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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN PAUL WOODRUFF,
Petitioner,

v.

MARION AWOKE, et al.,
Respondents.

No. C 10-03268 CW (PR)

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

This case was commenced when Petitioner filed a document captioned "Habeas Corpus" and paid the \$5.00 filing fee. Petitioner is a resident at "Cornell Companies, Inc.," a federal Bureau of Prisons (BOP) halfway house in Oakland. In his petition, he claims that he is filing a "writ of habeas corpus per 28 U.S.C. § 2241." (Pet. at 1.) Petitioner names employees of "Cornell Companies, Inc." as Respondents in this action, including Job Coordinator Merion Awoke, Case Manager M. Paldini, and Director M. Lange. Petitioner claims that Respondents "retaliat[ed] against [him] by denying access into the community for job searches, career [sic] center and/or employment opportunities, religious practice, law library, and further comply with the will of Congress re Second Chance Act of 2008." (Id. at 3.)

The petition does not challenge the lawfulness of the execution of his sentence in this district. Rather, it goes entirely to the conditions of his placement in the halfway house. A federal civil rights complaint for damages under Bivens v Six Unknown Named Agents, 403 U.S. 388 (1971), rather than a federal habeas petition, is the proper way to raise such claims. See Boyce v. Ashcroft, 251 F.3d 911, 914 (10th Cir.) (holding "[p]risoners

1 who raise constitutional challenges to other prison decisions --
2 including transfers to administrative segregation, exclusion from
3 prison programs, or suspension of privileges, e.g. conditions of
4 confinement, must proceed under Section 1983 or Bivens" and not
5 under habeas statute), judgment vacated as moot, 268 F.3d 953 (10th
6 Cir. 2001); see also Badea v. Cox, 931 F.2d 573, 574 (9th Cir.
7 1991) (civil rights action proper method of challenging conditions
8 of confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th
9 Cir. 1979) (affirming dismissal of habeas petition because
10 challenges to terms and conditions of confinement must be brought
11 as civil rights complaint). To state a claim under Bivens, and its
12 progeny, a plaintiff must allege: (1) that a right secured by the
13 Constitution of the United States was violated, and (2) that the
14 alleged violation was committed by a federal actor. See Van Strum
15 v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991) (42 U.S.C. § 1983 and
16 Bivens actions are identical save for replacement of state actor
17 under § 1983 by federal actor under Bivens).

18 While a district court may construe a habeas petition by a
19 prisoner attacking the conditions of his confinement as pleading
20 civil rights claims, see Wilwording v. Swenson, 404 U.S. 249, 251
21 (1971), it is not appropriate to do so in this case. The habeas
22 petition does not include the information necessary to state a
23 civil rights violation. It was not accompanied by the correct
24 filing fee for a civil rights case. Accordingly, the Court directs
25 Petitioner to file a civil rights complaint on the attached civil
26 rights complaint form, stating his claims for relief, if he wishes
27 to go forward with this action as a civil rights action. The
28 failure to file a completed civil rights complaint as directed

1 below will result in the dismissal of this action without
2 prejudice.

3 Before filing his complaint, Petitioner must ensure that he
4 has exhausted all of his administrative remedies. The Prison
5 Litigation Reform Act of 1995 (PLRA) amended 42 U.S.C. § 1997e to
6 provide that "[n]o action shall be brought with respect to prison
7 conditions under [42 U.S.C. § 1983], or any other Federal law, by a
8 prisoner confined in any jail, prison, or other correctional
9 facility until such administrative remedies as are available are
10 exhausted." 42 U.S.C. § 1997e(a). Accordingly, Petitioner must
11 exhaust all available administrative remedies with the BOP before
12 filing a Bivens claim in federal court. See Porter v. Nussle, 534
13 U.S. 516, 524-25 (2002) (holding that revised § 1997e(a) applies to
14 Bivens actions).

15 Although once within the discretion of the district court,
16 exhaustion in prisoner cases covered by § 1997e(a) is now
17 mandatory. Id. at 524. All available remedies must now be
18 exhausted; those remedies "need not meet federal standards, nor
19 must they be 'plain, speedy, and effective.'" Id. (citation
20 omitted). Even when the prisoner seeks relief not available in
21 grievance proceedings, notably money damages, exhaustion is a
22 prerequisite to suit. Id.; Booth v. Churner, 532 U.S. 731, 741
23 (2001). Similarly, exhaustion is a prerequisite to all prisoner
24 suits about prison life, whether they involve general circumstances
25 or particular episodes, and whether they allege excessive force or
26 some other wrong. Porter, 534 U.S. at 532. The PLRA's exhaustion
27 requirement requires "proper exhaustion" of available
28 administrative remedies. Woodford v. Ngo, 548 U.S. 81, 94 (2006).

