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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jaime Flores,

No. CV 13-1769-PHX-RCB (LOA)

10 Plaintiff,

11 vs.

ORDER

12 Pinal County Sheriff's Office, et al.,

13
14 Defendants.
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16 Plaintiff Jaime Flores, who is confined the Arizona State Prison Complex-Lewis,
17 filed a *pro se* Complaint pursuant to 42 U.S.C. § 1983 in Pinal County Superior Court.
18 On August 27, 2013, Defendants removed the action to this Court and paid the filing fee.
19 In a November 26, 2013 Order, the Court dismissed the Complaint and gave Plaintiff 30
20 days to file an amended complaint that cured the deficiencies identified in the Order.

21 On December 27, 2013, Plaintiff filed a Motion for Extension of Time to File
22 Amended Complaint (Doc. 6). Defendants filed a Response and Plaintiff filed a Reply.
23 On February 3, 2014, Plaintiff filed his First Amended Complaint (Doc. 10).

24 The Court will order grant the Motion for Extension of Time and accept the First
25 Amended Complaint as timely filed. The Court will also order Defendant Agangan to
26 answer the retaliation claim in the First Amended Complaint and will dismiss the
27 remaining Defendants without prejudice.

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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. First Amended Complaint**

2 Plaintiff names the following Defendants in the First Amended Complaint: the
3 Pinal County Sheriff’s Office; Sergeants Slinendoll and Agangan; and Detention Officers
4 N. Youssef and Young.

5 Plaintiff raises one claim for relief in which he alleges that on August 24, 2012, he
6 was sexually assaulted during his sleep while confined in the Pinal County Detention
7 Center. Plaintiff states that the next day his underwear was sent to a lab for processing
8 and that “Pinal County Detention ignored [his] complaints of sexual assault.” Plaintiff
9 further claims that Defendant Agangan “retaliated against [him] for filing grievances
10 (about being sexually assaulted and complaining of sexual assault) by putting [him] in the
11 hole and writing a ticket for fighting [his] cellmate (the same one that raped [him]).”
12 Plaintiff claims that he complained about the sexual assault to Defendants Slinendoll,
13 Agangan, Youssef, and Young.

14 Plaintiff seeks money damages.

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

16 **A. Pinal County Sheriff’s Office**

17 The Pinal County Sheriff’s Office is not a proper defendant. In Arizona, the
18 responsibility of operating jails and caring for prisoners is placed by law upon the sheriff.
19 *See* Ariz. Rev. Stat. § 11-441(A)(5); Ariz. Rev. Stat. § 31-101. A sheriff’s office is
20 simply an administrative creation of the county sheriff to allow him to carry out his
21 statutory duties and not a “person” amenable to suit pursuant to § 1983. Accordingly, the
22 Pinal County Sheriff’s Office will be dismissed from this action.

23 **B. Failure to Protect**

24 The Supreme Court has held that mere negligent failure to protect an inmate from
25 another inmate is not actionable under § 1983. *Davidson v. Cannon*, 474 U.S. 344
26 (1986). A prison official violates the Eighth Amendment in failing to protect one inmate
27 from another only when two conditions are met. First, the alleged constitutional
28 deprivation must be, objectively, “sufficiently serious;” the official’s act or omission

1 must result in the denial of “the minimal civilized measure of life’s necessities.” *Farmer*
2 *v. Brennan*, 511 U.S. 825, 834 (1994). Second, the prison official must have a
3 “sufficiently culpable state of mind,” *i.e.*, he must act with deliberate indifference to
4 inmate health or safety. *Id.* In defining “deliberate indifference” in this context, the
5 Supreme Court has imposed a subjective test: “the official must *both* be aware of the
6 facts from which the inference could be drawn that a substantial risk of serious harm
7 exists, *and* he must also draw the inference.” *Id.* at 839 (emphasis supplied).

8 Plaintiff has not alleged facts sufficient to show that Defendants were deliberately
9 indifferent to a substantial risk of serious harm to Plaintiff’s safety. Specifically, Plaintiff
10 has not alleged that Defendants were aware Plaintiff’s cellmate posed a risk to Plaintiff’s
11 safety and failed to act.

12 Further, Plaintiff’s allegation that Defendants “did nothing” after the attack is too
13 vague to state a claim. It is unclear whether Plaintiff intends to claim he was denied
14 medical or other treatment after the attack or if he intends to claim Defendants failed to
15 investigate or punish Plaintiff’s attacker. The Court will dismiss without prejudice these
16 portions of Plaintiff’s First Amended Complaint as well as Defendants Slinendoll,
17 Youssef, and Young.

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

19 Liberally construed, Plaintiff has adequately stated a retaliation claim against
20 Defendant Agangan and the Court will require Defendant Agangan to answer the First
21 Amended Complaint.

22 **V. Warnings**

23 **A. Address Changes**

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

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B. Copies

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

C. Possible Dismissal

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

IT IS ORDERED:

(1) Plaintiff’s Motion for Extension of Time (Doc. 6) is **granted**. The Court will accept the First Amended Complaint as timely filed.

(2) Plaintiff’s failure to protect claim in the First Amended Complaint is **dismissed** without prejudice.

(3) Defendants Pinal County Sheriff’s Office, Slinendoll, Youssef, and Young are **dismissed** without prejudice.

(4) Defendant Agangan must answer the retaliation claim in First Amended Complaint.

(5) Defendant Agangan must answer the First Amended Complaint (Doc. 10) 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.

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