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

Kelli Nicole Stoner,

Plaintiff,

v.

State of Arizona, et al.,

Defendant.

No. CV-23-01065-PHX-SMM
ORDER

Pending before the Court is *pro se* Plaintiff’s Application for Leave to Proceed In Forma Pauperis (Doc. 2) and Complaint (Doc. 1). For the following reasons, the Court will grant the Application and exercise its authority pursuant to 28 U.S.C. § 1915(e)(2) to dismiss the Complaint without prejudice and with partial leave to amend.

I. Factual Background¹

Plaintiff is a resident of Phoenix who sought to take advantage of various COVID-19 pandemic-era state and federal economic relief programs. (Doc. 1 at 2-3). During the height of the pandemic, the federal government created the Emergency Rental Assistance Program (“ERAP”), which provided rental assistance to qualified individuals. (*Id.* at 2) Such assistance was managed and distributed by the individual States and Arizona residents could receive ERAP assistance through the Arizona Department of Economic Security (“DES”), a state agency. (*Id.* at 2-3). However, Arizona and the DES did not allow

¹ The following facts are based on those alleged in Plaintiff’s Complaint, which this Court must accept as true for the purposes of this screening order. Similarly, all inferences have been drawn in Plaintiff’s favor.

1 residents of Phoenix to receive ERAP assistance, instead pointing such residents towards
2 “similar city or county-operated programs in the[] area.” (Id.)

3 On June 16, 2021, residents of Phoenix were informed that they could apply for
4 utility assistance through ERAP but remained ineligible for rental assistance. (Id.) That
5 same day, Plaintiff applied for utility assistance with DES. (Id.) The application was
6 approved on June 22, 2021. (Id.)

7 In June 2022, Phoenix residents were finally allowed to apply for rental assistance
8 through ERAP. (Id.) Plaintiff applied for such assistance on June 25, 2022. (Id.) At an
9 unknown date, DES denied this application, informing Plaintiff that she was ineligible for
10 rental assistance. (Id.) However, around the same time and in a series of separate notices,
11 DES asked Plaintiff to provide further documentation and information related to her
12 application and at times provided contradictory information as to the status of her
13 application. (Id. at 2-3). DES provided Plaintiff with multiple reasons for the denial of her
14 application. (Id. at 3).

15 In November 2022, Plaintiff appealed DES’ denial of her application for ERAP
16 rental assistance. (Id.) On December 6, 2022, DES approved the application, determining
17 that Plaintiff was eligible to receive eighteen months of ERAP rental assistance and had a
18 \$65,000 of lifetime benefit remaining. (Id.) On February 22, 2023, Plaintiff filed re-
19 certification for ERAP rental assistance, seeking rental assistance for April through June
20 of 2023. (Id.)

21 Around February of 2023, DES informed renters that the ERAP rental assistance
22 program would be drawing to a close and that, from April 1, 2023, it would no longer be
23 accepting any new applications for utility assistance or re-certifications for ERAP rental
24 assistance. (Id.) DES noted that claimants who had already had re-certifications approved
25 for future payments would still receive any such approved future payments. (Id. at 3-4).

26 On April 4, 2023, DES informed Plaintiff that she had reached the 18-month lifetime
27 limit for ERAP rental assistance payments. (Id. at 4). Plaintiff filed an appeal, and a hearing
28 was held before an administrative law judge on April 25, 2023. (Id.) At the hearing, DES

1 stated that before receiving payments from DES, Plaintiff had already received ERAP
2 rental assistance payments from the City of Phoenix. (Id.) DES stated that these earlier
3 payments, in addition to payments Plaintiff received under a state utility assistance program
4 and the ERAP rental assistance payments she had received from DES all contributed to her
5 reaching the 18-month limit. (Id.) Plaintiff rebutted these statements. (Id.) Ultimately, the
6 administrative law judge conducting the hearing rejected Plaintiff’s appeal, finding that
7 Plaintiff was due two more months of rental assistance payments and no more, because
8 after those two months Plaintiff would reach the eighteen-month limit. (Id.)

9 On June 12, 2023, Plaintiff filed the present Complaint, seeking monetary damages;
10 declaratory relief; and an injunction pursuant to 5 U.S.C. § 552(a)(4)(B). (Doc. 1).

11 **II. Application for Leave to Proceed In Forma Pauperis**

12 Plaintiff’s Application for Leave to Proceed In Forma Pauperis states that Plaintiff’s
13 future monthly income will be substantially lower than her anticipated monthly expenses.
14 (Doc. 2). Because the Application, signed under penalty of perjury, indicates that Plaintiff
15 is financially unable to pay the filing fee, the Court will grant Plaintiff’s IFP application
16 and screen Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e)(2).

17 **III. Screening IFP Complaint Pursuant to 28 U.S.C. § 1915(e)(2)**

18 **A. Legal Standard**

19 When a party seeks to proceed without paying fees or costs, as Plaintiff does here,
20 a district court is required to “dismiss the case at any time if the court determines” that the
21 “allegation of poverty is untrue” or that the “action or appeal” is “frivolous or malicious,”
22 “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a
23 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2); see also Lopez v.
24 Smith, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (noting that § 1915(e) applies to all IFP
25 complaints, not merely those filed by prisoners). Accordingly, “section 1915(e) not only
26 permits but requires a district court to dismiss an in forma pauperis complaint that fails to
27 state a claim.” Lopez, 203 F.3d at 1127.

28 In addition, a pleading must contain “a short and plain statement of the claim

1 *showing* that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). The
2 pleading must “put defendants fairly on notice of the claims against them.” McKeever v.
3 Block, 932 F.2d 795, 798 (9th Cir. 1991). While Rule 8 does not demand detailed factual
4 allegations, “a complaint must contain sufficient factual matter, accepted as true, to ‘state
5 a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
6 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial
7 plausibility when the plaintiff pleads factual content that allows the court to draw the
8 reasonable inference that the defendant is liable for the misconduct alleged.” Id.

9 **B. Analysis**

10 As an initial matter, the Complaint’s caption on its cover page lists as
11 “Defendant(s)” “State of Arizona et. al.” (Doc. 1 at 1). The cover page does not reference
12 any other Defendants. (Id.) However, the Complaint’s “Jurisdiction” section names DES
13 as “[t]he defendant.” (Id. at 2). The Court therefore interprets the Complaint as listing both
14 the State of Arizona and DES as Defendants.

15 Plaintiff’s Complaint does not clearly delineate its claims, and the Court must
16 attempt to assign Plaintiff’s arguments to legally cognizable claims under various statutes
17 referenced therein. As best it can see, the Complaint presents three claims. First, an
18 administrative appeal of an administrative law judge’s denial of Plaintiff’s appeal. Second,
19 a negligence claim against DES for its mismanagement of ERAP and related programs.
20 Third, a 42 U.S.C. § 1983 claim. The Complaint also devotes three pages to a discussion
21 of the Freedom of Information Act and to temporary restraining orders and preliminary and
22 permanent injunctions that the District Court for the District of Delaware allegedly issued
23 against DES or the Federal Emergency Management Agency (FEMA). (Doc. 1 at 9-11).
24 However, the Court is unable to link these arguments to a cognizable legal claim, and
25 FEMA is not a party to this case.

26 The Court need not, however, analyze for each of her three claims whether
27 Plaintiff has presented sufficient factual matter, accepted as true, to state a claim to relief
28 that is plausible on its face. Under the Eleventh Amendment to the Constitution of the

1 United States, neither a state nor a state agency may be sued in federal court without its
2 consent. Pennhurst St. Sch. & Hosp., 465 U.S. 89, 100 (1984); Taylor v. List, 880 F.2d
3 1040, 1045 (9th Cir. 1989). Arizona has not manifested the intention to waive its
4 sovereign immunity under the Eleventh Amendment from suit in federal court.
5 Accordingly, the State of Arizona will be dismissed as a Defendant from this action.
6 Similarly, DES' immunity has been neither waived nor abrogated and it is therefore also
7 immune from suit. See e.g., Patterson v. Ariz. Dep't of Econ. Sec., 689 Fed. Appx. 565,
8 565 (9th Cir. 2017). Thus, DES must also be dismissed as a Defendant in this action.
9 Because there are no remaining Defendants, the Court must dismiss the Complaint as a
10 whole.

11 **IV. Conclusion**

12 Screening the Complaint pursuant to 28 U.S.C. § 1915(e)(2), the Court finds that
13 the Eleventh Amendment bars Plaintiff's claims against both Defendants, and thus the
14 Complaint fails to state a claim on which relief may be granted. The Court will therefore
15 dismiss the complaint with partial leave to amend. Plaintiff's claims against Arizona and
16 DES are dismissed with prejudice, meaning that if Plaintiff wishes to file an amended
17 complaint, she must make her claims against new defendants.

18 Accordingly,

19 **IT IS HEREBY ORDERED granting** Plaintiff's Application for Leave to
20 Proceed In Forma Pauperis (Doc. 2).

21 **IT IS FURTHER ORDERED dismissing without prejudice** Plaintiff's
22 Complaint (Doc. 1), pursuant to 28 U.S.C. § 1915(e)(2).

23 **IT IS FURTHER ORDERED dismissing with prejudice** Plaintiff's claims
24 against the State of Arizona and DES.

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