IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DEBORAH GLADISH,

Plaintiff,

v. No. 18cv366 RB/SMV

RODRIGO RODRIGUEZ and
CARLOS RODRIGUEZ,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on *pro se* Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Doc. 1 ("Compl.")), filed April 19, 2018, and on her Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2 ("Appl.")), filed April 19, 2018. For the reasons stated below, the Court will **DISMISS** this case **without prejudice** and **DENY** Plaintiff's Application as moot.

Plaintiff filed her Complaint using the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983." (*See* Compl.) Plaintiff indicates that Defendant Rodrigo Rodriguez is her landlord, Defendant Carlos Rodriguez is a plumber, and that one of them "installed an unvented heater in Nov. 2017, no primary heating source." (*Id.* at 2.) Plaintiff asserts a cause of action for "emotional & verbal & physical abuse on an elderly, disabled person" and states that Defendant Rodrigo Rodriguez "laughed at me because of my physical condition [and] denied equal access to the properties in which I rent from him." (*Id.* at 3.) Plaintiff also asserts a cause of action for "Improper heating and cooling since Dec 31, 2016 – present" and states "electrical problems are likely to arise, wanted me to take care of debris left outside my residence, glass, weeds [and]

[w]hile living at the residence Mr. Rodriguez remodeled part of my residence demanding that he will be raising the rent due to the remodel." (*Id.*)

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) ("Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction"). While the form Complaint states "Jurisdiction in invoked pursuant to 28 U.S.C. § 1343[a](3), 42 U.S.C. § 1983," there are no allegations that Defendants deprived Plaintiff of any right, privilege or immunity secured by the Constitution or any federal law. Plaintiff's Complaint does not otherwise contain "a short and plain statement of the grounds for the court's jurisdiction" as required by Rule 8(a)(1) of the Federal Rules of Civil Procedure.

The Court does not have jurisdiction over this matter. *See Evitt v. Durland*, 243 F.3d 388, at *2 (10th Cir. 2000) ("even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte") (quoting *Tuck v. United Servs. Auto. Ass'n,* 859 F.2d 842, 843 (10th Cir. 1988)). Plaintiff is a citizen of New Mexico and alleges that Defendant Rodrigo Rodriguez is also a citizen of New Mexico. (*See* Compl. at 1.) Consequently, there is no properly alleged diversity jurisdiction. Nor is there any properly alleged federal question jurisdiction because there are no allegations that this action arises under the Constitution, laws, or treaties of the United States.

The Court will dismiss the Complaint without prejudice for lack of jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action"); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006) ("[D]ismissals for lack of jurisdiction should be without prejudice because the court,

having determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.").

Because it is dismissing this case, the Court will deny Plaintiff's Application to proceed *in forma pauperis* (Doc. 2) as moot.

IT IS ORDERED that:

(i) this case is **DISMISSED without prejudice;** and

(ii) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2), filed April 19, 2018, is **DENIED as moot.**

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE