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

John Wayne Warden,	)	No. CV 11-1461-PHX-DGC (JRI)
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Sergeant Robbert Harris, et al.,	)	
Defendants.	)	

On July 22, 2011, Plaintiff John Wayne Warden, who is confined in the Arizona State Prison Complex-Yuma (ASPC-Yuma) in San Luis, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1), an Application to Proceed *In Forma Pauperis*, and a Request for Appointment of U.S. Marshall to Effect Service. In a July 29, 2011 Order, the Court denied the deficient Application to Proceed and denied as premature the Request for Appointment. The Court gave Plaintiff 30 days to pay the fee or file a complete Application to Proceed *In Forma Pauperis*.

On August 10, 2011, Plaintiff filed a second Application to Proceed *In Forma Pauperis* (Doc. 7). The Court will grant the second Application to Proceed and will dismiss the Complaint with leave to amend.

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

Plaintiff's second Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$22.07. The remainder of

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

## 5 **II. Statutory Screening of Prisoner Complaints**

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

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

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

27 As the United States Court of Appeals for the Ninth Circuit has instructed, courts must  
28 “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir.

1 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards  
2 than formal pleadings drafted by lawyers.’” *Id.* (quoting Erickson v. Pardus, 551 U.S. 89,  
3 94 (2007) (*per curiam*)).

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

### 13 **III. Complaint**

14 In his ten-count Complaint, Plaintiff sues the following Defendants: Sergeant Robbert  
15 Harris, Visitation Officer John Doe, Certified Registered Nurses Nayelie Barrigan and Helen  
16 Spencer, Doctors Warren Heller and Karen Barklay, Facility Health Administrators Carrie  
17 Feehan and Dennis Chenail, Assistant Director of Health Services D.S. Adu-Tutu, and  
18 Arizona Department of Corrections (ADOC) Director Charles L. Ryan. In each count,  
19 Plaintiff alleges a “Breech of Custodial Duty resulting in [a] violation of [the] 5th, 8th, + 14th  
20 Amendment[s].” In his Request for Relief, Plaintiff seeks monetary damages and injunctive  
21 relief.

22 In Counts One and Two, Plaintiff alleges that he was not able to receive his post-  
23 surgical instructions in time to prevent injury because Defendant Harris did not deposit  
24 Plaintiff’s post-surgical instructions with Defendant Doe or the prison medical unit (Count  
25 One) and because Defendant Doe did not deposit the post-surgical instructions with the  
26 prison’s medical unit (Count Two). In Counts Three and Four, Plaintiff asserts that  
27 Defendants Barrigan (Count Three) and Spencer (Count Four) did not procure Plaintiff’s  
28 post-surgical instructions after being informed that Plaintiff was returning from surgery,

1 which prevented Plaintiff from receiving his post-surgery prescription in time to prevent his  
2 the corrected eye from rupturing.

3 In Count Five, Plaintiff contends that Defendant Heller did not provide prison officials  
4 with Plaintiff's post-surgical instructions, which prevented the prison medical unit from  
5 processing Plaintiff's post-surgical prescription in time to prevent the corrected lense from  
6 rupturing. In addition, Plaintiff claims that Defendant Heller, after being notified that  
7 Plaintiff's corrected lense had ruptured, "refus[ed] to treat Plaintiff as required by regular  
8 American Medical [A]ssociation guidelines" and did not respond to Plaintiff's complaint  
9 regarding this issue.

10 In Count Six, Plaintiff alleges that Defendant Feehan did not "maintain management  
11 of Plaintiff's surgery, and coordinate expedition of Plaintiff's post[-]surgical instructions/  
12 prescriptions to prevent any post-surgical trauma[is] from occurring." In Count Seven,  
13 Plaintiff asserts that Defendant Barklay, after being notified about Plaintiff's "surgery and  
14 follow up, did not procure Plaintiff's post-surgical instructions/prescriptions and expedite  
15 upon Plaintiff's . . . return from surgery[,] so as to prevent injury to the corrected lense."

16 In Counts Eight, Nine, and Ten, Plaintiff alleges that Defendants Chenail (Count  
17 Eight), Adu-Tutu (Count Nine), and Ryan (Count Ten), after being notified that Plaintiff's  
18 surgically repaired lense had ruptured and required surgical care, "refused to allow Plaintiff's  
19 medical care as in accord with American Medical Association uidelines."

