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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Michael Darrin Isham,

No. CV 13-1134-PHX-JAT (JFM)

10 Plaintiff,

11 vs.

**ORDER**

12 Susan L. Luder, et al.,

13 Defendants.  
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15 On June 5, 2013, Plaintiff Michael Darrin Isham, who is confined in the Arizona  
16 State Prison-Kingman in Kingman, Arizona, filed a *pro se* civil rights Complaint  
17 pursuant to 42 U.S.C. § 1983 (Doc. 1). In a June 11, 2013 Order, the Court noted that  
18 Plaintiff had not paid the \$400.00 filing and administrative fees or filed an Application to  
19 Proceed *In Forma Pauperis*. The Court gave Plaintiff 30 days to either pay the filing and  
20 administrative fees or file an Application to Proceed *In Forma Pauperis*.

21 On July 1, 2013, Plaintiff filed an Application to Proceed *In Forma Pauperis*  
22 (Doc. 4). On July 5, 2013, he filed a second Application to Proceed *In Forma Pauperis*  
23 (Doc. 6). On August 5, 2013, he filed:

- 24 (1) a Document entitled "Waiver of Court Fees and Costs" (Doc. 8);  
25 (2) a Document that purports to be a "First Amended Complaint"  
26 (Doc. 9);  
27 (3) a Document entitled "Waiver of Service" (Doc. 10);  
28 (4) a Document entitled "Affidavit/for Petition for Writ of Habeas  
Corpus" (Doc. 11) that appears to provide the Court with his current  
address and contains several exhibits; and

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(5) a Document entitled “Disposition for Release” (Doc. 12), in which he appears to seek release from prison and requests that the Court order the United States Marshal’s Service to “take custody of the Defendants[,] place lien(s) on named Defendants(s) employment and bring Defendants to appear before a Federal Magistrate in the United States District Court.”

On August 26, 2013, he filed:

- (1) a Document entitled “Order to Compel” (Doc. 13), in which he appears to seek relief in his pending habeas corpus case, *Isham v. Luder*, 13-CV-8126-PCT-JAT (JFM), and the disclosure of documents; and
- (2) a Motion for Consolidation (Doc. 14), seeking to consolidate this case with *Isham v. Mesquita*, 10-CV-2494-PHX-JAT (JRI), and *Isham v. Luder*, 13-CV-8126-PCT-JAT (JFM).

**I. Applications to Proceed *In Forma Pauperis*, Filing Fee, and Document seeking “Waiver of Court Fees and Costs”**

The Court will grant Plaintiff’s July 1 Application to Proceed *In Forma Pauperis*. 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 \$12.50. 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.

The Court will deny as moot Plaintiff’s July 5 Application to Proceed *In Forma Pauperis* and will deny Plaintiff’s August 5 Document seeking a waiver of court fees and costs. Congress set the filing fee and did not give the Court the authority to waive it. *See* 28 U.S.C. § 1915(b)(1) (“[I]f a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee.”); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) (“Under the [Prison Litigation Reform Act], all prisoners who file [*in forma pauperis*] civil actions must pay the full amount of the filing fee.”).

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

2             The Court is required to screen complaints brought by prisoners seeking relief  
3 against a governmental entity or an officer or an employee of a governmental entity. 28  
4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff  
5 has raised claims that are legally frivolous or malicious, that fail to state a claim upon  
6 which relief may be granted, or that seek monetary relief from a defendant who is  
7 immune from such relief. 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  
10 does not demand detailed factual allegations, “it demands more than an unadorned, the-  
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory 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  
17 content that allows the court to draw the reasonable inference that the defendant is liable  
18 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible  
19 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw  
20 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s  
21 specific factual allegations may be consistent with a constitutional claim, a court must  
22 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*  
23 at 681.

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

1           If the Court determines that a pleading could be cured by the allegation of other  
2 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal  
3 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The  
4 Court should not, however, advise the litigant how to cure the defects. This type of  
5 advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v.*  
6 *Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n.13 (declining to  
7 decide whether the court was required to inform a litigant of deficiencies). Plaintiff’s  
8 Complaint will be dismissed for failure to state a claim, without leave to amend because  
9 the defects cannot be corrected.

### 10 **III. Complaint**

11           Rule 8(a) of the Federal Rules of Civil Procedure requires a “short and plain  
12 statement of the claim.” Fed. R. Civ. P. 8(a)(2). Rule 8(d)(1) states that “[e]ach  
13 allegation must be simple, concise, and direct.” A complaint having the factual elements  
14 of a cause of action scattered throughout the complaint and not organized into a “short  
15 and plain statement of the claim” may be dismissed for failure to satisfy Rule 8(a). *See*  
16 *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988); *see also McHenry v.*  
17 *Renne*, 84 F.3d 1172 (9th Cir. 1996). It is not the responsibility of the Court to review a  
18 rambling narrative in an attempt to determine the number and nature of a plaintiff’s  
19 claims. The Court has reviewed Plaintiff’s Complaint and concludes that it fails to  
20 comply with Rule 8 of the Federal Rules of Civil Procedure. Plaintiff’s Complaint is  
21 rambling, disorganized, disjointed, and virtually incoherent.

