

1 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
2 be granted, or that seek monetary relief from a defendant who is immune from such relief.
3 28 U.S.C. § 1915A(b)(1), (2). If the Court determines that a pleading could be cured by the
4 allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint
5 before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000)
6 (*en banc*). The Court is required to grant leave to amend “if a complaint can possibly be
7 saved” but not if a complaint “lacks merit entirely.” Id. at 1129. The Court therefore should
8 grant leave to amend if the pleading could be cured by the allegation of other facts or if it
9 appears at all possible that the defect can be corrected. Id. at 1130.

10 The Court should not, however, advise the litigant how to cure the defects. This type
11 of advice “would undermine district judges’ role as impartial decisionmakers.” Pliler v.
12 Ford, 542 U.S. 225, 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide
13 whether the court was required to inform a litigant of deficiencies). Plaintiff’s Complaint
14 will be dismissed for failure to state a claim, with leave to amend because the Complaint may
15 possibly be saved by amendment.

16 **III. Complaint**

17 Plaintiff names Sheriff Joe M. Arpaio as Defendant. The Complaint contains 11
18 counts, which concern conditions at the Jail. In Count I, Plaintiff alleges that the Jail cells
19 are overcrowded, which causes so much noise that Plaintiff cannot sleep or hear the
20 television, and there are many inmates using the bathrooms and insufficient cleaning
21 supplies, which causes the bathrooms to smell bad and be slippery. In Count II, Plaintiff
22 alleges that his right to day room access is violated because there is insufficient seating for
23 all the inmates. In Count III, Plaintiff alleges that his right to natural light and warm
24 temperatures is violated. In Count V¹, Plaintiff alleges that his right to access to reading
25 material has been violated. In Count VI, Plaintiff alleges that his right to religious services
26 has been violated. In Count VII, Plaintiff alleges that his rights have been violated because
27 he has been provided with only 5 post cards and 1 pencil per week. In Count VIII, Plaintiff

28 ¹ There is no Count IV.

1 alleges that his right to a blanket change each month and sufficient blankets to keep him
2 warm has been violated. In Count IX, Plaintiff alleges that he has been denied his right to
3 the assistance of a law clerk with the necessary legal experience. In Count X, Plaintiff
4 alleges that he has been denied his right to the exercise areas one hour per day, six days per
5 week. In Count XI, Plaintiff alleges that he has been denied his right to three meals per day,
6 served by screened workers with food handler cards. In Count XII, Plaintiff alleges that his
7 right to clean clothes and towels has been violated because he receives a change of
8 underwear and towels only once per week.

9 For relief, Plaintiff seeks to have Defendant held in contempt, better medical attention,
10 damages, qualified professionals cooking and serving meals, and the population problem
11 solved.

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

13 In order to recover under § 1983, a plaintiff must show: (1) violation of a right
14 protected by the Constitution or federal law; (2) that was proximately caused; (3) by conduct
15 of a “person” named as a defendant; (4) acting under color of state law. See Crumpton v.
16 Gates, 947 F.2d 1418, 1420 (9th Cir. 1991).

17 **A. Failure to Link Harm to Defendant**

18 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
19 injury as a result of specific conduct of a defendant and show an affirmative link between the
20 injury and the conduct of that defendant. Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).
21 To state a claim against a supervisory official, the civil rights complainant must allege that
22 the supervisory official personally participated in the constitutional deprivation or that the
23 supervisory official was aware of widespread abuses and, with deliberate indifference to the
24 inmate’s constitutional rights, failed to take action to prevent further misconduct. See Ortez
25 v. Washington County, Or., 88 F.3d 804, 809 (9th Cir. 1996); Taylor v. List, 880 F.2d 1040,
26 1045 (9th Cir. 1989); King v. Atiyeh, 814 F.2d 565, 568 (9th Cir. 1987); see also Monell v.
27 New York City Department of Social Services, 436 U.S. 658, 691 (1978). There is no
28 *respondeat superior* liability under § 1983, and, therefore, a defendant’s position as the

1 supervisor of persons who allegedly violated Plaintiff's constitutional rights does not impose
2 liability. Monell, 436 U.S. at 691-92; Taylor, 880 F.2d at 1045.

