

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 30 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GEORGE MUTASCU,

Plaintiff-Appellant,

v.

EMIL BOTEZATU,

Defendant-Appellee,

and

DOES, 1-10,

Defendant.

No. 18-55702

D.C. No. 2:15-cv-07066-DDP-AFM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted May 21, 2019**

Before: THOMAS, Chief Judge, and FRIEDLAND and BENNETT, Circuit
Judges.

George Mutascu appeals pro se from the district court's judgment dismissing

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

his diversity action alleging a state law claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *Naffe v. Frey*, 789 F.3d 1030, 1035 (9th Cir. 2015). We affirm.

The district court properly dismissed Mutascu’s action for lack of subject matter jurisdiction because Mutascu failed to allege facts sufficient to show that there is complete diversity between the parties. *See* 28 U.S.C. § 1332(a); *Cheng v. Boeing Co.*, 708 F.2d 1406, 1412 (9th Cir. 1983) (“Diversity jurisdiction does not encompass foreign plaintiffs suing foreign defendants.”). However, a dismissal for lack of subject matter jurisdiction should be without prejudice. *See Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004). We affirm the dismissal, and instruct the district court to amend the judgment to reflect that the judgment is without prejudice.

AFFIRMED with instructions to amend the judgment.