

EXHIBIT 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 28 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MITCHELL TAEBEL,

Plaintiff-Appellant,

v.

DOUGLAS A. DUCEY, named as AZ
Governor; et al.,

Defendants-Appellees.

No. 19-16169

D.C. No.
2:19-cv-00323-JAT-CDB
District of Arizona,
Phoenix

ORDER

Before: M. SMITH and BENNETT, Circuit Judges.

Appellant's motions for emergency injunctive relief (Docket Entry Nos. 4, 5, 9) are denied. The court will not entertain any motions for reconsideration, clarification, or modification of these denials on an emergency basis.

Briefing remains stayed pending disposition of the June 25, 2019 order to show cause.

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

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9 Mitch Taebel,

No. CV 19-00323-JAT (CDB)

10 Plaintiff,

11 v.

ORDER

12 Douglas A. Ducey, et al.,
13 Defendants.

14

15 On or about January 2, 2019, Plaintiff Mitch Taebel,¹ who is confined in a Maricopa
16 County Jail, filed a pro se Complaint in Maricopa County Superior Court. Defendant was
17 served shortly thereafter, and, on January 18, 2019, timely removed the matter to this Court
18 and paid the filing fee. By Order dated January 28, 2019, the Court accepted jurisdiction,
19 but dismissed the Complaint for failure to comply with Rule 3.4 of the Local Rules of Civil
20 Procedure. The Court gave Plaintiff 30 days to file an amended complaint that cured the

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22 ¹ Plaintiff is a frequent litigant in this Court. In the past year, Plaintiff has filed at
23 least 14 cases with this court. *See Taebel v. Montgomery*, case no. 2:18-CV-01354-PHX-
24 SRB (ESW) (D. Ariz. 2018); *Taebel v. Sonberg*, case no. 2:18-CV-00046-PHX-GMS (D.
25 Ariz. 2018); *Taebel v. Harder*, case no. 2:18-CV-01183-PHX-JAT (ESW) (D. Ariz. 2018);
26 *Taebel v. Stanton*, case no. 2:18-CV-01569-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Morton*,
27 case no. 2:18-CV-01653-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Maricopa County Sheriff's Office*,
28 case no. 2:18-CV-01654-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Haas*, case no. 2:18-CV-01655-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Russo*, case no. 2:18-CV-PHX-JAT (CDB) (D. Ariz. 2018); *Taebel v. Stanton*, case no. 2:18-01167-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Harder*, case no. 2:18-CV-01183-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Maricopa County Sheriff's Office*, case no. 2:18-CV-02496-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Penzone*, case no. 2:18-CV-01122-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Castillo*, case no. 2:18-CV-02576-PHX-JAT (ESW) (D. Ariz. 2018); *Taebel v. Teilborg*, case no. 2:19-CV-02594-PHX-JAT (ESW) (D. Ariz. 2019).

1 deficiencies identified in the Order.

2 On March 1, 2019, Plaintiff filed his First Amended Complaint (Doc. 7). Plaintiff
3 has also filed the following:

- 4 - a Motion for Change of Judge (Doc. 6);
5 - a Motion for Service of Process (Doc. 8);
6 - a “Motion for Emergency Order Per Rule 65” (Doc. 10);
7 - a “Motion for Urgent Order Rule 65(b)” (Doc. 11);
8 - a Motion for Preliminary Injunction (Doc. 12); and
9 - a Motion for Appointment of Counsel (Doc. 13).

10 **I. Motion to Change Judge**

11 Title 28, Section 455(a) provides that a United States judge “shall disqualify”
12 himself in any proceeding in which his “impartiality might reasonably be questioned.”
13 Section 455(b)(1) provides that a judge must also disqualify himself where he “has a
14 personal bias or prejudice concerning a party, or personal knowledge of disputed
15 evidentiary facts concerning the proceeding[.]” Recusal pursuant to § 455(b) is required
16 only if the bias or prejudice stems from an extra-judicial source, not from conduct or rulings
17 during the course of the proceedings. *See Hasbrouck v. Texaco, Inc.*, 842 F.2d 1034, 1046
18 (9th Cir. 1987), *aff’d*, 496 U.S. 543 (1990); *United States v. Studley*, 783 F.2d 934, 939
19 (9th Cir. 1986) (judge’s prior adverse rulings are insufficient cause for recusal). “[J]udicial
20 rulings alone almost never constitute [a] valid basis for a bias or partiality motion.” *Liteky*
21 *v. United States*, 114 S. Ct. 1147, 1157 (1994). Adverse rulings should be appealed; they
22 do not form the basis for a recusal motion. Further, where the judge forms opinions in the
23 courtroom, either in the current proceeding or in a prior proceeding, these opinions “do not
24 constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism
25 or antagonism that would make fair judgment impossible.” *Id.*

26 Title 28, Section 144 provides for recusal where a party files a “timely and sufficient
27 affidavit that the judge before whom the matter is pending has a personal bias or prejudice
28 either against him or in favor of any adverse party.” The affidavit must state the facts and

1 reasons for the belief that the bias or prejudice exists. 28 U.S.C. § 144. If the judge finds
2 the affidavit timely and legally sufficient, the judge must proceed no further and another
3 judge must be assigned to hear the motion. *Id.*; *United States v. Sibla*, 624 F.2d 864, 867
4 (9th Cir. 1980).

5 Here, Plaintiff has not demonstrated that recusal pursuant to either §455 or §144 is
6 warranted. Plaintiff has not alleged any evidence to support that the undersigned's
7 partiality might reasonably be questioned. Nor has Plaintiff identified any extra-judicial
8 source of any bias or prejudice. Further, Plaintiff has failed to provide the affidavit required
9 by § 144, or to state the facts and reasons, under oath, for why he believes that the
10 undersigned has any bias or prejudice against him. Accordingly, recusal is not appropriate,
11 and Plaintiff's Motion will be denied.

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

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

19 A pleading must contain a “short and plain statement of the claim *showing* that the
20 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
21 not demand detailed factual allegations, “it demands more than an unadorned, the-
22 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
23 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
24 conclusory statements, do not suffice.” *Id.*

25 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
26 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
27 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
28 that allows the court to draw the reasonable inference that the defendant is liable for the

1 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 2 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 3 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 4 allegations may be consistent with a constitutional claim, a court must assess whether there
 5 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

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

11 If the Court determines that a pleading could be cured by the allegation of other
 12 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
 13 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
 14 Plaintiff’s First Amended Complaint will be dismissed for failure to state a claim, but
 15 because it may possibly be amended to state a claim, the Court will dismiss it with leave
 16 to amend.

17 **III. First Amended Complaint**

18 In his First Amended Complaint, Plaintiff names 12 different Defendants, including
 19 the “AZ Governor,” the “AZ Attorney General,” the “Mayor of Phoenix,” and numerous
 20 “Commanders” at the Maricopa County Fourth Avenue Jail. In Count One, Plaintiff
 21 alleges a claim for “unlawful restriction[] on marriage licenses,” which he states is related
 22 to basic necessities, access to the courts, and the exercise of religion. In Count Two,
 23 Plaintiff alleges a claim for “unlawful restriction on mail,” which he states is related to
 24 basic necessities, mail, and access to the courts. In Count Three, Plaintiff alleges a claim
 25 for “unlawful restriction[] on visitation,” which he states is related to basic necessities, and
 26 the exercise of religion. In Count Four, Plaintiff alleges a claim related to “the quality of
 27 the food,” which he states arises under the “privileges and immunities” clause and
 28 constitutes “cruel and unusual punishment.” In Count Five, Plaintiff alleges a claim of

1 “inadequate legal resources.” And in Count Six, Plaintiff alleges a claim for
2 “unconstitutional restrictions on access of journalists to defendants.” Plaintiff seeks
3 injunctive relief and “one hundred billion USD” in damages.