22           In addition, Local Rule of Civil Procedure 3.4 requires in part that “[a]ll  
23 complaints . . . by incarcerated persons must be signed and legibly written or typewritten  
24 on forms approved by the Court and in accordance with the instructions provided with the  
25 forms.” The court-approved form Complaint is six pages long and both the form  
26 Complaint and accompanying instructions permit an inmate to attach “**no more than**  
27 **fifteen additional pages**” of standard letter-sized paper. (Emphasis in original).  
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1 Plaintiff's 82-page Complaint exceeds the page limitation and therefore fails to comply  
2 with Local Rule 3.4.

3 More importantly, however, Plaintiff's Complaint fails to state a claim because  
4 Plaintiff is seeking "release from an unlawful sentence and wrongful conviction(s)."  
5 Plaintiff is challenging the validity of his confinement. This is not the proper subject  
6 matter for a § 1983 action. *See Muhammad v. Close*, 540 U.S. 749, 750 (2004)  
7 ("Challenges to the validity of any confinement or to particulars affecting its duration are  
8 the province of habeas corpus; requests for relief turning on circumstances of  
9 confinement may be presented in a § 1983 action."); *see also Badea v. Cox*, 931 F.2d  
10 573, 574 (9th Cir. 1991). Moreover, "a state prisoner's § 1983 action is barred (absent  
11 prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the  
12 target of the prisoner's suit (state conduct leading to conviction or internal prison  
13 proceedings)—if success in that action would necessarily demonstrate the invalidity of  
14 confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005). Thus, the  
15 Court will dismiss this action.<sup>1</sup>

#### 16 **IV. Document entitled "First Amended Complaint"**

17 Although Plaintiff has filed a Document that purports to be a First Amended  
18 Complaint, it is not. Plaintiff's statements in the Document are incoherent and do not  
19 constitute a First Amended Complaint. In the Document, Plaintiff alleges that he and  
20 Defendants are residents of Maricopa County and then alleges, as follows:

21 That on June 5, 2013 received an independent  
22 action~Supplement Motion related Case No. CV-13-8126-  
23 PCT-JAT (JFM)

24 Prompt disposition given criminal proceeding (FCRp 50).  
25 The pursuant to Title 18 U.S.C.A. chapter 47 – sec 1028 fraud  
26 and related activity in connection with identification  
27 document[]s and information of concealment of facts.

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28 <sup>1</sup> The Court notes that Plaintiff filed a Petition for Writ of Habeas Corpus pursuant  
to 28 U.S.C. § 2254 in *Isham v. Luder*, 13-CV-8126-PCT (JFM).

1 The US Marshal's Service will then be responsible for service  
2 of process to the named Defendants(s): . . . .

3 Thus, the Court will not consider the document as a First Amended Complaint.

4 **V. Pending Documents and Motion to Consolidate**

5 In light of the Court's dismissal of this case, the Motion to Consolidate and all  
6 other pending Documents, to the extent they are seeking relief from the Court, are denied  
7 as moot.

8 **IT IS ORDERED:**

9 (1) Plaintiff's July 1, 2013 Application to Proceed *In Forma Pauperis* (Doc. 4)  
10 is **granted**.

11 (2) As required by the accompanying Order to the appropriate government  
12 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing  
13 fee of \$12.50.

14 (3) Plaintiff's July 5, 2013 Application to Proceed *In Forma Pauperis* (Doc. 6)  
15 is **denied**.

16 (4) Plaintiff's August 5, 2013 Document entitled "Waiver of Court Fees and  
17 Costs" (Doc. 8) is **denied**.

18 (5) The Court will not consider Plaintiff's August 5, 2013 "First Amended  
19 Complaint" (Doc. 9) as a First Amended Complaint.

20 (6) The Complaint (Doc. 1) is **dismissed** for failure to state a claim pursuant to  
21 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment accordingly.

22 (7) All pending Documents (Docs 10, 11, 12, 13) and Plaintiff's Motion for  
23 Consolidation (Doc. 14) are **denied as moot**.

24 (8) The Clerk of Court must make an entry on the docket stating that the  
25 dismissal for failure to state a claim may count as a "strike" under 28 U.S.C. § 1915(g).

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