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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICK BERTRAND,  
Plaintiff,  
v.  
JUSTIN GIARLA,  
Defendant.

Case No.17-cv-06820-JSC

**SCREENING ORDER**

Plaintiff Patrick Bertrand brings this action against Defendant Justin Giarla alleging violations of state law arising out of the sale of a piece of artwork Plaintiff had given to Defendant on consignment. (Dkt. No. 1.) The Court previously granted Plaintiff's application to proceed in forma pauperis and reserved to a later time evaluation of the Complaint under 28 U.S.C. § 1915. (Dkt. No. 9.) Having reviewed the Complaint, the Court orders Plaintiff to show cause as to this Court's subject matter jurisdiction over this action.

**BACKGROUND**

Plaintiff is a resident of California who purchased a painting from Defendant, now a resident of Oregon, for \$18,000 on March 15, 2011. (Complaint ¶¶ 11, 15.) Two years later, Defendant contacted Plaintiff indicating that he knew of a collector interested in acquiring the painting. (Id. ¶ 16.) Defendant indicated that he would sell the painting to this interested buyer for \$30,000. (Id.) A few weeks later, Plaintiff agreed to place the painting on consignment with Defendant. (Id. ¶ 17.) A year later, Defendant sold the painting to a third-party without Plaintiff's knowledge. (Id. ¶ 18.) Plaintiff did not learn about the sale until August 2016—two years later. (Id. ¶ 19.) Plaintiff then attempted to contact Defendant but he did not return Plaintiff's calls or emails and Plaintiff also discovered that Defendant's three art galleries in San Francisco had

1 closed. (Id. ¶ 20.) Plaintiff then learned that several other individuals were owed consignment  
2 funds from Defendant who has apparently relocated to Portland, Oregon. (Id. ¶ 21.)

3 A little over a year later, Plaintiff filed the underlying action against Defendant alleging 11  
4 claims for relief under California law including: (1) breach of contract; (2) violation of fiduciary  
5 duty; (3) failure to use reasonable care; (4) violation of the duty of loyalty; (5) common counts; (6)  
6 trespass to chattels; (7) conversion; (8) intentional misrepresentation; (9) negligence; (10)  
7 negligent misrepresentation; and (11) unfair commercial practices.<sup>1</sup> (Dkt. No. 1.)

### 8 LEGAL STANDARD

9 Under 28 U.S.C. § 1915, the Court has a continuing duty to dismiss any case in which a  
10 party is proceeding in forma pauperis if the Court determines that the action is (1) frivolous or  
11 malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief  
12 against a defendant who is immune from such relief. A complaint is frivolous for Section 1915  
13 purposes where there is no subject matter jurisdiction. See *Castillo v. Marshall*, 207 F.3d 15, 15  
14 (9th Cir. 1997) (citation omitted); see also *Pratt v. Sumner*, 807 F.2d 817, 819 (9th Cir. 1987)  
15 (recognizing the general proposition that a complaint should be dismissed as frivolous on Section  
16 1915 review where subject matter jurisdiction is lacking). Upon dismissal, pro se plaintiffs  
17 proceeding in forma pauperis must be given leave to “amend their complaint unless it is absolutely  
18 clear that the deficiencies of the complaint could not be cured by amendment.” *Franklin v.*  
19 *Murphy*, 745 F.2d 1221, 1235 n.9 (9th Cir. 1984) (internal citations and quotation marks omitted);  
20 *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000).

### 21 DISCUSSION

22 “Federal courts are courts of limited jurisdiction. They possess only that power authorized  
23 by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377  
24 (1994). Further, as courts of limited jurisdiction, “federal courts have an independent obligation to  
25 ensure that they do not exceed the scope of their jurisdiction.” *Henderson ex rel. Henderson v.*  
26 *Shinseki*, 562 U.S. 428, 434 (2011).

27 \_\_\_\_\_  
28 <sup>1</sup> The Complaint pleads these claims against “all defendants,” but there only appears to be one  
Defendant—Justin Giarla.



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matter jurisdiction over this action. **Plaintiff shall show cause in writing on or before February 1, 2018.** To the extent that Plaintiff alleges diversity jurisdiction, his response to the Order to Show Cause must provide specific factual allegations as to the amount in controversy.

**IT IS SO ORDERED.**

Dated: January 11, 2018

  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge