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NOT FOR PUBLICATION

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

Corey Demar Shivers,)	No. CV 10-0796-PHX-GMS (JRI)
Plaintiff,)	ORDER
vs.)	
City of Phoenix Police Department, et al.,)	
Defendants.)	
_____)	

Plaintiff Corey Demar Shivers, who is confined in the Fourth Avenue Jail in Phoenix, Arizona, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983, which the Court dismissed with leave to amend.¹ (Doc. 1, 5.)² Plaintiff has filed a First Amended Complaint. (Doc. 7.) The Court will dismiss the First Amended Complaint with leave to amend.

I. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against

¹ Plaintiff has filed three other civil rights cases in federal court, Shivers v. Phoenix Police Dep’t, No. CV09-1243-PHX-GMS (JRI); Shivers v. Phoenix Police Dep’t, No. CV09-2285-PHX-GMS (JRI); and Shivers v. Phoenix Police Dep’t, No. CV10-1175-PHX-GMS (JRI).

² “Doc.” refers to the docket number of filings in this case.

1 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
2 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
3 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
4 be granted, or that seek monetary relief from a defendant who is immune from such relief.
5 28 U.S.C. § 1915A(b)(1), (2).

6 A pleading must contain a “short and plain statement of the claim *showing* that the
7 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
8 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
9 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
10 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
11 statements, do not suffice.” Id.

12 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
13 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
14 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
15 that allows the court to draw the reasonable inference that the defendant is liable for the
16 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
17 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
18 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
19 allegations may be consistent with a constitutional claim, a court must assess whether there
20 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

21 If the Court determines that a pleading could be cured by the allegation of other facts,
22 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
23 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
24 should not, however, advise the litigant how to cure the defects. This type of advice “would
25 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,
26 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was
27 required to inform a litigant of deficiencies). Plaintiff’s First Amended Complaint will be
28 dismissed with leave to amend because Plaintiff may be able to amend it to state a claim.

1 **II. First Amended Complaint**

2 Plaintiff alleges three claims for violation of his Fourteenth Amendment rights and
3 violation of his state constitutional rights in connection with criminal proceedings in state
4 court, case# CR2009-13488.³ Plaintiff sues the City of Phoenix Police Department, the
5 Phoenix Police Department's South Mountain Precinct, Phoenix Police Officer Tyler Kamp,
6 and the City of Phoenix. Plaintiff seeks injunctive, compensatory, and punitive relief.

7 On March 25, 2010, Plaintiff was convicted by a jury in CR2009-13488 of threatening
8 or intimidating to cause physical injury to another person while a member of a criminal street
9 gang. In his First Amended Complaint, Plaintiff alleges the following facts: On May 29,
10 2009, Officer Kamp falsely testified in grand jury proceedings that he (Kamp) had personally
11 confirmed that text messages at issue came from Plaintiff's cell phone, which resulted in
12 Plaintiff's indictment in CR2009-13488.

13 **III. Failure to State a Claim**

14 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the
15 conduct about which he complains was committed by a person acting under the color of state
16 law and (2) the conduct deprived him of a federal constitutional or statutory right. Wood v.
17 Ostrander, 879 F.2d 583, 587 (9th Cir. 1989). In addition, a plaintiff must allege that he
18 suffered a specific injury as a result of the conduct of a particular defendant and he must
19 allege an affirmative link between the injury and the conduct of that defendant. Rizzo v.
20 Goode, 423 U.S. 362, 371-72, 377 (1976).

21 **A. City of Phoenix, Phoenix Police Department and South Mountain Precinct**

22 Plaintiff sues the City of Phoenix, the City of Phoenix Police Department, and the
23

24 ³ See <http://www.courtminutes.maricopa.gov/docs/Criminal/032010/m4154305.pdf>.
25 On June 18, 2010, the Superior Court suspended imposition of sentence and placed Plaintiff
26 on probation for three years. See <http://www.courtminutes.maricopa.gov/docs/Criminal/062010/m4271331.pdf>.
27 On May 4, 2010, Plaintiff was convicted of threatening or intimidating to promote, further, or assist the interest of a criminal street gang and assisting
28 a criminal street gang in CR2009-130017. See <http://www.courtminutes.maricopa.gov/docs/Criminal/052010/m4214514.pdf>. It appears that a third case remains pending against
Plaintiff in Superior Court, CR2010-005937.

