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**NOT FOR PUBLICATION**

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

Edward Faye Parks,  
Plaintiff,  
vs.  
Christy Denise Johnson, et al.,  
Defendants.

No. CV 09-8057-PCT-GMS (DKD)

**ORDER**

Pending before the Court is Plaintiff’s First Amended Complaint (Doc. #13) (Amended Complaint). The Court will dismiss the Amended Complaint and this action for failure to state a claim upon which relief may be granted.

**I. Procedural Background**

On March 31, 2009, Plaintiff Edward Faye Parks, who is confined in the Great Plains Correctional Facility in Hinton, Oklahoma, filed a *pro se* “Motion To File Civil - Law Suit[] P[]unitive Damage[]s Case, CR-2005-0337 \$3,700,000,000 [] Arizona State” (Doc. #1), which the Court, by Order filed April 15, 2009 (Doc. #3), construed as a civil rights Complaint. Plaintiff did not pay the \$350.00 civil action filing fee or file an Application to Proceed *In Forma Pauperis*. Accordingly, the Court’s Order also gave Plaintiff 30 days to pay the fee or file a completed Application to Proceed *In Forma Pauperis* and a certified six-month trust account statement.

On April 30, 2009, Plaintiff filed a deficient Application to Proceed *In Forma*

1 *Pauperis* (Doc. #4). By Order filed May 7, 2009 (Doc. #6), the Court denied the Application  
2 to Proceed *In Forma Pauperis* without prejudice and gave Plaintiff 30 days from the filing  
3 date of the Order to either pay the \$350.00 filing fee or file a completed, certified Application  
4 to Proceed *In Forma Pauperis* and a certified six-month trust account statement from the  
5 Central Office of the Arizona Department of Corrections (ADOC).

6 On June 8, 2009, Plaintiff filed a “Notice Of Six Month[]s Statement” (Doc. #8),  
7 which included a “Certified Statement Of Account” from the ADOC’s Central Office, and  
8 on June 9, 2009, Plaintiff filed a new, certified Application to Proceed *In Forma Pauperis*  
9 (Doc. #9). Then, on September 17, 2009, Plaintiff filed another Application to Proceed *In*  
10 *Forma Pauperis* (Doc. #10).

11 By Order filed November 25, 2009 (Doc. #11), the Court granted Plaintiff’s  
12 Application to Proceed *In Forma Pauperis* (Doc. #9); assessed an initial partial filing fee of  
13 \$13.00; denied Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. #10) as moot; and  
14 dismissed Plaintiff’s Complaint (Doc. #1) without prejudice, with leave to amend, in order  
15 for Plaintiff to file an amended complaint on a court-approved form. Plaintiff was given 30  
16 days from the filing date of the Order to file a first amended complaint in compliance with  
17 the Order.

## 18 **II. Statutory Screening of Prisoner Complaints**

19 The Court is required to screen complaints brought by prisoners seeking relief against  
20 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
21 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
22 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
23 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
24 28 U.S.C. § 1915A(b)(1), (2).

25 A pleading must contain a “short and plain statement of the claim *showing* that the  
26 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not  
27 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-  
28 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).

1 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
2 statements, do not suffice.” Id.

3 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
4 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,  
5 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content  
6 that allows the court to draw the reasonable inference that the defendant is liable for the  
7 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for  
8 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
9 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual  
10 allegations may be consistent with a constitutional claim, a court must assess whether there  
11 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

12 If the Court determines that a pleading could be cured by the allegation of other facts,  
13 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the  
14 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court  
15 should not, however, advise the litigant how to cure the defects. This type of advice “would  
16 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,  
17 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was  
18 required to inform a litigant of deficiencies). Plaintiff’s Amended Complaint will be  
19 dismissed for failure to state a claim, without leave to amend because the defects cannot be  
20 corrected.

### 21 **III. Amended Complaint**

22 On December 11, 2009, Plaintiff filed his Amended Complaint (Doc. #13). Plaintiff  
23 should take notice that all causes of action alleged in an original complaint which are not  
24 alleged in an amended complaint are waived. Hal Roach Studios v. Richard Feiner & Co.,  
25 896 F.2d 1542, 1546 (9th Cir. 1990) (“an amended pleading supersedes the original”); King  
26 v. Atiyeh, 814 F.2d 565 (9th Cir. 1987). Accordingly, the Court will consider only those  
27 claims specifically asserted in Plaintiff’s Amended Complaint with respect to only those  
28 Defendants specifically named in the Amended Complaint.

1 Named as Defendants in the Amended Complaint are: (1) Christy Denise Johnson,  
2 Hotel Reservationist, Edgewater Casino, Laughlin, Nevada; (2) Shannon Bronson, Bullhead  
3 County Justice Court Clerk; (3) Neil Robert Taylor; and (4) Billy Sipe, Jr., Attorney,  
4 Kingman, Arizona.

