

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SVK

**WO**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Norman Lee Stackhouse,

Plaintiff,

vs.

Maricopa County, et al.,

Defendants.

) No. CV 05-0028-PHX-DGC(MEA)

) **ORDER**

Plaintiff Norman Lee Stackhouse, confined in the Arizona State Prison Complex-Lewis, has filed a Motion for Relief from Judgment and Motion for Leave to File an Amended Complaint regarding a *pro se* civil rights Complaint filed pursuant to 42 U.S.C. § 1983. The Court will grant the Motions.

The Court will vacate its Order of August 15, 2005 only to the extent that it dismisses the Complaint without leave to amend and dismisses the action. The Court will vacate the Judgment entered August 15, 2005 dismissing the Complaint and Action and direct the Clerk to reopen the case. The Court will direct the Clerk to file the Amended Complaint.

The Court will order Defendants Maricopa County and Joseph Arpaio to answer the Amended Complaint. The Court will not dismiss Defendant John Doe, but will not order service on Defendant Doe at this time.

1 **I. Procedural Background**

2 On January 4, 2005 Plaintiff filed a *pro se* civil rights Complaint pursuant to 42  
3 U.S.C. § 1983 alleging that Defendants Maricopa County Sheriff’s Office and Joseph Arpaio  
4 had lost Plaintiff’s property while he was in custody in the Maricopa County Jail. On  
5 August 15, 2005, this Court granted Plaintiff’s Motion to Proceed *In Forma Pauperis* and  
6 dismissed the Complaint for failure to state a claim. Doc. # 6. The Complaint did not state  
7 a claim because it named improper Defendants and because negligent conduct of prison  
8 officials that causes the loss of property does not constitute a violation of the Due Process  
9 Clause. *Id.* The dismissal was without leave to amend because it appeared that amendment  
10 could not cure the deficiencies in the Complaint. *Id.* On August 15, 2005, a Judgment was  
11 entered dismissing the Complaint and the action. Doc. # 8.

12 On December 12, 2005, Plaintiff filed a Motion for Relief from Judgment pursuant  
13 to Rule 60 (b) (6) of the Federal Rules of Civil Procedure and a Motion for Leave to File an  
14 Amended Complaint. Doc. # 10. In his Motion for Relief From Judgment, Plaintiff asserts  
15 that the heart of his claim is that while he was in Defendants’ custody, Defendants “took  
16 from him, or caused to be taken from him” his property. In his Motion for Relief, Plaintiff  
17 alleges that he does not know whether his property was lost or stolen. Plaintiff claims that  
18 he has no post-deprivation remedy available to him because (1) two grievances that he filed  
19 in jail were “stonewalled,” and (2) he is precluded by Arizona law from bringing a tort claim  
20 against Defendants. Specifically, he refers to A.R.S. § 31-201.01(L).

21 The allegations in the proposed Amended Complaint, lodged as Doc. # 9, state that  
22 the property loss was pursuant to a custom, practice, or usage whereby Defendant Arpaio  
23 permitted his employees to plunder the personal belongings of prisoners and pre-trial  
24 detainees and that Defendant encouraged his supervisory personnel to protect their  
25 subordinates by concealing the identities of those who stole, destroyed, or lost property.

26 **II. Reconsideration and Statutory Screening of Prisoner Complaints**

27 A motion for reconsideration must demonstrate some valid reason why the Court  
28 should reconsider its prior decision and must set forth facts or law of a strongly convincing

1 nature to induce the Court to reverse its prior decision. Courts have identified three major  
2 grounds justifying reconsideration: (1) an intervening change in controlling law, (2) the  
3 availability of new evidence, and (3) the need to correct clear error or prevent manifest  
4 injustice. School Dist. No. 1J Multnomah County, Or. v. AcandS, Inc., 139 F.R.D. 167  
5 (D.Or. 1991).

6 The Court is required to screen complaints brought by prisoners seeking relief against  
7 a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
8 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
9 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
10 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
11 28 U.S.C. § 1915A(b)(1),(2). “[P]ro se pleadings are liberally construed, particularly where  
12 civil rights claims are involved.” Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th  
13 Cir. 1990).

14 Here, Plaintiff has alleged new facts in the proposed Amended Complaint. After  
15 reviewing the pleadings and record and screening the proposed Amended Complaint, the  
16 Court determines that Plaintiff has stated a claim under §1983 and that he should be  
17 permitted an opportunity to proceed.

### 18 **III. Amended Complaint**

19 Plaintiff names the following Defendants: (1) Maricopa County, (2) Joseph Arpaio,  
20 Sheriff, and (3) John Doe. Plaintiff alleges a single ground for relief: the loss of his  
21 property when Defendant John Doe removed all of Plaintiff’s belongings from his cell,  
22 Defendants did not return the belongings, and Defendants did not respond to grievances.  
23 Plaintiff alleges that this conduct was pursuant to a custom, practice, or usage whereby  
24 Defendant Arpaio permitted his employees to plunder the personal belongings of prisoners  
25 and pre-trial detainees and that he encouraged his supervisory personnel to protect their  
26 subordinates by concealing the identities of those who stole, destroyed, or lost property.

27 For relief, Plaintiff requests damages and attorneys fees.  
28

1 An allegation of an intentional deprivation of property by government officials  
2 pursuant to custom and tradition sufficiently alleges a claim that employees acted  
3 intentionally pursuant to established government procedures. See Tripati v. State, 199 Ariz.  
4 222, 226-27, 16 P.3d 783, 787-88 (App.1Div. 2001). Post-deprivation remedies do not  
5 satisfy due process if the deprivation is caused by established government procedures. See  
6 Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982). Thus, the allegations in the  
7 Amended Complaint state a claim against Defendants.

