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

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GEORGE ALBERT BROGDON, JR.,)

No. CV 11-1675-PHX-RCB (MEA)

10

Plaintiff,)

ORDER

11

vs.)

12

CITY OF PHOENIX POLICE)
DEPARTMENT, et al.,)

13

Defendants.)

14

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Plaintiff George Albert Brogdon, Jr., who was then confined in the Maricopa County Fourth Avenue Jail in Phoenix, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*.¹ Plaintiff has also filed a request for forms to use in preparing amended complaints and requested the status of a motion filed in another case. (Doc. 6.) The Court will order Defendants Mancha and Torres to answer Counts I (in part) and II (in part) of the Complaint and will dismiss the remaining claims and Defendants without prejudice. Plaintiff’s motion will be granted.

22

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

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Plaintiff’s Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). The statutory fee will be collected monthly in payments of 20% of the previous month’s income each time

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¹ Plaintiff has since been transferred to the custody of the Arizona Department of Corrections (ADC). (Doc. 6.)

1 the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a
2 separate Order requiring the appropriate government agency to collect and forward the fees
3 according to the statutory formula.

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

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

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

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

26 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
27 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
28 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards

1 than formal pleadings drafted by lawyers.” *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89,
2 94 (2007) (*per curiam*)).

3 **III. Complaint**

4 Plaintiff alleges three counts for use of excessive force and malicious prosecution.
5 Plaintiff sues the City of Phoenix Police Department and three of its officers, Jay Gresset,
6 Paul Mancha, and Joseph Torres. Plaintiff seeks injunctive, compensatory, and punitive
7 relief.

8 All of Plaintiff’s claims arise from his arrest and detention in the Superior Court in
9 Maricopa County case CR2011113904. In that case, Plaintiff was indicted for theft of means
10 of transportation, aggravated assault, unlawful flight from law enforcement, and hit and run
11 resulting in death or injury.² On September 9, 2011, Plaintiff was convicted pursuant to a
12 plea agreement of theft of means of transportation with one prior felony, aggravated assault,
13 and unlawful flight from law enforcement and sentenced to seven years in prison followed
14 by probation for three years.³

15 Except as otherwise indicated, Plaintiff alleges the following: On March 18, 2011,
16 Defendant Mancha used force against Plaintiff and his cousin in the course of an arrest,
17 which injured Plaintiff by cutting his mouth and scratching his cornea. At the time, Plaintiff
18 was unarmed and “did not make any threatening gesture towards” Mancha and had his hands
19 on his head when Mancha approached because Plaintiff had seen Mancha assault his cousin.
20 (Doc. 1 at 3.) Torres watched as Mancha used force against Plaintiff without intervening and
21 Torres verbally encouraged Mancha. As Plaintiff was being placed in a police care, Torres
22 verbally harassed and threatened Plaintiff for bleeding on him and his car. Plaintiff was
23 examined by paramedics and his ribs x-rayed. Dr. Friedman told Plaintiff that he had a
24 scratched (or “scarred”) cornea. In his police report, Mancha falsely stated that Plaintiff had

26 ² See <http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/case>
27 [Info.asp?caseNumber=CR2011-113904](http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/case) (last visited Oct. 6, 2011).

28 ³ See <http://www.courtminutes.maricopa.gov/docs/Criminal/092011/m4887376.pdf>
(last visited Oct. 6, 2011).

1 swerved the vehicle he was driving towards Mancha and Mancha reported having “some kind
2 of forceful contact” with Plaintiff, so that Mancha could be a witness against Plaintiff.
3 Mancha pressured the prosecutor against offering Plaintiff a more favorable plea agreement.

4 **IV. Failure to State a Claim**

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

12 **A. City of Phoenix Police Department**

13 Plaintiff sues the City of Phoenix Police Department. A municipal police department
14 is not a “person” within the meaning of § 1983. See e.g., Petaway v. City of New Haven
15 Police Dep’t, 541 F. Supp.2d 504 (D. Conn. 2008); Pahle v. Colebrookdale Tp., 227 F.
16 Supp.2d 361 (E.D. Pa. 2002). However, a municipality is a “person” for purposes of § 1983,
17 i.e., a municipality such as a city or county, may be sued. See Leatherman v. Tarrant County
18 Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166 (1993); Monell v. Dep’t of
19 Soc. Servs., 436 U.S. 658, 694 (1978). To state a claim against a municipality under § 1983,
20 a plaintiff must allege facts to support that his constitutional rights were violated pursuant
21 to a policy or custom of the municipality. Cortez v. County of Los Angeles, 294 F.3d 1186,
22 1188 (9th Cir. 2001) (citing Monell, 436 U.S. at 690-91); Thompson v. City of Los Angeles,
23 885 F.2d 1439, 1443 (9th Cir. 1989)). Thus, a municipality may not be sued solely because
24 an injury was inflicted by one of its employees or agents. Long v. County of Los Angeles,
25 442 F.3d 1178, 1185 (9th Cir. 2006). Therefore, a § 1983 claim against a municipal
26 defendant “cannot succeed as a matter of law” unless a plaintiff: (1) contends that the
27 municipal defendant maintains a policy or custom pertinent to the plaintiff’s alleged injury;
28 and (2) explains how such policy or custom caused the plaintiff’s injury. Sadoski v. Mosley,

