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

8
9 Rodney Cabrera De La Rosa,
10 Plaintiff,

No. CV 15-0569-PHX-DGC (JFM)

11 v.

ORDER

12 Joseph M. Arpaio, et al.,
13 Defendants.
14

15 On March 30, 2015, Plaintiff Rodney Cabrera De La Rosa, who is confined in the
16 Maricopa County Durango Jail, filed a *pro se* civil rights Complaint pursuant to 42
17 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. In a May 15, 2015
18 order, the Court granted the Application to Proceed and dismissed the Complaint because
19 Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file an amended
20 complaint that cured the deficiencies identified in the order.

21 On June 8, 2015, Plaintiff filed a letter addressed to the undersigned¹ and his First
22 Amended Complaint (Doc. 9). The Court will dismiss the First Amended Complaint
23 with leave to amend.

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26 ¹ It is improper for a party to communicate directly with court personnel. Simply
27 mailing a letter to the Clerk of Court, the judge, or any court personnel is unacceptable.
28 Any request for action by the Court must be in the form of a motion that complies with
the Rules of Practice of the United States District Court for the District of Arizona (the
Local Rules). Any future letters directed to the Clerk of Court, the judge, or any court
personnel will be stricken from the record and returned to Plaintiff.

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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*)).

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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 three-count First Amended Complaint, Plaintiff sues Joseph M. Arpaio,
9 Maricopa County Sheriff; "Durango Jail Staff [and] Employees"; "G.T.L. Staff,"
10 "subcontractor phone provider services" at the Durango Jail; and Allen Pest Control,
11 "subcontractor pest control (3/3/2015)" at the Durango Jail. Plaintiff seeks monetary
12 damages

13 In Count One, Plaintiff asserts a claim based on the conditions of confinement. He
14 alleges that he was assigned to "Durango 4A-7-2" on February 8, 2015 and that he
15 noticed asbestos, black mold spores, "rusty vents," and "[g]nats flying everywhere."
16 Plaintiff claims that the housing unit is "not livable and should have been condemned."
17 Due to these conditions, Plaintiff has incurred sinus infections, coughing, sneezing,
18 headaches, body aches, chest pain, bloody mucus, skin rash, diarrhea, stomach aches,
19 runny nose, runny eyes, and irritated eyes.

20 In Count Two, Plaintiff asserts a claim of "phone call tampering" and alleges that
21 Defendant G.T.L. is the subcontractor that provides telephone services to inmates at the
22 Durango Jail. Staff members claim that they do not have control over the phone call
23 rates. G.T.L. charges \$12.00 for a twenty minute phone call, which is difficult for his
24 family to pay. Plaintiff complained about the phone call rates to prison staff members,
25 but they told Plaintiff that he should send a postcard instead of using the telephone. Due
26 to the telephone rates, Plaintiff has suffered from post-traumatic stress disorder, "extreme
27 mental cruelty," anxiety, depression, and "extreme financial hardship."
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1 In Count Three, Plaintiff asserts a claim of “discrimination” and alleges that on
2 March 3, 2015, a sprayer from Defendant Allen Pest Control yelled “you[‘]r[e] all
3 poisoned anyway.” Plaintiff claims that several inmates, including Plaintiff, filed a
4 grievance regarding this incident. Plaintiff further claims that he was “discriminated”
5 against by the sprayer employed by Defendant Allen Pest Control. On March 19, 2015,
6 Sergeant Contreras came into Plaintiff’s pod and said, “De La Rosa, you have to be
7 educated to be a spokesman for the pod.” Plaintiff claims this statement was judgmental,
8 degrading, and discriminatory because he is a “Pacific Islander.” Plaintiff further claims
9 that when he and another inmate were called in about two broken razors, Plaintiff was the
10 only one sent to disciplinary segregation, which was “not fair.” Due to these incidents,
11 Plaintiff claims he has suffered from “extreme mental cruelty,” post-traumatic stress
12 disorder, depression, anxiety, “discrimination,” and “pain and suffering.”