1 Phoenix Police Department’s South Mountain Precinct. A municipal police department is
2 not a “person” within the meaning of § 1983. See e.g., Petaway v. City of New Haven Police
3 Dep’t, 541 F. Supp.2d 504 (D. Conn. 2008); Pahle v. Colebrookdale Tp., 227 F. Supp.2d 361
4 (E.D. Pa. 2002). Similarly, a police precinct is not a “person” within the meaning of § 1983,
5 but merely a subdivision of the police department, which in turn is municipal agency. See
6 Wingate v. New York City, No. CV08-217 (ARR), 2008 WL 203313 at *2 (E.D.N.Y. Jan.
7 23, 2008); Wilson v. City of New York, 800 F. Supp.1098, 1101 (E.D.N.Y. 1992). However,
8 a municipality is a “person” for purposes of § 1983, i.e., a municipality such as a city or
9 county, may be sued. See Leatherman v. Tarrant County Narcotics Intelligence and
10 Coordination Unit, 507 U.S. 163, 166 (1993); Monell v. Dep’t of Soc. Servs., 436 U.S. 658,
11 694 (1978). To state a claim against a municipality under § 1983, a plaintiff must allege facts
12 to support that his constitutional rights were violated pursuant to a policy or custom of the
13 municipality. Cortez v. County of Los Angeles, 294 F.3d 1186, 1188 (9th Cir. 2001) (citing
14 Monell, 436 U.S. at 690-91); Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th
15 Cir. 1989)). Thus, a municipality may not be sued solely because an injury was inflicted by
16 one of its employees or agents. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th
17 Cir. 2006). Therefore, a § 1983 claim against a municipal defendant “cannot succeed as a
18 matter of law” unless a plaintiff: (1) contends that the municipal defendant maintains a policy
19 or custom pertinent to the plaintiff’s alleged injury; and (2) explains how such policy or
20 custom caused the plaintiff’s injury. Sadoski v. Mosley, 435 F.3d 1076, 1080 (9th Cir. 2006)
21 (affirming dismissal of a municipal defendant pursuant to Fed. R. Civ. P. 12(b)(6)).

22 Neither the Phoenix Police Department, nor its South Mountain Precinct, are proper
23 Defendants and they will be dismissed. To the extent that Plaintiff sues the City of Phoenix,
24 he fails to allege facts to support that the City of Phoenix maintained a policy or custom that
25 resulted in the violation of Plaintiff’s federal constitutional rights or to explain how his
26 injuries were caused by any municipal policy or custom. Rather, Plaintiff merely alleges that
27 Kamp violated police policies and rules, presumably by falsely testifying. That is, Plaintiff
28 does not allege facts to support that the City maintains an unconstitutional policy or rule, but

1 only alleges that Kamp failed to comply with constitutional policies and rules. Kamp's
2 alleged non-compliance with police policies and rules does not render the City liable for his
3 non-compliance. Accordingly, Plaintiff fails to state a claim against the City of Phoenix and
4 it will also be dismissed.

5 **B. Federal Law Claims**

6 In each Count of his First Amended Complaint, Plaintiff alleges that his
7 Fourteenth Amendment rights were violated by Detective Kamp falsely testifying before the
8 grand jury that he had personally confirmed text messages at issue in CR2009-134188 came
9 from Plaintiff's cell phone. Plaintiff contends that Kamp lied to the grand jury in order to
10 secure Plaintiff's indictment because Plaintiff is African-American and Plaintiff's brother
11 had previously sued Kamp, another officer, and the City. The Court construes these
12 allegations as asserting claims for retaliation, selective prosecution, and malicious
13 prosecution in violation of Plaintiff's federal constitutional rights.

14 **1. Retaliation**

15 To state a constitutional claim for retaliation, a plaintiff must allege that a defendant
16 acting under color of state law took adverse action against him because he engaged in
17 protected conduct, that the adverse action was not narrowly tailored to advance legitimate
18 goals, and that the adverse action chilled the plaintiff's exercise of his First Amendment
19 rights or caused him to suffer more than minimal harm. Rhodes v. Robinson, 408 F.3d 559,
20 567-58 (9th Cir. 2005); see also Hines v. Gomez, 108 F.3d 265, 267 (9th Cir. 1997).

21 Plaintiff asserts that Kamp retaliated against him based on (1) another criminal
22 case filed against Plaintiff, CR2009-130017, (2) Plaintiff's his race, and (3) a civil suit filed
23 by Plaintiff's brother against Kamp. Plaintiff fails to sufficiently allege facts to support that
24 Kamp retaliated against Plaintiff because *Plaintiff* engaged in constitutionally-protected
25 conduct. Therefore, Plaintiff fails to state a claim for retaliation.

26 **2. Selective Prosecution**

27 Claims of selective prosecution are judged according to equal protection standards.
28 Wayte v. United States, 470 U.S. 598, 608 (1985); see Rosenbaum v. City and County of San

1 Francisco, 484 F.3d 1142, 1152-53 (9th Cir. 2007); Ortega Melendres v. Arpaio, 598 F.
2 Supp.2d 1025, 1037 (D. Ariz. 2009); Sherman v. Brown, No. 2:06-cv-00911-JKS, 2009 WL
3 2190074 at *9 (E.D. Cal. July 22, 1009). To state a selective prosecution claim under the
4 Equal Protection Clause, a defendant must allege that others who were similarly situated
5 were not prosecuted and that his prosecution was based on an impermissible motive, such as
6 race or religion. Wayte, 470 U.S. at 608; United States v. Dumas, 64 F.3d 1427, 1431 (9th
7 Cir. 1995); Dal Molin v. County of Napa, 266 Fed. Appx. 585 (9th Cir. 2008) (“to maintain
8 a claim of selective prosecution, a plaintiff must show that similarly situated individuals were
9 not prosecuted unless they were members of a targeted class.”).

10 Plaintiff asserts that Kamp falsely testified in grand jury proceedings so that
11 Plaintiff would be indicted. Plaintiff fails to adequately allege facts to support that Kamp’s
12 testimony was false or that the allegedly false testimony resulted in Plaintiff’s indictment.
13 Further, while Plaintiff alleges Kamp falsely testified to the grand jury based on Plaintiff’s
14 race, Plaintiff does not allege that similarly-situated individuals are not prosecuted for the
15 same conduct with which Plaintiff was charged. For these reasons, Plaintiff fails to state a
16 claim for selective prosecution.

17 **3. Malicious Prosecution**

18 To state a claim for malicious prosecution, a plaintiff must allege facts to support that
19 a defendant prosecuted him with malice and without probable cause for the purpose of
20 denying equal protection or another specific constitutional right. Awabdy v. City of
21 Adelanto, 368 F.3d 1062, 1068 (9th Cir. 2004) (citing Freeman v. City of Santa Ana, 68 F.3d
22 1180, 1189 (9th Cir. 1995)). Malicious prosecution actions are not limited to suits against
23 prosecutors but may be brought against persons who have wrongfully caused the charges to
24 be filed. Id. (citing Galbraith v. County of Santa Clara, 307 F.3d 1119, 1126-27 (9th Cir.
25 2002)). However, an individual bringing a malicious prosecution claim must also establish
26 that the prosecution terminated in his favor. See Heck v. Humphrey, 512 U.S. 477, 484-85
27 (1994); Awabdy, 368 F.3d at 1068; Braunstein v. United States Postal Serv., No. 05-16390,
28 2007 WL 1112620 at *1 (9th Cir. Apr. 12, 2007).

1 In this case, Plaintiff has not alleged or shown that the alleged malicious prosecution
2 terminated in his favor, such as by acquittal or reversal on appeal. For that reason, Plaintiff
3 fails to state a claim for malicious prosecution.

4 **C. State Law Claims**

5 In each Count of the First Amended Complaint, Plaintiff asserts violations of his state
6 constitutional rights. Where a federal court has original jurisdiction over an action, such as
7 a case asserting violations of 42 U.S.C. § 1983, the doctrine of pendent jurisdiction allows
8 a federal court to exercise “pendent” or “supplemental” jurisdiction over closely-related state
9 law claims. Bahrampour v. Lampert, 356 F.3d 969, 978 (9th Cir. 2004) (citing 28 U.S.C.
10 § 1367(a)). Because Plaintiff has failed to state a federal constitutional claim that has
11 accrued in his First Amended Complaint, the Court declines to exercise jurisdiction over any
12 state law claim and will dismiss such claims without prejudice. 28 U.S.C. § 1367(c).

13 **V. Leave to Amend**

14 For the foregoing reasons, Plaintiff’s First Amended Complaint will be dismissed for
15 failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff may
16 submit a second amended complaint to cure the deficiencies outlined above. The Clerk of
17 Court will mail Plaintiff a court-approved form to use for filing a second amended complaint.
18 If Plaintiff fails to use the court-approved form, the Court may strike the amended complaint
19 and dismiss this action without further notice to Plaintiff.

20 Plaintiff must clearly designate on the face of the document that it is the “Second
21 Amended Complaint.” The second amended complaint must be retyped or rewritten in its
22 entirety on the court-approved form and may not incorporate any part of any prior complaint
23 by reference. Plaintiff may include only one claim per count.

24 A second amended complaint supersedes every prior complaint. Ferdik v. Bonzelet,
25 963 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d
26 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat every prior complaint as
27 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in a prior
28 complaint is waived if it is not raised in a second amended complaint. King v. Atiyeh, 814

1 F.2d 565, 567 (9th Cir. 1987).

2 **VI. Warnings**

3 **A. Release**

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

8 **B. Address Changes**

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

13 **C. Copies**

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

17 **D. Possible “Strike”**

18 Because the First Amended Complaint has been dismissed for failure to state a claim,
19 if Plaintiff fails to file an amended complaint correcting the deficiencies identified in this
20 Order, the dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C.
21 § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action or appeal
22 a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more
23 prior occasions, while incarcerated or detained in any facility, brought an action or appeal
24 in a court of the United States that was dismissed on the grounds that it is frivolous,
25 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is
26 under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

27 **E. Possible Dismissal**

28 If Plaintiff fails to timely comply with every provision of this Order, including these

1 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at
2 1260-61 (a district court may dismiss an action for failure to comply with any order of the
3 Court).

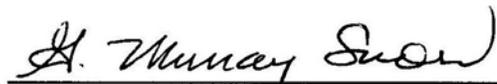
4 **IT IS ORDERED:**

5 (1) The First Amended Complaint (doc. 7) is **dismissed** for failure to state a claim.
6 Plaintiff has **30 days** from the date this Order is filed to file a second amended complaint in
7 compliance with this Order.

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

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

13 DATED this 14th day of July, 2010.

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16 _____
17 G. Murray Snow
18 United States District Judge
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**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.

_____.

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.
 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 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.

_____.

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:

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 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.