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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGELA NAILS,

No. C 12-00152 JSW

Plaintiff,

**ORDER DENYING WITHOUT  
PREJUDICE APPLICATION TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING COMPLAINT  
WITH LEAVE TO AMEND**

v.

WELLS FARGO BANK,

Defendant.

\_\_\_\_\_ /

On January 6, 2012, Plaintiff filed a Complaint in this action and applied to proceed *in forma pauperis*. In her Complaint, Plaintiff alleges that Wells Fargo improperly charged her “NSF” Fees, which based on the context of the complaint appears to refer to fees for insufficient funds. Plaintiff alleges that her total damages are \$3,641.98. The *in forma pauperis* statute provides that the Court shall dismiss the case if, *inter alia*, the Complaint fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). Federal courts are under a duty to raise and decide issues of subject matter jurisdiction *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed. R. Civ. P. 12; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). If the Court determines that subject matter jurisdiction is lacking, the Court must dismiss the case. *Id.*; Fed. R. Civ. P. 12(h)(3).

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United States District Court  
For the Northern District of California

1 Federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen v. Guardian Life*  
2 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts can only adjudicate cases which the  
3 Constitution or Congress authorize them to adjudicate: those cases involving diversity of  
4 citizenship (where the parties are from diverse states), or a federal question, or those cases to  
5 which the United States is a party. *See, e.g., Kokkonen v. Guardian Life Insurance Co. of*  
6 *America*, 511 U.S. 375 (1994). Federal courts are presumptively without jurisdiction over civil  
7 cases and the burden of establishing the contrary rests upon the party asserting jurisdiction. *Id.*  
8 at 377.

9 It is undisputed that the United States is not a party to this case. Although Plaintiff has  
10 not alleged the citizenship of each of the parties, even if they are completely diverse, based on  
11 the allegations in the Complaint, the amount in controversy does not exceed \$75,000. Thus,  
12 diversity jurisdiction is lacking. Finally, Plaintiff has not alleged that Defendant's actions  
13 violate any particular provision of federal law or raise any federal question. For this reason, the  
14 Court DENIES WITHOUT PREJUDICE Plaintiff's application to proceed *in forma pauperis*,  
15 and it DISMISSES Plaintiff's Complaint.

16 Because the Court cannot say there is no legal theory upon which Plaintiff could assert a  
17 basis for federal jurisdiction, it shall give the Plaintiff one further and final opportunity to file  
18 an amended complaint that sets forth a viable basis for federal jurisdiction. Indeed, although  
19 Plaintiff alleges that her complaint is based on "the banking and financing rules for the state," it  
20 is not clear to the Court on what legal theory she seeks to hold Defendant liable for its allegedly  
21 wrongful conduct. Plaintiff also shall clearly articulate that theory in any amended complaint  
22 that she files. Plaintiff shall file an amended complaint by no later than March 2, 2012. If  
23 Plaintiff fails to file an amended complaint by that date, the Court shall dismiss this case  
24 without prejudice.

25 The Court HEREBY ADVISES Plaintiff that a Handbook for Pro Se Litigants, which is  
26 available through the Court's website or in the Clerk's office, contains helpful information  
27 about proceeding without an attorney. The Court also advises Plaintiff that she also may wish  
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1 to seek assistance from the Legal Help Center. Plaintiff may call the Legal Help Center at 415-  
2 782-9000, extension 8657, or sign up on the 15th Floor of the Courthouse, Room 2796, for a  
3 free appointment with an attorney who may be able to provide basic legal help, but not legal  
4 representation.

5 **IT IS SO ORDERED.**

6 Dated: February 8, 2012

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9 JEFFREY S. WHITE  
10 UNITED STATES DISTRICT JUDGE  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
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5 ANGELA NAILS et al,  
6 Plaintiff,

Case Number: CV12-00152 JSW

**CERTIFICATE OF SERVICE**

7 v.

8 WELLS FARGO BANK et al,  
9 Defendant.  
10 \_\_\_\_\_/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
12 District Court, Northern District of California.

13 That on February 8, 2012, I SERVED a true and correct copy(ies) of the attached, by  
14 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter  
15 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an  
16 inter-office delivery receptacle located in the Clerk's office.

17 Angela Nails  
18 464 East Broad Street  
19 Ozark, AL 36360

20 Dated: February 8, 2012



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk