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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ricardo Rivera,

No. CV 14-0579-PHX-SMM (BSB)

10 Plaintiff,

11 vs.

ORDER

12 Joseph M. Arpaio, et al.,

13 Defendants.
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15 On March 20, 2014, Plaintiff Ricardo Rivera, who is confined in the Maricopa
16 County Durango Jail, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983
17 and an Application to Proceed *In Forma Pauperis*. In a May 30, 2014 Order, the Court
18 granted the Application to Proceed and dismissed the Complaint because Plaintiff had
19 failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint
20 that cured the deficiencies identified in the Order.

21 On July 8, 2014, Plaintiff filed his First Amended Complaint (Doc. 8). The Court
22 will dismiss the First Amended Complaint with leave to amend.

23 **I. Statutory Screening of Prisoner Complaints**

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

3 A pleading must contain a “short and plain statement of the claim *showing* that the
4 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
5 does not demand detailed factual allegations, “it demands more than an unadorned, the-
6 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
7 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice.” *Id.*

9 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
10 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
11 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
12 content that allows the court to draw the reasonable inference that the defendant is liable
13 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
14 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
15 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
16 specific factual allegations may be consistent with a constitutional claim, a court must
17 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
18 at 681.

19 But as the United States Court of Appeals for the Ninth Circuit has instructed,
20 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
21 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
22 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
23 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

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

3 **II. First Amended Complaint**

4 In his three-count First Amended Complaint, Plaintiff names as Defendants
5 Maricopa County Sheriff Joseph M. Arpaio and the “Maricopa Sheriffs Dept.” Plaintiff
6 seeks damages.

7 In Count One, Plaintiff alleges the following facts: there are four men to a cell and
8 overcrowded holding tanks. Four bunks in a cell are a fire hazard and it is unsafe to get
9 into the top bunks. Living conditions are unsanitary, there are 64 men to two toilets and
10 two showers, and they are in the same clothes for over eight days. There are inmates who
11 should be quarantined because of illnesses, and someone cannot get medical attention in a
12 timely manner. Plaintiff alleges that he has suffered bodily injury, has been exposed to
13 diseases with “no medical attention,” and the long-term effect is unknown.

14 In Count Two, Plaintiff alleges the following: under 2,000 calories are served per
15 day. There is “rotten milk and fruit,” moldy bread, and unidentified objects in the food.
16 Dinner is served cold and there are no drinks with dinner. There are not enough tables
17 and chairs, and inmates handling the food do not wear proper clothing to serve food.
18 Plaintiff has suffered malnutrition, loss of weight, and gets sick easily.

19 In Count Three, Plaintiff alleges the following: the air conditioning is always on
20 during the winter and the temperature is below 69 degrees. The air conditioning is off
21 during the summer and the temperature is 90 degrees. They are not allowed extra
22 clothing or blankets, there is improper air ventilation, and there is asbestos in the ceilings.
23 Someone is always getting sick and there is no medical attention. Plaintiff has been
24 exposed to “staff” infections and flu and cold viruses.

25 **III. Failure to State a Claim**

26 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants
27 (2) under color of state law (3) deprived him of federal rights, privileges or immunities
28 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th

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

6 **A. Arpaio**

7 Plaintiff sues Maricopa County Sheriff Joseph M. Arpaio. While Defendant
8 Arpaio may be sued for constitutional violations, Plaintiff fails to state a claim against
9 him. “A plaintiff must allege facts, not simply conclusions, that show that an individual
10 was personally involved in the deprivation of his civil rights.” *Barren v. Harrington*, 152
11 F.3d 1193, 1194 (9th Cir. 1998). For an individual to be liable in his official capacity, a
12 plaintiff must allege that the official acted as a result of a policy, practice, or custom. *See*
13 *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188 (9th Cir. 2002) (citation omitted).
14 Further, there is no respondeat superior liability under § 1983, so a defendant’s position
15 as the supervisor of someone who allegedly violated a plaintiff’s constitutional rights
16 does not make him liable. *Monell v. Dep’t of Soc. Servs. of New York*, 436 U.S. 658, 691
17 (1978); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted). A
18 supervisor in his individual capacity “is only liable for constitutional violations of his
19 subordinates if the supervisor participated in or directed the violations, or knew of the
20 violations and failed to act to prevent them.” *Taylor*, 880 F.2d at 1045.

21 As in his original Complaint, Plaintiff has not alleged *any* facts against Defendant
22 Arpaio. Plaintiff has not alleged that Defendant Arpaio personally participated in a
23 deprivation of Plaintiff’s constitutional rights, was aware of a deprivation and failed to
24 act, or formed policies that resulted in Plaintiff’s injuries. Accordingly, Plaintiff has
25 failed to state a claim against Defendant Arpaio and Defendant Arpaio will be dismissed.

26 **B. Maricopa County Sheriff’s Office**

27 Plaintiff sues “Maricopa Sheriffs Dept,” presumably referring to the Maricopa
28 County Sheriff’s Office (“MCSO”). However, the MCSO is not a proper defendant. In

1 Arizona, the responsibility of operating jails and caring for prisoners is placed by law
2 upon the sheriff. *See* Ariz. Rev. Stat. § 11-441(A)(5); Ariz. Rev. Stat. § 31-101. A
3 sheriff's office is simply an administrative creation of the county sheriff to allow him to
4 carry out his statutory duties and not a "person" amenable to suit pursuant to § 1983.
5 Accordingly, the MCSO will be dismissed from this action.

