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

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10	Russel Edward Haley,)	No. CV 12-532-PHX-RCB (ECV)
11	Plaintiff,)	ORDER
12	vs.)	
13	Joseph Arpaio,)	
14	Defendant.)	

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16 Plaintiff Russel Edward Haley, who is confined in the Arizona State Prison Complex-
17 Douglas, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an
18 Application to Proceed *In Forma Pauperis*. The Court will dismiss the Complaint with leave
19 to amend.

20 **I. Application to Proceed *In Forma Pauperis* and Filing Fee**

21 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
22 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
23 The Court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). The statutory
24 fee will be collected monthly in payments of 20% of the previous month's income each time
25 the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a
26 separate Order requiring the appropriate government agency to collect and forward the fees
27 according to the statutory formula.

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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, 627 F.3d 338, 342 (9th
25 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
26 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,
27 94 (2007) (*per curiam*)).

28 If the Court determines that a pleading could be cured by the allegation of other facts,

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

9 **III. Complaint**

10 Plaintiff names Maricopa County Sheriff Joseph Arpaio as Defendant in the
11 Complaint. Plaintiff raises one claim for relief in which he alleges that his Eighth
12 Amendment rights were violated when MCSO staff and screening officers failed to segregate
13 mentally ill inmates from the general population. Plaintiff alleges that these inmates were
14 unable to flush their toilets, sanitize their cells, take out their trash, or change their bedding.
15 Plaintiff further claims that he was subjected to their constant violent outbursts and that these
16 inmates were “prone to spreading communicable diseases [be]cause they wallow in bodily
17 fluids and excrement.”

18 Plaintiff seeks money damages.

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

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

25 Deliberate indifference is a higher standard than negligence or lack of ordinary due
26 care for the prisoner’s safety. Id. at 835. To state a claim of deliberate indifference,
27 plaintiffs must meet a two-part test. First, the alleged constitutional deprivation must be,
28 objectively, “sufficiently serious”; the official’s act or omission must result in the denial of

1 “the minimal civilized measure of life’s necessities.” Id. at 834. Second, the prison official
2 must have a “sufficiently culpable state of mind,” *i.e.*, he must act with deliberate
3 indifference to inmate health or safety. Id. In defining “deliberate indifference” in this
4 context, the Supreme Court has imposed a subjective test: “the official must both be aware
5 of facts from which the inference could be drawn that a substantial risk of serious harm
6 exists, and he must also draw the inference.” Id. at 837 (emphasis added).

7 Plaintiff has not alleged facts demonstrating that Defendant Arpaio was deliberately
8 indifferent to a serious risk of harm to Plaintiff’s health or safety. Plaintiff has not
9 demonstrated that Defendant Arpaio was aware of the conditions at issue in Plaintiff’s
10 Complaint, and failed to act, or that Defendant Arpaio formed policies that resulted in harm
11 to Plaintiff. Further, Plaintiff has not described what injury he suffered as a result of the
12 conditions of his confinement.

13 **V. Leave to Amend**

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

20 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
21 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of
22 the Defendant who violated the right; (3) exactly what that Defendant did or failed to do;
23 (4) how the action or inaction of that Defendant is connected to the violation of Plaintiff’s
24 constitutional right; and (5) what specific injury Plaintiff suffered because of that
25 Defendant’s conduct. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).

26 Plaintiff must repeat this process for each person he names as a Defendant. If Plaintiff
27 fails to affirmatively link the conduct of each named Defendant with the specific injury
28 suffered by Plaintiff, the allegations against that Defendant will be dismissed for failure to

1 state a claim. **Conclusory allegations that a Defendant or group of Defendants have**
2 **violated a constitutional right are not acceptable and will be dismissed.**

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

7 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
8 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
9 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
10 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
11 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
12 565, 567 (9th Cir. 1987).

13 **VI. Warnings**

14 **A. Release**

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

19 **B. Address Changes**

20 Plaintiff must file and serve a notice of a change of address in accordance with Rule
21 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
22 relief with a notice of change of address. Failure to comply may result in dismissal of this
23 action.

24 **C. Copies**

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

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1 **D. Possible “Strike”**

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

11 **E. Possible Dismissal**

12 If Plaintiff fails to timely comply with every provision of this Order, including these
13 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at
14 1260-61 (a district court may dismiss an action for failure to comply with any order of the
15 Court).

16 **IT IS ORDERED:**

- 17 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 3) is **granted**.
18 (2) As required by the accompanying Order to the appropriate government agency,
19 Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing fee.
20 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has
21 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
22 this Order.
23 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
24 Court must, without further notice, enter a judgment of dismissal of this action with prejudice
25 that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g).

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

DATED this 26th day of April, 2012.



Robert C. Broomfield
Senior United States District Judge