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

Feb 12, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

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| GREGORY TYREE BROWN,<br><br>Plaintiff,<br><br>v.<br><br>RICHARD MORGAN, et al.,<br><br>Defendants. | NO: 4:24-CV-05146-RLP<br><br>ORDER DISMISSING ACTION<br><br>**1915(g)** |

By Order filed December 10, 2024, the Court advised Plaintiff Gregory Tyree Brown, an individual incarcerated at the Washington State Penitentiary, of the deficiencies of his complaint and granted him sixty days to amend or voluntarily dismiss. ECF No. 6. Plaintiff is proceeding *pro se* and has paid the $405.00 filing fee for this action. Defendants have not been served.

The Court cautioned Plaintiff that if he failed to comply with the directives in the Order to Amend or Voluntarily Dismiss Complaint, the Court would dismiss the complaint. *Id.* at 12. Specifically, Plaintiff failed to set forth facts demonstrating how

each Defendant caused or personally participated in causing a deprivation of Plaintiff's protected rights. *See Arnold v. Int'l Bus. Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff failed to state a First Amendment access-to-courts claim because he did not present facts showing identified defendants caused an actual injury to a nonfrivolous claim Plaintiff sought to bring to the Court. *See Lewis v. Casey*, 518 U.S. 343, 348–49, 354–55 (1996) (setting forth elements of an access-to-courts claim and actual injury requirement). Furthermore, many of Plaintiff's assertions appeared to be time-barred. *See RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002).

In addition, Plaintiff's assertions under a federal antitrust statutory provision, 15 U.S.C. § 15, did not state a claim upon which this Court could grant him relief. *See* 15 U.S.C. § 21 (1995); *Parker v. Brown,* 317 U.S. 34, 350–51 (1943) ("We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature."); *see e.g., Parker Testing Laboratory v. Board of Regents for Oklahoma Agriculture and Mechanical Colleges,* 993 F.2d 768 (10th Cir. 1993) (The state action exemption articulated in *Parker* has been expanded to apply to all the federal antitrust laws, including the Clayton Act and the Robinson-Patman Act.).

Plaintiff did not amend his complaint as directed and has filed nothing further in this action. Therefore, for the reasons set forth above and in the prior Order, ECF

No. 6, the Court dismisses this action with prejudice for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

Pursuant to 28 U.S.C. § 1915(g) a prisoner who brings three or more civil actions or appeals that are dismissed as frivolous or for failure to state a claim will be precluded from bringing any other civil action or appeal *in forma pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

**Plaintiff is advised to read the statutory provisions of 28 U.S.C. § 1915. This dismissal of Plaintiff's Complaint may count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file future claims *in forma pauperis*.** *See Belanus v. Clark*, 796 F.3d 1021, 1028 (9th Cir. 2015) (A strike can be applied to a prior prisoner case where the prisoner paid the filing fee).

Accordingly, **IT IS ORDERED**:

**1.** This action is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

**2.** This dismissal may count as a "strike" under 28 U.S.C. § 1915(g).

**3.** The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith and would lack any arguable basis in

law or fact.

**4.** The Clerk of Court is further directed to forward a copy of this Order to the Office of the Attorney General of Washington, Criminal Justice Division.

**IT IS SO ORDERED**. The Clerk of Court is directed to enter this Order, **enter judgment,** provide copies to Plaintiff, and **CLOSE** the file.

**DATED** February 12, 2025.



REBECCA L. PENNELL
UNITED STATES DISTRICT JUDGE