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

Patrick Earl Young,
Plaintiff,
vs.
Joseph M. Arpaio, et al.,
Defendants.

No. CV 09-1629-PHX-MHM (DKD)

ORDER

Plaintiff Patrick Earl Young, who is confined in the Maricopa County Towers Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. The Court will dismiss the Complaint with leave to amend.

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.

II. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
2 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
3 be granted, or that seek monetary relief from a defendant who is immune from such relief.
4 28 U.S.C. § 1915A(b)(1), (2).

5 A pleading must contain a “short and plain statement of the claim *showing* that the
6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
7 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
8 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
9 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements, do not suffice.” Id.

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
12 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
13 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
14 that allows the court to draw the reasonable inference that the defendant is liable for the
15 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
16 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
17 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
18 allegations may be consistent with a constitutional claim, a court must assess whether there
19 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

20 If the Court determines that a pleading could be cured by the allegation of other facts,
21 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
22 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
23 should not, however, advise the litigant how to cure the defects. This type of advice “would
24 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,
25 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was
26 required to inform a litigant of deficiencies). Plaintiff’s Complaint will be dismissed for
27 failure to state a claim, with leave to amend because the Complaint may possibly be saved
28 by amendment.

1 **III. Complaint**

2 Plaintiff sues Maricopa County Sheriff Joe Arpaio and Detention Officers B0086 and
3 Mannell B0797. Plaintiff raises two grounds for relief in which he alleges that the detention
4 officers used excessive force against him (Count I) and threatened his safety (Count II) when
5 they subjected him to verbal abuse and physical assault. Specifically, Plaintiff claims that
6 while returning from court, he and Defendant Mannell were engaged in a “verbal
7 altercation.” Defendant B0086 arrived on the scene and informed Plaintiff that Plaintiff was
8 refusing to obey a direct order. Plaintiff was placed in handcuffs and Defendant B0086
9 escorted Plaintiff out of the holding area. Plaintiff states that he then turned to ask a question
10 and Defendant B0086 slammed Plaintiff to the ground and beat Plaintiff with his hands,
11 knees, and elbows. Plaintiff claims that he suffered lacerations, abrasions, and bruises.

12 Plaintiff seeks money damages.

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

14 **A. Failure to Link Injuries with Defendant Arpaio**

15 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
16 injury as a result of specific conduct of a defendant and show an affirmative link between the
17 injury and the conduct of that defendant. Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).
18 There is no *respondeat superior* liability under § 1983, and therefore, a defendant’s position
19 as the supervisor of persons who allegedly violated Plaintiff’s constitutional rights does not
20 impose liability. Monell v. New York City Department of Social Services, 436 U.S. 658
21 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List, 880 F.2d
22 1040, 1045 (9th Cir. 1989). “Because vicarious liability is inapplicable to Bivens and § 1983
23 suits, a plaintiff must plead that each Government-official defendant, through the official’s
24 own individual actions, has violated the constitution.” Iqbal, 129 S. Ct. at 1948.

25 Plaintiff has failed to make any allegations against Defendant Arpaio and has
26 therefore failed to state a claim against Defendant Arpaio.

27 **B. Defendant Mannell**

28 Plaintiff’s only allegations against Defendant Mannell are that Defendant Mannell

1 verbally abused him. “Verbal harassment or abuse . . . is not sufficient to state a
2 constitutional deprivation under 42 U.S.C. § 1983.” Oltarzewski v. Ruggiero, 830 F.2d 136,
3 139 (9th Cir. 1987) (quoting Collins v. Cundy, 603 F.2d 825 (10th Cir. 1979)). Accordingly,
4 Plaintiff has failed to state a claim against Defendant Mannell.

5 **C. Excessive Force**

6 The Fourteenth Amendment Due Process clause protects pretrial detainees from
7 excessive force that amounts to punishment. Gibson v. County of Washoe, 290 F.3d 1175,
8 1197 (9th Cir. 2002). “[T]he Fourth Amendment sets ‘the applicable constitutional
9 limitations’ for considering claims of excessive force during pretrial detention.” Id. (quoting
10 Pierce v. Multnomah County, 76 F.3d 1032, 1043 (9th Cir. 1996)).

