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

Mario Ochoa,	)	No. CV 06-0719-PHX-DGC (LOA)
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Joseph Arpaio,	)	
Defendant.	)	

This is a civil rights action pursuant to 42 U.S.C. § 1983 filed by an inmate confined in the Lower Buckeye Jail in Phoenix, Arizona. The Court will dismiss the action with leave to amend.

**A. Application to Proceed In Forma Pauperis & Filing Fee.**

Plaintiff's request to proceed *in forma pauperis* will be granted. Pursuant to 28 U.S.C. § 1915(b)(1), Plaintiff is required to pay the statutory filing fee of \$250.00 for this action. An initial partial filing fee of \$49.16 (based on an average monthly deposit of \$245.83) will be assessed by this Order. 28 U.S.C. § 1915(b)(1). By separate order, the Court will direct the appropriate agency to collect the initial partial filing fee from Plaintiff's trust account and forward it to the Clerk of Court. Thereafter, Plaintiff will be obligated for monthly payments of 20 percent of the preceding month's income credited to Plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of Court each time the amount in Plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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, 542  
21 U.S. 225, 231 (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’s action concerns his confinement in Madison Street Jail in 1995, Durango  
27 Jail in 1997, and Towers Jail in 1998. In Count I Plaintiff alleges that at Durango he was  
28 housed with 100 inmates in a pod that was designed to hold 32. At Towers Jail he states 45

1 inmates were housed in a pod build for 30. He claims that the overcrowding and lack of  
2 supervision created a safety and fire hazard. Plaintiff states that he lives in constant fear for  
3 his life and suffers from anxiety, depression, loss of sleep. In Count II Plaintiff contends that  
4 inmates are not provided with proper cleaning supplies to disinfect the living areas.  
5 Consequently, staph infections are commonly spread among the inmates. Plaintiff claims  
6 that he suffers constant anxiety and loss of sleep over the fear of exposure to infection. In  
7 Count III Plaintiff alleges that after he and other inmates complained about the conditions,  
8 the pod was placed on restriction status and detention officers threatened to take away all  
9 privileges. Plaintiff suffers headaches and stress as a result. For relief, Plaintiff requests  
10 monetary damages.

11 **D. Failure to State a Claim.**

12 *1. Statute of Limitations*

13 In § 1983 actions, the applicable statute of limitations is the forum state's statute of  
14 limitations for personal injury actions. Johnson v. California, 207 F.3d 650, 653 (9th Cir.  
15 2000). The Court applies Arizona's two year statute of limitations to § 1983 actions. Krug  
16 v. Imbordino, 896 F.2d 395, 397 (9th Cir. 1990). The Court must also apply any state rule  
17 for tolling to actions brought under § 1983. Hardin v. Straub, 490 U.S. 536, 544 (1989);  
18 TwoRivers v. Lewis, 174 F.3d 987, 992 (9th Cir. 1999). Pursuant to the former tolling  
19 provision of A.R.S. § 12-502(B), "the statute of limitations begins running when the  
20 incarcerated prisoner discovered or reasonably should have discovered the right to bring the  
21 action, or upon the prisoner's release from prison, whichever first occurs." Vega v. Morris,  
22 184 Ariz. 461, 464, 910 P.2d 6, 9 (1996). However, this tolling provision was deleted from  
23 the statute by amendment effective April 12, 1996. Consequently, as of April 12, 1996,  
24 incarceration was no longer a "disability" which tolled the statute of limitations. See e.g.,  
25 Zuck v. State of Arizona, 159 Ariz. 37, 40, 764 P.2d 772, 775 (Ariz.Ct.App. 1988). After  
26 April 12, 1996, "a prisoner had the same time others would have to bring a claim, from that  
27 date, or a later date if that was when the prisoner first reasonably discovered his or her right  
28 to bring and action." *Id.* Therefore, the statute of limitations began to run two years "from

1 the time after the effective date of the amendment that he discovered or with reasonable  
2 diligence should have discovered his right to bring those claims.” *Id.*

3 On the face of his Complaint Plaintiff states that the violations alleged in this action  
4 occurred in 1995, 1997, and 1998. Plaintiff had until 2000 to file a claim concerning the  
5 most recent occurrence. The Complaint was not filed until March 2006, six years after the  
6 statute of limitations deadline for the claims had passed.

7 Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court is required to dismiss an *in forma*  
8 *pauperis* case, at any time, if it fails to state a claim upon which relief may be granted.  
9 Failure to state a claim includes circumstances where a defense is complete and obvious from  
10 the face of the pleadings. Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984) (applying  
11 former § 1915(d) which is now codified at 28 U.S.C. § 1915(e)(2)(B)). In the absence of  
12 waiver, the Court may raise the defense of statute of limitations *sua sponte*. See Levald, Inc.  
13 v. City of Palm Desert, 998 F.2d 680, 687 (9th Cir. 1993). Accordingly, Plaintiff’s claims  
14 stemming from 1995, 1997, and 1998 are time-barred.

15 Plaintiff’s allegations in Counts II and III, however, do not specify a jail or year.  
16 Indeed, the facts are set forth in the present tense. Plaintiff has filed this civil rights action  
17 while incarcerated at the Lower Buckeye Jail in Phoenix, Arizona. At this juncture, it is  
18 unclear whether all of his claims arise from his previous confinements or if they include his  
19 current incarceration. Plaintiff may amend his Complaint if he can in good faith allege facts  
20 which set forth a constitutional claim within the statute of limitations.

