

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Reginald D. Trotter,
10 Plaintiff,

No. CV 20-01338-PHX-MTL (JZB)

11 v.

ORDER

12 Paul Penzone, et al.,

13
14 Defendants.
15

16 On July 6, 2020, Plaintiff Reginald D. Trotter, who was then confined in a Maricopa
17 County jail,¹ filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 and an
18 Application to Proceed In Forma Pauperis. In a July 21, 2020 Order, the Court denied the
19 deficient Application to Proceed and gave Plaintiff 30 days to either pay the required fees
20 or file a complete in forma pauperis application.

21 On August 21, 2020, Plaintiff filed a First Amended Complaint (Doc. 7)² and a
22 second Application to Proceed In Forma Pauperis (Doc. 8). The Court will grant the
23 Application to Proceed and order Defendant Barboza to answer Count Three of the First
24 Amended Complaint. The remaining claims and Defendants will be dismissed without
25 prejudice.

26
27 _____
28 ¹ On August 3, 2020, Plaintiff filed a Notice of Change of Address indicating that he had been transferred to Arizona State Prison Complex-Tucson.

² Plaintiff mistakenly identified this pleading as a “Second Amended Complaint.”

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

2 The Court will grant Plaintiff’s Application to Proceed In Forma Pauperis. 28
3 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.
4 § 1915(b)(1). The Court will assess an initial partial filing fee of \$46.01. The remainder
5 of the fee will be collected monthly in payments of 20% of the previous month’s income
6 credited to Plaintiff’s trust account each time the amount in the account exceeds \$10.00.
7 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate
8 government agency to collect and forward the fees according to the statutory formula.

9 **II. Statutory Screening of Prisoner Complaints**

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

16 A pleading must contain a “short and plain statement of the claim *showing* that the
17 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
18 not demand detailed factual allegations, “it demands more than an unadorned, the-
19 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
20 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
21 conclusory statements, do not suffice.” *Id.*

22 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
23 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
24 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
25 that allows the court to draw the reasonable inference that the defendant is liable for the
26 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
27 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
28 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual

1 allegations may be consistent with a constitutional claim, a court must assess whether there
2 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

3 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
4 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
5 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent
6 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
7 U.S. 89, 94 (2007) (*per curiam*)).

8 **III. First Amended Complaint**

9 The First Amended Complaint supersedes the original Complaint. *Ferdik v.*
10 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner &*
11 *Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court treats the original
12 Complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Thus, the Court will consider only
13 those claims raised in the First Amended Complaint against only those Defendants named
14 in the First Amended Complaint.

15 In his three-count First Amended Complaint, Plaintiff asserts claims for threats to
16 his safety and inadequate medical care.³ He names as Defendants Maricopa County;
17 Detention Officers Hortelano and C. Barboza; and multiple Doe Defendants identified as
18 “Medical Provider/Nurse Jane Doe 1,” “Medical Provider Nurse Jane Doe 2,”
19 “Correctional Health Services staff[,],” and “Detention Officers.” Plaintiff is seeking \$5
20 million in damages.

21 In Count One, Plaintiff alleges that his rights were violated when he was assaulted
22 by another inmate on December 4, 2019. Plaintiff claims that he submitted “multiple
23 grievance and request forms[] asking to be move[d]” over a two-month period. He also
24 claims that he told Defendant Hortelano on multiple occasions that he needed to be
25 “remove[d] and place[d] in a different unit for [his] safety.” Defendant Hortelano allegedly
26

27 ³ Although Plaintiff purports to assert both a threat-to-safety and a medical claim in
28 each count, his First Amended Complaint is better characterized as asserting a threat-to-
safety claim in Count One, a threat-to-safety claim and a medical claim in Count Two, and
a medical claim in Count Three.

1 laughed at Plaintiff; told him, “No”; and instructed him to “go fight the inmates who were
2 bullying [him], ganging up on [him], [and] th[r]eatening [his] safety.” As a result of the
3 December 4 assault, Plaintiff allegedly suffered concussions, seizures, knots on his head,
4 issues with his right eye, problems sleeping and relaxing, nightmares, headaches, and
5 “mental issues,” including fear, distress, and post-traumatic stress disorder.

