

1 filing fee from Plaintiff's trust account and forward it to the Clerk of Court. Thereafter,
2 Plaintiff will be obligated for monthly payments of 20 percent of the preceding month's
3 income credited to Plaintiff's trust account. These payments will be forwarded by the
4 appropriate agency to the Clerk of Court each time the amount in Plaintiff's account exceeds
5 \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

6 Plaintiff should take notice that if he is released before the filing fee is paid in full, he
7 must pay the remaining unpaid amount of the filing fee within 120 days of the date of his
8 release. If Plaintiff fails to pay the remainder of the filing fee within 120 days of the date of
9 his release, the action will be dismissed, unless Plaintiff shows good cause, in writing, why
10 he is unable to pay the remainder of the filing fee.

11 **B. Statutory Screening of Prisoner Complaints**

12 The Court is required to screen complaints brought by prisoners seeking relief against
13 a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
14 § 1915A(a). The Court must dismiss a complaint or portion thereof if the Plaintiff has raised
15 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief
16 may be granted, or that seek monetary relief from a defendant who is immune from such
17 relief. 28 U.S.C. § 1915A(b)(1),(2). The Court also must dismiss a complaint or portion
18 thereof if Plaintiff fails to exhaust any administrative remedy available to him. 42 U.S.C.
19 § 1997e(a).

20 **C. Complaint**

21 Plaintiff names as a Defendant Joseph Arpaio, Sheriff of Maricopa County, alleging
22 that he is responsible for the hiring and the policies of Maricopa County jails. Plaintiff
23 argues that his constitutional rights were violated by (1) inadequate and tainted food diet
24 resulting in dizziness and hunger,² and (2) overcrowding resulting in unsanitary conditions
25 and lack of adequate drinking water. Plaintiff seeks monetary and other relief.

27 ² Plaintiff sets forth his diet claim in two separate counts. However, because the claims are
28 identical, they will be combined in a single count.

1 **D. Claims to be Served**

2 At this early stage, Plaintiff has sufficiently alleged that his constitutional rights were
3 violated by (1) an inadequate and tainted diet, and (2) overcrowding. Defendant Arpaio will
4 be ordered to answer the Complaint.

5 **E. Rule 41 Cautionary Notice**

6 Plaintiff should take notice that if he fails to timely comply with every provision of
7 this Order, or any order entered in this matter, this action will be dismissed pursuant to Rule
8 41(b) of the Federal Rules of Civil Procedure. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-
9 61 (9th Cir. 1992) (district court may dismiss action for failure to comply with any order of
10 the Court).

11 **IT IS THEREFORE ORDERED that:**

12 (1) Plaintiff's Application to Proceed *In Forma Pauperis* is granted pursuant to 28
13 U.S.C. § 1915(a)(1).

14 (2) Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.
15 Plaintiff is assessed an initial partial filing fee of \$6.20. All fees shall be collected and paid
16 in accordance with this Court's Order to the appropriate government agency filed
17 concurrently herewith.

18 (3) The Clerk of Court shall send Plaintiff a service packet including the Complaint,
19 this Order, and both summons and request for waiver forms for Defendant Arpaio.

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

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

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1 (6) The United States Marshal shall retain the Summons, a copy of the Complaint, and
2 a copy of this Order for future use.

3 (7) The United States Marshal shall notify Defendant of the commencement of this
4 action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal
5 Rules of Civil Procedure. The notice to Defendant shall include a copy of this Order. The
6 Marshal shall file waivers of service of the summons or requests for waivers that were
7 returned as undeliverable as soon as they are received. If a waiver of service of summons
8 is not returned by a Defendant within thirty days from the date the request for waiver was
9 sent by the Marshal, the Marshal shall:

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

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

21 (8) **A Defendant who agrees to waive service of the Summons and Complaint**
22 **shall return the signed waiver forms to the United States Marshal, not the Plaintiff.**

23 (9) Defendant shall answer the Complaint or otherwise respond by appropriate
24 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal
25 Rules of Civil Procedure.

26 (10) Any answer or responsive pleading shall state the Defendant by name on whose
27 behalf it is filed. The Court may strike any answer, responsive pleading, or other motion or
28 paper that does not identify the Defendant by name on whose behalf it is filed.

1 (11) Plaintiff shall serve upon Defendant, or if appearance has been entered by
2 counsel, upon counsel, a copy of every further pleading or other document submitted for
3 consideration by the Court. Plaintiff shall include with the original document and copy, to
4 be filed with the Clerk of the Court, a certificate stating the date a true and correct copy of
5 the pleading or document was mailed to Defendant or counsel. Any paper received by a
6 District Court Judge or Magistrate Judge which has not been filed with the Clerk of Court
7 may be disregarded by the Court.

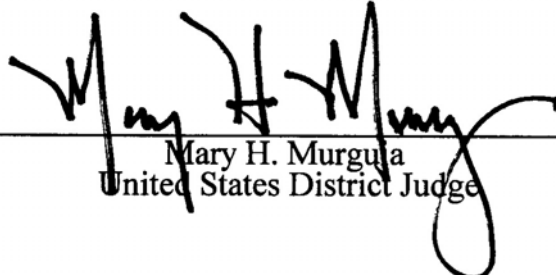
8 (12) At all times during the pendency of this action, Plaintiff shall immediately advise
9 the Court and the United States Marshal of any change of address and its effective date.
10 Such notice shall be captioned "NOTICE OF CHANGE OF ADDRESS." The notice shall
11 contain only information pertaining to the change of address and its effective date. Plaintiff
12 shall serve a copy of the notice on all opposing parties. The notice shall not include any
13 motions for any other relief. Failure to file a Notice of Change of Address may result in the
14 dismissal of the action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules
15 of Civil Procedure.

16 (13) A clear, legible copy of every pleading or other document filed shall accompany
17 each original pleading or other document filed with the Clerk for use by the District Judge
18 or Magistrate Judge to whom the case is assigned. Failure to comply with this requirement
19 may result in the pleading or document being stricken without further notice to Plaintiff.

20 (14) This matter is referred to Magistrate Judge Edward C. Voss pursuant to Local
21 Rules of Civil Procedure 72.1 and 72.2 for further proceedings.

22 DATED this 8th day of November, 2005.

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Mary H. Murgula
United States District Judge