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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Stephen Michael Borowski,  
Plaintiff,  
v.  
Paul Penzone, et al.,  
Defendants.

No. CV 18-01127-PHX-DGC (JFM)

**ORDER**

On April 12, 2018, Plaintiff Stephen Michael Borowski, who was then confined in a Maricopa County Jail and is now confined in the Arizona State Prison Complex-Yuma, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed In Forma Pauperis. In an April 27, 2018 order, the Court granted the Application to Proceed and dismissed the complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies identified in the order.

On May 10, 2018, Plaintiff filed his First Amended Complaint. In a May 17, 2018 order, the Court dismissed the First Amended Complaint for failure to state a claim. The Court gave Plaintiff 30 days to file a second amended complaint that cured the deficiencies identified in the order.

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1           Having not received a second amended complaint or a motion for extension of  
2 time, on July 6, 2018, the Clerk of Court dismissed this action with prejudice and entered  
3 Judgment. On July 9, 2018, Plaintiff filed a Motion for Extension of Time to File  
4 Amended Complaint. In a July 12, 2018 order, the Court vacated the July 6, 2018  
5 Judgment, directed the Clerk of Court to reopen the case, and granted Plaintiff’s Motion  
6 for Extension of Time. The Court gave Plaintiff 30 days to file a second amended  
7 complaint. On August 20, 2018, Plaintiff filed a Second Amended Complaint (Doc. 13).  
8 The Court will dismiss the Second Amended Complaint and this action.

9 **I. Statutory Screening of Prisoner Complaints**

10           The Court is required to screen complaints brought by prisoners seeking relief  
11 against a governmental entity or an officer or an employee of a governmental entity. 28  
12 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff  
13 has raised claims that are legally frivolous or malicious, that fail to state a claim upon  
14 which relief may be granted, or that seek monetary relief from a defendant who is  
15 immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

16           A pleading must contain a “short and plain statement of the claim *showing* that the  
17 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8  
18 does not demand detailed factual allegations, “it demands more than an unadorned, the-  
19 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
20 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
21 conclusory statements, do not suffice.” *Id.*

22           “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
23 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
24 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual  
25 content that allows the court to draw the reasonable inference that the defendant is liable  
26 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible  
27 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw  
28 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s

1 specific factual allegations may be consistent with a constitutional claim, a court must  
2 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*  
3 at 681.

4 But as the United States Court of Appeals for the Ninth Circuit has instructed,  
5 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,  
6 342 (9th Cir. 2010). A “complaint [filed by a pro se prisoner] ‘must be held to less  
7 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*  
8 *Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

## 9 **II. Second Amended Complaint**

10 In his three-count Second Amended Complaint, Plaintiff sues Maricopa County  
11 Sheriff Paul Penzone, Inmate Legal Services Supervisor T. Kendell-House, Unknown  
12 Detention Officers and Supervisors, and “Unknown Parties.” Plaintiff asserts claims  
13 relating to his mail and property, denial of access to the courts, a threat to safety, and  
14 denial of basic necessities. He seeks monetary relief.

15 In Count One, Plaintiff alleges that Defendants “continually put up obstacles” by  
16 providing conflicting information to resolve court cases and denying Plaintiff access to  
17 the courts by “knowingly, willfully and wantonly” denying him access to a law library to  
18 research the Arizona Rules of Criminal Procedure, the Arizona Revised Statutes, and case  
19 law. Plaintiff asserts that on several occasions, Defendants impaired his attempts to  
20 access legal supplies to resolve his court cases and fines not related to his criminal  
21 charge, “alway[s] referring [the] request to [his] criminal attorney.” Plaintiff includes a  
22 chronology of requests he apparently sent to Inmate Legal Services and the responses he  
23 received, which indicates that Plaintiff repeatedly requested supplies, case information,  
24 access to legal sources and a law library, and copies of case documents, all of which were  
25 denied.

26 Plaintiff claims that “Defendants acted and continue to act under the color of the  
27 law” and violated his Eighth and Fourteenth Amendment rights. Plaintiff asserts that  
28 Defendants denied him access to a law library, information, legal supplies, and access to

1 courts and failed to take steps to remedy “this situation.” Plaintiff claims that Defendants  
2 showed indifference to his “serious request.” Plaintiff contends that Defendants owed a  
3 duty to him to abide by the law and knowingly and willfully violated his civil rights to  
4 access to a law library, information, courts, and legal supplies. Plaintiff alleges that  
5 Defendants breached their duty and, as a direct and proximate result of Defendants’  
6 failure to provide access to a law library, information, courts, and “legal indigent  
7 supplies,” Plaintiff suffered severe hardships, mental anguish, anxiety, emotional distress,  
8 stress, and undue suffering.

