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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TRACEY N. THOMPSON,  
Plaintiff,  
v.  
JERRY HALL,  
Defendant.

Case No. [16-cv-04706-MEJ](#)

**ORDER GRANTING APPLICATION  
TO PROCEED IN FORMA PAUPERIS  
REPORT & RECOMMENDATION**

**INTRODUCTION & IN FORMA PAUPERIS APPLICATION**

On August 15, 2016, Plaintiff Tracey N. Thompson (“Plaintiff”) filed a Complaint and an Application to Proceed In Forma Pauperis. Compl., Dkt. No. 1; Appl., Dkt. No. 3. A district court may authorize the start of a civil action in forma pauperis if the court is satisfied the would-be plaintiff cannot pay the filing fees required to pursue the lawsuit. 28 U.S.C. § 1915(a)(1). Plaintiff submitted the required documentation declaring she is unable to pay the costs of this action, and it is evident from the Application that Plaintiff’s assets and income are insufficient to pay the court filing-fees. *See* Appl. Accordingly, the Court **GRANTS** Plaintiff’s Application to Proceed In Forma Pauperis. However, as Plaintiff did not yet consent to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c), the Clerk of Court shall **REASSIGN** this case to a District Judge with the undersigned’s **RECOMMENDATION** that the Complaint be **DISMISSED WITH LEAVE TO AMEND**.

**SUA SPONTE SCREENING UNDER 28 U.S.C. § 1915(E)(2)**

**A. Legal Standard**

While the Court has granted Plaintiff’s Application to Proceed In Forma Pauperis, it must also review Plaintiff’s Complaint to determine whether the action may be allowed to proceed. The Court must dismiss the Complaint if it is frivolous, fails to state a claim upon which relief can

1 be granted, or seeks monetary relief against a defendant who is immune from such relief.  
2 28 U.S.C. § 1915(e)(2)(B). To make this determination, courts assess whether there is a factual  
3 and legal basis for the asserted wrong, “however inartfully pleaded.” *Franklin v. Murphy*, 745  
4 F.2d 1221, 1227 (9th Cir. 1984) (quotation omitted). Pro se pleadings are liberally construed.  
5 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Moreover, when dismissing a case, the  
6 Ninth Circuit has “repeatedly held that a district court should grant leave to amend even if no  
7 request to amend the pleading was made, unless it determines that the pleading could not possibly  
8 be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).  
9 Thus, unless it is clear that no amendment can cure the defects of a complaint, a pro se plaintiff  
10 proceeding in forma pauperis is entitled to notice and an opportunity to amend before dismissal.  
11 *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

12 **B. Allegations in the Complaint**

13 Plaintiff’s Complaint alleges that Defendant Jerry Hall “used [Plaintiff] to open a nice big  
14 CVS Pharmacy store and mini market on 7th Street and Market Street” in San Francisco,  
15 California and that Hall “wishes to include [Plaintiff] in the profits since it was [Plaintiff’s] idea to  
16 open a store there.” Compl. at 1. She does not otherwise explain how Hall injured her.

17 Plaintiff also lists Stuart Murray as a Defendant, appearing to allege that he damaged her  
18 “right buttox and she had surgery on it[.]” *Id.* (errors in original). It is unclear if Plaintiff seeks to  
19 assert claims against Murray, however, as she crossed out his name and one of the allegations  
20 about her injury. *Id.* She also does not name Murray on her civil cover sheet. *Id.* at 2 (civil cover  
21 sheet included with the Complaint). Plaintiff’s civil cover sheet also lists Mick Jagger as a  
22 Defendant, but again crossed out his name; the civil cover sheet further refers to Hall and Jagger  
23 as the attorneys for the Defendant. *Id.* Plaintiff did not make direct allegations against Jagger in  
24 her Complaint.

