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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Ernest Bishop,

10 Plaintiff,

11 v.

12 Mohave Mental Health Incorporated,

13 Defendant.  
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No. CV-16-08228-PCT-JZB

**ORDER**

15 On October 3, 2016, Plaintiff filed his initial Complaint and Application to  
16 Proceed in District Court Without Prepaying Fees or Costs. (Docs. 1, 2.) On December  
17 16, 2016, the Court granted the Application to Proceed in District Court Without  
18 Prepaying Fees or Costs and dismissed the Complaint with leave to file an amended  
19 complaint. (Doc. 7.) On January 9, 2017, Plaintiff filed an Amended Complaint. (Doc.  
20 8.)<sup>1</sup> The Court will dismiss Plaintiff's Amended Complaint for failure to comply with  
21 Rules 8 and 10 of the Federal Rules of Civil Procedure. The Court will provide Plaintiff  
22 with one more opportunity to file an amended complaint that states a claim for relief.

23 **I. Screening of IFP Complaints**

24 **a. Legal Standards**

25 For cases proceeding *in forma pauperis*, Congress provided that a district court  
26 "shall dismiss the case at any time if the court determines" that the "allegation of poverty  
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28 <sup>1</sup> On the same date, Plaintiff filed a second Application to Proceed in District  
Court Without Prepaying Fees or Costs (Doc. 9), which the Court will deny as moot.

1 is untrue” or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim  
2 on which relief may be granted,” or “seeks monetary relief against a defendant who is  
3 immune from such relief.” 28 U.S.C. § 1915(e)(2); *see also Lopez v. Smith*, 203 F.3d  
4 1122, 1126 n.7 (9th Cir. 2000) (noting that section 1915(e) applies to all *in forma*  
5 *pauperis* complaints, not merely those filed by prisoners). Accordingly, “section 1915(e)  
6 not only permits but requires a district court to dismiss an *in forma pauperis* complaint  
7 that fails to state a claim.” *Lopez*, 203 F.3d at 1127.

8 Rule 8(a) of the Federal Rules of Civil Procedure provides that to state a claim for  
9 relief, a complaint must contain (1) “a short and plain statement of the grounds for the  
10 court’s jurisdiction,” (2) “a short and plain statement of the claim showing that the  
11 pleader is entitled to relief,” and (3) “a demand for the relief sought.” The complaint also  
12 must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
13 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
14 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

15 The complaint must also provide each defendant with a fair opportunity to frame a  
16 responsive pleading. *McHenry*, 84 F.3d at 1176. Even where a complaint has the factual  
17 elements of a cause of action present but scattered throughout and not organized into a  
18 “short and plain statement of the claim,” the Court may dismiss the complaint for failure  
19 to satisfy Rule 8. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988).  
20 Dismissal of the complaint is appropriate if it is so “verbose, confused, and redundant  
21 that its true substance, if any, is well disguised.” *Gillibeau v. City of Richmond*, 417 F.2d  
22 426, 431 (9th Cir. 1969).

23 Additionally, Rule 10(b) of the Federal Rules of Civil Procedure requires that:

24 A party must state its claims or defenses in numbered paragraphs, each  
25 limited as far as practicable to a single set of circumstances. A later pleading  
26 may refer by number to a paragraph in an earlier pleading. If doing so would  
27 promote clarity, each claim founded on a separate transaction or  
28 occurrence—and each defense other than a denial—must be stated in a  
separate count or defense.

1                                   **b. Plaintiff's Amended Complaint**

2           Plaintiff's Amended Complaint is again comprised of a series of letters, is  
3           disjointed, and is very difficult to understand. Plaintiff appears to again complain that  
4           staff members for Mohave Mental Health Inc., Katrina Webb and/or Lauren Retzen, told  
5           Plaintiff that he was not allowed to attend religious services on March 24, 2013, without  
6           prior permission from his probation officer. Plaintiff appears to allege that Ms. Webb  
7           contacted Plaintiff's Pastor, "Mark," regarding Plaintiff's request, and although Mark  
8           stated he would come to Plaintiff's location and explain to the staff that he would be  
9           taking Plaintiff to religious services, he did not show up to Plaintiff's house and Plaintiff  
10          does not know why. Plaintiff also appears to assert that he needed a staff member to sign  
11          a pass for him to attend services that would be faxed over to his probation officer.  
12          Plaintiff states that he is asserting a First Amendment free exercise of religion claim,  
13          although he also generally references "eminent domain" and "due process." Plaintiff also  
14          asserts that "I am a clinic of Southwest Behavior, so I wrote NHRBHA and let them  
15          know to file a grievance on my behalf." Plaintiff claims, however, that he would like to  
16          proceed with this matter in "federal court or supreme court." Although not entirely clear,  
17          based on the above, the Court again assumes Plaintiff attempts to bring a claim under 42  
18          U.S.C. § 1983, which provides for a private right of action against a state actor for a  
19          constitutional violation.

