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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MICHAEL CLEMONS,
Plaintiff,
v.
EMA HILDA CLEMONS,
Defendant.

Case No. [17-cv-05449-BLF](#)

**ORDER ADOPTING REPORT AND
RECOMMENDATION TO DISMISS
CASE FOR LACK OF SUBJECT
MATTER JURISDICTION**

Plaintiff Michael Clemons has filed an amended complaint in this action against Ema Hilda Clemons. *See* ECF 6. On November 22, 2017, Magistrate Judge Nathanael M. Cousins, to whom the case originally was assigned, issued a Report and Recommendation Under 28 U.S.C. § 1915 to Dismiss Amended Complaint. *See* ECF 7 (“R&R”). Judge Cousins recommends that this Court dismiss Mr. Clemons’ amended complaint for lack of federal subject matter jurisdiction, without prejudice to refiling in state court. *Id.* at 1.

When a magistrate judge issues an R&R regarding a case-dispositive matter, a party may file “specific written objections” to the R&R within 14 days after being served with the R&R. Fed. R. Civ. P. 72(b)(2). If the party is served with the R&R by mail, that 14-day period is extended by 3 days. *See* Fed. R. Civ. P. 6(d) (“When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . , 3 days are added after the period would otherwise expire.”). “The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3). “When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72, Adv. Comm. Notes to 1983 Amend.; *see also* *Grasdalen v. Shartle*, No. CV 15-0299-TUC-JGZ (BGM), 2016

1 WL 4138274, at *1 (D. Ariz. Aug. 4, 2016) (district court reviews for clear error where no
2 objections are filed); *Evony, LLC v. Aeria Games & Entm't, Inc.*, No. C 11-0141 SBA, 2014 WL
3 12658953, at *1 (N.D. Cal. June 12, 2014) (same).

4 Mr. Clemons was served with the R&R by mail on November 22, 2017. Certificate of
5 Service, ECF 7-1. He therefore had until December 11, 2017 to file objections. No objections
6 have been filed. Accordingly, this Court reviews Judge Cousins' R&R only for clear error. This
7 Court finds no error in Judge Cousins' determination that this Court lacks subject matter
8 jurisdiction over the action and that Mr. Clemons has failed to state a claim under Federal Rule of
9 Civil Procedure 8.

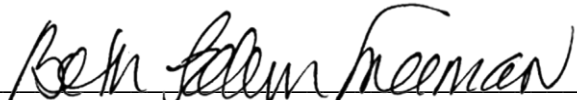
10 In particular, Mr. Clemons has failed to allege a federal claim in his amended complaint,
11 which only "appears to assert some type of theft at an unspecified time." See R&R at 3. As for
12 diversity jurisdiction, although the amount in controversy alleged to have been stolen is quite high
13 (\$26,000,000), it is unaccompanied by any supporting factual allegations. Moreover, the P.O. Box
14 address that Mr. Clemons provides for the Defendant indicates that she is also a citizen of
15 California despite Mr. Clemons' statement that Defendant's diverse citizenship "is not in
16 question." ECF 6 ¶¶ 3-5. Even after Judge Cousins identified deficiencies in Mr. Clemons'
17 original complaint (ECF 5), Mr. Clemons remains unable to allege facts showing that this Court
18 has subject matter jurisdiction over his claim.

19 For the foregoing reasons, the Court finds Judge Cousins' R&R legally correct, well-
20 reasoned, and thorough, and ADOPTS it in its entirety. The Court DISMISSES this case without
21 prejudice to Mr. Clemons refiling his claims in state court. The Clerk shall close the file.

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IT IS SO ORDERED.

Dated: December 12, 2017


BETH LABSON FREEMAN
United States District Judge