

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

BRIAN EUGENE JEFFERSON; LEAN
MANAGEMENT; FIZSOLEAN ENT; and
COAST 2 COAST DETAIL &
POLISHING,

Plaintiffs,

v.

CITY OF FRESNO/CODE
ENFORCEMENT; CENTRAL
CALIFORNIA SPCA; FRESNO POLICE
DEPARTMENT; COUNTY OF
FRESNO/SHERIFF DEPARTMENT;
POVERELLO HOUSE; and UNITED
STATES DISTRICT COURT, EASTERN
DISTRICT OF CALIFORNIA,

Defendants.

CASE NO. 1:16-cv-01298-LJO-SKO

**FINDINGS AND
RECOMMENDATIONS THAT
PLAINTIFFS' AMENDED
COMPLAINT BE DISMISSED WITH
PREJUDICE AND WITHOUT LEAVE
TO AMEND**

(Doc. 6)

OBJECTIONS DUE: 14 DAYS

I. INTRODUCTION

On September 1, 2016, Plaintiff Brian Eugene Jefferson (“Plaintiff” or “Jefferson”), proceeding *pro se*, filed this action against Defendants City of Fresno, Fresno Police Department, and “Fresno City County SPCA” (“Defendants”), along with an application to proceed *in forma pauperis* and a “Motion to Release.” (Docs. 1–3.) On November 4, 2016, the

1 undersigned recommended that Plaintiff’s complaint be dismissed with prejudice and without
2 leave to amend. (Doc. 4.) On January 6, 2017, the Court adopted the undersigned’s findings
3 and recommendations, but permitted Plaintiff leave to amend to plead a claim under Title II of
4 the Americans with Disabilities Act, 42 U.S.C. § 12132 (“Title II”). (Doc. 5.) Plaintiff’s
5 amended complaint was due to be filed by February 6, 2017. (*See id.*) On February 10, 2017,
6 Plaintiffs Jefferson, “Lean Management,” “Fizzolean Ent,” and “Coast 2 Coast Detail &
7 Polishing” (collectively “Plaintiffs”) filed an amended complaint against “City of Fresno/Code
8 Enforcement,” Central California SPCA, Fresno Police Department, “County of Fresno/Sheriff
9 Department,” Poverello House, and “United States District Court, Eastern District of
10 California.”¹ (Doc. 6.) Along with their amended complaint, Plaintiffs filed a “Motion the
11 Court to issue subpoena all complaints, Reports, Citations, Officers involved to be ordered to
12 restrain against further undue unjust harassment against my clients.” (Doc. 7.)

13 After screening Plaintiffs’ amended complaint, the Court finds that despite the explicit
14 recitation of the deficiencies of Plaintiff Jefferson’s original complaint, Plaintiffs have failed to
15 demonstrate any violation of Title II of the ADA. Accordingly, the Court RECOMMENDS that
16 Plaintiffs’ amended complaint be DISMISSED with prejudice and without leave to amend.²

17 //

18 //

21 ¹ Plaintiffs “Lean Management,” “Fizzolean Ent,” and “Coast 2 Coast Detail & Polishing” appear to be artificial
22 entities, not natural persons. As the Court previously advised Plaintiff Jefferson, *see* Doc. 4 at 5 n.4, such entities
23 “may appear in the federal courts only through licensed counsel.” *Rowland v. California Men's Colony*, 506 U.S.
24 194, 202 (1993); *United States v. High Country Broadcasting Co., Inc.*, 3 F.3d 1244, 1245 (9th Cir.1993); *see also*
Osborn v. President of Bank of United States, 9 Wheat. 738, 829, 6 L.Ed. 204 (1824); *Turner v. American Bar*
Ass’n, 407 F.Supp. 451, 476 (N.D. Tex. 1975) (citing the “long line of cases” from 1824 to the present holding that
a corporation may only be represented by licensed counsel).

