

Case 8:22-cv-01610-KKM-AAS Document 4 Filed 07/27/22 Page 1 of 5 PageID 96

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NOEL VINCENT THOMAS,

Plaintiff,

v.

Case No. 8:22-cv-1610-KKM-AAS

FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES, FLORIDA DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES INSPECTOR GENERAL,
FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES, BUREAU OF RECORDS,
DIVISION OF MOTORIST SERVICES,
AND FLORIDA ATTORNEY GENERAL,

Defendants.

ORDER

Plaintiff Noel Vincent Thomas, proceeding *pro se*, requests to proceed *in forma pauperis*. (Doc. 2). The court, upon a finding of indigency, may authorize the “commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor.” 28 U.S.C. § 1915. Mr. Thomas’s financial application supports his claim of indigency. Mr. Thomas also moves for appointment of counsel. (Doc. 3).

Because Mr. Thomas requests to proceed *in forma pauperis*, the court

must determine whether the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant immune from that relief. 28 U.S.C. § 1915(e)(2)(B). Although *pro se* pleadings are held to a less strict standard than pleadings drafted by attorneys, *pro se* litigants must still comply with the Federal Rules of Civil Procedure. *Boxer X v. Harris*, 437 F.3d 1107, 1110 (11th Cir. 2006) (quotation and citation omitted).

→ Mr. Thomas's complaint fails to comply with the Federal Rules of Civil Procedure and fails to state a claim. Federal Rule of Civil Procedure 8 establishes “[t]he bare minimum a plaintiff must set forth in the complaint.” *Hunter v. Woods*, No. 5:17-cv-482-JSM-PRL, 2017 WL 6610889, at *1 (M.D. Fla. Nov. 3, 2017). It requires that a complaint contain both “a short and plain statement of the grounds for the court’s jurisdiction,”¹ and “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(1)-(2). Rule 10 requires that the complaint “state its claims . . . in

¹ Federal courts are courts of limited jurisdiction and therefore have an obligation to inquire into their subject matter jurisdiction. *See Kirkland v. Midland Mortgage Co.*, 243 F.3d 1277, 1279-80 (11th Cir. 2001). “Subject-matter jurisdiction in a federal court may be based upon federal question jurisdiction or diversity jurisdiction.” *Walker v. Sun Trust Bank of Thomasville, Ga.*, 363 F. App’x 11, 15 (11th Cir. 2010). For federal question jurisdiction, federal district courts have jurisdiction to hear cases “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. The essential elements of diversity jurisdiction are diverse residence of all parties and an amount-in-controversy over \$75,000. 28 U.S.C. § 1332.

numbered paragraphs, each limited as far as practicable to a single set of circumstances,” and that “each claim founded on a separate transaction or occurrence . . . be stated in a separate count.” Fed. R. Civ. P. 10(b). Rules 8 and 10 “work together to require the pleader to present his claims discretely and succinctly, so that his adversary can discern what he is claiming and frame a responsive pleading, [and] the court can determine which facts support which claims and whether the plaintiff has stated any claims upon which relief can be granted.” *Fikes v. City of Daphne*, 79 F.3d 1079, 1082 (11th Cir. 1996) (quotation omitted).

→ Mr. Thomas’s complaint does not meet these threshold pleading requirements. Mr. Thomas failed to state a basis for this court’s jurisdiction, and failed to state a clear and concise cause of action with facts supporting his claims against *each* of the named defendants. Instead, Mr. Thomas’s complaint contains forty-one pages of unclear claims and statements, mostly about the Florida Department of Highway Safety and Motor Vehicles and Alabama Law Enforcement Agency. *See* (Doc. 1). More troubling, the majority of Mr. Thomas’s complaint appears to raise the same facts and claims dismissed in his previously dismissed action against the same defendants. *See Thomas v. Florida Highway Safety and Motor Vehicles et al.*, No. 8:18-cv-2497-CEH-CPT, Doc. 14 (M.D. Fla. Jan. 13, 2020). Mr. Thomas may therefore be precluded from bringing these claims in the present case. *See I.A. Durbin, Inc. v. Jefferson*

Nat'l Bank, 793 F.2d 1541, 1549 (11th Cir. 1986) (describing claim preclusion, otherwise known as *res judicata*). The court will allow Mr. Thomas to amend his complaint to attempt to allege a plausible claim for relief in compliance with the Federal Rules of Civil Procedure.²

Thus, Mr. Thomas's motion for leave to proceed *in forma pauperis* (Doc. 1) is **TAKEN UNDER ADVISEMENT**. By **September 26, 2022**, Mr. Thomas must file an amended complaint that states a viable cause of action not previously dismissed in his 2018 federal cause of action. Mr. Thomas's failure to timely file an amended complaint may result in a recommendation of denial of the motion to proceed *in forma pauperis*. However, Mr. Thomas may pay the filing fee and conduct proper service of process if he wishes to proceed under this complaint.

