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

Joseph Sam Parisi,
Plaintiff,
vs.
Joseph Arpaio,
Defendant.

) No. CV 09-1165-PHX-MHM (JRI)

) **ORDER**

Plaintiff Joseph Sam Parisi, who is confined in the Maricopa County Lower Buckeye Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. #1) and an Application to Proceed *In Forma Pauperis* (Doc. #3). The Court will order Defendant to answer Counts One and Two of the Complaint and will dismiss without prejudice Count Three.

I. Application to Proceed *In Forma Pauperis* and Filing Fee

Plaintiff’s Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$2.71. The remainder of the fee will be collected monthly in payments of 20% of the previous month’s income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

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).

8 **III. Complaint**

9 In his three-count Complaint, Plaintiff sues Defendant Maricopa County Sheriff
10 Joseph Arpaio. In each count, he alleges a violation of his Fifth, Eighth, and Fourteenth
11 Amendment rights.

12 In Count One, Plaintiff claims Defendant Arpaio sets policy and instructs his staff to
13 feed inmates only two meals per day. Plaintiff contends that the meals are stale, spoiled, and
14 lack necessary nutrition. Plaintiff alleges that Defendant Arpaio deliberately provides an
15 insufficient number of calories in order to cause daily hunger pains.

16 In Count Two, he asserts that Defendant Arpaio sets policy and directs his staff to
17 overcrowd the holding cells in the Fourth Avenue Jail. He claims that he was in the holding
18 cell for three days with 22-26 men, there was no place to sit or lay down, the toilet was
19 clogged and there was no toilet paper, the floor was wet from the overflowing toilet, and he
20 was not given a blanket, a mat, or a place to sleep.

21 In Count Three, Plaintiff asserts that he contracted a staphylococcus infection in the
22 holding cell, he received no medical treatment other than a heat pack for seven days, the on-
23 duty doctor's request on day eight that Plaintiff be taken to a hospital for emergency
24 treatment was denied by the doctor's supervisor, and Plaintiff received "emergency surgery
25 to lance and drain the lump" on day nine.

26 In his Request for Relief, Plaintiff seeks monetary damages and an order that sets cell
27 maximums and directs Defendant Arpaio to provide adequate food for pretrial detainees and
28 to correct all violations.

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

2 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
3 injury as a result of specific conduct of a defendant and show an affirmative link between the
4 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377
5 (1976). To state a claim against a supervisory official, the civil rights complainant must
6 allege that the supervisory official personally participated in the constitutional deprivation
7 or that the supervisory official was aware of widespread abuses and, with deliberate
8 indifference to the inmate’s constitutional rights, failed to take action to prevent further
9 misconduct. See Ortez v. Washington County, 88 F.3d 804, 809 (9th Cir. 1996); Taylor v.
10 List, 880 F.2d 1040, 1045 (9th Cir. 1989); King v. Atiyeh, 814 F.2d 565, 568 (9th Cir. 1987);
11 see also Monell v. New York City Dep’t of Soc. Servs., 436 U.S. 658, 691-92 (1978). There
12 is no *respondeat superior* liability under § 1983, and therefore, a defendant’s position as the
13 supervisor of persons who allegedly violated Plaintiff’s constitutional rights does not impose
14 liability. Monell, 436 U.S. at 691-92; Taylor, 880 F.2d at 1045.

15 In Count Three, Plaintiff does not allege any specific conduct by Defendant Arpaio,
16 and does not allege that Defendant Arpaio personally participated in a constitutional
17 deprivation or that he was aware of widespread abuses and, with deliberate indifference to
18 Plaintiff’s constitutional rights, failed to take action to prevent further misconduct, or that he
19 formed policies that resulted in Plaintiff’s injuries. Therefore, the Court will dismiss without
20 prejudice Count Three.

21 **V. Claims for Which an Answer Will be Required**

22 Liberally construed, Plaintiff has stated claims in Counts One and Two. The Court
23 will require Defendant Arpaio to answer Counts One and Two.

