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

Michael Dean Davis,  
Plaintiff,

vs.

Charles L. Ryan, et al.,  
Defendants.

) No. CV 09-0649-PHX-DGC (MEA)

) **ORDER**

Plaintiff Michael Dean Davis, who is confined in the Arizona State Prison Complex-Eyman, in Florence, Arizona, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. (Doc.# 1, 3.)<sup>1</sup> The Court will dismiss the Complaint with leave to amend.

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

Plaintiff’s Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). The statutory fee will be collected monthly in payments of 20% of the previous month’s income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

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<sup>1</sup> “Doc.#” refers to the docket number of filings in this case.

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

2 The Court is required to screen complaints brought by prisoners seeking relief against  
3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
6 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
7 28 U.S.C. § 1915A(b)(1), (2). If the Court determines that a pleading could be cured by the  
8 allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint  
9 before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000)  
10 (*en banc*).

11 The Court should not, however, advise the litigant how to cure the defects. This type  
12 of advice “would undermine district judges’ role as impartial decisionmakers.” Pliler v.  
13 Ford, 542 U.S. 225, 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide  
14 whether the court was required to inform a litigant of deficiencies). Plaintiff’s Complaint  
15 will be dismissed for failure to state a claim with leave to amend because the Complaint may  
16 possibly be saved by amendment.

17 **III. Complaint**

18 Plaintiff alleges three counts for relief for alleged breaches of a settlement agreement  
19 in a previous case filed by Plaintiff, Davis v. Miser, CV 08-0679-PHX-DGC (MEA).  
20 Plaintiff sues the following employees of the Arizona Department of Corrections (ADC):  
21 Director Charles L. Ryan; Captain Rowland; Sergeant Campagna; and Deputy Warden  
22 Jeffrey Freeland. Plaintiff seeks injunctive and compensatory relief.

23 **IV. Failure to State a Claim Under § 1983**

24 Plaintiff brings this action pursuant to 42 U.S.C. § 1983. Section 1983 provides a  
25 cause of action against persons acting under color of state law who have violated rights  
26 guaranteed by the United States Constitution and federal law. 42 U.S.C. § 1983; see also  
27 Buckley v. City of Redding, 66 F.3d 188, 190 (9th Cir. 1995). To state a claim under § 1983,  
28 a plaintiff must allege facts supporting that (1) the conduct about which he complains was

1 committed by a person acting under the color of state law and (2) the conduct deprived him  
2 of a federal constitutional or statutory right. Wood v. Ostrander, 879 F.2d 583, 587 (9th Cir.  
3 1989). In addition, a plaintiff must allege that he suffered a specific injury as a result of the  
4 conduct of a particular defendant and he must allege an affirmative link between the injury  
5 and the conduct of that defendant. Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976). To  
6 state a claim under § 1983, a plaintiff must not only allege a violation of his constitutional  
7 rights, but he must allege that a “defendant’s actions were taken under color of state law.”  
8 Gritchen v. Collier, 254 F.3d 807, 812 (9th Cir. 2001) (citing Flagg Bros., Inc. v. Brooks, 436  
9 U.S. 149, 155-56 (1978)).

10 **A. Failure to Allege a Federal Constitutional or Statutory Violation**

11 In this case, Plaintiff sues for alleged breaches of a settlement agreement in his  
12 previous case, CV 08-0679. In CV 08-0679, Plaintiff’s only claim was that Chaplain Miser  
13 had denied Plaintiff a vegetarian diet required by his Seventh Day Adventist religion. (See  
14 doc.# 6 at 3, CV 08-0679-PHX-DGC.) A settlement conference was conducted by  
15 Magistrate Judge Duncan on January 7, 2009, and the essential terms of the settlement were  
16 set forth on the record. (Doc.# 26, CV 08-0679-PHX-DGC.) Under the terms of the  
17 settlement, the State on behalf of the defendant agreed to pay a sum in return for release of  
18 Plaintiff’s claims *with prejudice*. Plaintiff expressly acknowledged on the record that he  
19 understood that he could not seek relief for religious diet issues arising prior to January 7,  
20 2009. On January 16, 2009, the parties filed a stipulation for dismissal with prejudice, which  
21 was granted on January 20, 2009. (Doc.# 27, 28, CV 08-0679-PHX-DGC.)

