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

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Harvey Deon Kendrick,

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No. CV 10-2799-PHX-RCB (LOA)

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Plaintiff,

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**ORDER**

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vs.

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Sheriff Joseph Arpaio, et al.,

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Defendants.

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On December 28, 2010, Plaintiff Harvey Deon Kendrick, who is confined in the Arizona State Prison Complex-Tucson in Tucson, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. On February 2, 2011, Plaintiff a First Amended Complaint (Doc. 5). In a February 28, 2011 Order, the Court denied the deficient Application to Proceed and gave Plaintiff 30 days to file a complete Application to Proceed *In Forma Pauperis*.

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On March 21, 2011, Plaintiff filed a second Application to Proceed *In Forma Pauperis* (Doc. 7). The Court will grant the second Application to Proceed and will dismiss the Complaint with leave to amend.

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

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Plaintiff's second 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 \$55.88. The remainder of the fee will be collected monthly in payments of 20% of the previous month's income each

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1 time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will  
2 enter a separate Order requiring the appropriate government agency to collect and forward  
3 the fees according to the statutory formula.

## 4 **II. Statutory Screening of Prisoner Complaints**

5 The Court is required to screen complaints brought by prisoners seeking relief against  
6 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
7 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
8 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
9 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
10 28 U.S.C. § 1915A(b)(1), (2).

11 Local Rule of Civil Procedure 3.4(a) requires in part that “[a]ll complaints . . . by  
12 incarcerated persons shall be signed and legibly written or typewritten on forms approved  
13 by the Court and in accordance with the instructions provided with the forms.” Plaintiff’s  
14 First Amended Complaint violates the “one claim per count” rule that is set forth in the form  
15 Complaint and accompanying instructions. Plaintiff’s First Amended Complaint consists of  
16 three counts which assert far more than three claims. For example, Plaintiff raises five  
17 “cause[s] of action” in Count Two. Plaintiff’s First Amended Complaint will therefore be  
18 dismissed without prejudice, with leave to amend, in order for Plaintiff to file a second  
19 amended complaint that complies with Local Rule of Civil Procedure 3.4(a).

## 20 **III. Leave to Amend**

21 For the foregoing reasons, Plaintiff’s First Amended Complaint will be dismissed for  
22 failure to comply with Local Rule of Civil Procedure 3.4(a). Within 30 days, Plaintiff may  
23 submit a second amended complaint to cure the deficiencies outlined above. The Clerk of  
24 Court will mail Plaintiff a court-approved form to use for filing a second amended complaint.  
25 If Plaintiff fails to use the court-approved form, the Court may strike the second amended  
26 complaint and dismiss this action without further notice to Plaintiff.

27 Plaintiff must clearly designate on the face of the document that it is the “Second  
28 Amended Complaint.” The second amended complaint must be retyped or rewritten in its

1 entirety on the court-approved form and may not incorporate any part of the original  
2 Complaint or First Amended Complaint by reference. **Plaintiff may include only one claim**  
3 **per count.**

4 A second amended complaint supersedes the original Complaint and First Amended  
5 Complaint. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v.  
6 Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will  
7 treat the original Complaint and First Amended Complaint as nonexistent. Ferdik, 963 F.2d  
8 at 1262. Any cause of action that was raised in the original Complaint or First Amended  
9 Complaint is waived if it is not raised in a second amended complaint. King v. Atiyeh, 814  
10 F.2d 565, 567 (9th Cir. 1987).

#### 11 **IV. Warnings**

##### 12 **A. Release**

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

##### 17 **B. Address Changes**

18 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
19 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
20 relief with a notice of change of address. Failure to comply may result in dismissal of this  
21 action.

##### 22 **C. Copies**

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

##### 26 **D. Possible Dismissal**

27 If Plaintiff fails to timely comply with every provision of this Order, including these  
28 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at

1 1260-61 (a district court may dismiss an action for failure to comply with any order of the  
2 Court).

3 **IT IS ORDERED:**

4 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 7) is **granted**.

5 (2) As required by the accompanying Order to the appropriate government agency,  
6 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$55.88.

7 (3) The First Amended Complaint (Doc. 5) is **dismissed** for failure to state a claim.  
8 Plaintiff has **30 days** from the date this Order is filed to file a second amended complaint in  
9 compliance with this Order.

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

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

15 DATED this 25th day of March, 2011.

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19 Robert C. Broomfield  
20 Senior United States District Judge  
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