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

8
9 John Priestley, Jr.,

10 Plaintiff,

11 v.

12 Two houses in Buckeye, Maricopa County,
13 AZ, et al.,

14 Defendants.

No. CV16-4126 PHX DGC

ORDER

15 Plaintiff John Priestley, Jr., apparently as a beneficiary of the John Priestley, Sr.
16 Trust, filed his complaint in this case on November 28, 2016. Doc. 1. On
17 January 30, 2017, the Court screened Plaintiff's complaint, entered an order dismissing
18 the complaint for failure to state a claim, and granted Plaintiff until February 24, 2017 to
19 file an amended complaint. Doc. 12. The Court has reviewed Plaintiff's amended
20 complaint and will dismiss it for failure to state a claim, failure to follow Rule 8 of the
21 Federal Rules of Civil Procedure, and failure to follow this Court's order of January 30,
22 2017. *Id.* Plaintiff has also filed a motion to order the U.S. Marshal to serve Plaintiff's
23 complaint. Doc. 15. The Court will deny the motion without prejudice.

24 **I. Legal Standard.**

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

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

8 **II. Plaintiff’s Amended Complaint.**

9 Plaintiff’s claims appear to be focused on two houses in Buckeye, Arizona, that
10 previously were held in the John Priestly, Sr. Trust. Plaintiff sues the Internal Revenue
11 Service, the Public Integrity Section of the United States Department of Justice, three
12 judges, some attorneys, and others. His 21-page complaint contains a rambling narrative
13 that appears to allege various wrongs committed by Defendants, including violations of
14 various state and federal statutes. The complaint also describes a case, apparently filed in
15 Cleveland County, Oklahoma, where Plaintiff claims to have received a default judgment
16 against some party, labeled “Trustee,” and Plaintiff now seeks an execution of that
17 judgment under Fed. R. Civ. P. 69. Plaintiff makes additional requests from the Court,
18 including that the Court require an accounting of the trust, a criminal investigation, and
19 other forms of relief that are not clear.

20 Plaintiff alleges a number of facts in his amended complaint, but most are
21 incomplete and fail to either identify the actor or provide needed context. Furthermore,
22 the complaint frequently fails to connect Plaintiff’s alleged facts to his claims. Plaintiff
23 also includes several attachments in his complaint, and occasionally cites them. These
24 attachments include legal documents filed in a state court in Oklahoma, excerpts of
25 testimony, news article on an Oklahoma state judge, internet comments reacting to the
26 article, photocopied checks, an unauthenticated letter from Randi Jo Haley, as well as a
27 number of financial documents, diagrams, and hand written charts.

28 The Court has carefully reviewed the complaint, and finds it defective. The

1 amended complaint fails to state the basis for this Court’s jurisdiction, the legal nature of
2 Plaintiff’s claim, or the actions of Defendants that give rise to liability.

3 **A. Rule 8.**

4 As an initial matter, the Court finds that the entire complaint may be dismissed
5 under Rule 8. That rule provides that a complaint should contain “a short and plain
6 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
7 8(a)(2). “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). A
8 complaint that fails to comply with these requirements may be dismissed. *See McHenry*
9 *v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir. 1996).

10 Plaintiff fails to allege specific facts showing how each Defendant violated the
11 particular right at issue in a given count. Plaintiff scatters facts throughout the complaint
12 and includes allegations that seem irrelevant. The Court will therefore dismiss the
13 complaint with leave to file a second amended complaint.

14 **B. Immune Parties.**

15 Plaintiff sues three judges. Specifically, Plaintiff states that “[t]hree Judges have
16 an affirmative duty under 58 O.S. 234 Chapter 3 that is not discretionary, and have
17 repeatedly refused to use the statutory tools at their disposal to compel the accounting or
18 prevent or remedy damages caused by third parties in their courts.” Doc. 13 at 18. As
19 best the Court can surmise, Plaintiff alleges that Oklahoma judges ordered an accounting
20 of the trust in question and have not fulfilled their duty to enforce the order.

