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

DEBORAH ANN WILBURN

Plaintiff,

v.

ROSE MARIE DIANN,

Defendant.

Case No. 1:18-cv-01153-DAD-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**

**I. BACKGROUND**

On August 27, 2018, Deborah Ann Wilburn (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, commenced this action by filing a Complaint against Rose Marie Diann (“Defendant”). (ECF No. 1.) Plaintiff alleges that Defendant was her case manager, and that Defendant sold her personal information and told her whereabouts to Jimmy Homando, a parolee. *Id.* Plaintiff further alleges that Defendant and Jimmy Homando have been harassing her. *Id.* As relief, Plaintiff seeks a subpoena. *Id.*

**II. SCREENING REQUIREMENT**

Under 28 U.S.C. § 1915(e)(2), the Court must conduct a review of a complaint to determine whether it “state[s] a claim on which relief may be granted,” is “frivolous or malicious,” or “seek[s] monetary relief against a defendant who is immune from such relief.” If

1 the Court determines that the complaint fails to state a claim, it must dismiss the complaint. *Id.*  
2 Leave to amend may be granted to the extent that the deficiencies of the complaint can be cured  
3 by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

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

12 In determining whether a complaint states an actionable claim, the Court must accept  
13 the allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738,  
14 740 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff,  
15 *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s  
16 favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must be  
17 held to less stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627  
18 F.3d 338, 342 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally  
19 construed after *Iqbal*).

### 20 **III. DISCUSSION**

21 Federal courts are courts of limited jurisdiction and their power to adjudicate is limited  
22 to that granted by Congress. *U.S. v. Sumner*, 226 F.3d 1005, 1009 (9th Cir. 2000). Pursuant to  
23 28 U.S.C. § 1331, federal courts have “original jurisdiction of all civil actions arising under the  
24 Constitution, laws, or treaties of the United States.” “A case ‘arises under’ federal law either  
25 where federal law creates the cause of action or where the vindication of a right under state law  
26 necessarily turns on some construction of federal law.” *Republican Party of Guam v. Gutierrez*,  
27 277 F.3d 1086, 1088 (9th Cir. 2002) (internal punctuation omitted) (quoting *Franchise Tax Bd.*  
28 *v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8–9 (1983) (citations omitted)). “The

1 presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint  
2 rule,’ which provides that federal jurisdiction exists only when a federal question is presented  
3 on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S.  
4 386, 392 (1987). As explained by the United States Court of Appeals for the Ninth Circuit in  
5 *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*:

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

19 582 F.3d 1083, 1086–87 (9th Cir. 2009).

20 Plaintiff states that her claims arise under federal law. Based on a review of the  
21 documents attached to the Complaint, Plaintiff has complained to the police that individuals are  
22 harassing her by following her and speaking on a horn all day long. (ECF No. 1 at 7-111).

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

27 Accordingly, Plaintiff fails to state a claim on which relief may be granted.  
28

1 **IV. CONCLUSION AND RECOMMENDATIONS**

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

4 Accordingly, the Court HEREBY RECOMMENDS that:

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

9 These findings and recommendations are submitted to the district judge assigned to the  
10 case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days after being  
11 served with these findings and recommendations, Plaintiff may file written objections with the  
12 court. Such a document should be captioned, “Objections to Magistrate Judge’s Findings and  
13 Recommendations.” Plaintiff is advised that failure to file objections within the specified time  
14 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
15 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

16 IT IS SO ORDERED.  
17

18 Dated: October 25, 2018

18 /s/ Eric P. Gray  
19 UNITED STATES MAGISTRATE JUDGE