

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kallys Albert, Sr.,

Civil No. 17-1697 (DWF/BRT)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

GEICO, GEICO General Insurance
Company, and John Doe,

Defendants.

This matter is before the Court upon Plaintiff Kallys Albert, Sr.'s ("Plaintiff") objections (Doc. No. 38)¹ to Magistrate Judge Becky R. Thorson's October 10, 2017 Report and Recommendation (Doc. No. 37) insofar as it recommends that: (1) Defendant GEICO General Insurance Company's motion to dismiss be granted; (2) Plaintiff's Motions for a Declaratory Judgment; Temporary Restraining Order, and a Preliminary Injunction be denied; and (3) this matter be dismissed due to lack of jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332, and Plaintiff's Complaint be dismissed without prejudice. Defendant Geico General Insurance Company filed a response to Plaintiff's objections on November 2, 2017. (Doc. No. 39.)²

¹ Plaintiff's objections were not timely filed. The Court will consider the untimely filing but cautions Plaintiff to adhere to the applicable rules in the future.

² Plaintiff submitted a letter to the Court dated November 9, 2017, and received on November 13, 2017 (Doc. No. 40) that appears to be a response to Defendant's opposition to Plaintiff's objections. Defendant correctly points out that this filing is improper and is properly stricken. The Court also notes that even if it considered the letter, the result here would be the same.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections. In the Report and Recommendation, Magistrate Judge Thorson concluded that neither the Fair Credit Billing Act, 15 U.S.C. § 1601 ("FCBA"), nor anything else alleged, provides a basis for federal question jurisdiction. Magistrate Judge Thorson explained that Plaintiff's FCBA claim could not sustain federal jurisdiction because the FCBA applies to providers of consumer credit and it is undisputed that GEICO, a provider of automobile insurance, is not a creditor and has not extended credit to Plaintiff. In addition, Magistrate Judge Thorson concluded that Plaintiff has not established diversity jurisdiction by demonstrating an amount in controversy greater than \$75,000. Plaintiff objects to the Report and Recommendation, arguing that the Magistrate Judge erred: (1) in finding that there was no federal question jurisdiction; (2) in finding a lack of diversity jurisdiction; (3) in recommending the dismissal of the case without an opportunity to amend the complaint; and (4) because the cases cited are not applicable.

Having carefully reviewed the record, the Court concludes that Plaintiff's objections do not warrant a departure from the Magistrate Judge's Report and Recommendation. In particular, the Magistrate Judge correctly determined that the court lacks subject-matter jurisdiction over this case. Based upon the *de novo* review of the

record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Kallys Albert, Sr.'s objections (Doc. No. [38]) to Magistrate Judge Becky R. Thorson's October 10, 2017 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Becky R. Thorson's October 10, 2017 Report and Recommendation (Doc. No. [37]) is **ADOPTED**.

3. Defendant GEICO General Insurance Company's motion to dismiss (Doc. No. [5]) is **GRANTED**.

4. Plaintiff's Motions for a Declaratory Judgment; Temporary Restraining Order, and a Preliminary Injunction (Doc. No. [16]) are **DENIED**.

5. This matter is **DISMISSED** due to lack of jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332, and Plaintiff's Complaint (Doc. No. [1]) is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 4, 2017

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge