

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

TERRIE HOLSCHER,

Plaintiff,

vs.

KEN HESS and LORI HESS, in their
individual capacities as co-landlords
and owners of d/b/a/ Glacier Mountain
Rentals,

Defendants.

CV-19-50-BU-BMM-KLD

ORDER

Plaintiff Terrie Holscher filed a complaint against Ken and Lori Hess (Defendants). Holscher asserts that this Court has subject matter jurisdiction based on diversity of citizenship and the presence of a federal question. *See* 28 U.S.C. §§ 1332, 1331. Defendants filed a motion to dismiss based on lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and failure to state a claim under Rule 12(b)(6). (Doc. 5).

United States Magistrate Judge Kathleen DeSoto entered Findings and Recommendations in this matter on November 26, 2019. (Doc. 21). The Magistrate Judge concluded that it lacked jurisdiction and recommended that Defendant's motion to dismiss be granted and the case dismissed with prejudice. (Doc. 21 at 14). Neither party filed objections. The Court reviews for clear error any portion to which no party specifically objected. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The Magistrate Judge concluded that Holscher had failed to establish the requirement for diversity jurisdiction that "each of the plaintiffs must be a citizen of a different state than each of the defendants" because her Complaint identified the parties as residents of Bozeman, Montana. (Doc. 21 at 7 quoting *Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1095 (9th Cir. 2001)).

The Magistrate Judge similarly concluded that federal question jurisdiction was lacking. Holscher alleges that Defendants violated the federal mail fraud statute because they sent her two letters containing misrepresentations. The Magistrate Judge noted, however, that 18 U.S.C. § 1341 does not provide a private right of action and cannot serve as a basis for federal question jurisdiction. (Doc. 21 at 9 citing *Aaronson v. Kangarani*, 2019 WL 3490447, at *3 (D. Or. June 20, 2019)). The Court agrees.

The Magistrate Judge correctly concluded that Holscher did not present claims that establish diversity or federal question jurisdiction.

IT IS ORDERED that the Findings and Recommendations (Doc. 21) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED:

1. Defendants' Motion to Dismiss (Doc. 5) is **GRANTED**.
2. This case is **DISMISSED** with prejudice.
3. The Clerk is directed to enter judgment accordingly.

DATED this 7th day of January, 2020.



Brian Morris
United States District Court Judge