11 The Fourth Amendment does not prohibit the use of reasonable force. Tatum v. City
12 and County of San Francisco, 441 F.3d 1090, 1095 (9th Cir. 2006). Whether the force was
13 excessive depends on “whether the officers’ actions [were] ‘objectively reasonable’ in light
14 of the facts and circumstances confronting them, without regard to their underlying intent or
15 motivation.” Graham v. Connor, 490 U.S. 386, 397 (1989). See also Tatum, 441 F.3d at
16 1095; Lolli v. County of Orange, 351 F.3d 410, 415 (9th Cir. 2003). The Court must balance
17 the nature and quality of the intrusion against the countervailing governmental interests.
18 Lolli, 351 F.3d at 415. Moreover,

19 [t]he “reasonableness” of a particular use of force must be
20 judged from the perspective of a reasonable officer on the scene,
21 rather than with the 20/20 vision of hindsight. . . . “Not every
22 push or shove, even if it may later seem unnecessary in the
23 peace of a judge’s chambers,” violates the Fourth Amendment.
24 The calculus of reasonableness must embody allowance for the
fact that police officers are often forced to make split-second
judgments-in circumstances that are tense, uncertain, and rapidly
evolving-about the amount of force that is necessary in a
particular situation.

25 Graham, 490 U.S. at 396-97 (citation omitted).

26 In Count I, Plaintiff alleges that he and Defendant Mannell had been engaged in a
27 “verbal altercation,” that Defendant B0086 had informed him that he was refusing to obey
28 a direct order, and that Plaintiff had turned back toward Defendant B0086 immediately

1 before the incident in question. Although Plaintiff may believe that the force used by
2 Defendant B0086 was unnecessary, Plaintiff's facts do not demonstrate that the use of force
3 was unreasonable in the circumstances described. Plaintiff has therefore failed to state an
4 excessive force claim.

5 **V. Leave to Amend**

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

12 In any amended complaint, Plaintiff must write short, plain statements telling the
13 Court: (1) the constitutional right Plaintiff believes was violated; (2) name of the Defendant
14 who violated the right; (3) exactly what that Defendant did or failed to do; (4) how the action
15 or inaction of that Defendant is connected to the violation of Plaintiff's constitutional right;
16 and (5) what specific injury Plaintiff suffered because of that Defendant's conduct. Rizzo,
17 423 U.S. at 371-72, 377.

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

22 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
23 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
24 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
25 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
26 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
27 565, 567 (9th Cir. 1987).

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1 **VI. Warnings**

2 **A. Release**

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

7 **B. Address Changes**

8 Plaintiff must file and serve a notice of a change of address in accordance with Rule
9 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
10 relief with a notice of change of address. Failure to comply may result in dismissal of this
11 action.

12 **C. Copies**

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

16 **D. Possible “Strike”**

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

26 **E. Possible Dismissal**

27 If Plaintiff fails to timely comply with every provision of this Order, including these
28 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at

1 1260-61 (a district court may dismiss an action for failure to comply with any order of the
2 Court).

3 **IT IS ORDERED:**

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

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

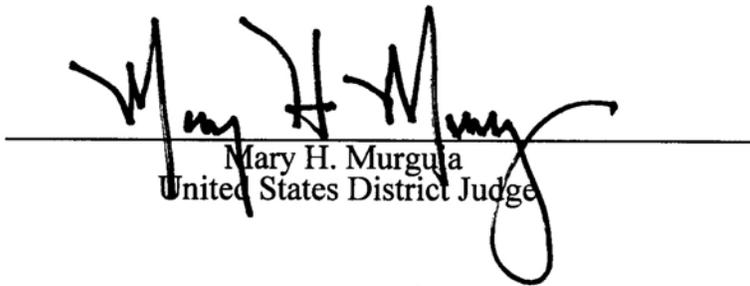
7 (3) The Complaint (Doc. #1) is **dismissed** for failure to state a claim. Plaintiff has
8 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
9 this Order.

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

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

15 DATED this 21st day of September, 2009.

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Mary H. Murgula
United States District Judge