25 ² The untimeliness of Plaintiffs’ amended complaint is alone grounds for dismissal with prejudice. *See* Rule 183(a)
26 of the Local Rules of the United States District Court, Eastern District of California (“Any individual representing
27 himself or herself without an attorney is bound by the Federal Rules of Civil or Criminal Procedure, these Rules,
28 and all other applicable law. All obligations placed on ‘counsel’ by these Rules apply to individuals appearing in
propria persona. Failure to comply therewith may be ground for dismissal . . . or any other sanction appropriate
under these Rules.”). *See also Johnson v. KHS & S Contractor*, No. 2:11-cv-00109 GEB KJN PS, 2011 WL
2470682, at *2 (E.D. Cal. June 20, 2011) (“[A] district court may impose sanctions, including involuntary
dismissal of a plaintiff’s case with prejudice pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff
fails to prosecute his or her case or fails to comply with the court’s orders.”) (collecting cases). Nevertheless, the
Court has screened the amended complaint.

1 **II. PLAINTIFF'S COMPLAINT**

2 Plaintiff Jefferson alleges that he “very briefly” left three nationally-recognized highly-
3 trained service dogs “reluctantly tied by chain to separate trees each with shade, water, all
4 available on a private lot.” (Doc. 6 at 9.) Plaintiff Jefferson alleges further that he “return[ed]
5 to the lot about one half hour later to see that the dogs had been moved & personal property
6 items were being dumped into what looked like a garbage bin type truck.” (*Id.*)

7 Plaintiffs seek “[t]otal and complete asservation [sic], Assignment of Analysis/per all
8 financial cost & damages,” “[a]ssignment of all rights & orders reinstated, General Guarantee,
9 General Improvements, General Fund, General Pardon to Full amnesty,” and “[a]ssignment of
10 Benefits fund per regards [sic] gov vs Plaintiff or gov agency vs Plaintiff.” (Doc. 6 at 10.)

11 **III. SCREENING STANDARD**

12 In cases where the plaintiff is seeking to proceed *in forma pauperis*, the Court is
13 required to screen each case, and must dismiss the case at any time if the Court determines that
14 the allegation of poverty is untrue, or the Court determines that the action or appeal is frivolous
15 or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief
16 against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint
17 must contain a “short and plain statement of the claim showing that the pleader is entitled to
18 relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare
19 recitals of the elements of a cause of action, supported by mere conclusory statements, do not
20 suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
21 550 U.S. 544, 555 (2007)).

22 A complaint may not simply allege a wrong has been committed and demand relief. The
23 pleading standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me
24 accusation[;]” the complaint must contain “sufficient factual matter, accepted as true, to ‘state a
25 claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 555, 570).
26 Further, while factual allegations are accepted as true, legal conclusions are not. *Id.* (quoting
27 *Twombly*, 550 U.S. at 555).

28 //

1 Finally, pro se pleadings are liberally construed. *See Haines v. Kerner*, 404 U.S. 519,
2 520-21 (1972); *Balistreri*, 901 F.2d at 699. Unless it is clear that no amendment can cure the
3 defects of a complaint, a pro se plaintiff proceeding *in forma pauperis* is entitled to notice and
4 an opportunity to amend before dismissal. *See Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.
5 1987). If the Court determines that the complaint fails to state a claim, leave to amend may be
6 granted to the extent that the deficiencies of the complaint are capable of being cured by
7 amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

8 IV. DISCUSSION

9 A. Plaintiffs Have Not Pleaded Any Viable Federal Claim.

10 Federal courts have no power to consider claims for which they lack subject-matter
11 jurisdiction. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986); *see also Vacek*
12 *v. United States Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006) (citing *Kokkonen v. Guardian*
13 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). Subject matter jurisdiction is determined and
14 must exist at the time the complaint is filed. *See Morongo Band of Mission Indians v. Cal. State*
15 *Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988) (looking to original complaint, and not
16 amended complaint, for subject matter jurisdiction). This Court has an independent duty to
17 consider its own subject-matter jurisdiction and must dismiss an action over which it lacks
18 jurisdiction. Fed. R. Civ. P. 12(h)(3); *see also Cal. Diversified Promotions, Inc. v. Musick*, 505
19 F.2d 278, 280 (9th Cir. 1974) (“It has long been held that a judge can dismiss *sua sponte* for
20 lack of jurisdiction.”). The burden is on Plaintiffs to allege facts establishing the existence of
21 jurisdiction to hear their claims.

