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2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

4 ARNOLD FLORES,

5 Plaintiff,

6 v.

7 CITY OF LAKEWOOD, et al.,

8 Defendants.

CASE NO. C15-5013 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

9
10 This matter comes before the Court on the Report and Recommendation (“R&R”)
11 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 97), and
12 Plaintiff Arnold Flores’s (“Flores”) objections to the R&R (Dkt. 99).

13 On February 3, 2015, Flores filed a 42 U.S.C. § 1983 complaint against Pierce
14 County, the City of Lakewood, and various individuals. Dkt. 7. Flores filed an amended
15 complaint on August 10, 2015. Dkt. 36. Flores asserted claims for perjury, fraud on the
16 court, fabrication of evidence, failure to train, equal protection, conspiracy, and excessive
17 force. *Id.* ¶¶ 45–58.

18 On August 24, 2015, the Pierce County Defendants¹ moved to dismiss Flores’s
19 amended complaint for failure to state a claim under Federal Rule of Civil Procedure
20 12(b)(6). Dkt. 37. Judge Creatura recommended granting the motion, but with leave to

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22 ¹ The Pierce County Defendants include Julie Anderson, Paul Pastor, Trent Stephens,
Pierce County, and the Pierce County Sheriff’s Department. Dkt. 37 at 1.

1 amend as to Flores’s equal protection claim. Dkt. 60. Judge Creatura explained the
2 deficiencies in Flores’s complaint and how he could overcome them. *Id.* at 15. No
3 objections were filed, and the Court adopted the R&R. Dkt. 69.

4 On January 5, 2016, Flores filed a third amended complaint. Dkt. 76. Defendant
5 Trent Stephens (“Stephens”) moved to dismiss under Rule 12(b)(6). Dkt. 77. On March
6 14, 2016, Judge Creatura issued an R&R on Stephens’s motion. Dkt. 97. Judge Creatura
7 recommended dismissing Flores’s equal protection and conspiracy claims against
8 Stephens without leave to amend. *Id.* at 8–12. On March 22, 2016, Flores filed
9 objections. Dkt. 99. Stephens did not respond.

10 Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge’s
11 recommended disposition. Rule 72(b) provides:

12 The district judge must determine de novo any part of the magistrate
13 judge’s disposition that has been properly objected to. The district judge
14 may accept, reject, or modify the recommended disposition; receive further
15 evidence; or return the matter to the magistrate judge with instructions.

16 Fed. R. Civ. P. 72(b)(3).

17 Flores objects to the R&R on three grounds. Flores first argues he clearly stated
18 claims and sufficient facts against Stephens. Dkt. 99 at 1. The Court disagrees. With
19 respect to his equal protection claim, Flores has failed to allege sufficient facts
20 demonstrating Stephens intentionally discriminated against him based on his membership
21 in a protected class. *See Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003).
22 Similarly, Flores has failed to allege facts showing Stephens conspired to violate his
equal protection rights. *See Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980); *see*

1 also *Serrano*, 345 F.3d at 1082. Judge Creatura did not err in concluding that Flores’s
2 equal protection and conspiracy claims should be dismissed without leave to amend. *See*
3 *Lopez v. Smith*, 203 F.3d 1122, 1120 (9th Cir. 2000).

4 Flores next contends Judge Creatura unfairly disregarded the declaration he
5 submitted in response to Stephens’s motion to dismiss. Dkt. 99 at 1. “As a general rule,
6 a district court may not consider any material beyond the pleadings in ruling on a Rule
7 12(b)(6) motion.” *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (internal
8 quotation marks omitted). Flores has not demonstrated that any exceptions to this rule
9 apply to his declaration. Finally, Flores argues Stephens failed to provide a declaration
10 disproving Flores’s claims against him. Dkt. 99 at 1. This argument is without merit.
11 The scope of review on a Rule 12(b)(6) dismissal is limited to Flores’s complaint, and all
12 factual allegations are taken as true and construed in Flores’s favor. *Lee*, 250 F.3d at 688.
13 Thus, Stephens was not required to provide a declaration.

14 Therefore, the Court having considered the R&R, Flores’s objections, and the
15 remaining record, does hereby find and order as follows:

- 16 (1) The R&R is **ADOPTED**; and
17 (2) This case is **RE-REFERRED** for further proceedings.

18 Dated this 20th day of April, 2016.

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21 BENJAMIN H. SETTLE
22 United States District Judge