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

Randy Allen Vice,

Plaintiff,

vs.

Joseph M. Arpaio, et al.,

Defendants.

No. CV 14-01855-PHX-SPL (JZB)

ORDER

Plaintiff Randy Allen Vice, who is confined in the Maricopa County Durango 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 the Complaint with leave to amend.

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.

....

....

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*).
4 Plaintiff's Complaint will be dismissed for failure to state a claim, but because it may
5 possibly be amended to state a claim, the Court will dismiss it with leave to amend.

6 **III. Complaint**

7 In his three-count Complaint, Plaintiff sues Defendants Joseph M. Arpaio,
8 Maricopa County, the Durango Jail Commander, the Towers Jail Commander, the
9 Maricopa County Detention Center, and the Towers Jail. In Count One, Plaintiff raises a
10 claim regarding "food/nutrition"; in Count Two, he raises a claim regarding
11 "heating/cooling"; and in Count Three, he raises a claim regarding "housing/clothing."
12 Each claim consists of a laundry list of protestations regarding Plaintiff's conditions of
13 confinement. In his Request for Relief, Plaintiff seeks monetary damages.

14 **IV. 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*
17 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a
18 liberal interpretation of a civil rights complaint may not supply essential elements of the
19 claim that were not initially pled. *Id.*

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

1 Government-official defendant, through the official’s own individual actions, has
2 violated the Constitution.” *Iqbal*, 556 U.S. at 676. “A plaintiff must allege facts, not
3 simply conclusions, that show that an individual was personally involved in the
4 deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.
5 1998).

6 **A. Defendants Arpaio, Durango Jail Commander, and Towers Jail**
7 **Commander**

8 Plaintiff has not alleged that Defendants Arpaio, Durango Jail Commander, and
9 Towers Jail Commander personally participated in a deprivation of Plaintiff’s
10 constitutional rights, were aware of a deprivation and failed to act, or formed policies that
11 resulted in Plaintiff’s injuries. Plaintiff has made no allegations at all against these
12 Defendants. Thus, the Court will dismiss without prejudice Defendants Arpaio, Durango
13 Jail Commander, and Towers Jail Commander.

14 **B. Defendant Maricopa County**

15 A municipality may not be sued under § 1983 solely because an injury was
16 inflicted by one of its employees or agents. *Long v. County of Los Angeles*, 442 F.3d
17 1178, 1185 (9th Cir. 2006). To state a claim against a municipality under § 1983, a
18 plaintiff must allege facts to support that his constitutional rights were violated pursuant
19 to an official policy or custom of the municipality. *Cortez v. County of Los Angeles*, 294
20 F.3d 1186, 1188 (9th Cir. 2002) (citing *Monell*, 436 U.S. at 690-91). A § 1983 claim
21 against a municipal defendant “cannot succeed as a matter of law” unless a plaintiff:
22 (1) contends that the municipal defendant maintains a policy or custom pertinent to the
23 plaintiff’s alleged injury; and (2) explains how such policy or custom caused the
24 plaintiff’s injury. *Sadoski v. Mosley*, 435 F.3d 1076, 1080 (9th Cir. 2006).

25 Plaintiff makes no allegations against Defendant Maricopa County and, therefore,
26 fails to allege facts to support that Defendant Maricopa County maintained a policy or
27 custom that resulted in the violation of his federal constitutional rights. Accordingly,
28

1 Plaintiff has failed to state a claim against Defendant Maricopa County, and the Court
2 will dismiss without prejudice Defendant Maricopa County.

3 **C. Defendants Maricopa County Detention Center and Towers Jail**

4 Defendants Maricopa County Detention Center and Towers Jail are not proper
5 Defendants. Section 1983 imposes liability on any “person” who violates an individual’s
6 federal rights while acting under color of state law. Defendants Maricopa County
7 Detention Center and Towers Jail are buildings or collections of buildings, neither is a
8 person or legally created entity capable of being sued. Therefore, the Court will dismiss
9 Defendants Maricopa County Detention Center and Towers Jail.

