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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Annamarie D. Reithmiller,

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No. CV 12-2034-PHX-JAT

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Plaintiff,

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**ORDER**

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vs.

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Electors for the State,

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Defendant.

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On September 28, 2012, the Court issued the following Order:

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Pending before the Court is Plaintiff's motion to proceed in forma pauperis. Before the Court orders service of an in forma pauperis complaint, the Court may screen the complaint. Specifically:

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**A. 28 U.S.C. § 1915(e)(2)**

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Congress provided with respect to in forma pauperis cases that a district court "shall dismiss the case at any time if the court determines" that the "allegation of poverty is untrue" or that the "action or appeal" is "frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). While much of section 1915 outlines how prisoners can file proceedings in forma pauperis, section 1915(e) applies to all in forma pauperis proceedings, not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)("section 1915(e) applies to all in forma pauperis complaints"). "It is also clear that section 1915(e) not only permits but requires a district court to dismiss an in forma pauperis complaint that fails to state a claim." *Id.* Therefore, this court must dismiss an in forma pauperis complaint if it fails to state a claim or if it is frivolous or malicious.

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1 "[A] complaint, containing both factual allegations and legal  
 2 conclusions, is frivolous where it lacks an arguable basis either  
 3 in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325  
 4 (1989). Furthermore, "a finding of factual frivolousness is  
 5 appropriate when the facts alleged rise to the level of the  
 6 irrational or wholly incredible, whether or not there are  
 7 judicially recognized facts available to contradict them."  
*Denton v. Hernandez*, 504 U.S. 25, 33 (1992). "A case is  
 8 malicious if it was filed with the intention or desire to harm  
 9 another." *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir.  
 10 2005).

### 7 **B. Rule 8, Federal Rules of Civil Procedure**

8 A claim must be stated clearly enough to enable a defendant to  
 9 frame a responsive pleading. A complaint must contain "a short  
 10 and plain statement of the claim showing that the pleader is  
 11 entitled to relief." Fed. R. Civ. P. 8(a). "Each averment of a  
 12 pleading shall be simple, concise, and direct." Fed. R. Civ. P.  
 13 8(e)(1). A complaint having the factual elements of a cause of  
 14 action present but scattered throughout the complaint and not  
 15 organized into a "short and plain statement of the claim" may be  
 16 dismissed for failure to satisfy Rule 8(a). *Sparling v. Hoffman*  
*Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988).

17 In order to assist litigants to understand the Rule 8(e)  
 18 requirements that averments "be simple, concise, and direct,"  
 19 Rule 84 of the Federal Rules of Civil Procedure provides  
 20 samples in an Appendix of Forms, which are "intended to  
 21 indicate the simplicity and brevity of statement which the rules  
 22 contemplate." *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir.  
 23 1996). An example is Form 9 (Complaint for Negligence):

1. Allegation of jurisdiction

2. On June 1, 1936, in a public highway called Boylston Street  
 in Boston, Massachusetts, defendant negligently drove a motor  
 vehicle against plaintiff, who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken,  
 and was otherwise injured, was prevented from transacting his  
 business, suffered great pain of body and mind, and incurred  
 expenses for medical attention and hospitalization in the sum of  
 one thousand dollars.

4. Wherefore plaintiff demands judgment against defendant in  
 the sum of \_\_\_\_ dollars and costs.

*Id.* "This complaint fully sets forth who is being sued, for what  
 relief, and on what theory, with enough detail to guide  
 discovery. It can be read in seconds and answered in minutes."

*Id.* In addition, to satisfy Rule 8, each claim must be stated in  
 a separate count. *Bautista v. Los Angeles*, 216 F.3d 837, 840-41  
 (9th Cir. 2000).

25 *Kennedy v. Andrews*, 2005 WL 3358205, \*2-\*3 (D. Ariz. 2005).

26 In this case, Plaintiff's initial filing, which she calls "motion for  
 27 declaratory orders and an interdict," fails to meet the requirements of Rule 8.  
 28 It appears, although it is unclear, that Plaintiff is seeking to enjoin the electors  
 for the state of Arizona from casting a vote for President Obama because he  
 is not a natural born citizen. Plaintiff further appears to be bringing this action

1 on behalf of herself and 649 other patients of a psychiatrist in Florida, whose  
 2 licence Plaintiff claims was fraudulent. The Court cannot determine how this  
 3 list of Plaintiffs is related to the claims against the electors of the state of  
 Arizona.

