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

Matthew Linden Harris,
Plaintiff,
vs.
Unknown Sawyer, et al.,
Defendants.

No. CV 13-790-PHX-DGC (BSB)

ORDER

Plaintiff Matthew Linden Harris, who was formerly confined in the Maricopa County Lower Buckeye Jail, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. Plaintiff subsequently filed a First Amended Complaint (Doc. 6).

On July 1, 2013, Plaintiff filed a Notice of Change of Address indicating he is no longer in custody. In a July 23, 2013 Order, the Court granted the Application to Proceed and required Plaintiff to either pay the filing fee or show good cause why he cannot pay.

On August 9, 2013, Plaintiff filed a response to the Order stating that he had been re-booked in the Maricopa County Jail and again had an inmate account from which periodic partial payments could be withdrawn. On August 16, 2013, Plaintiff filed another Notice of Change of Address indicating that he had again been released. On December 5, 2013, the Court issued another order to show cause requiring Plaintiff to either pay the \$350.00 filing fee or file a "Response" to the Order. On January 10, 2014, Plaintiff filed a Motion for Extension of Time to Pay the Filing Fee (Doc. 15).

1 The Court will dismiss the First Amended Complaint with leave to amend.

2 **I. Motion for Extension of Time and Filing Fee**

3 In his Motion for Extension of Time, Plaintiff asks that the Court grant him an
4 additional 180 days within which to pay the filing fee and that the Court allow him to
5 make monthly payments. The Court will grant the Motion; Plaintiff will have 180 from
6 the filing date of this order to pay the filing fee in full, and may make monthly payments.

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

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

14 A pleading must contain a “short and plain statement of the claim *showing* that the
15 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
16 does not demand detailed factual allegations, “it demands more than an unadorned, the-
17 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
18 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
19 conclusory statements, do not suffice.” *Id.*

20 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
21 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
22 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
23 content that allows the court to draw the reasonable inference that the defendant is liable
24 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
25 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
26 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
27 specific factual allegations may be consistent with a constitutional claim, a court must
28

1 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
2 at 681.

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

8 If the Court determines that a pleading could be cured by the allegation of other
9 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
10 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*).
11 Plaintiff’s First Amended Complaint will be dismissed for failure to state a claim, but
12 because it may possibly be amended to state a claim, the Court will dismiss it with leave
13 to amend.

14 **III. First Amended Complaint**

15 An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963
16 F.2d 1258,1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
17 1542, 1546 (9th Cir. 1990). After amendment, the original pleading is treated as
18 nonexistent. *Ferdik*, 963 F.2d at 1262. Accordingly, causes of action alleged in an
19 original complaint which are not alleged in an amended complaint are waived. *King v.*
20 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

21 Plaintiff names the following Defendants in the First Amended Complaint: Officer
22 Sawyer; Unknown Sergeants 1 and 2 at Estrella Jail; Sergeants Waters, Tenny, Perks,
23 Rothschild, Dunn, Anders, McKay, Bernsten, Henry, Allan, Layton, Rosales, and Dauch;
24 Lieutenants Garcia and Stump; Detention Officers Johnson, Negbee, Carrasco, #B1499,
25 Gomes, Cruz, #A7519, Vasquez, Madrano, #B0614, Bordan, and Fritz; Maricopa County
26 Sheriff Joseph M. Arpaio; Captain Haupmann; Chaplain Bristow; Dr. Joseph; and 17
27 Unknown Officers employed at the Lower Buckeye Jail.

28 Plaintiff raises six grounds for relief. In Count One, Plaintiff alleges his First

1 Amendment right to the redress of grievances was violated when, on multiple occasions,
2 he was denied grievance forms or detention officers failed to process his grievances.

3 In Count Two, Plaintiff claims his right of access to the courts was denied when
4 Defendants Gomes, Haupmann, Bordan, and Unknown Defendants denied him legal
5 forms. Plaintiff also claims he was unable to file motions and unable to communicate
6 with potential witnesses in his criminal case. Plaintiff further claims Defendants Dunn
7 and Stump refused to acknowledge his “pro per/pro se” status on three separate matters
8 and Defendant Dunn refused to allow him to attend court “on a family matter.” Plaintiff
9 claims he was unable to adequately defend his “criminal matter” and that he missed a
10 court date for his family case.

