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

10 HERMAN LEE BARTON, JR.,

11 Plaintiff,

12 v.

13 6 JOHN DOES, et al.,

14 Defendants.

CASE NO. C17-0608JLR

ORDER DISMISSING
COMPLAINT WITH LEAVE TO
AMEND

15 **I. INTRODUCTION**

16 Before the court is *pro se* Plaintiff Herman Lee Barton, Jr.’s complaint against
17 Defendants “6 John Does,” “6 Jane Does,” and “Government Work Source” (collectively,
18 “Defendants”) (Compl. (Dkt. # 1) at 1). Mr. Barton is proceeding *in forma pauperis*
19 (“IFP”). (IFP Order (Dkt. # 8).) In granting Mr. Barton IFP status, Magistrate Judge
20 Mary Alice Theiler recommended review of Mr. Barton’s amended complaint under 28
21 U.S.C. § 1915(e)(2)(B). (*Id.* at 1.) The court has conducted the recommended review

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1 and DISMISSES Mr. Barton’s complaint and GRANTS Mr. Barton leave to amend his
2 complaint as set forth below.

3 **II. BACKGROUND**

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

9 Although the limited allegations in Mr. Barton’s complaint are difficult to follow,
10 Mr. Barton’s complaint appears to stem from his exclusion from “Government Work
11 Source.” (Compl. at 3.) Mr. Barton alleges that the women who work at Government
12 Work Source invited him to use the service, but after a few days, some unspecified men
13 told him that he was committing “a criminal trespass.” (*Id.*) He further states that he has
14 “been invited to use Government Work Source more than 27 times [by] the women and at
15 one time the women told the police that [he did] not trespass[] and could use Government
16 Work Source.” (*Id.*) Mr. Barton requests a jury trial, an award of damages in the amount
17 of \$75,000.00, and the use of Government Work Source. (*Id.* at 4.) The court now
18 evaluates Mr. Barton’s complaint under Section 1915.

19 **III. ANALYSIS**

20 Title 28 U.S.C. § 1915(e)(2)(B) requires a district court to dismiss a claim filed
21 IFP if the court determines “at any time” that (1) the action is frivolous or malicious, (2)
22 the action fails to state a claim, or (3) the action seeks relief from a defendant who is

1 | immune from such relief.¹ See 28 U.S.C. § 1915(e)(2)(B). The court concludes that Mr.
2 | Barton’s complaint is frivolous and fails to state a claim.

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

11 | First, Mr. Barton fails to state the basis for subject matter jurisdiction or to allege
12 | facts from which the court can reasonably infer a basis for exercising subject matter
13 | jurisdiction. Federal Rule of Civil Procedure 8(a) requires Mr. Barton to include “a short
14 | and plain statement of the grounds for the court’s jurisdiction” in his complaint. Fed. R.
15 | Civ. P. 8(a). However, Mr. Barton provides no information regarding the domicile of
16 | Defendants. See 28 U.S.C. § 1332(a); *Medina v. Chas Roberts Air Conditioning, Inc.*,
17 | No. CV 05-4214-PHX-SMM, 2006 WL 2091665, at *6 (D. Ariz. July 24, 2006) (citing
18 | *Fifty Assocs. v. Prudential Life Ins. Co. of Am.*, 446 F.2d 1187, 1191 (9th Cir. 1970))
19 | (“The Ninth Circuit has rejected naming ‘Doe’ defendants in diversity actions, on the
20 |

21 | ¹ Although 28 U.S.C. § 1915 expressly addresses the filings of prisoner litigants, the
22 | 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 grounds that complete diversity cannot exist if the identity and citizenship of some
2 defendants (i.e., the ‘Does’) are unknown.”)); (Compl. at 4 (seeking relief of \$75,000.00
3 in damages and “use of Government Work Source”).) In addition, Mr. Barton does not
4 appear to assert any federal claims that support federal question jurisdiction. *See* 28
5 U.S.C. § 1331; (Compl. at 3 (failing to allege facts from which a federal claim can be
6 inferred from the face of the complaint).) Accordingly, Mr. Barton fails to allege facts to
7 establish the court’s subject matter jurisdiction.

8 Second, Mr. Barton’s complaint contains only conclusory allegations and lacks
9 facts that plausibly support liability. The court cannot determine what claims Mr. Barton
10 attempts to assert and cannot identify facts in Mr. Barton’s complaint from which the
11 court can reasonably infer that Defendants are liable to Mr. Barton. (*See* Compl. at 1-4.)
12 Even though Mr. Barton is proceeding *pro se* and the court construes his pleadings
13 liberally, *see Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010), his complaint is
14 nevertheless evaluated under the *Iqbal/Twombly* pleading standards, *see id.* at 342; *see*
15 *also Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 678. The complaint falls far short of
16 the applicable pleading standard.

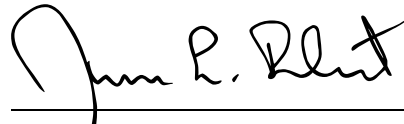
17 For these reasons, the court dismisses Mr. Barton’s complaint. However, when a
18 court dismisses a *pro se* plaintiff’s complaint, the court must give the plaintiff leave to
19 amend unless it is absolutely clear that amendment could not cure the defects in the
20 complaint. *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). Accordingly, the
21 court grants Mr. Barton leave to amend his complaint. Mr. Barton must file an amended
22 complaint, if any, that corrects the deficiencies the court identifies herein no later than

1 May 30, 2017.² If Mr. Barton chooses to amend his complaint, his amended complaint
2 must include a short and plain statement that describes (1) the factual circumstances of
3 the alleged harm, e.g., where and when it occurred; (2) the actions of Defendants that
4 give rise to Mr. Barton's claims; (3) the basis for the court's jurisdiction; and (4) the
5 relief Mr. Barton seeks. *See* Fed. R. Civ. P. 8(a)(1)-(3). If Mr. Barton fails to timely
6 comply with this order or fails to file an amended complaint that remedies the
7 deficiencies identified herein, the court will dismiss his complaint without leave to
8 amend.

9 IV. CONCLUSION

10 For the foregoing reasons, the court DISMISSES Mr. Barton's complaint (Dkt.
11 # 1) and GRANTS Mr. Barton leave to amend his complaint no later than May 30, 2017.

12 Dated this 9th day of May, 2017.

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15 JAMES L. ROBART
16 United States District Judge
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22 ² The court cautions Mr. Barton that an amended complaint will supersede his original
complaint and leave his original complaint without legal effect. *Lacey v. Maricopa Cty.*, 693
F.3d 896, 927 (9th Cir. 2012) (en banc).