

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT C. BOLTON,

Plaintiff,
V.

KING COUNTY CORRECTIONS, et al.

Case No. C17-388-RSM-JPD

ORDER DECLINING TO SERVE AND
GRANTING LEAVE TO AMEND

Plaintiff Scott C. Bolton is currently confined at the King County Jail. Proceeding *pro se* and *in forma pauperis*, he filed a 42 U.S.C. § 1983 civil rights complaint against the King County Correctional Facility (“KCCF”), KCCF Classifications Officer “John Doe,” and the Director of the KCCF. *See* Dkt. 1-1. Having reviewed plaintiff’s complaint, the Court finds and ORDERS:

(1) Plaintiff alleges that on February 3, 2017, a classifications officer admitted him into the “Trusty Inmate Worker Program.” Dkt. 1-1 at 3. He alleges that on February 4, 2017, a different classifications officer, the one named as a John Doe defendant in this action, revoked his admission into the program. *Id.* Plaintiff claims that the revocation was retaliatory and

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1 discriminatory. *Id.* As relief, he asks the Court to “correct this discriminatory act and its
2 retaliatory concealment.” *Id.*

3 (2) Once a complaint is filed *in forma pauperis*, the Court must dismiss it prior to
4 service if it “fails to state a claim on which relief can be granted.” 28 U.S.C. § 1915(e)(2)(b)(ii);
5 *see Talley v. Jackson*, 2015 WL 3796339, at *1 (W.D. Wash. June 18, 2015) (citations omitted).
6 To avoid dismissal, a complaint must contain sufficient factual matter, accepted as true, to state a
7 claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). The
8 factual allegations must be “enough to raise a right to relief above the speculative level.” *Bell*
9 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint may be dismissed if it
10 lacks a cognizable legal theory or states insufficient facts to support a cognizable legal theory.
11 *Zixiang v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013).

12 The Court holds *pro se* plaintiffs to less stringent pleading standards than represented
13 plaintiffs and liberally construes a *pro se* complaint in the light most favorable to the plaintiff.
14 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Nevertheless, § 1915(e) “not only permits but
15 requires a district court to dismiss an in forma pauperis complaint that fails to state a claim.”
16 *Lopez v. Smith*, 203 F.3d 1122, 1229 (9th Cir. 2000) (en banc). When dismissing a complaint
17 under § 1915(e), the Court gives *pro se* plaintiffs leave to amend unless “it is absolutely clear
18 that the deficiencies of the complaint could not be cured by amendment.” *Cato v. United States*,
19 70 F.3d 1103, 1106 (9th Cir. 1995).

20 (3) To sustain a § 1983 civil rights claim, plaintiff must show (1) he suffered a
21 violation of rights protected by the Constitution or created by federal statute, and (2) the
22 violation was proximately caused by a person acting under color of state or federal law. *West v.*
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1 *Atkins*, 487 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To
2 satisfy the second prong, plaintiff must allege facts showing how individually named defendants
3 caused or personally participated in causing the harm alleged in the complaint. *Arnold v. IBM*,
4 637 F.2d 1350, 1355 (9th Cir. 1981).

5 (4) Having screened plaintiff's complaint, the Court has identified the following
6 deficiencies:

7 a. The KCCF is an entity of King County and, as such, is not a proper
8 defendant in this action. *See Nolan v. Snohomish Cnty.*, 59 Wn. App. 876, 883, 802 P.2d 792,
9 796 (Wash. Ct. App. 1990) ("[I]n a legal action involving a county, the county itself is the only
10 legal entity capable of suing and being sued."). Plaintiff may sue King County as a "person"
11 under § 1983. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691-94 (1978).
12 However, King County cannot be held liable under § 1983 solely because it employs a tortfeasor.
13 *Id.* A plaintiff seeking to impose liability on King County under § 1983 must identify a
14 municipal "policy" or "custom" that caused his or her injury. *Bd. of the Cnty. Comm'r's of*
15 *Bryant Cnty. v. Brown*, 520 U.S. 397, 403 (1997) (citing *Monell*, 436 U.S. at 694). Plaintiff does
16 not allege that any King County policy or custom caused him injury.

17 b. Plaintiff names the KCCF Director as a defendant in this action but he
18 does not allege any facts regarding this defendant. The KCCF Director cannot be held liable
19 simply because he is John Doe's supervisor. Rather, to proceed against the KCCF Director,
20 plaintiff must allege facts showing that he caused or personally participated in causing the harm
21 alleged in the complaint.

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1 c. Plaintiff fails to allege sufficient facts to state a First Amendment
2 retaliation claim against John Doe. His conclusory claim that John Doe retaliated against him is
3 insufficient. If plaintiff files an amended complaint against John Doe, any retaliation claim will
4 be screened under the following standards.

5 “Within the prison context, a viable claim of First Amendment retaliation entails five
6 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
7 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
8 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
9 legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005). “The
10 prisoner must show that the type of activity in which he was engaged was constitutionally
11 protected, that the protected conduct was a substantial or motivating factor for the alleged
12 retaliatory action, and that the retaliatory action advanced no legitimate penological interest.”
13 *Quiroz v. Horel*, 85 F. Supp. 3d 1115, 1124 (N.D. Cal. 2015) (citing *Hines v. Gomez*, 108 F.3d
14 265, 267-68 (9th Cir. 1997)); *see also Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995)
15 (plaintiff bears burden of pleading and proving the absence of legitimate correctional goals for
16 the conduct of which he complains). Additionally, “a plaintiff who fails to allege a chilling
17 effect may still state a claim if he alleges he suffered some other harm.” *Brodheim v. Cry*, 584
18 F.3d 1262, 1269 (9th Cir. 2009).

19 d. Plaintiff fails to allege sufficient facts to state a discrimination claim
20 against John Doe. Plaintiff does not allege the basis for the discrimination, i.e., why John Doe
21 discriminated against him. "Prisoners are protected under the Equal Protection Clause of the
22 Fourteenth Amendment from invidious discrimination based on race." *Wolff v. McDonnell*, 418

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1 U.S. 539, 556 (1974) (citing *Lee v. Washington*, 390 U.S. 333 (1968)). But given the lack of any
2 specific factual allegations, the Court cannot say that plaintiff alleges a valid discrimination
3 claim under § 1983.

4 (5) Based on the forgoing, the Court DECLINES to serve plaintiff's complaint, but
5 GRANTS him leave to file an amended complaint curing the above-noted deficiencies within **30**
6 **days** after the date this Order is signed. The amended complaint must carry the same case
7 number as this one and must be filed on the appropriate form, a copy of which will be sent with
8 this Order. **If no amended complaint is timely filed or if plaintiff files an amended**
9 **complaint that fails to correct the deficiencies identified above, the Court may recommend**
10 **that this action be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim**
11 **upon which relief may be granted.**

12 Plaintiff is advised that an amended pleading operates as a *complete* substitute for an
13 original pleading. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, any
14 second amended complaint must clearly identify the defendant(s), the constitutional or federal
15 statutory claim(s) asserted, the specific facts which plaintiff believes support each claim, and the
16 specific relief requested.

17 (6) The Clerk is directed to send plaintiff the appropriate forms so that he may file an
18 amended complaint. The Clerk is further directed to send copies of this Order to plaintiff and to
19 the Honorable Ricardo S. Martinez.

20 Dated this 3rd day of April, 2017.

21 
22 JAMES P. DONOHUE
23 Chief United States Magistrate Judge

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