UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS L. GOFF,

Plaintiff,

v.

SERGEANT E.S. GAMEZ, et al.,

Defendants.

Case No. 1:15-cv-00937-AWI-EPG-PC

ORDER FOR PLAINTIFF TO EITHER:

(1) NOTIFY THE COURT THAT HE IS WILLING TO PROCEED ONLY ON THE CLAIMS FOUND COGNIZABLE BY THE COURT FOR: EXCESSIVE FORCE IN VIOLATION OF THE EIGHTH AMENDMENT AGAINST DEFENDANT GAMEZ AND DOE DEFENDANT, FAILURE TO PROTECT IN VIOLATION OF THE EIGHTH AMENDMENT AGAINST DOE DEFENDANTS, AND UNREASONABLE SEARCH IN VIOLATION OF THE FOURTH AMENDMENT AGAINST DEFENDANT EVERHART AND DOE DEFENDANTS;

OR

(2) FILE AN AMENDED COMPLAINT;

OR

(3) NOTIFY THE COURT THAT HE STANDS ON THE COMPLAINT AS WRITTEN, IN WHICH CASE THE COURT WILL ISSUE FINDINGS AND RECOMMENDATION CONSISTENT WITH THIS ORDER

THIRTY-DAY DEADLINE

Thomas L. Goff ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Now before the Court for screening is Plaintiff's Complaint, dated June 18, 2015. (ECF No. 1).

I. SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint is required to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state a viable claim, Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). While factual allegations are accepted as true, legal conclusions are not. The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S. at 678–79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009)

II. SUMMARY OF COMPLAINT

Plaintiff brings this civil rights action against officials working at Mountain Home Conservation Camp #10 ("CC #10"), where the events at issue occurred.[1] Plaintiff names Sergeant E.S. Gamez, Correctional Officers Everhart and Harris, CDF[2] Captain Thompson, and Does #1–10 as defendants in this action.

[1] Plaintiff currently is an inmate at the Sierra Conservation Center in Jamestown, California.
[2] California Department of Forestry and Fire Protection.

Plaintiff's Complaint alleges that on March 23, 2015, Correctional Officer Harris ("Defendant Harris") stood in the doorway of the recreation room bathroom and observed Plaintiff. Defendant Harris asked if Plaintiff was high, and Plaintiff responded, "Hell no, are you? You're the one standing in the doorway while I'm taking a piss." Defendant Harris then notified other staff members to have the inmates return to their bunk areas, instructed Plaintiff to put his hands behind his back, and handcuffed Plaintiff. Defendant Harris escorted Plaintiff without incident to the CC #10 office,[3] where they met Sergeant Gamez ("Defendant Gamez").

Defendant Gamez asked Plaintiff what his problem is. When Plaintiff responded that he had no problem and had done nothing wrong, Defendant Gamez became agitated. Plaintiff was taken through the swinging door and uncuffed. Plaintiff took off his boots and was subjected to a patdown search by Defendant Harris as Defendant Gamez observed and asked questions about what happened. Defendant Harris stated that he suspected Plaintiff to be under the influence of an unknown intoxicant. Defendant Gamez became upset, pulled out a penlight device, and gave instructions for Plaintiff to follow ("put your hands to your side, feet together, look straight forward, look to the left, to the right, stop moving your head, look at the light"). While this procedure continued for several minutes, Defendant Gamez became more agitated and threatened Plaintiff with "rolling him up and shipping him back to Jamestown." Thereafter, Defendant Gamez instructed Defendant Harris to handcuff Plaintiff. Plaintiff's hands were cuffed behind his back, shackles were placed on his ankles, and Plaintiff was seated in a wheeled chair in the middle of the office behind the counter.

Upon Plaintiff being shackled and seated, Defendant Gamez instructed Defendant Harris to bring Plaintiff's property from the bunk area to be inventoried. When Defendant Harris left, Plaintiff, still seated in the wheeled chair, rolled to the doorway of Gamez's office and attempted to plead his case. Defendant Gamez grabbed Plaintiff's shoulder and threw Plaintiff down hard on the floor. Plaintiff hit his face on the floor and his neck snapped backwards upon impact. Defendant Gamez pulled Plaintiff through the swinging door and as Plaintiff was on the ground,

[3] A swinging door separated the front office, which was accessible to CC #10 inmate firefighters for miscellaneous needs. The swinging door was adjacent to a counter that ran the length of the office. Defendant Gamez's own office was located behind the counter.

