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

CHANITA M. FREEMAN,

Plaintiff,

v.

RENEE T. FRANCIS,

Defendant.

Case No.: 16cv3082-MMA (BGS)

**ORDER GRANTING PLAINTIFF’S
MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS;**

[Doc. No. 2]

**SUA SPONTE DISMISSING CIVIL
ACTION FOR FAILING TO STATE
A CLAIM PURSUANT TO 28 U.S.C.
§ 1915(e)(2); AND**

**DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

[Doc. No. 3]

Plaintiff Chanita M. Freeman, proceeding *pro se*, has filed the instant action against Defendant Renee T. Francis. *See* Doc. No. 1. Plaintiff also moves for leave to proceed in this action *in forma pauperis* (“IFP”), and moves for appointment of counsel. *See* Doc. Nos. 2, 3.
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1 **MOTION FOR LEAVE TO PROCEED IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the
3 United States, except an application for writ of habeas corpus, must pay a filing fee of
4 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to
5 prepay the entire fee only if she is granted leave to proceed IFP pursuant to 28 U.S.C. §
6 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “To proceed in
7 forma pauperis is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir.
8 1965). A party need not be completely destitute to proceed *in forma pauperis*. *Adkins v.*
9 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948). Plaintiff’s IFP application
10 details her net monthly income and her monthly expenses. Based thereon, the Court
11 concludes that Plaintiff should be allowed to proceed IFP pursuant to 28 U.S.C. §
12 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Plaintiff’s
13 submission demonstrates that she lacks the financial resources to pay the costs of
14 commencing this action. Accordingly, the Court **GRANTS** Plaintiff’s motion to proceed
15 IFP. *See* Doc. No. 2.

16 **SCREENING PURSUANT TO 28 U.S.C. § 1915(E)(2)(B)**

17 ***I. Legal Standard***

18 When a plaintiff proceeds IFP, the complaint is subject to mandatory screening and
19 the Court must order the *sua sponte* dismissal of any case it finds “frivolous, malicious,
20 failing to state a claim upon which relief may be granted, or seeking monetary relief from
21 a defendant immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254
22 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not
23 limited to prisoners.”). “[W]hen determining whether a complaint states a claim, a court
24 must accept as true all allegations of material fact and must construe those facts in the
25 light most favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir.
26 2000). In addition, the Court has a duty to liberally construe a *pro se* plaintiff’s
27 pleadings. *See id.* In giving liberal interpretation to a *pro se* complaint, however, the
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1 court may not “supply essential elements of claims that were not initially pled.” *See Ivey*
2 *v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

3 A complaint should be dismissed for failure to state a claim if, taking all well-
4 pleaded factual allegations as true, it does not contain “enough facts to state a claim to
5 relief that is plausible on its face.” *See Coto Settlement v. Eisenberg*, 593 F.3d 1031,
6 1034 (9th Cir. 2010) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)). “A claim
7 has facial plausibility when the plaintiff pleads factual content that allows the court to
8 draw the reasonable inference that the defendant is liable for the misconduct alleged.”
9 *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010)
10 (citation omitted).

11 2. Analysis

12 This action arises out of a custody dispute. Plaintiff alleges causes of action for
13 perjury pursuant to California Penal Code section 118(a), interference with child custody
14 pursuant to California Penal Code section 278.5, parental alienation, and slander and
15 libel. Plaintiff requests monetary damages, that her son to be returned to her, and that
16 Defendant be prosecuted for perjury, interference with child custody, and slander and
17 libel. Essentially, Plaintiff alleges Defendant, who is her son’s stepmother, has interfered
18 with and thwarted Plaintiff’s ability to see and parent her son, caused Plaintiff to be
19 arrested for kidnapping her son, and has made perjurious and defamatory statements
20 during court proceedings and otherwise.

21 The Court lacks jurisdiction over this action. “Federal courts are courts of limited
22 jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). As
23 such, “[a] federal court is presumed to lack jurisdiction in a particular case unless the
24 contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221,
25 1225 (9th Cir. 1989) (citation omitted). Federal Rule of Civil Procedure 12(h)(3) permits
26 a district court to dismiss a complaint *sua sponte* for lack of subject matter jurisdiction.
27 Fed. R. Civ. P. 12(h)(3); *see Scholastic Entm’t, Inc. v. Fox Entm’t Grp., Inc.*, 336 F.3d
28 982, 985 (9th Cir. 2003). Without subject matter jurisdiction, a federal court is without

