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

Andre William Armstrong,
Plaintiff,

vs.

Brotherton, et al.,
Defendants.

No. CV 13-1264-PHX-DGC (BSB)

ORDER

Plaintiff Andre William Armstrong, who is confined in the Maricopa County Fourth Avenue Jail, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983, an Application to Proceed *In Forma Pauperis*, and a Motion to Appoint Guardian Ad Litem. In a February 5, 2014 Order, the Court dismissed the Complaint with leave to amend and appointed counsel to represent Plaintiff. The Court's appointment of counsel was based primarily the state trial court's finding that, at the time, Plaintiff was mentally incompetent to trial in state court.

On February 13, 2014, Attorney Sara Athen entered a Notice of Appearance as counsel for Plaintiff. On March 17, 2014, Ms. Athen filed a Motion to Withdraw as Attorney (Doc. 11). The Court will grant the Motion to Withdraw and will decline to appoint new counsel. Plaintiff will be given 30 days to file an amended complaint in compliance with the instructions set out below.

I. Motion to Withdraw

Local Rule of Civil Procedure 83.3(b) provides that an attorney may be permitted

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1 to withdraw as attorney of record by formal written order of the Court and with written
2 application from the attorney setting forth the reasons for the withdrawal together with
3 the name, last known residence and last known telephone number of the client.

4 Ms. Athen, citing to the Arizona Rules of Professional Conduct, asserts that
5 withdrawal is permissible because withdrawal can be accomplished without a material
6 adverse effect on Plaintiff's interests and because representation has been rendered
7 unreasonably difficult based on actions taken by Plaintiff. Ms. Athen states that
8 Plaintiff's last known address is:

9 Andre William Armstrong P973764
10 Fourth Avenue Jail
11 201 S. 4th Avenue
12 Phoenix, AZ 85004.

13 The Court will grant the Motion and permit Ms. Athen to withdraw as counsel for
14 Plaintiff.

14 **II. Appointment of Counsel**

15 Because the Court will allow Ms. Athen to withdraw as counsel for Plaintiff, the
16 Court will reevaluate the necessity for counsel in this action.

17 In the time between Plaintiff's Motion to Appoint Guardian Ad Litem and the
18 present, Plaintiff has been adjudicated mentally competent to stand trial in Maricopa
19 County Superior Court. Further, on December 11, 2013, the Maricopa County Superior
20 Court granted Plaintiff's oral motion to waive counsel and found Plaintiff mentally
21 competent to represent himself in criminal proceedings.¹

22 In the February 5, 2014 Order, the Court appointed counsel only because it was
23 required to do so pursuant to Federal Rule of Civil Procedure 17(c)(2) based on
24 Plaintiff's mental competency as adjudicated in his state criminal proceedings. Because
25 the Maricopa Superior Court has found Plaintiff mentally competent, the Court finds
26 appointment of counsel no longer necessary in this action. The Court declines to appoint
27

28 ¹ <http://www.courtminutes.maricopa.gov/docs/Criminal/122013/m6088682.pdf>
(last visited Mar. 31, 2014).

1 new counsel. It appears to the Court that Plaintiff has the ability to set forth his legal
2 positions and represent himself adequately in this case.

3 The Court will grant Plaintiff 30 days from the filing date of this Order to file an
4 amended complaint. As a courtesy to Plaintiff, the Court will repeat the portion of its
5 February 5 Order regarding screening of the Complaint and will provide Plaintiff with
6 instructions for filing an amended complaint and time to file an amended complaint.

7 **III. 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*). The
11 Court should not, however, advise the litigant how to cure the defects. This type of
12 advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v.*
13 *Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n.13 (declining to
14 decide whether the court was required to inform a litigant of deficiencies). Plaintiff’s
15 Complaint will be dismissed for failure to state a claim, but because it may possibly be
16 amended to state a claim, the Court will dismiss it with leave to amend.

17 **IV. Complaint**

18 Plaintiff names the following Defendants in the Complaint: Maricopa County
19 Superior Court Judge Brotherton; Maricopa County Sheriff Joseph M. Arpaio; and
20 Officers of the Court J.S. Jed and O.E. Smith.

21 Plaintiff raises two claims for relief. In Count One, Plaintiff claims his Fifth and
22 Fourteenth Amendment rights were violated when, on May 20, 2013, Defendant
23 Brotherton ordered Defendants Jed and Smith to “jump on [Plaintiff] in the hallway . . .
24 after [Plaintiff] informed the clerk that . . . [he] was having a medical problem.” Plaintiff
25 claims that he called 911 and the Defendants “jumped on [him] and dragged [him] into
26 the court room.” Plaintiff claims that he started crying and blacked out and that “they
27 took [his] bond money.”
28

1 In Count Two, Plaintiff alleges the same facts and claims Defendants Jed and
2 Smith used excessive force against him in violation of the Eighth Amendment.

