No *Shepard’s*  Signal™As of: August 13, 2018 2:49 PM Z

# [***Hernandez v. First Magnus Fin. Corp.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RSC-VBW1-JKPJ-G4G0-00000-00&context=)

United States District Court for the Southern District of Florida

February 28, 2018, Decided; February 28, 2018, Entered on Docket

Case No. 18-20719-COOKE

**Reporter**

2018 U.S. Dist. LEXIS 33688 \*

DANIEL A. HERNANDEZ, Plaintiff, vs. FIRST MAGNUS FINANCIAL CORPORATION and NATIONSTAR MORTGAGE, LLC, Defendants.

**Core Terms**

subject matter jurisdiction, commerce, federal question, ***regulating***, exerted

**Counsel:** **[\*1]**Daniel A. Hernandez, Plaintiff, Pro se, Miami, FL.

**Judges:** MARCIA G. COOKE, United States District Judge.

**Opinion by:** MARCIA G. COOKE

**Opinion**

ORDER OF DISMISSAL FOR LACK OF SUBJECT MATTER JURSIDICTION

THE COMPLAINT in this action (ECF No. 1) alleges subject matter jurisdiction under *28 U.S.C. §§ 1331* (federal question) and 1337 (commerce and ***antitrust*** ***regulation***).

A federal district court is obliged to carefully examine its jurisdiction over a case, and where proper, dismiss the case *sua sponte* for lack of subject-matter jurisdiction. [*Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 126 S.Ct. 941, 950, 163 L. Ed. 2d 797 (2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4J2C-CFW0-004B-Y02T-00000-00&context=) ("[S]ubject-matter jurisdiction must be considered by the court on its own motion, even if no party raises an objection"); *see also* [*Mansfield, C. & L.M. Ry. v. Swan, 111 U.S. 379, 384, 4 S. Ct. 510, 28 L. Ed. 462 (1884)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HPM0-003B-H30C-00000-00&context=) ("[T]he judicial power of the United States must not be exerted in a case to which it does not extend, even if both parties desire to have it exerted").

This Court does not appear to have subject matter jurisdiction over this action. Plaintiff's claims for misrepresentation and unjust enrichment arise under state law and do not involve a federal question that would establish jurisdiction under *28 U.S.C. § 1331*. Likewise, Plaintiff's claims do not arise from congressional acts "***regulating*** commerce or protecting trade and commerce against restraints and monopolies" that might support jurisdiction**[\*2]** under [*28 U.S.C. § 1337*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GN81-NRF4-4291-00000-00&context=). Plaintiff therefore cannot maintain his suit in federal court.

Accordingly, it is ORDERED and ADJUDGED that Plaintiff's Complaint (ECF No. 1) be DISMISSED ***without prejudice*** for lack of subject matter jurisdiction. The Clerk is directed to CLOSE this case. All pending motions, if any, are DENIED ***as moot***.

**DONE and ORDERED** in Chambers, in Miami, Florida, this 28th day of February 28, 2018.

/s/ Marcia G. Cooke

MARCIA G. COOKE

United States District Judge

**End of Document**