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

Richard Douglas Ostler,  
Plaintiff,  
vs.  
Joseph M. Arpaio, et al.,  
Defendants.

No. CV 14-1456-PHX-DGC (JFM)

**ORDER**

On June 26, 2014, Plaintiff Richard Douglas Ostler, who is confined in the Maricopa County Durango Jail, filed a *pro se* civil rights Complaint and an Application to Proceed *In Forma Pauperis*. In a July 29, 2014 Order, the Court granted the Application to Proceed and dismissed the Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies identified in the Order.

On August 5, 2014, Plaintiff filed his First Amended Complaint (Doc. 7). The Court will dismiss the First Amended Complaint with leave to amend.

**I. Statutory Screening of Prisoner Complaints**

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

1 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

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

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

17 But as the United States Court of Appeals for the Ninth Circuit has instructed,  
18 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,  
19 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less  
20 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*  
21 *Pardus*, 551 U.S. 89, 94 (2007) (per curiam)). If the Court determines that a pleading  
22 could be cured by the allegation of other facts, a *pro se* litigant is entitled to an  
23 opportunity to amend a complaint before dismissal of the action. *See Lopez v. Smith*, 203  
24 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc). Plaintiff’s First Amended Complaint will  
25 be dismissed for failure to state a claim, but because it may possibly be amended to state  
26 a claim, the Court will dismiss it with leave to amend.

27 . . . .

28 . . . .

1 **II. First Amended Complaint**

2 In his First Amended Complaint, Plaintiff alleges three counts against Maricopa  
3 County Sheriff Joseph Arpaio; Baron Erbuy, Jail Commander of the Maricopa County  
4 Durango Jail; and Captain Sensalini, Jail Commander of the Maricopa County Towers  
5 Jail.

6 In Count One,<sup>1</sup> Plaintiff alleges that his safety was threatened as follows: From  
7 January 2013 to May 2013, while incarcerated in Towers Jail, Plaintiff was locked down  
8 for more than three and a half months with more than two inmates in his cell. Plaintiff  
9 was locked down for more than 23 hours per day and was only allowed out for a shower.  
10 Plaintiff alleges that he became sick with flu-like symptoms.

11 In Count Two, Plaintiff alleges that his safety has been threatened as follows:  
12 While Plaintiff was housed in intake at the Fourth Avenue Jail, there was overcrowding.  
13 The toilets were unsanitary and urine was visible on the floor and on the toilet. There  
14 was no soap available to wash hands and no toilet paper was provided. Plaintiff was  
15 housed in intake from June 10 to June 11 without a blanket, mattress, or bed. Plaintiff  
16 was unable to submit a tank order to medical “for the conditions experienced” as no  
17 forms were provided. The Maricopa County Sheriff has “authority over all personnel  
18 working for the Maricopa County Jail facilities.” Plaintiff alleges that he suffered  
19 headaches, nausea, upset stomach, lack of rest, and diarrhea on several occasions over a  
20 period of four years.

21 In Count Three, Plaintiff alleges that his safety has been threatened as follows:  
22 From April 29, 2014 to June 2014, Plaintiff was repeatedly moved to different pods while  
23 housed in the Durango Jail. The pods were not sanitized prior to occupancy and inmates  
24 were forced to clean the cells when they were moved to a new pod. Adequate cleaning  
25 supplies were not provided each time. The Jail Commander “is directly involved by  
26

27 <sup>1</sup> In each Count, Plaintiff lists the “constitutional or federal right that was violated”  
28 as “Amended Judgment Document #705 of Second Amended Judgment.” It is unclear  
what Plaintiff is referring to or how such Judgment gives rise to a constitutional or  
federal right.

1 authority over all staff at jail facility who come in contact with inmates.” Plaintiff alleges  
2 that he became sick on three different occasions with diarrhea, vomiting, headaches, and  
3 upset stomach.

4 Plaintiff seeks monetary relief.

### 5 **III. Failure to State a Claim**

6 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants  
7 (2) under color of state law (3) deprived him of federal rights, privileges or immunities  
8 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th  
9 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d  
10 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific  
11 injury as a result of the conduct of a particular defendant and he must allege an  
12 affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,  
13 423 U.S. 362, 371-72, 377 (1976).

14 To state a claim for threat to safety, an inmate must allege facts to support that he  
15 was incarcerated under conditions posing a substantial risk of harm and that prison  
16 officials were “deliberately indifferent” to those risks. *Farmer v. Brennan*, 511 U.S. 825,  
17 832-33 (1994). To adequately allege deliberate indifference, a plaintiff must allege facts  
18 to support that a defendant knew of, but disregarded, an excessive risk to inmate safety.  
19 *Id.* at 837. That is, “the official must both [have been] aware of facts from which the  
20 inference could be drawn that a substantial risk of serious harm exist[ed], and he must  
21 also [have] draw[n] the inference.” *Id.*

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

28 ...