4 **IV. Failure to State a Claim**

5 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants
6 (2) under color of state law (3) deprived him of federal rights, privileges or immunities and
7 (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir.
8 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm'n*, 42 F.3d 1278,
9 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific injury
10 as a result of the conduct of a particular defendant and he must allege an affirmative link
11 between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-
12 72, 377 (1976).

13 Plaintiff makes no allegations against any named Defendant. Accordingly, the First
14 Amended Complaint will be dismissed.

15 **V. Leave to Amend**

16 Within 30 days, Plaintiff may submit a second amended complaint to cure the
17 deficiencies outlined above. The Clerk of Court will mail Plaintiff a court-approved form
18 to use for filing a second amended complaint. If Plaintiff fails to use the court-approved
19 form, the Court may strike the second amended complaint and dismiss this action without
20 further notice to Plaintiff.

21 Plaintiff must clearly designate on the face of the document that it is the “Second
22 Amended Complaint.” The second amended complaint must be retyped or rewritten in its
23 entirety on the court-approved form and may not incorporate any part of the original
24 Complaint or First Amended Complaint by reference. Plaintiff may include only one claim
25 per count.

26 A second amended complaint supersedes the original Complaint and First Amended
27 Complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v.*
28 *Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court

1 will treat the original Complaint and First Amended Complaint as nonexistent. *Ferdik*,
2 963 F.2d at 1262. Any cause of action that was raised in the original Complaint or First
3 Amended Complaint and that was voluntarily dismissed or was dismissed without
4 prejudice is waived if it is not alleged in a second amended complaint. *Lacey v. Maricopa*
5 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

6 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
7 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
8 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to
9 do; (4) how the action or inaction of that Defendant is connected to the violation of
10 Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of
11 that Defendant's conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

12 Plaintiff must repeat this process for each person he names as a Defendant. If
13 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
14 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
15 failure to state a claim. **Conclusory allegations that a Defendant or group of**
16 **Defendants has violated a constitutional right are not acceptable and will be**
17 **dismissed.**

18 Plaintiff should be aware that the right of meaningful access to the courts prohibits
19 officials from actively interfering with inmates' attempts to prepare or file legal documents.
20 *Lewis v. Casey*, 518 U.S. 343, 350 (1996). The right of access to the courts is only a right
21 to bring petitions or complaints to federal court and not a right to discover such claims or
22 even to litigate them effectively once filed with a court. *Id.* at 354. The right "guarantees
23 no particular methodology but rather the conferral of a capability—the capability of bringing
24 contemplated challenges to sentences or conditions of confinement before the courts." *Id.*
25 at 356.

26 As a matter of standing, for an access-to-courts claim, a plaintiff must show that he
27 suffered an "actual injury" with respect to contemplated litigation. *Id.* at 349. To show
28 actual injury with respect to contemplated litigation, the plaintiff must demonstrate that the

1 defendants' conduct frustrated or impeded him from bringing to court a nonfrivolous claim
2 that he wished to present. *Id.* at 352-53.

3 "[T]he injury requirement is not satisfied by just any type of frustrated legal claim." *Id.* at 354. The right of access to the courts "does not guarantee inmates the wherewithal
4 to transform themselves into litigating engines capable of filing everything from
5 shareholder derivative actions to slip-and-fall claims." *Id.* at 355. The nonfrivolous claim
6 must be a direct or collateral attack on the inmate's sentence or a challenge to the conditions
7 of his confinement. *Id.* "Impairment of any *other* litigating capacity is simply one of the
8 incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id.*
9 (emphasis in original).

