

1
2
3
4
5
6
7
8
9
10
11
12
13
14

JL

WO

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

Michael D. Escobar,
Plaintiff,
v.
Irene Barron Irby, et al.,
Defendants.

No. CV-23-02082-PHX-JAT (DMF)

ORDER

On September 15, 2023, Plaintiff Michael D. Escobar, who is confined in a Maricopa County Jail, filed a Complaint in the Superior Court of Maricopa County, Arizona, against Maricopa County Sheriff's Office (MCSO) Captain Irene Barron Irby, Sergeant Rushing, and Officers Moody and Murray. On October 6, 2023, Defendants filed a Notice of Removal and removed the case to this Court. On October 13, 2023, Defendants filed a Motion for Extension of Time to File Responsive Pleading/Motion to Dismiss. In a November 9, 2023 Order, the Court determined removal was proper, dismissed the Complaint with leave to amend because it was not filed on this Court's approved form, and denied as moot Defendants' Motion.

Meanwhile, on November 6, 2023, Plaintiff filed a First Amended Complaint and an Application to Proceed In Forma Pauperis (Doc. 5), and on November 9, 2023, he filed a Motion to Appoint Counsel (Doc. 8). The Court was not aware of these filings when it issued the November 9, 2023 Order. On November 29, 2023, Plaintiff filed a Second Amended Complaint (Doc. 9), which supersedes the First Amended Complaint in its

1 entirety. The Court will deny as moot the Application to Proceed,¹ dismiss the Second
2 Amended Complaint with leave to amend, and deny the Motion to Appoint Counsel
3 without prejudice.

4 **I. Statutory Screening of Prisoner Complaints**

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

11 A pleading must contain a “short and plain statement of the claim *showing* that the
12 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
13 not demand detailed factual allegations, “it demands more than an unadorned, the-
14 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
15 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice.” *Id.*

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

26 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
27

28 ¹ Defendants paid the filing fees when they removed the case to this Court. Thus, Plaintiff does not need to pay the fees or file an Application to Proceed In Forma Pauperis.

1 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
2 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent
3 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
4 U.S. 89, 94 (2007) (per curiam)).

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

11 **II. Second Amended Complaint**

12 In his two-count Second Amended Complaint,² Plaintiff sues Captain Irene Barron
13 Irby, Sergeant Rushing, and Officers Moody and Murray. Plaintiff asserts an excessive
14 force claim, purportedly under the Sixth Amendment, and a threat-to-safety claim,
15 purportedly under the Equal Protection Clause of the Fourteenth Amendment. He seeks
16 monetary relief.

17 In Count One, Plaintiff alleges that on March 27, 2023, an “incident” occurred that
18 could have been avoided if a supervisor had been called, as Plaintiff had requested.
19 Plaintiff asserts that Defendants Moody and Murray “cho[]se to entertain [Plaintiff’s]
20 frustration, which escalated the situation” until one of the officers struck Plaintiff with a
21 closed fist. Plaintiff claims Defendants Moody and Murray “proceeded to take part in a
22 physical altercation with [Plaintiff],” during which Plaintiff feared for his life and “decided
23 to defend [him]self.” Plaintiff alleges this was the second time that Defendants Moody and
24 Murray had assaulted him, and Plaintiff had filed a civil complaint against Moody and
25 Murray based on the prior incident.

26
27 ² Plaintiff indicates the source of this Court’s jurisdiction over the Second Amended
28 Complaint as 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Federal
Bureau of Narcotics*, 403 U.S. 388 (1971). Because Plaintiff names only state actors as
Defendants, the Court construes the Second Amended Complaint as brought pursuant to
42 U.S.C. § 1983.

1 Plaintiff alleges that Defendant Rushing “is aware of” Defendants Moody and
2 Murray’s aggressive behavior and “condones this type of mistreatment against inmates.”
3 As his injury, Plaintiff claims he suffered bruises on his neck and head, injuries from a
4 deployed taser, post-traumatic stress disorder, psychological trauma, and inadequate
5 medical treatment.

6 In Count Two, Plaintiff alleges that MCSO officers failed to abide by the United
7 States Constitution by failing to keep him safe and protect his rights. Plaintiff claims
8 Defendants Moody and Murray “intentionally ass[a]ulted” Plaintiff and physically harmed
9 him. Plaintiff asserts that Defendant Rushing failed to discipline Defendants Moody and
10 Murray’s for the prior assault against Plaintiff, which “keeps this type of thing[]
11 happening” to detainees.

