

1
2
3
4
5
6
7
8
9
10
11
12
13
14

KAB

WO

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

Justen Kofi Monk,

Plaintiff,

vs.

Ofc. Gissels, et al.,

Defendants.

No. CV 13-2392-PHX-DGC (MEA)

ORDER

Plaintiff Justen Kofi Monk, who is confined in the Maricopa County Fourth Avenue Jail, filed a *pro se* civil rights Complaint (Doc. 1)¹ and an Application to Proceed *In Forma Pauperis* (Doc. 3). The Court will grant the Application to Proceed and 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. *Id.* The statutory filing fee will be collected monthly in payments of 20% of the previous month's income credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00. 28 U.S.C.

¹ Plaintiff states that this Court has jurisdiction pursuant to "excessive force." Excessive force is not a basis for this Court's jurisdiction. Because it appears that Plaintiff is attempting to assert violations of his constitutional rights by state actors, the Court will construe his Complaint as brought pursuant to 42 U.S.C. § 1983.

1 § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government
2 agency to collect and forward the fees according to the statutory formula.

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

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

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

16 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
17 claim to relief that is plausible on its face.’” *Id.* (citation omitted). A claim is plausible
18 “when the plaintiff pleads factual content that allows the court to draw the reasonable
19 inference that the defendant is liable for the misconduct alleged.” *Id.* (citation omitted).
20 “Determining whether a complaint states a plausible claim for relief [is] . . . a context-
21 specific task that requires the reviewing court to draw on its judicial experience and
22 common sense.” *Id.* at 679 (citation omitted). Thus, although a plaintiff’s specific
23 factual allegations may be consistent with a constitutional claim, a court must assess
24 whether there are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

25 But as the United States Court of Appeals for the Ninth Circuit has instructed,
26 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
27 342 (9th Cir. 2010). A “complaint [filed by a pro se prisoner] ‘must be held to less
28 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*

1 *Pardus*, 551 U.S. 89, 94 (2007) (per curiam)). If the Court determines that a pleading
2 could be cured by the allegation of other facts, a *pro se* litigant is entitled to an
3 opportunity to amend a complaint before dismissal of the action. *See Lopez v. Smith*, 203
4 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc). Here, Plaintiff fails to state a claim upon
5 which relief can be granted in his Complaint, but it appears that the Complaint could be
6 cured by allegations of other facts. Accordingly, Plaintiff's Complaint will be dismissed
7 without prejudice and Plaintiff will be given an opportunity to amend.

8 **III. Complaint**

9 In his Complaint, Plaintiff alleges two counts against the following Defendants:
10 Ofc. Gissels, Gerbich Q, Towers Jail, and the City of Mesa.² Plaintiff designates Count
11 One as an "excessive force" claim. In Count One, Plaintiff alleges that his Fourth, Fifth,
12 Sixth, Ninth, and Fourteenth Amendment rights were violated as follows: On July 4 at
13 around 2:00 or 3:00 p.m., Plaintiff got a ride from a man who did not stop for police. The
14 man drove at a high speed to avoid the police and jumped out of the truck while it was
15 moving at a speed of two miles per hour. The doors on the inside were removed, so
16 Plaintiff jumped out the same side. When Plaintiff was two or three feet from the truck,
17 Plaintiff was told to "freeze" and to interlock his fingers and to walk toward "him" at
18 gunpoint.

19 Plaintiff was then placed on the black asphalt in the middle of the street and
20 handcuffed. The "officer" took Plaintiff's phone and three wallets and placed them two
21 houses from where Plaintiff had been in the middle of the street. The "officer" then
22 returned and took Plaintiff's hat off and crushed it on Plaintiff's head and pushed
23 Plaintiff's face to the ground and "scrubbed" Plaintiff's face into the hot asphalt three
24 times. The "officer" called two or three more police over "t[]o say stop resisting," while
25 they beat Plaintiff. Plaintiff waited for the EMT to get there and the EMT said Plaintiff

26
27 ² Although Plaintiff used the court-approved form, Plaintiff has not filled out
28 section "B" of the form, which is entitled "Defendants." If Plaintiff files an amended
complaint, he must fill out the form in its entirety, including the "Defendants" section and
must describe each defendant in that section as required by the form.

1 was fine. The officers then took Plaintiff to the DUI trailer, where five biker cops
2 threatened to beat him more if he would not give a blood sample.

3 In Count Two, Plaintiff alleges that that he was denied medical care in a timely
4 manner in violation of his Sixth and Eighth Amendment rights as follows: Plaintiff was
5 in Towers Jail and it was “so full at the time[,] they would not even see [Plaintiff].” “The
6 only thing they did was for the burn on [his] face [be]cause it was so bad.” “They” did
7 not see Plaintiff about “[unintelligible] blood” or a fractured rib. The bolts in Plaintiff’s
8 mouth are exposed and popping sounds in his ear. Plaintiff has had nightmares. Plaintiff
9 has “scars to [his] face! mental[l]y, and [is] still waiting to go to surgery.”

10 As relief, Plaintiff seeks to “be free and clear from jail” and three million dollars.

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

12 To prevail in a 42 U.S.C. § 1983 claim, a plaintiff must show that (1) acts by the
13 defendants (2) under color of state law (3) deprived him of federal rights, privileges or
14 immunities and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158,
15 1163-64 (9th Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game*
16 *Comm’n*, 42 F.3d 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he
17 suffered a specific injury as a result of the conduct of a particular defendant and he must
18 allege an affirmative link between the injury and the conduct of that defendant. *Rizzo v.*
19 *Goode*, 423 U.S. 362, 371-72, 377 (1976).

