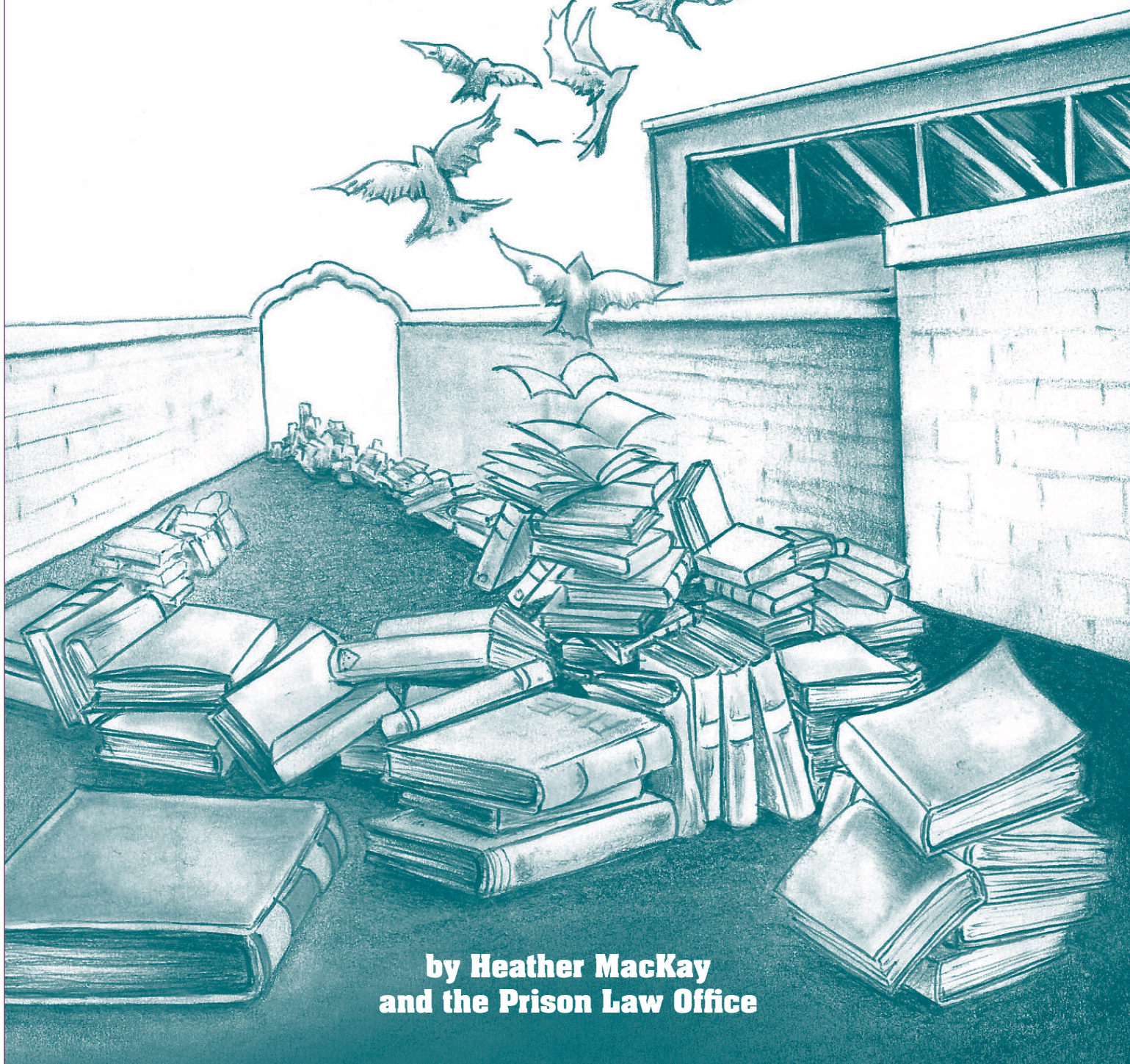


The California Prison and Parole Law Handbook



**by Heather MacKay
and the Prison Law Office**

THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

BY HEATHER MACKAY
&
THE PRISON LAW OFFICE

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The Prison Law Office is a non-profit public interest law firm that strives to protect the rights and improve the living conditions of people in state prisons, juvenile facilities, jails and immigration detention in California and elsewhere. The Prison Law Office represents individuals, engages in class actions and other impact litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country.

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YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in a prison law library or in a public county law library.

CHAPTER 17

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17.1 Introduction

This chapter addresses lawsuits filed under the federal Civil Rights Act (“federal civil rights suits” or “§ 1983 suits”).¹ This type of lawsuit can be used to sue prison officials or other state employees who have violated a person’s federal rights. People who suffer harm or injury due to the wrongful conduct or inaction of state employees or officials can use a § 1983 lawsuit to seek monetary compensation from the responsible people. People may also use this type of lawsuit to seek a court order (injunction) requiring that prison staff stop unlawful conduct or do their lawful duties. In addition, people can use a § 1983 suit to ask for declaratory relief by which the court states each party’s rights and liabilities. People should be aware that the Prison Litigation Reform Act of 1995 (PLRA), which took effect April 26, 1996, imposed significant limits on § 1983 suits.²

A person who brings a § 1983 lawsuit must prove the following: (1) a violation of (2) rights protected by the U.S. Constitution or a federal statute, (3) that was caused (4) by the conduct of a “person” (5) who was acting “under color of state law.”³

People should be aware that § 1983 cases are not the only types of actions that can be brought to seek either money damages or injunctive or declaratory relief. As described in Chapter 15, people can also obtain injunctive and declaratory relief regarding prison conditions by filing a petition for a writ of habeas corpus or for a writ of mandate in state court. Chapter 18 discusses state tort lawsuits for money damages. People may want to read those chapters before deciding whether a § 1983 lawsuit is the best course of action. In addition, § 19.30 provides an overview of various types of court actions available and the pros and cons of each type of action.

17.2 Finding a Lawyer

Finding a lawyer can mean the difference between success and failure in a federal civil rights action. The law is complex, and these suits are governed by many special rules of civil procedure and local court rules. The task of learning and following all the laws and rules, investigating the facts, and gathering evidence for a trial can be very difficult for anyone without legal training.

There are some incentives for lawyers to take civil rights cases for people in prison. A lawyer may represent a person based on a contingency fee arrangement, in which the lawyer agrees to

¹ 42 U.S.C. § 1983. Section 1983 states: “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 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 any action at law, suit in equity, or other proper proceeding for redress.”

² 42 U.S.C. § 1997e.

³ *Crumpton v. Gates* (9th Cir. 1991) 947 F.2d 1418, 1420.

represent the person in exchange for a percentage (usually between 33 and 40 percent) of any money recovered. Also, in federal civil rights cases, the law allows the winning party to collect attorney fees from the losing side.⁴ Under either of these arrangements, the attorney will only get paid if they win the lawsuit, and the amount of fees may depend on how much money the person wins. Thus, attorneys are likely to be interested only in cases with a good chance of success and winning significant damages.

Even with the possibility of attorney fees, people may find it difficult to obtain representation. Some lawyers are discouraged by the difficulty of investigating a case that occurred in a prison, the time it takes to visit a client in prison, or the complicated legal principles that govern such cases. Although these obstacles are regularly overcome by the few lawyers willing to take some prison cases, the demand for lawyers for these cases far exceeds the supply.

A person who wants to file a federal civil rights lawsuit for money damages should try contacting attorneys who represent plaintiffs in “personal injury,” “police brutality,” or “civil rights” actions.⁵ People usually cannot telephone attorneys, since most attorneys do not accept collect calls. Most people also cannot afford to pay the fee that a lawyer would charge to visit a person in prison to discuss a potential case. However, a person in prison can write letters to potential attorneys explaining the case and what the client hopes to gain from a lawsuit, and asking for representation. The letters should include a brief statement of the facts in the order in which they occurred. Alternatively, or as a follow-up, the person can authorize someone else (spouse, family member, or friend) to contact lawyers by phone or an additional letter.

If a person in prison or their family has the money to hire a lawyer, they should be careful in deciding whether the lawsuit can win and whether the lawyer is competent and reliable. There are unethical people, both lawyers and people pretending to be lawyers, who are willing to take money even where there is no chance that a case will succeed or result in any benefit to the person in prison.⁶ At the very least, the person in prison may be able to get someone on the outside to check the attorney’s disciplinary status on the California State Bar Association website at www.calbar.ca.gov. People who hire a lawyer should obtain a written fee agreement and retainer contract and keep detailed notes of their communications with the attorney.

Sometimes a person will have to go ahead with filing a § 1983 lawsuit without an attorney, as a “*pro se*” or “*pro per*” plaintiff. Once the initial papers for a lawsuit are filed in federal court, a person who has no money can ask the court to look for a lawyer to take the case. Some federal district courts in California have panels of attorneys willing to accept civil rights cases for people in prison.⁷ A federal court has the authority to appoint a lawyer to represent a person in a § 1983 lawsuit under “exceptional circumstances.” In determining whether there are exceptional circumstances, the court will evaluate how likely it is that the person can win the claims and how capable the person is to handle the

⁴ See §§ 17.33-17.34 for further discussion of attorney fees in civil rights cases.

⁵ The “Attorney” section of the phone book sometimes lists lawyers by such categories. Another possibility is contacting a Lawyer Referral Service that is operated by a local bar association. Lawyer Referral Services can refer people to attorneys and can sometimes arrange free or low-cost consultations between potential clients and attorneys. California State Bar, 180 Howard Street, San Francisco, CA 94105, 866-442-2529 (legal help line).

⁶ Unethical behavior or malpractice by attorneys can be reported to the California State Bar, 180 Howard Street, San Francisco, CA 94105.

⁷ A court can only ask a lawyer to represent a person; it cannot force a lawyer to take a case *Mallard v. U.S. District Court* (1989) 490 U.S. 296, 301 [109 S.Ct. 1814; 104 L.Ed.2d 318].

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complexities of the lawsuit.⁸ Thus, the request for an attorney should describe previous attempts to get a lawyer and explain why the case is too complex for the person in prison to handle on their own. If the court denies the initial request for a lawyer, the person may want to renew the request later in the case after surviving any summary judgment or dismissal motion made by the state (see §§ 17.26-17.27).

If a minor or incompetent person files a federal civil rights lawsuit, and the person has a legal interest that needs protection, a federal court must appoint a *guardian ad litem* (someone to investigate and stand up for the person's interests) or issue another appropriate order, which might include appointing an attorney.⁹

17.3 Cautionary Note to People Filing Federal Civil Rights Lawsuits

Section 1983 of title 42 of the United States Code provides very important means for people to address violations of constitutional rights. Civil rights cases from people in prison, including both class actions and individual lawsuits, have led to court orders correcting unconstitutional conditions and enforcing fundamental rights. Some of these cases were filed by people in prison acting as their own attorneys.

Unfortunately, in most civil rights lawsuits, the person never wins any relief. In many cases, there is never even a decision on the merits of the case. One reason a § 1983 lawsuit may fail is because the case did not meet the requirements for such actions. Too often, a person who is upset by an unjust act or policy will file a civil rights complaint without realistically evaluating the merits of the case. To avoid this, before filing a complaint, a person should review the elements of a civil rights action (§§ 17.6-17.12), as well as the prison officials' possible defenses (§§ 17.18-17.20), to determine if they have any chance of proving a claim for relief.

Another reason for the high dismissal rate of lawsuits is that in many cases people do not pursue the case after mailing the initial complaint to the court. Section 1983 lawsuits are civil cases governed by the Federal Rules of Civil Procedure and the local rules of the district court. This means the person must take active steps to bring the case to trial (see §§ 17.28-17.31).

Each year, many § 1983 lawsuits filed by people in prison are dismissed for "failure to prosecute" because the person did not bring the case to trial in a timely manner.¹⁰

⁸ 28 U.S.C. § 1915(d); *Terrell v. Brewer* (9th Cir. 1991) 935 F.2d 1015, 1017; *Wilborn v. Escalderon* (9th Cir. 1986) 789 F.2d 1328, 1331. In addition to the law allowing appointment of an attorney, a minor or person deemed incompetent must be appointed a *guardian ad litem* to aid in litigating a *pro se* § 1983 claim. *Davis v. Walker* (9th Cir. 2014) 745 F.3d 1303, 1305.

⁹ Federal Rules of Civil Procedure, rule 17(c); see *Harris v. Mangum* (9th Cir. 2017) 863 F.3d 1133 (no error in failing to evaluate competence where person had no interest in the case that could have been protected by appointment of a *guardian ad litem* or other order).

¹⁰ Federal Rules of Civil Procedure, rule 41(b). A court may not dismiss under this rule simply because a plaintiff does not appear on the date set for trial unless alternatives have been explored. See *Hernandez v. Whiting* (9th Cir. 1989) 881 F.2d 768, 771-772.

The court will expect a person representing themselves (*pro se*) to follow all applicable rules, including local rules of court and any other orders that the court issues.¹¹ The court will not help the person in prison prepare or investigate a case. Nor will it assist with the task of serving the defendants or their lawyer with a copy of every document that the person files with the court.¹² It may even be difficult for a person just to keep their copies of all the court documents. In short, one must be very mindful to properly bring a lawsuit to trial.

However, sometimes a person with a meritorious case will be unable to find an attorney and will have to file on their own. Because this chapter can only summarize the basic rules concerning federal civil rights suits, people who want to bring such lawsuits should seek additional resources:

- ◆ The websites of the federal district courts contain useful information. Most of those websites include documents with the local court rules and the forms for § 1983 suits. Some of the courts also publish handbooks or other informational material for *pro se* plaintiffs. A list of the federal district courts, their addresses, and notes about the prisons and areas that they cover is in Appendix 16-A. The websites for the federal district courts in California are:
 - ◆ Central District of California — www.cacd.uscourts.gov
 - ◆ Eastern District of California — www.caed.uscourts.gov
 - ◆ Northern District of California — www.cand.uscourts.gov
 - ◆ Southern District of California — www.casd.uscourts.gov
- ◆ *Representing Yourself in Federal Court: A Handbook for Pro Se Litigants* (January 2014) is a useful resource for people representing themselves in federal lawsuits. Although it is not targeted at plaintiffs in prison, it has clear descriptions of the stages of a federal court case. The information discusses the rules of the court for the Northern District of California, but could potentially be helpful to plaintiffs litigating in other districts. The *Handbook* and other resources such as sample pleading documents are available for free on the Northern District of California website at www.cand.uscourts.gov/prosehandbook or by writing to Office of the Clerk, United States District Court, 450 Golden Gate Avenue, San Francisco, CA 94102-3489. The website also has older versions of the *Handbook* in Spanish and Chinese.
- ◆ Public Counsel *Federal Pro Se Clinic Forms and Guides* at www.publiccounsel.org/featured Or by writing to: Federal Pro Se Clinic Office, United States District Courthouse, 312 North Spring Street, Los Angeles, CA 90012. Public Counsel operates clinics for litigants who are representing themselves in the federal court for the Southern District of California. Its website contains useful information and model pleadings, although these materials are not targeted at plaintiffs in prison.

¹¹ See, e.g., *King v. Ajiyeh* (9th Cir. 1986) 814 F.2d 565, 567. Each district court should provide a copy of the local rules of court upon request.

¹² Even though a court will not help a *pro se* plaintiff litigate a case, it may act to enforce a person's right of access to the courts if prison officials have unreasonably interfered with the person's research, investigation, or other actions necessary to pursue a lawsuit. The right of access to the courts is discussed in § 19.2.

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- ◆ *The Jailhouse Lawyer's Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison* (Fifth Edition, 2010) by the Center for Constitutional Rights and the National Lawyers Guild contains limited information about legal research and the American legal system. It can be downloaded free at www.nlg.org/resources or by sending a written request with \$2.00 in money order, check, or stamps to Prison Law Project, National Lawyers Guild, National Office, 132 Nassau Street, Rm. 922, New York, NY 10038.
- ◆ *Civil Rights and Civil Liberties Litigation: The Law of § 1983* (4th ed. 1997 and supplements), Thomson West Publishing, contains a full discussion of the substantive law regarding federal civil rights actions.
- ◆ *Protecting Your Health & Safety: A Litigation Guide For Inmates*, Southern Poverty Law Center, contains a useful discussion of the rights of people in prison, including federal civil rights law and practice. Available from Prison Legal News, PO Box 1151, Lake Worth, FL 33460 for \$16. There are several other relevant books available for purchase at the website: www.prisonlegalnews.org/store/.
- ◆ *A Jailhouse Lawyer's Manual (JLM)* contains useful information but is largely directed to people in New York state prisons. The 2011 Ninth Edition from Columbia Law School can be downloaded for free at www.law.columbia.edu/hrlr/jlm. There is also an older Spanish-language version. People can obtain the JLM by sending a \$30 check or money order to Columbia Human Rights Law Review, Attn: JLM Order, 435 W. 116th Street, New York, NY 10027.

SUBSTANTIVE REQUIREMENTS OF FEDERAL CIVIL RIGHTS LAWSUITS

17.4 Who May Bring a Federal Civil Rights Lawsuit

A federal civil rights action may be filed by any person who is deprived of a federal constitutional or statutory right. This may include people in prisons, jails, and psychiatric hospitals. Also, people who have been committed as Sexually Violent Predators (SVPs) may file federal civil rights actions about their conditions of their confinement.¹³ In legal terms, a person who files a lawsuit is called the plaintiff.

In order to file a lawsuit, a person must have “standing” to sue. This means the plaintiff must be the person who has actually suffered or is going to suffer the violation of rights.¹⁴ A person who has already suffered actual harm, and is seeking compensation in money damages, should be able to satisfy the standing requirement easily. In addition, the parents, children or spouse of a deceased

¹³ *Seling v. Young* (2001) 531 U.S. 250, 257-258 [121 S.Ct. 727; 148 L.Ed.2d 734]; see also *Young v. Weston* (9th Cir. 2003) 344 F.3d 973, 975.

¹⁴ *Warth v. Seldin* (1975) 422 U.S. 490, 498-499 [95 S.Ct. 219; 745 L.Ed.2d 343]. For example, a Wiccan volunteer chaplain did not have standing on behalf of people in prison to argue that their federal rights were violated by religious programs that provided paid chaplains for certain religions but only volunteer chaplains for others. *McCullum v. California Dept. of Corrections and Rehabilitation* (9th Cir. 2011) 647 F.3d 870, 878-880.

person in prison may have standing to sue for money damages, but siblings or distant relatives generally will not have standing.¹⁵

A person who does not have a lot of time left to serve may be able to wait to file a § 1983 lawsuit after they are released from prison. This can be helpful because some restrictions on § 1983 suits apply only to people in prison. One consideration is whether person's claims will be rendered irrelevant or "moot" by release. For example, a person may be able to proceed with claims for monetary damages for a past injury even after being released from prison,¹⁶ but claims for injunctive relief (an order for prison officials to do something or stop doing something) or declaratory relief (a statement clarifying the person's rights) are likely to be rendered moot by release from custody.¹⁷

People in prison sometimes try to file "class action" civil rights suits, in which they sue not only for themselves but also for other people who have suffered a similar injury or harm. However, a *pro se* plaintiff cannot adequately protect the interests of a class.¹⁸ Thus, a lawsuit can be certified by the court as a class action only if a lawyer is representing the class members. People should not waste their time filing *pro se* federal civil rights class actions. If a person proceeding *pro se* tries to file a class action case, the court will screen the lawsuit (see § 17.23), dismiss the class action claims, and treat the lawsuit as an individual case.

17.5 The Exhaustion of Administrative Remedies Requirement

The PLRA requires a person in prison to "exhaust" all "available" administrative remedies before filing a federal civil rights action.¹⁹ This means that a person must file (or at least attempt to file) a CDCR Form 602 or other type of administrative appeal through the Third (Director's) Level before filing a federal civil rights complaint. The process for filing administrative appeals is discussed in Chapter 1, and the requirements for exhaustion of administrative remedies are discussed in § 1.2 and § 1.5. However, this rule only applies to people in prison,²⁰ so a person who is released from prison prior to filing a civil rights complaint need not exhaust administrative remedies.²¹

¹⁵ *Kelson v. Springfield* (9th Cir. 1985) 767 F.2d 651, 655; *Smith v. City of Fontana* (9th Cir. 1987) 818 F.2d 1411, 1415; *Ward v. City of San Jose* (9th Cir. 1991) 967 F.2d 280, 283.

¹⁶ *Cano v. Taylor* (9th Cir. 2014) 739 F.3d 1214, 1217.

¹⁷ *Alvarez v. Hill* (9th Cir. 2012) 667 F.3d 1061, 1063-1065; *Cano v. Taylor* (9th Cir. 2014) 739 F.3d 1214, 1217; but see *Norsworthy v. Beard* (9th Cir. 2015) 802 F.3d 1090 (prior court-ordered injunction may be allowed to stand if release rendering issue moot during appeal is due to deliberate actions of officials to avoid complying with injunction).

¹⁸ *Oxendine v. Williams* (4th Cir. 1975) 509 F.2d 1405, 1407; Federal Rules of Civil Procedure, rule 23.

¹⁹ 42 U.S.C. § 1997e(a). The exhaustion requirement includes people who are housed in privately-operated prisons. *Roles v. Maddox* (9th Cir. 2006) 439 F.3d 1016, 1017.

²⁰ People who are civilly committed as Sexually Violent Predators under Welfare & Institutions Code §§ 6600-6609.3 are not "prisoners" within the meaning of the PLRA and do not have to exhaust administrative remedies before filing federal civil rights suits. *Page v. Torrey* (9th Cir. 2000) 201 F.3d 1136, 1139.

²¹ *Greig v. Goord* (2d Cir. 1999) 169 F.3d 165, 166; *Talamantes v. Leyva* (9th Cir. 2009) 575 F.3d 1021, 1024. See also *Jackson v. Fong* (9th Cir. 2017) 870 F.3d 929 [PLRA exhaustion requirement did not apply to person who filed lawsuit while in prison without exhausting administrative remedies, but was released from prison prior to filing an amended complaint].

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The exhaustion requirement applies to all § 1983 lawsuits, whether they involve general circumstances of prison life or particular episodes of abuse.²² A person must exhaust administrative remedies even if they are seeking money damages and money damages are not available through the prison grievance system.²³ The exhaustion also requirement applies even if the person is not bringing a constitutional claim under § 1983, and is raising claims under a federal statute like the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) or the federal Rehabilitation Act (29 U.S.C. § 701(b)(1)(F)).²⁴

Exhaustion of administrative remedies is not a *pleading* requirement in federal civil rights cases. This means that a person is not required to state in the initial complaint that they have exhausted administrative remedies. Rather, absence of exhaustion is an affirmative defense, which the government has the burden of raising and proving.²⁵ Nonetheless, it is wise for a person to avoid disputes by explaining in the complaint how they exhausted administrative remedies.

Sometimes people file “mixed complaints” that contain both exhausted and unexhausted claims. For example, a § 1983 complaint might involve a claim about a gang validation that has been exhausted plus unexhausted claims about safety concerns and denial of access to the courts. A court should dismiss the unexhausted claims and allow the person to proceed with the exhausted claims.²⁶ If the exhausted and unexhausted claims are closely related or “intertwined,” the entire complaint can be dismissed and the person should be allowed to amend the complaint to include only exhausted claims.²⁷ If the person files an amended complaint, any additional claims need not have been exhausted before the original complaint was filed, but must have been exhausted before the amended complaint was filed.²⁸

For federal civil rights suits, there is no requirement (as there is with an action brought under the California Tort Claims Act) that a government claim be filed and rejected by the Department of General Services, Office of Risk and Insurance Management before a lawsuit seeking money damages can be filed.²⁹ Nor is there any requirement (as there is with federal habeas corpus) that a person first present their claims to the state courts.³⁰

Indeed, a person who challenges prison conditions via a state habeas corpus action, and loses following a reasoned denial on the merits by the state courts, can be barred from bringing a § 1983

²² *Porter v. Nussle* (2002) 534 U.S. 516, 525-528 [122 S.Ct. 983; 152 L.Ed.2d 12].

²³ *Booth v. Churner* (2001) 532 U.S. 731, 733-734 [121 S.Ct. 1819; 149 L.Ed.2d 958].

²⁴ *O’Guinn v. Lovelock Corr. Center* (9th Cir. 2007) 502 F.3d 1056, 1060-1061.

²⁵ *Jones v. Bock* (2007) 549 U.S. 199, 211 [127 S.Ct. 910; 166 L.Ed.2d 798].

²⁶ *Jones v. Bock* (2007) 549 U.S. 199, 219 [127 S.Ct. 910; 166 L.Ed.2d 798].

²⁷ *Lira v. Herrera* (9th Cir. 2005) 427 F.3d 1164, 1175.

²⁸ *Rhodes v. Robinson* (9th Cir. 2010) 621 F.3d 1002, 1006-1007; *Cano v. Taylor* (9th Cir. 2014) 739 F.3d 1214, 1220.

²⁹ *Williams v. Horvath* (1976) 16 Cal.3d 834 [129 Cal.Rptr. 453]; *Plasencia v. California* (C.D.Cal. 1998) 29 F.Supp.2d 1145, 1148; *Barry v. Ratelle* (S.D. Cal. 1997) 985 F.Supp. 1235, 1238. However, where money damages are sought, a person should still file a government claim form (see §§ 18.4-18.6) to protect the right to sue under state tort law.

