

1 Plaintiff should take notice that if he is released before the filing fee is paid in full, he
2 must pay the remaining unpaid amount of the filing fee within 120 days of the date of his
3 release. If Plaintiff fails to pay the remainder of the filing fee within 120 days of the date of
4 his release, the action will be dismissed, unless Plaintiff shows good cause, in writing, why
5 he is unable to pay the remainder of the filing fee.

6 **B. Statutory Screening of Prisoner Complaints.**

7 The Court is required to screen complaints brought by prisoners seeking relief against
8 a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
9 § 1915A(a). The Court must dismiss a complaint or portion thereof if Plaintiff has raised
10 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief
11 may be granted, or that seek monetary relief from a defendant who is immune from such
12 relief. 28 U.S.C. § 1915A(b)(1),(2). If the Court determines that a pleading could be cured
13 by the allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend the
14 complaint before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th
15 Cir. 2000) (*en banc*). The Court is required to grant leave to amend “if a complaint can
16 possibly be saved,” but not if the Complaint “lacks merit entirely.” Id. at 1129. A court
17 therefore should grant leave to amend if the pleading could be cured by the allegation of
18 other facts, or if it appears at all possible that the defect can be corrected. Id. at 1130. The
19 Court should not, however, advise the litigant how to cure the defects. This type of advice
20 “would undermine the district judges’ role as impartial decisionmakers.” Pliler v. Ford, 124
21 S. Ct. 2441, 2446 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether
22 court was required to inform litigant of deficiencies). Plaintiff’s Complaint will be dismissed
23 for failure to state a claim, *with* leave to amend because the complaint may possibly be saved
24 by amendment.

25 **C. Complaint.**

26 Plaintiff names as a Defendant Joseph M. Arpaio, Sheriff of Maricopa County.
27 Plaintiff alleges that his rights as set out in Hart v. Hill (MCSO) were violated by (1) the lack
28

1 of a divider in the bathroom, (2) the use of handcuffs when he was being transported, and
2 (3) the lack of contact visits. Plaintiff seeks monetary and other relief.

3 *1. Hart v. Hill*

4 Throughout his Complaint, Plaintiff refers to Hart v. Hill, No. CIV 77-0479-PHX-
5 EHC (D. Ariz.), claiming that the conditions of his confinement violated an Amended
6 Judgment in that action. Jurisdiction to enforce the judgment is retained by the court which
7 entered it. Jeff D. v. Kempthorne, 365 F.3d 844, 853 (9th Cir. 2004). A civil rights action
8 is not the proper means by which to enforce the decree. Cagle v. Sutherland, 334 F.3d 980,
9 986 (11th Cir. 2003); Klein v. Zavaras, 80 F.3d 432, 435 (10th Cir. 1996); DeGidio v. Pung,
10 920 F.2d 525, 534 (8th Cir.1990); Green v. McKaskle, 788 F.2d 1116, 1122-23 (5th Cir.
11 1986). Standing alone, remedial orders cannot serve as a substantive basis for a § 1983 claim
12 for damages because such orders do not create “rights, privileges, or immunities secured by
13 the Constitution and laws.” Green, 788 F.3d at 1123-24. Remedial decrees are the means
14 by which unconstitutional conditions are corrected but they do not create or enlarge
15 constitutional rights. Id. at 1123. To the extent Plaintiff seeks to enforce Hart v. Hill, his
16 claim is not properly brought in this action.

