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

Delano Danny Quiroz, Jr.,
Plaintiff,
vs.
Phoenix Police Department, et al.,
Defendants.

No. CV 13-1876-PHX-DGC (LOA)

ORDER

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

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

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

....
....

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 three counts for denial of constitutionally adequate medical care,
12 excessive force, and threat to safety. Plaintiff sues the Phoenix Police Department, “in
13 their individual and official capacities,” and Phoenix Police Officer Lieutenant Russel
14 Frederiksen #5344. Plaintiff seeks \$2,000,000 in damages.

15 Plaintiff alleges the same facts in support of all three claims. Plaintiff does not say
16 when these events occurred, or where, but he states that he was fleeing from officers on
17 foot when a police vehicle swerved and pulled in front of him. Plaintiff leapt away and
18 continued to run toward a brick wall. He jumped to the top of the wall and heard
19 Defendant Frederiksen yell, “Get down from there. Get down.” Plaintiff alleges that
20 Frederiksen did not give him time to get down and fired six shots from his gun, a Glock
21 30, hitting Plaintiff four times in the legs—once in his left leg and three times in his right
22 leg, “which shattered [his] knee cap and required extensive surgery.” Plaintiff alleges he
23 was shot from behind. While lying on his back in the middle of an alley, Plaintiff told
24 arresting officers that he had been shot and to call an ambulance. Plaintiff alleges that the
25 officers responded that “you aren’t shot,” and then picked up both his legs and
26 “continuously slammed them on the ground.” Plaintiff states that he has pain to this day.

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1 **Additional Background**

2 According to records available on-line, Plaintiff is in custody and awaiting trial in
3 Maricopa County Superior Court, case #CR2011-154084, on charges of armed robbery,
4 first-degree burglary, theft -- means of transportation, aggravated assault, endangerment,
5 and misconduct involving weapons.¹ The offense date is listed as October 18, 2011 and
6 trial is currently scheduled for February 6, 2014.

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

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

15 **A. Phoenix Police Department**

16 Plaintiff sues the City of Phoenix Police Department. A municipal police
17 department is not a “person” within the meaning of § 1983. *See e.g., Petaway v. City of*
18 *New Haven Police Dep’t*, 541 F. Supp. 2d 504 (D. Conn. 2008), *Pahle v. Colebrookdale*
19 *Tp.*, 227 F. Supp. 2d 361 (E.D. Pa. 2002). However, a municipality is a “person” for
20 purposes of § 1983, i.e., a municipality such as a city or county, may be sued. *See*
21 *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S.
22 163, 166 (1993); *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978). To state a
23 claim against a municipality under § 1983, a plaintiff must allege facts to support that his
24 constitutional rights were violated pursuant to a policy or custom of the municipality.
25 *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188 (9th Cir. 2001) (citing *Monell*, 436
26 U.S. at 690-91); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989)).

27
28 ¹See <http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseInfo.asp> (last visited Oct. 29, 2013).

1 Thus, a municipality may not be sued solely because an injury was inflicted by one of its
2 employees or agents. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir.
3 2006). Therefore, a § 1983 claim against a municipal defendant “cannot succeed as a
4 matter of law” unless a plaintiff: (1) contends that the municipal defendant maintains a
5 policy or custom pertinent to the plaintiff’s alleged injury; and (2) explains how such
6 policy or custom caused the plaintiff’s injury. *Sadoski v. Mosley*, 435 F.3d 1076, 1080
7 (9th Cir. 2006) (affirming dismissal of a municipal defendant pursuant to Fed. R. Civ. P.
8 12(b)(6)).

9 The City of Phoenix Police Department is not a proper Defendant and it will be
10 dismissed. To the extent that Plaintiff is attempting to sue the City of Phoenix, he fails to
11 allege facts to support that the City of Phoenix maintained a policy or custom that
12 resulted in the violation of Plaintiff’s federal constitutional rights or to explain how his
13 injuries were caused by any municipal policy or custom. Accordingly, Plaintiff also fails
14 to state a claim against the City of Phoenix.

15 **B. Medical Care**

16 Plaintiff alleges in Count I that he was denied medical care. Not every claim by a
17 prisoner relating to inadequate medical treatment states a violation of the Eighth or
18 Fourteenth Amendment. To state a § 1983 medical claim, a plaintiff must show that the
19 defendants acted with “deliberate indifference to serious medical needs.” *Jett v. Penner*,
20 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104
21 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating that failure
22 to treat the condition could result in further significant injury or the unnecessary and
23 wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.
24 *Jett*, 439 F.3d at 1096 (quotations omitted).

25 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d
26 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must
27 both know of and disregard an excessive risk to inmate health; “the official must both be
28 aware of facts from which the inference could be drawn that a substantial risk of serious

1 harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825,
2 837 (1994). Deliberate indifference in the medical context may be shown by a
3 purposeful act or failure to respond to a prisoner’s pain or possible medical need and
4 harm caused by the indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may
5 also be shown when a prison official intentionally denies, delays, or interferes with
6 medical treatment or by the way prison doctors respond to the prisoner’s medical needs.
7 *Estelle*, 429 U.S. at 104-05; *Jett*, 439 F.3d at 1096.

