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

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Granville Carroll,

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No. CV 10-2032-PHX-RCB (ECV)

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Plaintiff,

)

**ORDER**

11

vs.

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Maricopa County Sheriff, et al.,

)

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Defendants.

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Plaintiff Carroll Granville, who is confined in the Arizona State Prison in Globe, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. On October 4, 2010, the Court denied the Application to Proceed with leave to re-file. On October 25, 2010, Plaintiff filed a new Application to Proceed (Doc. 6). The Court will dismiss the Complaint with leave to amend.

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

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Plaintiff's new 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 \$25.87. 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 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts  
24 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, No. 07-17265, 2010 WL  
25 2947323, at \*3 (9th Cir. Jul. 29, 2010). A “complaint [filed by a *pro se* prisoner] ‘must be  
26 held to less stringent standards than formal pleadings drafted by lawyers.’” Id. (quoting  
27 Erickson v. Pardus, 551 U.S. 89, 94 (2007) (*per curiam*)).

28 If the Court determines that a pleading could be cured by the allegation of other facts,

1 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the  
2 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court  
3 should not, however, advise the litigant how to cure the defects. This type of advice “would  
4 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,  
5 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was  
6 required to inform a litigant of deficiencies). Plaintiff’s Complaint will be dismissed for  
7 failure to state a claim, with leave to amend because the Complaint may possibly be saved  
8 by amendment.

### 9 **III. Complaint**

10 Plaintiff names the following Defendants in the Complaint: the Maricopa County  
11 Sheriff, Maricopa County Correctional Health Services, and Maricopa County Assistant  
12 Public Defender Lance Antonson.

13 Plaintiff raises three grounds for relief in the Complaint:

- 14 (1) Plaintiff’s Eighth Amendment rights were violated when two detention officers  
15 negligently failed to lock down Plaintiff’s pod and Plaintiff was attacked by  
16 other inmates;
- 17 (2) Plaintiff’s Eighth Amendment rights were violated when he did not receive  
18 adequate medical care for his broken hand; and
- 19 (3) Plaintiff’s trial counsel was ineffective.

20 Plaintiff seeks money damages.

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

#### 22 **A. Defendants**

##### 23 **1. Maricopa County Sheriff**

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

1 does not impose liability. Monell v. New York City Department of Social Services, 436 U.S.  
2 658, 691-92 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List,  
3 880 F.2d 1040, 1045 (9th Cir. 1989). “Because vicarious liability is inapplicable to Bivens  
4 and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the  
5 official’s own individual actions, has violated the Constitution.” Iqbal, 129 S. Ct. at 1448.

6 Plaintiff has not alleged that Defendant Maricopa County Sheriff personally  
7 participated in a deprivation of Plaintiff’s constitutional rights, was aware of a deprivation  
8 and failed to act, or formed policies that resulted in Plaintiff’s injuries. Thus, the Court will  
9 dismiss without prejudice Defendant Maricopa County Sheriff.

## 10 **2. Maricopa County Correctional Health Services**

11 Municipalities and other local governing bodies are included among those “persons”  
12 who may be sued under § 1983. Monell v. Department of Social Services of New York, 436  
13 U.S. 658, 690-91 (1978). Because Maricopa County Correctional Health Services is not a  
14 municipal corporation, a local governing body or a private corporation, it is not a “person”  
15 amenable to suit under § 1983. Maricopa County is responsible for providing medical care  
16 to county jail inmates. See Ariz. Rev. Stat. § 11-291(A). Any actions against a county  
17 policy must be brought against the county itself and not against an administrative subdivision  
18 of the county; thus, Maricopa County Correctional Health Services is an improper defendant.

## 19 **3. Defendant Antonson**

20 A prerequisite for any relief under 42 U.S.C. § 1983 is a showing that the defendant  
21 has acted under the color of state law. Whether an attorney representing a criminal defendant  
22 is a public defender or court-appointed counsel, he or she does not act under color of state  
23 law. See Polk County v. Dodson, 454 U.S. 312, 317-18 (1981). Accordingly, Plaintiff has  
24 failed to state a claim against Defendant Antonson.

### 25 **B. Count I–Failure to Protect**

26 In Count I, Plaintiff claims that two detention officers negligently failed to lock down  
27 his pod after observing tension among the inmates. Plaintiff alleges that, as a result, he was  
28 attacked by other inmates and suffered a broken hand.

