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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Salvatori Joseph Colletti,
10 Plaintiff,

No. CV 13-222-PHX-RCB (SPL)

11 vs.

ORDER

12 Joseph M. Arpaio, et al.,
13
14 Defendants.
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16 On February 1, 2013, Plaintiff Salvatori Joseph Colletti, who is confined in the
17 Arizona State Prison Complex-Florence, filed a *pro se* civil rights Complaint pursuant to
18 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. In a May 13, 2013
19 Order, the Court granted the Application to Proceed and dismissed the Complaint with
20 leave to amend.

21 On June 12, 2013, Plaintiff filed a First Amended Complaint (Doc. 7). The Court
22 will order Defendants A6542 and Alger to answer the First Amended Complaint and will
23 dismiss the remaining claims and Defendants without prejudice.

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

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

1 which relief may be granted, or that seek monetary relief from a defendant who is
2 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

3 A pleading must contain a “short and plain statement of the claim *showing* that the
4 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
5 does not demand detailed factual allegations, “it demands more than an unadorned, the-
6 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
7 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice.” *Id.*

9 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
10 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
11 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
12 content that allows the court to draw the reasonable inference that the defendant is liable
13 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
14 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
15 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
16 specific factual allegations may be consistent with a constitutional claim, a court must
17 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
18 at 681.

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

24 **II. First Amended Complaint**

25 Plaintiff names the following Defendants in the First Amended Complaint:
26 Maricopa County Fourth Avenue Jail Sergeants A6542 and Alger 7344; Chaplain Paval;
27 and Lieutenant Garcia.
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1 Plaintiff raises one claim for relief in which he claims his rights under the
2 Religious Land Use and Institutionalized Persons Act (“RLUIPA”) were violated when
3 Defendant A6542 confiscated his religious medallion, an item essential to Plaintiff’s
4 every day religious practice. Plaintiff claims that he filed a grievance on the issue with
5 Defendant Paval, who informed Plaintiff that he needed the Jail Commander’s approval
6 to have the medallion and “made other comments about [Plaintiff’s] religion . . . stating
7 that he [didn’t] care about [Plaintiff’s] religion and that he’s never heard of [Plaintiff’s]
8 religion.” Plaintiff further claims that Defendant Alger approved for Plaintiff a plastic
9 medallion similar to a rosary. Plaintiff explained that his religion did not make plastic or
10 rubber medallions. Plaintiff was told that he could have a wooden medallion if it was
11 approved by Jail Commander Harmon.

12 Plaintiff states that he proceeded to take steps to obtain the wooden medallion, but
13 that Defendant Alger intercepted Plaintiff’s letter to Commander Harmon and responded
14 to the letter by stating that “it was a grievance issue.” Plaintiff claims that because of
15 Defendant Alger’s actions, he was unable to proceed with obtaining a wooden medallion.
16 Plaintiff also alleges that he received responses during the grievance process from
17 Sergeant Wade, Defendant Garcia, and the external grievance referee and that the
18 responses contradicted each other.

19 Plaintiff seeks injunctive relief and damages.

20 **III. Failure to State a Claim**

21 Under RLUIPA, a government may not impose a substantial burden on the
22 religious exercise of a confined person unless the government establishes that the burden
23 furthers a “compelling governmental interest” and does so by “the least restrictive
24 means.” 42 U.S.C. § 2000cc-1(a)(1)-(2).

25 With respect to Defendant Paval, Plaintiff alleges only that Defendant Paval
26 explained to Plaintiff that he would have to obtain approval for a medallion from the jail
27 commander and that Defendant Paval made negative comments about Plaintiff’s religion.
28 Plaintiff does not allege that Defendant Paval denied Plaintiff possession of the medallion

1 or burdened the practice of Plaintiff's religion in some other way. Plaintiff has failed to
2 state a claim against Defendant Paval.

3 With respect to Defendant Garcia, Plaintiff claims that Defendant Garcia
4 responded unfavorably to Plaintiffs grievance. The mere denial of a grievance does not
5 give rise to the inference of active unconstitutional behavior. Where a defendant's only
6 involvement in the allegedly unconstitutional conduct is the denial of administrative
7 grievances, the failure to intervene on a prisoner's behalf to remedy alleged
8 unconstitutional behavior does not amount to active unconstitutional behavior for
9 purposes of § 1983. *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999). Plaintiff has
10 therefore failed to state a claim against Defendant Garcia.

11 **IV. Claims for Which an Answer Will be Required**

12 Liberally construed, Plaintiff has adequately stated a claim under RLUIPA against
13 Defendants A6542 and Alger and the Court will require these Defendants to answer the
14 First Amended Complaint.

15 **V. Warnings**

16 **A. Release**

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

21 **B. Address Changes**

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

26 **C. Copies**

27 Plaintiff must serve Defendants, or counsel if an appearance has been entered, a
28 copy of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a

1 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also,
2 Plaintiff must submit an additional copy of every filing for use by the Court. *See* LRCiv
3 5.4. Failure to comply may result in the filing being stricken without further notice to
4 Plaintiff.

5 **D. Possible Dismissal**

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

10 **IT IS ORDERED:**

11 (1) Defendants Paval and Garcia are **dismissed** without prejudice.

12 (2) Defendants A6542 and Alger must answer the First Amended Complaint.

13 (3) The Clerk of Court must send Plaintiff a service packet including the First
14 Amended Complaint (Doc. 7), this Order, and both summons and request for waiver
15 forms for Defendants A6542 and Alger.

16 (4) Plaintiff must complete and return the service packet to the Clerk of Court
17 within 21 days of the date of filing of this Order. The United States Marshal will not
18 provide service of process if Plaintiff fails to comply with this Order.

19 (5) If Plaintiff does not either obtain a waiver of service of the summons or
20 complete service of the Summons and First Amended Complaint on a Defendant within
21 120 days of the filing of the Complaint or within 60 days of the filing of this Order,
22 whichever is later, the action may be dismissed as to each Defendant not served. Fed. R.
23 Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

24 (6) The United States Marshal must retain the Summons, a copy of the First
25 Amended Complaint, and a copy of this Order for future use.

26 (7) The United States Marshal must notify Defendants of the commencement
27 of this action and request waiver of service of the summons pursuant to Rule 4(d) of the
28 Federal Rules of Civil Procedure. The notice to Defendants must include a copy of this

1 Order. **The Marshal must immediately file signed waivers of service of the**
2 **summons. If a waiver of service of summons is returned as undeliverable or is not**
3 **returned by a Defendant within 30 days from the date the request for waiver was**
4 **sent by the Marshal, the Marshal must:**

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

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

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

21 (9) Defendants must answer the First Amended Complaint or otherwise
22 respond by appropriate motion within the time provided by the applicable provisions of
23 Rule 12(a) of the Federal Rules of Civil Procedure.

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

27 . . .

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

4 DATED this 23rd day of October, 2013.

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9 Robert C. Broomfield
10 Senior United States District Judge
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