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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Nancy Patricia Fichtner,
10 Plaintiff,

11 v.

12 United States of America, et al.,
13 Defendants.
14

No. CV-18-00744-PHX-DJH

ORDER

15 This matter is before the Court on Plaintiff's First Amended Complaint¹ ("FAC")
16 (Doc. 11). In a prior Order, the Court granted Plaintiff's Application to Proceed in District
17 Court without Prepaying Fees or Costs, otherwise known as a motion for leave to proceed
18 *in forma pauperis* ("IFP") (Doc. 8). Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court then
19 screened Plaintiff's original Complaint (Doc. 1) and found Plaintiff's allegations failed to
20 state a claim for relief. (Doc. 8 at 4). The Court granted Plaintiff leave to amend. (*Id.*)

21 **I. LEGAL STANDARDS**

22 The determination that Plaintiff may proceed IFP does not end the inquiry under 28
23 U.S.C. § 1915. When a party has been granted IFP status, the Court must review the
24 complaint to determine whether the action:

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26 ¹ While the document is actually titled "Redacted Seconded Amended Complaint" this was
27 Plaintiff's First Amended Complaint. Plaintiff initially filed the First Amended Complaint
28 (Doc. 9), which contained personal identifiable information that was required to be
redacted pursuant to Federal Rule of Civil Procedure 5.2(a). Therefore, the Court struck
the First Amended Complaint (Doc. 9) and directed Plaintiff to file a redacted version of
the Amended Complaint. (Doc. 10). Thus, the Court will refer to this Amended Complaint
as the First Amended Complaint ("FAC").

- 1 (i) is frivolous or malicious;
2 (ii) fails to state a claim on which relief may be granted; or
3 (iii) seeks monetary relief against a defendant who is immune
4 from such relief.

5 *See* 28 U.S.C. § 1915(e)(2)(B).² In conducting such a review, “[i]t is . . . clear that section
6 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint that
7 fails to state a claim.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citation
8 omitted).

9 Rule 8(a) of the Federal Rules of Civil Procedure requires that:

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

20 While Rule 8 does not demand detailed factual allegations, “it demands more than
21 an unadorned, the defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556
22 U.S. 662, 678 (2009).³ “Threadbare recitals of the elements of a cause of action, supported
23 by mere conclusory statements, do not suffice.” *Id.* A complaint “must contain sufficient
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25 ² “While much of § 1915 outlines how prisoners can file proceedings *in forma pauperis*,
26 §1915(e) applies to all *in forma pauperis* proceedings, not just those filed by prisoners.”
27 *Long v. Maricopa Cmty. College Dist.*, 2012 WL 588965, at *1 (D. Ariz. Feb. 22, 2012)
28 (citing *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (“[S]ection 1915(e) applies
to all *in forma pauperis* complaints . . .”); *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir.
2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”)
(citation omitted). Therefore, section 1915 applies to this non-prisoner IFP complaint.

³ “Although the *Iqbal* Court was addressing pleading standards in the context of a Rule
12(b)(6) motion, the Court finds that those standards also apply in the initial screening of
a complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A since *Iqbal* discusses the
general pleading standards of Rule 8, which apply in all civil actions.” *McLemore v. Dennis
Dillon Automotive Group, Inc.*, 2013 WL 97767, at *2 n.1 (D. Idaho Jan. 8, 2013).

1 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.*
2 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible
3 “when the plaintiff pleads factual content that allows the court to draw the reasonable
4 inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550
5 U.S., at 556). A complaint that provides “labels and conclusions” or “a formulaic recitation
6 of the elements of a cause of action will not do.” *Twombly*, 550 U.S., at 555. Nor will a
7 complaint suffice if it presents nothing more than “naked assertions” without “further
8 factual enhancement.” *Id.* at 557.

9 **II. FAC STATUTORY SCREENING**

10 In her FAC, Plaintiff provides that in 2009, while working at “Grand Junction,
11 Colorado VA Hospital,” she submitted a “Beneficial Suggestion” as part of President
12 Obama’s SAVE award competition. (Doc. 11 at 4). Plaintiff alleges that her “Beneficial
13 Suggestion” won the SAVE award competition and received “Presidential endorsement”
14 and was “implement nationally on March 1, 2011 as a mandated VA Directive #2011-
15 001[;] therefore, she was entitled to compensation for her “Beneficial Suggestion” pursuant
16 to 5 U.S.C. § 4505. Plaintiff, however, avers that she was never compensated.