³⁰ *Ellis v. Dyson* (1975) 421 U.S. 426, 432-433 [95 S.Ct. 1691; 44 L.Ed.2d 274]. The exception is that a challenge to the validity or length of a sentence, including loss of credits due to disciplinary hearing, must first be raised in the state courts and then in a federal habeas petition. See § 17.12.

lawsuit concerning the same wrongful act or decision.³¹ The bar should not apply if the challenge to the constitutionality of the underlying state statute or rule governing the state courts' decision.³²

17.6 Overview: Who May Be Sued in a Federal Civil Rights Lawsuit

Section 1983 states that any “person” who has acted under “color of state law” and “caused” a deprivation of a federal right may be sued in a federal civil rights action. The person may be sued in either an “individual” or “official” capacity, depending on what type of remedy is being sought. These requirements are discussed in the following subsections. In legal terms, the people or government agency being sued are called the defendants. A § 1983 lawsuit can name several persons as defendants if they all act under color of state law and were involved in causing the violation of a federal right.

17.7 The Defendant Must Be a “Person”

A defendant in a civil rights lawsuit must be a “person.”³³ An individual prison official or staff member should be identified by name and position (for example, Officer Jones or Doctor Smith). Persons also include high-ranking officials such as the warden of the prison or the Secretary of the California Department of Corrections and Rehabilitation (CDCR). If the person in prison does not know the name of one or more of the defendants, the court will usually allow them to name those defendants as “John Doe #1” and so on.

The person in prison can later seek information through discovery regarding the identity of the John Doe defendants (see § 17.29). However, the court might not allow a suit against a “Doe” defendant if it is clear that discovery would not uncover the defendant’s identity or that the complaint will be dismissed for other reasons.³⁴

It is more tricky to figure out whether a government agency can be sued under § 1983. The state of California and state agencies such as the CDCR and the Board of Parole Hearings (BPH), are not considered to be “persons” for purposes of a federal civil rights case.³⁵ Moreover, the Eleventh Amendment to the U.S. Constitution prohibits a person from suing a state or state agency for money in federal court, unless the state has agreed to be subject to such a lawsuit.³⁶ Therefore, a person

³¹ *Allen v. McCurry* (1980) 449 U.S. 90, 102-103 [101 S.Ct. 411; 66 L.Ed.2d 308]; *Furnace v. Giurbino* (9th Cir. 2016) 838 F.3d 1019; *Gonzales v. California Dept. of Corrections* (9th Cir. 2014) 739 F.3d 1226, 1231; *Silverton v. Dept. of Treasury* (9th Cir. 1981) 644 F.2d 1341, 1345-1347; *Sperl v. Deukmejian* (9th Cir. 1981) 642 F.2d 1154, 1155; *Harris v. Jacobs* (9th Cir. 1980) 621 F.2d 341, 343-344.

³² *Skinner v. Switzer* (2011) 562 U.S. 521, 533-534 [131 S.Ct. 1289; 179 L.Ed.2d 233]; compare with *Cooper v. Ramos* (9th Cir. 2012) 704 F.3d 772, 780-781 (federal court will not hear § 1983 claim that is actually an attack on state court’s application of the state statute).

³³ A good discussion of who may be sued and in what capacities is included in *Taormina v. California Dept. of Corrections* (S.D.Cal. 1996) 946 F.Supp. 830.

³⁴ *Gillespie v. Civiletti* (9th Cir. 1980) 629 F.2d 637, 642; *Wakefield v. Thompson* (9th Cir. 1999) 177 F.3d 1160, 1163.

³⁵ *Will v. Michigan Dept. of State Police* (1989) 491 U.S. 58, 65 [109 S.Ct. 2304]; *Hale v. Arizona* (9th Cir. 1993) 993 F.2d 1387, 1398.

³⁶ *Alabama v. Pugh* (1978) 348 U.S. 781 [98 S.Ct. 3057; 57 L.Ed.2d 111]; *Edelman v. Jordan* (1974) 415 U.S. 651, 662-663 [94 S.Ct. 1347; 39 L.Ed.2d 662]. States do not waive their immunity against money damages suits under RLUIPA by accepting federal funding. *Sossamon v. Texas* (2011) 563 U.S. 277 [131 S.Ct. 1651; 179 L.Ed.2d 700]; *Alvarez v. Hill* (9th Cir. 2012) 667 F.3d 1061, 1063; *Holley v. California Dept. of Corrections* (9th Cir. 2010) 599 F.3d 1108, 1112.

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cannot generally file a federal civil rights action against “California”, “CDCR”, or a particular prison such as “San Quentin”.

There is one important exception to the general rule that the state itself cannot be sued in a § 1983 case. People in prison and on parole can name the state itself as a defendant in cases for injunctive relief under two federal disability rights laws, the ADA and the Rehabilitation Act.³⁷ Also, courts that people in prison can bring suits against the state for money damages under the Rehabilitation Act if the state has waived immunity by accepting federal funds for the program or activity at issue.³⁸ In addition, money damages suits can be brought against the state under the ADA if the person can demonstrate that the disability-based discrimination amounted to a constitutional violation.³⁹ The state and the prison may also be sued for ADA and Rehabilitation Act violations committed by a private company employing incarcerated people in a state program.⁴⁰

Local public entities – such as cities and counties – are considered to be “persons” for purposes of a § 1983 lawsuit. Furthermore, the Eleventh Amendment does not prohibit federal suits for money damages against local government entities.⁴¹

Thus, for example, a county can be sued for actions taken by sheriff’s department employees in the course of running a county jail.⁴² However, there are some limitations on the liability of county or local agencies. A local entity usually can be sued under § 1983 when the violation of federal rights is due to a rule, policy, regulation, or local custom, but not when the violation is due to the independent action of one of its employees.⁴³ Also, a sheriff’s department is immune from liability for violations of rights that occur when a sheriff’s deputy acts on behalf of the state by performing general law enforcement activities such as searches and seizures.⁴⁴

17.8 The Defendant Must be Sued in an “Individual” or “Official” Capacity

A person who acted under color of state law and caused a violation of federal rights may be sued in either an “individual” or “official” capacity. Suing a defendant in an individual capacity means the lawsuit acts against that individual personally. Suing a defendant in an official capacity means the

³⁷ *Clark v. California* (9th Cir. 1997) 123 F.3d 1267, 1269-1270; see also *Hason v. Medical Board of California* (9th Cir. 2002) 279 F.3d 1167, 1170.

³⁸ *Bane v. Virginia Dept. of Corrections* (W.D. Va. 2003) 267 F.Supp.2d 514, 527-528.

³⁹ *United States v. Georgia* (2006) 546 U.S. 151, 158 [126 S.Ct. 877; 163 L.Ed.2d 650]; see also *Alabama v. Garrett* (2001) 531 U.S. 356, 363 [121 S.Ct. 955; 148 L.Ed.2d 866].

⁴⁰ *Castle v. Eurofresh, Inc.* (9th Cir. 2013) 731 F.3d 901, 910.

⁴¹ *Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658 [690 98 S.Ct. 2018]; see also *Thompson v. City of Los Angeles* (9th Cir. 1989) 885 F.2d 1439, 1443.

⁴² *Cortez v. Los Angeles* (9th Cir. 2002) 294 F.3d 1186, 1189.

⁴³ *Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658, 690, 694-695 [98 S.Ct. 2018]. A full discussion of the law on when a local entity can be sued is beyond the scope of this chapter, which focuses on remedies against state officials. Local entity liability is fully discussed in Nahmod, *Civil Rights and Civil Liberties Litigation: The Law of § 1983* (4th ed. 1997 and periodic updates), Thomson West Publishing.

⁴⁴ *Pierce v. San Mateo County Sheriff's Department* (2014) 232 Cal.App.4th 995, 1006 [181 Cal.Rptr.3d 816]; *Venegas v. Los Angeles* (2004) 32 Cal.4th 820, 828 [11 Cal.Rptr.3d 692].

lawsuit is against the person's official position. A federal civil rights lawsuit must state whether each defendant is being sued in an individual capacity or official capacity, or both.⁴⁵

If a § 1983 lawsuit is for money damages, the defendants must be sued in their individual capacity.⁴⁶ This is due to the Eleventh Amendment absolute immunity discussed in § 17.19.

If the § 1983 lawsuit is for an injunction to force prison officials to take some type of action or a declaratory judgment stating the person's rights, the defendants should be sued in their official capacity, so that the case will continue even if the defendant leaves the job and no longer has any authority over the issue.⁴⁷ If a defendant who is being sued in an official capacity passes away, resigns, or gets transferred, the person who takes over the job will automatically be substituted in as the defendant.⁴⁸

If a lawsuit seeks both money damages and an injunction or declaration of rights, the plaintiff can sue the defendants in both their individual capacity and their official capacity.

17.9 The Defendant Must Have Acted “Under Color of State Law”

The defendant in a federal civil rights lawsuit must have acted “under color of state law.” This means that the person who is being sued must have been working as an employee or contractor with the state, or must have been working in an agreement with a state employee or contractor, when the violation of rights occurred.⁴⁹ Thus, prison and parole officials and their employees may be sued for their actions in running prisons and parole programs; so can prison doctors or teachers who work under contract to the state.⁵⁰ Employees of local governments, such as police officers and sheriff's deputies, can also be sued in civil rights actions. However, a state or local official, employee or

⁴⁵ *Barry v. Ratelle* (S. D. Cal. 1997) 985 F.Supp. 1235, 1240 (complaint dismissed due to failure to specify whether defendants were sued in official or individual capacities).

⁴⁶ *Will v. Michigan Dept. of State Police* (1989) 491 U.S. 58, 71 [109 S.Ct. 2304; 105 L.Ed.2d 45]; *Hafer v. Melo* (1991) 502 U.S. 21, 23, 31 [112 S.Ct. 358; 116 L.Ed.2d 301]; *Eaglesmith v. Ward* (9th Cir. 1996) 73 F.3d 857, 859; *Ashker v. California Dept. of Corrections* (9th Cir. 1997) 112 F.3d 392, 395; see also *Wood v. Yordy* (9th Cir. 2014) 753 F.3d 899, 902 [RLUIPA does not subject state prison officials to liability for monetary damages in their individual capacities]. The state can – but is not required to – “indemnify” (pay the money damages for) any employee who is sued in an individual capacity; the exception is that the state must indemnify a state health care worker for medical malpractice claims. Government Code § 844.6(d).

⁴⁷ *Will v. Michigan Dept. of State Police* (1989) 491 U.S. 58, 71, n. 10 [109 S.Ct. 2304; 105 L.Ed.2d 45]; *Guam Society of Obstetricians & Gynecologists v. Ada* (9th Cir. 1992) 962 F.2d 1366, 1371.

⁴⁸ Federal Rules of Civil Procedure, rule 25(d).

⁴⁹ *Lugar v. Edmondson Oil Co.* (1982) 457 U.S. 922, 937 [102 S.Ct. 274; 473 L.Ed.2d 482]; *Polk County v. Dodson* (1981) 454 U.S. 312, 317-318 [102 S.Ct. 445; 70 L.Ed.2d 509].

⁵⁰ *Haygood v. Younger* (9th Cir. 1985) 769 F.2d 1350, 1354; *Leer v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633; see *West v. Atkins* (1988) 487 U.S. 42, 54 [108 S.Ct. 2250; 101 L.Ed.2d 40] (doctors who contract with the state to provide occasional medical services to people in prison may be sued under § 1983); *Lopez v. Dept. of Health Services* (9th Cir. 1991) 939 F.2d 881, 883.

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contractor who does something outside the scope of the job is not acting under color of state law and cannot be sued under § 1983.⁵¹

Public defenders in their role as advocates are not acting under color of state law.⁵² Thus, a person cannot sue a public defender under § 1983 for inadequate representation in a criminal case. The only circumstance in which a civil rights action can be filed against a public defender is if the lawyer conspired with a state official to deprive the plaintiff of federal rights.⁵³

Similarly, an incarcerated person cannot sue another incarcerated person under § 1983 unless it can be proved that the other person conspired with a state employee to deprive the plaintiff of federal rights.⁵⁴

17.10 The Defendant Must Have “Caused” the Violation

A defendant in a federal civil rights case must have *caused* the deprivation or violation of a federal right. A person can cause a violation of rights by doing a wrongful act, by authorizing or assisting another person’s wrongful act, or by failing to do something that they are supposed to do.⁵⁵ Usually, it will be obvious who caused the violation, for example, the officer who hits a person or the doctor who does not prescribe adequate medical treatment.

Depending on the circumstances and type of remedy sought, a person may or may not be able to hold higher level officials and supervisors liable for actions by lower level employees. When a § 1983 suit is for money damages, the plaintiff must prove that the defendant is directly at fault; in other words, the defendant’s action or inaction must be the actual cause of the violation of rights.⁵⁶ Supervisory officials are *not* liable for money damages just because they had authority over a lower level employee who violated a person’s rights. To hold a supervisor liable for money damages, the person usually must show the supervisor had sufficient personal involvement in the violation.⁵⁷ However, if state law imposes vicarious liability on a supervisor, then vicarious liability may be imposed in a § 1983 case.⁵⁸

⁵¹ *Van Ort v. Estate of Stanewich* (9th Cir. 1996) 92 F.3d 831, 835 (there was no action under color of law where police officer – not acting in the course of his job or using his officer status – forced his way into a house and tortured the residents).

⁵² *Polk County v. Dodson* (1981) 454 U.S. 312, 324 [102 S.Ct. 445; 70 L.Ed.2d 509].

⁵³ *Tower v. Glover* (1984) 467 U.S. 914, 919 [104 S.Ct. 2820; 81 L.Ed.2d 758].

⁵⁴ *Dennis v. Sparks* (1980) 449 U.S. 24, 27-28 [101 S.Ct. 183; 66 L.Ed.2d 185]; *Kimes v. Stone* (9th Cir. 1996) 84 F.3d 1121, 1126.

⁵⁵ *Leer v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633; *Ybarra v. Reno Thunderbird Mobile Home Village* (9th Cir. 1984) 723 F.2d 675, 680-681; *Johnson v. Duffy* (9th Cir. 1978) 588 F.2d 740, 743; *Rizzo v. Goode* (1976) 423 U.S. 362, 373 [96 S.Ct. 598; 46 L.Ed.2d 561].

⁵⁶ *Leer v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633-634.

⁵⁷ *Johnson v. Duffy* (9th Cir. 1978) 588 F.2d 740, 743; see also *Ortez v. Washington County, Or.* (9th Cir. 1996) 88 F.3d 804, 809; *Taylor v. List* (9th Cir. 1989) 880 F.2d 1040, 1045.

⁵⁸ *Johnson v. Duffy* (9th Cir. 1978) 588 F.2d 740, 744.

If the plaintiff is seeking an injunction and/or a declaratory judgment, the causal link between the action or inaction and the violation of rights can be less direct.⁵⁹ This means that a person who is seeking only a court order will find it easier to hold supervisory officials liable.

There are several ways to show that a supervisor or higher-level official was personally involved in a deprivation of rights. A person could present evidence that a supervisor ordered the wrongful action, agreed to the action, or knowingly allowed it to happen.⁶⁰ A court may infer that a higher-level official had actual knowledge of a problem if it was part of an official policy or well-known practice, or if a pattern of staff misconduct had been brought to the attention of a supervisor who then did not address the problem.⁶¹

Sometimes, supervisors can be held liable for a failure to adequately train staff, if the lack of training actually caused the deprivation.⁶² Written documentation of a supervisory official's involvement (such as the supervisor's response to a second or third level administrative appeal or signature on a policy memo) is very helpful in establishing that it is proper to name the supervisor as a defendant in the case.

17.11 The Violation Must Be of a Federal Right

Under § 1983, a plaintiff must prove that the defendant caused the deprivation of a right protected by the U.S. Constitution or other federal law.⁶³ A federal civil rights action may also challenge the constitutionality of a state statute or rule.⁶⁴ Before filing a § 1983 lawsuit, a person should first determine what specific federal rights have been violated or infringed. A court will dismiss a § 1983 case that concerns matters that are not protected by federal law or that allege only a violation of state law.⁶⁵

⁵⁹ *Leer v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633.

⁶⁰ *Taylor v. List* (9th Cir. 1989) 880 F.2d 1040, 1045; see, e.g., *Barry v. Ratelle* (S.D. Cal. 1997) 985 F.Supp. 1235, 1239.

⁶¹ *Rizzo v. Goode* (1976) 423 U.S. 362, 366 [96 S.Ct. 598; 46 L.Ed.2d 561]; *Hydrick v. Hunter* (9th Cir. 2012) 669 F.3d 937, 941-942; *Starr v. Baca* (9th Cir. 2011) 652 F.3d 1202, 1216-1217; *Wright v. McMann* (2d Cir. 1972) 460 F.2d 126, 129; *Hearn v. Morris* (E.D. Cal. 1981) 526 F.Supp. 267, 268.

⁶² *City of Canton, Ohio v. Harris* (1989) 489 U.S. 378, 388-391 [109 S.Ct. 1197; 103 L.Ed.2d 412]; *Merritt v. County of Los Angeles* (9th Cir. 1989) 875 F.2d 765, 770; *Alexander v. City of San Francisco* (9th Cir. 1994) 29 F.3d 1355, 1367.

⁶³ *Parratt v. Taylor* (1981) 451 U.S. 527, 535 [101 S.Ct. 1908; 68 L.Ed.2d 420], overruled on other grounds in *Daniels v. Williams* (1986) 474 U.S. 327, 328 [106 S.Ct. 662; 88 L.Ed.2d 662]; see *Leer v. Murphy* (9th Cir. 1988) 844 F.2d 628, 632-633.

⁶⁴ *Skinner v. Switzer* (2011) 562 U.S. 521 [131 S.Ct. 1289; 179 L.Ed.2d 233].

⁶⁵ See, e.g., *Davis v. Bucher* (9th Cir. 1988) 853 F.2d 718, 720 (isolated and limited disclosure of personal information more appropriate for state tort action); *Hernandez v. Denton* (9th Cir. 1987) 833 F.2d 1316, 1319 (upholding dismissal of “libel and slander” claims as non-constitutional wrongs); *Oltarzewski v. Ruggiero* (9th Cir. 1987) 830 F.2d 136, 139 (verbal harassment or abuse does not amount to constitutional deprivation); *Johnson v. Barker* (9th Cir. 1986) 799 F.2d 1396, 1399 (dismissing claims of “false arrest” and “malicious prosecution” as state tort claims); *Pennhurst State School & Hospital v. Halderman* (1984) 465 U.S. 89, 124-125 [104 S.Ct. 900; 79 L.Ed.2d 67] (Eleventh Amendment prohibits a federal court from ordering declaratory or injunctive relief based on a violation of state law); *Ritschel v. City of Fountain Valley* (2006) 137 Cal.App.4th 107, 115 [40 Cal.Rptr.3d 48] (police officer's failure to comply with state law was not actionable in a § 1983 suit).

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The main source of federal rights is the U.S. Constitution, particularly the Amendments known as the Bill of Rights, although the law often gives prison officials broad power to restrict people's rights. Summaries of constitutional and other federal rights and the main cases establishing these rights for people in prison or on parole are set forth throughout this *Handbook*. For example, Chapter 2 discusses constitutional rights related to visiting, religion, race and sex discrimination, and being free of unreasonable searches. Chapter 3 discusses the right to be free from cruel and unusual punishment, such as inhumane prison conditions and violence by staff and other incarcerated people. Chapter 5 discusses due process rights regarding prison rule violation charges and Chapter 6 concerns due process rights concerning placement in segregation. Chapter 7 discusses rights related to medical and mental health care and disability access. Other sections of this *Handbook* discuss other federal constitutional and statutory rights.

There is no specific “state of mind” requirement for a civil rights action.⁶⁶ However, to prove many types of constitutional violations, the plaintiff must show by a preponderance of the evidence that the defendants acted with a particular state of mind;⁶⁷ this can be a difficult hurdle. For example, to prove a violation of the Eighth Amendment's prohibition on cruel and unusual punishment, prison staff must have acted with “deliberate indifference;” negligence or carelessness is not enough.⁶⁸ Similarly, simple negligence is insufficient to prove a violation of due process.⁶⁹ A person who claims that prison staff used excessive force will have to show that the force was applied “maliciously and sadistically to cause harm.”⁷⁰ A plaintiff must do legal research to determine what “state of mind” is required for the constitutional violations to be raised. The complaint should allege that the defendants acted with the applicable state of mind and describe the supporting evidence.⁷¹

People can also use § 1983 lawsuits to challenge violations of federal statutes that apply to them.⁷² For example, people with disabilities can file § 1983 lawsuits claiming discrimination or lack of access to programs and services under the ADA.⁷³ People can sue under § 1983 to protect their religious rights under the Religious Land Use and Incarcerated Persons Act (RLUIPA).⁷⁴ People who were unjustly incarcerated have also filed § 1983 suits sue under the federal Racketeer Influenced and

⁶⁶ *Daniels v. Williams* (1986) 474 U.S. 327, 329-330 [106 S.Ct. 662; 88 L.Ed.2d 662].

⁶⁷ *Cranford-El v. Britton* (1998) 523 U.S. 574, 592 [118 S.Ct. 1584; 140 L.Ed.2d 759] (rejecting heightened standard of proof by clear and convincing evidence for mental state element in § 1983 cases).

⁶⁸ See *Estelle v. Gamble* (1976) 429 U.S. 97, 104 [97 S.Ct. 285; 50 L.Ed.2d 251]; *Wilson v. Seiter* (1991) 501 U.S. 294, 302 [111 S.Ct. 2321; 115 L.Ed.2d 271]; *Leer v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633.

⁶⁹ *Daniels v. Williams* (1986) 474 U.S. 327, 328 [106 S.Ct. 662; 88 L.Ed.2d 662]; *Davidson v. Cannon* (1986) 474 U.S. 344, 347 [106 S.Ct. 668; 88 L.Ed.2d 677].

⁷⁰ *Hudson v. McMillan* (1992) 503 U.S. 1, 6-7 [112 S.Ct. 995; 117 L.Ed.2d 156]; *Whitley v. Albers* (1986) 475 U.S. 312, 320 [106 S.Ct. 1078; 89 L.Ed.2d 251].

⁷¹ *Galbraith v. County of Santa Clara* (9th Cir. 2002) 307 F.3d 1119, 1123; see also *Foster v. Skinner* (9th Cir. 1995) 70 F.3d 1084, 1088, fn. 7; *Barry v. Ratelle* (S.D. Cal. 1997) 985 F.Supp. 1235, 1239.

⁷² *Maine v. Thiboutot* (1980) 448 U.S. 1, 4 [100 S.Ct. 2502; 65 L.Ed.2d 555]; *Gonzaga University v. Doe* (2002) 536 U.S. 273, 279 [122 S.Ct. 2268; 153 L.Ed.2d 309].

⁷³ 42 U.S.C. § 12131; *Pennsylvania Dept. of Corrections v. Yeskey* (1998) 524 U.S. 206, 208 [118 S.Ct. 1952]; see, e.g., *Armstrong v. Davis* (9th Cir. 2001) 275 F.3d 849, 884; *Armstrong v. Wilson* (N.D. Cal. 1996) 942 F.Supp. 1252, 1264, aff'd at *Armstrong v. Wilson* (9th Cir. 1997) 124 F.3d 1019, 1026; *Clark v. California* (9th Cir. 1997) 123 F.3d 1267, 1271.

⁷⁴ 42 U.S.C. § 2000cc et seq.; *Holt v. Hobbs* (2015) ___ U.S. ___ [135 S.Ct. 853; 190 L.Ed.2d 747].

Corrupt Organizations Act (RICO) for injuries to business or property based on claims that they were rendered unable to pursue gainful employment while defending themselves.⁷⁵

Except in the most unusual circumstances, a person will not be able to get compensation for lost or damaged property through a federal civil rights action. Intentional or negligent loss or destruction of a person's property by prison officials does not support a civil rights action based on a violation of due process so long as state law provides adequate legal remedies for property deprivations; courts have held that California law provides such adequate remedies.⁷⁶ There are only very limited exceptions to this rule. A § 1983 suit may be allowed when a person's court transcripts or other legal material are lost or destroyed and deprived the person of their constitutional right of access to the courts.⁷⁷ There is also a possibility that a § 1983 would be allowed where the loss or destruction of property resulted in the person being deprived of some basic human necessity and thus violated the prohibition against cruel and unusual punishment or the disability rights laws. However, the vast majority of lost or damaged property claims will not fall into one of these exceptions. The appropriate actions to obtain compensation for other types of property loss or damage are discussed in § 1.27 (administrative appeals), §§ 15.30-15.46 (petitions for writ of mandate) and Chapter 18 (government claims and state tort lawsuits, including small claims actions).

There is one exception to the rule that a § 1983 may raise only federal claims. A person who files a federal civil rights lawsuit may also include state tort law claims for money damages that are based on the same facts. Such related state law claims may be heard by a federal court under the doctrine of "pendent jurisdiction."⁷⁸ For example, a person who sues an officer for using excessive force in violation of the Eighth Amendment's prohibition on cruel and unusual punishment could also include a claim that the officer violated state law by committing an assault and battery.

17.12 Limits on Challenges to Criminal Judgments, Credit Losses or Denials, and Parole Revocation Terms

A person cannot use a § 1983 lawsuit to seek injunctive relief or release due to an unlawful criminal conviction or sentence.⁷⁹ In addition, although a § 1983 suit can be filed to seek money damages due to an invalid conviction or sentence, such a suit can only be filed *after* a criminal

⁷⁵ 18 U.S.C. § 1961 et seq.; *Guerrero v. Gates* (9th Cir. 2003) 442 F.3d 697, 707-708; *Diaz v. Gates* (9th Cir. 2005), 420 F.3d 897, 900.

