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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 FREDERICK WILLIAMS,

11 Plaintiff,

12 v.

13 WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS,

14 Defendant.

CASE NO. 2:25-cv-00065-RAJ-GJL

ORDER DECLINING TO SERVE  
COMPLAINT AND GRANTING  
LEAVE TO AMEND

15 Plaintiff Frederick Williams, proceeding *pro se* and *in forma pauperis*, filed this civil  
16 rights actions pursuant to 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint  
17 (Dkt. 7) under 28 U.S.C. § 1915A, the Court declines to serve the Complaint, but grants Plaintiff  
18 leave to amend his Complaint, if possible, to correct the deficiencies identified herein.

19 **I. BACKGROUND**

20 Plaintiff, currently incarcerated at Monroe Correctional Complex ("MCC"), initiated this  
21 civil rights action alleging that prison officials violated his constitutional rights by (1) serving  
22 him cold meals without lids on the trays, increasing the risk of foodborne illness, and (2)  
23 confiscating items from his cell, in retaliation for his complaints about the cold food. Dkt. 7.

1 Plaintiff names the Washington State “Department of Corrections Food Handling Service  
2 (Staff)” as the sole Defendant. Dkt. 7 at 1.

## 3 II. DISCUSSION

4 Under the Prison Litigation Reform Act of 1995, the Court is required to screen  
5 complaints brought by prisoners seeking relief against a governmental entity or officer or  
6 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the  
7 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to  
8 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant  
9 who is immune from such relief.” 28 U.S.C. § 1915A(b); *see* 28 U.S.C. § 1915(e)(2); *Barren v.*  
10 *Harrington*, 152 F.3d 1193 (9th Cir. 1998). Dismissal on these grounds counts as a “strike”  
11 under 28 U.S.C. § 1915(g).

12 Having reviewed the Complaint, the Court notes the following deficiencies.

### 13 A. Failure to State a Claim

14 To sustain a 42 U.S.C. § 1983 claim, a plaintiff must show that he suffered a violation of  
15 rights protected by the Constitution or created by federal statute, and that the violation was  
16 proximately caused by a person acting under color of state or federal law. *West v. Atkins*, 487  
17 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). A plaintiff must  
18 provide more than conclusory allegations; he must set forth specific, plausible facts to support  
19 his claims. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–83 (2009). Moreover, a plaintiff in a § 1983  
20 action must allege facts that show how an individually named defendant caused or personally  
21 participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355  
22 (9th Cir. 1981).

1 Here, in the Complaint, Plaintiff alleges that officers at MCC serve him and other inmates  
2 “food with tray lids off[,] exposing the food” to germs and cold temperatures. Dkt. 7 at 4–5.  
3 Plaintiff enumerates dozens of instances where he was served uncovered meals. Dkt. 5 at 4–5.<sup>1</sup>  
4 Plaintiff notes that he attached a similar list to a grievance he filed with “Sgt. Talley” and alleges  
5 that officers retaliated against him because of this grievance. *See* Dkt. 5 at 5 (“11/6/24  
6 Retaliation for my grievance about lids coming off before hatch [. . .] they took all our stuff that  
7 was issued to us”).

8 Plaintiff appears to assert two § 1983 claims, including (1) a conditions of confinement  
9 claim under the Eighth Amendment against prison officials who served food susceptible to cold  
10 temperatures and bacterial growth, and (2) a First Amendment retaliation claim against officials  
11 who mistreated him after he filed a prison grievance about the food. However, Plaintiff has not  
12 pled facts stating a facially plausible claim under either of these theories.

13 To allege an Eighth Amendment conditions of confinement claim, Plaintiff must show  
14 that prison officials were deliberately indifferent to his health or safety by subjecting him to a  
15 substantial risk of serious harm. *Garnica v. Washington Dep’t of Corr.*, 965 F. Supp. 2d 1250,  
16 1264 (W.D. Wash. 2013), *aff’d*, 639 F. App’x 484 (9th Cir. 2016) (citing *Farmer v. Brennan*,  
17 511 U.S. 825, 834 (1994)). The deprivation alleged must be sufficiently serious, resulting in a  
18 denial of the “minimal civilized measures of life’s necessities.” *Id.* The Eighth Amendment  
19 requires only that prisoners receive food adequate to maintain health, and there is “no  
20 constitutional right to be served a hot meal.” *Id.* at 1265–67.

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22 <sup>1</sup> Plaintiff included this list of incidences with his Motion for Leave to Proceed *In Forma Pauperis* but did not  
23 include it in the Proposed Complaint attached to that Motion. Dkt. 5 at 4–5; Dkt. 5-2. As a result, the list is not  
24 present in the current version of the Complaint. Dkt. 7. The Court considers the factual allegations in this list as part  
of Plaintiff’s Complaint and **INSTRUCTS** the Clerk’s Office to file these pages, Dkt. 5 at 4–5, as a supplement to  
Plaintiff’s Complaint.

1           Assuming that Plaintiff was frequently served uncovered and cold meals, this fact alone  
2 does not demonstrate the food was *per se* dangerous to Plaintiff. Plaintiff does not identify how  
3 long perishable food at MCC is exposed to cooler temperatures before being served, information  
4 critical to determining the amount of bacterial growth.<sup>2</sup> Plaintiff alleges he has a weakened  
5 immune system due to Leukemia but does not identify whether he ever became sick from eating  
6 MCC’s food, or how he knew that any illness was due to eating contaminated food. Nor does  
7 Plaintiff identify any odd tastes, textures, or smells in the meals to indicate they may have  
8 spoiled. Plaintiff simply lists the instances when he was served meals without a cover, claims  
9 that these meals were “at times cold,” and alleges he could “possibly” become sick due to these  
10 conditions. Dkt. 7 at 4–5. These facts are insufficient to establish an Eighth Amendment  
11 violation.

