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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Aaron Joseph Bishop,  
10 Plaintiff,

No. CV 14-0371-PHX-SMM (MEA)

11 v.

**ORDER**

12 Paul R. Babeu, et al.,  
13 Defendants.  
14

15 On February 25, 2014, Plaintiff Aaron Joseph Bishop, who was confined in the  
16 Pinal County Jail in Florence, Arizona, filed a *pro se* civil rights Complaint pursuant to  
17 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. In a June 6, 2014  
18 Order, the Court granted the Application to Proceed and dismissed the Complaint  
19 because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an  
20 amended complaint that cured the deficiencies identified in the Order.

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

22 On November 10, 2014, Plaintiff filed a Notice of Change of Address, indicating  
23 he was no longer incarcerated (Doc. 16). At that time, Plaintiff still owed \$338.24  
24 towards his filing fee. Accordingly, in a November 21, 2014 Order, the Court ordered  
25 Plaintiff to either pay the remainder of the filing fee within 30 days or file a *non-prisoner*  
26 application to proceed *in forma pauperis* (Doc. 17).

27 On December 23, 2014, Plaintiff filed a *non-prisoner* Motion to Proceed *In Forma*  
28 *Pauperis* and Supporting Information (Doc. 19), indicating that he is not working and he

1 has no money or assets. The Court will grant the Motion to Proceed and permit Plaintiff  
2 to proceed without paying the remainder of the filing fee.

### 3 **II. Motions for Extension of Time to File a First Amended Complaint**

4 Following the Court's June 6, 2014 Order dismissing the Complaint with leave to  
5 Amend, Plaintiff filed three Motions for Extension of Time to File a First Amended  
6 Complaint (Docs. 11-13). On July 1, 2014, Plaintiff requested a 30-day extension due to  
7 medical issues and difficulty accessing the law library; on July 29, 2014, he requested an  
8 additional 45-day extension due to continued medical issues and limited access to legal  
9 materials; and on September 11, 2014, he requested an additional 7-day extension, which  
10 he appears to have sought in place of the additional 45-day extension. On the same day  
11 that Plaintiff requested the 7-day extension, he also filed his First Amended Complaint  
12 (Doc. 14). The Court will grant the Motions for 30- and 7-day extensions (Docs. 11, 13),  
13 rendering the First Amended Complaint timely; deny the Motion for a 45-day extension  
14 as moot (Doc. 12); and dismiss the First Amended Complaint with leave to amend.

### 15 **III. Statutory Screening of Prisoner Complaints**

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

22 A pleading must contain a “short and plain statement of the claim *showing* that the  
23 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8  
24 does not demand detailed factual allegations, “it demands more than an unadorned, the-  
25 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
26 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
27 conclusory statements, do not suffice.” *Id.*

1            “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
2 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
3 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual  
4 content that allows the court to draw the reasonable inference that the defendant is liable  
5 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible  
6 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw  
7 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s  
8 specific factual allegations may be consistent with a constitutional claim, a court must  
9 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*  
10 at 681.

11            But as the United States Court of Appeals for the Ninth Circuit has instructed,  
12 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,  
13 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less  
14 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*  
15 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

16            If the Court determines that a pleading could be cured by the allegation of other  
17 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal  
18 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*).  
19 Plaintiff’s First Amended Complaint will be dismissed for failure to state a claim, but  
20 because it may possibly be amended to state a claim, the Court will dismiss it with leave  
21 to amend.

#### 22 **IV. First Amended Complaint**

23            In his single-count First Amended Complaint, Plaintiff sues Pinal County Sheriff  
24 Paul Babeu, and Pinal County. Plaintiff seeks declaratory and monetary relief.

