

1 **WO**

2 NOT FOR PUBLICATION

3

4

5

6 IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9 Gordon Mayhew,

No. CV-10-1439-PHX-GMS

10 Plaintiff,

ORDER

11 vs.

12 Charlie Scharf, and/or his successor,
13 individually, and in his official capacity as
14 CFO of JPMorgan Chase Bank, NA,
(successor of Washington Mutual Bank,
15 FA), an ens legis being used to conceal
16 fraud; Charles E. Haldeman, Jr., and/or his
17 successor, individually, and in his official
18 capacity as CEO of Freddie Mac, an ens
19 legis being used to conceal fraud; Mark S.)
20 Bosco and Leonard J. McDonald, an/or his
21 successor, individually, and in his official
22 capacity as Attorneys of Freddie Mac, an
23 ens legis being used to conceal fraud;
24 Patrick Carey, and/or his successor,
25 individually, and in his official capacity as
26 CEO of Titanium Solutions, an ens legis
27 being used to conceal fraud,

28 Defendants.

23 Pending before the Court are Plaintiff's Motion for Temporary Restraining Order
24 (Doc. 5) and Motion for Leave to Proceed in Forma Pauperis (Doc. 6). The Court grants the
25 Motion for Leave to Proceed in Forma Pauperis.

26 The Court will screen Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e)(2) before
27 it is allowed to be served. Pursuant to that screening Plaintiff's Complaint is dismissed.

28

1 **I. Screening Complaint Under 28 U.S.C. § 1915(e)(2)**

2 **A. Legal Standards**

3 **1. 28 U.S.C. § 1915(e)(2)**

4 Congress provided with respect to in forma pauperis cases that a district court “shall
5 dismiss the case at any time if the court determines” that the “allegation of poverty is untrue”
6 or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim on which
7 relief may be granted,” or “seeks monetary relief against a defendant who is immune from
8 such relief.” 28 U.S.C. § 1915(e)(2). While much of § 1915 outlines how prisoners can file
9 proceedings in forma pauperis, section 1915(e) applies to all in forma pauperis proceedings
10 not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). “It
11 is also clear that section 1915(e) not only permits but requires a district court to dismiss an
12 in forma pauperis complaint if it fails to state a claim or if it is frivolous or malicious. If the
13 Court determines that a pleading could be cured by the allegation of other facts, a *pro se*
14 litigant is entitled to an opportunity to amend a complaint before the dismissal of the action.
15 *See Lopez v. Smith*, 203 F.3d 1122, 1127-1129 (9th Cir. 2000) (*en banc*).

16 The Court should not, however, advise the litigant how to cure the defects. This type
17 of advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v.*
18 *Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131 n. 13 (declining to decide
19 whether the court was required to inform a litigant of deficiencies). Plaintiff’s Complaint
20 will be dismissed for failure to state a claim, with leave to amend because it may be possible
21 for Plaintiff to assert claims that are appropriately brought in federal court.

22 **2. Rule 8, Federal Rules of Civil Procedure**

23 A claim must be stated clearly enough to enable each defendant to frame a responsive
24 pleading. A complaint must contain “a short and plain statement of the claim showing that
25 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Each allegation must be simple,
26 concise, and direct.” Fed. R. Civ. P. 8(d)(1). In addition, the complaint must include “a
27 demand for the relief sought. . . .” Fed. R. Civ. P. 8(a)(3). Finally, it must also have “a short
28 and plain statement of the grounds for the court’s jurisdiction. Fed. R. Civ. P. 8(a)(1).

1 In order to assist litigants to understand the Rule 8(d) requirements that averments “be
2 simple, concise and direct,” Rule 84 of the Federal Rules of Civil Procedure provides
3 samples in an Appendix of Forms, which are “intended to indicate the simplicity and brevity
4 of statement which the rules contemplate.” *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir.
5 1996). Examples of types of complaints for different types of claims are contained in forms
6 10 through form 21. In addition to setting forth why the federal court has jurisdiction over
7 Plaintiff’s claims a complaint should fully set forth “who is being sued, for what relief, and
8 on what theory, with enough detail to guide discovery.” *McHenry*, 84 F.3d at 1177. In
9 addition, to satisfy Rule 8, each claim must be stated in a separate count. *Bautista v. Los*
10 *Angeles*, 216 F.3d 837, 840-41 (9th Cir. 2000).