9 In Count Two, Plaintiff alleges that Defendants “denied access to new clean  
10 razors” and “failed to take steps to remedy [the] situation.” Plaintiff asserts that  
11 Defendants knowingly, willingly, and wantonly placed Plaintiff in continual danger by  
12 providing used razors. Plaintiff claims that on several occasions, he was provided razors  
13 with hair in between the razor blades. Plaintiff alleges that the razors have an embossed  
14 number on the inside neck, “not from [the manufacturer] since never consist[e]nt except  
15 location.” Plaintiff claims that Defendants continually denied reusing razors, as stated by  
16 Officer McGill, who told Plaintiff that new razors were wrapped in cellophane and  
17 rubber-banded together. Plaintiff asserts that Defendants failed to rectify this situation  
18 and repeatedly stated they “open[ed] new package.” Plaintiff again includes a  
19 chronology of events, including grievances he filed and the responses he received.  
20 Plaintiff claims that he suffered extreme anxiety, mental anguish, stress, undue suffering,  
21 and hardship.

22 In Count Three, Plaintiff alleges that Defendants served hot meals at improper  
23 temperatures and served an inadequate diet that did not meet “minimum civilized  
24 measure of life necessity,” causing physical weakness, mental deficiencies, mental  
25 anguish, stress, and undue hardship. Plaintiff asserts that Defendants denied him a  
26 balanced diet, protein, carbohydrates, fats, fiber, minerals, and vitamins. Plaintiff claims  
27 that meals that were supposed to be hot were served cold and contained insufficient  
28 calories. Plaintiff alleges that the meals consisted of a small loaf of wheat bread, a

1 serving of peanut butter, a small packet of jelly, a piece of fruit (usually a small apple), a  
2 small package of six cookies, and a half pint of low fat milk. Plaintiff asserts that the  
3 second meal consisted of a serving of soy protein with bits of vegetables, potatoes and/or  
4 beans from the previous dinner, a serving of mashed/powdered potatoes with pieces or  
5 bits of whole potatoes, or rice or whole beans, a serving of vegetables consisting of  
6 broccoli stacks, unwashed carrots, green beans, or a medley of all three with cauliflower  
7 stalks, a roll of wheat bread, a teaspoon of margarine, a piece of fruit, and another packet  
8 of cookies. Plaintiff claims that the second meal was consistently served cold “and  
9 unable to correct issue because stepped out of line before becoming aware of temperature  
10 per MCSO policy.” Plaintiff alleges that he received this diet for eight months, which  
11 caused high estrogen levels that produced gynecomastia, low testosterone levels, excess  
12 weight gain, low energy levels, sluggish thinking, and damage to his physical, emotional,  
13 and mental health.

### 14 **III. Failure to State a Claim**

15 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants  
16 (2) under color of state law (3) deprived him of federal rights, privileges or immunities  
17 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th  
18 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d  
19 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific  
20 injury as a result of the conduct of a particular defendant and he must allege an  
21 affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,  
22 423 U.S. 362, 371-72, 377 (1976).

23 Plaintiff does not connect any of the allegations in the complaint to any named  
24 Defendant. Instead, Plaintiff refers to “Defendants” collectively, without any factual  
25 specificity as to what any particular Defendant did or failed to do. Such vague and  
26 conclusory allegations are insufficient. *See Marcilis v. Township of Redford*, 693 F.3d  
27 589, 596 (6th Cir. 2012) (upholding dismissal of *Bivens* complaint that referred to all  
28 defendants “generally and categorically” because the plaintiff had failed to “allege, with

1 particularity, facts that demonstrate what *each* defendant did to violate the asserted  
2 constitutional right.” (quoting *Lanman v. Hinson*, 529 F.3d 673, 684 (6th Cir. 2008));  
3 *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008) (“Given the complaint’s use  
4 of either the collective term ‘Defendants’ or a list of the defendants named individually  
5 but with no distinction as to what acts are attributable to whom, it is impossible for any of  
6 these individuals to ascertain what particular unconstitutional acts they are alleged to  
7 have committed.”). Because Plaintiff has failed to state a claim against any named  
8 Defendant, the Court will dismiss the Second Amended Complaint.

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

10 Because Plaintiff has failed to state a claim in his Second Amended Complaint, the  
11 Court will dismiss his Second Amended Complaint. “Leave to amend need not be given  
12 if a complaint, as amended, is subject to dismissal.” *Moore v. Kayport Package Express,*  
13 *Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). The Court’s discretion to deny leave to amend is  
14 particularly broad where Plaintiff has previously been permitted to amend his complaint.  
15 *Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996).  
16 Repeated failure to cure deficiencies is one of the factors to be considered in deciding  
17 whether justice requires granting leave to amend. *Moore*, 885 F.2d at 538.

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

#### 22 **IT IS ORDERED:**

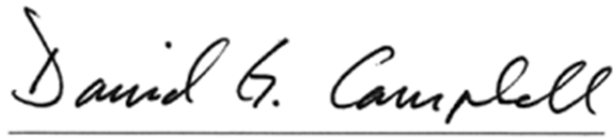
23 (1) Plaintiff’s Second Amended Complaint (Doc. 13) and this action are  
24 **dismissed** for failure to state a claim, and the Clerk of Court must enter judgment  
25 accordingly.

26 (2) The Clerk of Court must make an entry on the docket stating that the  
27 dismissal for failure to state a claim may count as a “strike” under 28 U.S.C. § 1915(g).  
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(3) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal of this decision would be taken in good faith and finds Plaintiff may appeal in forma pauperis.

Dated this 17th day of September, 2018.



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David G. Campbell  
Senior United States District Judge