Defendant Gamez sat on Plaintiff's back, put a knee in the back of Plaintiff's neck, and methodically pulled and twisted Plaintiff's wrist and ankle restraints. Plaintiff cried out in pain and his pleas were ignored by Defendant Gamez and anyone else who was present in the office. Plaintiff felt more pressure and weight and noticed an additional person on his back, but Plaintiff could not see who it was.

Plaintiff lost consciousness and when he awoke, he was being dragged across the floor in the front office, which is accessible to inmates, and propped up against the wall by the entrance door of the office. At that point, some CC #10 staff, including Correctional Officers Butts, Finely, and Everhart ("Defendant Everhart"), and CFD Captain Thompson ("Defendant Thompson"), came into the office and joked about Plaintiff's condition. Plaintiff was having a hard time swallowing, and his chest and neck hurt. Plaintiff was instructed to stand, but he could not stand on his own due to his restraints. Defendant Everhart picked Plaintiff up and took him around the desk of the front office. Plaintiff was instructed to strip, and he began to undress. Plaintiff's request to undress in a private area was rejected. Plaintiff handed all his clothing to Defendant Everhart, stood before the officers in the front office, and was subjected to a visual body cavity search.[4] Defendant Everhart made several comments, calling Plaintiff "little dick" and "pencil dick." When Plaintiff was instructed to turn around, squat, and cough, Defendant Everhart asked, "How much shit can you pack up in that ass?" The other officers laughed and made rude comments about Plaintiff for several minutes as Plaintiff stood naked in the office. Plaintiff then provided the staff with a urinalysis sample.[5] Thereafter, Plaintiff was transported to the Sierra Conservation Center and underwent a CDC 7219 physical, which reflected the injuries Plaintiff sustained.

III. EVALUATION OF PLAINTIFF'S COMPLAINT

The Civil Rights Act under which this action was filed provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

[4] This consisted of a visual inspection of Plaintiff's mouth, genitalia, and anus.

[5] This was the fourth urinalysis sample Plaintiff had provided in the last month. Plaintiff alleges that all of the tests have been negative.

> citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983.

"[Section] 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" Graham v. Connor, 490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)). See also Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under color of state law, and (2) the defendant deprived him of rights secured by the Constitution or federal law. Long v. Cty. of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); see also Marsh v. Cty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing "under color of state law"). A person deprives another of a constitutional right, "within the meaning of § 1983, 'if he does an affirmative act, participates in another's affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.'" Preschooler II v. Clark Cty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). "The requisite causal connection may be established when an official sets in motion a 'series of acts by others which the actor knows or reasonably should know would cause others to inflict' constitutional harms." Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of causation "closely resembles the standard 'foreseeability' formulation of proximate cause." Arnold v. Int'l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

A. Eighth Amendment Claims

1. Excessive Force

The Eighth Amendment prohibits prison officials from using "excessive physical force

against prisoners." Farmer v. Brennan, 511 U.S. 825, 832 (1994) (citing Hudson v. McMillian, 503 U.S. 1 (1992)). "[T]he settled rule [is] that 'the unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment." Hudson, 503 U.S. at 5 (omission in original) (quoting Whitley v. Albers, 475 U.S. 312, 319 (1986)). As courts have succinctly observed, "[p]ersons are sent to prison as punishment, not *for* punishment." Gordon v. Faber, 800 F. Supp. 797, 800 (N.D. Iowa 1992) (citation omitted), aff'd, 973 F.2d 686 (8th Cir. 1992). "Being violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society.'" Farmer, 511 U.S. at 834 (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)).

