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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Robert Hosac

No. CV09-0598-PHX-DGC

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Plaintiff,

ORDER

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vs.

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City of Mesa, body politic; Assistant Chief
of Police, John Meza, Former Director of
Media Relations, Holly (Hosac) Walter,

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Defendants.

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Defendants filed a motion to dismiss for lack of subject matter jurisdiction. Dkt. #6.

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Defendants claim that even though the amount in controversy exceeds \$75,000.00, the

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Plaintiff and Defendants all reside in Arizona and this Court therefore does not have diversity

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jurisdiction. Plaintiff does not dispute the lack of diversity jurisdiction, but instead asserts

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federal question jurisdiction under 42 U.S.C. §1983. Dkt. #7.

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In reply, Defendants argue that the complaint fails to assert a specific violation of the

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Constitution or federal law. Dkt # 10. Even in light of the liberal reading that must be

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accorded this *pro se* Plaintiff, the Court agrees that the complaint does not contain sufficient

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allegations of the Court's jurisdiction or Plaintiff's claim for relief. Plaintiff's jurisdiction

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statement includes only factors related to diversity jurisdiction and does not assert federal

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question jurisdiction. The body of the complaint invokes Arizona law, not federal or

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Constitutional law.

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1 Plaintiff is advised that “to state a claim for relief in an action brought under § 1983,
2 [plaintiffs] must [allege] that they were deprived of a right secured by the Constitution or
3 laws of the United States, and that the alleged deprivation was committed under color of state
4 law.” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). “Section 1983 ‘is not
5 itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal
6 rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker*
7 *v. McCollan*, 443 U.S. 137, 144, n. 3 (1979)). “It is well settled that section 1983 ‘imposes
8 liability for violations of rights protected by the Constitution, not for violations of duties of
9 care arising out of tort law.’” *Johnson v. Barker*, 799 F.2d 1396, 1399 (9th Cir. 1986)
10 (quoting *Baker*, 443 U.S. at 146).

11 Plaintiff may have attempted to assert a §1983 claim, alleging that Defendants acted
12 “under the color of law”(par. 5) and to “frustrate the plaintiff due process” (par. 7), but the
13 complaint fails to link the alleged facts to any specified Constitutional or federal rights
14 claims. For the purpose of stating a claim, legal conclusions couched as factual allegations
15 are not given a presumption of truthfulness and “conclusory allegations of law and
16 unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto v. F.D.I.C.*,
17 139 F.3d 696, 699 (9th Cir. 1998). The Court will dismiss the complaint without prejudice
18 and allow Plaintiff to file an amended complaint that complies with the Federal Rules of
19 Civil Procedure.

20 Plaintiff is advised that he must become familiar with, and follow, the Federal Rules
21 of Civil Procedure and the Rules of the United States District Court for the District of
22 Arizona (“Local Rules”), which may be obtained in the Clerk of Court’s office. In preparing
23 an amended complaint, Plaintiff should consult Federal Rule of Civil Procedure 84 and the
24 “Appendix of Forms” referenced therein because such forms “are sufficient under the rules
25 and are intended to indicate the simplicity and brevity of statement which the rules
26 contemplate.”

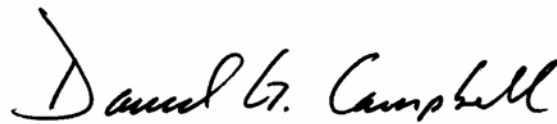
27 If Plaintiff fails to prosecute this action or comply with the rules or any Court order,
28 the Court may dismiss the action with prejudice pursuant to Federal Rule of Civil Procedure

1 41(b). *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir.1992) (holding that the district
2 court did not abuse its discretion in dismissing a pro se plaintiff's complaint for failing to
3 comply with a court order).

4 **IT IS ORDERED:**

- 5 1. Defendants' motion to dismiss the complaint for lack of subject matter
6 jurisdiction (Dkt. #6) is **granted**.
- 7 2. Plaintiff may file an amended complaint by **September 25, 2009**. If Plaintiff
8 does not file an amended complaint by this date, the clerk is directed to
9 terminate this action.

10 DATED this 3rd day of September, 2009.

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15 David G. Campbell
16 United States District Judge
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