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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SALLIE SMART,

v.

THE CEO OF DUETSCHKE BANK AND
TRUST COMPANY, et al.,

Defendant.

CASE NO. 10cv0010 BTM(AJB)

**ORDER:
(1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS;
AND
(2) DISMISSING COMPLAINT FOR
FAILURE TO STATE A CLAIM**

On January 4, 2010, Plaintiff filed a Complaint and a Motion to Proceed In Forma Pauperis ("IFP Motion"). For the reasons discussed below, the IFP Motion is granted and the Complaint is dismissed with leave to amend.

DISCUSSION

I. Motion to Proceed IFP

Upon review of Plaintiff's affidavit in support of her IFP Motion, the Court finds that Plaintiff has made a sufficient showing of inability to pay the filing fees required to prosecute this action. Accordingly, Plaintiff's IFP Motion is **GRANTED**.

II. Failure to State a Claim

Although the Court will allow Plaintiff to proceed IFP, Plaintiff's Complaint must be dismissed for failure to state a claim. The Court is under a continuing duty to dismiss an IFP case whenever the Court determines that the action "fails to state a claim on which relief may

1 be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

2 The Complaint is disjointed, rambling, incomprehensible and does not set forth the
3 basic elements of any claim.

4 Because Plaintiff has failed to state a valid legal claim, Plaintiff's Complaint is
5 dismissed. However, the Court grants Plaintiff leave to file an amended complaint curing the
6 deficiencies noted above. The amended complaint should include a short and plain
7 statement of the grounds for this Court's jurisdiction, a short and plain statement of the legal
8 claim(s) being asserted, and a demand for judgment for the relief sought. Fed. R. Civ. P.
9 8(a). With respect to the legal claims, Plaintiff should specify who did what, when the events
10 occurred, and how Plaintiff was harmed by the alleged wrongful conduct.

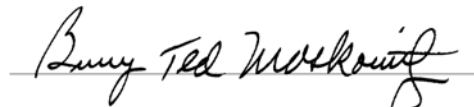
11 Regarding the form of the amended complaint, Plaintiff must abide by Rule 10 of the
12 Federal Rules of Civil Procedure. Among other things, Rule 10 requires that a party "state
13 its claims in numbered paragraphs, each limited as far as practicable to a single set of
14 circumstances." Fed. R. Civ. P. 10(b).

15 **CONCLUSION**

16 Plaintiff's Motion to Proceed IFP is **GRANTED**. Plaintiff's Complaint, however, is
17 **DISMISSED** without prejudice for failure to state a claim upon which relief may be granted.
18 Plaintiff may file a First Amended Complaint on or before February 26, 2010. If Plaintiff fails
19 to do so, the Court will close this case.

20 IT IS SO ORDERED.

21 DATED: February 2, 2010

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23 Honorable Barry Ted Moskowitz
24 United States District Judge

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