

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 17 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MITCHELL TAEBEL,

Plaintiff-Appellant,

v.

ALANE ORTEGA; et al.,

Defendants-Appellees.

No. 20-15487

D.C. No. 2:19-cv-05764-JAT-CDB
District of Arizona, Phoenix

ORDER

On May 19, 2020, this court ordered appellant, within 21 days, to pay the filing fees for this appeal. The order warned appellant that failure to comply would result in the automatic dismissal of the appeal by the Clerk of the Court. To date, appellant has not complied with the court's order. Accordingly, this appeal is dismissed for failure to prosecute. *See* 9th Cir. R. 42-1.

All other pending motions are denied as moot.

This order served on the district court shall, 21 days after the date of the order, act as and for the mandate of this court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Lance C. Cidre
Deputy Clerk
Ninth Circuit Rule 27-7

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MDR

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

8

9 Mitch Taebel,

10 Plaintiff,

No. CV 19-05764-PHX-JAT (CDB)

11 v.

12 Alane Ortega, et al.,

13 Defendants.

14 **ORDER**

15 On December 6, 2019, Plaintiff Mitch Taebel, who is confined in a Maricopa
16 County Jail, filed a three-page handwritten Complaint, which the Court construed as a pro
17 se civil rights Complaint pursuant to 42 U.S.C. § 1983. In a December 12, 2019 Order, the
18 Court dismissed the Complaint for failure to comply with Local Rule of Civil Procedure
19 3.4 and gave Plaintiff thirty days to (1) file an amended complaint on a court-approved
20 form and (2) either pay the filing and administrative fees or file an Application to Proceed
21 In Forma Pauperis.

22 On January 9, 2020, Plaintiff filed a 38-page First Amended Complaint (Doc. 4).
23 On January 17, 2020, he filed a 25-page Supplemental Civil Complaint with over 600 pages
24 of attachments. On January 27, 2020, Plaintiff filed an Application to Proceed In Forma
25 Pauperis (Doc. 6). On February 10, 2020, Plaintiff filed a 20-page “Motion for Rule 65(b)
26 Restraining Order” (Doc. 8) with over 300 pages of attachments. The Court will grant the
27 Application to Proceed, dismiss the First Amended Complaint with leave to amend, and
28 deny without prejudice the Motion for Rule 65(b) Restraining Order.

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

2 The Court will grant Plaintiff's Application to Proceed In Forma Pauperis. 28
3 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C.
4 § 1915(b)(1). The Court will assess an initial partial filing fee of \$73.33. The remainder
5 of the fee will be collected monthly in payments of 20% of the previous month's income
6 credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00.
7 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate
8 government agency to collect and forward the fees according to the statutory formula.

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

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

16 Local Rule of Civil Procedure 3.4 requires, in part, that “[a]ll complaints . . . by
17 incarcerated persons shall be signed and legibly written or typewritten on forms approved
18 by the Court and in accordance with the instructions provided with the forms.” The court-
19 approved form complaint is six pages long and both the form complaint and accompanying
20 instructions permit an inmate to attach “**no more than fifteen additional pages**” of
21 standard letter-sized paper. (Emphasis in original.) Thus, a document that complies with
22 Local Rule of Civil Procedure 3.4 would be no longer than 21 pages.

23 Plaintiff's 38-page First Amended Complaint far exceeds the page limitation.¹ The
24 Court will dismiss the First Amended Complaint without prejudice for failure to comply
25 with Local Rule of Civil Procedure 3.4.

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27

¹ The 38 pages include two pages of attachments. And, if the Court were to consider
28 the information in the Supplemental Civil Complaint, the First Amended Complaint would
consist of over 60 pages. Moreover, filing supplements or addenda is not the proper
method for amending a pleading.

1 **III. Leave to Amend**

2 Within 30 days, Plaintiff may submit a second amended complaint that cures the
3 deficiencies identified in this Order. The Clerk of Court will mail Plaintiff a court-
4 approved form to use for filing a second amended complaint. If Plaintiff fails to use the
5 court-approved form, the Court may strike the second amended complaint and dismiss this
6 action without further notice to Plaintiff.

