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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Tasha C. Paulino,

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No. CV 15-518-PHX-JAT

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Plaintiff,

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**ORDER**

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vs.

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Lino A. Paulino, Jr.,

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Defendant.

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The court has concluded that Plaintiff's complaint should be screened pursuant to 28

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U.S.C. § 1915(e)(2) before it is allowed to be served. Therefore, the court will do so in this

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order.

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

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"[A] complaint, containing both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in

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1 fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Furthermore, "a finding  
2 of factual frivolousness is appropriate when the facts alleged rise to the level  
3 of the irrational or wholly incredible, whether or not there are judicially  
4 recognized facts available to contradict them." *Denton v. Hernandez*, 504 U.S.  
5 25, 33 (1992). "A case is malicious if it was filed with the intention or desire  
6 to harm another." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005).

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

8 A claim must be stated clearly enough to enable a defendant to frame  
9 a responsive pleading. A complaint must contain "a short and plain statement  
10 of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).  
11 "Each averment of a pleading shall be simple, concise, and direct." Fed. R.  
12 Civ. P. 8(e)(1). A complaint having the factual elements of a cause of action  
13 present but scattered throughout the complaint and not organized into a "short  
14 and plain statement of the claim" may be dismissed for failure to satisfy Rule  
15 8(a). *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988).

16 *Kennedy v. Andrews*, 2005 WL 3358205, \*2-\*3 (D. Ariz. 2005).

## 17 **II. Analysis**

18 In this case, the complaint, including attachments, is 139 pages. Doc. 1. However,  
19 only the first two pages of the complaint contain Plaintiff's allegations. The entirety of the  
20 "complaint" portion of Plaintiff's complaint is as follows:

21 Oklahoma has yet to serve any real justice on this case/cases to me  
22 caused by the defendant. Complaint being there is no, Prose even if the state  
23 claims there is. I have tried and researched with no relief to file Prose.  
24 Complaint being defendant filed February 6<sup>th</sup> 2015 with out notifying me or  
25 the court notifying me and I was denied regular visitation. Complaint being  
26 defendant is abusive and refusing me visitation or support of proper alimony  
27 because we are no longer together. Meaning I am no longer under his control  
28 or abuse but he is trying to assume control and abuse me through denial of  
visitation and/or custody and proper alimony.

Doc. 1 at 1.

The United State Supreme Court has held:

...The whole subject of the domestic relations of husband and wife, parent and  
child, belongs to the laws of the States and not to the laws of the United States  
has been interpreted by the federal courts to apply with equal vigor in suits  
brought pursuant to diversity jurisdiction. This application is consistent with  
Barber's directive to limit federal courts' exercise of diversity jurisdiction over  
suits for divorce and alimony decrees. We conclude, therefore, that the  
domestic relations exception, as articulated by this Court since Barber, divests  
the federal courts of power to issue divorce, alimony, and child custody  
decrees. Given the long passage of time without any expression of  
congressional dissatisfaction, we have no trouble today reaffirming the validity  
of the exception as it pertains to divorce and alimony decrees and child  
custody orders.

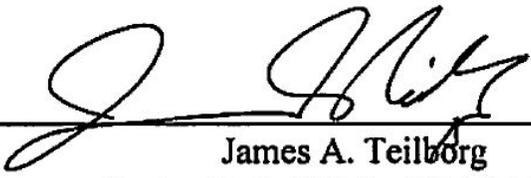
1 *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992) (internal citations and quotations  
2 omitted).

3 Plaintiff's complaint falls within the domestic relations exception to federal  
4 jurisdiction. Accordingly,

5 **IT IS ORDERED** that Plaintiff's application to proceed in forma pauperis (Doc. 2)  
6 is granted.

7 **IT IS FURTHER ORDERED** that the Complaint in this case is dismissed, without  
8 prejudice, for lack of federal subject matter jurisdiction and the Clerk of the Court shall enter  
9 judgment accordingly.

10 DATED this 31<sup>st</sup> day of March, 2015.

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15 James A. Teilborg  
16 Senior United States District Judge  
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