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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CAROLINE BIRK,

No. CIV S-10-1039-MCE-CMK

Plaintiff,

vs.

ORDER

GATEWAY FUNDING CORP., et al.,

Defendants.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h), this court must dismiss an action “[w]henever it appears . . . that the court lacks jurisdiction of the subject matter” Because plaintiff, who is

1 not a prisoner, has been granted leave to proceed in forma pauperis, the court will screen the
2 complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h), the court will also consider as a
3 threshold matter whether it has subject-matter jurisdiction.

4 In this case, plaintiff alleges violations of the federal Truth in Lending Act as well
5 as violations of various state laws with respect to the refinancing of a loan secured by real
6 property located in Hammond Ranch, California, and subsequent foreclosure of that property.
7 The court concludes that it has subject matter jurisdiction and that the complaint is appropriate
8 for service by the United States Marshal without pre-payment of costs. If plaintiff desires service
9 of process by the United States Marshal without pre-payment of costs, plaintiff must comply
10 with the requirements outlined below. Plaintiff is warned that failure to comply with this order,
11 or otherwise effect service pursuant to Federal Rule of Civil Procedure 4, may result in dismissal
12 of the action for lack of prosecution and failure to comply with court rules and orders. See Local
13 Rule 11-110.

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. The Clerk of the Court shall issue a summons in a civil case, the
16 undersigned's new case documents, and an order setting this matter for an initial scheduling
17 conference;

18 2. The Clerk of the Court shall send plaintiff the summons, ten USM-285
19 forms, and a copy of the complaint;

20 3. Within 15 days from the date of this order, plaintiff shall complete the
21 summons by indicating the addresses of the named defendants and shall submit to the United
22 States Marshal at the address indicated below the following documents:

- 23 a. The completed summons;
- 24 b. One completed USM-285 form for each named defendant;
- 25 c. Eleven copies of the complaint; and

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1 d. Ten copies of the court’s initial scheduling conference order issued
2 herewith;

3 4. Within 20 days of the date of this order, plaintiff shall file a notice
4 indicating that the documents described above have been submitted to the United States Marshal;

5 5. The United States Marshal is directed to serve all process without pre-
6 payment of costs not later than 60 days from the date of this order, such service of process to be
7 completed by serving a copy of the summons, complaint, and initial scheduling conference order
8 on the defendants at the addresses provided by plaintiff; and

9 6. The Clerk of the Court is directed to serve a copy of this order on the
10 United States Marshal at 501 “P” Street, Sacramento, CA, 95814.

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12 DATED: May 6, 2010

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14 **CRAIG M. KELLISON**
15 UNITED STATES MAGISTRATE JUDGE
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