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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Dale Maisano,

No. CV 14-1364-PHX-SMM (MHB)

10 Plaintiff,

11 vs.

ORDER

12 Maricopa County,

13 Defendant.
14

15 **I. Background**

16 Plaintiff Dale Maisano, who is confined in the Arizona State Prison Complex-
17 Florence in Florence, Arizona, has abused the legal process egregiously and often. He is
18 subject to the three-strikes provision of the Prisoner Litigation Reform Act. In addition,
19 in an August 11, 1992 Order and Restraining Order in *Maisano v. Lewis*, CV 92-1026-
20 PHX-SMM (MS), the Court concluded that “[i]t has become obvious from the nature of
21 the Plaintiff’s complaints and his lack of good faith that he simply desires to burden the
22 judicial system with complaints, without regard for their merit or final disposition” and
23 enjoined Plaintiff from filing any civil action in this or any other federal court without
24 first obtaining leave of the court. *See* August 11, 1992 Order and Restraining Order in
25 *Maisano v. Lewis*, CV 92-1026-PHX-SMM (MS).¹
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28 ¹Plaintiff appealed the final judgment in CV 92-1026-PHX-SMM (MS) to the
Ninth Circuit Court of Appeals. On March 17, 1993, the Court lodged a certified copy of
the Ninth Circuit’s mandate dismissing the appeal.

1 Unfortunately, the 1992 Restraining Order proved to be insufficient to quell
2 Plaintiff's assault on the federal courts. In a January 29, 2014 Order to Show Cause in
3 *Maisano v. Clark*, CV 14-0001-TUC-RCC (D. Ariz. 2014), Chief United States District
4 Court Judge Raner C. Collins examined Plaintiff's voluminous filings and concluded,
5 based on the number and nature of Plaintiff's filings, that Plaintiff's conduct was
6 manifestly abusive and harassing and that the 1992 Restraining Order had proven
7 insufficient to restrain Plaintiff's abuse of the courts. The Court concluded that more
8 stringent measures were required, proposed an additional abusive-litigant injunction, and
9 gave Plaintiff an opportunity to show cause in writing why such an injunction should not
10 be imposed.

11 After Plaintiff responded to the Order to Show Cause, Chief Judge Collins issued a
12 February 20, 2014 Injunction Order that enjoined Plaintiff from filing or lodging more
13 than one *in forma pauperis* lawsuit per month in this Court, refused to accept any
14 transfers pursuant to 28 U.S.C. § 1406(a) of cases filed by Plaintiff in other Districts, and
15 reiterated and supplemented the requirements of the 1992 Restraining Order.² In
16 addition, the 2014 Injunction Order enjoined Plaintiff from filing any civil action in this
17 or any other federal court without first obtaining leave of the court.

18 **II. Removal**

19 On April 2, 2014, Plaintiff filed a Complaint in the Superior Court of the State of
20 Arizona in and for the County of Maricopa, against Defendant Maricopa County. On
21 June 18, 2014, Defendant Maricopa County filed a Notice of Removal and removed the
22 lawsuit to this Court.

23 A State court defendant may remove to federal court any civil action brought in
24 the state court over which the federal district courts would have original jurisdiction. 28
25 U.S.C. § 1441(a). In his April 2, 2014 Complaint, Plaintiff alleges, among other things, a

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27 ² In an April 8, 2014 Order, the Ninth Circuit Court of Appeals reviewed
28 Plaintiff's Notice of Appeal of the Injunction Order and Plaintiff's accompanying
documents, concluded that "the appeal is so insubstantial as to not warrant further
review," and did not permit the appeal to proceed. *See* Doc. 8 in CV 14-0001-TUC-
RCC.

1 violation of his due process rights and refers extensively to 42 U.S.C. § 1983. This
2 Court’s jurisdiction extends to such claims. 28 U.S.C. §§ 1331, 1343(a). Defendant
3 timely removed. Accordingly, removal is appropriate.

4 **III. Statutory Screening of Prisoner Complaints**

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

11 A pleading must contain a “short and plain statement of the claim *showing* that the
12 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
13 does not demand detailed factual allegations, “it demands more than an unadorned, the-
14 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
15 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice.” *Id.*

17 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
18 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
19 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
20 content that allows the court to draw the reasonable inference that the defendant is liable
21 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
22 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
23 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
24 specific factual allegations may be consistent with a constitutional claim, a court must
25 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
26 at 681.

27 But as the United States Court of Appeals for the Ninth Circuit has instructed,
28 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,

1 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
2 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
3 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

4 If the Court determines that a pleading could be cured by the allegation of other
5 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
6 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*).
7 Plaintiff’s Complaint will be dismissed for failure to state a claim, without leave to
8 amend because the defects cannot be corrected.

