

1 Having reviewed the file, the court **adopts** the findings and recommendations **in part** and
2 **declines to adopt** them **in part**. As the magistrate judge set forth in the findings and
3 recommendations, the court agrees plaintiff’s case lacks subject matter jurisdiction. F. & R. at 1.
4 But the court disagrees plaintiff’s case should be dismissed with prejudice. *See id.* at 4 (citing
5 *Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988) (per curiam)). Based on just the
6 plaintiff’s complaint, the court cannot conclude plaintiff has no viable federal claim against
7 defendant. *See* Compl., ECF No. 1. Moreover, the magistrate judge has not explained why
8 plaintiff may not reassert his state law claims in a court with jurisdiction. *See generally* F. & R.
9 Unlike the *Frigard* case cited by the magistrate judge, this case does not involve sovereign
10 immunity that would bar any claims plaintiffs may have against defendant. *See* 862 F.2d at 204.
11 Thus, the court declines to adopt the findings and recommendations to the extent they recommend
12 this court dismiss plaintiff’s case with prejudice. The court instead **dismisses** plaintiff’s case
13 **without prejudice**. *See id.* (stating a dismissal for lack of jurisdiction should be without
14 prejudice unless plaintiff has no way to cure the jurisdictional defect); *see also* F. R. Civ. P. 41(b)
15 (“[an involuntary dismissal]—except one for lack of jurisdiction . . .—operates as an adjudication
16 on the merits”).

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The findings and recommendations filed October 19, 2022, ECF No. 4, are
19 adopted in part and not adopted in part;
- 20 2. This action is dismissed without prejudice for lack of jurisdiction; and
- 21 3. The clerk of the court is directed to enter judgment and close this file.

22 DATED: January 17, 2023.

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26 CHIEF UNITED STATES DISTRICT JUDGE
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