

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 02-3120

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Johnny Lee Sanders, Jr.

Appellant,

v.

Rex Jones, Supervisor of  
Education, FCI - Forrest City; Mel  
Smith, Captain, FCI - Forrest City;  
Kim Tillman, Teacher, FCI - Forrest  
City; Kim Thrash, Education  
Technician, FCI - Forrest City;  
Melanie Garrido, Supervisor of  
Education, FCI - Forrest City;  
Lindsey Dunham, Teacher, FCI -  
Forrest City; Howard Barron, Jr., Unit  
Manager, FCI - Forrest City;  
Marvin D. Morrison, Warden, FCI -  
Forrest City,

Appellees

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\* Appeal from the United States  
\* District Court for the Eastern  
\* District of Arkansas.

[UNPUBLISHED]

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Submitted: July 8, 2003

Filed: August 26, 2003

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Before MORRIS SHEPPARD ARNOLD, McMILLIAN, and FAGG, Circuit Judges.

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PER CURIAM.

Federal prisoner Johnny Lee Sanders, Jr., appeals the district court's<sup>1</sup> (1) pre-service dismissal without prejudice of his Bivens<sup>2</sup> action for failing to exhaust his administrative remedies, (2) denial of his motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), and (3) denial of leave to amend his complaint. We grant Mr. Sanders's request to proceed in forma pauperis, and assess the appellate filing fee. See Henderson v. Norris, 129 F.3d 481, 484-85 (8th Cir. 1997) (per curiam).

Because Mr. Sanders did not file any administrative grievances against defendant Marvin Morrison, we conclude the dismissal was proper. See 42 U.S.C. § 1997e(a); Porter v. Nussle, 534 U.S. 516, 524 (2002) (federal prisoners suing under Bivens must first exhaust inmate grievance procedures; administrative exhaustion is prerequisite even if administrative remedies are not plain, speedy, and effective, and relief inmate seeks is not available); Graves v. Norris, 218 F.3d 884, 885-86 (8th Cir. 2000) (per curiam) (dismissal proper where at least some of plaintiff's claims were unexhausted when district court ruled). We also conclude that the district court did not abuse its discretion in denying Mr. Sanders's Rule 59(e) motion, see Perkins v. US West Communications, 138 F.3d 336, 340 (8th Cir. 1998) (standard of review), or his motion for leave to amend, see In re NationsMart Corp. Sec. Litig., 130 F.3d 309, 322-23 (8th Cir. 1997) (standard of review), cert. denied, 524 U.S. 927 (1998).

Accordingly, we affirm.

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<sup>1</sup>The Honorable James M. Moody, United States District Judge for the Eastern District of Arkansas.

<sup>2</sup>Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.