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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Kevin Lewis Hobson,	)	CV 07-01222 PHX NVW
Plaintiff,	)	<b>ORDER</b>
vs.	)	
PBG (Pepsi Bottling Group),	)	
Defendant.	)	

The court will address whether Plaintiff’s complaint complies with 28 U.S.C. § 1915(e), which specifies when a district court must dismiss an in forma pauperis proceeding, and the general pleading requirements provided in Rule 8 of the Federal Rules of Civil Procedure.

**I. Legal Standards**

**A. § 1915(e)(2)**

In a case proceeding in forma pauperis, Congress provided that a district court “shall dismiss the case at any time if the court determines” that the “allegation of poverty is untrue” or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). While much of section 1915 outlines how prisoners can file proceedings in forma pauperis, the Ninth Circuit has held that section 1915(e) applies to all in forma pauperis proceedings, not just those filed by prisoners. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)(“section 1915(e) applies to all in forma pauperis

1 complaints”). In addition, section 1915(e) requires dismissal of in forma pauperis complaints  
2 that fail to state a claim, are frivolous or malicious, or seek monetary relief against a  
3 defendant who is immune from such relief. *See id.* (“It is also clear that section 1915(e) not  
4 only permits but requires a district court to dismiss an in forma pauperis complaint that fails  
5 to state a claim.”). Therefore, this court must dismiss an in forma pauperis complaint if it  
6 fails to state a claim or if it is frivolous or malicious.

7 “[A] complaint, containing both factual allegations and legal conclusions, is frivolous  
8 where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319,  
9 325 (1989). Furthermore, “a finding of factual frivolousness is appropriate when the facts  
10 alleged rise to the level of the irrational or wholly incredible, whether or not there are  
11 judicially recognized facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25,  
12 33 (1992). “A case is malicious if it was filed with the intention or desire to harm another.”  
13 *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005).

#### 14 **B. Rule 8, Federal Rules of Civil Procedure**

15 A claim must be stated clearly enough to enable a defendant to frame a responsive  
16 pleading. Rule 8(a) of the Federal Rules of Civil Procedure requires that a complaint contain  
17 “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Each  
18 averment of a pleading shall be simple, concise, and direct.” Fed. R. Civ. P. 8(e)(1). A  
19 complaint having the factual elements of a cause of action present but scattered throughout  
20 the complaint and not organized into a “short and plain statement of the claim” may be  
21 dismissed for failure to satisfy Rule 8(a) of the Federal Rules of Civil Procedure. *Sparling*  
22 *v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988).

23 In order to assist litigants to understand the Rule 8(e) requirements that averments “be  
24 simple, concise, and direct,” Rule 84 of the Federal Rules of Civil Procedure provides  
25 samples in an Appendix of Forms, which are “intended to indicate the simplicity and brevity  
26 of statement which the rules contemplate.” *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir.  
27 1996). An example is Form 9 (Complaint for Negligence):  
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1. Allegation of jurisdiction
2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff, who was then crossing said highway.
3. As a result plaintiff was thrown down and had his leg broken, and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.
4. Wherefore plaintiff demands judgment against defendant in the sum of \_\_\_\_ dollars and costs.

*Id.* “This complaint fully sets forth who is being sued, for what relief, and on what theory, with enough detail to guide discovery. It can be read in seconds and answered in minutes.”

*Id.* In addition, to satisfy Rule 8, each claim must be stated in a separate count. *Buatista v. Los Angeles County*, 216 F.3d 837, 840-41 (9th Cir. 2000).

**II. Analysis**

Plaintiff’s complaint makes no allegations of federal court jurisdiction or of any claim against the Defendant.

Plaintiff will be given an opportunity, if he so chooses, to amend his complaint to make clear his allegations in short, plain statements with each claim for relief identified in separate sections. In the amended complaint, Plaintiff must write out the rights he believes were violated, the name of the person who violated the right, exactly what that individual did or failed to do, how the action or inaction of that person is connected to the violation of Plaintiff’s right, and what specific injury Plaintiff suffered because of the other person’s conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976). Each claim of an alleged violation must be set forth in a separate count. Any amended complaint filed by Plaintiff

1 must conform to the requirements of Rule 8(a) and (e)(1) of the Federal Rules of Civil  
2 Procedure.

3 In addition, if Plaintiff's amended complaint, should he elect to file one, appears  
4 frivolous or malicious, the court will dismiss the action pursuant to § 1915(e)(2). Section  
5 1915(f)(1) further provides that "[j]udgment may be rendered for costs at the conclusion of  
6 the suit or action as in other proceedings . . . ." Plaintiff may also be ordered to pay the  
7 defendant's attorney's fees under Rule 11 of the Federal Rules of Civil Procedure, which  
8 allows courts to award sanctions when an action is frivolous, legally unreasonable, or without  
9 factual foundation. *See Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir.  
10 1986)("[S]anctions shall be assessed if the paper filed in district court and signed by an  
11 attorney or an unrepresented party is frivolous, legally unreasonable, or without factual  
12 foundation, even though the paper was not filed in subjective bad faith."), *overruled on other*  
13 *grounds, Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990). A sanction can include an  
14 award of attorney's fees if the pleading was used for "improper purposes, such as to harass  
15 or to cause unnecessary delay or needless increase in the cost of litigation." *Cook v. Peter*  
16 *Kiewit Sons Co.*, 775 F.2d 1030, 1036 (9th Cir. 1985).

17 Plaintiff is warned that if he elects to file an amended complaint and if he fails to  
18 comply with the Court's instructions explained in this Order, the action will be dismissed  
19 pursuant to section 1915(e) and/or Rule 41(b) of the Federal Rules of Civil Procedure. *See*  
20 *McHenry*, 84 F.3d at 1177 (affirming dismissal with prejudice of prolix, argumentative, and  
21 redundant amended complaint that did not comply with Rule 8(a)); *Nevijel v. North Coast*  
22 *Life Ins. Co.*, 651 F.2d 671, 673-74 (9th Cir. 1981)(affirming dismissal of amended  
23 complaint that was "equally as verbose, confusing, and conclusory as the initial complaint");  
24 *Corcoran v. Yorty*, 347 F.2d 222, 223 (9th Cir. 1965)(affirming dismissal without leave to  
25 amend second complaint that was "so verbose, confused and redundant that its true  
26 substance, if any, [was] well disguised"). In addition, if Plaintiff's amended complaint is of  
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1 a frivolous, malicious, or harassing nature, the court may award defendant costs under 28  
2 U.S.C. § 1915(e) and attorney's fees under Rule 11 of the Federal Rules of Civil Procedure.

3 IT IS THEREFORE ORDERED that Plaintiff's Complaint is dismissed for failure to  
4 comply with Rule 8 with leave to file an amended complaint by July 10, 2007.

5 IT IS FURTHER ORDERED that if Plaintiff does not file an amended complaint by  
6 July 10, 2007, the Clerk is directed to enter judgment dismissing the action with prejudice  
7 without any further order from the court.

8 IT IS FURTHER ORDERED that, should Plaintiff elect to file an amended complaint,  
9 the court will screen the complaint pursuant to 28 U.S.C. § 1915(e) before it will be  
10 necessary for Defendant to respond.

11 DATED this 27<sup>th</sup> day of June 2007.  
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16 Neil V. Wake  
17 United States District Judge  
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