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

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Corey Demar Shivers,

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No. CV 10-0796-PHX-GMS (JRI)

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Plaintiff,

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ORDER

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vs.

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April Arlene Sponsel, et al.,

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Defendants.

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On April 9, 2010, Plaintiff Corey Demar Shivers, who is confined in the Fourth Avenue Jail in Phoenix, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*.¹ In a May 20, 2010 Order, the Court granted the Application to Proceed and dismissed the Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies identified in the Order.

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On June 3, 2010, Plaintiff filed his First Amended Complaint. In a July 14, 2010 Order, the Court dismissed the First Amended Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file a second amended complaint that cured the deficiencies identified in the Order.

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¹ Plaintiff has filed three other civil rights cases in federal court, Shivers v. Phoenix Police Dep't, No. CV09-1243-PHX-GMS (JRI); Shivers v. Phoenix Police Dep't, No. CV09-2285-PHX-GMS (JRI); and Shivers v. Phoenix Police Dep't, No. CV10-1175-PHX-GMS (JRI). In each, he raises claims concerning state charges and the prosecution thereof.

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1 On August 17, 2010, Plaintiff filed a Second Amended Complaint. (Doc. 9.) The
2 Court will dismiss the Second Amended Complaint and this action.

3 **I. Statutory Screening of Prisoner Complaints**

4 The Court is required to screen complaints brought by prisoners seeking relief against
5 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
7 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
8 be granted, or that seek monetary relief from a defendant who is immune from such relief.
9 28 U.S.C. § 1915A(b)(1), (2).

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

16 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
17 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
18 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
19 that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
21 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
22 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
23 allegations may be consistent with a constitutional claim, a court must assess whether there
24 are other “more likely explanations” for a defendant’s conduct. Id. at 1951. But as the
25 United States Court of Appeals for the Ninth Circuit has instructed, courts must “continue
26 to construe *pro se* filings liberally.” Hebbe v. Pliler, No. 07-17265, 2010 WL 2947323, at
27 *3 (9th Cir. Jul. 29, 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
28 stringent standards than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v.

1 Pardus, 551 U.S. 89, 94 (2007) (*per curiam*)).

2 **II. Second Amended Complaint**

3 In his three-count Second Amended Complaint, Plaintiff sues the following
4 Defendants: April Arlene Sponsel, City of Phoenix, Tyler Kamp, David Snow, and Maricopa
5 County. In each Count, Plaintiff alleges only violations of the state constitution.

6 **III. Failure to State a Claim**

7 As Plaintiff has twice previously been informed in this case:

8 To state a claim under § 1983, a plaintiff must allege facts supporting
9 that (1) the conduct about which he complains was committed by a person
10 acting under the color of state law and (2) the conduct deprived him of a
11 federal constitutional or statutory right. Wood v. Ostrander, 879 F.2d 583, 587
12 (9th Cir. 1989). In addition, a plaintiff must allege that he suffered a specific
injury as a result of the conduct of a particular defendant and he must allege
an affirmative link between the injury and the conduct of that defendant.
Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).

13 (Doc. 5 at 3-4; 8 at 3.) Further, in dismissing the First Amended Complaint, the Court
14 declined to extend supplemental jurisdiction over state law claims where Plaintiff had failed
15 to state any federal constitutional claim. (Doc. 8 at 7.)

16 In the Second Amended Complaint, Plaintiff fails to allege any violation of his *federal*
17 constitutional rights. Instead, he only alleges violations of *state* constitutional rights.
18 Plaintiff thus fails to state a claim under 42 U.S.C. § 1983.

19 **IV. Dismissal without Leave to Amend**

20 Because Plaintiff has failed to state a claim in his Second Amended Complaint, the
21 Court will dismiss his Second Amended Complaint. “Leave to amend need not be given if
22 a complaint, as amended, is subject to dismissal.” Moore v. Kayport Package Express, Inc.,
23 885 F.2d 531, 538 (9th Cir. 1989). The Court’s discretion to deny leave to amend is
24 particularly broad where Plaintiff has previously been permitted to amend his complaint.
25 Sisseton-Wahpeton Sioux Tribe v. United States, 90 F.3d 351, 355 (9th Cir. 1996). Repeated
26 failure to cure deficiencies is one of the factors to be considered in deciding whether justice
27 requires granting leave to amend. Moore, 885 F.2d at 538.

28 Plaintiff has made three efforts at crafting a viable complaint and appears unable to

1 do so despite specific instructions from the Court. The Court finds that further opportunities
2 to amend would be futile. Therefore, the Court, in its discretion, will dismiss Plaintiff's
3 Second Amended Complaint without leave to amend.

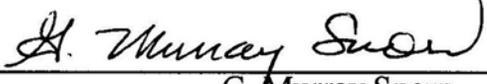
4 **IT IS ORDERED:**

5 (1) Plaintiff's Second Amended Complaint, doc. 9, and this action are **dismissed**
6 for failure to state a claim, and the Clerk of Court must enter judgment accordingly.

7 (2) The Clerk of Court must make an entry on the docket stating that the dismissal
8 for failure to state a claim may count as a "strike" under 28 U.S.C. § 1915(g).

9 (3) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.
10 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of this
11 decision would not be taken in good faith.

12 DATED this 8th day of September, 2010.

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15 G. Murray Snow
16 United States District Judge
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