⁷⁶ *Hudson v. Palmer* (1984) 468 U.S. 517, 533 [104 S.Ct. 3194; 82 L.Ed.2d 393] (deprivation of property does not violate due process where state has available and adequate post-deprivation remedies); *Logan, Blueford v. Prunty* (9th Cir. 1997) 108 F.3d 251, 255-526 (person cannot bring due process claim for loss of funds unless they show that state does not provide an adequate post-deprivation remedy); *Barnett v. Centoni* (9th Cir.1994) 31 F.3d 813, 816-817 (California provides adequate post-deprivation remedies for property damage or confiscation); *Teaban v. Wilhem* (S.D. Cal. 2007) 481 F.Supp.2d 1115, 1120 (California law provides adequate post-deprivation remedies);

⁷⁷ See *Vigliotto v. Terry* (9th Cir. 1989) 873 F.2d 1201, 1202-1203.

⁷⁸ 28 U.S.C. § 1367(a); see, e.g., *Hillery v. Rusben* (9th Cir. 1983) 720 F.2d 1132. The Court, however, has the power to decline supplemental jurisdiction over state law claims if (1) the claims raise novel or complex issues of state law, (2) the claims substantially predominate over the claims over which the Court has original jurisdiction, or (3) the Court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c).

⁷⁹ *Preiser v. Rodriguez* (1973) 411 U.S. 475, 489 [93 S.Ct. 1827; 36 L.Ed.2d 439].

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conviction is declared invalid in a direct appeal, habeas corpus proceeding or other court action. This is called the “*Heck* rule.”⁸⁰

These rules also apply to civil commitments, such as a Sexually Violent Predator (SVP) commitment.⁸¹ In addition, the same rules bar use of § 1983 action for prison or parole issues that affect the length of a sentence, such as challenges to denial or forfeiture of sentence credits or to revocation or denial of parole.⁸²

These bars apply only to issues that necessarily affect the length of incarceration; in other words, a person can still bring a federal civil rights case if winning the issue would not necessarily invalidate the underlying custody or decrease the time in custody. Applying this principle, courts have allowed § 1983 cases in a variety of criminal case related matters.⁸³ Some challenges to administrative segregation or filing of disciplinary charges may also fall into this category.⁸⁴ A § 1983 suit can be brought concerning parole suitability policies or parole conditions, if the matters could be addressed without invalidating the underlying criminal conviction or shortening the time spent in prison or on parole.⁸⁵

⁸⁰ *Heck v. Humphrey* (1994) 512 U.S. 477 [114 S.Ct. 2364; 129 L.Ed.2d 383]; see also *Jackson v. Barnes* (9th Cir. 2014) 749 F.3d 755, 759 (*Heck* rule did not bar § 1983 claim following overturned conviction, even though the person was later successfully prosecuted in the same case). If a § 1983 suit clearly is intended to state a habeas claim, a court may treat the complaint as a habeas petition or may dismiss it. *Guerrero v. Gates* (9th Cir. 2006) 442 F.3d 697, 703.

⁸¹ *Huftile v. Miccio-Fonseca* (9th Cir. 2005) 410 F.3d 1136, 1140.

⁸² *Edwards v. Balisok* (1997) 520 U.S. 641, 643 [117 S.Ct. 1584; 137 L.Ed.2d 906] (applying bar in case seeking to invalidate a prison disciplinary procedure that resulted in loss of good conduct credits); *Young v. Kenny* (9th Cir. 1990) 907 F.2d 874, 875 (applying bar to claim that prison officials improperly failed to apply jail time credits to prison sentence); *Hawkins v. Risley* (9th Cir. 1993) 984 F.2d 321, 325 (denial of federal habeas challenge to state’s revocation of work furlough barred § 1983 suit on challenging that revocation); *Barela v. Variz* (S.D. Cal. 1999) 36 F.Supp.2d 1254, 1256 (applying bar to challenge to prison job supervisor’s decision to deduct credits for days of work missed); *Robinson v. Board of Prison Terms* (C.D. Cal. 1998) 997 F.Supp. 1303, 1306 (bar applied to person with life sentence’s challenging to denial of parole).

⁸³ *Osborne v. District Attorney* (9th Cir. 2005) 423 F.3d 1050, 1053 (person may bring federal civil rights action to compel the state to release evidence needed for investigation); *Weilburg v. Shapiro* (9th Cir. 2007) 488 F.3d 1202, 1206 (suit alleging extradition law violations does not necessarily imply invalidity of the criminal conviction); *Wilkerson v. Wheeler* (9th Cir. 2014) 772 F.3d 834, 836 (excessive force in restraining person); *Shoemaker v. Harris* (2013) 214 Cal.App.4th 1210 [155 Cal.Rptr.3d 76] (implying person could use federal civil rights action to challenge sex offender registration requirement); *Lockett v. Ericson* (9th Cir. 2011) 656 F.3d 892 (person convicted by no contest plea can bring civil rights suit challenging an illegal search without first invalidating the conviction; since the illegally seized material was not used as evidence in a trial, any finding that the seizure was illegal will not invalidate the conviction).

⁸⁴ *Muhammad v. Close* (2004) 540 U.S. 749, 754 [124 S.Ct. 1303; 158 L.Ed.2d 32] (allowing § 1983 suit where person alleged that officer filed retaliatory disciplinary charges, which would not affect the time being served); *Ramirez v. Galaza* (9th Cir. 2003) 334 F.3d 850, 856 (allowing § 1983 suit for due process and equal protection challenge to disciplinary procedures and administrative segregation placement that would not necessarily result in earlier release from prison); *Thomas v. Eby* (6th Cir. 2007) 481 F.3d 434, 438-440; *York v. Huerta-Garcia* (S.D. Cal. 1999) 36 F.Supp.2d 1231, 1238.

⁸⁵ *Wilkinson v. Dotson* (2005) 544 U.S. 74, 78 [125 S.Ct. 1242; 161 L.Ed.2d 253] (people with life sentences could bring § 1983 suit challenging application of new, harsher guidelines for determining parole suitability, where the people with life sentences were not seeking injunctions ordering speedier or immediate release). *Thornton v. Brown* (9th Cir. 2014) 757 F.3d 834, 840-845 (person on parole could use § 1983 suit to challenge residence and GPS requirements for people with sex offenses).

Complicated issues concerning the *Heck* rule sometimes arise when people file § 1983 lawsuits seeking damages for use of excessive force at the time of a criminal arrest or prison rule violation incident. A person convicted or found guilty of a rule violation for resisting or obstructing a peace officer cannot seek damages (under either § 1983 or state tort law) for an officer's use of excessive force *during* the incident unless the conviction or disciplinary violation is first overturned on direct appeal or habeas corpus, because a person is guilty of resisting or obstructing an officer only if the officer was acting lawfully.⁸⁶ There is an exception if the loss of credits for a disciplinary violation does not affect the length of a person's sentence, such as for a person serving an indeterminate life sentence who is already past the initial parole eligibility date.⁸⁷ Also, a damages action for excessive force is not barred if the excessive force was used *after* the conduct on which the conviction or rule violation was based⁸⁸ or if use of deadly force was not a reasonable response to the person's actions.⁸⁹ If the person's conviction or disciplinary violation is for some charge other than resisting an officer, an excessive force claim can be brought so long as the claim does not necessarily imply invalidity of the conviction or disciplinary finding of guilt.⁹⁰

Finally, the *Heck* rule may or may not apply in a case in which the defendant has been released from custody and thus is no longer able to bring a petition for writ of habeas corpus challenging the underlying conviction or violation. If the person diligently pursued habeas relief to have the conviction or disciplinary violation overturned, but is released from custody prior to resolution of the petition, the *Heck* rule will not bar filing a civil rights suit challenging the constitutionality of the arrest, conviction or disciplinary finding.⁹¹ However, this exception does not apply if a person has failed to promptly seek habeas relief while still in custody.⁹²

⁸⁶ *Susag v. Lake Forest* (2002) 94 Cal.App.4th 1401, 1408 [115 Cal.Rptr.2d 269]; see also *Cunningham v. Gates* (9th Cir. 2003) 312 F.3d 1148, 1153 (civil rights claims for excessive force barred because claims imply invalidity of criminal conviction resulting from gunfight with police); *Truong v. Orange County Sheriff's Dept.* (2005) 129 Cal.App.4th 1423, 1427 [29 Cal.Rptr.3d 450] (same).

⁸⁷ *Wilkerson v. Wheeler* (9th Cir. 2014) 772 F.3d 834, 840-841.

⁸⁸ *Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 698; *Sanford v. Motts* (9th Cir. 2001) 258 F.3d 1117, 1119; *Kyles v. Baker* (N.D. Cal. 2014) 72 F.Supp.3d 1021, 1035-1037.

⁸⁹ *Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 898-900 [76 Cal.Rptr.3d 787].

⁹⁰ *Guerrero v. Gates* (9th Cir. 2003) 442 F.3d 697, 703; *Marquez v. Gutierrez* (E.D. Cal. 1999) 51 F.Supp.2d 1020, 1024.

⁹¹ *Nonnette v. Small* (9th Cir. 2002) 316 F.3d 872, 875; see also *Spencer v. Kemna* (1998) 523 U.S. 1, 19, 21 [118 S.Ct. 978; 140 L.Ed.2d 43] (conc. opn. of Souter, J.).

⁹² *Guerrero v. Gates* (9th Cir. 2003) 442 F.3d 697, 704-705; *Cunningham v. Gates* (9th Cir. 2002) 312 F.3d 1148, 1153.

17.13 When to File: Accrual of the Cause of Action and Statute of Limitations

Federal civil rights suits must be brought within a certain period of time after the cause of action “accrues.” This means that the timeline for filing a federal civil rights suit will begin on the date of the event that caused the injury or the date the person learns that they have an injury.⁹³

In a case alleging unlawful arrest with lack of probable cause, the time limit begins running from the date the person is first arraigned in front of a judicial officer.⁹⁴ In a case arising from an improper conviction or sentence, parole revocation, or disciplinary credit loss — which must normally first be deemed invalid on direct appeal or habeas corpus (see § 17.12) — the timeline for a § 1983 suit will begin running from the date the sentence, parole revocation, or credit loss, is deemed invalid.⁹⁵ In disputes, federal law determines when a cause of action accrues.⁹⁶

The law of the state where the issue occurred sets the baseline for how soon a person must file the case after the cause of action accrues, as § 1983 itself does not include any particular time limits.⁹⁷ This type of law is called a statute of limitations. In California, a person has two years to file a personal injury lawsuit; this is the statute of limitations that applies in most § 1983 cases.⁹⁸ However, there are a few important exceptions. A three-year statute of limitations applies to cases claiming violations of the Americans with Disabilities Act (the ADA; 42 U.S.C. § 12131 et seq.).⁹⁹ Claims of infringements on religious rights in violation of RLUIPA have a four-year statute of limitations.¹⁰⁰

However, the law recognizes that it is difficult for people in prison to exhaust administrative remedies, get legal information, hire a lawyer or prepare legal documents within the normal time period for filing a § 1983 lawsuit. Thus, there are many situations in which the statute of limitations is “tolled,” meaning the clock does not start or will pause for a period of time. Tolling is governed by the law of the state where the claim accrued.¹⁰¹ Because of tolling provisions, many people in prison have more than two years in which to file their § 1983 lawsuits. A person should explain any reasons why time should be tolled when they file the lawsuits.

⁹³ *Bagley v. CMC Real Estate Corp.* (9th Cir. 1991) 923 F.2d 758, 760; see also *Knox v. Davis* (9th Cir. 2001) 260 F.3d 1009, 1013 (letter from prison administration formally withdrawing visitation and mail privileges started the statute of limitations for filing § 1983 action; each subsequent denial of an attempt to visit or send mail did not create a new cause of action or re-start the timeline); compare with *Pouncil v. Tilton* (9th Cir. 2012) 704 F.3d 568, 581-583 (person was denied conjugal visits in 2002, reapplied in 2008 after re-marrying, was denied again, then filed § 1983 lawsuit challenging the 2008 denial; 2008 denial was discrete, independently wrongful act that triggered a new period of limitations).

⁹⁴ *Wallace v. Kato* (2007) 549 U.S. 384, 390 [127 S.Ct. 1091; 166 L.Ed.2d 973].

⁹⁵ *Edwards v. Balisok* (1997) 520 U.S. 641, 648 [117 S.Ct. 1584; 137 L.Ed.2d 906]; *Heck v. Humphrey* (1994) 512 U.S. 477, 489-490 [114 S.Ct. 2364; 129 L.Ed.2d 383].

⁹⁶ *Rosales-Martinez v. Palmer* (9th Cir. 2014) 753 F.3d 890, 895.

⁹⁷ *Wilson v. Garcia* (1985) 471 U.S. 261, 266 [105 S.Ct. 1938; 85 L.Ed.2d 254]; *Vaghan v. Grijalva* (9th Cir. 1991) 927 F.2d 476, 479.

⁹⁸ Code of Civil Procedure § 335.1 (effective Jan. 1, 2003).

⁹⁹ *Sharkey v. O’Neal* (9th Cir. 2015) 778 F.3d 767, 773.

¹⁰⁰ *Pouncil v. Tilton* (9th Cir. 2012) 704 F.3d 568, 573.

¹⁰¹ *Donoghue v. Orange County* (9th Cir. 1987) 848 F.2d 926, 930.

Tolling occurs in the following circumstances:

- ◆ Time is tolled while a person exhausts administrative remedies as required by the PLRA (see § 1.5).¹⁰²
- ◆ Time is tolled while a person brings a direct appeal or habeas corpus challenges to a criminal sentence, loss of credits or denial or revocation of parole, if required by the *Heck* rule (see 17.12).¹⁰³
- ◆ “Equitable tolling” can stop the statute of limitations clock where it is in the interests of justice, the plaintiff has acted reasonably, the defendants have adequate notice of the claim, and tolling would not cause prejudice to the defendants.¹⁰⁴
- ◆ Time is automatically tolled for up to two years if a person is suing for money damages *and* is imprisoned for a determinate term or a term of life with the possibility of parole; this tolling period ends early if the person is released before the two-year period expires.¹⁰⁵
- ◆ The statute of limitations will not start to run if the plaintiff in is a minor or is deemed insane when the cause of action occurred. The time limits will begin running only when the person becomes an adult or regains sanity.¹⁰⁶

Although the law seems to prohibit tolling for people serving Life Without the Possibility of Parole (LWOP) or death sentences, some courts have granted tolling in such cases;¹⁰⁷ nonetheless, a person who is unsure whether tolling applies should assume time is not tolled. The tolling period for imprisonment does *not* apply to lawsuits that are for injunctive or declaratory relief¹⁰⁸ or to any state tort claims that are joined with the federal §1983 claims.¹⁰⁹

¹⁰² *Brown v. Valoff* (9th Cir. 2005) 422 F.3d 926, 942-943

¹⁰³ *Marsh v. San Diego County* (S.D. Cal. 2006) 432 F.Supp.2d 1035, 1055-1056.

¹⁰⁴ *Jones v. Blanas* (9th Cir. 2004) 393 F.3d 918, 928; It can be difficult to convince a court to apply equitable tolling. See *Wade v. Ratella* (S.D. Cal. 2005) 407 F.Supp.2d 1196, 1205-1206; *Fink v. Shedler* (9th Cir. 1999) 192 F.3d 91.

¹⁰⁵ Code of Civil Procedure § 352.1; *Martinez v. Gomez* (9th Cir. 1998) 137 F.3d 1124, 1126 (tolling provision applies to people serving life with the possibility of parole). Automatic tolling for being imprisoned does not apply to people in custody for civil commitments, such as people with SVP commitments; however, equitable tolling may apply if the civil commitment causes similar difficulties in pursuing legal rights. *Jones v. Blanas* (2004) 393 F.3d 918, 928-930.

¹⁰⁶ Code of Civil Procedure § 352; *City of Huntington Park v. Superior Court* (1995) 34 Cal.App.4th 1293, 1300 [41 Cal.Rptr.2d 68].

¹⁰⁷ Code of Civil Procedure § 352.1 (tolling due to imprisonment applies to people serving a "term less than for life"); compare *Allen v. Barnes* (9th Cir. 2000) 243 F.3d 546 (unpublished order granting tolling to person with LWOP sentence both for pre-sentence time and time after LWOP sentence imposed) with *Boggs v. Treadway* (9th Cir. 1991) 172 F.3d 875 (unpublished order refusing to allow tolling after LWOP sentence imposed); see also *Ayers v. Ayala* (N.D. Cal. Sept. 22, 2011) No. C10-0979, Order (granting tolling to person who serving death sentence).

¹⁰⁸ Code of Civil Procedure § 352.1(c).

¹⁰⁹ Code of Civil Procedure § 352.1(b); *Ellis v. City of San Diego* (9th Cir. 1999) 176 F.3d 1183, 1190.

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For federal case filing deadlines, documents are deemed filed on the day a person delivers them to prison authorities or places them in the prison mail system for mailing to the court¹¹⁰

17.14 Where to File: Jurisdiction and Venue

Both federal and state courts have jurisdiction to hear § 1983 cases (and any related state tort law claims),¹¹¹ and it is up to the plaintiff to decide whether to file in federal or state court. Either choice may have pros and cons. However, people in prison usually are better off filing in federal court, as federal court judges are much more familiar with § 1983 actions from people in prison.

A person who wants to file in federal court must also figure out which of the federal district courts has authority or “venue” to decide the case. There are four federal court districts in California: Northern, Eastern, Central and Southern. Generally, the § 1983 case must be filed in the district that covers the location where the violations of federal law occurred or the location in which one or more of the defendants reside (in their official capacity).¹¹² However, if a person files in the wrong district, the court may simply transfer the case to the correct district. A list of the federal district courts and the prisons and areas that they cover is in Appendix 16-A.

A person who decides to file a § 1983 case in state court also will have to figure out which of the state superior courts has venue.¹¹³ Usually, a prison conditions case should be filed in the superior court for the county in which the prison is located and the violations occurred. A list of state superior courts is included in Appendix 15-A.

17.15 Relief Available: Money Damages

Plaintiffs can ask for three different types of money damages through § 1983 cases: compensatory damages, punitive damages, and nominal damages.¹¹⁴ A person who wants to seek money damages, must sue the defendant in their individual capacity (see § 17.8). The person must state in the complaint what types and amounts of damages are being sought and must prove any facts necessary to support those claims.¹¹⁵

Compensatory damages are intended to pay the plaintiff back for harms suffered. This may include reimbursing money a plaintiff had to spend for medical expenses, making up for lost income,

¹¹⁰ *Houston v. Lack* (1988) 487 U.S. 266, 270 [108 S.Ct. 2379; 101 L.Ed.2d 245]; *Caldwell v. Amend* (9th Cir. 1994) 30 F.3d 1199, 1202; see also *Faile v. Upjohn* (9th Cir. 1993) 988 F.2d 985, 988.

¹¹¹ *Maine v. Thiboutot* (1980) 448 U.S. 1, 11 [100 S.Ct. 2502; 65 L.Ed.2d 555]; *Brown v. Pitchess* (1975) 13 Cal.3d 518, 523 [119 Cal.Rptr. 204]; *Williams v. Horvath* (1976) 16 Cal.3d 834, 837 [129 Cal.Rptr. 453]; see also *Mendoza v. County of Tulare* (1982) 128 Cal.App.3d 403, 407-408 [128 Cal.App.3d 403].

¹¹² See 28 U.S.C. § 1391(b).

¹¹³ The U.S. Supreme Court struck down an attempt by the state of New York to shunt all lawsuits from people in prison against corrections officers to special courts that were created just to hear such cases. *Haywood v. Drown* (2009) 556 U.S. 729, 740-741 [129 S.Ct. 2108; 173 L.Ed.2d 920].

¹¹⁴ *Carey v. Piphus* (1978) 435 U.S. 247 (compensatory and nominal damages); *Smith v. Wade* (1983) 461 U.S. 30, 46 [103 S.Ct. 1625; 75 L.Ed.2d 632] (holding that punitive damages can be awarded in § 1983 cases). People who owe restitution on their criminal cases should be aware that the state can take restitution payments out of a money damages award.

¹¹⁵ *Carey v. Piphus* (1978) 435 U.S. 247, 250, 264 [98 S.Ct. 1042; 55 L.Ed.2d 252].

or compensating for physical or mental suffering¹¹⁶ An incarcerated person cannot receive compensatory damages for deprivation of a constitutional right unless some real injury or loss is proven.¹¹⁷ Moreover, incarcerated people cannot get compensatory damages for an emotional or mental injury suffered in custody unless there was also a physical injury.¹¹⁸

The physical injury need not be significant but must be more than trivial or minor.¹¹⁹

The physical injury requirement does not apply to claims that are independent of any physical, emotional or mental consequences.¹²⁰

Punitive damages are meant to punish defendants for their bad conduct. Punitive damages can be awarded only if the defendant acted maliciously with intent to cause the plaintiff harm, oppressively, or with recklessness amounting to deliberate indifference.¹²¹ Punitive damages are available even if the person is unable to show an actual injury or loss.¹²²

Nominal damages are a symbolic statement that the plaintiff suffered a constitutional wrong, even though it caused no compensable harm.¹²³ Nominal damages are usually awarded in the amount of \$1 or some other small sum. A person can win nominal damages without showing any actual injury or any physical injury.¹²⁴

¹¹⁶ *Memphis Community School Dist. v. Starbura* (1986) 477 U.S. 299, 307 [106 S.Ct. 2537; 91 L.Ed.2d 249]; *Borunda v. Richmond* (9th Cir. 1989) 885 F.2d 1384, 1389 (compensatory damages include attorneys' fees).

¹¹⁷ *Carey v. Piphus* (1978) 435 U.S. 247, 264 [98 S.Ct. 1042; 55 L.Ed.2d 252]; *Raditch v. United States* (9th Cir. 1991) 929 F.2d 478, 482, fn. 5; *Memphis Community School Dist. v. Starbura* (1986) 477 U.S. 299, 308 [106 S.Ct. 2537; 91 L.Ed.2d 249].

¹¹⁸ 42 U.S.C. § 1997e(e); see *Zehner v. Trigg* (7th Cir. 1997) 133 F.3d 459, 461. The requirement does not apply to suits filed by people who have been released on parole. *Kerr v. Puckett* (6th Cir. 1998) 138 F.3d 321, 323.

¹¹⁹ *Oliver v. Keller* (9th Cir. 2002) 289 F.3d 623, 627-628.

¹²⁰ See, e.g., *Canell v. Lightner* (9th Cir. 1998) 143 F.3d 1210, 1213 (First Amendment claim); *Lewis v. Sheaban* (N.D. Ill. 1999) 35 F.Supp.2d 633, 636 (access to court claims).

¹²¹ *Smith v. Wade* (1983) 461 U.S. 30, 55-56 [103 S.Ct. 1625; 75 L.Ed.2d 632]; *Kennedy v. Los Angeles Police Dept.* (9th Cir. 1989) 901 F.2d 702, 707; *Morgan v. Woessner* (9th Cir. 1993) 997 F.2d 1244, 1255; *Dang v. Cross* (9th Cir. 2005) 422 F.3d 800, 809-810.

¹²² *Smith v. Wade* (1983) 461 U.S. 30, 55-56 [103 S.Ct. 1625; 75 L.Ed.2d 632]; see also *Oliver v. Keller* (9th Cir. 2002) 289 F.3d 623, 629-630 (PLRA physical injury requirement inapplicable to actions for punitive damages).

¹²³ *Carey v. Piphus* (1978) 435 U.S. 247, 266-267 [98 S.Ct. 1042; 55 L.Ed.2d 252]; *George v. City of Long Beach* (9th Cir. 1992) 973 F.2d 706, 708.

¹²⁴ *Smith v. Wade* (1983) 461 U.S. 30, 55-56 [103 S.Ct. 1625; 75 L.Ed.2d 632]; see also *Oliver v. Keller* (9th Cir. 2002) 289 F.3d 623, 629-630 (PLRA physical injury requirement inapplicable to actions for punitive damages).

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17.16 Relief Available: Declaratory Relief

A request for declaratory relief asks the court to declare each party's rights and liabilities. Plaintiffs can seek declaratory relief in addition to or instead of money damages and/or an injunction. People asking for declaratory relief do not have to show that they have suffered any physical injury.¹²⁵

Declaratory relief should be requested in every case. If the court fails to grant injunctive relief, a declaratory judgment may persuade the court in the future to issue an injunction if the defendants continue their unlawful actions.

17.17 Relief Available: Injunctive Relief

Plaintiffs can ask for injunctive relief in addition to or instead of money damages and/or declaratory relief. Injunctive relief is a court order requiring prison officials to do (or not do) something. People asking for injunctive relief do not have to show that they have suffered any physical injury.¹²⁶ However, a court can order injunctive relief only if the plaintiff faces a reasonable likelihood of suffering future irreparable harm.¹²⁷ The likelihood that a constitutional right will be violated is sufficient.¹²⁸

A federal court's authority to issue an injunction is limited to correcting the constitutional violation, and cannot extend to requiring broader prison reforms.¹²⁹ However, parties can agree to enter into settlement agreements with more specific provisions, and can be required to substantially comply with those agreements.¹³⁰

The PLRA sets special limits on the courts' powers to order injunctive relief in prison conditions cases. A court may grant injunctive relief only if the injunction is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive way to correct the violation. The court also must take into consideration to any impact the injunction might have on public safety or administration of the criminal justice system.¹³¹ This requirement can be avoided if the parties enter into a settlement agreement that goes beyond the scope of the injunctive relief allowed by the PLRA.¹³²

There are two main types of injunctive relief: preliminary injunctive relief and permanent injunctive relief. A plaintiff can ask for a preliminary injunction that will take effect while the § 1983 case is proceeding. The court can grant a preliminary injunction if the plaintiff can show a likelihood

¹²⁵ *Davis v. District of Columbia* (D.C. Cir. 1998) 158 F.3d 1342, 1346.