21 The Court need not sift through more because each judge in question is entitled to
22 judicial immunity for decision made in the adjudication of cases. *Forrester v. White*, 484
23 U.S. 219, 227 (1988) (“When applied to the paradigmatic judicial acts involved in
24 resolving disputes between parties who have invoked the jurisdiction of a court, the
25 doctrine of absolute judicial immunity has not been particularly controversial.”) Because
26 each violation Plaintiff alleges against these judges stems from a decision made from the
27 bench, Plaintiff’s claims may not stand.

28

1 **C. Jurisdiction.**

2 A federal court must have both subject matter and personal jurisdiction to hear a
3 claim. Plaintiff bears the burden of demonstrating that jurisdiction is appropriate.
4 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). When a
5 plaintiff fails to allege facts sufficient to establish both subject matter and personal
6 jurisdiction, his claims must be dismissed.

7 **1. Subject Matter Jurisdiction.**

8 A court has subject matter jurisdiction over claims that arise under federal law
9 (“arising under” jurisdiction), or claims involving parties that are completely diverse and
10 an amount in controversy greater than \$75,000 (“diversity” jurisdiction). 28 U.S.C. §
11 1331-32. Plaintiff appears to argue that the Court has diversity jurisdiction. *See* Doc. 13
12 at 4 (“The compensatory damages far exceed the Federal Jurisdictional minimum of
13 \$75,000”). Although Plaintiff alleges an amount in controversy greater than the federal
14 minimum, he fails to allege the citizenship of any party and thus does not establish
15 diversity jurisdiction.

16 Plaintiff also seems to argue that the Court has “arising under” jurisdiction, and
17 may exercise supplemental jurisdiction over Plaintiff’s state law claims. Specifically,
18 Plaintiff alleges that the Court has jurisdiction under 42 U.S.C. §§ 1942, 1983, 1985,
19 1986, “U.S.C. Chapter 12, and 18 U.S.C. Chapter 63.” Doc. 13 at 6, 18. If Plaintiff is
20 able to state a claim under one of the listed statutes, the Court does have subject matter
21 jurisdiction.

22 **2. Personal Jurisdiction.**

23 Subject matter jurisdiction alone is not sufficient. A court must also have personal
24 jurisdiction over the parties involved. “Federal courts ordinarily follow state law in
25 determining the bounds of their jurisdiction over persons.” *Walden v. Fiore*, 134 S. Ct.
26 1115, 1121 (2014) (citation omitted). Arizona has authorized its courts to exercise
27 jurisdiction to the maximum extent permitted by the Due Process Clause of the U.S.
28 Constitution. *See* Ariz. R. Civ. P. 4.2(a). Thus, courts in the District of Arizona may

1 exercise jurisdiction over a defendant who is not physically present in Arizona if the
2 defendant has minimum contacts with the State, such that the suit can be maintained
3 without offending traditional notions of fair play and substantial justice. *Int'l Shoe Co. v.*
4 *Washington*, 326 U.S. 310, 316 (1945).

5 Plaintiff fails to allege how any party is connected with Arizona. Plaintiff's only
6 Arizona reference is to two houses in Buckeye, Arizona, which Plaintiff alleges were
7 purchased with funds from the trust. Plaintiff does not allege who purchased them, when,
8 or from where. Instead, Plaintiff states that he is entitled to an "Execution of Judgment of
9 Constructive Trust" on the two houses pursuant to Rule 69. Doc. 13 at 11. Plaintiff has
10 failed to allege sufficient facts to show that any Defendant has a meaningful connection
11 with Arizona such that the Court may exercise personal jurisdiction over it.

12 **D. Federal Law Claims.**

13 Plaintiff alleges that Defendants have engaged in violations of 42 U.S.C. §1942,
14 § 1983, § 1985, § 1986, and "U.S.C. Chapter 12, and 18 U.S.C. Chapter 63." Doc. 13 at
15 6, 18. Plaintiff also asserts that Defendants have "violate[d] the federally protected civil
16 rights of the Plaintiff under the first, sixth and fourteenth amendments[.]" *Id.* at 7.
17 Plaintiff fails to adequately state a claim for any of these wrongs.

