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

Micael Yemane Mulugeta,
Plaintiff,

vs.

C. Price, et al.,
Defendants.

No. CV 14-00120-PHX-RCB (MEA)

ORDER

Plaintiff Micael Yemane Mulugeta, who is confined in the Maricopa County Fourth Avenue Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed *In Forma Pauperis* (Doc. 2). The Court will dismiss this action.

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

Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will not assess an initial partial filing fee. *Id.* The statutory filing fee will be collected monthly in payments of 20% of the previous month's income credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the 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). Plaintiff’s
8 Complaint will be dismissed for failure to state a claim, without leave to amend because
9 the defects cannot be corrected.

10 **III. Complaint**

11 In his three-count Complaint, Plaintiff sues the following Defendants: Maricopa
12 County Sheriff’s Office Intake Sergeant C. Price and Maricopa County Superior Court
13 Commissioner Ronald J. Stien.

14 In Count One, Plaintiff alleges that he was denied his Sixth Amendment right to a
15 fair and impartial jury of his peers. Plaintiff contends that Defendant Price engaged in
16 “extreme extreme misconduct” when he “stood, pointed, and made discriminating,
17 prejudicial, and bias[ed] statements.” Specifically, Plaintiff claims Defendant Price
18 stated that he was a Maricopa County Sheriff’s Office sergeant, that he worked at the
19 maximum security facility at the Fourth Avenue Jail, and that he knew Plaintiff from
20 “having interactions with him.” Plaintiff contends this was done to mislead people to
21 have a negative impression of Plaintiff. Plaintiff alleges that Defendant Stien did not
22 dismiss the entire jury pool and that allowing the potential jurors to hear this statement
23 deprived Plaintiff of a “fair opportunity” and a jury of his peers.

24 In Count Two, Plaintiff alleges that he was denied his Fourth Amendment right
25 “securing saf[et]y of papers.” Plaintiff contends that his legal paperwork was withheld
26 from him. Specifically, he claims he was told that his legal paperwork had been given to
27 Defendant Price, but his legal paperwork was not provided to him and he attended jury
28 selection and his trial without his legal paperwork. He claims that “the acts leading to the

1 conviction or verdict were highly inappropriate.” He also contends that Defendant Stien
2 “ordered sealing some material as well.”

3 In Count Three, Plaintiff alleges that he was subjected to cruel and unusual
4 punishment in violation of the Eighth Amendment. He asserts that Defendant Price “used
5 knowledge of medical information relating to [Plaintiff’s] psychological profile as a
6 foundation to perform misconduct on his behalf.” Plaintiff claims he is “unstable due to
7 improper treat[.]ment” and Defendant Price “attacks [Plaintiff’s] mental disabilities by
8 making misleading comments [about Plaintiff] to over sixty people.” Plaintiff alleges
9 that the comments were “very damaging” because “the sixty people for a majority are
10 unknow[.]n to [Plaintiff]” and “[a] first impression could not even be made on [Plaintiff’s]
11 own behalf from [Defendant] Price behaving in gross misconduct with support from
12 [Defendant] Stien.” Plaintiff claims the remarks gave a “premature convincing effect to a
13 jury pool of potential jurors to not become a jury of [his] peers and of being guilty
14 because of [Plaintiff’s] presence and appe[a]rance.” Plaintiff contends that Defendant
15 Stien “continued the misconduct by not releasing that jury pool and using a different jury
16 pool.”

17 In his Request for Relief, Plaintiff seeks an “order vacating [his] second trial,” an
18 “order for a new trial,” and for his Complaint to be referred to the United States Attorney
19 General and an unidentified United States “Secr[eta]ry.”

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

21 “Federal law opens two main avenues to relief on complaints related to
22 imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under . . .
23 42 U.S.C. § 1983. Challenges to the validity of any confinement or to particulars
24 affecting its duration are the province of habeas corpus; requests for relief turning on
25 circumstances of confinement may be presented in a § 1983 action.” *Muhammad v.*
26 *Close*, 540 U.S. 749, 750 (2004) (citation omitted); *see also Badea v. Cox*, 931 F.2d 573,
27 574 (9th Cir. 1991). Moreover, “a state prisoner’s § 1983 action is barred (absent prior
28 invalidation)—no matter the relief sought (damages or equitable relief), no matter the

1 target of the prisoner's suit (state conduct leading to conviction or internal prison
2 proceedings)—if success in that action would necessarily demonstrate the invalidity of
3 confinement or its duration.” *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005).

4 Plaintiff's Complaint fails to state a claim because Plaintiff is either challenging
5 the validity of his confinement or conduct leading to his conviction. This is not the
6 proper subject matter for a § 1983 action. Thus, the Court will dismiss this action.

7 **IT IS ORDERED:**

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

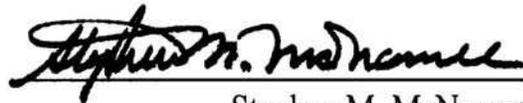
9 (2) As required by the accompanying Order to the appropriate government
10 agency, Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial
11 filing fee.

12 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim pursuant to
13 28 U.S.C. § 1915A(b)(1), and the Clerk of Court must enter judgment accordingly.

14 (4) The Clerk of Court must make an entry on the docket stating that the
15 dismissal for failure to state a claim may count as a “strike” under 28 U.S.C. § 1915(g).

16 (5) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.
17 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of
18 this decision would not be taken in good faith.

19 DATED this 9th day of May, 2014.

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23 Stephen M. McNamee
24 Senior United States District Judge
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