

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

WILLIE HOWARD ANDREWS, JR.

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v.

CIVIL ACTION NO. 6:16cv1218

KURESHE'S MART NO. 2

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of the complaint, has been presented for consideration. The Report and Recommendation (Docket No. 13), filed on January 10, 2017, recommends that the complaint be dismissed with prejudice for lack of subject-matter jurisdiction but without prejudice to the re-filing of Plaintiff's claims in an appropriate state court. The Court received an acknowledgment of receipt revealing that Plaintiff received the Report and Recommendation on January 17, 2017. No objections have been filed.

The Court agrees with the Magistrate Judge's finding that the Complaint should be dismissed for lack of subject-matter jurisdiction. Plaintiff does not allege any facts showing that Mr. Kureshe is a state employee such that 42 U.S.C. § 1983 could provide relief in this case. Finding no plain error with the Magistrate Judge's Report and Recommendation, this Court

ADOPTS the findings and conclusions of the Magistrate Judge as those of the Court. It is

ORDERED that the complaint is **DISMISSED** with prejudice for lack of subject-matter jurisdiction. FED R. CIV. P. 12(b)(1). This dismissal is without prejudice to the re-filing of Plaintiff's claims in an appropriate state court.

SIGNED this 9th day of February, 2017.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE