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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 JONATHAN JAITE,

10 Plaintiff,

11 v.

12 BELLA HOMES WASHINGTON,

13 Defendants.
14

No. 4:16-cv-05075-SAB

**ORDER DISMISSING
COMPLAINT; GRANTING
LEAVE TO AMEND**

15 On June 21, 2016, Plaintiff Jonathan Jaite, who is proceeding pro se, was
16 granted leave to proceed in forma pauperis. ECF No. 4. In his Complaint, Plaintiff
17 is suing his former employer and alleges that he was subject to sexually
18 harassment and retaliation. He is bringing a claim under Title VII of the Civil
19 Rights Act of 1964 and the United States Constitution. ECF NO. 5.

20 **Legal Standard**

21 In light of the fact that Plaintiff is preceding pro se, the Court is required to
22 screen the Complaint and dismiss the case at any time it concludes the action is
23 frivolous or malicious, fails to state a claim on which relief may be granted, or
24 seeks monetary relief against a defendant who is immune from such relief. See 28
25 U.S.C. § 1915(e)(2)(B); see also Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir.
26 2000) (“[S]ection 1915e not only permits but requires a district court to dismiss an
27 in forma pauperis complaint that fails to state a claim.”).

28 The facts alleged in a complaint are to be taken as true and must “plausibly

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1 give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).
2 Mere legal conclusions “are not entitled to the assumption of truth.” *Id.* The
3 complaint must contain more than “a formulaic recitation of the elements of a
4 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It must
5 plead “enough facts to state a claim to relief that is plausible on its face.” *Id.* at
6 570. On the basis of these standards, Plaintiff’s allegations in his First Amended
7 Complaint fail to state a claim upon which relief may be granted.

8 **Analysis**

9 In order to bring an action against an employer under Title VII, the
10 employer must meet the definition of “employer” set forth in 42 U.S.C.
11 § 2000e(b). *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 505 (2006). Title VII defines an
12 “employer” as:

13 a person engaged in an industry affecting commerce who has fifteen
14 or more employees for each working day in each of twenty or more
15 calendar weeks in the current or preceding calendar year and any
agent of such a person.

16 § 2000e(b). Here, Plaintiff has not alleged any factual allegations that his
17 employer, Bella Homes Washington, meets this definition. As such, Plaintiff fails
18 to allege a claim upon which relief can be granted.

19 Additionally, generally private entities are not subject to suit under 42
20 U.S.C. § 1983. See *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982) (“Although
21 Title VII . . . govern[s] action by private parties making personnel decisions, it is
22 fundamental that the First Amendment prohibits governmental infringement on the
23 right of free speech. Similarly, the Fourteenth Amendment, which prohibits the
24 states from denying federal constitutional rights and which guarantees due
25 process, applies to acts of the states, not to acts of private persons or entities.”).

26 Plaintiff has not alleged facts that establish his employer, Bella Homes
27 Washington, is a state actor. As such, Plaintiff fails to allege a claim upon which
28 relief can be granted.

1 **Leave to Amend**

2 As set forth above, Plaintiff has failed to state a claim upon which relief can
3 be granted. However, unless it is absolutely clear that amendment would be futile,
4 a pro se litigant must be given the opportunity to amend his complaint to correct
5 any deficiencies. Lopez v. Smith, 203 F.3d 1122, 1127-30 (9th Cir. 2000). As such,
6 Plaintiff is granted leave to file a First Amended Complaint to allege sufficient
7 facts to state a claim under Title VII and/or 42 U.S.C. § 1983.

8 Accordingly, **IT IS HEREBY ORDERED** that:

- 9 1. The Complaint, ECF No. 4, is **DISMISSED without prejudice**.
10 2. Plaintiff is permitted to file a Second Amended Complaint within 30
11 days from the date of this Order.
12 3. Plaintiff is cautioned that if he fails to amend within 30 days, the Court
13 will dismiss the complaint for failure to state a claim under 28 U.S.C.
14 § 1915(e)(2)(B).

15 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
16 and forward copies to pro se Plaintiff.

17 **DATED** this 11th day of July, 2017.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

23 Stanley A. Bastian
24 United States District Judge
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