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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Steve J. Longariello,

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No. CV-09-01602-PHX-LOA

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Plaintiff,

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ORDER

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vs.

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Saint Joseph's Hospital and Medical
Center,

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Defendant.

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This case arises upon Plaintiff's timely payment of the full filing fee and the Court's review of the docket. Plaintiff has voluntarily consented in writing to magistrate-judge jurisdiction pursuant to 28 U.S.C. 636(c)(1). (docket # 7)

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The Court has reviewed Plaintiff's Complaint, filed on August 4, 2009, and finds that it fails to comply with Rule 8, Federal Rules of Civil Procedure, and fails to state claims upon which relief may be granted. Rule 8, FED.R.CIV.P., provides:

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(a) **Claim for Relief.** A pleading that states a claim for relief *must* contain:

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(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

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(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

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(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

1 Rule 8, FED.R.CIV.P. (emphasis added)

2 Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404
3 U.S. 519, 520-21 (1972), a *pro se* plaintiff must still satisfy the pleading requirements of
4 Federal Rule of Civil Procedure 8(a). Rule 8(a)(2) requires a complaint to include “a short
5 and plain statement of the claim showing that the pleader is entitled to relief.” *Id.* While
6 Rule 8 does not demand detailed factual allegations, “it demands more than an unadorned,
7 the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S. Ct.
8 1937, 1949 (2009). “Threadbare recitals of the elements of a cause of action, supported by
9 mere conclusory statements, do not suffice.” *Id.* In other words, “a plaintiff’s obligation to
10 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions,
11 and a formulaic recitation of a cause of action’s elements will not do. Factual allegations
12 must be enough to raise a right to relief above the speculative level on the assumption that
13 all the allegations in the complaint are true” *Bell Atlantic Corp. v. Twombly*, 550 U.S.
14 544, 555-56 (2007) (citations and emphasis omitted).

15 “[A] complaint must contain sufficient factual matter, accepted as true, to
16 ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 125 S.Ct. at 1949 (quoting
17 *Twombly*, 550 U.S. at 570). A claim is plausible “when the plaintiff pleads factual content
18 that allows the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
20 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
21 experience and common sense.” *Id.* at 1950. Thus, although a plaintiff’s specific factual
22 allegations may be consistent with an employment discrimination or other type of claim, a
23 district court must assess whether there are other “more likely explanations” for a defendant’s
24 conduct. *Id.* at 1951. In addition to satisfying the requirements of Rule 8(a)(2), a complaint
25 must include the grounds upon which the court’s jurisdiction rests and a demand for relief.
26 Fed.R.Civ.P. 8(a)(1), (3).

27 If a district court determines that a pleading may be cured by the allegation of
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1 other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before
2 dismissal of the action. *Lopez*, 203 F.3d at 1127-29 (*en banc*). Thus, a district court may *sua*
3 *sponte* dismiss a *pro se* complaint for a violation of Rule 8 provided the plaintiff is given an
4 opportunity to cure the complaint's deficiencies. *Robert v. First Hawaiian Bank*, 172 F.3d
5 58 (9th Cir 1999) (unpublished) (citing *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 673
6 (9th Cir. 1981) and *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996)). The district
7 court should not, however, advise the litigant how to cure the defects. This type of advice
8 "would undermine [trial] judges' role as impartial decisionmakers." *Piler v. Ford*, 542 U.S.
9 225, 231 (2004); *Lopez*, 203 F.3d at 1131 n.13 (declining to decide whether the court was
10 required to inform a litigant of deficiencies).

11 Here, Plaintiff's Complaint falls short of satisfying the requirements of Rule
12 8(a). Plaintiff lists various statutes but fails to provide facts to explain how the Defendant
13 violated each of these statutes. Also, Plaintiff's demand for "at least all relief required
14 pursuant to the laws violated by this Defendant[]" is too generalized to inform either the
15 Court or Defendant of exactly what relief he hopes to obtain from this lawsuit and, therefore,
16 does not comply with Rule 8(a)(3), FED.R.CIV.P.

17 Plaintiff will be given a reasonable opportunity, if he so chooses, to amend his
18 complaint to make clear his allegations in short, plain statements with each claim for relief
19 identified in separate sections. In the amended complaint, Plaintiff must write out the rights
20 he believes were violated, the name of the person who violated the right, exactly what that
21 individual did or failed to do, how the action or inaction of that person is connected to the
22 violation of Plaintiff's rights, and what specific injury Plaintiff suffered because of the other
23 person's conduct. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976). Each claim of an
24 alleged violation must be set forth in a separate count. The amended complaint filed by
25 Plaintiff must conform to the requirements of Rule 8 of the Federal Rules of Civil Procedure.

26 Plaintiff is warned that if elects to file an amended complaint and if he fails
27 to comply with the Court's instructions explained in this order, this lawsuit may be
28 dismissed.

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Accordingly,

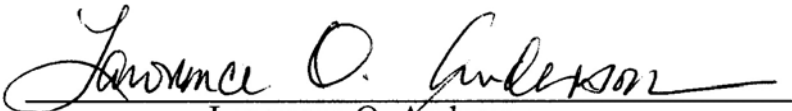
IT IS ORDERED Plaintiff's Complaint, docket #1, is hereby **STRICKEN** for failure to comply with Rule 8, FED.R.CIV.P., and failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that Plaintiff may file an Amended Complaint that shall fully comply with Rule 8, FED.R.CIV.P., on or before **Friday, October 2, 2009**. Plaintiff is directed to attach a copy of the EEOC Right to Sue letter as an exhibit to the Amended Complaint.

IT IS FURTHER ORDERED that if no Amended Complaint is filed on or before **Friday, October 2, 2009**, the Clerk is hereby directed to dismiss this case without prejudice and further notice.

IT IS FURTHER ORDERED that Plaintiff shall use proper capitalization in all future captions as mandated by LRCiv 7.1(a)(3).

Dated this 1st day of September, 2009.



Lawrence O. Anderson
United States Magistrate Judge