25            Plaintiff asserts violations of his Eighth Amendment Right to be free from cruel  
26 and unusual punishment and violations of the Fourteenth Amendment due process clause.  
27 Plaintiff’s claim stems from an incident on February 22, 2013, in which he alleges he fell  
28 from his assigned upper bunk when his “back failed,” causing him to collapse to the floor

1 and to injure his left knee. Plaintiff alleges that when he was first taken to the Pinal  
2 County Jail, he informed “medical staff” that he had suffered from a back injury while  
3 incarcerated at the Arizona Department of Corrections (“ADOC”). He told them that the  
4 injury and a “lower bunk waiver” were documented in his ADOC file. He further  
5 informed medical staff that he had been prescribed medication for chronic back pain  
6 which limited his ability to walk any distance or travel up and down stairs, and he could  
7 not climb in and out of an upper bunk without severe back pain and the risk of lower back  
8 failure. Plaintiff alleges that he “repeatedly complained” to medical staff about needing  
9 to be placed on a lower bunk, but they only increased his pain medication instead.  
10 Plaintiff alleges that after he fell and severely injured his knee, “Pinal County medical”  
11 did not treat him for 24 days, leaving him in excruciating pain and still assigned to an  
12 upper bunk. He states that after he received care on March 18, 2013, he was taken from  
13 the jail for numerous x-rays and an MRI and was seen by Dr. Andrew Jones to discuss  
14 the results of these tests and a treatment plan. According to Plaintiff, Dr. Jones informed  
15 him that “there were numerous abnormalities cause[d] by the fall.” Dr. Jones prescribed  
16 lidocaine and kenalog injections as a first course of treatment and stated that if these did  
17 not work, Plaintiff would need knee replacement surgery.

18 Plaintiff alleges that on May 10, 2013, he was removed to the custody of ADOC,  
19 and ADOC medical staff told him they would continue his medications, but he could not  
20 receive surgery because his injury had happened elsewhere. Plaintiff states that ADOC  
21 provided him with continued pain medication, a cane, and a lower bunk waiver.

22 Plaintiff alleges that “serious injury to left knee was caused by depraved  
23 indifference to [his] verified medical needs,” and that “Defendants” delay of medical  
24 treatment and failure to provide surgery caused him “extensive injury and unnecessary  
25 pain and suffering.”

## 26 **V. Failure to State a Claim**

27 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants  
28 (2) under color of state law (3) deprived him of federal rights, privileges or immunities

1 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th  
2 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d  
3 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that **he suffered a**  
4 **specific injury as a result of the conduct of a particular defendant** and he must allege  
5 an affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,  
6 423 U.S. 362, 371-72, 377 (1976).

7 Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,  
8 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*  
9 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a  
10 liberal interpretation of a civil rights complaint may not supply essential elements of the  
11 claim that were not initially pled. *Id.*

#### 12 **A. Deliberate Indifference Standard**

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

21 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d  
22 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must  
23 both know of and disregard an excessive risk to inmate health; “the official must both be  
24 aware of facts from which the inference could be drawn that a substantial risk of serious  
25 harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825,  
26 837 (1994). Deliberate indifference in the medical context may be shown by a  
27 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and  
28 harm caused by the indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may

1 also be shown when a prison official intentionally denies, delays, or interferes with  
2 medical treatment or by the way prison doctors respond to the prisoner's medical needs.  
3 *Estelle*, 429 U.S. at 104-05; *Jett*, 439 F.3d at 1096.

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

#### 16 **B. Defendant Babeu**

17 For an individual to be liable in his individual capacity, "[a] plaintiff must allege  
18 facts, not simply conclusions, that show that the individual was personally involved in the  
19 deprivation of his civil rights." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.  
20 1998). Further, there is no *respondeat superior* liability under § 1983, so a defendant's  
21 position as the supervisor of someone who allegedly violated a plaintiff's constitutional  
22 rights does not make him liable. *Monell*, 436 U.S. at 691; *Taylor v. List*, 880 F.2d 1040,  
23 1045 (9th Cir. 1989) (citation omitted). A supervisor in his individual capacity "is only  
24 liable for constitutional violations of his subordinates if the supervisor participated in or  
25 directed the violations, or knew of the violations and failed to act to prevent them."  
26 *Taylor*, 880 F.2d at 1045. Alternatively, for an individual to be liable in his official  
27 capacity, a plaintiff must allege injuries resulting from a policy, practice, or custom of the  
28

1 entity over which that individual has final policy-making authority. *See Cortez*, 294 F.3d  
2 at 1188.

3 Plaintiff does not allege that Defendant Babeu was personally involved in the  
4 deprivation of his rights; nor does he allege that, as a supervisor, Babeu participated in  
5 violations against Plaintiff, directed anyone else to do so, or knew of any such violations  
6 and failed to act to prevent them. Plaintiff also fails to allege any facts showing that his  
7 injuries ensued from a policy, practice, or custom of the Pinal County Jail. Accordingly,  
8 Plaintiff fails to state a claim against Babeu in either his individual or official capacity,  
9 and he will be dismissed.

