

EXHIBIT. #2.

**FIFTH CIRCUIT COURT OF APPEALS
GRANTS REHEARING OUT OF TIME &
DISMISSING THE CLAIM AS FRIVILOUS.**

(Page. #25).

United States Court of Appeals
for the Fifth Circuit

No. 24-50640

United States Court of Appeals
Fifth Circuit

FILED

April 22, 2025

Lyle W. Cayce
Clerk

LARRY E. WEBSTER, JR.,

Plaintiff—Appellant,

versus

DOCTOR BALA DAVULURI,

Defendant—Appellee.

Appeal from the United States District Court
Western District of Texas
USDC No. 6:24-CV-294

ON PETITION FOR REHEARING

Before SMITH, CLEMENT, and WILSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellant's motion for leave to file petition for rehearing out of time is GRANTED.

IT IS FURTHER ORDERED that the petition for rehearing is DENIED.

EXHIBIT. #3.

FIFTH CIRCUIT COURT OF APPEALS

March 12, 2025. Order.
(Page. #27-29)..

United States Court of Appeals for the Fifth Circuit

No. 24-50640
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 12, 2025

Lyle W. Cayce
Clerk

LARRY E. WEBSTER, JR.,

Plaintiff—Appellant,

versus

DOCTOR BALA DAVULURI,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:24-CV-294

Before SMITH, CLEMENT, and WILSON, *Circuit Judges.*

PER CURIAM.*

Larry E. Webster, Jr., appeals the district court's dismissal with prejudice of his pro se complaint as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i). The basis for the district court's dismissal was that Webster's claims were based on allegations of malpractice and failed to

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 24-50640

implicate any federal subject-matter jurisdiction. As an initial matter, we DENY Webster's motion for default judgment.

We review the dismissal of an *in forma pauperis* complaint under § 1915(e)(2)(B)(i) for abuse of discretion. *Black v. Warren*, 134 F.3d 732, 733-34 (5th Cir. 1998) (per curiam). A complaint "is frivolous if it lacks an arguable basis in law or fact." *Id.* at 734. Although Webster indicates on appeal that his amended complaint named two additional defendants—as well as alleged violations of the False Claims Act and the Health Insurance Portability and Accountability Act—these new matters were not properly before the district court because Webster no longer had a right to amend his complaint when he filed pleadings raising them for the first time. Our court has held if a pro se litigant attempts to raise new issues when the litigant no longer has a right to amend his pleadings without leave and fails to request such leave from the district court, we are not required to consider those issues as properly submitted amendments to the complaint. *See United States v. Cervantes*, 132 F.3d 1106, 1111 (5th Cir. 1998); *United States v. Armstrong*, 951 F.2d 626, 630 (5th Cir. 1992). Accordingly, we decline to consider those new defendants and claims. However, we construe Webster's initial objections to the magistrate judge's report as an amendment to his complaint. *See United States v. Riascos*, 76 F.3d 93, 94 (5th Cir. 1996).

As found by the district court, Webster has not established federal subject-matter jurisdiction over his claims. Both Webster and Davuluri are Texas citizens. Although Webster on appeal characterizes his complaint as relying on 42 U.S.C. § 1983, that statute does not confer jurisdiction here because Webster is not suing a state actor. *See Priester v. Lowndes County*, 354 F.3d 414, 420 (5th Cir. 2004). Webster's vague references to his Medicaid coverage and the Social Security Act likewise fail to provide any basis for federal subject-matter jurisdiction.

EXHIBIT. #4
UNITED STATES WESTERN DISTRICT OF TEXAS
(July 29, 2025.).
(Page. #32).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

LARRY E. WEBSTER JR.,

Plaintiff,

v.

CIVIL NO. W-24-CV-00294-ADA

DR BALA DAVULURI,

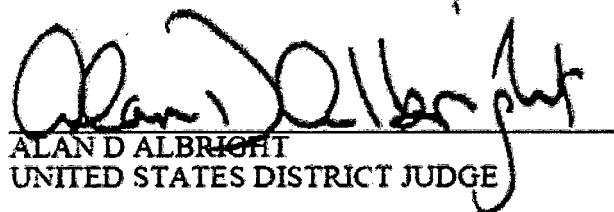
Defendant.

FINAL JUDGMENT

In accordance with the Court's Order Adopting the Report and Recommendations of Magistrate Judge Jeffery C. Manske, ECF No. 15, and pursuant to Rule 54 of the Federal Rules of Civil Procedure, it is hereby **ORDERED** and **ADJUDGED** that:

1. The Court dismisses Plaintiff's claims with prejudice as frivolous.
2. **FINAL JUDGMENT** is entered in favor of Defendant Dr. Bala Davuluri against Plaintiff Larry E. Webster, Jr.
3. Plaintiff shall take nothing, and each party shall bear its own costs of this action.
4. This **FINAL JUDGMENT** starts the time for filing any post-trial motions or appeal.
5. All remaining pending motions are denied as **MOOT**.

SIGNED this 29th day of July, 2024.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

LARRY WEBSTER,
Plaintiff,

v.

DR. BALA DAVULURI,
Defendant.

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C.A. NO. 6:24-CV-0294-ADA-JCM

ORDER

Before the Court is Plaintiff's Motion to Proceed in Forma Pauperis (ECF No. 2). For the following reasons, the Court **ORDERS** that Plaintiff's Motion to Proceed in Forma Pauperis be **GRANTED**. The Court further **RECOMMENDS** that Plaintiff's claim be dismissed as frivolous.

I. DISCUSSION

The Court may grant in forma pauperis status to an indigent litigant "who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). The Court has limited discretion to deny such an application based on the litigant's financial information. *Adkins v. E.I. Du Pont De Nemours & Co., Inc.*, 335 U.S. 331, 337 (1948).

The Court must consider whether paying filing fees and court costs will cause undue financial hardship. *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). The Court must review the litigant's financial resources as well as expenses and whether those expenses are discretionary or mandatory. *Id.* Courts may look to where the litigant's reported income is in relation to applicable poverty guidelines. *See, e.g., Mann v. City of Moss Point*, No. 1:14cv237-KS-MTP, 2014 WL 4794544, at *2 (S.D. Miss. Sept. 25, 2014); *Williams v. Louisiana*, No. 14-

00154-BAJ-EWD, 2017 WL 3124332, at *2 (M.D. La. April 14, 2017); *Bruton v. Colvin*, No. 4:14-CV-083-A, 2014 WL 840993, at *1 (N.D. Tex. Mar. 4, 2014).

Here, Plaintiff reports his monthly gross income to be \$483. Mot. at 2. The applicable poverty guideline for a family of four is \$31,200. U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Programs*, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited May 31, 2024). Plaintiff's annual household income totals \$5,796. Plaintiff's application shows that having to pay his filing fee would cause him undue financial hardship.

Once IFP status is conferred, 28 U.S.C.A. § 1915(e)(2)(B)(i) allows dismissal of an action if it is frivolous. *See* 28 U.S.C.A. § 1915(e)(2)(B)(i). A complaint is frivolous if it "lacks an arguable basis either in fact or in law." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law if it is "based on an indisputably meritless legal theory." *Id.* at 327. A claim lacks an arguable basis in fact if the alleged facts are "clearly baseless, a category encompassing allegations that are 'fanciful,' 'fantastic,' and 'delusional.'" *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992).

Plaintiff sues Defendant for medical malpractice. *See generally* Pl.'s CCompl. (ECF No. 1); Pl.'s Civil Cover Sheet (ECF No. 1-1). Plaintiff alleges that Defendant Dr. Davuluri is an individual residing in McLennan County, Texas. Pl.'s Civil Cover Sheet. Plaintiff also asserts that this Court's jurisdiction is based on having a U.S. Government Defendant. *Id.* Not once in Plaintiff's 44-page Complaint does he identify any fact which could establish that Dr. Davuluri is a government defendant.

Plaintiff also does not plead facts establishing federal question jurisdiction. Plaintiff apparently brings his claims against Defendant under Colorado law despite all relevant conduct occurring in Waco, Texas. Pl.'s Compl. at 7. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). A federal question exists "only [in] those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Singh v. Duane Morris LLP*, 538 F.3d 334, 337–38 (5th Cir. 2008). Here, Plaintiff's complaint does not establish that a federal law creates his causes of action or that his right to relief necessarily depends on resolution of a substantial question of federal law. Thus, this Court does not have federal question jurisdiction over this matter.

The Court also does not have jurisdiction over this cause under diversity of citizenship jurisdiction. Federal courts have original jurisdiction over all civil actions where the amount in controversy exceeds \$75,000 and is between citizens of a state and citizens or subjects of a foreign state. 28 U.S.C. § 1332(a)(2). Diversity jurisdiction requires complete diversity of citizenship, meaning that a court lacks jurisdiction over a case in which one of the plaintiffs shares the same state citizenship as any one of the defendants. *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003) (citations omitted). Here, Plaintiff claims to be a resident of Texas and claims that the defendant, Dr. Davuluri, is also a Texas resident. Pl.'s Civil Cover Sheet. The Court lacks jurisdiction because of the lack of complete diversity of citizenship.

II. CONCLUSION

For the reasons explained above, the Court **ORDERS** Plaintiff's Motion to Proceed in Forma Pauperis (ECF No. 2) be **GRANTED**. The Court further **RECOMMENDS** that Plaintiff's claim be dismissed as frivolous.

SIGNED this 3rd day of June 2024.


JEFFREY C. MANSKE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

LARRY E. WEBSTER JR.,

Plaintiff,

v.

DR BALA DAVULURI,

Defendant.

CIVIL NO. W-24-CV-00294-ADA

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the Report and Recommendation of United States Magistrate Judge Jeffrey C. Manske. ECF No. 6. The report recommends that Plaintiff's claim (ECF No. 1) be dismissed as frivolous. The report and recommendation was filed on June 3, 2024.

A party may file specific, written objections to the proposed findings and recommendations of the magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing *de novo* review by the district court. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). A district court need not consider “[f]rivolous, conclusive, or general objections.”

Battle v. U.S. Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (en banc), overruled on other grounds by *Douglass v. United States Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996)).

Plaintiff filed objections on June 9, 2024, ECF No. 8, and an amendment to the objections on June 10, 2024, ECF No. 9. The Court has conducted a *de novo* review of the complaint, the report and recommendation, the objections to the report and recommendation, and the applicable

laws. After that thorough review, the Court is persuaded that the Magistrate Judge's findings and recommendation should be adopted.

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge Jeffrey C. Manske, ECF No. 6, is **ADOPTED**.

IT IS FURTHER ORDERED that Plaintiff's objections are **OVERRULED**.

IT IS FINALLY ORDERED that Plaintiff's claim be dismissed as frivolous in accordance with the Report and Recommendation.

SIGNED this 20th day of June, 2024.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**