UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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March 14, 2022

Clerk - Middle District of Georgia
U.S. District Court
201 W BROAD AVE
ALBANY, GA 31701

Appeal Number: 21-13742-C
Case Style: Jermaine Spence v. Mr. Reemon Bishara, et al
District Court Docket No: 1:20-cv-00230-LAG

The enclosed copy of the Clerk's Order of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

Any pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Walter Pollard, C
Phone #: (404) 335-6186

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13742-C

JERMAINE E. SPENCE,

Plaintiff-Appellant

versus

REEMON BISHARA, MD of the State of Georgia Department of Beh. Health and Dis. [SOG-DBHDD], in his individual capacity, DAVID K. GETACHEW-SMITH, SR., Attorney for the State of Georgia - County of Fulton County - Office of the District Attorney, in his individual capacity, RAJ KRUPA LLC, d.b.a. Relax Inn Ex Rel Prakash Patel, LAURA BARBER, Nurse of Aspire, State of Georgia, Albany Area Community Service Board, in her individual capacity a.k.a. Lora, SONIA ANN GREEN, Licensed practical nurse of Aspire, in her individual capacity,

Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Georgia

ORDER:

Jermaine E. Spence's motion for leave to proceed *in forma pauperis* is DENIED because he has not made the required showing that he is a pauper. *See Adkins v. E.I. Dupont de Nemours & Co.*, 335 U.S. 331, 337 (1948). Additionally, Mr. Spence's motion for voluntary resignation of a district court judge is DENIED AS MOOT.

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JERMAINE E. SPENCE,	:	
Plaintiff,	:	
v.	:	CASE NO.: 1:20-CV-230 (LAG)
REEMON BISHARA, *et al.*,	:	
Defendants.	:	

ORDER

Before the Court is *pro se* Plaintiff Jermaine E. Spence's Amended Motion for Leave to Proceed *in forma pauperis* (Doc. 8) and Motion to Amend Complaint to Add Defendants (Doc. 9). For the reasons stated below, Plaintiff's Motion for Leave to Proceed *in forma pauperis* is **GRANTED**, but Plaintiff's Complaint is **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff's Motion to Amend Complaint is **DENIED**.

BACKGROUND

In December 2018, Plaintiff was released from involuntary confinement at Georgia Regional Hospital-Savannah after Defendant David Getachew-Smith, Sr., a state attorney, allegedly entered a *nolle prosequi* for Plaintiff's April 2010 criminal charge.[1] (Doc. 1-3 at 3, 6). In December 2018, Defendant Getachew-Smith allegedly disclosed "a fictitious diagnosis" in a report provided to the superior court.[2] (*Id.* at 4–5, 53–56). Plaintiff eventually sent Defendant Getachew-Smith's supervisor a letter and email to lodge his grievance regarding the disclosure, claiming it negatively affected Plaintiff's political aspirations. (*Id.* at 53–56).

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[1] The details surrounding Plaintiff's initial confinement and the *nolle prosequi* from April 2010 through December 2018 are not contained in Plaintiff's Complaint or the record.

[2] It is unclear what effect the allegedly fictitious report had or for what purpose it was submitted. (*See* Doc. 1-3 at 53–54). Plaintiff contends that disclosure of the report was "libelous . . . [and] hurtful and harmful to [his] ambitions." (*Id.* at 54).

Later that month, Plaintiff sought to retrieve his belongings from the hospital. (*Id.* at 5). The clinical director, Defendant Dr. Reemon Bishara, allegedly threatened Plaintiff, telling him that he would be involuntarily committed if he returned to the hospital. (*Id.*). In February 2019, Plaintiff attempted to rent a room at the Relax Inn—a motel in Albany, Georgia—but left after his key card failed to work twice. (*Id.* at 5–6, 58). Plaintiff later sought a $70.00 refund from the motel owner, Defendant Raj Krupa, LLC, but was denied. (*Id.* at 6, 58).

Around February 19, 2019, Plaintiff was transported by local police and involuntarily committed to Aspire Behavioral Health & Developmental Disability Services (Aspire) in Albany, Georgia "due to bizarre behavior." (*Id.* at 5, 17). While at Aspire, Plaintiff alleges that Defendant Nurse Stanley Soles prescribed medications and administered approximately eighteen sedative injections, despite not having a "nurse/physician protocol agreement with an Aspire physician." (*Id.* at 5). Plaintiff also alleges that other nurses at Aspire—Defendants Laura Barber, Sonia Green, Betty Johnson, Nikki Marshall, Laura Wells, and Miguel Williams (the Aspire Defendants)—were forced by Defendant Soles to administer these injections. (*Id.*). Plaintiff later filed a complaint against Dr. Bishara and the Aspire nurses with Defendant Georgia Composite Medical Board for violations of the Medical Practice Act and Medical Board Rules.[3] (*Id.* at 26–52). The Georgia Composite Medical Board reviewed Plaintiff's complaint but voted not to take any disciplinary action. (*Id.* at 24).

