

SKC

1  
2 **WO**3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
89 Michael David Johnson,  
10 Plaintiff,

No. CV 15-0094-PHX-DGC (DMF)

11 v.

**ORDER**12 Scottsdale Police Department, et al.,  
13 Defendants.  
14

15 On January 20, 2015, Plaintiff Michael David Johnson, who was then confined in  
16 the Maricopa County Lower Buckeye Jail, filed a *pro se* civil rights Complaint pursuant  
17 to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. In a March 3,  
18 2015 Order, the Court granted the Application to Proceed and dismissed the Complaint  
19 because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an  
20 amended complaint that cured the deficiencies identified in the Order.

21 On March 5, 2015, Plaintiff filed a Notice of Party's Change of Address,  
22 indicating he was no longer in custody, and on May 7, 2015, Plaintiff filed a non-prisoner  
23 application to proceed *in forma pauperis*. In an April 8, 2015 Order, the Court granted  
24 Plaintiff's non-prisoner application to proceed and dismissed the Complaint with leave to  
25 amend for failure to state a claim.

26 On May 7, 2015, Plaintiff filed his First Amended Complaint (Doc. 12). The  
27 Court will dismiss the First Amended Complaint with leave to amend.

28 . . .

**JDDL-K**

1       **I.       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 First Amended Complaint will be dismissed for failure to state a claim, but  
5 because it may possibly be amended to state a claim, the Court will dismiss it with leave  
6 to amend.

7       **II. First Amended Complaint**

8           In his two-count First Amended Complaint, Plaintiff sues Darren Hyman,  
9 Detective for the Scottsdale Police Department; Alan Rodbell, Chief of Police for the  
10 Scottsdale Police Department; and Joe Nichols and Melissa Palopoli, Sergeants for the  
11 Scottsdale Police Department, for alleged Fourth and Fifth Amendment violations.  
12 Plaintiff seeks punitive damages and costs.

13           Both Counts are based on the following allegations.

14           On May 20, 2014, Plaintiff was arrested in Phoenix by Defendant Hyman for  
15 violation of an order of protection issued by the Scottsdale City Court. After Plaintiff's  
16 arrest, Hyman and Detective Leal conducted a search of Plaintiff's vehicle in Plaintiff's  
17 presence. The detectives seized a legal envelope "containing documents, evidence, case  
18 notes, research[,] and strategy for two civil cases [Plaintiff] had against the alleged  
19 victim" named in the order of protection. One of these cases was "against the order of  
20 protection." Plaintiff informed Hyman of the contents of the envelope, and Hyman  
21 inspected it. Plaintiff told Hyman "you should not take that," but Hyman seized it  
22 anyway.

23           Plaintiff alleges that he was representing himself in the two civil cases and he  
24 believes the documents are protected by attorney-client privilege. He further alleges that  
25 seizure of these documents "exceeded the requirements of the warrant." According to  
26 Plaintiff, the warrant encompassed "indicia of residency, occupancy, cell phones,  
27 computer equipment, storage, devices, paper documents [and] all items that relate to the  
28 alleged charges." Plaintiff alleges that the documents seized did not contain information

1 related to the charges; his residency was already established when Hyman allegedly  
2 visited Plaintiff's apartment manager the week prior to Plaintiff's arrest; and, although  
3 item #6 of the warrant asked for documents establishing a relationship between Plaintiff  
4 and the alleged victim named in the order of protection, the order of protection and its  
5 supporting documentation were enough to establish this relationship.

6 Plaintiff additionally alleges defects in the way the warrant was procured. He  
7 alleges that the warrant request used boiler-plate language from an unrelated case, and  
8 "the officer clearly typed over a prior existing search warrant request" because this and  
9 other court-order requests related to the warrant "contain[ed] information that is  
10 identifiable to other cases with another person's personal information." Plaintiff alleges  
11 that Hyman simply typed over prior requests and did not review them to verify the need  
12 for all the itemized information before presenting these requests to the judge.

13 Plaintiff alleges that he was released from custody on May 21, 2014, and while he  
14 was awaiting trial on June 23, 2014, he filed paperwork at the Scottsdale City Court,  
15 seeking a hearing to challenge the order of protection. At that time, he went to the  
16 counter of the Scottsdale Police Department's satellite office and requested the return of  
17 his legal documents. Plaintiff alleges that the clerk told him to call the Sergeant. He  
18 alleges that he then called Hyman's Sergeant, and she instructed him to call Hyman and  
19 told him that "it shouldn't be a problem." Plaintiff alleges that he called Hyman, and  
20 Hyman told him he would see what he could do, but he did not release Plaintiff's  
21 envelope.