5 Plaintiff alleges three counts in the Amended Complaint. In Count I, Plaintiff claims  
6 that his rights were violated by “felony [] stalking [] across state line[.]s.” Plaintiff alleges  
7 that on March 4, 2005, Defendant Christy Johnson followed Plaintiff and his girlfriend, Miss  
8 French, from the Edgewater Casino in Laughlin, Nevada, across the bridge into Arizona and  
9 made a lane change, causing an accident. Plaintiff further alleges that Defendant Johnson  
10 drove off, leaving Plaintiff and Miss French sitting in the roadway of Highway 95. Plaintiff  
11 also alleges that he “was not at fault,” but that he was arrested, charged with “DUI,” and  
12 sentenced to 3.75 years in prison.

13 In Count II, Plaintiff claims that his rights were violated by the negligence of his  
14 attorney, Defendant Billy Sipe, Jr. Plaintiff alleges that Defendant Sipe was retained to  
15 defend and represent Plaintiff in the Mohave County Superior Court, and that after Plaintiff  
16 told Defendant Sipe about “Defendants’ actions” at the Edgewater Casino parking lot on  
17 March 4, 2005, Defendant Sipe would not investigate the case and as a result Plaintiff was  
18 sentenced to prison for aggravated DUI. Plaintiff further alleges that Defendant Sipe never  
19 planned to help Plaintiff, but instead “prosecuted” Plaintiff in court “up until” June 7, 2005.  
20 Plaintiff also alleges that Defendant Sipe was ineffective.

21 In Count III, Plaintiff claims that his rights were violated by his next-door neighbor,  
22 Defendant Shannon Bronson. Plaintiff alleges that on October 15, 2004, Defendant Bronson  
23 asked Amelia French to pay for half of a block wall, but that Plaintiff and Miss French told  
24 Defendant Bronson that they have a chain link fence and could not afford to pay for the block  
25 wall. Plaintiff further alleges that on the night of March 4, 2005, Defendant Bronson called  
26 Defendant Christy Johnson and told her that Plaintiff and Miss French were heading up to  
27 Laughlin, Nevada, in a white Ford truck. Plaintiff also alleges that Defendants Johnson and  
28 Neil Taylor watched as Plaintiff and Miss French walked “from buildings” to their truck and

1 followed them, “flipping [] off” Plaintiff and Miss French at the bridge into the State of  
2 Arizona on Highway 95. Plaintiff claims that Defendants Johnson and Bronson “are the  
3 cause of arrest and wrongful conviction” of Plaintiff on June 7, 2005.

4 In his Request for Relief, Plaintiff seeks punitive monetary damages.

#### 5 **IV. Failure to State a Claim**

6 Plaintiff has failed to state a claim upon which relief may be granted in any of his  
7 claims in the Amended Complaint because they are all barred by either Heck v. Humphrey,  
8 512 U.S. 477, 486-87 (1994), or the statute of limitations.

##### 9 **A. Heck v. Humphrey**

10 In Heck, the Supreme Court held that

11 in order to recover damages for allegedly unconstitutional  
12 conviction or imprisonment, or for other harm caused by actions  
13 whose unlawfulness would render a conviction or sentence  
14 invalid, a § 1983 plaintiff must prove that the conviction or  
15 sentence has been reversed on direct appeal, expunged by  
16 executive order, declared invalid by a state tribunal authorized  
to make such determination, or called into question by a federal  
court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.  
A claim for damages bearing that relationship to a conviction or  
sentence that has *not* been so invalidated is not cognizable under  
§ 1983.

17 Heck, 512 U.S. at 486-87 (emphasis in original) (footnote omitted).

18 A prisoner’s claim for damages under § 1983, therefore, must be dismissed if “a  
19 judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or  
20 sentence,” unless the prisoner demonstrates that the conviction or sentence has previously  
21 been reversed, expunged, or otherwise invalidated. Id. Heck also bars claims of wrongful  
22 arrest, malicious prosecution, and conspiracy. See Guerrero v. Gates, 442 F.3d 697, 705 (9th  
23 Cir. 2006); Smithart v. Towery, 79 F.3d 951, 952 (9th Cir. 1996).

24 In Smithart, the plaintiff sought damages for, *inter alia*, excessive force used during  
25 the course of an arrest that resulted in plaintiff’s conviction. The plaintiff alleged that  
26 defendants, “without probable cause, authority, or justification” assaulted, arrested,  
27 handcuffed and beat plaintiff. Smithart, 79 F.3d at 952. Summarizing the Supreme Court’s  
28 decision in Heck, the Court stated: “if a criminal conviction arising out of the same facts

1 stands and is fundamentally inconsistent with the unlawful behavior for which section 1983  
2 damages are sought, the 1983 action must be dismissed.” Id. The Court continued: “[t]here  
3 is no question that Heck bars [plaintiff’s] claims that defendants lacked probable cause to  
4 arrest him and brought unfounded charges against him.” Id. “If [plaintiff] wishes to  
5 challenge his arrest, prosecution or conviction, he should file a writ of habeas corpus.” Id.

