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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Douglas Wittboldt,
10 Plaintiff,

No. CV 13-0747-PHX-RCB (SPL)

11 vs.

ORDER

12 Joseph Arpaio, et al.,
13 Defendants.
14

15 Plaintiff Douglas Wittboldt, who is confined in the Fourth Avenue Jail in Phoenix,
16 Arizona, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1)
17 and an Application to Proceed *In Forma Pauperis* (Doc. 2). The Court will dismiss the
18 Complaint with leave to amend.

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

20 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
21 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
22 The Court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). The
23 statutory fee will be collected monthly in payments of 20% of the previous month's
24 income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2).
25 The Court will enter a separate Order requiring the appropriate government agency to
26 collect and forward the fees according to the statutory formula.
27
28

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

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

8 A pleading must contain a “short and plain statement of the claim *showing* that the
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
10 does not demand detailed factual allegations, “it demands more than an unadorned, the-
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Id.*

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
15 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
17 content that allows the court to draw the reasonable inference that the defendant is liable
18 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
19 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
20 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
21 specific factual allegations may be consistent with a constitutional claim, a court must
22 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
23 at 681.

24 But as the United States Court of Appeals for the Ninth Circuit has instructed,
25 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
26 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
27 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
28 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

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

10 **III. Complaint**

11 Plaintiff alleges one count for threat to safety. Plaintiff sues Maricopa County
12 Sheriff Joseph Arpaio and a third-shift detention officer working at the Fourth Avenue
13 Jail on December 24, 2012. Plaintiff seeks compensatory and punitive damages.

14 Plaintiff alleges the following facts in his Complaint: in November 2012, Plaintiff
15 informed the jail’s classification unit that he had a leg injury and a urinary tract issue that
16 caused him to urinate ten to twelve times a night. Because of his health conditions,
17 Plaintiff was assigned to a bottom bunk in the housing unit for pre-trial detainees. On
18 December 25, 2012,¹ a detention officer brought in a new cell mate and told Plaintiff to
19 move to the top bunk. Plaintiff responded that he was assigned to the bottom bunk, but
20 the officer told him the new inmate had a stomach injury and needed a bottom bunk.
21 Plaintiff explained that he, too, needed the bottom bunk, but the officer became irate and
22 ordered Plaintiff to move to the top bunk. Plaintiff had no choice but to comply. The top
23 bunk lacked a ladder or steps for climbing up and down, so Plaintiff had to use a table
24 and a stool with a stainless steel surface to get up and down from his bunk. On February
25 20, 2013, Plaintiff got up in the night to urinate. He was wearing socks to keep his feet
26 warm, and his foot slipped when he stepped onto the stool, causing Plaintiff to fall and

27
28 ¹ Plaintiff asserts first that this incident occurred on December 25, 2012 (see Doc.
1 at 3), and later in his Complaint he asserts the incident occurred on December 24, 2012
(*Id.* at 4).

1 bounce off the table and onto the floor. Plaintiff was able to urinate and get back into
2 bed, but he woke up two hours later, unable to move. Medical staff took his vitals and a
3 urine sample, and the following day Plaintiff saw a doctor, who ordered x-rays. The x-
4 rays revealed two broken ribs. Plaintiff contends that the jail was aware of his health
5 conditions and that he needed to be placed in a bottom bunk. Further, he asserts that the
6 detention officer who ordered him to take the top bunk on December 24, 2012 was
7 negligent in “not tak[ing] the time to check into [Plaintiff’s] situation[.]” (Doc. 1 at 4.)
8 Plaintiff seeks compensatory and punitive damages.

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

10 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the
11 conduct about which he complains was committed by a person acting under the color of
12 state law and (2) the conduct deprived him of a federal constitutional or statutory right.
13 *Wood v. Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989). Negligence is not sufficient to
14 state a claim under § 1983. *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986). In
15 addition, a plaintiff must allege that he suffered a specific injury as a result of the conduct
16 of a particular defendant and he must allege an affirmative link between the injury and
17 the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

18 **A. Sheriff Arpaio**

19 Plaintiff sues Sheriff Joseph Arpaio. While Arpaio may be sued under § 1983,
20 Plaintiff fails to state a claim against him.