20                 To prevail on a § 1983 claim, a plaintiff must allege facts supporting that (1) the  
21          conduct about which he complains was committed by a person acting under the color of  
22          state law, and (2) the conduct deprived him of a federal constitutional or statutory right.  
23          *Wood v. Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989). In addition, a plaintiff must  
24          allege that he suffered a specific injury as a result of the conduct of a particular defendant  
25          and he must allege an affirmative link between the injury and the conduct of that  
26          defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976). The ultimate issue in  
27          determining whether an entity is subject to suit under § 1983 is the "same question posed  
28          in cases arising under the Fourteenth Amendment: is the alleged infringement of federal

1 rights fairly attributable to the [government]?” *Sutton v. Providence St. Joseph Med. Ctr.*,  
2 192 F.3d 826, 835 (9th Cir. 1999) (citing *Rendell-Baker v. Kohn*, 457 U.S. 830, 838  
3 (1982)). For a court to answer in the affirmative, a plaintiff must show that two  
4 requirements are met: (1) the deprivation to the plaintiff by the entity “must result from a  
5 governmental policy,” and (2) “the party charged with the deprivation must be a person  
6 who may fairly be said to be a [governmental] actor.” *Sutton*, 192 F.3d at 835 (citing  
7 *Rendell-Baker*, 457 U.S. at 838 (1982)).

8 Municipalities and other local governmental entities may be sued under 42 U.S.C.  
9 § 1983 for the acts of their officials only if a plaintiff can prove that the constitutional  
10 deprivation was the result of a custom or policy of the governmental entity. *Monell v.*  
11 *Dept. of Soc. Servs.*, 436 U.S. 658, 690-91 (1978). A local government cannot be held  
12 liable for the acts of its employees under the theory of *respondeat superior*. *Bd. Of*  
13 *County Comm’rs of Bryan County Okla. v. Brown*, 520 U.S. 397, 403 (1997). Simply  
14 because a governmental entity employs a wrong-doing official does not create liability on  
15 behalf of the entity.

16 Here, Plaintiff’s Amended Complaint fails to state a claim for relief under § 1983.  
17 As an initial matter, Plaintiff again fails in the Amended Complaint to specify the  
18 Defendant(s) he is attempting to sue. Plaintiff references Mohave Mental Health Inc.  
19 and two staff members in the body of his Amended Complaint.<sup>2</sup> However, Plaintiff fails  
20 to assert any allegations to show that either of those individuals, or Mohave Mental  
21 Health Inc., is a governmental actor. *See Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002)  
22 (private individual or group may be state actor when they perform function that is  
23 traditionally and exclusively governmental); *Johnson v. Grays Harbor Community*  
24 *Hospital*, 385 Fed. Appx. 647, 649 (9th Cir. 2010) (unpublished) (non-profit status of  
25 hospital alone did not make it a state actor for purposes of § 1983). Further, Plaintiff  
26 does not specifically allege what policy or custom Mohave Mental Health Inc. adopted

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28 <sup>2</sup> In the Summons Plaintiff attached to his Amended Complaint, he names Mohave  
Mental Health Inc. as the Defendant in this action.

1 and in what way it deprived Plaintiff of his rights, or the specific circumstances  
2 surrounding his living situation, his relationship with Mohave Mental Health Inc., the  
3 terms of his probation, and whether Mohave Mental Health Inc. ultimately denied  
4 Plaintiff's request to attend services. Accordingly, Plaintiff has failed to assert sufficient  
5 facts to state a claim pursuant to 42 U.S.C. § 1983.

6 The Court cannot discern any other federal claim in Plaintiff's Amended  
7 Complaint. The Court also does not find the Amended Complaint alleges any state law  
8 claim relying on diversity jurisdiction. More specifically, Plaintiff has not alleged that  
9 his claim involves a controversy between citizens of different states, or that the amount in  
10 controversy exceeds the statutory minimum of \$75,000. *See* 28 U.S.C. § 1332.