11 In Count Three, Plaintiff claims his Fourteenth Amendment rights were violated
12 when Defendant Fritz “rejected a piece of mail which contained a money order which
13 was acceptable under MCSO rules and regulations.” Plaintiff claims this was in
14 retaliation for filing a lawsuit against the Maricopa County Sheriff’s Office. Plaintiff
15 further claims that Defendant Cruz denied him access to the courts by refusing to process
16 legal mail.

17 In Count Four, Plaintiff claims his Fourteenth Amendment rights were violated
18 when he was denied weekly indigent packages, “preventing access to mail and basic
19 hygiene tasks.” Plaintiff further claims that from April 28, 2013 through May 5, 2013, he
20 was denied the opportunity to shower.

21 In Count Five, Plaintiff claims his First Amendment right to the free exercise of
22 religion was violated when, on two different occasions, he was not allowed to attend
23 religious services, even though he had been approved to attend.

24 In Count Six, Plaintiff claims his Fourteenth Amendment rights were violated
25 when he was denied psychiatric treatment despite repeatedly requesting treatment.
26 Plaintiff states that when he attempted to grieve the issue, Defendant Joseph refused to
27 address the issue with him.

28 Plaintiff seeks injunctive relief and money damages.

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

2 **A. Count One**

3 Prisoners have a First Amendment right to file prison grievances, *Rhodes v.*
4 *Robinson*, 408 F.3d 559, 567 (9th Cir. 2005), but “[t]here is no legitimate claim of
5 entitlement to a grievance procedure,” *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.
6 1988), and the failure to follow grievance procedures does not give rise to a due process
7 claim. *See Flournoy v. Fairman*, 897 F. Supp. 350, 354 (N.D. Ill. 1995) (jail grievance
8 procedures did not create a substantive right enforceable under § 1983); *Spencer v.*
9 *Moore*, 638 F. Supp. 315, 316 (E.D. Mo. 1986) (violations of grievance system
10 procedures do not deprive inmates of constitutional rights). “[N]o constitutional right
11 was violated by the defendants’ failure, if any, to process all of the grievances [plaintiff]
12 submitted for consideration.” *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993). In
13 addition, “[t]he right to petition the government for redress of grievances . . . does not
14 guarantee a favorable response, or indeed any response, from state officials. Moreover,
15 the First Amendment’s right to redress of grievances is satisfied by the availability of a
16 judicial remedy.” *Baltoski v. Pretorius*, 291 F. Supp. 2d 807, 811 (N.D. Ind. 2003); *see*
17 *also Ashann-Ra v. Virginia*, 112 F. Supp. 2d 559, 569 (W.D. Va. 2000) (failure to comply
18 with state’s grievance procedure is not actionable under § 1983 and does not compromise
19 an inmate’s right of access to the courts).

20 Accordingly, Plaintiff’s claim that he was denied grievance forms and that
21 Defendants refused to process his grievances fails to state a claim.

22 **B. Count Two**

23 The right of meaningful access to the courts prohibits officials from actively
24 interfering with inmates’ attempts to prepare or file legal documents. *Lewis v. Casey*,
25 518 U.S. 343, 350 (1996). The right of access to the courts is only a right to bring
26 petitions or complaints to federal court and not a right to discover such claims or even to
27 litigate them effectively once filed with a court. *Id.* at 354. The right “guarantees no
28 particular methodology but rather the conferral of a capability—the capability of bringing

1 contemplated challenges to sentences or conditions of confinement before the courts.”
2 *Id.* at 356.

3 As a matter of standing, for an access-to-courts claim, a plaintiff must show that
4 he suffered an “actual injury” with respect to contemplated litigation. *Id.* at 349. To
5 show actual injury with respect to contemplated litigation, the plaintiff must demonstrate
6 that the defendants’ conduct frustrated or impeded him from bringing to court a
7 nonfrivolous claim that he wished to present. *Id.* at 352-53.

8 “[T]he injury requirement is not satisfied by just any type of frustrated legal
9 claim.” *Id.* at 354. The right of access to the courts “does not guarantee inmates the
10 wherewithal to transform themselves into litigating engines capable of filing everything
11 from shareholder derivative actions to slip-and-fall claims.” *Id.* at 355. The nonfrivolous
12 claim must be a direct or collateral attack on the inmate’s sentence or a challenge to the
13 conditions of his confinement. *Id.* “Impairment of any *other* litigating capacity is simply
14 one of the incidental (and perfectly constitutional) consequences of conviction and
15 incarceration.” *Id.* (emphasis in original).