21 To state a claim against a defendant, “[a] plaintiff must allege facts, not simply
22 conclusions, that show that an individual was personally involved in the deprivation of
23 his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). For an
24 individual to be liable in his official capacity, a plaintiff must allege that the official acted
25 as a result of a policy, practice, or custom. *See Cortez v. County of Los Angeles*, 294 F.3d
26 1186, 1188 (9th Cir. 2001). Further, there is no *respondeat superior* liability under
27 § 1983, so a defendant’s position as the supervisor of someone who allegedly violated a
28 plaintiff’s constitutional rights does not make him liable. *Monell v. Dep’t of Soc. Servs.*,

1 436 U.S. 658, 691 (1978); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). A
2 supervisor in his individual capacity, “is only liable for constitutional violations of his
3 subordinates if the supervisor participated in or directed the violations, or knew of the
4 violations and failed to act to prevent them.” *Taylor*, 880 F.2d at 1045. In addition,
5 where a defendant’s only involvement in allegedly unconstitutional conduct is the denial
6 of administrative grievances, the failure to intervene on a prisoner’s behalf to remedy the
7 alleged unconstitutional behavior does not amount to active unconstitutional behavior for
8 purposes of § 1983. *See Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999); *accord*
9 *Proctor v. Applegate*, 661 F.Supp.2d 743, 765 (W.D. Mich. 2009); *Stocker v. Warden*,
10 No. 1:07-CV-00589, 2009 WL 981323, at *10 (E.D. Cal. Apr. 13, 2009); *Mintun v.*
11 *Blades*, No. CV-06-139, 2008 WL 711636, at *7 (D. Idaho Mar. 14, 2008); *see also*
12 *Gregory v. City of Louisville*, 444 F.3d 725, 751 (6th Cir. 2006) (a plaintiff must allege
13 that a supervisor defendant did more than play a passive role in an alleged violation or
14 mere tacit approval thereof; a plaintiff must allege that the supervisor defendant somehow
15 encouraged or condoned the actions of their subordinates).

16
17 Plaintiff fails to allege any facts to support that Arpaio violated his constitutional
18 rights. Plaintiff has not alleged that Arpaio directly violated his constitutional rights, nor
19 has he alleged that his rights have been violated under a policy or practice promulgated,
20 endorsed, or condoned by Arpaio. For these reasons, Plaintiff fails to state a claim
21 against Arpaio and he will be dismissed.

22 **B. Threat to Safety**

23 To state a claim under § 1983 for failure to protect or threat to safety, an inmate
24 must allege facts to support that he was incarcerated under conditions posing a substantial
25 risk of harm and that prison officials were “deliberately indifferent” to those risks.
26 *Farmer v. Brennan*, 511 U.S. 825, 832-33 (1994). To adequately allege deliberate
27 indifference, a plaintiff must allege facts to support that a defendant knew of, but
28 disregarded, an excessive risk to inmate safety. *Id.* at 837. That is, “the official must
both [have been] aware of facts from which the inference could be drawn that a

1 substantial risk of serious harm exist[ed], and he must also [have] draw[n] the inference.”

2 *Id.*

3 Plaintiff alleges only that he told the detention officer on December 24 or 25,
4 2012, that he was assigned to the bottom bunk and that he needed the bottom bunk.
5 Plaintiff does not allege that he told the detention officer why he was assigned to the
6 bottom bunk, i.e., that he had a medical condition that necessitated getting in and out of
7 bed many times during the night and that he had a leg injury. That is, Plaintiff does not
8 allege that the unidentified detention officer knew of, but disregarded, an excessive risk
9 to his safety. Nor does Plaintiff allege that the detention officer was aware of facts from
10 which he could draw the inference that a substantial risk of harm existed and that the
11 detention officer actually drew that inference. Finally, Plaintiff does not assert that he
12 complained or filed a grievance at any time between being moved to the top bunk in late
13 December 2012 and February 20, 2013, when he was injured, that would put Defendants
14 on notice that a substantial threat to Plaintiff’s safety existed. Accordingly, the Court will
15 dismiss this claim with leave to amend.

16 **V. Leave to Amend**

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

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

27 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,
28 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896

1 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original
2 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
3 in the original complaint is waived if it is not raised in a first amended complaint. *King v.*
4 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

5 **VI. Warnings**

6 **A. Release**

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

11 **B. Address Changes**

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

16 **C. Copies**

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

20 **D. Possible “Strike”**

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

1 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner
2 is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

3 **E. Possible Dismissal**

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

8 **IT IS ORDERED:**

9 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.


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

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

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

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

21 DATED this 28th day of May, 2013.

22
23
24 
25 Robert C. Broomfield
26 Senior United States District Judge
27
28

**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 II

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

2. **Count II.** 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 II. 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 II? Yes No
- c. Did you appeal your request for relief on Count II 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.