On March 25, 2019, Plaintiff was transferred to West Central Georgia Regional Hospital in Columbus, Georgia. (*Id.* at 17). While at West Central Georgia Regional Hospital, Plaintiff alleges that he was physically attacked and stalked by another patient, Defendant Ronald Derrick. (*Id.* at 6). A month later, the Georgia Department of Behavioral Health and Developmental Disabilities filed a petition for continued involuntary treatment in the Probate Court of Muscogee County, Georgia. (*See id.* at 48). Defendant Judge Marc D'Antonio granted the petition, ordered an extension of Plaintiff's involuntary treatment

[3] Many of Plaintiff's documents are illegible and difficult to read. The Court cannot tell specifically what Plaintiff is alleging in these complaints.

for sixty days, and set a hearing for May 16, 2019. (*Id.* at 49). The order was docketed by the Chief Clerk, Defendant Brooke Bolstead. (*Id.* at 12).

Sometime later, the Georgia Department of Behavioral Health and Developmental Disabilities filed another petition for continued involuntary treatment, this time with the Georgia Office of State Administrative Hearings (OSAH). (*See id.* at 48). On October 2, 2019, Defendant Judge Ana Kennedy granted the petition and ordered an extension of Plaintiff's involuntary treatment for one year. (*Id.* at 20). During the hearing, Plaintiff alleges that Judge Kennedy forced Defendant Greg Bagley, a state attorney, to call witnesses. (*Id.* at 5). Judge Kennedy later issued a final decision on November 19, 2019, ordering an extension of Plaintiff's involuntary confinement for no more than one year from the date of her October order. (*Id.* at 17–18).

On October 14, 2019, Plaintiff filed a complaint against Defendants Judge D'Antonio and Bolstead with Defendant Georgia Judicial Qualifications Commission (JQC). (*Id.* at 10–12). In his JQC complaint, Plaintiff alleged that Judge D'Antonio divulged a "fictitious, malicious, and private medical diagnosis," violated his due process rights, and "misdirected the Clerk of Probate Court," Defendant Bolstead. (*Id.* at 10). The JQC reviewed the allegations and determined that no misconduct occurred. (*Id.* at 8). On April 20, 2020, Plaintiff filed a complaint against Defendant Judge Kennedy with the JQC. (*Id.* at 15–16). In this JQC complaint, Plaintiff alleged that Judge Kennedy "willfully demonstrated misconduct in performing official duties" and "was aware that she lacked jurisdiction to hear" the petition for continued involuntary treatment. (*Id.* at 15). Two months later, the JQC concluded its review and found no judicial misconduct on behalf of Judge Kennedy. (*Id.* at 9).

Plaintiff filed this action and moved for leave to proceed *in forma pauperis* (IFP) on November 10, 2020. (Docs. 1–2). In his Complaint, Plaintiff raises claims under 42 U.S.C. § 1983 against seventeen defendants for false detention, deprivation of property, undue embarrassment, and pain and suffering. Plaintiff seeks monetary damages in the following

amounts:[4]

- $5,000,000 from Defendant Getachew-Smith;
- $10,000 from Defendant Bishara;
- $500 from Defendant Raj Krupa, LLC;
- $300,000 each from the Aspire Defendants;
- $1,000,000 from Defendant Georgia Medical Composite Board;
- $100,000 from Defendant Derrick;
- $5,000 from Defendant Judge Kennedy;
- $5,000 from Defendant Bagley; and
- $1,000,000 from Defendant Judicial Qualifying Commission. (Doc. 1-3 at 5–6).

The Court denied Plaintiff leave to proceed IFP but permitted Plaintiff to amend his Motion for Leave to Proceed IFP by February 8, 2021. (Doc. 5). Plaintiff responded to the Court's Order by filing the instant Amended Motion for Leave to Proceed IFP on January 28, 2021. (Doc. 8). On February 12, 2021, Plaintiff filed a Motion to Amend Complaint to Add Defendants. (Doc. 9). Plaintiff's Amended Motion for Leave to Proceed IFP, Complaint, and Motion to Amend Complaint are now ripe for review pursuant to 28 U.S.C. § 1915.

DISCUSSION

Courts follow a well-established, two-step procedure when processing *pro se* complaints filed IFP pursuant to 28 U.S.C. § 1915. *See Procup v. Strickland*, 760 F.2d 1107, 1114 (11th Cir. 1985) (first citing *Green v. City of Montezuma*, 650 F.2d 648, 650 n.3 (5th Cir. Unit B 1981); then citing *Woodall v. Foti*, 648 F.2d 268, 271 (5th Cir. Unit A 1981); and then citing *Watson v. Ault*, 525 F.2d 886, 891 (5th Cir. 1976)). "Initially, the district court must determine whether the plaintiff is unable to prepay costs and fees and is therefore a pauper under the statute." *Id.* (citing 28 U.S.C. § 1915(a)). "Only after making a finding of poverty and docketing the case can the court proceed to the next question: whether the claim asserted is frivolous or malicious." *Id.* (citing 28 U.S.C. § 1915(d)).

[4] Plaintiff's Complaint does not include a request for damages or relief sought from Defendants Judge D'Antonio or Bolstead. (*See generally* Doc. 1-3).

I. Financial Status

Pursuant to 28 U.S.C. § 1915(a), a court "may authorize the commencement . . . of any suit, action or proceeding . . . without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [litigant] possesses that the person is unable to pay such fees or give security therefor."[5] 28 U.S.C. § 1915(a)(1). Section 1915 "is designed to ensure that indigent litigants have meaningful access to the federal courts." *Neitzke v. Williams*, 490 U.S. 319, 324 (1988) (citing *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342–43 (1948)); *see also Attwood v. Singletary*, 105 F.3d 610, 612 (11th Cir. 1997) (per curiam) (citing *Coppedge v. United States*, 369 U.S. 438, 446 (1962)). It permits litigants to file suit without prepaying any requisite fees. *Denton v. Hernandez*, 504 U.S. 25, 27 (1992). It does not, however, create an absolute right to proceed in civil actions without payment of costs. *Bey v. Lenox Mun. Ct.*, No. 7:17-CV-180 (WLS), 2017 WL 6617053, at *1 (M.D. Ga. Dec. 4, 2017) (quoting *Startti v. United States*, 415 F.2d 1115, 1116 (5th Cir. 1969)).[6] While a plaintiff need not demonstrate absolute destitution to proceed IFP, "something more than mere statement and an affidavit that a man is 'poor' should be required before a claimant is allowed to proceed in forma pauperis." *Levy v. Federated Dep't Stores*, 607 F. Supp. 32, 34 (S.D. Fla. 1984) (citation omitted). The affidavit required by the statute must show inability to prepay fees and costs without foregoing the basic necessities of life. *Adkins*, 335 U.S. at 339.

In his initial IFP application, Plaintiff states that his monthly household income is $751.00 while his household's monthly expenses total $704.51.[7] (Doc. 2 at 2, 5). Plaintiff also states that he has $2,340.05 in cash and in his banking accounts. (*Id.* at 2). Additionally, Plaintiff checked "no" in response to whether he expected any major changes to his monthly income, expenses, assets, or liabilities during the next year. (*Id.* at 5). And

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[5] "[T]he affidavit requirement applies to all persons requesting leave to proceed IFP." *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 n.1 (11th Cir. 2004) (per curiam) (citations omitted).

[6] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions issued by the former Fifth Circuit prior to October 1, 1981.

[7] Plaintiff appears to have miscalculated his total monthly income. Plaintiff states that he expects to receive $720.00 from employment and $31.00 in interest and dividends. (Doc. 2 at 1). Plaintiff's total monthly income, however, fails to include the $31.00 from interest and dividends. Therefore, the Court calculates Plaintiff's total monthly income at $751.00.

Plaintiff has not incurred expenses or attorney's fees in conjunction with the present suit. (*Id.*). In his Amended Motion, Plaintiff contends that he is "in the custody of the state, is now (1) without income and (2) likely homeless due to rent collect [sic] [on] November 23, 2020." (Doc. 8). Plaintiff also states that he was ejected from the Albany Rescue Mission, where he was previously staying. (*Id.*).

The filing fee for a civil case is $402.00. Because Plaintiff is now unemployed, and apparently homeless, the Court finds that Plaintiff qualifies under 28 U.S.C. § 1951(a)(1). Accordingly, Plaintiff's Amended Motion to Proceed *in forma pauperis* (Doc. 8) is **GRANTED**.

II. Frivolity Review

A. Legal Standard

Because Plaintiff has been granted leave to proceed IFP, the Court must conduct a review of his Complaint guided by the pleading instructions contained in the Federal Rules of Civil Procedure and pursuant to 28 U.S.C. § 1915(e). Rule 8 requires that:

> A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction . . . ; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought.

