

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

KM

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

William Mark Isbell,
Plaintiff,

vs.

Charles L. Ryan, et al.,
Defendants.

No. CV 11-391-PHX-JAT (JRI)

ORDER

Plaintiff William Mark Isbell, 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 and paid the filing fee. The Court will order Defendants to answer the Complaint.

I. 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

TERMPREF

1 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
2 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
3 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
4 statements, do not suffice.” Id.

5 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
6 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
7 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
8 that allows the court to draw the reasonable inference that the defendant is liable for the
9 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
10 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
11 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
12 allegations may be consistent with a constitutional claim, a court must assess whether there
13 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

14 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
15 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
16 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
17 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,
18 94 (2007) (*per curiam*)).

19 **II. Complaint**

20 Plaintiff names the following Defendants in the Complaint: Arizona Department of
21 Corrections Director Charles L. Ryan, Deputy Warden Alfred Ramos, Associate Deputy
22 Warden Jack Heet Warden Ernie Trujillo, Senior Chaplain D. Henderson, and Chaplain A.
23 Miser.

24 Plaintiff raises one ground for relief in the Complaint. Plaintiff claims that
25 Defendants violated his First Amendment rights and rights under the Religious Land Use and
26 Institutionalized Persons Act (“RLUIPA”) when they denied him a vegetarian diet. Plaintiff
27 alleges that his religious beliefs only allow him to consume meat that has been killed and
28 processed in a specific manner and that because he cannot control how the meat he receives

1 is processed, he requested a vegetarian diet. Plaintiff alleges that he explained his religious
2 beliefs to each Defendant but that each Defendant denied his request for a vegetarian diet.
3 Plaintiff further alleges that by declining to eat the meat included in his meals, he does not
4 receive sufficient food to maintain his health.

5 Plaintiff seeks declaratory and injunctive relief as well as money damages.

6 Liberally construed, Plaintiff's allegations adequately state a claim under the First
7 Amendment and RLUIPA, and the Court will require Defendants to answer the Complaint.

8 **III. Warnings**

9 **A. 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 **B. Copies**

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

20 **C. Possible Dismissal**

21 If Plaintiff fails to timely comply with every provision of this Order, including these
22 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
23 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
24 comply with any order of the Court).

25 **IT IS ORDERED:**

26 (1) The Clerk of Court must send Plaintiff a service packet including the
27 Complaint (Doc. 1), this Order, and both summons and request for waiver forms for
28 Defendants Ryan, Ramos, Heet, Trujillo, Henderson, and Miser.

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

4 (3) If Plaintiff does not either obtain a waiver of service of the summons or
5 complete service of the Summons and Complaint on a Defendant within 120 days of the
6 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the
7 action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv
8 16.2(b)(2)(B)(I).

9 (4) The United States Marshal must retain the Summons, a copy of the Complaint,
10 and a copy of this Order for future use.

11 (5) The United States Marshal must notify Defendants of the commencement of
12 this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal
13 Rules of Civil Procedure. The notice to Defendants must include a copy of this Order. The
14 Marshal must immediately file requests for waivers that were returned as undeliverable and
15 waivers of service of the summons. If a waiver of service of summons is not returned by a
16 Defendant within 30 days from the date the request for waiver was sent by the Marshal, the
17 Marshal must:

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

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

