

1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief against
3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
6 be granted, or that seek monetary relief from a defendant who is immune from such relief.
7 28 U.S.C. § 1915A(b)(1), (2). If the Court determines that a pleading could be cured by the
8 allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint
9 before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000)
10 (*en banc*).

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

17 **III. Complaint**

18 In his three-count Complaint, Plaintiff sues Defendant Maricopa County Sheriff
19 Joseph M. Arpaio.

20 In Count One, Plaintiff alleges that the inmate housing limitations are being exceeded
21 and that Defendant Arpaio is “obviously negligent in the requirements.” In Count Two,
22 Plaintiff asserts a violation of “[a]ll around health[,] which includes medical, dental, and
23 psychiatric.” He alleges the Durango Jail is rampant with several communicable diseases
24 and “is grossly failing in screening and segregation of those infected.” He contends
25 Defendant Arpaio and his staff are “negligent for his inactions are apparent.”

26 In Count Three, Plaintiff alleges a violation of “safety, hygiene, and all around
27 sanitation.” He alleges the Durango Jail is “grossly negligent” regarding fire and health
28 codes. In his Request for Relief, Plaintiff seeks monetary damages.

1 **IV. Failure to Allege a Violation of a Constitutional Right**

2 Section 1983 provides a cause of action against persons acting under color of state law
3 who have violated rights guaranteed by the United States Constitution and federal law. 42
4 U.S.C. § 1983; see also Buckley v. City of Redding, 66 F.3d 188, 190 (9th Cir. 1995).
5 Plaintiff has failed to allege any constitutional or federal law violations.

6 A pretrial detainee’s claim for unconstitutional conditions of confinement arises from
7 the Fourteenth Amendment Due Process Clause rather than from the Eighth Amendment
8 prohibition against cruel and unusual punishment. Bell v. Wolfish, 441 U.S. 520, 535
9 (1979). Nevertheless, the same standards are applied, requiring proof that the defendant
10 acted with deliberate indifference. See Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

11 To state a claim of deliberate indifference, plaintiffs must meet a two-part test. First,
12 the alleged constitutional deprivation must be, objectively, “sufficiently serious”; the
13 official’s act or omission must result in the denial of “the minimal civilized measure of life’s
14 necessities.” Farmer v. Brennan, 511 U.S. 825, 834 (1994). Second, the prison official must
15 have a “sufficiently culpable state of mind,” *i.e.*, he must act with deliberate indifference to
16 inmate health or safety. Id. In defining “deliberate indifference” in this context, the Supreme
17 Court has imposed a subjective test: “the official must both be aware of facts from which the
18 inference could be drawn that a substantial risk of serious harm exists, and he must also draw
19 the inference.” Id. at 837 (emphasis added).

20 Not every claim by a prisoner that he has received inadequate medical treatment states
21 a violation of the Eighth or Fourteenth Amendment. To state a § 1983 medical claim, a
22 plaintiff must show that the defendants acted with “deliberate indifference to serious medical
23 needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429
24 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating
25 that failure to treat the condition could result in further significant injury or the unnecessary
26 and wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.
27 Jett, 439 F.3d at 1096 (quotations omitted).

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1 Mere claims of “indifference,” “negligence,” or “medical malpractice” do not support
2 a claim under § 1983. See Broughton v. Cutter Labs., 622 F.2d 458, 460 (9th Cir. 1980).
3 “A difference of opinion does not amount to deliberate indifference to [a plaintiff’s] serious
4 medical needs.” Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in
5 medical care, without more, is insufficient to state a claim against prison officials for
6 deliberate indifference. See Shapley v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404,
7 407 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of
8 “unnecessary and wanton infliction of pain.” Estelle, 429 U.S. at 105-06.

9 Here, Plaintiff has failed to allege any constitutional or federal law violations. Thus,
10 the Court will dismiss without prejudice Plaintiff’s Complaint because it fails to state a claim.

11 **V. Leave to Amend**

12 For the foregoing reasons, Plaintiff’s Complaint will be dismissed for failure to state
13 a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first
14 amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail
15 Plaintiff a court-approved form to use for filing a first amended complaint. If Plaintiff fails
16 to use the court-approved form, the Court may strike the amended complaint and dismiss this
17 action without further notice to Plaintiff.

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

22 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
23 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
24 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
25 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
26 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
27 565, 567 (9th Cir. 1987).

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1 **VI. Warnings**

2 **A. Release**

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

7 **B. Address Changes**

8 Plaintiff must file and serve a notice of a change of address in accordance with Rule
9 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
10 relief with a notice of change of address. Failure to comply may result in dismissal of this
11 action.

12 **C. Copies**

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

16 **D. Possible “Strike”**

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

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E. 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, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any order of the Court).

IT IS HEREBY ORDERED:

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

(2) As required by the accompanying Order to the appropriate government agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$41.00.

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

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

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

DATED this 5th day of February, 2008.



Stephen M. McNamee
United States District Judge