

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 GREG GALLEGOS,

10 Plaintiff,

11 v.

12 DUNNION LAW FIRM,

13 Defendant.

Case No. 1:19-cv-01168-LJO-EPG

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
BE DISMISSED, WITHOUT PREJUDICE,
FOR LACK OF SUBJECT-MATTER
JURISDICTION

(ECF No. 1)

14 OBJECTIONS, IF ANY, DUE WITHIN
15 TWENTY-ONE DAYS

16 Plaintiff, Greg Gallegos, is proceeding *pro se* in this action (ECF No. 1), and has
17 applied to proceed *in forma pauperis* (ECF No. 3). The Court recommends that this action be
18 dismissed without prejudice and without leave to amend for lack of subject-matter jurisdiction.

19 The Court must dismiss an action at any time if the Court determines that it lacks
20 subject-matter jurisdiction over the action. *See* Fed. R. Civ. P. 12(h)(3) (“If the court
21 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
22 action.”); *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002) (“[A] court may raise the
23 question of subject matter jurisdiction, *sua sponte*, at any time during the pendency of the
24 action, even on appeal.”).

25 There are two bases for federal subject-matter jurisdiction: federal question and
26 diversity. Under federal question jurisdiction, federal district courts “have original jurisdiction
27 over all civil actions arising under the Constitution, laws, or treaties of the United States.” 28
28 U.S.C. § 1331. Under diversity jurisdiction, federal district courts “have original jurisdiction of

1 all civil actions where the matter in controversy exceeds the sum or value of \$75,000 . . . and is
2 between . . . citizens of different states. . . .” 28 U.S.C. § 1332(a). Plaintiff, as the party
3 invoking federal jurisdiction, “has the burden of proving the actual existence of subject matter
4 jurisdiction.” *Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir. 1996).

5 Here, the Complaint (ECF No. 1) alleges a single claim against Dunion Law Firm. The
6 claim appears to arise out of the law firm’s representation of Plaintiff in a personal injury
7 action. The Complaint alleges:

8 The plaintiff herein is victem under stress that was defrauded of “equitable”
9 compensation by Dunnion Law under set RULES of Law for injurys of 30 areas
10 of plaintiffs single body in line with A.M.A. and Insurers standards, thus,
11 [Defendants] are very guilty of Malice of Fore thought in Obstruction of Justice
with criminal intent, because of bone fractures, brain trama, internal injurys, neck,
spinal, shoulder, torso, hip and legs damages that creates medical costs for
remainder of life.

12 (ECF No. 1 at 3 (underlining omitted); *see id.* at 4.)

13 The Complaint asserts that there is federal question jurisdiction under the provisions of
14 the U.S. Constitution. However, the factual allegations of the Complaint do not support that
15 assertion. The Complaint also does not include factual allegations that support a finding of
16 diversity jurisdiction. To the contrary, the complaint lists Plaintiff’s address as Fresno,
17 California and the defendant law firm’s address as “Montray,” California (which the Court
18 interprets as meaning Monterey, California), indicating that diversity jurisdiction is lacking.
19 (*See* ECF No. 1.) Thus, based on the facts alleged in the Complaint, the Court lacks subject-
20 matter jurisdiction over this case.

21 The Court provided Plaintiff with an opportunity to provide additional information
22 regarding his assertion of federal jurisdiction by issuing an order to show cause (“OSC”)
23 requiring Plaintiff to show cause why the case should not be dismissed for lack of subject-
24 matter jurisdiction. (ECF No. 4.) In his response to the OSC, Plaintiff asserts that there is
25 jurisdiction under the U.S. Constitution and makes clear that he is not claiming diversity
26 jurisdiction, and is only claiming federal question jurisdiction:

27 S.O.F. of Jurisdiction is SUBJECT MATTER already stated clearly as #470
28 Federal Constitution LAW of U.S. Burden of Proof has been stated on Cival
Cover sheet sent as #470 in V. ORIGIN: Original Proceeding answered already.
Your 8-28-19 [OSC], p.2, line 12 is repetition. I did NOT state DIVERSITY

