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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

KIONA SMILEY,

 Plaintiff,

 v.

JP MORGAN CHASE,

 Defendant.

Case No. 14-cv-01651 NC

**ORDER GRANTING APPLICATION
TO PROCEED IN FORMA
PAUPERIS; DISMISSING WITH
LEAVE TO AMEND**

Re: Dkt. Nos. 1, 2

Pro se plaintiff Kiona Smiley requests permission to proceed in forma pauperis (“IFP”) under 28 U.S.C. § 1915. Dkt. No. 2. Because she has demonstrated her inability to pay the filing fees necessary to pursue litigation, the Court grants plaintiff’s IFP application. But plaintiff has failed to state a claim upon which relief can be granted, and has failed to allege facts supporting federal subject matter jurisdiction. The Court therefore dismisses her complaint with leave to amend under 28 U.S.C. § 1915(e)(2)(B).

I. BACKGROUND

Plaintiff brings this action alleging negligence, breach of contract, unfair business practices, fraud and deceit, and slander. Dkt. No. 1. She alleges that defendant foreclosed on her property while she was “awaiting status of [a] modification,” presumably of her

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1 mortgage. Plaintiff alleges that Chase knew plaintiff's address but "kept corresponding
2 with a vacant house." *Id.* Plaintiff further alleges that Chase "reacted without thinking,"
3 took "negligent actions," and committed "grand larceny," but does not specify what facts
4 support those allegations. *Id.* Plaintiff states that her "demand started at \$329,000.00 [but]
5 now it's at \$3.9 Million Dollars." *Id.*

6 Plaintiff has consented to the jurisdiction of a magistrate judge under 28 U.S.C. §
7 636(c).

8 **II. STANDARD OF REVIEW**

9 Under 28 U.S.C. § 1915(a), "any court of the United States may authorize the
10 commencement . . . of any suit . . . without prepayment of fees or security therefor, by a
11 person who submits an affidavit that includes a statement . . . that the person is unable to
12 pay such fees or give security therefor." A district court must dismiss the complaint of an
13 IFP applicant if it determines that the complaint is frivolous or fails to state a claim upon
14 which relief can be granted. 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122,
15 1126-27 (9th Cir. 2000). A complaint is frivolous for purposes of 28 U.S.C. § 1915 if it
16 lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325
17 (1989). "Dismissals on these grounds are often made *sua sponte* prior to the issuance of
18 process, so as to spare prospective defendants the inconvenience and expense of answering
19 such complaints." *Neitzke*, 490 U.S. at 324.

20 A court may also dismiss the complaint if the plaintiff fails to state a "basis for
21 federal subject matter jurisdiction." *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
22 1995). In most cases, original federal subject matter jurisdiction may be premised on two
23 grounds: (1) diversity jurisdiction, or (2) federal question jurisdiction. District courts have
24 diversity jurisdiction over "all civil actions where the matter in controversy exceeds the sum
25 or value of \$75,000, exclusive of interest and costs," and the action is between: "(1) citizens
26 of different States; (2) citizens of a State and citizens or subjects of a foreign state . . . ; (3)
27 citizens of different States and in which citizens or subjects of a foreign state are additional
28 parties; and (4) a foreign state . . . as plaintiff and citizen of a State or of different States."

1 28 U.S.C. § 1332.

2 District courts also have federal question jurisdiction over “all civil actions arising
3 under the Constitution, laws, or treaties of the United States.” *Id.* § 1331. A case “arises
4 under” federal law if the complaint establishes “either that federal law creates the cause of
5 action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial
6 question of federal law.” *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1219 (9th
7 Cir. 2009) (citations omitted). Federal jurisdiction exists only when a federal question is
8 presented on the face of the plaintiff’s properly pleaded complaint. *Provincial Gov’t of*
9 *Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1091 (9th Cir. 2009).

10 A plaintiff bringing a claim for fraud must plead “with particularity the circumstances
11 constituting fraud or mistake.” Fed. R. Civ. P. 9(b). The pleading must “be specific enough
12 to give defendants notice of the particular misconduct . . . so that they can defend against
13 the charge and not just deny that they have done anything wrong.” *Sanford v.*
14 *Memberworks, Inc.*, 625 F.3d 550, 558 (9th Cir. 2010). To avoid dismissal, “the complaint
15 must describe the time, place, and specific content of the false representations and identify
16 the parties to the misrepresentations.” *NavCom Tech., Inc. v. Oki Elec. Indus. Co., Ltd.*, No.
17 12-cv-04175 EJD, 2014 WL 991102, at *4 (N.D. Cal. Mar. 11, 2014).

18 Where a litigant is acting pro se and the court finds the litigant’s complaint frivolous
19 within the meaning of 28 U.S.C. § 1915(e)(2)(B), the pro se litigant “must be given leave to
20 amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear
21 that the deficiencies of the complaint could not be cured by amendment.” *Cato*, 70 F.3d at
22 1106.

23 III. DISCUSSION

24 Smiley has shown in her IFP application, Dkt. No. 2, that she is unable to pay the
25 filing fee required to file a complaint in district court. However, her complaint must be
26 dismissed for two reasons.

27 First, the complaint is almost completely devoid of any factual allegations and is thus
28 insufficient to demonstrate that this Court has subject matter jurisdiction over this case. The

1 complaint fails to allege the citizenship of all relevant parties or facts supporting the amount
2 in controversy, allegations necessary to establish diversity jurisdiction. Nor has Smiley
3 alleged that any defendant has violated her federal rights. The complaint does not refer to
4 any federal law and fails to identify any constitutional or statutory basis for her claims. The
5 complaint therefore does not demonstrate a basis for either diversity or federal question
6 jurisdiction.

7 Second, while the complaint makes vague references to negligence, it is impossible to
8 determine what the conduct is that constitutes the basis for the alleged violations of law.
9 The complaint does not allege whether Smiley was improperly denied a loan modification,
10 whether she was dual tracked, or why a foreclosure on her property was in violation of the
11 law. She also fails to allege facts supporting the amount of damages she seeks.

12 Accordingly, the Court dismisses Smiley's complaint for lack of subject matter
13 jurisdiction, and because the complaint is frivolous and fails to state a claim upon which
14 relief can be granted. However, given Smiley's pro se status and because it is not
15 absolutely clear that the deficiencies of the complaint could not be cured by amendment, the
16 Court grants Smiley leave to amend her complaint.

17 **IV. CONCLUSION**

18 For the reasons described, the Court grants plaintiff's application to proceed in forma
19 pauperis. The Court dismisses plaintiff's complaint with leave to amend within 28 days of
20 this order.

21 The Court advises plaintiff that there are additional resources available. First,
22 plaintiff may wish to obtain a copy of the district court's Handbook for Litigants Without a
23 Lawyer. It provides instructions on how to proceed at every stage of a case, including
24 discovery, motions, and trial. The handbook is available in person at the Clerk's Office
25 and at <http://cand.uscourts.gov/prosehandbook>.

26 Second, Plaintiff may wish to seek assistance from the Legal Help Center, a free
27 service of the Volunteer Legal Services Program, by calling 415-782-8982, or by signing
28 up for an appointment on the 15th Floor of the Federal Courthouse in San Francisco, 450

1 Golden Gate Avenue, San Francisco, California. At the Legal Help Center, pro se litigants
2 can speak with an attorney who may be able to provide basic legal help but not
3 representation. More information is available at <http://cand.uscourts.gov/helpcentersf>.

4 IT IS SO ORDERED.

5 Date: June 10, 2014


6 Nathanael M. Cousins
7 United States Magistrate Judge