11 Finally, the Court specifically instructed Plaintiff that in any amended complaint  
12 he must comply with Rule 10(b) of the Federal Rules of Civil Procedure, which requires  
13 that Plaintiff organize his Complaint in numbered paragraphs. However, Plaintiff again  
14 has styled his Amended Complaint as a series of disjointed letters, which makes it  
15 difficult for any Defendant to properly respond to the allegations. Therefore, the Court  
16 will dismiss Plaintiff's Amended Complaint.

## 17 **II. Leave to Amend**

18 The Court will give Plaintiff another opportunity, if he so chooses, to amend his  
19 Amended Complaint to make clear his allegations and state a claim for relief. *See Lopez*,  
20 203 F.3d at 1127 (when dismissing for failure to state a claim, "a district court should  
21 grant leave to amend even if no request to amend the pleading was made, unless it  
22 determines that the pleading could not possibly be cured by the allegation of other facts")  
23 (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). In the amended  
24 complaint, Plaintiff must write out, **in short, plain statements**, (1) the rights he believes  
25 were violated, (2) the name of the person or entity who violated each right, (3) exactly  
26 what that individual or entity did or failed to do, (4) how the action or inaction of that  
27 person or entity is connected to the violation of each right, and (5) what specific injury  
28 was suffered because of the other person's or entity's conduct. Plaintiff shall also

1 comply with Rule 10(b) of the Federal Rules of Civil Procedure in filing an amended  
2 complaint.

3 Plaintiff is warned that if he elects to file a second amended complaint and if he  
4 fails to comply with the Court's instructions explained in this Order or the Federal Rules  
5 of Civil Procedure, the action will be dismissed pursuant to section 28 U.S.C. § 1915(e)  
6 and/or Rule 41(b) of the Federal Rules of Civil Procedure. *See McHenry*, 84 F.3d at 1180  
7 (affirming dismissal with prejudice of amended complaint that did not comply with Rule  
8 8(a)); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673–74 (9th Cir. 1981)  
9 (affirming dismissal of amended complaint that was “equally as verbose, confusing, and  
10 conclusory as the initial complaint”).

### 11 **III. Motion to Appoint Counsel**

12 In his Amended Complaint, Plaintiff also appears to request the Court appoint him  
13 counsel. (Doc. 8 at 8.) There is no constitutional right to appointment of counsel in a  
14 civil case. *Johnson v. U.S. Dep't. of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991).  
15 Appointment of counsel in a civil rights case is required only when “exceptional  
16 circumstances” are present. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *see*  
17 *also Cano v. Taylor*, 739 F.3d 1214, 1218 (9th Cir. 2014). To determine whether there  
18 are exceptional circumstances, the Court must consider “the likelihood of success on the  
19 merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the  
20 complexity of the legal issues involved.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.  
21 2009) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). “Neither of these  
22 factors is dispositive and both must be viewed together before reaching a decision.”  
23 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *see also Cano*, 739 F.3d at  
24 1218; *Palmer*, 560 F.3d at 970.

25 The Court finds that Plaintiff has failed to demonstrate the required exceptional  
26 circumstances to warrant appointment of counsel in this case. Plaintiff has not  
27 demonstrated a likelihood of success on the merits, nor has he shown that he is  
28 experiencing difficulty in litigating this case because of the complexity of the issues

1 involved. Therefore, the Court will deny Plaintiff's Motion to appoint counsel.

2 Accordingly,

3 **IT IS ORDERED** that Plaintiff's Amended Complaint (Doc. 8) is dismissed for  
4 failure to comply with Rules 8 and 10 of the Federal Rules of Civil Procedure.

5 **IT IS FURTHER ORDERED** that Plaintiff is granted leave to file a second  
6 amended complaint by **June 9, 2017**.

7 **IT IS FURTHER ORDERED** that if Plaintiff elects to file a second amended  
8 complaint, the complaint may not be served until and unless the Court screens the second  
9 amended complaint pursuant to 28 U.S.C. § 1915(e)(2).

10 **IT IS FURTHER ORDERED** that if Plaintiff elects not to file a second amended  
11 complaint by **June 9, 2017**, the Clerk shall dismiss this action without further order of  
12 this Court.

13 **IT IS FURTHER ORDERED** that Plaintiff's Motion to appoint counsel (Doc. 8  
14 at 8) is denied.

15 **IT IS FURTHER ORDERED** Plaintiff's second Application to Proceed in  
16 District Court Without Prepaying Fees and Costs (Doc. 9) is denied as moot.

17 Dated this 10th day of May, 2017.

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22 Honorable John Z. Boyle  
23 United States Magistrate Judge  
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