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

FRED L. KING,

Plaintiff,

v.

CORCORAN STATE PRISON, et al.,

Defendants.

CASE NO. 1:10-cv-00878-LJO-SKO

**FINDINGS AND  
RECOMMENDATIONS THAT  
PLAINTIFF'S COMPLAINT BE  
DISMISSED WITHOUT LEAVE TO  
AMEND**

**OBJECTIONS DUE: 30 days**

**I. INTRODUCTION**

Plaintiff Fred King ("Plaintiff") is proceeding pro se and *in forma pauperis* with an action for damages under Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. §§ 2000e *et. seq.* against Corcoran State Prison ("Corcoran") and Walden House, Inc. ("Walden House").<sup>1</sup>

In his Third Amended Complaint ("TAC"), Plaintiff alleges he was discharged from his employment as a counselor at Walden House because Corcoran revoked his security clearance. Plaintiff claims that his security clearance was revoked because of an "investigation b[r]ought on by false allegations made about [his] conduct . . . ." (Doc. 13 at 1.) He asserts that others, who are not

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<sup>1</sup> It appears that Walden House is a substance abuse treatment facility located on the grounds at Corcoran. Plaintiff alleges he was employed as a counselor at Walden House. (Doc. 13.)

1 African American, were not terminated from their employment despite being investigated for similar  
2 security issues. (Doc. 13 at 1.) Plaintiff also alleges that he was terminated in part because of his  
3 "knowledge of corruption and misconduct of officers" at the Department of Corrections and because  
4 "it came to light that [he] was once an inmate . . . ." (Doc 13 at 1.) Plaintiff also believes he was  
5 singled out because of his race.

## 6 II. DISCUSSION

### 7 A. Screening Standard

8 In cases where the plaintiff is proceeding *in forma pauperis*, the Court is required to screen  
9 each case, and shall dismiss the case at any time if the Court determines that the allegation of poverty  
10 is untrue, or the action or appeal is frivolous or malicious, fails to state a claim upon which relief  
11 may be granted, or seeks monetary relief against a defendant who is immune from such relief.  
12 28 U.S.C. § 1915(e)(2). If the Court determines that the complaint fails to state a claim, leave to  
13 amend may be granted to the extent that the deficiencies of the complaint can be cured by  
14 amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

### 15 B. Failure to State a Claim

16 In determining whether a complaint fails to state a claim, the Court uses the same pleading  
17 standard used under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must  
18 contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed.  
19 R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 8 announces does not require 'detailed factual  
20 allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me  
21 accusation." *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp.*  
22 *v. Twombly*, 550 U.S. 544, 555 (2007)). "[A] complaint must contain sufficient factual matter,  
23 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*,  
24 550 U.S. at 570). "[A] complaint [that] pleads facts that are 'merely consistent with' a defendant's  
25 liability . . . 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.*  
26 (quoting *Twombly*, 550 U.S. at 557). Further, although a court must accept as true all factual  
27 allegations contained in a complaint, a court need not accept a plaintiff's legal conclusions as true.  
28 *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory

1 statements, do not suffice." *Id.* (quoting *Twombly*, 550 U.S. at 555).

## 2 **C. Analysis**

3 Pursuant to 42 U.S.C. § 2000e-2(a) ("Title VII"), it is an unlawful employment practice for  
4 an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate  
5 against any individual with respect to his compensation, terms, conditions, or privileges of  
6 employment, because of such individual's race, color, religion, sex, or national origin." A person is  
7 discriminated against when he or she is singled out and treated less favorably than others similarly  
8 situated on account of race, for example. *Jauregui v. City of Glendale*, 852 F.2d 1128, 1134 (9th  
9 Cir. 1988).

### 10 **1. No Cognizable Claim Against Corcoran State Prison**

11 Title VII liability is premised upon "some connection with an employment relationship."  
12 *Lutcher v. Musicians Union Local 47*, 633 F.2d 880, 883 (9th Cir. 1980). With only limited  
13 exceptions related primarily to prospective employers and applicants for employment, the employer  
14 charged with discrimination under Title VII must have been the plaintiff's employer at the time of  
15 the alleged discrimination for plaintiff to prevail. *See City of L.A. v. Manhart*, 435 U.S. 702, 718  
16 n.33 (1978) (Title VII "primarily govern[s] relations between employees and their employer, not  
17 between employees and third parties"). The relationship between the employee and the employer  
18 may be direct or indirect. *Lutcher*, 633 F.2d at 883.

19 There are at least two theories under which a plaintiff may plead an indirect employment  
20 relationship with a defendant. First, an employer may be pled as a "joint employer." *EEOC v. Pac.*  
21 *Mar. Ass'n*, 351 F.3d 1270, 1275-77 (9th Cir. 2003). Joint-employer liability under Title VII may  
22 be shown where "both employers control the terms and conditions of employment of the employee."  
23 *Id.* (internal quotation marks and citations omitted). In considering joint-employer status, the Ninth  
24 Circuit applies an "economic reality test" that "considers all factors relevant to the particular  
25 situation." *Id.* For example, the Ninth Circuit has considered whether the joint employer (1)  
26 supervised the employee, (2) had the power to hire and fire him, (3) had the power to discipline him,  
27 and (4) supervised, monitored and/or controlled his work site. *See id.* at 1277; *Anderson v. Pac.*  
28 *Mar. Ass'n*, 336 F.3d 924, 927 (9th Cir. 2003).

