d 905, 918 (9th Cir. 2000) (prisoners in Washington have adequate post-deprivation remedies to challenge deductions from inmate accounts by utilizing the prison grievance procedure or by filing a state tort action).

The ADC provides a grievance procedure for property claims. See Department Order 909.12. Arizona prison inmates can use the inmate grievance system to file claims seeking reimbursement for property loss or damage. Id. Because Plaintiff has an adequate post-deprivation remedy through the prison grievance procedure, he has failed to state a claim under the Due Process Clause against Defendant Hall in Count IX.

Plaintiff has failed to state an equal protection claim against either Defendant Ryan or Hall in Count IX because he does not allege in Count IX that he is being treated differently than other similarly situated individuals and that there was no rational basis for treating him differently. Also, Plaintiff has failed to state a Takings Clause claim against either Defendant Ryan or Hall in Count IX because he has not alleged that Defendant Ryan or Hall took his property and converted it for public use.

Accordingly, the Court will dismiss Plaintiff's claims in Count IX against Defendant Hall and will dismiss Plaintiff's equal protection and Takings Clause claims against Defendant Ryan for failure to state a claim upon which relief may be granted.

**J. Count X**

In Count X, Plaintiff claims that his Fifth and Fourteenth Amendment rights to "due process, equal protection, and freedom from unconstitutional takings" were violated by **Defendant Ryan** when he promulgated "an ADC policy that demands that Plaintiff Olmos surrender all orange-colored clothing purchased at the inmate store to ADC staff on his release date without any compensation." Plaintiff alleges that "[u]pon release," he "will incur a property injury by having his clothing taken by ADC staff due to Defendant Ryan's policy" and he will be injured financially by "being compelled to purchase replacement clothing." Although Plaintiff does not allege that he has actually been injured yet, he does

seek both declaratory and prospective injunctive relief.

Liberally construed, Plaintiff has stated a due process against Defendant Ryan. Accordingly, the Court will required Defendant Ryan to answer Plaintiff's due process claim in Count X. However, for the same reasons discussed above in Count VII, the Court will dismiss Plaintiff's equal protection and Takings Clause claims in Count X against Defendant Ryan for failure to state a claim upon which relief may be granted.

**K. Count XI**

In Count XI, Plaintiff claims that his right to be free from prison mail policies that either violate the First, Fifth, Sixth, and Fourteenth Amendments or "do not pass the tests of Turner v. Safley, 482 U.S. 78 (1987), or Procunier v. Martinez, 416 U.S. 396 (1974)," was violated by Defendant Ryan when he enacted "ADC mail policies that do not pass legal muster." Plaintiff alleges that **Defendant Ryan** has "enacted a legal mail definition that is too narrow in scope" and that has led to his "legal mail being opened on multiple occasions." Plaintiff further alleges that Defendant Ryan has instituted "incoming mail policies" that "abridg[e] his free speech rights in a manner that does not pass the Turner test" and also has instituted a "policy that all outgoing legal mail must be mailed using first[-]class postal delivery" that violates Plaintiff's rights to "due process, equal protection, freedom from unconstitutional takings, and freedom from outgoing mail policies that do not pass the strict scrutiny test of Procunier by compelling Plaintiff Olmos to pay more postage than is necessary to mail his legal mail."

Plaintiff's claim that Defendant Ryan's legal mail definition is "too narrow" will be dismissed for failure to state a claim upon which relief may be granted. This claim is very conclusory and vague. Plaintiff does not allege what the legal mail definition is or why it is "too narrow."

Additionally, Plaintiff's claim that Defendant Ryan's "policy that all outgoing legal mail must be mailed using first[-]class postal delivery" will be dismissed for failure to state a claim upon which relief may be granted. This claim is also very conclusory and vague. Plaintiff does not allege how he is being denied due process or equal protection by this policy

and does not allege how being required to use first-class postal delivery constitutes an unconstitutional taking or does not pass the strict scrutiny test of Procunier. The Court is unaware of any constitutional right requiring an inmate to be allowed to use the cheapest method of postal delivery for his outgoing legal mail. Indeed, in certain instances the use of first-class postage is important in federal court. For example, Rule 4(c)(1) of the Federal Rules of Appellate Procedure provides in part that the filing of a notice of appeal by an inmate in either a civil or criminal case "is timely if it is deposited in the institution's internal mail system on or before the last day for filing" and "timely filing may be shown by a declaration . . . or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage was prepaid."

