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

Salam Alkhafaji,)	No. CV 11-741-PHX-DGC (MEA)
Plaintiff,)	ORDER
vs.)	
County of Maricopa, et al.,)	
Defendants.)	

I. Procedural History

On April 14, 2011, Plaintiff Salam Alkhafaji, who is confined in the Arizona State Prison Complex-Lewis in Buckeye, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed *In Forma Pauperis*. In an April 27, 2011 Order, the Court denied the deficient Application to Proceed because Plaintiff had not included the second page of the court-approved form and had not submitted a certified six-month trust account statement. The Court gave Plaintiff 30 days to either pay the filing fee or file a complete Application to Proceed *In Forma Pauperis*.

On May 6, 2011, Plaintiff filed a second Application to Proceed *In Forma Pauperis*. In a May 23, 2011 Order, the Court denied the deficient Application to Proceed because Plaintiff had not submitted a certified six-month trust account statement, as required. The Court instructed Plaintiff to obtain a certified copy of his trust fund account statement from the Arizona Department of Corrections (ADOC) Central Office. The Court gave Plaintiff

1 30 days to either pay the filing fee or file a complete Application to Proceed *In Forma*
2 *Pauperis*.

3 On June 3, 2011, Plaintiff filed a third Application to Proceed *In Forma Pauperis*.
4 In a June 22, 2011 Order, the Court denied the deficient Application to Proceed because
5 Plaintiff had still not provided the Court with a certified six-month trust account statement,
6 as required. The Court again instructed Plaintiff to obtain a copy of his trust fund account
7 statement from the ADOC's Central Office. The Court gave Plaintiff a final 30 days to either
8 pay the filing fee or file a complete Application to Proceed *In Forma Pauperis*.

9 On July 22, 2011, Plaintiff filed a "Motion to Accept Plaintiff[s] Application to
10 Proceed *In Forma Pauperis*" (Doc. 11) and lodged an Application to Proceed *In Forma*
11 *Pauperis* (Doc. 12).

12 **II. Motion to Accept Application to Proceed**

13 In his "Motion to Accept Plaintiff[s] Application to Proceed *In Forma Pauperis*,"
14 Plaintiff requests that the Court accept his Application to Proceed without the certified
15 account statement. Plaintiff states that he has formally requested his six-month account
16 statement from the ADOC's Central Office three times and the Central Office has "been
17 unresponsive." Plaintiff avers that the Correctional Officer who signed the "Certificate of
18 Correctional Official as to Status of Applicant's Trust Account" portion of Plaintiff's lodged
19 Application to Proceed called ADOC's Central Office, but, to date, the ADOC's Central
20 Office has not provided the account statement. Plaintiff contends that he has done all he can
21 to comply with the Court's Orders.

22 The Court, in its discretion, will grant Plaintiff's Motion and will accept Plaintiff's
23 Application to Proceed *In Forma Pauperis* without a certified six-month trust account
24 statement. The Court will direct the Clerk of Court to docket the lodged Application to
25 Proceed.

26 **III. Fourth Application to Proceed *In Forma Pauperis* and Filing Fee**

27 Plaintiff's fourth Application to Proceed *In Forma Pauperis* will be granted. 28
28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.

1 § 1915(b)(1). The Court will assess an initial partial filing fee of \$6.00.¹ The remainder of
2 the fee will be collected monthly in payments of 20% of the previous month's income each
3 time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will
4 enter a separate Order requiring the appropriate government agency to collect and forward
5 the fees according to the statutory formula.

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

7 The Court is required to screen complaints brought by prisoners seeking relief against
8 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
9 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
10 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
11 be granted, or that seek monetary relief from a defendant who is immune from such relief.
12 28 U.S.C. § 1915A(b)(1), (2).

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

19 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
20 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
21 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
22 that allows the court to draw the reasonable inference that the defendant is liable for the
23 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
24 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
25 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
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27 ¹The Court has calculated the initial partial filing fee based on the information
28 provided by the Correctional Officer in the “Certificate of Correctional Official as to Status
of Applicant’s Trust Account.”

1 allegations may be consistent with a constitutional claim, a court must assess whether there
2 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

3 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
4 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
5 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
6 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,
7 94 (2007) (*per curiam*)).

8 If the Court determines that a pleading could be cured by the allegation of other facts,
9 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
10 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
11 should not, however, advise the litigant how to cure the defects. This type of advice “would
12 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,
13 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was
14 required to inform a litigant of deficiencies). The Court will dismiss Plaintiff’s Complaint
15 for failure to state a claim, but because the Complaint may possibly be saved by amendment,
16 will dismiss the Complaint with leave to amend.

