



1 may be granted, or that seek monetary relief from a defendant who is immune from such  
2 relief. 28 U.S.C. § 1915A(b)(1),(2). If the Court determines that a pleading could be cured  
3 by the allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend the  
4 complaint before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th  
5 Cir. 2000) (*en banc*). The Court is required to grant leave to amend “if a complaint can  
6 possibly be saved,” but not if the Complaint “lacks merit entirely.” Id. at 1129. A court  
7 therefore should grant leave to amend if the pleading could be cured by the allegation of  
8 other facts, or if it appears at all possible that the defect can be corrected. Id. at 1130. The  
9 Court should not, however, advise the litigant how to cure the defects. This type of advice  
10 “would undermine the district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542  
11 U.S. 225, 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether  
12 court was required to inform litigant of deficiencies). Plaintiff’s Complaint will be dismissed  
13 for failure to state a claim, *with* leave to amend because the complaint may possibly be saved  
14 by amendment.

### 15 **III. Complaint**

16 In his Complaint, Plaintiff alleges that the jail is severely overcrowded, he receives  
17 insufficient and frequently spoiled food, the living conditions are unsanitary and unhealthy,  
18 the lighting is bad, his safety is threatened, the temperatures are cold, the noise is severe,  
19 reading materials are limited and food handlers do not have a permit, which subjects inmates  
20 to diseases. The sole Defendant named in this action is Joseph Arpaio.

### 21 **IV. Failure To State A Claim**

22 To sustain an action under section 1983, a plaintiff must show (1) that the conduct  
23 complained of was committed by a person acting under the color of state law; and (2) that  
24 the conduct deprived the plaintiff of a federal constitutional or statutory right.” Wood v.  
25 Ostreander, 879 F.2d 583, 587 (9th Cir. 1989). For a person to be liable in his official  
26 capacity, Plaintiff must allege that he acted as a result of a policy, practice, or custom. See  
27 Cortez v. County of Los Angeles, 294 F.3d 1186, 1188 (9th Cir. 2001).

1 A supervisor, in his individual capacity, “is only liable for constitutional violations  
2 of his subordinates if the supervisor participated in or directed the violations, or knew of  
3 the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th  
4 Cir. 1989). “A plaintiff must allege facts, not simply conclusions, that show that an  
5 individual was personally involved in the deprivation of his civil rights.” Barren v.  
6 Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

7 Plaintiff has not alleged that Defendant Arpaio enacted or enforced a policy,  
8 custom, or practice which resulted in the denial of his constitutional rights. Further,  
9 Plaintiff did not allege that Defendant Arpaio violated his constitutional rights, or was  
10 even aware that his rights were being violated. Accordingly, Plaintiff fails to sufficiently  
11 set forth a cause of action against Defendant Arpaio.

12 A pretrial detainee’s claim for unconstitutional conditions of confinement arises  
13 from the Due Process Clause of the Fourteenth Amendment rather than from the Eighth  
14 Amendment prohibition against cruel and unusual punishment. Bell v. Wolfish, 441 U.S.  
15 520 (1979). Nevertheless, the same standards are applied. See Frost v. Agnos, 152 F.3d  
16 1124, 1128 (9th Cir. 1998). To state a claim regarding his conditions of confinement, a  
17 plaintiff must allege that a jailor’s acts or omissions have deprived him of “the minimal  
18 civilized measure of life’s necessities” and that the jailor acted with deliberate  
19 indifference to an excessive risk to inmate health or safety. Allen v. Sakai, 48 F.3d 1082,  
20 1087 (9th Cir. 1994) (citing Farmer v. Brennan, 511 U.S. 825 (1994); see Estate of Ford  
21 v. Ramirez-Palmer, 301 F.3d 1043, 1049-50 (9th Cir. 2002). Allegations of  
22 overcrowding, alone, are insufficient to state a claim. See Rhodes v. Chapman, 452 U.S.  
23 337, 348 (1981). However, when overcrowding causes an increase in violence or reduces  
24 the provision of other constitutionally required services, or reaches a level where the  
25 institution is no longer fit for human habitation, the inmate’s right against cruel and  
26 unusual punishment may be violated. See Balla v. Idaho State Bd. of Corr., 869 F.2d  
27 461, 471 (9th Cir. 1989); Toussaint v. Yockey, 722 F.2d 1490, 1492 (9th Cir. 1984).

