

INSTRUCTIONS FOR FILING A COMPLAINT IN THE EASTERN DISTRICT OF CALIFORNIA BY A PRISONER:

1. **AGAINST FEDERAL GOVERNMENT EMPLOYEES UNDER BIVENS V. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS, 403 U.S. 388(1971)**

A Bivens action is available to challenge violations of the federal Constitution or federal statutes which affect the conditions of your confinement or your treatment by Federal government employees. Although you may ask for and obtain money damages or an injunction, the court cannot issue an order which could affect the length of your sentence in any way. Those types of claims may be raised only through a petition for writ of habeas corpus. If you want to file a petition for writ of habeas corpus, you must do so on the correct forms, which are provided by the Clerk of the Court on request.

2. **AGAINST STATE OR LOCAL GOVERNMENT EMPLOYEES UNDER THE CIVIL RIGHTS STATUTE 42 U.S.C. 1983**

An action under Section 1983 is available to challenge violations of the federal constitution or federal statutes which affect the conditions of your confinement or your treatment by state or local government employees. Although you may ask for and obtain money damages or an injunction under Section 1983, the court cannot issue an order which could affect the length of your sentence in any way. Those types of claims may be raised only through a petition for writ of habeas corpus. If you want to file a petition for writ of habeas corpus, you must do so on the correct forms, which are provided by the Clerk of the Court on request.

I. **Exhaustion of Administrative Remedies**

If there is an inmate appeal or administrative grievance process available at your institution, you may not file a Bivens Action, Section 1983, or an action under any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002). Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit. Booth, 532 U.S. at 734.

II. **Packet**

A copy of a complaint form is attached to this instruction sheet. Included in the packet is an information sheet for prisoners seeking leave to proceed in forma pauperis (without prepayment of filing fees) and a copy of an application to proceed in forma pauperis. To file an action, you must send all of the following items to the court:

1. An original complaint. You must keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original. If you wish to have a conformed copy of your complaint returned to you, you must send, in addition to the original, one extra copy and provide the court with a self-addressed postage paid envelope.

2. Either a completed in forma pauperis application or the \$400.00 filing fee (the filing fee is \$350.00 plus a \$50.00 administrative fee).

NOTICE: The \$50.00 administrative fee does not apply to persons granted in forma pauperis status. Leave to proceed in forma pauperis allows a case to proceed without *pre-payment* of the filing fee. However, a prisoner who brings a civil action in forma pauperis shall nevertheless be required to pay the \$350.00 filing fee. The court shall collect the filing fees through deductions from the prisoner's trust account. Dismissal of the case does not excuse payment of the full filing fee. See 28 U.S.C. 1915.

III. Complaint Form

Your complaint must be legibly handwritten or typewritten. You must sign the complaint and declare under penalty of perjury that the facts stated in the complaint are correct. **Your complaint must be no more than 25 pages.** If you need additional space to answer a question, you should attach an additional blank page. Please write or type on only one side of the paper. You are required to state facts in support of each claim. The complaint should refer to the provision of the federal constitution or federal law on which you are relying, but should not contain legal arguments or citations.

Your complaint must be concise and should be brief as possible, not to exceed 25 pages. Fed.R.Civ.P.8. Failure to briefly and concisely state your claim may result in an order striking the complaint. In most cases the space provided in the attached form should be sufficient.

IV. Venue

The Fresno Division of the Eastern District of California is comprised of the following counties: Fresno, Calaveras, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne. If you are filing your case in the Fresno Division, mail all completed forms described in part II to the following address:

Clerk of the U.S. District Court
for the Eastern District of California
2500 Tulare Street, Room 1501
Fresno, CA 93721

The Sacramento Division of the Eastern District of California is comprised of the following counties: Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, Yuba. If you are filing your case in the Sacramento Division, mail all completed forms described in part II to the following address:

Clerk of the U.S. District Court
for the Eastern District of California
501 "I" Street, Suite 4200
Sacramento, CA 95814

V. After the Complaint is Filed

Once the complaint is filed, the court will review it and decide whether to order service of the complaint on the defendants. You will be sent a copy of every order the court issues. Because of the large volume of cases filed by inmates pending in this court, the court **WILL NOT ANSWER INQUIRIES** concerning the status of your complaint.

YOU MUST KEEP THE COURT INFORMED OF ANY CHANGE OF ADDRESS. IF YOU FAIL TO DO SO, THE CLERK CANNOT BE RESPONSIBLE FOR YOUR FAILURE TO RECEIVE COURT ORDERS. THIS COULD RESULT IN THE DISMISSAL OF YOUR SUIT.

The Clerk of the Court cannot provide copies of documents to litigants, except at a charge of fifty cents (\$0.50) per page. This charge also applies to litigants proceeding in forma pauperis. **Therefore you must keep copies of all documents submitted to the court for your own records.**

VI. Submission of Original Paper Exhibits

The Eastern District of California converted to an electronic filing service, and storage system, effective January 3, 2005. Pro Se litigants are exempt from the electronic filing requirement and must submit all documents to the court in paper. Local Rule 5-133(b)(2). Paper documents submitted by pro se litigants for filing will be scanned into the electronic court file by the Clerk's Office. Local Rule 39-138(d). *For this reason, pro se litigants are cautioned not to send original exhibits to the court.* If pro se litigants choose to submit exhibits to the court, the litigants shall retain their original exhibits and send photocopies to the court. Please keep in mind that your pleadings are taken as true at the initial state of the litigation, so there is no need to attach exhibits to show the truth of your allegations.

Plaintiff's Name _____

Inmate No. _____

Address _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

(Name of Plaintiff)

(Case Number)

vs.

