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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Cedric Ross Jordan,

10 Plaintiff,

11 v.

12 J. Caffey,

13 Defendant.
14

No. CV 15-0594-PHX-DGC (MEA)

ORDER

15 On April 2, 2015, Plaintiff Cedric Ross Jordan, who is confined in the Arizona
16 State Prison Complex-Lewis in Buckeye, Arizona, filed a *pro se* civil rights Complaint
17 pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed *In Forma*
18 *Pauperis* (Doc. 2). On April 22, 2015, he filed a Motion for Appointed Counsel (Doc. 7).
19 The Court will grant the Application to Proceed, dismiss the Complaint with leave to
20 amend, and deny without prejudice the Motion for Appointed Counsel.

I. Application to Proceed *In Forma Pauperis* and Filing Fee

21
22 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
23 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
24 The Court will assess an initial partial filing fee of \$1.80. The remainder of the fee will
25 be collected monthly in payments of 20% of the previous month's income credited to
26 Plaintiff's trust account each time the amount in the account exceeds \$10.00. 28 U.S.C.
27 § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government
28 agency to collect and forward the fees according to the statutory formula.

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1 **II. Statutory Screening of Prisoner Complaints**

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

8 A pleading must contain a “short and plain statement of the claim *showing* that the
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
10 does not demand detailed factual allegations, “it demands more than an unadorned, the-
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Id.*

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

24 But as the United States Court of Appeals for the Ninth Circuit has instructed,
25 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
26 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
27 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
28 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

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

6 **III. Complaint**

7 In his one-count Complaint, Plaintiff sues Defendant Nurse J. Caffey. Plaintiff
8 alleges a violation of the Eighth Amendment regarding his medical care and seeks six
9 million dollars in damages. Plaintiff alleges that since January 2015, Defendant Caffey
10 has been aware of Plaintiff’s severe chest and head cold, but has chosen not to provide
11 him with any medication to treat the cold. Plaintiff states that he met with Defendant
12 Caffey on January 28, February 17, and March 9, 2015, regarding his severe chest and
13 head cold, and Defendant Caffey refused to provide Plaintiff with any medication for his
14 cold, despite determining that he was ill. Plaintiff also states that he is African-
15 American, Defendant Caffey is a racist, and Defendant Caffey told him on January 28
16 that “Black People always want something that they cannot have.” In addition, Plaintiff
17 claims Defendant Caffey has denied his request for a blood test and, therefore, he will not
18 be tested for hepatitis C or HIV/AIDS.

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

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

25 Not every claim by a prisoner relating to inadequate medical treatment states a
26 violation of the Eighth or Fourteenth Amendment. To state a § 1983 medical claim, a
27 plaintiff must show that the defendants acted with “deliberate indifference to serious
28 medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *Estelle v.*

1 *Gamble*, 429 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need”
2 by demonstrating that failure to treat the condition could result in further significant
3 injury or the unnecessary and wanton infliction of pain and (2) the defendant’s response
4 was deliberately indifferent. *Jett*, 439 F.3d at 1096 (quotations omitted).

5 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d
6 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must
7 both know of and disregard an excessive risk to inmate health; “the official must both be
8 aware of facts from which the inference could be drawn that a substantial risk of serious
9 harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825,
10 837 (1994). Deliberate indifference in the medical context may be shown by a
11 purposeful act or failure to respond to a prisoner’s pain or possible medical need and
12 harm caused by the indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may
13 also be shown when a prison official intentionally denies, delays, or interferes with
14 medical treatment or by the way prison doctors respond to the prisoner’s medical needs.
15 *Estelle*, 429 U.S. at 104-05; *Jett*, 439 F.3d at 1096.

16 Deliberate indifference is a higher standard than negligence or lack of ordinary
17 due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor
18 gross negligence will constitute deliberate indifference.” *Clement v. California Dep’t of*
19 *Corr.*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*,
20 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or
21 “medical malpractice” do not support a claim under § 1983). “A difference of opinion
22 does not amount to deliberate indifference to [a plaintiff’s] serious medical needs.”
23 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care,
24 without more, is insufficient to state a claim against prison officials for deliberate
25 indifference. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407
26 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of
27 “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 105.

