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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Brett Honig,

10 Plaintiff,

11 v.

12 Social Security Administration,

13 Defendant.

No. CV-14-01443-PHX-DGC

ORDER

14 On June 25, 2014 Plaintiff filed a complaint against the “AZ Social Security
15 Administration.” Doc. 1. Plaintiff has also filed a motion to proceed in forma pauperis
16 (“IFP”). Doc. 2. The Court will grant Plaintiff’s application for IFP status, screen his
17 complaint, and dismiss the 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 \$885 in disability benefits and that he has monthly
21 expenses totaling \$885. Doc. 2. It is clear from Plaintiff’s affidavit that he cannot pay or
22 give security for fees and costs and still provide himself with the necessities of life. *See*
23 *Adkins v. E. I. Du Pont De Nemours & Co.*, 335 U.S. 331, 339 (1943). Plaintiff’s motion
24 for IFP status will be granted.

25 **II. Legal Standard.**

26 In IFP proceedings, a district court “shall dismiss the case at any time if the court
27 determines that . . . the action . . . fails to state a claim on which relief can be granted[.]”
28 28 U.S.C. § 1915(e)(2). Although much of § 1915 concerns prisoner litigation, § 1915(e)

1 applies to all IFP proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000)
2 (en banc). “Section 1915(e)(2)(B)(ii) . . . allows a district court to dismiss[] sua
3 sponte . . . a complaint that fails to state a claim[.]” *Id.* at 1130. “It is also clear that
4 section 1915(e) not only permits but requires a district court to dismiss an in forma
5 pauperis complaint that fails to state a claim.” *Id.* at 1127. A district court dismissing
6 under this section “should grant leave to amend even if no request to amend the pleading
7 was made, unless it determines that the pleading could not possibly be cured by the
8 allegation of other facts.” *Id.* at 1127-29 (citations omitted).

9 Rule 8 of the Federal Rules of Civil Procedure provides that “[a] pleading that
10 states a claim for relief must contain . . . a short and plain statement of the claim showing
11 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). This short and plain statement
12 “need not contain detailed factual allegations; rather, it must plead ‘enough facts to state
13 a claim to relief that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534
14 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
15 (2007)). Legal conclusions couched as factual allegations are not given a presumption of
16 truthfulness and “conclusory allegations of law and unwarranted inferences are not
17 sufficient.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). Dismissal is
18 appropriate where the complaint lacks a cognizable legal theory, lacks sufficient facts
19 alleged under a cognizable legal theory, or contains allegations disclosing some absolute
20 defense or bar to recovery. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699
21 (9th Cir. 1988).

22 **II. Plaintiff’s Complaint.**

23 Plaintiff names as Defendant the Arizona Social Security Administration.¹
24 Plaintiff appears to be complaining that he was treated rudely during a telephone
25 conversation with the Social Security Administration on June 18, 2014. Doc. 1 at 2, 4.

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27 ¹ This case was designated as an action for review of a determination of the
28 Commissioner of the Social Security Administration. However, finding nothing in
Plaintiff’s complaint suggesting he seeks such review, this case will not be placed on an
expedited track.

1 Plaintiff's complaint, which appears to be a series of letters written either to the "Director
2 of Social Security," the "Social Security Office," or President Obama, states that the
3 "Director wants an overpayment back," and Plaintiff does not believe this is fair because
4 he was incarcerated. *Id.* at 4-7. Later in the complaint, Plaintiff says "I will pay the
5 overpayment \$40.00 (sic)." *Id.* at 8.

6 Plaintiff's complaint does not satisfy federal pleading requirements. The
7 complaint fails to state the legal nature of Plaintiff's claim, the basis for this Court's
8 jurisdiction, the specific defendants being sued, or the actions of those defendants that
9 give rise to liability. The complaint appears to be a series of letters to various
10 individuals, is difficult to understand, and contains no facts. The complaint does not
11 provide a "short and plain statement" of his claims nor "simple, concise, and direct"
12 allegations. Fed. R. Civ. P. 8(a). The Court will therefore dismiss Plaintiff's complaint
13 for failure to state a claim.

14 **III. Leave to Amend and Plaintiff's Obligations.**

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

21 Plaintiff is advised that he must become familiar with, and follow, the Federal
22 Rules of Civil Procedure and the Rules of the United States District Court for the District
23 of Arizona ("Local Rules"), which may be obtained in the Clerk of Court's office. For
24 purposes of the amended complaint, Plaintiff is directed to Rule 8 of the Federal Rules of
25 Civil Procedure. Rule 8(a) provides that a complaint "must contain (1) a short and plain
26 statement of the grounds for the court's jurisdiction, . . . (2) a short and plain statement of
27 the claim showing that the pleader is entitled to relief, and (3) a demand for the relief
28 sought." Fed. R. Civ. P. 8(a). These pleading requirements shall be set forth in separate

1 and discrete paragraphs. Rule 8(d) provides that each such paragraph “must be simple,
2 concise, and direct.” Fed. R. Civ. P. 8(d)(1).

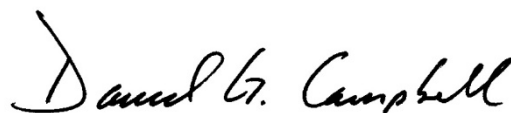
3 The “short and plain statement of the claim” required by Rule 8(a)(2) must not
4 only designate a cause of action, but must also include enough factual allegations to
5 render the claim plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). If Plaintiff
6 chooses to file an amended complaint asserting constitutional violations by federal or
7 state officials, his pleading should include a statement of the constitutional rights Plaintiff
8 believes to have been violated, how each right was violated, how each defendant
9 contributed to the violation, and what injury was caused by each alleged constitutional
10 violation. Such factual allegations must provide enough information to “allow[] the
11 court to draw the reasonable inference that the defendant[s are] liable for the misconduct
12 alleged.” *Iqbal*, 556 U.S. at 678.

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

18 **IT IS ORDERED:**

- 19 1. Plaintiff’s complaint (Doc. 1) is **dismissed without prejudice**.
- 20 2. Plaintiff’s request for IFP status (Doc. 2) is **granted**.
- 21 3. Plaintiff shall have until **September 5, 2014** to file an amended complaint.
- 22 4. The Clerk of Court shall terminate this action without further order of the
23 Court if Plaintiff fails to file an amended complaint on or before
24 **September 5, 2014**.

25 Dated this 15th day of August, 2014.

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David G. Campbell
United States District Judge