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

Richard Johnson,  
Plaintiff,  
vs.  
Sergeant Juvera, et al.,  
Defendants.

) No. CV 12-539-PHX-GMS (DKD)

**ORDER**

Plaintiff Richard Johnson, who is confined in the Maricopa County Fourth Avenue Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed *In Forma Pauperis* (Doc. 2). The Court will order Defendants to answer Count Three of the Complaint and will dismiss Counts One and Two without prejudice.

**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 assess an initial partial filing fee of \$14.40. The remainder of the 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 separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief against  
3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
6 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
7 28 U.S.C. § 1915A(b)(1), (2).

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

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

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

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1 **III. Complaint**

2 In his three-count Complaint, Plaintiff sues the following Defendants at the Arizona  
3 State Prison Complex-Lewis: Sergeant Juvera and Correctional Officer IIs Jackson, David  
4 Cruz, Larry Brown, and Mark Reed.

5 Plaintiff alleges that he was subjected to cruel and unusual punishment, in violation  
6 of the Eighth Amendment. Plaintiff asserts that Defendants Juvera and Jackson did not  
7 require inmates who triggered a metal detector alarm to submit to additional searches or to  
8 again pass through the metal detector. Plaintiff also contends that Defendants Cruz and  
9 Brown failed to properly control inmate movements, allowing inmates from different  
10 buildings, who were supposed to be locked down and kept separate because they had been  
11 continually assaulting each other, out of their cells, out of their buildings, onto the recreation  
12 field, and through locked fences. Plaintiff also alleges that Defendant Reed was inattentive  
13 to his duties and was confused about his duties, permitting inmates onto the yard although  
14 they were supposed to be locked into their cells and separated. Plaintiff contends that  
15 Defendants and other officers on the yard had an ongoing problem with assaults caused by  
16 allowing the same groups of inmates to come into contact with each other when they were  
17 supposed to be kept separate because of security concerns.

18 Plaintiff contends that, as a result of Defendants' actions and inactions, he was  
19 stabbed. He asserts that an inmate who triggered the metal detector alarm but was permitted  
20 by Defendants Juvera and Jackson to pass through without an additional search, was involved  
21 in Plaintiff's stabbing. He also contends that the officers purposely allowed the assault to  
22 occur.

23 Plaintiff's allegations in all three counts are essentially the same,<sup>1</sup> although in Count  
24 Three, Plaintiff alleges that Defendants acted with deliberate indifference and knew their  
25 actions created a substantial risk or had a subjective awareness of a risk.

26 In his Request for Relief, Plaintiff seeks injunctive relief and monetary damages.

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28 <sup>1</sup>The Court notes that Plaintiff makes additional allegations against nonparties in  
Counts One and Two.

1 **IV. Discussion**

2 Liberally construed, Plaintiff has stated an Eighth Amendment deliberate indifference  
3 claim. Because Counts One and Two are duplicative of the more clearly pled allegations in  
4 Count Three, the Court will dismiss Counts One and Two and will require Defendants to  
5 answer Count Three.

6 **V. Warnings**

7 **A. Release**

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

12 **B. Address Changes**

13 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
14 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
15 relief with a notice of change of address. Failure to comply may result in dismissal of this  
16 action.

17 **C. Copies**

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

23 **D. Possible Dismissal**

24 If Plaintiff fails to timely comply with every provision of this Order, including these  
25 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,  
26 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
27 comply with any order of the Court).

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1           **IT IS ORDERED:**

2           (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

3           (2) As required by the accompanying Order to the appropriate government agency,  
4 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$14.40.

5           (3) Counts One and Two are **dismissed** without prejudice because they are  
6 duplicative.

7           (4) Defendants Juvera, Jackson, Cruz, Brown, and Reed must answer Count Three.

8           (5) The Clerk of Court must send Plaintiff a service packet including the  
9 Complaint (Doc. 1), this Order, and both summons and request for waiver forms for  
10 Defendants Juvera, Jackson, Cruz, Brown, and Reed.

11           (6) Plaintiff must complete<sup>2</sup> and return the service packet to the Clerk of Court  
12 within 21 days of the date of filing of this Order. The United States Marshal will not provide  
13 service of process if Plaintiff fails to comply with this Order.

14           (7) If Plaintiff does not either obtain a waiver of service of the summons or  
15 complete service of the Summons and Complaint on a Defendant within 120 days of the  
16 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the  
17 action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv  
18 16.2(b)(2)(B)(i).

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

21           (9) The United States Marshal must notify Defendants of the commencement of  
22 this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal  
23 Rules of Civil Procedure. The notice to Defendants must include a copy of this Order. **The**  
24 **Marshal must immediately file signed waivers of service of the summons. If a waiver**

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27           <sup>2</sup>If a Defendant is an officer or employee of the Arizona Department of Corrections,  
28 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 **of service of summons is returned as undeliverable or is not returned by a Defendant**  
2 **within 30 days from the date the request for waiver was sent by the Marshal, the**  
3 **Marshal must:**

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

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

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

17 (11) Defendants must answer the Complaint or otherwise respond by appropriate  
18 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal  
19 Rules of Civil Procedure.

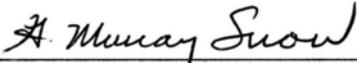
20 (12) Any answer or response must state the specific Defendant by name on whose  
21 behalf it is filed. The Court may strike any answer, response, or other motion or paper that  
22 does not identify the specific Defendant by name on whose behalf it is filed.

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(13) This matter is referred to Magistrate Judge David K. Duncan 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 27th day of March, 2012.

  
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G. Murray Snow  
United States District Judge