7 Plaintiff must clearly designate on the face of the document that it is the “Second
8 Amended Complaint.” The second amended complaint must be retyped or rewritten in its
9 entirety on the court-approved form and may not incorporate any part of the original
10 Complaint or First Amended Complaint by reference. Plaintiff may include only one claim
11 per count.

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

20 If Plaintiff files a second amended complaint, he should take note that the
21 instructions provided with the court-approved civil rights form state, “**You do not need to**
22 **cite case law.**” (Emphasis added.) Moreover, Plaintiff is advised that the Court is not
23 repository for Plaintiff’s paperwork. Indeed, the instructions provided with the court-
24 approved civil rights complaint form state that a plaintiff “should not submit exhibits with
25 the complaint or amended complaint. . . . **You should keep the exhibits** to support or
26 oppose a motion to dismiss, a motion for summary judgment, or at trial.” (Emphasis
27 added.)

28

1 Plaintiff should be aware that Rule 8(a) of the Federal Rules of Civil Procedure
2 requires a “short and plain statement of the claim.” Fed. R. Civ. P. 8(a)(2). Rule 8(d)(1)
3 states that “[e]ach allegation must be simple, concise, and direct.” A complaint having the
4 factual elements of a cause of action scattered throughout the complaint and not organized
5 into a “short and plain statement of the claim” may be dismissed for failure to satisfy Rule
6 8(a). *See Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988); *see also*
7 *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996). It is not the responsibility of the Court
8 to review a rambling narrative in an attempt to determine the number and nature of a
9 plaintiff’s claims.

10 If Plaintiff files a second amended complaint, he should take note that prosecutors
11 are absolutely immune from liability for damages under § 1983 for their conduct in
12 “initiating a prosecution and in presenting the State’s case” insofar as that conduct is
13 “intimately associated with the judicial phase of the criminal process.” *Buckley v.*
14 *Fitzsimmons*, 509 U.S. 259, 270 (1993) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430-
15 31 (1976)). Immunity even extends to prosecutors for “eliciting false or defamatory
16 testimony from witnesses or for making false or defamatory statements during, and related
17 to, judicial proceedings.” *Buckley*, 509 U.S. at 270; *see also Broam v. Bogan*, 320 F.3d
18 1023, 1029-30 (9th Cir. 2003) (prosecutor absolutely immune from liability for failure to
19 investigate the accusations against a defendant before filing charges; for knowingly using
20 false testimony at trial; and for deciding not to preserve or turn over exculpatory material
21 before trial, during trial, or after conviction); *Roe v. City & County of San Francisco*, 109
22 F.3d 578, 583-84 (9th Cir. 1997) (absolute immunity for decision to prosecute or not to
23 prosecute and for professional evaluation of a witness and evidence assembled by the
24 police).

25 Plaintiff should also be aware that a prerequisite for any relief under § 1983 is a
26 showing that the defendant has acted under the color of state law. An attorney representing
27 a criminal defendant does not act under color of state law. *See Polk County v. Dodson*, 454
28 U.S. 312, 325 (1981); *see also Szijarto v. Legeman*, 466 F.2d 864, 864 (9th Cir. 1972) (per

1 curiam) (“[A]n attorney, whether retained or appointed, does not act ‘under color of’ state
2 law.”).