3 Plaintiff does not allege that Defendant Arpaio personally participated in any
4 constitutional deprivation or that he was aware of widespread abuses and, with deliberate
5 indifference to the inmate's constitutional rights, failed to take action to prevent further
6 misconduct, or that he formed policies that resulted in Plaintiff's injuries. Plaintiff fails to
7 link Defendant Arpaio to the allegations in the Complaint; the Complaint fails to state a claim
8 against Defendant Arpaio.

9 **B. Failure to Allege a Constitutional Violation**

10 In addition to failing to link the harms alleged to the conduct of the named Defendant,
11 Plaintiff fails to allege a constitutional violation in any of the counts.

12 Allegations regarding the conditions of confinement can state constitutional claims
13 cognizable under § 1983. A pretrial detainee's claim for unconstitutional conditions of
14 confinement arises from the Due Process Clause rather than from the Eighth Amendment
15 prohibition against cruel and unusual punishment. Bell v. Wolfish, 441 U.S. 520 (1979).
16 Nevertheless, the Eighth Amendment provides a minimum standard of care for determining
17 a plaintiff's rights as a pretrial detainee. Anderson v. Kern, 45 F.3d 1310, 1312-13 (9th Cir.
18 1995) (citing Redman v. County of San Diego, 942 F.2d 1435, 1442 (9th Cir. 1991)). To
19 prevail on an unconstitutional conditions claim under an Eighth Amendment standard of care,
20 a plaintiff, whether a pretrial detainee or a convict, must show that defendants were
21 "deliberately indifferent" to the alleged constitutional violations. Redman, 942 F.2d at 1443;
22 Wilson v. Seiter, 501 U.S. 294, 302-03 (1991).

23 To comply with the Eighth Amendment's prohibition against cruel and unusual
24 punishment, a prison must provide prisoners with "adequate food, clothing, shelter,
25 sanitation, medical care, and personal safety." Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th
26 Cir. 1982). The minimum standard allowed by the Due Process Clause is the same as that
27 allowed by the Eighth Amendment for convicted persons. Hamm v. Dekalb County, 774
28 F.2d 1567, 1574 (11th Cir. 1985). However, this does not mean that federal courts can or

1 should interfere whenever prisoners are inconvenienced or suffer *de minimis* injuries. See
2 Bell, 441 U.S. at 539 n.21 (noting that a *de minimis* level of imposition does not rise to a
3 constitutional violation).

4 **V. Leave to Amend**

5 For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to state
6 a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first
7 amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail
8 Plaintiff a court-approved form to use for a first amended complaint. If Plaintiff fails to use
9 the court-approved form, the Court may strike the amended complaint and dismiss this action
10 without further notice to Plaintiff.

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

15 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
16 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
17 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
18 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
19 complaint is waived if it is not raised in a first amended complaint. King, 814 F.2d at 567.

20 **VI. Warnings**

21 **A. Release**

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

1 **B. Address Changes**

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

5 **C. Copies**

6 Plaintiff must submit an additional copy of every document that he files for use by the
7 Court. See LRCiv 5.4. Failure to comply may result in the filing being stricken without
8 further notice to Plaintiff.

9 **D. Possible “Strike”**

10 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails
11 to file an amended complaint correcting the deficiencies identified in this Order, the
12 dismissal will count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
13 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
14 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior
15 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
16 court of the United States that was dismissed on the grounds that it is frivolous, malicious,
17 or fails to state a claim upon which relief may be granted, unless the prisoner is under
18 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

19 **E. Possible Dismissal**

20 Plaintiff is warned that failure to timely comply with every provision of this Order,
21 including these warnings, may result in dismissal of this action without further notice. See
22 Ferdik, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with
23 any order of the Court).

24 **IT IS ORDERED:**

25 (1) Plaintiff’s Application to Proceed *In Forma Pauperis*, filed with the Complaint,
26 is **granted**.

27 (2) As required by the accompanying Order to the appropriate government agency,
28 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$30.82.

