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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Alice Minch,

10 Plaintiff,

11 v.

12 Arizona State Board of Nursing, *et al.*,13 Defendants.
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No. CV-17-02525-PHX-JJT

ORDER

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16 At issue is *pro se* Plaintiff Alice Minch's Application for Leave to Proceed *In*
17 *Forma Pauperis* (Doc. 2). Having determined that Plaintiff is unable to pay the Court's
18 fees, the Court grants the Application. However, as set forth below, upon screening
19 Plaintiff's Complaint (Doc. 1, Compl.) pursuant to 28 U.S.C. § 1915(e)(2), the Court finds
20 that Plaintiff fails to state a plausible claim on which this Court may grant relief.

21 **I. LEGAL STANDARDS**22 **A. 28 U.S.C. § 1915(e)(2)**

23 For cases in which a party is permitted to proceed *in forma pauperis*—that is, the
24 party lacks the means to pay court fees—Congress provided that a district court “shall
25 dismiss the case at any time if the court determines” that the “allegation of poverty is
26 untrue” or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim on
27 which relief may be granted,” or “seeks monetary relief against a defendant who is immune
28 from such relief.” 28 U.S.C. § 1915(e)(2). Section 1915(e) applies to all *in forma pauperis*

1 proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000). “It is also clear that
2 section 1915(e) not only permits but requires a district court to dismiss an *in forma*
3 *pauperis* complaint that fails to state a claim.” *Id.* at 1127.

4 **B. Sufficiency of a Claim**

5 A complaint must include “a short and plain statement of the claim showing that the
6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The complaint must contain “sufficient
7 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
8 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.
9 544, 570 (2007)). A dismissal under Rule 12(b)(6) for failure to state a claim can be based
10 on either (1) the lack of a cognizable legal theory or (2) insufficient facts to support a
11 cognizable legal claim. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
12 1990). The Court is to construe a *pro se* plaintiff’s complaint “liberally” and afford the
13 plaintiff “the benefit of any doubt.” *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012)
14 (citation omitted). However, even where a complaint has the factual elements of a cause of
15 action present but scattered throughout the complaint and not organized into a “short and
16 plain statement of the claim,” it may be dismissed for failure to satisfy Rule 8(a). *Sparling*
17 *v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988).

18 **II. ANALYSIS**

19 **A. Pleading Requirements**

20 Plaintiff’s Complaint alleges that Defendants violated Title VII of the Civil Rights
21 Act of 1964 by discriminating against Plaintiff on the basis of her religion. (Compl. 7–8.)
22 Plaintiff has named as Defendants the Arizona State Board of Nursing and twenty
23 individuals, all of whom Plaintiff lists as either current or former members of the Board.
24 (Compl. 1–6.) Although the extent of Plaintiff’s alleged injury is not entirely clear from
25 the face of the Complaint, the Court construes the Complaint as challenging the
26 revocation of Plaintiff’s nursing license by Defendants. (Compl. 22.)

27 Title VII prohibits “employer[s],” “employment agenc[ies],” and “labor
28 organizations” from discriminating on the basis of “race, color, religion, sex, or national

1 origin.” 42 U.S.C § 2000e-2(a)-(c). The Act, however, further defines an “employer” as
2 “a person engaged in an industry affecting commerce who has fifteen or more employees
3 for each working day in each of twenty or more calendar weeks in the current or
4 preceding calendar year, and any agent of such a person.” 42 U.S.C. § 2000e(b). As such,
5 the plain text of Title VII indicates that it does not apply to professional licensing boards,
6 such as the Arizona State Board of Nursing and its agents, when acting in a licensing
7 capacity. *See Haddock v. Bd. of Dental Exam’rs*, 777 F.2d 462, 463–64 (9th Cir. 1985)
8 (“The Board is neither an ‘employer,’ an ‘employment agency,’ nor a ‘labor
9 organization’ within the meaning of the Act.”). Plaintiff fails to allege that Defendants
10 either paid her wages or engaged her services, nor does she allege that any employer-
11 employee relationship has ever existed between the parties. Therefore, Plaintiff fails to
12 state a cognizable claim against Defendants under Title VII. *See Haddock*, 777 F.2d at
13 464.

14 **B. Leave to Amend**

15 If a defective complaint can be cured, the plaintiff is entitled to amend the
16 complaint before the action is dismissed. *See Lopez*, 203 F.3d at 1127–30. Here, the
17 Court will give Plaintiff an opportunity to amend her Complaint, but any Amended
18 Complaint must meet the requirements of the Federal Rules of Civil Procedure.

19 For links to the Federal Rules of Civil Procedure and Local Rules as well as
20 information about creating a complaint and filing it in this Court, Plaintiff may refer to the
21 section entitled “For those Proceeding Without an Attorney” on the Court’s website,
22 www.azd.uscourts.gov.

23 **IT IS THEREFORE ORDERED** granting Plaintiff Alice Minch’s Application
24 for Leave to Proceed *In Forma Pauperis* (Doc. 2).

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

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