

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*)).

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

10 **III. Complaint**

11 In his three-count Complaint, Plaintiff sues Defendants Maricopa County Sheriff Joe
12 Arpaio and Maricopa County Supervisors Fulton Brock, Don Stapeley, Andrew Kunasek,
13 Max W. Wilson, and Mary Rose Wilcox.

14 In each count, Plaintiff alleges a violation of his right as a pretrial detainee to be free
15 from cruel and unusual punishment. In Count One, he asserts that there are 53 people in an
16 area for only 16, which leaves two-thirds of the detainees to eat their meals on cement floors.
17 In Count Two, Plaintiff contends that he has been denied research material by Inmate Legal
18 Services. He also raises issues about his right to representation. In Count Three, Plaintiff
19 asserts that he is only served two meals per day, that the meals are 12 hours apart, that the
20 meals are inadequate notwithstanding the fact that they meet his daily caloric intake needs,
21 and that an “unsafe and combative atmosphere” exists because detainees ration their food.
22 He also contends that only 16 cups are distributed for 53 detainees.

23 In his Request for Relief, Plaintiff seeks monetary damages.

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

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 Department of Social Services, 436 U.S.
3 658, 691-92 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List,
4 880 F.2d 1040, 1045 (9th Cir. 1989). "Because vicarious liability is inapplicable to Bivens
5 and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the
6 official's own individual actions, has violated the Constitution." Iqbal, 129 S. Ct. at 1448.

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 the Complaint,
10 without prejudice.

11 **V. Leave to Amend**

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

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

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

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

6 Plaintiff should take note that a pretrial detainee's claim for unconstitutional
7 conditions of confinement arises from the Fourteenth Amendment Due Process Clause rather
8 than from the Eighth Amendment prohibition against cruel and unusual punishment. Bell
9 v. Wolfish, 441 U.S. 520, 535 and n.16 (1979). Nevertheless, the same standards are applied,
10 requiring proof that the defendant acted with deliberate indifference. See Frost v. Agnos,
11 152 F.3d 1124, 1128 (9th Cir. 1998).

12 Deliberate indifference is a higher standard than negligence or lack of ordinary due
13 care for the prisoner's safety. Farmer v. Brennan, 511 U.S. 825, 835 (1994). To state a claim
14 of deliberate indifference, plaintiffs must meet a two-part test. First, the alleged
15 constitutional deprivation must be, objectively, "sufficiently serious"; the official's act or
16 omission must result in the denial of "the minimal civilized measure of life's necessities."
17 Id. at 834. Second, the prison official must have a "sufficiently culpable state of mind," *i.e.*,
18 he must act with deliberate indifference to inmate health or safety. Id. In defining
19 "deliberate indifference" in this context, the Supreme Court has imposed a subjective test:
20 "the official must both be aware of facts from which the inference could be drawn that a
21 substantial risk of serious harm exists, and he must also draw the inference." Id. at 837
22 (emphasis added).

23 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
24 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
25 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
26 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
27 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
28 565, 567 (9th Cir. 1987).

1 **VI. Warnings**

2 **A. Release**

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

7 **B. Address Changes**

8 Plaintiff must file and serve a notice of a change of address in accordance with Rule
9 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
10 relief with a notice of change of address. Failure to comply may result in dismissal of this
11 action.

12 **C. Copies**

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

16 **D. Possible “Strike”**

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

26 **E. Possible Dismissal**

27 If Plaintiff fails to timely comply with every provision of this Order, including these
28 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at

1 1260-61 (a district court may dismiss an action for failure to comply with any order of the
2 Court).

3 **IT IS ORDERED:**

4 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 3) is **granted**.

5 (2) As required by the accompanying Order to the appropriate government agency,
6 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$6.00.

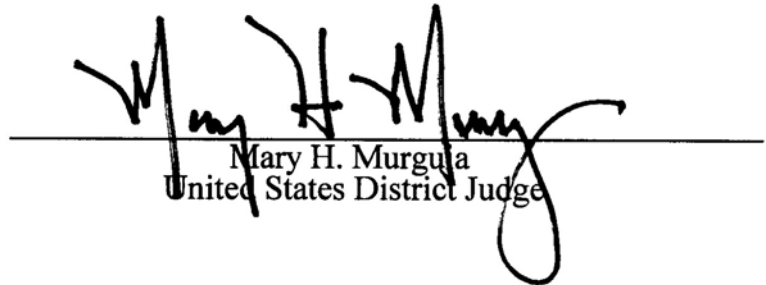
7 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has
8 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
9 this Order.

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

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

15 DATED this 22nd day of November, 2010.

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Mary H. Murgula
United States District Judge