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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Damon Kizzee,

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No. CV-10-0802-PHX-DGC

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Plaintiff,

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ORDER

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vs.

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Walmart, Inc.,

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Defendant.

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Plaintiff commenced this action by filing a pro se complaint on April 12, 2010.

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Dkt. #1. Plaintiff has filed a motion to proceed in forma pauperis (“IFP”). Dkt. #4. The

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Court will dismiss the complaint with leave to amend and deny the IFP motion without

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prejudice.

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I. Screening of the Complaint.

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In IFP proceedings, a district court “shall dismiss the case at any time if the court

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determines that . . . the action . . . fails to state a claim on which relief can be granted[.]” 28

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U.S.C. § 1915(e)(2). While much of § 1915 concerns prisoner litigation, § 1915(e) applies

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to all IFP proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (en banc).

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“Section 1915(e)(2)(B)(ii) . . . allows a district court to dismiss[] sua sponte . . . a complaint

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that fails to state a claim[.]” *Id.* at 1130. “It is also clear that section 1915(e) not only

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permits but requires a district court to dismiss an in forma pauperis complaint that fails to

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state a claim.” *Id.* at 1127. A district court dismissing under § 1915(e)(2)(B)(ii) “should

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grant leave to amend even if no request to amend the pleading was made, unless it determines

1 that the pleading could not possibly be cured by the allegation of other facts.” *Id.* at 1127-29
2 (citations omitted).

3 A complaint must plead “enough facts to state a claim to relief that is plausible on its
4 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “The plausibility standard . . .
5 asks for more than a sheer possibility that a defendant has acted unlawfully,” demanding
6 instead sufficient factual allegations to allow “the court to draw the reasonable inference that
7 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949
8 (2009). “[W]here the well-pleaded facts do not permit the court to infer more than the mere
9 possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the
10 pleader is entitled to relief.’” *Id.* at 1950 (citing Fed. R. Civ. P. 8(a)(2)).

11 Plaintiff’s complaint does not satisfy these pleading requirements. The complaint
12 describes various altercations Plaintiff had with different Walmart employees, apparently
13 while he worked for Walmart. Dkt. #1 at 2-7. On the front page, Plaintiff states that his
14 claims are for discrimination, assault, aiding and abetting, retaliation, defamation, pain and
15 suffering, and wrongfully trespassing, but it is unclear from the factual narrative how
16 Plaintiff contends Walmart is liable for each of these claims. *Id.* at 1.

17 The complaint also fails to allege subject matter jurisdiction. “Federal courts are
18 courts of limited jurisdiction. They possess only that power authorized by Constitution and
19 statute[.]” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Pursuant
20 to federal statutes, this Court has subject matter jurisdiction over a case only if it arises under
21 federal law or the amount in controversy exceeds \$75,000 and the parties are citizens of
22 different states. *See* 28 U.S.C. §§ 1331, 1332(a). The complaint does not explain why this
23 Court has subject matter jurisdiction, particularly given that the claims cited in the complaint
24 appear to be state-law claims.

25 The Court will dismiss the complaint without prejudice. Plaintiff shall have until
26 **May 3, 2010** to file an amended complaint.

27 For purposes of the amended complaint, Plaintiff is directed to Rule 8 of the Federal
28 Rules of Civil Procedure. Rule 8(a) provides that a complaint “shall contain (1) a short and

1 plain statement of the grounds upon which the court’s jurisdiction depends, . . . (2) a short
2 and plain statement of the claim showing that the pleader is entitled to relief, and (3) a
3 demand for judgment for the relief the pleader seeks.” Fed. R. Civ. P. 8(a). These pleading
4 requirements shall be set forth in separate and discrete paragraphs. The paragraphs must be
5 numbered in consecutive order. Each paragraph must be “simple, concise, and direct.” Fed.
6 R. Civ. P. 8(d)(1).

7 Plaintiff is advised that vague references to discrimination, assault, aiding and
8 abetting, retaliation, and defamation are insufficient to satisfy the pleading requirements of
9 Rule 8. The amended complaint must give each Defendant “fair notice of what [Plaintiff’s]
10 claim is and the grounds upon which it is based.” *Holgate v. Baldwin*, 425 F.3d 671, 676
11 (9th Cir. 2005). This includes some factual basis for each claim asserted and the specific
12 legal theory supporting the claim. “Threadbare recitals of the elements of a cause of action,
13 supported by mere conclusory statements, do not suffice.” *Iqbal*, 129 S. Ct. at 1949.

14 **II. Plaintiff’s Obligations.**

15 Plaintiff must become familiar with, and follow, the Federal Rules of Civil Procedure
16 and the Rules of the United States District Court for the District of Arizona (“Local Rules”).
17 *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986) (“Pro se litigants must follow the same
18 rules of procedure that govern other litigants.”); *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th
19 Cir. 1986) (pro se litigants “should not be treated more favorably than parties with attorneys
20 of record”); *Carter v. Comm’r of Internal Revenue*, 784 F.2d 1006, 1008 (9th Cir. 1986)
21 (“Although pro se, [plaintiff] is expected to abide by the rules of the court in which he
22 litigates.”). The Federal Rules of Civil Procedure are available at the following Internet
23 website: <http://www.law.cornell.edu/rules/frcp/>. A copy of the Court’s Local Rules of Civil
24 Procedure may be obtained from the Clerk’s Office.

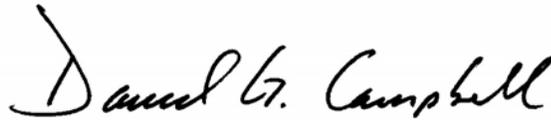
25 Plaintiff is further advised that he is responsible for having the summons and
26 complaint properly served on each Defendant within the time allowed by Rule 4(m) of the
27 Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 4(c)(1). If Plaintiff fails to prosecute
28 this action, or if he fails to comply with the rules or any Court order, the Court may dismiss

1 the action with prejudice pursuant to Rule 41(b) of the Federal Rule of Civil Procedure. *See*
2 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir.1992); *Ghazali v. Moran*, 46 F.3d 52, 54
3 (9th Cir. 1995).

4 **IT IS ORDERED:**

- 5 1. Plaintiff's complaint (Dkt. #1) is **dismissed** without prejudice. Plaintiff shall
6 have until **May 3, 2010** to file an amended complaint.
- 7 2. Plaintiff's motion to proceed inform a pauperis (Dkt. #4) is **denied** without
8 prejudice. Plaintiff may re-file the motion if he files an amended complaint.
- 9 3. The Clerk is directed to terminate this matter without further notice of Court
10 if Plaintiff fails to comply with this order.

11 DATED this 13th day of April, 2010.

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15 David G. Campbell
16 United States District Judge
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