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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 TONY TALEFF and VERA TALEFF,

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14 Plaintiffs,

15 v.

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18 MARCIA LYNN SATTGAST TALEFF,

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20
21 Defendant.
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Case No.: 18-CV-1294-AJB-JMA

**(1) DENYING AS MOOT MOTION
TO PROCEED IN FORMA
PAUPERIS (Doc. No. 2)**

**(2) SUA SPONTE DISMISSING
COMPLAINT FOR LACK OF
SUBJECT MATTER JURISDICTION
(Doc. No. 1); and**

**(3) DENYING AS MOOT
PLAINTIFF’S MOTION TO
APPOINT COUNSEL (Doc. No. 3).**

23 Tony Taleff and Vera Taleff, proceeding pro se, commenced this action against
24 Defendant Marcia L. Sattgast Taleff. (Doc. No. 1.) Plaintiffs also filed for leave to proceed
25 in forma pauperis (“IFP”) in their complaint. (Doc. No. 2.) The Court reviews Plaintiffs’
26 complaint under 28 U.S.C. § 1915(e), as required when a plaintiff files a motion to proceed
27 IFP. (Doc. Nos. 1, 2.) The Court finds *sua sponte* that Taleff’s complaint does not establish
28 subject matter jurisdiction. Thus, the Court **DENIES** as moot Taleff’s IFP motion,

1 **DISMISSES** the complaint for failure to state subject matter jurisdiction, and **DENIES** as
2 moot Taleff's motion to appoint counsel.

3 **I. MOTION FOR IFP**

4 Taleff moves to proceed IFP under 28 U.S.C. § 1915. All parties instituting any civil
5 action, suit, or proceeding in a district court of the United States, except an application for
6 writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a). An action
7 may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is
8 granted leave to proceed IFP under 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d
9 1176, 1177 (9th Cir. 1999). All actions sought to be filed IFP under § 1915 must be
10 accompanied by an affidavit, signed by the applicant under penalty of perjury, that includes
11 a statement of all assets which shows inability to pay initial fees or give security.
12 CivLR 3.2.a.

13 Taleff's affidavit states he receives no monthly income because he is currently
14 unemployed. (Doc. No. 2 at 2.) Taleff writes he did not earn an income in 2017 because he
15 was caring for his parent who underwent three operations. (*Id.* at 6.) He also states he was
16 last employed in 2016. (*Id.* at 6.) The Court finds that Taleff has sufficiently shown an
17 inability to pay the filing fee, but **DENIES** the IFP motion as moot because he failed to
18 state a claim.

19 **II. DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION**

20 Taleff's complaint alleges the following seven claims: (1) Making false statements
21 to a federal investigator; (2) Defamation of character; (3) Psychological child abuse; (4)
22 Constitutional rights to be a parent; (5) Conversion of property, documents, jewelry,
23 invasion of privacy; (6) Seizure of property, interest repayment; and (7) Elder abuse, child
24 abuse, and extortion. (Doc. No. 1 at 2.)

25 **III. DISCUSSION**

26 Taleff contends that jurisdiction is based on federal question. Based on the Court's
27 review of the complaint, the Court finds Taleff failed to establish federal question
28 jurisdiction. Taleff simply listed the factual statements regarding his claims but failed to

1 state any legal arguments or violations of any constitutional or federal law. (*See* Doc. No. 1
2 at 5–11.) And while Rule 8 only requires a short and plain statement of facts, Taleff still
3 must connect those facts to federal claims.

4 Federal courts are courts of limited jurisdiction. Unlike state courts, they have no
5 inherent or general subject matter jurisdiction. They can adjudicate only those cases which
6 the Constitution and Congress authorize them to adjudicate, i.e. those involving diversity
7 of citizenship, a federal question, or to which the United States is a party. *See Finley v.*
8 *United States*, 490 U.S. 545 (1989). Federal courts are presumptively without jurisdiction
9 over civil actions and the burden of establishing the contrary rests upon the party asserting
10 jurisdiction. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). A federal
11 court cannot reach the merits of any dispute until it confirms that it has subject matter
12 jurisdiction to adjudicate the issues presented. *See Steel Co. v. Citizens for a Better*
13 *Enviorn.*, 523 U.S. 83, 94–95 (1998). As a result, federal courts are under a continuing duty
14 to confirm their jurisdictional power and “obliged to inquire *sua sponte* whenever a doubt
15 arises as to [its] existence. . . .” *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S.
16 274, 278 (1977) (citations omitted). “Subject matter jurisdiction is determined from the
17 face of the complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

18 ***A. Claims One, Two, Three, Five, Six, and Seven***

19 Here, Taleff claims the Court has subject matter jurisdiction over the matter based
20 on federal question under 28 U.S.C. § 1331. However, the following claims are deeply
21 grounded in state law: defamation, conversion of property, seizure of property, elder abuse,
22 psychological child abuse, and making false statements to a federal investigator. Taleff’s
23 complaint fails to invoke a federal question and Taleff has not shown that diversity
24 jurisdiction exists. (*See* Doc. No. 1.) As a result, Taleff has not presented sufficient basis
25 for federal jurisdiction in this case.

26 ***B. Claim Four (Constitutional Rights as a Parent)***

27 Moreover, Taleff also states his constitutional rights as a parent were violated,
28 however he only makes a vague reference to a violation of his constitutional rights.

1 (Doc. No. 1 at 8.) Taleff has not alleged a violation of the constitution as an individual
2 claim or a violation of federal law. Additionally, the Court lacks subject matter jurisdiction,
3 pursuant to the domestic relations exception, which divests the federal courts of jurisdiction
4 to resolve disputes involving custody and support decrees. *See Ankenbrandt v. Richards*,
5 504 U.S. 689, 702–03 (1992); *see Thompson v. Thompson*, 798 F.2d 1547, 1562
6 (9th Cir. 1986), *aff'd*, 484 U.S. 174 (1988). In his complaint, Taleff’s primary allegations
7 were that Marcia Taleff, his ex-wife, was allegedly interfering with his parental rights to
8 see, visit, and speak with their children. (Doc. No. 1 at 8.) As such, the Court cannot have
9 subject matter jurisdiction over this claim. Accordingly, the Court *sua sponte* **DISMISSESS**
10 the complaint without prejudice.

11 **IV. REQUEST FOR APPOINTMENT OF COUNSEL**


12 Concurrently with the filing of Taleff’s complaint, Taleff filed a motion for
13 appointment of counsel. (Doc. No. 3.) Taleff’s motion for appointment of counsel is
14 **DENIED** as moot as Taleff has not established subject matter jurisdiction.

15 **V. CONCLUSION**

16 For the reasons set forth above, the Court **DENIES** as moot Taleff’s motion to
17 proceed IFP, **DISMISSES** *sua sponte* the complaint for lack of subject matter jurisdiction,
18 and **DENIES** as moot Taleff’s motion to appoint counsel. If Taleff elects to continue in
19 federal court rather than re-file in state court, Taleff must file: (1) an amended complaint
20 no later than **thirty (30) days** from the date of this order, and (2) an updated IFP motion.
21 Any amended complaint must clearly set forth why this Court has subject matter
22 jurisdiction.

23 **IT IS SO ORDERED.**

24 Dated: July 2, 2018

25 
26 Hon. Anthony J. Battaglia
27 United States District Judge
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