17 *2. Count I - Lack of Privacy*

18 Inmates have a “right to bodily privacy.” Sepulveda v. Ramirez, 967 F.2d 1413, 1415
19 (9th Cir. 1992). However, the state may restrict this right “to the extent necessary to further
20 the correctional system’s legitimate goals and policies.” Grummett v. Rushen, 779 F.2d 491,
21 493 (9th Cir. 1985). Of significant importance in a jail is internal security. Id. The Plaintiff
22 “bears the burden of pleading and proving the absence of legitimate correctional goals for
23 the conduct of which he complains.” Bruce v. Ylst, 351 f.3d 1283, 1289 (9th Cir. 2003)
24 (citations omitted). In Count I, Plaintiff complains that because there are no dividers in the
25 bathrooms, his constitutional right to privacy was violated. The jail has a reasonable
26 penological interest in not providing dividers or stalls in the bathroom due to security issues.
27 Plaintiff has not attempted to allege the absence of a legitimate correctional goal.
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1 3. *Count II - Handcuffs*

2 Officers in the jail may not use excessive force against pre-trial detainees. See Lolli
3 v. County of Orange, 351 F.3d 410, 415 (9th Cir. 2003) (providing that in determining
4 whether excessive force was used against a pre-trial detainee in violation of the Fourteenth
5 Amendment, the court is to use an objective reasonableness standard). Plaintiff's claims that
6 he was placed in handcuffs while being transported does not sufficiently allege a claim that
7 his constitutional rights were violated.

8 4. *Count III - Contact Visits*

9 Inmates do not have a right to "unfettered visitation." Kentucky Dept. of Corrections
10 v. Thompson, 490 U.S. 454, 460 (1989). Denial of contact visitation does not violate an
11 inmate's constitutional rights. Toussaint v. McCarthy, 801 F.2d 1080, 1113 (9th Cir. 1986).
12 Plaintiff alleges that Hill v. Hart provided that "contact should not be unreasonably
13 withheld." Plaintiff does not have a constitutional right to a contact visit, thus, this claim will
14 be dismissed without prejudice.

15 5. *Defendant Arpaio*

16 To state a valid constitutional claim, a plaintiff must allege that he suffered specific
17 injury as a result of the specific conduct of a defendant, and show an affirmative link between
18 the injury and the conduct of the defendant. Rizzo v. Goode, 423 U.S. 362, 371-72, 377
19 (1976). For a person to liable in his official capacity, Plaintiff must allege that he acted as
20 a result of a policy, practice, or custom. See Cortez v. County of Los Angeles, 294 F.3d
21 1186, 1188 (9th Cir. 2001). A supervisor, in his individual capacity, "is only liable for
22 constitutional violations of his subordinates if the supervisor participated in or directed the
23 violations, or knew of the violations and failed to act to prevent them." Taylor v. List, 880
24 F.2d 1040, 1045 (9th Cir. 1989). "A plaintiff must allege facts, not simply conclusions, that
25 show that an individual was personally involved in the deprivation of his civil rights."
26 Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

27 Even had Plaintiff sufficiently alleged that his constitutional rights were violated, he
28 would still have failed to sufficiently allege that Defendant Arpaio violated his rights.

1 Plaintiff fails to allege that his rights were violated by a policy, practice, or custom enacted
2 or enforced by Defendant Arpaio. Moreover, he fails to allege that Defendant Arpaio
3 directly violated his rights, or was even aware that his rights were being violated. However,
4 Plaintiff will be provided an opportunity to amend his Complaint so that he may sufficiently
5 allege that his constitutional rights were violated, linking the violation to specific conduct by
6 a defendant.

7 **D. Leave to Amend.**

8 For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to state
9 a claim upon which relief may be granted. Plaintiff may amend his Complaint to cure the
10 deficiencies outlined above. The Clerk of Court will be directed to provide Plaintiff with a
11 Court-approved form for filing a civil rights complaint. Plaintiff is advised that the amended
12 complaint must be retyped or rewritten in its entirety on the court-approved form and may
13 not incorporate any part of the original Complaint by reference. Any amended complaint
14 submitted by Plaintiff should be clearly designated as such on the face of the document.

15 Plaintiff is also reminded that in an Amended Complaint, he may only include one
16 claim per count. The "one claim per count" rule is set forth in the form Complaint and
17 accompanying instructions, and is a requirement imposed by the local rules of this Court.
18 See LRCiv 3.4(a) (complaint must be in accordance with the instructions provided with the
19 form).

