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

Jack D. Riggs,

Plaintiff,

vs.

Sheriff Joe Arpaio, et al.,

Defendants.

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

) **ORDER**

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.

On December 9, 2010, Plaintiff filed his First Amended Complaint (Doc. 7). The Court will dismiss the First Amended Complaint with leave to amend.

**I. Statutory Screening of Prisoner Complaints**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may

1 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
2 28 U.S.C. § 1915A(b)(1), (2).

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

9 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
10 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,  
11 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content  
12 that allows the court to draw the reasonable inference that the defendant is liable for the  
13 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for  
14 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
15 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual  
16 allegations may be consistent with a constitutional claim, a court must assess whether there  
17 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

18 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts  
19 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, No. 07-17265, 2010 WL  
20 2947323, at \*3 (9th Cir. Jul. 29, 2010). A “complaint [filed by a *pro se* prisoner] ‘must be  
21 held to less stringent standards than formal pleadings drafted by lawyers.’” Id. (quoting  
22 Erickson v. Pardus, 551 U.S. 89, 94 (2007) (*per curiam*)).

23 If the Court determines that a pleading could be cured by the allegation of other facts,  
24 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the  
25 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court  
26 should not, however, advise the litigant how to cure the defects. This type of advice “would  
27 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,  
28 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was

1 required to inform a litigant of deficiencies). Plaintiff's First Amended Complaint will be  
2 dismissed for failure to state a claim, with leave to amend because the First Amended  
3 Complaint may possibly be saved by amendment.

## 4 **II. First Amended Complaint**

5 In his three-count First Amended Complaint, Plaintiff sues Defendant Maricopa  
6 County Sheriff Joseph M. Arpaio.

7 In each count, Plaintiff alleges a violation of his Fourteenth Amendment due process  
8 rights regarding his conditions of confinement. In Count One, he asserts that there are 53  
9 people in an area with only 16 seats, which leaves two-thirds of the detainees to eat their  
10 meals on cement floors. In Count Two, Plaintiff contends that he has been denied research  
11 materials and supplies by Inmate Legal Services and is not being allowed to research his  
12 case. In Count Three, Plaintiff asserts that he is only served two meals per day, that the  
13 meals are 12 hours apart, that the meals are inadequate notwithstanding the fact that they  
14 meet his daily caloric intake needs, and that an "unsafe and combative atmosphere" exists  
15 because detainees ration their food. He also contends that only 16 cups are distributed for  
16 53 detainees.

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

## 18 **III. Failure to State a Claim**

19 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific  
20 injury as a result of specific conduct of a defendant and show an affirmative link between the  
21 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377  
22 (1976). There is no *respondeat superior* liability under § 1983, and therefore, a defendant's  
23 position as the supervisor of persons who allegedly violated Plaintiff's constitutional rights  
24 does not impose liability. Monell v. New York City Department of Social Services, 436 U.S.  
25 658, 691-92 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List,  
26 880 F.2d 1040, 1045 (9th Cir. 1989). "Because vicarious liability is inapplicable to Bivens  
27 and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the  
28 official's own individual actions, has violated the Constitution." Iqbal, 129 S. Ct. at 1948.

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

5 **IV. Leave to Amend**

6 For the foregoing reasons, Plaintiff's First Amended Complaint will be dismissed for  
7 failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff may  
8 submit a second amended complaint to cure the deficiencies outlined above. The Clerk of  
9 Court will mail Plaintiff a court-approved form to use for filing a second amended complaint.  
10 If Plaintiff fails to use the court-approved form, the Court may strike the second amended  
11 complaint and dismiss this action without further notice to Plaintiff.

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

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

23 Plaintiff must repeat this process for each person he names as a Defendant. If Plaintiff  
24 fails to affirmatively link the conduct of each named Defendant with the specific injury  
25 suffered by Plaintiff, the allegations against that Defendant will be dismissed for failure to  
26 state a claim. **Conclusory allegations that a Defendant or group of Defendants have  
27 violated a constitutional right are not acceptable and will be dismissed.**  
28

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

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

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

## 25 **V. Warnings**

### 26 **A. Release**

27 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.  
28 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay

1 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result  
2 in dismissal of this action.

3 **B. Address Changes**

4 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
5 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
6 relief with a notice of change of address. Failure to comply may result in dismissal of this  
7 action.

8 **C. Copies**

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

12 **D. Possible “Strike”**

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

22 **E. Possible Dismissal**

23 If Plaintiff fails to timely comply with every provision of this Order, including these  
24 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at  
25 1260-61 (a district court may dismiss an action for failure to comply with any order of the  
26 Court).

27 . . . .

28 . . . .

1 **IT IS ORDERED:**

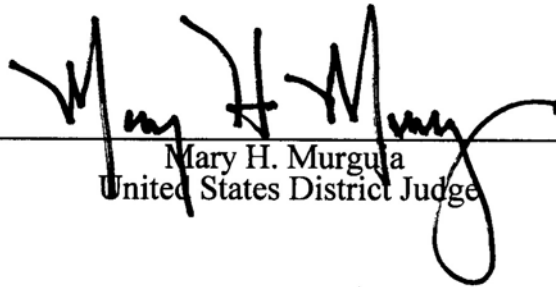
2 (1) The First Amended Complaint (Doc. 7) is **dismissed** for failure to state a claim.  
3 Plaintiff has **30 days** from the date this Order is filed to file a second amended complaint in  
4 compliance with this Order.

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

8 (3) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil  
9 rights complaint by a prisoner.

10 DATED this 14<sup>th</sup> day of December, 2010.

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Mary H. Murgula  
United States District Judge