¹²⁶ *Davis v. District of Columbia* (D.C. Cir. 1998) 158 F.3d 1342, 1346.

¹²⁷ *City of Los Angeles v. Lyons* (1983) 461 U.S. 95, 112 [103 S.Ct. 1660; 75 L.Ed.2d 675].

¹²⁸ *Elrod v. Burns* (1976) 427 U.S. 347, 373 [96 S.Ct. 2673; 49 L.Ed.2d 547].

¹²⁹ *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1087; *Hoptowit v. Ray* (9th Cir. 1982) 682 F.2d 1237, 1246; *Doty v. County of Lassen* (9th Cir. 1994) 37 F.3d 540, 543.

¹³⁰ See, e.g., *Rouser v. White* (9th Cir. 2016) 825 F.3d 1076.

¹³¹ 18 U.S.C. § 3626(a); see, e.g., *Oluma v. Gomez* (9th Cir. 1998) 133 F.3d 1237, 1239 (applies in cases filed prior to enactment of PLRA).

¹³² 18 U.S.C. § 3626(c).

of success on the merits and the possibility of irreparable injury if the court does not issue immediate relief, or if there are serious questions about the merits and the balance of hardships tips in the plaintiff's favor.¹³³ Generally, a court will not act on a request for preliminary relief that is simply included in the complaint. Instead, the plaintiff must make a motion for a preliminary injunction pursuant to the federal rules of procedure and the local rules of court. Under the PLRA, any preliminary injunctive relief terminates automatically after 90 days if the court does not act to make the injunction permanent.¹³⁴ After the court decides the main issues in the case, it can issue a permanent injunction.

A plaintiff who seeks injunctive relief should be aware that the case may be dismissed as “moot” if, before the case is decided, the plaintiff actually obtains the relief sought or if the relief is no longer justified or possible.¹³⁵ In some circumstances, a court may decide a case despite mootness, such as when the problem is likely to happen again to the plaintiff or to other people.¹³⁶

The defendants may ask the court to modify or terminate an ongoing injunction at any time if the injunction no longer meets the PLRA requirements of being necessary to correct a current and ongoing violation of the federal right, extending no further than necessary to correct the violation, and being the least intrusive means of correction.¹³⁷ In addition, prospective relief must end two years after it is ordered unless the court makes new written findings that continuing the injunction is justified under the PLRA.¹³⁸ If the plaintiff shows that it is necessary to keep the injunction in place, the defendant again may move for termination every year thereafter.¹³⁹ During the time that any termination motion is pending, the injunction will automatically be stayed and unenforceable.¹⁴⁰ Federal courts have ruled that these provisions do not violate the constitution.¹⁴¹

17.18 Defenses: In General

Prison officials and staff may have defenses to the lawsuit. These can generally be divided into factual defenses and legal defenses.

A defendant might raise a factual defense that they simply did not do what the plaintiff says was done. Alternatively, a defendant might admit doing the action, but contend that it was not done

¹³³ *Diamontiney v. Borg* (9th Cir. 1990) 918 F.2d 793, 795; *Taylor v. Honig* (9th Cir. 1990) 910 F.2d 627, 631.

¹³⁴ 18 U.S.C. § 3626(a)(2).

¹³⁵ See, e.g., *Sample v. Borg* (9th Cir. 1989) 870 F.2d 563 (lawsuit for injunctive relief moot where person challenged policies or rules issued by one prison, but then is transferred to a different prison).

¹³⁶ *Weinstein v. Bradford* (1975) 423 U.S. 147, 148 [96 S.Ct. 347; 46 L.Ed.2d 350]. *City of Los Angeles v. Lyons* (1983) 461 U.S. 95, 112 [103 S.Ct. 1660; 75 L.Ed.2d 675]; *United States Parole Commission v. Geraghty* (1980) 445 U.S. 388, 404 [100 S.Ct. 1202; 63 L.Ed.2d 479].

¹³⁷ 18 U.S.C. § 3626(b).

¹³⁸ 18 U.S.C. § 3626(b)(1)(A)(i), (b)(2).

¹³⁹ 18 U.S.C. § 3626(b)(1)(A)(ii), (b)(3).

¹⁴⁰ 18 U.S.C. § 3626(e)(2); *Miller v. French* (2000) 530 U.S. 327, 342 [120 S.Ct. 2246; 147 L.Ed.2d 326].

¹⁴¹ *Gilmore v. California* (9th Cir. 2000) 220 F.3d 987, 999; *Benjamin v. Jacobson* (2d Cir. 1999) 172 F.3d 144, 149; *Hadix v. Johnson* (6th Cir. 1998) 133 F.3d 940, 941-942; *Inmates of Suffolk County Jail v. Rouse* (1st Cir. 1997) 129 F.3d 649, 653. The termination provisions apply to injunctions imposed prior to the enactment of the PLRA. *Oluma v. Gomez* (9th Cir. 1998) 133 F.3d 1237, 1239; see also *Pierce v. County of Orange* (9th Cir. 2008) 526 F.3d 1190, 1206, 1211.

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with the state of mind necessary for a constitutional violation. The truth of a factual defense is decided by the trier of fact, which is either a jury or a judge (see § 17.31).

Defendants may also raise legal defenses. These include arguments that the defendant failed to exhaust administrative remedies (see § 17.5) or did not meet filing deadline (see § 17.13). Defendants also frequently assert that the plaintiff has failed to make a claim that is specific enough or that even if the plaintiff's factual claims are true, no federal right was violated or, in other words, that the plaintiff has “failed to state a claim upon which relief can be granted.” There are also defenses of absolute immunity (see § 17.19) and qualified immunity (see § 17.20). Defendants usually raise their legal defenses in a pre-trial motion to dismiss or motion for summary judgment (see §§ 17.26-17.27), which will be decided by the judge overseeing the case.

Although prison officials sometimes try to contend that they cannot accommodate people's rights due to financial constraints, lack of funds generally is not a valid defense.¹⁴²

17.19 Defenses: Absolute Immunity

Many state officials have absolute immunity under the U.S. Constitution's Eleventh Amendment from being sued in an “individual capacity” for money damages for acts performed as part of their official duties; this means that a plaintiff cannot win money damages even if the official's action violated federal law. However, officials do not have absolute immunity against lawsuits seeking only declaratory or injunctive relief against them in their “official capacity” (see § 17.16-17.17).¹⁴³

For example, judges cannot be held liable in § 1983 actions for money damages, for acts performed as part of their official duties.¹⁴⁴ Prosecutors and the state attorney general are immune for acts or failures to act as part of a judicial process, but they are not immune from suit in regards to some activities that are strictly investigative or administrative.¹⁴⁵

Law enforcement officers and other government agents have absolute immunity for their testimony in a judicial proceeding, and cannot be sued for false or misleading testimony.¹⁴⁶

¹⁴² *Jackson v. Bishop* (8th Cir. 1968) 404 F.2d 571, 580; *Gates v. Collier* (5th Cir. 1974) 501 F.2d 1291, 1320; *Payne v. Superior Court* (1976) 17 Cal.3d 908, 920-921 [132 Cal.Rptr. 405]; but see *Peralta v. Dillard* (9th Cir. 2014) 744 F.3d 1076 (medical provider cannot be held personally liable for deliberate indifference to person's serious medical needs if he could not render the needed services because of a lack of resources he could not change).

¹⁴³ *Kentucky v. Graham* (1985) 473 U.S. 159, 166 [105 S.Ct. 3099; 87 L.Ed.2d 114]; *Thornton v. Brown* (9th Cir. 2014) 757 F.3d 834; *Los Angeles Police Protective League v. Gates* (9th Cir. 1993) 995 F.2d 1469, 1472; *American Fire, Theft and Collision Managers v. Gillespie* (9th Cir. 1991) 932 F.2d 816, 818.

¹⁴⁴ *Stump v. Sparkman* (1978) 435 U.S. 349, 359 [99 S.Ct. 1099; 55 L.Ed.2d 331]; *Pierson v. Ray* (1967) 386 U.S. 547, 564 [87 S.Ct. 1213; 18 L.Ed.2d 288]; *Sadoski v. Mosley* (9th Cir. 2006) 435 F.3d 1076, 1079.

¹⁴⁵ *Van de Kamp v. Goldstein* (2009) 555 U.S. 335, 344 [129 S.Ct. 855; 172 L.Ed.2d 706]; *Cousins v. Lockyer* (9th Cir. 2009) 568 F.3d 1063, 1071-1072; see also *Brown v. California Dept. of Corrections* (9th Cir. 2009) 554 F.3d 747, 751 (prosecutor immune from suit for recommending denial of parole).

¹⁴⁶ *Bounds v. Smith* (1977) 430 U.S. 817, 825 [97 S.Ct. 1491; 52 L.Ed.2d 72]; *Wright v. Rushen* (9th Cir. 1987) 642 F.2d 1129, 1134.

Parole board commissioners cannot be held liable in § 1983 actions for money damages for acts performed as part of their official duties, such as decisions to grant, deny or revoke parole.¹⁴⁷ Similarly, the Governor has absolute immunity for reversing a grant of parole.¹⁴⁸

Prison officials are absolutely immune from lawsuits for enforcing sentences imposed by the courts.¹⁴⁹ However, prison officials and correctional officers generally do *not* have absolute immunity for other types of actions.¹⁵⁰ This is so even when they serve in the role of adjudicators, such as being hearing officers in prison disciplinary cases.¹⁵¹

Parole agents have absolute immunity for imposing parole conditions and for initiating revocation proceedings, but they are *not* absolutely immune in regards to law enforcement functions like investigating parole violations, arresting parolees or initiating parole holds.¹⁵²

17.20 Defenses: Qualified Immunity

Qualified immunity is another defense to a § 1983 lawsuit. Law enforcement staff and prison staff have qualified immunity if they reasonably could have believed that their conduct was lawful, even if the plaintiff's rights were indeed violated.¹⁵³ A court can dismiss a claim due to qualified immunity even if the prison officials do not assert the defense, if it is clear from the complaint that the plaintiff could not defeat a qualified immunity defense.¹⁵⁴

Like absolute immunity, a defendant can assert qualified immunity only when being sued in an individual capacity for money damages. Qualified immunity does not protect a defendant from being sued in an official capacity for injunctive or declaratory relief.¹⁵⁵ Qualified immunity also does

¹⁴⁷ *Brown v. California Dept. of Corrections* (9th Cir. 2009) 554 F.3d 747, 751; *Sellars v. Procnier* (9th Cir. 1981) 641 F.2d 1295, 1302.

¹⁴⁸ *Miller v. Davis* (9th Cir. 2008) 521 F.3d 1142, 1145.

¹⁴⁹ *Engbretson v. Mahoney* (9th Cir. 2013) 724 F.3d 1034, 1039.

¹⁵⁰ *Procnier v. Navarette* (1978) 434 U.S. 555, 561 [98 S.Ct. 855; 55 L.Ed.2d 24].

¹⁵¹ *Cleavinger v. Saxner* (1985) 474 U.S. 193, 203-204 [106 S.Ct. 496; 88 L.Ed.2d 507].

¹⁵² *Swift v. California* (9th Cir. 2004) 384 F.3d 1184, 1189, 1191; *Thornton v. Brown* (9th Cir. 2014) 757 F.3d 834, 839-840.

¹⁵³ *Anderson v. Creighton* (1987) 483 U.S. 635, 639 [107 S.Ct. 3034; 97 L.Ed.2d 523]; *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818 [102 S.Ct. 2727; 73 L.Ed.2d 396]. *Procnier v. Navarette* (1978) 434 U.S. 555, 561-562 [98 S.Ct. 855; 55 L.Ed.2d 24]; see *Sorrels v. McKee* (9th Cir. 2002) 290 F.3d 965, 970-971 (officers had qualified immunity from suit for enforcing regulation because their belief that the regulation was lawful was not unreasonable, even though the regulation was subsequently found unconstitutional). Courts can decide whether a claimed right was clearly established without first deciding whether the person's rights were actually violated. *Pearson v. Callahan* (2009) 555 U.S. 223, 232, 242 [129 S.Ct. 808; 172 L.Ed.2d 565]. Qualified immunity has been granted in a wide variety of contexts. See, e.g., *Hamby v. Hammond* (9th Cir. 2016) 821 F.3d 1085; *Chappell v. Mandeville* (9th Cir. 2013) 706 F.3d 1052; *Noble v. Adams* (9th Cir. 2011) 646 F.3d 1138, 1142-1143; *Jeffers v. Gomez* (9th Cir. 2001) 267 F.3d 895, 910; *Marquez v. Gutierrez* (9th Cir. 2003) 322 F.3d 689, 691; *Estate of Ford v. Ramirez-Palmer* (9th Cir. 2002) 301 F.3d 1043, 1050-1053; *Osolinski v. Kane* (9th Cir. 1996) 92 F.3d 934, 936; 1052-1053; *Kelley v. Borg* (9th Cir. 1995) 60 F.3d 664, 666.

¹⁵⁴ *Chavez v. Robinson* (9th Cir. 2016) 817 F.3d 1162, 1169.

¹⁵⁵ *Kentucky v. Graham* (1985) 473 U.S. 159, 166 [105 S.Ct. 3099; 87 L.Ed.2d 114]; *Los Angeles Police Protective League v. Gates* (9th Cir. 1993) 995 F.2d 1469, 1472; *American Fire, Theft and Collision Managers v. Gillespie* (9th Cir. 1991) 932 F.2d 816, 818; *Thornton v. Brown* (9th Cir. 2014) 757 F.3d 834.

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not apply when a local government agency is being sued for money damages¹⁵⁶ or when the lawsuit is against a private party acting under color of state law.¹⁵⁷

In deciding whether a defendant is entitled to qualified immunity, courts make a two-part inquiry: (1) was the law governing the state official's conduct clearly established?, and, if so, (2) under that law could a reasonable state official have believed his conduct was lawful?¹⁵⁸ A right may be clearly established by a specific court decision on the same topic or by decisions or from which a reasonable person would infer that such conduct is unconstitutional.¹⁵⁹ However, there are some situations in which a reasonable officer should know that conduct violates a person's rights even if that specific conduct has not previously been addressed by statutes or cases.¹⁶⁰

PROCEDURES FOR BRINGING FEDERAL CIVIL RIGHTS LAWSUITS

17.21 Preparing and Filing the Complaint

A person begins a federal civil rights lawsuit by filing a document called a complaint. The complaint must state why the court has jurisdiction (legal authority to hear the case), set forth the claims as to why the plaintiff is entitled to relief, and a demand whatever types of relief the plaintiff wants to get.¹⁶¹ The federal district courts have fill-in-the-blank forms for people in state prison to use for filing § 1983 actions; a person who is filing a complaint without the help of a lawyer should always use the form; additional pages can be attached if needed.

Each court uses a slightly different form, but the basic contents are the same. The complaint forms for *pro se* plaintiffs in the Central, Eastern, Northern and Southern Districts of California are included in Appendix 17-A. These forms should also be available in the prison law libraries and on the courts' websites. A sample § 1983 complaint, as drafted by a lawyer who is not using the standard forms, is attached as Appendix 17-B.

The first part of the complaint form requires the person to fill in basic information such as the names of the plaintiff and defendants. A person who does not know the names of some or all of the defendants may be able to call the unknown defendants "John Doe" or "Jane Doe," then later

¹⁵⁶ *Brandon v. Holt* (1985) 469 U.S. 464, 473 [105 S.Ct. 873; 83 L.Ed.2d 878].

¹⁵⁷ *Connor v. City of Santa Ana* (9th Cir. 1990) 897 F.2d 1487, 1492, fn. 9.

¹⁵⁸ *Jeffers v. Gomez* (9th Cir. 2001) 267 F.3d 895, 910-911.

¹⁵⁹ See, e.g., *Jeffers v. Gomez* (9th Cir. 2001) 267 F.3d 895, 910-911; *Newell v. Sauser* (9th Cir. 1996) 79 F.3d 115, 117; *Kelley v. Borg* (9th Cir. 1995) 60 F.3d 664, 666-667; *Vaughan v. Ricketts* (9th Cir. 1988) 859 F.2d 736, 740-741.

¹⁶⁰ *Hope v. Pelzer* (2002) 536 U.S. 730, 741 [122 S.Ct. 2508; 153 L.Ed.2d 666] (no qualified immunity where prison guards handcuffed person in prison to hitching post for seven hours, despite his having been subdued); *Carrillo v. County of Los Angeles* (9th Cir. 2015) 798 F.3d 1210, 1219-1221 (no qualified immunity where police failed to disclose evidence that would have cast serious doubt on the testimony of key prosecution witnesses); *Foster v. Rannels* (9th Cir. 2009) 554 F.3d 807, 814 (officer not entitled to qualified immunity for depriving a person in prison of food); *Hamilton v. Endell* (9th Cir. 1992) 981 F.2d 1062, 1066 (prison officials who deliberately ignored express orders of person's prior physician could not claim qualified immunity); *Allen v. City and County of Honolulu* (9th Cir. 1994) 39 F.3d 936, 938 (no qualified immunity where person forced to choose between right to law library access and right to outdoor exercise).

¹⁶¹ Federal Rules of Civil Procedure, rule 8(a).

find out the defendants' names through discovery and amend the complaint (see § 17.29).¹⁶² The person must identify whether the defendants are sued in their official or individual capacities (see § 17.8). The initial sections of the form usually also ask for information about whether administrative remedies have been exhausted (see § 17.5).

The next parts of the form generally are where the person sets forth the claims. First, they must describe the basic facts of the case: what happened, when it happened, who did it, and facts showing the defendant acted with the required state of mind. Second, they should identify what federal constitutional or statutory rights have been violated; this need not include legal arguments or lengthy discussions of the law but should put the defendants on notice as to the nature of the claims.¹⁶³ If the lawsuit includes related claims under state tort law in addition to federal legal claims (see § 17.11 and Chapter 18) the complaint should set forth the legal grounds for the state law action and describe how the administrative remedies for a state tort case have been exhausted (see §§ 18.3-18.7).

Finally, the person should state what relief is being requested (see §§ 17.15-17.17). They may seek more than one type of relief, and should describe the amounts and types of damages or the type of court order being sought. A person can also include a general request that the court order any other relief that it finds to be appropriate.

The standard court forms for *pro se* plaintiffs have little room for explaining the details of the case, presumably with the goal that courts will not have to wade through excessive and disorganized material. People should sort out the important facts from those that are irrelevant and to write statements of facts that are clear and to the point, but that include all the basic information necessary for the case to go forward. Nonetheless, a person who does need more space to describe the important facts should attach additional pages to the standard complaint form.

The plaintiff files the complaint by mailing the completed and signed form to the court, along with any filing fee or a request to proceed without paying a filing fee (see § 17.22). The plaintiff should also send an extra copy of the cover page and a self-addressed stamped envelope. When the complaint is filed, the court clerk will write the case number and stamp the filing date on the cover page, and then return the cover page to the plaintiff. The plaintiff will then have an official record that the complaint was filed and will know what identification number has been assigned to the case. The plaintiff should use this identification number on every pleading, motion, or paper filed in the case.

If a plaintiff wants to ask the court to appoint an attorney, they should file a motion or request for appointment of an attorney with the complaint. The motion should explain that they do not have funds to hire an attorney, describe prior efforts to find an attorney to take the case on a contingency fee or volunteer basis, and explain why they are unable to adequately represent themselves. In deciding whether to appoint an attorney, a district court considers whether there is a likelihood of success on the merits, and whether the person is unable to articulate their claims in light of the complexity of the legal issues involved.¹⁶⁴ § 17.2 contains additional information on the rules and procedures for appointment of attorneys in federal civil rights cases.

¹⁶² Federal Rules of Civil Procedure, rule 15(a).

¹⁶³ *Alvarez v. Hill* (9th Cir. 2008) 518 F.3d 1152 (person representing himself was allowed to pursue claim even though his complaint did not cite the governing statute because the filings nonetheless provided the defendants with fair notice of the basis for the claim).

¹⁶⁴ *Cano v. Taylor* (9th Cir. 2014) 739 F.3d 1214, 1218.

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17.22 Requesting *In Forma Pauperis* Status and/or Paying Filing Fees

There is a \$400 fee for filing a complaint in federal court (\$350 filing fee plus \$50 administrative fee). A person who has money to pay the filing fee must send this amount to the court with the complaint.¹⁶⁵

Plaintiffs who do not have enough money to pay the federal court filing fee must request permission to proceed without paying the fee. A plaintiff who is not required to pay the full filing fee is proceeding “*in forma pauperis*” or has “IFP status.” The request for IFP status should be sent to the court with the complaint. The plaintiff must disclose the value of any assets and income (if any), and state that they are unable to pay the fee.¹⁶⁶ A plaintiff who is in prison must also get a certified copy of their trust account statement from prison staff for the six-month period prior to the filing of the complaint, and attach the statement to the IFP request.¹⁶⁷ The federal district courts in California have standard forms for IFP applications, which are included in Appendix 16-C.

There are two PLRA rules in regards to IFP status in federal court that apply only to plaintiffs who in prison:

- ◆ A person in prison who is granted in IFP status must eventually pay some of all of the court filing fee if able to do so.¹⁶⁸ When the court grants IFP status, it will review the person’s trust account statement for the six-month period preceding the filing of the complaint and require payment of a filing fee equal to 20 percent of either (1) the average monthly deposits to their prison account, or (2) the average monthly balance in the prison account for, whichever is greater.¹⁶⁹ The person must thereafter make monthly payments of 20 percent of the preceding month’s income; the CDCR must send these payments to the court clerk each time the amount in the person’s trust account exceeds \$10 until either the case is completed or the full filing fee is paid.¹⁷⁰ The filing fee is deducted from the trust account on a per case basis, so a person who has more than one case going would pay a 20 percent monthly installment on each case.¹⁷¹
- ◆ Under the “three strikes” rule, a person in prison is not eligible for IFP status if they have filed three or more federal court actions that were dismissed for being frivolous, malicious

¹⁶⁵ 28 U.S.C. § 1914(a).

¹⁶⁶ 28 U.S.C. § 1915(a)(1).

¹⁶⁷ 28 U.S.C. § 1915(a)(2). If a plaintiff fails to file a trust account statement, the court should give the plaintiff an opportunity to either pay the fees or demonstrate why they cannot. *Sanders v. Yarborough* (2006) 137 Cal.App.4th 764, 769 [40 Cal.Rptr.3d 565]. Note that people who are civilly committed under the Sexually Violent Predator Act are not “prisoners” and are not subject to this additional PLRA requirement. *Page v. Torrey* (9th Cir. 2000) 201 F.3d 1136, 1139. Also, persons who have been released from prison before the lawsuit is filed do not have to include a trust account statement. *Haynes v. Scott* (9th Cir. 1997) 116 F.3d 137, 138.

¹⁶⁸ 28 U.S.C. § 1915(b)(1) and (4); *Taylor v. Delatoore* (9th Cir. 2002) 281 F.3d 844, 850-851.

¹⁶⁹ 28 U.S.C. § 1915(b)(1); *Taylor v. Delatoore* (9th Cir. 2002) 281 F.3d 844, 848-850. A person who is released while the suit is pending, but before the filing fee is fully paid, is not subject to the PLRA fee requirements after release. *In re Prison Litigation Reform Act* (6th Cir. 1997) 105 F.3d 1131, 1138.

¹⁷⁰ 28 U.S.C. § 1915(b)(2).

¹⁷¹ *Bruce v. Samuels* (2016) ___ U.S. ___ [136 S.Ct. 627; 193 L.Ed.2d 496].

or failing to state a claim.¹⁷² To count as a strike, a dismissal must become final before the new action is filed.¹⁷³ A court can allow a person with three or more strikes to obtain IFP status only if the lawsuit shows that they are in immediate danger of serious physical injury.¹⁷⁴ The burden is on the defendant to produce sufficient evidence to establish that the person has three strikes. If the defendant meets this burden, then IFP status will be denied unless the person can show why the “three strikes” provision does not apply.¹⁷⁵

People who file their § 1983 cases in state court rather than in federal court should be aware that the state courts have their own filing fees and processes for obtaining IFP status, though these are similar to the federal court procedures. The basic filing fee for most civil cases in state court is \$435; the actual fee for a particular case may be lower or higher depending on the amount of damages sought and local surcharges.¹⁷⁶ People who have enough money must pay the state court filing fee, along with a \$3 handling fee to the CDCR.¹⁷⁷ People who do not have funds to pay the fee may request IFP status and must present a trust account statement showing their accounts for the prior six months.¹⁷⁸ People who are allowed to file a complaint without paying the filing fee will be required to make periodic payments toward the fee if they are able to do so.¹⁷⁹ A plaintiff who has repeatedly filed frivolous lawsuits may be barred from obtaining IFP status.¹⁸⁰

17.23 Initial Screening of the Complaint by the Court

After a person files a complaint, the court will screen the complaint to determine whether it is “frivolous or malicious,” fails to state a valid federal claim or requests monetary relief from a defendant who has absolute immunity.¹⁸¹ The court can dismiss the complaint for any of these reasons before it is served on (sent to) the defendants; even if the court allows the case to proceed, it can dismiss the

¹⁷² 28 U.S.C. § 1915(g); *Rodriguez v. Cook* (9th Cir. 1998) 163 F.3d 584, 587-591; *Rivera v. Allin* (11th Cir. 1998) 144 F.3d 719, 723-729; *Knapp v. Hogan* (9th Cir. 2013) 738 F.3d 1106, 1108. Suits dismissed prior to the 1996 effective date of the PLRA count toward the three strikes provision. *Tierney v. Kupers* (9th Cir. 1997) 128 F.3d 1310, 1311. However, dismissal for lack of subject-matter jurisdiction does not count as a “strike.” *Moore v. Maricopa County Sheriff’s Office* (9th Cir. 2011) 657 F.3d 890, 893-894; *Washington v. Los Angeles County Sheriff’s Department* (9th Cir. 2016) 833 F.3d 1048 (partial “Heck” dismissals and “Younger” dismissals are not “strikes”). Cases discussing whether various dismissals constitute strikes include *El-Shaddai v. Zamora* (9th Cir. 2016) 833 F.3d 1036; *Richey v. Dabne* (9th Cir. 2015) 807 F.3d 1202, 1208; *O’Neal v. Price* (2008) 531 F.3d 1146; and *Barela v. Variz* (S.D. Cal. 1999) 36 F.Supp.2d 1254, 1258.