CIVIL RIGHTS COMPLAINT UNDER:

42 U.S.C. 1983 (State Prisoner)

Bivens Action [403 U.S. 388 (1971)] (Federal Prisoner)

(Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on additional page):

A. Have you brought any other lawsuits while a prisoner? Yes ___ No ___

B. If your answer to A is yes, how many? _____

Describe previous or pending lawsuits in the space below. (If more than one, attach additional page to continue outlining all lawsuits in same format.)

1. Parties to this previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if Federal Court, give name of District; if State Court, give name of County)

3. Docket Number _____ 4. Assigned Judge _____

5. Disposition (Was the case dismissed? Appealed? Is it still pending?)

6. Filing Date (approx.) _____

7. Disposition Date (approx.) _____

II. Exhaustion of Administrative Remedies

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prior to filing suit, inmates are required to exhaust the available administrative remedy process, *Jones v. Bock*, 549 U.S. 199, 211, 127 S.Ct. 910, 918-19 (2007); *McKinney v. Carey*, 311 F.3d 1198, 1999 (9th Cir. 2002), and neither futility nor the unavailability of money damages will excuse the failure to exhaust, *Porter v. Nussle*, 534 U.S. 516, 524, 122 S.Ct. 983, 988 (2002). If the court determines that an inmate failed to exhaust prior to filing suit, the unexhausted claims will be dismissed, without prejudice. *Jones*, 549 U.S. at 223-24, 127 S.Ct. at 925-26.

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes _____ No _____

B. Have you filed an appeal or grievance concerning **ALL** of the facts contained in this complaint?

Yes _____ No _____

C. Is the process completed?

Yes _____ If your answer is yes, briefly explain what happened at each level.

No _____ If your answer is no, explain why not.

III. Defendants

List each defendant’s full name, official position, and place of employment and address in the spaces below. If you need additional space please provide the same information for any additional defendants on separate sheet of paper.

A. Name _____ is employed as _____

Current Address/Place of Employment _____

B. Name _____ is employed as _____

Current Address/Place of Employment _____

C. Name _____ is employed as _____

Current Address/Place of Employment _____

D. Name _____ is employed as _____

Current Address/Place of Employment _____

E. Name _____ is employed as _____

Current Address/Place of Employment _____

IV. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary. Must be in same format outlined below.)

Claim 1: The following civil right has been violated (e.g. right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.):

Supporting Facts (Include all facts you consider important to Claim 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, *by name*, did to violate the right alleged in Claim 1.):

**INFORMATION TO PRISONERS SEEKING LEAVE TO
PROCEED WITH A CIVIL ACTION IN FEDERAL COURT
IN FORMA PAUPERIS PURSUANT TO 28 U.S.C. § 1915**

In accordance with 1996 amendments to the in forma pauperis (IFP) statute, **AS A PRISONER YOU WILL BE OBLIGATED TO PAY THE FULL FILING FEE OF \$400.00 FOR A CIVIL RIGHTS ACTION, \$5.00 FOR A HABEAS CORPUS PETITION, OR \$505.00 FOR AN APPEAL.**

If you have the money to pay the filing fee, you should send a cashier's check or money order to the court with your complaint, petition, or notice of appeal.

If you do not have enough money to pay the full filing fee when your action is filed, you can file the action without prepaying the filing fee. The court will order the agency that has custody of you to take the filing fee out of your prison or jail trust account if there are available funds, and to forward the money to the court. Until the amount of the filing fee is paid in full, **EACH MONTH YOU WILL OWE 20 PERCENT OF YOUR PRECEDING MONTH'S INCOME TOWARD THE BALANCE.** The agency that has custody of you will collect that money and send payments to the court any time the amount in the account exceeds \$10.00. The balance of the filing fee will be collected even if the action is later dismissed, summary judgment is granted against you, or you fail to prevail at trial.

In order to proceed with an action in forma pauperis you must complete the attached form and return it to the court with your complaint, habeas corpus petition, or appeal. You must attach to the form a certified copy of your prison or jail account statement for the last six months. If you submit an incomplete form or do not submit a prison or jail account statement with the form, your request to proceed in forma pauperis will be denied.

Regardless of whether some or all of the filing fee has been paid, the court is required to screen your complaint and to dismiss the complaint if

1. Your allegation of poverty is untrue;
2. The action is frivolous or malicious;
3. Your complaint does not state a claim on which relief can be granted, or
4. You sue a defendant for money damages and that defendant is immune from liability for money damages.

If you file more than three actions or appeals while you are a prisoner which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, you will be prohibited from bringing any other actions in forma pauperis unless you are in imminent danger of serious physical injury.

Name: _____

CDC No: _____

Address: _____

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

CASE NUMBER:

Plaintiff/Petitioner,

vs.

**APPLICATION TO PROCEED
IN FORMA PAUPERIS
BY A PRISONER**

Defendants/Respondent.

_____ /

I, _____, declare that I am the plaintiff in the above-entitled proceeding; that, in support of my request to proceed without prepayment of fees under 28 U.S.C. section 1915, I declare that I am unable to pay the fees for these proceedings or give security therefor and that I am entitled to the relief sought in the complaint.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? ___ Yes ___ No **(If “no” DO NOT USE THIS FORM)**

State the place of your incarceration. _____

2. Are you currently employed (includes prison employment)? ___ Yes ___ No

a. If the answer is “yes” state the amount of your pay. _____

b. If the answer is “no” state the date of your last employment, the amount of your take-home salary or wages and pay period, and the name and address of your last employer.

3. Have you received any money from the following sources over the last twelve months?

a. Business, profession, or other self-employment: ___ Yes ___ No

b. Rent payments, interest or dividends: ___ Yes ___ No