Fed. R. Civ. P. 8(a)(1)–(3). Rule 10 requires that claims be set forth in "numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b).

Section 1915 provides that an IFP action shall be dismissed at any time if it is "frivolous or malicious," "fails to state a claim," or "seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). A claim is frivolous when it "has little or no chance of success," i.e., when it appears "from the face of the complaint that the factual allegations are 'clearly baseless' or that the legal theories are 'indisputably meritless.'" *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (per curiam) (first citing *Neitzke*, 490 U.S. at 327; and then citing *Denton*, 504 U.S. at 32–33). "Dismissal for failure to state a claim is appropriate if the complaint's factual allegations

fail to state a claim for relief that is 'plausible on its face.'" *Jacobs v. Biando*, 592 F. App'x 838, 840 (11th Cir. 2014) (first quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); and then citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "A claim is facially plausible 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* (quoting *Iqbal*, 556 U.S. at 678). The Court must "take the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiffs," but the same liberal reading does not apply to legal conclusions. *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010) (citations omitted). "[A] plaintiff armed with nothing more than conclusions" cannot "unlock the doors of discovery." *Iqbal*, 556 U.S. at 678–79. Additionally, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678 (citation omitted). "Even if the complaint legally states a claim and the facts are not fantastic, a dismissal on grounds of frivolousness might be justified. For example, if the district court sees that an affirmative defense would defeat the action, a section 1915(d) dismissal is allowed." *Clark v. Ga. Pardons & Paroles Bd.*, 915 F.2d 636, 640 (11th Cir. 1990).

Generally, "[*p*]*ro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam) (citation omitted); *see also Estelle v. Gamble*, 429 U.S. 97, 106 (1976) ("[A] pro se complaint, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers' and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" (citation omitted)). "But the leniency accorded *pro se* litigants does not give a court license to serve as *de facto* counsel for a party or to rewrite an otherwise deficient pleading to sustain an action." *Matthews, Wilson & Matthews, Inc. v. Cap. City Bank*, 614 F. App'x 969, 969 n.1 (11th Cir. 2015) (per curiam) (citing *GJR Invs., Inc. v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled in part on other grounds as recognized in Randall v. Scott*, 610 F.3d 701, 709 (11th Cir. 2010)).

B. Plaintiff's Statement of Claims

After review of Plaintiff's allegations, the Court liberally construes Plaintiff's Complaint as bringing claims under 42 U.S.C. § 1983 for deprivation of liberty and property against all seventeen defendants. To state a claim for relief under § 1983, a plaintiff must allege that: (1) an act or omission deprived him of a right, privilege, or immunity secured by the constitution or a statute of the United States; and (2) the act or omission was committed by a person acting under color of state law. *Hale v. Tallapoosa County*, 50 F.3d 1579, 1582 (11th Cir. 1995) (citing 42 U.S.C. § 1983). If a litigant cannot satisfy these requirements or fails to provide factual allegations in support of his claim or claims, then the complaint is subject to dismissal. *See Chappell v. Rich*, 340 F.3d 1279, 1282–84 (11th Cir. 2003) (per curiam) (affirming dismissal of a § 1983 complaint because plaintiff's factual allegations were insufficient to support the alleged constitutional violation); *see also* 28 U.S.C. § 1915A(b) (dictating that a complaint, or any portion thereof, that does not pass the standard in § 1915 "shall" be dismissed on preliminary review).

Plaintiff's Complaint must be dismissed because it is frivolous and fails to state a claim upon which relief can be granted. Moreover, several Defendants have affirmative defenses that would defeat Plaintiff's action.

1. Defendants Bagley and Getachew-Smith

Plaintiff claims Defendant Bagley was forced by Defendant Judge Kennedy to call witnesses during a November 4, 2019 hearing. (Doc. 1-3 at 5). Plaintiff alleges that Defendant Getachew-Smith made an "unauthorized and fictitious disclosure . . . in December 2018" and that this caused him "[p]ain and [s]uffering and undue embarrassment." (*Id.* at 5–6). As a threshold matter, Plaintiff's Complaint does not comply with Federal Rule of Civil Procedure 8 because it does not include "enough factual matter" to "give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555–56 (omission in original) (citation omitted). Plaintiff fails to specify what injury Defendant Bagley caused him. As to Defendant Getachew-Smith, even if the Court were to construe Plaintiff's claim as a deprivation of his liberty interest

under the Fourteenth Amendment and assumed that Defendant Getachew-Smith's alleged disclosure was defamatory, defamation "standing alone and apart from any other governmental action, does not constitute a deprivation of liberty . . . under the Fourteenth Amendment." *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1302 (11th Cir. 2001) (citing *Paul v. Davis*, 424 U.S. 693, 694 (1976)). To establish a deprivation based on defamation by the government, plaintiffs must satisfy the "stigma-plus" test. *See id.* (citing *Moore v. Otero*, 557 F.2d 435, 437 (5th Cir. 1977)). Under the stigma-plus test, a plaintiff "must establish the fact of the defamation 'plus' the violation of some more tangible interest before the plaintiff is entitled to invoke the procedural protections of the Due Process Clause." *Id.* (first citing *Paul*, 424 U.S. at 701–02; and then citing *Siegert v. Gilley*, 500 U.S. 226, 233 (1991)). Here, Plaintiff has not alleged a violation of a tangible interest.

Furthermore, prosecutors are entitled to "absolute immunity from allegations stemming from the prosecutor's function as advocate." *Hart v. Hodges*, 587 F.3d 1288, 1295 (11th Cir. 2009) (per curiam) (citation omitted). "[P]rosecutorial immunity does not apply when the prosecutor acts outside the ambit of activities 'intimately associated' with the judicial process." *Id.* at 1296. The allegations in the Complaint relate to actions by Defendants Getachew-Smith and Bagley that are squarely within "the ambit of activities 'intimately associated' with the judicial process." *Id.*; *see also, e.g.*, *Hopkins v. Vacura*, No. C07-5293RJB, 2007 WL 1960615, at *2 (W.D. Wash. July 2, 2007) (finding a case manager was entitled to prosecutorial immunity when he filed a report in connection with a petition requesting involuntary treatment). Accordingly, Plaintiff's claims against these Defendants are dismissed as Plaintiff has failed to state a claim upon which relief can be granted and because Defendants Getachew-Smith and Bagley are entitled to prosecutorial immunity.

2. Defendant Bishara

Plaintiff alleges that Defendant Bishara threatened to involuntarily commit him if he returned to retrieve his property from Georgia Regional Hospital-Savannah. (Doc. 1-3 at 5). The Court liberally construes Plaintiff's claim as a deprivation of personal property without due process of law. "A § 1983 action alleging a procedural due process clause

violation requires proof of three elements: a deprivation of a constitutionally-protected liberty or property interest; state action; and constitutionally inadequate process." *Doe v. Fla. Bar*, 630 F.3d 1336, 1342 (11th Cir. 2011) (quoting *Cryder v. Oxendine*, 24 F.3d 175, 177 (11th Cir. 1994)). As to the third element, it is recognized that '[d]ue process is a flexible concept that varies with the particular situation." *Cryder*, 24 F.3d at 177.

Determining whether due process is satisfied requires consideration of three distinct factors:

> [f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976) (citation omitted).

Even if a state actor has continued to wrongfully retain a person's personal property, "no procedural due process violation has occurred if a meaningful postdeprivation remedy for the loss is available." *Case v. Eslinger*, 555 F.3d 1317, 1331 (11th Cir. 2009) (first quoting *Lindsey v. Storey*, 936 F.2d 554, 561 (11th Cir. 1991); then citing *Hudson v. Palmer*, 468 U.S. 517 (1984); and then citing *Parratt v. Taylor*, 451 U.S. 527 (1981), *overruled by Daniels v. Williams*, 474 U.S. 327 (1986)). "[T]he state's action is not complete until and unless it provides or refuses to provide a suitable postdeprivation remedy." *Hudson*, 468 U.S. at 533. Georgia law provides a post-deprivation remedy through an action for conversion of personal property, which "is a sufficient postdeprivation remedy when it extends to unauthorized seizures [or retentions] of personal property by state officers." *Case*, 555 F.3d at 1331. Under Georgia law, "[t]he owner of personalty is entitled to its possession," and "[a]ny deprivation of such possession is a tort for which an action lies." O.C.G.A. § 51-10-1. The Eleventh Circuit has noted that, "this statutory provision covers the unauthorized seizure of personal property by [state] officers. Therefore, the state has provided an adequate postdeprivation remedy when a plaintiff claims that the state has retained his property without due process of law." *Lindsey*, 936

F.2d at 561 (quoting *Byrd v. Stewart*, 811 F.2d 554, 555 n.1 (11th Cir. 1987) (per curiam)); *see also Pierce v. Georgia*, No. 6:17-CV-31, 2017 WL 1363319, at *3 (S.D. Ga. Apr. 11, 2017) (finding no procedural due process violation where prison officers failed to return plaintiff's property), *report and recommendation adopted*, No. 6:17-CV-31, 2017 WL 2312941 (S.D. Ga. May 26, 2017). Because Georgia law provides an adequate post-deprivation remedy through O.C.G.A. § 51-10-1, Plaintiff fails to state a claim upon which relief can be granted against Defendant Bishara.

3. Defendants Judge D'Antonio, Bolstead, and Judge Kennedy

Plaintiff alleges that Defendant Judge D'Antonio violated his due process rights and a settlement agreement. (Doc. 1-3 at 4). Plaintiff alleges that Defendant Bolstead docketed Judge D'Antonio's order without a proper signature and "purposefully ignored Mr. Spence's written motions." (*Id.* at 4, 12). Plaintiff also alleges that Defendant Judge Kennedy "willfully demonstrated misconduct in performing [her] official duties" and acted without jurisdiction when she ordered Plaintiff's continued involuntary treatment. (*Id.* at 15). Again, as a preliminary matter, Plaintiff's Complaint fails to satisfy Rule 8's pleading standards. For example, Plaintiff fails to specify what relief is sought from Defendants Judge D'Antonio and Bolstead. *See* Fed. R. Civ. P. 8(a)(3). Nor do Plaintiff's conclusory allegations specify how Judge Kennedy exceeded her authority.

Moreover, judges and judicial staff are entitled to absolute immunity from damages for acts taken in their judicial capacity—including acts taken maliciously, in excess of authority, or done in error—unless they acted in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978) (citation omitted); *see also Simmons v. Conger*, 86 F.3d 1080, 1084–85 (11th Cir. 1996); *Roland v. Phillips*, 19 F.3d 552, 556 n.4 (11th Cir. 1994) ("When an official acts pursuant to a direct judicial order, absolute quasi-judicial immunity is obvious."). Plaintiff alleges no facts that show Judge D'Antonio, Judge Kennedy, or Clerk Bolstead acted in the "clear absence of all jurisdiction." *See, e.g.*, *Patterson v. Aiken*, 628 F. Supp. 1068, 1076–77 (N.D. Ga. 1985) (dismissing as frivolous claims against judges that provided much more substantial factual allegations than Plaintiff asserts here), *aff'd*, 784 F.2d 403 (11th Cir. 1986). Accordingly, Plaintiff's claims against

these Defendants are dismissed.

4. Defendants JQC and Georgia Medical Composite Board

Plaintiff's claims against the JQC and Georgia Medical Composite Board under § 1983 are also frivolous. Section 1983 "provides every person with the right to sue those acting under color of state law for violations of federal constitutional and statutory provisions." *Williams v. Bd. of Regents of the Univ. Sys. of Ga.*, 477 F.3d 1282, 1299 (11th Cir. 2007) (citing 42 U.S.C. § 1983). To succeed under § 1983, "a plaintiff must show that he or she was deprived of a federal right *by a person* acting under color of state law." *Griffin v. City of Opa-Locka*, 261 F.3d 1295, 1303 (11th Cir. 2001) (emphasis added) (citation omitted). Neither the JQC nor the Georgia Medical Composite Board are "persons" subject to liability under § 1983. Further, even if the Court liberally construes Plaintiff's Complaint as directed against an agency of the State of Georgia, Plaintiff's claims are still without merit because it is well established that a state agency is also not a "person" subject to liability under § 1983. *See Edwards v. Wallace Cmty. Coll.*, 49 F.3d 1517, 1524 (11th Cir. 1995) (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989)); *McGinley v. Fla. Dep't. of Highway Safety & Motor Vehicles*, 438 F App'x 754, 756 (11th Cir. 2011) (per curiam). Thus, Plaintiff's claims against the JQC and Georgia Medical Composite Board are "indisputably meritless." *Carroll*, 984 F.2d at 393.

5. The Aspire Defendants and Defendants Raj Krupa, LLC, and Derrick

Plaintiff's remaining claims are against the Aspire Defendants and Defendants Derrick and Raj Krupa, LLC. Plaintiff claims that the Aspire Defendants unlawfully administered medication and injections while he was committed to the Aspire facility. (Doc. 1-3 at 5). Plaintiff alleges that Defendant Derrick assaulted and stalked him while he was undergoing involuntary treatment at West Central Georgia Regional Hospital. (*Id.* at 6). And Plaintiff contends that Defendant Raj Krupa, LLC wrongfully withheld his $70.00 payment when his keycard would not work at the Relax Inn. (*Id.* at 5).