9 **IV. Plaintiff’s Complaint**

10 In his Complaint, Plaintiff alleges that there was a “taking” of his home in the
11 Maricopa County Superior Court by a Maricopa County Superior Court Judge.
12 Specifically, Plaintiff asserts that “[v]ia a non-d[ivor]ce action[,] a Judge for Maricopa
13 County took said home and sold it below market value[.] Said funds were given to
14 Norma Maisano[,] forcing the Plaintiff to move to Pinal County[,] which was crime[-
15]ridden and it came to be the Plaintiff was tossed into prison where he was found to be
16 S.M.I. Note[:] said home was paid for with Federal Workers Comp Monies.” Plaintiff
17 asserts that his home was illegally sold, he was illegally removed from his home, he was
18 denied due process, there was a taking of his federal workman’s compensation monies,
19 Maricopa County failed to diagnose his mental illness, and he was injured because he
20 was forced to move to Pinal County. Plaintiff seeks monetary damages ranging from 3 to
21 20 million dollars.

22 **V. Failure to State a Claim**

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

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1 First, a municipality may not be sued under § 1983 solely because an injury was
2 inflicted by one of its employees or agents. *Long v. County of Los Angeles*, 442 F.3d
3 1178, 1185 (9th Cir. 2006).³ But even if it could, Defendant Maricopa County is an
4 improper party because a judge of the Maricopa County Superior Court is a state
5 employee, not a county employee. *See Greater Los Angeles Council on Deafness, Inc. v.*
6 *Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (“[A] suit against the Superior Court is a suit
7 against the State, barred by the eleventh amendment.”); *see also Lucas v. Ariz. Sup. Ct.*
8 *Fiduciary Certification Program*, 457 Fed. Appx. 689, 690 (9th Cir. 2011) (“The Arizona
9 Supreme Court . . . is an ‘arm of the state’ for Eleventh Amendment purposes.”). *Cf.*
10 *Massengill v. Super. Ct. in and for Maricopa Cnty.*, 416 P.2d 1009, 1012 (Ariz. Ct. App.
11 1966) (“There is but one Superior Court in the State of Arizona.” (citing Ariz. Const. art.
12 6, § 1)).

13 Second, even if Plaintiff had sued the judge who allegedly ordered the sale of
14 Plaintiff’s home, Plaintiff’s claim is barred by judicial immunity. Judges are absolutely
15 immune from § 1983 suits for damages for their judicial acts except when they are taken
16 “in the ‘clear absence of all jurisdiction.’” *Stump v. Sparkman*, 435 U.S. 349, 356-57
17 (1978) (quoting *Bradley v. Fisher*, 80 U.S. 335, 351 (1871)); *Ashelman v. Pope*, 793 F.2d
18 1072, 1075 (9th Cir. 1986). An act is “judicial” when it is a function normally performed
19 by a judge and the parties dealt with the judge in his or her judicial capacity. *Stump*, 435
20 U.S. at 362; *Crooks v. Maynard*, 913 F.2d 699, 700 (9th Cir. 1990). This immunity
21 attaches even if the judge is accused of acting maliciously and corruptly, *Pierson v. Ray*,

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24 ³ To state a claim against a municipality under § 1983, a plaintiff must allege facts
25 to support that his constitutional rights were violated pursuant to an official policy or
26 custom of the municipality. *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188 (9th
27 Cir. 2002) (citing *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658, 690-91
28 (1978)). A § 1983 claim against a municipal defendant “cannot succeed as a matter of
law” unless a plaintiff: (1) contends that the municipal defendant maintains a policy or
custom pertinent to the plaintiff’s alleged injury; and (2) explains how such policy or
custom caused the plaintiff’s injury. *Sadoski v. Mosley*, 435 F.3d 1076, 1080 (9th Cir.
2006). Plaintiff does not allege that Defendant Maricopa County maintains an official
policy or custom related to Plaintiff’s alleged injury.

1 386 U.S. 547, 554 (1967), or of making grave errors of law or procedure. *See Schucker*
2 *v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988).

3 Because Plaintiff has failed to state a claim upon which relief can be granted and
4 any amendment would be futile, the Court will dismiss his Complaint and this action with
5 prejudice.

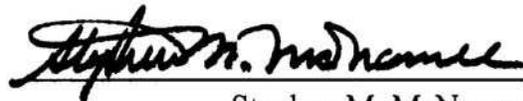
6 **IT IS ORDERED:**

7 (1) Plaintiff's Complaint (attached to Doc. 1) is **dismissed with prejudice**
8 pursuant to 28 U.S.C. § 1915A(b), and the Clerk of Court must enter judgment
9 accordingly and close this case.

10 (2) **The Clerk of Court must accept no further documents for filing in this**
11 **case number, other than those in furtherance of an appeal.**

12 (3) The docket shall reflect that the Court certifies, pursuant to 28 U.S.C.
13 § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), that any appeal of
14 this decision would not be taken in good faith.

15 DATED this 5th day of September, 2014.

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19 Stephen M. McNamee
20 Senior United States District Judge
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