22 In Count I of the current Complaint, Plaintiff alleges that Ryan as Director and  
23 Freeland as Deputy Warden have failed to comply with state law and to ensure compliance  
24 with the “laws, statues [sic], constitutions, etc. [sic]” by allowing their officers and staff to  
25 breach the settlement agreement. In Count II, Plaintiff alleges Captain Rowland is in charge  
26 of all food-related matters and is familiar with the terms of the settlement agreement.  
27 Plaintiff asserts that Rowland is aware of unidentified problems with the food, but has failed  
28 to correct these problems. Plaintiff alleges that Sergeant Campagna is a kitchen supervisor,

1 who is responsible for ensuring portions consistent with the diet menu, but is “failing in this  
2 area” especially as to medical and religious diets. In Count III, Plaintiff asserts that based  
3 on the described acts of the Defendants, ADC is failing to comply with the terms of the  
4 settlement agreement by failing to provide what is on the menu and in proper portions.

5 As an initial matter, the settlement agreement in CV 08-0679 only provided for the  
6 payment of a sum by the defendant in return for a release of Plaintiff’s claim. No other relief  
7 was included in the settlement agreement and Plaintiff fails to allege facts to support that the  
8 defendant in the earlier case did not pay the agreed sum.

9 Moreover, even if Plaintiff had alleged facts to support that the defendant in CV 08-  
10 0679 had breached the settlement agreement, failure to comply with the terms of a private  
11 settlement agreement, absent more, is not enforceable in federal court. 18 U.S.C. § 3626(c);  
12 see O’Connor v. Colvin, 70 F.3d 530, 532 (9th Cir. 1995); cf. Rushdan v. Perbula, No.  
13 07-15244, 2008 WL 4430669 (9th Cir. Sept. 8, 2008). Section 3626(a) of title 18 imposes  
14 limits on prospective relief in any civil action with respect to prison conditions. Section  
15 3626(c)(2)(A) provides that parties may enter into a “private settlement agreement”<sup>2</sup> that  
16 does not comply with the limitations on prospective relief stated in § 3626(a), so long as the  
17 terms of such agreement are not subject to court enforcement, other than reinstatement of the  
18 civil proceeding. Section 3626(c)(2)(B) further provides that a party claiming a breach of  
19 a private settlement agreement is *not* precluded from seeking any remedy available under  
20 *state* law in *state* court.

21 The settlement agreement reached in CV 08-0679-PHX-DGC constituted a “private  
22 settlement agreement.” It was an agreement reached by the parties and did not provide for  
23 court enforcement or prospective relief. Under the terms of the agreement, Plaintiff  
24 expressly agreed to dismissal of his claim with prejudice in return for the payment of a sum.  
25 To the extent that Plaintiff asserts a breach of that settlement agreement, his remedy is in

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26  
27 <sup>2</sup> A “private settlement agreement” is defined as “an agreement entered into among  
28 the parties that is not subject to judicial enforcement other than the reinstatement of the civil  
proceeding that the agreement settled.” 18 U.S.C. § 3626(g)(6).

1 state court under state law, not federal court. See Klein v. Crawford, No. , 2007 WL 782170  
2 at \*8 (D. Nev. March 12, 2007) (“Violation of a settlement agreement is a breach of contract,  
3 not a constitutional violation.”). Plaintiff accordingly fails to state a claim under § 1983 in  
4 his Complaint.

5 **B. Failure to Connect Defendants to Any Constitutional Violation**

6 Although each of the Defendants may properly be sued for constitutional violations,  
7 Plaintiff fails to state a claim against any of them. “A plaintiff must allege facts, not simply  
8 conclusions, that show that an individual was personally involved in the deprivation of his  
9 civil rights.” Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). For an individual  
10 to be liable in his official capacity, a plaintiff must allege that the official acted as a result of  
11 a policy, practice, or custom or that the official promulgated a policy, practice or custom  
12 resulting in the violation. See Cortez v. County of Los Angeles, 294 F.3d 1186, 1188 (9th  
13 Cir. 2001). Further, there is no *respondeat superior* liability under § 1983, so a defendant’s  
14 position as the supervisor of a someone who allegedly violated a plaintiff’s constitutional  
15 rights does not make him liable. Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 691 (1978);  
16 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor in his individual capacity,  
17 “is only liable for constitutional violations of his subordinates if the supervisor participated  
18 in or directed the violations, or knew of the violations and failed to act to prevent them.”  
19 Taylor, 880 F.2d at 1045.