1 435 F.3d 1076, 1080 (9th Cir. 2006) (affirming dismissal of a municipal defendant pursuant
2 to Fed. R. Civ. P. 12(b)(6)).

3 The City of Phoenix Police Department is not a proper Defendant and it will be
4 dismissed. To the extent that Plaintiff sues the City of Phoenix, he fails to allege facts to
5 support that the City of Phoenix maintained a policy or custom that resulted in the violation
6 of Plaintiff's federal constitutional rights or to explain how his injuries were caused by any
7 municipal policy or custom. Accordingly, Plaintiff also fails to state a claim against the City
8 of Phoenix.

9 **B. Counts I (in part) and II (in part)**

10 In Counts I and II, Plaintiff alleges in part that Torres verbally harassed him while
11 Plaintiff was being transported to the substation. In Count II, Plaintiff also alleges that
12 Defendant Gresset interviewed him at the substation and, despite his injuries, failed to report
13 them up the chain of command. These allegations do not rise to the level of a constitutional
14 violation. Plaintiff acknowledges that he was evaluated by paramedics and a physician.
15 Torres' mere verbal harassment or threats, absent more, do not rise to the level of a
16 constitutional violation. Plaintiff also does not have a constitutional right to have his injuries
17 reported to police superiors. Accordingly, these allegations will be dismissed.

18 **C. Counts III**

19 In Count III, Plaintiff alleges a claim for malicious prosecution against Mancha.
20 Plaintiff alleges that the prosecutor told him that Mancha had verbally advocated for a more
21 onerous plea deal than the prosecutor might otherwise have offered.

22 To state a claim for malicious prosecution, a plaintiff must allege facts to support that
23 a defendant prosecuted him with malice and without probable cause for the purpose of
24 denying equal protection or another specific constitutional right. Awabdy v. City of
25 Adelanto, 368 F.3d 1062, 1068 (9th Cir. 2004) (citing Freeman v. City of Santa Ana, 68 F.3d
26 1180, 1189 (9th Cir. 1995)). Malicious prosecution actions are not limited to suits against
27 prosecutors but may be brought against persons who have wrongfully caused the charges to
28 be filed. Id. (citing Galbraith v. County of Santa Clara, 307 F.3d 1119, 1126-27 (9th Cir.

1 2002)). However, an individual bringing a malicious prosecution claim must also establish
2 that the prosecution terminated in his favor. See Heck v. Humphrey, 512 U.S. 477, 484-85
3 (1994); Awabdy, 368 F.3d at 1068; Braunstein v. United States Postal Serv., No. 05-16390,
4 2007 WL 1112620 at *1 (9th Cir. Apr. 12, 2007).

5 As discussed above, the prosecution did not terminate in Plaintiff's favor. Rather, he
6 entered into a plea agreement to three charges. Accordingly, Plaintiff fails to state a claim
7 for malicious prosecution.

8 **V. Claim for Which an Answer Will be Required**

9 In Counts I (in part) and II (in part), Plaintiff alleges that Defendant Mancha used
10 excessive force against him and that Torres failed to intercede and encouraged Mancha's use
11 of excessive force. Plaintiff alleges that he was not resisting and had his hands on head at
12 the time. Plaintiff sufficiently alleges a claim for the excessive use of force in connection
13 with his arrest. Defendants Mancha and Torres will be required to respond to these portions
14 of Counts I and II.

15 **VI. Motion for Status**

16 As described above, Plaintiff has requested the status of a motion filed in another of
17 his cases, CV11-1389-PHX-RCB, and that two copies of the court-approved form complaint
18 be sent to him to use for preparing amended complaints. Plaintiff's motion for an extension
19 of time filed in CV11-1389 was denied by the Magistrate Judge on October 4, 2011. In the
20 future, if Plaintiff seeks the status of matters in another case, he must file a motion in *that*
21 case. The Court will grant Plaintiff's request for two court-approved form complaints. **VII.**

22 **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 serve Defendants, or counsel if an appearance has been entered, a copy
8 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate
9 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit
10 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply
11 may result in the filing being stricken without further notice to Plaintiff.