6 Thus, under Heck, before Plaintiff may seek to recover damages under 42 U.S.C.  
7 § 1983 for harm caused by actions of Defendants whose lawfulness would render his  
8 conviction or sentence invalid, he must first show that his conviction or sentence has been  
9 invalidated by a state or federal court. Heck, 512 U.S. at 486-87. Plaintiff has not shown in  
10 the instant Amended Complaint that his conviction or sentence has been invalidated by a  
11 state or federal court.<sup>1</sup> Accordingly, to the extent that Plaintiff’s claims in the Amended  
12 Complaint would render his conviction or sentence invalid, they are barred by Heck and will  
13 be dismissed for failure to state a claim upon which relief may be granted.

14 **B. Failure to Comply with Two-Year Statute of Limitations**

15 Title 28 U.S.C. § 1915A(b)(1) mandates that the Court dismiss a complaint if it is  
16 frivolous, malicious, or fails to state a claim upon which relief may be granted. Moreover,  
17 “an action may be dismissed . . . where the defense is complete and obvious from the face  
18 of the pleadings.” Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984). In the absence  
19 of waiver, the Court may raise the defense of statute of limitations *sua sponte*. Levald, Inc.  
20 v. City of Palm Desert, 998 F.2d 680, 687 (9th Cir. 1993).

21 Here, it appears from the face of Plaintiff’s Amended Complaint that those claims that  
22 are not barred by Heck are barred by the applicable statute of limitations.

23 In 42 U.S.C. § 1983 actions, the applicable statute of limitations is the forum state’s  
24 statute of limitations for personal injury actions. Wilson v. Garcia, 471 U.S. 261, 266, 274-  
25 76 (1985); Vaughan v. Grijalva, 927 F.2d 476, 478 (9th Cir. 1991). The Arizona statute of  
26 limitations for personal injury actions is two years. See Ariz. Rev. Stat. § 12-542(1);

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27  
28 <sup>1</sup>The Court takes judicial notice that Plaintiff currently has a habeas corpus action  
pending in this Court regarding his conviction (CV 07-8133-PCT-GMS).

1 Madden-Tyler v. Maricopa County, 943 P.2d 822, 824 (Ariz. Ct. App. 1997); Vaughan, 927  
2 F.2d at 478.

3 Plaintiff's claims in the Amended Complaint arise from actions that took place  
4 between October 15, 2004 and June 7, 2005. However, Plaintiff did not file this action until  
5 March 31, 2009, well over three years after the claims in his Amended Complaint arose.  
6 Accordingly, those claims in the Amended Complaint that are not barred by Heck are barred  
7 by the statute of limitations and will be dismissed for failure to state a claim upon which  
8 relief may be granted.

9 **C. Color of State Authority and Constitutional Violation**

10 Lastly, the Court notes that to state a claim under 42 U.S.C. § 1983, Plaintiff must  
11 allege: (1) the conduct complained of was committed by a person acting under color of state  
12 law; and (2) the conduct deprived the Plaintiff of a constitutional right. Balisteri v. Pacifica  
13 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). Here, all of the Defendants appear to be  
14 private actors that were not acting under color of state law. Also, Plaintiff has failed to allege  
15 the violation of any constitutional rights.

16 **V. Dismissal of Amended Complaint Without Leave to Amend**

17 For the above reasons, the Amended Complaint will be dismissed for failure to state  
18 a claim upon which relief may be granted. Also, because it is clear from the face of the  
19 Amended Complaint that the deficiencies in the Amended Complaint cannot be cured by  
20 amendment, the Court's dismissal will be without leave to amend, and the Court will order  
21 that the action be dismissed and judgment entered. See Noll v. Carlson, 809 F.2d 1446, 1448  
22 (9th Cir. 1987) (citing Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)).

23 **IT IS ORDERED:**

24 (1) The Amended Complaint (Doc. #13) and this action are **dismissed** for failure  
25 to state a claim upon which relief may be granted, and the Clerk of Court **must enter**  
26 **judgment** accordingly.

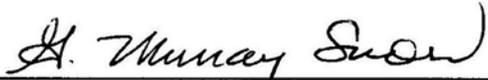
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(2) The Clerk of Court **must make an entry** on the docket stating that the dismissal for failure to state a claim may count as a “strike” under 28 U.S.C. § 1915(g).

DATED this 22nd day of March, 2010.

  
\_\_\_\_\_  
G. Murray Snow  
United States District Judge