

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

MASIMINO QUIROZ,¹

Plaintiffs,

v.

No. 1:19-cv-00725-RB-LF

TLC PLUMBING UTILITY,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 filed August 8, 2019 (Doc. 1 (Compl.)), and on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Application) filed August 8, 2019 (Doc. 2). For the reasons stated below, the Court **DISMISSES** this case without prejudice and **DENIES** the Application **as moot**.

The Complaint

Plaintiff, who is proceeding *pro se*, filed his Complaint using the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983." Plaintiff states he and Defendant are citizens of New Mexico. (*See* Compl. at 2.) Plaintiff alleges:

On May 29, 2015 I suffered an accident at job site. I was working for [Defendant] TLC as a concrete finisher. Facts of the accident are as follows: I stepped in the portapotty when the superintendent was throwing a rock. At the time I stepped out one of the rocks hit my right knee with great force. Making it difficult to move.

...

I believe that the appropriate medical care has not been provided. The amount of compensation has not been paid for my pain and suffering and loss of quality time with the family. Loss of work.

¹ Plaintiff's name is spelled four different ways in the Complaint. The caption shows the spelling from Plaintiff's signature on page five of the Complaint.

...

Most importantly my family has suffered I have a 7 year old with special needs. that requires my most attention and financial support. Due to this accident there has been a hardship in the family for my missing income.

(*Id.* at 2–3.²) Plaintiff seeks the following relief: “The right compensation for my injury and loss of my daily activities with my family and my special needs son. And the proper care to alleviate my injury.” (*Id.* at 5.)

Jurisdiction

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, at *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)).

The Court does not have jurisdiction over this matter. Both Plaintiff and Defendant are citizens of New Mexico. (*See* Compl. at 1.) Consequently, there is no properly alleged diversity jurisdiction. *See Dutcher*, 733 F.3d at 987 (“[A] party must show that complete diversity of citizenship exists between the adverse parties Complete diversity is lacking when any of the plaintiffs has the same residency as even a single defendant”). Nor is there any properly alleged federal question jurisdiction because there are no allegations that this action “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

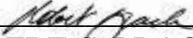
² The Court retains all spelling and grammatical errors as written in the Complaint.

The Court dismisses the Complaint without prejudice for lack of jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006) (“[D]ismissals for lack of jurisdiction should be without prejudice because the court, having determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.”).

Because it is dismissing this case, the Court denies Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs as moot.

IT IS ORDERED that:

- (i) This case is **DISMISSED without prejudice**.
- (ii) Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2) is **DENIED as moot**.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE