

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). Plaintiff’s
8 Complaint will be dismissed failure to state a claim, but because it may possibly be
9 amended to state a claim, the Court will dismiss it with leave to amend.

10 **III. Complaint**

11 Plaintiff alleges three counts of denial of constitutionally adequate medical care.
12 In Count I, Plaintiff alleges that prison officials “have acted with deliberate indifference
13 that a substantial risk of serious harm exists.” In Count II, Plaintiff alleges that he has
14 been “denied medically appropriate oral medications for his hepatitis disease.” In Count
15 III, Plaintiff alleges that he has been denied treatment under the Hepatitis-C protocol
16 because the Arizona Department of Corrections (ADOC) “think[s] [Plaintiff] has a
17 shorter sentence.” Plaintiff names as Defendants Dr. Gale Steinhauser and Dr. Michael
18 Lesac, whom Plaintiff identifies as Primary Health Care Providers for ADOC. Plaintiff
19 seeks testing and treatment for Hepatitis-C and damages.

20 It is difficult to distill the actual factual allegations in Plaintiff’s Complaint
21 because they are scattered throughout the twenty-page document, which contains
22 numerous recitations of legal standards, citations to cases and statutes, and other
23 conclusory statements. To the extent they are discernible, Plaintiff alleges the following:
24 Plaintiff is serving a “life sentence 25-years flat from the State of Florida prison” for
25 first-degree murder and has been in ADOC custody since 2005. Plaintiff has Hepatitis-C,
26 which has “been poorly controlled since 2005.” Plaintiff states that he “never received
27 any antiviral treatment or medications prescribed for him” and “has never been
28 prescribed the correct medications to protect” him from viruses that attack the liver. In

1 addition, Plaintiff has not been tested “to determine the particular virus genotype.”
2 Plaintiff “has never been giv[en] adequate care to treat his liver function and never been
3 refer[ed] to an outside consultant on a yearly basis for his Hepatitis C and HCV
4 genotype.”

5 Plaintiff was sent to St. Mary’s Hospital in September 2010, where a blood screen
6 indicated he had “elevated levels of AST, ALT and bilirubin, and a decrease in blood
7 platelets. These results were consistent with a diagnosis of liver disease [as] well as
8 HCV.” At some point later, “ADOC Program Evaluation Administrator Health Services
9 Contract Monitoring Bureau advised [Plaintiff that] the results were once again abnormal
10 and consistent with liver disease and HCV.” On November 8, 2010, “the staff physician
11 at Central Office indicated to Bean that he had tested positive for HCV; the doctor also
12 confi[r]med that [Plaintiff’s] minimum sentence extended through June 2011. This . . .
13 would have allowed enough time for at least the 24-week treatment protocol if
14 [Plaintiff’s] HCV were genotype II or III. However, the doctor did no genotype testing to
15 determine if Bean was an appropriate candidate for the 24-week treatment regimen.”
16 Instead, Plaintiff “was told again he was assigned to the chronic care clinic,” which he
17 states is palliative rather than curative care.

18 In late 2010 and early 2011, Plaintiff “requested and was denied HCV treatment
19 on several more occasions. The (HNRs) submitted w[ere] never logged in the Central
20 Office Health Unit records.” Plaintiff filed formal grievance appeals “requesting to be
21 genotype scree[n]ed and treated,” but “the responses always stated that Plaintiff[’s]
22 minimum sentence remaining was less than a year, which made him ineligible for
23 treatment and genotype testing.” According to Plaintiff, ADOC’s Hepatitis-C protocol
24 “denies those [] like Plaintiff and other prisoners with sentence[s] longer than 12 months
25 and those prisoners with sentences longer than 18 months with genotype I or IV, the type
26 of individualized treatment normally associated with the provision of adequate medical
27 care.”
28

