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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 Alexandria Barkclay,  
9 Plaintiff,  
10  
11 v.  
12 Phoenix College, et al.,  
13 Defendant.

No. CV11-1968-PHX-DGC

**ORDER**

14 Plaintiff Alexandria Barkclay filed an initial complaint and requested a Temporary  
15 Restraining Order (“TRO”). Doc. 1. Plaintiff also filed a motion for leave to proceed *in*  
16 *forma pauperis*. Doc. 3. The Court granted the latter motion, denied her request for a  
17 TRO, and screened her complaint pursuant to 28 U.S.C. § 1915(e)(2). Doc. 7. As a  
18 result of the screening, the Court concluded that Plaintiff had failed to state a claim. The  
19 Court granted Plaintiff leave to file an amended complaint by November 4, 2011. *Id.*

20 Plaintiff filed an appeal (Doc. 9), and the Ninth Circuit referred the matter back to  
21 this Court to determine whether the appeal was frivolous and whether Plaintiff’s IFP  
22 status should be revoked (Doc. 12). In response, the Court concluded that Plaintiff’s  
23 appeal was frivolous and revoked her IFP status. Doc. 13.

24 Plaintiff has now filed an amended complaint. Doc. 15. Plaintiff has also filed a  
25 renewed motion to proceed *in forma pauperis* (Doc. 16), a motion to recuse the  
26 undersigned judge (Doc. 23), a motion for a TRO (Doc. 22), a motion to appoint the  
27 Marshal to serve Defendants (Doc. 25), and a motion to appoint counsel (Doc. 31). For  
28 reasons stated below, the Court will deny Plaintiff’s motion to recuse, dismiss the

1 amended complaint without prejudice, afford leave to amend, deny the motion to appoint  
2 counsel, and deny the remaining motions as moot.

3 **I. Motion to Recuse.**

4 Plaintiff moves to recuse the undersigned judge under 28 U.S.C. §§ 144 and 455.  
5 Although Plaintiff accuses the undersigned of “sadistic,” “pre-meditated,” and  
6 “murderous criminal acts,” her motion is based entirely on the Court’s previous rulings in  
7 this case.

8 Section 144 applies when a district judge has “a personal bias or prejudice either  
9 against him or in favor of an adverse party[.]” 28 U.S.C. § 144. “Section 144 expressly  
10 conditions relief upon the filing of a timely and legally sufficient affidavit.” *United*  
11 *States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980). Plaintiff has not filed an affidavit, nor  
12 has she provided a reasonable basis for concluding that the undersigned has a personal  
13 bias against her or in favor of Defendants. The Court therefore will not grant her recusal  
14 request under section 144.

15 Section 455 provides that a district judge shall disqualify himself in any  
16 proceeding “[w]here he has a personal bias or prejudice concerning a party[.]”  
17 28 U.S.C. § 455(b)(1). The bias or prejudice generally “must stem from an extrajudicial  
18 source and not be based solely on information in the course of the proceedings.”  
19 *Hasbrook v. Texaco, Inc.*, 842 F.2d 1034, 1045-46 (9th Cir. 1987). Plaintiff’s sole basis  
20 for seeking recusal is this Court’s prior rulings, which is not a sufficient basis. *Liteky v.*  
21 *United States*, 510 U.S. 540, 555 (1994). Recusal is not warranted under section 455.

22 **II. Screening of Complaint.**

23 In *in forma pauperis* (“IFP”) proceedings, a district court “shall dismiss the case at  
24 any time if the court determines that . . . the action . . . fails to state a claim on which  
25 relief can be granted[.]” 28 U.S.C. § 1915(e)(2). While much of section 1915 concerns  
26 prisoner litigation, section 1915(e) applies to all IFP proceedings. *Lopez v. Smith*,  
27 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (en banc). “Section 1915(e)(2)(B)(ii) . . . allows  
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1 a district court to dismiss[] sua sponte . . . a complaint that fails to state a claim[.]” *Id.* at  
2 1130. “It is also clear that section 1915(e) not only permits but requires a district court to  
3 dismiss an in forma pauperis complaint that fails to state a claim.” *Id.* at 1127. A district  
4 court dismissing under § 1915(e)(2)(B)(ii) “should grant leave to amend even if no  
5 request to amend the pleading was made, unless it determines that the pleading could not  
6 possibly be cured by the allegation of other facts.” *Id.* at 1127-29 (citations omitted).

7 Rule 8 of the Federal Rules of Civil Procedure provides that “[a] pleading that  
8 states a claim for relief must contain . . . a short and plain statement of the claim showing  
9 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). This short and plain statement  
10 “need not contain detailed factual allegations; rather, it must plead ‘enough facts to state  
11 a claim to relief that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534  
12 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570  
13 (2007)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (“The  
14 plausibility standard . . . asks for more than a sheer possibility that a defendant has acted  
15 unlawfully”). When analyzing a complaint for failure to state a claim, “[a]ll allegations  
16 of material fact are taken as true.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996).  
17 Legal conclusions couched as factual allegations, however, are not given a presumption  
18 of truthfulness and “conclusory allegations of law and unwarranted inferences are not  
19 sufficient.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). Dismissal is  
20 appropriate where the complaint lacks a cognizable legal theory, lacks sufficient facts  
21 alleged under a cognizable legal theory, or contains allegations disclosing some absolute  
22 defense or bar to recovery. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699  
23 (9th Cir. 1988); *Weisbuch v. County of L.A.*, 119 F.3d 778, 783, n.1 (9th Cir. 1997).

24 Plaintiff’s amended complaint is an improvement over the initial complaint in this  
25 case. It is written in the form of a complaint and identifies specific causes of action.  
26 Unfortunately, the amended complaint fails to state a claim upon which relief can be  
27 granted and therefore must be dismissed at screening. 28 U.S.C. § 1915(e)(2).

1           The amended complaint names as Defendants Maricopa County; the Maricopa  
2 County Board of Supervisors; each of the individual supervisors, named in their personal  
3 and official capacities; Phoenix College; the Maricopa County Community College  
4 District Board; and each member of the board, sued in his or her official and individual  
5 capacities. Doc. 15. The complaint is 110 pages long. It asserts generally that Plaintiff  
6 entered into a contract with Phoenix College to receive an education that guaranteed her a  
7 spot among the top two percent of best-selling authors – individuals such as Mary  
8 Higgins-Clark, Danielle Steele, Lisa Scottolini, and John Grisham “all rolled up into  
9 one.” *Id.* at 3. The complaint alleges that Phoenix College advisor Pride and counselor  
10 McIntyre failed to include in Plaintiff’s curriculum several critical and required courses.  
11 Plaintiff also alleges that as a result of the conduct of Pride, McIntyre, and others  
12 employed at Phoenix College, she lost federal financial aid, was rendered destitute, and  
13 was expelled from Phoenix College.

14           Plaintiff alleges that she is a public figure known by 90 million Americans as “The  
15 Queen of Justice in the American Jurisprudence System.” *Id.* at 79. Plaintiff alleges that  
16 she is an accomplished author, having written four books in one year and published one  
17 in a test market. Plaintiff seeks \$30 million in damages.

18           The amended complaint asserts a number of state-law claims, including  
19 negligence, negligent misrepresentation, breach of implied warranty, breach of contract,  
20 breach of the covenant of good faith and fair dealing, aiding and abetting, interference  
21 with contract, fraud, fraudulent non-disclosure, fraudulent misrepresentation, fraudulent  
22 concealment, civil conspiracy to commit fraud, abuse of process, conversion, slander,  
23 libel, false light, injurious falsehood/slander of title, profession negligence, unjust  
24 enrichment, intentional infliction of emotional distress, and negligent hiring, retention, or  
25 supervision. Doc. 15. The complaint also asserts claims for violation of 42 U.S.C.  
26 §§ 1983, 1985, and 1985(3). *Id.*

27           The complaint is based on federal question jurisdiction. *Id.* at 2. But in alleging  
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1 the claims for violation of §§ 1983, 1985, and 1985(3) – the only federal claims asserted  
2 in the complaint – Plaintiff bases her claim on violation of her alleged “constitutional  
3 rights” to a “higher education,” “federal funding,” “career, business, and trade,” and a  
4 “good reputation.” *Id.* at 62. Plaintiff does not identify the source of these alleged  
5 constitutional rights, nor does she tie them to any particular provision of the Constitution.

6 Elsewhere in the amended complaint, in a section titled “Motion for a Temporary  
7 Restraining Order,” Plaintiff alleges that she was subjected to a disciplinary hearing at  
8 Phoenix College that violated her right to due process of law. The primary persons  
9 named in this section include Phoenix College personnel Martinez, Watson, Brimage,  
10 Solley, Nelson, Escalante, and the Student Conduct Board, but none of these individuals  
11 is named as a defendant in the case. The amended complaint alleges that the Maricopa  
12 County Community College District Board, which is named as a Defendant, aided and  
13 abetted advisor Pride’s false information, but does not specifically allege how the Board  
14 did so, or how it otherwise violated Plaintiff’s right to due process. *Id.* at 34-36.

15 In short, the amended complaint fails to allege valid constitutional violations  
16 against the named Defendants and thereby fails to allege violations of 42 U.S.C. §§ 1983,  
17 1985, and 1985(3). As a result, the amended complaint fails to state a claim that would  
18 confer upon this Court federal question jurisdiction and must be dismissed.<sup>1</sup>

19 In addition, many Defendants named in the caption of the amended complaint,  
20 including Maricopa County, Fulton Brock, Don Stapley, Andrew Kunasek, Max Wilson,  
21 Mary Rose Wilcox, Doyle Burke, Donald Campbell, Debra Pierson, and Danan Saar, are  
22 never mentioned in the body of the amended complaint. The amended complaint does  
23 not include any specific allegations against these individuals and therefore fails to state a  
24 claim against them. Although the amended complaint does allege generally that the  
25 Maricopa County Board of Supervisors and the Maricopa County Community College

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27 <sup>1</sup> In any amended complaint, Plaintiff must identify specific constitutional rights  
28 that were violated, tying them to specific provisions of the Constitution, and must explain  
how each Defendant named in the complaint contributed to the constitutional violation.

1 District Board aided and abetted the wrongs committed by others, no specific allegations  
2 are included as to actions taken by the Boards that harmed Plaintiff. Similarly, although  
3 various officers and employees of Phoenix College are alleged to have engaged in  
4 wrongs, the amended complaint does not explain the basis for the liability of Defendant  
5 Phoenix College. Because the amended complaint fails to include specific allegations  
6 establishing the liability of the Defendants named in the amended complaint, the  
7 amended complaint fails to state a cause of action and must be dismissed. 28 U.S.C.  
8 § 1915(e)(2)(B)(ii).

9 **III. Leave to Amend.**

10 In this circuit, “[a] pro se litigant must be given leave to amend his or her  
11 complaint unless it is absolutely clear that the deficiencies of the complaint could not be  
12 cured by amendment.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir.  
13 1988) (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)); *see also Lopez*, 203  
14 F.3d at 1127-29 (§ 1915(e)(2)(B)(ii)’s mandated dismissal of an IFP complaint allows a  
15 district court to grant leave to amend); *Waters v. Young*, 100 F.3d 1437, 1441 (9th Cir.  
16 1996) (“As a general matter, this court has long sought to ensure that pro se litigants do  
17 not unwittingly fall victim to procedural requirements that they may, with some  
18 assistance from the court, be able to satisfy.”). The Court will dismiss the complaint  
19 without prejudice and allow Plaintiff to file an amended complaint, consistent with this  
20 order, that properly states a claim for relief. Plaintiff shall have until **Friday,**  
21 **January 13, 2012**, to file a second amended complaint.

22 Plaintiff is advised that this is the final opportunity the Court will afford for her to  
23 amend her complaint. Plaintiff will have had three opportunities to state her claims. If  
24 Plaintiff fails to do so, the Court will dismiss this case with prejudice.

25 Plaintiff is advised that although she is proceeding IFP, she must become familiar  
26 with, and follow, the Federal Rules of Civil Procedure and the Rules of the United States  
27 District Court for the District of Arizona (“Local Rules”). *See King v. Atiyeh*, 814 F.2d  
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1 565, 567 (9th Cir.1986) (“Pro se litigants must follow the same rules of procedure that  
2 govern other litigants.”); *Carter v. Comm'r of Internal Revenue*, 784 F.2d 1006, 1008 (9th  
3 Cir.1986) (“Although pro se, [plaintiff] is expected to abide by the rules of the court in  
4 which he litigates.”). The Federal Rules of Civil Procedure are available at the following  
5 Internet website: [www.law.cornell.edu/rules/frcp/](http://www.law.cornell.edu/rules/frcp/). A copy of the Court's Local Rules of  
6 Civil Procedure may be obtained in the Clerk's Office and are available online at the  
7 Court's Internet website: [www.azd.uscourts.gov](http://www.azd.uscourts.gov) (follow hyperlink titled  
8 “Opinions/Orders/Rules”).