Plaintiff's Complaint states a claim against Defendant Gamez and a Doe defendant for excessive force in violation of the Eighth Amendment. Taking Plaintiff's allegations as true and liberally construing them in Plaintiff's favor, Plaintiff alleges that Defendant Gamez used unprovoked force against Plaintiff when Gamez threw Plaintiff down hard on the floor while Plaintiff was handcuffed and shackled, sat on Plaintiff's back, put a knee on the back of Plaintiff's neck, and methodically pulled and twisted Plaintiff's wrist and ankle restraints. Plaintiff also alleges an unnamed prison official came onto Plaintiff's back while Defendant Gamez was pulling and twisting Plaintiff's wrist and ankle restraints.

Plaintiff's allegations are insufficient to state an excessive force claim against Defendants Harris, Everhart, or Thompson. The Complaint does not clearly allege that Defendants Harris, Everhart, or Thompson was involved in the use of unprovoked force against Plaintiff or even present in the office when Gamez used unprovoked force against Plaintiff.

2. Failure to Protect

The Eighth Amendment requires, *inter alia*, that prison officials "take reasonable measures to guarantee the safety of the inmates," Farmer, 511 U.S. at 832 (1994) (internal quotation marks omitted) (quoting Hudson v. Palmer, 468 U.S. 517, 526–27 (1984)), including intervening to protect an inmate from excessive force inflicted by other prison officials, Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995). "The question under the Eighth Amendment is whether prison officials, acting with deliberate indifference, exposed an inmate to sufficiently

substantial 'risk of serious damage to his future health.'" Farmer, 511 U.S. at 843 (quoting Helling v. McKinney, 509 U.S. 25, 35 (1993)).

A prison official violates this duty when two requirements are met. Farmer, 511 U.S. at 834. First, objectively viewed, the prison official's act or omission must cause "a substantial risk of serious harm." Id. Second, the official must be subjectively aware of that risk and act with "deliberate indifference to inmate health or safety." Id. at 834, 839–40 (internal quotation marks omitted). In other words, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837. Deliberate indifference is "something more than mere negligence: but "something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." Id. at 835. A prison official's deliberate indifference may be established through an "inference from circumstantial evidence" or "from the very fact that the risk was obvious." Id. at 842.

Plaintiff's Complaint states a claim against Doe defendants for failure to protect in violation of the Eighth Amendment. Taking Plaintiff's allegations as true and liberally construing them in Plaintiff's favor, Plaintiff alleges that unnamed officers present in the office failed to intervene when Defendant Gamez, unprovoked, threw Plaintiff down hard on the floor while Plaintiff was handcuffed and shackled, sat on Plaintiff's back, put a knee on the back of Plaintiff's neck, and methodically pulled and twisted Plaintiff's wrist and ankle restraints.

Plaintiff's allegations are insufficient to state a failure to protect claim against Defendants Harris, Everhart, or Thompson. The Complaint does not clearly allege that Harris, Everhart, or Thompson was present in the office when Gamez used unprovoked force against Plaintiff.

3. Sexual Harassment

Sexual harassment or abuse of an inmate by a prison official is a violation of the Eighth Amendment. Wood v. Beauclair, 692 F.3d 1041, 1046, 1051 (9th Cir. 2012) (citing Schwenk v. Hartford, 204 F.3d 1187, 1197 (9th Cir. 2000)). In evaluating such a claim, "courts consider whether 'the official act[ed] with a sufficiently culpable state of mind' and if the alleged wrongdoing was objectively 'harmful enough' to establish a constitutional violation." Wood, 692

F.3d at 1046 (alteration in original) (quoting Hudson, 503 U.S. at 8). Differentiating between claims involving physical contact and those involving verbal abuse, the Ninth Circuit has stated that "the Eighth Amendment's protections do not necessarily extend to mere verbal sexual harassment." Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004). In Somers v. Thurman, the Ninth Circuit found no Eighth Amendment violation when female guards gawked, pointed, and joked as they performed visual body cavity searches and shower viewings of a male inmate. 109 F.3d 614, 624 (9th Cir. 1997). The Ninth Circuit emphasized that the searches and viewings did not involve any physical contact and was "mindful of the realities of prison life . . . 'fully aware that the exchange of verbal insults between inmates and guards is a constant, daily ritual observed in this nation's prisons.'" Id. at 622, 624 (quoting Morgan v. Ward, 699 F. Supp. 1025, 1055 (N.D.N.Y. 1988)).

