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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 JOHNNY RHOADES,

12 Plaintiff,

13 v.

14 CITY OF LYNDEN, *et al.*,

15 Defendants.

CASE NO. C07-376-TSZ-MJB

REPORT AND RECOMMENDATION

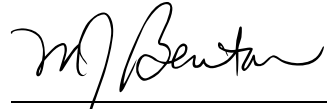
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17 Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, along with an
18 application for leave to proceed *in forma pauperis* by a prisoner (“IFP application”). Although plaintiff is
19 incarcerated in the Whatcom County Jail in Bellingham, Washington, his complaint does not challenge
20 any aspect of his confinement. Rather, his complaint alleges that he was injured while performing work
21 related to the installation of fiber optic cable in the city of Lynden, Washington. (Complaint at 3). He
22 names as defendants the City of Lynden and the Verizon company. (*Id.*)

23 In order to bring an action under 42 U.S.C. § 1983, plaintiff must establish that defendants are
24 “persons” acting “under color of state law,” and that defendants deprived plaintiffs of a right or privilege
25 secured by the Constitution or the laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535
26 (1981). In addition, section 1983 liability may not be premised upon negligence, but requires an
27 intentional act. *See Daniels v. Williams*, 474 U.S. 327, 328 (1986).

28 From the face of his complaint, it is apparent that plaintiff has chosen the wrong vehicle to bring

1 his claim for his work-related injury. Accordingly, the court recommends that plaintiff's IFP application
2 be denied and this action be dismissed without prejudice. A proposed Order is attached.

3 DATED this 19th day of March, 2007.

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6 MONICA J. BENTON
7 United States Magistrate Judge
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