1 “power” to hear or adjudicate a claim. *See Leeson v. Transamerica Disability Income*
2 *Plan*, 671 F.3d 969, 975 (9th Cir. 2012) (citing *Steel Co. v. Citizens for a Better*
3 *Environment*, 523 U.S. 83, 89 (1998)); *Kokkonen*, 511 U.S. at 377. Generally, subject
4 matter jurisdiction is based on the presence of a federal question, *see* 28 U.S.C. § 1331,
5 or on complete diversity of citizenship between the parties, *see* 28 U.S.C. § 1332. A
6 federal question is one “arising under the Constitution, laws, or treaties of the United
7 States.” 28 U.S.C. § 1331. “[F]ederal jurisdiction exists only when a federal question is
8 presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v.*
9 *Williams*, 482 U.S. 386, 392 (1987). Diversity jurisdiction exists where a plaintiff has
10 pled (1) the amount in controversy exceeds \$75,000, and (2) no plaintiff is a citizen of the
11 same state as any defendant. *See* 28 U.S.C. § 1332.

12 Plaintiff does not assert any causes of action arising under federal law to invoke
13 federal question jurisdiction. Further, “the ‘domestic relations exception’ prevents
14 federal courts from exercising jurisdiction in child custody matters.” *See Pronesti v.*
15 *Dep’t of Family Servs.*, No. 215CV01994JADPAL, 2017 WL 976629, at *2 (D. Nev. Jan.
16 25, 2017), *report and recommendation adopted*, No. 215CV01994JADPAL, 2017 WL
17 968991 (D. Nev. Mar. 13, 2017) (citing *Ankenbrandt v. Richards*, 504 U.S. 689 (1992));
18 “The subject matter of domestic relations and particularly child custody problems is
19 generally considered a state law matter.” *Id.*; *see also Peterson v. Babbitt*, 708 F.2d 465,
20 466 (9th Cir. 1983) (per curiam) (stating that since 1890, “federal courts have uniformly
21 held that they should not adjudicate cases involving domestic relations”); *Santos v. Los*
22 *Angeles Cty. Dep’t of Children & Family Servs.*, 200 F. App’x 681, 683 (9th Cir. 2006).
23 Thus, the Court does not have jurisdiction over any of Plaintiff’s claims regarding
24 custody or visitation rights.

25 Regarding diversity jurisdiction, while Plaintiff and Defendant appear to be
26 residents of different states, Plaintiff provides no basis for the Court to conclude that her
27 damages would exceed \$75,000. For example, in describing her damages, Plaintiff
28 alleges that “due to [Defendant’s] egregious antics of having me arrested,” Plaintiff’s

1 family had to take on the responsibility of taking care of Plaintiff’s other children while
2 Plaintiff was incarcerated. *See* Doc. No. 1. Plaintiff alleges her family also incurred
3 damages in hiring an attorney “to fight to get [her] out of jail,” and helping her with other
4 financial obligations such as her mortgage. *See* Doc. No. 1. Thus, Plaintiff does not
5 allege that she suffered these damages—she alleges her family did. *See Powers v. Ohio*,
6 499 U.S. 400, 410 (1991) (“In the ordinary course, a litigant must assert his or her own
7 legal rights and interests, and cannot rest a claim to relief on the legal rights or interests
8 of third parties.”). Also, Plaintiff does not allege she suffered any monetary damages as
9 a result of any allegedly defamatory statements. Thus, the Court does not have
10 jurisdiction over any other remaining claims. Based on the foregoing, the Court lacks
11 jurisdiction over this entire action.

12 Further, even were the Court to consider the sufficiency of Plaintiff’s allegations,
13 the Court would be required to dismiss this action. For example, regarding Plaintiff’s
14 request that Defendant be prosecuted under various sections of the California penal code,
15 an individual may not bring criminal charges against another individual by filing a civil
16 complaint in this Court. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

17 Also, the only non-conclusory allegations that Plaintiff provides in support of her
18 claims for slander and libel indicate that the statements forming the basis for her claims
19 were made during judicial proceedings. However, there is an absolute privilege under
20 California law for participants in litigation and other proceedings, which provides
21 participants with broad protection, including protection from liability for defamation
22 claims. *See Beroiz v. Wahl*, 84 Cal. App. 4th 485, 492 (2000); *see* Cal. Civ. Code § 47.
23 “Generally, this privilege ‘applies to any communication (1) made in judicial or quasi-
24 judicial proceedings; (2) by litigants or other participants authorized by law; (3) to
25 achieve the objects of the litigation; and (4) that have some connection or logical relation
26 to the action.’” *Id.* (quoting *Silberg v. Anderson*, 50 Cal. 3d 205, 212, 266 Cal.Rptr. 638,
27 786 P.2d 365.) Typically, courts should not dismiss cases based on affirmative defenses,
28 such as the litigation privilege for example, unless the elements of the defense are