20 Plaintiff has not alleged facts to support that his constitutional rights were violated  
21 pursuant to a policy, practice, or custom promulgated or endorsed by any Defendant. That  
22 is, Plaintiff fails to allege facts to support that any Defendant enacted or enforced a policy,  
23 custom, or practice that resulted in the denial of Plaintiff’s constitutional rights. Further,  
24 Plaintiff has not alleged facts to support that any of the Defendants directly violated his  
25 constitutional rights or that any Defendant was aware that Plaintiff’s rights were being  
26 violated but failed to act. Plaintiff accordingly fails to state a constitutional claim against any  
27 of the Defendants.

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1           **C.     Violation of Religious Rights**

2           It appears that Plaintiff may be seeking to allege violation of his right to receive a  
3 religious diet based on conduct occurring after the date of the settlement in CV 08-0679-  
4 PHX-DGC. Plaintiff may thus be attempting to allege a violation of his First Amendment  
5 rights or violation under the Religious Land Use and Institutionalized Persons Act  
6 (RLUIPA), 42 U.S.C. §§ 2000cc - 2000cc-5. The First Amendment prohibits government  
7 interference with the free exercise of religion. U.S. Const. amend. I. Nevertheless, free  
8 exercise rights are “necessarily limited by the fact of incarceration, and may be curtailed in  
9 order to achieve legitimate correctional goals or to maintain prison security.” O’Lone v.  
10 Shabazz, 482 U.S. 342, 348 (1987). To state a First Amendment free exercise violation, a  
11 plaintiff must show that the religious practice at issue satisfies two criteria: (1) the “proffered  
12 belief must be sincerely held” and (2) “the claim must be rooted in religious belief, not in  
13 ‘purely secular’ philosophical concerns.” Malik v. Brown, 16 F.3d 330, 333 (9th Cir. 1994)  
14 (internal citations omitted); Shakur v. Schriro, 514 F.3d 878, 885 (9th Cir. 2008). RLUIPA  
15 prohibits the government from imposing a substantial burden on the religious exercise of a  
16 confined person, unless the government establishes that the burden furthers a “compelling  
17 governmental interest” and does so by “the least restrictive means.” 42 U.S.C.  
18 § 2000cc-1(a)(1)-(2). “[A] ‘substantial burden’ on ‘religious exercise’ must impose a  
19 significantly great restriction or onus upon such exercise.” Warsoldier v. Woodford, 418  
20 F.3d 989, 995 (9th Cir. 2005) (quotations omitted). An inmate’s religious exercise is  
21 substantially burdened “‘where the state . . . denies [an important benefit] because of conduct  
22 mandated by religious belief, thereby putting substantial pressure on an adherent to modify  
23 his behavior and to violate his belief.’” Id.

24           In his Complaint, Plaintiff makes only vague and conclusory assertions regarding  
25 meals and the portions. He fails to set forth specific facts regarding when, how, and by  
26 whom any violation of the constitutional right to a religious diet has occurred or has  
27 burdened his religious exercise. Plaintiff therefore fails to state a claim for violation of his  
28 First Amendment or RLUIPA rights.

1 **V. Leave to Amend**

2 For the foregoing reasons, Plaintiff’s Complaint will be dismissed for failure to state  
3 a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first  
4 amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail  
5 Plaintiff a court-approved form to use for filing a first amended complaint. If Plaintiff fails  
6 to use the court-approved form, the Court may strike the amended complaint and dismiss this  
7 action without further notice to Plaintiff.

8 Plaintiff must clearly designate on the face of the document that it is the “First  
9 Amended Complaint.” The first amended complaint must be retyped or rewritten in its  
10 entirety on the court-approved form and may not incorporate any part of the original  
11 Complaint by reference. Plaintiff may include only one claim per count.

12 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963  
13 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,  
14 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as  
15 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original  
16 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d  
17 565, 567 (9th Cir. 1987).

18 **VI. Warnings**

19 **A. Release**

20 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.  
21 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay  
22 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result  
23 in dismissal of this action.

24 **B. Address Changes**

25 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
26 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
27 relief with a notice of change of address. Failure to comply may result in dismissal of this  
28 action.

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**C. Copies**

Plaintiff must submit an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice to Plaintiff.

**D. Possible “Strike”**

Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails to file an amended complaint correcting the deficiencies identified in this Order, the dismissal will count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

**E. Possible Dismissal**

If Plaintiff fails to timely comply with every provision of this Order, including these warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any order of the Court).

**IT IS ORDERED:**

- (1) Plaintiff’s Application to Proceed *In Forma Pauperis*, filed with the Complaint, is **granted**. (Doc.# 3.)
- (2) As required by the accompanying Order to the appropriate government agency, Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing fee.
- (3) The Complaint (doc.# 1) is **dismissed** for failure to state a claim. Plaintiff has **30 days** from the date this Order is filed to file a first amended complaint in compliance with this Order.

