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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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Jack D. Riggs,

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No. CV 10-2455-PHX-MHM (ECV)

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Plaintiff,

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**ORDER**

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vs.

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Sheriff Joe Arpaio, et al.,

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Defendants.

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On November 12, 2010, Plaintiff Jack D. Riggs, who is confined in the Maricopa County Durango Jail, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. In a November 29, 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 December 9, 2010, Plaintiff filed his First Amended Complaint. In a December 15, 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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On December 29, 2010, Plaintiff filed a Second Amended Complaint (Doc. 9). The Court will order Defendant Arpaio to answer Counts One and Three of the Second Amended Complaint and will dismiss Count Two without prejudice.

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TERMPSPREF 28

1 **I. 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*)).

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1 **II. Second Amended Complaint**

2 In his three-count Second Amended Complaint, Plaintiff sues Defendant Maricopa  
3 County Sheriff Joseph M. Arpaio.

4 In each count, Plaintiff alleges a violation of his Fourteenth Amendment due process  
5 rights regarding his conditions of confinement and alleges that Defendant Arpaio personally  
6 participated in a deprivation of Plaintiff’s constitutional rights because Defendant Arpaio was  
7 aware of the conditions or policies and failed to correct them.

8 In Count One, Plaintiff asserts there are 60 people in an area with only 24 seats, which  
9 leaves the remainder of the detainees to eat their meals on unsanitary, cement floors. He  
10 claims this causes a hostile environment.

11 In Count Two, Plaintiff contends that he fired his attorney “through I.L.S. [(Inmate  
12 Legal Services)] and has been denied research materials and supplies by Inmate Legal  
13 Services and is not being allowed to research his case because he has an attorney on record.

14 In Count Three, Plaintiff asserts that he is only served two meals per day, that the  
15 meals are 12 hours apart, that the meals are inadequate notwithstanding the fact that they  
16 meet his daily caloric intake needs, and that an “unsafe and combative atmosphere” exists  
17 because detainees ration their food.

18 In his Request for Relief, Plaintiff seeks monetary damages and his court costs and  
19 fees.

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

21 As a pretrial detainee, Plaintiff’s right of access to the courts for his *criminal*  
22 *prosecution* is guaranteed by the State’s offer of a criminal defense attorney. United States  
23 v. Wilson, 690 F.2d 1267, 1272 (9th Cir. 1982) (“The offer of court-appointed counsel to  
24 represent [Defendant] satisfied the Fifth Amendment obligation to provide meaningful access  
25 to the courts.”). Although Plaintiff contends that he “fired [his] attorney through I.L.S.,” a  
26 review of minute entries available online reflects that Plaintiff has always been represented  
27 by counsel in the Maricopa County Superior Court in both of his criminal  
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1 cases—CR-2010-113396 and CR-2010-007895.<sup>1</sup> Plaintiff’s own access to legal materials,  
2 therefore is irrelevant. Plaintiff has failed to state an access-to-the-courts claim in Count  
3 Two, and the Court will dismiss Count Two without prejudice.

4 **IV. Claims for Which an Answer Will be Required**

5 Liberally construed, Plaintiff has stated Fourteenth Amendment  
6 conditions-of-confinement claims against Defendant Arpaio in Counts One and Three. The  
7 Court will require Defendant Arpaio to answer Counts One and Three.

8 **V. Warnings**

9 **A. Release**

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

14 **B. Address Changes**

15 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
16 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
17 relief with a notice of change of address. Failure to comply may result in dismissal of this  
18 action.

19 **C. Copies**

20 Plaintiff must serve Defendant, or counsel if an appearance has been entered, a copy  
21 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate  
22 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit  
23 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply  
24 may result in the filing being stricken without further notice to Plaintiff.

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<sup>1</sup>See <http://www.courtminutes.maricopa.gov>.

1           **D.     Possible Dismissal**

2           If Plaintiff fails to timely comply with every provision of this Order, including these  
3 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,  
4 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
5 comply with any order of the Court).

6 **IT IS ORDERED:**

7           (1)     Count Two is **dismissed** without prejudice.

8           (2)     Defendant Arpaio must answer Counts One and Three.

9           (3)     The Clerk of Court must send Plaintiff a service packet including the Second  
10 Amended Complaint (Doc. 9), this Order, and both summons and request for waiver forms  
11 for Defendant Arpaio.

12          (4)     Plaintiff must complete and return the service packet to the Clerk of Court  
13 within 21 days of the date of filing of this Order. The United States Marshal will not provide  
14 service of process if Plaintiff fails to comply with this Order.

15          (5)     If Plaintiff does not either obtain a waiver of service of the summons or  
16 complete service of the Summons and Second Amended Complaint on Defendant within 120  
17 days of the filing of the Complaint or within 60 days of the filing of this Order, whichever  
18 is later, the action may be dismissed. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

19          (6)     The United States Marshal must retain the Summons, a copy of the Second  
20 Amended Complaint, and a copy of this Order for future use.

21          (7)     The United States Marshal must notify Defendant of the commencement of this  
22 action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal  
23 Rules of Civil Procedure. The notice to Defendant must include a copy of this Order. The  
24 Marshal must immediately file requests for waivers that were returned as undeliverable and  
25 waivers of service of the summons. If a waiver of service of summons is not returned by  
26 Defendant within 30 days from the date the request for waiver was sent by the Marshal, the  
27 Marshal must:

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1 (a) personally serve copies of the Summons, Second Amended Complaint,  
2 and this Order upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil  
3 Procedure; and

4 (b) within 10 days after personal service is effected, file the return of service  
5 for Defendant, along with evidence of the attempt to secure a waiver of service of the  
6 summons and of the costs subsequently incurred in effecting service upon Defendant.  
7 The costs of service must be enumerated on the return of service form (USM-285) and  
8 must include the costs incurred by the Marshal for photocopying additional copies of  
9 the Summons, Second Amended Complaint, or this Order and for preparing new  
10 process receipt and return forms (USM-285), if required. Costs of service will be  
11 taxed against the personally served Defendant pursuant to Rule 4(d)(2) of the Federal  
12 Rules of Civil Procedure, unless otherwise ordered by the Court.

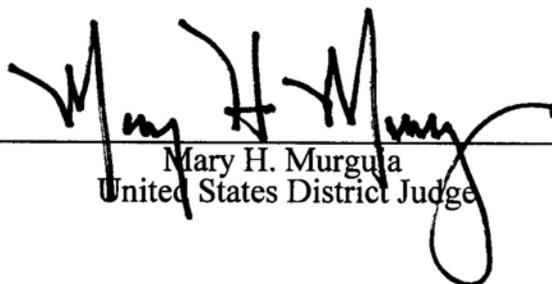
13 (8) **If Defendant agrees to waive service of the Summons and Second**  
14 **Amended Complaint, he must return the signed waiver forms to the United States**  
15 **Marshal, not the Plaintiff.**

16 (9) Defendant must answer the Second Amended Complaint or otherwise respond  
17 by appropriate motion within the time provided by the applicable provisions of Rule 12(a)  
18 of the Federal Rules of Civil Procedure.

19 (10) This matter is referred to Magistrate Judge Edward C. Voss pursuant to Rules  
20 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized  
21 under 28 U.S.C. § 636(b)(1).

22 DATED this 5<sup>th</sup> day of January, 2011.

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Mary H. Murgula  
United States District Judge