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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
89 Douglas Wayne Derello,
10 Plaintiff,

No. CV 21-00129-PHX-MTL (JFM)

11 v.

ORDER12 Christopher Romero, et al.,
13 Defendants.
14

15 On January 22, 2021, Plaintiff Douglas Wayne Derello, who is confined in the
16 Arizona State Prison Complex-Eyman in Florence, Arizona, filed a Motion to Exceed
17 Number of Pages and lodged a pro se civil rights Complaint. In a February 3, 2021 Order,
18 the Court granted the Motion to Exceed, directed the Clerk of Court to file the lodged
19 Complaint, and gave Plaintiff thirty days to either pay the filing and administrative fees or
20 file an Application to Proceed In Forma Pauperis. The same day, the Clerk of Court filed
21 the Complaint (Doc. 6).

22 On February 25, 2021, Plaintiff filed a "Motion Informing Court Regarding Status
23 of Application to Proceed In Forma Pauperis," requesting the Court (a) compel Defendants
24 to immediately provide Plaintiff's six month trust account statement and (b) grant Plaintiff
25 until March 19, 2021, to submit the trust account statement and his Application to Proceed
26 In Forma Pauperis. In a March 3, 2021 Order, the Court granted Plaintiff's request for an
27 extension of time and denied the remainder of the Motion. The Court warned Plaintiff that
28 the action would be dismissed, without prejudice, if he failed to timely file an Application

1 to Proceed or pay the filing and administrative fees. On April 5, 2021, the Clerk of Court
2 entered a Judgment of dismissal, having not received either the filing and administrative
3 fees or an Application to Proceed In Forma Pauperis.

4 On April 15, 2021, Plaintiff filed a Motion to the Court (Doc. 10) and an Application
5 to Proceed In Forma Pauperis (Doc. 11). On April 22, 2021, he filed a Motion to
6 Support (Doc. 13). On May 27, 2021, Plaintiff filed a Motion for Status (Doc. 14).

7 The Court will grant the Motion to the Court, take no action on the Motion to
8 Support, vacate the Judgment, and direct the Clerk of Court to reopen this action. The
9 Court will grant the Application to Proceed, dismiss the Complaint because it does not
10 comply with Rule 8 of the Federal Rules of Civil Procedure and Rule 3.4 of the Local Rules
11 of Civil Procedure, and give Plaintiff thirty days to file an amended complaint that cures
12 the deficiencies identified in this Order. The Court will grant the Motion for Status to the
13 extent this Order provides Plaintiff with the status of this action.

14 **I. Motion to the Court and Motion to Support**

15 In his Motion to the Court, Plaintiff alleges he mailed the Application to Proceed
16 and trust account statement on March 15, 2021, “[a]s [s]oon as[] his CO III signed [it].”
17 He claims he used the institutional mail, rather than e-filing, because March 15 was a
18 Monday, he can only submit e-filings on Wednesdays, and he had been told that he might
19 not be at the institution by Wednesday. In his Motion to Support, Plaintiff states that he
20 “now has proof” that the Application to Proceed “apparently . . . was taken and then filed
21 in the wrong Court.” He claims the document was filed in the Ninth Circuit Court of
22 Appeals, although there is nothing “that would remotely indicate that the Document should
23 be filed in the 9th Cir. Court.”

24 Under the “prison mailbox rule,” a document is deemed “filed” when delivered by
25 the prisoner to a prison official for mailing. *See Houston v. Lack*, 487 U.S. 266, 276 (1988);
26 *Douglas v. Noelle*, 567 F.3d 1103, 1107 (9th Cir. 2009). Plaintiff’s Application to Proceed
27 In Forma Pauperis was signed by Plaintiff and a correctional official on March 15, 2021.
28 Although it is unclear when Plaintiff delivered the Application to Proceed to prison

officials for mailing, the Court, in an abundance of caution and in the interest of justice, will treat the Application to Proceed as though it was received before the Judgment. Thus, the Court will grant the Motion to the Court and will direct the Clerk of Court to vacate the April 5, 2021 Judgment and reopen this action. Because Plaintiff seeks no action from the Court in the Motion to Support, the Court will take no action on that Motion.

