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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 PATRICK HOLLEY,

9 Plaintiff,

10 v.

11 UNITED STATES OF AMERICA; FAMILY
12 HEALTHCARE NETWORK; DR. FIROOZI,
DDS # 62466,

13 Defendants.

CASE NO. 1:16-CV-476-LJO-SMS

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

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15 Plaintiff Patrick Holley brings this action *in pro se* and *in forma pauperis* against
16 defendants Hamed Firoozi, DDS, Family Healthcare Network, and the United States of America
17 for actions related to a teeth cleaning on September 2, 2015. Plaintiff alleges federal jurisdiction
18 based on federal question under 28 USC § 1331 and diversity of citizenship under 28 USC § 1332.
19 Plaintiff's complaint will be dismissed for lack of jurisdiction with leave to amend.

20 I. SCREENING STANDARD

21 Under 28 U.S.C § 1915(e)(2), the Court must screen all complaints brought *in forma*
22 *pauperis* or by prisoners. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000). The Court must
23 dismiss the complaint or any portion of it that is "frivolous," "malicious," "fails to state a claim
24 upon which relief may be granted," or "seeks monetary relief from a defendant who is immune
25 from such relief." 28 U.S.C. § 1915(e)(2). "Notwithstanding any filing fee, or portion thereof, that
26 may have been paid, the court shall dismiss the case at any time if the court determines that [...]
27 the action or appeal [...] fails to state a claim upon which relief may be granted." 28 U.S.C. §
28 1915(e)(2)(B)(ii).

1 II. SUBJECT MATTER JURISDICTION

2 Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction only
3 over matters authorized by the Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *Kokkonen*
4 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts have original
5 jurisdiction where an action presents a federal question under 28 U.S.C. § 1331, or diversity of
6 citizenship under 28 U.S.C. § 1332. To exercise diversity jurisdiction, a federal court must find
7 complete diversity of citizenship between the parties opposed in interest, and the amount in
8 controversy must exceed \$75,000. 28 U.S.C. § 1332(a); *Kuntz v. Lamar Corp.*, 385 F.3d 1177,
9 1181 (9th Cir. 2004). To exercise federal question jurisdiction the civil action must “aris[e] under
10 the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

11 Plaintiff alleges that he is a resident of Tulare County, California. He alleges that Hamed
12 Firoozi, DDS is a doctor of dental surgery licensed to practice in California and employed by
13 Family Healthcare Network in Tulare County, California. Plaintiff alleges that Family Healthcare
14 Network is a nonprofit organization based in Tulare County, California that operates federally
15 qualified health centers. Plaintiff alleges that the Unites States of America is Family Healthcare
16 Network’s employer and that Family Healthcare Network’s employees are federal employees.
17 Plaintiff has not sufficiently alleged diversity jurisdiction because he is a resident and citizen of
18 California and at least one defendant, Family Healthcare Network, is also a resident and citizen of
19 California. Therefore, complete diversity of citizenship between the parties is not present in this
20 case.

21 In addition, Plaintiff brings his case against Defendants for “negligence, lack of informed
22 consent, res ipsa loquitor, and negligence/failure to treat dental malpractice.” These causes of
23 action do not arise under the Constitution or federal law. It appears that these causes of action arise
24 under California state law. Plaintiff has not cited any federal statute or law under which he brings
25 this action. It is most likely that Plaintiff’s relief exists in the California Superior Court.

26 Therefore, the Court does not have jurisdiction over this case. It will be dismissed for lack
27 of subject matter jurisdiction. FRCP 12(b)(1). This dismissal does not reflect on the merits of
28 Plaintiff’s claims and is without prejudice to Plaintiff’s ability to file this action in the proper state

1 court.

2 III. LEAVE TO AMEND

3 Plaintiff is proceeding pro se and will be given the opportunity to amend his complaint
4 *only* in order to sufficiently allege federal subject matter jurisdiction. Plaintiff is not required to
5 file an amended complaint, but failure to do so by the deadline will result in dismissal of this
6 action. Plaintiff may also file a voluntary dismissal of this action and file his action in the proper
7 state court. If Plaintiff elects to file an amended complaint, it must bear the docket number
8 assigned in this case and be labeled “First Amended Complaint.” Plaintiff is advised that an
9 amended complaint supersedes the original complaint and must be “complete in itself without
10 reference to the prior or superseded pleading,” Local Rule 220.

11 IV. ORDER

12 Based on the foregoing, it is hereby ORDERED that Plaintiff’s complaint is DISMISSED
13 with leave to amend. Plaintiff may file an amended complaint curing the deficiencies identified by
14 the Court in this order within thirty (30) days from the date of service of this order.

15 Plaintiff’s motion to proceed in forma pauperis (Doc. 2) is deferred until the Court
16 determines that it has jurisdiction over this action.

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19 IT IS SO ORDERED.

20 Dated: April 13, 2016

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE