

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 Arpaio. In each count, Plaintiff alleges a violation of his Fifth, Eighth, and
20 Fourteenth Amendment rights. His claims relate to his medical care (Count One), excessive
21 force by an officer (Count Two), and overcrowding (Count Three). In his Request for Relief,
22 Plaintiff seeks for Defendant to be held accountable, adequate medical care, all violations to
23 be corrected and witnessed by federal monitors, cell maximums and cell seating, and
24 monetary damages.

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

26 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
27 injury as a result of specific conduct of a defendant and show an affirmative link between the
28 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377

1 (1976). To state a claim against a supervisory official, the civil rights complainant must
2 allege that the supervisory official personally participated in the constitutional deprivation
3 or that the supervisory official was aware of widespread abuses and, with deliberate
4 indifference to the inmate's constitutional rights, failed to take action to prevent further
5 misconduct. See Ortez v. Washington County, 88 F.3d 804, 809 (9th Cir. 1996); Taylor v.
6 List, 880 F.2d 1040, 1045 (9th Cir. 1989); King v. Atiyeh, 814 F.2d 565, 568 (9th Cir. 1987);
7 see also Monell v. New York City Department of Social Services, 436 U.S. 658, 691-92
8 (1978). There is no *respondeat superior* liability under § 1983, and therefore, a defendant's
9 position as the supervisor of persons who allegedly violated Plaintiff's constitutional rights
10 does not impose liability. Monell, 436 U.S. at 691-92; Taylor, 880 F.2d at 1045.

11 Plaintiff does not allege any specific conduct by Defendant Arpaio. He does not
12 allege that Defendant Arpaio personally participated in a constitutional deprivation or that
13 he was aware of widespread abuses and, with deliberate indifference to Plaintiff's
14 constitutional rights, failed to take action to prevent further misconduct, or that he formed
15 policies that resulted in Plaintiff's injuries. Therefore, the Court will dismiss without
16 prejudice Defendant Arpaio. Because Defendant Arpaio is the sole defendant named in the
17 Complaint, the Court will also dismiss without prejudice the Complaint.

18 **V. Leave to Amend**

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

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

1 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
2 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
3 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
4 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
5 complaint is waived if it is not raised in a first amended complaint. King, 814 F.2d at 567.

6 **VI. Warnings**

7 **A. Release**

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

12 **B. Address Changes**

13 Plaintiff must file and serve a notice of a change of address in accordance with Rule
14 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
15 relief with a notice of change of address. Failure to comply may result in dismissal of this
16 action.

17 **C. Copies**

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

21 **D. Possible “Strike”**

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

1 or fails to state a claim upon which relief may be granted, unless the prisoner is under
2 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

3 **E. Possible Dismissal**

4 If Plaintiff fails to timely comply with every provision of this Order, including these
5 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at
6 1260-61 (a district court may dismiss an action for failure to comply with any order of the
7 Court).

8 **IT IS ORDERED:**

9 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. #3) is **granted**.

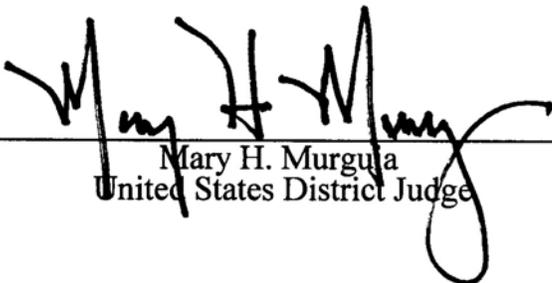
10 (2) As required by the accompanying Order to the appropriate government agency,
11 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$8.02.

12 (3) The Complaint (Doc. #1) is **dismissed** for failure to state a claim. Plaintiff has
13 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
14 this Order.

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

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

20 DATED this 26th day of June, 2009.

21
22
23 
24 Mary H. Murgula
25 United States District Judge
26
27
28