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

14 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants
15 (2) under color of state law (3) deprived him of federal rights, privileges or immunities
16 and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th
17 Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d
18 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific
19 injury as a result of the conduct of a particular defendant and he must allege an
20 affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,
21 423 U.S. 362, 371-72, 377 (1976).

22 **A. Arpaio**

23 Plaintiff fails to state a claim against Arpaio. For an individual to be liable in his
24 individual capacity, “[a] plaintiff must allege facts, not simply conclusions, that show that
25 the individual was personally involved in the deprivation of his civil rights.” *Barren v.*
26 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Further, there is no *respondeat*
27 *superior* liability under § 1983, so a defendant’s position as the supervisor of someone
28 who allegedly violated a plaintiff’s constitutional rights does not make him liable.

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1 *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691; *Taylor v. List*, 880 F.2d 1040, 1045
2 (9th Cir. 1989) (citation omitted). A supervisor in his individual capacity “is only liable
3 for constitutional violations of his subordinates if the supervisor participated in or
4 directed the violations, or knew of the violations and failed to act to prevent them.”
5 *Taylor*, 880 F.2d at 1045.

6 Plaintiff does not allege that Arpaio was personally involved in the deprivation of
7 his rights. Nor does he allege that, as a supervisor, Arpaio participated in violations
8 against Plaintiff, directed anyone else to do so, or knew of any such violations and failed
9 to act to prevent them. Accordingly, Plaintiff fails to state a claim against Arpaio.

10 **B. Durango Jail Staff and Employees**

11 “Durango Jail Staff [and] Employees” are not proper Defendants. A conclusory
12 allegation that a large group of individuals has violated Plaintiff’s constitutional rights is
13 not sufficient to state a § 1983 claim. Plaintiff must identify and name as defendants the
14 individuals responsible for violating his constitutional rights. Accordingly, the Court will
15 dismiss Defendant “Durango Jail Staff [and] Employees.”

16 **C. G.T.L. Staff and Allen Pest Control**

17 Plaintiff has failed to allege facts showing that G.T.L Staff and Allen Pest Control
18 are state actors for purposes of § 1983. “Like the state-action requirement of the
19 Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its
20 reach ‘merely private conduct, no matter how discriminatory or wrongful.’” *American*
21 *Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (quoting *Blum v. Yaretsky*, 457
22 U.S. 991, 1002 (1982)). “[S]tate action requires *both* an alleged constitutional
23 deprivation ‘caused by the exercise of some right or privilege created by the State or by a
24 rule of conduct imposed by the State or by a person for whom the State is responsible,’
25 *and* that ‘the party charged with the deprivation must be a person who may fairly be said
26 to be a state actor.’” *Id.* (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937
27 (1982)). Defendants G.T.L. Staff and Allen Pest Control are private parties, not state
28 actors. Moreover, as discussed above, a conclusory allegation that a large group of

1 individuals has violated Plaintiff's constitutional rights is not sufficient to state a § 1983
2 claim. Thus, Defendant G.T.L. Staff is not a proper Defendant. Accordingly, the Court
3 will dismiss Defendants G.T.L. Staff and Allen Pest Control.

4 **D. Discrimination**

5 Plaintiff asserts a claim for discrimination in Count Three against Defendant Allen
6 Pest Control. As discussed above, Defendant Allen Pest Control is not a state actor and
7 cannot be sued under § 1983.

8 The remainder of the allegations are against Sergeant Contreras, who is not named
9 as a Defendant in the First Amended Complaint. Even if the Court were to construe
10 Contreras as a Defendant, Plaintiff fails to state a claim against him. Plaintiff alleges that
11 on March 19, 2015, Sergeant Contreras came into Plaintiff's pod and said "De La Rosa,
12 you have to be educated to be a spokesman for the pod." Plaintiff claims this statement
13 was judgmental, degrading, and discriminatory because he is a "Pacific Islander."
14 Plaintiff further claims that when he and another inmate were called in about two broken
15 razors, Plaintiff was the only one sent to disciplinary segregation, which was "not fair.
16 As discussed in the Court's May 15, 2015 order, to the extent that Plaintiff seeks to assert
17 a Fourteenth Amendment claim based on harassment, Plaintiff's allegations are too vague
18 and incidental to state a claim. "Verbal harassment or abuse . . . is not sufficient to state
19 a constitutional deprivation under 42 U.S.C. § 1983." *Oltarzewski v. Ruggiero*, 830 F.2d
20 136, 139 (9th Cir. 1987) (quoting *Collins v. Cundy*, 603 F.2d 825, 827 (10th Cir. 1979));
21 *see also Kennan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996).