10 **V. Leave to Amend**

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

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

21 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,
22 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896
23 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original
24 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
25 in the original complaint and that was voluntarily dismissed or was dismissed without
26 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*
27 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

28

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

7 Plaintiff must repeat this process for each person he names as a Defendant. If
8 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
9 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
10 failure to state a claim. **Conclusory allegations that a Defendant or group of**
11 **Defendants has violated a constitutional right are not acceptable and will be**
12 **dismissed.**

13 In addition, if Plaintiff files an amended complaint, he should take note that
14 § 1983 provides a cause of action against persons acting under color of state law who
15 have violated rights guaranteed by the United States Constitution and federal law. 42
16 U.S.C. § 1983; *see also Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir. 1995). A
17 pretrial detainee’s claim for unconstitutional conditions of confinement arises from the
18 Fourteenth Amendment Due Process Clause rather than from the Eighth Amendment
19 prohibition against cruel and unusual punishment. *Bell v. Wolfish*, 441 U.S. 520, 535 and
20 n.16 (1979). Nevertheless, the same standards are applied, requiring proof that the
21 defendant acted with deliberate indifference. *See Frost v. Agnos*, 152 F.3d 1124, 1128
22 (9th Cir. 1998).

23 Deliberate indifference is a higher standard than negligence or lack of ordinary
24 due care for the prisoner’s safety. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). To
25 state a claim of deliberate indifference, plaintiffs must meet a two-part test. “First, the
26 alleged constitutional deprivation must be, objectively, sufficiently serious”; and the
27 “official’s act or omission must result in the denial of the minimal civilized measure of
28 life’s necessities.” *Id.* at 834 (internal quotations omitted). Second, the prison official

1 must have a “sufficiently culpable state of mind,” i.e., he must act with “deliberate
2 indifference to inmate health or safety.” *Id.* (internal quotations omitted). In defining
3 “deliberate indifference” in this context, the Supreme Court has imposed a subjective
4 test: “the official must both be aware of facts from which the inference could be drawn
5 that a substantial risk of serious harm exists, *and* he must also draw the inference.” *Id.* at
6 837 (emphasis added).

7 The specific inquiry with respect to pretrial detainees is whether the prison
8 conditions amount to “punishment” without due process in violation of the Fourteenth
9 Amendment. *Bell*, 441 U.S. at 535. A jail or prison must provide prisoners with
10 “adequate food, clothing, shelter, sanitation, medical care, and personal safety.”
11 *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982). However, this does not mean that
12 federal courts can, or should, interfere whenever prisoners are inconvenienced or suffer
13 *de minimis* injuries. *See Bell*, 441 U.S. at 539 n.21 (noting that a *de minimis* level of
14 imposition does not rise to a constitutional violation). Whether a condition of
15 confinement rises to the level of a constitutional violation may depend, in part, on the
16 duration of an inmate’s exposure to that condition. *See Keenan v. Hall*, 83 F.3d 1083,
17 1089 (9th Cir. 1996) (citing *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)).

18 With respect to food, the Eighth and Fourteenth Amendments require “only that
19 prisoners receive food that is adequate to maintain health; it need not be tasty or
20 aesthetically pleasing. ‘The fact that the food occasionally contains foreign objects or
21 sometimes is served cold, while unpleasant, does not amount to a constitutional
22 deprivation.’” *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993) (citation omitted)
23 (quoting *Hamm v. DeKalb County*, 774 F.2d 1567, 1575 (11th Cir. 1985)). Spoiled food
24 and foul water are inadequate to maintain health. *Keenan*, 83 F.3d at 1091. An inmate
25 may state a claim where he alleges that he is served meals with insufficient calories for
26 long periods of time. *LeMaire*, 12 F.3d at 1456.

27 In addition, overcrowding alone does not violate the Eighth or Fourteenth
28 Amendments. *Hoptowit*, 682 F.2d at 1249. A plaintiff may, however, state a cognizable

1 claim where he or she alleges that overcrowding results in some unconstitutional
2 condition. *See, e.g., Akao v. Shimoda*, 832 F.2d 119, 120 (9th Cir. 1987) (reversing
3 district court’s dismissal of claim that overcrowding caused increased stress, tension, and
4 communicable diseases, and confrontations between inmates); *see also Toussaint v.*
5 *Yockey*, 722 F.2d 1490, 1492 (9th Cir. 1984) (constitutional violation may occur as a
6 result of overcrowded prison conditions causing increased violence, tension and
7 psychiatric problems).

8 **VI. Warnings**

9 **A. Release**

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

14 **B. Address Changes**

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

19 **C. Copies**

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

23 **D. Possible “Strike”**

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

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

5 **E. Possible Dismissal**

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

10 **IT IS ORDERED:**

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

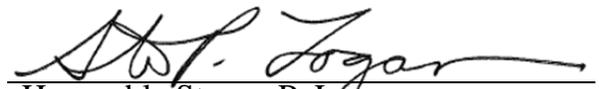
12 (2) As required by the accompanying Order to the appropriate government
13 agency, Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial
14 filing fee.

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

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

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

23 Dated this 24th day of October, 2014.

24
25 
26 Honorable Steven P. Logan
27 United States District Judge
28