20 An amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
21 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
22 1546 (9th Cir. 1990). After amendment, the original pleading is treated as nonexistent.
23 Ferdik, 963 F.2d at 1262. Thus, causes of action alleged in an original complaint which are
24 not alleged in an amended complaint are waived. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.
25 1987).

26 **E. Address Changes.**

27 In the notice of assignment issued in this action (Doc. #2), Plaintiff was advised he
28 must file a notice of change of address if his address changes. Plaintiff is again reminded

1 that at all times during the pendency of this action, Plaintiff shall immediately advise the
2 Court of any change of address and its effective date. Such notice shall be captioned
3 “NOTICE OF CHANGE OF ADDRESS.” Plaintiff shall serve a copy of the Notice of
4 Change of Address on all opposing parties. The notice shall contain only information
5 pertaining to the change of address and its effective date, and shall not include a motion for
6 other relief. Failure to timely file a notice of change of address may result in the dismissal
7 of the action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil
8 Procedure.

9 **F. Warning of Possible Dismissal.**

10 Plaintiff should take note that if he fails to timely comply with every provision of this
11 Order, this action will be dismissed without further notice. See Ferdik, 963 F.2d at 1260-
12 61(district court may dismiss action for failure to comply with any order of the Court).
13 Moreover, because the Complaint has been dismissed for failure to state a claim, if Plaintiff
14 fails to file an amended complaint correcting the deficiencies identified in this Order, the
15 dismissal of this action will count as a “strike” under the “three strikes” provision of the
16 Prison Litigation Reform Act. See 28 U.S.C. § 1915(g).

17 **IT IS THEREFORE ORDERED that:**

18 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. #1) is granted
19 pursuant to 28 U.S.C. § 1915(a)(1).

20 (2) Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.
21 Plaintiff is assessed no initial partial filing fee. All fees shall be collected and paid in
22 accordance with this Court’s Order to the appropriate government agency filed concurrently
23 herewith.

24 (3) The Complaint is **dismissed** for failure to state a claim. Plaintiff shall have **30**
25 **days** from the date this Order is filed to file an Amended Complaint in compliance with this
26 Order.

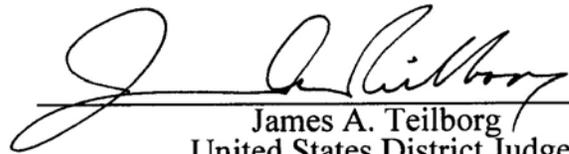
27 (4) The Clerk of Court shall enter a judgment of dismissal of this action with
28 prejudice and without further notice to Plaintiff, if Plaintiff fails to file an amended complaint

1 within thirty (30) days of the date this Order is filed. Upon entry of judgment, the Clerk shall
2 make an entry on the docket in this matter indicating that the dismissal of this action falls
3 within the purview of 28 U.S.C. § 1915(g).

4 (5) Aside from the two copies of the petition or amended petition that must be
5 submitted pursuant to LRCiv 3.5(a), a clear, legible copy of every pleading or other
6 document filed shall accompany each original pleading or other document filed with the
7 Clerk for use by the District Judge or Magistrate Judge to whom the case is assigned. See
8 LRCiv 5.4. Failure to comply with this requirement may result in the pleading or document
9 being stricken without further notice to Plaintiff.

10 (6) The Clerk of Court is directed to provide to Plaintiff a current court-approved
11 form for filing a civil rights complaint by a prisoner.

12 DATED this 14th day of December, 2005.

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17 James A. Teilborg
18 United States District Judge
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**INFORMATION AND INSTRUCTIONS FOR A
PRISONER FILING CIVIL RIGHTS COMPLAINT
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

I. General Information About the Civil Rights Complaint Form:

A. The Form. The civil rights complaint form is designed to help prisoners prepare a complaint seeking relief for a violation of their federal civil rights. Local Rule of Civil Procedure 3.4(a) requires that prisoner civil rights complaints be filed on the court-approved form. Your complaint must be typewritten or legibly handwritten. All information must be clearly and concisely written, **only in the space provided on the form.** If needed, you may attach no more than fifteen additional pages of standard letter size paper to continue any part of the complaint. You must identify which part of the complaint is being continued and number all pages.

