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Joseph Johnson, Jr.,) No. CV 1-07-1408-NVW
Plaintiff,)
) **ORDER**
vs.)
)
State of California, et al.,)
)
Defendants.)

This case was reassigned to the undersigned judge on November 25, 2008 (Doc. # 9).
The Court will dismiss the First Amended Complaint with leave to amend.

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

JDDL-K

1 be granted, or that seek monetary relief from a defendant who is immune from such relief.
2 28 U.S.C. § 1915A(b)(1), (2). If the Court determines that a pleading could be cured by the
3 allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint
4 before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000)
5 (*en banc*).

6 The Court should not, however, advise the litigant how to cure the defects. This type
7 of advice “would undermine district judges’ role as impartial decisionmakers.” Pliler v.
8 Ford, 542 U.S. 225, 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide
9 whether the court was required to inform a litigant of deficiencies). Plaintiff’s Complaint
10 will be dismissed for failure to state a claim, with leave to amend because the Complaint may
11 possibly be saved by amendment.

12 **II. Complaint**

13 In his two-count First Amended Complaint, Plaintiff sues Defendants the State of
14 California, California Governor Arnold Schwarzenegger, Director of the California
15 Department of Medical Health Stephen Mayberg, Executive Director at Coalinga State
16 Hospital Norm Kramer, and Psychiatrist M. Kaur (Doc. # 5 at 2).

17 In Count One, Plaintiff alleges that Defendants have violated his due process rights
18 under the First and Fourteenth Amendments since May 10, 2007 by “departing from
19 generally accepted professional standards of care.” Plaintiff also alleges that Defendants
20 have acted in violation of a Consent Judgment entered in United States v. California, CV-06-
21 2667-GPS. In Count Two, Plaintiff alleges that Defendants actions have also violated the
22 ADA. Finally, Plaintiff claims that his equal protection rights have been violated because
23 he has not been permitted to possess a laptop computer, unlike other individuals.

24 Plaintiff seeks declaratory relief, injunctive relief, and monetary damages.

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

26 **A. State of California**

27 Defendant the State of California is not a proper Defendant. Under the Eleventh
28 Amendment to the Constitution of the United States, a state or state agency may not be sued

1 in federal court without its consent. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S.
2 89, 100 (1984); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Furthermore, “a state
3 is not a ‘person’ for purposes of section 1983. Therefore, the Court will dismiss Defendant
4 the State of California.

5 **B. Failure to Link Defendant with Injuries**

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

11 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
12 injury as a result of specific conduct of a defendant and show an affirmative link between the
13 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377
14 (1976). To state a claim against a supervisory official, the civil rights complainant must
15 allege that the supervisory official personally participated in the constitutional deprivation
16 or that the supervisory official was aware of widespread abuses and, with deliberate
17 indifference to the inmate’s constitutional rights, failed to take action to prevent further
18 misconduct. See Ortez v. Washington County, 88 F.3d 804, 809 (9th Cir. 1996); Taylor v.
19 List, 880 F.2d 1040, 1045 (9th Cir. 1989); King v. Atiyeh, 814 F.2d 565, 568 (9th Cir. 1987);
20 see also Monell v. New York City Department of Social Services, 436 U.S. 658, 691-92
21 (1978). There is no *respondeat superior* liability under § 1983, and therefore, a defendant’s
22 position as the supervisor of persons who allegedly violated Plaintiff’s constitutional rights
23 does not impose liability. Monell, 436 U.S. at 691-92; Taylor, 880 F.2d at 1045.

24 Plaintiff has not alleged specific conduct by any Defendant; Plaintiff has proffered
25 only vague and conclusory allegations that Defendants have collectively violated his
26 constitutional rights. This is insufficient. Therefore, the Court will dismiss the First
27 Amended Complaint with leave to amend.

28 ///

1 **C. Medical Care**

2 Not every claim by a prisoner that he has received inadequate medical treatment states
3 a violation of the Eighth Amendment. To state a § 1983 medical claim, a plaintiff must show
4 that the defendants acted with “deliberate indifference to serious medical needs.” Jett v.
5 Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104
6 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating that failure
7 to treat the condition could result in further significant injury or the unnecessary and wanton
8 infliction of pain and (2) the defendant’s response was deliberately indifferent. Jett, 439 F.3d
9 at 1096 (quotations omitted).

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

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

1 must be substantial. The action must rise to a level of “unnecessary and wanton infliction
2 of pain.” Estelle, 429 U.S. at 105-06.

3 Plaintiff has failed to allege any conduct that rises to the level of deliberate
4 indifference. Indeed, Plaintiff has alleged only violations of “professional standards of care,”
5 which is nothing more than negligence. Count One will therefore be dismissed.

6 **D. Violations of the Consent Judgment**

7 Plaintiff also alleges violation of a Consent Judgment entered in United States v.
8 California, CV-06-2667-GPS. But the Coalinga State Hospital was not at issue in that case,
9 and Plaintiff does not identify how he is a beneficiary of that judgment.

