

## ATTACHMENT 1

***Berryhill v. Evans*, No. CIV-10-126-RAW-SPS (June 14, 2010).**

- Order dismissing action, entered June 14, 2010.
- Judgment entered June 14, 2010.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**FILED**

JUN 14 2010

WILLIAM B. GUTHRIE  
Clerk, U.S. District Court  
By \_\_\_\_\_  
Deputy Clerk

**LAVERN BERRYHILL,** )  
)  
Plaintiff, )  
)  
v. )  
)  
**EDWARD EVANS, et. al.,** )  
)  
Defendants. )

**No. CIV 10-126-RAW-SPS**

**OPINION AND ORDER**

Plaintiff Lavern Berryhill, an inmate in the custody of the Oklahoma Department of Corrections (DOC) who is incarcerated at Oklahoma State Penitentiary (OSP) in McAlester, Oklahoma, has filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights while incarcerated in that facility. The defendants are DOC Deputy Director Edward Evans, Members of the Oklahoma Board of Corrections, DOC Regional Director Bobby Boone, OSP Warden Randall Workman, OSP Warden's Assistant Terry Crenshaw, Deputy Warden Art Lightle, Procedural Officer M. Sexton, All OSP Unit Managers, All OSP Medical Staff, OSP Major Jones, All OSP Food Service Staff, All OSP Mail Room Staff, Both OSP Law Library Supervisors, OSP Sgt. Williams, OSP Sgt. Summers, OSP Sgt. R. Kelley, all OSP Staff/Personnel, and DOC Director Justin Jones.

Plaintiff alleges the defendants have conspired through a criminal meeting of their minds to deprive him of hot meals for almost a week. He claims the gas line at his facility broke, and the defendants failed to use barbeque grills to prepare hot food. He also alleges the defendants are not giving him enough food to live much longer, and the food he was served from March 25-30, 2010, was contaminated. He asks for compensatory damages of

one million dollars from each defendant, punitive damages of two million dollars from each defendant, and a declaratory judgment that his rights were violated.

The court has reviewed the record and construed plaintiff's pro se pleadings liberally. *Haines v. Kerner*, 404 U.S. 519 (1972). This relaxed standard, however, does not relieve his burden of alleging sufficient facts on which a recognized legal claim could be based. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Although plaintiff has not paid the filing fee in this action or been granted leave to proceed *in forma pauperis*, this court is empowered to dismiss the complaint pursuant to 28 U.S.C. § 1915A:

(a) Screening.--The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief. . . .

28 U.S.C. § 1915A. *See also Plunk v. Givens*, 234 F.3d 1128, 1129 (10th Cir. 2000) (“§ 1915A applies to all prison litigants, without regard to their fee status, who bring civil suits against a governmental entity, officer, or employee.”).

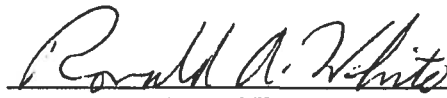
Here, the court finds plaintiff's complaint is frivolous and malicious. He is attempting to sue every OSP employee, as well as numerous DOC officials, yet he has failed to allege personal participation by any of the defendants, “an essential allegation in a § 1983 claim.” *Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976) (citations omitted). *See also Mee*

*v. Ortega*, 967 F.2d 423, 430 (10th Cir. 1992). With regard to plaintiff's conspiracy claim, the court finds he has failed to "plead and prove not only a conspiracy, but also an actual deprivation of rights." *Dixon v. City of Lawton*, 898 F.2d 1443, 1449 (10th Cir. 1990). Prisoners are guaranteed a nutritionally adequate diet under the Eighth Amendment, *Ramos v. Lamm*, 639, 571 (10th Cir. 1980), but there is no constitutional right to hot meals, *Brown-El v. Delo*, 969 F.2d 644, 648 (8th Cir. 1992). See also *Hoitt v. Vitek*, 497 F.2d 598, 601 (1st Cir. 1974) (explaining the constitutional requirement of adequate food in prisons does not include a right to hot meals).

After careful review, the court further finds the allegations in plaintiff's complaint are vague and conclusory, and the allegations do not rise to the level of a constitutional violation. The Tenth Circuit Court of Appeals consistently has held that bald conclusions, unsupported by allegations of fact, are legally insufficient, and pleadings containing only such conclusory language may be summarily dismissed or stricken without a hearing. *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989), *cert. denied*, 493 U.S. 1059 (1990); *Lorraine v. United States*, 444 F.2d 1 (10th Cir. 1971). Therefore, summary dismissal is appropriate.

**ACCORDINGLY**, this action is, in all respects, **DISMISSED** as frivolous and malicious, pursuant to 28 U.S.C. § 1915A(b)(1). All pending motions are **DENIED** as moot.

**IT IS SO ORDERED** this 14<sup>th</sup> day of June 2010.

  
\_\_\_\_\_  
**RONALD A. WHITE**  
**UNITED STATES DISTRICT JUDGE**

UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

OKLAHOMA

**JUDGMENT IN A CIVIL CASE**

Lavern Berryhill  
V.

Edward Evans et al

CIV-10-126-RAW-SPS

Case Number:

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

This action is, in all respects, DISMISSED as frivolous and malicious, pursuant to 28 U.S.C 1915A(b)(1).

6/14/10

Date

WILLIAM B. GUTHRIE

Clerk

s/ A Green

(By) Deputy Clerk

## **ATTACHMENT 2**

***Berryhill v. Seay*, No. CIV-10-151-RAW-SPS (May 10, 2010).**

- Order dismissing action, entered May 10, 2010.
- Judgment entered May 10, 2010.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

<b>LAVERN BERRYHILL,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>No. CIV 10-151-JHP</b>
	)	
<b>JUDGE FRANK H. SEAY and</b>	)	
<b>JUDGE STEVEN P. SHREDER,</b>	)	
	)	
Defendants.	)	

**OPINION AND ORDER**

Plaintiff Lavern Berryhill, an inmate in the custody of the Oklahoma Department of Corrections who is incarcerated at Oklahoma State Penitentiary in McAlester, Oklahoma, has filed this civil rights action pursuant to 42 U.S.C. § 1983 against United States District Judge Frank H. Seay and United States Magistrate Judge Stephen P. Shreder, both of whom serve in this court. Plaintiff alleges Judge Seay and Judge Shreder conspired to protect unnamed friends and associates, as well as state and federal officials. He specifically complains he was denied due process and equal protection in *Berryhill v. Henry*, No. CIV 10-091-FHS-SPS (E.D. Okla.), when his motions for appointment of counsel and for leave to proceed *in forma pauperis* were denied. He contends the defendants had “a criminal meeting of the mind” and “elected to cause this plaintiff severe mental anguish and emotional distress & to sabotage 10-CV-91 . . . and to murder me . . . and to hard labor” [Docket #1 at 3]. He asks for relief in the form of a declaratory judgment, criminal prosecution of the defendants, compensatory damages of \$125,000,000 from each defendant, and punitive damages of \$375,000,000 from each defendant [Docket #1 at 4].

The court has reviewed the record and construed plaintiff's pro se pleadings liberally. *Haines v. Kerner*, 404 U.S. 519 (1972). This relaxed standard, however, does not relieve his burden of alleging sufficient facts on which a recognized legal claim could be based. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Although plaintiff has not paid the filing fee in this action or been granted leave to proceed *in forma pauperis*, this court is empowered to dismiss the complaint pursuant to 28 U.S.C. § 1915A:

(a) Screening.--The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief. . . .

28 U.S.C. § 1915A. *See also Plunk v. Givens*, 234 F.3d 1128, 1129 (10th Cir. 2000) (“§ 1915A applies to all prison litigants, without regard to their fee status, who bring civil suits against a governmental entity, officer, or employee.”).