6 In Count Two, Plaintiff claims that after the December 4 assault, “medical” failed
7 to treat him properly. According to Plaintiff, he “told medical” multiple times that there
8 was “something really wrong with [him]” and that he needed to be reexamined because he
9 was suffering blurred vision, double vision, dizziness, and a “pounding” head. “They
10 didn’t care,” however, and instead of reexamining him, they “sent [him] to the hole,” where
11 Plaintiff suffered vomiting and tremors. Plaintiff became unresponsive and was sent to the
12 hospital.

13 On December 12, 2019, Plaintiff was allegedly transferred to Towers Jail, where he
14 told multiple officers that he was not supposed to be there because he “was being
15 threaten[ed] and accuse[d] as a snitch.” The officers told him to “shut up,” and stated that
16 he was “where [he was] supposed to be.” Plaintiff was later assaulted by three inmates.
17 After the assault, detention officers refused to send Plaintiff to the hospital. As a result of
18 the foregoing conduct, Plaintiff allegedly suffered concussions, seizures, knots on his head,
19 “issues” with his right eye, headaches, difficulty sleeping and relaxing, and mental issues,
20 including fear, distress, post-traumatic stress disorder, and nightmares.

21 In Count Three, Plaintiff asserts that “medical did nothing for [him]” following the
22 December 12, 2019 assault, even though he was vomiting blood and was experiencing
23 blurred vision, headaches, breathing issues, an inability to swallow, and dizziness. Plaintiff
24 told “them” he needed help and asked to be sent to the hospital, but “they didn’t care,” and
25 he was instead placed in a holding tank for four to five hours. Plaintiff lost consciousness
26 in the holding tank. When he awoke, he was coughing and choking on his own blood.
27 Plaintiff was subsequently transferred to the Lower Buckeye Jail, where he told Defendant
28 Barboza that he needed help because he had passed out and had been coughing up blood

1 and experiencing blurred vision, dizziness, a pounding head, and difficulty breathing,
2 talking, and swallowing. Defendant Barboza allegedly told Plaintiff, “[S]hut up. [I] don’t
3 care. Die,” and stated that if Plaintiff did not like the treatment, he should not come to jail.
4 Barboza also threatened to “write [Plaintiff] up” if he did not “shut up.” Plaintiff allegedly
5 suffered a bruised back and ribs, a concussion, knots on his head, a contused right eye,
6 distress, post-traumatic stress disorder, difficulty sleeping and relaxing, nightmares,
7 headaches, and issues with his throat that necessitated surgery on his voice box.

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

9 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants
10 (2) under color of state law (3) deprived him of federal rights, privileges or immunities and
11 (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir.
12 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d 1278,
13 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific injury
14 as a result of the conduct of a particular defendant and he must allege an affirmative link
15 between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-
16 72, 377 (1976).

17 **A. Defendant Maricopa County**

18 “A municipality may not be sued under § 1983 solely because an injury was inflicted
19 by its employees or agents.” *Long v. County of L.A.*, 442 F.3d 1178, 1185 (9th Cir. 2006).
20 The actions of individuals may support municipal liability only if the employees were
21 acting pursuant to an official policy or custom of the municipality. *Botello v. Gammick*,
22 413 F.3d 971, 978-79 (9th Cir. 2005). A § 1983 claim against a municipal defendant
23 “cannot succeed as a matter of law” unless a plaintiff: (1) contends that the municipal
24 defendant maintains a policy or custom pertinent to the plaintiff’s alleged injury; and
25 (2) explains how such policy or custom caused the plaintiff’s injury. *Sadoski v. Mosley*,
26 435 F.3d 1076, 1080 (9th Cir. 2006) (affirming dismissal of a municipal defendant pursuant
27 to Fed. R. Civ. P. 12(b)(6)). Plaintiff has failed to allege facts to support that Defendant
28 Maricopa County maintained a specific policy or custom that resulted in a violation of

1 Plaintiff's federal constitutional rights and has failed to explain how his injuries were
2 caused by any municipal policy or custom. Thus, the Court will dismiss without prejudice
3 Defendant Maricopa County.

4 **B. Detention Officers and Correctional Health Services Staff**

5 To the extent Plaintiff's claims against Defendants Detention Officers and
6 Correctional Health Services Staff are premised on undifferentiated allegations against a
7 group of individuals, such allegations are not sufficient to state a claim. *See Marcilis v.*
8 *Township of Redford*, 693 F.3d 589, 596 (6th Cir. 2012) (upholding dismissal of *Bivens*
9 complaint that referred to all defendants "generally and categorically" because the plaintiff
10 had failed to "allege, with particularity, facts that demonstrate what *each* defendant did to
11 violate the asserted constitutional right." (quoting *Lanman v. Hinson*, 529 F.3d 673, 684
12 (6th Cir. 2008)); *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008) ("Given the
13 complaint's use of either the collective term 'Defendants' or a list of the defendants named
14 individually but with no distinction as to what acts are attributable to whom, it is impossible
15 for any of these individuals to ascertain what particular unconstitutional acts they are
16 alleged to have committed."); *Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal.
17 1988) (section 1983 allegation that "lumped [defendants] together in a single, broad
18 allegation" did not satisfy Federal Rule of Civil Procedure 8(a)(2)). Insofar as Plaintiff's
19 claims against these Defendants are premised on the conduct of individual members of
20 Correctional Health Services or detention staff, the Court cannot impose liability against
21 an entire category of employees based on the conduct of a few unidentified staff members.
22 In order to state a claim, Plaintiff must name each individual staff member as a Defendant
23 and make it clear how each individual violated his rights. Because Plaintiff has failed to
24 state a claim against Defendants Detention Officers and Correctional Health Services Staff,
25 these Defendants will be dismissed without prejudice.

26 **C. Jane Doe 1 and Jane Doe 2**

27 Plaintiff does not allege any facts against the Defendants identified in the First
28 Amended Complaint as Jane Doe 1 and Jane Doe 2. Accordingly, he has failed to state a

1 claim against these individuals, and they will be dismissed without prejudice.

2 **D. Defendant Hortelano**

3 Plaintiff's threat-to-safety claim against Hortelano arises under the Fourteenth
4 Amendment's Due Process Clause, which grants pretrial detainees the right to be free from
5 punishment prior to an adjudication of guilt. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).
6 "Pretrial detainees are entitled to 'adequate food, clothing, shelter, sanitation, medical care,
7 and personal safety.'" *Alvarez-Machain v. United States*, 107 F.3d 696, 701 (9th Cir. 1996)
8 (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982)). To state a claim of
9 unconstitutional conditions of confinement against an individual defendant, a pretrial
10 detainee must allege facts that show:

- 11 (i) the defendant made an intentional decision with respect to
12 the conditions under which the plaintiff was confined;
13 (ii) those conditions put the plaintiff at substantial risk of
14 suffering serious harm; (iii) the defendant did not take
15 reasonable available measures to abate that risk, even though a
16 reasonable official in the circumstances would have
17 appreciated the high degree of risk involved—making the
consequences of the defendant's conduct obvious; and (iv) by
not taking such measures, the defendant caused the plaintiff's
injuries.

18 *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

19 Plaintiff's allegation that he told Defendant Hortelano he "need[ed] to be remove[d]
20 . . . for [his] safety" is too vague and conclusory to show that Hortelano was aware of a
21 substantial threat to Plaintiff's safety. In the absence of information demonstrating that
22 Hortelano was aware of the *basis* for Plaintiff's fear, Plaintiff cannot show that Hortelano
23 was deliberately indifferent to a substantial risk of harm. Accordingly, Plaintiff has failed
24 to state a claim against Hortelano in Count One, and this Defendant will be dismissed
25 without prejudice.

26 **V. Claim for Which an Answer Will Be Required**

27 Liberally construed, Plaintiff has stated a claim against Defendant Barboza for
28 deficient medical care, and this Defendant will be required to respond to Count Three.

