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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Tomas Ramos,

Plaintiff,

vs.

Wal-Mart,

Defendant.

No. CV10-2508-PHX-NVW

**ORDER**

In its November 29, 2010 order granting Plaintiff’s Motion to Proceed In Forma Pauperis (Doc. 4), the Court dismissed Plaintiff’s complaint pursuant to 28 U.S.C. § 1915(e)(2) for failure to state a claim upon which relief may be granted. The Court granted Plaintiff leave to file an amended complaint by December 23, 2010, and ordered Plaintiff not to serve any amended complaint unless and until it had been screened by the Court pursuant to 28 U.S.C. § 1915(e)(2). On December 22, 2010, Plaintiff filed an amended complaint (Doc. 5), which is now pending before the Court.

**I. Legal Standards**

**A. 28 U.S.C. § 1915(e)(2)**

Congress provided with respect to in forma pauperis cases that a district court “shall dismiss the case at any time if the court determines” that the “allegation of poverty is untrue” or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is

1 immune from such relief.” 28 U.S.C. § 1915(e)(2). While much of section 1915 outlines  
2 how prisoners can file proceedings in forma pauperis, section 1915(e) applies to all in  
3 forma pauperis proceedings, not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d  
4 1122, 1129 (9th Cir. 2000). “It is also clear that section 1915(e) not only permits but  
5 requires a district court to dismiss an in forma pauperis complaint that fails to state a  
6 claim.” *Id.* at 1127.

7 “[A] complaint, containing both factual allegations and legal conclusions, is  
8 frivolous where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*,  
9 490 U.S. 319, 325 (1989). Furthermore, “a finding of factual frivolousness is appropriate  
10 when the facts alleged rise to the level of the irrational or the wholly incredible, whether  
11 or not there are judicially recognized facts available to contradict them.” *Denton v.*  
12 *Hernandez*, 504 U.S. 25, 33 (1992). “A case is malicious if it was filed with the intention  
13 or desire to harm another.” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005).  
14 Finally, Rule 8 of the Federal Rules of Civil Procedure governs whether the complaint  
15 has sufficiently stated a claim upon which relief may be granted.

## 16 **B. Rule 8, Federal Rules of Civil Procedure**

17 To state a claim upon which relief may be granted, a complaint must include “a  
18 short and plain statement of the grounds for the court’s jurisdiction, . . . a short and plain  
19 statement of the claim showing that the pleader is entitled to relief,” and “a demand for  
20 the relief sought . . . .” Fed. R. Civ. P. 8(a). Each claim for relief must be stated in a  
21 separate count. *Bautista v. Los Angeles County*, 216 F.3d 837, 840-41 (9th Cir. 2000).  
22 The complaint must contain “sufficient factual matter, accepted as true, to ‘state a claim  
23 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)  
24 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim must be stated  
25 clearly enough to enable a defendant to frame a responsive pleading. Therefore, even  
26 where a complaint has the factual elements of a cause of action present but scattered  
27 throughout the complaint and not organized into a “short and plain statement of the  
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1 claim,” it may be dismissed for failure to satisfy Rule 8(a). *Sparling v. Hoffman Constr.*  
2 *Co.*, 864 F.2d 635, 640 (9th Cir. 1988).

3 “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). In  
4 order to assist litigants to understand this requirement, Rule 84 of the Federal Rules of  
5 Civil Procedure provides samples in an Appendix of Forms, which “illustrate the  
6 simplicity and brevity that the[] rules contemplate.” Fed. R. Civ. P. 84; *see also McHenry*  
7 *v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). An example is Form 11 (Complaint for  
8 Negligence):

9 1. (Statement of Jurisdiction - See Form 7).

10 2. On *date*, at *place*, the defendant negligently drove a motor vehicle  
11 against the plaintiff.

12 3. As a result, the plaintiff was physically injured, lost wages or income,  
13 suffered physical and mental pain, and incurred medical expenses of \$\_\_\_\_.

14 Therefore, the plaintiff demands judgment against the defendant for \$\_\_\_\_, plus  
15 costs.

## 15 **II. Analysis**

### 16 **A. Plaintiff’s Amended Complaint**

17 Plaintiff’s amended complaint (Doc. 5) still fails to satisfy the requirements of  
18 Rule 8(a). Although Plaintiff’s amended complaint describes in more detail the alleged  
19 incidents of employment discrimination and Plaintiff’s resulting injuries, it still fails to  
20 assert specific, separately-numbered claims for relief and the relevant causes of action  
21 under which relief could be granted. Plaintiff’s initial complaint (Doc. 1) included a letter  
22 from the Equal Employment Opportunity Commission (EEOC) dated May 29, 2009,  
23 notifying Plaintiff that he had ninety days from either the attempted delivery of the notice  
24 at his last known address or the date Plaintiff received the notice, whichever was earlier,  
25 to file suit in federal court in order to maintain his claim. However, Plaintiff’s complaint  
26 was filed on November 19, 2010, nearly eighteen months after the date of the EEOC  
27 notice letter.  
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1 In his amended complaint (Doc. 5), Plaintiff still has not sufficiently shown that  
2 his claim is not time-barred. Plaintiff has attached an envelope from the EEOC with an  
3 October 26, 2010 date stamp, but has not provided the Court with the contents of that  
4 communication or otherwise alleged that his claim is not time-barred. In order to  
5 sufficiently state a claim for relief, Plaintiff must allege facts explaining why the ninety  
6 day limitations period has not expired and why Plaintiff has not lost his rights to pursue  
7 this claim.

8 **B. Leave to Amend**

9 If a defective complaint can be cured, the plaintiff is entitled to amend the  
10 complaint before the action is dismissed. *See Lopez*, 203 F.3d at 1127-30. Therefore,  
11 Plaintiff will be given an opportunity, if he so chooses, to amend his complaint again to  
12 assert specific, separately-numbered claims for relief. Each claim must be set forth in a  
13 separate count and the amended complaint must generally conform to the requirements of  
14 Rules 8(a) and (d)(1) of the Federal Rules of Civil Procedure.

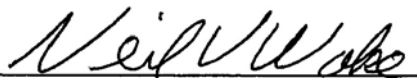
15 Plaintiff is warned that if he elects to file an amended complaint and if he fails to  
16 comply with the Court's instructions explained in this order, the action will be dismissed  
17 pursuant to section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil  
18 Procedure. *See McHenry*, 84 F.3d at 1177 (affirming dismissal with prejudice of  
19 redundant amended complaint that did not comply with Rule 8(a)); *Nevijel v. North Coast*  
20 *Life Ins. Co.*, 651 F.2d 671, 673-74 (9th Cir. 1981) (affirming dismissal of amended  
21 complaint that was "equally as verbose, confusing, and conclusory as the initial  
22 complaint").

23 IT IS THEREFORE ORDERED that Plaintiff's Amended Complaint (Doc. 5) is  
24 dismissed for failure to comply with Rule 8 of the Federal Rules of Civil Procedure, with  
25 leave to file an amended complaint by January 28, 2011.

26 IT IS FURTHER ORDERED that if Plaintiff elects not to file an amended  
27 complaint by January 28, 2011, the Clerk shall dismiss this action without further order of  
28 this Court.

1 IT IS FURTHER ORDERED that if Plaintiff elects to file an amended complaint,  
2 the complaint may not be served until and unless the Court screens the amended  
3 complaint pursuant to 28 U.S.C. § 1915(e)(2).

4 DATED this 29<sup>th</sup> day of December, 2010.

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Neil V. Wake  
United States District Judge

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