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

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10 Richard LaGrand Gause,

11 Plaintiff,

12 vs.

13 M. Mullen, et al.,

14 Defendants.

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No. CV 12-1439-PHX-RCB (MEA)

**ORDER**

17 Plaintiff Richard LaGrand Gause, who is confined in the Maricopa County Fourth  
18 Avenue Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1)  
19 and an Application to Proceed *In Forma Pauperis* (Doc. 2). The Court will order Defendants  
20 Mullen and Beauford to answer Count One of the Complaint and will dismiss the remaining  
21 claims and Defendant Mesa Police Department without prejudice.

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

23 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.  
24 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).  
25 The Court will assess an initial partial filing fee of \$14.25. The remainder of the fee will be  
26 collected monthly in payments of 20% of the previous month's income each time the amount  
27 in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate  
28 Order requiring the appropriate government agency to collect and forward the fees according

1 to the statutory formula.

## 2 **II. Statutory Screening of Prisoner Complaints**

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

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

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

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

1 **III. Complaint**

2 In this three-count Complaint, Plaintiff sues Defendants Mesa Police Department and  
3 Officers M. Mullen and Beauford.

4 Plaintiff alleges that he was riding his bicycle in the wrong lane, Defendant Mullen  
5 directed Plaintiff to stop his bicycle, and Plaintiff rode up to Defendant Mullen, attempted  
6 to stop his bicycle with his feet because he had no brakes, and swerved to avoid a collision  
7 when it became clear that he was going to run into Defendant Mullen’s police car. Plaintiff  
8 contends that Defendant Mullen then grabbed Plaintiff by the throat and slammed Plaintiff’s  
9 face into the asphalt. Plaintiff states that Defendant Mullen instructed Plaintiff to stand up  
10 and, when Plaintiff did, Defendant Mullen, without provocation, punched Plaintiff in the  
11 face, grabbed Plaintiff’s arm, and again slammed Plaintiff into the asphalt. Plaintiff alleges  
12 that Defendant Beauford then arrived, jumped on Plaintiff, and drove a knee into Plaintiff’s  
13 side/lower back.

14 Plaintiff contends that Defendants Mullen and Beauford then placed handcuffs on  
15 Plaintiff’s wrists, that the handcuffs were “extremely tight” and cut off the blood flow to his  
16 hands, and that the handcuffs were not loosened for approximately one hour. Plaintiff asserts  
17 that Defendant Mullen told Plaintiff to “quit being a baby” when Plaintiff requested medical  
18 attention. Plaintiff also alleges that he was denied medical care at intake and was told that  
19 Defendant Mesa Police Department did not provide medical care and that he would have to  
20 wait until he was transported to the Maricopa County Jail before he could receive care.<sup>1</sup>

21 Plaintiff alleges that as a result of Defendants Mullen and Beauford’s actions, he has  
22 severe nerve damage in his left hand, possible nerve damage in his right hand, has to wear  
23 braces on both hands, has intense pain in his lower back, has to take nerve and pain  
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25 <sup>1</sup>Plaintiff’s Complaint also contains an allegation that a non-party police officer told  
26 an officer at the Maricopa County Jail’s intake that Plaintiff was suicidal and should be  
27 stripped naked and kept on suicide watch. Plaintiff contends that he was neither suicidal nor  
28 on drugs and that the non-party police officer was simply abusing his power. The Court will  
not address this allegation because it is unrelated to the conduct of any Defendant named in  
this lawsuit.

1 medications, has reduced mobility, cannot sit or stand for long periods of time, cannot lift  
2 heavy objects without pain, received a possible concussion, has migraine headaches, is  
3 psychologically scarred, and might have post-traumatic stress disorder.

4 Plaintiff alleges that the conduct described in the Complaint constitutes a violation of  
5 his Eighth Amendment rights regarding excessive force (Count One), medical care (Count  
6 Two), and a threat to safety (Count Three). In his Request for Relief, Plaintiff seeks  
7 monetary damages and injunctive relief.

#### 8 **IV. Claims for Which an Answer Will be Required**

9 The use of excessive force by police officers in the course of an arrest can violate the  
10 arrestee's Fourth Amendment right to be free from unreasonable seizures. See White by  
11 White v. Pierce County, 797 F.2d 812, 816 (9th Cir.1986). Liberally construed, Plaintiff  
12 has stated a Fourth Amendment excessive force claim against Defendants Mullen and  
13 Beauford. The Court will require Defendants Mullen and Beauford to answer Count One.

#### 14 **V. Failure to State a Claim**

15 Although *pro se* pleadings are liberally construed, Haines v. Kerner, 404 U.S. 519,  
16 520-21 (1972), conclusory and vague allegations will not support a cause of action. Ivey v.  
17 Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). Further,  
18 a liberal interpretation of a civil rights complaint may not supply essential elements of the  
19 claim that were not initially pled. Id.

#### 20 **A. Count One - Defendant Mesa Police Department**

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

1           The actions of individuals may support municipal liability only if the employees were  
2 acting pursuant to an official policy or custom of the municipality. Botello v. Gammick, 413  
3 F.3d 971, 978-79 (9th Cir. 2005). A plaintiff must allege, as a matter of law, that the policy  
4 or custom of the municipality caused him to suffer constitutional injury. Sadoski v. Mosley,  
5 435 F.3d 1076, 1080 (9th Cir. 2006). Plaintiff has not alleged that Defendants Mullen and  
6 Beauford were acting pursuant to an official policy or custom of Defendant Mesa Police  
7 Department when they used force in the course of the arrest. Thus, the Court will dismiss  
8 without prejudice Count One against Defendant Mesa Police Department.

9           **B.     Count Two**

10           Not every claim by a prisoner relating to inadequate medical treatment states a  
11 violation of the Eighth or Fourteenth Amendment. To state a § 1983 medical claim, a  
12 plaintiff must show that the defendants acted with “deliberate indifference to serious medical  
13 needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429  
14 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating  
15 that failure to treat the condition could result in further significant injury or the unnecessary  
16 and wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.  
17 Jett, 439 F.3d at 1096 (quotations omitted).

18           “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,  
19 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know  
20 of and disregard an excessive risk to inmate health; “the official must both be aware of facts  
21 from which the inference could be drawn that a substantial risk of serious harm exists, and  
22 he must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). Deliberate  
23 indifference in the medical context may be shown by a purposeful act or failure to respond  
24 to a prisoner’s pain or possible medical need and harm caused by the indifference. Jett, 439  
25 F.3d at 1096. Deliberate indifference may also be shown when a prison official intentionally  
26 denies, delays, or interferes with medical treatment or by the way prison doctors respond to  
27 the prisoner’s medical needs. Estelle, 429 U.S. at 104-05; Jett, 439 F.3d at 1096.

28           Deliberate indifference is a higher standard than negligence or lack of ordinary due

1 care for the prisoner’s safety. Farmer, 511 U.S. at 835. “Neither negligence nor gross  
2 negligence will constitute deliberate indifference.” Clement v. California Dep’t of  
3 Corrections, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); see also Broughton v. Cutter  
4 Labs., 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or  
5 “medical malpractice” do not support a claim under § 1983). A mere delay in medical care,  
6 without more, is insufficient to state a claim against prison officials for deliberate  
7 indifference. See Shapley v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th  
8 Cir. 1985). The indifference must be substantial. The action must rise to a level of  
9 “unnecessary and wanton infliction of pain.” Estelle, 429 U.S. at 105.

10 Plaintiff’s allegations do not support a claim of deliberate indifference by Defendants  
11 Mullen and Beauford. In addition, although Plaintiff alleges that Defendant Mesa Police  
12 Department does not provide medical care, he has failed to state a claim against Defendant  
13 Mesa Police Department because he does not allege that he suffered any injury as a result of  
14 Defendant Mesa Police Department’s refusal to provide medical care. See Shapley, 766 F.2d  
15 at 407. Therefore, the Court will dismiss without prejudice Count Two.

16 **C. Count Three**

17 The Court will dismiss without prejudice Count Three because Plaintiff’s allegations  
18 in Count Three are entirely duplicative of his allegations in Count One.

19 **VI. Warnings**

20 **A. Release**

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

25 **B. Address Changes**

26 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
27 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
28 relief with a notice of change of address. Failure to comply may result in dismissal of this

1 action.

2 **C. Copies**

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

8 **D. Possible Dismissal**

9 If Plaintiff fails to timely comply with every provision of this Order, including these  
10 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,  
11 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
12 comply with any order of the Court).

13 **IT IS ORDERED:**

14 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

15 (2) As required by the accompanying Order to the appropriate government agency,  
16 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$14.25.

17 (3) Counts Two and Three and Defendant Mesa Police Department are **dismissed**  
18 without prejudice.

19 (4) Defendants Mullen and Beauford must answer Count One.

20 (5) The Clerk of Court must send Plaintiff a service packet including the  
21 Complaint (Doc. 1), this Order, and both summons and request for waiver forms for  
22 Defendants Mullen and Beauford.

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

26 (7) If Plaintiff does not either obtain a waiver of service of the summons or  
27 complete service of the Summons and Complaint on a Defendant within 120 days of the  
28 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the

1 action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv  
2 16.2(b)(2)(B)(i).

3 (8) The United States Marshal must retain the Summons, a copy of the Complaint,  
4 and a copy of this Order for future use.

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

12 (a) personally serve copies of the Summons, Complaint, and this Order upon  
13 Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and

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

23 (10) **A Defendant who agrees to waive service of the Summons and Complaint  
24 must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

25 (11) Defendants must answer the Complaint or otherwise respond by appropriate  
26 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal  
27 Rules of Civil Procedure.

28 (12) Any answer or response must state the specific Defendant by name on whose




1 behalf it is filed. The Court may strike any answer, response, or other motion or paper that  
2 does not identify the specific Defendant by name on whose behalf it is filed.

3 (13) This matter is referred to Magistrate Judge Mark E. Aspey pursuant to Rules  
4 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized  
5 under 28 U.S.C. § 636(b)(1).

6 DATED this 15th day of July, 2012.

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Robert C. Broomfield  
Senior United States District Judge