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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Jeffrey Alan Taylor,

10 Plaintiff,

11 vs.

12 Roger Todd Margolis, et al.,

13 Defendants.  
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No. CV 13-2146-PHX-RCB (JFM)

**ORDER**

15 On October 21, 2013, Plaintiff Jeffrey Alan Taylor, who is confined in the  
16 Maricopa County Lower Buckeye Jail, filed a *pro se* civil rights Complaint (Doc. 1) and  
17 an “Application for Deferral or Waiver of Court Fees and/or Costs and Consent to Entry  
18 of Judgment.” In an Order dated December 12, 2013, the Court denied Plaintiff’s  
19 Application and granted Plaintiff 30 days to either pay the \$400.00 filing and  
20 administrative fees or to file a complete *Application to Proceed In Forma Pauperis*.

21 On December 19, 2013, Plaintiff filed an Application to Proceed *In Forma*  
22 *Pauperis* (Doc. 6). The Court will grant the Application to Proceed and will dismiss the  
23 Complaint with leave to amend using the court-approved form.

24 **I. Application to Proceed *In Forma Pauperis* and Filing Fee**

25 Plaintiff’s Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.  
26 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).  
27 The Court will assess an initial partial filing fee of \$6.10. *Id.* The remainder of the  
28 statutory filing fee will be collected monthly in payments of 20% of the previous month’s

1 income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2).  
2 The Court will enter a separate Order requiring the appropriate government agency to  
3 collect and forward the fees according to the statutory formula.

## 4 **II. Failure to File Complaint on Court-Approved Form**

5 Pursuant to Local Rule of Civil Procedure 3.4, “[a]ll complaints and applications  
6 to proceed *in forma pauperis* by incarcerated persons shall be signed and legibly written  
7 or typewritten on forms approved by the Court.” Plaintiff has not filed his Complaint on  
8 the court-approved form and the Court is unable to determine the precise number and  
9 nature of Plaintiff’s claims. Also, in the caption of his Complaint, Plaintiff names “Roger  
10 Todd Margolis, et al.” as Defendant, making it unclear whether Plaintiff intends to sue  
11 one person, Margolis, or others.<sup>1</sup> The Court will therefore dismiss the Complaint and  
12 grant Plaintiff 30 days to file a first amended complaint on the court-approved form.

## 13 **III. Leave to Amend**

14 For the foregoing reasons, the Complaint will be dismissed for failure to comply  
15 with Local Rule of Civil Procedure 3.4. Within 30 days, Plaintiff may submit a first  
16 amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail  
17 Plaintiff a court-approved form to use for filing a first amended complaint. If Plaintiff  
18 fails to use the court-approved form, the Court may strike the first amended complaint  
19 and dismiss this action without further notice to Plaintiff.

20 Plaintiff must clearly designate on the face of the document that it is the “First  
21 Amended Complaint.” The first amended complaint must be retyped or rewritten in its

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23 <sup>1</sup> It appears that Defendant Margolis is Plaintiff’s defense counsel in Plaintiff’s  
24 state court case. Plaintiff should note that a prerequisite for any relief under § 1983 are  
25 allegations to support that a defendant acted under the color of state law. The “under  
26 color of state law” component is the equivalent of the “state action” requirement under  
27 the Constitution. *Lugar v. Edmondson Oil Co, Inc.*, 457 U.S. 922, 928 (1982); *Jensen v.*  
28 *Lane County*, 222 F.3d 570, 574 (9th Cir. 2000) (citing *Rendell-Baker v. Kohn*, 457 U.S.  
830, 838 (1982); *West v. Atkins*, 487 U.S. 42, 49 (1988)). “Acting under color of state  
law is ‘a jurisdictional requisite for a § 1983 action.’” *Gritchen v. Collier*, 254 F.3d 807,  
812 (9th Cir. 2001) (quoting *West*, 487 U.S. at 46). Whether an attorney representing a  
criminal defendant is privately retained, a public defender, or court-appointed counsel, he  
or she does not act under color of state law. See *Polk County v. Dodson*, 454 U.S. 312,  
317-18 (1981); *Miranda v. Clark County, Nevada*, 319 F.3d 465, 468 (9th Cir. 2003) (*en*  
*banc*).

1 entirety on the court-approved form and may not incorporate any part of the original  
2 Complaint by reference. Plaintiff may include only one claim per count.

3 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,  
4 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896  
5 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original  
6 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised  
7 in the original complaint and that was voluntarily dismissed or was dismissed without  
8 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*  
9 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

#### 10 **IV. Warnings**

##### 11 **A. Release**

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

##### 16 **B. Address Changes**

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

##### 21 **C. Copies**

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

##### 25 **D. Possible Dismissal**

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

3 **IT IS ORDERED:**

4 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 6) is **granted**.

5 (2) As required by the accompanying Order to the appropriate government  
6 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing  
7 fee of \$6.10.

8 (3) The Complaint (Doc. 1) is **dismissed** for failure to comply with Local Rule  
9 of Civil Procedure 3.4. Plaintiff has **30 days** from the date this Order is filed to file a first  
10 amended complaint in compliance with this Order.

11 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of  
12 Court must, without further notice, enter a judgment of dismissal of this action without  
13 prejudice.

14 (5) The Clerk of Court must mail Plaintiff a court-approved form for filing a  
15 civil rights complaint by a prisoner.

16 DATED this 25th day of February, 2014.

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20 Robert C. Broomfield  
21 Senior United States District Judge  
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