

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HERMAN L. BARTON, JR.,

CASE NO. C17-0608JLR

Plaintiff,

ORDER DISMISSING
COMPLAINT WITH LEAVE TO
AMEND

JOHN DOES 1-6, et al.,

Defendants.

I. INTRODUCTION

Before the court is Plaintiff Herman L. Barton, Jr.’s amended complaint against Defendants John Does 1-6, Jane Does 1-6, and “Government Work Source” (collectively, “Defendants”). (FAC (Dkt. # 10).) Mr. Barton is proceeding *in forma pauperis* (“IFP”) and *pro se*. (See IFP Order (Dkt. # 8).) The court concludes that Mr. Barton fails to adequately allege the court’s subject matter jurisdiction. Accordingly, the court dismisses Mr. Barton’s complaint with leave to amend.

ORDER - 1

II. BACKGROUND

2 On April 25, 2017, Mr. Barton filed this lawsuit (*see* Compl. (Dkt. # 1)), and on
3 May 2, 2017, he filed a motion for leave to proceed IFP (IFP Mots. (Dkt. ## 5, 7)). On
4 May 8, 2017, Magistrate Judge Theiler granted Mr. Barton’s IFP motion and
5 recommended review of Mr. Barton’s complaint under 28 U.S.C. § 1915(e)(2)(B). (IFP
6 Order at 1.)

7 In his first complaint, Mr. Barton alleged that the women who work at
8 Government Work Source invited him to use the service, but after a few days, some
9 unspecified men told him that he was committing “a criminal trespass.” (Compl. at 3.)
10 He further stated that he has “been invited to use Government Work Source more than 27
11 times [by] the women and at one time the women told the police that [he did] not
12 trespass[] and could use Government Work Source.” (*Id.*) Mr. Barton requested a jury
13 trial, an award of damages in the amount of \$75,000.00, and the use of Government
14 Work Source. (*Id.* at 4.)

15 After reviewing Mr. Barton’s complaint, the court concluded that Mr. Barton’s
16 complaint was frivolous and failed to state a claim. (5/9/17 Order (Dkt. # 9) at 3.)
17 Specifically, the court determined that Mr. Barton failed to allege facts from which the
18 court could reasonably infer a basis for exercising subject matter jurisdiction (*id.*), and
19 because Mr. Barton’s complaint contained only conclusory allegations, the court could
20 not determine what claims Mr. Barton attempted to assert or identify facts in Mr.
21 Barton’s complaint from which the court could reasonably infer Defendants’ liability (*id.*
22 at 4).

The court granted Mr. Barton leave to amend his complaint and instructed Mr. Barton that any amended complaint he filed must include a short and plain statement that describes (1) the factual circumstances of the alleged harm, e.g., where and when it occurred; (2) Defendants' actions that give rise to Mr. Barton's claims; (3) the basis for the court's jurisdiction; and (4) the relief Mr. Barton seeks. (*Id.* at 4-5 (citing Fed. R. Civ. P. 8(a)(1)-(3).)) Mr. Barton timely filed an amended complaint, which is now before the court. (*See* FAC.)

III. ANALYSIS

Title 28 U.S.C. § 1915(e)(2)(B) requires a district court to dismiss a claim filed IFP if the court determines “at any time” that the action (1) is frivolous or malicious, (2) fails to state a claim, or (3) seeks relief from a defendant who is immune from such relief.¹ *See* 28 U.S.C. § 1915(e)(2)(B); *see also Deere v. Brown*, No. 11cv1579 WQH (JMA), 2012 WL 4740328, at *1 (S.D. Cal. Oct. 3, 2012) (noting the mandatory nature of a district court’s screening function under Section 1915). Moreover, “the court may raise the question of subject matter jurisdiction, *sua sponte*, at any time during the pendency of the action.” *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002). The court again concludes that Mr. Barton’s amended complaint fails to adequately allege the court’s subject matter jurisdiction.

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¹ Although 28 U.S.C. § 1915 expressly addresses the filings of prisoner litigants, the court must also screen the filings of non-prisoner civil litigants seeking to proceed IFP. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam).