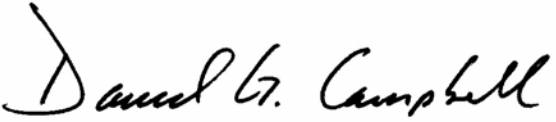


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(4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action with prejudice that states that the dismissal counts as a “strike” under 28 U.S.C. § 1915(g).

(5) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil rights complaint by a prisoner.

DATED this 29<sup>th</sup> day of April, 2009.



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David G. Campbell  
United States District Judge

**Instructions for a Prisoner Filing a Civil Rights Complaint  
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
  
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
  
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
  
4. The Filing Fee. The filing fee for this action is \$350.00. If you are unable to immediately pay the filing fee, 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 additional instructions.
  
5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.
  
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$350 filing fee or the application to proceed *in forma pauperis* to:**

Phoenix & Prescott Divisions:  
U.S. District Court Clerk  
U.S. Courthouse, Suite 130  
401 West Washington Street, SPC 10  
Phoenix, Arizona 85003-2119

**OR**

Tucson Division:  
U.S. District Court Clerk  
U.S. Courthouse, Suite 1500  
405 West Congress Street  
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants 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.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed *in forma pauperis*). Each original document (except the initial complaint and application 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 defendants and the address to which it was mailed. See Fed. R. Civ. P. 5(a), (d). Any document received by the Court that 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 \_\_\_\_\_ (month, day, year) to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Attorney for Defendant(s)

\_\_\_\_\_  
(Signature)

9. 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. You may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

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

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

## 12. Completing the Civil Rights Complaint Form.

### **HEADING:**

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may 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. Location. 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 separate pages labeled “2-A,” “2-B,” etc., at the bottom. 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 each defendant 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 right 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.

3. Supporting Facts. After you have identified which civil right was violated, you must 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 must identify which defendant did what act. You also should 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. You must exhaust any available administrative remedies before you file a civil rights complaint. See 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why 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. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

**FINAL NOTE**

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form 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

**(Failure to notify the Court of your change of address may result in dismissal of this action.)**

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

\_\_\_\_\_  
(Full Name of Plaintiff) Plaintiff,

vs.

CASE NO. \_\_\_\_\_  
(To be supplied by the Clerk)

(1) \_\_\_\_\_  
(Full Name of Defendant)

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

Defendant(s).

Check if there are additional Defendants and attach page 1-A listing them.

**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:
  - 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
  - 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
  - Other: \_\_\_\_\_
2. Institution/city where violation occurred: \_\_\_\_\_

## B. DEFENDANTS

1. Name of first Defendant: \_\_\_\_\_ . The first Defendant is employed as:  
\_\_\_\_\_ at \_\_\_\_\_ .  
(Position and Title) (Institution)
2. Name of second Defendant: \_\_\_\_\_ . The second Defendant is employed as:  
\_\_\_\_\_ at \_\_\_\_\_ .  
(Position and Title) (Institution)
3. Name of third Defendant: \_\_\_\_\_ . The third Defendant is employed as:  
\_\_\_\_\_ at \_\_\_\_\_ .  
(Position and Title) (Institution)
4. Name of fourth Defendant: \_\_\_\_\_ . The fourth Defendant is employed as:  
\_\_\_\_\_ at \_\_\_\_\_ .  
(Position and Title) (Institution)

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

## C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner?  Yes  No
2. If yes, how many lawsuits have you filed? \_\_\_\_\_. Describe the previous lawsuits:
  - a. First prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
  - b. Second prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
  - c. Third prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_

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

**D. CAUSE OF ACTION**

**COUNT I**

1. State the constitutional or other federal civil right that was violated: \_\_\_\_\_  
\_\_\_\_\_.

2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.  
 Basic necessities                       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 I. Describe exactly what **each Defendant** did or did not do that violated 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 were 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 at any level, briefly explain why you did not. \_\_\_\_\_  
\_\_\_\_\_.





**COUNT III**

1. State the constitutional or other federal civil right that was violated: \_\_\_\_\_  
\_\_\_\_\_.

2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<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"/> 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 III. Describe exactly what **each Defendant** did or did not do that violated 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 were 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 at any 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.

**E. REQUEST FOR RELIEF**

State the relief you are seeking:

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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)

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

**ADDITIONAL PAGES**

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form 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 all pages.