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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**8  
9 Berry Williams,

No. CV 14-2231-PHX-DGC (DKD)

10 Plaintiff,

11 v.

**ORDER**

12 Unknown Cisneros, et al.,

13  
14 Defendants.  
15

16 On October 8, 2014, Plaintiff Berry Williams, who is confined in the Arizona  
17 State Prison Complex -Yuma in San Luis, Arizona, filed a *pro se* civil rights Complaint  
18 pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. In a  
19 January 14, 2015 Order, the Court granted the Application to Proceed and dismissed the  
20 Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days  
21 to file an amended complaint that cured the deficiencies identified in the Order.

22 On March 13, 2015, Plaintiff filed his First Amended Complaint. In an April 24,  
23 2015 Order, the Court dismissed the First Amended Complaint because Plaintiff had  
24 failed to state a claim. The Court gave Plaintiff 30 days to file a second amended  
25 complaint that cured the deficiencies identified in the Order.

26 On May 14, 2015, Plaintiff filed a Second Amended Complaint (Doc. 11). The  
27 Court will dismiss the Second Amended Complaint and this action.

28 . . . .

1       **I.       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 **II. Second Amended Complaint**

2 In his one-count Second Amended Complaint, Plaintiff sues the Arizona  
3 Department of Corrections (“ADOC”) and ADOC Correctional Officers Unknown  
4 Cisneros, Unknown Badsted, and Unknown Reigie. Plaintiff seeks monetary damages.

5 Plaintiff asserts a failure to protect claim and alleges the following facts: On  
6 November 22, 2013, Defendants Cisneros, Badsted, and Reigie were working in the  
7 maximum security housing unit where Plaintiff was housed. Defendants Cisneros,  
8 Badsted, and Reigie failed to follow procedure by moving unrestrained inmates outside  
9 of the cells and having more than one inmate out of a cell at a time. As a result of this  
10 failure to comply with procedure, Plaintiff was assaulted by another inmate identified as  
11 “Nobles.” Defendant Cisneros walked Plaintiff, who was unrestrained, to the shower.  
12 Defendants Reigie and Badsted failed to “act by not objecting to behavior [that]  
13 knowingly plac[ed], not only [Plaintiff], but any other officer at risk.” Defendant  
14 Badsted held Plaintiff outside of his cell while Defendant Cisneros led another  
15 unrestrained inmate past Plaintiff and “allowed [Nobles] to attack [Plaintiff].” Plaintiff  
16 claims that all of the “most violent offenders” are housed in maximum security housing,  
17 and that the inmates are not allowed any contact with other inmates. Plaintiff further  
18 claims that Defendant Cisneros failed to comply with “procedure” on three occasions,  
19 and that “her fellows . . . . turned a blind eye to policy” on those three occasions.  
20 Plaintiff contends that Defendants are “specifically trained to guard against” the risk  
21 involved when moving unrestrained inmates outside of the cells and having more than  
22 one inmate out of a cell at a time. Plaintiff further contends that ADOC is responsible for  
23 training its employees and ensuring that its employees act in compliance with that  
24 training. Plaintiff claims he has been injured as follows: he suffers from anxiety, pain in  
25 his leg and back, and takes a “plethora of medication in an attempt to cope with  
26 every[]day existence.”

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

2             To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants  
3     (2) under color of state law (3) deprived him of federal rights, privileges or immunities  
4     and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th  
5     Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d  
6     1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific  
7     injury as a result of the conduct of a particular defendant and he must allege an  
8     affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,  
9     423 at 371-72, 377 (1976).

10            Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,  
11     520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*  
12     *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a  
13     liberal interpretation of a civil rights complaint may not supply essential elements of the  
14     claim that were not initially pled. *Id.*

15            **A. ADOC**

16            The Arizona Department of Corrections is not a proper Defendant. Under the  
17     Eleventh Amendment to the Constitution of the United States, a state or state agency may  
18     not be sued in federal court without its consent. *Pennhurst State Sch. & Hosp. v.*  
19     *Halderman*, 465 U.S. 89, 100 (1984); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).  
20     Furthermore, “a state is not a ‘person’ for purposes of section 1983. Likewise ‘arms of  
21     the State’ such as the Arizona Department of Corrections are not ‘persons’ under section  
22     1983.” *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991) (citation  
23     omitted). Therefore, the Court will dismiss Defendant Arizona Department of  
24     Corrections.

