

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

Wilkins v. Lugo

Wilkins · No. 2:25-cv-1069-CKD P · Decided August 20, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 TIMOTHY D. WILKINS, 2:25-cv-1069-CKD P 12 Plaintiff, 13 v. ORDER
14 LUGO, et al., 15 Defendants. 16 17 Plaintiff Timothy Wilkins, a state prisoner, proceeds
without counsel and requests to 18 proceed in forma pauperis. This matter was referred to the
undersigned by Local Rule 302.

See 28 19 U.S.C. § 636(b)(1). The complaint fails to state a claim and must be dismissed, but
plaintiff is 20 granted leave to file an amended complaint as set forth below. 21 I. In Forma
Pauperis 22 Plaintiff's declaration in support of the motion to proceed in forma pauperis makes
the 23 showing required by 28 U.S.C. § 1915(a).

The motion is granted. By separate order, plaintiff will 24 be assessed an initial partial filing fee in
accordance with the provisions of 28 U.S.C. § 25 1915(b)(1). The order will direct the appropriate
agency to collect the initial partial filing fee 26 from plaintiff's trust account and forward it to the
Clerk of the Court. Thereafter, plaintiff will be 27 obligated for monthly payments of twenty
percent of the preceding month's income credited to 28 plaintiff's prison trust account.

These payments will be forwarded by the appropriate agency to 1 the Clerk of the Court each time
the amount in plaintiff's account exceeds \$10.00 until the filing 2 fee is paid in full. 28 U.S.C. §
1915(b)(2). 3 II. Screening Requirement 4 The court is required to screen complaints brought by
prisoners seeking relief against a 5 governmental entity or officer or employee of a governmental
entity.

28 U.S.C. § 1915A(a). The 6 court must dismiss a complaint or portion thereof if the prisoner has
raised claims that are legally 7 "frivolous or malicious," that fail to state a claim upon which relief
may be granted, or that seek 8 monetary relief from a defendant who is immune from such relief.
28 U.S.C. § 1915A(b)(1), (2). 9 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a
short and plain statement 10 of the claim that shows the pleader is entitled to relief.

Bell Atlantic Corp. v. Twombly, 550 U.S. 11 544, 555 (2007). In order to state a cognizable claim,
a complaint must contain more than "naked 12 assertions" or "a formulaic recitation of the
elements of a cause of action;" it must contain factual 13 allegations sufficient "to raise a right to
relief above the speculative level." Id. The facts alleged 14 must "give the defendant fair notice

of what the... claim is and the grounds upon which it rests.” 15 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Twombly*, 550 U.S. at 555).

In reviewing a 16 complaint under this standard, the court accepts as true the allegations of the complaint and 17 construes the pleading in the light most favorable to the plaintiff. See *id.*; *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). 19 III. Allegations in the Complaint 20 On March 6, 2025, inmate Wade approached plaintiff in a fighting stance and said guards 21 had said plaintiff was dropping “kites” (“snitching”) on him.

(ECF No. 1 at 3.) Plaintiff and Wade 22 came “danger-close” to a physical altercation and parted ways. (*Id.*) Plaintiff was told that C/O 23 Lugo told inmate Wade that plaintiff was dropping kites on him. (*Id.*) By telling other inmates 24 that plaintiff was a snitch, C/O Lugo placed plaintiff in immediate danger of being attacked by 25 other inmates. (*Id.* at 5.)

Plaintiff seeks damages. (*Id.* at 6.) 26 IV. Discussion 27 Under the Eighth Amendment, prison officials have a duty to protect prisoners from 28 violence at the hands of other prisoners. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994).

To state a 1 failure to protect claim, plaintiff must show he is incarcerated “under conditions posing a 2 substantial risk of serious harm.” *Farmer*, 511 U.S. at 833. Plaintiff must also show the prison 3 official subjectively had a sufficiently culpable state of mind, “one of deliberate indifference to 4 inmate health or safety.” *Id.* (internal quotation marks and citations omitted).

The official is not 5 liable under the Eighth Amendment unless he “knows of and disregards an excessive risk to 6 inmate health or safety; the official must both be aware of facts from which the inference could be 7 drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 8 837. Then, the official must fail to take reasonable measures to abate the substantial risk of 9 serious harm.

Id. at 847. 10 Here, plaintiff’s request for relief is for damages, which cannot be awarded for mental or 11 emotional injury without a showing of physical injury. See 42 U.S.C.A. § 1997e (“No Federal 12 civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, 13 for mental or emotional injury suffered while in custody without a prior showing of physical 14 injury or the commission of a sexual act (as defined in section 2246 of Title 18).”) Plaintiff was 15 not physically injured because of defendant’s alleged conduct.

Plaintiff cannot obtain damages for 16 any mental or emotional injury without a showing of physical injury. 17 “While a prisoner need not wait to be injured before seeking injunctive relief, see *Farmer*, 18 511 U.S. at 845 [], a prisoner seeking damages must allege that the risk materialized and caused 19 him physical injury.” *Rodrigues v. Norwood*, 2010 WL 2740174, at *3 (C.D.

Cal. July 9, 2010); 20 see also *Babcock v. White*, 102 F.3d 267, 272 (7th Cir.1996) (“it is the reasonably preventable 21 assault itself, rather than any fear of assault, that gives rise to a compensable claim under the 22 Eighth Amendment”).

Accordingly, plaintiff does not state a claim for relief. See *Thompson v. Addison*, No. 1:22-CV-01545-HBK (PC), 2024 WL 1053475, at *8 (E.D. Cal. Mar. 11, 2024) 24 (finding no Eighth Amendment claim for damages stated because plaintiff alleged no physical 25 injury alleged from defendant’s alleged failure to protect or deliberate indifference). 26 V. Leave to Amend 27 Plaintiff is granted leave to amend.

See *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to amend is proper only if it is 1 | absolutely clear that the deficiencies of the complaint could not be cured by amendment.”). This 2 || opportunity to amend is not for the purposes of adding new and unrelated claims. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir.

2007). Local Rule 220 requires that an amended complaint be 4 | complete without reference to any prior pleading. See *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 5 || 1967). In the alternative, if plaintiff does not wish to pursue this case further or cannot fix the 6 || problem identified in this order, then plaintiff may file a notice of voluntary dismissal. 7 VI. Plain Language Summary for Pro Se Party 8 The following information is meant to explain this order in plain English.

This summary 9 || is not intended as legal advice. 10 Your complaint is being dismissed because you cannot bring a claim for damages against 11 | C/O Lugo for failure to protect in the absence of a physical injury. You have an opportunity to 12 | file an amended complaint. 13 VII. Conclusion 14 In accordance with the above, IT IS HEREBY ORDERED as follows: 15 1.

Plaintiff's motion to proceed in forma pauperis (ECF No. 2) is GRANTED. 16 2. Plaintiff's complaint is dismissed with leave to amend. 17 3. Plaintiff is granted thirty days from the date of service of this order to file an amended 18 complaint with the docket number assigned this case and labeled “Amended 19 Complaint.” Failure to file an amended complaint in accordance with this order will 20 result in a recommendation that this action be dismissed.

21 | Dated: August 19, 2025 / ☐☐ I / dle ae 22 CAROLYNK. DELANEY 23 UNITED STATES MAGISTRATE JUDGE 24 8, wilk1069.scrn 25 26 27 28