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2 **NOT FOR PUBLICATION**

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

9 Robin J. Reidhead,
10 Plaintiff,

11 vs.

12 Heber Overgaard Fire Department; Stan
13 Wagamen, Chief; Paul Rehman, Deputy
14 Chief,
15 Defendants.

) No. CV-09-8212-PCT-GMS

) **ORDER**

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17 The Court has reviewed Defendant Rehman’s Letter re Summons (Dkt. # 15);
18 Plaintiff’s Summonses Returned Executed (Dkt. ## 16,17); and Defendant Heber Overgaard
19 Fire Department’s Letter re Summons (Dkt. # 18). It appears Plaintiff has failed to properly
20 serve Defendants with the Summons and the Amended Complaint pursuant to Federal Rule
21 of Civil Procedure 4(m).

22 The Court will screen Plaintiff’s Amended Complaint (Dkt. 11) pursuant to 28 U.S.C.
23 § 1915(e)(2). Pursuant to that screening Plaintiff’s Amended Complaint is dismissed.

24 **I. Screening Complaint Under 28 U.S.C. § 1915(e)(2)**

25 **A. Legal Standards**

26 **1. 28 U.S.C. § 1915(e)(2)**

27 Congress provided with respect to in forma pauperis cases that a district court “shall
28 dismiss the case at any time if the court determines” that the “allegation of poverty is untrue”

1 or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim on which
2 relief may be granted,” or “seeks monetary relief against a defendant who is immune from
3 such relief.” 28 U.S.C. § 1915(e)(2). While much of § 1915 outlines how prisoners can file
4 proceedings in forma pauperis, section 1915(e) applies to all in forma pauperis proceedings
5 not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). “It
6 is also clear that section 1915(e) not only permits but requires a district court to dismiss an
7 in forma pauperis complaint if it fails to state a claim or if it is frivolous or malicious.

8 “[A] complaint, containing both factual allegations and legal conclusions is frivolous
9 where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319,
10 325 (1989). Furthermore, “a finding of factual frivolousness is appropriate when the facts
11 alleged rise to the level of the irrational or wholly incredible, whether or not there are
12 judicially recognized facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25,
13 33 (1992). “A case is malicious if it was filed with the intention or desire to harm another.”
14 *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005).

15 **2. Rule 8, Federal Rules of Civil Procedure**

16 A claim must be stated clearly enough to enable each defendant to frame a responsive
17 pleading. A complaint must contain “a short and plain statement of the claim showing that
18 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Each allegation must be simple,
19 concise, and direct.” Fed. R. Civ. P. 8(d)(1). In addition, the complaint must include “a
20 demand for the relief sought. . . .” Fed. R. Civ. P. 8(a)(3). Finally, it must also have “a short
21 and plain statement of the grounds for the court’s jurisdiction. Fed. R. Civ. P. 8(a)(1).

22 In order to assist litigants to understand the Rule 8(d) requirements that averments “be
23 simple, concise and direct,” Rule 84 of the Federal Rules of Civil Procedure provides
24 samples in an Appendix of Forms, which are “intended to indicate the simplicity and brevity
25 of statement which the rules contemplate.” *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir.
26 1996). Examples of types of complaints for different types of claims are contained in forms
27 10 through form 21. In addition to setting forth why the federal court has jurisdiction over
28 Plaintiff’s claims a complaint should fully set forth “who is being sued, for what relief, and

1 on what theory, with enough detail to guide discovery.” *McHenry*, 84 F.3d at 1177. In
2 addition, to satisfy Rule 8, each claim must be stated in a separate count. *Bautista v. Los*
3 *Angeles*, 216 F.3d 837, 840-41 (9th Cir. 2000).

4 **B. Analysis**

5 **1. Plaintiff’s Complaint**

6 Plaintiff’s complaint falls short of satisfying the requirements of Rule 8. It does not
7 allege a legal basis for this Court to exercise jurisdiction over this lawsuit. To the extent that
8 Plaintiff seeks to bring a claim for sex discrimination under Title VII, Plaintiff must first
9 exhaust the procedure available to make her claim with the Equal Employment Opportunity
10 Commission. Plaintiff has failed to certify that she has exhausted that procedure. *Sommattino*
11 *v. U.S.*, 255 F.3d 704 (9th Cir. 2001). She has not established, therefore, that this Court has
12 jurisdiction over her claim.

13 **2. Leave to Amend**

14 Plaintiff will be given an opportunity, if she so chooses, to amend her complaint. In
15 the amended complaint, Plaintiff must state what rights she believes were violated. *See Rizzo*
16 *v. Goode*, 423 U.S. 362, 371-72, 377 (1976), Each claim of an alleged violation must be set
17 forth in a separate count. The amended complaint must also state why the federal court has
18 jurisdiction over Plaintiff’s claims. Any amended complaint filed by Plaintiff must conform
19 to the requirements of Rule 8(a) and (d)(1) of the Federal Rules of Civil Procedure.

20 Plaintiff is advised that if she elects to file an amended complaint and if she fails to
21 comply with the Court’s instructions explained in this Order, the action will be dismissed
22 pursuant to section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil
23 Procedure. *See McHenry*, 84 F.3d at 1177 (affirming dismissal with prejudice of amended
24 complaint that did not comply with rule 8(a)); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d
25 671, 673-74 (9th Cir. 1965)(affirming dismissal without leave to amend second complaint
26 that was “so verbose, confused and redundant that its true substance, if any, [was] well
27 disguised”).

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IT IS HEREBY ORDERED that pursuant to 28 U.S.C. § 1915(e)(2) Plaintiff's Amended Complaint (Dkt. # 11) is dismissed for failure to comply with Rule 8, with leave to file an Amended Complaint by **April 30, 2010**.

IT IS FURTHER ORDERED that, if Plaintiff elects not to file an Amended Complaint by **April 30, 2010**, the Clerk shall dismiss this action without further Order of the Court.

IT IS FURTHER ORDERED that, if Plaintiff elects to file an Amended Complaint the Complaint may not be served until and unless the Court screens the Amended Complaint pursuant to 18 U.S.C. § 1915(e)(2).

DATED this 31st day of March, 2010.



G. Murray Snow
United States District Judge