

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 Burk N. ASHFORD,  
12  
13 Plaintiff,  
14 v.  
15 Eugene WOO, AKA Eugene WU, and  
16 JEAN SHIOMOTO, EXECUTIVE  
17 DIRECTOR OF CALIFORNIA  
18 DEPARTMENT OF MOTOR  
19 VEHICLES (DMV) AND DOES 1-20,  
20 Defendant.

Case No.: 17-cv-1742-GPC-NLS

**ORDER**

**(1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS**

**(2) DISMISSING SUA SPONTE FOR  
LACK OF SUBJECT MATTER  
JURISDICTION**

19  
20 On August 28, 2017 plaintiff Burk N. Ashford, proceeding *pro se*, commenced this  
21 action against Defendants Eugene Woo and Jean Shiomoto, Executive Director of  
22 California Department of Motor Vehicles. (Dkt. No. 1.) For the following reasons, the  
23 Court **GRANTS** Plaintiff's motion to proceed IFP, but sua sponte **DISMISSES** his suit  
24 for lack of federal jurisdiction.

25 **I. Motion to Proceed *In Forma Pauperis***

26 Every party instituting a civil action, suit or proceeding in a district court of the  
27 United States, except an application for writ of habeas corpus, must pay a filing fee of  
28 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to

1 prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28  
2 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176,1177 (9th Cir. 1999). The court  
3 may authorize a lawsuit’s commencement without payment of the filing fee if the  
4 plaintiff submits an affidavit demonstrating his or her inability to pay the filing fee. 28  
5 U.S.C. § 1915(a). Such affidavit must include a complete statement of the plaintiff’s  
6 assets. *Id.* However, an IFP action is subject to dismissal if the court determines that the  
7 complaint is frivolous or malicious, or fails to state a claim upon which relief may be  
8 granted. 28 U.S.C. § 1915(e)(2). When a plaintiff moves to proceed IFP, the court first  
9 “grants or denies IFP status based on the plaintiff’s financial resources alone and then  
10 independently determines whether to dismiss the complaint” pursuant to § 1915(e)(2).  
11 *Franklin v. Murphy*, 745 F.2d 1221, 1226 n.5 (9th Cir. 1984).

12 Here plaintiff moves to proceed IFP under 28 U.S.C. § 1915(a). Plaintiff has  
13 submitted an affidavit in support of his IFP motion indicating that he is unemployed, has  
14 \$0 in a bank account, and owns no real or personal property. (Dkt No. 2-1.) Plaintiff is  
15 currently incarcerated in San Luis Obispo, CA as a prisoner of the State of California.  
16 Accordingly, the Court finds that plaintiff meets the § 1915(a) requirements and  
17 **GRANTS** plaintiff’s motion to proceed IFP.

## 18 **II. Sua Sponte Dismissal for Lack of Jurisdiction**

19 It is well-established that a federal court cannot reach the merits of any dispute  
20 until it confirms that it retains subject matter jurisdiction to adjudicate the issues  
21 presented. *See Steel Co. v. Citizens for a Better Environ.*, 523 U.S. 83, 94-95 (1998).  
22 Accordingly, federal courts are under a continuing duty to confirm their jurisdictional  
23 power and are “obliged to inquire sua sponte whenever a doubt arises as to [its] existence  
24 . . . .” *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 278 (1977)  
25 (citations omitted).

26 Federal courts are courts of limited jurisdiction. Unlike state courts, they have no  
27 “inherent” or “general” subject matter jurisdiction. They can adjudicate only those cases  
28 which the Constitution and Congress authorize them to adjudicate, i.e. those involving

1 diversity of citizenship, a federal question, or to which the United States is a party. *See*  
2 *Finley v. United States*, 490 U.S. 545 (1989). Federal courts are presumptively without  
3 jurisdiction over civil actions and the burden of establishing the contrary rests upon the  
4 party asserting jurisdiction. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377  
5 (1994).

6 Plaintiff appears to be asserting a state law tort claim of “replevin by detinue”  
7 against Defendant. Based on the facts alleged in the Complaint, Defendant Eugene Woo  
8 appears to be a California citizen and Plaintiff also appears to be a California citizen.  
9 Thus, Plaintiff has not adequately pled facts to indicate that there is diversity jurisdiction  
10 as to his tort claim.

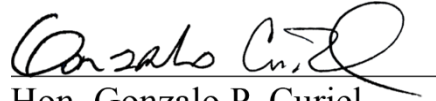
11 Further, Plaintiff has not adequately pled facts to indicate federal question  
12 jurisdiction. Plaintiff argues that he was denied due process under the Fourteenth  
13 Amendment when the Superior Court of California denied him access to forms to file for  
14 relief in this case. (Dkt. No. 1 at 1.) However, Plaintiff has not sued the Superior Court  
15 of California and instead sues Defendant Woo and the DMV who are entirely unrelated to  
16 any potential denial of process. As such, the Court finds that the Complaint does not  
17 allege a colorable Section 1983 claim sufficient to invoke federal question jurisdiction.  
18 *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 513 n.10 (2006) (“A claim invoking federal  
19 question jurisdiction . . . may be dismissed for want of subject matter jurisdiction if it is  
20 not colorable, i.e., if it is ‘immaterial and made solely for the purpose of obtaining  
21 jurisdiction’ or is ‘wholly insubstantial and frivolous.’”). Moreover, Ashford has not  
22 pled federal question jurisdiction in his “Statement of Jurisdiction” stating only that  
23 “[t]he Case is based upon a TORT act of the defendant upon the Plaintiff that was  
24 executed and committed in the City of Escondido, California. Therefore venue is proper.”  
25 (Dkt. No. 1.)

26 Plaintiff does not state a sufficient basis for federal subject matter jurisdiction over  
27 his case. Accordingly, the Court sua sponte **DISMISSES** the complaint for lack of  
28

1 subject matter jurisdiction. Further, the Court **DISMISSES** as moot Defendant's Motion  
2 to Dismiss for Lack of Jurisdiction. (Dkt. No. 3.)

3 **IT IS SO ORDERED.**

4 Dated: September 13, 2017

5   
6 Hon. Gonzalo P. Curiel  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28