Plaintiff fails to state a claim under § 1983 against any of these Defendants. Plaintiff has not alleged that the Aspire Defendants or Defendants Derrick and Raj Krupa, LLC "acted under color of state law." Actions under § 1983 are only proper when there has been

state action. *See Shelley v. Kramer*, 334 U.S. 1, 13 (1948). The Fourteenth Amendment "erects no shield against merely private conduct, however discriminatory or wrongful." *Id.* Plaintiff, however, lists only private actors. A private individual may be liable as a "state actor" for a constitutional violation only in the following circumstances:

> (1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution ("State compulsion test"); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State ("public function test"); or (3) "the State had so far insinuated itself into a position of interdependence with the [private parties] that it was a joint participant in the enterprise[]" ("nexus/joint action test").

Rayburn ex rel. Rayburn v. Hogue, 241 F.3d 1341, 1347 (11th Cir. 2001) (alterations in original) (citing *NBC, Inc. v. Commc'ns Workers of Am.*, 860 F.2d 1022, 1026–27 (11th Cir. 1988)). Plaintiff's Complaint does not allege facts supporting any of these circumstances; therefore, Plaintiff has not alleged any state action. Thus, Plaintiff's claims against the Aspire Defendants and Defendants Derrick and Raj Krupa, LLC fail to state a claim upon which relief may granted under § 1983.

The Court assumes that Plaintiff's claim against Raj Krupa, LLC is intended to raise a claim for breach of contract under Georgia law and that Plaintiff's claims against the Aspire Defendants and Defendant Derrick are intended to raise assault and battery claims under Georgia tort law. *See* O.C.G.A. §§ 13-6-14, 51-1-13 & 14. The Court declines to exercise its jurisdiction over these claims as all the federal claims over which the Court might have had original jurisdiction have been dismissed, and as Plaintiff's possible state law claims are not part of the same case or controversy as they are completely unrelated to any of the claims above. *See* 28 U.S.C. § 1367(a), (c)(3). Thus, the Court does not have supplemental jurisdiction over these claims. Even assuming Plaintiff's claim against the Aspire Defendants and Defendants Derrick and Raj Krupa, LLC are part of the same controversy, the Court would still decline to exercise supplemental jurisdiction because it would require the Court to make "[n]eedless decisions of state law," which "should be avoided." *Ameritox, Ltd. v. Millenium Lab'ys, Inc.*, 803 F.3d 518, 531 (11th Cir. 2015)

(alteration in original) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966)).

III. Motion to Amend Complaint to Add Defendants

On February 12, 2021, nearly three months after Plaintiff first filed his Complaint, Plaintiff moved to add Kemaya Wilburn, G. Gilbert, Erving Mclain, Kevin Sproul, Doesha Dark, and Judy Fitzgerald as defendants. (Doc. 9). The Motion to Amend reads, in part, "[P]lease allow this Plaintiff to amend the principal brief, reflecting: An Amended Style . . . [a] corrected and total damages amount of: $9,428,500[, and] [a] revised and amended jurisdictional statement . . . ." (*Id.* at 1). "The policy of generously permitting amendments under Rule 15(a) primarily involves new theories of liability against existing Defendants. The decision of whether to allow a Plaintiff to join additional defendants is governed by a different standard." *Anderson v. Tyus*, No. 4:06-CV-4-SPM/WCS, 2008 WL 4525143, at *2 (N.D. Fla. Sept. 30, 2008). "The decision to join additional parties is left to the discretion of the district court and will not be disturbed unless that court has abused its discretion." *Dean v. Barber*, 951 F.2d 1210, 1215 (11th Cir. 1992) (citation omitted). Plaintiff does not mention any of the proposed Defendants in his Complaint. (Doc. 1 at 4; Doc. 1-2 at 1). Plaintiff's Motion to Amend fails to provide any information on what basis he seeks to add the proposed Defendants, and Plaintiff provides no nexus between his claims and the new proposed Defendants. Nor can the Court grasp what cause(s) of action Plaintiff is attempting to assert against each of the proposed Defendants from the exhibit Plaintiff attached. (*See generally* Doc. 9-1); *see, e.g.*, *Adkins v. Dep't of Homeland Sec.*, No. 2:19-cv-85, 2020 WL 1482448, at *2 (S.D. Ga. Feb. 20, 2020) (finding that Plaintiff failed to state a claim "given the incoherent and threadbare nature of Plaintiff's Amended Complaint"), *report and recommendation adopted*, No. 2:19-CV-85, 2020 WL 1492179 (S.D. Ga. Mar. 23, 2020). While *pro se* pleadings are held to a less stringent standard, "the leniency accorded *pro se* litigants does not give a court license to serve as *de facto* counsel for a party or to rewrite an otherwise deficient pleading to sustain an action." *Matthews, Wilson & Matthews, Inc.*, 614 F. App'x at 969 n.1 (citation omitted). As Plaintiff does not provide enough information to allow the Court to add the proposed Defendants, the Court

has no basis upon which to grant the Motion to Amend.

