

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

PAMELA KAY JOPLIN,

Plaintiff,

v.

No. 1:24-cv-00326-WJ-JMR

CAPSTONE REAL ESTATE SERVICES, INC.,

Defendant.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL**

This case arises from a dispute between *pro se* Plaintiff, who is being evicted from her apartment, and Defendant, which is the agent for the apartment. *See* Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 at 4, Doc. 1, filed April 4, 2024 (“Complaint”). Plaintiff indicates there is a pending lawsuit in state court dealing with the same facts as alleged in this Complaint. *See* Complaint at 4.

United States Magistrate Judge Jennifer M. Rozzoni notified Plaintiff:

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243 F.3d 388 \*2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 843 (10th Cir.1988)).

There is no properly alleged federal-question jurisdiction because the Complaint does not allege that this action “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

For a case to arise under federal law within the meaning of § 1331, the plaintiff's well-pleaded complaint must establish one of two things: either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law . . . The complaint must identify

the statutory or constitutional provision under which the claim arises, and allege sufficient facts to show that the case is one arising under federal law.

*Davison v. Grant Thornton LLP*, 582 Fed.Appx. 773, 775 (10th Cir. 2014) (quoting *Firstenberg v. City of Santa Fe*, 696 F.3d 1018, 1023 (10th Cir.2012) and *Martinez v. U.S. Olympic Committee*, 802 F.2d 1275, 1280 (10th Cir. 1986)). Although Plaintiff filed her Complaint using the form “Civil Rights Complaint Pursuant to 42 U.S.C. § 1983,” there are no factual allegations showing that this case arises under 42 U.S.C. § 1983.

There is no properly alleged diversity jurisdiction because the Complaint states that Plaintiff and Defendant are citizens of New Mexico. *See* Complaint at 1. To invoke diversity jurisdiction, “a party must show that complete diversity of citizenship exists between the adverse parties and that the amount in controversy exceeds \$75,000.” *Symes v. Harris*, 472 F.3d 754, 758 (10th Cir.2006). “Complete diversity is lacking when any of the plaintiffs has the same residency as even a single defendant.” *Dutcher v. Matheson*, 733 F.3d 980, 987 (10th Cir. 2013).

Order to Show Cause at 2-3, Doc. 5, filed April 5, 2024. Judge Rozzoni also notified Plaintiff:

It also appears that this case is barred by the *Younger* abstention doctrine because there is a pending proceeding in state court involving the same factual allegations. The *Younger* abstention doctrine "dictates that federal courts not interfere with state court proceedings ... when such relief could adequately be sought before the state court." *Rienhardt v. Kelly*, 164 F.3d 1296, 1302 (10th Cir. 1999).

....

If the state-court proceeding is no longer ongoing, then this case may be barred by the *Rooker-Feldman* doctrine which:

bars federal district courts from hearing cases “brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). Where the relief requested would necessarily undo the state court’s judgment, *Rooker-Feldman* deprives the district court of jurisdiction. *Mo’s Express*, 441 F.3d at 1237.

*Velasquez v. Utah*, 775 Fed.Appx. 420, 422 (10th Cir. 2019).

Order to Show Cause at 3-4. Judge Rozzoni ordered Plaintiff to show cause why the Court should not dismiss this case for lack of jurisdiction and as barred by the *Younger* abstention or *Rooker-Feldman* doctrines, and to file an amended complaint.

Plaintiff did not file a response to the Order to Show Cause by the April 26, 2024, deadline. Plaintiff timely filed an Amended Complaint using the form “Civil Rights Complaint Pursuant to 42 U.S.C. § 1983.” Doc. 6, filed April 26, 2024. There are no factual allegations in the Amended Complaint describing what Defendant did to Plaintiff and what specific federally protected right Plaintiff believes Defendant violated. *See Schaffer v. Salt Lake City Corp.*, 814 F.3d 1151, 1155 (10th Cir. 2016) (“The two elements of a Section 1983 claim are (1) deprivation of a federally protected right by (2) an actor acting under color of state law”); *Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1163 (10th Cir. 2007) (“[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant’s action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated.”). Plaintiff alleges that she “fil[ed] timely Notice of Appeal in all New Mexico Court of Appeals, located at 2211 Tucker Avenue, Albuquerque, New Mexico.” Amended Complaint at 2-3. Plaintiff did not otherwise address whether this case is barred by the *Younger* abstention or *Rooker-Feldman* doctrines.

Plaintiff has not shown that the Court has federal question jurisdiction over this case. Although Plaintiff filed her Amended Complaint using the form “Civil Rights Complaint Pursuant to 42 U.S.C. § 1983,” there are no factual allegations showing that this case arises under 42 U.S.C. § 1983.

Plaintiff has not shown that the Court has diversity jurisdiction over this case. The Amended Complaint does not assert that the Court has jurisdiction based on diversity of citizenship