3 Plaintiff is advised that the “Maricopa County Criminal Court” is not a proper
4 Defendant. The proper name of the “Maricopa County Criminal Court” is the “Superior
5 Court of the State of Arizona in and for the County of Maricopa,” and it is a state court.
6 *See Massengill v. Super. Ct. in and for Maricopa Cnty.*, 416 P.2d 1009, 1012 (Ariz. Ct.
7 App. 1966) (citing Ariz. Const. art. 6, § 1); *see also* Ariz. Const. art. 6, § 13 (the superior
8 courts “constitute a single court”). Under the Eleventh Amendment to the Constitution of
9 the United States, a state or state agency may not be sued in federal court without its
10 consent. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Taylor v.*
11 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *see also* *Lucas v. Ariz. Sup. Ct. Fiduciary*
12 *Certification Program*, 457 Fed. Appx. 689, 690 (9th Cir. 2011) (“The Arizona Supreme
13 Court . . . is an ‘arm of the state’ for Eleventh Amendment purposes.”); *Greater Los*
14 *Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (“[A] suit
15 against the Superior Court is a suit against the State, barred by the eleventh amendment.”).
16 Furthermore, “a state is not a ‘person’ for purposes of section 1983. Likewise ‘arms of the
17 State’ . . . are not ‘persons’ under section 1983.” *Gilbreath v. Cutter Biological, Inc.*, 931
18 F.2d 1320, 1327 (9th Cir. 1991) (citation omitted).

19 Plaintiff should be aware that the Maricopa County Public Defender’s Office and
20 the Office of Public Defense Services are not proper defendants because they are nonjural
21 entities. *See Wilson v. Yavapai Cnty.*, 2012 WL 1067959, at *4 (D. Ariz. 2012) (county
22 sheriff’s office and county attorney’s office are nonjural entities); *Foster v. Orleans Parish*
23 *Pub. Defendants Office*, 2011 WL 446031, at *2 (E.D. La. Jan. 3, 2011) (public defender’s
24 office is “not an entity capable of being sued under § 1983”), *report and recommendation*
25 *adopted*, 2011 WL 445957 (E.D. La. Feb. 4, 2011).

26 Plaintiff is advised that the abstention doctrine set forth in *Younger v. Harris*, 401
27 U.S. 37 (1971), prevents a federal court in most circumstances from directly interfering
28 with ongoing criminal proceedings in state court and applies while the case works its way

1 through the state appellate process. *New Orleans Pub. Serv., Inc. v. Council of City of New*
2 *Orleans*, 491 U.S. 350, 369 (1989) (“[f]or *Younger* purposes, the State’s trial-and-appeals
3 process is treated as a unitary system”); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975)
4 (“Virtually all of the evils at which *Younger* is directed would inhere in federal intervention
5 prior to completion of state appellate proceedings, just as surely as they would if such
6 intervention occurred at or before trial.”). “Only in the most unusual circumstances is a
7 defendant entitled to have federal interposition by way of injunction or habeas corpus until
8 after the jury comes in, judgment has been appealed from and the case concluded in the
9 state courts.” *Drury v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972). Special circumstances
10 occur “[o]nly in cases of proven harassment or prosecutions undertaken by state officials
11 in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary
12 circumstances where irreparable injury can be shown.” *Carden v. Montana*, 626 F.2d 82,
13 84 (9th Cir. 1980) (quoting *Perez v. Ledesma*, 401 U.S. 82, 85 (1971)).

14 Moreover, *Younger* principles also apply to a plaintiff’s request for damages, but in
15 that situation, a temporary stay, rather than dismissal, is appropriate. *Gilbertson v.*
16 *Albright*, 381 F.3d 965, 981 (9th Cir. 2004). Staying the federal case until the state court
17 criminal case is no longer pending

18 allows the federal plaintiff an opportunity to pursue
19 constitutional challenges in the state proceeding (assuming, of
20 course, that such an opportunity is available under state law),
21 and the state an opportunity to pass on those constitutional
22 issues in the context of its own procedures, while still
23 preserving the federal plaintiff’s opportunity to pursue
compensation in the forum of his choice. In this way, neither
the federal plaintiff’s right to seek damages for constitutional
violations nor the state’s interest in its own system is frustrated.