18 **1. 42 U.S.C. § 1942, "U.S.C. Chapter 12."**

19 42 U.S.C. § 1942 does not exist. Similarly, the Court cannot determine what
20 claim Plaintiff is attempting to make with regard to "U.S.C. chapter 12." It appears
21 Plaintiff is attempting to assert a § 1983 claim.

22 **2. 42 U.S.C. § 1983.**

23 "To state a claim for relief in an action brought under § 1983, [plaintiffs] must
24 [allege] that they were deprived of a right secured by the Constitution or laws of the
25 United States, and that the alleged deprivation was committed under color of state law."
26 *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). Plaintiff fails to state a
27 claim under § 1983 because he has not identified what conduct, if any, was conducted by
28 a state actor.

1 Plaintiff does name the Internal Revenue Service and the Department of Justice
2 Public Integrity Section as “respondent[s]” (Doc. 13 at 9-10), but he fails to identify any
3 conduct by these parties that could be considered a deprivation of his constitutional
4 rights. Plaintiff does allege that the I.R.S. violated his Fifth Amendment rights because
5 he “has been delayed in discovering that he has plausibly overpaid the I.R.S. nearly
6 \$60,000[,]” and that the Public Integrity Section violated his Sixth and Fourteenth
7 Amendment rights by apparently failing to investigate an “‘ethics crisis’ in the state of
8 Alaska.” *Id.* But Plaintiff’s factual allegations fail to show that he was “deprived of a
9 right secured by the Constitution or the laws of the United States” by either of these
10 government entities.

11 A defendant acts under color of state law where he or she exercises “power
12 possessed by virtue of state law and made possible only because the wrongdoer is clothed
13 with the authority of state law.” *West v. Atkins*, 487 U.S. 42, 49 (1988) (quotation marks
14 and citation omitted). Plaintiff fails to allege that any other Defendant acted with the
15 authority of state law, and thus cannot maintain a claim against them under § 1983.

16 **3. Claims Under § 1985 and § 1986**

17 Plaintiff alleges that this Court's jurisdiction is based in part on 42 U.S.C. § 1985
18 and § 1986. But the complaint does not contain any allegations of race-based
19 discrimination and fails to allege sufficient facts to suggest a meeting of the minds to
20 support a conspiracy claim. Plaintiff therefore fails to state claims under § 1985 and
21 § 1986.

22 **4. 18 U.S.C. Chapter 63.**

23 Plaintiff attempts to assert a claim under 18 U.S.C. Chapter 63. That chapter is
24 contained within the Crimes and Criminal Procedures portion of the United States Code,
25 and covers “Mail Fraud and Other Fraud Offenses.” 18 U.S.C. Ch. 63, §§ 1341-51.
26 Plaintiff’s complaint fails to allege facts sufficient to identify, much less state a claim
27 under, any specific statute, and fails to suggest how he can bring civil claims under
28 criminal statutes.

1 **5. Enforcement of Judgment under Rule 69.**

2 Plaintiff seeks to enforce a default judgment he claims was obtained in a State
3 Court proceeding in Oklahoma. Plaintiff states:

4 Pursuant to Rule 69, Execution of Judgment of Constructive Trust on two
5 houses and one vehicle described in the Default Judgment (see exhibits- 1-
6 4) rendered in January 2016 after lengthy delays and - fair warnings to the
7 Trustee. The Trustees have filed a motion to Vacate which was denied.
8 They have failed to raise a timely appeal. This complies with comity of the
9 courts.

