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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Gene Edward Scott, II,

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No. CV 10-2168-PHX-JAT

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Plaintiff,

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ORDER

11

vs.

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12

Melinda L. Caraballo; et al.,

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Defendants.

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Plaintiff has filed a document that the Clerk’s office has interpreted as a complaint (Doc. 1). This document is not signed, but ends with a copy of Mr. Scott’s drivers license, so the Court has presumed he is the filer. Mr. Scott may also be attempting to bring this case on behalf of some additional Plaintiffs, but the Court is unclear whether that was his intent.¹

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This document goes on to state, for example:

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...being our man Gene Edward Scott II’s [social security number omitted] now companying demanding rennovating Ancient Egypt’s Sphinx nose psychol og - - cosmetic cures for promises who are God’s prophetic Negroes nurturers with tax exemption but \$3 million each...

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(Doc. 1 at 4).

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Plaintiff has also filed a motion to proceed in forma pauperis. (Doc. 4). The Court has

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¹ For example, in the portion of document 1 that may be the caption, it says, “Tangy the woman and (CPS) (typical victims) (Negroes except one Italian woman Sarah) (etcs progenes) (typical victims) (mentallities now on).” (Doc. 1 at 2).

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1 concluded that Plaintiff's complaint should be screened pursuant to 28 U.S.C. § 1915(e)(2)
2 before it is allowed to be served.

3 **A. 28 U.S.C. § 1915(e)(2)**

4 Congress provided with respect to in forma pauperis cases that a district
5 court "shall dismiss the case at any time if the court determines" that the
6 "allegation of poverty is untrue" or that the "action or appeal" is "frivolous or
7 malicious," "fails to state a claim on which relief may be granted," or "seeks
8 monetary relief against a defendant who is immune from such relief." 28
9 U.S.C. § 1915(e)(2). While much of section 1915 outlines how prisoners can
10 file proceedings in forma pauperis, section 1915(e) applies to all in forma
11 pauperis proceedings, not just those filed by prisoners. *Lopez v. Smith*, 203
12 F.3d 1122, 1127 (9th Cir. 2000)("section 1915(e) applies to all in forma
13 pauperis complaints"). "It is also clear that section 1915(e) not only permits
14 but requires a district court to dismiss an in forma pauperis complaint that fails
15 to state a claim." *Id.* Therefore, this court must dismiss an in forma pauperis
16 complaint if it fails to state a claim or if it is frivolous or malicious.

17 "[A] complaint, containing both factual allegations and legal conclusions,
18 is frivolous where it lacks an arguable basis either in law or in fact." *Neitzke*
19 *v. Williams*, 490 U.S. 319, 325 (1989). Furthermore, "a finding of factual
20 frivolousness is appropriate when the facts alleged rise to the level of the
21 irrational or wholly incredible, whether or not there are judicially recognized
22 facts available to contradict them." *Denton v. Hernandez*, 504 U.S. 25, 33
23 (1992). "A case is malicious if it was filed with the intention or desire to harm
24 another." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005).

25 **B. Rule 8, Federal Rules of Civil Procedure**

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

In order to assist litigants to understand the Rule 8(e) requirements that
averments "be simple, concise, and direct," Rule 84 of the Federal Rules of
Civil Procedure provides samples in an Appendix of Forms, which are
"intended to indicate the simplicity and brevity of statement which the rules
contemplate." *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). An
example is Form 9 (Complaint for Negligence):

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

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

3 *Kennedy v. Andrews*, 2005 WL 3358205, *2-*3 (D. Ariz. 2005).

4 In this case, Plaintiff's complaint fails to satisfy Rule 8's pleading requirements.
5 Additionally, Plaintiff's complaint is so difficult to decipher, it rises to the level of being
6 frivolous.

7 The Court will give Plaintiff one opportunity to amend his complaint to cure the
8 deficiencies identified above. Plaintiff must:

9 make clear his allegations in short, plain statements with each claim for relief
10 identified in separate sections. In the amended complaint, Plaintiff must write
11 out the rights he believes were violated, the name of the person who violated
12 the right, exactly what that individual did or failed to do, how the action or
13 inaction of that person is connected to the violation of Plaintiff's rights, and
14 what specific injury Plaintiff suffered because of the other person's conduct.
15 *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976). Each claim of an
16 alleged violation must be set forth in a separate count. Any amended
17 complaint filed by Plaintiff must conform to the requirements of Rules 8(a)
18 and (e)(1) of the Federal Rules of Civil Procedure.

19 *Kennedy*, 2005 WL 3358205, *3 (D. Ariz. 2005).

20 Further, like the Plaintiff in *Kennedy*,

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

Kennedy, 2005 WL 3358205, *3 (D. Ariz. 2005) (emphasis added).

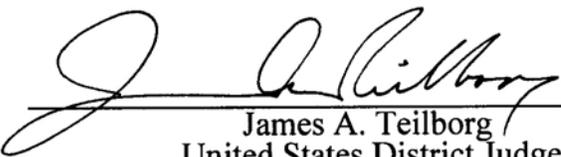
Therefore,

IT IS ORDERED that Plaintiff's complaint is dismissed with leave to amend by
November 30, 2010. If Plaintiff fails to file an amended complaint by November 30, 2010,
the Clerk of the Court shall enter judgment of dismissal, without prejudice.

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IT IS FURTHER ORDERED that, if Plaintiff elects to file an amended complaint, the amended complaint may not be served until and unless the Court screens the amended complaint pursuant to 18 U.S.C. § 1915(e)(2).

DATED this 28th day of October, 2010.



James A. Teilborg
United States District Judge