

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

Timothy D. Wilkins v. D. Smith, et al.

No. 2:24-cv-3135 CKD P (E.D. Cal. Feb. 27, 2025) · No. No. 2:24-cv-3135 CKD P · Decided February 27,
2025

OPINION

(PC) Wilkins v. Smith

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 TIMOTHY D. WILKINS, No. 2:24-cv-3135 CKD P

12 Plaintiff, 13 v. ORDER 14 D. SMITH, 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. This proceeding was
referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 19 636(b)(1). 20 Plaintiff requests
leave to proceed in forma pauperis. As plaintiff has submitted a 21 declaration that makes the
showing required by 28 U.S.C. § 1915(a), his request will be granted. 22 Plaintiff is required to
pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 23 1914(a), 1915(b)(1). By
separate order, the court will direct the appropriate agency to collect the 24 initial partial filing fee
from plaintiff's trust account and forward it to the Clerk of the Court. 25 Thereafter, plaintiff will
be obligated for monthly payments of twenty percent of the preceding 26 month's income credited
to plaintiff's prison trust account. These payments will be forwarded by 27 the appropriate agency
to the Clerk of the Court each time the amount in plaintiff's account 28 exceeds \$10.00, until the
filing fee is paid in full. 28 U.S.C. § 1915(b)(2). 1 The court is required to screen complaints
brought by prisoners seeking relief against a 2 governmental entity or officer or employee of a
governmental entity. 28 U.S.C. § 1915A(a). The 3 court must dismiss a complaint or portion
thereof if the prisoner has raised claims that are legally 4 "frivolous or malicious," that fail to state
a claim upon which relief may be granted, or that seek 5 monetary relief from a defendant who is
immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). 6 Plaintiff has filed three complaints: an
original, amended, and second amended. The court 7 screens the most recently filed second
amended complaint. 8 To avoid dismissal for failure to state a claim a complaint must contain
more than "naked 9 assertions," "labels and conclusions" or "a formulaic recitation of the
elements of a cause of 10 action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007).
In other words, 11 "[t]hreadbare recitals of the elements of a cause of action, supported by mere
conclusory 12 statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Furthermore, a claim 13 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A 14 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw 15 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. 16 at 678. 17 The court has reviewed plaintiff’s second amended complaint and finds that it fails to state 18 a claim upon which relief can be granted under federal law. Plaintiff’s second amended 19 complaint must be dismissed. The court will, however, grant leave to file a third amended 20 complaint. 21 The primary problem with petitioner’s allegations is that they are vague. Plaintiff asserts 22 various injuries, but does not point to facts establishing that the injuries were caused by 23 defendants as a result of the denial of federal rights. If plaintiff chooses to amend the complaint, 24 plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of 25 plaintiff’s constitutional rights. See *Ellis v. Cassidy*, 625 F.2d 227 (9th Cir. 1980). Plaintiff must 26 allege in specific terms how each named defendant is involved. There can be no liability under 27 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s 28 actions and the claimed deprivation. *Rizzo v. Goode*, 423 U.S. 362 (1976). Furthermore, vague 1 and conclusory allegations of official participation in civil rights violations are not sufficient. 2 *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 3 Plaintiff also complains about medical care. Denial or delay of medical care can violate 4 the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). A violation occurs when 5 a prison official causes injury as a result of his or her deliberate indifference to a prisoner’s 6 serious medical needs. *Id.* “Deliberate indifference” includes a purposeful act or failure to 7 respond to a prisoner’s pain or possible medical need. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th 8 Cir. 2006) citing *Estelle*, 429 U.S. at 104. Mere delay of medical treatment, “without more, is 9 insufficient to state a claim of deliberate medical indifference.” *Shapley v. Nev. Bd. of State 10 Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985). Where a prisoner alleges that delay of 11 medical treatment evinces deliberate indifference, the prisoner must show that the delay caused 12 “significant harm and that defendants should have known this to be the case.” *Hallett v. Morgan*, 13 296 F.3d 732, 745-46 (9th Cir. 2002). 14 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to 15 make plaintiff’s third amended complaint complete. Local Rule 220 requires that any amended 16 complaint be complete in itself without reference to any prior pleading. 17 In accordance with the above, IT IS HEREBY ORDERED that: 18 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2 & 7) is 19 GRANTED. 20 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees 21 shall be collected and paid in accordance with this court’s order to the Director of the California 22 Department of Corrections and Rehabilitation filed concurrently herewith. 23 3. Plaintiff’s motions for leave to amend his pleadings (ECF Nos. 4 & 8) are GRANTED. 24 4. Plaintiff’s complaint (ECF No. 1), amended complaint (ECF No. 5), and second 25 amended complaint (ECF No. 9) are DISMISSED. 26 5. Plaintiff is granted thirty days from the date of service of this order to file a third 27 amended complaint that complies with the requirements of the Civil Rights Act, the

Federal Rules 28 of Civil Procedure, and the Local Rules of Practice. The third amended complaint must bear the 1 | docket number assigned this case and must be labeled “Third Amended Complaint.” Failure to 2 || file a third amended complaint in accordance with this order will result in a recommendation that 3 || this action be dismissed. 4 || Dated: February 27, 2025
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5 CAROLYN K DELANEY?

6 UNITED STATES MAGISTRATE JUDGE

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