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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**

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10 DEBORAH ANN WILBURN

11 Plaintiff,

12 v.

13 MICK HOMANDO and SHARAN  
14 HOMANDO,

15 Defendants.

Case No. 1:18-cv-01152-LJO-EPG

**FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT THIS ACTION BE  
DISMISSED FOR FAILURE TO STATE A  
CLAIM**

(ECF No. 1)

**OBJECTIONS, IF ANY, DUE WITHIN  
THIRTY (30) DAYS**

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18 **I. BACKGROUND**

19 On August 27, 2018, Deborah Ann Wilburn (“Plaintiff”), proceeding *pro se* and *in*  
20 *forma pauperis*, commenced this action by filing a Complaint against Mick Homando and  
21 Sharan or Sarah Homando (collectively, “Defendants”). (ECF No. 1.) Plaintiff states that the  
22 Court has jurisdiction in this action because Defendants checked her social security, and both  
23 “Social Security” and the Fresno County Police Department are aware. Plaintiff alleges that  
24 Jimmy Homando, Rose Marie Diann, Charlan Gray, and Landia Gray, said that Mick Homando  
25 and Sarah Homando ran a background check on Plaintiff’s social security and has given out her  
26 information. *Id.* Plaintiff further alleges that Jimmy Homando and Mick Homando have asked  
27 to buy her prescription cough syrup for \$500.00. As relief, Plaintiff seeks a subpoena. *Id.*

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1 **II. SCREENING REQUIREMENT**

2 Under 28 U.S.C. § 1915(e)(2), the Court must conduct a review of an *in forma pauperis*  
3 complaint to determine whether it “state[s] a claim on which relief may be granted,” is  
4 “frivolous or malicious,” or “seek[s] monetary relief against a defendant who is immune from  
5 such relief.” If the Court determines that the complaint fails to state a claim, it must dismiss the  
6 complaint. *Id.* Leave to amend may be granted to the extent that the deficiencies of the  
7 complaint can be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.  
8 1995).

9 A complaint must contain “a short and plain statement of the claim showing that the  
10 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
13 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient  
14 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*,  
15 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as  
16 true, legal conclusions are not. *Id.* at 678.

17 In determining whether a complaint states an actionable claim, the Court must accept  
18 the allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738,  
19 740 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff,  
20 *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s  
21 favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must be  
22 held to less stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627  
23 F.3d 338, 342 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally  
24 construed after *Iqbal*).

25 **III. DISCUSSION**

26 Federal courts are courts of limited jurisdiction and their power to adjudicate is limited  
27 to that granted by Congress. *U.S. v. Sumner*, 226 F.3d 1005, 1009 (9th Cir. 2000). Pursuant to  
28 28 U.S.C. § 1331, federal courts have “original jurisdiction of all civil actions arising under the

1 Constitution, laws, or treaties of the United States.” “A case ‘arises under’ federal law either  
2 where federal law creates the cause of action or where the vindication of a right under state law  
3 necessarily turns on some construction of federal law.” *Republican Party of Guam v. Gutierrez*,  
4 277 F.3d 1086, 1088 (9th Cir. 2002) (internal punctuation omitted) (quoting *Franchise Tax Bd.*  
5 *v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8–9 (1983) (citations omitted)). “The  
6 presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint  
7 rule,’ which provides that federal jurisdiction exists only when a federal question is presented  
8 on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S.  
9 386, 392 (1987). As explained by the United States Court of Appeals for the Ninth Circuit in  
10 *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*:

11 Federal courts may exercise federal-question jurisdiction over an  
12 action in two situations. First, and most commonly, a federal  
13 court may exercise federal-question jurisdiction if a federal right  
14 or immunity is “‘an element, and an essential one, of the  
15 plaintiff’s cause of action.’” *Franchise Tax Bd. v. Constr.*  
16 *Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 11, 103 S.Ct.  
17 2841, 77 L.Ed.2d 420 (1983) (quoting *Gully v. First National*  
18 *Bank*, 299 U.S. 109, 112, 57 S.Ct. 96, 81 L.Ed. 70 (1936)). Thus,  
19 the federal question on which jurisdiction is premised cannot be  
20 supplied via a defense; rather, the federal question must “be  
21 disclosed upon the face of the complaint, unaided by the answer.”  
22 *Phillips Petroleum Co. v. Texaco, Inc.*, 415 U.S. 125, 127–28, 94  
23 S.Ct. 1002, 39 L.Ed.2d 209 (1974) (per curiam). Second, a  
24 federal court may have such jurisdiction if a state-law claim  
25 “necessarily raise[s] a stated federal issue, actually disputed and  
26 substantial, which a federal forum may entertain without  
27 disturbing any congressionally-approved balance of federal and  
28 state judicial responsibilities.” *Grable & Sons Metal Prod., Inc. v.*  
*Darue Eng’g & Mfg.*, 545 U.S. 308, 314, 125 S.Ct. 2363, 162  
L.Ed.2d 257 (2005). Such a federal issue must be “a substantial  
one, indicating a serious federal interest in claiming the  
advantages thought to be inherent in a federal forum.” *Id.* at 313,  
125 S.Ct. 2363.

582 F.3d 1083, 1086–87 (9th Cir. 2009).

Plaintiff states that her claims arise under federal law. She alleges that both “Social Security” and the Fresno County Police Department are aware that Defendants have checked her social security and have given out her person information. The only relief requested is the

1 issuance of a subpoena. Based on review of the documents attached to the complaint, Plaintiff  
2 has complained to the police that individuals are harassing her by following her and speaking  
3 on a horn all day long. (ECF No. 1 at 6-41).

4 Essentially, Plaintiff is alleging that private individuals are harassing her, and she has  
5 notified the police of the harassment. These allegations do not implicate any federal law or  
6 federal issue. And, Plaintiff does not identify any federal law or federal issue under which to  
7 evaluate her claims. Thus, the Court is without jurisdiction to adjudicate this action.

8 Accordingly, Plaintiff fails to state a claim on which relief may be granted.

9 **IV. CONCLUSION AND RECOMMENDATIONS**

10 The Court finds that Plaintiff fails to state any claim on which relief may be granted as  
11 the Complaint does not present any federal question that would invoke the Court's jurisdiction.

12 Accordingly, the Court HEREBY RECOMMENDS that:

- 13 1. Pursuant to 28 U.S.C. §1915(e)(2)(B)(ii), this action be DISMISSED, with  
14 prejudice, based on Plaintiff's failure to state a claim on which relief may be  
15 granted; and
- 16 2. The Clerk of Court be directed to close this case.

17 These findings and recommendations are submitted to the district judge assigned to the  
18 case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days after being  
19 served with these findings and recommendations, Plaintiff may file written objections with the  
20 court. Such a document should be captioned, "Objections to Magistrate Judge's Findings and  
21 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
22 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
23 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24  
25 IT IS SO ORDERED.

26 Dated: October 16, 2018

27 /s/ Eric P. Gray  
28 UNITED STATES MAGISTRATE JUDGE