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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Victor O. Dema,

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CV 09-642-PHX-NVW

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Plaintiff,

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ORDER

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vs.

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City of Mesa et al.,

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Defendants.

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Pending before the Court is Defendant City of Mesa’s Motion to Dismiss (doc.

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#18), which the Court now grants.

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I. Standard of Review

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To avoid dismissal of a complaint under Fed. R. Civ. P. 12(b)(6), a plaintiff must

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“provide the grounds of [his] entitlement to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S.

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544, 555 (2007). A formulaic recitation of the elements of a cause of action is not

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sufficient. *Id.* The pleading must not merely allege conduct that is conceivable, but a

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plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.”

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Twombly, 550 U.S. at 556-57.

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In considering a motion to dismiss, “all factual allegations set forth in the

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complaint are taken as true and construed in the light most favorable to plaintiff[.]” *Lee v.*

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City of Los Angeles, 250 F.3d 668, 679 (9th Cir. 2001) (citation and internal quotation

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marks omitted). A document filed pro se is construed liberally, and “a pro se complaint,

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however inartfully pleaded, must be held to less stringent standards than formal pleadings

1 drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations and internal
2 quotation marks omitted). However, “a liberal interpretation of a civil rights complaint
3 may not supply essential elements of the claim that were not initially pled.” *Bruns v.*
4 *Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of*
5 *Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

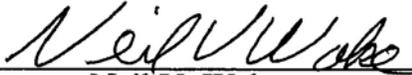
6 **II. Analysis**

7 The Court has already described the incidents that gave rise to Plaintiff’s claims in
8 its October 5, 2009 Order (doc. #14), and it will not repeat Plaintiff’s factual allegations
9 here. In that Order, the Court dismissed Plaintiff’s Amended Complaint (doc. #7) for
10 failure to state a claim against the City of Mesa. If a pleading can be cured by the
11 allegation of other facts, a pro se litigant is entitled to an opportunity to amend the
12 complaint before dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-31
13 (9th Cir. 2000) (en banc). The Court has already given Plaintiff an opportunity to amend
14 his complaint to supply additional facts that would support his municipal liability claims.
15 However, the facts alleged in Plaintiff’s Second Amended Complaint (doc. #17) are
16 virtually identical to the facts alleged in Plaintiff’s Amended Complaint. The Court has
17 already determined that those facts are insufficient to state a municipal liability claim
18 against the City of Mesa. As a result, the Court concludes that an amendment cannot cure
19 the deficiencies in Plaintiff’s complaint.

20 **IT IS THEREFORE ORDERED** that Defendant City of Mesa’s Motion to
21 Dismiss (doc. #18) is granted.

22 **IT IS FURTHER ORDERED** that Plaintiff’s claims against the City of Mesa are
23 dismissed with prejudice.

24 DATED this 13th day of January, 2010.

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Neil V. Wake
United States District Judge