## 21 2. Hart v. Hill

22 Throughout his Complaint, Plaintiff refers to Hart v. Hill, No. CIV 77-0479-PHX-  
23 EHC (MS) (D. Ariz.), claiming that the conditions of his confinement violate an Amended  
24 Judgment in that action. Jurisdiction to enforce the judgment is retained by the court which  
25 entered it. Jeff D. v. Kempthorne, 365 F.3d 844, 853 (9th Cir. 2004). A civil rights action  
26 is not the proper means by which to enforce the decree. Cagle v. Sutherland, 334 F.3d 980,  
27 986 (11th Cir. 2003); Klein v. Zavaras, 80 F.3d 432, 435 (10th Cir. 1996); DeGidio v. Pung,  
28 920 F.2d 525, 534 (8th Cir. 1990); Green v. McKaskle, 788 F.2d 1116, 1122-23 (5th

1 Cir.1986). Standing alone, remedial orders cannot serve as a substantive basis for a § 1983  
2 claim for damages because such orders do not create “rights, privileges, or immunities  
3 secured by the Constitution and laws.” Green, 788 F.3d at 1123-24. Remedial decrees are  
4 the means by which unconstitutional conditions are corrected but they do not create or  
5 enlarge constitutional rights. Id. at 1123. To the extent Plaintiff seeks to enforce Hart v.  
6 Hill, his claim is not properly brought in this action. Instead, his allegations must separately  
7 state a violation of a constitutional right.

8 **E. Leave to Amend.**

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

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

21 An amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963  
22 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,  
23 1546 (9th Cir. 1990). After amendment, the original pleading is treated as nonexistent.  
24 Ferdik, 963 F.2d at 1262. Thus, causes of action alleged in an original complaint which are  
25 not alleged in an amended complaint are waived. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.  
26 1987).

27 **F. Address Changes.**

28 In the notice of assignment issued in this action (Doc. #2), Plaintiff was advised he

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

10 **G. Warning of Possible Dismissal.**

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

18 **IT IS THEREFORE ORDERED that:**

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

21 (2) Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.  
22 Plaintiff is assessed an initial partial filing fee of \$49.16 (based on an average monthly  
23 deposit of \$245.83). All fees shall be collected and paid in accordance with this Court’s  
24 Order to the appropriate government agency filed concurrently herewith.

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

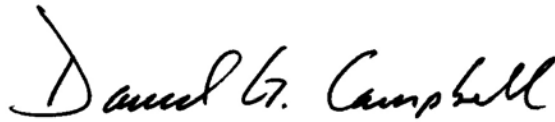
28 (4) The Clerk of Court shall enter a judgment of dismissal of this action with

1 prejudice and without further notice to Plaintiff, if Plaintiff fails to file an amended complaint  
2 within thirty (30) days of the date this Order is filed. Upon entry of judgment, the Clerk shall  
3 make an entry on the docket in this matter indicating that the dismissal of this action falls  
4 within the purview of 28 U.S.C. § 1915(g).

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

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

13 DATED this 23<sup>rd</sup> day of March, 2006.

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18 David G. Campbell  
19 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.)

## C. CAUSE OF ACTION

### COUNT I

1. The following constitutional or other federal civil right has been violated by the Defendant(s): \_\_\_\_\_  
\_\_\_\_\_.

2. Count I involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)

<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).

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4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).

\_\_\_\_\_  
\_\_\_\_\_.

5. **Administrative Remedies:**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
- b. Did you submit a request for administrative relief on Count I?  Yes  No
- c. Did you appeal your request for relief on Count I to the highest level?  Yes  No
- d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. \_\_\_\_\_  
\_\_\_\_\_.



**COUNT II**

1. The following constitutional or other federal civil right has been violated by the Defendant(s): \_\_\_\_\_  
\_\_\_\_\_.

2. Count II involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)       Mail                       Access to the court               Medical care  
 Disciplinary proceedings       Property                       Exercise of religion               Retaliation  
 Excessive force by an officer       Threat to safety               Other: \_\_\_\_\_.

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).  
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4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).  
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\_\_\_\_\_  
\_\_\_\_\_.

**5. Administrative Remedies:**

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?                       Yes       No  
b. Did you submit a request for administrative relief on Count II?                       Yes       No  
c. Did you appeal your request for relief on Count II to the highest level?                       Yes       No  
d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. \_\_\_\_\_  
\_\_\_\_\_.

**COUNT III**

1. The following constitutional or other federal civil right has been violated by the Defendant(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. Count III involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)

<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Other: _____.		

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).

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4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

5. **Administrative Remedies:**

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No

b. Did you submit a request for administrative relief on Count III?  Yes  No

c. Did you appeal your request for relief on Count III to the highest level?  Yes  No

d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. \_\_\_\_\_  
\_\_\_\_\_.

(If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.)

**D. REQUEST FOR RELIEF**

State briefly exactly what you want the Court to do for you.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF PLAINTIFF

\_\_\_\_\_  
(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

\_\_\_\_\_  
(Signature of attorney, if any)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Attorney's address & telephone number)

**ADDITIONAL PAGES**

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.