10 Moreover, with respect to any claim for monetary damages, United States v.
11 California provides no independent cause of action. Although the action does not foreclose
12 an individual complaint for damages, see Hiser v. Franklin, 94 F.3d 1287 (9th Cir. 1997),
13 Plaintiff must demonstrate some right of action and legal entitlement to the monetary
14 damages he seeks. In a case challenging the conditions of confinement of civil detainees, the
15 most likely source of a right to sue (of which Plaintiff has availed himself in this action) is
16 42 U.S.C. § 1983. However, in order to state a claim under § 1983, Plaintiff must allege a
17 cognizable constitutional claim. As discussed above, Plaintiff has failed to state such a
18 constitutional claim.

19 **E. ADA Claim**

20 Under Title II of the ADA, “no qualified individual with a disability shall, by reason
21 of such disability, be excluded from participation in or be denied the benefits of the services,
22 programs, or activities of a public entity, or be subjected to discrimination by any such
23 entity.” 42 U.S.C. § 12132. To state an ADA claim, a plaintiff must demonstrate that he:

24 (1) is a handicapped person; (2) that he is otherwise qualified;
25 and that [prison officials’] actions either (3) excluded his
26 participation in or denied him the benefits of a service, program,
or activity; or (4) otherwise subjected him to discrimination on
the basis of his physical handicap.

27 Duffy v. Riveland, 98 F.3d 447, 455 (9th Cir. 1996).
28

1 In Count Two, Plaintiff makes only vague and conclusory allegations that he has
2 suffered violations of the ADA. Therefore, the Court will dismiss Plaintiff's ADA claim.

3 **IV. Leave to Amend**

4 For the foregoing reasons, Plaintiff's First Amended Complaint will be dismissed for
5 failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff may
6 submit a second amended complaint on the form provided with this Order. If Plaintiff fails
7 to use the form provided with this Order, the Court may strike the second amended complaint
8 and dismiss this action without further notice to Plaintiff.

9 Plaintiff must clearly designate on the face of the document that it is the "Second
10 Amended Complaint." The second amended complaint must be retyped or rewritten in its
11 entirety on the form provided with this Order and may not incorporate any part of the original
12 Complaint or First Amended Complaint by reference.

13 Plaintiff must comply with the instructions provided with the form. Plaintiff should
14 pay close attention to the instructions provided with the form. If Plaintiff fails to comply
15 with the instructions provided with the form, the Court may strike the second amended
16 complaint and dismiss this action without further notice to Plaintiff.

17 Among other requirements contained in the instructions, Plaintiff is advised that the
18 instructions require him to provide information regarding the Court's jurisdiction, provide
19 information about the defendants, and divide his lawsuit into separate counts. In each count,
20 Plaintiff must identify what federal constitutional civil right was violated, identify the issue
21 most closely involved in that count, state which defendants violated that right and what those
22 defendants did to violate that right, explain how Plaintiff was injured by the alleged violation
23 of the constitutional right, and identify whether Plaintiff has exhausted any available
24 administrative remedies. Plaintiff must repeat this process for each civil right that was
25 violated. Plaintiff may allege only one claim per count.

26 A second amended complaint supersedes all prior complaints. Ferdik v. Bonzelet, 963
27 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
28 1546 (9th Cir. 1990). After amendment, the Court will treat an original or first amended

1 complaint as nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in
2 the original or first amended complaint is waived if it is not raised in a first amended
3 complaint. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

4 **V. Warnings**

5 **A. Address Changes**

6 Plaintiff must file and serve a notice of a change of address in accordance with Rule
7 83-182(f) and 83-183(b) of the Local Rules of Civil Procedure. Plaintiff must not include
8 a motion for other relief with a notice of change of address. Failure to comply may result in
9 dismissal of this action.

10 **B. Copies**

11 Plaintiff must submit an additional copy of every filing for use by the Court. See
12 LRCiv 5-133(d)(2). Failure to comply may result in the filing being stricken without further
13 notice to Plaintiff.

14 **C. Possible “Strike”**

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

24 **D. Possible Dismissal**

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


1 **IT IS ORDERED:**

2 (1) The First Amended Complaint (Doc. # 5) is **dismissed** for failure to state a
3 claim. Plaintiff has **30 days** from the date this Order is filed to file a second amended
4 complaint in compliance with this Order.

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

8 (3) The Clerk of Court must include with this Order a copy of this judge’s required
9 form for filing a civil rights complaint by a prisoner.

10 DATED this 1st day of April, 2009.

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14 _____
Neil V. Wake
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 Eastern District of California

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. 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 Fee. The filing fee for this action is \$350.00. If you are unable to immediately pay the filing fee, 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. 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.**
7. 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)

8. 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. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. **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.

9. 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.

10. 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.

11. 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 EASTERN DISTRICT OF CALIFORNIA**

_____ (Full Name of Plaintiff))	
Plaintiff,)	
)	
vs.)	CASE NO. _____
)	(To be supplied by the Clerk)
(1) _____ (Full Name of Defendant))	
)	
(2) _____)	
)	
(3) _____)	CIVIL RIGHTS COMPLAINT BY A PRISONER
)	
(4) _____)	
Defendant(s).)	<input type="checkbox"/> Original Complaint
)	<input type="checkbox"/> First Amended Complaint
<input type="checkbox"/> Check if there are additional Defendants and attach page 1-A listing them.)	<input type="checkbox"/> 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

- [illegible]

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.

□ 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:

☐ 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.

[illegible]

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.

[illegible]

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.