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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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J.W. Carlson,

No. CV-11-02096-PHX-NVW

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Plaintiff,

**ORDER**

11

vs.

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Kari Granville, et al.,

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Defendants.

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Pending before the Court is Plaintiff J.W. Carlson’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 3), which will be granted. The Court has concluded that Plaintiff’ Complaint (Doc. 1) should be screened pursuant to 28 U.S.C. § 1915(e)(2) before it is allowed to be served. For the reasons set forth below, Plaintiff’s complaint will be dismissed with leave to file an amended complaint by November 18, 2011.

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**I. Legal Standards**

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**A. 28 U.S.C. § 1915(e)(2)**

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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 immune from such relief.” 28 U.S.C. § 1915(e)(2). While much of section 1915 outlines how prisoners

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1 can file proceedings *in forma pauperis*, section 1915(e) applies to all *in forma pauperis*  
2 proceedings, not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.  
3 2000) (“section 1915(e) applies to all in forma pauperis complaints”). “It is also clear that  
4 section 1915(e) not only permits but requires a district court to dismiss an in forma pauperis  
5 complaint that fails to state a claim.” *Id.* Therefore, this court must dismiss an *in forma*  
6 *pauperis* complaint if it fails to state a claim or if it is frivolous or malicious.

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

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

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

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

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

8 2. On date, at place, the defendant negligently drove a motor vehicle against  
9 the plaintiff.

10 3. As a result, the plaintiff was physically injured, lost wages or income,  
11 suffered physical and mental pain, and incurred medical expenses of \$\_\_\_\_.  
Therefore, the plaintiff demands judgment against the defendant for \$\_\_\_\_,  
plus costs.

12 A plaintiff must allege facts sufficient “to raise a right to relief above the speculative level.”  
13 *Twombly*, 127 S. Ct. at 1965.

## 14 **II. Analysis**

### 15 **A. Plaintiff’s Complaint**

16 Plaintiff’s Complaint (Doc. 1) does not satisfy the federal pleading requirements  
17 because it fails to provide a “short and plain statement” of any claim. While Plaintiff lists  
18 a number of alleged constitutional violations, stating generally that “officers violated my  
19 civil/constitutional rights,” (*id.*), he has not pled any factual allegations detailing which  
20 officers took which actions against him. Vague assertions that “officers” used “excessive  
21 force” or conducted an “illegal stop and seizure, search, and wrongful arrest” are  
22 insufficient to explain how each Defendant allegedly violated Plaintiff’s rights in order to  
23 put each Defendant on notice of the claims against it. It is not enough to simply list  
24 various causes of action; rather, Plaintiff must include facts showing how Defendants’  
25 actions constitute a violation of his rights. For these reasons, Plaintiff’s complaint will be  
26 dismissed without prejudice to filing an amended complaint.

### 27 **B. Leave to Amend**

28 If a defective complaint can be cured, the plaintiff is entitled to amend the

1 complaint before the action is dismissed. *See Lopez*, 203 F.3d at 1127-30. Therefore,  
2 Plaintiff will be given an opportunity, if he so chooses, to amend his complaint to make  
3 clear his allegations in short, plain statements with each claim for relief identified in  
4 separate sections. In the amended complaint, each claim of an alleged violation must be  
5 set forth in a separate count and the factual allegations must be separately numbered.  
6 Any amended complaint filed by Plaintiff must conform to the requirements of Rules 8(a)  
7 and (d)(1) of the Federal Rules of Civil Procedure.

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

18 IT IS THEREFORE ORDERED that Plaintiff J.W. Carlson's Application to  
19 Proceed in District Court Without Prepaying Fees or Costs (Doc. 3) is granted.

20 IT IS FURTHER ORDERED that Plaintiff's Complaint (Doc. 1) is dismissed with  
21 leave to file an amended complaint by November 18, 2011. If Plaintiff elects not to file  
22 an amended complaint by November 18, 2011, the Clerk shall dismiss this action without  
23 further order of this Court.

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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 18 U.S.C. § 1915(e)(2). If and when Plaintiff is given leave to  
4 serve an amended Complaint, Plaintiff shall be responsible for service by waiver of the  
5 summons and complaint.

6 DATED this 27<sup>th</sup> day of October, 2011.

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Neil V. Wake  
United States District Judge

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