17 **V. Complaint**

18 In his three-count Complaint, Plaintiff sues the following Defendants: the State of
19 Arizona, Maricopa County; Maricopa County Sheriff Joseph Arpaio; the Commander of
20 Maricopa County Lower Buckeye Jail; Detention Officer Rain; Sergeants Roger, Chris,
21 Oddly, and Striaight; Doctors Spiritu-Denrois and Dyapeau-Pam; and a variety of unknown
22 individuals, corporations, and political subdivisions.

23 Plaintiff alleges that he was subjected to a “misuse of force and excessive force”
24 (Count One), denied medical care (Count Two), and denied due process (Count Three). In
25 his Request for Relief, Plaintiff seeks declaratory and injunctive relief and monetary
26 damages.

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1 **VI. Failure to State a Claim**

2 Although *pro se* pleadings are liberally construed, Haines v. Kerner, 404 U.S. 519,
3 520-21 (1972), conclusory and vague allegations will not support a cause of action. Ivey v.
4 Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). Further,
5 a liberal interpretation of a civil rights complaint may not supply essential elements of the
6 claim that were not initially pled. Id.

7 **A. Improper Defendant**

8 The State of Arizona is not a proper Defendant. Under the Eleventh Amendment to
9 the Constitution of the United States, a state may not be sued in federal court without its
10 consent. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984); Taylor v.
11 List, 880 F.2d 1040, 1045 (9th Cir. 1989). Therefore, the Court will dismiss Defendant State
12 of Arizona.

13 **B. Failure to Link Defendants with Injuries**

14 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
15 injury as a result of specific conduct of a defendant and show an affirmative link between the
16 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377
17 (1976). There is no *respondeat superior* liability under § 1983. Therefore, a defendant's
18 position as the supervisor of persons who allegedly violated Plaintiff's constitutional rights
19 does not give rise to liability. Monell v. New York City Department of Social Services, 436
20 U.S. 658, 691-92 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor
21 v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). "Because vicarious liability is inapplicable to
22 Bivens and § 1983 suits, a plaintiff must plead that each Government-official defendant,
23 through the official's own individual actions, has violated the Constitution." Iqbal, 129 S.
24 Ct. at 1948.

25 Plaintiff has not alleged that Defendants Arpaio and Lower Buckeye Jail Commander
26 personally participated in a deprivation of Plaintiff's constitutional rights, were aware of a
27 deprivation and failed to act, or formed policies that resulted in Plaintiff's injuries. Plaintiff
28 has made no allegations at all against these Defendants. Plaintiff also makes no allegations

1 against the various unknown individuals, corporations, and political subdivisions.² Thus, the
2 Court will dismiss without prejudice Defendant Arpaio, Defendant Lower Buckeye Jail
3 Commander, and the unknown individuals, corporations, and political subdivisions.

4 In addition, the actions of individuals may support municipal liability only if the
5 employees were acting pursuant to an official policy or custom of the municipality. Botello
6 v. Gammick, 413 F.3d 971, 978-79 (9th Cir. 2005). A plaintiff must allege, as a matter of
7 law, that the policy or custom of the municipality caused him to suffer constitutional injury.
8 Sadoski v. Mosley, 435 F.3d 1076, 1080 (9th Cir. 2006). Plaintiff has not alleged that a
9 policy or custom of Defendant Maricopa County caused his constitutional injuries. Thus, the
10 Court will dismiss without prejudice Defendant Maricopa County.

11 C. Count One

12 In Count One, Plaintiff alleges that he was subjected to a “misuse of force and
13 excessive force.” He claims that while he was handcuffed and shackled, he was “forcefully
14 abused” by Defendants Rain, Roger, Chris, Oddly, and Striaight. He asserts that he was
15 “struck and his head was split open” and that after his lower body went numb and he had no
16 feeling in this legs, Defendants slammed him against the floor and dragged him out of his
17 cell. Plaintiff contends that the “main abuse” was done by Defendants Rain and Chris and
18 that Defendants Roger, Oddly, and Striaight did nothing to stop the abuse.

19 The Fourteenth Amendment Due Process Clause protects pretrial detainees from
20 excessive force that amounts to punishment. Gibson v. County of Washoe, 290 F.3d 1175,
21 1197 (9th Cir. 2002). “[T]he Fourth Amendment sets the ‘applicable constitutional
22 limitations’ for considering claims of excessive force during pretrial detention.” Id. (quoting
23 Pierce v. Multnomah County, 76 F.3d 1032, 1043 (9th Cir. 1996).

