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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Joshua James Gerst,

) No. CV 12-1353-PHX-RCB (JFM)

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Plaintiff,

ORDER

11

vs.

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Joseph M. Arpaio,

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Defendant.

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Plaintiff Joshua James Gerst, who is confined in the Arizona State Prison Complex-

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Lewis, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an

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Application to Proceed *In Forma Pauperis*. In an August 6, 2012 Order, the Court granted

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the Application to Proceed, dismissed the Complaint, and granted Plaintiff 30 days to file

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an amended complaint. On August 22, 2012, Plaintiff filed a Notice of Change of Address

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(Doc. 10) and a Motion for Status of Service of Process (Doc. 9). On October 5, 2012, the

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Clerk of Court re-sent the August 6th Order to Plaintiff at his new address.

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I. Motion and Extension of Time to File Amended Complaint

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In his Motion for Status, Plaintiff asks that the Court inform him of the status of

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service of his Complaint. The Court has dismissed the Complaint with leave to amend. If

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Plaintiff files an amended complaint, the Court will review the amended complaint to

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determine whether service is appropriate.

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Because it appears that Plaintiff did not receive the August 6th screening Order until

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this month, the Court will give Plaintiff 30 days from the filing date of this Order to file an

1 amended complaint.

2 **II. Warnings**

3 **A. Release**

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

8 **B. Address Changes**

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

13 **C. Copies**

14 Plaintiff must submit an additional copy of every filing for use by the Court. See
15 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
16 to Plaintiff.

17 **D. Possible “Strike”**

18 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails
19 to file an amended complaint correcting the deficiencies identified in the August 6, 2012
20 Order, the dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C.
21 § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action or appeal
22 a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more
23 prior occasions, while incarcerated or detained in any facility, brought an action or appeal
24 in a court of the United States that was dismissed on the grounds that it is frivolous,
25 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is
26 under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

27 **E. Possible Dismissal**

28 If Plaintiff fails to timely comply with every provision of the August 6, 2012 Order,

1 or this Order, including these warnings, the Court may dismiss this action without further
2 notice. See Ferdik v. Bonzelet, 963 F.2d 1258,1260-61(9th Cir. 1992) (a district court may
3 dismiss an action for failure to comply with any order of the Court).


4 **IT IS ORDERED:**

5 (1) Plaintiff's August 22, 2012 Motion for Status (Doc. 9) is **granted** insofar as
6 this Order informs Plaintiff of the status of this case.

7 (2) Plaintiff has **30 days** from the date this Order is filed to file a first amended
8 complaint in compliance with the August 6, 2012 Order.

9 (3) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
10 Court must, without further notice, enter a judgment of dismissal of this action with prejudice
11 that states that the dismissal may count as a "strike" under 28 U.S.C. § 1915(g).

12 DATED this 18th day of October, 2012.

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16 Robert C. Broomfield
17 Senior United States District Judge
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