1 First, the Court notes that Plaintiff has not named either Detention Officer as a  
2 Defendant in this action. Further, the Supreme Court has held that mere negligent failure to  
3 protect an inmate from another inmate is not actionable under § 1983. Davidson v. Cannon,  
4 474 U.S. 344 (1986). A prison official violates the Eighth Amendment in failing to protect  
5 one inmate from another only when two conditions are met. First, the alleged constitutional  
6 deprivation must be, objectively, “sufficiently serious;” the official’s act or omission must  
7 result in the denial of “the minimal civilized measure of life’s necessities.” Farmer v.  
8 Brennan, 511 U.S. 825, 834 (1994). Second, the prison official must have a “sufficiently  
9 culpable state of mind,” *i.e.*, he must act with deliberate indifference to inmate health or  
10 safety. Id. In defining “deliberate indifference” in this context, the Supreme Court has  
11 imposed a subjective test:

12 the official must both be aware of the facts from which the inference could be  
13 drawn that a substantial risk of serious harm exists, and he must also draw the  
inference.

14 Id. at 839 (emphasis supplied).

15 Plaintiff has not alleged facts demonstrating that the Detention Officers were  
16 deliberately indifferent to a threat to his safety. Plaintiff has therefore failed to state a claim  
17 in Count I.

### 18 C. Count II—Medical Claims

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

27 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,  
28 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know

1 of and disregard an excessive risk to inmate health; “the official must both be aware of facts  
2 from which the inference could be drawn that a substantial risk of serious harm exists, and  
3 he must also draw the inference.” Farmer v. Brennan, 511 U.S. at 837. Deliberate  
4 indifference in the medical context may be shown by a purposeful act or failure to respond  
5 to a prisoner’s pain or possible medical need and harm caused by the indifference. Jett, 439  
6 F.3d at 1096. Deliberate indifference may also be shown when a prison official intentionally  
7 denies, delays, or interferes with medical treatment or by the way prison doctors respond to  
8 the prisoner’s medical needs. Estelle, 429 U.S. at 104-05; Jett, 439 F.3d at 1096.

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

15 In Count II, Plaintiff claims that after receiving an x-ray, “Defendants carelessly and  
16 negligently fail[ed] to give proper medical attention. Defendant improperly splinted the  
17 Plaintiff[’]s left hand.” Plaintiff claims that his hand did not heal proper and that by the time  
18 he saw a specialist, it was too late to repair the damage to his hand.

19 First, Plaintiff has not linked his medical claims to specific, individual Defendants  
20 who were responsible for providing him with inadequate medical care. Further, even if  
21 Plaintiff had named proper Defendants, Plaintiff has shown, at most, that he received  
22 negligent medical care. Plaintiff has not alleged facts showing that individual Defendants  
23 were deliberately indifferent to his medical needs. Plaintiff has therefore failed to state a  
24 claim in Count II.

25 **D. Count III**

26 A prisoner’s claim for damages cannot be brought under 42 U.S.C. § 1983 if “a  
27 judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or  
28 sentence,” unless the prisoner demonstrates that the conviction or sentence has previously

1 been reversed, expunged, or otherwise invalidated. Heck v. Humphrey, 512 U.S. 477, 486-  
2 87 (1994). Plaintiff's claim that his trial counsel was ineffective implies the invalidity of his  
3 conviction, and his claims are therefore barred by Heck. Plaintiff has failed to state a claim  
4 in Count III.

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

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

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

27 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963  
28 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,

1 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as  
2 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original  
3 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d  
4 565, 567 (9th Cir. 1987).

## 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 may 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 or fails to state a claim upon which relief may be granted, unless the prisoner is under



1 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

2 **E. Possible Dismissal**

3 If Plaintiff fails to timely comply with every provision of this Order, including these  
4 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at  
5 1260-61 (a district court may dismiss an action for failure to comply with any order of the  
6 Court).

7 **IT IS ORDERED:**

8 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 6) is **granted**.


9 (2) As required by the accompanying Order to the appropriate government agency,  
10 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$25.87.

11 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has  
12 **30 days** from the date this Order is filed to file a first amended complaint in compliance with  
13 this Order.

14 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of  
15 Court must, without further notice, enter a judgment of dismissal of this action with prejudice  
16 that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g).

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

19 DATED this 17th day of November, 2010.

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23 Robert C. Broomfield  
24 Senior United States District Judge  
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