Plaintiff's allegations are insufficient to state a claim for sexual harassment in violation of the Eighth Amendment. Plaintiff alleges that he was instructed to strip and subjected to a visual body cavity search in the middle of the front office, which is accessible to inmates. He stood naked in front of CC #10 staff, who verbally insulted Plaintiff for several minutes. Even taking Plaintiff's allegations as true and liberally construing them in Plaintiff's favor, the Complaint fails to state a claim because the allegations demonstrate that the conduct at issue involved only verbal abuse and did not involve any physical contact.

B. Fourth Amendment Claims

1. Visual Body Cavity Search

The Fourth Amendment guarantees "[t]he right of the people to be secure . . . against unreasonable searches and seizures," U.S. Const. amend. IV, and the Ninth Circuit has "recognized that the Fourth Amendment does apply to the invasion of bodily privacy in prisons." Bull v. City & Cty. Of San Francisco, 595 F.3d 964, 974–75 (9th Cir. 2010) (*en banc*) (citing Michenfelder v. Sumner, 860 F.2d 328, 332 (9th Cir. 1988)). In Bell v. Wolfish, the Supreme Court upheld a federal facility's policy of requiring visual body cavity searches of inmates after every contact visit with a person from outside the institution. 441 U.S. 520, 560 (1979). The Supreme Court recognized that the "test of reasonableness under the Fourth Amendment is not

capable of precise definition or mechanical application" and in the context of prisons, it requires "[b]alancing the significant and legitimate security interests of the institution against the privacy interests of the inmates." Id. at 559, 560. In evaluating the reasonableness of a particular search, the Supreme Court instructs that "[c]ourts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. Id. at 559. Although the visual body cavity searches were upheld in Bell, the Supreme Court "obviously recognized that not all strip search procedures will be reasonable; some could be excessive, vindictive, harassing, or unrelated to any legitimate penological interest." Michenfelder, 860 F.2d at 332.

Plaintiff's Complaint states a claim against Defendant Everhart and Doe defendants for an unreasonable visual body cavity search in violation of the Fourth Amendment. Taking Plaintiff's allegations as true and liberally construing them in Plaintiff's favor, Plaintiff alleges that he was subjected to a visual body cavity search in the front office, which is accessible to other inmates, as Defendant Everhart and other unnamed officers verbally abused Plaintiff.

Plaintiff's allegations are insufficient to state an unreasonable search claim against Defendants Gamez, Harris, or Thompson, or Correctional Officers Butts or Finely.[6] The Complaint does not clearly allege that Gamez, Harris, Thompson, Butts, or Finely was involved in the visual body cavity search or engaged in verbal abuse during the search, or that Defendant Gamez was even present in the front office when Plaintiff was subjected to the visual body cavity search.

2. Urinalysis

Compelled urinalysis constitutes a search within the meaning of the Fourth Amendment. Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 617 (1989); Thompson v. Souza, 111 F.3d 694, 701 (9th Cir. 1997). In the prison context, the Ninth Circuit applies the Bell balancing test to determine whether a urinalysis test is "reasonably related to legitimate penological interests." Thompson, 111 F.3d at 702.

[6] It is not clear from Plaintiff's Complaint whether he intended to name Correctional Officers Butts and Finely as defendants in this case. Plaintiff only names Defendants Gamez, Harris, Everhart, and Thompson in the section discussing defendants.

Plaintiff's allegations are insufficient to state an unreasonable search claim against Defendants. The Complaint does not clearly allege facts demonstrating that the urinalysis was not reasonably related to legitimate penological interests or was conducted in such a manner as to harass Plaintiff. Further, the Complaint does not clearly allege which officers were involved in the urinalysis.

