

1 **WO**

NOT FOR PUBLICATION

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9 Ernest Bishop,

No. CV-16-08087-PCT-JJT

10 Plaintiff,

ORDER

11 v.

12 Bridget Wicks,

13 Defendant.

14

15 At issue is *pro se* Plaintiff Ernest Bishop's Application to Proceed in District
16 Court Without Prepaying Fees or Costs (Doc. 2). Having determined that Plaintiff is
17 unable to pay the Court's fees, the Court grants the Application. However, as set forth
18 below, upon screening Plaintiff's Complaint (Doc. 1, Compl.) pursuant to 28 U.S.C.
19 § 1915(e)(2), the Court has found that Plaintiff has not satisfied the pleading requirements
20 of the Federal Rules of Civil Procedure. The Court therefore dismisses the Complaint with
21 permission to file an Amended Complaint by June 29, 2016.

22 **I. LEGAL STANDARDS**23 **A. 28 U.S.C. § 1915(e)(2)**

24 For cases in which a party is permitted to proceed *in forma pauperis*—that is, the
25 party lacks the means to pay court fees—Congress provided that a district court “shall
26 dismiss the case at any time if the court determines” that the “allegation of poverty is
27 untrue” or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim on
28 which relief may be granted,” or “seeks monetary relief against a defendant who is immune

1 from such relief.” 28 U.S.C. § 1915(e)(2). Section 1915(e) applies to all *in forma pauperis*
2 proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000). “It is also clear that
3 section 1915(e) not only permits but requires a district court to dismiss an *in forma*
4 *pauperis* complaint that fails to state a claim.” *Id.* at 1127.

5 **B. Subject Matter Jurisdiction and Pleading in Federal Court**

6 Unlike state courts, federal courts only have jurisdiction over a limited number of
7 cases, and those cases typically involve either a controversy between citizens of different
8 states (“diversity jurisdiction”) or a question of federal law (“federal question
9 jurisdiction”). *See* 28 U.S.C. §§ 1331, 1332. The United States Supreme Court has stated
10 that a federal court must not disregard or evade the limits on its subject matter
11 jurisdiction. *Owen Equip. & Erections Co. v. Kroger*, 437 U.S. 365, 374 (1978). Thus, a
12 federal court is obligated to inquire into its subject matter jurisdiction in each case and to
13 dismiss a case when subject matter jurisdiction is lacking. *See Valdez v. Allstate Ins. Co.*,
14 372 F.3d 1115, 1116 (9th Cir. 2004); Fed. R. Civ. P. 12(h)(3).

15 Federal Rule of Civil Procedure 8(a) provides that a complaint must include “a
16 short and plain statement of the grounds for the court’s jurisdiction” and “a short and
17 plain statement of the claim showing that the pleader is entitled to relief.” In other words,
18 to proceed in federal court, a plaintiff must allege enough in the complaint for the court to
19 conclude it has subject matter jurisdiction. *See* Charles Alan Wright & Arthur R. Miller,
20 *5 Fed. Practice & Procedure* § 1206 (3d ed. 2014). The complaint must also contain
21 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
22 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
23 550 U.S. 544, 570 (2007)).

24 **II. ANALYSIS**

25 Plaintiff’s Complaint alleges that Defendant Bridget Wicks, a Nurse Practitioner at
26 the Guidance Center in Flagstaff, Arizona, conducted an HIV test of Plaintiff despite his
27 explicit statement that he did not want to be tested. (Compl. at 2–4.) He alleges that
28 Ms. Wicks violated his civil rights in so doing. (Compl. at 3–4.) Applying a benefit-of-

1 any-doubt standard to this claim, the Court assumes that Plaintiff attempts to bring a claim
2 under 42 U.S.C. § 1983, which provides for a private right of action against a state actor for
3 a constitutional violation.

4 To state a § 1983 claim, a plaintiff must first allege state action. Determining
5 whether an entity is subject to suit under § 1983 is the “same question posed in cases
6 arising under the Fourteenth Amendment: is the alleged infringement of federal rights
7 fairly attributable to the [government]?” *Sutton v. Providence St. Joseph Med. Ctr.*, 192
8 F.3d 826, 835 (9th Cir. 1999) (citing *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982)).
9 For a court to answer this question in the affirmative, a plaintiff must show that two
10 requirements are met: (1) the deprivation to the plaintiff by the entity “must result from a
11 governmental policy,” and (2) “the party charged with the deprivation must be a person
12 who may fairly be said to be a [governmental] actor.” *Id.*

13 Here, the allegations in the Complaint do not meet either requirement. The
14 Complaint contains no allegations that the procedures used by Ms. Wicks are part of a
15 governmental policy. Moreover, Ms. Wicks, is, based on the information available to the
16 Court, not a governmental actor. Accordingly, Plaintiff fails to allege a state action
17 sufficient to raise a § 1983 claim. *See id.* at 836-43.

18 The Court cannot discern any other federal claim based on Plaintiff’s Complaint.
19 The Court also does not find that the Complaint alleges any state law claim relying on
20 diversity jurisdiction, but the Court notes that such a claim would fail because Plaintiff
21 has not alleged that his claim involves a controversy between citizens of different states.
22 Rather, he only alleges that he lives in Arizona and that the incident and Defendant’s
23 actions took place in Arizona.

24 In sum, Plaintiff’s claims fail because he does not allege facts sufficient for the
25 Court to find it has subject matter jurisdiction over his claims. Plaintiff may amend his
26 Complaint to the extent he can allege subject matter jurisdiction by either showing his
27 claims involve a controversy between citizens of different states, and the amount in
28 controversy exceeds \$75,000, or a question of federal law, identifying the specific claim

1 and what statute applies, if any. Plaintiff may only amend his Complaint to allege a
2 § 1983 claim if he can allege facts showing state action.

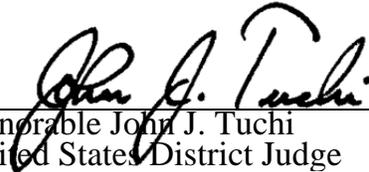
3 IT IS THEREFORE ORDERED granting Plaintiff's Application to Proceed in
4 District Court Without Prepaying Fees or Costs (Doc. 2).

5 IT IS FURTHER ORDERED that Plaintiff's Complaint (Doc. 1) is dismissed with
6 permission to file an Amended Complaint by June 29, 2016.

7 IT IS FURTHER ORDERED that if Plaintiff does not file an Amended Complaint
8 by June 29, 2016, the Clerk shall dismiss this action without further Order of this Court.

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

14 Dated this 10th day of June, 2016.

15
16 
17 Honorable John J. Tuchi
18 United States District Judge
19
20
21
22
23
24
25
26
27
28