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NOT FOR PUBLICATION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 Cynthia J Watson,

No. CV-17-03783-PHX-JJT

10 Plaintiff,

ORDER

11 v.

12 Office of Inspector General, *et al.*,13 Defendants.
1415 At issue is *pro se* Plaintiff Cynthia Watson's Application to Proceed in District
16 Court without Prepaying Fees or Costs (Doc. 2).17 **I. LEGAL STANDARDS**18 **A. 28 U.S.C. § 1915(e)(2)**19 For cases in which a party is permitted to proceed *in forma pauperis*, Congress
20 provides that a district court "shall dismiss the case at any time if the court determines" that
21 the "allegation of poverty is untrue" or that the "action or appeal" is "frivolous or
22 malicious," "fails to state a claim on which relief may be granted," or "seeks monetary
23 relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2).
24 Section 1915(e) applies to all *in forma pauperis* proceedings. *Lopez v. Smith*, 203 F.3d
25 1122, 1129 (9th Cir. 2000). "It is also clear that section 1915(e) not only permits but
26 requires a district court to dismiss an *in forma pauperis* complaint that fails to state a
27 claim." *Id.* at 1127. "The standard for determining whether a plaintiff has failed to state a
28 claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal

1 Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*,
2 668 F.3d 1108, 1112 (9th Cir. 2012).

3 **B. Sufficiency of a Claim**

4 A complaint must include “a short and plain statement of the claim showing that the
5 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The complaint must contain “sufficient
6 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
7 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.
8 544, 570 (2007)). The Court is to construe a *pro se* plaintiff’s complaint “liberally” and
9 afford the plaintiff “the benefit of any doubt.” *Watison*, 668 F.3d at 1112 (citation omitted).

10 **II. ANALYSIS**

11 Upon review of Plaintiff’s Complaint (Doc. 1, Compl.), the Court finds that the
12 Complaint fails to comply with Federal Rules of Civil Procedure 8 and 10(b). Rule 8(a)
13 requires that:

14 A pleading which sets forth a claim for relief, whether an original claim,
15 counter-claim, cross-claim, or third-party claims, shall contain (1) a short
16 and plain statement of the grounds upon which the court’s jurisdiction
17 depends, unless the court already has jurisdiction and the claim needs no
18 new grounds of jurisdiction to support it, (2) a short and plain statement of
19 the claim showing that the pleader is entitled to relief; and (3) a demand for
20 the relief sought, which may include relief in the alternative or different
21 types of relief.

18 Fed. R. Civ. P. 8(a).

19 “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1).
20 Furthermore, the complaint must contain “sufficient factual matter, accepted as true, to
21 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
22 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Even where a
23 complaint has the factual elements of a cause of action present but scattered throughout the
24 complaint and not organized into a “short and plain statement of the claim,” it may be
25 dismissed for failure to satisfy Rule 8(a). *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635,
26 640 (9th Cir. 1988).

27 Rule 10(b) requires that:

28 A party must state its claims or defenses in numbered paragraphs, each
limited as far as practicable to a single set of circumstances. A later

1 pleading may refer by number to a paragraph in an earlier pleading. If
2 doing so would promote clarity, each claim founded on a separate
transaction or occurrence—and each defense other than a denial—must be
stated in a separate count or defense.

3 Fed. R. Civ. P. 10(b).

4 Moreover, Plaintiff's Complaint must give Defendant "fair notice of what
5 [Plaintiff's] claim is and the grounds upon which it is based." *Holgate v. Baldwin*, 425
6 F.3d 671, 676 (9th Cir. 2005). This includes some factual basis for each claim asserted
7 and the specific legal theory supporting the claim. "Threadbare recitals of the elements of
8 a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556
9 U.S. 678.

10 Though Plaintiff's allegations are not entirely clear, the Court reads Plaintiff's
11 Complaint to allege constitutional injuries under *Bivens* and 42 U.S.C. § 1983 for the
12 placement of Plaintiff's name in the Office of Inspector General's Exclusions Database.
13 For her alleged injuries, Plaintiff requests \$500,780,000 in damages. To the extent that
14 Plaintiff brings a *Bivens* claim against the Office of the Inspector General ("OIG"), her
15 claim fails. *Bivens* itself does not waive federal sovereign immunity and provide a cause
16 of action for damages against government agencies. *Arensberg v. United States*, 757 F.2d
17 971, 980 (9th Cir. 1985); *see also FDIC v. Meyer*, 510 U.S. 471, 486 (1994). Therefore,
18 Plaintiff's claims for damages against OIG are dismissed.

19 Further, to the extent that Plaintiff's claims under *Bivens* and § 1983 lie against
20 individual employees of OIG and the Arizona Department of Public Safety, Plaintiff fails
21 to meet the Rule 8 requirements with regard to stating a claim. Plaintiff alleges that she
22 had a number of telephone and email conversations with Defendant Frances and that
23 Frances was "overjoyed with excitement of the accomplishment [sic] of what this database
24 had done for IG." As to Defendants Ford and Bainer, Plaintiff again merely alleges that
25 she had a number of telephone and email interactions with Defendants. Finally, as to
26 Defendant "Rose at DPS Psych Unit," Plaintiff makes no individualized allegations.

27 Plaintiff's allegations are general, conclusory, and devoid of any facts showing,
28 for example, what each Defendant did, said, did not do, or did not say, and why and

1 action or inaction violates any law or the Constitution. It is impossible from the pleadings
2 for this Court or for Defendants to have notice of any specific or general acts taken by
3 Defendants that Plaintiff claims to be contrary to law. The Court concludes Plaintiff's
4 Complaint fails to state a claim upon which relief may be granted and it will dismiss the
5 action without prejudice.

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

10 With regard to the Application to Proceed in District Court Without Prepaying
11 Fees or Costs (Doc. 2), the Court finds that the Application is not clear enough for the
12 Court to meaningfully evaluate Plaintiff's ability to pay the costs of these proceedings.
13 For example, although Plaintiff provides her specific take home wages, she fails to
14 provide with specificity her monthly expenses and financial obligations.

15 **IT IS THEREFORE ORDERED** dismissing Plaintiff's Complaint (Doc. 1).

16 **IT IS FURTHER ORDERED** that Plaintiff may file an Amended Complaint that
17 complies with the Federal Rules of Civil Procedure no later than 21 days from the date of
18 this order. If no Amended Complaint is timely filed, the Clerk shall dismiss this action
19 without further Order of the Court.

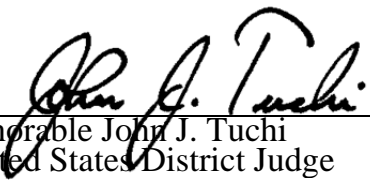
20 **IT IS FURTHER ORDERED** striking Plaintiff's Application to Proceed in
21 District Court Without Prepaying Fees or Costs because Plaintiff provided insufficient
22 detail. If Plaintiff files an Amended Complaint, Plaintiff may either file an Amended
23 Application to Proceed in District Court Without Prepaying Fees or Costs containing the
24 required information, or pay the Court's filing fee.

25 **IT IS FURTHER ORDERED** that if Plaintiff elects to file an Amended
26 Complaint, it may not be served on Defendant until and unless the Court screens the
27 Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2). If and when the Court gives
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Plaintiff leave to serve an Amended Complaint, Plaintiff shall be responsible for service and may do so by request for waiver under Federal Rule of Civil Procedure 4.

Dated this 30th day of October, 2017.



Honorable John J. Tuchi
United States District Judge