B. Your Signature. You must sign the complaint. Your signature constitutes a certificate that: 1) you have read the complaint; 2) to the best of your knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and law; and 3) it is not being filed for any improper purpose. Please review Rule 11 of the Federal Rules of Civil Procedure. Rule 11 provides for the imposition of sanctions if the complaint is signed in violation of the Rule.

C. The Filing Fee. You must pay the \$250.00 filing fee. If you are unable to pay the filing fee when the complaint is filed, you may request leave to proceed *in forma pauperis*. Please review the "Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915" for more information.

D. Court Divisions. If you resided in Maricopa, Pinal, Yuma, La Paz, or Gila county when your rights were allegedly violated, you should file your complaint in the Phoenix Division of the court. If you resided in Apache, Navajo, Coconino, Mohave, or Yavapai county when your rights were allegedly violated, you should file your complaint in the Prescott Division of the court. If you resided in Pima, Cochise, Santa Cruz, Graham, or Greenlee county when your rights were allegedly violated, you should file your complaint in the Tucson Division of the court. See LRCiv 5.1(a) and 77.1(a).

You should mail THE ORIGINAL AND ONE COPY of your complaint with the \$250.00 filing fee or the application to proceed *in forma pauperis* to:

Phoenix & Prescott Divisions:

OR

Tucson Division:

U.S. District Court Clerk
U.S. Courthouse, Suite 321

U.S. District Court Clerk
U.S. Courthouse, Suite 1500

401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

405 West Congress Street
Tucson, Arizona 85701-5010

E. Certificate of Service on Defendants. You must furnish the opposing party or their attorney with a copy of any document you submit to the court (except the initial complaint and application to proceed *in forma pauperis*). Pursuant to Rules 5(a) and (d) of the Federal Rules of Civil Procedure, each original document (except the initial complaint and application for leave to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the opposing party or their attorney and the address to which it was mailed. Any document received by the court which does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this __ day of __ (month) __, (year), to:

Name: _____

Address: _____

Attorney for Defendant(s)/Respondent(s)

(Signature)

F. Original and Judge's Copy. You must furnish an original and one copy of any document submitted to the court. You must furnish one additional copy to the clerk if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original.

G. Exhibits. You should not submit exhibits with the complaint. Instead, the relevant information should be paraphrased in the complaint. You should keep the exhibits to use to support or oppose a motion for summary judgment or at trial.

H. Change of Address. You must immediately notify the clerk and the opposing party or their attorney in writing of any change in your mailing address. Failure to notify the court of any change in your mailing address may result in the dismissal of your case.

I. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. Rule 15(a) of the Federal Rules of Civil Procedure allows you to file one amended complaint prior to any defendant filing an answer. After any defendant has filed an answer, you must file a motion for leave to amend and lodge a proposed amended complaint. Local Rule of Civil Procedure 15.1(a)(2) prohibits any amended pleading from referencing any prior pleading. Further, any allegations or defendants not included in the

amended complaint are considered dismissed.

J. Letters and Motions. It is generally inappropriate to write a letter to any of the District Judges, Magistrates Judges, or the staff of any of the judicial officers. The appropriate way to communicate with these persons is by filing a written pleading or motion.