22 Plaintiff alleges that he had a hearing on August 6, 2014, for which he was  
23 "caught completely unprepared" due to his inability to recall the details of the case.  
24 Consequently, Plaintiff lost the hearing, and he filed a notice of appeal on August 8,  
25 2014. On the same day, Plaintiff wrote to the City of Scottsdale Court and the District  
26 Attorney's Office, requesting the return of his envelope, but those requests were denied.  
27 Plaintiff alleges that the City of Scottsdale judge who denied his request was the same  
28 judge who presided over the hearing that Plaintiff lost. Plaintiff alleges that he thereafter

1 made requests for his documents to the Scottsdale Police Department internal affairs  
2 department, the Maricopa County Superior Court judge who had approved the warrant,  
3 and the Scottsdale Police Chief, but all of these requests were either ignored or denied,  
4 even though “none of these documents appear as evidence provided by the state in  
5 [Plaintiff’s] case.” Plaintiff alleges that on January 9, 2015, he reported his documents  
6 stolen to the Phoenix Police Department because they were taken in its jurisdiction, and  
7 the Phoenix Police Department referred his complaint to the Scottsdale Police  
8 Department.

9 Plaintiff alleges that his criminal case was to go to trial in February 2015, and he  
10 “took a plea with the understanding that if [he] could win [his] appeal on the order of  
11 protection” he would “rule 32 [his criminal] case later from the outside.” Plaintiff alleges  
12 that as a result of his plea, he served 7.5 months in jail, one week in prison, and he now  
13 has two felony counts of aggravated harassment for violating the order of protection.  
14 Plaintiff further alleges that he lost his appeal on the order of protection, and he claims  
15 that the Scottsdale Police Department deliberately withheld his documents to keep him  
16 from being able to overturn the order of protection decision. He alleges that Hyman  
17 showed up to testify against him at the order of protection hearing on August 6, 2014,  
18 even though he had not been involved in the original case.

19 Plaintiff alleges that the seizure and retention of his documents violated his Fourth  
20 Amendment rights to be free of unreasonable search and seizure and his Fifth and  
21 Fourteenth Amendment rights to due process. He claims he was injured because he lost  
22 his hearing and appeal, he was sentenced and incarcerated, and he still does not have his  
23 property.

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

25 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants  
26 (2) under color of state law (3) deprived him of federal rights, privileges or immunities  
27 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th  
28 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d

1 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific  
2 injury as a result of the conduct of a particular defendant and he must allege an  
3 affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,  
4 423 U.S. 362, 371-72, 377 (1976).

5 Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,  
6 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*  
7 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a  
8 liberal interpretation of a civil rights complaint may not supply essential elements of the  
9 claim that were not initially pled. *Id.*

10 **A. Defendant Rodbell**

11 For an individual to be liable in his individual capacity, “[a] plaintiff must allege  
12 facts, not simply conclusions, that show that the individual was personally involved in the  
13 deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.  
14 1998). Further, there is no *respondeat superior* liability under § 1983, so a defendant’s  
15 position as the supervisor of someone who allegedly violated a plaintiff’s constitutional  
16 rights does not make him liable. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691;  
17 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted). A supervisor in his  
18 individual capacity “is only liable for constitutional violations of his subordinates if the  
19 supervisor participated in or directed the violations, or knew of the violations and failed  
20 to act to prevent them.” *Taylor*, 880 F.2d at 1045. Alternatively, for an individual to be  
21 liable in his official capacity, a plaintiff must allege injuries resulting from a policy,  
22 practice, or custom of the governmental entity for which that individual exercises final  
23 policy-making authority. *See Monell*, 436 U.S. 694.

24 Plaintiff fails to state a claim against Defendant Rodbell. Plaintiff’s only  
25 allegation against Rodbell is that Plaintiff wrote to “the Chief of the Scottsdale Police  
26 Department” seeking the return of his documents, and his request was either ignored or  
27 denied. This vague assertion is not sufficient to show that Rodbell was personally  
28 involved in the deprivation of Plaintiff’s rights, or that, as a supervisor, he participated in

1 violations against Plaintiff, directed anyone else to do so, or knew of any such violations  
2 and failed to act to prevent them. Additionally, Plaintiff fails to allege any facts showing  
3 that his injuries ensued from a policy, practice, or custom observed within the City of  
4 Scottsdale Police Department. Accordingly, Plaintiff fails to state a claim against  
5 Rodbell in either his individual or official capacity, and he will be dismissed.