Liberally construed, Plaintiff has stated a First and Fourteenth Amendment claim against Defendant Ryan in Count XI regarding his incoming mail policies. Accordingly, the Court will require Defendant Ryan to answer this claim.

**L. Count XII**

In Count XII, Plaintiff claims that his First, Fifth, and Fourteenth Amendment rights were violated by Defendants "Unknown ADC mail room staff at ASPC Lewis Complex and/or Morey" when, on or about November 29, 2007, they "seized a subpoena that Plaintiff Olmos was informally serving upon the Chandler Unified School District." Plaintiff alleges that "unknown ADC staff censured the aforementioned subpoena by faxing a copy of it to the County Attorney's Office,"

Title 28 U.S.C. § 1915A(b)(1) mandates that the Court dismiss a complaint if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. Moreover, "an action may be dismissed . . . where the defense is complete and obvious from the face of the pleadings." Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984). In the absence of waiver, the Court may raise the defense of statute of limitations *sua sponte*. Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 687 (9th Cir. 1993).

In actions under 42 U.S.C. § 1983, the applicable statute of limitations is the forum state's statute of limitations for personal injury actions. Wilson v. Garcia, 471 U.S. 261, 266,

274-76 (1985); Vaughan v. Grijalva, 927 F.2d 476, 478 (9th Cir. 1991). The Arizona statute of limitations for personal injury actions is two years. See Ariz. Rev. Stat. § 12-542(1); Madden-Tyler v. Maricopa County, 943 P.2d 822, 824 (Ariz. Ct. App. 1997); Vaughan, 927 F.2d at 478.

Plaintiff's allegations in Count XII involved actions that occurred on November 2, 2007, over three years before Plaintiff filed the original Complaint in this action. Thus, Plaintiff's claim in Count XII is barred by the statute of limitations.

Accordingly, the Court will dismiss Count XII for failure to state a claim upon which relief may be granted.

**M. Count XIII**

In Count XIII, Plaintiff claims that his Fourteenth Amendment rights were violated by Defendant Ryan when he failed "to protect [Plaintiff's] personal property against damage during a non-disciplinary-related institutional move." Plaintiff alleges that Defendant Ryan's "property policy requires, that when an inmate is moved a distance of fifteen miles or more, his appliances are to be packed in boxes." Thus, Plaintiff asserts that the "onus was on Defendant Ryan to provide ADC staff with boxes pursuant to ADC policy" and that Defendant Ryan "personally participated in this deprivation by refusing to provide packing material to ADC staff as required by the aforementioned ADC policy."

Because Plaintiff has an adequate post-deprivation remedy through the prison grievance procedure for Defendant Ryan's allegedly intentional and unauthorized deprivation of packing boxes to safely transport Plaintiff's appliances, he has failed to state a claim under the Due Process Clause of the Fourteenth Amendment against Defendant Ryan in Count XIII. See Hudson, 468 U.S. at 533.

Accordingly, the Court will dismiss Count XIII for failure to state a claim upon which relief may be granted.

**N. Count XIV**

In Count XIV, Plaintiff claims that his right to be free from prison policies that do not pass the test set out in Turner v. Safley, 482 U.S. 78 (1987), was violated by Defendant

Ryan. Plaintiff alleges that Defendant Ryan is "responsible" for numerous "ADC Department Orders that do not pass the Turner test," including "Orders" that deal with such things as hair length, banning beards, tucking in shirts, the wearing of sweat pants and gym shorts, going shirtless, covering up thermal shirts, appearance changes, the use of empty containers to organize living areas, homemade lamp shades, making beds, limiting television channels, providing legal assistance to other inmates, possessing legal materials of other inmates, possessing typewriters and computers, limiting clothing and laundry bags, limiting legal books, regulating the identification and storage of religious items, limiting the value of an inmate's property, inmate property specifications, and eating leftovers.

