

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

Gregory Wherry v. Jeff Lynch, et al.

Wherry v. Lynch, No. 2:25-cv-0429 CKD P (E.D. Cal. Sept. 9, 2025) · No. 2:25-cv-0429 CKD P · Decided  
September 9, 2025

SUMMARY

The United States District Court for the Eastern District of California dismisses Gregory Wherry’s amended 42 U.S.C. § 1983 complaint for failure to state a claim. The court grants plaintiff one final opportunity to file a complete second amended complaint within thirty days and warns that failure to do so will result in a recommendation that the action be dismissed.

CASE DETAILS

|                       |                                                                                                                                                                                                                           |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of California                                                                                                                                                       |
| WRITING FOR THE COURT | Carolyn K. Delaney                                                                                                                                                                                                        |
| JURISDICTION          | United States District Court for the Eastern District of California                                                                                                                                                       |
| DECIDED               | September 9, 2025                                                                                                                                                                                                         |
| DOCKET                | 2:25-cv-0429 CKD P                                                                                                                                                                                                        |
| DISPOSITION           | dismissed                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Screening of a state prisoner’s amended complaint under 28 U.S.C. § 1915A after the original complaint had been dismissed with leave to amend.                                                                            |
| STANDARD OF REVIEW    | Mandatory screening under 28 U.S.C. § 1915A; the complaint must be dismissed if it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from an immune defendant. |
| PRECEDENTIAL VALUE    | unpublished                                                                                                                                                                                                               |
| PARTIES               | Gregory Wherry v. Jeff Lynch, Boballa, Dr. Hlaing, Doe defendants                                                                                                                                                         |

TOPICS

- prisoners rights
- section 1983
- civil rights
- pleadings
- civil procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the amended complaint stated a cognizable claim under 42 U.S.C. § 1983 against the named prison officials.
2. Whether the amended complaint stated an Eighth Amendment deliberate-indifference claim based on medical care.
3. Whether the action could proceed against unidentified Doe defendants.
4. Whether plaintiff should receive another opportunity to amend.

## HOLDINGS

1. The amended complaint failed to state a claim against Lynch and Bobbala because it alleged no specific facts establishing an affirmative link between either defendant's actions and the claimed constitutional deprivation.
2. The amended complaint failed to state an Eighth Amendment medical-care claim because it did not allege facts showing that Dr. Hlaing denied or delayed care for a serious medical need or acted with deliberate indifference.
3. The action could not proceed against unidentified Doe defendants because they could not be served with process.
4. Plaintiff was granted one final opportunity, for thirty days, to file a complete second amended complaint complying with the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

## KEY QUOTATIONS

*“This action cannot proceed against “doe” defendants as they cannot be served with process.” (at 2)*

*“There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s actions and the claimed deprivation.” (at 2)*

*“Plaintiff fails to point to any facts suggesting Dr. Hlaing denied or delayed any medical care for plaintiff and plaintiff does not identify what care, if any, was delayed or denied.” (at 2)*

## FACTUAL BACKGROUND

Plaintiff is a state prisoner who alleged civil-rights violations by prison officials and inadequate medical care. He named Warden Lynch, Chief Medical Executive Bobbala, Dr. Hlaing, and unidentified Doe defendants. The amended complaint did not identify conduct by Lynch or Bobbala linking them to a constitutional deprivation and did not allege that Dr. Hlaing denied or delayed medical care for a serious medical need.

## PROCEDURAL HISTORY

Plaintiff, a state prisoner proceeding pro se under 42 U.S.C. § 1983, filed an amended complaint after the court dismissed his original complaint on February 27, 2025, with leave to amend. The court screened the amended complaint, found that it failed to state a cognizable claim against the identified defendants and could not proceed against Doe defendants, dismissed the amended complaint, and granted plaintiff one final opportunity to amend.

DISPOSITION

dismissed

CASES CITED

- Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980)
- Rizzo v. Goode, 423 U.S. 362 (1976)
- Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Estelle v. Gamble, 429 U.S. 97, 104-05 (1976)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002)
- Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF  
CALIFORNIA 10 11 GREGORY WHERRY, No. 2:25-cv-0429 CKD P 12 Plaintiff, 13 v. ORDER  
14 JEFF LYNCH, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se and  
seeking relief pursuant to 42 U.S.C. § 18 1983.

On February 27, 2025, plaintiff’s complaint was dismissed with leave to file an amended 19  
complaint which plaintiff has now filed. 20 The court is required to screen complaints brought by  
prisoners seeking relief against a 21 governmental entity or officer or employee of a governmental  
entity. 28 U.S.C. § 1915A(a).

The 22 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
legally 23 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
that seek 24 monetary relief from a defendant who is immune from such relief. 28 U.S.C. §  
1915A(b)(1), (2). 25 In his amended complaint plaintiff identifies “doe” defendants.

This action cannot 26 proceed against “doe” defendants as they cannot be served with process. 27  
Plaintiff does identify as defendants Warden Lynch, Chief Medical Executive Bobbala, 28 and Dr.  
Hlaing. With respect to Lynch and Bobbala, plaintiff fails to point to anything specific 1  
suggesting they were responsible for a violation of plaintiff’s civil rights.

As plaintiff has already 2 been informed, in order to state a claim upon which relief could be  
granted a plaintiff must point 3 to specific facts demonstrating how the conditions resulted in a

deprivation of plaintiff's 4 constitutional rights. See *Ellis v. Cassidy*, 625 F.2d 227 (9th Cir. 1980). There can be no liability 5 under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's 6 actions and the claimed deprivation.

*Rizzo v. Goode*, 423 U.S. 362 (1976). Furthermore, vague 7 and conclusory allegations of official participation in civil rights violations are not sufficient. 8 *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 9 Plaintiff also complains about medical care provided by Dr. Hlaing. Denial or delay of 10 medical care for a prisoner's serious medical needs may constitute a violation of the prisoner's 11 Eighth Amendment rights.

*Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). An individual is 12 liable for such a violation only when the individual is deliberately indifferent to a prisoner's 13 serious medical needs. *Id.*; see *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *Hallett v. 14 Morgan*, 296 F.3d 732, 744 (9th Cir. 2002); *Lopez v. Smith*, 203 F.3d 1122, 1131-32 (9th Cir. 15 2000).

Plaintiff fails to point to any facts suggesting Dr. Hlaing denied or delayed any medical 16 care for plaintiff and plaintiff does not identify what care, if any, was delayed or denied. 17 For the foregoing reasons, plaintiff's amended complaint must be dismissed.

The court 18 will grant plaintiff one final opportunity to state a claim upon which he can proceed. Plaintiff 19 should refer to both this order and the court's February 27, 2025, order while drafting his second 20 amended complaint. Plaintiff is informed that the court cannot refer to a prior pleading in order 21 to make plaintiff's second amended complaint complete.

Local Rule 220 requires that an 22 amended complaint be complete in itself without reference to any prior pleading. 23 In accordance with the above, IT IS HEREBY ORDERED that: 24 1. Plaintiff's amended complaint is dismissed. 25 2. Plaintiff is granted thirty days from the date of service of this order to file a second 26 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules 27 of Civil Procedure, and the Local Rules of Practice.

The second amended complaint must bear 28 the docket number assigned this case and must be labeled "Second Amended Complaint." Failure 1 || to file a second amended complaint in accordance with this order will result in a recommendation 2 | that this action be dismissed. 3 | Dated: September 9, 2025 Card Kt | (£4 (g— 4 CAROLYN K.DELANEY 5 UNITED STATES MAGISTRATE JUDGE 6 7 8 | 1 wher0429.frs 9 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28