16 Plaintiff has failed to describe the specific injury he suffered as a result of the
17 alleged denial of access to the courts and, therefore, has failed to state an access to courts
18 claim.

19 Further, to the extent Plaintiff claims he was denied access the court in his
20 criminal proceedings, a prisoner who is represented by counsel “has no constitutional
21 right of access to legal materials.” *United States v. Robinson*, 913 F.2d 712, 717 (9th Cir.
22 1990). The state has the option of deciding whether to provide legal assistance or access
23 to a law library. *See Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981).
24 “Availability of legal assistance at government expense . . . is a constitutionally
25 permissible means of access.” *United States v. Wilson*, 690 F.2d 1267, 1271 (9th Cir.
26 1982). When an inmate is provided adequate access, he may not reject the method of
27 access provided and insist on a method of access of his or her choosing. *Id. Accord*
28 *Martin v. Tyson*, 845 F.2d 1451, 1456 (7th Cir. 1988) (no denial of meaningful access to

1 courts where jail did not provide access to a law library to inmate who was represented
2 by counsel). Accordingly, Plaintiff has failed to state a claim for access to the courts with
3 regard to his criminal proceedings.

4 **C. Count Three**

5 Prisoners have “a First Amendment right to send and receive mail.” *Witherow v.*
6 *Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (*per curiam*) (citing *Thornburgh v. Abbott*, 490
7 U.S. 401, 407 (1989)). However, a prison may adopt regulations which impinge on an
8 inmate’s constitutional rights if those regulations are “reasonably related to legitimate
9 penological interests.” *Turner v. Safley*, 482 U.S. 78, 89 (1987). Similarly, a viable
10 claim of First Amendment retaliation contains five basic elements: (1) an assertion that a
11 state actor took some adverse action against an inmate (2) because of (3) that prisoner’s
12 protected conduct, and that such action (4) chilled the inmate’s exercise of his First
13 Amendment rights (or that the inmate suffered more than minimal harm) and (5) did not
14 reasonably advance a legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559,
15 567-68 (9th Cir. 2005). The plaintiff has the burden of demonstrating that his exercise of
16 his First Amendment rights was a substantial or motivating factor behind the defendants’
17 conduct. *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977);
18 *Soranno’s Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989).

19 Plaintiff has not alleged facts demonstrating that his mail was withheld without a
20 valid penological purpose. He has therefore failed to state a claim for retaliation or for
21 the wrongful withholding his mail.

22 **D. Count Four**

23 A pretrial detainee’s claim for unconstitutional conditions of confinement arises
24 from the Fourteenth Amendment Due Process Clause rather than from the Eighth
25 Amendment prohibition against cruel and unusual punishment. *Bell v. Wolfish*, 441 U.S.
26 520, 535 and n.16 (1979). Nevertheless, the same standards are applied, requiring proof
27 that the defendant acted with deliberate indifference. *See Frost v. Agnos*, 152 F.3d 1124,
28 1128 (9th Cir. 1998).

1 Deliberate indifference is a higher standard than negligence or lack of ordinary
2 due care for the prisoner's safety. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). To
3 state a claim of deliberate indifference, plaintiffs must meet a two-part test. "First, the
4 alleged constitutional deprivation must be, objectively, sufficiently serious"; and the
5 "official's act or omission must result in the denial of the minimal civilized measure of
6 life's necessities." *Id.* at 834 (internal quotations omitted). Second, the prison official
7 must have a "sufficiently culpable state of mind," i.e., he must act with "deliberate
8 indifference to inmate health or safety." *Id.* (internal quotations omitted). In defining
9 "deliberate indifference" in this context, the Supreme Court has imposed a subjective
10 test: "the official must both be aware of facts from which the inference could be drawn
11 that a substantial risk of serious harm exists, *and* he must also draw the inference." *Id.* at
12 837 (emphasis added).

13 In Count Four, Plaintiff claims he was denied "indigent packages" and basic
14 hygiene supplies. Plaintiff has failed to allege facts showing that the denial of these items
15 created a substantial risk of serious harm to Plaintiff's health or safety. Further, Plaintiff
16 has not alleged that a specifically named Defendant was aware of such a risk of harm and
17 failed to act. Plaintiff has failed to state a claim in Count Four.

18 **E. Count Five**

19 To state a First Amendment, free-exercise-of-religion claim, a plaintiff must allege
20 that a defendant burdened the practice of plaintiff's religion by preventing him from
21 engaging in a sincerely held religious belief and that the defendant did so without any
22 justification reasonably related to legitimate penological interests. *Shakur v. Schriro*, 514
23 F.3d 878 (9th Cir. 2008).