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1 **V. Amendment**

2 Plaintiff may choose to amend his Complaint as described by this Order. Plaintiff  
3 is advised that his First Amended Complaint must be retyped or rewritten in its entirety  
4 on a court-approved form and may not incorporate any part of the original Complaint by  
5 reference. Any Amended Complaint submitted by Plaintiff should be clearly designated  
6 as such on the face of the document. The Clerk of Court will be directed to provide  
7 Plaintiff with a form for filing a civil rights action.

8 In any Amended Complaint, Plaintiff must write short, plain statements telling the  
9 Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the  
10 person who violated the right; (3) exactly what that individual did or failed to do; (4) how  
11 the action or inaction of that person is connected to the violation of Plaintiff's  
12 constitutional right; and (5) what specific injury Plaintiff suffered because of that person's  
13 conduct. Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976). Plaintiff must repeat this  
14 process for each person he names as a Defendant. If Plaintiff fails to do this for any  
15 person named as a Defendant, the Court will dismiss that Defendant from this action.

16 Plaintiff should note that an amended complaint supersedes the original complaint.  
17 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.), cert. denied, 506 U.S. 915 (1992); Hal  
18 Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990). After  
19 amendment, the original pleading is treated as nonexistent. Ferdik, 963 F.2d at 1262.  
20 Thus, causes of action alleged in an original complaint which are not alleged in an  
21 amended complaint are waived. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

22 **VI. Warnings**

23 **A. Release**

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

28 **B. Address Changes**

1 Plaintiff must file and serve a notice of a change of address in accordance with  
2 Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion  
3 for other relief with a notice of change of address. Failure to comply may result in  
4 dismissal of this action.

5 **C. Copies**

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

9 **D. Possible “Strike”**

10 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff  
11 fails 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  
15 prior occasions, while incarcerated or detained in any facility, brought an action or appeal  
16 in a court of the United States that was dismissed on the grounds that it is frivolous,  
17 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is  
18 under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

19 **E. Possible Dismissal**

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

24 **IT IS THEREFORE ORDERED THAT:**

25 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* is granted pursuant to 28  
26 U.S.C. § 1915(a)(1).

27 (2) Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.  
28 An initial partial filing fee will not be assessed. All fees shall be collected and paid in

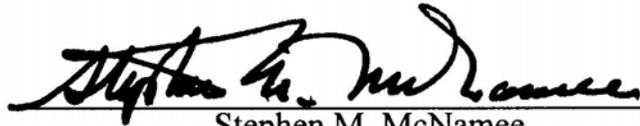
1 accordance with this Court's Order to the appropriate government agency filed  
2 concurrently herewith.

3 (3) The Complaint is **dismissed** for failure to state a claim. Plaintiff shall have **30**  
4 **days** from the date this Order is filed to file an Amended Complaint in compliance with  
5 this Order.

6 (4) The Clerk of Court shall enter a judgment of dismissal of this action with  
7 prejudice and without further notice to Plaintiff, if Plaintiff fails to file an amended  
8 complaint within thirty (30) days of the date this Order is filed. Upon entry of judgment,  
9 the Clerk shall make an entry on the docket in this matter indicating that the dismissal of  
10 this action falls within the purview of 28 U.S.C. § 1915(g).

11 (5) The Clerk of Court is directed to provide to Plaintiff a current court-approved  
12 form for filing a civil rights complaint by a prisoner.

13 DATED this 2<sup>nd</sup> day of February, 2007.

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18 Stephen M. McNamee  
19 United States District Judge  
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