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

9 Shawn Michael Folta,

10 Plaintiff,

11 v.

12 Jeffrey Van Winkle, et al.,

13 Defendants.  
14

No. CV-14-01562-PHX-PGR (ESW)

**ORDER**

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16 Pending before the Court are a number of motions. The Court has reviewed the  
17 motions and issues its orders as set forth below.

18 **I. DISCUSSION**

19 **A. Motions Pertaining to Service of Defendant Basso**

20 On October 26, 2015, Plaintiff filed a “Motion for Service by Publication as to  
21 Defendant Richard Basso” (Doc. 61). On November 13, 2015, Defendants filed a  
22 “Motion to Extend the Time to Respond to Plaintiff’s Motion for Service by Publication  
23 (Doc. 61)” (Doc. 65) and a “Response in Opposition to Plaintiff’s Motion for Service by  
24 Publication [Doc. 61]” (Doc. 66). For good cause shown, Defendants Motion to Extend  
25 the Time to Respond (Doc. 65) is granted.

26 In his Motion (Doc. 61), Plaintiff requests to serve Defendant Basso by  
27 publication. Defendants oppose Plaintiff’s Motion because the Arizona Attorney  
28 General’s Office has obtained Defendant Basso’s home address. (Doc. 66).

1 Rule 4(e)(1) of the Federal Rules of Civil Procedure provides that service may be  
2 made in any manner provided for under state law. Service by publication is permitted  
3 under Rule 4.1(n) of the Arizona Rules of Civil Procedure. Arizona law requires that  
4 prior to seeking service by publication, a plaintiff must provide an affidavit or declaration  
5 evidencing that the plaintiff exercised due diligence to locate a defendant to effect  
6 personal service. *Barlage v. Valentine*, 210 Ariz. 270, 273 (Ariz. Ct. App. 2005).  
7 Plaintiff has not provided such an affidavit or declaration. Moreover, Defendants  
8 indicate that Defendant Basso's home address is now known. Plaintiff's "Motion for  
9 Service by Publication as to Defendant Richard Basso" (Doc. 61) is denied. Defendants'  
10 "Motion for Leave to File Under Seal Defendant Basso's Home Address" (Doc. 67) is  
11 granted. Defendants shall file under seal the home address of Defendant Basso by  
12 **January 19, 2016**. Upon receipt of the address, the Clerk of Court shall prepare and  
13 send to the U.S. Marshal a service packet for service of the Summons and Complaint  
14 upon Defendant Basso. The time for completing service is extended sixty days from the  
15 date this Order is filed.

16 **B. Defendants' "Motion to Strike Plaintiff's First Amended Complaint (Doc.  
17 60)" (Doc. 64)**

18 In its October 2015 Order (Doc. 56), the Court granted Plaintiff's "Motion for  
19 Leave to File Amended Complaint." As Plaintiff submitted only a redline version of the  
20 proposed First Amended Complaint with his Motion for Leave, the Court ordered  
21 Plaintiff to file a "clean" version of the First Amended Complaint. (*Id.* at 4). On October  
22 26, 2015, Plaintiff filed a "clean" version of the First Amended Complaint (Doc. 60).

23 On November 5, 2015, Defendants filed a "Motion to Strike Plaintiff's First  
24 Amended Complaint (Doc. 60)" (Doc. 64). Defendants request that the Court strike  
25 Plaintiff's First Amended Complaint on the ground that Plaintiff failed to comply with  
26 the Court's Order (Doc. 56) by including language in the "clean" version of the First  
27 Amended Complaint that was not present in the redline version. In the alternative,  
28 Defendants request that the Court screen the First Amended Complaint pursuant to 28

1 U.S.C. § 1915A(a).

2 The Court has reviewed the additional language included in the “clean” version of  
3 the First Amended Complaint and does not find that it substantially alters the claims  
4 presented in the redline version. Accordingly, Defendants’ “Motion to Strike Plaintiff’s  
5 First Amended Complaint (Doc. 60)” (Doc. 64) is denied. The Court will screen the First  
6 Amended Complaint by separate order.