CONCLUSION

Accordingly, Plaintiff's Amended Motion for Leave to Proceed *in forma pauperis* (Doc. 8) is **GRANTED**, and Plaintiff's Complaint (Doc. 1) is **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff's Motion to Amend Complaint to Add Defendants (Doc. 9) is **DENIED**.

SO ORDERED, this 27th day of September, 2021.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

JERMAINE E. SPENCE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO.: 1:20-CV-230 (LAG)
	:	
REEMON BISHARA, *et al.*,	:	
	:	
Defendants.	:	
	:	

ORDER

Before the Court is *pro se* Plaintiff Jermaine E. Spence's Application to Proceed in District Court Without Prepayment of Filing Fees or Costs (Doc. 15). The Application was filed concurrently with Plaintiff's Notice of Appeal in this matter. (*See* Doc. 14). Accordingly, the Court construes the Application as a Motion for Leave to Appeal *in forma pauperis* (IFP).

Pursuant to 28 U.S.C. § 1915(a)(1), a court may authorize an appeal of a civil action or proceeding "without prepayment of fees or security therefor" if the putative appellant has filed "an affidavit that includes a statement of all assets" and "state[s] the nature of the . . . appeal and [the] affiant's belief that the person is entitled to redress."[1] If the trial court certifies in writing that the appeal is not taken in good faith, however, such appeal may not be taken IFP. 28 U.S.C. § 1915(a)(3); *see also* Fed. R. App. 24(a)(3)(A). "'[G]ood faith' . . . must be judged by an objective standard." *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The putative appellant demonstrates good faith when he seeks review of a non-frivolous issue. *Id.*; *see also Morris v. Ross*, 663 F.2d 1032, 1033 (11th Cir. 1981). An issue "is frivolous if it is without arguable merit either in law or fact." *Bilal v. Driver*, 251

[1] Federal Rule of Appellate Procedure 24 similarly requires a party seeking leave to appeal IFP to file a motion and affidavit that establishes the party's inability to pay fees and costs, the party's belief that he is entitled to redress, and a statement of the issues which the party intends to present on appeal. *See* Fed. R. App. P. 24(a).

F.3d 1346, 1349 (11th Cir. 2001) (citations omitted). "Arguable means being capable of being convincingly argued." *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991) (per curiam) (quotation marks and citations omitted); *see also Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (per curiam) ("[A] case is frivolous . . . when it appears the plaintiff 'has little or no chance of success.'" (citations omitted)). "In deciding whether an IFP appeal is frivolous, a district court determines whether there is 'a factual and legal basis, of constitutional dimension, for the asserted wrong, however inartfully pleaded.'" *Sun*, 939 F.2d at 925 (citations omitted).

After a review of Plaintiff's Notice of Appeal (Doc. 14), the Motion (Doc. 15), and the Order to be challenged on appeal (Doc. 12), the Court finds no good faith basis for Plaintiff's appeal. Plaintiff states that his grounds to appeal are: (1) "Judge did not award million-dollar resolution," (2) "judge . . . did not decide in favor of appellant and no appellees served reply to my U.S.P.S. complaint [sic]" and (3) "four women named in said complaint used false-nursing-aliases [sic]." (Doc. 14). Each of these grounds are meritless and, as stated in the Court's September 27th Order, each of Plaintiff's claims in his Complaint are frivolous or fail to state a claim upon which relief can be granted. (*See generally* Doc. 12). The Court, therefore, certifies that Plaintiff's appeal is not taken in good faith. *See Coppedge*, 369 U.S. at 444–45.

Accordingly, Plaintiff's Motion for Leave to Appeal IFP (Doc. 15) is **DENIED**. If Plaintiff wishes to proceed with his appeal, he must either: (1) pay the entire $505 appellate filing fee or (2) file a motion to proceed IFP with the Court of Appeals for the Eleventh Circuit. *See Jackson v. Bank of Am., N.A.*, No. 7:14-CV-82 (HL), 2015 WL 6675568, at *3 (M.D. Ga. Nov. 2, 2015) (explaining that, after a motion to appeal IFP is denied, the proper procedure under Federal Rule of Appellate Procedure 24(a)(5) is to file a motion in the appropriate court of appeals).

SO ORDERED, this 29th day of October, 2021.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT