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

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10	Sergio Mendez,	)	No. CV 12-271-PHX-RCB (MHB)
11	Plaintiff,	)	<b>ORDER</b>
12	vs.	)	
13		)	
14	Charles L. Ryan, et al.,	)	
15	Defendants.	)	

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17 Plaintiff Sergio Mendez, who is confined in the Arizona State Prison Complex-  
18 Eyman, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and paid the  
19 filing fee. The Court will order Defendants Ryan, Freeland, Mendoza, McCarville, and  
20 Herman to answer the Complaint and will dismiss the remaining Defendants without  
21 prejudice.

22 **I. Statutory Screening of Prisoner Complaints**

23 The Court is required to screen complaints brought by prisoners seeking relief against  
24 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
25 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
26 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
27 be granted, or that seek monetary relief from a defendant who is immune from such relief.

28 **TERMPSPREF**

1 28 U.S.C. § 1915A(b)(1), (2).

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

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

17 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts  
18 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th  
19 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards  
20 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,  
21 94 (2007) (*per curiam*)).

## 22 **II. Complaint**

23 Plaintiff names the following Defendants in the Complaint: Arizona Department of  
24 Corrections Director Charles L. Ryan; Deputy Wardens Freeland, Mendoza, and McCarville;  
25 S.S.U. Officers Espinoza, Costello, and Valadez; and STG VC-Chair George Herman.

26 Plaintiff raises one claim for relief in which he alleges his Fourteenth Amendment due  
27 process rights were violated during his Security Threat Group (“STG”) validation  
28 proceedings. Plaintiff claims that his validation was based entirely on hearsay evidence and

1 was therefore invalid because evidence used during disciplinary or segregation proceedings  
2 must have some indicia of reliability. See Cato v. Rushen, 824 F.2d 703, 706 (9th Cir. 1987).  
3 Plaintiff claims that he was entitled to due process protections because the conditions of  
4 confinement in the STG unit are atypical.

5 Plaintiff alleges that Defendant Ryan establishes STG validation policy for the  
6 Arizona Department of Corrections, that Defendants Freeland, Mendoza, and McCarville are  
7 responsible for validating him based on unreliable evidence, and that Defendant Herman  
8 denied his appeal of the validation.

9 Plaintiff seeks declaratory and injunctive relief.

### 10 **III. Failure to State a Claim**

11 With respect to Defendants Espinoza, Costello, and Valadez, Plaintiff alleges only that  
12 these Defendants were responsible for writing the incident reports which contained hearsay  
13 evidence and were used during Plaintiff's validation proceedings. These allegations are not  
14 sufficient to establish § 1983 liability against the reporting officers. See Smith v.  
15 Mensinger, 293 F.3d 641, 654 (3d Cir. 2002) (“[M]ere allegations of falsified evidence or  
16 misconduct reports, without more, are not enough to state a due process claim.”).

17 The Court will therefore dismiss Defendants Espinoza, Costello, and Valadez because  
18 Plaintiff has failed to state a claim against them.

### 19 **IV. Claims for Which an Answer Will be Required**

20 Liberally construed, Plaintiff has adequately stated a Fourteenth Amendment due  
21 process claim against Defendants Ryan, Freeland, Mendoza, McCarville, and Herman. The  
22 Court will require these Defendants to answer the Complaint.

### 23 **V. Warnings**

#### 24 **A. Address Changes**

25 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
26 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
27 relief with a notice of change of address. Failure to comply may result in dismissal of this  
28 action.

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**B. 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.

**C. 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) Defendants Espinoza, Costello, and Valadez are **dismissed** without prejudice.
- (2) Defendants Ryan, Freeland, Mendoza, McCarville, and Herman must answer the Complaint.
- (3) The Clerk of Court must send Plaintiff a service packet including the Complaint (Doc. 1), this Order, and both summons and request for waiver forms for Defendants Ryan, Freeland, Mendoza, McCarville, and Herman.
- (4) Plaintiff must complete<sup>1</sup> 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.
- (5) If Plaintiff does not either obtain a waiver of service of the summons or complete service of the Summons and 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

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<sup>1</sup>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.

1 16.2(b)(2)(B)(I).

2 (6) The United States Marshal must retain the Summons, a copy of the Complaint,  
3 and a copy of this Order for future use.

4 (7) The United States Marshal must notify Defendants of the commencement of  
5 this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal  
6 Rules of Civil Procedure. The notice to Defendants must include a copy of this Order. **The  
7 Marshal must immediately file signed waivers of service of the summons. If a waiver  
8 of service of summons is returned as undeliverable or is not returned by a Defendant  
9 within 30 days from the date the request for waiver was sent by the Marshal, the  
10 Marshal must:**

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

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

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

24 (9) Defendants must answer the Complaint or otherwise respond by appropriate  
25 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal  
26 Rules of Civil Procedure.

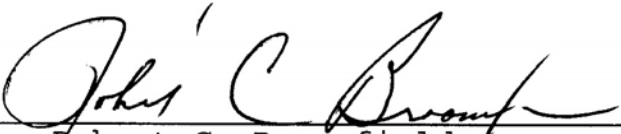
27 (10) Any answer or response must state the specific Defendant by name on whose  
28 behalf it is filed. The Court may strike any answer, response, or other motion or paper that

1 does not identify the specific Defendant by name on whose behalf it is filed.

2 (11) This matter is referred to Magistrate Judge Michelle H. Burns pursuant to Rules  
3 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized  
4 under 28 U.S.C. § 636(b)(1).

5 DATED this 26th day of March, 2012.

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Robert C. Broomfield  
Senior United States District Judge