In order to state a claim under 42 U.S.C. § 1983, Plaintiff must show that the conduct of a Defendant deprived him of a constitutional right. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985) (*en banc*). However, Plaintiff has failed to allege the violation of any specific constitutional provision in Count XIV. The test set out in Turner to which Plaintiff refers is a test used by the courts to determine if a prison regulation that "impinges on inmates' constitutional rights" is valid. Turner, 482 U.S. at 89. However, Plaintiff has not alleged that any of the "Orders" that he complains about in Count XIV impinge on a particular constitutional right.

Accordingly, the Court will dismiss Count XIV for failure to state a claim upon which relief may be granted.

**O. Count XV**

In Count XV, Plaintiff claims that his First, Fifth, and Fourteenth Amendment rights were violated by Defendants "Unknown ADC staff," Ortega, Cardoza, and Brockman when they used the "ADC's disciplinary policy to retaliate" against Plaintiff "without a legitimate penological interest for properly exercising his right to free speech."

Plaintiff alleges that he wrote to the Kansas Department of Corrections (KDOC) "in order to acquire information regarding the access to the courts it provides to inmates," and that "in addition to providing Plaintiff Olmos with the information," the "KDOC notified ADC administration of the inquiry out of courtesy and included a copy of Plaintiff Olmos'

letter." Plaintiff further alleges that Defendant **Unknown ADC staff** "ordered Defendant Ortega to 'take care' of Plaintiff Olmos, even though an unbiased review of the letter in question made it clear that the letter did not violate either state law or ADC policy," and that **Defendant Ortega** "initiated disciplinary proceedings by charging Plaintiff Olmos with fraud, even though Plaintiff Olmos' actions did not satisfy the fraud elements."

Liberally construed, Plaintiff has stated a retaliation claim against Defendant "Unknown ADC staff" and Defendant Ortega. The Court will therefore require Defendant Ortega to answer Count XV. However, the Court will not direct that service be made on Defendant "Unknown ADC Administrator(s)" at ADC at this time.[1]

Plaintiff may use the discovery processes to obtain the name of the person who he believes violated his constitutional rights. If Plaintiff discovers the true identity of this fictitious party through the discovery process, or otherwise, he may seek leave of the Court to amend his Complaint to name the individual in place of Defendant "Unknown ADC Administrator(s)."

Plaintiff also alleges that **Defendant Cardoza** "called Plaintiff Olmos to defend himself in a disciplinary hearing, even though the disciplinary clearly showed that Plaintiff Olmos had not been served a copy of the disciplinary report prior to the hearing," and that "Defendant Cardoza abused his discretion by modifying the fraud charge" to a charge that "not only did not exist in ADC policy as a disciplinable offense, but also did not share a single element of the original fraud charge." Lastly, Plaintiff alleges that **Defendant Brockman** sustained the "invalid disciplinary report" against Plaintiff.

Plaintiff has failed to state a claim for retaliation against Defendants Cardoza and Brockman because Plaintiff does not allege that they acted with a retaliatory motive. Also, to the extent that Plaintiff may be attempting to bring a due process claim against them, the due process claim must fail.

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[1]The Court presumes that the Defendant "Unknown ADC staff" that Plaintiff is referring to is the Defendant named in the First Amended Complaint as "Unknown ADC Administrator(s)."

In analyzing a due process claim, the Court must first decide whether Plaintiff was entitled to any process, and if so, whether he was denied any constitutionally required procedural safeguard. Liberty interests which entitle an inmate to due process are "generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995) (internal citations omitted).

Therefore, to determine whether an inmate is entitled to the procedural protections afforded by the Due Process Clause of the Fourteenth Amendment, the Court must look to the particular restrictions imposed and ask whether they "'present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest.'" Mujahid v. Meyer, 59 F.3d 931, 932 (9th Cir. 1995) (quoting Sandin, 515 U.S. at 486).