II. Application to Proceed In Forma Pauperis and Filing Fee

The Court will grant Plaintiff's Application to Proceed In Forma Pauperis. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$53.53. The remainder of the fee will be collected monthly in payments of 20% of the previous month's income credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

III. Statutory Screening of Prisoner Complaints

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

Local Rule of Civil Procedure 3.4 requires, in part, that “[a]ll complaints . . . by incarcerated persons must be signed and legibly written or typewritten on forms approved by the Court and in accordance with the instructions provided with the forms.” The instructions provided with the court-approved civil rights complaint form state that a plaintiff may only allege “**one violation per count.**” (Emphasis in original.)

Moreover, Rule 8(a) of the Federal Rules of Civil Procedure requires a “short and plain statement of the claim.” Fed. R. Civ. P. 8(a)(2). Rule 8(d)(1) states that “[e]ach allegation must be simple, concise, and direct.” A complaint having the factual elements

1 of a cause of action scattered throughout the complaint and not organized into a “short and
2 plain statement of the claim” may be dismissed for failure to satisfy Rule 8(a). *See Sparling*
3 *v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988); *see also McHenry v. Renne*, 84
4 F.3d 1172 (9th Cir. 1996). It is not the responsibility of the Court to review a rambling
5 narrative in an attempt to determine the number and nature of a plaintiff’s claims.

6 Plaintiff’s three-count Complaint violates Rule 8 of the Federal Rules of Civil
7 Procedure and Local Rule of Civil Procedure 3.4. Plaintiff presents rambling allegations
8 and raises more than one violation per count.¹ Because the Court cannot meaningfully
9 review Plaintiff’s Complaint, as required by 28 U.S.C. § 1915A(a), the Court will dismiss
10 it with leave to amend.

11 **IV. Leave to Amend**

12 For the foregoing reasons, Plaintiff’s Complaint will be dismissed for failure to
13 comply with Rule 8 of the Federal Rules of Civil Procedure and Local Rule of Civil
14 Procedure 3.4. Within 30 days, Plaintiff may submit a first amended complaint to cure the
15 deficiencies outlined above. The Clerk of Court will mail Plaintiff a court-approved form
16 to use for filing a first amended complaint. **In light of Plaintiff’s use of a computer, the**
17 **Court will not require Plaintiff to use the court-approved form if he follows the**
18 **format of the court-approved form.**

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

23 A first amended complaint supersedes the original Complaint. *Ferdik v. Bonzelet*,
24 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
25 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat the original Complaint
26 as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised in the
27

28 ¹ In Count One, Plaintiff appears to be raising claims regarding medical care,
retaliation, conditions of confinement, access to the courts, and property.

1 original Complaint and that was voluntarily dismissed or was dismissed without prejudice
2 is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa County*, 693
3 F.3d 896, 928 (9th Cir. 2012) (en banc).

4 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
5 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name
6 of the Defendant who violated the right; (3) exactly what that Defendant did or failed to
7 do; (4) how the action or inaction of that Defendant is connected to the violation of
8 Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of
9 that Defendant's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

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

16 Plaintiff should take note that a viable claim of First Amendment retaliation contains
17 five basic elements: (1) an assertion that a state actor took some adverse action against an
18 inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled
19 the inmate's exercise of his First Amendment rights (or that the inmate suffered more than
20 minimal harm) and (5) did not reasonably advance a legitimate correctional goal. *Rhodes*
21 *v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005); *see also Hines v. Gomez*, 108 F.3d 265,
22 267 (9th Cir. 1997) (retaliation claim requires an inmate to show (1) that the prison official
23 acted in retaliation for the exercise of a constitutionally protected right, and (2) that the
24 action "advanced no legitimate penological interest"). The plaintiff has the burden of
25 demonstrating that his exercise of his First Amendment rights was a substantial or
26 motivating factor behind the defendants' conduct. *Mt. Healthy City Sch. Dist. Bd. of Educ.*
27 *v. Doyle*, 429 U.S. 274, 287 (1977); *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314
28 (9th Cir. 1989).

1 Plaintiff is advised that prisoners have a right under the First and Fourteenth
2 Amendments to litigate their claims “without *active interference* by prison officials.” *Silva*
3 *v. DiVittorio*, 658 F.3d 1090, 1103 (9th Cir. 2011) (emphasis in original), *overruled on*
4 *other grounds as stated in Richey v. Dahne*, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015). The
5 right of access to the courts is only a right to bring petitions or complaints to federal court
6 and not a right to discover such claims or even to litigate them effectively once filed with a
7 court. *Lewis v. Casey*, 518 U.S. 343, 354 (1996). The right “guarantees no particular
8 methodology but rather the conferral of a capability—the capability of bringing
9 contemplated challenges to sentences or conditions of confinement before the courts.” *Id.*
10 at 356.

