

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

SC

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

Clide Anthony Walfall,
Plaintiff,
vs.
Joseph Arpaio,
Defendant.

No. CV 09-1628-PHX-MHM (ECV)

ORDER

Plaintiff Clide Anthony Walfall, who is confined in the Lower Buckeye Jail in Phoenix, Arizona, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. (Doc.# 1, 3.)¹ The Court will order Defendant Arpaio to answer Counts I - III of the Complaint.

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 not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). The statutory 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 “Doc.#” refers to the docket number of filings in this case.

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 A pleading must contain a “short and plain statement of the claim *showing* that the
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
10 not demand detailed factual allegations, “it demands more than an unadorned,
11 the-defendant-unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” Id. Further, “a complaint must contain sufficient
14 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id.
15 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible
16 “when the plaintiff pleads factual content that allows the court to draw the reasonable
17 inference that the defendant is liable for the misconduct alleged.” Id. “Determining whether
18 a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the
19 reviewing court to draw on its judicial experience and common sense.” Id. at 1950. Thus,
20 although a plaintiff’s specific factual allegations may be consistent with a constitutional
21 claim, a court must assess whether there are other “more likely explanations” for a
22 defendant’s conduct. Id. at 1951.

23 **III. Complaint**

24 In his three-count Complaint, Plaintiff sues Maricopa County Sheriff Joseph Arpaio.
25 In each count, he alleges a violation of his Fifth, Eighth, and Fourteenth Amendment rights.
26 Plaintiff seeks injunctive, compensatory, and punitive relief.

27 In Count I, Plaintiff asserts that Arpaio sets policy and directs his staff to overcrowd
28 the intake/booking facility at the Fourth Avenue Jail, where Plaintiff was held for 36 hours.

1 He claims that the intake/booking cells were designed to hold 15 detainees but were filled
2 with 30 to 45 detainees, that there was no place to sit other than the floor that was wet from
3 urine and vomit, the cell was never cleaned, there was no soap, and Plaintiff was not
4 provided a mat or blanket.

5 In Count II, Plaintiff claims that Arpaio sets policy and directs his staff to feed pretrial
6 detainees only two meals per day. Plaintiff contends that the meals are small and of bad
7 quality and lack nutrition. Plaintiff further contends that while Arpaio allows detainees with
8 money to possess commissary items in their cells, he will not allow detainees without funds
9 for commissary to save portions of the jail provided meals for consumption later in the day.
10 Plaintiff alleges that Arpaio brags publicly that he does this to cause pain and suffering to
11 inmates.

12 In Count III, Plaintiff alleges that Arpaio sets policies requiring him and other
13 detainees to be taken from their cells at midnight the evening before court appearances and
14 placed in holding cells for eight hours before transport, with no place to sleep except the
15 floor, which has germs from urine and other waste. He contends that detainees being
16 transported are fed at 1:00 a.m. and do not receive another meal until their return to their cell,
17 which can be as late as the following evening. Exposure to these conditions results in hunger
18 and lack of focus and rest prior to hearings.

19 **IV. Claims for Which an Answer Will be Required**

20 Liberally construed, Plaintiff has stated a claim in Counts I to III. The Court will
21 require Defendant to respond to those counts.

22 **V. Warnings**

23 **A. Release**

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

28 / / /

1 **B. Address Changes**

2 Plaintiff must file and serve a notice of a change of address in accordance with Rule
3 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
4 relief with a notice of change of address. Failure to comply may result in dismissal of this
5 action.

6 **C. Copies**

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

12 **D. Possible Dismissal**

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

17 **IT IS ORDERED:**

18 (1) Plaintiff’s Application to Proceed *In Forma Pauperis*, filed with the Complaint,
19 is **granted**. (Doc.# 3.)

20 (2) As required by the accompanying Order to the appropriate government agency,
21 Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing fee.

22 (3) Defendant Arpaio must answer Counts I to III.

23 (4) The Clerk of Court must send Plaintiff a service packet including the
24 Complaint (doc.# 1), this Order, and both summons and request for waiver forms for
25 Defendant Arpaio.

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

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

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

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

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

17 (b) within 10 days after personal service is effected, file the return of service
18 for Defendant, along with evidence of the attempt to secure a waiver of service of the
19 summons and of the costs subsequently incurred in effecting service upon Defendant.
20 The costs of service must be enumerated on the return of service form (USM-285) and
21 must include the costs incurred by the Marshal for photocopying additional copies of
22 the Summons, Complaint, or this Order and for preparing new process receipt and
23 return forms (USM-285), if required. Costs of service will be taxed against the
24 personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
25 Procedure, unless otherwise ordered by the Court.

26 (9) **A Defendant who agrees to waive service of the Summons and Complaint**
27 **must return the signed waiver forms to the United States Marshal, not the Plaintiff.**
28

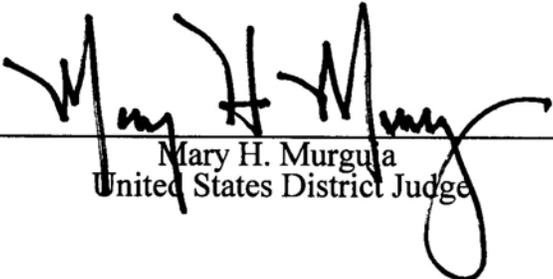
1 (10) Defendant must answer the Complaint or otherwise respond by appropriate
2 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal
3 Rules of Civil Procedure.

4 (11) Any answer or response must state the specific Defendant by name on whose
5 behalf it is filed. The Court may strike any answer, response, or other motion or paper that
6 does not identify the specific Defendant by name on whose behalf it is filed.

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

10 DATED this 2nd day of October, 2009.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Mary H. Murgula
United States District Judge