

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KENNETH CULBREATH,

Plaintiff,

v.

**Case No. 1:07cv113
(Judge Keeley)**

HARLEY LIPTON, et al.,

Defendants.

ORDER

On August 22, 2007, the *pro se* plaintiff initiated this Bivens action seeking damages and a declaratory judgment. A Bivens action like an action under 42 U.S.C. § 1983, is subject to exhaustion of administrative remedies as required by the Prison Litigation Reform Act (PLRA). Porter v. Nussle, 534 U.S. 516, 524 (2002).

The BOP provides a four-step administrative process beginning with attempted informal resolution with prison staff (BP-8). If the prisoner achieves no satisfaction informally, he must file a written complaint with the warden (BP-9), followed by an appeal to the regional director of the Federal Prisons (BP-10). Finally, if the prisoner has received no satisfaction, he may appeal to the Office of the General Counsel (BP-11). 28 C.F.R. § 542.10-542.15.

The Fourth Circuit has found that exhaustion is an affirmative defense, but that a district court may inquire “on its own motion into whether the inmate has exhausted all administrative remedies.” Anderson v. XYZ Correctional Health Services, 407 F.3d 674, 683 (4th Cir. 2005).

Therefore, **within 20 days of the entry of this Order**, plaintiff is directed to provide the Court with proof that he has exhausted his administrative remedies as set forth above. The failure

to comply with this Order in the allotted time will result in the recommendation that this case be dismissed for the failure to exhaust.

IT IS SO ORDERED.

The Clerk is directed to send a copy of this Order to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as reflected on the docket sheet.

DATED: October 18, 2007.

/s/ James E. Seibert _____
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE