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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ABENA MCKENZIE,
Plaintiff,
v.
KENNETH LEE WATKINS,
Defendant.

No. 2:14-cv-1653-JAM-KJN PS

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff Abena McKenzie, proceeding without counsel, has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF No. 2.)¹ Plaintiff’s application in support of her request to proceed in forma pauperis makes the showing required by 28 U.S.C. § 1915. Accordingly, the undersigned grants plaintiff’s request to proceed in forma pauperis.

The determination that a plaintiff may proceed in forma pauperis does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

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¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 Importantly, a federal court also has an independent duty to assess whether federal subject
2 matter jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins.
3 Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that “the district court had
4 a duty to establish subject matter jurisdiction over the removed action sua sponte, whether the
5 parties raised the issue or not”); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir.
6 1996). A federal district court generally has original jurisdiction over a civil action when: (1) a
7 federal question is presented in an action “arising under the Constitution, laws, or treaties of the
8 United States” or (2) there is complete diversity of citizenship and the amount in controversy
9 exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a).

10 In this case, plaintiff alleges that she signed a contract with defendant Kenneth Lee
11 Watkins to store some of plaintiff’s property in his garage for about 6 months. However,
12 according to plaintiff, defendant subsequently began to verbally and sexually harass her, and
13 refused to return at least some of plaintiff’s property. The complaint does not identify any
14 specific claims or causes of action, but alleges that plaintiff suffered great mental distress and
15 harm to her health. (See generally ECF No. 1.)

16 Regardless of the merits of plaintiff’s claims, on which the court expresses no opinion, the
17 court concludes that it lacks federal subject matter jurisdiction over the action. Liberally
18 construed, plaintiff’s complaint alleges only potential state law tort, property, and/or contract
19 claims, and does not assert any federal claims; nor do any federal claims appear plausible based
20 on the factual allegations involved. Furthermore, even assuming that plaintiff seeks damages
21 exceeding \$75,000, there is no diversity of citizenship, because both plaintiff and defendant are
22 citizens of California. Therefore, the court lacks federal subject matter jurisdiction over the
23 action, and the court recommends that the action be dismissed on that basis. However, such
24 dismissal should be without prejudice, giving plaintiff an opportunity to pursue her claims in state
25 court, if she so desires.²

26
27 ² It may well be that plaintiff actually intended to file this action in state court, but inadvertently
28 filed it in federal court, because the complaint requests “the Court of California to please hold Mr.
Kenneth Lee Watkins accountable....” (ECF No. 1 at 3.)

