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

MELINA RAZAVI,  
Plaintiff,  
v.  
CARLOS COTI, et al.,  
Defendants.

Case No. 17-cv-04341-BLF

**ORDER ADOPTING REPORT AND  
RECOMMENDATION; AND  
DISMISSING COMPLAINT WITH  
LEAVE TO AMEND**

[Re: ECF 4]

This action arises from a 2015 automobile accident between Plaintiff Melina Razavi and Defendant Carlos Coti. Compl., ECF 1. Razavi, proceeding *pro se*, filed the present complaint on July 31, 2017, alleging that although Coti admitted at the scene that the accident was his fault, he later lied and said that the accident was her fault. *Id.* at 1. Both Coti’s insurance company, Progressive, and Razavi’s own insurance company, Geico, have taken the position that Razavi was at fault rather than Coti. *Id.* at 2. Razavi sues Coti, Progressive, and Geico, as well as individual employees of Progressive and Geico. Her complaint is drafted in letter format, and does not contain subheadings identifying her claims. However, it appears from the text of the complaint that Razavi asserts state law claims for fraud and breach of contract. Razavi alleges federal jurisdiction based on diversity of citizenship, “because defendants do business out of state and have out of state locations, and this case is worth over \$75,000.” *Id.* at 2.

The case initially was assigned to Magistrate Judge Howard R. Lloyd. On August 2, 2017, Judge Lloyd issued a combined order which granted Razavi leave to proceed *in forma pauperis*, directed that the action be reassigned to a district judge, and included a Report and Recommendation (“R&R”) suggesting that the complaint be dismissed with leave to amend. R&R, ECF 4. The docket reflects that the R&R was served on Razavi by mail on August 2, 2017. Razavi thus was required to file any objections to the R&R on or before August 21, 2017. *See* Fed. R. Civ. P. 72(b)(2) (deadline for objection is fourteen days after service of report and

1 recommendation); Fed. R. Civ. P. 6(d) (adding three days when a party must act within a specified  
2 time after being served with a document by mail). Razavi has not filed an objection.


3 The Court finds the R&R to be correct, well-reasoned and thorough. In particular, the  
4 Court agrees with Judge Lloyd's conclusion that the complaint does not establish diversity of  
5 citizenship because it does not allege the citizenship of each party and does not set forth facts  
6 showing damages in excess of \$75,000. *See Mellor v. W. Trop Storage, LLC*, 672 F. App'x 708,  
7 709 (9th Cir. 2016) ("The district court properly dismissed Mellor's action for lack of subject  
8 matter jurisdiction because Mellor failed to allege facts sufficient to show that the amount in  
9 controversy was satisfied."); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)  
10 ("Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be able to  
11 allege affirmatively the actual citizenship of the relevant parties."). Because it is not clear that  
12 Razavi could not establish diversity of citizenship if given an opportunity to do so, the Court will  
13 grant leave to amend to cure the deficiencies identified above and in Judge Lloyd's R&R. The  
14 Court notes that Razavi's complaint states that she is disabled, expects to undergo surgery, and  
15 may find herself unable to litigate the case in the near future. Compl. at 3, ECF 1. For that  
16 reason, the Court will grant Razavi thirty days to amend her pleading rather than the fourteen days  
17 that she otherwise would be afforded.

18 Accordingly, the Court:

- 19 (1) ADOPTS the R&R in its entirety;
- 20 (2) DISMISSES the complaint WITH LEAVE TO AMEND;
- 21 (3) ORDERS that any amended complaint be filed on or before September 21, 2017;
- 22 and
- 23 (4) ADVISES that the U.S. Marshal will not be directed to serve process on  
24 Defendants unless and until Razavi files a viable complaint establishing the  
25 existence of federal subject matter jurisdiction.

26 **IT IS SO ORDERED.**

27 Dated: August 22, 2017

28   
BETH LABSON FREEMAN  
United States District Judge