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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
89 Tommie Lee Henderson, Jr.,  
10 Plaintiff,

No. CV 12-1438-PHX-GMS (JFM)

11 vs.

**ORDER**

12 Joseph M. Arpaio,

13  
14 Defendant.  
15

16 On July 3, 2012, Plaintiff Tommie Lee Henderson, Jr., who is confined in the  
17 Maricopa County Lower Buckeye Jail, filed a *pro se* civil rights Complaint pursuant to  
18 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. In an October 10,  
19 2012 Order, the Court granted the Application to Proceed and dismissed the Complaint  
20 because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an  
21 amended complaint that cured the deficiencies identified in the Order.

22 On October 29, 2012, Plaintiff filed his First Amended Complaint. In a November  
23 26, 2012 Order, the Court dismissed the First Amended Complaint because Plaintiff had  
24 failed to state a claim. The Court gave Plaintiff 30 days to file a second amended  
25 complaint that cured the deficiencies identified in the Order.

26 On December 11, 2012, Plaintiff filed a Second Amended Complaint (Doc. 14).  
27 The Court will order Defendant Arpaio to answer Count One of the Second Amended  
28 Complaint and will dismiss the remaining claim without prejudice.

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

2             The Court is required to screen complaints brought by prisoners seeking relief  
3 against a governmental entity or an officer or an employee of a governmental entity. 28  
4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff  
5 has raised claims that are legally frivolous or malicious, that fail to state a claim upon  
6 which relief may be granted, or that seek monetary relief from a defendant who is  
7 immune from such relief. 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  
10 does not demand detailed factual allegations, “it demands more than an unadorned, the-  
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory 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  
17 content that allows the court to draw the reasonable inference that the defendant is liable  
18 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible  
19 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw  
20 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s  
21 specific factual allegations may be consistent with a constitutional claim, a court must  
22 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*  
23 at 681.

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

1 **II. Second Amended Complaint**

2 Plaintiff names Maricopa County Sheriff Joseph Arpaio as Defendant in the  
3 Second Amended Complaint and raises two claims for relief.

4 In Count One, Plaintiff claims that his rights under the Americans with Disabilities  
5 Act (ADA) were violated when jail staff denied him assistance in obtaining his attorney's  
6 phone number. Plaintiff claims that he suffers from memory problems as the result of a  
7 learning disability, diagnosed chemical imbalance, and a head injury. Plaintiff claims  
8 that upon his arrest, a police officer assisted Plaintiff in obtaining the phone number of  
9 Plaintiff's attorney and wrote it on a piece of paper. When Plaintiff was booked into the  
10 Maricopa County Jail, Plaintiff's personal possessions, including the phone number, were  
11 confiscated. Plaintiff claims that jail staff refused to assist him in obtaining the phone  
12 number and that as a result, he was excluded from using the phones, canteen, and mail.  
13 Specifically, Plaintiff states that he was unable to use the phone because he could not call  
14 an outside party set up the required pre-pay service. Plaintiff claims that he was therefore  
15 denied participation in the jail's services because of his disability.

16 In Count Two, Plaintiff claims that the jail's failure to assist him and to comply  
17 with the ADA violated his Fourteenth Amendment due process rights.

18 Plaintiff seeks injunctive relief and money damages.

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

20 Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,  
21 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*  
22 *v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).  
23 Further, a liberal interpretation of a civil rights complaint may not supply essential  
24 elements of the claim that were not initially pled. *Id.*

25 In Count Two, Plaintiff fails to adequately allege how Defendant Arpaio's policies  
26 violated his due process rights, what injuries resulted from Defendant Arpaio's policies,  
27 or how his equal protection rights were violated by the policies. The Court will therefore  
28 dismiss Count Two for failure to state a claim.

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

2 Liberally construed, Plaintiff has adequately stated an ADA claim in Count One.  
3 The Court will require Defendant Arpaio to answer Count One.

4 **V. Warnings**

5 **A. Release**

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

10 **B. Address Changes**

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

15 **C. Copies**

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

22 **D. Possible Dismissal**

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

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1           **IT IS ORDERED:**

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

3           (2)    Defendant Arpaio must answer Count One of the Second Amended  
4 Complaint.

5           (3)    The Clerk of Court must send Plaintiff a service packet including the  
6 Second Amended Complaint (Doc. 14), this Order, and both summons and request for  
7 waiver forms for Defendant Arpaio.

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

11          (5)    If Plaintiff does not either obtain a waiver of service of the summons or  
12 complete service of the Summons and Second Amended Complaint on Defendant within  
13 120 days of the filing of the Complaint or within 60 days of the filing of this Order,  
14 whichever is later, the action may be dismissed. Fed. R. Civ. P. 4(m); LRCiv  
15 16.2(b)(2)(B)(i).

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

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

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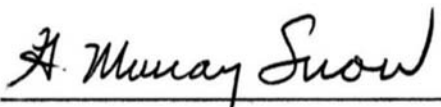
(b) within 10 days after personal service is effected, file the return of service for Defendant, along with evidence of the attempt to secure a waiver of service of the summons and of the costs subsequently incurred in effecting service upon Defendant. The costs of service must be enumerated on the return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

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

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

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

Dated this 12th day of March, 2013.

  
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G. Murray Snow  
United States District Judge