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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
89 Salvatori Joseph Colletti,
10 Plaintiff,

No. CV 13-222-PHX-RCB (SPL)

11 vs.

ORDER12 Joseph M. Arpaio, et al.,
13 Defendants.
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15 Plaintiff Salvatori Joseph Colletti, who is confined in the Maricopa County Fourth
16 Avenue Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983
17 (Doc. 1) and an Application to Proceed *In Forma Pauperis* (Doc. 2). The Court will
18 dismiss the Complaint with leave to amend.

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

20 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
21 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
22 The Court will assess an initial partial filing fee of \$10.25. The remainder of the fee will
23 be collected monthly in payments of 20% of the previous month's income each time the
24 amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a
25 separate Order requiring the appropriate government agency to collect and forward the
26 fees 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
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 If the Court determines that a pleading could be cured by the allegation of other
2 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
3 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The
4 Court should not, however, advise the litigant how to cure the defects. This type of
5 advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v.*
6 *Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n.13 (declining to
7 decide whether the court was required to inform a litigant of deficiencies). The Court
8 will dismiss Plaintiff’s Complaint for failure to state a claim, but because the Complaint
9 may possibly be saved by amendment, will dismiss the Complaint with leave to amend.

10 **III. Complaint**

11 Plaintiff names the following Defendants in the Complaint: Maricopa County
12 Sheriff Joseph M. Arpaio, Chaplain G. Millard, Sergeant Wade, Chaplain Paval, Jail
13 Sergeant Alger, Captain Harmon, and Lieutenant Garcia.

14 Plaintiff raises one claim for relief in which alleges that his First Amendment
15 rights are violated because he is denied a religious medallion. Plaintiff claims that when
16 he was transferred to the Maricopa County Jail, he was told that he would have to remove
17 his necklace. Plaintiff explained that the necklace was a religious item, but he was
18 nevertheless forced to relinquish it. Plaintiff filed grievances requesting the medallion.
19 Plaintiff claims that Sergeant A7344 approved the medallion if the chaplain would
20 provide it, but the jail chaplain responded by saying that he didn’t care about Plaintiff’s
21 religion and was not going to approve the medallion.

22 Plaintiff seeks declaratory and injunctive relief as well as money damages.

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

24 To state a First Amendment, free-exercise-of-religion claim, a plaintiff must allege
25 that a defendant burdened the practice of plaintiff’s religion by preventing him from
26 engaging in a sincerely held religious belief and that the defendant did so without any
27 justification reasonably related to legitimate penological interests. *Shakur v. Schriro*, 514
28 F.3d 878 (9th Cir. 2008).

1 Plaintiff does not allege that the denial of his religious medallion burdened the
2 practice of his religion by preventing him from engaging in a sincerely held religious
3 belief, nor does he allege that Defendants denied the medallion without a penological
4 justification. Plaintiff has therefore failed to state a claim.

5 **V. Leave to Amend**

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

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

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

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

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

7 **VI. Warnings**

8 **A. Release**

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

13 **B. Address Changes**

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

18 **C. Copies**

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

22 **D. Possible “Strike”**

23 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff
24 fails to file an amended complaint correcting the deficiencies identified in this Order, the
25 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
26 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
27 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more
28 prior occasions, while incarcerated or detained in any facility, brought an action or appeal

1 in a court of the United States that was dismissed on the grounds that it is frivolous,
2 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner
3 is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

4 **E. Possible Dismissal**

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

9 **IT IS ORDERED:**

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


11 (2) As required by the accompanying Order to the appropriate government
12 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing
13 fee of \$10.25.

14 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff
15 has **30 days** from the date this Order is filed to file a first amended complaint in
16 compliance with this Order.

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

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

22 DATED this 10th day of May, 2013.

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25 _____
26 Robert C. Broomfield
27 Senior United States District Judge
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