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

8
9 Alexandro Lyman,

10 Plaintiff,

11 v.

12 United States of America,

13 Defendant.

No. CV-14-0967-PHX-DGC

ORDER

14 Plaintiff Alexandro Lyman has filed a complaint against the United States.
15 Doc. 1. He has also filed a motion to proceed in forma pauperis (“IFP”). Doc. 2. The
16 Court will grant his application for IFP status, screen his complaint, and dismiss the
17 complaint for failure to state a claim.

18 **I. Motion for IFP Status.**

19 Plaintiff attaches an affidavit on a court-approved form which suggests that he
20 receives a total monthly income of \$0, that he has monthly expenses totaling \$0, and that
21 he has a medical condition that prevents him from working. Doc. 2. His motion for IFP
22 status will be granted.

23 **II. Legal Standard.**

24 In IFP proceedings, a district court “shall dismiss the case at any time if the court
25 determines that . . . the action . . . fails to state a claim on which relief can be granted[.]”
26 28 U.S.C. § 1915(e)(2). Although much of § 1915 concerns prisoner litigation, § 1915(e)
27 applies to all IFP proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000)
28 (en banc). “Section 1915(e)(2)(B)(ii) . . . allows a district court to dismiss[] sua

1 sponte . . . a complaint that fails to state a claim[.]” *Id.* at 1130. “It is also clear that
2 section 1915(e) not only permits but requires a district court to dismiss an in forma
3 pauperis complaint that fails to state a claim.” *Id.* at 1127. A district court dismissing
4 under this section “should grant leave to amend even if no request to amend the pleading
5 was made, unless it determines that the pleading could not possibly be cured by the
6 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, 678 (2009) (“The plausibility
14 standard . . . asks for more than a sheer possibility that a defendant has acted
15 unlawfully”). Legal conclusions couched as factual allegations are not given a
16 presumption of truthfulness and “conclusory allegations of law and unwarranted
17 inferences are not sufficient.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998).
18 Dismissal is appropriate where the complaint lacks a cognizable legal theory, lacks
19 sufficient facts alleged under a cognizable legal theory, or contains allegations disclosing
20 some absolute defense or bar to recovery. *See Balistreri v. Pacifica Police Dept.*, 901
21 F.2d 696, 699 (9th Cir. 1988); *Weisbuch v. Cnty of L.A.*, 119 F.3d 778, 783 n.1 (9th Cir.
22 1997).

23 **III. Plaintiff’s Complaint.**

24 Plaintiff’s complaint is largely incoherent, but appears to allege various wrongs
25 committed by the United States in violation of his constitutional rights. The complaint
26 contains no facts in support of these claims. The complaint also fails to state the legal
27 nature of Plaintiff’s claim, the basis for this Court’s jurisdiction, the specific defendants
28 being sued, or the actions of those defendant that give rise to liability.

1 The complaint fails to state a plausible claim for relief. The Court will therefore
2 dismiss it.

3 **IV. Leave to Amend and Plaintiff's Obligations.**

4 In this circuit, “[a] pro se litigant must be given leave to amend his or her
5 complaint unless it is absolutely clear that the deficiencies of the complaint could not be
6 cured by amendment.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir.
7 1988). The Court will dismiss the complaint without prejudice and allow Plaintiff to file
8 an amended complaint, consistent with this order, that properly states a claim for relief.
9 Plaintiff shall have until **July 7, 2014** to file an amended complaint.

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

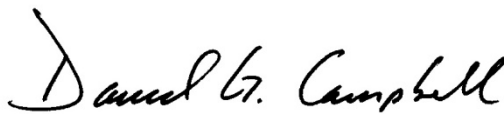
20 The “short and plain statement of the claim” required by Rule 8(a)(2) must not
21 only designate a cause of action, but must also include enough factual allegations to
22 render the claim plausible. *Iqbal*, 556 U.S. at 677. If Plaintiff chooses to file an amended
23 complaint asserting constitutional violations by federal or state officials, his pleading
24 should include a statement of the constitutional rights Plaintiff believes to have been
25 violated, how each right was violated, how each defendant contributed to the violation,
26 and what injury was caused by each alleged violation. Such factual allegations must
27 provide enough information to allow the court to draw the reasonable inference that the
28 defendants are liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

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

6 **IT IS ORDERED:**

- 7 1. Plaintiff's request for IFP status (Doc. 2) is **granted**.
8 2. Plaintiff's complaint (Doc. 1) is **dismissed without prejudice**.
9 3. Plaintiff shall have until **July 7, 2014** to file an amended complaint.
10 4. The Clerk of Court shall terminate this action without further order of the
11 Court if Plaintiff fails to file an amended complaint by July 7, 2014.

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13 Dated this 6th day of June, 2014.

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17 David G. Campbell
18 United States District Judge
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