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7 **United States District Court**  
8 **Central District of California**  
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10 TOM QUACH,

11 Plaintiff,

12 v.

13 ACE BENEDICT ARCA LOVALHATI;  
14 UNITED STATES DEPARTMENT OF  
15 AGRICULTURE; and DOES 1–10,  
16 inclusive,

17 Defendants.

Case No 2:15-cv-09341-ODW (SS)

**AMENDED ORDER DISMISSING  
ACTION WITHOUT PREJUDICE**

18 **I. INTRODUCTION**

19 On December 3, 2015, Plaintiff Tom Quach filed this action in federal court  
20 based on alleged diversity jurisdiction. (ECF No. 1.) After reviewing Quach’s  
21 Complaint, it is clear that (1) the suit against the United States Department of  
22 Agriculture (“United States”) is barred by sovereign immunity, and (2) Defendant Ace  
23 Benedict Arca Lovalhati (“Lovalhati”) is not diverse from Plaintiff Quach. Thus, the  
24 Court lacks subject matter jurisdiction over the case at bar. Consequently, this action  
25 is **DISMISSED** without prejudice.<sup>1</sup>  
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27 <sup>1</sup> After carefully considering Quach’s Complaint, the Court deems the matter appropriate for *sua*  
28 *sponte* decision. *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981).

1 **II. FACTUAL BACKGROUND**

2 This is a negligence action arising out of a motor vehicle accident. Quach  
3 alleges that, on April 2, 2014, Lovalhati, while driving his employer-issued vehicle,  
4 failed to stop and collided with Quach’s vehicle. (Complaint [“Compl.”] ¶¶ 11–17,  
5 ECF No. 1.) As a direct and proximate result of the accident, Quach claims he was  
6 severely injured and has suffered great pain and suffering. (*Id.* ¶ 19.) In turn, Quach  
7 claims that the United States, as Lovalhati’s employer, is responsible for Quach’s  
8 injuries under the respondeat superior doctrine. (*Id.* ¶¶ 20–24.)

9 Plaintiff is a citizen of California. (*Id.* ¶ 2.) Defendant Lovalhati is likewise a  
10 citizen of California. (*Id.*) Quach alleges that Defendant United States Department of  
11 Agriculture is a “federal government department” and a “citizen of an unknown state.”  
12 (*Id.* ¶ 3.) Quach claims that this Court has subject matter jurisdiction under 28 U.S.C.  
13 § 1332 (“diversity” jurisdiction) and supplemental jurisdiction over the state law  
14 claims under 28 U.S.C. § 1367(a). Quach makes no claims for federal question  
15 jurisdiction.

16 **III. LEGAL STANDARD**

17 Federal courts have subject matter jurisdiction only as authorized by the  
18 Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *see also Kokkonen v.*  
19 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts have  
20 jurisdiction where an action arises under federal law, 28 U.S.C. § 1331, or where each  
21 plaintiff’s citizenship is diverse from each defendant’s citizenship and the amount in  
22 controversy exceeds \$75,000, *id.* § 1332(a). The court may dismiss the action *sua*  
23 *sponte* where the court lacks subject matter jurisdiction. *Frankin*, 662 F.2d at 1342  
24 (citing *Cal. Diversified Promotions, Inc. v. Musick*, 505 F.2d 278, 280 (9th Cir.  
25 1974)). Moreover, where the court lacks subject matter jurisdiction, “it is not required  
26 to issue a summons or follow the other procedural requirements.” *Loux v. Rhay*, 375  
27 F.2d 55, 58 (9th Cir. 1967).

1 **IV. DISCUSSION**

2 On December 3, 2015, Plaintiff Quach filed this action alleging claims wholly  
3 based in state law and against a defendant with common citizenship. Simply stated,  
4 this action cannot be originally filed in federal court because the complaint does not  
5 competently allege facts supporting either diversity or federal question jurisdiction,  
6 and therefore federal jurisdiction is improper. *Frankin*, 662 F.2d at 1342.

7 While Quach’s Complaint does name one potentially diverse defendant,<sup>2</sup> the  
8 United States, the well-settled doctrine of sovereign immunity bars suit. The United  
9 States cannot be sued without its explicit consent. *United States v. Lee*, 106 U.S. 195,  
10 206 (1940); *see also Lena v. Pena*, 518 U.S. 187, 192 (1996) (Rehabilitation Act  
11 lacked “unequivocal expression” of congressional intent required for waiver of  
12 sovereign immunity.) With no illusions to any statutes conferring such consent,  
13 Quach’s suit against the United States is therefore barred.

14 Leaving only Loyalhati as a Defendant, Quach’s suit doubly fails for want of  
15 diversity jurisdiction. The Supreme Court “ha[s] consistently interpreted § 1332 as  
16 requiring complete diversity: In a case with multiple plaintiffs and multiple  
17 defendants, the presence in the action of a single plaintiff from the same State as a  
18 single defendant deprives the district court of original diversity jurisdiction over the  
19 entire action.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553  
20 (2005). Here, Quach alleges that he is a California citizen, and that Defendant  
21 Loyalhati is also a California citizen. (Compl. ¶ 2.) Thus, this destroys complete  
22 diversity.

23 For the reasons discussed above, the Court **DISMISSES** the action for lack of  
24 subject matter jurisdiction pursuant to 28 U.S.C. § 1332. The action is dismissed  
25 without prejudice. *Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th  
26 Cir. 1999) (“Dismissals for lack of jurisdiction ‘should be ... without prejudice so that

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28 <sup>2</sup> Because this action lacks complete diversity and therefore this Court lacks jurisdiction, the Court will not assess whether an allegation that a defendant is a “citizen of another state” will suffice to establish diversity jurisdiction. (Compl. ¶ 3.)

1 a plaintiff may reassert his claims in a competent court.” (quoting *Frigard v. United*  
2 *States*, 862 F.2d 201, 204 (9th Cir.1988)).

3 The Clerk is also ordered to **REOPEN** this case and to accept Quach’s First  
4 Amended Complaint and accompanying documents. (ECF Nos. 10–13.)

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6 **IT IS SO ORDERED.**

7  
8 December 14, 2015

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12 **OTIS D. WRIGHT, II**  
13 **UNITED STATES DISTRICT JUDGE**