6 **IV. Leave to Amend**

7 For the foregoing reasons, Plaintiff's First Amended Complaint will be dismissed
8 for failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff
9 may submit a second amended complaint to cure the deficiencies outlined above. The
10 Clerk of Court will mail Plaintiff a court-approved form to use for filing a second
11 amended complaint. If Plaintiff fails to use the court-approved form, the Court may
12 strike the second amended complaint and dismiss this action without further notice to
13 Plaintiff.

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

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

27 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
28 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name

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

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

11 Plaintiff should be aware that a pretrial detainee's claim for unconstitutional
12 conditions of confinement arises from the Fourteenth Amendment Due Process Clause
13 rather than from the Eighth Amendment prohibition against cruel and unusual
14 punishment. *Bell v. Wolfish*, 441 U.S. 520, 535 and n.16 (1979). Nevertheless, the same
15 standards are applied, requiring proof that the defendant acted with deliberate
16 indifference. *See Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

17 Deliberate indifference is a higher standard than negligence or lack of ordinary
18 due care for the prisoner's safety. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). To
19 state a claim of deliberate indifference, plaintiffs must meet a two-part test. "First, the
20 alleged constitutional deprivation must be, objectively, sufficiently serious"; and the
21 "official's act or omission must result in the denial of the minimal civilized measure of
22 life's necessities." *Id.* at 834 (internal quotations omitted). Second, the prison official
23 must have a "sufficiently culpable state of mind," i.e., he must act with "deliberate
24 indifference to inmate health or safety." *Id.* (internal quotations omitted). In defining
25 "deliberate indifference" in this context, the Supreme Court has imposed a subjective
26 test: "the official must both be aware of facts from which the inference could be drawn
27 that a substantial risk of serious harm exists, *and* he must also draw the inference." *Id.* at
28 837 (emphasis added).

1 The specific inquiry with respect to pretrial detainees is whether the prison
2 conditions amount to “punishment” without due process in violation of the Fourteenth
3 Amendment. *Bell*, 441 U.S. at 535. A jail or prison must provide prisoners with
4 “adequate food, clothing, shelter, sanitation, medical care, and personal safety.”
5 *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982). However, this does not mean that
6 federal courts can, or should, interfere whenever prisoners are inconvenienced or suffer
7 *de minimis* injuries. *See Bell*, 441 U.S. at 539 n.21 (noting that a *de minimis* level of
8 imposition does not rise to a constitutional violation). Whether a condition of
9 confinement rises to the level of a constitutional violation may depend, in part, on the
10 duration of an inmate’s exposure to that condition. *See Keenan v. Hall*, 83 F.3d 1083,
11 1089 (9th Cir. 1996) (citing *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)).

12 The Eighth and Fourteenth Amendments require “only that prisoners receive food
13 that is adequate to maintain health; it need not be tasty or aesthetically pleasing. ‘The
14 fact that the food occasionally contains foreign objects or sometimes is served cold, while
15 unpleasant, does not amount to a constitutional deprivation.’” *LeMaire v. Maass*, 12 F.3d
16 1444, 1456 (9th Cir. 1993) (citation omitted) (quoting *Hamm v. DeKalb County*, 774 F.2d
17 1567, 1575 (11th Cir. 1985)). Spoiled food and foul water are inadequate to maintain
18 health. *Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996). An inmate may state a claim
19 where he alleges that he is served meals with insufficient calories for long periods of
20 time. *LeMaire*, 12 F.3d at 1456.

21 Overcrowding alone does not violate the Eighth or Fourteenth Amendments.
22 *Hoptowit*, 682 F.2d at 1249. A plaintiff may, however, state a cognizable claim where he
23 or she alleges that overcrowding results in some unconstitutional condition. *See, e.g.*,
24 *Akao v. Shimoda*, 832 F.2d 119, 120 (9th Cir. 1987) (reversing district court’s dismissal
25 of claim that overcrowding caused increased stress, tension, and communicable diseases,
26 and confrontations between inmates); *see also Toussaint v. Yockey*, 722 F.2d 1490, 1492
27 (9th Cir. 1984) (constitutional violation may occur as a result of overcrowded prison
28 conditions causing increased violence, tension and psychiatric problems).

1 **V. Warnings**

2 **A. Release**

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

7 **B. Address Changes**

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

12 **C. Copies**

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

16 **D. Possible “Strike”**

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

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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) The First Amended Complaint (Doc. 8) is **dismissed** for failure to state a claim. Plaintiff has **30 days** from the date this Order is filed to file a second amended complaint in compliance with this Order.

(2) If Plaintiff fails to file a second 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).

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

DATED this 29th day of September, 2014.



Stephen M. McNamee
Senior United States District Judge

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

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

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

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

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

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

6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$350 filing fee or the application to proceed *in forma pauperis* to:**

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.