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1 Plaintiff alleges that Defendant Caffey failed to give him medication for a cold. In
2 Health Needs Request forms attached to his Complaint, Plaintiff identified his symptoms
3 as “sneezing, watery eyes, itchy throat & runny nose,” a “really [bad] cough,” and pain
4 when he coughs and breathes. Plaintiff’s allegations regarding Defendant Caffey’s
5 failure to treat his cold do not support a claim that Defendant Caffey was deliberately
6 indifferent to a serious medical need or an excessive risk to inmate health. *See Cooper v.*
7 *Casey*, 97 F.3d 914, 916-17 (7th Cir. 1996) (“A prison’s medical staff that refuses to
8 dispense bromides for the sniffles or minor aches and pains or a tiny scratch or a mild
9 headache or minor fatigue—the sorts of ailments for which many people who are not in
10 prison do not seek medical attention—does not by its refusal violate the Constitution.”);
11 *Gibson v. McEvers*, 631 F.2d 95, 98 (7th Cir. 1980) (“Plaintiff’s allegation that he was
12 refused medical treatment for a cold does not show deliberate indifference to a serious
13 medical need, and therefore there was no violation of his constitutional rights.”).

14 In addition, although Plaintiff alleges that he requested and was denied a blood test
15 for hepatitis or HIV/AIDS, he does not identify why he believes he needs such a test. He
16 does not allege that he was a heightened risk of exposure to either disease, does not
17 identify the basis for such a heightened risk, and does not allege that he communicated
18 this information to Defendant Caffey prior to her rejection of his request. *See Doe v.*
19 *Wigginton*, 21 F.3d 733, 738-39 (6th Cir. 1994) (no deliberate indifference when
20 defendants adhered to policy requiring the testing of only inmates who request an HIV
21 test and “provide[] a presumptive history of exposure”). Plaintiff’s vague and conclusory
22 allegation that Defendant Caffey denied his request for a blood test is insufficient to state
23 a claim.

24 Finally, as to Defendant Caffey’s racial comment, “[v]erbal harassment or abuse
25 . . . is not sufficient to state a constitutional deprivation under 42 U.S.C. § 1983.”
26 *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (quoting *Collins v. Cundy*,
27 603 F.2d 825, 827 (10th Cir. 1979)); *see also Kennan v. Hall*, 83 F.3d 1083, 1092 (9th
28 Cir. 1996); *Hopson v. Frederickson*, 961 F.2d 1378-79 (9th Cir. 1992) (racial slur and

1 threat did not constitute at § 1983 claim). If true, Defendant Caffey’s comment was
2 plainly inappropriate and unprofessional, but does not rise to the level of a constitutional
3 violation.

4 Thus, the Court will dismiss without prejudice Count One and Defendant Caffey.

5 **V. Leave to Amend**

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

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

16 A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,
17 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896
18 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original
19 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised
20 in the original complaint and that was voluntarily dismissed or was dismissed without
21 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*
22 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

23 **VI. Motion for Appointed Counsel**

24 In his Motion for Appointed Counsel, Plaintiff states that he is seriously mentally
25 ill and needs counsel. There is no constitutional right to the appointment of counsel in a
26 civil case. *See Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir.
27 1982). In proceedings *in forma pauperis*, the court may request an attorney to represent
28 any person unable to afford one. 28 U.S.C. § 1915(e)(1). Appointment of counsel under

1 28 U.S.C. § 1915(e)(1) is required only when “exceptional circumstances” are present.
2 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A determination with respect to
3 exceptional circumstances requires an evaluation of the likelihood of success on the
4 merits as well as the ability of Plaintiff to articulate his claims *pro se* in light of the
5 complexity of the legal issue involved. *Id.* “Neither of these factors is dispositive and
6 both must be viewed together before reaching a decision.” *Id.* (quoting *Wilborn v.*
7 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

8 Having considered both elements, it does not appear at this time that exceptional
9 circumstances are present that would require the appointment of counsel in this case.
10 Thus, the Court will deny without prejudice Plaintiff’s Motion for Appointed Counsel.

11 **VII. Warnings**

12 **A. Release**

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

18 **B. Address Changes**

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

23 **C. Copies**

24 Because Plaintiff is currently confined in an Arizona Department of Corrections
25 unit subject to General Order 14-17, Plaintiff is not required to submit an additional copy
26 of every filing for use by the Court, as would ordinarily be required by Local Rule of
27 Civil Procedure 5.4. If Plaintiff is transferred to a unit other than one subject to General
28

1 Order 14-17, he will be notified of the requirements regarding copies for the Court that
2 are required for inmates whose cases are not subject to General Order 14-17.

3 **D. Possible “Strike”**

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

13 **E. Possible Dismissal**

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

18 **IT IS ORDERED:**

19 (1) Plaintiff’s Motion for Appointed Counsel (Doc. 7) is **denied without**
20 **prejudice**.

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

22 (3) As required by the accompanying Order to the appropriate government
23 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing
24 fee of \$1.80.

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

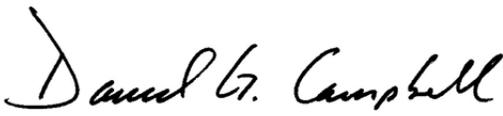
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(5) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action with prejudice that states that the dismissal may count as a “strike” under 28 U.S.C.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

(6) 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.