7 **C. Defendants’ “Motion to Strike Plaintiff’s Filings (DKTS. 8, 9, 14, and 17)”**  
8 **(Doc. 75)**

9 Defendants request that the Court strike the following four documents filed by  
10 Plaintiff: (i) “Declaration by Plaintiff Shawn Folta . . .” (Doc. 8); (ii) “Prisoner Civil  
11 Rights Complaint Amended by Plaintiff Shawn Folta Request to Supplement Facts in  
12 Support of Original Claim” (Doc. 9); (iii) “Declarations of Garrot Jason Deetz and Mark  
13 Sanchez in Support of Shawn Michael Folta” (Doc. 14); and (iv) “Declaration of Facts in  
14 Support of Claim” (Doc. 17). In his Response (Doc. 78), Plaintiff states that “Doc. # 8, 9,  
15 14, 17 can be stricken [sic] in violation of the court’s rules.” It appears that Plaintiff filed  
16 the documents in an attempt to disclose them to Defendants during discovery. The  
17 documents filed as Document Nos. 8, 9, 14, and 17 are deemed disclosed on Defendants;  
18 the disclosure date of each particular document is deemed to be date the document was  
19 filed. Defendants’ “Motion to Strike Plaintiff’s Filings (DKTS. 8, 9, 14, and 17)” (Doc.  
20 75) is granted.

21 **D. Plaintiff’s “Motion to Compel Production of Documents” (Doc. 76)**

22 On December 14, 2015, Plaintiff filed a “Motion to Compel Production of  
23 Documents” (Doc. 76). Plaintiff states that on November 10, 2015, he hand-delivered to  
24 Defendants a request for production of documents and an interrogatory. Defendants  
25 oppose Plaintiff’s Motion (Doc. 76), asserting that Plaintiff did not confer in good-faith  
26 with Defendants prior to filing the Motion. Defendants do not articulate an objection to  
27 the substance of Plaintiff’s discovery requests. The Court’s April 20, 2015 Scheduling  
28 Order (Doc. 34 at 3) states that “**the Court will NOT consider a motion regarding  
discovery matters**” unless two conditions have been met. First, the parties must have

1 attempted to resolve the matter through personal consultation and sincere effort as  
2 required by Rule 7.2(j) of the Local Rules of Civil Procedure. (*Id.*). Second, the parties  
3 must have participated in a discovery conference with the Court, unless the Court finds  
4 that a discovery conference is not appropriate. (*Id.*). The Court’s Scheduling Order  
5 warned the parties that the Court may strike a discovery motion that is filed in  
6 noncompliance with the Court’s Order. (*Id.*).

7 On January 12, 2016, Plaintiff filed a “Suppliment [sic] to reply # 8” (Doc. 82).  
8 Plaintiff avers that he made three good faith efforts to acquire the disciplinary histories of  
9 correctional officers II (“CO II”) Burke, Basso, and Schiavo. Plaintiff asserts that  
10 counsel for Defendants stated that she would provide any disciplinary history for those  
11 individuals that pertained to violations similar to the violations alleged by Plaintiff. The  
12 Court finds that the information sought by Plaintiff as to CO II Burke is relevant, not  
13 privileged, and within the scope of discovery as set forth in Rule 26(b) of the Federal  
14 Rules of Civil Procedure.

15 Though Plaintiff’s “Motion to Compel Production of Documents” (Doc. 76)  
16 technically does not comply with the requirements set forth in the Court’s Scheduling  
17 Order (Doc. 34), the Court finds that a discovery conference is not needed. In light of  
18 Plaintiff’s “Suppliment [sic] to reply #8” and Defendants’ Response, it is ordered  
19 granting Plaintiff’s Motion to Compel (Doc. 76) in part. By February 16, 2016, counsel  
20 for Defendants shall produce any and all disciplinary history pertaining to Defendant CO  
21 II Burke. Plaintiff’s discovery request is premature as to Defendant CO II Basso, who  
22 has not yet been served or appeared in this action. Plaintiff’s discovery request is also  
23 premature as to CO II Schiavo, who is not a party in this case. Although CO II Schiavo  
24 is named as an additional defendant in Plaintiff’s proposed First Amended Complaint, the  
25 Court has not yet screened Plaintiff’s First Amended Complaint. Accordingly, the  
26 Motion to Compel (Doc. 76) is denied as to CO II Schiavo and Defendant CO II Basso.

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pertaining to Defendant CO II Burke.

**IT IS FURTHER ORDERED** that “Motion for Default Judgement [sic] Against Dustin Burke” (Doc. 62) is referred to the District Court Judge.

Dated this 13th day of January, 2016.

  
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Eileen S. Willett  
United States Magistrate Judge