25            **B. Failure to Protect**

26            To state a claim for failure to protect or threat to safety, an inmate must allege  
27     facts to support that he was incarcerated under conditions posing a substantial risk of  
28     harm and that prison officials were “deliberately indifferent” to those risks. *Farmer*, 511

1 U.S. at 832-33. To adequately allege deliberate indifference, a plaintiff must allege facts  
2 to support that a defendant knew of, but disregarded, an excessive risk to inmate safety.  
3 *Id.* at 837. That is, “the official must both [have been] aware of facts from which the  
4 inference could be drawn that a substantial risk of serious harm exist[ed], and he must  
5 also [have] draw[n] the inference.” *Id.* Thus, Plaintiff must allege facts to support when  
6 and how any particular defendant knew of a substantial risk of harm to Plaintiff and that  
7 the defendant disregarded or failed to take steps to protect Plaintiff.

8 Plaintiff’s allegations are too vague and conclusory to state a failure to protect  
9 claim under the Eighth Amendment. Plaintiff has not adequately alleged facts showing  
10 that Defendants Cisneros, Badsted, and Reigie knew of any excessive risk to Plaintiff’s  
11 safety. Although Plaintiff states that due to Defendants failure to follow procedure, he  
12 was assaulted, he does not allege adequate factual support to show that Defendants acted  
13 with deliberate indifference. Other than broadly asserting that all inmates housed in the  
14 maximum security housing unit are the most violent offenders, Plaintiff does not allege  
15 how any Defendant could have known that he was at risk when he was out of his cell on  
16 November 22, 2013. For example, Plaintiff does not indicate whether any verbal or  
17 physical threats were made against him or whether there was any indication that Nobles  
18 or any other inmate intended to hurt him. Accordingly, Plaintiff has failed to allege that  
19 Defendants knew or should have known that Nobles posed a substantial threat to Plaintiff  
20 but nevertheless allowed both Plaintiff and Nobles to be out of their cells unrestrained.  
21 Therefore, Plaintiff has failed to state a claim for failure to protect in Count One, and the  
22 Court will dismiss Count One.

#### 23 **IV. Dismissal without Leave to Amend**

24 Because Plaintiff has failed to state a claim in his Second Amended Complaint, the  
25 Court will dismiss his Second Amended Complaint. “Leave to amend need not be given  
26 if a complaint, as amended, is subject to dismissal.” *Moore v. Kayport Package Express,*  
27 *Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). The Court’s discretion to deny leave to amend is  
28 particularly broad where Plaintiff has previously been permitted to amend his complaint.

1 *Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996).  
2 Repeated failure to cure deficiencies is one of the factors to be considered in deciding  
3 whether justice requires granting leave to amend. *Moore*, 885 F.2d at 538.

4 Plaintiff has made three efforts at crafting a viable complaint and appears unable  
5 to do so despite specific instructions from the Court. The Court finds that further  
6 opportunities to amend would be futile. Therefore, the Court, in its discretion, will  
7 dismiss Plaintiff's Second Amended Complaint without leave to amend.

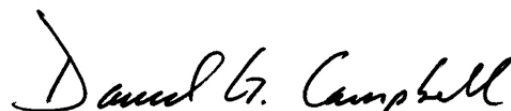
8 **IT IS ORDERED:**

9 (1) Plaintiff's Second Amended Complaint (Doc. 11) and this action are  
10 **dismissed** for failure to state a claim, and the Clerk of Court must enter judgment  
11 accordingly.

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

14 (3) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.  
15 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of  
16 this decision would not be taken in good faith.

17 Dated this 9th day of June, 2015.

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22 David G. Campbell  
23 United States District Judge  
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