¹⁷³ *Silva v. Di Vittorio* (9th Cir. 2011) 658 F.3d 1090, 1100-1101.

¹⁷⁴ 28 U.S.C. § 1915(g); *Andrews v. Cervantes* (9th Cir. 2007) 493 F.3d 1047, 1053; *Williams v. Paramo* (9th Cir. 2015) 775 F.3d 1182, 1190.

¹⁷⁵ *Andrews v. King* (9th Cir. 2005) 398 F.3d 1113, 1116.

¹⁷⁶ Government Code § 70611; Superior Court of California Statewide Civil Fee Schedule, eff. January 1, 2014, <http://www.courts.ca.gov/documents/filingfees.pdf>.

¹⁷⁷ Penal Code § 2601(d).

¹⁷⁸ Government Code § 68635(c). The right to file or proceed with a civil action in state court may not to be denied due to inability to pay court fees. Government Code § 68635(h).

¹⁷⁹ Government Code § 68635(e); see also *Sanders v. Yarborough* (2006) 137 Cal.App.4th 764 [40 Cal.Rptr.3d 565] (describing IFP provisions for people in prison).

¹⁸⁰ Code of Civil Procedure § 391, § 391.7.

¹⁸¹ 28 U.S.C. § 1915A. This PLRA screening procedure does not apply to cases filed by people who are no longer incarcerated. *Olivas v. Nevada* (9th Cir. 2017) 856 F.3d 1281.

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case at a later time if the court decides at a later point that the complaint is insufficient.¹⁸² When reviewing the complaint, the court must give a person who is proceeding without an attorney the benefit of any reasonable doubt as to whether the complaint shows that they may be entitled to relief.¹⁸³

A complaint is “frivolous” if the plaintiff does not make a rational argument in support of an actionable claim.¹⁸⁴ Common reasons why cases are dismissed as frivolous are:

- ◆ The complaint is so vague in its claims that the court cannot tell what happened or what is the nature of the claims.
- ◆ The complaint present claims that are already pending in another lawsuit filed by the same plaintiff or that are barred because they have already been decided in a previous case.
- ◆ It is obvious from the complaint or court records that the defendant has a complete defense to the claim.
- ◆ The complaint raises claims that are wholly fanciful, fantastic, or delusional.¹⁸⁵

Furthermore, a plaintiff — even one proceeding *pro se* — may be subject to money sanctions if the court decides the action is frivolous or that a factual statement in the complaint is a lie.¹⁸⁶

The PLRA also requires a court to dismiss a case if the complaint fails to state a claim upon which relief can be granted.¹⁸⁷ However, courts have the discretion to give a plaintiff with IFP status an opportunity to amend the complaint to correct such problems.¹⁸⁸ Generally, the court should grant permission to amend a complaint at least once unless the problems with the complaint could not possibly be cured.¹⁸⁹ A plaintiff who files an amended complaint must restate all the allegations of the

¹⁸² 28 U.S.C. § 2925(e)(2).

¹⁸³ *Haines v. Kerner* (1972) 404 U.S. 519, 520 [92 S.Ct. 594; 30 L.Ed.2d 652]; *King v. Atiyeh* (9th Cir. 1987) 814 F.2d 565, 567.

¹⁸⁴ *Neitzke v. Williams* (1989) 490 U.S. 319, 325 [109 S.Ct. 1827; 104 L.Ed.2d 338]; *Franklin v. Murphy* (9th Cir. 1984) 745 F.2d 1221, 1227; *Cato v. United States* (9th Cir. 1995) 70 F.3d 1103, 1106.

¹⁸⁵ See *Denton v. Hernandez* (1992) 504 U.S. 25, 33 [112 S.Ct. 1728; 118 L.Ed.2d 340]; *Cato v. United States* (9th Cir. 1995) 70 F.3d 1103, 1106; *Franklin v. Murphy* (9th Cir. 1984) 745 F.2d 1221, 1228; *Martin v. Sias* (9th Cir. 1996) 88 F.3d 774, 775; *O’Loughlin v. Doe* (9th Cir. 1990) 920 F.2d 614, 616.

¹⁸⁶ Federal Rules of Civil Procedure, rule 11; *Warren v. Guelker* (9th Cir. 1994) 29 F.3d 1386, 1388; *Zatko v. Rowland* (N.D. Cal. 1993) 835 F.Supp. 1174, 1182.

¹⁸⁷ 28 U.S.C. § 1915(e)(2); 28 U.S.C. § 1915A; 42 U.S.C. § 1997(e)(c)(1); see, e.g., *Pena v. Gardner* (9th Cir. 1992) 976 F.2d 469, 471; *Barren v. Harrington* (9th Cir. 1998) 152 F.3d 1193, 1194.

¹⁸⁸ *Lopez v. Smith* (9th Cir. 2000) 203 F.3d 1122, 1129; *Bazronx v. Scott* (5th Cir. 1998) 136 F.3d 1053, 1054; *Perkins v. Kansas Dept. of Corrections* (10th Cir. 1999) 165 F.3d 803, 806. However, one Circuit has held that under the PLRA, courts may not grant leave to amend. *Benson v. O’Brian* (6th Cir. 1999) 179 F.3d 1014, 1016.

¹⁸⁹ *Franklin v. Murphy* (9th Cir. 1984) 745 F.2d 1221, 1228; *Cato v. United States* (9th Cir. 1995) 70 F.3d 1103, 1106; *Lopez v. Smith* (9th Cir. 2000) 203 F.3d 1122, 1129; see also *Doe v. United States* (9th Cir. 1995) 58 F.3d 494, 497; *Dolan v. Connolly* (2d Cir. 2015) 794 F.3d 290.

original complaint and add whatever information is necessary to fully state a valid legal claim.¹⁹⁰ However, the plaintiff need not pay a new filing fee or submit a new IFP application. If the court wants to consider any additional information in deciding whether the complaint properly states a claim, the matter becomes a summary judgment proceeding in which both sides must be given an opportunity to present further arguments.¹⁹¹

During the initial screening, the court will also determine whether the plaintiff has attached all the necessary documents to support IFP status and will decide whether to grant an IFP request.¹⁹²

The type of dismissal ordered by the court determines whether the plaintiff can try to re-file a new complaint on the issues. When a case is dismissed *with* prejudice, the case cannot be re-filed. If a case is dismissed *without* prejudice to refile, the plaintiff still has the option of correcting the problems with the claims and filing a new complaint.¹⁹³ However, the plaintiff must pay a new filing fee or file a new IFP application.

If a case is dismissed, the plaintiff may appeal the dismissal to the federal appellate court with jurisdiction over the district. For all federal lawsuits in California, the proper court is the Ninth Circuit Court of Appeals (see § 17.32).

17.24 Service of the Complaint and Summons

If the federal district court decides that the complaint may go forward, it will order the court clerk to issue a summons. The summons is a document that informs the defendants that the case has been filed and that they must respond to the claims raised in the complaint. A copy of the complaint and summons then must actually be given to (served on) the defendants by a person (not by mail). If the plaintiff has been granted permission to proceed IFP, the court should order the U.S. Marshal's Office to serve the complaint and summons on the defendants.¹⁹⁴ If the plaintiff is *not* proceeding IFP, a person in prison will have to either hire a professional process server or get a friend, family member or advocate to serve the documents.¹⁹⁵

In order for the U.S. Marshal's Office to serve the papers, a plaintiff who is proceeding IFP must request that the Marshal serve the papers and provide the Marshal with all necessary information.¹⁹⁶ Typically, the plaintiff must provide the name and work addresses of all defendants. Some courts may also require a plaintiff to provide sufficient copies of the complaint so that each defendant can be given a copy; the court clerk or the Marshal generally will notify the plaintiff of any such requirement.

¹⁹⁰ *Lopez v. Smith* (9th Cir. 2000) 203 F.3d 1122, 1129. A dismissal with leave to amend cannot be appealed unless the plaintiff files a written notice with the district court stating they do not intend to amend the complaint. *WMX Technologies, Inc. v. Miller* (9th Cir. 1997) 104 F.3d 1133, 1135.

¹⁹¹ *Lucas v. California Dept. of Corrections* (9th Cir. 1995) 66 F.3d 245, 248.

¹⁹² 28 U.S.C. §§ 1915, 1915A.

¹⁹³ See, e.g., *Onapolis v. Lamanna* (N.D. Ohio 1999) 70 F.Supp.2d 809, 810.

¹⁹⁴ See 28 U.S.C. § 1915(d); *Puett v. Blandford* (9th Cir. 1991) 912 F.2d 270, 275.

¹⁹⁵ Federal Rules of Civil Procedure, rule 4; 28 U.S.C. § 1915(d).

¹⁹⁶ *Bondette v. Barnette* (9th Cir. 1991) 923 F.2d 754, 757; *Walker v. Sumner* (9th Cir. 1994) 14 F.3d 1415, 1421.

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The person who serves the complaint and summons must complete the portion of the summons stating that the documents have been served and then return it to the court clerk. If it is the Marshal who serves the document, the Marshal should also notify the plaintiff of the date of service.

17.25 The Defendant's Response and the Plaintiff's Opposition or Reply Brief: In General

The defendants have 20 days after being served with the complaint to file some type of response.¹⁹⁷ The court must order the defendants to respond “if it finds that the plaintiff has a reasonable opportunity to prevail on the merits;” a defendant may waive (give up) the right to file a response.¹⁹⁸ There are three common types of response: (1) a motion to dismiss, (2) a motion for summary judgment, or (3) an answer. The type of response filed by the defendant will affect what type of opposition or reply brief will be filed by the plaintiff and what proceedings will happen before the case is resolved. Each of these types of responses are discussed further in §§ 17.26-17.28.

It is critically important for a plaintiff to get a copy of the nationwide Federal Rules of Civil procedure and the local rules for the court where the case is proceeding. Those rules will have specific information about the document filing deadlines and requirements as the case proceeds. Copies of the rules of court should be available from the court's website or the prison law library. Some court clerks may be willing to send a person in prison a copy of the rules on request.

After a defendant files a response, there will be a deadline for the plaintiff to file the appropriate opposition or reply brief; the timeline is usually in the range of 14 days, though different courts have somewhat different rules. For plaintiffs who are not incarcerated, the deadline is calculated by counting calendar days and the court must receive the document by the last of the deadline period; if the last day falls on a weekend or court holiday the court must receive the document by the next business day.¹⁹⁹ However, for plaintiffs who are in prison, there is a special “mailbox rule.” For people in prison, documents are deemed filed on the date the person presents the documents to prison authorities or places documents in the prison mail system for forwarding to the court.²⁰⁰

A plaintiff who cannot meet the deadline for filing the opposition or reply brief should file a request asking the court for an extension of time. The request should explain why more time is needed, and state how much additional time is being sought and what the new due date will be if the request is granted. Ideally, the plaintiff should file the request before the current deadline runs out; if this is not possible, the plaintiff should explain why the request was not filed before the deadline and ask the court to grant the request anyway.²⁰¹

After the complaint and summons are served, a copy of every pleading, motion, or paper filed with the court must be served on the other side. It is the responsibility of the party who is filing the

¹⁹⁷ Federal Rules of Civil Procedure, rule 12(a)(1)(A).

¹⁹⁸ 42 U.S.C. § 1997e(g).

¹⁹⁹ Federal Rules of Civil Procedure, rule 6.

²⁰⁰ *Houston v. Lack* (1988) 487 U.S. 266, 270 [108 S.Ct. 2379; 101 L.Ed.2d 245]; *Caldwell v. Amend* (9th Cir. 1994) 30 F.3d 1199, 1202; see also *Hostler v. Groves* (9th Cir. 1990) 912 F.2d 1158, 1160; *Faile v. Upjohn* (9th Cir. 1993) 988 F.2d 985, 988; *Koch v. Ricketts* (9th Cir. 1995) 68 F.3d 1191, 1192.

²⁰¹ Federal Rules of Civil Procedure, rule 6(b).

document to serve it—the court will not do it and will not order the Marshal to do it. Service can be done in any of several different ways; for people in prison, service by U.S. Mail is the norm. A plaintiff must do two things to serve a document. First the plaintiff must mail a copy of the document to each of the defendants or defendants' attorneys.²⁰² Second, when sending the original document to the court for filing, the plaintiff must attach a “proof of service” to the document that is being filed with the court; a court will not accept a document that does not contain a proper proof of service. The proof of service must state under penalty of that the document is being served by mail, list the names and addresses of the defendants or attorneys who are being served, and provide the date of mailing. The plaintiff can fill out and sign the proof of service form themselves. A sample proof of service is attached as Appendix 15-E.

When a plaintiff or defendant files a motion (a request to the court to take some type of action related to the lawsuit), local federal court rules generally require that the motion state (or “notice”) a date on which the motion will be heard by the judge assigned to the case; generally, the person making the motion must find out which dates the court hears motions and then pick a date a certain number of days after filing and serving the motion papers.²⁰³ However, the courts have different rules about when the notice requirement may be waived and whether there will be oral arguments. For example, the federal district court for the Eastern District of California has special rules for cases in which a plaintiff is incarcerated and proceeding without an attorney; in such a case, most motions do not need to be “noticed” for a particular date or orally argued.²⁰⁴ Other districts, including the Northern, Southern and Central Districts of California, may allow the parties to waive oral argument or give the judge the discretion to make an exception to the notice and oral argument requirements.²⁰⁵ Some courts may allow the parties to participate in oral arguments by telephone. A person should always check the local rules of the court.

17.26 Proceedings on a Motion to Dismiss the Case

One type of response that a defendant can file is a motion to dismiss. A motion to dismiss asserts that the complaint is legally insufficient in some way, even if all of the facts are true. For example, a defendant might argue that the complaint fails to state a federal claim for which relief can be granted.²⁰⁶

If a defendant files a motion to dismiss, the plaintiff will have an opportunity to file an opposition brief arguing why the motion should be denied. If the motion to dismiss includes declarations or other new information for the court to consider, the court cannot grant the motion without first giving a *pro se* plaintiff a notice explaining the right to respond to the motion to dismiss.²⁰⁷

²⁰² Federal Rules of Civil Procedure, rule 5.

²⁰³ See, e.g., Northern District of California Local Rule 7-2(a).

²⁰⁴ Eastern District of California Local Rule 78-230(l).

²⁰⁵ See, e.g., Northern District of California Local Rule 7-6; Southern District of California Local Rule 7.1(d); Central District of California Local Rule 7-15.

²⁰⁶ Federal Rules of Civil Procedure rule 12(b); see *Cooper v. Pate* (1964) 378 U.S. 546, 548 [84 S.Ct. 1733; 12 L.Ed.2d 1030].

²⁰⁷ *Stratton v. Buck* (9th Cir. 2012) 697 F.3d 1004, 1007.

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After the plaintiff files an opposition to the motion, the defendant will have an opportunity to file a reply brief. The court may or may not hold a hearing or allow oral argument before deciding the motion.

If the court denies the motion, it will order the defendant to file an answer (see § 17.28). If the court grants the motion, the case will be dismissed. However, in most cases, the court will also give the plaintiff an opportunity to file an amended complaint that corrects the problems. Indeed, when a person is proceeding without an attorney, if a court dismisses a case for failure to state a claim it must advise the plaintiff of why the complaint is insufficient and must allow the plaintiff to file an amended complaint unless it is clear that the defect could not be cured.²⁰⁸

If the case is dismissed, the plaintiff can file an appeal from the dismissal order (see § 17.32).

17.27 Proceedings on a Motion for Summary Judgment

Defendants in cases from people in prison commonly respond to a complaint by filing a motion for summary judgment. A defendant who moves for summary judgment must show that, based on undisputed facts, the defendant is entitled to win the case.²⁰⁹ Note that plaintiffs can also file motions for summary judgment if the defendant does not dispute the important facts.

The vast majority of prison cases are resolved by courts granting summary judgment for the defendants; thus it is very important for a plaintiff to fully respond to a summary judgment motion. The plaintiff will have an opportunity to file an opposition brief in which the plaintiff must either submit evidence showing that there are disputed facts or, if the facts are undisputed, convince the court that the law does not entitle the defendant to win. Note that in *pro se* cases, summary judgment may not be entered against the person unless the court or the defendant has given fair, timely and adequate notice of what the person must do to oppose those motions.²¹⁰

Also, if the defendant files a motion for summary judgment early in the proceedings, the plaintiff can ask the court to delay the decision (the legal term is “continuing”) until after discovery can be conducted, which allows the plaintiff to attempt to obtain additional evidence for opposing the motion.²¹¹ If summary judgment is granted for the defendants, the plaintiff can appeal that decision (see § 17.32).

17.28 Proceedings When a Defendant Files an Answer

The defendant can respond to the complaint by filing an answer (instead of filing a motion to dismiss or for summary judgment), or if the court denies such motions. An answer is a document that admits or denies each of the allegations made in the complaint. The answer will also set forth any

²⁰⁸ *Noll v. Carlson* (9th Cir. 1987) 809 F.2d 1446, 1449.

²⁰⁹ See Federal Rules of Civil Procedure, rule 56; *Anderson v. Liberty Lobby* (1986) 477 U.S. 242, 251-252 [106 S.Ct. 2505; 91 L.Ed.2d 202]; *Celotex Corp. v. Catrett* (1986) 477 U.S. 317, 325 [106 S.Ct. 2548; 91 L.Ed.2d 265].

²¹⁰ *Rand v. Rowland* (9th Cir. 1998) 154 F.3d 952, 95; *Klinge v. Eikenberry* (9th Cir. 1988) 849 F.2d 409, 411. General advisements before any summary judgment motion has actually been made do not provide sufficient notice. *Woods v. Carey* (9th Cir. 2012) 684 F.3d 934, 938.

²¹¹ *Murrell v. Bennett* (5th Cir. 1980) 615 F.2d 306, 311; *Griffith v. Wainwright* (11th Cir. 1985) 772 F.2d 822, 825 (person entitled to special consideration because of difficulty gaining access to information from prison officials).

defenses upon which the defendant will rely. If the defendant files an answer, the plaintiff will have 20 days to file a reply brief.²¹²

If the defendant files an answer, it is the plaintiff's responsibility to initiate further proceedings and to bring the case to trial pursuant to the federal of civil procedure rules and the local court rules. Plaintiffs acting in *pro se* have the same duty to diligently pursue an action as do attorneys.²¹³

17.29 Seeking Discovery

Prior to setting a trial date, each party is allowed to seek information from the other regarding the facts. This process is called “discovery.” The scope of discovery in federal court is extremely broad: if the information sought appears reasonably calculated to lead to discovery of admissible evidence, it may be obtained by either party.²¹⁴

These there are a variety of methods for conducting discovery:

- ◆ interrogatories, which are written lists of questions that the other side must answer under oath;²¹⁵
- ◆ depositions, which are face-to-face questioning under oath and recorded by a court reporter;²¹⁶
- ◆ requests for admissions, which can help narrow the issues in dispute. Any statement in a request for an admission that is admitted or is not denied by the defendant will be considered to be true;²¹⁷
- ◆ requests for documents or other items. The plaintiff should request that the defendants produce copies of all documents, such as policy statements, guidelines, incident reports or other written materials, relevant to the case. These could include documents that might show the official duties or policies of the defendants and the names of any other knowledgeable or responsible persons;²¹⁸
- ◆ requests for mental and/or physical examinations.²¹⁹

Sample discovery requests can be found in Appendix 17-C.

There are privileges under federal law that sometimes exempts a defendant from having to provide certain types of information. Several types of privileges may be relevant in cases involving

²¹² Federal Rules of Civil Procedure, rule 12(a)(1)(C).

²¹³ See, e.g., Northern District of California Local Rule 3-9(a); Eastern District of California Local Rule 83-183(a).

²¹⁴ Federal Rules of Civil Procedure, rule 26; see e.g., *Agster v. Maricopa County* (9th Cir. 2005) 422 F.3d 836, 839.

²¹⁵ Federal Rules of Civil Procedure, rule 33.

²¹⁶ Federal Rules of Civil Procedure, rule 30.

²¹⁷ Federal Rules of Civil Procedure, rule 36.

²¹⁸ Federal Rules of Civil Procedure, rule 34.

²¹⁹ Federal Rules of Civil Procedure, rule 35.

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people in prison. For example, there is an official information privilege if disclosing investigation files that were compiled for law enforcement purposes would be contrary to the public interest, interfere with law enforcement proceedings, deprive a person of a fair trial, unreasonably invade another's personal privacy, risk danger to life, or pose a reasonable risk of disclosure of national security information, the identity of a confidential informant, or confidential law enforcement techniques.²²⁰

As with other pre-trial processes, the individual federal courts each have specific rules for when and how discovery is to be carried out. Ideally, discovery is mostly conducted between the parties without need for the court to intervene or issue orders. However, if the defendants do not cooperate with or respond to discovery requests, the plaintiff may have to file a motion to compel discovery.²²¹ Also, a person in prison who has difficulties conducting discovery may want to file a renewed request for appointment of counsel at this stage of the case (see § 17.2).

17.30 Case Management, Settlement, and Pre-Trial Conferences

There are several different types of hearings that a court may hold while the parties are conducting discovering and otherwise preparing their cases. These include case management conferences, settlement conferences, and pre-trial conferences.

A case management conference (sometimes called a status conference) is a meeting of the lawyers and the court for the purpose of setting scheduling deadlines and discussing other case logistics. A person who is bringing a case in *pro se* will not normally be able to attend such a conference. For that reason, the conferences are usually not held in *pro se* cases.²²² Some courts may be able to conduct such conferences by telephone.

A settlement conference may be held in an attempt to get parties reach an agreement that will resolve the case. A settlement conference may be requested by the parties or ordered by the court.²²³ Again, for a *pro se* person to participate in such a conference, the court would have to either order prison officials to bring the plaintiff to court or allow the plaintiff to participate in a phone conference. The settlement terms should be documented in a written agreement signed by both sides.

A pre-trial conference is a meeting held shortly before the trial to iron out the logistics and resolve any foreseeable problems or disputes. A pre-trial conference can be set either by the court or by a motion by a party,²²⁴ and it can be held by telephone.²²⁵ The parties may be required to file pre-trial statements, lists of their expected witnesses, proposed jury instructions, or other documents, depending on the local rules or the particulars of the court order. The local rules of each district state

²²⁰ Federal Rules of Evidence, rule 501; 5 U.S.C. § 552(b)(7); *Jackson v. County of Sacramento* (E.D. Cal. 1997) 175 F.R.D. 653, 655.

²²¹ Federal Rules of Civil Procedure, rule 37.

²²² Northern District of California Local Rule 16-2(d).

²²³ Eastern District of California Local Rule 16-270.

²²⁴ Northern District of California Local Rule 16-10(b)(a).

²²⁵ 42 U.S.C. § 1997e(f).

in further detail what should be included in a pre-trial statement.²²⁶ Before resolving any pre-trial disputes about how the trial will be conducted or what evidence will be admissible, the court may issue orders, ask for additional briefing, or conduct pre-trial hearings.

A person must take all steps necessary to bring the case to trial so that the case does not end up being dismissed for “lack of prosecution.”²²⁷ The court is under no obligation to push the case forward, although some courts may establish deadlines to keep a case moving along. If a case reaches the point where it appears that the matter will actually go to trial, a *pro se* plaintiff should file a renewed request for appointment of counsel (see § 17.2).

17.31 Trial

Either side can ask for a jury trial if the complaint asks for money damages;²²⁸ if neither side wants a jury trial a money damages case can be heard and decided by the judge assigned to the case. There is no right to a jury trial in a case in which the complaint seeks only declaratory or injunctive relief, so the assigned judge will hear the evidence and arguments and decide the case without a jury.²²⁹

Presenting a case at trial is beyond the scope of this Handbook. Among the tasks that will need be done are presenting witnesses (some of whom may have to be compelled to attend the trial by subpoenas), introducing evidence such as documents or other items, cross-examining the defense witnesses, proposing or opposing jury instructions (which explain what must be proved), and delivering opening statements and closing arguments. The plaintiff must be able to conduct direct examinations of their own witnesses by asking non-leading questions that do not lead to a specific answer. Non-leading questions often begin with the words who, what, when, or where, such as “where were you working on May 20, 2014?” The plaintiff must be able to conduct cross-examinations using leading questions. Leading questions are asked in a way that it calls for a certain answer, such as “isn't it true that you didn't provide a meal to people on May 20, 2014?” The plaintiff will also have to know how to use the witnesses to introduce evidence.

Useful references for a plaintiff preparing for trial include Nahmod, *Civil Rights and Civil Liberties Litigation: The Law of § 1983* (4th ed. 1997 and periodic updates), Thomson West Publishing, and Yagman and Lewis, *Police Misconduct and Civil Rights: Federal Jury Practice and Instructions* (2d ed. 2002 and periodic updates), Thomson West Publishing. Some of the federal district courts also publish useful *pro se* litigant handbooks (see § 17.3).

