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

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Joshua Erik Bowler,

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No. CV 13-0046-PHX-RCB (JFM)

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Plaintiff,

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ORDER

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vs.

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Charles L. Ryan, et al.,

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Defendants.

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Plaintiff Joshua Erik Bowler, who is confined in the Arizona State Prison Complex-
Eyman, Browning Unit, in Florence, Arizona, filed a *pro se* civil rights Complaint pursuant
to 42 U.S.C. § 1983, which the Court dismissed for failure to state a claim with leave to
amend. (Doc. 6.) Plaintiff filed a First Amended Complaint. (Doc. 11.) On August 12,
2013, the Court dismissed the First Amended Complaint for failure to state a claim with leave
to amend within 30 days. (Doc. 13.) On September 12, 2013, Plaintiff filed a motion for
extension of time to file a second amended complaint and a motion for appointment of
counsel. (Doc. 14, 15.) The Court will deny the motion for appointment of counsel, but will
grant Plaintiff an extension of time as set forth herein.

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Plaintiff seeks the appointment of counsel because he is indigent and because he does
not understand how to amend to correct the deficiencies in his prior complaints. There is no
constitutional right to the appointment of counsel in a civil case. See Ivey v. Bd of Regents
of the Univ. of Alaska, 673 F.2d 266, 269 (9th Cir. 1982). In proceedings *in forma pauperis*,
the court may request an attorney to represent any person unable to afford one. 28 U.S.C.
§ 1915(e)(1). Appointment of counsel under 28 U.S.C. § 1915(e)(1) is required only when

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1 “exceptional circumstances” are present. Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
2 1991). A determination with respect to exceptional circumstances requires an evaluation of
3 the likelihood of success on the merits as well as the ability of Plaintiff to articulate his
4 claims *pro se* in light of the complexity of the legal issue involved. Id. “Neither of these
5 factors is dispositive and both must be viewed together before reaching a decision.” Id.
6 (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)).

7 Having considered both elements, Plaintiff has not shown that exceptional
8 circumstances are present that would require the appointment of counsel in this case. In its
9 prior Orders, the Court has described the standard to state the type of claims alleged by
10 Plaintiff.¹ Plaintiff should review those Orders and allege any *facts* that, if proven, may
11 entitle him to relief.

12 Plaintiff also seeks an extension of time to file a second amended complaint. Plaintiff
13 states that he lacked access to his property while a protective custody review was being
14 conducted. The Court will grant Plaintiff an additional 30 days in which to file a second
15 amended complaint.

16 **Warnings**

17 **A. Release**

18 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.
19 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay
20 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result
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22 ¹ Specifically, Plaintiff alleged a claim for threat to safety. To state a claim under
23 § 1983 for failure to protect or threats to safety, an inmate must allege *facts* to support that
24 he was incarcerated under conditions posing a *substantial* risk of harm and that prison
25 officials were “deliberately indifferent” to those risks. Farmer v. Brennan, 511 U.S. 825,
26 832-33 (1994). To adequately allege deliberate indifference, he must allege facts to support
27 that a defendant knew of, but disregarded, an excessive risk to his safety. Id. at 837. That
28 is, “the official must both [have been] aware of facts from which the inference could be
drawn that a substantial risk of serious harm exist[ed], and he must also [have] draw[n] the
inference.” Id. Thus, Plaintiff must allege *facts* to support when and how any particular
defendant knew of a substantial risk of harm to Plaintiff and that the defendant disregarded
or failed to take steps to protect Plaintiff.

1 in dismissal of this action.

2 **B. Address Changes**

3 Plaintiff must file and serve a notice of a change of address in accordance with Rule
4 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
5 relief with a notice of change of address. Failure to comply may result in dismissal of this
6 action.

7 **C. Copies**

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

11 **D. Possible “Strike”**

12 Because the Complaint and First Amended Complaint were dismissed for failure to
13 state a claim, if Plaintiff fails to file a second amended complaint correcting the deficiencies
14 identified in the Court’s August 12, 2013 Order, the dismissal may count as a “strike” under
15 the “3-strikes” provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner
16 may not bring a civil action or appeal a civil judgment *in forma pauperis* under 28 U.S.C.
17 § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in
18 any facility, brought an action or appeal in a court of the United States that was dismissed
19 on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may
20 be granted, unless the prisoner is under imminent danger of serious physical injury.” 28
21 U.S.C. § 1915(g).

22 **E. Possible Dismissal**

23 If Plaintiff fails to timely comply with every provision of this Order, including these
24 warnings, and the August 12, 2013 Order, the Court may dismiss this action without further
25 notice. See Ferdik, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to
26 comply with any order of the Court).

27 **IT IS ORDERED:**


28 (1) Plaintiff’s motion for appointment of counsel is **denied**. (Doc. 15.)

1 (2) Plaintiff's motion for an extension of time is **granted** to the extent set forth
2 below. (Doc. 14.)

3 (3) Plaintiff is granted an additional **30 days** from the filing date of this Order in
4 which to file a second amended complaint in compliance with the August 12, 2013 Order,
5 doc. 13.

6 (4) If Plaintiff fails to file an amended complaint within the extension granted
7 herein, the Clerk of Court must, without further notice, enter a judgment of dismissal of this
8 action with prejudice that states that the dismissal may count as a "strike" under 28 U.S.C.
9 § 1915(g).

10 DATED this 19th day of September, 2013.

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14 Robert C. Broomfield
15 Senior United States District Judge
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