

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

PICCOLO

CIVIL ACTION

VERSUS

NO. 12-509

ALAIMO ET AL

SECTION "J"(3)

ORDER

The Court, having considered the complaint, the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge, and the failure of plaintiff to file an objection to the Magistrate Judge's Report and Recommendation, hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as the Court's opinion in this matter, with the sole exception that the dismissal should be *without prejudice*, for lack of subject matter jurisdiction.¹ Accordingly,

IT IS ORDERED that plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

New Orleans, Louisiana, this 30th day of May, 2012.


UNITED STATES DISTRICT JUDGE

¹ Because the dismissal is made due to a lack of subject matter jurisdiction, the dismissal should be without prejudice. See *Ramming v. U.S.*, 281 F.3d 158, 161 (5th Cir. 2001) ("The court's dismissal of a plaintiff's case because the plaintiff lacks subject matter jurisdiction is not a determination of the merits and does not prevent the plaintiff from pursuing a claim in a court that does have proper jurisdiction.").