24 The Fourth Amendment does not prohibit the use of reasonable force. Tatum v. City
25 & County of San Francisco, 441 F.3d 1090, 1095 (9th Cir. 2006). Whether the force was

26
27 ²Moreover, Rule 10(a) of the Federal Rules of Civil Procedure requires the plaintiff
28 to include the names of the parties in the action. As a practical matter, it is impossible in
most instances for the United States Marshal or his designee to serve a summons and
complaint on an unidentified defendant.

1 excessive depends on “whether the officers’ actions [were] ‘objectively reasonable’ in light
2 of the facts and circumstances confronting them, without regard to their underlying intent or
3 motivation.” Graham v. Connor, 490 U.S. 386, 397 (1989); Tatum, 441 F.3d at 1095; Lolli
4 v. County of Orange, 351 F.3d 410, 415 (9th Cir. 2003). The Court must balance the nature
5 and quality of the intrusion against the countervailing governmental interests at stake.
6 Graham, 490 U.S. at 396; Lolli, 351 F.3d at 415. Moreover,

7 [t]he “reasonableness” of a particular use of force must be
8 judged from the perspective of a reasonable officer on the scene,
9 rather than with the 20/20 vision of hindsight. . . . “Not every
push or shove, even if it may later seem unnecessary in the
peace of a judge’s chambers,” violates the Fourth Amendment.

10 Graham, 490 U.S. at 396 (citations omitted).

11 Plaintiff’s allegations are too vague and conclusory to state an excessive force claim.
12 Plaintiff has failed to explain any of the facts or circumstances that gave rise to Defendant
13 Rain and Chris’s use of force against him. Thus, the Court will dismiss without prejudice
14 Count One against Defendants Rain and Chris.

15 In addition, prison officials can be held liable for failing to intercede when their fellow
16 officers violate constitutional rights only when they have a reasonable opportunity to
17 intercede. See Cunningham v. Gates, 229 F.3d 1271, 1289-90 (9th Cir. 2000); see also Yang
18 v. Hardin, 37 F.3d 282, 285 (7th Cir. 1994). Plaintiff has failed to state a failure-to-intervene
19 claim against Defendants Roger, Oddly, and Striaight because, as previously noted, Plaintiff
20 has failed to demonstrate that Defendants Rain and Chris were violating his constitutional
21 rights. Moreover, even if Defendants Rain and Chris were violating Plaintiff’s constitutional
22 rights, Plaintiff has nevertheless failed to state a failure-to-intervene claim against
23 Defendants Roger, Oddly, and Striaight because he does not allege that these Defendants had
24 a reasonable opportunity to intercede. Thus, the Court will dismiss without prejudice Count
25 One against Defendants Roger, Oddly, and Striaight.

26 **D. Count Two**

27 In Count Two, Plaintiff alleges he was denied medical care after the incident
28 described in Count One. He claims that Defendants Rain, Roger, Striaight, Spiritu-Denrois,

1 and Dyapeau-Pam inflicted “[e]xtreme medical indifference” because no medical care was
2 provided for his head or leg wounds and no medical equipment was provided, even though
3 Plaintiff was forced to drag himself on the floor. He claims that “[t]reatment was denied by
4 all Defendants and specifically deliberate indifference was shown by Defendants [Rain,
5 Roger, Striaight, Spiritu-Denrois, and Dyapeau-Pam,] who specifically handled the Plaintiff
6 as a wounded animal[,] requiring him to drag himself like a wounded animal at the Jail.”

7 Not every claim by a prisoner relating to inadequate medical treatment states a
8 violation of the Eighth or Fourteenth Amendment. To state a § 1983 medical claim, a
9 plaintiff must show that the defendants acted with “deliberate indifference to serious medical
10 needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429
11 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating
12 that failure to treat the condition could result in further significant injury or the unnecessary
13 and wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.
14 Jett, 439 F.3d at 1096 (quotations omitted).

15 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
16 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know
17 of and disregard an excessive risk to inmate health; “the official must both be aware of facts
18 from which the inference could be drawn that a substantial risk of serious harm exists, and
19 he must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). Deliberate
20 indifference in the medical context may be shown by a purposeful act or failure to respond
21 to a prisoner’s pain or possible medical need and harm caused by the indifference. Jett, 439
22 F.3d at 1096. Deliberate indifference may also be shown when a prison official intentionally
23 denies, delays, or interferes with medical treatment or by the way prison doctors respond to
24 the prisoner’s medical needs. Estelle, 429 U.S. at 104-05; Jett, 439 F.3d at 1096.