24 **VI. Warnings**

25 **A. Release**

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

3 **B. Address Changes**

4 Plaintiff must file and serve a notice of a change of address in accordance with Rule
5 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
6 relief with a notice of change of address. Failure to comply may result in dismissal of this
7 action.

8 **C. Copies**

9 Plaintiff must serve Defendant, or counsel if an appearance has been entered, a copy
10 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate
11 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit
12 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply
13 may result in the filing being stricken without further notice to Plaintiff.

14 **D. Possible Dismissal**

15 If Plaintiff fails to timely comply with every provision of this Order, including these
16 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
17 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
18 comply with any order of the Court).

19 **IT IS ORDERED:**

- 20 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. #3) is **granted**.
21 (2) As required by the accompanying Order to the appropriate government agency,
22 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$2.71.
23 (3) Count Three is **dismissed** without prejudice.
24 (4) Defendant Arpaio must answer Counts One and Two.
25 (5) The Clerk of Court must send Plaintiff a service packet including the
26 Complaint (Doc. #1), this Order, and both summons and request for waiver forms for
27 Defendant Arpaio.

1 (6) Plaintiff must complete and return the service packet to the Clerk of Court
2 within 20 days of the date of filing of this Order. The United States Marshal will not provide
3 service of process if Plaintiff fails to comply with this Order.

4 (7) If Plaintiff does not either obtain a waiver of service of the summons or
5 complete service of the Summons and Complaint on Defendant within 120 days of the filing
6 of the Complaint or within 60 days of the filing of this Order, whichever is later, the action
7 may be dismissed. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

8 (8) The United States Marshal must retain the Summons, a copy of the Complaint,
9 and a copy of this Order for future use.

10 (9) The United States Marshal must notify Defendant of the commencement of this
11 action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal
12 Rules of Civil Procedure. The notice to Defendant must include a copy of this Order. The
13 Marshal must immediately file requests for waivers that were returned as undeliverable and
14 waivers of service of the summons. If a waiver of service of summons is not returned by
15 Defendant within 30 days from the date the request for waiver was sent by the Marshal, the
16 Marshal must:

17 (a) personally serve copies of the Summons, Complaint, and this Order upon
18 Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and

19 (b) within 10 days after personal service is effected, file the return of service
20 for Defendant, along with evidence of the attempt to secure a waiver of service of the
21 summons and of the costs subsequently incurred in effecting service upon Defendant.
22 The costs of service must be enumerated on the return of service form (USM-285) and
23 must include the costs incurred by the Marshal for photocopying additional copies of
24 the Summons, Complaint, or this Order and for preparing new process receipt and
25 return forms (USM-285), if required. Costs of service will be taxed against the
26 personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
27 Procedure, unless otherwise ordered by the Court.
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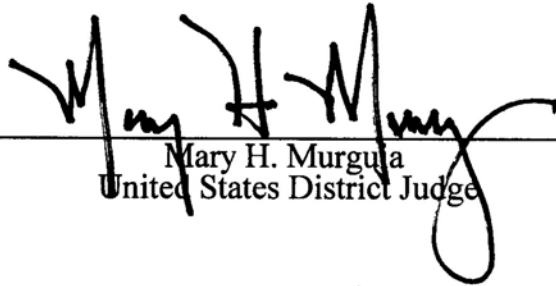
1 (10) **If Defendant agrees to waive service of the Summons and Complaint, he**
2 **must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

3 (11) Defendant must answer the Complaint or otherwise respond by appropriate
4 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal
5 Rules of Civil Procedure.

6 (12) This matter is referred to Magistrate Judge Jay R. Irwin pursuant to Rules 72.1
7 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized
8 under 28 U.S.C. § 636(b)(1).

9 DATED this 9th day of June, 2009.

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Mary H. Murgula
United States District Judge