1 Plaintiff's sole allegation against the named Defendants is that they each have  
2 authority over staff in the jails. This allegation is insufficient to state a claim against any  
3 named Defendant because a defendant's position as the supervisor of someone who  
4 allegedly violated a plaintiff's constitutional rights does not make him liable. *Monell v.*  
5 *N.Y. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Taylor v. List*, 880 F.2d 1040, 1045  
6 (9th Cir. 1989) (citation omitted). "A plaintiff must allege facts, not simply conclusions,  
7 that show that an individual was personally involved in the deprivation of his civil  
8 rights." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). For an individual to  
9 be liable in his official capacity, a plaintiff must allege that the official acted as a result of  
10 a policy, practice, or custom. *See Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188  
11 (9th Cir. 2002) (citation omitted). A supervisor in his individual capacity "is only liable  
12 for constitutional violations of his subordinates if the supervisor participated in or  
13 directed the violations, or knew of the violations and failed to act to prevent them."  
14 *Taylor*, 880 F.2d at 1045.

15 Moreover, although Plaintiff characterizes all of his claims as claims for threat to  
16 safety, Plaintiff has not alleged that any Defendant knew of a substantial risk of harm to  
17 Plaintiff and was deliberately indifferent to such risk, and Plaintiff has not alleged facts  
18 supporting such an allegation. Plaintiff has not alleged that any Defendant was directly  
19 involved in a violation of Plaintiff's constitutional rights or knew of such a violation and  
20 failed to act to prevent it. Moreover, Plaintiff has not alleged facts to support that  
21 Plaintiff's constitutional rights were violated as a result of a policy or custom  
22 promulgated or endorsed by any Defendant. Accordingly, Plaintiff fails to state a claim  
23 upon which relief can be granted against Defendants and they will be dismissed.

#### 24 **IV. Leave to Amend**

25 For the foregoing reasons, Plaintiff's First Amended Complaint will be dismissed  
26 for failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff  
27 may submit a second amended complaint to cure the deficiencies outlined above. The  
28 Clerk of Court will mail Plaintiff a court-approved form to use for filing a second

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

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

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

15 Plaintiff must repeat this process for each person he names as a Defendant. If  
16 Plaintiff fails to affirmatively link the conduct of each named Defendant<sup>2</sup> with the  
17 specific injury suffered by Plaintiff, the allegations against that Defendant will be  
18 dismissed for failure to state a claim. **Conclusory allegations that a Defendant or**  
19 **group of Defendants has violated a constitutional right are not acceptable and will**  
20 **be dismissed.**

21 Moreover, in amending his Complaint, Plaintiff should be aware that a pretrial

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22  
23 <sup>2</sup> If Plaintiff does not know the names of the individual Defendants, Plaintiff must  
24 list the individual unknown defendants as Defendant John (or Jane) Doe 1, John Doe 2,  
25 and so on in the caption of his first amended complaint, *and*, in the body of the first  
26 amended complaint, Plaintiff must allege facts to support how each particular Doe  
27 defendant violated Plaintiff’s rights. *See Wakefield v. Thompson*, 177 F.3d 1160, 1163  
28 (9th Cir. 1999) (where identity is unknown prior to the filing of a complaint, the plaintiff  
should be given an opportunity through discovery to identify the unknown defendants,  
unless it is clear that discovery would not uncover the identities, or that the complaint  
would be dismissed on other grounds) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642  
(9th Cir. 1980)).

1 detainee's claim for unconstitutional conditions of confinement arises from the  
2 Fourteenth Amendment Due Process Clause rather than from the Eighth Amendment  
3 prohibition against cruel and unusual punishment. *Bell v. Wolfish*, 441 U.S. 520, 535  
4 n.16 (1979). Nevertheless, the same standards are applied, requiring proof that the  
5 defendant acted with deliberate indifference. *See Frost v. Agnos*, 152 F.3d 1124, 1128  
6 (9th Cir. 1998) (citation omitted).