1 Plaintiff does not say when, but he “started to complain of many of the common
2 physical symptoms of HCV such as right quadrant pain and fatigue.” However, “he was
3 still refused treatment.” He “repeatedly appealed the denial [of] treatment and each time
4 was told that his remaining sentence did not fit the HCV protocol criteria.” When
5 Plaintiff’s minimum sentence date of July 2011 passed, Plaintiff “saw the doctor and
6 again complained of right upper quadrant pain.” The doctor did not order treatment or
7 genotype screening but told Plaintiff he would be returned to the chronic care clinic. In
8 October 2011, the Board of Probation and Parole denied parole for Plaintiff and ordered
9 him to serve out his maximum sentence, with a new release date of December 28, 2014.
10 Plaintiff believed the “math was now in [his] favor to receive HCV treatment and
11 genotype screening.” However, he was again denied HCV treatment and genotype
12 testing in the spring of 2012. A nurse supervisor responded to one of his grievances in
13 June 2012 and stated that “given that you are past your minimum sentence and eligible
14 for parole you do not have the required 12-18 months of time on your sentence for
15 treatment completion.” Plaintiff asserts that “hypothetically, state prison officials can
16 deny HCV treatment indefinitely once a prisoner passes his or her minimum eligib[ility]
17 for a parole hearing, [but that] doesn’t necessary[il]y mean that parole will be granted,
18 however.” Plaintiff continued to request treatment for the remainder of 2012 and was
19 denied. Plaintiff states that the responses were always the same: “you are past your
20 minimum time and eligible for parole and do not have the required 12-18 months of time
21 on your sentence for treatment completion.” In August 2012, the Chief Grievance
22 Officer offered Plaintiff “a deal if he deferred his parole until treatment was completed.
23 The response indicated that if he didn’t take the deal, then HCV treatment would be
24 denied.” Apparently, Plaintiff refused the offer.

25 Plaintiff argues that “[w]hile the ADOC is reducing prison healthcare costs by
26 denying treatment to the [P]laintiff and other prisoners with HCV based on the
27 Department’s current treatment protocol, a ten-fold increase in medical expenses for
28 untreated prisoners who are released will be passed to other government agencies and

1 ultimately the taxpaying public.” Plaintiff contends that “[t]here is evidence showing that
2 [D]efendants Steinhauser and Lesac acted or failed to take action with deliberate
3 indifference to [P]laintiff’s Hepatitis-C conditions.” Plaintiff asserts that he has
4 attempted to grieve his situation, but his “grievance appeals have gone unanswered,
5 unprocessed or defendants have denied ever receiv[ing] any grievance appeals.” In some
6 instances, Plaintiff has attempted to use the grievance process, but his efforts “have been
7 frustrated because of defendants[’] willful and deliberate actions to block Plaintiff from
8 exhausting the process.”

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

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

17 Moreover, a “plaintiff must allege facts, not simply conclusions, that show that an
18 individual was personally involved in the deprivation of his civil rights.” *Barren v.*
19 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). For an individual to be liable in his
20 official capacity, a plaintiff must allege that the official acted as a result of a policy,
21 practice, or custom. *See Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188 (9th Cir.
22 2001). Further, there is no *respondeat superior* liability under § 1983, so a defendant’s
23 position as the supervisor of someone who allegedly violated a plaintiff’s constitutional
24 rights does not make him liable. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691
25 (1978); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor in his
26 individual capacity “is only liable for constitutional violations of his subordinates if the
27 supervisor participated in or directed the violations, or knew of the violations and failed
28 to act to prevent them.” *Taylor*, 880 F.2d at 1045.

