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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Michael Carmine Micolo,
10 Plaintiff,
11 v.
12 County of Pinal, et al.,
13 Defendants.
14

No. CV-14-02649-PHX-DGC

ORDER

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16 Pursuant to the Court's February 16, 2016 order (Doc. 56), Plaintiff Michael
17 Micolo filed an amended complaint on March 11, 2016. Docs. 59; 60. The Court has
18 reviewed the amended complaint and determined that it must be dismissed. The Court
19 will, once again, grant Plaintiff leave to amend his complaint with respect to the claim for
20 excessive force relating to officers' conduct after the arrest.

21 Plaintiff has again failed to allege sufficient factual detail to state an excessive
22 force claim relating to the arresting officers' conduct after the arrest. Although Plaintiff
23 did include some additional factual detail, the addition that he "was placed on his back
24 causing injuries to his arms and legs," which "made it hard to breath[e]," remains
25 insufficient to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*,
26 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
27 (2007)). If Plaintiff chooses to file a second amended complaint, he is directed to the
28 Court's guidance in its prior order. *See* Doc. 56 at 5-6.

1 Plaintiff's amended complaint includes a claim for malicious prosecution.
2 Plaintiff's malicious prosecution claim is barred by *Heck v. Humphrey*, 512 U.S. 477,
3 486-87 (1994). *See* Doc. 56 at 3-5. Under *Heck*, before Plaintiff may seek to recover
4 damages under 42 U.S.C. § 1983 for malicious prosecution, he must first show that his
5 conviction or sentence has been invalidated by a state or federal court. *Id.* Absent such a
6 showing, Plaintiff may not include a malicious prosecution claim in his second amended
7 complaint.

8 Plaintiff included claims against Pinal County as well as state law claims in his
9 amended complaint. *See* Doc. 60. The Court previously dismissed Defendant Pinal
10 County and all state law claims. Doc. 24. Plaintiff therefore may not include claims
11 against Pinal County or state claims in its second amended complaint.

12 **IT IS ORDERED:**

- 13 1. Plaintiff's motion to amend (Doc. 59) is **granted**.
- 14 2. Plaintiff's amended complaint (Doc. 60) is **dismissed without prejudice**.
15 Plaintiff may file a second amended complaint by **April 15, 2016**. If
16 Plaintiff fails to file a second amended complaint by that date, the Clerk is
17 directed to terminate this matter without further order of the Court.

18 Dated this 22nd day of March, 2016.

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23 David G. Campbell
24 United States District Judge
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