

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

LAWRENCE L. BLANKENSHIP,

Plaintiff,

v.

CASE NO. 3:12-cv-216-MW/EMT

**PAM CHILDERS,
Clerk of the Circuit Court,**

Defendant.

_____ /

**ORDER ACCEPTING
REPORT AND RECOMMENDATION**

This Court has reviewed the Magistrate's Report and Recommendation, ECF No. 45, filed November 14, 2013, and has considered *de novo* Plaintiff's Objection, ECF No. 48, filed December 5, 2013, and Defendant's Response, ECF No. 49, filed December 9, 2013.

IT IS ORDERED:

This Court accepts and adopts the Report and Recommendation except for its recommended dismissal of Plaintiff's federal claims "with prejudice." Plaintiff's federal claims shall be dismissed for lack of jurisdiction without reference to prejudice. *See Frederiksen v. City of Lockport*, 384 F.3d 437, 438-39 (7th Cir. 2004) ("The *Rooker-Feldman* doctrine is a rule of federal jurisdiction. A suit dismissed for lack of jurisdiction cannot *also* be dismissed 'with prejudice';

that's a disposition on the merits, which only a court with jurisdiction may render. 'No jurisdiction' and 'with prejudice' are mutually exclusive. When the *Rooker-Feldman* doctrine applies, there is only one proper disposition: dismissal for lack of federal jurisdiction. A jurisdictional disposition is conclusive on the jurisdictional question: the plaintiff cannot re-file in federal court. But it is without prejudice on the merits, which are open to review in state court to the extent the state's law of preclusion permits. . . . [T]he right disposition, when the *Rooker-Feldman* doctrine applies, is an order under Fed. R. Civ. P. 12(b)(1) dismissing the suit for lack of subject-matter jurisdiction." (internal citations omitted)).

The Clerk shall enter judgment stating, "Defendant's Motion to Dismiss, ECF No. 20, is **GRANTED**; Plaintiff's federal claims against Defendant are **dismissed for lack of jurisdiction**; Plaintiff's state law claims are **dismissed without prejudice** to Plaintiff pursuing them in state court. Defendant's Motion for Sanctions, ECF No. 31, is **DENIED**." The Clerk shall close the file.

SO ORDERED on December 13, 2013.

s/Mark E. Walker
United States District Judge