UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EDWARD PAUL CELESTINE JR,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4:15-CV-2811
	§	
AXEL NIEVES,	§	
	§	
Defendant.	§	

ORDER AND OPINION

Before the Court is Defendant Axel Nieves' Motion to Dismiss. (Document No. 7). Plaintiff has filed a Response. (Document No. 12). Having considered these filings, the facts in the record, and the applicable law, the Court concludes Defendant's Motion (Document No. 7) should be granted.

A federal court has subject matter jurisdiction over cases "arising under" the Constitution, laws, or treaties of the United States (federal question jurisdiction), or in cases where the matter in controversy exceeds $75,000, exclusive of interest and costs, and diversity of citizenship exists between the parties (diversity jurisdiction). 28 U.S.C. §§ 1331, 1332. Federal courts are courts of limited jurisdiction and must have statutory or constitutional power to adjudicate a claim. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Absent jurisdiction conferred by statute or the Constitution, they lack the power to adjudicate claims and must dismiss an action if subject matter jurisdiction is lacking. *Home Builders Ass'n, Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). The burden of establishing subject matter jurisdiction rests upon the party asserting it. *Kokkonen*, 511 U.S. at 377.

Plaintiff does not allege federal question jurisdiction in this case (and any negligence alleged by Plaintiff is not a federal claim). Furthermore, Plaintiff and Defendant both reside in

Texas, so diversity jurisdiction is inappropriate. (Document No. 1-2 at 1); 28 U.S.C. 1332.

Therefore, this Court does not have subject matter jurisdiction. It is hereby

ORDERED that Defendant's Motion (Document No. 12) is GRANTED and Plaintiff's

claims are DISMISSED without prejudice.

SIGNED at Houston, Texas, this 13th day of April, 2016.

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MELINDA HARMON
UNITED STATES DISTRICT JUDGE