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

John Henry Tomlin,

No. CV 13-1980-PHX- RCB (SPL)

Plaintiff,

VS.

ORDER

Nathaniel E. Gafvert, et al.,
Defendants.

Plaintiff John Henry Tomlin, who is confined the Arizona State Prison Complex-Florence, filed a *pro se* civil rights Complaint in Maricopa County Superior Court. Defendant Gafvert¹ removed the action to this Court on September 30, 2013, and paid the filing fee.

On October 1, 2013, Defendant filed a Motion to Stay Discovery (Doc. 3) and on October 9, 2013, Plaintiff filed a Motion for Extension of Time to Serve Complaint (Doc. 5). The Court will dismiss the Complaint with leave to amend and deny as moot the pending Motions.

I. Removal to Federal Court

Title 28 U.S.C. § 1441 authorizes removal of any civil action brought in the state court over which the federal district courts would have original jurisdiction. “Only . . . actions that originally could have been filed in federal court may be removed to federal

¹ Defendant Gafvert is the only named Defendant, the remaining defendants are fictitiously named.

1 court by the defendant.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Absent
2 diversity of citizenship (not present here), federal question jurisdiction is required.
3 Federal district courts have original jurisdiction over all civil actions arising under the
4 Constitution of the United States pursuant to 28 U.S.C. § 1331, including those actions
5 where the plaintiff has requested a remedy under state law for an alleged violation of a
6 federal substantive right. *Smith v. Kansas City Title & Trust*, 255 U.S. 180, 199 (1921).

7 Plaintiff claims violations of his constitutional rights and has not objected to
8 removal. The Court finds removal was proper.

9 **II. Failure to File Complaint on Court-Approved Form**

10 Pursuant to Local Rule of Civil Procedure 3.4, “[a]ll complaints and applications
11 to proceed *in forma pauperis* by incarcerated persons shall be signed and legibly written
12 or typewritten on forms approved by the Court.” Plaintiff has not filed his Complaint on
13 the court-approved form and the Court is unable to determine the precise number and
14 nature of Plaintiff’s claims. The Court will therefore dismiss the Complaint and grant
15 Plaintiff 30 days to file an amended complaint on the court-approved form.

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

20 If Plaintiff files a an amended complaint, Plaintiff must write short, plain
21 statements telling the Court: (1) the constitutional right Plaintiff believes was violated;
22 (2) the name of the Defendant who violated the right; (3) exactly what that Defendant did
23 or failed to do; (4) how the action or inaction of that Defendant is connected to the
24 violation of Plaintiff’s constitutional right; and (5) what specific injury Plaintiff suffered
25 because of that Defendant’s conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377
26 (1976).

27 Plaintiff must repeat this process for each person he names as a Defendant. If
28 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific

1 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
2 failure to state a claim. **Conclusory allegations that a Defendant or group of**
3 **Defendants has violated a constitutional right are not acceptable and will be**
4 **dismissed.**

5 **III. Motions**

6 On October 1, 2013, Defendant filed a Motion to Stay Discovery. Because the
7 Court has not yet completed statutory screening, the Court will deny the Motion as moot.
8 If Plaintiff files an amended complaint, and the Court determines that Plaintiff's claims
9 may proceed, the Court will then issue a scheduling order setting the time for the parties
10 to conduct discovery.

11 On October 9, 2013, Plaintiff filed a Motion for Extension of Time to Serve
12 Complaint (Doc. 5). Defendant filed a Response stating that the Motion should be denied
13 as moot because Defendant has waived any defect with Plaintiff's attempted service of
14 the Complaint. The Court will deny Plaintiff's Motion for Extension of Time as moot.

15 **IV. Warnings**

16 **A. Address Changes**

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

21 **B. Copies**

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

25 **C. Possible Dismissal**

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

¹ *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action
² for failure to comply with any order of the Court).

3 | IT IS ORDERED:

4 (1) The Complaint (filed with the Notice of Removal at Doc. 1) is **dismissed**.
5 Plaintiff has **30 days** from the date this Order is filed to file a first amended complaint in
6 compliance with this Order.

7 (2) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
8 Court must, without further notice, enter a judgment of dismissal of this action without
9 prejudice.

10 (3) Defendant's October 1, 2013 Motion to Stay Discovery (Doc. 3) is **denied**
11 as moot.

12 (4) Plaintiff's Motion for Extension of Time to Serve Complaint (Doc. 5) is
13 **denied** as moot.

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

16 DATED this 13th day of January, 2014.



Robert C. Broomfield
Senior 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 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:**

<u>Phoenix & Prescott Divisions:</u>	OR	<u>Tucson Division:</u>
U.S. District Court Clerk		U.S. District Court Clerk
U.S. Courthouse, Suite 130		U.S. Courthouse, Suite 1500
401 West Washington Street, SPC 10		405 West Congress Street
Phoenix, Arizona 85003-2119		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,))))))))))))	CASE NO. _____
	vs.)))))))))))	(To be supplied by the Clerk)	
<u>(1)</u>	,)))))))))))		
(Full Name of Defendant))))))))))))		
<u>(2)</u>	,)))))))))))		
<u>(3)</u>	,)))))))))))		
<u>(4)</u>	,)))))))))))		
CIVIL RIGHTS COMPLAINT BY A PRISONER														
<input type="checkbox"/> Original Complaint <input type="checkbox"/> First Amended Complaint <input type="checkbox"/> Second Amended Complaint														
<input type="checkbox"/> Check if there are additional Defendants and attach page 1-A listing them.														

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:

(Position and Title) _____
(Institution)
2. Name of second Defendant: _____ . The second Defendant is employed as:

(Position and Title) _____
(Institution)
3. Name of third Defendant: _____ . The third Defendant is employed as:

(Position and Title) _____
(Institution)
4. Name of fourth Defendant: _____ . The fourth Defendant is employed as:

(Position and Title) _____
(Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: _____.
 2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
 Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.
 3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count I. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

.

- ## **5. Administrative Remedies:**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count I? Yes No

c. Did you appeal your request for relief on Count I to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT II

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

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

- 3. Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## **5. Administrative Remedies.**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count II? Yes No

c. Did you appeal your request for relief on Count II to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT III

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

2. **Count III.** Identify the issue involved. Check only one. State additional issues in separate counts.

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 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.