

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ASH

WO

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

Ricardo Angel Moran,
Plaintiff,
vs.
Joseph M. Arpaio, et al.,
Defendants.

No. CV 14-1414-PHX-DGC (JFM)

ORDER

Plaintiff Ricardo Angel Moran, who is confined in the Maricopa County Durango 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 not assess an initial partial filing fee. *Id.* The statutory filing fee will be collected monthly in payments of 20% of the previous month’s income credited to Plaintiff’s trust account each time the amount in the account exceeds \$10.00. 28 U.S.C. § 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*).
4 Plaintiff's Complaint will be dismissed for failure to state a claim, but because it may
5 possibly be amended to state a claim, the Court will dismiss it with leave to amend.

6 **III. Complaint**

7 In his three-count Complaint, Plaintiff names as Defendants Joseph M. Arpaio, the
8 Maricopa County Sheriff; and the County of Maricopa. Plaintiff seeks monetary relief.

9 In Count One, Plaintiff alleges that moldy bread, rotten fruit, and expired milk are
10 served at the jail; that there are not enough food portions, and less than 2,000 calories are
11 served per day; that there are no drinking fountains; that food trays are not washed and
12 dried food is left on the trays; and that the canteen sells expired food. As a result,
13 Plaintiff alleges that he has lost weight, and suffers from headaches and diarrhea.

14 In Count Two, Plaintiff alleges there is no fresh air because the filters and
15 ductwork are filthy and unclean; that there is asbestos in the building ceiling, and lead
16 paint chips falling off the wall and circulating in the air; that multiple inmates are always
17 sick with cold and flu viruses, as well as tuberculosis; and that the air conditioner is
18 always on with the temperature under 67 degrees. As a result, Plaintiff alleges that he has
19 lost sleep, suffers from headaches, body aches, and cold viruses, that his eyes burn and
20 his throat is sore, and that he is always cold.

21 In Count Three, Plaintiff alleges that there is asbestos in the building, and paint
22 chips are falling off the walls and tables; that there are four men to a cell, too many beds
23 in the cells, and that 64 men share two toilets and two showers; that overcrowding causes
24 tension and violence; that there are not enough seats in the dayroom to eat his food; and
25 that there is mildew in the shower area. As a result, Plaintiff alleges that he has "body
26 injury," is stressed and has lost sleep, and has body sores.

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

28 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants

1 (2) under color of state law (3) deprived him of federal rights, privileges or immunities
2 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th
3 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm'n*, 42 F.3d
4 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific
5 injury as a result of the conduct of a particular defendant and he must allege an
6 affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,
7 423 U.S. 362, 371-72, 377 (1976).

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

13 **A. Joseph M. Arpaio**

14 Plaintiff fails to state a claim against Defendant Arpaio in his Complaint. “A
15 plaintiff must allege facts, not simply conclusions, that show that an individual was
16 personally involved in the deprivation of his civil rights.” *Barren v. Harrington*, 152
17 F.3d 1193, 1194 (9th Cir. 1998). For an individual to be liable in his official capacity, a
18 plaintiff must allege that the official acted as a result of a policy, practice, or custom. *See*
19 *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188 (9th Cir. 2002). Further, there is
20 no *respondeat superior* liability under § 1983, so a defendant’s position as the supervisor
21 of someone else who allegedly violated a plaintiff’s constitutional rights does not make
22 the supervisor liable. *Monell v. Dep’t of Soc. Svcs. of New York*, 436 U.S. 658, 691
23 (1978); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor in his
24 individual capacity “is only liable for constitutional violations of his subordinates if the
25 supervisor participated in or directed the violations, or knew of the violations and failed
26 to act to prevent them.” *Taylor*, 880 F.2d at 1045.

27 Plaintiff fails to allege any facts regarding Defendant Arpaio in his Complaint.
28 Plaintiff does not allege that Defendant Arpaio directly violated Plaintiff’s constitutional

1 rights. Moreover, Plaintiff does not allege facts showing that Defendant Arpaio violated
2 Plaintiff's constitutional rights pursuant to a policy, practice, or custom, or that
3 Defendant Arpaio participated in or directed any violations of Plaintiff's rights, or knew
4 of any violations of Plaintiff's rights but failed to act to prevent them. Accordingly,
5 Plaintiff fails to state a claim against Defendant Arpaio, and Defendant Arpaio will be
6 dismissed.

7 **B. Maricopa County**

8 A municipality, such as Maricopa County, is a "person" for purposes of § 1983,
9 *i.e.*, a municipality may be sued. *See Leatherman v. Tarrant County Narcotics*
10 *Intelligence and Coordination Unit*, 507 U.S. 163, 166 (1993); 436 U.S. at 694. To state
11 a claim against a municipality under § 1983, a plaintiff must allege facts to support that
12 his constitutional rights were violated pursuant to a policy or custom of the municipality.
13 *Cortez*, 294 F.3d at 1188 (citing *Monell*, 436 U.S. at 690-91); *Thompson v. City of Los*
14 *Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989)). Thus, a municipality may not be sued
15 solely because an injury was inflicted by one of its employees or agents. *Long v. County*
16 *of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). Therefore, a § 1983 claim against a
17 municipal defendant "cannot succeed as a matter of law" unless a plaintiff: (1) contends
18 that the municipal defendant maintains a policy or custom pertinent to the plaintiff's
19 alleged injury; and (2) explains how such policy or custom caused the plaintiff's injury.
20 *Sadoski v. Mosley*, 435 F.3d 1076, 1080 (9th Cir. 2006) (affirming dismissal of a
21 municipal defendant pursuant to Fed. R. Civ. P. 12(b)(6)).