11 As a matter of standing for an access-to-courts claim, a plaintiff must show that he
12 suffered an “actual injury”—i.e., “actual prejudice with respect to contemplated or existing
13 litigation, such as the inability to meet a filing deadline or to present a claim.” *Id.* at 348
14 (citation omitted); *see also Davis v. Goord*, 320 F.3d 346, 352 (2d Cir. 2003) (“Mere ‘delay
15 in being able to work on one’s legal action or communicate with the courts does not rise to
16 the level of a constitutional violation.’”) (citations omitted); *cf. Silva*, 658 F.3d at 1104
17 (actual injury alleged where plaintiff claimed pending lawsuits had been dismissed as the
18 result of defendants’ actions). A prisoner must demonstrate that defendants’ conduct
19 frustrated or impeded him from bringing to court a nonfrivolous or arguable claim he
20 wished to present. *Lewis*, 518 U.S. at 353 and n.3.

21 Plaintiff should also be aware that not every claim by a prisoner relating to
22 inadequate medical treatment states a violation of the Eighth Amendment. To state a
23 § 1983 medical claim, a plaintiff must show (1) a “serious medical need” by demonstrating
24 that failure to treat the condition could result in further significant injury or the unnecessary
25 and wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.
26 *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

27 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d
28 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both

1 know of and disregard an excessive risk to inmate health; “the official must both be aware
2 of facts from which the inference could be drawn that a substantial risk of serious harm
3 exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).
4 Deliberate indifference in the medical context may be shown by a purposeful act or failure
5 to respond to a prisoner’s pain or possible medical need and harm caused by the
6 indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may also be shown when a
7 prison official intentionally denies, delays, or interferes with medical treatment or by the
8 way prison doctors respond to the prisoner’s medical needs. *Estelle v. Gamble*, 429 U.S.
9 97, 104-05 (1976); *Jett*, 439 F.3d at 1096.

10 Deliberate indifference is a higher standard than negligence or lack of ordinary due
11 care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor gross
12 negligence will constitute deliberate indifference.” *Clement v. Cal. Dep’t of Corr.*, 220 F.
13 Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*, 622 F.2d 458,
14 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or “medical malpractice”
15 do not support a claim under § 1983). “A difference of opinion does not amount to
16 deliberate indifference to [a plaintiff’s] serious medical needs.” *Sanchez v. Vild*, 891 F.2d
17 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is insufficient to
18 state a claim against prison officials for deliberate indifference. *See Shapley v. Nev. Bd. of*
19 *State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985). The indifference must be
20 substantial. The action must rise to a level of “unnecessary and wanton infliction of pain.”
21 *Estelle*, 429 U.S. at 105.

22 In addition, Plaintiff should take note that to state an Eighth Amendment conditions-
23 of-confinement claim, plaintiffs must meet a two-part test. “First, the alleged constitutional
24 deprivation must be, objectively, sufficiently serious” such that the “official’s act or
25 omission must result in the denial of the minimal civilized measure of life’s necessities.”
26 *Farmer*, 511 U.S. at 834 (internal quotations omitted). Second, the prison official must
27 have a “sufficiently culpable state of mind,” i.e., he must act with “deliberate indifference
28 to inmate health or safety.” *Id.* (internal quotations omitted). Deliberate indifference is a

1 higher standard than negligence or lack of ordinary due care for the prisoner's safety. *Id.*
2 at 835. In defining "deliberate indifference" in this context, the Supreme Court has
3 imposed a subjective test: "the official must both be aware of facts from which the
4 inference could be drawn that a substantial risk of serious harm exists, *and* he must also
5 draw the inference." *Id.* at 837 (emphasis added).

