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

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

No. CV11-1968-PHX-DGC

ORDER

14 Plaintiff Alexandria Barkclay has filed a complaint and a request for a temporary
15 restraining order (“TRO”). Doc. 1. She has also filed a motion for leave to proceed in
16 forma pauperis (Doc. 3), and a motion for leave to file documents electronically (Doc. 5).
17 For the reasons that follow, the TRO and motion to file electronically will be denied, and
18 the motion to proceed in forma pauperis will be granted.

19 **I. Request for Temporary Restraining Order.**

20 Plaintiff seeks a TRO, but her filings do not show that Plaintiff has served or
21 otherwise given notice of her request to Defendants. Under Rule 65 of the Federal Rules
22 of Civil Procedure, a TRO may be entered without notice to Defendants only if the
23 requirements of Rule 65(b)(1) have been satisfied. Plaintiff makes no attempt to show
24 that these requirements have been satisfied.

25 In addition, to obtain a TRO, a Plaintiff must show that she is likely to succeed on
26 the merits, that she is likely to suffer irreparable harm in the absence of preliminary
27 relief, that the balance of equities tips in her favor, and that an injunction is in the public
28 interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S.Ct. 365, 374 (2008).

1 The test includes a sliding scale. If the plaintiff has shown that the balance of hardships
2 tips sharply in her favor, she need not make as strong a showing of the likelihood of
3 success on the merits – the existence of serious questions will suffice. *Alliance for Wild*
4 *Rockies v. Cotrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

5 Plaintiff has filed a 31-page complaint and a 91-page memorandum of points and
6 authorities. The nature of Plaintiff’s claims are not clearly identified, but she appears to
7 complain about the termination of federal financial aid she was receiving in connection
8 with her college education. Plaintiff appears to argue that her due process rights were
9 violated because the notice she received prior to a hearing was insufficiently clear to
10 enable her to prepare for the hearing. Plaintiff also asserts a long list of claims for
11 negligence, negligent misrepresentation, breach of implied warranty, breach of contract,
12 breach of the implied covenant of good faith and fair dealing, civil conspiracy, aiding and
13 abetting, fraud, fraudulent concealment, intentional interference with contractual
14 relations, slander, libel, false light invasion of privacy, abuse of process, abuse of power,
15 and violations of various federal civil rights statutes. Plaintiff has not shown, however,
16 that she is likely to succeed on the merits of these claims. Nor has she shown that the
17 claims raise serious questions, a showing which requires a “fair chance” of success on the
18 merits. *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (*en*
19 *banc*).

20 Because Plaintiff has not provided notice to Defendants as required by Rule 65,
21 and has not satisfied the requirements for obtaining a TRO, her request for a TRO is
22 denied.

23 **II. Request to Proceed In Forma Pauperis.**

24 Plaintiff’s motion to proceed in forma pauperis includes the Court’s required
25 affidavit. Doc. 3. Having reviewed the affidavit, the Court will grant Plaintiff’s request
26 and permit her to proceed in forma pauperis.

1 **III. Motion to Allow Electronic Filing.**

2 The Court, as a matter of standard operating policy, does not allow non-lawyers to
3 file documents electronically. Plaintiff’s request is denied.

4 **IV. Screening of Complaint.**

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

16 Rule 8 of the Federal Rules of Civil Procedure provides that “[a] pleading that
17 states a claim for relief must contain . . . a short and plain statement of the claim showing
18 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). This short and plain statement
19 “need not contain detailed factual allegations; rather, it must plead ‘enough facts to state
20 a claim to relief that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534
21 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
22 (2007)); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (“The
23 plausibility standard . . . asks for more than a sheer possibility that a defendant has acted
24 unlawfully”). When analyzing a complaint for failure to state a claim, “[a]ll allegations
25 of material fact are taken as true.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996).
26 Legal conclusions couched as factual allegations, however, are not given a presumption
27 of truthfulness and “conclusory allegations of law and unwarranted inferences are not
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1 sufficient.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). Dismissal is
2 appropriate where the complaint lacks a cognizable legal theory, lacks sufficient facts
3 alleged under a cognizable legal theory, or contains allegations disclosing some absolute
4 defense or bar to recovery. See *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699
5 (9th Cir. 1988); *Weisbuch v. County of L.A.*, 119 F.3d 778, 783, n.1 (9th Cir. 1997).