17.32 Appeals

The losing side can appeal from a final judgment in a federal civil rights case; the Ninth Circuit Court of Appeals hears the appeals from the federal district courts in California (address included in Appendix 16-A). Final judgments include dismissals, summary judgments, and the ultimate court or

²²⁶ See, e.g., Northern District of California Local Rule 16-9(a); Standing Order for All Judges of the Northern District of California, *Contents of Joint Case Management Statement* (November 1, 2014); Eastern District of California Local Rule 16-281.

²²⁷ See, e.g., Eastern District of California Local Rule 40-280.

²²⁸ Federal Rules of Civil Procedure, rule 38.

²²⁹ *Ross v. Bernhard* (1970) 396 U.S. 531, 548 [90 S.Ct. 733; 24 L.Ed.2d 729].

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jury decision in favor of one side or the other.²³⁰ Most disputes regarding orders that were made before the final judgment (which are called interlocutory orders) cannot be raised on appeal until after the judgment is made.

An appeal is started when the losing side files a notice of appeal in the same federal district court that issued the judgment.²³¹ The notice of appeal must identify the case, state which party wants to appeal and the date and type of judgment being appealed, and name the court in which the appeal will be filed.²³² The notice of appeal usually must be filed within 30 days after entry of the judgment or the appealable order, although there are some exceptions.²³³ A notice filed by a person in prison is considered to be on time if they placed it in the prison mail system on or before the due date.²³⁴ The district court clerk will take care of serving the notice of appeal on the other parties.²³⁵

There are filing fees for appeals, but plaintiffs who have no money may be granted permission to proceed *in forma pauperis* (IFP) (see § 17.22). People who were granted IFP status in the district court do not have to re-apply for IFP status when they appeal.²³⁶

A full discussion of appeal procedures and standards of review and reversal is beyond the scope of this *Handbook*. A person who is involved in an appeal should review and comply with the Federal Rules of Appellate Procedure and the Ninth Circuit's Local Rules. These rules should be available in the prison law libraries and on the Ninth Circuit website at www.ca9.uscourts.gov. Other litigation manuals may have information that will help a person with an appeal (see § 17.3).

17.33 Attorneys' Fees for Section Federal Civil Rights Suits in Federal Court

People in prison who represent themselves in civil rights lawsuits are not entitled to an award of attorneys' fees.²³⁷ However, winning plaintiffs who are represented by attorneys may be awarded attorneys' fees.²³⁸ This is helpful to people in prison in two ways. First, the possibility of a fee award may help persuade an attorney to take a case. Second, a person who is represented by an attorney may have a better chance of reaching a favorable settlement, especially in a case that is likely to result only in injunctive relief or a small amount of monetary damages. The state has little incentive to settle a *pro se* case that is not likely to result in a significant damages award. However, if an attorney is involved, the state might agree to a settlement that includes attorneys' fees rather than go to trial and risk having to pay a larger amount of attorneys' fees.

²³⁰ 28 U.S.C. § 1291.

²³¹ Federal Rules of Appellate Procedure, rule 3(a).

²³² Federal Rules of Appellate Procedure, rule 3(c).

²³³ Federal Rules of Appellate Procedure, rule 4(a).

²³⁴ Federal Rules of Appellate Procedure, rule 4(c).

²³⁵ Federal Rules of Appellate Procedure, rule 3(d).

²³⁶ 28 U.S.C. § 1915(a).

²³⁷ *Gonzalez v. Kangas* (9th Cir. 1987) 814 F.2d 1411; *Friedman v. Arizona* (9th Cir. 1990) 912 F.2d 328, 333, fn. 2.

²³⁸ 42 U.S.C. § 1988.

To be entitled to attorneys' fees, the plaintiff must be the "prevailing party;" this means that the plaintiff must obtain some practical benefit as a result of the case.²³⁹ Plaintiffs who prevail through a settlement or reform brought about during the course of the litigation are entitled to recover attorneys' fees, unless the settlement terms include a waiver of fees.²⁴⁰ However, a plaintiff is not necessarily the prevailing party even if the court made some favorable rulings or issued a preliminary injunction during the litigation.²⁴¹ Also, courts have discretion to refuse to grant attorneys' fees where the case results in only minimal damages, does not establish any important precedent, or does not materially change the relationship of the parties.²⁴² Where the plaintiff wins some of the claims and loses others, then the court must determine what portion of the time spent on the case was spent on the prevailing claims.²⁴³ Another consideration is that a plaintiff who raises both federal civil rights claims and state tort claims, and wins only on the state law claims, cannot be awarded attorneys' fees under the federal civil rights act.²⁴⁴

Courts rarely award attorneys' fees to defendants when a plaintiff in prison loses a case. Awards of attorneys' fees to defendants are made only in exceptional cases and only if the action is unreasonable, frivolous, meritless or vexatious.²⁴⁵ Awards of fees to the defendants are even less likely when the plaintiff is proceeding without an attorney.²⁴⁶

The PLRA sets special limits on attorneys' fees in "any action brought by a prisoner." There are three types of limits: (1) a cap on the attorneys' hourly billing rate, (2) a requirement that some of the damage award be used for attorneys' fees, and (3) restrictions on the type of work that can be compensation. These PLRA fee restrictions do not apply to a case that is filed by a person after release.²⁴⁷

²³⁹ *Hewitt v. Helms* (1987) 482 U.S. 755, 759 [107 S.Ct. 2672; 96 L.Ed.2d 654]; *Newman v. Piggie Park Enterprises, Inc.* (1968) 390 U.S. 400, 402 [88 S.Ct. 964; 19 L.Ed.2d 1263]; *Parks Sch. of Bus., Inc. v. Symington* (9th Cir. 1995) 51 F.3d 1480, 1489; *Friend v. Kolodziejczak* (9th Cir. 1995) 72 F.3d 1386, 1389.

²⁴⁰ *Maher v. Gagne* (1980) 448 U.S. 122, 128 [100 S.Ct. 2570; 65 L.Ed.2d 653]; *Evans v. Jeff D.* (1986) 475 U.S. 717, 741 [106 S.Ct. 1531; 89 L.Ed.2d 747].

²⁴¹ *Hewitt v. Helms* (1987) 482 U.S. 755, 759 [107 S.Ct. 2672]; *Parks Sch. of Bus., Inc. v. Symington* (9th Cir. 1995) 51 F.3d 1480, 1489; *Friend v. Kolodziejczak* (9th Cir. 1995) 72 F.3d 1386, 1389; *Kimbrough v. California* (9th Cir. 2010) 609 F.3d 1027, 1031 (attorneys were not entitled to fees in case challenging prison grooming regulations that was dismissed as moot after state restored credits lost for violating the regulations; although the court had issued a preliminary injunction forbidding the state from enforcing the regulations, the case did not result in any order establishing that the state had violated the people's rights).

²⁴² *Farrar v. Hobby* (1992) 506 U.S. 103, 114-115 [113 S.Ct. 566; 121 L.Ed.2d 811]; *Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 324 [103 Cal.Rptr.2d 339].

²⁴³ *O'Neal v. City of Seattle* (9th Cir. 1995) 66 F.3d 1064, 1068-1069; *Webb v. Ada County* (9th Cir. 1999) 195 F.3d 524, 527; *Hensley v. Eckerhart* (1983) 461 U.S. 424, 434 [103 S.Ct. 1933; 76 L.Ed.2d 40].

²⁴⁴ *McFadden v. Villa* (2001) 93 Cal.App.4th 235, 237 [113 Cal.Rptr.2d 80].

²⁴⁵ *Barry v. Fowler* (9th Cir. 1990) 902 F.2d 770, 773; *Patton v. County of Kings* (9th Cir. 1988) 857 F.2d 1379, 138; *Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 322.

²⁴⁶ *Hughes v. Rowe* (1980) 449 U.S. 5, 14-15 [101 S.Ct. 173; 66 L.Ed.2d 163].

²⁴⁷ *Doe v. Washington County* (8th Cir. 1998) 150 F.3d 920, 924.

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Also, the PLRA fee restrictions do not apply in cases where there is a separate statute authorizing fees awards, such as cases brought under the ADA or § 504 of the Rehabilitation Act.²⁴⁸

First, attorneys' fees in cases involving people in prison are limited to hourly rates of 150 percent of the Criminal Justice Act Rates.²⁴⁹ These rates generally are much lower than market rates billed by most attorneys.

Second, a court cannot award fees to a attorneys for people in prison that amount to more than 150 percent of the amount of the damages judgment *and* up to 25 percent of the damages award can be applied to pay the attorneys' fees.²⁵⁰ There is an important exception in that attorneys' fees for work done to obtain injunctive relief are not limited to 150 percent of the money damages in a case in which the person won both money damages and injunctive relief.²⁵¹

Third, the court in a case involving a person in prison may award only attorneys' fees "directly and reasonably incurred in proving an actual violation of the plaintiff's rights."²⁵² Nonetheless, courts have awarded attorneys' fees for work such as post-judgment monitoring and enforcement in class action cases,²⁵³ work done on appeal,²⁵⁴ and work expended to gain an award of fees.²⁵⁵

Courts may also order the losing party to pay the winning side's costs, such as those charged by the court clerk, Marshal, court reporters, witnesses, copying service, experts or interpreters.²⁵⁶ Winning *pro se* plaintiffs are entitled to recover their actual costs for expenses reasonably incurred.²⁵⁷ On the other hand, a *pro se* plaintiff who loses the case could be ordered to pay the defendants' costs.²⁵⁸

A winning plaintiff should file a motion for attorneys' fees promptly after the judgment.²⁵⁹ The motion should discuss why the attorneys are entitled to fees and should include declarations by the attorneys with detailed accounting of their time and expenses.

²⁴⁸ *Armstrong v. Davis* (9th Cir. 2003) 318 F.3d 965, 971.

²⁴⁹ 42 U.S.C. § 1997e(d)(3); 18 U.S.C. § 3006A. Paralegal fees are compensable under the PLRA and are subject to the same hourly cap as attorneys' fees. *Perez v. Cate* (9th Cir. 2011) 632 F.3d 553, 556.

²⁵⁰ 42 U.S.C. § 1997e(d)(2).

²⁵¹ *Dannenbergh v. Valadez* (9th Cir. 2003) 338 F.3d 1070, 1073.

²⁵² 42 U.S.C. § 1997e(d)(1)(A).

²⁵³ *Hadix v. Johnson* (6th Cir. 1998) 143 F.3d 246, 257; *Balla v. Idaho* (9th Cir. 2012) 677 F.3d 910, 915; *Prison Legal News v. Schwarzenegger* (9th Cir. 2010) 608 F.3d 446, 451-452; *Stewart v. Gates* (9th Cir. 1993) 987 F.2d 1450, 1452.

²⁵⁴ *Hutto v. Finney* (1978) 437 U.S. 678 [98 S.Ct. 2565; 57 L.Ed.2d 5222]; *Woods v. Carey* (9th Cir. 2013) 722 F.3d 1177, 1180.

²⁵⁵ *Hernandez v. Kalinowski* (3d Cir. 1998) 146 F.3d 196, 199-201; *Souza v. Southworth* (1st Cir. 1977) 564 F.2d 609, 614; *Bagby v. Beal* (3d Cir. 1979) 606 F.2d 411, 416; see also *McGrath v. County of Nevada* (9th Cir. 1995) 67 F.3d 248, 253.

²⁵⁶ 28 U.S.C. § 1920.

²⁵⁷ *Burt v. Hennessey* (9th Cir. 1991) 929 F.2d 457, 459.

²⁵⁸ *Warren v. Guelker* (9th Cir. 1994) 29 F.3d 1386, 1390.

²⁵⁹ See e.g. Northern District of California Local Rule 54-5; Eastern District of California Local Rule 54-293.

Attorneys are encouraged to contact their local federal district court and to learn more about how to take appointments in pending § 1983 lawsuits.²⁶⁰ Although taking a court-appointed case does not guarantee payment, many judges are pleased to have potentially meritorious claims handled by counsel and will award attorneys' fees to the greatest extent possible.

17.34 Attorneys' Fees for Federal Civil Rights Suits in State Court

As discussed in § 17.14, § 1983 suits may be brought in state court. The laws concerning attorneys' fees and costs for § 1983 cases in federal court also apply to cases in state court.

In addition, a plaintiff may be entitled to attorneys' fees in state court under § 1021.5 of the California Code of Civil Procedure, which allows courts to award fees in a case that protects important public rights; this is sometimes called the "private attorney general" doctrine.²⁶¹ However, attorneys' fees cannot be granted if the primary effect of a lawsuit is to benefit the plaintiff's personal economic interests.²⁶² Also, people in prison proceeding in *pro se* cannot obtain attorneys' fees.²⁶³

In deciding whether to award a plaintiff fees under § 1021.5, a court considers whether the case resulted in enforcement of an important right affecting the public interest, whether it conferred a significant benefit on a large group of people, and whether there was a need for the plaintiff to take on the burden of enforcing that right.²⁶⁴ Attorneys' fees are appropriate when people's rights have been vindicated because of the benefit both to people in prison and the public.²⁶⁵

As under federal law, plaintiffs' counsel are also entitled to attorneys' fees for work on appeal and work done to collect the fees.²⁶⁶

²⁶⁰ 28 U.S.C. § 1915(e).

²⁶¹ *Woodland Hills Residents' Assn. v. City Counsel of Los Angeles* (1979) 23 Cal.3d 917, 925 [154 Cal.Rptr. 503]; *Press v. Lucky Stores* (1983) 34 Cal.3d 311, 317 [193 Cal.Rptr. 900]; see also *Serrano v. Priest* (1977) 20 Cal.3d 25, 33 [141 Cal.Rptr. 315] (authorizing fee awards for constitutional claims). Code of Civil Procedure § 1021.5 does not authorize compensation for costs of litigation other than attorneys' fees. *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1156-1157 [74 Cal.Rptr.3d 81].

²⁶² *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637 [71 Cal.Rptr.2d 632].

²⁶³ *Bruno v. Bell* (1979) 91 Cal.App.3d 776, 786 [154 Cal.Rptr. 435]; *Atherton v. Board of Supervisors* (1986) 176 Cal.App.3d 433, 437 [222 Cal.Rptr. 56].

²⁶⁴ *City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal.App.4th 1100, 1112 [72 Cal.Rptr.2d 134]; *Woodland Hills Resident' Assn. v. City Counsel of Los Angeles* (1979) 23 Cal.3d 917, 934-935 [154 Cal.Rptr. 503].

²⁶⁵ *Head* (1986) 42 Cal.3d 223, 228 [228 Cal.Rptr. 184]; *Inmates of the Sybil Brand Institute for Women v. County of Los Angeles* (1982) 130 Cal.App.3d 89, 112 [181 Cal.Rptr. 599].

²⁶⁶ *Daniels v. McKinney* (1983) 146 Cal.App.3d 42, 50 [193 Cal.Rptr. 842].

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**INSTRUCTIONS FOR FILING A CIVIL RIGHTS COMPLAINT BY A PRISONER
LOCATED IN A FACILITY NOT PARTICIPATING IN THE COURT'S PILOT PROJECT
FOR THE SUBMISSION OF COMPLAINTS THROUGH ELECTRONIC MAIL**

This package includes the following documents:

- 4 copies - Complaint form
- 4 copies- Declaration to proceed without prepayment of filing fees

In order for your complaint to be filed, you must submit the original and two copies of **both** the complaint and declaration to the Clerk. The remaining copy of each is for you to keep for your records. Your complaint must be typewritten or legibly handwritten in ink. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space to answer a question, you must use the reverse side of the form or an additional blank page. You must file a separate complaint for each claim unless they are all related to the same incident or issue. You are required to allege facts, not legal arguments or authorities.

FILING FEES

Payment of filing fee required

The filing fee is \$350 plus a \$50 administrative fee, for a total of \$400. However, in accordance with 28 U.S.C. § 1915, if your Request to Proceed Without Prepayment of Filing Fees is granted, you will be obligated to pay only the filing fee of \$350, and not the \$50 administrative fee. If you have the money to pay the filing fee, you should submit a cashier's check, certified bank check, business or corporate check, government issued check, or money order drawn on a major American bank or the United States Postal Service, payable to the *Clerk of Court* and mail it with your complaint to the address listed on page 2 of these instructions. The Clerk's Office will also accept credit cards (Mastercard/Visa, Discover, American Express) for filing fees and miscellaneous fees. Credit card payments may be made at all payment windows where receipts are issued.

Request to pay filing fee in monthly installments

If you do not have the money to pay the full filing fee, you must complete the Request to Proceed Without Prepayment of Filing Fees with Declaration in Support ("Request"). The Request must be returned to the Court with your complaint. **NOTE: You must have a prison or jail official complete the Certification Section of the Request and attach to the Request a certified copy of your prison or jail trust account statement for the six months immediately preceding the filing of the complaint. If you submit an incomplete Request or do not submit a prison or jail trust account statement with the Request, your request to proceed without prepayment of the filing fees may be denied.**

Initial partial filing fee assessment

If your Request to Proceed Without Prepayment of Filing Fees is granted, the Court will assess an initial partial filing fee at the time your action is filed. The initial partial filing fee will be equal to 20% of the average monthly deposits to your prison or jail account for the six months immediately preceding the filing of the action, or 20% of the average monthly balance in your prison or jail account for that same six month period, whichever is greater. The Court will order the agency that has custody of you to take that initial partial filing fee out of your prison or jail account as soon as funds are available and forward the money to the Clerk of Court.

Collection of balance of filing fee

After the initial partial filing fee has been paid, you will owe the balance of the filing fee. Until the amount of the filing fee is paid in full, each month you will owe 20% 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 Clerk of Court any time the amount in your account exceeds \$10.00.

DISMISSAL OF THE COMPLAINT

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. **NOTE: You are required under penalties of perjury to provide accurate information regarding previous filings. Failure to provide this information may result in the immediate dismissal of your complaint.**

JURISDICTION

To determine whether jurisdiction and venue are proper in this Court:

- **AGAINST FEDERAL DEFENDANTS**, please refer to 28 U.S.C. § 1391(e) and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 397 (1971);
- **AGAINST NON-FEDERAL DEFENDANTS**, please refer to 28 U.S.C. § 1391(b) for claims brought pursuant to 42 U.S.C. § 1983.

SERVICE OF THE COMPLAINT

If your Request to Proceed Without Prepayment of Filing Fees is approved, the Court will determine whether the United States Marshal should serve the defendant(s) on your behalf.

INQUIRIES AND COPYING REQUESTS

Because of the large volume of cases filed by prisoners in this Court and limited court resources, the Court and Clerk's Office will not answer inquires concerning the status of your case or provide copies of documents, except at a charge of fifty cents (\$0.50) per page. You must therefore keep copies of all documents submitted to the court for your own records.

TO MAIL THE COMPLAINT

Mail the original and the two copies of your Complaint and (if applicable) your Request to Proceed Without Prepayment of Filing Fees with Declaration in Support to the address below:

United States District Court
Central District of California
255 East Temple Street, Suite TS-134
Los Angeles, California 90012

ATTENTION: PRO SE CLERK

FULL NAME

COMMITTED NAME (if different)

FULL ADDRESS INCLUDING NAME OF INSTITUTION

PRISON NUMBER (if applicable)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER

_____ *To be supplied by the Clerk*

PLAINTIFF,

v.

**CIVIL RIGHTS COMPLAINT
PURSUANT TO (Check one)**

DEFENDANT(S).

42 U.S.C. § 1983

Bivens v. Six Unknown Agents 403 U.S. 388 (1971)

A. PREVIOUS LAWSUITS

- 1. Have you brought any other lawsuits in a federal court while a prisoner: Yes No
- 2. If your answer to "1." is yes, how many? _____

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

- a. Parties to this previous lawsuit:
 Plaintiff _____

 Defendants _____

- b. Court _____

- c. Docket or case number _____
- d. Name of judge to whom case was assigned _____
- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) _____
- f. Issues raised: _____

- g. Approximate date of filing lawsuit: _____
- h. Approximate date of disposition _____

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? Yes No
2. Have you filed a grievance concerning the facts relating to your current complaint? Yes No

If your answer is no, explain why not _____

3. Is the grievance procedure completed? Yes No

If your answer is no, explain why not _____

4. Please attach copies of papers related to the grievance procedure.

C. JURISDICTION

This complaint alleges that the civil rights of plaintiff _____
(print plaintiff's name)
 who presently resides at _____
(mailing address or place of confinement)
 were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

(institution/city where violation occurred)

on (date or dates) _____, _____, _____
(Claim I) (Claim II) (Claim III)

NOTE: You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

2. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

3. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

4. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

5. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

D. CLAIMS*

CLAIM I

The following civil right has been violated:

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each DEFENDANT (by name) did to violate your right.

**If there is more than one claim, describe the additional claim(s) on another attached piece of paper using the same outline.*

Instructions for a Prisoner Filing a Civil Rights Complaint in the United States District Court for the Eastern District of California

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.

2. The Form. **Incarcerated persons are encouraged to file their complaints using the court-approved form attached to these instructions.** The form must be typed or neatly handwritten and 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 are strongly encouraged to **limit your complaint to 25 pages of standard letter-sized paper.** [Note, if filing electronically under the CDCR pilot program, your complaint, including exhibits, cannot exceed 25 pages, absent permission from the Court.] 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 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. The \$50.00 administrative fee does not apply to persons granted *in forma pauperis* status.

5. Original. You must send your complaint to the Court. If you wish to have a file-stamped copy of the complaint returned to you must include a copy of the complaint along with a stamped, self-addressed envelope for that copy to be returned to you. All copies must be identical to the original. Copies may be legibly handwritten.

6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** If you were confined in Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, or Yuba County, file in the Sacramento Division. If you were confined in Fresno, Calaveras, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, or Tuolumne County, file in the Fresno Division. Mail the original with the \$400 filing and administrative fees **or** a completed application to proceed *in forma pauperis* to:

Sacramento Division:
Clerk of the U.S. District Court
for the Eastern District of California
501 I Street, Room 4-200
Sacramento, California 95814

OR

Fresno Division:
Clerk of the U.S. District Court
for the Eastern District of California
2500 Tulare Street
Fresno, California 93721

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. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. L.R. 137(c). In addition, an amended complaint may not incorporate by reference any part of your prior complaint. L.R.220. **Any allegations or defendants not included in the amended complaint are considered abandoned.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

9. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

10. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

11. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.

2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words "and others" on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it "1-A" at the bottom.

3. Jury Demand. If you want a jury trial, you must write "JURY TRIAL DEMANDED" in the space below "CIVIL RIGHTS COMPLAINT BY A PRISONER." Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; "Bivens v. Six Unknown Federal Narcotics Agents" for federal defendants; or "other." If you mark "other," identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled "2-A," "2-B," etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate claims (**one violation per claim**). If you are alleging more than three claims, you must provide the necessary information about each additional claim on a separate page. Number the additional pages "5-A," "5-B," etc., and insert them immediately behind page 5. Remember that you are strongly encouraged to limit your complaint to twenty-five pages.

1. Claims. You must identify which civil right was violated. **You may allege the violation of only one civil right per claim.**
2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per claim.** 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 or did not do which you allege violated 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 claim in your complaint. If the grievance procedures were not available for any of your claims, 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. You are strongly encouraged to file a complaint that is no longer than twenty-five 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. Remember, there is no need to attach exhibits to your complaint.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

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

_____))
(Full Name of Plaintiff) Plaintiff,))
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:
_____ at _____
(Position and Title) (Institution)
3. Name of third Defendant: _____ . The third Defendant is employed as:
_____ at _____
(Position and Title) (Institution)
4. Name of fourth Defendant: _____ . The fourth Defendant is employed as:
_____ at _____
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

CLAIM I

1. State the constitutional or other federal civil right that was violated: _____

2. **Claim I.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim 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 Claim I? Yes No
- c. Did you appeal your request for relief on Claim 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. _____

CLAIM II

1. State the constitutional or other federal civil right that was violated: _____

2. **Claim II.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- 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 Claim 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 Claim II? Yes No
- c. Did you appeal your request for relief on Claim 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. _____

CLAIM III

1. State the constitutional or other federal civil right that was violated: _____

2. **Claim III.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim 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 Claim III? Yes No
- c. Did you appeal your request for relief on Claim 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 Claims, answer the questions listed above for each additional Claim 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 more pages, but you are strongly encouraged to limit your complaint to twenty-five pages. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages. Remember, there is no need to attach exhibits to your complaint.

**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* statute, **AS A PRISONER YOU WILL BE OBLIGATED TO PAY THE FULL FILING FEE OF \$350.00 FOR A CIVIL RIGHTS ACTION, \$5.00 FOR A HABEAS CORPUS PETITION, OR \$505.00 FOR AN APPEAL. If you are not afforded *in forma pauperis* status in a Civil Rights Action, you will be required to pay the \$350.00 filing fee plus a \$50.00 administrative fee for a total of \$400.00.**

If you have the money to pay the full filing fee, send a cashier's check or money order made payable to the U.S. District 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 facility where you are held in custody to collect the filing fee from your prison or jail trust account. **EACH MONTH YOU WILL OWE 20 PERCENT OF YOUR PRECEDING MONTH'S INCOME TOWARD THE BALANCE UNTIL THE FILING FEE IS PAID IN FULL.** The facility will forward 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. The form includes your authorization for the agency having custody of you to provide a certified copy of your trust account statement for activity covering the last six months directly to the Court so that your eligibility for *in forma pauperis* status can be determined. Your signature on the form also authorizes the agency having custody of you to collect money from your trust account and forward it to the Clerk of the United States District Court payments if you are granted *in forma pauperis* status. 28 U.S.C. § 1915(b)(2). If you are housed at a non-CDCR facility (such as a local jail or federal facility), you must have your institution complete the certification on the form and attach a certified copy of your prison or jail account statement for the last six months.

