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

Lewis A. Martin,

Plaintiff,

vs.

Joseph M. Arpaio, et al.,

Defendants.

No. CV 13-2639-PHX-DGC (SPL)

ORDER

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

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

Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$20.75. The remainder of the fee will be collected monthly in payments of 20% of the previous month's income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

....

....

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

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

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

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
15 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
17 content that allows the court to draw the reasonable inference that the defendant is liable
18 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
19 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
20 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
21 specific factual allegations may be consistent with a constitutional claim, a court must
22 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
23 at 681.

24 But as the United States Court of Appeals for the Ninth Circuit has instructed,
25 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
26 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
27 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
28 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

1 If the Court determines that a pleading could be cured by the allegation of other
2 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal
3 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The
4 Court should not, however, advise the litigant how to cure the defects. This type of
5 advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v.*
6 *Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n.13 (declining to
7 decide whether the court was required to inform a litigant of deficiencies). Plaintiff’s
8 Complaint will be dismissed for 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 filed his Complaint on the court-approved form, but he omitted page two,
12 wherein he is required to list the Defendants he is suing. Nevertheless, the Court will
13 screen his Complaint because he has listed the following individuals as Defendants in the
14 caption of his Complaint: Maricopa County Sheriff Joseph Arpaio; Facility Commander
15 A. Harmon; and Attorney William Peterson.¹ Plaintiff asserts five claims and seeks
16 compensatory and punitive damages, attorney’s fees and costs.

17 Plaintiff designates Count I as a claim of excessive force by an officer. Plaintiff
18 alleges that upon being booked at Maricopa County Jail on August 20, 2013, he was
19 placed in a padded security room without any clothing. According to Plaintiff, inmates
20 are placed in a security room to protect themselves or others from injury. Plaintiff states
21 that he was “in an unstable mental state of mind” and all he can remember is that while
22 lying on his stomach with his hands under his head, he woke up and heard detention
23 officers yelling at him to remove his hands from under his head. Plaintiff was not
24 resisting or exhibiting any type of aggressive behavior when he was shot with a Taser
25 gun, even though he was “unstable physically or mentally” and in a security room
26

27
28 ¹ If Plaintiff files an amended complaint, he must follow the instructions for listing
Defendants on page two of the court-approved form.

1 “deemed necessary to accommodate physical as well as mental well being.” Plaintiff
2 asserts that he was injured physically and emotionally.

3 Plaintiff designates Count II as a denial of constitutionally adequate medical care.
4 He alleges that he has been incarcerated in the Fourth Avenue Jail for four months and
5 has requested medical and mental health support and assistance. Plaintiff states that he
6 has submitted numerous health needs requests (“HNR”s) to be seen by a health care
7 provider or a mental health advisor or psychiatrist, but his HNRs have “not been adhered
8 to or taken seriously.”

9 Plaintiff designates Count III as a denial of his Sixth Amendment right to
10 assistance of counsel. After Plaintiff was arrested and charged, he was “given an attorney
11 to represent [him] throughout the criminal proceedings as well as court process.”
12 Plaintiff alleges that his attorney, Defendant Peterson, “has continuously shown himself
13 to be incompetent and unprofessional[.]” Plaintiff asserts that he has continuously
14 requested information and evidence relating to his case “as well as other case factors
15 which have not been given to myself or granted.”

16 Plaintiff appears to allege an equal protection claim in Count IV. He states that he
17 has not been found guilty of any crimes, sentenced or convicted “to where my due
18 process and equal protection of all laws should be forfeited or deprived.” Plaintiff alleges
19 that every time he goes to court he is strip searched, clothed, shackled and pat-down
20 searched even though he has not yet been found guilty of any crime or wrong doing.

21 Plaintiff alleges in Count V that he has been illegally strip searched, in violation of
22 the Fourth Amendment. He asserts that Defendant Arpaio has instructed Defendant
23 Harmon and facility commanders to have housing officers “force inmates to be
24 completely stripped of all clothing before being issued new clothes, then shackled and
25 ‘pat down’ searched again before and upon return from each and every court
26 appearance.” Plaintiff alleges that Arpaio has “repeatedly violated [his] 4th Amendment
27 right by illegally strip searching an ‘un-sentenced’ inmate without war[a]nt, necessary
28 immediate safety concern or cause of action.”