6 Plaintiff’s complaint is lengthy and includes a long list of alleged wrongs, but the
7 Court is unable to determine from the complaint precisely what actions Plaintiff is
8 complaining about. Plaintiff’s complaint names several Defendants, but fails to state
9 clearly what wrongs each Defendant is alleged to have committed and which claims are
10 asserted against which Defendants. As a result, the Court cannot conclude that Plaintiff’s
11 complaint asserts a viable claim against any particular Defendant. The complaint
12 therefore will be dismissed for failure to state a claim upon which relief can be granted.

13 **V. Leave to Amend.**

14 In this circuit, “[a] pro se litigant must be given leave to amend his or her
15 complaint unless it is absolutely clear that the deficiencies of the complaint could not be
16 cured by amendment.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir.
17 1988) (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)); see also *Lopez*, 203
18 F.3d at 1127-29 (§ 1915(e)(2)(B)(ii)’s mandated dismissal of an IFP complaint allows a
19 district court to grant leave to amend); *Waters v. Young*, 100 F.3d 1437, 1441 (9th Cir.
20 1996) (“As a general matter, this court has long sought to ensure that pro se litigants do
21 not unwittingly fall victim to procedural requirements that they may, with some
22 assistance from the court, be able to satisfy.”). The Court will dismiss the complaint
23 without prejudice and allow Plaintiff to file an amended complaint, consistent with this
24 order, that properly states a claim for relief. Plaintiff shall have until **Friday,**
25 **November 4, 2011**, to file an amended complaint.

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

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

17 The “short and plain statement of the claim” required by Rule 8(a)(2) must not
18 only designate a cause of action, but must also include enough factual allegations to
19 render the claim plausible. *Iqbal*, 129 S. Ct. at 1950. If Plaintiff chooses to file an
20 amended complaint asserting constitutional violations, her pleading should include a
21 statement of the constitutional rights Plaintiff believes to have been violated, how each
22 right was violated, how each Defendant contributed to the violation, and what injury was
23 caused by each alleged constitutional violation. See *Jimenez v. State of Arizona*, No. CV-
24 08-0892 (D. Ariz. May 22, 2008) (order dismissing with leave to amend). Such factual
25 allegations must provide enough information to “allow[] the court to draw the reasonable
26 inference that the defendant[s are] liable for the misconduct alleged.” *Iqbal*, 129 S. Ct. at
27 1149.

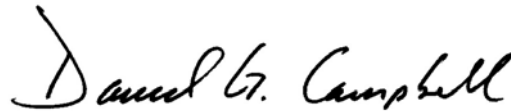
1 Plaintiff is further advised that she is responsible for having the summons and
2 amended complaint properly served on each Defendant within the time allowed by
3 Rule 4(m) of the Federal Rules of Civil Procedure.

4 If Plaintiff fails to prosecute this action, or if she fails to comply with the rules or
5 any Court order, the Court may dismiss the action with prejudice pursuant to Rule 41(b)
6 of the Federal Rule of Civil Procedure. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th
7 Cir.1992); *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir.1995).

8 **IT IS ORDERED:**

- 9 1. Plaintiff's request for a temporary restraining order (Doc. 1) is **denied**.
- 10 2. Plaintiff's motion to proceed in forma pauperis (Doc. 3) is **granted**.
- 11 3. Plaintiff's motion to allow electronic filing (Doc. 5) is **denied**.
- 12 4. Plaintiff shall have until **November 4, 2011**, to filed an amended
13 complaint.

14 Dated this 17th day of October, 2011.

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19 David G. Campbell
20 United States District Judge
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