24 *Id.*

25 **IV. Motion for Rule 65(b) Restraining Order**

26 Whether to grant or deny a motion for a temporary restraining order or preliminary
27 injunction is within the Court’s discretion. *See Miss Universe, Inc. v. Flesher*, 605 F.2d
28 1130, 1132-33 (9th Cir. 1979). An injunction or restraining order is appropriate to grant

1 intermediate relief of the same character as which may be granted finally, and relief is not
2 proper when requested on matters lying wholly outside the issues in suit. *See DeBeers*
3 *Consol. Mines v. United States.*, 325 U.S. 212, 220 (1945); *Kaimowitz v. Orlando, Fla.*,
4 122 F.3d 41, 43 (11th Cir.), *amended*, 131 F.3d 950 (11th Cir. 1997). To obtain injunctive
5 relief, the party “must necessarily establish a relationship between the injury claimed in the
6 party’s motion and the conduct asserted in the complaint.” *Devose v. Herrington*, 42 F.3d
7 470, 471 (8th Cir. 1994). Because the Court has dismissed the First Amended Complaint,
8 the Court will deny without prejudice Plaintiff’s Motion for Rule 65(b) Restraining Order.

9 **V. Warnings**

10 **A. Release**

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

16 **B. Address Changes**

17 Plaintiff must file and serve a notice of a change of address in accordance with Rule
18 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
19 relief with a notice of change of address. Failure to comply may result in dismissal of this
20 action.

21 **C. Possible Dismissal**

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

26 **IT IS ORDERED:**

27 (1) Plaintiff’s Application to Proceed In Forma Pauperis (Doc. 6) is **granted**.

28

4 (3) The First Amended Complaint (Doc. 4) is **dismissed** for failure to comply
5 with Local Rule of Civil Procedure 3.4. Plaintiff has **30 days** from the date this Order is
6 filed to file a second amended complaint in compliance with this Order.

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

10 (5) Plaintiff's Motion for Rule 65(b) Restraining Order (Doc. 8) is **denied**
11 **without prejudice.**

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

14 Dated this 14th day of February, 2020.


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(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. **Your Signature.** You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. **The Filing and Administrative Fees.** The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the "Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915" for additional instructions.
5. **Original and Judge's Copy.** You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **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 \$400 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:

U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:

U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. **Change of Address.** You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. **Certificate of Service.** You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **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: _____
as: _____ at _____
(Position and Title) (Institution)
3. Name of third Defendant: _____ The third Defendant is employed as: _____
as: _____ at _____
(Position and Title) (Institution)
4. Name of fourth Defendant: _____ The fourth Defendant is employed as: _____
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 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: _____

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.

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.

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MDR

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

8

9

Mitch Taebel,

No. CV 19-05764-PHX-JAT (CDB)

10

Plaintiff,

11

v.

ORDER FOR PAYMENT

12

Alane Ortega, et al.,

OF INMATE FILING FEE

13

Defendants.

14

15

TO: MARICOPA COUNTY SHERIFF PAUL PENZONE

16

Plaintiff Mitch Taebel, inmate #T430659, who is confined in a Maricopa County Jail, must pay the statutory filing fee of \$350.00. Plaintiff must first pay an initial partial filing fee of \$73.33. Thereafter, Plaintiff must pay the balance of the fee in monthly payments of 20% of the preceding month's income credited to Plaintiff's trust account. Maricopa County Sheriff Paul Penzone or his designee must collect and forward these payments to the Clerk of Court each time the amount in the account exceeds \$10.00.

22

IT IS ORDERED:

23

(1) Maricopa County Sheriff Paul Penzone or his designee must forward to the Clerk of Court the initial partial filing fee of \$73.33. The balance of the \$350.00 filing fee must be collected from Plaintiff's trust account in monthly payments of 20% of the preceding month's income credited to the account. Payments must be forwarded to the Clerk of Court each time the amount in the account exceeds \$10.00. The payments must be clearly identified by the name and number assigned to this action.

5 (3) The Clerk of Court must serve by mail a copy of this Order on the Maricopa
6 County Sheriff's Office, Office of Inmate Legal Services, 3250 West Lower Buckeye
7 Road, Phoenix, Arizona, 85009.

8 (4) The Clerk of Court must forward a copy of this Order to Financial
9 Administration for the Phoenix Division of the United States District Court for the District
10 of Arizona. Financial Administration must set up an account to receive payments on the
11 filing fee for this action and must notify the Court when the filing fee is paid in full.

12 Dated this 14th day of February, 2020.



James A. Teilborg
Senior United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**