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

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

9 **A. Peterson**

10 A prerequisite for any relief under § 1983 are allegations to support that a
11 defendant acted under the color of state law. The “under color of state law” component is
12 the equivalent of the “state action” requirement under the Constitution. *Lugar v.*
13 *Edmondson Oil Co, Inc.*, 457 U.S. 922, 928 (1982); *Jensen v. Lane County*, 222 F.3d
14 570, 574 (9th Cir. 2000) (citing *West v. Atkins*, 487 U.S. 42, 49 (1988); *Rendell-Baker v.*
15 *Kohn*, 457 U.S. 830, 838 (1982)). “Acting under color of state law is ‘a jurisdictional
16 requisite for a § 1983 action.’” *Gritchen v. Collier*, 254 F.3d 807, 812 (9th Cir. 2001)
17 (quoting *West*, 487 U.S. at 46). Whether an attorney representing a criminal defendant is
18 privately retained, a public defender, or court-appointed counsel, he or she does not act
19 under color of state law. *See Polk County v. Dodson*, 454 U.S. 312, 317-18 (1981);
20 *Miranda v. Clark County, Nevada*, 319 F.3d 465, 468 (9th Cir. 2003) (*en banc*). Because
21 Plaintiff’s criminal defense attorney, Defendant Peterson, is not acting under color of
22 state law, Plaintiff fails to state a claim against him and Peterson and Count III will be
23 dismissed.

24 **B. Arpaio and Harmon**

25 While Plaintiff may sue Arpaio and Harmon for violations of constitutional rights
26 for acts taken under color of state law, Plaintiff fails to state a claim against either of
27 them. “A plaintiff must allege facts, not simply conclusions, that show that an individual
28 was personally involved in the deprivation of his civil rights.” *Barren v. Harrington*, 152

1 F.3d 1193, 1194 (9th Cir. 1998). For an individual to be liable in his official capacity, a
2 plaintiff must allege that the official acted as a result of a policy, practice, or custom. *See*
3 *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188 (9th Cir. 2001). Further, there is
4 no *respondeat superior* liability under § 1983, so a defendant’s position as the supervisor
5 of someone who allegedly violated a plaintiff’s constitutional rights does not make him
6 liable. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Taylor v. List*, 880 F.2d
7 1040, 1045 (9th Cir. 1989). A supervisor in his individual capacity “is only liable for
8 constitutional violations of his subordinates if the supervisor participated in or directed
9 the violations, or knew of the violations and failed to act to prevent them.” *Taylor*, 880
10 F.2d at 1045.

11 In Count V, Plaintiff makes a generalized assertion that Arpaio and Harmon
12 require housing officers to have inmates remove their clothing and be searched when they
13 arrive at the jail and before and after court appearances. Plaintiff also alleges that Arpaio
14 “repeatedly violated [his] 4th Amendment right by illegally strip searching an ‘un-
15 sentenced’ inmate without war[a]nt, necessary immediate safety concern or cause of
16 action.”

17 As discussed below, Plaintiff fails to state a claim for a Fourth Amendment
18 violation for illegal search and seizure. Thus, Plaintiff necessarily fails to state a claim
19 against Arpaio and Harmon for an unconstitutional custom, practice, or policy.
20 Moreover, Plaintiff’s allegations fail to specifically describe the allegedly
21 unconstitutional custom, practice, or policy or facts to support Arpaio’s or Harmon’s
22 involvement in promulgating or endorsing such custom, practice, or policy. As for
23 Plaintiff’s claim that Arpaio himself has repeatedly violated the Fourth Amendment by
24 illegally strip searching an un-sentenced inmate, he fails to state when Arpaio conducted
25 these searches, where these searches occurred, or if Plaintiff was the person Arpaio
26 searched. Accordingly, Plaintiff fails to state a claim against Arpaio and Harmon and
27 they will be dismissed.

