

1 **UNITED STATES DISTRICT COURT**
2 **NORTHERN DISTRICT OF CALIFORNIA**
3 **SAN JOSE DIVISION**

4 LILLIYA WILLIS,
5 Plaintiff,
6
7 v.
8 ANDRE WILLIS,
9 Defendant.

Case No. [16-cv-05957-BLF](#)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE AND
DISMISSING THE CASE WITHOUT
PREJUDICE**

[Re: ECF 7]

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11 On October 14, 2016, Plaintiff Lilliya Willis, proceeding pro se, filed the above-titled
12 action alleging four causes of action against Defendant Andre Willis: trespass, breach of contract,
13 fraud, and extortion. Compl., ECF 1. Now before the Court is Magistrate Judge Lloyd's Report
14 and Recommendation ("R&R") that the case be dismissed for lack of subject matter jurisdiction.
15 On December 12, 2016, Willis timely filed an objection to Judge Lloyd's R&R. *See generally*
16 Objection, ECF 10. The Court has reviewed and thoroughly considered Judge Lloyd's R&R and
17 the arguments in Willis's objection, and finds the R&R correct, well reasoned, and thorough.
18 Accordingly, and for the reasons discussed below the Court adopts Judge Lloyd's R&R and
19 DISMISSES the action without prejudice.

20 In her objection, Willis makes several unavailing arguments. First, she contends that she is
21 "not a Plaintiff and [] did not file[] an administrative court complaint." ECF 10. Second, Willis
22 states that she is "not bounded to administrative court rules." *Id.* Neither of these arguments has
23 merit. She also objects to this case having been assigned to a judge in the San Jose division of this
24 district. *Id.* However, although a case may be initiated in San Francisco, it may properly be
25 assigned to San Jose based on venue. The assignment of the instant case to San Jose was proper
26 because the action appears to relate to property located in Santa Clara County. *See* Ex. B to
27 Compl., ECF 1.

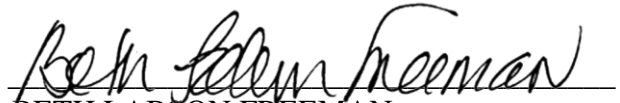
28 Finally, Willis asks the Court to seal the suit and not alter it until it "gets before [a] jury."

1 *Id.* However, as Judge Lloyd explained, “[f]ederal courts are courts of limited jurisdiction. They
2 possess only that power authorized by Constitution and statute, which is not to be expanded by
3 judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (internal
4 citations omitted). “A party invoking the federal court’s jurisdiction has the burden of proving the
5 actual existence of subject matter jurisdiction.” *Thompson v. McCombe*, 99 F.3d 352, 353 (9th
6 Cir. 1996) (citation omitted). “A plaintiff suing in a federal court must show in his pleading,
7 affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction, and, if he
8 does not do so, the court, on having the defect called to its attention or on discovering the same,
9 must dismiss the case, unless the defect [can] be corrected by amendment.” *Id.* (citing *Smith v.*
10 *McCullough*, 270 U.S. 456, 459 (1926)).

11 To invoke diversity jurisdiction in an action involving U.S. citizens, the complaint must
12 allege that the matter in controversy is between citizens of different states and the amount in
13 controversy must exceed \$75,000. 28 U.S.C. §1332(a)(1). The complaint contains no facts
14 suggesting that there is diversity jurisdiction in this case. In fact, the underlying issue appears to
15 be related to property located in Santa Clara County, and as such, it appears that both parties are
16 domiciled in California. *See* Ex. B to Compl. Moreover, this case does not involve a federal
17 question—claims for trespass, breach of contract, fraud, and extortion are all resolved under state
18 law. Willis does not contest any of this in her objection. Because the defect cannot be corrected
19 by amendment, the above-titled action is DISMISSED WITHOUT PREJUDICE.

20 **IT IS SO ORDERED.**

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22 Dated: December 13, 2016

23 
24 BETH LABSON FREEMAN
25 United States District Judge
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