6 Plaintiff should be aware that as to a claim regarding his property, the "Due Process
7 Clause is simply not implicated by a *negligent* act of an official causing unintended loss of
8 or injury to life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). Even
9 unauthorized and intentional deprivations of property do not constitute a violation of
10 procedural requirements of the Due Process Clause if a meaningful post-deprivation
11 remedy for the loss is available. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). The
12 availability of a common-law tort suit against a state employee constitutes an adequate
13 post-deprivation remedy. *Id.* at 534-35. Moreover, Arizona provides a meaningful and
14 adequate post-deprivation remedy through the prison grievance system, specifically
15 Department Order 909(8.0). *Dennison v. Ryan*, 522 F. App'x 414, 417-18 (9th Cir. 2013);
16 *Aldrete v. Ariz. Dep't of Corr.*, 2011 WL 30959, at *7 (D. Ariz. Jan. 3, 2011); *see also*
17 *Wright v. Riveland*, 219 F.3d 905, 918 (9th Cir. 2000) (both state tort claims *and* prison
18 grievance procedures provide adequate post-deprivation remedies).

19 Plaintiff should also take note that as to claim regarding the denial of due process
20 relating to disciplinary proceedings, the Court must first decide whether Plaintiff was
21 entitled to any process, and if so, whether he was denied any constitutionally required
22 procedural safeguard. Liberty interests that entitle an inmate to due process are "generally
23 limited to freedom from restraint which, while not exceeding the sentence in such an
24 unexpected manner as to give rise to protection by the Due Process Clause of its own force,
25 nonetheless imposes atypical and significant hardship on the inmate in relation to the
26 ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995) (internal
27 citations omitted).

28

1 To determine whether an inmate is entitled to the procedural protections afforded
2 by the Due Process Clause, the Court must look to the particular restrictions imposed and
3 ask whether they “present the type of atypical, significant deprivation in which a state
4 might conceivably create a liberty interest.” *Mujahid v. Meyer*, 59 F.3d 931, 932 (9th Cir.
5 1995) (quoting *Sandin*, 515 U.S. at 486). “Atypicality” requires not merely an empirical
6 comparison, but turns on the importance of the right taken away from the prisoner. *See*
7 *Carlo v. City of Chino*, 105 F.3d 493, 499 (9th Cir. 1997). To determine whether the
8 sanctions are atypical and a significant hardship, courts look to prisoner’s conditions of
9 confinement, the duration of the sanction, and whether the sanction will affect the duration
10 of the prisoner’s sentence. *See Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir. 1996).

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

23 **C. Possible Dismissal**

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

28

1 **IT IS ORDERED:**

2 (1) Plaintiff's Motion to the Court (Doc. 10) is **granted**.

3 (2) The Judgment (Doc. 9) is **vacated**. The Clerk of Court must **reopen** this
4 action.

5 (3) The Court will take **no action** on Plaintiff's Motion to Support (Doc. 13).

6 (4) Plaintiff's Motion for Status (Doc. 14) is **granted** to the extent this Order
7 provides Plaintiff with the status of this action.

8 (5) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 11) is **granted**.

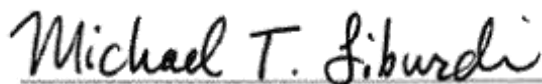
9 (6) As required by the accompanying Order to the appropriate government
10 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee
11 of \$53.53.

12 (7) Plaintiff's Complaint (Doc. 6) is **dismissed** for failure to comply with Rule
13 8 of the Federal Rules of Civil Procedure and Local Rule of Civil Procedure 3.4. Plaintiff
14 has **30 days** from the date this Order is filed to file a first amended complaint in compliance
15 with this Order.

16 (8) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
17 Court must, without further notice, enter a judgment of dismissal of this action without
18 prejudice and deny any pending unrelated motions as moot.

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

21 Dated this 3rd day of June, 2021.

22
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24 Michael T. Liburdi
25 United States District Judge
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**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 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 \$402.00 (\$350.00 filing fee plus \$52.00 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. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
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 \$402 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. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

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 within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, 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,

v.

(1) _____,
(Full Name of Defendant)

(2) _____,

(3) _____,

(4) _____,

Defendant(s).

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

CASE NO. _____
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- ☐ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

A. JURISDICTION

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

☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

☐ Other: _____.

2. Institution/city where violation occurred: _____.

B. DEFENDANTS

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

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

C. PREVIOUS LAWSUITS

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

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

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: _____
_____.
 2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<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 I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.
 4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

_____.
 5. **Administrative Remedies:**
 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
 - b. Did you submit a request for administrative relief on Count I? ☐ Yes ☐ No
 - c. Did you appeal your request for relief on Count I to the highest level? ☐ Yes ☐ No
 - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT II

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

2. **Count II.** 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 II. 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 II? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not.

COUNT III

1. State the constitutional or other federal civil right that was violated: _____.
 2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.	
 3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.
 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.