

1 determines that it lacks subject matter jurisdiction. Because plaintiff has been granted leave to
2 proceed in forma pauperis, the court will screen the complaint pursuant to § 1915(e)(2). Pursuant
3 to Rule 12(h)(3), the court will also consider as a threshold matter whether it has subject-matter
4 jurisdiction.

6 **II. PLAINTIFF’S ALLEGATIONS**

7 Plaintiff’s allegations arise from a private arbitration proceeding. Plaintiff alleges
8 that JAMS and Fred K. Morrison, the arbitrator, were negligent in failing to adhere to guidelines
9 during the arbitration and for disregarding evidence during the arbitration, and grossly negligent
10 because of the magnitude of the harm to others. Plaintiff further alleges that JAMS was negligent
11 in failing to review the competency of the arbitrator.

13 **III. ANALYSIS**

14 Plaintiff asserts that his allegations are actionable. However, Plaintiff raises only
15 claims based on a “negligence” theory of liability, none of which “arise under” federal law. For
16 that reason, this court does not have federal question jurisdiction in this case. See 28 U.S.C. §
17 1331. Further, Plaintiff has provided no indication and pleaded no facts that would indicate this
18 court has diversity jurisdiction over this case. See 28 U.S.C. 1332. Thus, this Court lacks
19 subject matter jurisdiction. For that reason, this case must be dismissed for lack of jurisdiction.

21 **IV. AMENDING THE COMPLAINT**

22 The Federal Rules of Civil Procedure provide that a party may amend his or her
23 pleading once as a matter of course within 21 days of serving the pleading or, if the pleading is
24 one to which a responsive pleading is required, within 21 days after service of the responsive
25 pleading, see Fed. R. Civ. P. 15(a)(1)(A), or within 21 days after service of a motion under Rule
26 12(b), (e), or (f) of the rules, whichever time is earlier, see Fed. R. Civ. P. 15(a)(1)(B). In all
27 other situations, a party’s pleadings may only be amended upon leave of court or stipulation of all
28 the parties. See Fed. R. Civ. P. 15(a)(2). Where leave of court to amend is required and sought,

1 the court considers the following factors: (1) whether there is a reasonable relationship between
2 the original and amended pleadings; (2) whether the grant of leave to amend is in the interest of
3 judicial economy and will promote the speedy resolution of the entire controversy; (3) whether
4 there was a delay in seeking leave to amend; (4) whether the grant of leave to amend would delay
5 a trial on the merits of the original claim; and (5) whether the opposing party will be prejudiced
6 by amendment. See Jackson v. Bank of Hawai'i, 902 F.2d 1385, 1387 (9th Cir. 1990). Leave to
7 amend should be denied where the proposed amendment is frivolous. See DCD Programs, Ltd. v.
8 Leighton, 833 F.2d 183, 186 (9th Cir. 1987).

9 Plaintiff was previously granted leave to amend and instructed to plead a cause of
10 action this court can exercise jurisdiction over, or to state how this court has jurisdiction over the
11 negligence and gross negligence claims. Plaintiff has failed to do either. Additionally, in reading
12 the first amended complaint it does not appear possible for Plaintiff to cure the jurisdictional issue
13 through amendment. Thus, the complaint should be dismissed without leave to amend.

14 15 V. CONCLUSION

16 Based on the foregoing, the undersigned recommends that this case be dismissed
17 with prejudice.

18 These findings and recommendations are submitted to the United States District
19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court. Responses to objections shall be filed within 14 days after service of
22 objections. Failure to file objections within the specified time may waive the right to appeal. See
23 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24
25 Dated: November 19, 2018



26 DENNIS M. COTA
27 UNITED STATES MAGISTRATE JUDGE
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