² Mr. Thomas is encouraged to consult the "Proceeding Without Lawyers" guidelines on the court's website, located at <http://www.flmd.uscourts.gov/litigants-without-lawyers>.

Mr. Thomas's motion for appointment of counsel (Doc. 3) is **DENIED without prejudice** because Mr. Thomas has not demonstrated this lawsuit "involves factual and legal issues so novel or complex as to require the assistance of an experienced litigator." *Honor v. USA Truck, Inc.*, No. 8:18-cv-677-CPT, 2019 WL 13082544, at *1 (M.D. Fla. June 14, 2019).

ORDERED in Tampa, Florida on July 27, 2022.

Amanda Arnold Sansone
AMANDA ARNOLD SANSONE
United States Magistrate Judge

cc:

Noel Vincent Thomas
14004 Nephi Place, Apt. #103
Tampa, FL 33613

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

NOEL VINCENT THOMAS,

Plaintiff,

v.

Case No: 8:22-cv-1610-KKM-AAS

FLORIDA DEPARTMENT of
HIGHWAY SAFETY & MOTOR
VEHICLES, et al.,

Defendants.

ORDER

Plaintiff Noel Vincent Thomas filed a complaint against three defendants on July 15, 2022. (Doc. 1.) At the same time, he moved to proceed in forma pauperis and for the Court to appoint counsel. (Doc. 2; Doc. 3.) After reviewing his application to proceed without paying filing fees and his complaint, the United States Magistrate Judge took his motion to proceed in forma pauperis under advisement because his complaint failed to state a claim for relief and denied his motion to appoint counsel. (Doc. 4.) The Magistrate Judge gave him leave to file an amended complaint that states a viable cause for action. (*Id.*)

On August 18, 2022, the Magistrate Judge entered a Report and Recommendation, recommending that Thomas's Motion to Proceed In Forma Pauperis (Doc. 2) be denied and his Amended Complaint (Doc. 6) be dismissed for a variety of reasons. (Doc. 7.) Thomas then filed an objection to the Report and Recommendation. (Doc. 8.) Considering the record, the Court adopts the Report and Recommendation for the reasons stated therein (Doc. 7); denies Thomas's

Motion to Proceed In Forma Pauperis (Doc. 2); and dismisses Thomas's amended complaint (Doc. 6).

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's Report and Recommendation. 28 U.S.C. § 636(b)(1). If a party files a timely and specific objection to a finding of fact by a magistrate judge, the district court must conduct a de novo review with respect to that factual issue. *Stokes v. Singletary*, 952 F.2d 1567, 1576 (11th Cir. 1992). The district court reviews legal conclusions de novo, even in the absence of an objection. *See Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994); *Ashworth v. Glades Cnty. Bd. of Cnty. Comm'rs*, 379 F. Supp. 3d 1244, 1246 (M.D. Fla. 2019).

Thomas's objection to the Magistrate Judge's Report is mostly perfunctory and fails to identify specific flaws in the Magistrate Judge's Report. He asserts that "the sole purpose of the Magistrate Judge is to force Plaintiff to remove the bulk of the factual information from his complaint," that Federal Rule of Civil Procedure 8 does not have "anything to do with the structure, the length, or the factual contents of the entirety of the complaint," and that the recommendation "is a violation of Plaintiff's First Amendment right." He also uses the objection to reallege many of the factual allegations in his complaint. Nevertheless, after carefully reviewing the record and the conclusions in the Report and Recommendation, the Court agrees with the Magistrate Judge. As the Magistrate Judge explains, Thomas's Amended Complaint fails to state a claim upon which relief can be granted. While Thomas thoroughly details his factual assertions, his legal claims are unclear, vague, and conclusory. Additionally, he fails to provide

a basis by which the Court has jurisdiction to hear his case. Therefore, his case is due to be dismissed under 28 U.S.C. §1915(e)(2).