II. Completing the Civil Rights Complaint Form:

HEADING:

1. Your Name. Print your name, prison or jail inmate number, and mailing address on the lines provided.
2. Defendants. Print the names of each of your defendants. If you name more than **four** defendants, you should print the name of one defendant and "see additional page for defendants" in the space provided. On the additional page you must list the names of **all** of the defendants. This additional page should be inserted after page 1 and numbered as page "1-A" at the bottom of the page. The initial complaint must contain the names of **all** of the parties (plaintiffs as well as defendants) in the heading (or on the additional page if more than four defendants). See Rule 10(a) of the Federal Rules of Civil Procedure.
3. Jury Demand. If you want a jury trial, you must write "JURY TRIAL DEMANDED" on the line below "CIVIL RIGHTS COMPLAINT BY A PRISONER." Failure to do so will result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; "Bivens v. Six Unknown Federal Narcotics Agents" for federal defendants; or "other." If you mark "other," identify the source of that authority.
2. Plaintiff. Print all of the requested information on the spaces provided. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary

information about each additional lawsuit on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights the defendant(s) violated. The form provides space to allege three separate counts (one violation per count). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages "5-A", "5-B", etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. YOU MAY ALLEGE THE VIOLATION OF ONLY ONE CIVIL RIGHTS CLAIM PER COUNT.

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. YOU MAY CHECK ONLY ONE BOX PER COUNT. If you check the box marked "Other," you must identify the specific issue involved in the space provided.

3. Supporting Facts. After you have identified which civil right was violated, you need to state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you need to identify which defendant did what act. You also need to state the date(s) on which the act(s) occurred if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. Exhaustion of administrative remedies is a prerequisite to filing a civil rights complaint. 42 U.S.C. § 1997e requires prisoners to exhaust the available administrative remedies before being allowed to file a civil rights action. Consequently, you must disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If one of your counts is exempt from the grievance procedures or administrative appeals, fully explain the exemption on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Your signature must be an original signature, not a photocopy.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed by the court. All questions must be answered concisely

in the proper space on the form. If needed, you may attach no more than fifteen additional pages. The form, however, must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

 Name and Prisoner/Booking Number

 Place of Confinement

 Mailing Address

 City, State, Zip Code

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

_____))
 (Full Name of Plaintiff) Plaintiff,)
 vs.)
 _____))
 _____))
 _____))
 _____))
 (Full Name of Each Defendant) Defendant(s).)
 _____))

CASE NO. _____
 (To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
 BY A PRISONER**

- Original Complaint
- First Amended Complaint
- Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:
 - a. 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
 - b. 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
 - c. Other: (Please specify.) _____.

2. Name of Plaintiff: _____.
 Present mailing address: _____.
 (Failure to notify the Court of your change of address may result in dismissal of this action.)

 Institution/city where violation occurred: _____.

3. Name of first Defendant: _____ . The first Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

The first Defendant is sued in his/her: individual capacity official capacity (check one or both).
Explain how the first Defendant was acting under color of law: _____

4. Name of second Defendant: _____ . The second Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

The second Defendant is sued in his/her: individual capacity official capacity (check one or both).
Explain how the second Defendant was acting under color of law: _____

5. Name of third Defendant: _____ . The third Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

The third Defendant is sued in his/her: individual capacity official capacity (check one or both).
Explain how the third Defendant was acting under color of law: _____

6. Name of fourth Defendant: _____ . The fourth Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

The fourth Defendant is sued in his/her: individual capacity official capacity (check one or both).
Explain how the fourth Defendant was acting under color of law: _____

(If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.)

B. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If your answer is "yes," how many lawsuits have you filed? _____. Describe the previous lawsuits in the spaces provided below.
3. First prior lawsuit:
 - a. Parties to previous lawsuit:
Plaintiff: _____
Defendants: _____

- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
 _____.
- c. Case or docket number: _____.
- d. Claims raised: _____

 _____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
 _____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.
4. Second prior lawsuit:
- a. Parties to previous lawsuit:
 Plaintiff: _____.
 Defendants: _____
 _____.
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
 _____.
- c. Case or docket number: _____.
- d. Claims raised: _____

 _____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
 _____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.
5. Third prior lawsuit:
- a. Parties to previous lawsuit:
 Plaintiff: _____.
 Defendants: _____
 _____.
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
 _____.
- c. Case or docket number: _____.
- d. Claims raised: _____

 _____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
 _____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.

(If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.)