12           Plaintiff has also not pled facts showing he suffered retaliation in violation of the First  
13 Amendment. “It is well-established that, among the rights they retain, prisoners have a First  
14 Amendment right to file prison grievances. Retaliation against prisoners for their exercise of this  
15 right is itself a constitutional violation, and [is] prohibited as a matter of clearly established law.”  
16 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009) (internal quotations omitted). The  
17 elements of a First Amendment retaliation claim arising in the prison context include: (1) a state  
18 actor took an adverse action against an inmate (2) because of (3) the inmate’s protected conduct;  
19 (4) the adverse action, viewed objectively, would chill an inmate’s exercise of their First  
20 Amendment rights; and, finally, (5) the adverse action did not reasonably advance a legitimate  
21 correctional goal. *Id.* (citing *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005)).

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23 <sup>2</sup> *Food Safety Myths*, Washington State Department of Health, <https://doh.wa.gov/you-and-your-family/food-safety/food-safety-myths> (last visited February 27, 2025) (“Perishable foods should be put in a refrigerator that is 40  
24 degrees or below within 2 hours of preparation. If you leave food out to cool and forget about it after 2 hours, throw it away. Bacteria can grow rapidly on food left out at room temperature for more than 2 hours.”)

1 Plaintiff's conclusory assertion that officials confiscated his belongings because he filed a  
2 grievance is insufficient to plead a violation. Plaintiff does not explain how he knew that the  
3 seizure was because of his grievance, does not explain Sgt. Talley's response to his grievance  
4 beyond there being "no change" in the way meals were served, and his description of the reason  
5 given by MCC officials for the seizure is difficult to parse and appears to stop mid-sentence. *See*  
6 Dkt. 5 at 5 ("they took all our stuff that was issued to us, just because in a room for portors [sic]  
7 another inmate stepped in for a [second] then right out, and").

8 If Plaintiff chooses to file an amended complaint, he must set forth specific, plausible  
9 facts to support each of his claims. He must explain how those facts support a violation of his  
10 constitutional rights and specify when, where, and how any individual defendant personally  
11 participated in causing his alleged injuries. Plaintiff must also ensure that any amended  
12 complaint is a concise and organized document. *See* Fed. R. Civ. P. 8(a)(2) and (d)(1) (a  
13 complaint must provide a "short and plain statement of the claim" and "[e]ach allegation must be  
14 simple, concise, and direct.").

## 15 **B. Improper Defendant**

16 Plaintiff names the "Department of Corrections Food Handling Service (Staff)" as a  
17 Defendant in this action. However, a § 1983 claim may only be brought against "persons" acting  
18 under color of state law. 42 U.S.C. § 1983. Neither the State of Washington nor arms of the state,  
19 such as the Washington State Department of Corrections, are proper defendants in a § 1983 case.  
20 *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) ("a State is not a person within  
21 the meaning of § 1983"); *Hale v. Arizona*, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc)  
22 (Arizona Department of Corrections is an arm of the State of Arizona). Consequently, a State  
23 cannot be sued for damages or injunctive relief. *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43,  
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1 69 (1997) (“we have held that § 1983 actions do not lie against a State”). The Washington State  
2 Department of Corrections and its subsidiary services are therefore not proper defendants here.

3 To pursue a claim against individuals working at the Department of Corrections, Plaintiff  
4 must describe how these individuals are responsible for the alleged constitutional violations.

5 Aside from a brief mention of Sgt. Talley as the officer who received Plaintiff’s grievance, Dkt.  
6 7 at 5, Plaintiff fails to identify any prison officials who prepared or delivered his food,  
7 responded (or failed to respond) to his grievances, or confiscated his belongings. More  
8 information is needed before the Court can serve the Complaint.

### 9 C. Additional Deficiencies

10 Because of the lack of specificity in the Complaint, the Court cannot ascertain whether  
11 there may be additional deficiencies here, such as an issue arising under the First and Eighth  
12 Amendment doctrines above. If Plaintiff chooses to submit an amended complaint, he must  
13 provide sufficient facts for the Court to properly assess what actions allegedly violated Plaintiff’s  
14 constitutional rights, who took those actions, when those actions were taken, and how they  
15 violated his rights.

## 16 III. CONCLUSION

17 Because of the deficiencies described above, the Court declines to serve the Complaint or  
18 to direct that an answer be filed. Plaintiff is, however, granted leave to amend his Complaint, if  
19 possible, to correct the identified deficiencies. Within **thirty (30) days** from the date of this  
20 Order, Plaintiff may submit an amended complaint that corrects the deficiencies outlined above.  
21 The amended complaint must be filed under the same case number as this one, and will operate  
22 as a complete substitute for, rather than a mere supplement to, the present complaint. *See Ferdik*  
23 *v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). **If no amended complaint is timely filed, or if**  
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1 **Plaintiff files an amended complaint that fails to correct the deficiencies identified herein,**  
2 **the Court may recommend that this matter be dismissed.**

3 The Clerk is directed to send a copy of this Court's prisoner civil rights complaint form to  
4 Plaintiff, as well as copies of this Order to Plaintiff and to the Honorable Richard A. Jones.

5 Dated this 5th day of March, 2025.

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8 Grady J. Leupold  
9 United States Magistrate Judge  
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