

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 19, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROSS CULLEN PLUMB,

Plaintiff,

v.

STEPHEN SINCLAR,

Defendant.

2:20-cv-00444-SAB

**ORDER DISMISSING
COMPLAINT**

1915(g)

Before the Court is Plaintiff's Notice of Intent of Plaintiff to "Stand On Complaint" [and Appeal a Dismissal] (hereinafter "Notice of Intent"). ECF No. 16. Plaintiff is a prisoner at the Monroe Correctional Complex Twin Rivers Unit who is proceeding *pro se* and *in forma pauperis*. Defendant has not been served.

By Order dated April 15, 2021, the Court advised Plaintiff of the deficiencies of his First Amended Complaint and directed him to amend or voluntarily dismiss within thirty (30) days. ECF No. 14. In that Order, the Court found that Plaintiff had failed to state a claim upon which relief may be granted. *Id.* at 2. Although granted the opportunity to do so, Plaintiff has failed to amend his complaint to state a claim upon which relief may be granted. The Court has cautioned Plaintiff that the failure to amend or voluntarily dismiss would result in

1 the dismissal of this complaint and a possible “strike” under 28 U.S.C. § 1915(g).
2 *Id.* at 6.

3 In his Notice of Intent, Plaintiff objects to the Court’s Second Order to
4 Amend or Voluntarily Dismiss Complaint, ECF No. 14. ECF No. 16 at 3. He
5 contends that the Court’s “intentional misrepresentation of material facts of ‘the
6 complaint’ without rational baisses [sic] would indicate deliberate discrimination to
7 Plaintiff Plumb.” *Id.* He also states his intention not to file an amended complaint.
8 *Id.* at 4. He contends that his complaint alleges enough facts with sufficient
9 particularity to state a plausible ground for relief, and claims that he “need not
10 prove those allegations at this point in the proceeding.” *Id.* at 1–2. Plaintiff
11 indicates that he “stands on his complaint” and intends to appeal a dismissal of this
12 action. *Id.* at 4. If Plaintiff wishes to appeal this Order dismissing this action, then
13 he must file a Notice of Appeal as required by Rule 3 of the Federal Rules of
14 Appellate Procedure.

15 For the reasons set forth above and in the Court’s Second Order to Amend or
16 Voluntarily Dismiss, ECF No. 14, **IT IS HEREBY ORDERED:**

17 1. Plaintiff’s First Amended Complaint, ECF No. 13, is **DISMISSED**
18 **with prejudice** for failure to state a claim upon which relief may be granted. 28
19 U.S.C. §§ 1915(e)(2), 1915A(b)(1).

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 2. Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
2 who brings three or more civil actions or appeals that are dismissed as frivolous or
3 for failure to state a claim will be precluded from bringing any other civil action or
4 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
5 physical injury.” 28 U.S.C. § 1915(g). Plaintiff is advised to read the statutory
6 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s complaint may
7 count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may
8 adversely affect his ability to file future claims.

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
10 enter judgment, provide copies to Plaintiff, and **close** the file. The Clerk of Court is
11 further directed to forward a copy of this Order to the Office of the Attorney
12 General of Washington, Corrections Division. The Court certifies any appeal of
13 this dismissal would not be taken in good faith.

14 **DATED** this 19th day of May 2021.



18
19

A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

20 Stanley A. Bastian
21 Chief United States District Judge
22
23
24
25
26
27
28