22 Plaintiffs allege the following bases for federal question jurisdiction: “ADA and Code of
23 Federal Regulations § 36.202,” 28 U.S.C. § 1331, and 28 U.S.C. § 1332. (Doc. 8 at 8.) At the
24 outset, 28 U.S.C. sections 1331 (federal question) and 1332 (diversity) are purely jurisdictional
25 statutes that do not, on their own, create a private right of action. *See Montana-Dakota Util. Co.*
26 *v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 249 (1951) (“The Judicial Code, in vesting
27 jurisdiction in the District Courts, does not create causes of action, but only confers jurisdiction
28 to adjudicate those arising from other sources which satisfy its limiting provisions.”). *See also*

1 *White v. Paulsen*, 997 F. Supp. 1380, 1382-83 (E.D. Wash. 1998) (citing *In re Estate of*
2 *Ferdinand Marcos, Human Rights Litig.*, 25 F.3d 1467, 1474-75 (9th Cir. 1994)).

3 Plaintiffs’ remaining basis for federal question jurisdiction is the “ADA and Code of
4 Regulations § 36.202.” Title 28 C.F.R. section 36.202 mirrors the language of Title III of the
5 ADA, 42 U.S.C. section 12182(b)(1)(A), and, like the original complaint, Plaintiffs’ amended
6 complaint fails to state a claim under either Title III or Title 28 C.F.R. section 36.202 because it
7 does not plead any discrimination on the basis of disability by a public accommodation. *See* 42
8 U.S.C. § 12182(a) (prohibiting discrimination “on the basis of disability in the full and equal
9 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any
10 place of public accommodation by any person who owns, leases (or leases to), or operates a
11 place of public accommodation.”); 28 C.F.R. § 36.202 (prohibiting discrimination on the basis
12 of a disability or disabilities by a “public accommodation.”)

13 The Court now turns to the question of whether Plaintiffs adequately plead a claim under
14 Title II of the ADA, which is the *sole* basis for which Plaintiff Jefferson was granted to leave to
15 amend. (*See* Doc. 5 at 2 (“[T]he Court adopts the F&Rs with the modification that leave to
16 amend will be permitted as to a Title II claim *only*.”) (emphasis added)). As the Court
17 explained in its January 6, 2017 Order granting leave to amend, cases construing Title II
18 authorize several different types of ADA claims: (i) those brought under an intentional
19 discrimination (or “disparate treatment”) theory; (ii) those brought under a “disparate impact”
20 theory; and (iii) those brought under a “failure to accommodate” theory. (*Id.* (citing *McGary v.*
21 *City of Portland*, 386 F.3d 1259, 1266 (9th Cir. 2004)). Based upon the facts pled in Plaintiffs’
22 amended complaint, the only theory that appears even arguably applicable to this case is
23 “disparate impact,” which, as pointed out in the Court’s January 6, 2017 Order, requires a
24 plaintiff to allege the existence of a facially neutral policy or decision that, because of his
25 disability, effectively precludes him from “meaningful access” to a public service. (*Id.* (citing
26 *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1102 (9th Cir. 2013)).

27 Plaintiffs’ amended complaint does not allege the existence of any policy or decision –
28 facially neutral or otherwise – that has denied Plaintiffs meaningful access to a public service.

1 Instead, Plaintiff Jefferson again claims that his dogs had been “moved” from his private
2 property, and makes the new allegation that his personal property had been “dumped into what
3 looked like a garbage bin type truck.” (Doc. 6 at 9.) These allegations fail to support a Title II
4 claim under either a disparate impact theory or any other theory of liability under the ADA.

5 Because Plaintiffs have not articulated any cognizable federal claim over which this
6 Court may assert jurisdiction, dismissal is recommended. *Bender*, 475 U.S. at 541; *Kokkonen*,
7 511 U.S. at 377; *Vacek*, 447 F.3d at 1250; *Cal Diversified*, 505 F.2d at 1380.