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

20 Plaintiff has not alleged sufficient facts to support a claim of denial of
21 constitutionally adequate medical care. Plaintiff does not say who denied him medical
22 care or when. Presumably, the alleged denial of medical care occurred after Plaintiff had
23 been shot, when Plaintiff was lying on his back and told arresting officers he was shot
24 and to call an ambulance. He alleges that “they” responded, “You aren’t shot,” and
25 picked up both of his legs “and continuously slammed them on the ground.” Plaintiff
26 does not identify any individual(s) who said, “You aren’t shot,” or who picked up his legs
27 and “continuously” slammed them on the ground. Nor does Plaintiff state whether he
28 was further injured by the arresting officers’ words or actions. Plaintiff does not say

1 whether he told the arresting officers he had been shot in the legs, as opposed to
2 elsewhere on his body, and he does not allege how any individual responsible for the
3 alleged violation knew he had been shot in the legs, such that whoever “continuously
4 slammed” his legs on the ground would know that a serious risk of further harm existed.
5 In addition, Plaintiff does not state that any Defendant actually refused to call an
6 ambulance or for how long he was allegedly denied medical care. Plaintiff apparently
7 did receive medical care at some point because he states that his shattered knee cap
8 required extensive surgery. Absent additional facts, Plaintiff fails to state a claim for
9 denial of constitutionally adequate medical care and Count I will be dismissed.

10 **C. Excessive Force**

11 The use of excessive force by police officers in the course of an arrest can violate
12 the arrestee’s Fourth Amendment right to be free from unreasonable seizures. *See White*
13 *by White v. Pierce County*, 797 F.2d 812, 816 (9th Cir. 1986). The Fourth Amendment
14 does not prohibit the use of reasonable force. *Tatum v. City & County of San Francisco*,
15 441 F.3d 1090, 1095 (9th Cir. 2006). Whether the force was excessive depends on
16 “whether the officers’ actions [were] ‘objectively reasonable’ in light of the facts and
17 circumstances confronting them, without regard to their underlying intent or motivation.”
18 *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Tatum*, 441 F.3d at 1095; *Lolli v. County*
19 *of Orange*, 351 F.3d 410, 415 (9th Cir. 2003). The Court must balance the nature and
20 quality of the intrusion against the countervailing governmental interests at stake.
21 *Graham*, 490 U.S. at 396; *Lolli*, 351 F.3d at 415. Moreover,

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

28 *Graham*, 490 U.S. at 396 (citations omitted). “Whether a particular use of force was
‘objectively reasonable’ depends on several factors, including the severity of the crime

1 that prompted the use of force, the threat posed by a suspect to the police or to others, and
2 whether the suspect was resisting arrest.” *Tatum*, 441 F.3d at 1095.

3 In this case, Plaintiff provides no information about the circumstances of his arrest
4 that would allow the Court to evaluate the reasonableness of the force used against him.
5 For instance, Plaintiff fails to provide information about the severity of the crime at issue,
6 whether he posed a threat to the safety of the officers or others, or whether he was
7 carrying a weapon.² Moreover, Plaintiff asserts that he was fleeing from officers, which
8 indicates he may have been evading or resisting arrest. Accordingly, Plaintiff’s
9 allegations of excessive force fail to state a claim and Count II will be dismissed.

10 **D. Threat to Safety**

11 Plaintiff designates Count III as a threat to safety and alleges the same facts as in
12 Counts I and II. Typically, to state a claim for failure to protect or threats to safety, an
13 inmate must allege facts to support that he was incarcerated under conditions posing a
14 substantial risk of harm and that prison officials were “deliberately indifferent” to those
15 risks. *Farmer v. Brennan*, 511 U.S. 825, 832-33 (1994). To adequately allege deliberate
16 indifference, a plaintiff must allege facts to support that a defendant knew of, but
17 disregarded, an excessive risk to inmate safety. *Id.* at 837. That is, “the official must
18 both [have been] aware of facts from which the inference could be drawn that a
19 substantial risk of serious harm exist[ed], and he must also [have] draw[n] the inference.”
20 *Id.*

21 Plaintiff has not alleged any facts suggesting that he has been incarcerated under
22 conditions posing a risk of harm and that officials were deliberately indifferent to those
23 risks. Accordingly, Count III will be dismissed.

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26 _____
27 ² Because Plaintiff failed to identify when the events described in the Complaint
28 took place, it is unclear whether the events described in the Complaint occurred after or
during the commission of the multiple felonies for which Plaintiff has been charged in
Maricopa County Superior Court, case #CR2011-154084.

1 **V. Leave to Amend**

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

8 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
9 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
10 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to
11 do; (4) how the action or inaction of that Defendant is connected to the violation of
12 Plaintiff’s constitutional right; and (5) what specific injury Plaintiff suffered because of
13 that Defendant’s conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

14 Plaintiff must repeat this process for each person he names as a Defendant. If
15 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
16 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
17 failure to state a claim. **Conclusory allegations that a Defendant or group of**
18 **Defendants has violated a constitutional right are not acceptable and will be**
19 **dismissed.**

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

24 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,
25 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896
26 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original
27 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
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1 in the original complaint is waived if it is not raised in a first amended complaint. *King v.*
2 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

3 **VI. Warnings**

4 **A. Release**

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

9 **B. Address Changes**

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

14 **C. Copies**

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

18 **D. Possible “Strike”**

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

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E. Possible Dismissal

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

IT IS ORDERED:

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

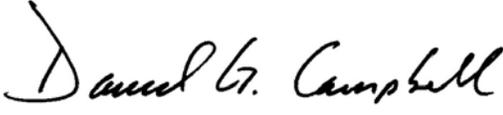
(2) As required by the accompanying Order to the appropriate government agency, Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial filing fee.

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

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

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

Dated this 4th day of November, 2013.



David G. Campbell
United States District Judge

**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 and Administrative Fees. The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, 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 \$400 filing and administrative fees 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.

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.