

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Berry v. Meta Platforms

Berry · No. 25-cv-02870-LJC · Decided June 11, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
QUINCY K. BERRY, Case No. 25-cv-02870-LJC 8 Plaintiff, ORDER TO SHOW CAUSE WHY
9 v. SECOND APPLICATION TO PROCEED IN FORMA PAUPERIS 10 META PLATFORMS,
et al., SHOULD NOT BE DENIED AND COMPLAINT SHOULD NOT BE 11 Defendants.
DISMISSED 12 Re: Dkt. Nos. 1, 7 13 I. INTRODUCTION 14 Plaintiff Quincy Berry, pro se,
brings this action against Defendants Meta Platforms, Mark 15 Zuckerberg, Facebook, and
Instagram.

The Court previously denied Berry’s first application to 16 proceed in forma pauperis without
prejudice, and Berry has since filed a renewed application. For 17 the reasons discussed below,
Berry is ORDERED TO SHOW CAUSE why his renewed 18 application to proceed in forma
pauperis should not be denied, and why this case should not be 19 dismissed. Berry must file a
response to this Order no later than July 3, 2025.

20 II. APPLICATION TO PROCEED IN FORMA PAUPERIS 21 On April 23, 2025, the Court
issued the following Order to Show Cause: 22 Plaintiff Quincy Berry, pro se, filed a “short form”
application to proceed in forma pauperis erroneously captioned for the Eastern 23 District of
California. ECF No. 2. Every answer that Berry provided consists of “N/A,” “No,” or “0.” Id. 24
The form Berry provided does not include sufficient information to 25 determine whether Berry’s
responses—that he has no assets or income of any kind—are credible.

Berry is therefore ORDERED TO 26 SHOW CAUSE why his application should not be denied.
Berry must provide additional information no later than May 14, 2025 by: 27 (1) completing this
District’s standard application form (a copy of which is attached to this Order); and (2) attaching
an additional 1 1 As one example, if Berry truly has “\$0” in cash and bank accounts, as he has
reported, it is not clear how he paid the 2 \$4.70 postage reflected on the envelope in which he
submitted his Complaint and related documents.

See ECF No. 1-2. 3 4 ECF No. 5. 5 Berry did not file a response by that deadline. The Court
therefore denied his application 6 to proceed in forma pauperis on May 23, 2025, “without
prejudice to submitting a new application 7 that addresses the defects identified in the Court’s
previous Order to Show Cause.” ECF No. 6. 8 The Court ordered Berry to either pay the filing fee
or file a new application to proceed in forma 9 pauperis no later than June 6, 2025.

Id. 10 On May 27, 2025, Berry filed a new application to proceed in forma pauperis using the 11 correct form. ECF No. 7. He still reported no current income or assets of any kind, but he 12 reported monthly expenses of \$50 for food and \$50 for clothing. Id. at 3. Berry did not file “an 13 additional declaration explaining how he meets basic needs” as required by the previous Order to 14 Show Cause, ECF No. 5, and it is not clear from his renewed application how he pays his reported 15 \$100 monthly expenses.¹ Berry instead attached a record of a Pennsylvania criminal docket where 16 he is named as a defendant to charges including theft and assault, ECF No. 7 at 6, which does not 17 speak to the issue this Court directed him to address.

18 Berry therefore did not comply with the previous Order, and it remains unclear whether his 19 statements in his application to proceed in forma pauperis are credible. Berry is ORDERED TO 20 SHOW CAUSE why his renewed application should not be denied on that basis, and why this case 21 should not be dismissed for failure to pay the filing fee. 22 III. DISMISSAL OF COMPLAINT 23 If Berry’s application is granted, the Court would then be required to evaluate the 24 sufficiency of his Complaint under 28 U.S.C. § 1915(e)(2)(B), which provides in relevant part that 25 after granting permission to proceed in forma pauperis, a court “shall dismiss the case at any time 26 if the court determines that... the action... is frivolous or malicious [or] fails to state a claim on 27 1 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(i), (ii).

When a complaint fails to state a 2 claim on which relief may be granted, a court may also dismiss the case sua sponte (meaning on 3 the court’s own initiative) under Rule 12(b)(6) of the Federal Rules of Civil Procedure, regardless 4 of whether a plaintiff is proceeding in forma pauperis. *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 5 986, 991 (9th Cir. 1987). 6 When the complaint has been filed by a pro se plaintiff, a court must “construe the 7 pleadings liberally and... afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 8 F.3d 338, 342 (9th Cir.

2010) (citation omitted). But “[t]hreadbare recitals of the elements of a 9 cause of action... do not suffice,” and a court need not credit “legal conclusions” or “mere 10 conclusory statements.” See *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

In order to state a 11 claim on which relief may be granted, the factual allegations in the complaint “must be enough to 12 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 13 (2007). A complaint must demonstrate “facial plausibility” by pleading “factual content that 14 allows the court to draw the reasonable inference that the defendant is liable for the misconduct 15 alleged.” *Iqbal*, 556 U.S. at 678.

In other words, the Complaint needs to include facts, not just the 16 type of legal claim the plaintiff asserts. In assessing whether a complaint is “frivolous” under 17 § 1915, the Court may also consider whether “the facts alleged are clearly baseless, a category 18 encompassing allegations that are fanciful, fantastic, and delusional.” *Denton v. Hernandez*, 504 19 U.S. 25, 32–33 (1992).