1           Second, a plaintiff may plead an indirect employment relationship by asserting that the  
2 defendant interfered with the plaintiff's employment through reference to invidious criteria or on  
3 invidious grounds. *Lutcher*, 633 F.2d at 883 n.3; *Sibley Memorial Hosp. v. Wilson*, 488 F.2d 1338,  
4 1342 (D.C. Cir. 1973). If the interfering party has the right to control the "means and manner" of  
5 the individual's performance and has "the right to control and direct the work of an individual," then  
6 it is likely that an employment relationship exists between that party and the plaintiff. *Lutcher*,  
7 633 F.2d at 883 & n.5 (citing *Spirides v. Reinhardt*, 613 F.2d 826, 831 (D.C. Cir. 1979)).

8           Here, Plaintiff has not alleged that he had a direct employment relationship with Corcoran;  
9 rather, Plaintiff identifies his place of employment as "Walden House." (Doc. 13 at 2.) There are  
10 also insufficient facts to indicate that Plaintiff had an indirect employment relationship with  
11 Corcoran. Plaintiff has not alleged any facts that indicate Corcoran acted as a joint employer with  
12 Walden House under the "economic reality test." For example, there are no facts indicating that  
13 Corcoran supervised Plaintiff, had the power to hire or fire him, had the power to discipline him, or  
14 supervised or controlled his precise work space. Additionally, no facts are alleged indicating that  
15 Corcoran controlled the "means and manner" of Plaintiff's employment, i.e., that Corcoran had  
16 control of his work hours, work assignments, supervision, or training. Thus, Plaintiff's Title VII  
17 claim against Corcoran for employment discrimination is not viable because Plaintiff has not pled  
18 any facts indicating how he had some type of employment relationship with Corcoran.

19           Further, even assuming an employment relationship was sufficiently pled, it is unclear how  
20 Corcoran used invidious criteria in revoking Plaintiff's security clearance.<sup>2</sup> Though Plaintiff states  
21 that he was singled out because of his race, he also states that he was terminated because of he knew  
22 of the "corruption and misconduct" of Department of Corrections officers, that he was treated  
23 differently after the discovery that he had previously been an inmate, and that Plaintiff's termination  
24 resulted from an investigation into allegations of his misconduct. (Doc. 13 at 1.) Discrimination  
25 because of an employee's knowledge of corruption, previous incarceration status, or an employee's  
26 misconduct is not actionable under Title VII. *See* 42 U.S.C. § 2000e-2(a)(1) (it is unlawful to

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28           <sup>2</sup> The Court notes that security clearance decisions by *federal* agencies are not reviewable by Article III  
courts. *Brazil v. U.S. Dep't of Navy*, 66 F.3d 193, 196 (9th Cir. 1995) (judicial review of security clearance  
decisions by Executives or their agents is precluded in Title VII discrimination actions).

1 discriminate because of race, color, religion, sex, or national origin). It is unclear whether Plaintiff  
2 is alleging that his security clearance was revoked because of his race or based on grounds not  
3 actionable under Title VII.

4 As Plaintiff has failed to adequately allege any type of employment relationship with  
5 Corcoran and because it is unclear upon what discriminatory grounds Corcoran revoked his security  
6 clearance, there is no cognizable claim stated against Corcoran.

7 **2. No Cognizable Claim Against Walden House**

8 There are no allegations against Walden House contained in the TAC, and Walden House  
9 is not named in the caption of the complaint. Thus, there is no cognizable claim stated against  
10 Walden House.

11 **III. CONCLUSION**

12 Plaintiff's TAC, like his previous complaints, does not allege sufficient facts to support a  
13 plausible and cognizable Title VII claim. Plaintiff has not alleged that Corcoran was his direct  
14 employer, or asserted any plausible theory of indirect employment relationship with Corcoran. It is  
15 also unclear whether Plaintiff has alleged that his security clearance was revoked due to his race or  
16 some other reason not actionable under Title VII. Further, Plaintiff sets forth no facts to support a  
17 viable claim against Walden House. The Court has provided Plaintiff with notice of these  
18 deficiencies, and Plaintiff has had three opportunities to amend his complaint to state a cognizable  
19 claim but has been unable to do so. As a result, dismissal without leave to amend is warranted.

20 **IV. RECOMMENDATION**

21 Based on consideration of the declarations, pleadings, and exhibits to the present motion, the  
22 Court RECOMMENDS that Plaintiff's Third Amended Complaint be DISMISSED without leave  
23 to amend.

24 These findings and recommendations are submitted to the district judge assigned to this  
25 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30) days  
26 of service of this recommendation, any party may file written objections to these findings and  
27 recommendations with the Court and serve a copy on all parties. Such a document should be  
28 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge

1 will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C.  
2 § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may  
3 waive the right to appeal the district judge's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

4  
5 IT IS SO ORDERED.

6 **Dated: June 8, 2011**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE