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

Anthony Grady,

Plaintiff,

vs.

Joe Arpaio, et al.,

Defendants.

) No. CV 09-1996-PHX-MHM (LOA)

) **ORDER**

Plaintiff Anthony Grady, 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 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 assess an initial partial filing fee of \$19.21. 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.

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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 not  
10 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-  
11 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).  
12 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
13 statements, do not suffice.” Id.

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

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

1 required to inform a litigant of deficiencies). Plaintiff's Complaint will be dismissed for  
2 failure to state a claim, with leave to amend because the Complaint may possibly be saved  
3 by amendment.

### 4 **III. Complaint**

5 In his two-count Complaint, Plaintiff sues the following Defendants: Maricopa County  
6 Sheriff Joe Arpaio, Don Stapley, the Maricopa County Sheriff's Department, and Maricopa  
7 County Sheriff Supervisors. In Count One, Plaintiff alleges "access to court with health code  
8 violation." He claims that on three occasions he was in a holding cell with trash all over the  
9 cell and with living and dead cockroaches. In Count Two, Plaintiff states that he asked for  
10 a nail clipper because he was unable to bend to use a nail file, and that "medical" refused to  
11 clip his toenail. In his Request for Relief, Plaintiff seeks monetary compensation.

### 12 **IV. Failure to State a Claim**

#### 13 **A. Failure to Allege a Violation of a Constitutional Right**

14 Section 1983 provides a cause of action against persons acting under color of state law  
15 who have violated rights guaranteed by the United States Constitution and federal law. 42  
16 U.S.C. § 1983; see also Buckley v. City of Redding, 66 F.3d 188, 190 (9th Cir. 1995).  
17 Plaintiff has failed to allege any constitutional or federal-law violations. Thus, the Court will  
18 dismiss without prejudice Plaintiff's Complaint because it fails to state a claim.

#### 19 **B. Failure to Link Defendant with Injuries**

20 Although *pro se* pleadings are liberally construed, Haines v. Kerner, 404 U.S. 519,  
21 520-21 (1972), conclusory and vague allegations will not support a cause of action. Ivey v.  
22 Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). Further,  
23 a liberal interpretation of a civil rights complaint may not supply essential elements of the  
24 claim that were not initially pled. *Id.*

25 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific  
26 injury as a result of specific conduct of a defendant and show an affirmative link between the  
27 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377  
28 (1976). There is no *respondeat superior* liability under § 1983, and therefore, a defendant's

1 position as the supervisor of persons who allegedly violated Plaintiff's constitutional rights  
2 does not impose liability. Monell v. New York City Dep't of Soc. Servs., 436 U.S. 658, 691-  
3 92 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List, 880 F.2d  
4 1040, 1045 (9th Cir. 1989). "Because vicarious liability is inapplicable to . . . § 1983 suits,  
5 a plaintiff must plead that each Government-official defendant, through the official's own  
6 individual actions, has violated the constitution." Iqbal, 129 S. Ct. at 1948.

7 Plaintiff has not alleged that any Defendant personally participated in a deprivation  
8 of Plaintiff's constitutional rights, was aware of a deprivation and failed to act, or formed  
9 policies that resulted in Plaintiff's injuries. Thus, the Court will dismiss all Defendants.

### 10 **C. Improper Defendant**

11 The Maricopa County Sheriff's Department is not a proper defendant. In Arizona, the  
12 responsibility of operating jails and caring for prisoners is placed by law upon the sheriff.  
13 See Ariz. Rev. Stat. § 11-441(A)(5); Ariz. Rev. Stat. § 31-101. A sheriff's office is simply  
14 an administrative creation of the county sheriff to allow him to carry out his statutory duties  
15 and not a "person" amenable to suit pursuant to § 1983. Accordingly, the Maricopa County  
16 Sheriff's Department will be dismissed from this action.

### 17 **V. Leave to Amend**

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

24 Plaintiff must clearly designate on the face of the document that it is the "First  
25 Amended Complaint." The first amended complaint must be retyped or rewritten in its  
26 entirety on the court-approved form and may not incorporate any part of the original  
27 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 v. Atiyeh, 814 F.2d  
6 565, 567 (9th Cir. 1987).