28

1 Because Plaintiff has failed to state a claim against any identifiable Defendant, his
2 Complaint will be dismissed with leave to amend.

3 **C. Excessive Force**

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

10 The Fourth Amendment does not prohibit the use of reasonable force. *Tatum v.*
11 *City & County of San Francisco*, 441 F.3d 1090, 1095 (9th Cir. 2006). Whether the force
12 was excessive depends on “whether the officers’ actions [were] ‘objectively reasonable’
13 in light of the facts and circumstances confronting them, without regard to their
14 underlying intent or motivation.” *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Tatum*,
15 441 F.3d at 1095; *Lolli v. County of Orange*, 351 F.3d 410, 415 (9th Cir. 2003). The
16 Court must balance the nature and quality of the intrusion against the countervailing
17 governmental interests at stake. *Graham*, 490 U.S. at 396; *Lolli*, 351 F.3d at 415.
18 Moreover,

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

23 *Graham*, 490 U.S. at 396 (citations omitted).

24 Plaintiff fails to allege sufficient facts in Count I to support that the amount of
25 force allegedly used was objectively unreasonable under the circumstances. Plaintiff fails
26 to identify the individual who allegedly shot him with a Taser or any other detention
27 officer allegedly involved in the use of excessive force. In addition, Plaintiff does not
28 state whether he was complying with the officers’ orders or generally resisting them. For

1 these reasons, Plaintiff fails to state a claim for excessive force under the circumstances
2 in Count I.

3 **D. Medical Care**

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

12 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d
13 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must
14 both know of and disregard an excessive risk to inmate health; “the official must both be
15 aware of facts from which the inference could be drawn that a substantial risk of serious
16 harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825,
17 837 (1994). Deliberate indifference in the medical context may be shown by a
18 purposeful act or failure to respond to a prisoner’s pain or possible medical need and
19 harm caused by the indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may
20 also be shown when a prison official intentionally denies, delays, or interferes with
21 medical treatment or by the way prison doctors respond to the prisoner’s medical needs.
22 *Estelle*, 429 U.S. at 104-05; *Jett*, 439 F.3d at 1096.

23 Deliberate indifference is a higher standard than negligence or lack of ordinary
24 due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor
25 gross negligence will constitute deliberate indifference.” *Clement v. California Dep’t of*
26 *Corr.*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*,
27 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or
28 “medical malpractice” do not support a claim under § 1983). “A difference of opinion

1 does not amount to deliberate indifference to [a plaintiff's] serious medical needs.”
2 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care,
3 without more, is insufficient to state a claim against prison officials for deliberate
4 indifference. *See Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407
5 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of
6 “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 105.

7 In Count II, Plaintiff states that he submitted numerous HNRs, but he fails to
8 provide any details about those HNRs such as the dates he submitted each HNR, what he
9 said in his HNRs, to whom he gave the HNRs, and what response he received, if any.
10 Further, he fails to identify any individual allegedly responsible for the denial of medical
11 care. Accordingly, Plaintiff has failed to state a claim of deliberate indifference to a
12 serious medical need in Count II.

13 **E. Fourth Amendment**

14 While Plaintiff alleges violations of his rights under the Fourth and Fourteenth
15 Amendments in Counts IV and V, both claims relate to the allegedly unconstitutional
16 practice of strip searching detainees or inmates at the Fourth Avenue Jail. Such claims
17 are properly analyzed under the Fourth Amendment. Detainees, like convicted prisoners,
18 do not possess “the full range of freedoms of an unincarcerated individual.” *Bell v.*
19 *Wolfish*, 441 U.S. 520, 546 (1979). “The applicability of the Fourth Amendment turns on
20 whether the person invoking its protection can claim a “justifiable,” a “reasonable,” or a
21 “legitimate expectation of privacy” that has been “invaded by government action.”
22 *Hudson v. Palmer*, 468 U.S. 517, 525 (1984) (quotation omitted); *see also Bell*, 441 U.S.
23 at 557 (“any reasonable expectation of privacy that a detainee retained necessarily would
24 be of a diminished scope”). “A right of privacy in traditional Fourth Amendment terms is
25 fundamentally incompatible with the close and continual surveillance of inmates and
26 their cells required to ensure institutional security and internal order.” *Id.* at 527-28.
27 Furthermore, any restriction on plaintiff’s privacy interests is justified to the extent that it
28 is “reasonably related to legitimate penological interests.” *See Turner v. Safley*, 482 U.S.