10 Doc. 13 at 11.

11 A party must have obtained a final judgment prior to seeking its enforcement
12 under Rule 69. Under Rule 54, a judgment is defined as “a decree and any order from
13 which an appeal lies.” Fed. R. Civ. P. 54(a). Plaintiff submits Exhibits 1 through 4 as
14 evidence that he has obtained a final judgment. Exhibits 1 through 4 contain a
15 handwritten summary order from the District Court of Cleveland County (Doc. 13 at 25),
16 a filing titled “Counterclaims” in the same court by John Priestly, Jr. (*id.* at 26-31), an
17 “Amended Answer with Crossclaims Briefed” (*id.* at 32-37), a “Motion for Partial
18 Summary Judgment” (*id.* at 38-39), and a “Journal Entry” (*id.* at 40). It appears that John
19 Priestly, Jr., Plaintiff here, was the defendant in the Cleveland County Action, and all
20 filings attached, save the summary order and journal entry, were made by him. *Id.*

21 Plaintiff has not shown sufficient information for the Court to enforce judgment
22 under Rule 69. The handwritten summary order is difficult to read, but it appears to be
23 signed by a Judge Virgin and states that the “Court finds [plaintiff] is in default as to all
24 motions pending. [Defendant/John Priestly, Jr.] to provide Court [with] proposed order.”
25 *Id.* at 25. Plaintiff does not submit his subsequently proposed order, or the Cleveland
26 County Court’s acceptance of that order. Instead, he submits previously filed documents
27 that he filed. Plaintiff has not shown that a final judgment was entered upon which the
28 Court may act. Accordingly, Plaintiff’s request for the Court to enforce judgment under
Rule 69 will also be dismissed.

1 **E. State Law Claims.**

2 As noted above, Plaintiff has failed to establish that this Court has diversity
3 jurisdiction over his claims. Accordingly, the Court may only hear state law claims by
4 exercising supplemental jurisdiction in conjunction with a federal law claim establishing
5 subject matter jurisdiction. Because Plaintiff has failed to state a claim regarding any
6 federal cause of action, the Court will not exercise supplemental jurisdiction over
7 Plaintiff's state law claims.

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

9 “A pro se litigant must be given leave to amend his or her complaint unless it is
10 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”
11 *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988). The Court will
12 dismiss the amended complaint without prejudice and allow Plaintiff one more
13 opportunity to file an amended complaint that states a claim for relief. Plaintiff shall
14 have until **April 28, 2017** to file an amended complaint that fully complies with this order
15 and Rule 8 of the Federal Rules of Civil Procedure.

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

26 The “short and plain statement of the claim” required by Rule 8(a)(2) must not
27 only designate a cause of action, but must also include enough factual allegations to
28 render the claim plausible. *Iqbal*, 556 U.S. at 677. Such factual allegations must provide

1 enough information to “allow[] the court to draw the reasonable inference that the
2 defendant[s are] liable for the misconduct alleged.” *Id.* at 678.

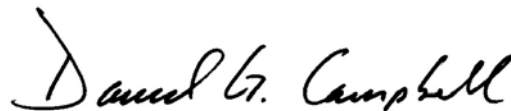
3 If Plaintiff fails to prosecute this action or to comply with the rules or any Court
4 order, the Court may dismiss the action with prejudice pursuant to Federal Rule of Civil
5 Procedure 41(b). *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
6 (holding that the district court did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

8 Plaintiff is advised that this is his final opportunity to amend his complaint. This
9 will be his third attempt, and if he fails again to state a claim, this case likely will be
10 dismissed with prejudice.

11 **IT IS ORDERED:**

- 12 1. Plaintiff’s amended complaint (Doc. 13) is **dismissed without prejudice**.
- 13 2. Plaintiff shall have one more opportunity to file an amended complaint that
14 complies fully with this order and Rule 8 of the Federal Rules of Civil
15 Procedure. Plaintiff may file a second amended complaint on or before
16 **April 28, 2017**.
- 17 3. The Clerk of Court shall terminate this action without further order of the
18 Court if Plaintiff fails to file a second amended complaint by **May 1, 2017**.
- 19 4. Plaintiff’s motion to order U.S. Marshal’s service to serve Plaintiff’s
20 complaint (Doc. 15) is **denied** without prejudice.

21 Dated this 10th day of April, 2017.

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24 _____
25 David G. Campbell
26 United States District Judge
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