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

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Beauford Powell,)	No. CV 12-0663-PHX-GMS (DKD)
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
Shawn Magness,)	
)	
Defendant.)	

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Plaintiff Beauford Powell, who is confined in the Fourth Avenue Jail in Phoenix, Arizona, filed a *pro se* civil rights Complaint in state court. (Doc. 1.) On March 28, 2012, Defendant removed the case to federal court and paid the \$350.00 filing fee. (Id.) The Court dismissed the Complaint with leave to amend for failure to state a claim. (Doc. 5.) Plaintiff filed a First Amended Complaint. (Doc. 6.) The Court dismissed two of Plaintiff’s claims but ordered service of the First Amended Complaint on Defendant as to a third claim. (Doc. 8.) However, the Court stayed the filing of a response by Defendant Magness as to that claim pending further Court order and ordered Magness to file a notice every 90 days regarding the status of Plaintiff’s state criminal cases. (Id.)

On September 17, 2012, Plaintiff filed an Application to Proceed *In Forma Pauperis*. (Doc. 12.) Because *Defendant* removed this case to federal court, *Defendant* was obligated to pay the \$350.00 filing fee. For that reason, the Court denied Plaintiff’s application as moot. (Doc. 14.)

On September 24, 2012, Plaintiff submitted a “Second Amended Complaint” and another Application to Proceed *In Forma Pauperis*. (Doc. 15, 16.) On October 12, 2012,

1 Defendant filed a motion to strike the Second Amended Complaint. (Doc. 19.) Plaintiff's
2 *in forma pauperis* application will be denied as moot for the reasons stated in the Court's
3 September 18, 2012 Order, doc. 14. Defendant's motion to strike will be granted. Rule 15(a)
4 of the Federal Rules of Civil Procedure provides that a party may amend its pleading once
5 as a matter course within 21 days after serving it, or if the pleading is one to which a
6 responsive pleading is required, 21 days after service of a responsive pleading or 21 days
7 after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. "In all other
8 cases, a party may amend its pleading only with the opposing party's written consent or the
9 court's leave." Fed. R. Civ. P. 15(a)(2). The Court ordered service of the First Amended
10 Complaint on July 20, 2012. Plaintiff's "Second Amended Complaint" was filed on
11 September 24, 2012, more than 21 days after service. Therefore, Plaintiff was required to
12 either to seek leave of Court or the written consent of the Defendant before again amending
13 the complaint. Plaintiff failed to do either. Accordingly, Plaintiff's "Second Amended
14 Complaint" is stricken.

15 On October 5, 2012, Plaintiff filed a motion for clarification, which will be granted
16 to the extent set forth herein. (Doc. 18.) In this motion, Plaintiff seeks clarification as to
17 whether he is obligated to pay any portion of the federal filing fee citing a standard warning
18 included in the Court's September 18 Order. That warning, in section A, requires an inmate
19 to notify the Court that he intends to pay the balance of the federal filing fee or show good
20 cause why he cannot within 30 days after his release. (Doc. 14 at 1-2.) Because this case
21 was removed from state court by Defendant, Plaintiff is not obligated to pay the federal filing
22 fee; the warning was erroneously included in that Order.

23 **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 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.

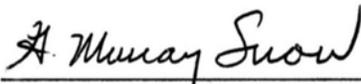
C. Possible Dismissal

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 at 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) Plaintiff's Application to Proceed *In Forma Pauperis* is **denied** as moot. (Doc. 16.)
- (2) Plaintiff's motion for clarification is **granted** to the extent set forth herein. (Doc. 18.)
- (3) Defendant's motion to strike the Second Amended Complaint, doc. 19, is **granted** and the Second Amended Complaint, doc. 15, is ordered **stricken**.

DATED this 17th day of October, 2012.



G. Murray Snow
United States District Judge