If you submit an incomplete form or you are ineligible for *in forma pauperis* status, your request to proceed *in forma pauperis* will be denied.

The court is required to screen your complaint regardless of the amount of filing fee paid and will 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 incarcerated that are dismissed as frivolous, 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.

(Revised 06/2016)

Name: _____

CDC No: _____

Address: _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASE NUMBER:

v. Plaintiff/Petitioner,

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. § 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. _____

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
- c. Pensions, annuities or life insurance payments: Yes No
- d. Disability or workers compensation payments: Yes No
- e. Re Gifts or inheritances: Yes No
- f. Any other sources: Yes No

If the answer to any of the above is "yes," describe by that item each source of money, state the amount received, as well as what you expect you will continue to receive (attach an additional sheet if necessary).

4. Do you have cash (includes balance of checking or savings accounts)? Yes No

If "yes" state the total amount: _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or other valuable property? Yes No

If "yes" describe the property and state its value: _____

6. Do you have any other assets? Yes No

If "yes," list the asset(s) and state the value of each asset listed: _____

7. List all persons dependent on you for support, stating your relationship to each person listed and how much you contribute to their support.

This form must be dated and signed below for the court to consider your application.

I hereby authorize the agency having custody of me to provide a certified copy of my trust account statement for activity covering the last six months to the Court. Additionally, once eligibility is established, I further authorize the agency having custody of me to collect from my trust account and forward to the Clerk of the United States District Court payments in accordance with 28 U.S.C. § 1915(b)(2).

DATE

SIGNATURE OF APPLICANT

Applicant's CDCR Number (Mandatory for CDCR Applicants): _____

**CERTIFICATION BELOW IS TO BE COMPLETED BY
NON-CDCR INCARCERATED PRISONERS ONLY**

CERTIFICATE

(To be completed by the institution of incarceration)

I certify that the applicant named herein has the sum of \$ _____ on account to his/her credit at _____ (name of institution). I further certify that during the past six months the applicant's average monthly balance was \$ _____. I further certify that during the past six months the average monthly deposits to the applicants account was \$ _____.
(Please attach a certified copy of the applicant's trust account statement showing transactions for the past six months.)

DATE

SIGNATURE OF AUTHORIZED OFFICER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**INSTRUCTIONS FOR FILING A CIVIL RIGHTS COMPLAINT
BY A PRISONER UNDER 42 U.S.C. § 1983**

I. SCOPE OF 42 U.S.C. § 1983

You may file a civil rights action under 42 U.S.C. § 1983 to challenge federal constitutional or statutory violations by state actors which affect the conditions of your confinement.

A § 1983 action may not be used to challenge the length of your sentence or the validity of your conviction. Such claims must be addressed in a petition for a writ of habeas corpus, on the forms provided by the clerk. If you wish to challenge a state court sentence or conviction, ask for the packet titled *Instructions for Filing a Petition for a Writ of Habeas Corpus by a Person in State Custody under 28 U.S.C. § 2254*.

II. FILING A § 1983 ACTION

To file a § 1983 action, you must submit: (1) an original, completed complaint form; and (2) a check or money order for \$400.00, or an original, completed Prisoner's Application to Proceed In Forma Pauperis (see more below). When these forms are completed fully, mail the originals to: Clerk, U.S. District Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

III. FILING FEE

The fee for filing a § 1983 action is \$400.00 (\$350 filing fee plus \$50 administrative fee), to be paid at the time of filing. If you are unable to pay the full fee when you file your complaint, you may petition the court to proceed in forma pauperis, using the forms provided by the clerk. Ask for the packet titled *Instructions for Filing an Application to Proceed In Forma Pauperis by a Prisoner under 28 U.S.C. § 1915*. Even if you are granted leave to proceed in forma pauperis, you must still pay the \$350 filing fee (not the \$50 administrative fee), but the filing fee will be paid in several installments.

You must complete the Prisoner's Application to Proceed In Forma Pauperis in its entirety and sign and declare under penalty of perjury that the facts stated therein are true and correct. Each plaintiff must submit his or her own Prisoner's In Forma Pauperis Application. You must use the Prisoner's In Forma Pauperis Application provided with the clerk of this court and not any other version.

IV. COMPLAINT FORM

You must complete the complaint form in its entirety. All questions must be answered in order for your action to proceed. Your responses must be typewritten or legibly handwritten and you must sign and declare under penalty of perjury that the facts stated in the complaint are true and correct.

Under 42 U.S.C. § 1997e, you are required to exhaust available administrative remedies before filing a § 1983 action; you must indicate clearly in the space provided on the complaint form whether you have done so.

V. MAGISTRATE JUDGE JURISDICTION

Magistrate judges are selected through a statutorily prescribed merit selection process and are appointed by the judges of this court. The court encourages parties to consent to magistrate judge jurisdiction as it may result in an earlier resolution of the matter; the rules and procedures used to decide your case will be the same regardless of whether a district judge or a magistrate judge decides your case. But you are free to decline magistrate judge jurisdiction and request that your case be decided by a district judge. Please indicate on the *Consent or Declination to Magistrate Judge Jurisdiction* form, provided by the clerk, whether you consent or decline to consent to magistrate judge jurisdiction.

VI. AFTER YOUR COMPLAINT IS FILED

The clerk will assign a case number and judge to your complaint and mail you a copy of the first page, which will have the case number and judge's initials stamped on it. Please retain this copy for your records and put the case number on any case-related document you send to the court. If your complaint is deficient in any way, the clerk may send you a notice that will require your response. If your case is assigned to a magistrate judge before you consented or declined to consent to magistrate judge jurisdiction, the clerk may send you a *Consent or Declination to Magistrate Judge Jurisdiction* form that will require your response. Please note that it is your responsibility to inform the court in writing without delay if your address changes. You will be notified at the address the court has on record whenever the court issues an order. A failure to respond to notices or orders or a failure to update your address may result in the dismissal of your case.

VII. REPEAT FILERS

If you are seeking leave to proceed in forma pauperis and, while incarcerated or detained, you filed § 1983 actions on three or more prior occasions that were dismissed as frivolous, malicious or for failure to state a claim upon which relief may be granted, you may not file a new § 1983 action unless you are under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

VIII. INQUIRIES AND COPYING REQUESTS

Because of the large volume of cases filed in this court and limited court resources, the court will not answer inquiries concerning the status of your case or provide copies of documents, except at a charge of fifty cents (\$0.50) per page. It is therefore recommended that you make and keep a copy of every document you submit to the court for your records.

1 **COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983**

2 Name: _____
3 (Last) (First) (Middle Initial)

4 Prisoner Number: _____

5 Institutional Address: _____
6 _____

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 _____)
11 (Enter your full name.))
12 vs.)
13 _____)
14 _____)
15 (Enter the full name(s) of the defendant(s) in this action.))
16 _____)

Case No. _____
(Provided by the clerk upon filing)

**COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
42 U.S.C. § 1983**

17 **I. Exhaustion of Administrative Remedies.**

18 **Note:** You must exhaust available administrative remedies before your claim can go
19 forward. The court will dismiss any unexhausted claims.

20 A. Place of present confinement _____

21 B. Is there a grievance procedure in this institution? YES NO

22 C. If so, did you present the facts in your complaint for review through the grievance
23 procedure? YES NO

24 D. If your answer is YES, list the appeal number and the date and result of the appeal at each
25 level of review. If you did not pursue any available level of appeal, explain why.

26 1. Informal appeal: _____
27 _____
28 _____

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2. First formal level: _____

3. Second formal level: _____

4. Third formal level: _____

E. Is the last level to which you appealed the highest level of appeal available to you?

YES NO

F. If you did not present your claim for review through the grievance procedure, explain why.

II. Parties.

A. Write your name and present address. Do the same for additional plaintiffs, if any.

B. For each defendant, provide full name, official position and place of employment.

1 **III. Statement of Claim.**

2 State briefly the facts of your case. Be sure to describe how each defendant is involved
3 and to include dates, when possible. Do not give any legal arguments or cite any cases or
4 statutes. If you have more than one claim, each claim should be set forth in a separate
5 numbered paragraph.
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16 **IV. Relief.**

17 Your complaint must include a request for specific relief. State briefly exactly what you
18 want the court to do for you. Do not make legal arguments and do not cite any cases or
19 statutes.
20
21
22
23

24 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

25 Executed on: _____
Date *Signature of Plaintiff*

**INSTRUCTIONS FOR FILING
CIVIL RIGHTS COMPLAINT UNDER 42 U.S.C. § 1983
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

(1) This complaint must be legibly handwritten or typewritten, and signed by the plaintiff. All questions must be answered concisely in the proper space on the form. Do NOT write on the back of any page. No citation of case or statutory authority is necessary.

(2) Additional pages not to exceed fifteen (15) in number may be included with the court approved form complaint, provided the form is completely filled in to the extent applicable in the particular case. This limitation does not include exhibits.

(3) Upon receipt of a **fee of \$400** (\$350 statutory fee and \$50 administrative fee) your complaint will be filed if it is in proper order. The \$400 fee must be submitted with the complaint, not separately.

(4) If you do not have the necessary funds to pay the filing fee or cannot afford to pay for transcripts, counsel, appeal, or other costs connected with this civil action, you may request permission to proceed in forma pauperis, in which event you must execute a separate form provided by the Court, entitled "Motion and Declaration Under Penalty of Perjury in Support of Motion to Proceed In Forma Pauperis" setting forth information establishing your inability to pay fees or costs.

IF YOU ARE A PRISONER, you must attach a certified copy of your prison trust account statements for the 6-month period immediately preceding the filing of the complaint per 28 U.S.C. § 1915(a)(2) or your motion to proceed in forma pauperis will be denied. Even if your motion to proceed in forma pauperis is granted, however, the Court may assess an initial partial filing fee at the time your action is filed and the \$50 administrative fee will be waived. After the initial partial fee is assessed, YOU WILL STILL OWE THE BALANCE OF THE \$350 STATUTORY FILING FEE WHICH THE COURT WILL ORDER GARNISHED FROM YOUR PRISON TRUST ACCOUNT.

(5) When the complaint is fully completed, it must be mailed to:

**Clerk of U.S. District Court
333 West Broadway, Suite 420
San Diego, CA 92101**

(Name)

(Address)

(City, State, Zip)

(CDCR / Booking / BOP No.)

**United States District Court
Southern District of California**

(Enter full name of plaintiff in this action.))
)

Plaintiff,)

V.)

)

)

)

)
(Enter full name of each defendant in this action.))

Defendant(s).)

Civil Case No. _____
(To be supplied by Court Clerk)

Complaint under the
Civil Rights Act
42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

_____.

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, _____
(print Plaintiff's name)

_____, who presently resides at _____
(mailing address or place of confinement)

_____, were violated by the actions of
the below named individuals. The actions were directed against Plaintiff at _____

_____ on (dates) _____, _____, and _____.
(institution/place where violation occurred) (Count 1) (Count 2) (Count 3)

2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? Yes No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

(b) Name of the court and docket number: _____

_____.

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] _____

_____.

(d) Issues raised: _____

_____.

(e) Approximate date case was filed: _____.

(f) Approximate date of disposition: _____.

2. Have you previously sought and exhausted all forms of available relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDCR Inmate/Parolee Appeal Form 602, etc.]? Yes No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not exhausted.

_____.

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

- 1. An injunction preventing defendant(s):

- 2. Damages in the sum of \$ _____.

- 3. Punitive damages in the sum of \$ _____.

- 4. Other: _____

F. Demand for Jury Trial

Plaintiff demands a trial by Jury Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

Date

Signature of Plaintiff

1 Joe Attorney, CDR #111111
PRISON LAW OFFICE
2 General Delivery
San Quentin, California 94964
3 Telephone: *****
Facsimilic: *****

4 Attorneys for Plaintiff *****

5
6
7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **(San Francisco Division)**

10
11 *****) Case No.
12)
Plaintiff,)
13) **COMPLAINT FOR**
v.) **DECLARATORY RELIEF**
14) **AND MONETARY DAMAGES**
15 *****) (42 U.S.C. § 1983
16 *****) Civil Rights Action)
***** and *****)
Defendants)

17
18 Plaintiff ***** alleges as follows:

19 **I. INTRODUCTION**

20 This is a civil rights complaint for declaratory relief and monetary damages brought over the
21 use of unreasonable, unnecessary and excessive force in violation of the legal rights of plaintiff
22 ***** while he was incarcerated at the California State Prison-San Quentin by defendants *****,
23 who was the Warden of San Quentin at the time of the incident; *****, California Department of
24 Corrections and Rehabilitation Correctional Sergeant at San Quentin; and *****, *****, *****,

1 California Department of Corrections and Rehabilitation Correctional Officers at San Quentin.

2 **II. JURISDICTION AND VENUE**

3 1. This is a civil rights action under 42 U.S.C. § 1983 to redress the deprivation under color of
4 state law of rights, privileges and immunities guaranteed by the Eighth Amendment of the
5 United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

6 2. This Court has jurisdiction over plaintiff's action for declaratory relief pursuant to 28
7 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure.

8 3. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b)(2)
9 because a substantial part of the events giving rise to the claim occurred at California State
10 Prison - San Quentin, in the Northern District of California.

11 **III. PARTIES**

12 4. Plaintiff **** is not now incarcerated, but was at all times relevant to this action a convicted
13 inmate incarcerated in the California Department of Corrections and Rehabilitation (hereinafter
14 CDCR), California State Prison-San Quentin (hereinafter San Quentin).

15 5. Defendant **** was at all relevant times the Warden of San Quentin, and is sued herein in
16 his individual capacity. **** was responsible for supervising, disciplining, and providing
17 necessary training for all correctional officers and staff employed at San Quentin.

18 6. Defendant **** is a Correctional Sergeant at San Quentin and is sued herein in his
19 individual capacity.

20 7. Defendants ****, **** and **** are or were Correctional Officers at San Quentin at all
21 times relevant to this lawsuit and are sued in their individual capacities.

22 8. At all times mentioned herein, the defendants, and each of them, were employees of the
23 California Department of Corrections.

24

1 **IV. INTRA-DISTRICT ASSIGNMENT**

2 9. The events giving rise to this lawsuit took place in Marin County and thus this case should
3 be assigned to the San Francisco Division of the Northern District of California pursuant to
4 Rule 3-2(d) of the Local Rules of the Northern District of California.

5 **V. FACTUAL ALLEGATIONS**

6 10. Plaintiff, while housed in San Quentin in August 2016, suffered from severe claustrophobic
7 reactions which precipitated Post Traumatic Stress Disorder. He was under treatment by prison
8 mental health staff for this serious mental health condition, which caused him to experience
9 crisis episodes marked by flashbacks to traumatic events, uncontrollable weeping, and
10 overwhelming anxiety.

11 11. In August 2016, plaintiff was housed in a cell on the fifth tier of San Quentin's North
12 Block. Unlike his previous dormitory housing at San Quentin, the celled housing precipitated
13 Post Traumatic Stress Disorder episodes.

14 12. On August 20, 2016, at approximately 1 a.m., plaintiff experienced a severe trauma episode
15 in his cell. As was typical for him in such episodes, he lay on the cell floor weeping in a fetal
16 position. He lay with his head close to the cell door in an attempt to reduce the sensation of
17 claustrophobia.

18 13. While plaintiff was in this condition, a fifth tier Correctional Officer observed him and
19 summoned several other correctional staff, including defendant *****, a Correctional Sergeant
20 and the highest ranking officer in the group, and defendants *****, *****, and *****.

21 14. Instead of summoning medical assistance, these defendants banged on the cell screen,
22 laughed loudly, and yelled obscenities, insults, and mocking jokes at plaintiff. Several of these
23 officers jabbed and poked at plaintiff with broom handles through the food port and under the
24 door of the cell.

1 15. Defendants made statements such as “Look at that stupid asshole!” and “Get up you stupid
2 mother-fucker!”

3 16. Defendant **** and the other correctional officers eventually opened plaintiff’s cell door
4 and rushed in. They grabbed him, placed him in handcuffs, and yelled at him to get up. They
5 lifted him by his neck, choking him. Defendant **** hit plaintiff on his right ear. Plaintiff did
6 not struggle or resist in any way. He was unable to speak or to get up and walk due to his
7 psychiatric condition.

8 17. The officers dragged plaintiff from his cell, again choking him, and defendant **** again
9 struck him on his right ear. Plaintiff was again told, “stand up and walk, you stupid mother-
10 fucker!” When he was unable to comply, the officers continued to laugh at him, yell at him, and
11 make obscene jokes about his condition.

12 18. Defendant **** held plaintiff by the throat, choking him and repeatedly hitting him on the
13 right ear with a cupped hand. He wore rubber gloves. He held his face close to plaintiff’s face,
14 yelling at him.

15 19. Defendants dragged plaintiff down the fifth tier aisle in front of other prisoners’ cells.
16 Defendant **** continued to yell obscenities at plaintiff, holding his face very close to plaintiff’s,
17 ordering him to “Stand up, you stupid mother-fucker!” and “Walk, you stupid mother-fucker!”

18 20. At the fifth tier stairwell, another correctional officer laughingly said to defendant ****,
19 “here, Sarg, let me take him off your hands.” Defendant **** struck plaintiff one more time on
20 his right ear.

21 21. Defendants dragged plaintiff down five flights of stairs through North Block and the East
22 Block Rotunda, through a large concrete yard, through South Block Rotunda, and then to San
23 Quentin’s Drop-In Clinic. Plaintiff was wearing only underwear, with no shoes or socks.

24

1 22. At no time did defendant **** exercise his supervisory responsibility and prevent the
2 beating and choking of plaintiff or the yelling of obscenities at him. At no time did any of the
3 other defendants present prevent defendant **** from repeatedly striking plaintiff or yelling
4 obscenities at him.

5 23. At the Drop-In Clinic plaintiff was placed on a steel chair until a Medical Technical
6 Assistant (MTA) arrived. The MTA reviewed plaintiff's medical records and learned that he had
7 had extensive mental health treatment at San Quentin, including psychiatric medications.
8 Plaintiff informed him that he had been beaten by correctional officers, including a large black
9 sergeant whose name he did not know (later identified as defendant ****). Plaintiff became
10 aware that he could not hear out of his right ear.

11 24. The MTA called the on-call psychiatrist, Dr. A. Plaintiff spoke to him and told him that he
12 had had a Post Traumatic Stress Disorder episode and had been beaten by correctional officers.
13 Dr. A referred him to psychiatric and medical care appointments later that morning.

14 25. Plaintiff was seen by psychiatrist Dr. B later that morning and told him that he had had a
15 Post Traumatic Stress Disorder episode and had been beaten by correctional officers. Plaintiff
16 was also seen that morning by Dr. C, a medical doctor, who discovered a traumatic perforation
17 in plaintiff's right ear drum. Dr. C referred him to the prison's Ear Nose and Throat Clinic
18 where Dr. D confirmed the diagnosis. Dr. D informed plaintiff that he would need surgery on
19 his right ear to patch the perforation.

20 26. Plaintiff subsequently received surgery on his eardrum to repair the damage caused by
21 defendant ****'s blows. Plaintiff continued to experience dizziness after the surgery and was
22 diagnosed with inner ear nerve damage that affected his hearing and balance. He was later given
23 another operation on his ear.

24

1 27. Plaintiff filed an administrative appeal, Form CDC 602, complaining of the assault and his
2 resulting ear damage, log number ***. The appeal was answered at the Director's Level on
3 December 18, 2016, log number ***. He was informed that any action taken on staff
4 misconduct is confidential and would not be revealed to him. The response states that it
5 exhausts the administrative remedies available to plaintiff.

6 28. Although plaintiff repeatedly informed prison staff of the beating and ill-treatment he
7 suffered at the hands of defendant correctional officers and defendant *****, including the 602
8 and statements to defendant *** and other prison officials, on information and belief defendant
9 *** failed to properly investigate and take proper actions to discipline those involved.

10 29. Defendants *****, *****, *****, ***** and ***** knew or should have known that plaintiff was
11 suffering from a mental health crisis episode when they viewed him in his cell in the early
12 morning of August 20, 2016. Instead of summoning medical assistance, they willfully and
13 without provocation dragged plaintiff from his cell, choking him and beating him on the head,
14 while directing obscene jokes and abusive language towards him. Defendant *****'s blows to
15 plaintiff's right ear were done with a cupped and rubber-gloved hand, maliciously and
16 sadistically, for the purpose of causing harm.

17 30. On information and belief, defendant ***** failed to properly train defendants *****, *****,
18 and ***** to ensure that they do not use excessive force against prisoners who have not done
19 anything to provoke the use of force or who are suffering from mental health crisis episodes.

20 VI. CAUSES OF ACTION

21 FIRST CAUSE OF ACTION

22 (42 U.S.C. § 1983, 8th Amendment to U.S. Constitution)

23 (Plaintiff v. *****)

24

1 31. The allegations contained in paragraphs 1 through 30, inclusive, are hereby incorporated by
2 reference.

3 32. Defendant **** violated plaintiff's right to be free from cruel and unusual punishment
4 guaranteed to the plaintiff by the Eighth Amendment of the United States Constitution by his
5 actions of intimidation, abuse, harassment and other violations of law against plaintiff.

6 33. Defendant **** violated plaintiff's right to be free from cruel and unusual punishment
7 guaranteed to the plaintiff by the Eighth Amendment of the United States Constitution by his
8 failure to adequately supervise the correctional officers subordinate to him.

9 34. Defendant's wrongful actions alleged herein are in violation of 42 U.S.C. § 1983 because
10 they have deprived plaintiff of rights, benefits, and privileges secured by the United States
11 Constitution.

12 35. Defendant **** acted under color of state law.

13 36. Defendant **** knew or should have known that his conduct, attitudes and actions created
14 an unreasonable risk of serious harm to plaintiff.

15 37. The actions and conduct of defendant **** demonstrate deliberate indifference to
16 plaintiff's Eighth Amendment rights.

17 38. As a proximate result of the defendant's violation of plaintiff's right to be free from cruel
18 and unusual punishment while he was at San Quentin, plaintiff has suffered, is suffering, and will
19 continue to suffer irreparable harm.

20 39. As a direct and foreseeable result of the defendant's violations of the Eighth Amendment,
21 plaintiff has suffered, is suffering and will continue to suffer physical injuries in the form of
22 damage to his right eardrum, loss of hearing, problems with balance, and other injuries.

23 40. As a direct and foreseeable result of the defendant's violations of the Eighth Amendment,
24 plaintiff has suffered, is suffering and will continue to suffer injuries in the form of pain and

1 suffering, shame, humiliation, degradation, emotional distress, embarrassment, mental distress
2 and other injuries.

3 41. An actual controversy exists between plaintiff and defendant concerning their rights,
4 privileges, and obligations.

5 42. Defendant ****'s acts were willful, intentional, malicious, wanton, and despicable in
6 conscious disregard of plaintiff's rights, entitling plaintiff to an award of exemplary damages.

7
8 **SECOND CAUSE OF ACTION**

9 (42 U.S.C. § 1983, 8th Amendment to U.S. Constitution)

10 (Plaintiff v. ****, ****, ****, ****, ****, ****, ****, ****, ****, ****, and ****)

11 43. The allegations contained in paragraphs 1 through 42, inclusive, are hereby incorporated by
12 reference.

13 44. Defendants ****, ****, ****, ****, ****, ****, ****, ****, ****, and **** violated plaintiff's right
14 to be free from cruel and unusual punishment guaranteed to the plaintiff by the Eighth
15 Amendment of the United States Constitution by their actions of intimidation, abuse,
16 harassment and other violations of law against plaintiff.

17 45. Defendants' wrongful actions alleged herein are in violation of 42 U.S.C. § 1983 because
18 they have deprived plaintiff of rights, benefits, and privileges secured by the United States
19 Constitution.

20 46. Defendants acted under color of state law.

21 47. Defendants knew or should have known that their conduct, attitudes and actions created an
22 unreasonable risk of serious harm to plaintiff.

23 48. The actions and conduct of defendants demonstrate deliberate indifference plaintiff's
24 Eighth Amendment rights.

1 49. As a proximate result of the defendants' violation of plaintiff's right to be free from cruel
2 and unusual punishment while he was at San Quentin, plaintiff has suffered, is suffering, and will
3 continue to suffer irreparable harm.

4 50. As a direct and foreseeable result of the defendant's violations of the Eighth Amendment,
5 plaintiff has suffered, is suffering and will continue to suffer physical injuries in the form of
6 damage to his right eardrum, loss of hearing, problems with balance, and other injuries.

7 51. As a direct and foreseeable result of the defendants' violations of the Eighth Amendment,
8 plaintiff has suffered, is suffering and will continue to suffer injuries in the form of pain and
9 suffering, shame, humiliation, degradation, emotional distress, embarrassment, mental distress
10 and other injuries.

11 52. An actual controversy exists between plaintiff and defendant concerning their rights,
12 privileges, and obligations.

13 53. Defendants' acts were willful, intentional, malicious, wanton, and despicable in conscious
14 disregard of plaintiff's rights, entitling plaintiff to an award of exemplary damages.

15
16 **THIRD CAUSE OF ACTION**

17 (42 U.S.C. § 1983, 8th Amendment to U.S. Constitution)

18 (Plaintiff v. ****)

19 54. The allegations contained in paragraphs 1 through 53, inclusive, are hereby incorporated by
20 reference.