25 Deliberate indifference is a higher standard than negligence or lack of ordinary due
26 care for the prisoner’s safety. Farmer, 511 U.S. at 835. “Neither negligence nor gross
27 negligence will constitute deliberate indifference.” Clement v. California Dep’t of
28 Corrections, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); see also Broughton v. Cutter

1 Labs., 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or
2 “medical malpractice” do not support a claim under § 1983). “A difference of opinion does
3 not amount to deliberate indifference to [a plaintiff’s] serious medical needs.” Sanchez v.
4 Vild, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is
5 insufficient to state a claim against prison officials for deliberate indifference. See Shapley
6 v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985). The indifference
7 must be substantial. The action must rise to a level of “unnecessary and wanton infliction
8 of pain.” Estelle, 429 U.S. at 105.

9 Plaintiff’s allegations in Count Two are vague and conclusory allegations against a
10 group of Defendants. Plaintiff has failed to allege what any particular Defendant did or
11 failed to do, when that action or inaction occurred, and what specific injury Plaintiff suffered
12 as a result. Plaintiff has failed to state a claim of deliberate indifference in Count Two and,
13 therefore, the Court will dismiss without prejudice Count Two.

14 **E. Count Three**

15 In Count Three, Plaintiff alleges that he was denied due process. He claims that
16 Defendants Chris and Striaight denied Plaintiff access to administrative remedies and
17 threatened him when he attempted to submit administrative remedies. He also claims that
18 he is of Middle Eastern descent and that “all Defendants displayed racial bias and denied due
19 medical care and due process.”

20 “There is no legitimate claim of entitlement to a grievance procedure,” Mann v.
21 Adams, 855 F.2d 639, 640 (9th Cir. 1988), and the failure to follow grievance procedures
22 does not give rise to a due process claim. See Flournoy v. Fairman, 897 F. Supp. 350, 354
23 (N.D. Ill. 1995) (jail grievance procedures did not create a substantive right enforceable
24 under § 1983); Spencer v. Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986) (violations of
25 grievance system procedures do not deprive inmates of constitutional rights). In addition,
26 Plaintiff’s allegation that he was threatened does not state a claim upon which relief can be
27 granted. See Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987) (defendants’ threats of bodily
28 harm to convince plaintiff not to pursue legal redress were insufficient to state a claim under

1 § 1983; “it trivializes the eighth amendment to believe a threat constitutes a constitutional
2 wrong”); Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (“[v]erbal harassment
3 or abuse . . . is not sufficient to state a constitutional deprivation under 42 U.S.C. § 1983”
4 (quoting Collins v. Cundy, 603 F.2d 825, 827 (10th Cir. 1979))). And Plaintiff’s claim of
5 racial bias is too vague and conclusory to state a claim. Thus, the Court will dismiss without
6 prejudice Count Three.

7 **VII. Leave to Amend**

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

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

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

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

1 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
2 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
3 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
4 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
5 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
6 565, 567 (9th Cir. 1987).

7 **VIII. Warnings**

8 **A. Release**

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

13 **B. Address Changes**

14 Plaintiff must file and serve a notice of a change of address in accordance with Rule
15 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
16 relief with a notice of change of address. Failure to comply may result in dismissal of this
17 action.

18 **C. Copies**

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

22 **D. Possible “Strike”**

23 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails
24 to file an amended complaint correcting the deficiencies identified in this Order, the
25 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
26 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
27 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior
28 occasions, while incarcerated or detained in any facility, brought an action or appeal in a

1 court of the United States that was dismissed on the grounds that it is frivolous, malicious,
2 or fails to state a claim upon which relief may be granted, unless the prisoner is under
3 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

4 **E. Possible Dismissal**

5 If Plaintiff fails to timely comply with every provision of this Order, including these
6 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at
7 1260-61 (a district court may dismiss an action for failure to comply with any order of the
8 Court).

9 **IT IS ORDERED:**

10 (1) Plaintiff’s “Motion to Accept Plaintiff[’s] Application to Proceed *In Forma*
11 *Pauperis*” (Doc. 11) is **granted**.

12 (2) The Clerk of Court must **file** the lodged Application to Proceed *In Forma*
13 *Pauperis* (Doc. 12).

14 (3) Plaintiff’s July 22, 2011 Application to Proceed *In Forma Pauperis* is **granted**.

15 (4) As required by the accompanying Order to the appropriate government agency,
16 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$6.00.

17 (5) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has
18 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
19 this Order.

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

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

25 DATED this 11th day of August, 2011.

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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.

_____.

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.

_____.

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.