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

Joshua DeRoche,	)	No. CV 11-302-PHX-DGC (JRI)
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Michael Adu-Tutu, et al.,	)	
Defendants.	)	

Plaintiff Joshua DeRoche, who is confined in the Arizona State Prison Complex-Eyman, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1), an Application to Proceed *In Forma Pauperis* (Doc. 3), and a “Certified Statement Of Account” (Doc. 4). The Court will order Defendant Michael Adu-Tutu to answer the Complaint and will dismiss the remaining Defendants.

**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

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1 separate Order requiring the appropriate government agency to collect and forward the fees  
2 according 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 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts  
26 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th  
27 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards  
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1 than formal pleadings drafted by lawyers.’’ Id. (quoting Erickson v. Pardus, 551 U.S. 89,  
2 94 (2007) (*per curiam*)).

### 3 **III. Complaint**

4 Named as Defendants in the Complaint are: (1) Michael Adu-Tutu, Director of Inmate  
5 Health Services, Arizona Department of Corrections (ADOC); (2) Members of the Central  
6 Office Hepatitis C Committee, ADOC; and (3) ADOC.

7 Plaintiff’s sole claim in the Complaint is that his Eighth Amendment rights are being  
8 violated by the authorization of a clinical practice policy that denies essential health care to  
9 Plaintiff and others suffering from Hepatitis C.

10 Plaintiff seeks Court-ordered Interferon treatment for his Hepatitis C.

### 11 **IV. Dismissal of Defendants**

#### 12 **A. Members of the ADOC’s Central Office Hepatitis C Committee**

13 Plaintiff attempts to sue members of ADOC’s Central Office Hepatitis C Committee  
14 who denied his requests for treatment of his Hepatitis C. Although *pro se* pleadings are  
15 liberally construed, Haines v. Kerner, 404 U.S. 519 (1972), conclusory and vague allegations  
16 will not support a cause of action. Ivey v. Board of Regents of the University of Alaska, 673  
17 F.2d 266, 268 (9th Cir. 1982); Rhodes v. Robinson, 612 F.2d 766, 772 (3d Cir. 1979).  
18 Further, a liberal interpretation of a civil rights complaint may not supply essential elements  
19 of the claim that were not initially pled. Ivey, 673 F.2d at 268.

20 In order to state a claim against an individual in a civil rights action, Plaintiff must  
21 identify a specific individual who violated Plaintiff’s constitutional rights. See Rizzo v.  
22 Goode, 423 U.S. 362, 371-72, 377 (1976). Plaintiff’s conclusory and vague allegations  
23 against the members of the ADOC’s Central Office Hepatitis C Committee are not sufficient  
24 to link Plaintiff’s injuries to any individual member or to identify any individual member  
25 with enough specificity to state a claim against any specific individual. Moreover, the use  
26 of anonymous type appellations to identify defendants is generally not favored. Rule 10(a)  
27 of the Federal Rules of Civil Procedure requires the plaintiff to include the names of the  
28 parties in the action. As a practical matter, it is impossible in most instances for the United

1 States Marshal or his designee to serve a summons and complaint, or amended complaint,  
2 upon an anonymous defendant.

3 Accordingly, the unidentified members of the ADOC's Central Office Hepatitis C  
4 Committee will be dismissed for failure to state a claim upon which relief may be granted.

5 **B. ADOC**

6 Under the Eleventh Amendment to the Constitution of the United States, a state or  
7 state agency may not be sued in federal court without its consent. Pennhurst State School  
8 and Hosp. v. Halderman, 465 U.S. 89, 100 (1984); Taylor v. List, 880 F.2d 1040, 1045 (9th  
9 Cir. 1989). Furthermore, "a state is not a 'person' for purposes of section 1983. Likewise  
10 'arms of the State' such as the Arizona Department of Corrections are not 'persons' under  
11 section 1983." Gilbreath v. Cutter Biological, Inc., 931 F.2d 1320, 1327 (9th Cir. 1991)  
12 (citation omitted).