11 **B. Analysis**

12 **1. Plaintiff’s Complaint**

13 Plaintiff’s complaint falls far short of satisfying the requirements of Rule 8. It lists
14 Defendants in the caption, and provides some statutes and rules in the complaint. It further
15 alleges some sort of cooperation or conspiracy among the Defendants, but the complaint
16 contains no discussion of any particular Defendant. It does not allege that any of the
17 defendants committed any specific acts and it does not identify what each defendant did that
18 violates the law. Further, it does not allege a legal basis for this Court to exercise jurisdiction
19 over this lawsuit.

20 Federal court have limited jurisdiction, and limitations on the court’s jurisdiction must
21 neither be disregarded or evaded. *Owen Equip. & Erection Co. V. Kroger*, 437 U.S. 365, 374
22 (1978). The Court is obligated to determine *sua sponte* whether it has subject matter
23 jurisdiction. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004). *See also*
24 *Fed. R. Civ. P. 12(h)(3)* (“If the court determines at any time that it lacks subject matter
25 jurisdiction, the court must dismiss the action.”)

26 Plaintiff asserts that this Court has diversity jurisdiction over his claims against
27 Defendants. A review of the Complaint, however, demonstrates that Plaintiff, an Arizona
28 resident has sued Arizona residents. Thus, Plaintiff must amend his Complaint to assert a

1 basis for federal jurisdiction or seek to bring his claims against Defendants in another court.

2 **C. Leave To Amend**

3 Plaintiff will be given an opportunity, if he so chooses, to amend his complaint. In
4 the amended complaint, Plaintiff must state what rights he believes were violated, the name
5 of the person, persons, or entities who committed each violation, exactly what that individual
6 did or failed to do, how the action or inaction of that person is connected to the violation of
7 Plaintiff's rights, and what specific injury Plaintiff suffered because of the other person's
8 conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976), Each claim of an alleged
9 violation must be set forth in a separate count. The complaint must also state why the federal
10 court has jurisdiction over Plaintiff's claims. Any amended complaint filed by Plaintiff must
11 conform to the requirements of Rule 8(a) and (d)(1) of the Federal Rules of Civil Procedure.

12 Plaintiff is advised that if he elects to file an amended complaint and if he fails to
13 comply with the Court's instructions explained in this order, the action will be dismissed
14 pursuant to section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil
15 Procedure. *See McHenry*, 84 F.3d at 1177 (affirming dismissal with prejudice of amended
16 complaint that did not comply with rule 8(a)); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d
17 671, 673-74 (9th Cir. 1965)(affirming dismissal without leave to amend second complaint
18 that was "so verbose, confused and redundant that its true substance, if any, [was] well
19 disguised").

20 **IT IS THEREFORE ORDERED** that Plaintiff's Application to Proceed in District
21 Court Without Prepaying Fees or Costs (Doc. 6) is granted.

22 **IT IS FURTHER ORDERED** that pursuant to 28 U.S.C. § 1915(e)(2) Plaintiff's
23 Complaint is dismissed for failure to comply with Rule 8, with leave to file an Amended
24 Complaint by **August 19, 2010**.

25 **IT IS FURTHER ORDERED** that if Plaintiff elects not to file an Amended
26 Complaint by **August 19, 2010**, the Clerk shall dismiss this action without further Order of
27 the Court.

28 **IT IS FURTHER ORDERED** that if Plaintiff elects to file an Amended Complaint,

1 the Complaint may not be served until and unless the Court screens the Amended Complaint
2 pursuant to 18 U.S.C. § 1915(e)(2).

3 **IT IS FURTHER ORDERED** denying the Motion for Temporary Restraining Order
4 (Doc. 5) as moot.

5 DATED this 20th day of July, 2010.

6
7 
8 _____
9 G. Murray Snow
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28