6 **B. Defendants Nichols and Palopoli**

7 Plaintiff fails to state a claim against Defendants Nichols and Palopoli. Other than  
8 identifying Nichols and Palopoli as Sergeants for the Scottsdale Police Department,  
9 Plaintiff does not mention them anywhere in the body of the Complaint. As noted above,  
10 there is no *respondeat superior* liability under § 1983, so a defendant’s position as the  
11 supervisor of someone who allegedly violated a plaintiff’s constitutional rights does not  
12 make him liable. Even assuming that Palopoli was the Sergeant who allegedly told  
13 Plaintiff to contact Hyman for the return of his documents and that getting them back  
14 should not be a problem,<sup>1</sup> these facts do not support a claim against her. Merely referring  
15 Plaintiff to the person she thought could return his documents does not show that Palopoli  
16 violated Plaintiff’s constitutional rights. Accordingly, Plaintiff fails to state a claim  
17 against either Nichols or Palopoli, and they will be dismissed.

18 **C. Count One**

19 Plaintiff alleges a Fourth Amendment violation in Count One. The Fourth  
20 Amendment protects the “right of people to be secure in their persons, houses, papers,  
21 and effects, against unreasonable searches and seizures” and decrees that “no warrants  
22 shall issue, but upon probable cause, supported by oath or affirmation, and particularly  
23 describing the place to be searched, and the persons or things to be seized.” U.S. Const.  
24 amend. IV. There are, however, exceptions to the warrant requirement. *See, e.g., United*  
25 *States v. Jenkins*, 876 F.2d 1085, 1088 (2d Cir. 1989) (consent); *United States v. Soussi*,  
26 29 F.3d 565, 571-72 (10th Cir. 1994) (consent); *Roberts v. Spielman*, 643 F.3d 899, 905

---

27  
28 <sup>1</sup> Plaintiff refers to the Sergeant who told him this as “she,” presumably referring  
to Defendant Palopoli, or at least ruling out Defendant Nichols.

1 (11th Cir. 2011) (exigent circumstances); and *United States v. Hudson*, 100 F.3d 1409,  
2 1420 (9th Cir. 1996) (plain view). A seizure of property occurs when there is some  
3 meaningful interference with an individual’s possessory interests in that property. *Soldal*  
4 *v. Cook County, Ill.*, 506 U.S. 56, 61 (1992) (citation and quotation omitted).

5 Plaintiff’s Fourth Amendment claim rests on assertions that (1) the seizure of his  
6 documents exceeded the scope of the warrant, and (2) the warrant itself was improperly  
7 procured. In its March 3, 2015 Order dismissing Plaintiff’s original Complaint, the Court  
8 addressed these same assertions and concluded that Plaintiff had failed to provide  
9 sufficient factual allegations concerning what prompted the search, what the warrant  
10 covered, where and how Plaintiff’s personal documents were discovered, and what  
11 charges ensued to show that the alleged seizure violated the Fourth Amendment. Plaintiff  
12 fails to cure these deficiencies in the First Amended Complaint. For example, Plaintiff’s  
13 allegations now suggest that officers Hyman and Leal conducted a warranted search of  
14 Plaintiff’s vehicle in Phoenix at the same time they apprehended him for violating an  
15 order of protection. But the added allegations about Plaintiff’s arrest and order of  
16 protection still do not show what prompted the warrant or on what charges the warrant  
17 was based. Plaintiff alleges, in part, that the warrant sought “indicia of residency,  
18 occupancy, cell phones, computer equipment, storage, devices, paper documents [and] all  
19 items that relate to the alleged charges.” But absent virtually any facts about these  
20 “alleged charges,” Plaintiff fails to show that the seizure of his documents was outside  
21 the warrant’s scope. The Court’s review of Maricopa County Superior Court records  
22 shows that on November 5, 2014, Plaintiff pled guilty in case # CR2014-124171-001 to  
23 taking the identity of another and aggravated harassment, and that additional charges of  
24 credit card theft and fraud were dismissed.<sup>2</sup> This case stemmed from crimes that  
25 allegedly occurred from late September to early December 2013. Plaintiff additionally  
26 pled guilty in case # CR2014-132003-001 to a charge of aggravated harassment, and

---

27  
28 <sup>2</sup> See <https://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseInfo.asp?caseNumber=CR2014-124171> (last visited May 12, 2015).

