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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Stephen Paul Ditko,  
Plaintiff,  
v.  
Brian Fabiano, FabCom, and Fabiano  
Communications,  
Defendants.

No. CV-17-00132-PHX-JZB

**ORDER**

Pending before the Court is Plaintiff Stephen Paul Ditko’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2), which the Court will grant. However, as detailed below, the Court will dismiss Plaintiff’s Complaint (Doc. 1) because it fails to comply with Rule 8 of the Federal Rules of Civil Procedure. The Court will allow Plaintiff leave to amend his Complaint to include facts sufficient to state a claim for relief.

**I. Application to Proceed in District Court Without Prepaying Fees or Costs**

In Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs, he declares under penalty of perjury that he is unable to pay the filing fee and other costs associated with this case. Plaintiff has presented financial information to support his Application. Given Plaintiff’s lack of significant income, the Court will grant his Application.

**II. Screening of In Forma Pauperis Complaint**

**a. Legal Standards**

1 For cases proceeding *in forma pauperis*, Congress provided that a district court  
2 “shall dismiss the case at any time if the court determines” that the “allegation of poverty  
3 is untrue” or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim  
4 on which relief may be granted,” or “seeks monetary relief against a defendant who is  
5 immune from such relief.” 28 U.S.C. § 1915(e)(2); *see also Lopez v. Smith*, 203 F.3d  
6 1122, 1126 n.7 (9th Cir. 2000) (noting that section 1915(e) applies to all in forma  
7 pauperis complaints, not merely those filed by prisoners). Accordingly, “section 1915(e)  
8 not only permits but requires a district court to dismiss an in forma pauperis complaint  
9 that fails to state a claim.” *Lopez*, 203 F.3d at 1127.

10 Rule 8(a) of the Federal Rules of Civil Procedure provides that to state a claim for  
11 relief, a complaint must contain (1) “a short and plain statement of the grounds for the  
12 court’s jurisdiction,” (2) “a short and plain statement of the claim showing that the  
13 pleader is entitled to relief,” and (3) “a demand for the relief sought.” The complaint also  
14 must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
15 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl.*  
16 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plaintiff must allege facts sufficient “to  
17 raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. Further,  
18 the allegations “may not simply recite the elements of a cause of action, but must contain  
19 sufficient allegations of underlying facts to give fair notice and to enable the opposing  
20 party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

21 **b. Plaintiff’s Complaint**

22 Plaintiff appears to assert claims pursuant to the Arizona Employment Protection  
23 Act, A.R.S. § 23-1501(a)(3)(a). Plaintiff names Brian Fabiano, FabCom, and Fabiano  
24 Communications as Defendants, but asserts only the following allegations:

25 **Jurisdiction**  
26 Phoenix Division

27 **Complaint**

28 In violation of ARS 23-1501. Severability of employment  
relationships; protection from retaliatory discharges;

1 exclusivity of statutory remedies in employment.

2 3. An employee has a claim against an employer for  
3 termination of employment only if one of more of the  
4 following circumstances have occurred:

5 (a) The employer has terminated the employment relationship  
6 of an employee in breach of an employment contract.

### 7 **Demand**

8 The Statutory Remedy provided or in the alternative all back  
9 pay from date of firing, January 19, 2016 including IRS wage  
10 garnishments payments for one year plus any and all penalties  
11 and fines issued by the IRS for default of agreement.

12 (Doc. 1.)

13 The Court will dismiss Plaintiff's Complaint because it fails to allege facts  
14 sufficient to establish this Court has subject matter jurisdiction over Plaintiff's claim.  
15 Unlike state courts, federal courts only have jurisdiction over a limited number of cases,  
16 and those cases involve either a controversy between citizens of different states (diversity  
17 jurisdiction) or a question of federal law (federal question jurisdiction). *See* 28 U.S.C. §§  
18 1331, 1332. The United States Supreme Court has stated that a federal court must not  
19 disregard or evade the limits on its subject matter jurisdiction. *Owen Equip. & Erection*  
20 *Co. v. Kroger*, 437 U.S. 365, 374 (1978). The United States Code specifies the  
21 requirements for federal subject matter jurisdiction based on diversity:

22 (a) The district courts shall have original jurisdiction of all  
23 civil actions where the matter in controversy exceeds the sum  
24 or value of \$ 75,000, exclusive of interest and costs, and is  
25 between--

26 (1) citizens of different States;

27 (2) citizens of a State and citizens or subjects of a foreign  
28 state, except that the district courts shall not have original  
jurisdiction under this subsection of an action between  
citizens of a State and citizens or subjects of a foreign state  
who are lawfully admitted for permanent residence in the  
United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or  
subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title [28  
USCS § 1603(a)], as plaintiff and citizens of a State or of  
different States.

1 28 U.S.C. § 1332(a).

