

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 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
21 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, No. 07-17265, 2010 WL
22 2947323, at *3 (9th Cir. Jul. 29, 2010). A “complaint [filed by a *pro se* prisoner] ‘must be
23 held to less stringent standards than formal pleadings drafted by lawyers.’” Id. (quoting
24 Erickson v. Pardus, 551 U.S. 89, 94 (2007) (*per curiam*)).

25 If the Court determines that a pleading could be cured by the allegation of other facts,
26 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
27 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
28 should not, however, advise the litigant how to cure the defects. This type of advice “would

1 undermine district judges' role as impartial decisionmakers." Pliler v. Ford, 542 U.S. 225,
2 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was
3 required to inform a litigant of deficiencies). Plaintiff's Complaint will be dismissed for
4 failure to state a claim, with leave to amend because the Complaint may possibly be saved
5 by amendment.

6 **III. Complaint**

7 Plaintiff names the following Defendants in the Complaint: Maricopa County Sheriff
8 Joseph M. Arpaio and Maricopa County Supervisors Fulton Brock, Don Stapley, Andrew
9 Kunasek, Max W. Wilson, and Mary Rose Wilcox.

10 Plaintiff raises three grounds for relief in the Complaint. Plaintiff claims his right to
11 be free from cruel and unusual punishment was violated by: roaches in his food (Count I),
12 being placed in an unsanitary holding cell with 80 other inmates (Count II), and being housed
13 with 50 to 60 other inmates with only 16 seats and 16 cups from which to drink (Count III).

14 Plaintiff seeks money damages.

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

16 **A. Board of Supervisors**

17 The Maricopa County Board of Supervisors and the individual members of that Board
18 are not proper Defendants and must be dismissed. Local government bodies, such as Arizona
19 counties, are persons under § 1983 and may be sued for constitutional injuries. Liability may
20 be imposed on the county if a plaintiff establishes that his injuries were inflicted pursuant to
21 an official county policy or custom. Thompson v. City of Los Angeles, 885 F.2d 1439, 1443
22 (9th Cir. 1989) (citations omitted). Official county policy may only be set by an official with
23 "final policymaking authority." Id. (citing Pembaur v. City of Cincinnati, 475 U.S. 469,
24 481-83 (1986) (plurality opinion)). To identify those officials with "final policymaking
25 authority," the Court looks to state law. Id. (citing City of St. Louis v. Praprotnik, 485 U.S.
26 112, 126 (1988) (plurality opinion) (quotations omitted)).

27 In Arizona, the responsibility of operating jails is placed by law upon the Sheriff, not
28 on the county's Board of Supervisors. See Ariz. Rev. Stat. § 11-141(A)(5); Ariz. Rev. Stat.

1 § 31-101. Therefore, the Board of Supervisors is not liable to Plaintiff under § 1983 because
2 it lacks authority to establish an official policy with respect to the operation of the jail.
3 Further, the Board cannot be held liable for the actions of the Sheriff or his deputies on a
4 theory of *respondeat superior* liability. See Thompson, 885 F.2d at 1443. Accordingly, the
5 Board and individual members of the Board will be dismissed.

6 **B. Arpaio**

7 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
8 injury as a result of specific conduct of a defendant and show an affirmative link between the
9 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377
10 (1976). There is no *respondeat superior* liability under § 1983, and therefore, a defendant's
11 position as the supervisor of persons who allegedly violated Plaintiff's constitutional rights
12 does not impose liability. Monell v. New York City Department of Social Services, 436 U.S.
13 658, 691-92 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List,
14 880 F.2d 1040, 1045 (9th Cir. 1989). "Because vicarious liability is inapplicable to Bivens
15 and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the
16 official's own individual actions, has violated the Constitution." Iqbal, 129 S. Ct. at 1948.

17 Plaintiff has not alleged that Defendant Arpaio personally participated in a deprivation
18 of Plaintiff's constitutional rights, was aware of a deprivation and failed to act, or formed
19 policies that resulted in Plaintiff's injuries. Thus, the Court will dismiss without prejudice
20 Defendant Arpaio.

21 **V. Leave to Amend**

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

28 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements

1 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of
2 the Defendant who violated the right; (3) exactly what that Defendant did or failed to do;
3 (4) how the action or inaction of that Defendant is connected to the violation of Plaintiff's
4 constitutional right; and (5) what specific injury Plaintiff suffered because of that
5 Defendant's conduct. See Rizzo, 423 U.S. at 371-72, 377.

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

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

15 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
16 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
17 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
18 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
19 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
20 565, 567 (9th Cir. 1987).

21 **VI. Warnings**

22 **A. Release**

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

28 **B. Address Changes**

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

5 **C. Copies**

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

9 **D. Possible “Strike”**

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

19 **E. Possible Dismissal**

20 If Plaintiff fails to timely comply with every provision of this Order, including these
21 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at
22 1260-61 (a district court may dismiss an action for failure to comply with any order of the
23 Court).

24 **IT IS ORDERED:**

- 25 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.
26 (2) As required by the accompanying Order to the appropriate government agency,
27 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$26.30.
28 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has

1 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
2 this Order.

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

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

8 DATED this 30th day of November, 2010.

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13 Robert C. Broomfield
14 Senior United States District Judge
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