

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

Wherry v. Lynch

Wherry · No. 2:25-cv-0429 CKD P · Decided February 27, 2025

OPINION

(PC) Wherry v. Lynch

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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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. 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 The court has reviewed plaintiff's
complaint and finds that it fails to state a claim upon 7 which relief can be granted under federal
law. Plaintiff's complaint must be dismissed. The 8 court will, however, grant leave to file an
amended complaint. 9 The primary problem with the allegations in plaintiff's complaint is that
they are mostly 10 vague. Plaintiff alleges various injuries but fails to connect them to a basis for
liability against 11 any defendant. If plaintiff chooses to amend the complaint, plaintiff must point
to specific facts 12 demonstrating how the conditions complained of have resulted in a deprivation

of plaintiff's 13 constitutional rights. See *Ellis v. Cassidy*, 625 F.2d 227 (9th Cir. 1980). Also, in his amended 14 complaint, plaintiff must allege in specific terms how each named defendant is involved. There 15 can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection 16 between a defendant's actions and the claimed deprivation. *Rizzo v. Goode*, 423 U.S. 362 17 (1976). Furthermore, vague and conclusory allegations of official participation in civil rights 18 violations are not sufficient. *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 19 Also, plaintiff is informed that under Rule 20 of the Federal Rules of Civil Procedure, 20 plaintiff cannot bring unrelated claims against different defendants. Simply put, plaintiff cannot 21 join claims against defendant B that have nothing to do with those brought against defendant A. 22 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to 23 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended 24 complaint be complete in itself without reference to any prior pleading. 25 In accordance with the above, IT IS HEREBY ORDERED that: 26 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED. 27 Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees shall be 28 // 1 | collected and paid in accordance with this court's order to the Director of the California 2 || Department of Corrections and Rehabilitation filed concurrently herewith. 3 2. Plaintiffs complaint is dismissed. 4 3. Plaintiff is granted thirty days from the date of service of this order to file an amended 5 || complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil 6 || Procedure, and the Local Rules of Practice. The amended complaint must bear the docket 7 || number assigned this case and must be labeled "Amended Complaint." Failure to file an 8 | amended complaint in accordance with this order will result in a recommendation that this action 9 || be dismissed. 10 | Dated: February 27, 2025 / ae □□ / a Ly a i CAROLYN K DELANEY 12 UNITED STATES MAGISTRATE JUDGE 13 14 wher0429.14 16 17 18 19 20 21 22 23 24 25 26 27 28