#### 20 **IV. Failure to State a Claim**

21 Although *pro se* pleadings are liberally construed, Haines v. Kerner, 404 U.S. 519,  
22 520-21 (1972), conclusory and vague allegations will not support a cause of action. Ivey v.  
23 Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). Further,  
24 a liberal interpretation of a civil rights complaint may not supply essential elements of the  
25 claim that were not initially pled. Id.

26 Not every claim by a prisoner relating to inadequate medical treatment states a  
27 violation of the Eighth or Fourteenth Amendment. To state a § 1983 medical claim, a  
28 plaintiff must show that the defendants acted with "deliberate indifference to serious medical

1 needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429  
2 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating  
3 that failure to treat the condition could result in further significant injury or the unnecessary  
4 and wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.  
5 Jett, 439 F.3d at 1096 (quotations omitted).

6 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,  
7 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know  
8 of and disregard an excessive risk to inmate health; “the official must both be aware of facts  
9 from which the inference could be drawn that a substantial risk of serious harm exists, and  
10 he must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). Deliberate  
11 indifference in the medical context may be shown by a purposeful act or failure to respond  
12 to a prisoner’s pain or possible medical need and harm caused by the indifference. Jett, 439  
13 F.3d at 1096. Deliberate indifference may also be shown when a prison official intentionally  
14 denies, delays, or interferes with medical treatment or by the way prison doctors respond to  
15 the prisoner’s medical needs. Estelle, 429 U.S. at 104-05; Jett, 439 F.3d at 1096.

16 Deliberate indifference is a higher standard than negligence or lack of ordinary due  
17 care for the prisoner’s safety. Farmer, 511 U.S. at 835. “Neither negligence nor gross  
18 negligence will constitute deliberate indifference.” Clement v. California Dep’t of  
19 Corrections, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); see also Broughton v. Cutter  
20 Labs., 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or  
21 “medical malpractice” do not support a claim under § 1983). “A difference of opinion does  
22 not amount to deliberate indifference to [a plaintiff’s] serious medical needs.” Sanchez v.  
23 Vild, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is  
24 insufficient to state a claim against prison officials for deliberate indifference. See Shapley  
25 v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985). The indifference  
26 must be substantial. The action must rise to a level of “unnecessary and wanton infliction  
27 of pain.” Estelle, 429 U.S. at 105.

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1 Plaintiff's allegations, at best, support a claim that Defendants may have acted  
2 negligently or committed medical malpractice. His allegations do not support a claim that  
3 any Defendant acted with deliberate indifference. Thus, the Court will dismiss without  
4 prejudice Plaintiff's Complaint.

5 **V. Leave to Amend**

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

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

16 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963  
17 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,  
18 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as  
19 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original  
20 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d  
21 565, 567 (9th Cir. 1987).

22 **VI. Warnings**

23 **A. Release**

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

28 . . . .

1           **B.     Address Changes**

2           Plaintiff must file and serve a notice of a change of address in accordance with Rule  
3 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
4 relief with a notice of change of address. Failure to comply may result in dismissal of this  
5 action.

6           **C.     Copies**

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

10          **D.     Possible “Strike”**

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

20          **E.     Possible Dismissal**

21          If Plaintiff fails to timely comply with every provision of this Order, including these  
22 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at  
23 1260-61 (a district court may dismiss an action for failure to comply with any order of the  
24 Court).

25 **IT IS ORDERED:**

26          (1) Plaintiff’s second Application to Proceed *In Forma Pauperis* (Doc. 7) is  
27 **granted.**

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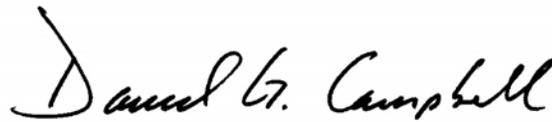
1 (2) As required by the accompanying Order to the appropriate government agency,  
2 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$22.07.

3 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has  
4 **30 days** from the date this Order is filed to file a first amended complaint in compliance with  
5 this Order.

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

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

11 DATED this 25<sup>th</sup> day of August, 2011.

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16 David G. Campbell  
17 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.

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4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).  
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\_\_\_\_\_  
\_\_\_\_\_.

5. **Administrative Remedies:**  
a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?                       Yes                       No  
b. Did you submit a request for administrative relief on Count 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.