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

13 Plaintiff must repeat this process for each person he names as a Defendant. If Plaintiff  
14 fails to affirmatively link the conduct of each named Defendant with the specific injury  
15 suffered by Plaintiff, the allegations against that Defendant will be dismissed for failure to  
16 state a claim. **Conclusory allegations that a Defendant or group of Defendants have  
17 violated a constitutional right are not acceptable and will be dismissed.**

18 Plaintiff should take note that a pretrial detainee's claim for unconstitutional  
19 conditions of confinement arises from the Fourteenth Amendment Due Process Clause rather  
20 than from the Eighth Amendment prohibition against cruel and unusual punishment. Bell  
21 v. Wolfish, 441 U.S. 520, 535 (1979). Nevertheless, the same standards are applied,  
22 requiring proof that the defendant acted with deliberate indifference. See Frost v. Agnos,  
23 152 F.3d 1124, 1128 (9th Cir. 1998).

24 To state a claim of deliberate indifference, plaintiffs must meet a two-part test. First,  
25 the alleged constitutional deprivation must be, objectively, "sufficiently serious"; the  
26 official's act or omission must result in the denial of "the minimal civilized measure of life's  
27 necessities." Farmer v. Brennan, 511 U.S. 825, 834 (1994). Second, the prison official must  
28 have a "sufficiently culpable state of mind," *i.e.*, he must act with deliberate indifference to

1 inmate health or safety. Id. In defining “deliberate indifference” in this context, the Supreme  
2 Court has imposed a subjective test: “the official must both be aware of facts from which the  
3 inference could be drawn that a substantial risk of serious harm exists, and he must also draw  
4 the inference.” Id. at 837 (emphasis added).

5 Not every claim by a prisoner that he has received inadequate medical treatment states  
6 a violation of the Eighth or Fourteenth Amendment. To state a § 1983 medical claim, a  
7 plaintiff must show that the defendants acted with “deliberate indifference to serious medical  
8 needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429  
9 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating  
10 that failure to treat the condition could result in further significant injury or the unnecessary  
11 and wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.  
12 Jett, 439 F.3d at 1096 (quotations omitted).

13 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,  
14 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know  
15 of and disregard an excessive risk to inmate health; the official must both be aware of facts  
16 from which the inference could be drawn that a substantial risk of serious harm exists and  
17 he must also draw the inference. Farmer, 511 U.S. at 837. Deliberate indifference in the  
18 medical context may be shown by a purposeful act or failure to respond to a prisoner’s pain  
19 or possible medical need and harm caused by the indifference. Jett, 439 F.3d at 1096.  
20 Deliberate indifference may also be shown when a prison official intentionally denies,  
21 delays, or interferes with medical treatment or by the way prison doctors respond to the  
22 prisoner’s medical needs. Estelle, 429 U.S. at 104-05; Jett, 439 F.3d at 1096.

23 Deliberate indifference is a higher standard than negligence or lack of ordinary due  
24 care for the prisoner’s safety. Farmer, 511 U.S. at 835. “Neither negligence nor gross  
25 negligence will constitute deliberate indifference.” Clement v. California Dep’t of  
26 Corrections, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); see also Broughton v. Cutter  
27 Labs., 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or  
28 “medical malpractice” do not support a claim under § 1983). “A difference of opinion does

1 not amount to deliberate indifference to [a plaintiff's] serious medical needs.” Sanchez v.  
2 Vild, 891 F.2d 240, 242 (9th Cir. 1989). The indifference must be substantial. The action  
3 must rise to a level of “unnecessary and wanton infliction of pain.” Estelle, 429 U.S. at 105-  
4 06.

## 5 **VI. Warnings**

### 6 **A. Release**

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

### 11 **B. Address Changes**

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

### 16 **C. Copies**

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

### 20 **D. Possible “Strike”**

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

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**.

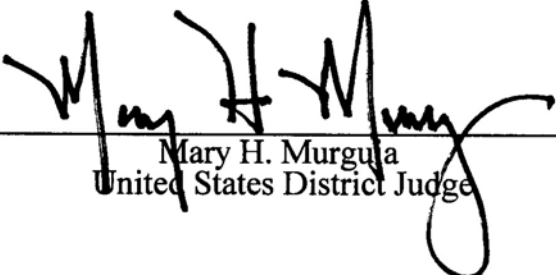
10 (2) As required by the accompanying Order to the appropriate government agency,  
11 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$19.21.

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 30<sup>th</sup> day of October, 2009.

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