25 **C. Analysis and Screening under 28 U.S.C. § 1915(e)(2)(B)**

26 Having carefully reviewed Plaintiff’s Complaint, the undersigned recommends the district  
27 court dismiss this case with leave to amend. The Complaint fails to state a claim at this point for  
28 the following reasons:

1 First, Plaintiff has not alleged sufficient facts showing she is entitled to relief under Federal  
2 Rule of Civil Procedure 8(a). *See* Fed. R. Civ. P. 8(a)(2) (a pleading that states a claim for relief  
3 must contain “a short and plain statement of the claim showing that the pleader is entitled to  
4 relief”); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (a complaint must provide  
5 a defendant with “fair notice” of the claims against it and the grounds for relief). Plaintiff  
6 provides very little background information about the basis for this lawsuit. She does not specify  
7 what if any wrongful conduct Defendant allegedly committed or specifically when and how. It is  
8 also not clear what relief Plaintiff actually seeks through this lawsuit and against whom.

9 Second, it is not clear that this Court has jurisdiction over this action. Federal courts such  
10 as this one have limited jurisdiction, which means that the United States Constitution limits the  
11 power of these courts to only hearing cases where the court has subject matter jurisdiction.  
12 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Subject matter jurisdiction  
13 is established by the party bringing the lawsuit in one of two ways: (1) by showing diversity of  
14 citizenship (diversity jurisdiction) or (2) by raising a federal question (federal question  
15 jurisdiction). *Id.* Subject matter jurisdiction is determined from the face of the complaint. *Rivet*  
16 *v. Regions Bank of La.*, 522 U.S. 470, 475 (1998); *see also Caterpillar, Inc. v. Williams*, 482 U.S.  
17 386, 392 (1987) (federal question must be presented on face of plaintiff’s properly pleaded  
18 complaint); *Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1189-90 (9th Cir. 1970)  
19 (same re: diversity jurisdiction). While Plaintiff contends this Court has jurisdiction based on the  
20 existence of a federal question in this action (*see* Civil Cover Sheet), she has not asserted any  
21 federal claim, nor has she demonstrated the parties are diverse or that the amount in controversy  
22 exceeds \$75,000. Without more, the Court has no basis to exercise subject matter jurisdiction  
23 over this action.

24 While there may be other issues associated with Plaintiff’s case that preclude her from  
25 bringing this action in this Court, based on the issues above, the undersigned finds dismissal of the  
26 current Complaint appropriate. Nonetheless, as Plaintiff is acting pro se, and given it is not clear  
27 what she seeks to allege at this point, theoretically it is possible the deficiencies of the Complaint  
28 could be cured by amendment. Consequently, the undersigned recommends the district court

1 grant Plaintiff one further opportunity to amend her Complaint.

2 **CONCLUSION**

3 Based on the analysis above, the undersigned **RECOMMENDS** that the Complaint be  
4 **DISMISSED WITH LEAVE TO AMEND**. Pursuant to Federal Rule of Civil Procedure 72, any  
5 party may serve and file objections to this Report and Recommendation within 14 days after being  
6 served.

7 Finally, the undersigned notes that Plaintiff may wish to seek assistance from the Legal  
8 Help Center, a free service offered by the Justice & Diversity Center of the Bar Association of San  
9 Francisco (“JDC”), by calling 415-782-8982, or by signing up for an appointment on the 15th  
10 Floor, Room 2796, of the Federal Courthouse in San Francisco, 450 Golden Gate Avenue, San  
11 Francisco, California. At the Legal Help Center, you will be able to speak with an attorney who  
12 may be able to provide basic legal help but not representation. More information is available  
13 online at: <http://cand.uscourts.gov/helpcentersf>. Plaintiff may also wish to obtain a copy of the  
14 district court’s *Handbook for Litigants Without a Lawyer*. It provides instructions on how to  
15 proceed at every stage of your case. The handbook is available in person at the Clerk’s Office and  
16 online at: <http://cand.uscourts.gov/prosehandbook>.

17 **IT IS SO ORDERED AND RECOMMENDED.**

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19 Dated: September 19, 2016



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MARIA-ELENA JAMES  
United States Magistrate Judge

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