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

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10 Jason Howard Elder,

11 Plaintiff,

12 vs.

13 Patrick Michael Fish,
14 Defendant.

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No. CV 12-8174-PCT-RCB (LOA)

ORDER

17 Plaintiff Jason Howard Elder, who is confined in the Mohave County Jail, has filed
18 a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed
19 *In Forma Pauperis*. The Court will order Defendant to answer the Complaint.

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

21 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
22 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
23 The Court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). The statutory
24 fee will be collected monthly in payments of 20% of the previous month's income each time
25 the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a
26 separate Order requiring the appropriate government agency to collect and forward the fees
27 according to the statutory formula.

28 TERMPSREF

1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief against
3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
6 be granted, or that seek monetary relief from a defendant who is immune from such relief.
7 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 does not
10 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
11 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
12 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
13 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 content
17 that allows the court to draw the reasonable inference that the defendant is liable for the
18 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
19 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
20 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
21 allegations may be consistent with a constitutional claim, a court must assess whether there
22 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

23 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
24 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
25 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
26 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,
27 94 (2007) (*per curiam*)).

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1 **III. Complaint**

2 The Complaint raises a single claim for violation of the Fourth Amendment by
3 Defendant Detention Officer Michael Fish. Plaintiff alleges that Fish used excessive force
4 to subdue Plaintiff by unnecessarily physically assaulting him and punching him in the face
5 and causing a gash on Plaintiff's eye. Plaintiff seeks damages.

6 Plaintiff adequately states a claim of excessive force, and the Court will direct
7 Defendant to answer.

8 **IV. Warnings**

9 **A. Release**

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

14 **B. Address Changes**

15 Plaintiff must file and serve a notice of a change of address in accordance with Rule
16 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
17 relief with a notice of change of address. Failure to comply may result in dismissal of this
18 action.

19 **C. Copies**

20 Plaintiff must serve Defendant, or counsel if an appearance has been entered, a copy
21 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate
22 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit
23 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply
24 may result in the filing being stricken without further notice to Plaintiff.

25 **D. Possible Dismissal**

26 If Plaintiff fails to timely comply with every provision of this Order, including these
27 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
28 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to

1 comply with any order of the Court).

2 **IT IS ORDERED:**

3 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

4 (2) As required by the accompanying Order to the appropriate government agency,
5 Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing fee.

6 (3) The Clerk of Court must send Plaintiff a service packet including the
7 Complaint (Doc. 1), this Order, and both summons and request for waiver forms for
8 Defendant Fish.

9 (4) Plaintiff must complete and return the service packet to the Clerk of Court
10 within 21 days of the date of filing of this Order. The United States Marshal will not provide
11 service of process if Plaintiff fails to comply with this Order.

12 (5) If Plaintiff does not either obtain a waiver of service of the summons or
13 complete service of the Summons and Complaint on Defendant within 120 days of the filing
14 of the Complaint or within 60 days of the filing of this Order, whichever is later, the action
15 may be dismissed. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

16 (6) The United States Marshal must retain the Summons, a copy of the Complaint,
17 and a copy of this Order for future use.

18 (7) The United States Marshal must notify Defendant of the commencement of this
19 action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal
20 Rules of Civil Procedure. The notice to Defendants must include a copy of this Order. **The
21 Marshal must immediately file signed waivers of service of the summons. If a waiver
22 of service of summons is returned as undeliverable or is not returned by Defendant
23 within 30 days from the date the request for waiver was sent by the Marshal, the
24 Marshal must:**

25 (a) personally serve copies of the Summons, Complaint, and this Order upon
26 Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and

27 (b) within 10 days after personal service is effected, file the return of service
28 for Defendant, along with evidence of the attempt to secure a waiver of service of the


1 summons and of the costs subsequently incurred in effecting service upon Defendant.
2 The costs of service must be enumerated on the return of service form (USM-285) and
3 must include the costs incurred by the Marshal for photocopying additional copies of
4 the Summons, Complaint, or this Order and for preparing new process receipt and
5 return forms (USM-285), if required. Costs of service will be taxed against the
6 personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
7 Procedure, unless otherwise ordered by the Court.

8 (8) **If Defendant agrees to waive service of the Summons and Complaint, he**
9 **must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

10 (9) Defendant must answer the Complaint or otherwise respond by appropriate
11 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal
12 Rules of Civil Procedure.

13 (10) This matter is referred to Magistrate Judge Lawrence O. Anderson pursuant to
14 Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as
15 authorized under 28 U.S.C. § 636(b)(1).

16 DATED this 17th day of September, 2012.

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20 Robert C. Broomfield
21 Senior United States District Judge
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