20 Here, Berry’s entire statement of his claim (before his response cuts off due to space 21 constraints in the form that he used) reads as follows: 22 Under color of law (Meta Platforms Inc. et.al., a public official induced, obtained, accepted, or agreed to accept a payment to which 23 he or she was not entitled to, knowing that the payment was made in return for taking, with-holding, or influencing official acts.

Under 24 color of law (Mark Zuckerberg et.al., a public official induced, obtained, accepted, or agreed to accept a payment to which he or she 25 was not entitled, knowing that the payment was made in return for taking, with-holding, or influencing official acts.

Under 26 ECF No. 1 at 4 (non-standard punctuation in original). The next line of Berry’s response, which is 27 only partially visible, appears to restate the same assertion with respect to Instagram. Id. 1 Those assertions are, at most, the sort of “[t]hreadbare recitals of the elements of a cause of 2 action” that the Supreme Court has held insufficient to state a claim.

See *Iqbal*, 556 U.S. at 678– 3 79. If Berry wishes to pursue these claims, he must file an amended complaint alleging more 4 specific facts as to what the defendants did that harmed him and gives rise to a claim. If he wishes 5 to base a claim on Defendants’ purported status as “public officials”—an assertion that might well 6 be frivolous, but the Court will allow leave to amend if Berry wishes to pursue it—he must offer 7 more specific facts that show that Zuckerberg and the corporate entities Berry has sued somehow 8 acted as government officials or entities.

If Berry continues to use the form that he used for his 9 current Complaint to file an amended complaint, Berry would likely need to attach additional 10 pages setting forth the facts supporting his claim(s). 11 Furthermore, federal courts are courts of limited subject matter jurisdiction, and Berry 12 must provide a sufficient explanation of why this case falls within that jurisdiction.

Two of the 13 most common grounds for federal subject matter jurisdiction are federal question jurisdiction 14 under 28 U.S.C. § 1331, which applies to claims “arising under the Constitution, laws, or treaties 15 of the United States,” and diversity jurisdiction under 28 U.S.C. § 1332(a), which applies to cases 16 where no defendant is a citizen of the same state as any plaintiff and where the amount in 17 controversy exceeds \$75,000.

18 Berry checked a box indicating that he is invoking federal question jurisdiction, but his 19 statement of the basis for such jurisdiction appears to be an incomplete sentence: “I(The 20 Plaintiff’s) 14th amendment (Due Process) is connected to this issue, since under Breach of 21 Contract (CAL. CIV. CODE § 1559”.

To the extent Berry might be asserting that breach of 22 contract violates his right to due process under the Fourteenth Amendment and thus gives rise to 23 federal question jurisdiction, that is an incorrect statement of the law, as the Ninth Circuit held: 24 Nor is the action one which ‘arises

under the Constitution, laws or treaties of the United States’ and hence within the purview of 28 U.S.C. § 1331[.]

To the contrary (and despite plaintiff’s conclusory characterization of defendants’ acts as violative of due 26 process and equal protection, etc.) the claim is simply one for breach of contract, the charge being that the defendant school district refused 27 to perform certain obligations imposed upon it under a teaching 1 *Adelt v. Richmond Sch. Dist.*, 439 F.2d 718, 718 (9th Cir.

1971). Moreover, even if Berry could 2 allege a deprivation of due process, such a claim would likely depend on him showing that 3 Defendants were government officials or entities, or otherwise acted under the color of law.

As 4 noted above, his current complaint does not include sufficient, non-conclusory allegations to that 5 effect. 6 Berry is therefore ORDERED TO SHOW CAUSE why his Complaint should not be 7 dismissed as frivolous, for failure to state a claim on which relief may be granted, and for lack of 8 subject matter jurisdiction. 9 IV. CONCLUSION 10 For the reasons discussed above, Berry is ORDERED TO SHOW CAUSE why his second 11 application to proceed in forma pauperis should not be denied, and why this case should not be 12 dismissed for failure to pay the filing fee, lack of subject matter jurisdiction, failure to state a 13 claim on which relief may be granted, and/or as frivolous.

14 No later than July 3, 2025, Berry must either pay the filing fee or file a response to this 15 Order explaining why he qualifies to proceed in forma pauperis and how he pays his basic 16 expenses, including his \$100 total monthly expenses for food and clothing. 17 By the same deadline, Berry must also file either: (1) an amended complaint curing the 18 defects identified in this Order; or (2) a response to this Order explaining why his current 19 Complaint should be allowed to proceed.

If Berry chooses to file an amended complaint, it would 20 completely replace his original Complaint, and therefore must include all claims, allegations, and 21 defendants that Berry intends to pursue. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 22 1992). Any amended complaint must present Berry’s allegations and legal claims “in numbered 23 paragraphs, each limited as far as practicable to a single set of circumstances.” Fed.

R. Civ. P. 24 10(b). 25 Failure to comply with either or both requirements in this order by the July 3rd deadline— 26 responding to the Order to Show Cause regarding the second application to proceed in forma 27 pauperis and filing an amended complaint or other response to address the identified defects in the 1 failure to prosecute. 2 IT IS SO ORDERED. 3 || Dated: June 11, 2025 4 ts, | hartry — ‘A J. CISNEROS 5 ited States Magistrate Judge 6 7 8 9 10 11 12 15 16 17 Z 18 19 20 21 22 23 24 25 26 27 28

