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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Aaron Dwayne Kelly,
10 Plaintiff,

No. CV 14-0241-PHX-SMM (LOA)

11 vs.

ORDER

12 Director Charles Ryan, et al.,
13 Defendants.
14

15 On February 7, 2014, while confined in the Arizona State Prison Complex-Eyman,
16 Plaintiff Aaron Dwayne Kelly filed a *pro se* civil rights Complaint pursuant to 42 U.S.C.
17 § 1983 and an Application to Proceed *In Forma Pauperis*. In a February 18, 2014 Order,
18 the Court denied the deficient Application to Proceed and gave Plaintiff 30 days to either
19 pay the filing and administrative fees or file a complete Application to Proceed *In Forma*
20 *Pauperis*.

21 On March 11, 2014, Plaintiff filed a second Application to Proceed *In Forma*
22 *Pauperis* and a First Amended Complaint. In a March 20, 2014 Order, the Court granted
23 the second Application to Proceed and dismissed the First Amended Complaint because
24 Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file a second
25 amended complaint that cured the deficiencies identified in the Order.

26 On March 27, 2014, Plaintiff filed a "Motion to Request Copies of All Medical
27 Files to Work my Case Interrog[a]tories etc." On April 3, 2014, he filed a Second
28 Amended Complaint. In a May 5, 2014 Order, the Court dismissed the Second Amended

1 Complaint because Plaintiff had failed to state a claim and denied as premature the
2 Motion to Request Copies. The Court gave Plaintiff 30 days to file a third amended
3 complaint that cured the deficiencies identified in the Order.

4 On May 9, 2014, Plaintiff filed a notice of change of address, providing the Court
5 with a new address to be used when he was released from prison on June 25, 2014. On
6 June 18, 2014, Plaintiff filed a “Request for a 30 Day Extension” (Doc. 18).

7 **I. Pending Motion**

8 In his “Request for a 30 Day Extension,” Plaintiff states that he has received
9 “additional proof that the medical was in fact in the wrong” and that he has not had “the
10 time or material to complete further actions on [his] end.” Plaintiff has attached to his
11 Request an Inmate Grievance form, an Inmate Grievance Appeal form, and a Medical
12 Grievance Appeal decision that grants Plaintiff’s medical grievance appeal. Plaintiff
13 requests a thirty-day extension of time to comply with the May 5 Order, requests that the
14 Court “view the documents, and requests that the Court send Plaintiff copies of the
15 proper forms if he “need[s] to file anything further.”

16 The Court, in its discretion, will grant Plaintiff’s Request and will give him an
17 additional 30 days to file a third amended complaint that cures the deficiencies identified
18 in the May 5 Order.¹ In addition, the Court will direct the Clerk of Court to send Plaintiff
19 another copy of the court-approved form for filing a civil rights complaint by a prisoner.

20 **II. Warnings**

21 **A. 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
27 ¹ The Court dismissed the Second Amended Complaint because Plaintiff had
28 failed to state a claim and gave Plaintiff leave to file a third amended complaint that does
state a claim. Thus, Plaintiff must file a third amended complaint that states a
constitutional claim; he cannot simply rely on the submitted paperwork.

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B. Copies

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

C. Possible “Strike”

Because the Second Amended Complaint has been dismissed for failure to state a claim, if Plaintiff fails to file a third amended complaint correcting the deficiencies identified in the May 5 Order, the dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

D. Possible Dismissal

If Plaintiff fails to timely comply with every provision of the May 5 Order and this Order, including these warnings, the Court may dismiss this action without further notice. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to comply with any order of the Court).

IT IS ORDERED:

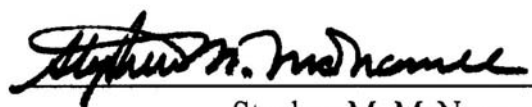
(1) Plaintiff’s “Request for a 30 Day Extension” (Doc. 18) is **granted**. Plaintiff has **30 days** from the date this Order is filed to file a third amended complaint in compliance with the May 5, 2014 Order and this Order.

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

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

DATED this 31st day of July, 2014.



Stephen M. McNamee
Senior United States District Judge