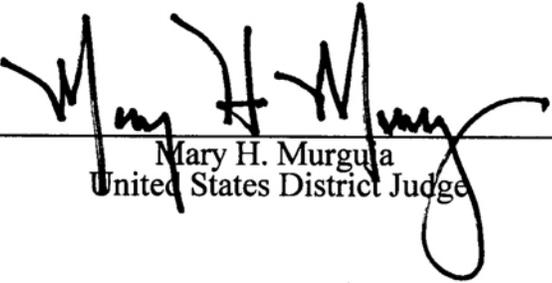
1 (3) The Complaint (Doc. #1) is **dismissed** for failure to state a claim. Plaintiff has
2 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
3 this Order.

4 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of Court
5 must, without further notice, enter a judgment of dismissal of this action with prejudice that
6 states that the dismissal counts as a “strike” under 28 U.S.C. § 1915(g).

7 (5) The Clerk of Court must mail Plaintiff the court-approved form for filing a civil
8 rights complaint by a prisoner.

9 DATED this 16th day of November, 2006.

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Mary H. Murgula
United States District Judge

**INFORMATION AND INSTRUCTIONS FOR A
PRISONER FILING CIVIL RIGHTS COMPLAINT
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

I. General Information About the Civil Rights Complaint Form:

A. The Form. The civil rights complaint form is designed to help prisoners prepare a complaint seeking relief for a violation of their federal civil rights. Local Rule of Civil Procedure 3.4(a) requires that prisoner civil rights complaints be filed on the court-approved form. Your complaint must be typewritten or legibly handwritten. All information must be clearly and concisely written, **only in the space provided on the form**. If needed, you may attach no more than fifteen additional pages of standard letter size paper to continue any part of the complaint. You must identify which part of the complaint is being continued and number all pages.

B. Your Signature. You must sign the complaint. Your signature constitutes a certificate that: 1) you have read the complaint; 2) to the best of your knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and law; and 3) it is not being filed for any improper purpose. Please review Rule 11 of the Federal Rules of Civil Procedure. Rule 11 provides for the imposition of sanctions if the complaint is signed in violation of the Rule.

C. The Filing Fee. You must pay the \$350.00 filing fee. If you are unable to pay the filing fee when the complaint is filed, you may request leave to proceed *in forma pauperis*. Please review the "Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915" for more information.

D. Court Divisions. If you resided in Maricopa, Pinal, Yuma, La Paz, or Gila county when your rights were allegedly violated, you should file your complaint in the Phoenix Division of the court. If you resided in Apache, Navajo, Coconino, Mohave, or Yavapai county when your rights were allegedly violated, you should file your complaint in the Prescott Division of the court. If you resided in Pima, Cochise, Santa Cruz, Graham, or Greenlee county when your rights were allegedly violated, you should file your complaint in the Tucson Division of the court. See LRCiv 5.1(a) and 77.1(a).

You should mail THE ORIGINAL AND ONE COPY of your complaint with the \$350.00 filing fee or the application to proceed *in forma pauperis* to:

Phoenix & Prescott Divisions:

OR

Tucson Division:

U.S. District Court Clerk
U.S. Courthouse, Suite 321
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

E. Certificate of Service on Defendants. You must furnish the opposing party or their attorney with a copy of any document you submit to the court (except the initial complaint and application to proceed *in forma pauperis*). Pursuant to Rules 5(a) and (d) of the Federal Rules of Civil Procedure, each original document (except the initial complaint and application for leave to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the opposing party or their attorney and the address to which it was mailed. Any document received by the court which does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this __ day of __ (month) __, (year) __, to:
Name: _____
Address: _____
Attorney for Defendant(s)/Respondent(s)

(Signature)

F. Original and Judge's Copy. You must furnish an original and one copy of any document submitted to the court. You must furnish one additional copy to the clerk if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original.

G. Exhibits. You should not submit exhibits with the complaint. Instead, the relevant information should be paraphrased in the complaint. You should keep the exhibits to use to support or oppose a motion for summary judgment or at trial.

H. Change of Address. You must immediately notify the clerk and the opposing party or their attorney in writing of any change in your mailing address. Failure to notify the court of any change in your mailing address may result in the dismissal of your case.

I. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. Rule 15(a) of the Federal Rules of Civil Procedure allows you to file one amended complaint prior to any defendant filing an answer. After any defendant has filed an answer, you must file a motion for leave to amend and lodge a proposed amended complaint. Local Rule of Civil Procedure 15.1(a)(2) prohibits any amended pleading from referencing any prior pleading. Further, any allegations or defendants not included in the amended complaint are considered dismissed.

J. Letters and Motions. It is generally inappropriate to write a letter to any of the District Judges, Magistrates Judges, or the staff of any of the judicial officers. The appropriate way to communicate with these persons is by filing a written pleading or motion.

II. Completing the Civil Rights Complaint Form:

HEADING:

1. Your Name. Print your name, prison or jail inmate number, and mailing address on the lines provided.
2. Defendants. Print the names of each of your defendants. If you name more than **four** defendants, you should print the name of one defendant and "see additional page for defendants" in the space provided. On the additional page you must list the names of **all** of the defendants. This additional page should be inserted after page 1 and numbered as page "1-A" at the bottom of the page. The initial complaint must contain the names of **all** of the parties (plaintiffs as well as defendants) in the heading (or on the additional page if more than four defendants). See Rule 10(a) of the Federal Rules of Civil Procedure.
3. Jury Demand. If you want a jury trial, you must write "JURY TRIAL DEMANDED" on the line below "CIVIL RIGHTS COMPLAINT BY A PRISONER." Failure to do so will result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; "Bivens v. Six Unknown Federal Narcotics Agents" for federal defendants; or "other." If you mark "other," identify the source of that authority.
2. Plaintiff. Print all of the requested information on the spaces provided. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights the defendant(s) violated. The form provides space to allege three separate counts (one violation per count). If you are alleging more than three

counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages "5-A", "5-B", etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **YOU MAY ALLEGE THE VIOLATION OF ONLY ONE CIVIL RIGHTS CLAIM PER COUNT.**

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **YOU MAY CHECK ONLY ONE BOX PER COUNT.** If you check the box marked "Other," you must identify the specific issue involved in the space provided.

3. Supporting Facts. After you have identified which civil right was violated, you need to state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you need to identify which defendant did what act. You also need to state the date(s) on which the act(s) occurred if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. Exhaustion of administrative remedies is a prerequisite to filing a civil rights complaint. 42 U.S.C. § 1997e requires prisoners to exhaust the available administrative remedies before being allowed to file a civil rights action. Consequently, you must disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If one of your counts is exempt from the grievance procedures or administrative appeals, fully explain the exemption on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Your signature must be an original signature, not a photocopy.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed by the court. All questions must be answered concisely in the proper space on the form. If needed, you may attach no more than fifteen additional pages. The form, however, must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

3. Name of first Defendant: _____ . The first Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

The first Defendant is sued in his/her: individual capacity official capacity (check one or both).
Explain how the first Defendant was acting under color of law: _____

4. Name of second Defendant: _____ . The second Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

The second Defendant is sued in his/her: individual capacity official capacity (check one or both).
Explain how the second Defendant was acting under color of law: _____

5. Name of third Defendant: _____ . The third Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

The third Defendant is sued in his/her: individual capacity official capacity (check one or both).
Explain how the third Defendant was acting under color of law: _____

6. Name of fourth Defendant: _____ . The fourth Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

The fourth Defendant is sued in his/her: individual capacity official capacity (check one or both).
Explain how the fourth Defendant was acting under color of law: _____

(If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.)

B. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If your answer is "yes," how many lawsuits have you filed? _____. Describe the previous lawsuits in the spaces provided below.
3. First prior lawsuit:
 - a. Parties to previous lawsuit:
Plaintiff: _____
Defendants: _____

- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
- c. Case or docket number: _____
- d. Claims raised: _____
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
- f. Approximate date lawsuit was filed: _____
- g. Approximate date of disposition: _____

4. Second prior lawsuit:

- a. Parties to previous lawsuit:
 Plaintiff: _____
 Defendants: _____
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
- c. Case or docket number: _____
- d. Claims raised: _____
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
- f. Approximate date lawsuit was filed: _____
- g. Approximate date of disposition: _____

5. Third prior lawsuit:

- a. Parties to previous lawsuit:
 Plaintiff: _____
 Defendants: _____
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
- c. Case or docket number: _____
- d. Claims raised: _____
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
- f. Approximate date lawsuit was filed: _____
- g. Approximate date of disposition: _____

(If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.)