1 Even though the court must liberally construe *pro se* pleadings, *Balistreri v.*
2 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990), the plaintiff must nevertheless
3 plead facts supporting the court's subject matter jurisdiction, *see Simmons v. Revenue*
4 *Officers*, 865 F. Supp. 678, 679 (D. Idaho 1994), and allege facts sufficient "to raise a
5 right to relief above the speculative level," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
6 (2007). Although Federal Rule of Civil Procedure 8 does not require "detailed factual
7 allegations," it demands more than "an unadorned, the-defendant-unlawfully-harmed-me
8 accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at
9 555).

10 Mr. Barton once again fails to state a basis for the court's subject matter
11 jurisdiction or to allege facts from which the court can reasonably infer a basis for
12 exercising subject matter jurisdiction. (*See generally* FAC (failing to address the court's
13 jurisdiction).) As the court previously indicated (*see* 5/9/17 Order), Federal Rule of Civil
14 Procedure 8(a) requires Mr. Barton to include "a short and plain statement of the grounds
15 for the court's jurisdiction" in his complaint, Fed. R. Civ. P. 8(a). However, Mr. Barton
16 provides no information regarding the domicile of Defendants. *See* 28 U.S.C. § 1332(a);
17 *Medina v. Chas Roberts Air Conditioning, Inc.*, No. CV 05-4214-PHX-SMM, 2006 WL
18 2091665, at *6 (D. Ariz. July 24, 2006) (citing *Fifty Assocs. v. Prudential Life Ins. Co. of*
19 *Am.*, 446 F.2d 1187, 1191 (9th Cir. 1970)) ("The Ninth Circuit has rejected naming 'Doe'
20 defendants in diversity actions, on the grounds that complete diversity cannot exist if the
21 identity and citizenship of some defendants (i.e., the 'Does') are unknown."); (FAC at 3
22 (seeking relief of \$75,000.00 in damages and "use of Work Source").) In addition, Mr.

1 Barton does not appear to assert any federal claims that support federal question
2 jurisdiction. *See* 28 U.S.C. § 1331; (FAC at 1-3 (failing to allege facts from which a
3 federal claim can be inferred from the face of the complaint).) Accordingly, Mr. Barton
4 once again fails to allege facts to establish the court's subject matter jurisdiction.

5 The court must grant a *pro se* plaintiff leave to amend unless it is absolutely clear
6 that amendment could not cure the defects in the complaint. *Lucas v. Dep't of Corr.*, 66
7 F.3d 245, 248 (9th Cir. 1995). Accordingly, the court grants Mr. Barton leave to amend
8 his complaint to adequately state a basis for the court's subject matter jurisdiction. Mr.
9 Barton must file his second amended complaint, if any, no later than Monday, July 10,
10 2017. In any amended complaint, Mr. Barton must state a basis for the court's subject
11 matter jurisdiction or allege facts from which the court can reasonably infer a basis for
12 exercising subject matter jurisdiction. *See* Fed. R. Civ. P. 8(a); 28 U.S.C. § 1332(a); 28
13 U.S.C. § 1331; *Medina*, 2006 WL 2091665, at *6.

14 The court cautions Mr. Barton that a plaintiff does not enjoy unlimited
15 opportunities to amend his complaint, particularly when he fails to remedy pleading
16 deficiencies that the court has identified. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th
17 Cir. 1992) (affirming dismissal with prejudice where district court had instructed *pro se*
18 plaintiff regarding deficiencies in prior order dismissing claim with leave to amend);
19 *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) (holding that
20 “[t]he district court's discretion to deny leave to amend is particularly broad where
21 plaintiff has previously amended the complaint”); *Webb v. Kaiser (Fremont)*,
22 No. 13-cv-04654 NC, 2014 WL 1616412, at *3 (N.D. Cal. Apr. 21, 2014) (dismissing

1 without further leave to amend where the plaintiff failed to remedy the deficiencies the
2 court previously identified with regard to subject matter jurisdiction); *Razavi v. San Jose*
3 *Police*, No. 5:17-cv-02088-EJD, 2017 WL 2117418, at *3 (N.D. Cal. May 16, 2017)
4 (same). Therefore, if Mr. Barton fails to remedy the deficiencies identified in this order
5 or to timely amend his complaint, the court will dismiss his complaint without further
6 leave to amend.

7 **IV. CONCLUSION**

8 The court DISMISSES Mr. Barton's first amended complaint (Dkt. # 10) with
9 leave to amend. Mr. Barton's second amended complaint, if any, must be filed no later
10 than Monday, July 10, 2017.

11 Dated this 26th day of June, 2017.

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14 JAMES L. ROBART
15 United States District Judge
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