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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DANIEL MARK BALDER,

9 Plaintiff,

10 v.

11 KING COUNTY CORRECTIONAL
FACILITY, et al.,

12 Defendants.
13

CASE NO. C17-0628-RAJ-MAT

ORDER DECLINING TO SERVE
AMENDED COMPLAINT AND
GRANTING LEAVE TO AMEND

14 Plaintiff Daniel Balder is currently confined at the King County Correctional Facility
15 (“KCCF”). Proceeding *pro se* and *in forma pauperis*, he filed a 42 U.S.C. § 1983 civil rights
16 complaint, which the Court declined to serve because it was deficient. Dkt. 6. Plaintiff has filed
17 an amended complaint, naming as defendants King County, Pioneer Industries Housing, Jim
18 Pheonix, Sound Mental Health, and King County Public Health. Dkt. 8. Having reviewed
19 plaintiff’s amended complaint, the Court finds and ORDERS:

20 (1) The Court gleaned the following factual allegations from plaintiff’s original
21 complaint. Plaintiff was charged with a crime in King County and his case was referred to the
22 King County District Court Mental Health Court. After two violations of the conditions of his
23 participation in the Mental Health Court, he was sentenced to 1,191 days at the KCCF. One of the

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1 violations involved housing his common law wife, who is an important source of support for
2 plaintiff.

3 While plaintiff's amended complaint is not entirely clear, it appears that he wishes to (a)
4 challenge the decision to revoke his participation in the Mental Health Court and incarcerate him,
5 and (b) bring claims related to the medical care he has received at the KCCF. *See* Dkts. 8 & 8-1;
6 *see also* Dkt. 9. As relief, he asks to return to the Mental Health Court and to be allowed to reside
7 with his common law wife. Dkt. 8 at 4.

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

17 The Court holds *pro se* plaintiffs to less stringent pleading standards than represented
18 plaintiffs and liberally construes a *pro se* complaint in the light most favorable to the plaintiff.
19 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Nevertheless, § 1915(e) "not only permits but requires
20 a district court to dismiss an *in forma pauperis* complaint that fails to state a claim." *Lopez v.*
21 *Smith*, 203 F.3d 1122, 1229 (9th Cir. 2000) (en banc). When dismissing a complaint under §
22 1915(e), the Court gives *pro se* plaintiffs leave to amend unless "it is absolutely clear that the
23 deficiencies of the complaint could not be cured by amendment." *Cato v. United States*, 70 F.3d

1 1103, 1106 (9th Cir. 1995).

2 (3) To sustain a § 1983 civil rights claim, plaintiff must show (1) he suffered a violation
3 of rights protected by the Constitution or created by federal statute, and (2) the violation was
4 proximately caused by a person acting under color of state or federal law. *West v. Atkins*, 487 U.S.
5 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second
6 prong, plaintiff must allege facts showing how individually named defendants caused or personally
7 participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355
8 (9th Cir. 1981).

9 (4) Having screened plaintiff's amended complaint, the Court has identified the
10 following deficiencies:

11 a. This Court cannot reinstate plaintiff's Mental Health Court proceedings or
12 overturn the decision to incarcerate him. In *Heck v. Humphrey*, the Supreme Court held that a
13 plaintiff cannot bring a § 1983 claim that calls into question the lawfulness of his conviction or
14 confinement until the conviction and sentence have been invalidated. 512 U.S. 477, 487-89
15 (1994). In addition, a plaintiff cannot challenge the fact or duration of his confinement under §
16 1983; instead, he may file a federal petition for writ of habeas corpus after exhausting state
17 remedies. *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875
18 (9th Cir. 1990). In light of *Heck* and *Preiser*, plaintiff's challenges to his incarceration and the
19 termination of his Mental Health Court proceedings, including his claims related to housing his
20 common law wife, cannot be brought in a § 1983 action at this time. If plaintiff's second amended
21 complaint includes such claims, the Court will recommend that they be dismissed.

22 b. It appears that plaintiff is attempting to bring an Eighth Amendment claim
23 related to the medical care he has received at the KCCF. As noted previously, to establish such a

1 violation, an inmate must prove “acts or omissions sufficiently harmful to evidence deliberate
2 indifference to serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *see also*
3 *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1241 (9th Cir. 2010). Prison officials may be
4 deemed to have been deliberately indifferent to an inmate’s serious medical needs “when they
5 deny, delay, or intentionally interfere with medical treatment.” *Hallett v. Morgan*, 296 F.3d 732,
6 744 (9th Cir. 2002) (quoted sources and internal quotation marks omitted). However, a prison
7 official may be held liable “only if he knows that inmates face a substantial risk of serious harm
8 and disregards that risk by failing to take reasonable measures to abate it.” *Farmer v. Brennan*,
9 511 U.S. 825, 847 (1994). “A ‘serious’ medical need exists if the failure to treat a prisoner’s
10 condition could result in further significant injury or the ‘unnecessary and wanton infliction of
11 pain.’” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992) (quoting *Estelle*, 429 U.S. at
12 104), *overruled on other grounds by WMX Techs. V. Miller*, 104 F.3d 1133 (9th Cir. 1997).

13 The indifference to medical needs must be substantial; a constitutional violation is not
14 established by negligence or “an inadvertent failure to provide adequate medical care.” *Estelle*,
15 429 U.S. at 105-06; *Anthony v. Dowdle*, 853 F.2d 741, 743 (9th Cir. 1988). Nor does a difference
16 of opinion between an inmate and medical authorities regarding proper medical treatment give rise
17 to a § 1983 claim. *Franklin v. Oregon, State Welfare Div.*, 662 F.2d 1337, 1344 (9th Cir. 1981).

18 In most cases, constitutional medical care claims are brought against the individual staff
19 members who provided the allegedly deficient medical care. Plaintiff does not identify any
20 individual staff members who he claims are responsible for the alleged constitutional violations.
21 Instead, he alleges that he has a prescription for Wellbutrin that is not being filled because of DAJD
22 policy. Dkt. 8 at 3; Dkt. 8-1 at 8-9. He also claims he is hearing impaired and has not received a
23 hearing screening or adequate facilities to accommodate his hearing issues. Dkt. 8-1 at 9.

1 It appears that plaintiff is attempting to hold King County liable for the allegedly deficient
2 medical care. As the Court previously informed plaintiff, he may bring a § 1983 claim against
3 King County so long as he identifies a municipal “policy” or “custom” that caused his injury. *Bd.*
4 *of the Cnty. Comm’rs of Bryant Cnty. v. Brown*, 520 U.S. 397, 403 (1997) (citing *Monell v. Dep’t*
5 *of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978)). Although plaintiff cites DAJD
6 policy as the reason he is not receiving Wellbutrin, he acknowledges that other inmates receive the
7 same medication, which suggests the decision to deny him Wellbutrin is personal to him, rather
8 than a DAJD policy.

9 If plaintiff wishes to amend his medical care claims, he should explain why he thinks he
10 has been denied Wellbutrin while at the KCCF. If individual staff members have made the
11 decision to deny the medication, he should name those staff members as defendants and explain
12 why he thinks those people were deliberately indifferent to a serious medical need. If the decision
13 to deny the medication is based on DAJD policy, plaintiff should explain as much as he can about
14 the alleged policy.

15 c. Plaintiff also names as defendants Pioneer Industries Housing, Jim Pheonix,
16 Sound Mental Health, and King County Public Health. He fails to allege any facts against these
17 defendants. If he would like to proceed against them, he must explain why he thinks that they
18 acted under state or federal law, as required for a § 1983 claim, and what they did to violate his
19 rights.

20 (5) Based on the forgoing, the Court DECLINES to serve plaintiff’s amended
21 complaint, but GRANTS him leave to file a second amended complaint curing the above-noted
22 deficiencies within **30 days** after the date this Order is signed. The second amended complaint
23 must carry the same case number as this one and must be filed on the appropriate form, a copy of

1 which will be sent with this Order. **If no second amended complaint is timely filed or if plaintiff**
2 **files a second amended complaint that fails to correct the deficiencies identified above, the**
3 **Court may recommend that this action be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for**
4 **failure to state a claim upon which relief may be granted.**

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

10 (6) The Clerk is directed to send plaintiff the appropriate forms so that he may file a
11 second amended complaint. The Clerk is further directed to send copies of this Order to plaintiff
12 and to the Honorable Richard A. Jones.

13 Dated this 21st day of June, 2017.

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Mary Alice Theiler
16 United States Magistrate Judge