20 Although Plaintiff named Defendants to his Complaint, Plaintiff has failed to
21 include any allegations about the Defendants in the Complaint. Accordingly, Plaintiff
22 has failed to allege an affirmative link between any alleged injury that he suffered and the
23 conduct of any named defendant. Accordingly, Defendants Ofc. Gissels, Gerbich Q.,
24 Towers Jail, and the City of Mesa will be dismissed.

25 **V. Leave to Amend**

26 For the foregoing reasons, Plaintiff’s Complaint will be dismissed for failure to
27 state a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a
28 first amended complaint to cure the deficiencies outlined above. The Clerk of Court will

1 mail Plaintiff a court-approved form to use for filing a first amended complaint. If
2 Plaintiff fails to use the court-approved form, the Court may strike the amended
3 complaint and dismiss this action without further notice to Plaintiff.

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

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 In amending his Complaint, Plaintiff should be aware that the use of excessive
21 force by police officers in the course of an arrest can violate the arrestee’s Fourth
22 Amendment right to be free from unreasonable seizures. *See White by White v. Pierce*
23 *County*, 797 F.2d 812, 816 (9th Cir. 1986) (citation omitted). The Fourth Amendment,
24 however, does not prohibit the use of reasonable force. *Tatum v. City & County of San*
25 *Francisco*, 441 F.3d 1090, 1095 (9th Cir. 2006) (citation omitted). Whether the force
26 was excessive depends on “whether the officers’ actions [were] ‘objectively reasonable’
27 in light of the facts and circumstances confronting them, without regard to their
28 underlying intent or motivation.” *Graham v. Connor*, 490 U.S. 386, 397 (1989) (citations

1 omitted); *see Tatum*, 441 F.3d at 1095; *Lolli v. County of Orange*, 351 F.3d 410, 415 (9th
2 Cir. 2003). The Court must balance the nature and quality of the intrusion against the
3 countervailing governmental interests at stake. *Graham*, 490 U.S. at 396; *Lolli*, 351 F.3d
4 at 415. Moreover,

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

11 *Graham*, 490 U.S. at 396 (internal citations omitted). “Whether a particular use of force
12 was ‘objectively reasonable’ depends on several factors, including the severity of the
13 crime that prompted the use of force, the threat posed by a suspect to the police or to
14 others, and whether the suspect was resisting arrest.” *Tatum*, 441 F.3d at 1095 (citation
15 omitted).

16 Further, to state a claim based on an unreasonable search in the form of a blood
17 test in violation of the Fourth Amendment, Plaintiff must plead facts demonstrating that
18 the blood test was not justified under the circumstances. *See Schmerber v. California*,
19 384 U.S. 757, 767-68 (1966); *Nelson v. City of Irvine*, 143 F.3d 1196, 1201 (9th Cir.
20 1998).

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

27 Not every claim by a pre-trial detainee relating to inadequate medical treatment
28 states a violation of the Fourteenth Amendment. To state a § 1983 medical claim, a
plaintiff must show that the defendants acted with “deliberate indifference to serious
medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *Estelle v.*

1 *Gamble*, 429 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need”
2 by demonstrating that failure to treat the condition could result in further significant
3 injury or the unnecessary and wanton infliction of pain and (2) the defendant’s response
4 was deliberately indifferent. *Jett*, 439 F.3d at 1096 (quotations omitted).

5 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d
6 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must
7 both know of and disregard an excessive risk to inmate health; “the official must both be
8 aware of facts from which the inference could be drawn that a substantial risk of serious
9 harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825,
10 837 (1994). Deliberate indifference in the medical context may be shown by a
11 purposeful act or failure to respond to a prisoner’s pain or possible medical need and
12 harm caused by the indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may
13 also be shown when a prison official intentionally denies, delays, or interferes with
14 medical treatment or by the way prison doctors respond to the prisoner’s medical needs.
15 *Estelle*, 429 U.S. at 104-05; *Jett*, 439 F.3d at 1096.

16 Deliberate indifference is a higher standard than negligence or lack of ordinary
17 due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor
18 gross negligence will constitute deliberate indifference.” *Clement v. California Dep’t of*
19 *Corrections*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter*
20 *Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or
21 “medical malpractice” do not support a claim under § 1983). “A difference of opinion
22 does not amount to deliberate indifference to [a plaintiff’s] serious medical needs.”
23 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care,
24 without more, is insufficient to state a claim against prison officials for deliberate
25 indifference. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407
26 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of
27 “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 105.

28

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

8 **VI. Warnings**

9 **A. Release**

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

14 **B. Address Changes**

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

19 **C. Copies**

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

23 **D. Possible “Strike”**

24 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff
25 fails to file an amended complaint correcting the deficiencies identified in this Order, the
26 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
27 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
28 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more

1 prior occasions, while incarcerated or detained in any facility, brought an action or appeal
2 in a court of the United States that was dismissed on the grounds that it is frivolous,
3 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner
4 is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

5 **E. Possible Dismissal**

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

10 **IT IS ORDERED:**

11 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 3) is **granted**.

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

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

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

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

23 Dated this 22nd day of April, 2014.

24
25
26 

27 _____
28 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.