To determine whether the sanctions are atypical and a significant hardship, courts look to prisoner's conditions of confinement, the duration of the sanction, and whether the sanction will affect the duration of the prisoner's sentence. See Keenan, 83 F.3d at 1088-89. "Atypicality" requires not merely an empirical comparison, but turns on the importance of the right taken away from the prisoner. See Carlo v. City of Chino, 105 F.3d 493, 499 (9th Cir. 1997). See *e.g.*, Sandin, 515 U.S. at 472 (30 days' disciplinary segregation is not atypical and significant); Torres v. Fauver, 292 F.3d 141, 151 (3rd Cir. 2002) (four months in administrative segregation is not atypical and significant); Jacks v. Crabtree, 114 F.3d 983 (9th Cir. 1997) (denial of year sentence reduction is not an atypical and significant hardship); Jones v. Baker, 155 F.3d 810 (6th Cir. 1998) (two and one-half years of administrative segregation is not atypical and significant); Griffin v. Vaughn, 112 F.3d 703, 706-708 (3rd Cir. 1997) (fifteen months' administrative segregation is not atypical and significant); Beverati v. Smith, 120 F.3d 500, 504 (4th Cir. 1997) (six months of confinement in especially disgusting conditions that were "more burdensome than those imposed on the general prison population" were not "atypical . . . in relation to the ordinary incidents of

prison life").

In Count XV, Plaintiff has not alleged or shown that sanctions imposed as a result of his disciplinary conviction violated a liberty interest he had under the Due Process Clause itself, or imposed an "atypical and significant hardship" on him. Sandin, 515 U.S. at 484. Indeed, Plaintiff has not identified any of the sanctions imposed on him. Therefore, Plaintiff has failed to state a cognizable due process claim against Defendants Cardoza and Brockman.

Accordingly, Plaintiff's claims against Defendants Cardoza and Brockman in Count XV will be dismissed for failure to state a claim upon which relief may be granted.

**VII. Dismissal of Defendants**

Because no claims remain against them, the Court will dismiss Defendants GEO, Canteen, Keefe, Brewer, Ahee, Cardoza, "Unknown ADC Security Officer(s)" at the Mail Room of the Arizona State Prison Complex-Lewis (ASPC-Lewis) and/or the Morey Unit of ASPC-Lewis, Hall, Horne, and Brockman from this action for failure to state a claim upon which relief may be granted.

**VIII. Motion for Order to Return Documents Not Filed by Clerk**

On March 2, 2011, Plaintiff filed a "Motion For Order To Return Of Documents Not Filed By Clerk" (Doc. 20), in which he moves the Court to order the Clerk of Court to return the "556-page 'Complaint Addendum' (Docs. 2 [part] and 3) and 'Memorandum Establishing Conformance With 42 U.S.C. § 1997(e)[']  (Doc. 8), which is over 150 pages in length." Plaintiff alleges that he cannot afford to recopy these documents.

By Order filed February 9, 2011 (Doc. 11), the Court directed the Clerk of Court not to file these two lodged documents. For good cause shown, the Court will grant Plaintiff's Motion and direct the Clerk of Court to return the unfiled documents to Plaintiff.

**IX. Motion for Assistance in Locating Select Defendants for Service**

On May 2, 2011, Plaintiff filed a "Motion For Assistance In Locating Select Defendants For Service Of Pleadings" (Doc. 25), in which Plaintiff moves the Court to "order Defendant Ryan and/or the Arizona Attorney General to assist Plaintiff and the U.S. Marshal[] in locating and serving Defendants Ahee, Hall, Ortega, and Brockman." Plaintiff's Motion

will be denied without prejudice.

This Order dismisses Defendants Ahee, Hall, and Brockman from this action and therefore, there is no need for Plaintiff to locate and serve these Defendants. As to Defendant Ortega, Plaintiff states that his "only confirmed information on Defendant Ortega is his officer badge number (CO II # 2083) at the time of the incident described in Count XV" and that Defendant Ortega's "first name and current employment information/location was provided to Plaintiff by a prison staff member that did not know Defendant Ortega personally." Accordingly, it appears that Plaintiff has sufficient information to complete a service packet for Defendant Ortega. If Plaintiff's information proves to be insufficient, and the U.S. Marshal is unable to obtain enough information to serve Defendant Ortega, then Plaintiff may approach the Court with this matter again.

**X. Warnings**

**A. Release**

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

**B. Address Changes**

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

**C. Copies**

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

**D. Possible Dismissal**

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

**IT IS ORDERED:**

(1) Plaintiff's "Motion For Enlargement Of Time To File First Amended Complaint" (Doc. 19) is **granted** and Plaintiff's First Amended Complaint (Doc. 21), which was filed on March 14, 2011, is accepted as being timely filed.

(2) Plaintiff's "Motion For Leave To Suspend Enforcement Of Local Rules Upon Pro Se Litigant" (Doc. 23) is **granted** to the extent that the Court accepts Plaintiff's First Amended Complaint (Doc. 21) in the form in which it was filed.

(3) Plaintiff's "Motion For Order To Return Of Documents Not Filed By Clerk" (Doc. 20) is **granted** and the Clerk of Court **must return** Plaintiff's unfiled "556-page 'Complaint Addendum'" (Docs. 2 [part] and 3) and "Memorandum Establishing Conformance With 42 U.S.C. § 1997(e)" (Doc. 8) to Plaintiff.

(4) Plaintiff's "Motion For Assistance In Locating Select Defendants For Service Of Pleadings" (Doc. 25) is **denied without prejudice**.

(5) Defendants GEO Group, Inc.; Compass Group – North America Division, d.b.a. Canteen Correctional Services; Keefe Group, d.b.a. Keefe Commissary Network; Janice K. Brewer; Ferris D. Ahee; Daniel Cardoza; "Unknown ADC Security Officer(s)" at the Mail Room of the Arizona State Prison Complex-Lewis and/or the Morey Unit of ASPC-Lewis; Eric Hall; Thomas C. Horne; and Timothy Brockman are **dismissed** from this action.

(6) The following claims in the First Amended Complaint (Doc. 21) are **dismissed** for failure to state a claim upon which relief may be granted:

(a) Plaintiff's equal protection and Takings Clause claims against Defendant Charles L. Ryan in Counts VII, IX, and X;

(b) Plaintiff's legal mail policy claims, including his claim regarding the

requirement to use first-class postal delivery for legal mail, against Defendant Ryan in Count XI; and

(c) Counts I, II, IV, V, VI, XII, XIII, and XIV.

(7) The following Defendants **must answer** the following claims in the First Amended Complaint (Doc. 21):

(a) Defendant Charles L. Ryan—Plaintiff's due process claims in Counts VII, IX, and X; Counts III and VIII; and Plaintiff's free speech claim regarding his incoming mail policy in Count XI; and

(b) Defendant Allen Ortega—Plaintiff's retaliation claim in Count XV.

(8) The Clerk of Court **must send** Plaintiff a service packet including the First Amended Complaint (Doc. 21), this Order, and both summons and request for waiver forms for Defendants Charles L. Ryan and Allen Ortega.

(9) Plaintiff **must complete**[2] **and return** the service packet to the Clerk of Court within **21 days** of the date of filing of this Order. The United States Marshal will not provide service of process if Plaintiff fails to comply with this Order.

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

(11) The United States Marshal **must retain** the Summons, a copy of the First Amended Complaint, and a copy of this Order for future use.

(12) The United States Marshal **must notify** Defendants Charles L. Ryan and Allen Ortega of the commencement of this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice to Defendants must

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[2]If a Defendant is an officer or employee of the Arizona Department of Corrections, Plaintiff must list the address of the specific institution where the officer or employee works. Service cannot be effected on an officer or employee at the Central Office of the Arizona Department of Corrections unless the officer or employee works there.

include a copy of this Order. **The Marshal must immediately file signed waivers of service of the summons. If a waiver of service of summons is returned as undeliverable or is not returned by a Defendant within 30 days from the date the request for waiver was sent by the Marshal, the Marshal must**:

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

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

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

(14) Defendants Charles L. Ryan and Allen Ortega **must answer** the First Amended Complaint or otherwise respond by appropriate motion within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

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

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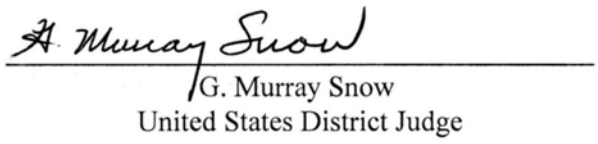
(16) This matter is **referred** to Magistrate Judge Mark E. Aspey pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized under 28 U.S.C. § 636(b)(1).

DATED this 10th day of May, 2011.



G. Murray Snow
United States District Judge