8 **B. The Court Lacks Diversity Jurisdiction over Plaintiffs’ Claim.**

9 As in the original complaint, Plaintiffs also allege diversity jurisdiction over their claim.
10 (Doc. 6 at 3.) Pursuant to 28 U.S.C. § 1332(a), federal district courts have original jurisdiction
11 over civil actions in diversity cases “where the matter in controversy exceeds the sum or value
12 of \$75,000” and where the matter is between “citizens of different States.” In other words,
13 Plaintiffs and Defendants must be citizens of different states to satisfy the complete diversity
14 requirement of section 1332. *Strawbridge v. Curtiss*, 7 U.S. 267 (1806) (no plaintiff can be a
15 citizen of the same state as any of the defendants); *Cook v. AVI Casino Enterprises, Inc.*, 548
16 F.3d 718, 722 (9th Cir. 2008) (citing *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (stating
17 that diversity jurisdiction requires “complete diversity of citizenship”). Here, although
18 Plaintiffs assert that they are all citizens of the State of “One Soul Nation Under GOD (a
19 Solemn Religious Assertion [sic] in the Nature of Oath” (Doc. 6 at 5, 8), elsewhere in the
20 amended complaint Plaintiff Jefferson indicates that he is a citizen of California.³ (Doc. 6 at 1,
21 2, 5. *See also* Doc. 6-1 (civil cover sheet).) The allegations in the complaint and the civil cover
22 sheet indicate that Defendants are also all citizens of California. (Docs. 6, 6-1.) It appears that
23 Plaintiff Jefferson and Defendants are all citizens of California, therefore complete diversity is
24 lacking. *Garcia-Cardenas v. Immigration Legal Servs.*, APC, No. 1:13-CV-01065-AWI, 2013
25 WL 4542223, at *2 (E.D. Cal. Aug. 27, 2013) (citing *Strawbridge*, 7 U.S. at 267). Because

26
27 ³ In addition, Plaintiff Jefferson’s exhibit submitted in support of his “Motion for Release,” filed with his original
28 complaint, states that he is a resident of California (Doc. 3 at 4). *See Thompson v. U.S. Postal Serv.*, No. C 12-
0301 PJH, 2012 WL 3583134, at *1 (N.D. Cal. Aug. 20, 2012) (“In determining whether it has subject matter
jurisdiction, a court is not limited to the allegations of the complaint, but may consider facts outside the pleadings.”
(citing *Wyatt v. Terhune*, 315 F.3d 1108, 1119–20 (9th Cir. 2003)).

1 there is no diversity jurisdiction, this Court must dismiss Plaintiffs’ amended complaint for lack
2 of jurisdiction, with prejudice. *See Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d
3 802, 806 (9th Cir. 2001) (“[I]f the court dismisses for lack of subject matter jurisdiction, it has
4 no discretion and must dismiss all claims.”).

5 **B. Amendment Would Be Futile**

6 The amended complaint has not set forth any viable federal claim, and there is not
7 complete diversity between the parties. *See Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir.
8 1996) (“A party invoking the federal court’s jurisdiction has the burden of proving the actual
9 existence of subject matter jurisdiction.”). Plaintiff Jefferson has demonstrated that he is unable
10 to marshal facts sufficient to constitute a cognizable claim under Title II of the ADA, despite
11 being afforded leave to do so. *See, e.g., Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th
12 Cir. 1996); *McHenry*, 84 F.3d at 1177–78, 1180 (dismissal with prejudice appropriate where
13 deficiencies of complaint were explained, time was afforded to amend, and the plaintiff was
14 warned that failure to cure deficiencies would result in dismissal). Because Plaintiffs have
15 failed to plead facts invoking the Court’s jurisdiction, the amended complaint should be
16 dismissed. *Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir. 1996) (“A party invoking the
17 federal court’s jurisdiction has the burden of proving the actual existence of subject matter
18 jurisdiction.”).

19 **V. CONCLUSION AND RECOMMENDATION**

20 IT IS HEREBY RECOMMENDED that Plaintiffs’ amended complaint be DISMISSED
21 with prejudice and without leave to amend.

22 These findings and recommendations are submitted to the district judge assigned to this
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within **fourteen**
24 **(14) days** of service of this recommendation, any party may file written objections to these
25 findings and recommendations with the Court and serve a copy on all parties. The document
26 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
27 district judge will review the magistrate judge’s findings and recommendations pursuant to 28
28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

1 time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th
2 Cir. 2014).

3
4 IT IS SO ORDERED.

5 Dated: April 20, 2017

/s/ Sheila K. Overt
6 UNITED STATES MAGISTRATE JUDGE