12 **D. Possible Dismissal**

13 If Plaintiff fails to timely comply with every provision of this Order, including these
14 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
15 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
16 comply with any order of the Court).

17 **IT IS ORDERED:**

18 (1) Plaintiff's Application to Proceed *In Forma Pauperis* is **granted**. (Doc. 3.)

19 (2) As required by the accompanying Order to the appropriate government agency,
20 Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing fee.

21 (3) Counts I (in part), II (in part) and III and Defendant City of Phoenix Police
22 Department and Gresset are **dismissed** without prejudice.

23 (4) Defendants Mancha and Torres must answer Counts I (in part) and II (in part).

24 (5) The Clerk of Court must send Plaintiff a service packet including the
25 Complaint (Doc. 1), this Order, and both summons and request for waiver forms for
26 Defendants Mancha and Torres.

27 (6) Plaintiff must complete and return the service packet to the Clerk of Court
28 within 21 days of the date of filing of this Order. The United States Marshal will not provide

1 service of process if Plaintiff fails to comply with this Order.

2 (7) If Plaintiff does not either obtain a waiver of service of the summons or
3 complete service of the Summons and Complaint on a Defendant within 120 days of the
4 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the
5 action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv
6 16.2(b)(2)(B)(i).

7 (8) The United States Marshal must retain the Summons, a copy of the Complaint,
8 and a copy of this Order for future use.

9 (9) The United States Marshal must notify Defendants of the commencement of
10 this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal
11 Rules of Civil Procedure. The notice to Defendants must include a copy of this Order. **The
12 Marshal must immediately file signed waivers of service of the summons. If a waiver
13 of service of summons is returned as undeliverable or is not returned by a Defendant
14 within 30 days from the date the request for waiver was sent by the Marshal, the
15 Marshal must:**

16 (a) personally serve copies of the Summons, Complaint, and this Order upon
17 Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and

18 (b) within 10 days after personal service is effected, file the return of service
19 for Defendant, along with evidence of the attempt to secure a waiver of service of the
20 summons and of the costs subsequently incurred in effecting service upon Defendant.
21 The costs of service must be enumerated on the return of service form (USM-285) and
22 must include the costs incurred by the Marshal for photocopying additional copies of
23 the Summons, Complaint, or this Order and for preparing new process receipt and
24 return forms (USM-285), if required. Costs of service will be taxed against the
25 personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
26 Procedure, unless otherwise ordered by the Court.

27 (10) **A Defendant who agrees to waive service of the Summons and Complaint
28 must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

1 (11) Defendant must answer the Complaint or otherwise respond by appropriate
2 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal
3 Rules of Civil Procedure.

4 (12) Any answer or response must state the specific Defendant by name on whose
5 behalf it is filed. The Court may strike any answer, response, or other motion or paper that
6 does not identify the specific Defendant by name on whose behalf it is filed.

7 (13) Plaintiff's motion for status and form complaints is **granted**. (Doc. 6.)

8 (14) The Clerk of Court must mail Plaintiff two court-approved forms for filing a
9 civil rights complaint by a prisoner.

10 (15) This matter is referred to Magistrate Judge Mark E. Aspey pursuant to Rules
11 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized
12 under 28 U.S.C. § 636(b)(1).

13 DATED this 6th day of October, 2011.

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17 Robert C. Broomfield
18 Senior United States District Judge
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**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.

2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.

3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

4. The Filing Fee. The filing fee for this action is \$350.00. If you are unable to immediately pay the filing fee, you may request leave to proceed *in forma pauperis*. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915” for additional instructions.

5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.

6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$350 filing fee or the application to proceed *in forma pauperis* to:**

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

OR

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

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed *in forma pauperis*). Each original document (except the initial complaint and application to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. See Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

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

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

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

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “Bivens v. Six Unknown Federal Narcotics Agents” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.

3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. See 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

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

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

(Full Name of Plaintiff) Plaintiff,

vs.

CASE NO. _____
(To be supplied by the Clerk)

(1) _____
(Full Name of Defendant)

(2) _____

(3) _____

(4) _____

Defendant(s).

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

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- Original Complaint
- First Amended Complaint
- Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

- 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
- 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
- Other: _____

2. Institution/city where violation occurred: _____

B. DEFENDANTS

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

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

C. PREVIOUS LAWSUITS

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

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

D. CAUSE OF ACTION

COUNT I

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

2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
 Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count I. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.

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

_____.

5. **Administrative Remedies:**
a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No
b. Did you submit a request for administrative relief on Count I? Yes No
c. Did you appeal your request for relief on Count I to the highest level? Yes No
d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____
_____.

COUNT III

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

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

<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.

**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.