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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Joyce Juniel,

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No. CV12-1539 PHX DGC

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Plaintiff,

)

CV12-1540 PHX DGC

CV12-1541 PHX DGC

(Consolidated)

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v.

)

ORDER

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Labcorp, Anasazi Internal Medicine,

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Defendants.

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Plaintiff Joyce Juniel has filed complaints against Defendants Labcorp and Anasazi

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Internal Medicine. The complaints have been consolidated in this action, and the Court

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granted in forma pauperis (“IFP”) status to Plaintiff. Docs. 6, 9. The Court has an obligation

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to screen Plaintiff’s complaints pursuant to 28 U.S.C. § 1915(e)(2). Because Plaintiff’s

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complaints fail to state a jurisdictional basis for this action, the Court will dismiss them *sua*

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sponte and grant leave to amend. Plaintiff’s other pending motions will also be denied.

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I. Screening of Plaintiff’s Complaints.

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In IFP proceedings, a district court “shall dismiss the case at any time if the court

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determines that . . . the action . . . fails to state a claim on which relief can be granted[.]” 28

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U.S.C. § 1915(e)(2). While much of § 1915 concerns prisoner litigation, § 1915(e) applies

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to all IFP proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (en banc).

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“Section 1915(e)(2)(B)(ii) . . . allows a district court to dismiss[] *sua sponte* . . . a complaint

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that fails to state a claim[.]” *Id.* at 1130. “It is also clear that section 1915(e) not only

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permits but requires a district court to dismiss an in forma pauperis complaint that fails to

1 state a claim.” *Id.* at 1127. A district court dismissing under § 1915(e)(2)(B)(ii) “should
2 grant leave to amend even if no request to amend the pleading was made, unless it determines
3 that the pleading could not possibly be cured by the allegation of other facts.” *Id.* at 1127-29
4 (citations omitted).

5 Plaintiff’s complaints do not adequately allege subject matter jurisdiction as required
6 by Rule 8(a)(1) of the Federal Rules of Civil Procedure. “Federal courts are courts of limited
7 jurisdiction. They possess only that power authorized by Constitution and statute[.]”
8 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Pursuant to federal
9 statutes, this Court has subject matter jurisdiction over a case only if it arises under federal
10 law or the amount in controversy exceeds \$75,000 and the parties are citizens of different
11 states. *See* 28 U.S.C. §§ 1331, 1332(a). The complaints do not explain why this Court has
12 subject matter jurisdiction. The Court will dismiss the complaints without prejudice.
13 Plaintiff shall have until **January 4, 2013**, to file a single amended complaint.

14 Plaintiff is advised that she must become familiar with, and follow, the Federal Rules
15 of Civil Procedure and the Rules of the United States District Court for the District of
16 Arizona (“Local Rules”), which may be obtained in the Clerk of Court’s office. For purposes
17 of the amended complaint, Plaintiff is directed to Rule 8 of the Federal Rules of Civil
18 Procedure. Rule 8(a) provides that a complaint must contain (1) a short and plain statement
19 of the grounds for the court’s jurisdiction, (2) a short and plain statement of the claim
20 showing that the pleader is entitled to relief, and (3) a demand for the relief sought. Fed. R.
21 Civ. P. 8(a). These pleading requirements shall be set forth in separate and discrete
22 paragraphs. Rule 8(d) provides that each such paragraph “must be simple, concise, and
23 direct.” Fed. R. Civ. P. 8(d)(1).

24 The short and plain statement of the claim required by Rule 8(a)(2) must not only
25 designate a cause of action, but must also include enough factual allegations to render the
26 claim plausible. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009) (“But where the
27 well-pleaded facts do not permit the court to infer more than the mere possibility of
28 misconduct, the complaint has alleged – but it has not “show[n]” – “that the pleader is

1 entitled to relief.”) (citing Fed. R. Civ. P. 8(a)(2)). Plaintiff’s amended complaint should
2 include a statement of the legal rights Plaintiff believes to have been violated, how each right
3 was violated, how each Defendant contributed to the violation, and what injury was caused
4 by each alleged violation. *See Jimenez v. State of Arizona*, No. CV-08-0892 (D. Ariz. May
5 22, 2008) (order dismissing with leave to amend). Such factual allegations must provide
6 enough information to “allow[] the court to draw the reasonable inference that the
7 defendant[s are] liable for the misconduct alleged.” *Iqbal*, 129 S. Ct. at 1149.

8 **II. Motion for Appointment of Counsel.**

9 Plaintiff asks the Court to appoint counsel. Doc. 11. There is no constitutional right
10 to appointed counsel in a civil case. *See Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d
11 266, 269 (9th Cir. 1982). The Court, however, does have the discretion to appoint counsel
12 in “exceptional circumstances.” *See* 28 U.S.C. § 1915(e)(1); *Wilborn v. Escalderon*, 789
13 F.2d 1328, 1331 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980). “A
14 finding of exceptional circumstances requires an evaluation of both ‘the likelihood of success
15 on the merits and the ability of the petitioner to articulate his or her claim *pro se* in light of
16 the complexity of the legal issues involved.’” *Wilborn*, 789 F.2d at 1331 (quoting *Weygant*
17 *v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)); *see Richards v. Harper*, 864 F.2d 85, 87 (9th
18 Cir. 1988). “Neither of these factors is dispositive and both must be viewed together before
19 reaching a decision on request of counsel” under section 1915(e)(1). *Wilborn*, 789 F.2d at
20 1331.

21 Having considered both factors, the Court finds that Plaintiff has not demonstrated a
22 likelihood of success on the merits or that any difficulty she is experiencing in attempting to
23 litigate her case is due to the complexity of the issues involved. Accordingly, this case does
24 not present “exceptional circumstances” requiring the appointment of counsel.

25 However, Plaintiff may contact the following organization to determine whether it
26 has an attorney available to represent Plaintiff *pro bono* or at a reduced rate:
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1 Volunteer Lawyers Program
2 305 South Second Avenue
3 P.O. Box 21538
Phoenix, Arizona 85036-1538
(602) 258-3434

4 **III. Motions for Emergency Orders.**

5 Plaintiff has filed two motions asking the Court to enter emergency orders preventing
6 Defendants from terminating her as a patient. Docs. 10, 12. The motions will be denied for
7 several reasons. First, as noted above, Plaintiff has not shown that this Court has jurisdiction
8 over her claim. Second, Plaintiff has not served Defendants as required by Rule 4(m) of the
9 Federal Rules of Civil Procedure. Third, Plaintiff has not satisfied the requirements of
10 Rule 65 of the Federal Rules of Civil Procedure for obtaining emergency injunctive relief.

11 **IV. Warning.**

12 If Plaintiff fails to prosecute this action or to comply with the rules or any Court order,
13 the Court may dismiss the action with prejudice pursuant to Federal Rule of Civil Procedure
14 41(b). *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.1992) (holding that the
15 district court did not abuse its discretion in dismissing a pro se plaintiff's complaint for
16 failing to comply with a court order).

17 **IT IS ORDERED:**

- 18 1. Plaintiff's motion for appointment of counsel (Doc. 11) is **denied**.
19 2. Plaintiff's emergency motions preventing Defendants from terminating her as
20 a patient (Docs. 10, 12) are denied.
21 3. Plaintiff's complaint(s) are denied without prejudice. Plaintiff may file a single
22 amended complaint on or before **January 4, 2013**.

23 DATED this 14th day of December, 2012.

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David G. Campbell
United States District Judge