10 Further, a pretrial detainee has a right under the Due Process Clause of the
11 Fourteenth Amendment to be free from punishment prior to an adjudication of guilt. *Bell*
12 *v. Wolfish*, 441 U.S. 520, 535 (1979). "Pretrial detainees are entitled to 'adequate food,
13 clothing, shelter, sanitation, medical care, and personal safety.'" *Alvarez-Machain v.*
14 *United States*, 107 F.3d 696, 701 (9th Cir. 1996) (quoting *Hoptowit v. Ray*, 682 F.2d 1237,
15 1246 (9th Cir. 1982)). To state a claim of unconstitutional conditions of confinement
16 against an individual defendant, a pretrial detainee must allege facts that show:
17

18 (i) the defendant made an intentional decision with respect to
19 the conditions under which the plaintiff was confined;
20 (ii) those conditions put the plaintiff at substantial risk of
21 suffering serious harm; (iii) the defendant did not take
22 reasonable available measures to abate that risk, even though a
23 reasonable official in the circumstances would have
24 appreciated the high degree of risk involved—making the
consequences of the defendant's conduct obvious; and (iv) by
not taking such measures, the defendant caused the plaintiff's
injuries.

25 *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

26 Whether the conditions and conduct rise to the level of a constitutional violation is
27 an objective assessment that turns on the facts and circumstances of each particular case.
28 *Id.*; *Hearns v. Terhune*, 413 F.3d 1036, 1042 (9th Cir. 2005). However, "a de minimis

1 level of imposition" is insufficient. *Bell*, 441 U.S. at 539 n.21. In addition, the "mere lack
2 of due care by a state official" does not deprive an individual of life, liberty, or property
3 under the Fourteenth Amendment." *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071
4 (9th Cir. 2016) (quoting *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)). Thus, a
5 plaintiff must "prove more than negligence but less than subjective intent—something akin
6 to reckless disregard." *Id.*

7 Additionally, prisoners retain the First Amendment right directing that no law shall
8 prohibit the free exercise of religion. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348
9 (1987); *Henderson v. Terhune*, 379 F.3d 709 (9th Cir. 2004). To state a First Amendment,
10 free-exercise-of-religion claim, a plaintiff must allege that a defendant burdened the
11 practice of plaintiff's religion by preventing him from engaging in a sincerely held religious
12 belief and that the defendant did so without any justification reasonably related to
13 legitimate penological interests. *Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008).

14 Plaintiff should also be aware that prisoners have "a First Amendment right to send
15 and receive mail." *Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (*per curiam*) (citing
16 *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989)). However, a prison may adopt
17 regulations which impinge on an inmate's constitutional rights if those regulations are
18 "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89
19 (1987).

20 **VI. Motions**

21 **A. Motion for Service**

22 Plaintiff's Motion for Service is premature. As noted, the Court is required to screen
23 complaints brought by prisoners seeking relief against a governmental entity or an officer
24 or an employee of a governmental entity. 28 U.S.C. § 1915A(a). If and when Plaintiff
25 files an amended complaint that sufficiently states a claim against one or more Defendants,
26 the Court will direct that service be made. In the meantime, however, Plaintiff's Motion
27 will be denied.

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1 **B. Motion for Counsel**

2 There is no constitutional right to the appointment of counsel in a civil case. *See*
3 *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). In
4 proceedings in forma pauperis, the court may request an attorney to represent any person
5 unable to afford one. 28 U.S.C. § 1915(e)(1). Appointment of counsel under 28 U.S.C.
6 § 1915(e)(1) is required only when “exceptional circumstances” are present. *Terrell v.*
7 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A determination with respect to exceptional
8 circumstances requires an evaluation of the likelihood of success on the merits as well as
9 the ability of Plaintiff to articulate his claims pro se in light of the complexity of the legal
10 issue involved. *Id.* “Neither of these factors is dispositive and both must be viewed
11 together before reaching a decision.” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328,
12 1331 (9th Cir. 1986)).

13 Having considered both elements, it does not appear at this time that exceptional
14 circumstances are present that would require the appointment of counsel in this case.
15 Plaintiff is in no different position than many pro se prisoner litigants. Thus, the Court will
16 deny without prejudice Plaintiff’s Motion for Appointment of Counsel.

17 **C. Motions for Injunction**

18 Plaintiff has filed three Motions seeking preliminary injunctive relief (Docs. 10, 11,
19 and 12). To obtain a preliminary injunction, the moving party must show “that he is likely
20 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
21 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
22 the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 21
23 (2008). The moving party has the burden of proof on each element of the test.
24 *Environmental Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal.
25 2000).

26 Here, because Plaintiff has failed to state a claim in his Complaint, he has
27 necessarily failed to demonstrate that he is likely to succeed on the merits of his claims,
28 and is thus not entitled to preliminary injunctive relief. As such, Plaintiff’s Motions will

1 be denied.

2 **VII. Warnings**

3 **A. Address Changes**

4 If Plaintiff's address changes, Plaintiff must file and serve a notice of a change of
5 address in accordance with Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff
6 must not include a motion for other relief with a notice of change of address. Failure to
7 comply may result in dismissal of this action.

8 **B. Possible Dismissal**

9 If Plaintiff fails to timely comply with every provision of this Order, including these
10 warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963 F.2d
11 at 1260-61 (a district court may dismiss an action for failure to comply with any order of
12 the Court).

13 **IT IS ORDERED:**

14 (1) The First Amended Complaint (Doc. 7) is **dismissed** for failure to state a
15 claim. Plaintiff has **30 days** from the date this Order is filed to file a second amended
16 complaint in compliance with this Order.

17 (2) If Plaintiff fails to file a second amended complaint within 30 days, the Clerk
18 of Court must, without further notice, enter a judgment of dismissal of this action with
19 prejudice and deny any pending unrelated motions as moot.

20 (3) Plaintiff's Motion for Change of Judge (Doc. 6), Motion for Service of
21 Process (Doc. 8), Motion for Appointment of Counsel (Doc. 13), and Motions for
22 preliminary injunctive relief (Docs. 10, 11, and 12) are **denied**.

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EXHIBIT 2

CASREF,DTE

**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:19-cv-00323-JAT--CDB**

Taebel v. Ducey

Assigned to: Senior Judge James A Teilborg
Referred to: Magistrate Judge Camille D Bibles (PS)
Demand: \$1,000,000,000

Related Cases: 2:18-cv-01122-JAT--ESW
2:18-cv-01167-JAT--ESW
2:18-cv-01183-JAT--ESW
2:18-cv-01569-JAT--ESW
2:18-cv-01653-JAT--ESW
2:18-cv-01654-JAT--ESW

Date Filed: 01/18/2019
Jury Demand: Defendant
Nature of Suit: 555 Prisoner: Prison
Condition
Jurisdiction: Federal Question

Case in other court: Maricopa County Superior Court,
CV2019-000061

Cause: 28:1441 Petition for Removal- Civil Rights Act

Plaintiff

Mitch Taebel

represented by **Mitch Taebel**
#T430659
PHOENIX-AZ-MCSO-INMATE
LEGAL SERVICES
MARICOPA COUNTY SHERIFFS
OFFICE
INMATE LEGAL SERVICES
3250 W LOWER BUCKEYE
PHOENIX, AZ 85009
PRO SE

V.

Defendant

Douglas A Ducey
named as AZ Governor

represented by **Byron Jeffords Babione**
Office of the Attorney General -
Phoenix
2005 N Central Ave.
Phoenix, AZ 85004-1592
602-542-7690
Email: byron.babione@azag.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Timothy J Watson

Mark Brnovich
Arizona Attorney General

Defendant

Paul Penzone
Maricopa County Sheriff

Defendant

William Montgomery
Maricopa County Attorney

Date Filed	#	Docket Text
01/18/2019	<u>1</u>	NOTICE OF REMOVAL from Maricopa County Superior Court, case number CV2019-000061. Filing fee received: \$ 400.00, receipt number 0970-16432063 filed by Douglas A Ducey. (Babione, Byron) (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Supplemental Civil Cover Sheet, # <u>3</u> Exhibit A)(MFR) (Entered: 01/18/2019)
01/18/2019		***STATE COURT RECORD RECEIVED***SERVICE EXECUTED : Certificate of Service re: Summons, Civil Complaint-Jury Trial, Certificate of Compulsory Arbitration, and Plaintiff's Demand for Jury Trial upon Douglas A Ducey on 1/3/2019 (Original filed in Maricopa County Superior Court on 1/9/2019). (MFR) This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (Entered: 01/18/2019)
01/18/2019	<u>2</u>	NOTICE OF ASSIGNMENT (MFR) (Entered: 01/18/2019)
01/22/2019	<u>3</u>	DEFENDANT'S DEMAND for Jury Trial by Douglas A Ducey. (Babione, Byron) (Entered: 01/22/2019)
01/22/2019	<u>4</u>	MOTION for Extension of Time to File Answer by Douglas A Ducey. (Attachments: # <u>1</u> Text of Proposed Order)(Babione, Byron) (Entered: 01/22/2019)
01/28/2019	<u>5</u>	ORDER - IT IS ORDERED: The Complaint (Doc. <u>1</u> -3 at 4-7) is dismissed for failure to comply with Rule 3.4 of the Local Rules of Civil Procedure. Plaintiff has 30 days from the date this Order is filed to file a first amended complaint in compliance with this Order. If Plaintiff fails to file an amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action without prejudice and deny any pending unrelated motions as moot. Defendant's Motion for Extension of Time to Respond to Complaint (Doc. <u>4</u>) is denied as moot. (See document for complete details). Signed by Senior Judge James A Teilborg on 1/28/19. (SLQ) (Entered: 01/28/2019)
02/01/2019	<u>6</u>	MOTION for Change of Judge by Mitch Taebel. (2 pages) (REK) (Entered: 02/04/2019)
03/01/2019	<u>7</u>	First AMENDED COMPLAINT against All Defendants filed by Mitch Taebel. (22 pages)(MSA) (Entered: 03/05/2019)

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

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Mitch Taebel, No. CV 19-00323-PHX-JAT (ESW)
Plaintiff,
v.
Douglas A. Ducey,
Defendant.

ORDER

On or about January 2, 2019, Plaintiff Mitch Taebel, who is confined in a Maricopa County Jail, filed a pro se Complaint in Maricopa County Superior Court. Defendant was served shortly thereafter, and, on January 18, 2019, timely removed the matter to this Court and paid the filing fee. Subsequently, Defendant filed a Motion for Extension of Time to Respond to Complaint (Doc. 4). The Court will dismiss the Complaint with leave to amend, and deny the Motion as moot.

I. Jurisdiction

A defendant may remove any civil action brought in state court over which the federal court would have original jurisdiction. 28 U.S.C. §1441(a). That is, a civil action that could have originally been brought in federal court may be removed from state to federal court. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). A federal court has original jurisdiction “of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

The Complaint in this case facially supports the existence of federal subject matter

1 jurisdiction because Plaintiff alleges violations of his federal constitutional rights. 28
2 U.S.C. § 1441(a). Further, the case was timely removed. 28 U.S.C. § 1446(b).
3 Accordingly, the Court will accept jurisdiction over this matter.

4 **II. Complaint Not on Court-Approved Form**

5 Pursuant to Local Rule of Civil Procedure 3.4, Plaintiff is required to use a court-
6 approved form when he files a pro se civil rights complaint. Plaintiff's Complaint is not
7 on the court's approved form. While the Court may, in its discretion, forgo the requirement
8 that a plaintiff use a court-approved form, *see* Local Rule of Civil Procedure 3.4, the Court
9 will require Plaintiff to use the court-approved form here because the Complaint does not
10 substantially comply with the court-approved form. Accordingly, the Court will dismiss
11 the Complaint, with leave to amend, for failure to comply with Local Rule 3.4.¹

12 **III. Leave to Amend**

13 Within 30 days, Plaintiff may submit a first amended complaint to cure the
14 deficiencies outlined above. The Clerk of Court will mail Plaintiff a court-approved form
15 to use for filing a first amended complaint. If Plaintiff fails to use the court-approved form,
16 the Court may strike the amended complaint and dismiss this action without further notice
17 to Plaintiff.

18 Plaintiff must clearly designate on the face of the document that it is the "First
19 Amended Complaint." The first amended complaint must be retyped or rewritten in its
20 entirety on the court-approved form and may not incorporate any part of any previous
21 complaint by reference. Plaintiff may include only one claim per count.

22 A first amended complaint supersedes any previous complaints. *Ferdik v. Bonzelet*,
23 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
24 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat any previous complaint
25 as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised in a previous

27 ¹ Because the Court will dismiss the Complaint with leave to amend, the Court will
28 deny Defendant's Motion for Extension of Time to Respond to Complaint as moot. If
Plaintiff files an amended complaint that sufficiently states a cause of action against
Defendant, the Court will call for an answer and set a briefing schedule at that time.

1 complaint and that was voluntarily dismissed or was dismissed without prejudice is waived
2 if it is not alleged in a first amended complaint. *Lacey v. Maricopa County*, 693 F.3d 896,
3 928 (9th Cir. 2012) (en banc).

4 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
5 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
6 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to
7 do; (4) how the action or inaction of that Defendant is connected to the violation of
8 Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of
9 that Defendant's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

10 Plaintiff must repeat this process for each person he names as a Defendant. If
11 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
12 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
13 failure to state a claim. **Conclusory allegations that a Defendant or group of**
14 **Defendants has violated a constitutional right are not acceptable and will be**
15 **dismissed.**

16 **IV. Warnings**

17 **A. Address Changes**

18 If Plaintiff's address changes, Plaintiff must file and serve a notice of a change of
19 address in accordance with Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff
20 must not include a motion for other relief with a notice of change of address. Failure to
21 comply may result in dismissal of this action.

22 **B. Copies**

23 Plaintiff must submit an additional copy of every filing for use by the Court. *See*
24 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
25 to Plaintiff.

26 **C. Possible Dismissal**

27 If Plaintiff fails to timely comply with every provision of this Order, including these
28 warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963 F.2d

1 at 1260-61 (a district court may dismiss an action for failure to comply with any order of
2 the Court).

3 **IT IS ORDERED:**

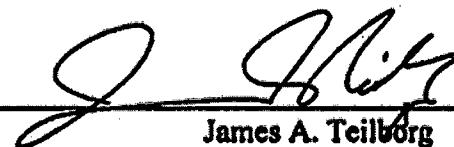
4 (1) The Complaint (Doc. 1-3 at 4-7) is **dismissed** for failure to comply with Rule
5 3.4 of the Local Rules of Civil Procedure. Plaintiff has **30 days** from the date this Order
6 is filed to file a first amended complaint in compliance with this Order.

7 (2) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
8 Court must, without further notice, enter a judgment of dismissal of this action without
9 prejudice and deny any pending unrelated motions as moot.

10 (3) Defendant's Motion for Extension of Time to Respond to Complaint (Doc.
11 4) is **denied as moot**.

12 (4) The Clerk of Court must mail Plaintiff a court-approved form for filing a
13 civil rights complaint by a prisoner.

14 Dated this 28th day of January, 2019.

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17 
18 James A. Teilborg
19 Senior United States District Judge
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**Additional material
from this filing is
available in the
Clerk's Office.**