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

Charles Jason Whitehead,)	No. CV 11-1664-PHX-DGC (MEA)
Plaintiff,)	ORDER
vs.)	
Charles L. Ryan, et al.,)	
Defendants.)	

On August 24, 2011, Plaintiff Charles Jason Whitehead, who is confined in the Arizona State Prison Complex-Lewis, 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 23, 2011 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 22, 2011, Plaintiff filed his First Amended Complaint. On January 11, 2012, Plaintiff filed a Motion for Leave to File a Second Amended Complaint (Doc. 15), and attached to it a Second Amended Complaint. On January 24, 2012, attorney Shad Beavers filed a Notice of Appearance on behalf of Plaintiff (Doc. 16).

The Court will grant Plaintiff's Motion for Leave to File Second Amended Complaint and direct the Clerk of Court to file the Second Amended Complaint. The Court will also

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1 order Defendants Nichols and Samo to answer Count I of the Second Amended Complaint
2 and will dismiss the remaining claims and Defendants without prejudice.

3 **I. Statutory Screening of Prisoner Complaints**

4 The Court is required to screen complaints brought by prisoners seeking relief against
5 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
7 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
8 be granted, or that seek monetary relief from a defendant who is immune from such relief.
9 28 U.S.C. § 1915A(b)(1), (2).

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

16 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
17 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
18 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
19 that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
21 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
22 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
23 allegations may be consistent with a constitutional claim, a court must assess whether there
24 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

25 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
26 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
27 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
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1 than formal pleadings drafted by lawyers.’’ Id. (quoting Erickson v. Pardus, 551 U.S. 89,
2 94 (2007) (*per curiam*)).

3 **II. Second Amended Complaint**

4 An amended complaint supersedes the original complaint and first amended
5 complaint. Ferdik v. Bonzelet, 963 F.2d 1258,1262 (9th Cir. 1992); Hal Roach Studios v.
6 Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the original
7 pleading is treated as nonexistent. Ferdik, 963 F.2d at 1262. Accordingly, the Court will
8 consider only those claims raised in the Second Amended Complaint.

9 In his two-count Second Amended Complaint, Plaintiff sues the following
10 Defendants: Corrections Officer III Nichols, Arizona Department of Corrections Director
11 Charles Ryan, Maricopa County, and the State of Arizona. Plaintiff also makes allegations
12 against C.O. III Samo. Although C.O. III Samo is not listed as a Defendant in the Second
13 Amended Complaint, the Court will construe him as a Defendant and direct the Clerk of
14 Court add C.O. III Samo as a Defendant in the docket.

15 In Count I, Plaintiff claims that his safety was threatened in violation of the Eighth
16 Amendment when Defendant Nichols housed him with an inmate that posed a danger to
17 Plaintiff’s safety. Plaintiff alleges that he informed Defendant Nichols and C.O. III Samo
18 that this particular inmate was a danger to Plaintiff and asked that that inmate be placed on
19 Defendant’s “Do Not House With” list. Plaintiff claims that Defendants Nichols and Samo
20 failed to act on this information and that Plaintiff was housed with the other inmate who,
21 within a matter of days, assaulted Plaintiff.

22 In Count II, Plaintiff claims that his Eighth Amendment rights were violated when he
23 was denied adequate medical treatment for the injuries he received from the assault.

24 Plaintiff seeks injunctive relief and money damages.

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

26 **A. Defendant Ryan**

27 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
28 injury as a result of specific conduct of a defendant and show an affirmative link between the

1 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377
2 (1976). There is no *respondeat superior* liability under § 1983, and therefore, a defendant’s
3 position as the supervisor of persons who allegedly violated Plaintiff’s constitutional rights
4 does not impose liability. Monell v. New York City Department of Social Services, 436 U.S.
5 658, 691-92 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List,
6 880 F.2d 1040, 1045 (9th Cir. 1989). “Because vicarious liability is inapplicable to Bivens
7 and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the
8 official’s own individual actions, has violated the Constitution.” Iqbal, 129 S. Ct. at 1948.

9 Plaintiff has not alleged that Defendant Ryan personally participated in a deprivation
10 of Plaintiff’s constitutional rights, was aware of a deprivation and failed to act, or formed
11 policies that resulted in Plaintiff’s injuries. The Court will therefore dismiss without
12 prejudice Defendant Ryan.

13 **B. Defendant Maricopa County**

14 Plaintiff makes no allegations against Defendant Maricopa County. Further, Plaintiff
15 was in the custody of the Arizona Department of Corrections, a state institution, at the time
16 of the incident in question. Accordingly, the Court will dismiss Defendant Maricopa County.

17 **C. State of Arizona**

18 Under the Eleventh Amendment to the Constitution of the United States, a state or
19 state agency may not be sued in federal court without its consent. Pennhurst State Sch. &
20 Hosp. v. Halderman, 465 U.S. 89, 100 (1984); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
21 1989). Furthermore, “a state is not a ‘person’ for purposes of section 1983. The Court will
22 therefore dismiss Defendant State of Arizona.