4 When a complaint fails to meet the requirements of Rule 8, and other  
 5 factors are present, the Court should grant leave to amend. *Bonanno v.*  
 6 *Thomas*, 309 F.2d 320, 322 (9th Cir. 1962). Although the Court is not  
 convinced that Plaintiff can cure the deficiencies in her original complaint, the  
 Court will nonetheless give Plaintiff ONE opportunity to amend the complaint.  
 Plaintiff must:

7 make clear [her] allegations in short, plain statements with each  
 8 claim for relief identified in separate sections. In the amended  
 9 complaint, Plaintiff must write out the rights [s]he believes  
 10 were violated, the name of the person who violated the right,  
 11 exactly what that individual did or failed to do, how the action  
 or inaction of that person is connected to the violation of  
 Plaintiff's rights, and what specific injury Plaintiff suffered  
 because of the other person's conduct. *See Rizzo v. Goode*, 423  
 12 U.S. 362, 371-72, 377 (1976). Each claim of an alleged  
 violation must be set forth in a separate count. Any amended  
 13 complaint filed by Plaintiff must conform to the requirements of  
 Rules 8(a) and [(d)(1)] of the Federal Rules of Civil Procedure.

14 *Kennedy*, 2005 WL 3358205, \*3 (D. Ariz. 2005).

15 Further, like the Plaintiff in *Kennedy*,

16 **Plaintiff is warned that if [s]he elects to file an**  
 17 **amended complaint and if [s]he fails to comply with the**  
 18 **Court's instructions explained in this order, the action will**  
 19 **be dismissed pursuant to section 28 U.S.C. § 1915(e) and/or**  
 20 **Rule 41(b) of the Federal Rules of Civil Procedure.** *See*  
 21 *McHenry*, 84 F.3d at 1177 (affirming dismissal with prejudice  
 22 of prolix, argumentative, and redundant amended complaint that  
 23 did not comply with Rule 8(a)); *Nevijel v. North Coast Life Ins.*  
*Co.*, 651 F.2d 671, 673-74 (9th Cir. 1981)(affirming dismissal  
 of amended complaint that was "equally as verbose, confusing,  
 and conclusory as the initial complaint"); *Corcoran v. Yorty*,  
 347 F.2d 222, 223 (9th Cir. 1965)(affirming dismissal without  
 leave to amend second complaint that was "so verbose, confused  
 and redundant that its true substance, if any, [was] well  
 disguised").

24 *Kennedy*, 2005 WL 3358205, \*3 (D. Ariz. 2005) (emphasis added).

25 Based on the foregoing,

26 **IT IS ORDERED** that Plaintiff's motion for declaratory orders and an  
 interdict (Doc. 1) is denied.

27 **IT IS FURTHER ORDERED** that Plaintiff shall file an amended  
 28 complaint within 30 days of the date of this Order. If Plaintiff fails to file an  
 amended complaint within 30 days, the Clerk of the Court shall enter judgment

1 of dismissal, without prejudice, for failure to comply with a Court order.

2 Doc. 6.

3 On October 15, 2012, Plaintiff filed an amended complaint. Doc. 7. In this 18 page  
4 amended complaint, Plaintiff still fails to meet Rule 8's pleading standard. First, she has  
5 failed to name any Defendants. Instead she names "Electors of the State of Arizona."  
6 However, those names are ascertainable, and generally, the Federal courts do not permit  
7 generic naming of Defendants.<sup>1</sup>

8 Second, and more importantly, Plaintiff fails to explain in any terms how the "Electors  
9 of the State of Arizona" have harmed her. Though the Court is taking liberties with the  
10 following summary, it appears Plaintiff is arguing and alleging that President Obama became  
11 involved in her divorce proceeding in Florida (Doc. 7 at 3). Plaintiff further alleges that  
12 President Obama's involvement in her divorce proceeding violated his Oath of Office (Doc.  
13 7 at 4). Thus, Plaintiff is now suing the Electors of the State of Arizona to enjoin them from  
14 casting their votes for President Obama because, Plaintiff claims, this alleged violation of his  
15 Oath of Office makes him ineligible to hold the office of the President (Doc. 7 at 4-5).  
16 Finally, Plaintiff claims she is suing on behalf of a class of 620 people who all suffered this  
17 same violation of President Obama's Oath of Office.

18 The Court finds that Plaintiff has failed to meet Rule 8's pleading standard. The Court  
19 further finds that Plaintiff has failed to state a claim against the "Electors of the State of  
20 Arizona" (which the Court has already found to be an improper Defendant). For these  
21 reasons, the Court will dismiss this case. Finally, the Court also finds that Plaintiff's  
22 complaint in this case falls into the category of "the irrational or wholly incredible." *See*  
23 *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (dismissal also appropriate when the facts  
24 alleged are "clearly baseless," "fanciful," "fantastic," and/or "delusional."). Thus, dismissal  
25 is also justified on this basis.

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27 <sup>1</sup> *See, e.g.*, Fed. R. Civ. P. 10(a); *Craig v. U.S.*, 413 F.2d 854, 856 (9th Cir.), *cert.*  
28 *denied*, 396 U.S. 987 (1969); *Molnar v. Nat'l Broadcasting Co.*, 231 F.2d 684, 686-87 (9th  
Cir. 1956).