CONCLUSION

For the foregoing reasons, Petitioner's case is DISMISSED with leave to amend. Petitioner may file his complaint no later than thirty (30) days from the date of this Order. Petitioner must write the case number for this action -- Case No. C 10-03268 CW (PR) -- on the form, entitle it "Civil Rights Complaint Under Bivens v. Six Unknown Named Agents," and complete all sections of the form. Petitioner is particularly directed to name as defendants each person who caused a violation of his constitutional rights and explain what each person did to cause the violation. Bivens liability requires proof of direct personal responsibility. See Pellegrino v. United States, 73 F.3d 934, 936 (9th Cir. 1996). A theory of respondent superior is not applicable in a Bivens action. See id.; Terrell v. Brewer, 935 F.2d 1015, 1018 (9th Cir. 1991). Bivens liability may be imposed, however, when a supervisor participated or acquiesced in the alleged constitutional deprivations. See Jasinski v. Adams, 781 F.2d 843, 848 (11th Cir. 1986).

The filing fee for a civil rights action is \$350.00. Petitioner must pay the \$350.00 filing fee, or file an application for leave to proceed in forma pauperis (IFP), before this action can proceed. If Petitioner is a prisoner who alleges that he is unable to pay the full filing fee at the time of filing, he must submit: (1) an affidavit that includes a statement of all assets he possesses, and (2) a certified copy of the trust fund account statement for the prisoner for the six-month period immediately preceding the filing of the action, obtained from the appropriate official of each prison at which the prisoner is or was confined.

1 See 28 U.S.C. § 1915(a)(1), (2). If the district court determines
2 that the prisoner is unable to pay the full filing fee at the time
3 of filing, the prisoner will be granted leave to proceed IFP. This
4 means that the filing fee must be paid by way of an installment
5 plan, according to which the court first will assess and collect a
6 partial filing fee from the prisoner, and then the prisoner will be
7 required to make monthly payments of twenty percent of the
8 preceding month's income credited to the prisoner's account until
9 the full \$350.00 filing fee is paid. Id. § 1915(b)(1). The agency
10 having custody of the prisoner is responsible for forwarding to the
11 court payments from the prisoner's account each time the amount in
12 the account exceeds ten dollars. See id. Accordingly, Petitioner
13 is hereby ORDERED to pay the requisite \$350.00 filing fee in this
14 action no later than thirty (30) days from the date of this Order.
15 He shall include with his payment a clear indication that it is for
16 the above-referenced case number, Case No. C 10-03268 CW (PR). In
17 the event that Petitioner is unable to pay the filing fee, he shall
18 submit an IFP application, and a trust account statement and
19 certificate of funds from Cornell Companies, Inc. no later than
20 thirty (30) days from the date of this Order. If Cornell
21 Companies, Inc. does not maintain a trust account for him,
22 Petitioner must submit a declaration, preferably from Cornell
23 Companies, Inc., verifying that Cornell Companies, Inc. does not
24 maintain trust accounts. In that case, Petitioner must complete a
25 non-prisoner IFP application, a blank copy of which is enclosed.

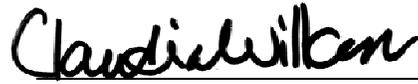
26 Failure to file a completed civil rights form and to pay the
27 filing fee or file the requisite documents within the thirty-day
28 deadline shall result in dismissal of this action without

1 prejudice.

2 The Clerk of the Court shall send Petitioner a blank civil
3 rights form and the Court's prisoner and non-prisoner IFP
4 application forms along with his copy of this Order.

5 IT IS SO ORDERED.

6 Dated: 10/18/2010



7 CLAUDIA WILKEN
8 UNITED STATES DISTRICT JUDGE
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 WOODRUFF et al,

5 Plaintiff,

6 v.

7 AWOKE et al,

8 Defendant.

Case Number: CV10-03268 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on October 18, 2010, I SERVED a true and correct copy(ies) of the attached and a **blank**
12 **civil rights form and the Court's prisoner and non-prisoner IFP application forms**, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
15 delivery receptacle located in the Clerk's office.

16 Kevin Woodruff 56195-097
17 1512 Harrison St.
18 Fairfield, CA 94533

19 Dated: October 18, 2010

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk
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