23 **D. Count II**

24 As noted above, to state a valid claim under § 1983, plaintiffs must allege that they
25 suffered a specific injury as a result of specific conduct of a defendant and show an
26 affirmative link between the injury and the conduct of that defendant. See Rizzo, 423 U.S.
27 at 371-72, 377. Plaintiff has failed to link his injuries in Count II with any of the named
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1 Defendants; Plaintiff has not described who was responsible for denying him adequate
2 medical care. Plaintiff has failed to state a claim in Count II, and Count II will be dismissed.

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

4 Liberally construed, Plaintiff has adequately stated an Eighth Amendment claim
5 against Defendants Nichols and Samo in Count I and the Court will require these Defendants
6 to answer Count I.

7 **V. Notice to Plaintiff**

8 Plaintiff should take note that Mr. Beavers “shall be recognized by the Court and by
9 all the parties to the cause as having control of [Plaintiff’s] case, in all proper ways, and shall,
10 as such attorney, sign all papers which are to be signed on behalf of the client.” LRCiv
11 83.3(c)(2). Moreover, because Mr. Beavers is representing Plaintiff in this case, Plaintiff
12 cannot “appear or act in that party’s own behalf in the cause, or take any steps therein, unless
13 an order of substitution shall first have been made by the Court after notice to the attorney
14 of each such party, and to the opposite party.” LRCiv 83.3(c)(2). This means that Mr.
15 Beavers, not Plaintiff, shall file future documents in this case.

16 **IT IS ORDERED:**

17 (1) Plaintiff’s January 11, 2011 Motion for Leave to File Second Amended
18 Complaint (Doc. 15) is **granted**; the Clerk of Court **must file** the Second Amended
19 Complaint attached to Document 15.

20 (2) The Clerk of Court must add C.O. III Samo as a Defendant to this action.

21 (3) Count II of the Second Amended Complaint is **dismissed** without prejudice.

22 (4) Defendants Ryan, Maricopa County, and State of Arizona are **dismissed**
23 without prejudice.

24 (5) Defendants Nichols and Samo must answer Count I of the Second Amended
25 Complaint.

26 (6) The Clerk of Court must send Plaintiff’s counsel a service packet including the
27 Second Amended Complaint (attached to Doc. 15), this Order, and both summons and
28 request for waiver forms for Defendant Nichols and Samo.

1 (7) Plaintiff's counsel must complete¹ and return the service packet to the Clerk
2 of Court within 21 days of the date of filing of this Order. The United States Marshal will
3 not provide service of process if Plaintiff fails to comply with this Order.

4 (8) If Plaintiff does not either obtain a waiver of service of the summons or
5 complete service of the Summons and Second Amended Complaint on a Defendant within
6 120 days of the filing of the Complaint or within 60 days of the filing of this Order,
7 whichever is later, the action may be dismissed as to each Defendant not served. Fed. R. Civ.
8 P. 4(m); LRCiv 16.2(b)(2)(B)(i).

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

11 (10) The United States Marshal must notify Defendants of the commencement of
12 this action and request waiver of service of the summons pursuant Rule 4(d) of the Federal
13 Rules of Civil Procedure. The notice to Defendants must include a copy of this Order. **The**
14 **Marshal must immediately file signed waivers of service of the summons. If a waiver**
15 **of service of summons is returned as undeliverable or is not returned by a Defendant**
16 **within 30 days from the date the request for waiver was sent by the Marshal, the**
17 **Marshal must:**

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

21 (b) within 10 days after personal service is effected, file the return of service
22 for Defendant, along with evidence of the attempt to secure a waiver of service of the
23 summons and of the costs subsequently incurred in effecting service upon Defendant.
24 The costs of service must be enumerated on the return of service form (USM-285) and
25 must include the costs incurred by the Marshal for photocopying additional copies of

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27 ¹If a Defendant is an officer or employee of the Arizona Department of Corrections,
28 Plaintiff must list the address of the specific institution where the officer or employee works.
Service cannot be effected on an officer or employee at the Central Office of the Arizona
Department of Corrections unless the officer or employee works there.

1 the Summons, Second Amended Complaint, or this Order and for preparing new
2 process receipt and return forms (USM-285), if required. Costs of service will be
3 taxed against the personally served Defendant pursuant to Rule 4(d)(2) of the Federal
4 Rules of Civil Procedure, unless otherwise ordered by the Court.

5 (11) **A Defendant who agrees to waive service of the Summons and Second**
6 **Amended Complaint must return the signed waiver forms to the United States Marshal,**
7 **not the Plaintiff.**

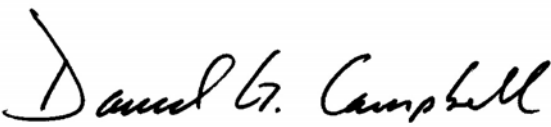
8 (12) Defendants Nichols and Samo must answer the Second Amended Complaint
9 or otherwise respond by appropriate motion within the time provided by the applicable
10 provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

11 (13) Any answer or response must state the specific Defendant by name on whose
12 behalf it is filed. The Court may strike any answer, response, or other motion or paper that
13 does not identify the specific Defendant by name on whose behalf it is filed.

14 (14) This matter is referred to Magistrate Judge Mark E. Aspey pursuant to Rules
15 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized
16 under 28 U.S.C. § 636(b)(1).

17 DATED this 13th day of February, 2012.

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David G. Campbell
United States District Judge