1 three additional charges of aggravated harassment were dismissed.<sup>3</sup> This case stemmed  
2 from crimes that allegedly occurred on June 12 and June 30, 2014. Although Plaintiff  
3 alleges that none of the documents seized from his vehicle on May 20, 2014 were used as  
4 evidence “by the state in [Plaintiff’s] case,” it is not clear what case Plaintiff refers to.  
5 Clearly, the seized documents could not have been used as evidence in the second case  
6 because the alleged crimes did not even take place until after Hyman conducted the  
7 search. But this does not show that these documents were outside the scope of the  
8 charges in the first case to which it appears the warrant may have pertained. Moreover,  
9 the mere allegation that the seized documents were not used at trial does not show that  
10 they were beyond the scope of the warrant. Absent any facts about the charges alleged in  
11 the warrant, Plaintiff fails plausibly to show that Hyman’s seizure of his documents  
12 exceeded its scope.

13 Plaintiff also fails to allege sufficient facts to show that the alleged warrant was  
14 improperly procured. Plaintiff vaguely asserts that parts of the documents Hyman put  
15 forth in support of the warrant were “boiler plated from a different, unrelated case” or  
16 contained information “identifiable to other cases with another person’s personal  
17 information,” and he alleges that this shows that Hyman “misled the court.” But it is not  
18 clear from these facts what information was allegedly “boiler plated” or how the facts  
19 Hyman put forth to procure the warrant were misleading as applied to Plaintiff. Plaintiff  
20 also alleges that Hyman failed to review the itemized information he allegedly used from  
21 other warrant requests to fit the specific requirements in his case, but Plaintiff does not  
22 identify any requests that he believes were overly broad.

23 For the above reasons, Plaintiff fails to state a Fourth Amendment claim in Count  
24 One, and this claim will be dismissed.<sup>4</sup>

---

25  
26 <sup>3</sup> See <https://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseInfo.asp?caseNumber=CR2014-132003>(last visited May 12, 2015).

27 <sup>4</sup> Even if Plaintiff could allege sufficient facts to state a Fourth Amendment claim,  
28 such a claim may nonetheless be barred if this violation could, in some way, invalidate  
any of Plaintiff’s criminal convictions, unless or until those convictions are overturned.

1           **D.     Count Two**

2           Plaintiff’s Fourteenth Amendment due process claim in Count Two is based on the  
3 alleged failures or refusals of Defendants to return his documents after they were  
4 allegedly unlawfully seized. Plaintiff also appears to allege due process violations with  
5 respect to his order of protection because he alleges that, without those documents, he  
6 was unprepared for a hearing on that order and is unable effectively to appeal that case.

7                   **1.     Documents**

8           Plaintiff’s allegations that Defendants failed to return his documents may support  
9 a common law tort claim or a claim for conversion of personal property, but they do not  
10 support a federal constitutional claim. In *Parratt v. Taylor*, 451 U.S. 527, 541 (1981), the  
11 Supreme Court held that due process is not violated when a state employee negligently  
12 deprives an individual of property, as long as the state makes available a meaningful  
13 post-deprivation remedy. The logic of *Parratt* has been extended to intentional  
14 unauthorized deprivations of property by state actors. *Hudson v. Palmer*, 468 U.S. 517,  
15 533 (1984). As with negligent deprivations, where a state makes available a meaningful  
16 *post*-deprivation remedy, such as a common-law tort suit against a state employee for  
17 intentional unauthorized deprivations, a federal due process claim is precluded. *Hudson*,  
18 468 U.S. at 534-35; *King v. Massarweh*, 782 F.2d 825, 826 (9th Cir. 1986). Plaintiff has  
19 not alleged that he has been deprived of an available post-deprivation remedy for seeking  
20 the return of his property. Even if Scottsdale Police personnel, the City Attorney’s  
21 Office, and the Scottsdale City Court have effectively deprived Plaintiff of any direct  
22 means to recover his property due to their repeated denials or failures to respond to

---

23 A prisoner’s claim for damages cannot be brought under 42 U.S.C. § 1983 if “a judgment  
24 in favor of the plaintiff would necessarily imply the invalidity of his conviction or  
25 sentence,” unless the prisoner demonstrates that the conviction or sentence has previously  
26 been reversed, expunged, or otherwise invalidated. *Heck v. Humphrey*, 512 U.S. 477,  
27 486-87 (1994). Plaintiff appears to suggest that he only pled guilty to certain criminal  
28 charges because he believed that after his legal documents were returned, he could “rule  
32” that case. At this point, however, Plaintiff has not alleged facts plausibly showing  
that a Fourth Amendment violation, if it occurred, would invalidate any of his criminal  
convictions. Thus, it is not entirely clear that *Heck* applies.