IV. APPROPRIATE DEFENDANTS

The Court notes that unidentified, or "Doe" defendants must be named or otherwise identified before service can go forward. "As a general rule, the use of 'John Doe' to identify a defendant is not favored." Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). Plaintiff is advised that Doe defendants cannot be served by the United States Marshal until Plaintiff has identified them as actual individuals and amended his complaint to substitute names for Doe. For service to be successful, the Marshal must be able to identify and locate defendants. Although the Court finds the Complaint states claims against Doe defendants for excessive force, failure to protect, and unreasonable visual body cavity search, Plaintiff will be required to identify specific individuals as the litigation proceeds and before those individuals can be served.

V. CONCLUSION AND ORDER

The Court has screened Plaintiff's Complaint and finds that it states cognizable claims against Defendant Gamez and Doe defendant for violation of the Eighth Amendment due to excessive force, against Doe defendants for violation of the Eighth Amendment for failure to protect, and against Defendant Everhart and Doe defendants for violation of the Fourth Amendment for unreasonable visual body cavity search. The Court finds that Plaintiff's Complaint fails to state any other cognizable claims or claims against any other defendants.

Plaintiff may (1) proceed with the Complaint on the claims found cognizable by the Court, (2) file a First Amended Complaint curing the deficiencies identified by this order, or (3) notify the Court that he stands on the Complaint as written, in which case the Court will issue findings and recommendation to the assigned District Judge consistent with this order. If Plaintiff chooses to file a First Amended Complaint, that complaint will supersede the initial Complaint and the Court will screen the First Amended Complaint in full.

Should Plaintiff choose to amend the complaint, the amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights. Iqbal, 556 U.S. at 678; Jones, 297 F.3d at 934. Plaintiff must set forth "sufficient factual matter . . . to 'state a claim that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). Plaintiff is reminded that Plaintiff must demonstrate that each defendant *personally* participated in the deprivation of his rights. Jones, 297 F.3d at 934. Plaintiff is advised that a short, concise statement of the allegations in chronological order will assist the Court in identifying his claims. Plaintiff should name each defendant and explain what happened, describing personal acts by the individual defendant that resulted in the violation of Plaintiff's rights. Plaintiff should also describe any harm he suffered as a result of the violation. Plaintiff should note that although he has been given the opportunity to amend, it is not for the purpose of adding new defendants for unrelated issues.

If Plaintiff decides to file an amended complaint, he is advised that an amended complaint supersedes the original complaint, Lacey v. Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete in itself without reference to the prior or superseded pleading. Local Rule 220. Once an amended complaint is filed, the original complaint no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged. The amended complaint should be clearly and boldly titled "First Amended Complaint," refer to the appropriate case number, and be an original signed under penalty of perjury.

Based on the foregoing, it is HEREBY ORDERED that:

1. The Clerk's Office shall send Plaintiff a civil rights complaint form;
2. Within **THIRTY (30) days** from the date of service of this order, Plaintiff shall either:
   (1) Notify the Court in writing that he does not wish to file a First Amended complaint and is instead willing to proceed only on the excessive force claim under the Eighth Amendment against Defendant Gamez and Doe defendant, the failure to protect claim under the Eighth Amendment

against Doe defendants, and the unreasonable visual body cavity search claim against Defendant Everhart and Doe defendants under the Fourth Amendment; or

(2) File a First Amended Complaint attempting to cure the deficiencies identified in this order; or

(3) Notify the Court in writing that he wishes to stand by the Complaint as written, in which case the Court will issue findings and recommendation to the assigned District Judge consistent with this order;

3. Should Plaintiff choose to amend the complaint, Plaintiff shall caption the amended complaint "First Amended Complaint" and refer to the case number 1:15-cv-00937-AWI-EPG-PC; and

4. If Plaintiff fails to comply with this order, this action may be dismissed for failure to comply with a Court order and failure to prosecute.

IT IS SO ORDERED.

Dated: **September 28, 2016**

/s/ Eric P. Grosjean
UNITED STATES MAGISTRATE JUDGE

Plaintiff's Name_____

Inmate No._____

Address _____

_____

_____

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

(Name of Plaintiff) (Case Number)

vs.

AMENDED 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.):

_____

_____

_____

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_____

Claim 2: 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 2. 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 2.):

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statues.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____ Signature of Plaintiff: _____

(Revised 4/4/14)