10 **B. Pinal County**

11 A municipality, such as a city or county, is a “person” for purposes of § 1983 and  
12 may be sued. *See Leatherman v. Tarrant County Narcotics Intelligence and*  
13 *Coordination Unit*, 507 U.S. 163, 166 (1993); *Monell v. N.Y. Dep’t of Soc. Servs.*, 436  
14 U.S. 658, 694 (1978). However, a municipality may not be sued solely because an injury  
15 was inflicted by one of its employees or agents. *Long v. County of Los Angeles*, 442 F.3d  
16 1178, 1185 (9th Cir. 2006). A § 1983 claim against a municipal defendant “cannot  
17 succeed as a matter of law” unless a plaintiff: (1) contends that the municipal defendant  
18 maintains a policy or custom pertinent to the plaintiff’s alleged injury; and (2) explains  
19 how such policy or custom caused the plaintiff’s injury. *Sadoski v. Mosley*, 435 F.3d  
20 1076, 1080 (9th Cir. 2006) (affirming dismissal of a municipal defendant pursuant to Fed.  
21 R. Civ. P. 12(b)(6)).

22 Plaintiff does not allege any facts against Pinal County, nor does he connect his  
23 allegedly unconstitutional medical care to any policies maintained by the County.  
24 Accordingly Plaintiff fails to state a claim against Pinal County, and it will be dismissed.

25 . . .

26 **VI. Leave to Amend**

27 For the foregoing reasons, Plaintiff’s First Amended Complaint will be dismissed  
28 for failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff

1 may submit a second amended complaint to cure the deficiencies outlined above. The  
2 Clerk of Court will mail Plaintiff a court-approved form to use for filing a second  
3 amended complaint. If Plaintiff fails to use the court-approved form, the Court may  
4 strike the second amended complaint and dismiss this action without further notice to  
5 Plaintiff.

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

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

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

25 Plaintiff must repeat this process for each person he names as a Defendant. If  
26 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific  
27 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for  
28 failure to state a claim. **Conclusory allegations that a Defendant or group of**

1 **Defendants has violated a constitutional right are not acceptable and will be**  
2 **dismissed.**

3 **VII. Warnings**

4 **A. Address Changes**

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

9 **B. Copies**

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

13 **C. Possible “Strike”**

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

24 ...

25 **D. 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*, 963  
28

1 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any  
2 order of the Court).

3 **IT IS ORDERED:**

4 (1) Plaintiff's *non-prisoner* Motion to Proceed *In Forma Pauperis* is **granted**  
5 (Doc. 19). Plaintiff may proceed without paying the \$338.24 balance of his filing fee.

6 (2) Plaintiff's July 1, 2014 and September 11, 2014 Motions for Extension of  
7 Time to File a First Amended Complaint are **granted** (Docs. 11, 13).

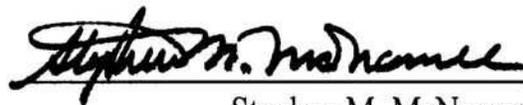
8 (3) Plaintiff's July 29, 2014 Motion for Extension of Time to File a First  
9 Amended Complaint is **denied as moot** (Doc. 12).

10 (4) Plaintiff's First Amended Complaint (Doc. 15) is **dismissed** for failure to  
11 state a claim. Plaintiff has **30 days** from the date this Order is filed to file a second  
12 amended complaint in compliance with this Order.

13 (5) If Plaintiff fails to file a second amended complaint within 30 days, the  
14 Clerk of Court must, without further notice, enter a judgment of dismissal of this action  
15 with prejudice that states that the dismissal may count as a "strike" under 28 U.S.C.  
16 § 1915(g).

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

19 DATED this 2nd day of February, 2015.

20  
21 

22 \_\_\_\_\_  
23 Stephen M. McNamee  
24 Senior United States District Judge  
25  
26  
27  
28

**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:**

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.

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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.

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\_\_\_\_\_.

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:

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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)

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\_\_\_\_\_  
(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.