1 Plaintiff's requests, this does not mean that Plaintiff is left without an effective post-  
2 deprivation means of relief. Plaintiff alleges that he already reported his documents  
3 stolen to the Phoenix Police Department, and it referred his complaint to the Scottsdale  
4 Police Department. Moreover, to the extent that the Police Departments fail to provide  
5 relief, Plaintiff has an available civil remedy in the Arizona state courts. *See Howland v.*  
6 *State*, 818 P.2d 1169, 1172-73 (Ariz. Ct. App. 1991) (state prison officials' confiscation  
7 of and failure to return prisoner's personal property states a claim for conversion under  
8 Arizona law).

## 9 **2. Order of Protection Hearing**

10 Insofar as Plaintiff attempts to assert a due process violation on the grounds that  
11 the Scottsdale Police Department "deliberately and intentionally" impaired his ability to  
12 represent himself in his order of protection hearing and appeal, this claim also fails. As  
13 an initial matter, these allegations are too speculative to state a claim. Plaintiff vaguely  
14 alleges that the seized documents were not required "in the case against [Plaintiff],"  
15 purportedly showing that they were seized and kept solely as a way to interfere with  
16 Plaintiff's ability to litigate his order of protection case. Plaintiff also alleges that Hyman  
17 showed up to testify at the order of protection hearing, even though Hyman "was never a  
18 part of that pre-existing case." These bare assertions are insufficient, however, to show  
19 that Hyman or any other state actors interfered with Plaintiff receiving due process.  
20 Additionally, to the extent that Plaintiff believes he was denied due process in his order  
21 of protection proceedings, the proper place to raise those objections was at those  
22 proceedings or on appeal in that case. This Court is not a court of appeals for state court  
23 decisions and must decline jurisdiction whenever it is "in essence being called upon to  
24 review the state court decision." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d  
25 1026, 1030 (9th Cir. 2001) ("Because district courts lack power to hear direct appeals  
26 from state court decisions, they must decline jurisdiction whenever they are "in essence  
27 being called upon to review the state court decision.") (applying the *Rooker-Feldman*  
28 doctrine; *see Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *Dist. of Columbia Ct. of*

1 *App. v. Feldman*, 460 U.S. 462 (1983)); *see, e.g., Noel v. Hall*, 341 F.3d 1148, 1156 (9th  
2 Cir.2003) (“If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision  
3 by a state court, and seeks relief from a state court judgment based on that decision,  
4 *Rooker–Feldman* bars subject matter jurisdiction in federal district court.”).

5 For all of these reasons, Plaintiff fails to state a Fourteenth Amendment due  
6 process claim in Count Two, and this claim will be dismissed.

#### 7 **IV. Leave to Amend**

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

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

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

28 . . .

1 **V. Warnings**

2 **A. Release**

3 If Plaintiff is released while this case remains pending, and the filing fee has not  
4 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court  
5 that he intends to pay the unpaid balance of his filing fee within 120 days of his release or  
6 (2) file a non-prisoner application to proceed *in forma pauperis*. Failure to comply may  
7 result in dismissal of this action.

8 **B. Address Changes**

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

13 **C. Copies**

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

17 **D. Possible “Strike”**

18 Because the First Amended Complaint has been dismissed for failure to state a  
19 claim, if Plaintiff fails to file a second amended complaint correcting the deficiencies  
20 identified in this Order, the dismissal may count as a “strike” under the “3-strikes”  
21 provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring  
22 a civil action or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the  
23 prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility,  
24 brought an action or appeal in a court of the United States that was dismissed on the  
25 grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be  
26 granted, unless the prisoner is under imminent danger of serious physical injury.” 28  
27 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

**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).

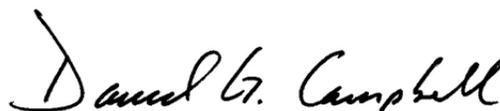
**IT IS ORDERED:**

(1) The First Amended Complaint (Doc. 12) 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 15th day of May, 2015.



---

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.