7 To state a claim for unconstitutional conditions of confinement, a plaintiff must  
8 allege that a defendant's acts or omissions have deprived the inmate of "the minimal  
9 civilized measure of life's necessities" and that the defendant acted with deliberate  
10 indifference to an excessive risk to inmate health or safety. *Allen v. Sakai*, 48 F.3d 1082,  
11 1087 (9th Cir. 1994) (quoting *Farmer*, 511 U.S. at 834); *see Estate of Ford v. Ramirez-*  
12 *Palmer*, 301 F.3d 1043, 1049-50 (9th Cir. 2002). Whether conditions of confinement rise  
13 to the level of a constitutional violation may depend, in part, on the duration of an  
14 inmate's exposure to those conditions. *Keenan v. Hall*, 83 F.3d 1083, 1089, 1091 (9th  
15 Cir. 1996) (citing *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)). "The circumstances,  
16 nature, and duration of a deprivation of [ ] necessities must be considered in determining  
17 whether a constitutional violation has occurred." *Hearns v. Terhune*, 413 F.3d 1036,  
18 1042 (9th Cir. 2005) (quoting *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000)).

19 Allegations of overcrowding, without more, do not state a claim under the Eighth  
20 and Fourteenth Amendments. *See Hoptowit v. Ray*, 682 F.2d 1237, 1248-49 (9th Cir.  
21 1982). A plaintiff may, however, state a cognizable claim where he or she alleges that  
22 overcrowding results in some unconstitutional condition. *See, e.g., Akao v. Shimoda*, 832  
23 F.2d 119, 120 (9th Cir. 1987) (reversing district court's dismissal of claim that  
24 overcrowding caused increased stress, tension and communicable disease among inmate  
25 population); *see also Toussaint v. Yockey*, 722 F.2d 1490, 1492 (9th Cir. 1984) (affirming  
26 that an Eighth Amendment violation may occur as a result of overcrowded prison  
27 conditions causing increased violence, tension and psychiatric problems).

28 . . . .

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

9 **V. Warnings**

10 **A. Release**

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

15 **B. Address Changes**

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

20 **C. Copies**

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

24 **D. Possible “Strike”**

25 Because the First Amended Complaint has been dismissed for failure to state a  
26 claim, if Plaintiff fails to file a second amended complaint correcting the deficiencies  
27 identified in this Order, the dismissal may count as a “strike” under the “3-strikes”  
28 provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring

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

7 **E. Possible Dismissal**

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

12 **IT IS ORDERED:**

13 (1) The First Amended Complaint (Doc. 7) is **dismissed** for failure to state a  
14 claim. Plaintiff has **30 days** from the date this Order is filed to file a second amended  
15 complaint in compliance with this Order.

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

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

22 Dated this 12th day of September, 2014.

23  
24  
25 

26 \_\_\_\_\_  
27 David G. Campbell  
28 United States District Judge

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

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
  
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
  
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
  
4. The Filing and Administrative Fees. The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed *in forma pauperis*. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915” for additional instructions.
  
5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.
  
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$400 filing and administrative fees or the application to proceed *in forma pauperis* to:**

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

**OR**

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

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

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

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Attorney for Defendant(s)

\_\_\_\_\_  
(Signature)

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

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

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

## 12. Completing the Civil Rights Complaint Form.

### **HEADING:**

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

### **Part A. JURISDICTION:**

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

### **Part B. PREVIOUS LAWSUITS:**

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

### **Part C. CAUSE OF ACTION:**

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

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

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

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

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

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

**Part D. REQUEST FOR RELIEF:**

Print the relief you are seeking in the space provided.

**SIGNATURE:**

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

**FINAL NOTE**

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

\_\_\_\_\_  
Name and Prisoner/Booking Number

\_\_\_\_\_  
Place of Confinement

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

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

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

\_\_\_\_\_, )  
(Full Name of Plaintiff) Plaintiff, )

vs. )

**CASE NO.** \_\_\_\_\_  
(To be supplied by the Clerk)

(1) \_\_\_\_\_, )  
(Full Name of Defendant)

(2) \_\_\_\_\_, )

(3) \_\_\_\_\_, )

(4) \_\_\_\_\_, )

Defendant(s). )

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

**CIVIL RIGHTS COMPLAINT  
BY A PRISONER**

- Original Complaint
- First Amended Complaint
- Second Amended Complaint

**A. JURISDICTION**

1. This Court has jurisdiction over this action pursuant to:

- 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
- 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
- Other: \_\_\_\_\_.

2. Institution/city where violation occurred: \_\_\_\_\_.

**B. DEFENDANTS**

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

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

**C. PREVIOUS LAWSUITS**

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

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

**D. CAUSE OF ACTION**

**COUNT I**

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

2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.  
 Basic necessities                       Mail                       Access to the court                       Medical care  
 Disciplinary proceedings                       Property                       Exercise of religion                       Retaliation  
 Excessive force by an officer                       Threat to safety                       Other: \_\_\_\_\_.

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

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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.