22 To the extent Plaintiff seeks to assert a Fourteenth Amendment equal protection
23 claim, this claim also fails. Generally, "[t]o state a claim . . . for a violation of the Equal
24 Protection Clause . . . [,] a plaintiff must show that the defendants acted with an intent or
25 purpose to discriminate against the plaintiff based upon membership in a protected class."
26 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiff has not alleged
27 facts demonstrating that any named Defendant acted with an intent to discriminate
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1 against Plaintiff based on Plaintiff's race. Plaintiff's own conclusory statement is not
2 sufficient to demonstrate intent.

3 Accordingly, Plaintiff fails to state a claim in Count Three, and the Court will
4 dismiss Count Three.

5 **IV. Leave to Amend**

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

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

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

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

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

19 To state a claim for unconstitutional conditions of confinement, a plaintiff must
20 allege that a defendant’s acts or omissions have deprived the inmate of “the minimal
21 civilized measure of life’s necessities” or basic safety, and that the defendant acted with
22 deliberate indifference to an excessive risk of inmate health or safety. *Allen v. Sakai*, 48
23 F.3d 1082, 1087 (9th Cir. 1994) (quoting *Farmer*, 511 U.S. at 834); *see Estate of Ford v.*
24 *Ramirez-Palmer*, 301 F.3d 1043, 1049-50 (9th Cir. 2002). Whether conditions of
25 confinement rise to the level of a constitutional violation may depend, in part, on the
26 duration of an inmate’s exposure to those conditions. *Keenan v. Hall*, 83 F.3d 1083,
27 1089, 1091 (9th Cir. 1996) (citing *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)). “The
28 circumstances, nature, and duration of a deprivation of [] necessities must be considered

1 in determining whether a constitutional violation has occurred.” *Hearns v. Terhune*, 413
2 F.3d 1036, 1042 (9th Cir. 2005) (quoting *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir.
3 2000)).

4 Plaintiff should further note that courts have recognized pretrial detainees’ and
5 prisoners’ first amendment right to telephone access. See *Brenneman v. Madigan*, 343
6 F.Supp. 128 (N. D. Cal. 1972); *Moore v. Janing*, 427 F.Supp. 567, 576 (D. Neb.1976).
7 This right is “subject to reasonable limitations arising from . . . legitimate penological and
8 administrative interests.” *Johnson v. State of Cal.*, 207 F.3d 650, 656 (9th Cir. 2000)
9 (citing *Strandburg v. City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986)). Inmates are not
10 entitled to a specific phone call rate, as long as the rates charged are not “so exorbitant as
11 to deprive prisoners of phone access altogether.” “If the limitations on access are
12 reasonable, there is no first amendment violation.” *Strandburg*, 791 F.2d at 747 (citing
13 *Johnson v. Galli*, 596 F. Supp. 135, 138 (D. Nev. 1984)).

14 **V. Warnings**

15 **A. Release**

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

21 **B. Address Changes**

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

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C. Copies

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

D. Possible “Strike”

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

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. 9) 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.

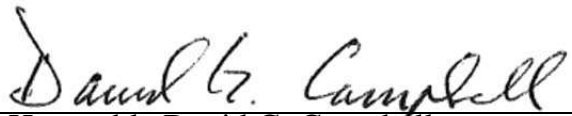
(2) If Plaintiff fails to file a second amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action with prejudice that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g).

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

Dated this 18th day of June, 2015.


Honorable 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.