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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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Larry Lee Moore,

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No. CV-10-1495-PHX-GMS (JRI)

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Plaintiff,

)

**ORDER**

11

vs.

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Maricopa County Sheriff's Office,

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Defendant.

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**I. Background**

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In a January 18, 2012 Order, the Court, among others things, granted Plaintiff Larry Lee Moore *in forma pauperis* status and dismissed his Complaint and "Amended Complaint" for failure to comply with Local Rule of Civil Procedure 3.4. Although the Court dismissed the Complaint and "Amended Complaint" for failure to comply with Local Rule of Civil Procedure 3.4, the Court noted that there were additional defects in Plaintiff's Complaint and "Amended Complaint." The Court gave Plaintiff 30 days to file a second amended complaint on a court-approved form.

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On February 9, 2012, Plaintiff filed a "Re-Filed Complaint" (Doc. 28) and attached to it a "Cover Sheet." The Court will dismiss the "Re-Filed Complaint" and will give Plaintiff a final opportunity to file a second amended complaint.

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**II. Statutory Screening of Prisoner Complaints**

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The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.

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

5 **III. Dismissal of “Re-Filed Complaint”**

6 In his “Cover Sheet,” Plaintiff requests that the Court “use the original filed  
7 Complaint(s) as the Official filed Document(s). To Correct Its Errors.” In the “Re-Filed  
8 Complaint,” Plaintiff requests that the Court “refer to the original filed Complaint(s) in all  
9 matters.” In each of the seven Counts in the “Re-Filed Complaint,” Plaintiff directs the Court  
10 to “See: Original Filed Complaint” rather than state the constitutional or other federal right  
11 that was allegedly violated, identify the issue involved in the count, state his supporting facts,  
12 or identify his injury. Similarly, in his Request for Relief, he directs the Court to “See:  
13 Original Filed Complaint(s) (Requests),” “plus compensation (settlement(s)) Hart v. Hill as  
14 a Pretrial Detainee (Graves v. Arpaio).”

15 Plaintiff’s “Re-Filed Complaint” does not comply with the Court’s January 18th  
16 Order, which specifically instructed Plaintiff that the second amended complaint must be  
17 retyped or rewritten in its entirety on the court-approved form and may not incorporate any  
18 part of the Complaint or “Amended Complaint” by reference.

19 In addition, the “Re-Filed Complaint” does not comply with Local Rule of Civil  
20 Procedure 3.4, which requires in part that “[a]ll complaints . . . by incarcerated persons shall  
21 be signed and legibly written or typewritten on forms approved by the Court and in  
22 accordance with the instructions provided with the forms.” Plaintiff’s “Re-Filed Complaint”  
23 is filed on this Court’s court-approved form, but does not substantially comply with the  
24 instructions provided with the form. Among other things, the instructions state:

25 Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that  
26 complaints by incarcerated persons must be filed on the  
27 court-approved form. The form must be typed or neatly  
28 handwritten. **The form must be completely filled in to the  
extent applicable.**

. . . .

1           You should follow these instructions carefully. Failure to do so  
2           may result in your complaint being stricken or dismissed. **All**  
3           **questions must be answered concisely in the proper space on**  
4           **the form.**

(Emphasis added).

5           Section D of the court-approved form requires Plaintiff to state “the constitutional or  
6           other federal civil right that was violated” in each count, identify the issue involved, state the  
7           facts supporting that count, and indicate how he was injured. In the section for “Supporting  
8           Facts” for each claim, the form requires Plaintiff to “[d]escribe exactly what each Defendant  
9           did or did not do that violated your rights. State the facts clearly in your own words without  
10          citing legal authority or arguments.” Plaintiff has failed to do so. Instead, Plaintiff simply  
11          directs the Court to “See: Original Filed Complaint.”

12          Because Plaintiff’s “Re-Filed Complaint” does not comply with the January 18th  
13          Order or the requirements in the court-approved form and the instructions provided with it,  
14          the Court will dismiss without prejudice the “Re-Filed Complaint,” with leave to amend, in  
15          order for Plaintiff to file an amended complaint that complies with Local Rule 3.4, the  
16          Court’s January 18th Order, and this Order.

17          **III. Leave to Amend**

18          For the foregoing reasons, Plaintiff’s “Re-Filed Complaint” will be dismissed for  
19          failure to comply with the Court’s January 18th Order and Local Rule 3.4. Within 30 days,  
20          Plaintiff may submit a second amended complaint on a court-approved form. The Clerk of  
21          Court will mail Plaintiff a court-approved form to use for filing a second amended complaint.  
22          If Plaintiff fails to use the court-approved form, the Court may strike the second amended  
23          complaint and dismiss this action without further notice to Plaintiff.

24          Plaintiff must clearly designate on the face of the document that it is the “Second  
25          Amended Complaint.” **The second amended complaint must be retyped or rewritten in**  
26          **its entirety on the court-approved form and may not incorporate any part of the**  
27          **Complaint, the “Amended Complaint,” or the “Re-Filed Complaint” by reference.**  
28          Plaintiff may include only one claim per count.

1 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements  
2 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of  
3 the Defendant who violated the right; (3) exactly what that Defendant did or failed to do;  
4 (4) how the action or inaction of that Defendant is connected to the violation of Plaintiff's  
5 constitutional right; and (5) what specific injury Plaintiff suffered because of that  
6 Defendant's conduct. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).

7 Plaintiff must repeat this process for each person he names as a Defendant. If Plaintiff  
8 fails to affirmatively link the conduct of each named Defendant with the specific injury  
9 suffered by Plaintiff, the allegations against that Defendant will be dismissed for failure to  
10 state a claim. **Conclusory allegations that a Defendant or group of Defendants have  
11 violated a constitutional right are not acceptable and will be dismissed.**

12 A second amended complaint supersedes the Complaint, the "Amended Complaint,"  
13 and the "Re-Filed Complaint." Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992); Hal  
14 Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990). After  
15 amendment, the Court will treat the Complaint, the "Amended Complaint," and the "Re-Filed  
16 Complaint" as nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised  
17 in the Complaint, the "Amended Complaint, or the "Re-Filed Complaint" is waived if it is  
18 not raised in a second amended complaint. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.  
19 1987).

#### 20 **IV. Warnings**

##### 21 **A. Address Changes**

22 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
23 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
24 relief with a notice of change of address. Failure to comply may result in dismissal of this  
25 action.

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**B. 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.

**C. 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).

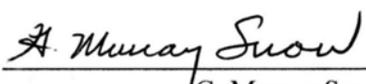
**IT IS ORDERED:**

(1) The “Re-Filed Complaint” (Doc. 28) is **dismissed** for failure to comply with the Court’s January 18, 2012 Order and Local Rule of Civil Procedure 3.4. Plaintiff has **30 days** from the date this Order is filed to file a second amended complaint in compliance with this Order, the January 18th Order, and Local Rule of Civil Procedure 3.4..

(2) 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 without prejudice and without further notice to Plaintiff.

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

DATED this 14th day of February, 2012.

  
\_\_\_\_\_  
G. Murray Snow  
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.