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

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

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

25 **A. Defendant Irby**

26 To state a valid claim under § 1983, plaintiffs must allege that they suffered a
27 specific injury as a result of specific conduct of a defendant and show an affirmative link
28 between the injury and the conduct of that defendant. *See Rizzo v. Goode*, 423 U.S. 362,

1 371-72, 377 (1976). There is no respondeat superior liability under § 1983, and therefore,
2 a defendant’s position as the supervisor of persons who allegedly violated Plaintiff’s
3 constitutional rights does not impose liability. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658
4 (1978); *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992); *Taylor v. List*, 880 F.2d
5 1040, 1045 (9th Cir. 1989). “Because vicarious liability is inapplicable to *Bivens* and
6 § 1983 suits, a plaintiff must plead that each Government-official defendant, through the
7 official’s own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676.

8 Plaintiff has not alleged that Defendant Irby personally participated in a deprivation
9 of Plaintiff’s constitutional rights, was aware of a deprivation and failed to act, or formed
10 policies that resulted in Plaintiff’s injuries. Plaintiff names Defendant Irby solely based on
11 her role as a supervisor. Thus, the Court will dismiss without prejudice Defendant Irby.

12 **B. Excessive Force**

13 The Fourteenth Amendment’s Due Process Clause, and not the Eighth Amendment,
14 applies to the use of excessive force against pretrial detainees that amounts to punishment.
15 *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015); *Gibson v. County of Washoe*, 290 F.3d
16 1175, 1197 (9th Cir. 2002). Force is excessive if the officers’ use of force was “objectively
17 unreasonable” in light of the facts and circumstances confronting them, without regard to
18 their mental state. *Kingsley*, 576 U.S. at 396. In determining whether the use of force was
19 reasonable, the Court should consider factors including, but not limited to

20 the relationship between the need for the use of force and the
21 amount of force used; the extent of the plaintiff’s injury; any
22 effort made by the officer to temper or to limit the amount of
23 force; the severity of the security problem at issue; the threat
24 reasonably perceived by the officer; and whether the plaintiff
25 was actively resisting.

26 *Kingsley*, 576 U.S. at 397.

27 Because officers are “often forced to make split-second judgments—in
28 circumstances that are tense, uncertain, and rapidly evolving”—the reasonableness of a
particular use of force must be examined “from the viewpoint of [a] reasonable officer on
the scene, ‘rather than with the 20/20 vision of hindsight.’” *Gibson*, 290 F.3d at 1197

1 (quoting *Graham*, 490 U.S. at 396). Further, “[n]ot every push or shove, even if it may
2 later seem unnecessary in the peace of a judge’s chambers,” violates the Constitution.
3 *Graham*, 490 U.S. at 396 (citation omitted).

4 Plaintiff’s allegations are too vague and conclusory to state an excessive force claim.
5 Plaintiff provides no factual detail regarding the altercation with Defendants Moody and
6 Murray, including how Defendants “entertained” Plaintiff’s frustration, what immediately
7 precipitated Defendants’ alleged use of force, or whether Plaintiff posed a threat to
8 Defendants or anyone else. Thus, Plaintiff fails to state an excessive force claim against
9 Defendants Moody and Murray.

10 **C. Threat to Safety**

11 Although not entirely clear, Plaintiff appears to allege that Defendant Rushing failed
12 to protect Plaintiff from Defendants Moody and Murray because Rushing failed to
13 discipline Moody and Murray for their prior assaultive behavior. A pretrial detainee has a
14 right under the Due Process Clause of the Fourteenth Amendment to be free from
15 punishment prior to an adjudication of guilt. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).
16 “Pretrial detainees are entitled to ‘adequate food, clothing, shelter, sanitation, medical care,
17 and personal safety.’” *Alvarez-Machain v. United States*, 107 F.3d 696, 701 (9th Cir. 1996)
18 (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982)). To state a claim of
19 unconstitutional conditions of confinement against an individual defendant, a pretrial
20 detainee must allege facts that show:

- 21 (i) the defendant made an intentional decision with respect to
- 22 the conditions under which the plaintiff was confined;
- 23 (ii) those conditions put the plaintiff at substantial risk of
- 24 suffering serious harm; (iii) the defendant did not take
- 25 reasonable available measures to abate that risk, even though a
- 26 reasonable official in the circumstances would have
- 27 appreciated the high degree of risk involved—making the
- consequences of the defendant’s conduct obvious; and (iv) by
- not taking such measures, the defendant caused the plaintiff’s
- injuries.

