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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Takisha M. Johnson, Plaintiff, v. David Shinn, et al., Defendants.	No. CV 22-00537-PHX-JAT (JFM) **ORDER**

Plaintiff Takisha M. Johnson, who is confined in the Arizona State Prison Complex-Perryville, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983, an Application to Proceed In Forma Pauperis, and a motion for appointment of counsel. The Court granted the Application, denied the motion, and dismissed the Complaint with leave to amend (Doc. 6). After being granted an extension of time, Plaintiff filed a First Amended Complaint (Doc. 10). The Court will order Defendants Shinn, Bendell, and Barnes to answer Counts I and II of the First Amended Complaint.

I. Statutory Screening of Prisoner Complaints

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

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

"[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Thus, although a plaintiff's specific factual allegations may be consistent with a constitutional claim, a court must assess whether there are other "more likely explanations" for a defendant's conduct. *Id.* at 681.

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

II. First Amended Complaint

In her two-count First Amended Complaint, Plaintiff asserts claims for threat to safety. Plaintiff sues Arizona Department of Corrections, Rehabilitation, and Reentry (ADC) Director David Shinn, Perryville Complex Deputy Warden Bendell, and Building Maintenance Staff A. Barnes. Plaintiff seeks injunctive, compensatory, and punitive relief and her costs.

In **Count I**, Plaintiff alleges the following facts:

In early 2021, Defendant Barnes hired Plaintiff to work on a prison maintenance

crew under his supervision and instruction. Plaintiff told Barnes that she did not have prior training or experience. Nevertheless, Barnes failed to comply with Department Order (DO) 404.11[1] which requires that prisoner-workers receive mandatory safety training and supervision. Barnes also often left his prisoner workers unsupervised, even when they were using dangerous tools and working in unsafe conditions. Despite Plaintiff's substantial safety concerns associated with being on the work crew, Plaintiff could not quit the prison job or refuse to work without facing significant disciplinary consequences.

On July 7, 2021, Plaintiff was required to work on the roof of the Lumley Unit D-yard housing unit. By that time, Plaintiff had been on Barnes's maintenance crew for six months and still had not received safety training pursuant to DO 404.11. Barnes ordered Plaintiff, who is 4 feet 11 inches tall, to climb down a six-foot wall into a pit housing swamp coolers above Wing 1. Immediately after ordering Plaintiff to climb into the pit, Barnes left the area and went to a section of the roof above Wing 4, about 100 feet away, and where Barnes could not see Plaintiff.

The roof of Wing 1 was wet, slippery, covered in animal feces, and had rotted through in places. The area where Plaintiff was ordered to work was especially dangerous because the pit lacked any safety railing or ladder, unlike other pits. Barnes was aware of the conditions and problems with that section of roof but nevertheless walked away and failed to oversee or supervise the work to be done there. As Plaintiff attempted to climb into the pit to service the coolers as ordered, she fell, dislocating her ankle and breaking it in three places. Plaintiff screamed for help and another prisoner went to find and inform Barnes of Plaintiff's fall. Barnes called Lumley Unit control and summoned officers and medical staff. When medical staff arrived, they immediately told officers to call 911 due to the obvious severity of Plaintiff's injuries.

Responding emergency vehicles were unable to enter the scene because the access gate was too small for their vehicles to enter. First responders summoned an additional fire truck to rescue Plaintiff from the roof. After eventually reaching Plaintiff, the

[1] The version of DO 404 in effect at relevant times has been superseded.

responders took Plaintiff to the hospital where she underwent extensive surgery and had hardware, including a metal plate, inserted in her foot.

In **Count II**, Plaintiff alleges the following:

"Defendants" have an ongoing practice, custom, and de facto policy of forcing prisoners to work in unsafe and hazardous conditions. The failure to provide a reasonably safe work environment constitutes deliberate indifference to prisoner safety. Despite DO 404.11.2's requirement that prisoner workers be properly trained, supervised, and provided safety equipment, the policy has been intentionally ignored for years. Defendants knew the policy was not being enforced because DO 404.11.3 required that all safety training be documented in a file, but no documentation exists to establish that prisoner workers in the Lumley Unit received any such training. Plaintiff claims that Defendants Shinn and Bendell willfully ignored risks to prisoner workers from unsafe conditions but took no action to ensure prisoner workers were trained, supervised, and provided appropriate safety equipment.

III. Claims for Which an Answer Will Be Required

Plaintiff sufficiently alleges facts to state a claim for threat to safety or failure to protect in violation of Plaintiff's Eighth Amendment rights. Defendant Barnes, in his individual capacity, and Defendants Shinn and Bendell, in their official capacities, will be required to respond to the First Amended Complaint.

IV. Warnings

A. Release

If Plaintiff is released while this case remains pending, and the filing fee has not been paid in full, Plaintiff must, within 30 days of her release, either (1) notify the Court that she intends to pay the unpaid balance of her filing fee within 120 days of her release or (2) file a non-prisoner application to proceed in forma pauperis. Failure to comply may result in dismissal of this action.

B. Address Changes

Plaintiff must file and serve a notice of a change of address in accordance with Rule

83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other relief with a notice of change of address. Failure to comply may result in dismissal of this action.

C. Copies

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

D. Possible Dismissal

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

IT IS ORDERED:

(1) Defendants Shinn, Bendell, and Barnes must answer Counts I and II.

(2) The Clerk of Court must send Plaintiff a service packet including the First Amended Complaint (Doc. 10), this Order, and both summons and request for waiver forms for Defendants Shinn, Bendell, and Barnes.

(3) Plaintiff must complete[2] and return the service packet to the Clerk of Court within 21 days of the date of filing of this Order. The United States Marshal will not provide service of process if Plaintiff fails to comply with this Order.

(4) If Plaintiff does not either obtain a waiver of service of the summons or complete service of the Summons and First Amended Complaint on a Defendant within 90 days of the filing of the Complaint or within 60 days of the filing of this Order, whichever

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[2] If a Defendant is an officer or employee of the Arizona Department of Corrections, Plaintiff must list the address of the specific institution where the officer or employee works. Service cannot be effected on an officer or employee at the Central Office of the ADC unless the officer or employee works there.

is later, the action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(ii).

(5) The United States Marshal must retain the Summons, a copy of the First Amended Complaint, and a copy of this Order for future use.

(6) The United States Marshal must notify Defendants of the commencement of this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice to Defendants must include a copy of this Order.

(7) A Defendant who agrees to waive service of the Summons and First Amended Complaint must return the signed waiver forms to the United States Marshal, not the Plaintiff, **within 30 days of the date of the notice and request for waiver of service** pursuant to Federal Rule of Civil Procedure 4(d)(1)(F) to avoid being charged the cost of personal service.

(8) The Marshal must immediately file signed waivers of service of the summons. If a waiver of service of summons is returned as undeliverable or is not returned by a Defendant within 30 days from the date the request for waiver was sent by the Marshal, the Marshal must:

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

(b) within 10 days after personal service is effected, file the return of service for Defendant, along with evidence of the attempt to secure a waiver of service of the summons and of the costs subsequently incurred in effecting service upon Defendant. The costs of service must be enumerated on the return of service form (USM-285) and must include the costs incurred by the Marshal for photocopying additional copies of the Summons, First Amended Complaint, or this Order and for preparing new process receipt and return forms (USM-285), if required. Costs of service will be taxed against the personally served Defendant

pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

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

(10) Any answer or response must state the specific Defendant by name on whose behalf it is filed. The Court may strike any answer, response, or other motion or paper that does not identify the specific Defendant by name on whose behalf it is filed.

(11) This matter is referred to Magistrate Judge James F. Metcalf pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized under 28 U.S.C. § 636(b)(1).

Dated this 5th day of October, 2022.

James A. Teilborg
Senior United States District Judge

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