1 **A. Steinhauser and Lesac**

2 Plaintiff names Steinhauser and Lesac as Defendants, yet the only assertion he
3 makes against them is that “[t]here is evidence showing that [D]efendants Steinhauser
4 and Lesac acted or failed to take action with deliberate indifference to [P]laintiff’s
5 Hepatitis-C conditions.” Other than this one conclusory statement, Plaintiff fails to allege
6 how Steinhauser and Lesac were personally involved in the deprivation of his civil rights.
7 Plaintiff fails to allege that they acted as a result of a policy, practice, or custom, that they
8 participated in or directed the alleged violations of Plaintiff’s constitutional rights, or that
9 they knew of the violations and failed to act to prevent them. Although *pro se* pleadings
10 are liberally construed, *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), conclusory and
11 vague allegations will not support a cause of action. *Ivey v. Bd. of Regents of the Univ. of*
12 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a liberal interpretation of a civil
13 rights complaint may not supply essential elements of the claim that were not initially
14 pled. *Id.* Accordingly, Plaintiff fails to state a claim against Steinhauser and Lesac and
15 they will be dismissed.

16 **B. Medical Care**

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

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

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

9 Deliberate indifference is a higher standard than negligence or lack of ordinary
10 due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor
11 gross negligence will constitute deliberate indifference.” *Clement v. California Dep’t of*
12 *Corr.*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*,
13 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or
14 “medical malpractice” do not support a claim under § 1983). “A difference of opinion
15 does not amount to deliberate indifference to [a plaintiff’s] serious medical needs.”
16 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care,
17 without more, is insufficient to state a claim against prison officials for deliberate
18 indifference. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407
19 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of
20 “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 105, 439 F.3d at 1096
21 (quotations omitted).

22 Plaintiff has failed to allege facts to support that any identifiable Defendant was
23 deliberately indifferent to a serious medical need. First, it is unclear whether Plaintiff has
24 actually been diagnosed with Hepatitis-C or whether his blood work merely indicates he
25 may have HCV and further testing is needed. He appears to allege both. In one instance
26 he alleges that he has Hepatitis-C and that it has “been poorly controlled since 2005.”
27 Later in his Complaint, Plaintiff alleges that in 2010 a blood screen indicated he had
28 “elevated levels of AST, ALT and bilirubin, and a decrease in blood platelets,” which are

1 “consistent with a diagnosis of liver disease [as] well as HCV.” If Plaintiff was actually
2 diagnosed with Hepatitis-C, he needs to state when he was diagnosed, by whom, what
3 treatment, if any, has been recommended and by whom, and who, if anyone, refused such
4 treatment. It is also unclear whether Plaintiff has actually been prescribed treatment or
5 medications because he states at one point that he “never received any antiviral treatment
6 or medications prescribed for him,” but later alleges that he “has never been prescribed
7 the correct medications to protect” him from viruses that attack the liver and he has not
8 been tested “to determine the particular virus genotype.” Plaintiff also alleges that he has
9 requested treatment for HCV and his requests have been denied, but he fails to provide
10 specifics to support these allegations such as when he requested treatment, to whom he
11 submitted these requests, how, and who denied these requests. He also fails to provide
12 any specific information regarding the grievances and grievance appeals he submitted
13 such as the dates he submitted them, to whom, and what response(s) he received, if any,
14 and from whom. Absent additional facts, Plaintiff fails to state a claim for the denial of
15 constitutionally adequate medical care and Counts I, II and III will be dismissed.

16 **V. Leave to Amend**

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

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

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

7 Plaintiff must clearly designate on the face of the document that it is the “First
8 Amended Complaint.” The first amended complaint must be retyped or rewritten in its
9 entirety on the court-approved form and may not incorporate any part of the original
10 Complaint by reference. Plaintiff may include only one claim per count. However, it is
11 not necessary for Plaintiff to separate the various aspects of his medical claim into
12 multiple counts. Also, Plaintiff should follow all instructions on the court-approved
13 form, including the instruction to “state the facts clearly in your own words without citing
14 legal authority or arguments.”

15 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,
16 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896
17 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original
18 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
19 in the original complaint and that was voluntarily dismissed or was dismissed without
20 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*
21 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

22 **VI. Warnings**

23 **A. Release**

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

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B. Address Changes

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

C. Copies

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

D. Possible “Strike”

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

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**.

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(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 18th 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.

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.