1 78, 89 (1987). The investigation and prevention of illegal inmate activity, including the
2 prevention of contraband and circulation of threats, is a legitimate penological objective.
3 *See Thornburgh v. Abbott*, 490 U.S. 401, 411-12 (1989).

4 The Fourth Amendment guarantees the right of the people to be secure against
5 unreasonable searches, and its protections are not extinguished upon incarceration.
6 *Michenfelder v. Sumner*, 860 F.2d 328, 322-33 (9th Cir. 1988). Further, the Fourth
7 Amendment has been held to apply to the invasion of bodily privacy. *Id.* at 332. Thus,
8 strip searches that are excessive, vindictive, harassing, or unrelated to any legitimate
9 penological interest may violate the Fourth Amendment. *Id.* Nevertheless, a policy of
10 routinely strip searching arrestees for contraband has been held not to be unreasonable
11 where there is no physical contact and the searches are professionally conducted in
12 relative privacy. *Bull v. City and County of San Francisco*, 595 F.3d 964, 973 (9th Cir.
13 2010).

14 Plaintiff fails to allege any specific facts about the strip searches at the Fourth
15 Avenue Jail, such as when he was strip searched, by whom, where, or any facts to support
16 that the search or searches were excessive, vindictive, harassing, or unrelated to a
17 legitimate penological interest. Plaintiff does not allege facts to support that there was
18 any physical contact or that the search was unprofessionally conducted or not conducted
19 in relative privacy. In short, Plaintiff fails to allege sufficient facts to state a Fourth
20 Amendment claim in Counts IV and V.

21 **V. Leave to Amend**

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

28 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements

1 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
2 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to
3 do; (4) how the action or inaction of that Defendant is connected to the violation of
4 Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of
5 that Defendant's conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

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

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

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

23 **VI. Warnings**

24 **A. Release**

25 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his
26 release. Also, within 30 days of his release, he must either (1) notify the Court that he
27 intends to pay the balance or (2) show good cause, in writing, why he cannot. Failure to
28 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**.
- (2) As required by the accompanying Order to the appropriate government

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agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$20.75.

(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 February, 2014.



David G. Campbell
United States District Judge

**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.

2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.

3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

4. The Filing and Administrative Fees. The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed *in forma pauperis*. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915” for additional instructions.

5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.

6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$400 filing and administrative fees or the application to proceed *in forma pauperis* to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed *in forma pauperis*). Each original document (except the initial complaint and application to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. See Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “Bivens v. Six Unknown Federal Narcotics Agents” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked "Other," you must identify the specific issue involved.

3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. See 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

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

_____,)
(Full Name of Plaintiff) Plaintiff,)

vs.)

CASE NO. _____
(To be supplied by the Clerk)

(1) _____,)
(Full Name of Defendant)

(2) _____,)

(3) _____,)

(4) _____,)

Defendant(s).)

Check if there are additional Defendants and attach page 1-A listing them.)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- Original Complaint
- First Amended Complaint
- Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:
- 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
 - 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
 - Other: _____.

2. Institution/city where violation occurred: _____.

B. DEFENDANTS

- 1. Name of first Defendant: _____ . The first Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)
- 2. Name of second Defendant: _____ . The second Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)
- 3. Name of third Defendant: _____ . The third Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)
- 4. Name of fourth Defendant: _____ . The fourth Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

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

C. PREVIOUS LAWSUITS

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

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

COUNT III

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

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

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.	

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

_____.

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

_____.

5. **Administrative Remedies.**

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

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

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

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

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.