17 In the FAC, Plaintiff named the United States, the United States Department of
18 Veterans Affairs, and several individual Department of Veterans Affairs employees. As a
19 general matter, the United States is immune from suit and can be sued only to the extent
20 that it has waived its immunity. *See United States v. Orleans*, 425 U.S. 807, 814 (1976).
21 Plaintiff fails to allege any facts or cite any authority that the United States has waived its
22 sovereign immunity for a suit of this nature. Additionally, while Plaintiff provides that the
23 VA failed to compensate her, the statute she cites states does not require an agency to
24 compensate for suggestions, it only provides that an agency may compensate an employee.
25 *See* 5 U.S.C. § 4505 (“An agency may pay or grant an award under this subchapter . . .”).
26 Plaintiff must state factual allegations and explain how those allegations establish a
27 violation of a relevant legal authority. In short, Plaintiff must show she is entitled to relief.
28 She has not done so here. The Court will therefore dismiss Plaintiff’s FAC with leave to

1 amend.

2 **III. LEAVE TO AMEND**

3 In accordance with the well-settled law in this Circuit, however, because “it is not
4 ‘absolutely clear’ that [Plaintiff] could not cure [the Complaint’s] deficiencies by
5 amendment,” the Court will give him the opportunity to do so. *See Jackson v. Barnes*, 749
6 F.3d 755, 767 (9th Cir. 2014) (citations omitted); *see also Lopez*, 203 F.3d at 1131 (en
7 banc) (internal quotation marks and citations omitted) (holding that a pro se litigant must
8 be given leave to amend his complaint “if it appears at all possible that the plaintiff can
9 correct the defect” in the complaint); Fed. R. Civ. P. 15(a)(2) (leave to amend should be
10 “freely” given “when justice so requires[]”).

11 Plaintiff’s FAC must be amended to address the deficiencies identified above.
12 Plaintiff’s Second Amended Complaint should follow the form detailed in Rule 7.1 of the
13 Local Rules of Civil Procedure (“LRCiv”).⁴ Additionally, Plaintiff is advised that his
14 Second Amended Complaint must satisfy the pleading requirements of Rule 8.
15 Specifically, the Second Amended Complaint shall contain a short and plain statement of
16 the grounds upon which the Court’s jurisdiction depends, a short and plain statement of
17 each specific claim asserted against each Defendant, and a demand for the relief sought.
18 Fed.R.Civ.P. 8(a)(1)-(3). These pleading requirements are to be set forth concisely in
19 separate and discrete numbered paragraphs. The Second Amended Complaint also must
20 set forth each legal claim for relief in a separate count (i.e., count one, count two, etc.).
21 Given this specific guidance on pleading requirements, the Court is not inclined to grant
22 Plaintiff leave to file a Third Amended Complaint if the Second Amended Complaint is
23 found to be deficient. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)
24 (affirming dismissal with prejudice where district court had instructed *pro se* plaintiff

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26 ⁴ Examples of different types of complaints demonstrating the proper form can be found in
27 the appendix of forms that is contained with the Federal Rules of Civil Procedure (forms
28 11–21). These forms, as well as the Federal Rules of Civil Procedure and the Local Rules,
as well as other information for individuals filing without an attorney may be found on the
District Court’s internet web page at www.azd.uscourts.gov/.

1 regarding deficiencies in prior order dismissing claim with leave to amend); *Ascon Props.,*
2 *Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) (“The district court’s discretion
3 to deny leave to amend is particularly broad where plaintiff has previously amended the
4 complaint.”).

5 Within **thirty (30) days** from the date of entry of this Order, Plaintiff may submit
6 an amended complaint. Plaintiff must clearly designate on the face of the document that it
7 is the “Second Amended Complaint.” The Second Amended Complaint must be retyped
8 in its entirety and may not incorporate any part of the original Complaint or the FAC by
9 reference. Plaintiff should also be aware that “an amended complaint supercedes the
10 original complaint and renders it without legal effect” *Lacey v. Maricopa County*,
11 693 F.3d 896, 927 (9th Cir. 2012) (en banc). Thus, after amendment, the Court will treat
12 the first amended complaint as nonexistent. *Id.* at 925.

13 **IV. WARNING**

14 Plaintiff is advised that if she elects to file a Second Amended Complaint but fails
15 to comply with the Court’s instructions explained in this Order, the action will be dismissed
16 pursuant to section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil
17 Procedure. *See McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996) (affirming dismissal
18 with prejudice of amended complaint that did not comply with Rule 8(a)). If Plaintiff fails
19 to prosecute this action, or if she fails to comply with the rules or any court order, the Court
20 may dismiss the action with prejudice pursuant to Rule 41(b) of the Federal Rule of Civil
21 Procedure. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992); *Ghazali v. Moran*,
22 46 F.3d 52, 54 (9th Cir. 1995).

23 Plaintiff is directed to become familiar with the Local Rules and the Federal Rules
24 of Civil Procedure and is advised of the Free Self-Service Clinic at the Phoenix courthouse.
25 For information, visit the Court’s internet site at: www.azd.uscourts.gov. Proceed to the
26 box entitled *Information for Those Proceeding Without an Attorney* and then the link
27 entitled *Federal Court Self-Service Center Phoenix*.

28 Accordingly,