2 Here, Plaintiff fails to allege any grounds for this Court’s jurisdiction. Plaintiff  
3 does not attempt to assert a federal claim in his Complaint. Plaintiff also fails to allege  
4 any basis for diversity jurisdiction, including the citizenship of any of the parties.  
5 Additionally, although Plaintiff seeks “[t]he Statutory Remedy or in the alternative all  
6 back pay from date of firing,” he does not specify the damages he seeks in his Complaint  
7 and the Court cannot discern if his claim meets the minimum amount in controversy  
8 amount. Therefore, Plaintiff has failed to plead facts sufficient to show jurisdiction.

9 Further, Plaintiff fails to allege *any* facts to support his claims and, therefore, has  
10 failed to state a claim for relief pursuant to Rule 8 of the Federal Rules of Civil  
11 Procedure. A.R.S. § 23-1501 provides the following:

12 2. The employment relationship is severable at the pleasure of  
13 either the employee or the employer unless both the employee  
14 and the employer have signed a written contract to the  
15 contrary setting forth that the employment relationship shall  
16 remain in effect for a specified duration of time or otherwise  
17 expressly restricting the right of either party to terminate the  
18 employment relationship. Both the employee and the  
19 employer must sign this written contract, or this written  
20 contract must be set forth in the employment handbook or  
21 manual or any similar document distributed to the employee,  
if that document expresses the intent that it is a contract of  
employment, or this written contract must be set forth in a  
writing signed by the party to be charged. Partial performance  
of employment shall not be deemed sufficient to eliminate the  
requirements set forth in this paragraph. Nothing in this  
paragraph shall be construed to affect the rights of public  
employees under the Constitution of Arizona and state and  
local laws of this state or the rights of employees and  
employers as defined by a collective bargaining agreement.

22 3. An employee has a claim against an employer for  
23 termination of employment only if one or more of the  
following circumstances have occurred:

24 (a) The employer has terminated the employment relationship  
25 of an employee in breach of an employment contract, as set  
26 forth in paragraph 2 of this subsection, in which case the  
remedies for the breach are limited to the remedies for a  
breach of contract.

27 Here, Plaintiff fails to assert any facts in his Complaint to support his claim.  
28 Plaintiff does not allege the existence of a written contract, with any Defendant, that

1 meets the requirements of § 23-1501(2), facts that show any of the Defendants breached  
2 the contract, or any resulting damages from an alleged breach by Defendants. Rather, he  
3 cites to portions of § 23-1501 and demands unspecified damages. Therefore, the Court  
4 will dismiss Plaintiff's Complaint for failure to comply with Rule 8 of the Federal Rules  
5 of Civil Procedure.

### 6 **III. Leave to Amend**

7 The Court will give Plaintiff an opportunity, if he so chooses, to amend his  
8 Complaint to assert factual allegations sufficient to state a claim for relief. *See Lopez*,  
9 203 F.3d at 1127 (when dismissing for failure to state a claim, "a district court should  
10 grant leave to amend even if no request to amend the pleading was made, unless it  
11 determines that the pleading could not possibly be cured by the allegation of other facts")  
12 (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). In the amended  
13 complaint, Plaintiff must write out, in short, plain statements, (1) the rights he believes  
14 were violated, (2) the name of the person or entity who violated each right, (3) exactly  
15 what that individual or entity did or failed to do, (4) how the action or inaction of that  
16 person or entity is connected to the violation of each right, and (5) what specific injury  
17 was suffered because of the other person's or entity's conduct.

18 Plaintiff is warned that if he elects to file an amended complaint and he fails to  
19 comply with the Court's instructions explained in this Order or the Federal Rules of Civil  
20 Procedure, the action will be dismissed pursuant to section 28 U.S.C. § 1915(e) and/or  
21 Rule 41(b) of the Federal Rules of Civil Procedure. *See McHenry*, 84 F.3d at 1180  
22 (affirming dismissal with prejudice of amended complaint that did not comply with Rule  
23 8(a)); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673-74 (9th Cir. 1981)  
24 (affirming dismissal of amended complaint that was "equally as verbose, confusing, and  
25 conclusory as the initial complaint").

26 Accordingly,

27 **IT IS ORDERED** that Plaintiff's Application to Proceed in District Court  
28 Without Prepaying Fees or Costs (Doc. 2) is granted.

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**IT IS FURTHER ORDERED** that Plaintiff's Complaint (Doc. 1) is dismissed.

**IT IS FURTHER ORDERED** that Plaintiff is granted leave to file an amended complaint by **June 8, 2017**.

**IT IS FURTHER ORDERED** that if Plaintiff elects to file an amended complaint, the amended complaint may not be served until and unless the Court screens the amended complaint pursuant to 28 U.S.C. § 1915(e)(2).

**IT IS FURTHER ORDERED** that if Plaintiff elects not to file an amended complaint by **June 8, 2017**, the Clerk shall dismiss this action without further order of this Court.

Dated this 9th day of May, 2017.

  
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Honorable John Z. Boyle  
United States Magistrate Judge