1 **VI. Warnings**

2 **A. Release**

3 If Plaintiff is released while this case remains pending, and the filing fee has not
4 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court
5 that he intends to pay the unpaid balance of his filing fee within 120 days of his release or
6 (2) file a non-prisoner application to proceed in forma pauperis. Failure to comply may
7 result in dismissal of this action.

8 **B. Address Changes**

9 Plaintiff must file and serve a notice of a change of address in accordance with Rule
10 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
11 relief with a notice of change of address. Failure to comply may result in dismissal of this
12 action.

13 **C. Copies**

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

19 **D. Possible Dismissal**

20 If Plaintiff fails to timely comply with every provision of this Order, including these
21 warnings, the Court may dismiss this action without further notice. *See Ferdik v. Bonzelet*,
22 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure
23 to comply with any order of the Court).

24 **IT IS ORDERED:**

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

26 (2) As required by the accompanying Order to the appropriate government
27 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee
28 of \$46.01.

- 1 (3) Counts One and Two are **dismissed** without prejudice.
- 2 (4) Defendants Maricopa County, Hortelano, Jane Doe 1, Jane Doe 2,
3 Correctional Health Services staff, and Detention Officers are **dismissed** without prejudice.
- 4 (5) Defendant Barboza must answer Count Three.
- 5 (6) The Clerk of Court must send Plaintiff a service packet including the First
6 Amended Complaint (Doc. 7), this Order, and both summons and request for waiver forms
7 for Defendant Barboza.
- 8 (7) Plaintiff must complete and return the service packet to the Clerk of Court
9 within 21 days of the date of filing of this Order. The United States Marshal will not
10 provide service of process if Plaintiff fails to comply with this Order.
- 11 (8) If Plaintiff does not either obtain a waiver of service of the summons or
12 complete service of the Summons and First Amended Complaint on Defendant within 90
13 days of the filing of the Complaint or within 60 days of the filing of this Order, whichever
14 is later, this action may be dismissed. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(ii).
- 15 (9) The United States Marshal must retain the Summons, a copy of the First
16 Amended Complaint, and a copy of this Order for future use.
- 17 (10) The United States Marshal must notify Defendant of the commencement of
18 this action and request waiver of service of the summons pursuant to Rule 4(d) of the
19 Federal Rules of Civil Procedure. The notice to Defendant must include a copy of this
20 Order.
- 21 (11) If Defendant agrees to waive service of the Summons and First Amended
22 Complaint, he must return the signed waiver forms to the United States Marshal, not the
23 Plaintiff, **within 30 days of the date of the notice and request for waiver of service**
24 pursuant to Federal Rule of Civil Procedure 4(d)(1)(F) to avoid being charged the cost of
25 personal service.
- 26 (12) The Marshal must immediately file signed waivers of service of the
27 summons. If a waiver of service of summons is returned as undeliverable or is not returned
28

1 by Defendant within 30 days from the date the request for waiver was sent by the Marshal,
2 the Marshal must:

3 (a) personally serve copies of the Summons, First Amended Complaint,
4 and this Order upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil
5 Procedure; and

6 (b) within 10 days after personal service is effected, file the return of
7 service for Defendant, along with evidence of the attempt to secure a waiver of
8 service of the summons and of the costs subsequently incurred in effecting service
9 upon Defendant. The costs of service must be enumerated on the return of service
10 form (USM-285) and must include the costs incurred by the Marshal for
11 photocopying additional copies of the Summons, First Amended Complaint, or this
12 Order and for preparing new process receipt and return forms (USM-285), if
13 required. Costs of service will be taxed against the personally served Defendant
14 pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise
15 ordered by the Court.

16 (13) Defendant Barboza must answer the First Amended Complaint or otherwise
17 respond by appropriate motion within the time provided by the applicable provisions of
18 Rule 12(a) of the Federal Rules of Civil Procedure.

19 (14) This matter is referred to Magistrate Judge John Z. Boyle pursuant to Rules
20 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as
21 authorized under 28 U.S.C. § 636(b)(1).

22 Dated this 9th day of September, 2020.

23
24 

25 Michael T. Liburdi
26 Michael T. Liburdi
27 United States District Judge
28