3 Plaintiff seeks injunctive relief and money damages.

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

5 **A. Defendant Brotherton**

6 Judges are absolutely immune from § 1983 suits for damages for their judicial acts
7 except when they are taken “in the clear absence of all jurisdiction.” *Stump v. Sparkman*,
8 435 U.S. 349, 356-357 (1978); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986).
9 An act is “judicial” when it is a function normally performed by a judge and the parties
10 dealt with the judge in his or her judicial capacity. *Stump*, 435 U.S. at 362; *Crooks v.*
11 *Maynard*, 913 F.2d 699, 700 (9th Cir. 1990). In this case, Plaintiff’s only allegation
12 regarding Defendant Brotherton is that he directed Defendants Jed and Smith to bring
13 Plaintiff back into the courtroom. These actions were performed within Defendant
14 Brotherton’s judicial capacity and Defendant Brotherton is therefore immune from suit.

15 **B. Defendant Arpaio**

16 To state a valid claim under § 1983, plaintiffs must allege that they suffered a
17 specific injury as a result of specific conduct of a defendant and show an affirmative link
18 between the injury and the conduct of that defendant. *See Rizzo v. Goode*, 423 U.S. 362,
19 371-72, 377 (1976).

20 Plaintiff makes no allegations against Defendant Arpaio and therefore fails to state
21 a claim against him.

22 **C. Defendants Jed and Smith**

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

1 The Fourth Amendment does not prohibit the use of reasonable force. *Tatum v.*
2 *City & County of San Francisco*, 441 F.3d 1090, 1095 (9th Cir. 2006). Whether the force
3 was excessive depends on “whether the officers’ actions [were] ‘objectively reasonable’
4 in light of the facts and circumstances confronting them, without regard to their
5 underlying intent or motivation.” *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Tatum*,
6 441 F.3d at 1095; *Lolli v. County of Orange*, 351 F.3d 410, 415 (9th Cir. 2003). The
7 Court must balance the nature and quality of the intrusion against the countervailing
8 governmental interests at stake. *Graham*, 490 U.S. at 396; *Lolli*, 351 F.3d at 415.
9 Moreover,

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

14 *Graham*, 490 U.S. at 396 (citations omitted). The due process clause does not protect a
15 pretrial detainee from the use of all force, but only from the use of excessive force that
16 amounts to punishment. *Id.* at 395.

17 In evaluating a due process claim alleging excessive force, the court should
18 consider: (1) the need for the application of force, (2) the relationship between the need
19 and the amount of force use; (3) the extent of the injury inflicted, and (4) whether force
20 was applied in a good faith effort to maintain and restore discipline. *White v. Roper*, 901
21 F.2d 1501, 1507 (9th Cir. 1990). Assuming all facts alleged by Plaintiff are true,
22 Plaintiff’s allegations fail to demonstrate that the use of force in this case was
23 unreasonable. Plaintiff’s release conditions were revoked, Plaintiff left the courtroom to
24 call 911, and Defendants Jed and Smith were directed to bring Plaintiff back to the
25 courtroom. Plaintiff alleges Defendants Jed and Smith “dragged” him back to the
26 courtroom, he started crying, and then “blacked out.” Plaintiff claims he suffered
27 emotional distress and mental anguish, but alleges no physical injury.

1 Plaintiff's facts show that although Plaintiff may not have been attempting to
2 "escape," Plaintiff did leave the courtroom after his release had been revoked and that
3 Defendants Jed and Smith acted with what appears to be the minimum force necessary to
4 return Plaintiff to the courtroom. Plaintiff does not allege that he suffered physical injury
5 and it appears that Defendants Jed and Smith acted pursuant to instructions from the court
6 and with the purpose of restoring order. Plaintiff has therefore failed to state a claim
7 against Defendants Jed and Smith and these Defendants will be dismissed.

8 **VI. Leave to Amend**

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

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

19 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,
20 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896
21 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original
22 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
23 in the original complaint and that was voluntarily dismissed or was dismissed without
24 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*
25 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

1 **VII. Warnings**

2 **A. Release**

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

7 **B. Address Changes**

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

12 **C. Copies**

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

16 **D. Possible “Strike”**

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

26 **E. Possible Dismissal**

27 If Plaintiff fails to timely comply with every provision of this Order, including
28 these warnings, the Court may dismiss this action without further notice. *See Ferdik, 963*

1 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any
2 order of the Court).

3 **IT IS ORDERED:**

4 (1) The March 17, 2014 Motion to Withdraw as Attorney (Doc. 11) is **granted**.
5 Attorney Sara M. Athen is no longer counsel for Plaintiff.

6 (2) The Court declines to appoint new counsel; Plaintiff must proceed *pro se*.

7 (3) Plaintiff has **30 days** from the date this Order is filed to file a first amended
8 complaint in compliance with this Order.

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

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

14 Dated this 17th day of April, 2014.

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18 _____
19 David G. Campbell
20 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.