22 Here, Plaintiff has not alleged any facts against Maricopa County. Plaintiff has
23 not alleged that Maricopa County maintains a policy or custom pertinent to Plaintiff's
24 alleged injuries. Nor does Plaintiff allege how, if there is such a policy, it caused
25 Plaintiff's alleged injuries. Accordingly, Maricopa County will be dismissed.

26 **C. Conditions of Confinement**

27 Plaintiff appears to be asserting claims challenging his conditions of confinement.
28 Plaintiff should be aware that a pretrial detainee's claim for unconstitutional conditions of

1 confinement arises from the Fourteenth Amendment’s Due Process Clause rather than
2 from the Eighth Amendment’s prohibition against cruel and unusual punishment. *Bell v.*
3 *Wolfish*, 441 U.S. 520, 535 n.16 (1979). Nevertheless, the same standards are applied,
4 requiring proof that the defendant acted with “deliberate indifference.” *See Frost v.*
5 *Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

6 “Deliberate indifference” is a higher standard than negligence or lack of ordinary
7 due care for the prisoner’s health or safety. *Farmer v. Brennan*, 511 U.S. 825, 835
8 (1994). To state a claim of deliberate indifference, plaintiffs must meet a two-part test.
9 First, the alleged constitutional deprivation must objectively be “sufficiently serious”;
10 that is, the official’s act or omission must result in the denial of “the minimal civilized
11 measure of life’s necessities.” *Id.* at 834 (citations omitted). Second, the prison official
12 must have a “sufficiently culpable state of mind”; that is, “the official must be both aware
13 of facts from which the inference could be drawn that a substantial risk of serious harm
14 exists, and he must also draw that inference.” *Id.* at 837 (emphasis added).

15 To state a claim for unconstitutional conditions of confinement, a plaintiff must
16 allege that a defendant’s acts or omissions have deprived the inmate of “the minimal
17 civilized measure of life’s necessities” and that the defendant acted with deliberate
18 indifference to an excessive risk of inmate health or safety. *Allen v. Sakai*, 48 F.3d 1082,
19 1087 (9th Cir. 1994) (quoting *Farmer*, 511 U.S. at 834); *see Estate of Ford v. Ramirez-*
20 *Palmer*, 301 F.3d 1043, 1049-50 (9th Cir. 2002). Whether conditions of confinement rise
21 to the level of a constitutional violation may depend, in part, on the duration of an
22 inmate’s exposure to those conditions. *Keenan v. Hall*, 83 F.3d 1083, 1089, 1091 (9th
23 Cir. 1996) (citing *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)). “The circumstances,
24 nature, and duration of a deprivation of [] necessities must be considered in determining
25 whether a constitutional violation has occurred.” *Hearns v. Terhune*, 413 F.3d 1036,
26 1042 (9th Cir. 2005) (quoting *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000)).

27 To adequately allege that a defendant acted with deliberate indifference, a plaintiff
28 must allege facts that a defendant knew of, but disregarded, an excessive risk to inmate

1 health or safety. *Farmer*, 511 U.S. at 832-33. That is, “the official must both be aware of
2 facts from which the inference could be drawn that a substantial risk of serious harm
3 exists, and he must also draw the inference.” *Id.*

4 With respect to meals, “[t]he Eighth [and Fourteenth] Amendment[s] require[]
5 only that prisoners receive food that is adequate to maintain health; it need not be tasty or
6 aesthetically pleasing.” *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993) (citation
7 omitted); *see Frost*, 152 F.3d at 1128 (applying Eighth Amendment standard to a pretrial
8 detainee’s Fourteenth Amendment claims regarding his conditions of confinement).
9 “The fact that the food occasionally contains foreign objects or sometimes is served cold,
10 while unpleasant, does not amount to a constitutional deprivation.” *LeMaire*, 12 F.3d at
11 1456 (citations omitted). An inmate may, however, state a claim where he alleges that he
12 is served meals with insufficient calories for long periods of time. *Id.*

13 **V. Leave to Amend**

14 For the foregoing reasons, Plaintiff’s Complaint will be dismissed for failure to
15 state a claim upon which relief may be granted. Within 30 days, however, Plaintiff may
16 submit a first amended complaint to cure the deficiencies outlined above. The Clerk of
17 Court will mail Plaintiff a court-approved form to use for filing a first amended
18 complaint. If Plaintiff fails to use the court-approved form, the Court may strike the
19 amended complaint and dismiss this action without further notice to Plaintiff.

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

24 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,
25 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896
26 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original
27 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
28 in the original complaint and that was voluntarily dismissed or was dismissed without

1 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*
2 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

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

9 Plaintiff must repeat this process for each person he names as a Defendant. If
10 Plaintiff fails to explain how the conduct of each named Defendant is connected to the
11 specific injury suffered by Plaintiff, the allegations against that Defendant will be
12 dismissed for failure to state a claim. **Conclusory allegations that a Defendant or**
13 **group of Defendants has violated a constitutional right are not acceptable and will**
14 **be dismissed.**

15 **VI. Warnings**

16 **A. Release**

17 If released from custody, Plaintiff must pay the unpaid balance of the filing fee
18 within 120 days of his release. Also, within 30 days of his release, he must either (1)
19 notify the Court that he intends to pay the balance or (2) show good cause, in writing,
20 why he cannot. Failure to comply may result in dismissal of this action.

21 **B. Address Changes**

22 If Plaintiff's address changes, Plaintiff must file and serve a notice of a change of
23 address in accordance with Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff
24 must not include a motion for other relief with a notice of change of address. Failure to
25 comply may result in dismissal of this action.

26 **C. Copies**

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

1 notice to Plaintiff.

2 **D. Possible “Strike”**

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

12 **E. Possible Dismissal**

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

17 **IT IS ORDERED:**

18 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

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

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

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

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(5) 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 July, 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.