Here, the court finds plaintiff's complaint is both frivolous and malicious. Judges have absolute immunity for their “official adjudicative acts.” *Lundahl v. Zimmer*, 296 F.3d 936, 939 (10th Cir. 2002). There are only two exceptions to this absolute immunity: actions taken outside the judge's judicial capacity, and actions “taken in the complete absence of all jurisdiction.” *Stein v. Disciplinary Bd. of Supreme Ct. of N.M.*, 520 F.3d 1183, 1195 (10th Cir. 2008) (quoting *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991)). The court further finds the



allegations in plaintiff's complaint are vague and conclusory, and the allegations do not rise to the level of a constitutional violation. The Tenth Circuit Court of Appeals consistently has held that bald conclusions, unsupported by allegations of fact, are legally insufficient, and pleadings containing only such conclusory language may be summarily dismissed or stricken without a hearing. *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989), *cert. denied*, 493 U.S. 1059 (1990); *Lorraine v. United States*, 444 F.2d 1 (10th Cir. 1971). Therefore, summary dismissal is appropriate.

**ACCORDINGLY**, this action is, in all respects, **DISMISSED** as frivolous and malicious, pursuant to 28 U.S.C. § 1915A(b)(1). All pending motions are **DENIED** as moot.

**IT IS SO ORDERED** this 10<sup>th</sup> day of May, 2010.

  
James H. Payne  
United States District Judge  
Eastern District of Oklahoma

UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

OKLAHOMA

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**JUDGMENT IN A CIVIL CASE**

Lavern Berryhill  
V.

Case Number: CIV-10-151-JHP

Judge Frank H. Seay and  
Judge Steven P. Shreder

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard a decision has been rendered.

IT IS ORDERED AND ADJUDGED

This action is, in all respects, DISMISSED as frivolous and malicious, pursuant to 28 U.S.C. § 1915A(b)(1).

5/10/10

Date

WILLIAM B. GUTHRIE

Clerk

s/ A Green

(By) Deputy Clerk

## **ATTACHMENT 3**

***Berryhill v. White*, No. CIV-10-176-RAW-SPS (June 7, 2010).**

- Order dismissing action, entered June 7, 2010.
- Judgment entered June 7, 2010.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

<b>LAVERN BERRYHILL,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>No. CIV 10-176-JHP</b>
	)	
<b>JUDGE RONALD A. WHITE and</b>	)	
<b>JUDGE STEVEN P. SHREDER,</b>	)	
	)	
Defendants.	)	

**OPINION AND ORDER**

Plaintiff Lavern Berryhill, an inmate in the custody of the Oklahoma Department of Corrections who is incarcerated at Oklahoma State Penitentiary in McAlester, Oklahoma, has filed this civil rights action pursuant to 42 U.S.C. § 1983 against United States District Judge Ronald A. White and United States Magistrate Judge Stephen P. Shreder, both of whom serve in this court. Plaintiff alleges Judge White and Judge Shreder each “abused his office to protect his Ku Klux Klan friends,” as evidenced by plaintiff’s litigation in *Berryhill v. Henry*, No. CIV 10-091-FHS-SPS (E.D. Okla.), and *Berryhill v. Seay*, No. CIV 10-151-JHP (E.D. Okla. May 10, 2010). Plaintiff maintains the defendants had a “criminal meeting of the minds” on May 3, 2010, to disregard state and federal law and to deprive him of his constitutional rights as a prisoner. He specifically alleges Judge White and Judge Shreder are depriving him of sufficient food and water, failing to protect him from physical and mental assaults, and attempting to murder him. He claims he has been kidnaped and held in involuntary servitude.

The court has reviewed the record and construed plaintiff’s pro se pleadings liberally.

*Haines v. Kerner*, 404 U.S. 519 (1972). This relaxed standard, however, does not relieve his burden of alleging sufficient facts on which a recognized legal claim could be based. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Although plaintiff has not paid the filing fee in this action or been granted leave to proceed *in forma pauperis*, this court is empowered to dismiss the complaint pursuant to 28 U.S.C. § 1915A:

(a) Screening.--The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief. . . .


28 U.S.C. § 1915A. *See also Plunk v. Givens*, 234 F.3d 1128, 1129 (10th Cir. 2000) (“§ 1915A applies to all prison litigants, without regard to their fee status, who bring civil suits against a governmental entity, officer, or employee.”).

Here, the court finds plaintiff’s complaint is both frivolous and malicious. Judges have absolute immunity for their “official adjudicative acts.” *Lundahl v. Zimmer*, 296 F.3d 936, 939 (10th Cir. 2002). There are only two exceptions to this absolute immunity: actions taken outside the judge’s judicial capacity, and actions “taken in the complete absence of all jurisdiction.” *Stein v. Disciplinary Bd. of Supreme Ct. of N.M.*, 520 F.3d 1183, 1195 (10th Cir. 2008) (quoting *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991)). The court further finds the allegations in plaintiff’s complaint are vague and conclusory, and the allegations do not rise

to the level of a constitutional violation. The Tenth Circuit Court of Appeals consistently has held that bald conclusions, unsupported by allegations of fact, are legally insufficient, and pleadings containing only such conclusory language may be summarily dismissed or stricken without a hearing. *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989), *cert. denied*, 493 U.S. 1059 (1990); *Lorraine v. United States*, 444 F.2d 1 (10th Cir. 1971). Therefore, summary dismissal is appropriate.

**ACCORDINGLY**, this action is, in all respects, **DISMISSED** as frivolous and malicious, pursuant to 28 U.S.C. § 1915A(b)(1).

**IT IS SO ORDERED** this 7th day of June 2010.

  
James H. Payne  
United States District Judge  
Eastern District of Oklahoma

SAO450 (Rev. 5/85) Judgement in a Civil Case

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UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

OKLAHOMA

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**JUDGMENT IN A CIVIL CASE**

Lavern Berryhill  
V.  
Judge Ronald A. White and  
Judge Steven P. Shreder

Case Number: CIV-10-176-JHP

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard a decision has been rendered.

IT IS ORDERED AND ADJUDGED

This action is, in all respects, DISMISSED as frivolous and malicious, pursuant to 28 U.S.C. § 1915A(b)(1).

June 7, 2010

Date

WILLIAM B. GUTHRIE

Clerk

s/ A Green

(By) Deputy Clerk

## **ATTACHMENT 4**

***Berryhill v. Payne*, No. CIV-10-188-RAW-SPS (June 15, 2010).**

- Order dismissing action, entered June 14, 2010.
- Judgment entered June 15, 2010.



**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

<b>LAVERN BERRYHILL,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>No. CIV 10-188-JHP</b>
	)	
<b>JUDGE JAMES H. PAYNE,</b>	)	
<b>JUDGE FRANK H. SEAY,</b>	)	
<b>JUDGE RONALD A. WHITE, and</b>	)	
<b>JUDGE STEVEN P. SHREDER,</b>	)	
	)	
Defendants.	)	

**OPINION AND ORDER**

On May 19, 2010, Plaintiff Lavern Berryhill, an inmate in the custody of the Oklahoma Department of Corrections who is incarcerated at Oklahoma State Penitentiary in McAlester, Oklahoma, filed this civil rights complaint pursuant to 42 U.S.C. § 1983, along with a motion for leave to proceed *in forma pauperis*. The defendants are United States District Judge James H. Payne, United States District Judge Frank H. Seay, United States District Judge Ronald A. White, and United States Magistrate Judge Stephen P. Shreder, all of whom serve in this court. Plaintiff alleges he is a victim, not a prisoner, and he has been held in involuntary servitude in the Oklahoma prison system for more than 20 years. He claims the defendants have conspired with more than 100 other defendants in *Berryhill v. Henry*, No. CIV 10-091-FHS-SPS (E.D. Okla.), to conceal his allegedly illegal incarceration that violates the Thirteenth Amendment to the United States Constitution.

On May 22, 2010, Judge White recused himself from this case, and it was assigned to Chief Judge Payne. Because all the district court judges in this court have been named as

defendants, there is no other judge in this court to whom it can be assigned. Although plaintiff has not requested recusal of the Chief Judge, the question arises whether the Chief Judge should disqualify himself, when he and the other district judges all are named as defendants.

“Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). The judge also should disqualify himself if he “[i]s a party to the proceeding.” 28 U.S.C. § 455(b)(5)(I). This statute, however, must be read in light of a judge’s “duty to sit” on cases filed with the court. *Switzer v. Berry*, 198 F.3d 1255, 1257 (10th Cir. 2000) (citations omitted). Furthermore, “under the ‘rule of necessity,’ a judge is qualified to decide a case, even if he or she would normally be impeded from doing so, when ‘the case cannot be heard otherwise.’” *Id.* at 1258 (quoting *United States v. Will*, 449 U.S. 200, 213 (1980)). Keeping in consideration plaintiff’s history of suing the judges in this court, *see Berryhill v. Seay*, No. CIV 10-151-JHP (E.D. Okla. May 10, 2010); *Berryhill v. White*, No. CIV 10-176-JHP (E.D. Okla. June 7, 2010), the court finds this lawsuit brought against all the district court judges in this court “does not operate automatically to render the court unable to hear and decide” the case. *Switzer*, 198 F.3d at 1258. Therefore, the Chief Judge need not disqualify himself.

The court has reviewed the record and construed plaintiff’s pro se pleadings liberally. *Haines v. Kerner*, 404 U.S. 519 (1972). This relaxed standard, however, does not relieve his burden of alleging sufficient facts on which a recognized legal claim could be based. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Although plaintiff has not paid the filing fee in this action or been granted leave to proceed *in forma pauperis*, this court is empowered

to dismiss the complaint pursuant to 28 U.S.C. § 1915A:

(a) Screening.--The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief. . . .


28 U.S.C. § 1915A. *See also Plunk v. Givens*, 234 F.3d 1128, 1129 (10th Cir. 2000) (“§ 1915A applies to all prison litigants, without regard to their fee status, who bring civil suits against a governmental entity, officer, or employee.”).

Here, the court finds plaintiff’s complaint is both frivolous and malicious. Judges have absolute immunity for their “official adjudicative acts.” *Lundahl v. Zimmer*, 296 F.3d 936, 939 (10th Cir. 2002). There are only two exceptions to this absolute immunity: actions taken outside the judge’s judicial capacity, and actions “taken in the complete absence of all jurisdiction.” *Stein v. Disciplinary Bd. of Supreme Ct. of N.M.*, 520 F.3d 1183, 1195 (10th Cir. 2008) (quoting *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991)). The court further finds the allegations in plaintiff’s complaint are vague and conclusory, and the allegations do not rise to the level of a constitutional violation. The Tenth Circuit Court of Appeals consistently has held that bald conclusions, unsupported by allegations of fact, are legally insufficient, and pleadings containing only such conclusory language may be summarily dismissed or stricken without a hearing. *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989), *cert. denied*, 493

U.S. 1059 (1990); *Lorraine v. United States*, 444 F.2d 1 (10th Cir. 1971). Therefore, summary dismissal is appropriate.

**ACCORDINGLY**, this action is, in all respects, **DISMISSED** as frivolous and malicious, pursuant to 28 U.S.C. § 1915A(b)(1), and plaintiff's pending motions are **DENIED** as moot.

**IT IS SO ORDERED** this 14th day of June 2010.

  
James H. Payne  
United States District Judge  
Eastern District of Oklahoma

SAO450 (Rev. 5/85) Judgement in a Civil Case

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UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

OKLAHOMA

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**JUDGMENT IN A CIVIL CASE**

Lavern Berryhill  
V.  
Judge James H. Payne et al

Case Number: CIV-10-188-JHP

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard a decision has been rendered.

IT IS ORDERED AND ADJUDGED

This action is, in all respects, **DISMISSED** as frivolous and malicious, pursuant to 28 U.S.C. § 1915A(b)(1).

6/15/10

Date

WILLIAM B. GUTHRIE

Clerk

s/ A Green

(By) Deputy Clerk