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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 GABRIEL MARTINEZ,

11 Plaintiff,

12 vs.

13 DIANA BORJA,

14 Defendant.  
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Case No. 1:17-cv-01594-LJO-EPG

ORDER TO SHOW CAUSE WHY THIS  
CASE SHOULD NOT BE DISMISSED FOR  
LACK OF SUBJECT MATTER  
JURISDICTION

(ECF No. 1)

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

17 Plaintiff Gabriel Martinez, appearing *pro se*, filed a Complaint on November 30, 2017.  
18 (ECF No. 1). From the Court’s initial review of the Complaint, it appears that the Court lacks  
19 subject matter jurisdiction to consider the claims.

20 Federal courts are courts of limited jurisdiction and lack inherent or general subject  
21 matter jurisdiction. Federal courts can adjudicate only those cases which the United States  
22 Constitution and Congress authorize them to adjudicate. *Kokkonen v. Guardian Life Ins. Co.*,  
23 511 U.S. 375 (1994). To proceed in federal court, a plaintiff’s pleading must establish the  
24 existence of subject matter jurisdiction. Generally, there are two potential bases for federal  
25 subject matter jurisdiction: (1) federal question jurisdiction, or (2) diversity jurisdiction.

26 “[A] case ‘arises under’ federal law either where federal law creates the cause of action  
27 or ‘where the vindication of a right under state law necessarily turn[s] on some construction of  
28 federal law.’” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89 (9th Cir.

1 2002), quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8–9  
2 (1983). The presence or absence of federal question jurisdiction is governed by the “well-  
3 pleaded complaint rule.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under the  
4 well-pleaded complaint rule, “federal jurisdiction exists only when a federal question is  
5 presented on the face of the plaintiff’s properly pleaded complaint.” *Id.*

6 Here, the Complaint does not appear to contain any allegation of a violation arising  
7 under the Constitution, federal law, or treaties of the United States. Plaintiff’s claims are state  
8 claims and do not invoke federal subject matter jurisdiction. *Kaohi v. Kaiser Found. Health*  
9 *Plan, Inc.*, Case No. 15-00266 SOM/RLP, 2015 WL 6472231, at \*5 (D. Haw. Oct. 27, 2015)  
10 (remanding medical malpractice claims to state court).

11 Alternatively, under 28 U.S.C. § 1332, federal district courts have original jurisdiction  
12 over civil actions in diversity cases “where the matter in controversy exceeds the sum or value  
13 of \$75,000” and where the matter is between “citizens of different states.” 28 U.S.C. § 1332.  
14 “Subject matter jurisdiction based upon diversity of citizenship requires that no defendant have  
15 the same citizenship as any plaintiff.” *Tosco Corp. v. Communities for a Better Env’t*, 236 F.3d  
16 495, 499 (9th Cir.2001) (per curiam), *abrogated on other grounds by Hertz Corp. v. Friend*,  
17 559 U.S. 77, 130 S.Ct. 1181 (2010), *citing* 28 U.S.C. § 1332(a). “A plaintiff suing in federal  
18 court must show in his pleading, affirmatively and distinctly, the existence of whatever is  
19 essential to federal jurisdiction, and, if he does not do so, the court . . . on discovering the  
20 [defect], must dismiss the case, unless the defect be corrected by amendment.” *Id.*, quoting  
21 *Smith v. McCullough*, 270 U.S. 456 (1926).

22 As an initial matter, Plaintiff do not make any allegation that diversity jurisdiction  
23 exists. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857-858 (9th Cir. 2001) (“the party  
24 asserting diversity jurisdiction bears the burden of proof.”).

25 Accordingly, it appears that the Court would lack subject matter jurisdiction over the  
26 claims in the Complaint. It appears that the claims are more properly suited for filing in the  
27 state court system (courts of general jurisdiction). Thus, Plaintiff may elect to file a notice of  
28 dismissal of this action instead of filing a response to this Order.