8 The Court will not order service at this time on Defendant John Doe because, as a  
9 practical matter, it is in most instances impossible for the United States Marshal to serve a  
10 summons and complaint on an unidentified defendant. If Plaintiff is able to determine the  
11 identity of this Defendant, he should amend his Complaint to name him. Pursuant to Rule 15  
12 of the Federal Rules of Civil Procedure, a party may amend the party's pleading once as a  
13 matter of course at any time before a responsive pleading is served. Otherwise a party may  
14 amend the party's pleading only by leave of court or by written consent of the adverse party.

#### 15 **IV. Warnings**

##### 16 **A. Release**

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

##### 21 **B. Address Changes**

22 Plaintiff must file and serve a notice of a change of address 10 days before the move  
23 is effective, if practicable. See LRCiv 83.3(d). Plaintiff must not include a motion for other  
24 relief with a notice of change of address. Failure to comply may result in dismissal.

##### 25 **C. Copies**

26 Plaintiff must serve Defendants, or counsel if an appearance has been entered, a copy  
27 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must be accompanied by  
28 a certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff

1 must submit an additional copy of every filing for use by the Court. LRCiv 5.4. The Court  
2 may strike any filing that fails to comply with these requirements.

3 **D. Possible Dismissal**

4 Plaintiff is warned that failure to timely comply with every provision of this Order,  
5 including these warnings, may result in dismissal of this action without further notice. See  
6 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an  
7 action for failure to comply with any order of the Court).

8 **IT IS ORDERED:**

9 (1) Plaintiff's Motion for Relief from Judgment and Motion for Leave to File an  
10 Amended Complaint (Doc. #10) are **granted**.

11 (2) The Court's Order of August 15, 2005 (Doc. # 6) is **vacated** only to the extent that  
12 it dismisses the Complaint without leave to amend and dismisses the action.

13 (3) The Judgment entered August 15, 2005 dismissing the Complaint and action (Doc.  
14 # 8) is **vacated** and the Clerk of Court must **reopen** the case.

15 (4) The Clerk of Court must file the Amended Complaint (now lodged as Doc. # 9).

16 (5) Defendants Maricopa County and Joseph Arpaio must answer the Amended  
17 Complaint.

18 (6) The Clerk of Court must send Plaintiff a service packet including the Amended  
19 Complaint (now lodged as Doc.# 9), this Order, and both summons and request for waiver  
20 forms for Defendants Maricopa County and Arpaio.

21 (7) Plaintiff must complete and return the service packet to the Clerk of Court within  
22 20 days of the date of filing of this Order. The United States Marshal will not provide  
23 service of process if Plaintiff fails to comply with this Order.

24 (8) If Plaintiff does not either obtain a waiver of service of the summons or complete  
25 service of the Summons and Amended Complaint on a Defendant within 120 days of the  
26 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the  
27 action may be dismissed as to each Defendant not served pursuant to Rule 4(m) of the  
28 Federal Rules of Civil Procedure and Local Rule of Civil Procedure 16.2(b)(2)(B)(i).

1 (9) The United States Marshal must retain the Summons, a copy of the Amended  
2 Complaint (now lodged as Doc. # 9), and a copy of this Order for future use.

3 (10) The United States Marshal must notify Defendants Maricopa County and Arpaio  
4 of the commencement of this action and request waiver of service of the summons pursuant  
5 to Rule 4(d) of the Federal Rules of Civil Procedure and Rule 4(j)(2) of the Federal Rules of  
6 Civil Procedure and Rule 4.1(c) of the Arizona Rules of Civil Procedure. The notice to  
7 Defendants must include a copy of this Order. The Marshal must immediately file requests  
8 for waivers that were returned as undeliverable and waivers of service of the summons. If a  
9 waiver of service of summons is not returned by a Defendant within 30 days from the date  
10 the request for waiver was sent by the Marshal, the Marshal must:

11 (a) Personally serve copies of the Summons, Amended Complaint, and this Order  
12 upon Defendant pursuant to Rule 4(e)(2) and Rule 4(j)(2) of the Federal Rules of  
13 Civil Procedure;

14 (b) Within 10 days after personal service is effected, file the return of service for  
15 Defendant, along with evidence of the attempt to secure a waiver of service of the  
16 summons and of the costs subsequently incurred in effecting service upon Defendant.  
17 The costs of service must be enumerated on the return of service form (USM-285) and  
18 must include the costs incurred by the Marshal for photocopying additional copies of  
19 the Summons, Amended Complaint, or this Order and for preparing new process  
20 receipt and return forms (USM-285), if required. Costs of service will be taxed against  
21 the personally served Defendant pursuant to Rule 4(d)(2) and (5) of the Federal Rules  
22 of Civil Procedure, unless otherwise ordered by the Court.

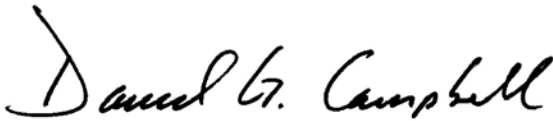
23 (11) **A Defendant who agrees to waive service of the Summons and Amended**  
24 **Complaint must return the signed waiver forms to the United States Marshal, not the**  
25 **Plaintiff.**

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

1 (13) Any answer or responsive pleading must state the specific Defendant by name  
2 on whose behalf it is filed. The Court may strike any answer, responsive pleading, or other  
3 motion or paper that does not identify the specific Defendant by name on whose behalf it is  
4 filed.

5 (14) This matter is referred to Magistrate Mark E. Aspey pursuant to Rules 72.1 and  
6 72.2 of the Local Rules of Civil Procedure for further proceedings.

7 DATED this 19<sup>th</sup> day of July, 2006.

8  
9 

10 \_\_\_\_\_  
11 David G. Campbell  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28