Accordingly, the following is **ORDERED**:

1. The Magistrate Judge's Report and Recommendation (Doc. 7) is **ADOPTED** and made part of this Order for all purposes.
2. Plaintiff's Motion to Proceed In Forma Pauperis (Doc. 2) is **DENIED**.
3. Plaintiff's Amended Complaint is **DISMISSED** without prejudice.
4. The Clerk is directed to **TERMINATE** any pending deadlines and **CLOSE** this case.

DONE AND ORDERED at Tampa, Florida, on September 8, 2020.

/s/ William F. Jung

WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NOEL VINCENT THOMAS,

Plaintiff,

v.

Case No: 8:22-cv-1610-KKM-AAS

FLORIDA DEPARTMENT of
HIGHWAY SAFETY & MOTOR
VEHICLES, et al.,

Defendants.

ORDER

Plaintiff Noel Vincent Thomas moves to appeal the Court's order dismissing his case with prejudice, (Doc. 9), in forma pauperis. (Doc. 12.) For the reasons explained in the Magistrate Judge's Report and Recommendation (Doc. 13), his motion to appeal in forma pauperis is denied.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's Report and Recommendation. 28 U.S.C. § 636(b)(1). If a party files a timely and specific objection to a finding of fact by a magistrate judge, the district court must conduct a de novo review with respect to that factual issue. *Stokes v. Singletary*, 952 F.2d 1567, 1576 (11th Cir.

1992). The district court reviews legal conclusions de novo, even in the absence of an objection. See *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994); *Ashworth v. Glades Cnty. Bd. of Cnty. Comm'rs*, 379 F. Supp. 3d 1244, 1246 (M.D. Fla. 2019).

Here, Thomas provides no reason that the Court's dismissal of his case erred. And like his objection to the Magistrate Judge's Report recommending dismissal of his petition, his objection here, (Doc. 14), does not identify any specific flaws in the Magistrate Judge's recommendation that IFP be denied here. Therefore, he fails to establish that his appeal is taken in good faith as required by 28 U.S.C. § 1915(a)(3).

Accordingly, the following is ORDERED:

1. The Magistrate Judge's Report and Recommendation (Doc. 13) is **ADOPTED** and made part of this Order for all purposes.

2. Plaintiff's Motion to Proceed In Forma Pauperis (Doc. 12) is **DENIED**.

DONE AND ORDERED at Tampa, Florida, on October 5, 2022.

/s/ William F. Jung
WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

Counsel of Record

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-13107-J

NOEL THOMAS,

Plaintiff-Appellant,

versus

FLORIDA DEPARTMENT OF HIGHWAY
SAFETY & MOTOR VEHICLES,
FLORIDA (DHSMV) INSPECTOR GENERAL,
FLORIDA DHSMV, BUREAU OF RECORDS, DIVISION
OF MOTORIST SERVICES,
ATTORNEY GENERAL, STATE OF FLORIDA,

Defendants-Appellees.

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

ORDER:

Noel Vincent Thomas, proceeding *pro se*, appeals the district court's dismissal of his complaint without prejudice for failure to state a claim on which relief may be granted. Thomas's complaint alleged fraud, conspiracy, and negligence of duty arising from the defendants' refusal to grant him a driver's license. Thomas appealed and now moves for leave to proceed on appeal *in forma pauperis*.

As an initial matter, because Thomas's affidavit of indigency indicates that he is indigent and cannot pay or give security for the fees on appeal, his appeal is subject to a frivolity

determination. *See* 28 U.S.C. § 1915(e)(2). As to frivolity, reasonable jurists would not debate the district court's dismissal of Thomas's complaint for failure to state a claim.

In his complaint, Thomas made only conclusory statements that the defendants had conspired against him to deprive him of a driver's license without due process. He did not offer any facts, beyond conclusory allegations that documents were falsified, that demonstrated that any listed defendant violated his constitutional rights while acting under color of state law. *See Griffin*, 261 F.3d at 1303. Further, the magistrate judge provided Thomas with an opportunity to amend his complaint, and the district court dismissed the action without prejudice. *See Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir. 2007) (stating that "the court dismissed this particular claim without prejudice, granting the [plaintiff] leave to amend the complaint a second time, thereby neutralizing one of our concerns regarding *sua sponte* dismissals"). Thus, Thomas's motion for leave to proceed on appeal *in forma pauperis* is DENIED because the appeal is frivolous. *See Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1352 (11th Cir. 2021) (*en banc*).