13 Accordingly, as an arm of the State, the ADOC is not a proper Defendant and will be  
14 dismissed from this action for failure to state a claim upon which relief may be granted.

15 **V. Claim for Which an Answer Will be Required**

16 In Count I, Plaintiff claims that his Eighth Amendment rights are being violated by  
17 Defendant Michael Adu-Tutu's authorization of a clinical practice policy that denies  
18 essential health care to Plaintiff and others suffering from Hepatitis C. Plaintiff alleges that  
19 the policy is "unconstitutional and does not accurately reflect the applicable standard of care  
20 within the community." Plaintiff further alleges that Defendant Adu-Tutu had the  
21 "opportunity to review Plaintiff's need for treatment based on community standards, but  
22 declined to do so." Plaintiff also alleges that "[u]nder the policy, inmates who are at Stage  
23 (0) and (1) fibrous (Plaintiff is at Stage 1) will not be treated." Plaintiff asserts that  
24 "[r]efusing to provide essential Hepatitis C antiviral therapy has promoted further liver  
25 damage and decreased the probability of sustaining a successful treatment response."

26 Liberally construed, Plaintiff has stated an Eighth Amendment medical care claim in  
27 Count I against Defendant Adu-Tutu. Accordingly, the Court will require Defendant  
28 Michael Adu-Tutu to answer the Complaint.

1 **VI. Warnings**

2 **A. Release**

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

7 **B. Address Changes**

8 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
9 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
10 relief with a notice of change of address. Failure to comply may result in dismissal of this  
11 action.

12 **C. Copies**

13 Plaintiff must serve Defendants, or counsel if an appearance has been entered, a copy  
14 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate  
15 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit  
16 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply  
17 may result in the filing being stricken without further notice 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 v. Bonzelet*,  
21 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
22 comply with any order of the 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) Defendants ADOC and Members of the ADOC's Central Office Hepatitis C  
2 Committee are **dismissed** from this action for failure to state a claim upon which relief may  
3 be granted.

4 (4) Defendant Michael Adu-Tutu **must answer** the Complaint (Doc. 1).

5 (5) The Clerk of Court **must send** to Plaintiff a service packet including the  
6 Complaint (Doc. 1), this Order, and both summons and request for waiver forms for  
7 Defendant Michael Adu-Tutu.

8 (6) Plaintiff **must complete<sup>1</sup> and return** the service packet to the Clerk of Court  
9 within **21 days** of the date of filing of this Order. The United States Marshal will not provide  
10 service of process if Plaintiff fails to comply with this Order.

11 (7) **If** Plaintiff does not either obtain a waiver of service of the summons or  
12 complete service of the Summons and Complaint on Defendant Adu-Tutu within 120 days  
13 of the filing of the Complaint or within 60 days of the filing of this Order, whichever is later,  
14 the action may be dismissed. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

15 (8) The United States Marshal **must retain** the Summons, a copy of the  
16 Complaint, and a copy of this Order for future use.

17 (9) The United States Marshal must notify Defendant Michael Adu-Tutu of the  
18 commencement of this action and request waiver of service of the summons pursuant to Rule  
19 4(d) of the Federal Rules of Civil Procedure. The notice to Defendant must include a copy  
20 of this Order. **The Marshal must immediately file signed waivers of service of the**  
21 **summons. If a waiver of service of summons is returned as undeliverable or is not**  
22 **returned by Defendant within 30 days from the date the request for waiver was sent by**  
23 **the Marshal, the Marshal must:**

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

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26  
27 <sup>1</sup>If a Defendant is an officer or employee of the ADOC, Plaintiff must list the address  
28 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 ADOC unless the officer or employee  
works there.

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

10 (10) **If Defendant agrees to waive service of the Summons and Complaint, he**  
11 **must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

12 (11) Defendant Michael Adu-Tutu **must answer** the Complaint or otherwise  
13 respond by appropriate motion within the time provided by the applicable provisions of Rule  
14 12(a) of the Federal Rules of Civil Procedure.

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

18 DATED this 13<sup>th</sup> day of April, 2011.

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23 David G. Campbell  
24 United States District Judge  
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