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

8
9 Tanya Winters,

10 Plaintiff,

11 v.

12 State of Arizona,

13 Defendant.

No. CV16-3542 PHX DGC

ORDER

14
15 Plaintiff Tanya Winters filed an amended complaint against the State of Arizona
16 on November 28, 2016 (Doc. 8), pursuant to the Court’s Order (Doc. 7). The Court will
17 screen Plaintiff’s First Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff
18 has also filed a motion to appoint pro bono counsel. Doc. 10. For the reasons stated
19 below, the Court will dismiss the amended complaint and deny the motion to appoint pro
20 bono counsel.

21 **I. Legal Standards.**

22 In IFP proceedings, a district court “shall dismiss the case at any time if the court
23 determines that . . . the action . . . fails to state a claim on which relief can be granted[.]”
24 28 U.S.C. § 1915(e)(2). Although much of § 1915 concerns prisoner litigation, § 1915(e)
25 applies to all IFP proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000)
26 (en banc). “It is also clear that section 1915(e) not only permits but requires a district
27 court to dismiss an in forma pauperis complaint that fails to state a claim.” *Id.* at 1127.
28 A district court dismissing under this section “should grant leave to amend even if no

1 request to amend the pleading was made, unless it determines that the pleading could not
2 possibly be cured by the allegation of other facts.” *Id.* at 1127-29 (citations omitted).

3 Rule 8 of the Federal Rules of Civil Procedure provides that “[a] pleading that
4 states a claim for relief must contain . . . a short and plain statement of the claim showing
5 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). This short and plain statement
6 “need not contain detailed factual allegations; rather, it must plead ‘enough facts to state
7 a claim to relief that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534
8 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
9 (2007)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“The plausibility
10 standard . . . asks for more than a sheer possibility that a defendant has acted
11 unlawfully”). Dismissal is appropriate where the complaint lacks a cognizable legal
12 theory, lacks sufficient facts alleged under a cognizable legal theory, or contains
13 allegations disclosing some absolute defense or bar to recovery. *See Balistreri v.*
14 *Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988); *Weisbuch v. Cnty. of L.A.*, 119
15 F.3d 778, 783 n.1 (9th Cir. 1997).

16 **II. Amended Complaint.**

17 Although Plaintiff’s amended complaint contains more information than her
18 original complaint, it still fails to state a claim upon which relief can be granted. Plaintiff
19 alleges that the State of Arizona is “not distributing Federal taxes and therefore violating
20 the Complainants Constitutional Rights.” Doc. 8 at 2. As a basis for jurisdiction,
21 Plaintiff cites the Arizona state constitution, which is not a legitimate basis for
22 jurisdiction in this Court. *Id.* at 1. Plaintiff appears to quote at length from a state
23 criminal money laundering statute, but such a statute does not grant her a private right of
24 action in federal court. *Id.* at 2-3. Plaintiff fails to set forth any facts justifying her claim,
25 and identifies no cognizable legal theory for this case.

26 Because Plaintiff has failed to state a claim, the Court again will dismiss this
27 action with leave to amend. The Court warns Plaintiff that a third failure to plead a claim
28 will result in dismissal without leave to amend.

1 **III. Leave to Amend and Plaintiff’s Obligations.**

2 Plaintiff shall have until **December 23, 2016** to file a second amended complaint.
3 Plaintiff is advised that she must become familiar with, and follow, the Federal Rules of
4 Civil Procedure and the Rules of the United States District Court for the District of
5 Arizona (“Local Rules”), which may be obtained in the Clerk of Court’s office. For
6 purposes of the amended complaint, Plaintiff is directed to Rule 8 of the Federal Rules of
7 Civil Procedure. Rule 8(a) provides that a complaint “must contain (1) a short and plain
8 statement of the grounds for the court’s jurisdiction, . . . (2) a short and plain statement of
9 the claim showing that the pleader is entitled to relief, and (3) a demand for the relief
10 sought.” Fed. R. Civ. P. 8(a). These pleading requirements should be set forth in
11 separate and discrete paragraphs. Rule 8(d) provides that each such paragraph “must be
12 simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1).

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

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

1 **IV. Motion to Appoint Pro Bono Counsel.**

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

13 Plaintiff has not demonstrated a likelihood of success on the merits. While
14 Plaintiff has pointed to financial difficulties she is experiencing, such difficulties do not
15 make her case exceptional. Accordingly, this case does not present “exceptional
16 circumstances” requiring the appointment of counsel. *See Terrell v. Brewer*, 935 F.2d
17 1015, 1017 (9th Cir. 1991) (district court did not abuse its discretion by refusing to
18 appoint counsel where the plaintiff had sufficient writing ability and legal knowledge to
19 articulate his claim, the facts alleged and issues raised were not of substantial complexity,
20 and it was not likely that he would succeed on the merits).

21 **IT IS ORDERED:**

- 22 1. Plaintiff’s amended complaint (Doc. 8) is **dismissed without prejudice.**
23 2. Plaintiff’s motion for appointment of pro bono counsel (Doc. 10) is **denied.**
24 3. Plaintiff shall have until **December 23, 2016** to file a second amended
25 complaint.

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4. The Clerk of Court shall terminate this action without further order of the Court if Plaintiff fails to file a second amended complaint by **December 23, 2016.**

Dated this 5th day of December, 2016.



David G. Campbell
United States District Judge