21 55. Defendant **** violated plaintiff's right to be free from cruel and unusual punishment
22 guaranteed to the plaintiff by the Eighth Amendment of the United States Constitution by his
23 failure to adequately train custody staff in the appropriate use of force, in the determination of
24 an inmate's need for mental health crisis support and in the appropriate manner to facilitate such

1 support, by his failure to supervise the other defendants and by his failure to investigate the
2 incident or discipline the other defendants.

3 56. Defendant's wrongful actions alleged herein are in violation of 42 U.S.C. § 1983 because
4 they have deprived plaintiff of rights, benefits, and privileges secured by the United States
5 Constitution.

6 57. Defendant **** acted under color of state law.

7 58. Defendant **** knew or should have known that his conduct, attitudes and actions created
8 an unreasonable risk of serious harm to plaintiff.

9 59. Despite this knowledge, defendant **** failed to take reasonable steps to protect plaintiff
10 and to ensure his constitutional right to be free from cruel and unusual punishment while he was
11 in defendants' care and custody at San Quentin.

12 60. The actions and conduct of defendant **** demonstrate deliberate indifference to
13 violations of plaintiff's Eighth Amendment rights.

14 61. As a proximate result of the defendant's failure to ensure plaintiff's right to be free from
15 cruel and unusual punishment while he was at San Quentin, plaintiff has suffered, is suffering,
16 and will continue to suffer irreparable harm.

17 62. As a direct and foreseeable result of the defendant's violations of the Eighth Amendment,
18 plaintiff has suffered, is suffering and will continue to suffer physical injuries in the form of
19 damage to his right eardrum, loss of hearing, problems with balance, and other injuries.

20 63. As a direct and foreseeable result of the defendant's violations of the Eighth Amendment,
21 plaintiff has suffered, is suffering and will continue to suffer injuries in the form of pain and
22 suffering, shame, humiliation, degradation, emotional distress, embarrassment, mental distress
23 and other injuries.

1 64. An actual controversy exists between plaintiff and defendant concerning their rights,
2 privileges, and obligations.

3 **PRAYER FOR RELIEF**

4 65. Wherefore, plaintiff respectfully prays for relief as follows:

5 1. Issue a declaratory judgment that the defendants' actions complained of herein
6 violate plaintiff's rights under the U.S. Constitution and as otherwise alleged herein;

7 2. Award plaintiff monetary damages, compensatory and punitive, in an amount to
8 be determined at trial;

9 3. Award plaintiff the costs of suit and reasonable attorney's fees; and

10 4. Grant plaintiff such other and further relief as the Court deems just and proper.

11
12 Dated: _____

Respectfully submitted,

13
14 _____
15 Joe Attorney
16 Attorney for plaintiff

1 *Name and address of*
2 *pro se plaintiff*
3 *or attorney for plaintiff*

4
5 **U.S. DISTRICT COURT**
6 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

7 ****,) Case No. XXXXXXXX
8)
9 Plaintiff,) **PLAINTIFFS' REQUEST FOR**
10) **ADMISSIONS**
11 ****, et al.)
12 Defendants.)
_____)

13 Propounding Party: Plaintiff
14 Responding Party: ***
15 Set Number: One

16 Pursuant to Rule 36 of the Federal Rules of Civil Procedure and the Local Rules for
17 the U.S. District Court, Northern District, defendants are requested herein to admit the
18 truthfulness of some matters, and to admit the authenticity of some documents, as follows.

19 **DEFINITIONS**

20 Unless otherwise indicated, the following definitions and terms shall apply to these
21 Requests for Production of Documents:

22 1. The terms "you" and "your" refer to defendants and anyone purporting to act on
23 their behalf, including but not limited to, their attorneys, assistants, advisors, investigators,
24 employees, experts, consultants or custodians of records.

2. The terms "document" or "documents" are intended to have the broadest possible

1 meaning. These terms refer to, but are not limited to, any written, typed, printed, recorded,
2 taped, copied, computerized, graphic or photographic material, however produced,
3 reproduced or stored, including, without limitation, any data stored on computer tapes, disks
4 or hard drives, including electronic mail and any sound or visual reproduction. The types of
5 documents include, without limitation, preliminary, supplemental or final drafts of
6 correspondence, letters, forms, teletypes, notes, memoranda, reports, studies, bulletins, logs,
7 directives, announcements, notices, rules, regulations, instructions, procedure manuals, training
8 materials, catalogs, transcripts, minutes, schedules, agendas, work assignments, bills,
9 specifications, blueprints, budget requests, and contracts. Specifically included are all files
10 separately maintained by employees, representatives, experts, agents or consultants of the
11 California Department of Corrections and Rehabilitation.

12 3. The term "CDCR" refers to the California Department of Corrections and
13 Rehabilitation, its agents, employees and anyone acting on its behalf.

14 4. The term "San Quentin" refers to the California State Prison at San Quentin.

15 4. The term "relate to" means constitutes, mentions, discusses, describes, concerns,
16 comments on or refers, relates or pertains to the subject matter of the request, directly or
17 indirectly, in whole or in part.

18 5. The term "all" means any and all.

19 6. The term "any" means each and every.

20 AUTHENTICITY OF DOCUMENTS

21 * Admit the authenticity of the letter dated February 10, 2016, addressed to Mr. **** and
22 written for the signature of ****, Warden, a copy of which letter is attached here as
23 EXHIBIT "A." (The term "EXHIBIT 'A'" as used hereinafter shall mean the letter
24 described in this request for admission number 1.)

TRUTH OF MATTERS

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*. Admit that you came to the cell of plaintiff **** the night of August 20, 2016 or morning of August 21, 2016.

*. Admit that you saw no videotaping equipment, medical staff, or safety equipment (including but not limited to protection suits, vests, shields, knee or elbow pads, and leg restraints) in use during the removal of plaintiff **** from his cell the night of August 20, 2016 or morning of August 21, 2016.

*. Admit that you escorted plaintiff **** from his cell to the medical clinic the night of August 20, 2016 or morning of August 21, 2016.

*. Admit that you saw no videotaping equipment, medical staff, or safety equipment (including but not limited to protection suits, vests, shields, knee or elbow pads, and leg restraints) in use during the escorting of plaintiff **** from his cell the night of August 20, 2016 or morning of August 21, 2016, to the medical clinic.

*. Admit that you did not file any written report (including but not limited to incident reports and use of force reports) relating to the removal of **** from his cell and/or the escorting of **** to the medical clinic the night of August 20, 2016 or morning of August 21, 2016.

Dated:

Signature of plaintiff or plaintiffs' attorney

1 *Name and address of*
2 *pro se plaintiff*
or attorney for plaintiff

3 **U.S. DISTRICT COURT**
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

5 ****,) Case No. XXXXX
6)
7 Plaintiff,) **PLAINTIFF'S**
8) **REQUEST FOR**
9 v.) **PRODUCTION**
10 ****, et al.) **OF DOCUMENTS**
11 Defendants.)
_____)

11 Plaintiff requests, pursuant to Rule 34 of the Federal Rules of Civil Procedure, that (1)
12 on May 12, 2018, defendants produce for inspection and copying the documents described
13 below; and (2) within 30 days after service of this Request, serve a written response pursuant
14 to Rule 34(b) of the Federal Rules of Civil Procedure.

15 The documents are to be made available at the Law Office of Joe Attorney,
16 _____ (U.S. mail address).

17 **DEFINITIONS**

18 Unless otherwise indicated, the following definitions and terms shall apply to these
19 Requests for Production of Documents:

20 1. The terms “you” and “your” refer to defendants and anyone purporting to act on
21 their behalf, including but not limited to, their attorneys, assistants, advisors, investigators,
22 employees, experts, consultants or custodians of records.

23 2. The terms “document” or “documents” are intended to have the broadest possible
24 meaning. These terms refer to, but are not limited to, any written, typed, printed, recorded,

1 taped, copied, computerized, graphic or photographic material, however produced,
2 reproduced or stored, including, without limitation, any data stored on computer tapes, disks
3 or hard drives, including electronic mail and any sound or visual reproduction. The types of
4 documents include, without limitation, preliminary, supplemental or final drafts of
5 correspondence, letters, forms, teletypes, notes, memoranda, reports, studies, bulletins, logs,
6 directives, announcements, notices, rules, regulations, instructions, procedure manuals, training
7 materials, catalogs, transcripts, minutes, schedules, agendas, work assignments, bills,
8 specifications, blueprints, budget requests, and contracts. Specifically included are all files
9 separately maintained by employees, representatives, experts, agents or consultants of the
10 California Department of Corrections and Rehabilitation.

11 3. The term “CDCR” refers to the California Department of Corrections
12 Rehabilitation, its agents, employees and anyone acting on its behalf.

13 4. The term “San Quentin” refers to the California State Prison at San Quentin.

14 5. The term “relate to” means constitutes, mentions, discusses, describes, concerns,
15 comments on or refers, relates or pertains to the subject matter of the request, directly or
16 indirectly, in whole or in part.

17 6. The term “all” means any and all.

18 7. The term “any” means each and every.

19 INSTRUCTIONS

20 1. This request covers all documents in the actual or constructive possession, custody
21 or control of defendants whether prepared by defendants or any other persons.

22 2. Unless otherwise indicated, for purposes of responding to these requests, the
23 relevant time period for this request is **August 18, 2015 (one year before the incident at**
24 **issue), to the present.** This request includes all documents generated, prepared, sent,

1 received, and/or reviewed during that period or which were operative during, relate to, or
2 contain information about, events occurring within that period.

3 3. Documents shall be segregated according to the paragraph to which they are
4 responsive. If there are any paragraphs of this request for which no documents are produced,
5 please indicate in writing the basis for not producing any documents. If there are not
6 responsive documents, please indicate that fact in writing. If a document is responsive to
7 more than one paragraph it need be produced only once. If a document responsive to
8 multiple requests is produced only once, please segregate the document according to the first
9 paragraph to which it is responsive and identify in writing all subsequent paragraphs to which
10 the document is responsive.

11 4. Please produce all non-identical copies of all responsive documents, including
12 copies that bear marks, notations, or changes not present in the original.

13 5. With respect to each document otherwise called for by this request as to which a
14 claim of privilege is asserted, separately state the following: (a) the type of document (e.g.,
15 letter, memorandum, note, etc.); (b) the date of the document; (c) the name, business address,
16 and present position of its author or authors; (d) the name and position of its author or
17 authors at the time the document was prepared; (e) the name, business address, and present
18 position of its addressee and all other recipients of the document; (f) the position of its
19 addressee and all other recipients at the time the document was prepared and/or received; (g)
20 a general description of the subject of the document; (h) the basis of the claim of privilege; and
21 (i) if the basis of the claim of privilege is the work product doctrine, please identify the
22 proceeding for which the document was prepared.

23 6. Electronic records and computerized information including, but not limited to,
24 computer tapes and disks, must be produced in an intelligible format or together with a

1 description of the system from which it was derived that is sufficient to permit the materials to
2 be rendered intelligible.

3 **REQUESTS FOR DOCUMENTS**

4 REQUEST NO. 1:

5 Any and all documents that refer or relate to policies, procedures, and practices in
6 effect in November 2015 for San Quentin medical staff regarding the examination of prisoners
7 in Reception Centers and the completion of Reception Center Physical Examination forms.
8 This request includes but is not limited to all policies, procedures, or practices generated by the
9 CDC as well as policies, procedures, or practices specific to San Quentin.

10 REQUEST NO. 2

11 Any and all equipment/use logs (as defined by the San Quentin State Prison Use of
12 Force Policy signed by defendant *****) for use of video equipment on August 19 and 20,
13 2016, at San Quentin.

14 REQUEST NO. 3

15 Any and all incident packages (as defined by the San Quentin State Prison Use of
16 Force Policy signed by defendant *****) generated by San Quentin staff relating to interactions
17 with plaintiff ***** on or about August 19-20, 2016, at San Quentin. This document request
18 includes but is not limited to Crime/Incident Report Review Notices, Incident Commander
19 Reviews, Management Reports of Calculated Use of Force, Captain's Reviews of Use of Force
20 Crime/Incident Report Critiques, Use of Force Critiques, and Associate Warden Reviews of
21 Use of Force Crime/Incident Report Critiques.

22 REQUEST NO. 4:

23 Any and all photographs taken by CDCR staff in relation to and/or as a result of
24 plaintiff's being removed from his cell and taken to the San Quentin medical clinic on or about

1 August 19-20, 2016.

2 REQUEST NO. 5

3 Any and all records of training that has been provided to each defendant on use of
4 force. The time frame for this discovery request is the time each defendant became employed
5 by the CDC to the present.

6 REQUEST NO. 6

7 Any and all records of training that has been provided to each defendant on cell
8 extractions. The time frame for this discovery request is the time each defendant became
9 employed by the CDCR to the present.

10 REQUEST NO. 7

11 Any and all records of training that has been provided to each defendant on emergency
12 medical evacuation procedures. The time frame for this discovery request is the time each
13 defendant became employed by the CDCR to the present.

14 REQUEST NO. 8

15 Any and all documents received, read, or reviewed by each defendant that refer or
16 relate to training, policies, or procedures on use of force.

17 REQUEST NO. 9

18 Any and all documents received, read, or reviewed by each defendant that refer or
19 relate to training, policies, or procedures on cell extractions.

20 REQUEST NO. 10

21 Any and all documents received, read, or reviewed by each defendant that refer or
22 relate to training, policies, or procedures on emergency medical evacuations.

23 REQUEST NO. 11

24 Any and all documents relating to allegations of excessive use of force by any San

1 Quentin staff in cell extractions or emergency medical evacuations while defendant **** was
2 Warden at San Quentin.

3 REQUEST NO. 12

4 Any and all formal and informal written complaints (including but not limited to 602
5 forms) against any defendant, alleging excessive use of force that occurred prior to August 19,
6 2016 (including all written responses, appeals, reports, investigations, and/or correspondence
7 regarding the complaints).

8 REQUEST NO. 13

9 Any and all formal and informal written complaints (including but not limited to 602
10 forms) against any San Quentin staff member alleging excessive use of force during defendant
11 ****'s employment as Warden of San Quentin (including all written responses, appeals,
12 reports, investigations, and/or correspondence regarding the complaints).

13 REQUEST NO. 14

14 Any and all policies on use of force in effect at San Quentin during defendant ****'s
15 employment as Warden.

16

17 Dated: _____

18

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Signature of plaintiff or plaintiffs' attorney

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1 *Name and address of*
2 *pro se plaintiff*
3 *or attorney for plaintiff*

4 **U.S. DISTRICT COURT**
5 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

6 ****,) Case No. XXXX
7 Plaintiff,) **PLAINTIFFS' FIRST**
8 v.) **SET OF**
9 ****, et al.) **INTERROGATORIES**
10 Defendants.) **(DEFENDANT ****)**
11 _____)

12 Plaintiff requests, pursuant to Rule 33 of the Federal Rules of Civil Procedure, that
13 defendant in the above-entitled action respond to the following written interrogatories
14 separately and fully under oath, in the manner set forth in Rule 33.

15 **DEFINITIONS**

16 Unless otherwise indicated, the following definitions and terms shall apply to these
17 Interrogatories:

18 1. The terms “you” and “your” refer to you and anyone purporting to act on your
19 behalf, including but not limited to, your attorneys, assistants, advisors, investigators,
20 employees, experts, consultants or custodians of records.

21 2. The terms “document” or “documents” are intended to have the broadest possible
22 meaning. These terms refer to, but are not limited to, any written, typed, printed, recorded,
23 taped, copied, computerized, graphic or photographic material, however produced,
24 reproduced or stored, including, without limitation, any data stored on computer tapes, disks

1 or hard drives, including electronic mail and any sound or visual reproduction. The types of
2 documents include, without limitation, preliminary, supplemental or final drafts of
3 correspondence, letters, forms, teletypes, notes, memoranda, reports, studies, bulletins, logs,
4 directives, announcements, notices, rules, regulations, instructions, procedure manuals, training
5 materials, catalogs, transcripts, minutes, schedules, agendas, work assignments, bills,
6 specifications, blueprints, budget requests, and contracts. Specifically included are all files
7 separately maintained by employees, representatives, experts, agents or consultants of the
8 California Department of Corrections and Rehabilitation.

9 3. The term "CDCR" refers to the California Department of Corrections and
10 Rehabilitation, its agents, employees and anyone acting on its behalf.

11 4. The term "San Quentin" refers to the California State Prison at San Quentin.

12 5. The term "relate to" means constitutes, mentions, discusses, describes, concerns,
13 comments on or refers, relates or pertains to the subject matter of the request, directly or
14 indirectly, in whole or in part.

15 6. The term "all" means any and all.

16 7. The term "any" means each and every.

17 8. An interrogatory to "identify" a writing or document means a request either to
18 attach such as an exhibit to your answers to these interrogatories, or to describe such with
19 sufficient specificity that it may be made the subject of a request for production of documents.

20 9. A request to "identify" an oral communication shall mean a request to describe the
21 communication with particularity, including the identity of all parties to the communication,
22 the identity of the person whom you contend initiated the communication, the identity of all
23 persons present at the time of the communication, and the time, date and place of the
24 communication.

1 separately state the following: (a) the basis of the claim of privilege; (b) a general description of
2 the subject of the information or communication; (c) the identities of all person(s) with
3 knowledge of the information or communication; (d) the date of the communication; (e) the
4 identities of all persons present when the communication took place; and (f) the type of
5 communication (i.e., face-to-face conversation, telephone conversation) and the location of
6 each party to the communication at the time it took place.

7 **INTERROGATORIES**

8 INTERROGATORY NO. 1:

9 State all the positions you have held in the CDCR and the dates you held them.

10 INTERROGATORY NO. 2:

11 Describe what you did, if anything, to ensure that San Quentin staff followed the Use
12 of Force policies in effect during your employment as Warden of San Quentin.

13 INTERROGATORY NO. 3:

14 Describe what you did, if anything, to ensure that San Quentin staff followed the
15 Emergency Medical Evacuation policies in effect during your employment as Warden of San
16 Quentin. The time period for this interrogatory is the period you were Warden of San
17 Quentin.

18 INTERROGATORY NO. 4:

19 Describe how you were kept informed, if at all, of allegations of the excessive use of
20 force against prisoners at San Quentin during your employment as Warden there. The time
21 period for this interrogatory is the period you were Warden of San Quentin.

22 INTERROGATORY NO. 5:

23 Describe how you first became aware of *****'s allegations that excessive force was
24 used against him by San Quentin staff in August 2016.

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INTERROGATORY NO. 6:

Describe any actions you took in response to the allegations of excessive use of force by San Quentin staff made by **** relating to events of August 19-20, 2016.

INTERROGATORY NO. 7:

Describe all efforts made by San Quentin staff to track and evaluate complaints of excessive use of force made by prisoners at San Quentin during your employment as Warden there.

INTERROGATORY NO. 8:

Describe what you did, if anything, as a result of the Office of the Inspector General's report regarding ***'s allegations of excessive use of force against him by San Quentin staff members.

Dated:

Signature of plaintiff or plaintiffs' attorney

1 *Name and address of*
2 *pro se plaintiff*
or attorney for plaintiff

3
4 **U.S. DISTRICT COURT**
5 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

6 ****,) Case No. XXXXX
7)
8 Plaintiff,) **PLAINTIFFS' FIRST**
9) **SET OF**
10 v.) **INTERROGATORIES**
11 ****, et al.) **(DEFENDANT ****)**
12)
13 Defendants.)
14 _____)

15 Plaintiff requests, pursuant to Rule 33 of the Federal Rules of Civil Procedure, that
16 defendant in the above-entitled action respond to the following written interrogatories
17 separately and fully under oath, in the manner set forth in Rule 33.

18 **DEFINITIONS**

19 Unless otherwise indicated, the following definitions and terms shall apply to these
20 Interrogatories:

21 1. The terms "you" and "your" refer to you and anyone purporting to act on your
22 behalf, including but not limited to, your attorneys, assistants, advisors, investigators,
23 employees, experts, consultants or custodians of records.

24 2. The terms "document" or "documents" are intended to have the broadest possible
meaning. These terms refer to, but are not limited to, any written, typed, printed, recorded,
taped, copied, computerized, graphic or photographic material, however produced,
reproduced or stored, including, without limitation, any data stored on computer tapes, disks

1 or hard drives, including electronic mail and any sound or visual reproduction. The types of
2 documents include, without limitation, preliminary, supplemental or final drafts of
3 correspondence, letters, forms, teletypes, notes, memoranda, reports, studies, bulletins, logs,
4 directives, announcements, notices, rules, regulations, instructions, procedure manuals, training
5 materials, catalogs, transcripts, minutes, schedules, agendas, work assignments, bills,
6 specifications, blueprints, budget requests, and contracts. Specifically included are all files
7 separately maintained by employees, representatives, experts, agents or consultants of the
8 California Department of Corrections and Rehabilitation.

9 3. The term "CDCR" refers to the California Department of Corrections and
10 Rehabilitation, its agents, employees and anyone acting on its behalf.

11 4. The term "San Quentin" refers to the California State Prison at San Quentin.

12 4. The term "relate to" means constitutes, mentions, discusses, describes, concerns,
13 comments on or refers, relates or pertains to the subject matter of the request, directly or
14 indirectly, in whole or in part.

15 5. The term "all" means any and all.

16 6. The term "any" means each and every.

17 7. An interrogatory to "identify" a writing or document means a request either to
18 attach such as an exhibit to your answers to these interrogatories, or to describe such with
19 sufficient specificity that it may be made the subject of a request for production of documents.
20 Your description should include, without limitation, an indication of: (a) the author, (b)
21 addressee(s); (c) copy recipients; (d) date; (e) the nature of the writing or document (e.g., letter,
22 telephone memorandum, audio tape recording, photograph, etc.); (f) a summary or description
23 of the contents; and (g) the present location and custodian thereof for each existing copy.

24 8. A request to "identify" an oral communication shall mean a request to describe the

1 communication with particularity, and shall include, without limitation, the following
2 information: (a) the identity of all parties to the communication; (b) the identity of the person
3 whom you contend initiated the communication; (c) the identity of all persons present at the
4 time of the communication; and (d) the time, date and place of the communication.

5 9. A request to "identify" a person or individual, unless otherwise stated, means to
6 state his or her name, title, place of employment, and present or last known business and
7 home addresses and telephone numbers.

8 INSTRUCTIONS

9 1. These interrogatories cover all documents in the actual or constructive possession,
10 custody or control of defendants whether prepared by defendants or any other persons.

11 2. Unless otherwise indicated, for purposes of responding to these requests, the
12 relevant time period for this request is **August 18, 2016, to the present**. These interrogatories
13 include all information available to, learned of or communicated within the period, as well as
14 all information in documents generated, prepared, sent, received, and/or reviewed during that
15 period or which were operative during, relate to, or contain information about, events
16 occurring within that period exclusive of information and documents produced by defendants
17 in this case in response to previous Requests to Produce Documents.

18 3. With respect to each document required to be identified by these interrogatories as
19 to which a claim of privilege is asserted, separately state the following: (a) the type of
20 document (e.g., letter, memorandum, note, etc.); (b) the date of the document; (c) the name,
21 business address, and present position of its author or authors; (d) the name and position of its
22 author or authors at the time the document was prepared; (e) the name, business address, and
23 present position of its addressee and all other recipients of the document; (f) the position of its
24 addressee and all other recipients at the time the document was prepared and/or received; (g)

1 a general description of the subject of the document; (h) the basis of the claim of privilege; and
2 (i) if the basis of the claim of privilege is the work product doctrine, please identify the
3 proceeding for which the document was prepared.

4 4. With respect to any non documentary information or communications, required to
5 be identified or described by these interrogatories as to which a claim of privilege is asserted,
6 separately state the following: (a) the basis of the claim of privilege; (b) a general description of
7 the subject of the information or communication; (c) the identities of all person(s) with
8 knowledge of the information or communication; (d) the date of the communication; (e) the
9 identities of all persons present when the communication took place; and (f) the type of
10 communication (i.e., face-to-face conversation, telephone conversation) and the location of
11 each party to the communication at the time it took place.

12 INTERROGATORIES

13 INTERROGATORY NO. 1:

14 State the positions you have held in the CDCR and the dates you held them.

15 INTERROGATORY NO. 2:

16 Identify by name, date, duration, title and location any training you have received
17 concerning CDCR policies and procedures on the use of force

18 INTERROGATORY NO. 3:

19 Identify by name, date, duration, title and location any training you have received
20 concerning CDCR policies and procedures on emergency medical evaluations.

21 INTERROGATORY NO. 4:

22 Identify by name, date, duration, title and location any training you have received
23 concerning CDCR policies and procedures on cell extractions.

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INTERROGATORY NO. 5:

State all facts that support your contention that ***.

INTERROGATORY NO. 6:

Identify all persons that support your contention that ***.

INTERROGATORY NO. 7:

Defendants ****, ****, ****, ****, ****:

Were you present at or near ****'s cell in San Quentin the night of August 19-20, 2016?

If you were present at or near ****'s cell in San Quentin the night of August 19-20, 2016, did you observe videotaping equipment in the vicinity of the cell?

If you were present at or near ****'s cell in San Quentin the night of August 19-20, 2016, did you observe medical staff in the vicinity of the cell?

Did you submit any incident report (including but not limited to use of force incident reports) with regards to **** and any events of the night of August 19-20, 2016?

Defendant ****:

Describe ****'s position and actions when you first came to his cell on the night of August 19-20, 2016.

Describe the actions you took with regards to **** on the night of August 19-20, 2016.

Did you submit any incident report (including but not limited to use of force incident reports) with regards to **** and any events of the night of August 19-20, 2016?

Dated:

Signature of plaintiff or plaintiffs' attorney