

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JIMMY LEE MENIFEE,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL CASE NO. 3:16-CV-0731-N-BK
	§	
JERRY LEE BLAYLOCK,	§	
Defendant.	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this case was automatically referred to the United States Magistrate Judge. Plaintiff filed a *pro se* complaint against Defendant Jerry Lee Blaylock. The Court granted the motion to proceed *in forma pauperis*, but did not issue process pending preliminary screening. For the reasons that follow, this case should be dismissed *sua sponte* without prejudice for lack of subject matter jurisdiction.

I. BACKGROUND

Plaintiff, a homeless and disabled resident of Dallas, Texas, brings this lawsuit against his brother, Jerry Lee Blaylock (“Blaylock”), who resides in Lancaster, Texas. Plaintiff claims that Blaylock stole his life insurance information, reported him dead to the insurance agent, and cashed in on his policy. [Doc. 3 at 1](#). Plaintiff also alleges “abuse and neglect” of a disabled person, and requests a court order returning to him his home at 212 Pioneer Court, Lancaster, Texas, where Blaylock currently resides. *Id.*

II. ANALYSIS

Before screening an *in forma pauperis* complaint under [28 U.S.C. § 1915\(e\)](#), the Court should always examine, *sua sponte*, if necessary, the threshold question of whether it has subject matter jurisdiction. [System Pipe & Supply, Inc. v. M/V Viktor Kurnatovsky](#), 242 F.3d 322, 324

(5th Cir. 2001); FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Unless otherwise provided by statute, federal court jurisdiction requires (1) a federal question arising under the Constitution, a federal law, or a treaty, *see* 28 U.S.C. § 1331, or (2) complete diversity of citizenship between adverse parties and the matter in controversy exceeds \$75,000, *see* 28 U.S.C. § 1332. “Under the well-pleaded complaint rule, ‘a federal court has original or removal jurisdiction only if a federal question appears on the face of the plaintiff’s well-pleaded complaint; generally, there is no federal jurisdiction if the plaintiff properly pleads only a state law cause of action.’” *Gutierrez v. Flores*, 543 F.3d 248, 251-52 (5th Cir. 2008).

The Court must always liberally construe pleadings filed by *pro se* litigants. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*pro se* pleadings are “to be liberally construed,” and “a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.”); *Cf.* FED. RULE CIV. PROC. 8(e) (“Pleadings must be construed so as to do justice”). Even under this most liberal construction, Plaintiff has not alleged facts supporting federal question or diversity jurisdiction.

The complaint does not present a federal cause of action. Rather Plaintiff only asserts a possible state law claim against his brother. [Doc. 3 at 1](#). Additionally, the complaint does not aver that the parties are citizens of different states and, thus, Plaintiff cannot rely on diversity jurisdiction. *See Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003) (district court cannot exercise diversity jurisdiction if the plaintiff shares the same state of citizenship as

any one of the defendants) (citation omitted). Therefore, this action should be dismissed *sua sponte* without prejudice for lack of subject matter jurisdiction.¹

III. LEAVE TO AMEND

Ordinarily, a *pro se* plaintiff should be granted leave to amend his complaint prior to dismissal, but leave is not required when he has already pled his “best case.” *Brewster v. Dretke*, 587 F.3d 764, 767–68 (5th Cir. 2009). Here, the facts as alleged by Plaintiff clearly establish a lack of complete diversity among the parties and no federal question jurisdiction. Thus, granting leave to amend would be futile and cause needless delay.

IV. RECOMMENDATION

For the foregoing reasons, it is recommended that this action be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

SIGNED March 21, 2016.


RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

¹ Since the complaint does not present a sufficient basis for federal question or diversity jurisdiction, the Court cannot exercise supplemental jurisdiction over Plaintiff’s state claim if any. See 28 U.S.C. § 1367(a) (“in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”).

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE