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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 GABRIEL MARTINEZ,

9 Plaintiff,

10 vs.

11 DIANA BORJA,

12 Defendant.

Case No. 1:17-cv-01577-LJO-EPG

FINDINGS AND RECOMMENDATIONS
THAT THIS CASE BE DISMISSED FOR
LACK OF SUBJECT MATTER
JURISDICTION

(ECF No. 1)

OBJECTIONS, IF ANY, TO BE FILED IN
WRITING WITHIN 14 DAYS

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15 **A. Introduction**

16 Plaintiff Gabriel Martinez, appearing *pro se*, filed a Complaint on November 27, 2017.
17 (ECF No. 1). On December 26, 2017, the Court entered an Order to Show Cause as to why this
18 case should not be dismissed for lack of subject matter jurisdiction. (ECF No. 9.) The Order
19 gave Plaintiff 14 days to file a written response and warned that “[f]ailure to file a response will
20 be considered an admission that the jurisdictional defects cannot be cured by amendment to the
21 Complaint.”

22 For the following reasons, it is recommended that this action be dismissed without
23 prejudice.

24 **B. Lack of Subject Matter Jurisdiction**

25 Federal courts are courts of limited jurisdiction and lack inherent or general subject
26 matter jurisdiction. Federal courts can adjudicate only those cases which the United States
27 Constitution and Congress authorize them to adjudicate. *Kokkonen v. Guardian Life Ins. Co.*,
28 511 U.S. 375 (1994). To proceed in federal court, a plaintiff’s pleading must establish the

1 existence of subject matter jurisdiction. Generally, there are two potential bases for federal
2 subject matter jurisdiction: (1) federal question jurisdiction, or (2) diversity jurisdiction.

3 “[A] case ‘arises under’ federal law either where federal law creates the cause of action
4 or ‘where the vindication of a right under state law necessarily turn[s] on some construction of
5 federal law.’” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89 (9th Cir.
6 2002), quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8–9
7 (1983). The presence or absence of federal question jurisdiction is governed by the “well-
8 pleaded complaint rule.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under the
9 well-pleaded complaint rule, “federal jurisdiction exists only when a federal question is
10 presented on the face of the plaintiff’s properly pleaded complaint.” *Id.*

11 Here, the Complaint does not appear to contain any allegation of a violation arising
12 under the Constitution, federal law, or treaties of the United States. Plaintiff’s claims are state
13 claims and do not invoke federal subject matter jurisdiction. *Kaohi v. Kaiser Found. Health*
14 *Plan, Inc.*, Case No. 15-00266 SOM/RLP, 2015 WL 6472231, at *5 (D. Haw. Oct. 27, 2015)
15 (remanding medical malpractice claims to state court). The sole claim alleged in the Complaint
16 is for “trespass,” which is a claim based upon state law.¹

17 Alternatively, under 28 U.S.C. § 1332, federal district courts have original jurisdiction
18 over civil actions in diversity cases “where the matter in controversy exceeds the sum or value
19 of \$75,000” and where the matter is between “citizens of different states.” 28 U.S.C. § 1332.
20 “Subject matter jurisdiction based upon diversity of citizenship requires that no defendant have
21 the same citizenship as any plaintiff.” *Tosco Corp. v. Communities for a Better Env’t*, 236 F.3d
22 495, 499 (9th Cir.2001) (per curiam), *abrogated on other grounds by Hertz Corp. v. Friend*,
23 559 U.S. 77, 130 S.Ct. 1181 (2010), *citing* 28 U.S.C. § 1332(a). “A plaintiff suing in federal
24 court must show in his pleading, affirmatively and distinctly, the existence of whatever is
25 essential to federal jurisdiction, and, if he does not do so, the court . . . on discovering the
26 [defect], must dismiss the case, unless the defect be corrected by amendment.” *Id.*, quoting
27 *Smith v. McCullough*, 270 U.S. 456 (1926).

28 ¹ It is not entirely clear who Plaintiff is attempting name as a Defendant. Plaintiff had an opportunity to explain this in response to the Court’s Order to Show Cause but chose not to do so.

1 Plaintiff does not make any allegation that diversity jurisdiction exists. *Kanter v.*
2 *Warner-Lambert Co.*, 265 F.3d 853, 857-858 (9th Cir. 2001) (“the party asserting diversity
3 jurisdiction bears the burden of proof.”). From what information the Court has gathered from
4 the pleadings filed on the public docket, it does not appear that Plaintiff would be able to assert
5 diversity.

6 **C. Conclusion**

7 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s complaint be
8 DISMISSED without prejudice.

9 These findings and recommendations are submitted to the district judge assigned to the
10 case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen days after being
11 served with these findings and recommendations, Plaintiff may file written objections with the
12 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
13 Recommendations." Plaintiff is advised that failure to file objections within the specified time
14 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
15 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

16 IT IS SO ORDERED.
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18 Dated: January 17, 2018

18 /s/ Eric P. Grogan
19 UNITED STATES MAGISTRATE JUDGE