9 For purposes of the amended complaint, Plaintiff is directed to Rule 8 of the  
10 Federal Rules of Civil Procedure. Rule 8(a) provides that a complaint “must contain (1) a  
11 short and plain statement of the grounds for the court’s jurisdiction, . . . (2) a short and  
12 plain statement of the claim showing that the pleader is entitled to relief, and (3) a  
13 demand for the relief sought.” Fed. R. Civ. P. 8(a). These pleading requirements shall be  
14 set forth in separate and discrete paragraphs. Rule 8(d) provides that each such paragraph  
15 “must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1).

16 The “short and plain statement of the claim” required by Rule 8(a)(2) must not  
17 only designate a cause of action, but must also include enough factual allegations to  
18 render the claim plausible. *Iqbal*, 129 S. Ct. at 1950. If Plaintiff chooses to file an  
19 amended complaint asserting constitutional violations, her pleading should include a  
20 statement of the constitutional rights Plaintiff believes to have been violated, how each  
21 right was violated, how each Defendant contributed to the violation, and what injury was  
22 caused by each alleged constitutional violation. Such factual allegations must provide  
23 enough information for “the court to draw the reasonable inference that the defendant[s]  
24 are] liable for the misconduct alleged.” *Iqbal*, 129 S. Ct. at 1149.

25 Plaintiff is further advised that she is responsible for having the summons and  
26 amended complaint properly served on each Defendant within the time allowed by  
27 Rule 4(m) of the Federal Rules of Civil Procedure.  
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1           If Plaintiff fails to prosecute this action, or if she fails to comply with the rules or  
2 any Court order, the Court may dismiss the action with prejudice pursuant to Rule 41(b)  
3 of the Federal Rule of Civil Procedure. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th  
4 Cir.1992); *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir.1995).

5 **IV. Motion to Appoint Counsel.**

6           There is no constitutional right to appointment of counsel in a civil case. *See Ivey*  
7 *v. Board of Regents of the University of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). The  
8 appointment of counsel under 28 U.S.C. § 1915(e)(1) is required only when “exceptional  
9 circumstances” are present. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

10           A determination with respect to exceptional circumstances requires an evaluation  
11 of the likelihood of success on the merits as well as the ability of Plaintiff to articulate her  
12 claims *pro se* in light of the complexity of the legal issues involved. *Id.* “Neither of  
13 these factors is dispositive and both must be viewed together before reaching a decision.”  
14 *Id.*

15           Having considered both elements, the Court concludes that Plaintiff is not entitled  
16 to appointment of counsel. The Court is not persuaded that Plaintiff is likely to succeed  
17 on the merits. Moreover, Plaintiff’s amended complaint showed substantial improvement  
18 over her initial complaint, and Plaintiff is an experienced litigant. *See Barkclay v. State*  
19 *of Arizona*, 97-cv-00346-RGS; *Barkclay v. City of Phoenix, et al.*, 01-cv-01454 JWS;  
20 *Barkclay v. Wal-Mart Stores, et al.*, 07-cv-00981-MHM.

21 **V. Other Motions.**

22           Because Plaintiff’s complaint is being dismissed without prejudice, her remaining  
23 motions will be denied as moot.

24 **IT IS ORDERED:**

- 25           1. Plaintiff’s motion to recuse the undersigned judge (Doc. 23) is **denied**.  
26           2. Plaintiff’s amended complaint (Doc. 15) is **dismissed** for failure to state a  
27 claim upon which relief can be granted. Plaintiff may file a second  
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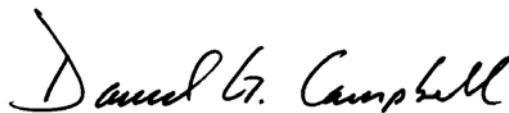
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amended complaint on or before **January 13, 2012**.

3. Plaintiff's motion for appointment of counsel (Doc. 31) is **denied**.

4. Plaintiff's remaining motions (Docs. 16, 22, 25) are **denied** as moot.

Dated this 16th day of December, 2011.



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David G. Campbell  
United States District Judge