24 In Count Five, Plaintiff claims that on two occasions he was not allowed to attend
25 religious services. Plaintiff has not alleged facts showing that the practice of his religion
26 was burdened because he was prevented from engaging in a sincerely held religious
27 belief, nor has he alleged facts showing that Defendants acted without a legitimate
28 penological purpose. Plaintiff has failed to state a claim in Count Five.

1 **F. Count Six**

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

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

21 Deliberate indifference is a higher standard than negligence or lack of ordinary
22 due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor
23 gross negligence will constitute deliberate indifference.” *Clement v. California Dep’t of*
24 *Corr.*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*,
25 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or
26 “medical malpractice” do not support a claim under § 1983). “A difference of opinion
27 does not amount to deliberate indifference to [a plaintiff’s] serious medical needs.”
28 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care,

1 without more, is insufficient to state a claim against prison officials for deliberate
2 indifference. *See Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407
3 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of
4 “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 105.

5 In Count Six, Plaintiff claims that he repeatedly requested psychiatric treatment
6 and that his requests were denied. Plaintiff has not described his medical conditions and
7 it is therefore impossible for the Court to determine whether he suffered from a serious
8 medical need. Further, Plaintiff does not allege that a specific Defendant was aware of
9 his serious medical need and failed to act. Accordingly, Plaintiff has failed to state a
10 claim in Count Six.

11 **V. Leave to Amend**

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

19 If Plaintiff files a second amended complaint, Plaintiff must write short, plain
20 statements telling the Court: (1) the constitutional right Plaintiff believes was violated;
21 (2) the name of the Defendant who violated the right; (3) exactly what that Defendant did
22 or failed to do; (4) how the action or inaction of that Defendant is connected to the
23 violation of Plaintiff’s constitutional right; and (5) what specific injury Plaintiff suffered
24 because of that Defendant’s conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377
25 (1976).

26 Plaintiff must repeat this process for each person he names as a Defendant. If
27 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
28 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for

1 failure to state a claim. **Conclusory allegations that a Defendant or group of**
2 **Defendants has violated a constitutional right are not acceptable and will be**
3 **dismissed.**

4 Plaintiff must clearly designate on the face of the document that it is the “Second
5 Amended Complaint.” The second amended complaint must be retyped or rewritten in
6 its entirety on the court-approved form and may not incorporate any part of the original
7 Complaint or First Amended Complaint by reference. Plaintiff may include only one
8 claim per count.

9 A second amended complaint supersedes the original and first amended
10 complaints. *Ferdik*, 963 F.2d at 1262; *Hal Roach*, 896 F.2d at 1546. After amendment,
11 the Court will treat the original and first amended complaints as nonexistent. *Ferdik*, 963
12 F.2d at 1262. Any cause of action that was raised in the original or first amended
13 complaints and that was voluntarily dismissed or was dismissed without prejudice is
14 waived if it is not alleged in a second amended complaint. *Lacey v. Maricopa County*,
15 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

16 **VI. Warnings**

17 **A. Release**

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

22 **B. Address Changes**

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

27 **C. Copies**

28 Plaintiff must submit an additional copy of every filing for use by the Court. *See*

1 LRCiv 5.4. Failure to comply may result in the filing being stricken without further
2 notice to Plaintiff.

3 **D. Possible “Strike”**

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

14 **E. Possible Dismissal**

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

19 **IT IS ORDERED:**

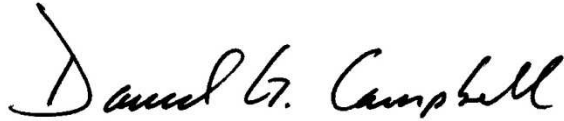
20 (1) Plaintiff’s Motion for Extension of Time to Pay Filing Fee (Doc. 15) is
21 **granted**; Plaintiff has 180 days from the filing date of this Order to pay the filing fee.

22 (2) The First Amended Complaint (Doc. 6) is **dismissed** for failure to state a
23 claim. Plaintiff has **30 days** from the date this Order is filed to file a second amended
24 complaint in compliance with this Order.

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

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

3 Dated this 22nd day of May, 2014.
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9 David G. Campbell
10 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 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.

- | | | | |
|--|---|---|---------------------------------------|
| <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 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.