28 *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

1 Whether the conditions and conduct rise to the level of a constitutional violation is
2 an objective assessment that turns on the facts and circumstances of each particular case.
3 *Id.*; *Hearns v. Terhune*, 413 F.3d 1036, 1042 (9th Cir. 2005). However, “a de minimis
4 level of imposition” is insufficient. *Bell*, 441 U.S. at 539 n.21. In addition, the “‘mere lack
5 of due care by a state official’ does not deprive an individual of life, liberty, or property
6 under the Fourteenth Amendment.” *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071
7 (9th Cir. 2016) (quoting *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)). Thus, a
8 plaintiff must “prove more than negligence but less than subjective intent—something akin
9 to reckless disregard.” *Id.*

10 Plaintiff provides no factual detail concerning Defendants Moody and Murray’s
11 alleged prior assaultive behavior, including whether and how Defendant Rushing was
12 aware of the conduct, and whether Rushing knew or should have known that Defendants
13 Moody and Murray’s prior behavior created a substantial risk of serious harm to Plaintiff.
14 Thus, Plaintiff fails to state a claim against Defendant Rushing.

15 **IV. Leave to Amend**

16 For the foregoing reasons, the Court will dismiss Plaintiff’s Second Amended
17 Complaint for failure to state a claim upon which relief may be granted. Within 30 days,
18 Plaintiff may submit a third amended complaint to cure the deficiencies outlined above.
19 The Clerk of Court will mail Plaintiff a court-approved form to use for filing a third
20 amended complaint. If Plaintiff fails to use the court-approved form, the Court may strike
21 the third amended complaint and dismiss this action without further notice to Plaintiff.

22 Plaintiff must clearly designate on the face of the document that it is the “Third
23 Amended Complaint.” The third amended complaint must be retyped or rewritten in its
24 entirety on the court-approved form and may not incorporate any part of the original
25 Complaint or prior Amended Complaints by reference. Plaintiff may include only one
26 claim per count.

27 A third amended complaint supersedes the original Complaint and prior Amended
28 Complaints. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios*

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

7 **V. Motion to Appoint Counsel**

8 There is no constitutional right to the appointment of counsel in a civil case. *See*
9 *Ivey v. Bd. of Regents*, 673 F.2d 266, 269 (9th Cir. 1982). In proceedings in forma pauperis,
10 the court may request an attorney to represent any person unable to afford one. 28 U.S.C.
11 § 1915(e)(1). Appointment of counsel under 28 U.S.C. § 1915(e)(1) is required only when
12 “exceptional circumstances” are present. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.
13 1991). A determination with respect to exceptional circumstances requires an evaluation
14 of the likelihood of success on the merits as well as the ability of Plaintiff to articulate his
15 claims pro se in light of the complexity of the legal issue involved. *Id.* “Neither of these
16 factors is dispositive and both must be viewed together before reaching a decision.” *Id.*
17 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

18 Having considered both elements, it does not appear at this time that exceptional
19 circumstances are present that would require the appointment of counsel in this case.
20 Plaintiff is in no different position than many pro se prisoner litigants. Thus, the Court will
21 deny without prejudice Plaintiff’s Motion to Appoint Counsel.

22 **VI. Warnings**

23 **A. Address Changes**

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

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. 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) Plaintiff’s Application to Proceed In Forma Pauperis (Doc. 5) is **denied as moot**.


(2) Plaintiff’s Motion to Appoint Counsel (Doc. 8) is **denied without prejudice**.

(3) The Second 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 third amended complaint in compliance with this Order.

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

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

Dated this 12th day of January, 2024.



James A. Teilborg
Senior 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 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 \$455.00 (\$350.00 filing fee plus \$55.00 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. **Unless you are an inmate housed at an Arizona Department of Corrections facility that participates in electronic filing, mail the original and one copy of the complaint with the \$455 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.
 Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

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

_____.

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

_____.

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

COUNT III

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

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

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count 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.