1		
2		
3		
4		
5		
6		
7		
8	UNITED STAT	ES DISTRICT COURT
9	FOR THE EASTERN	DISTRICT OF CALIFORNIA
10		
11	ELSINA KILPATRICK,	No. 2:15-cv-2233-GEB-KJN PS
12	Plaintiff,	
13	V.	ORDER AND
14	WFRPSN,	FINDINGS AND RECOMMENDATIONS
15		
16	Defendant.	
17		
18	Plaintiff Elsina Kilpatrick, who proceeds in this action without counsel, has requested	
19	leave to proceed in forma pauperis pursuant t	to 28 U.S.C. § 1915. $(ECF No. 2.)^1$ Pursuant to 28
20	U.S.C. § 1915, the court is directed to dismis	s the case at any time if it determines that the
21	allegation of poverty is untrue, or if the action	n is frivolous or malicious, fails to state a claim on
22	which relief may be granted, or seeks moneta	ry relief against an immune defendant.
23	For the reasons discussed below, the o	court concludes that it lacks federal subject matter
24	jurisdiction over this action. As such, the cou	art recommends that the action be dismissed without
25	prejudice, and that plaintiff's application to p	roceed in forma pauperis in this court be denied as
26	moot.	
27	¹ This case proceeds before the undersigned -	oursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C.
28	\$ 636(b)(1).	Juisuant 10 E.D. Cai. L.K. 502(C)(21) and 28 U.S.C.
		1

1	A federal court has an independent duty to assess whether federal subject matter
2	jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co. v.
3	Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that "the district court had a duty
4	to establish subject matter jurisdiction over the removed action sua sponte, whether the parties
5	raised the issue or not"); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir. 1996).
6	The court must sua sponte dismiss the case if, at any time, it determines that it lacks subject
7	matter jurisdiction. Fed. R. Civ. P. 12(h)(3). A federal district court generally has original
8	jurisdiction over a civil action when: (1) a federal question is presented in an action "arising
9	under the Constitution, laws, or treaties of the United States" or (2) there is complete diversity of
10	citizenship and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a).
11	Here, plaintiff's complaint alleges that defendant West Florin Representative Payee
12	Service & Nordhus, an entity that apparently disburses social benefits and other income for
13	individuals deemed incapable of managing their own resources, abused its power in managing
14	plaintiff's funds by allowing plaintiff's in-home support services ("IHSS") worker to receive a
15	monthly check from plaintiff's funds despite the IHSS worker already being paid by the State of
16	California. Plaintiff contends that she was taken advantage of, and that defendant's actions
17	constituted fraud and violated "trust law." It is unclear specifically what relief plaintiff seeks,
18	although it can be presumed that she seeks, at a minimum, recovery of any amounts alleged to
19	have been improperly paid to the IHSS worker. (See generally Complaint, ECF No. 1.)
20	Regardless of the merits of plaintiff's claims, on which the court expresses no opinion, the
21	court plainly lacks subject matter jurisdiction over the action. There is no federal question
22	jurisdiction, because plaintiff's complaint fails to assert any federal claims; nor does it appear
23	plausible that plaintiff could do so in this factual context. Additionally, because plaintiff and
24	defendant are both citizens of California, there is no diversity of citizenship jurisdiction.
25	Therefore, the court recommends that the action be dismissed for lack of subject matter
26	jurisdiction. However, such dismissal should be without prejudice, allowing plaintiff to pursue
27	any potential state law claims she may have in state court. The court expresses no opinion
28	regarding the merits of any such potential state law claims.

1	Accordingly, IT IS HEREBY RECOMMENDED that:	
2	1. The action be dismissed without prejudice for lack of subject matter jurisdiction.	
3	2. Plaintiff's motion to proceed <i>in forma pauperis</i> in this court (ECF No. 2) be denied as	
4	moot.	
5	3. The Clerk of Court be directed to close this case.	
6	In light of these recommendations, IT IS ALSO HEREBY ORDERED that all pleading,	
7	discovery, and motion practice in this action are stayed pending resolution of these findings and	
8	recommendations. Other than objections to the findings and recommendations or non-frivolous	
9	motions for emergency relief, the court will not entertain or respond to any pleadings or other	
10	filings until the findings and recommendations are resolved.	
11	These findings and recommendations are submitted to the United States District Judge	
12	assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen (14)	
13	days after being served with these findings and recommendations, any party may file written	
14	objections with the court and serve a copy on all parties. Such a document should be captioned	
15	"Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections	
16	shall be served on all parties and filed with the court within fourteen (14) days after service of the	
17	objections. The parties are advised that failure to file objections within the specified time may	
18	waive the right to appeal the District Court's order. <u>Turner v. Duncan</u> , 158 F.3d 449, 455 (9th	
19	Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).	
20	IT IS SO ORDERED AND RECOMMENDED.	
21	Dated: November 6, 2015	
22	Fordall P. Newman	
23	KENDALL J. NEWMAN UNITED STATES MAGISTRATE JUDGE	
24		
25		
26		
27		
28		
	3	