

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3
4 MATTHEW CONLEY,

5 Plaintiff,

6 vs.

7 LYNN S CONLEY, CALIFORNIA
8 BOARD OF ACCOUNTANCY,

9 Defendants.

Case No. 1:17-cv-01629-DAD-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

10 Plaintiff Matthew Conley, appearing pro se, filed a Complaint on December 7, 2017.
11 (ECF No. 1). From the Court's initial review of the Complaint, it appears that the Court lacks
12 subject matter jurisdiction to consider the claims.

13 Federal courts are courts of limited jurisdiction and lack inherent or general subject
14 matter jurisdiction. Federal courts can adjudicate only those cases which the United States
15 Constitution and Congress authorize them to adjudicate. *Kokkonen v. Guardian Life Ins. Co.*,
16 511 U.S. 375 (1994). To proceed in federal court, a plaintiff's pleading must establish the
17 existence of subject matter jurisdiction. Generally, there are two potential bases for federal
18 subject matter jurisdiction: (1) federal question jurisdiction, or (2) diversity jurisdiction.

19 "[A] case 'arises under' federal law either where federal law creates the cause of action
20 or 'where the vindication of a right under state law necessarily turn[s] on some construction of
21 federal law.'" *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89 (9th Cir.
22 2002), quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8–9
23 (1983). The presence or absence of federal question jurisdiction is governed by the "well-
24 pleaded complaint rule." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under the
25 well-pleaded complaint rule, "federal jurisdiction exists only when a federal question is
26 presented on the face of the plaintiff's properly pleaded complaint." *Id.*

27 Here, the Complaint does not appear to contain any allegation of a violation arising
28 under the Constitution, federal law, or treaties of the United States. Plaintiff's claims are state

1 claims and do not invoke federal subject matter jurisdiction. *Kaohi v. Kaiser Found. Health*
2 *Plan, Inc.*, Case No. 15-00266 SOM/RLP, 2015 WL 6472231, at *5 (D. Haw. Oct. 27, 2015)
3 (remanding medical malpractice claims to state court).

4 Alternatively, under 28 U.S.C. § 1332, federal district courts have original jurisdiction
5 over civil actions in diversity cases “where the matter in controversy exceeds the sum or value
6 of \$75,000” and where the matter is between “citizens of different states.” 28 U.S.C. § 1332.
7 “Subject matter jurisdiction based upon diversity of citizenship requires that no defendant have
8 the same citizenship as any plaintiff.” *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d
9 495, 499 (9th Cir.2001) (per curiam), abrogated on other grounds by *Hertz Corp. v. Friend*,
10 559 U.S. 77, 130 S.Ct. 1181 (2010), citing 28 U.S.C. § 1332(a). “A plaintiff suing in federal
11 court must show in his pleading, affirmatively and distinctly, the existence of whatever is
12 essential to federal jurisdiction, and, if he does not do so, the court . . . on discovering the
13 [defect], must dismiss the case, unless the defect be corrected by amendment.” *Id.*, quoting
14 *Smith v. McCullough*, 270 U.S. 456 (1926).

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

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

22 Therefore, Plaintiff is ORDERED to SHOW CAUSE why this case should not be
23 dismissed for lack of subject matter jurisdiction. Plaintiff shall file a written response within 14
24 days of this Order. Failure to file a response will be considered an admission that the
25 jurisdictional defects cannot be cured by amendment to the Complaint.
26 IT IS SO ORDERED.

27 Dated: December 26, 2017

28 /s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE