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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Jeremy David Henderson,

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No. CV 09-0154-PHX-GMS (LOA)

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Plaintiff,

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ORDER

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vs.

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Joseph Arpaio, et al.,

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Defendants.

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Plaintiff Jeremy David Henderson, who is confined at the Arizona State Prison Complex-Lewis, filed this civil rights action against Officers Frank Hermosillo and John LaFontaine, police officers with the City of Mesa; Joseph Arpaio, Maricopa County Sheriff; and Dr. Basye, emergency room doctor at Mountain Vista Hospital. (Doc. #12.) Arpaio moves to dismiss. (Doc. #22.) Although the Court provided a Notice to Plaintiff pursuant to, Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003), advising him of his obligation to respond, Plaintiff filed no response.

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The Court will grant Arpaio’s motion and dismiss him from the action.

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I. Background and Summary of Motion

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The First Amended Complaint alleges that Hermosillo and LaFontaine used excessive force on Plaintiff during his arrest; that Arpaio was deliberately indifferent regarding alleged abuse by K-9 units; and that Basye was deliberately indifferent in treating Plaintiff’s injuries. (Doc. #12.)

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1 Plaintiff's claims arise out of his arrest on January 28, 2008, by Hermosillo and
2 LaFontaine, who Plaintiff describes as Maricopa County Sheriff's Office (MCSO) officers.
3 (Id. at 3.) Plaintiff alleged that LaFontaine sent his K-9 to attack Plaintiff. He alleged that
4 Arpaio makes and carries out MCSO policy on K-9 units use of force and that he failed to
5 train MCSO officers and K-9 units. (Id.)

6 The Court ordered all Defendants to answer the First Amended Complaint. (Doc.
7 #11.)

8 Arpaio now moves to dismiss on the ground that (1) he is an improper party because
9 he is the Sheriff of Maricopa County, not an employee of the City of Mesa; (2) Plaintiff fails
10 to state a claim as to Arpaio; and (3) Plaintiff failed to exhaust his administrative remedies.
11 (Doc. #22.)

12 **II. Motion to Dismiss**

13 Arpaio argues that Plaintiff has named him as a responsible party but this is clearly
14 incorrect; Arpaio asserts that he is the duly elected Sheriff of Maricopa County and is not and
15 never has been an employee of the City of Mesa and he does not exercise any control over
16 Hermosillo or La Fontaine. (Doc. #22 at 3.). Arpaio further asserts that Hermosillo and
17 LaFontaine are police officers employed by the City of Mesa, not by the MCSO. (Id., ref.
18 Doc. #15, Hermosillo Aff. ¶ 1, LaFontaine Aff. ¶ 1.)

19 Plaintiff filed no opposition to Arpaio's motion. Plaintiff makes only conclusory
20 allegations in the Amended Complaint that the K-9 unit in question allegedly used by the
21 City of Mesa police officers or those officers themselves were under Arpaio's control. See
22 Schroeder v. McDonald, 55 F.3d 454, 460 (9th Cir. 1995) (verified complaint may be used
23 as an affidavit if it is based on personal knowledge and sets forth specific facts admissible
24 in evidence). There is nothing in the Amended Complaint to suggest that Plaintiff has
25 personal knowledge that the officers or the K-9 unit were under the control of Arpaio or
26 MCSO. Arpaio points to evidence in the record showing that the officers were employed by
27 the City of Mesa, not MCSO. The Court will grant the motion and dismiss Arpaio.

28 The Court need not address Arpaio's remaining arguments.

1 **IT IS ORDERED:**

2 (1) The reference to the Magistrate Judge is withdrawn as to Arpaio's Motion to
3 Dismiss (Doc. #22).


4 (2) Arpaio's Motion to Dismiss (Doc. #22) is **granted**.

5 (3) Arpaio is dismissed with prejudice.

6 DATED this 19th day of November, 2009.

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G. Murray Snow
United States District Judge

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