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 09, 2023

Noel Thomas
14004 NEPHI PL APT 103
TAMPA, FL 33613

Appeal Number: 22-13107-J

Case Style: Noel Thomas v. Florida Department of Highway Safety & Motor Vehic, et al
District Court Docket No: 8:22-cv-01610-KKM-AAS

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless you pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office.

Clerk's Office Phone Numbers

General Information	404-335-6100
New / Before Briefing Cases	404-335-6135
Cases in Briefing / After Opinion	404-335-6130
Cases Set for Oral Argument	404-335-6141
Capital Cases	404-335-6200
Attorney Admissions	404-335-6122
CM/ECF Help Desk	404-335-6125

MOT-2 Notice of Court Action

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 26, 2023

Noel Thomas
14004 NEPHI PL APT 103
TAMPA, FL 33613

Appeal Number: 22-13107-J

Case Style: Noel Thomas v. Florida Department of Highway Safety & Motor Vehic, et al
District Court Docket No: 8:22-cv-01610-KKM-AAS

NO ACTION / DEFICIENCY NOTICE

No action will be taken on Motion for reconsideration of single judge's order [9855551-2]. The referenced filing from Appellant Noel Thomas is deficient for failure to comply with this Court's rules on Certificates of Interested Persons and Corporate Disclosure Statements

No deadlines will be extended as a result of your deficient filing.

Certificate of Interested Persons and Corporate Disclosure Statement ("CIP")

You failed to comply with the CIP rules by:

- not including a CIP in your filing. See 11th Cir. R. 26.1-1(a)(1).

ACTION REQUIRED

For motions for reconsideration or petitions for rehearing that are not permitted, no action is required or permitted. Your filing will not be considered.

For all other deficiencies, to have your document considered, you **must refile the entire document** after all the deficiencies identified above have been corrected and you **must include** any required items identified above **along with** the refiled document. No action will be taken if you only provide the missing items without refiling your entire document.

Please note that any filing submitted out of time must be accompanied by an appropriate motion, *i.e.*, a motion to file out of time, a motion to reinstate if the case has been dismissed, and/or a motion to recall the mandate if the mandate has issued.

Clerk's Office Phone Numbers

General Information	404-335-6100
New / Before Briefing Cases	404-335-6135
Cases in Briefing / After Opinion	404-335-6130
Cases Set for Oral Argument	404-335-6141
Capital Cases	404-335-6200
Attorney Admissions	404-335-6122
CM/ECF Help Desk	404-335-6125

Notice No Action Taken

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-13107-J

NOEL THOMAS,

Plaintiff - Appellant,

versus

FLORIDA DEPARTMENT OF HIGHWAY
SAFETY & MOTOR VEHICLES,
FLORIDA (DHSMV) INSPECTOR GENERAL,
FLORIDA DHSMV, BUREAU OF RECORDS, DIVISION
OF MOTORIST SERVICES,
ATTORNEY GENERAL, STATE OF FLORIDA,

Defendants - Appellees.

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

ORDER: Pursuant to the 11th Cir. R. 42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Noel Thomas has failed to pay the filing and docketing fees to the district court within the time fixed by the rules.

Effective February 27, 2023.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 27, 2023

Clerk - Middle District of Florida
U.S. District Court
801 N FLORIDA AVE
TAMPA, FL 33602-3849

Appeal Number: 22-13107-J

Case Style: Noel Thomas v. Florida Department of Highway Safety & Motor Vehic, et al
District Court Docket No: 8:22-cv-01610-KKM-AAS

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.

Clerk's Office Phone Numbers

General Information	404-335-6100
New / Before Briefing Cases	404-335-6135
Cases in Briefing / After Opinion	404-335-6130
Cases Set for Oral Argument	404-335-6141
Capital Cases	404-335-6200
Attorney Admissions	404-335-6122
CM/ECF Help Desk	404-335-6125

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

)
)
NOEL VINCENT THOMAS)
PRO SE LITIGANT) DIST. 8:22-cv-01610-KKM-AAS
APPELLANT) APPEALS 22-13107-J
Vs.)
FLORID DHSMV)
MIKE STACY, DHSMV, IG)
STEPHANIE D DUHART,)
DHSMV, MS)
MARIE T. RIVES, FLORIDA, AG)
APPELLEES)

PETITION FOR PANAL REHEARING

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NOEL VINCENT THOMAS,

Plaintiff,

v.

Case No. 8:22-cv-1610-KKM-AAS

FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES, FLORIDA DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES INSPECTOR GENERAL,
FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES, BUREAU OF RECORDS,
DIVISION OF MOTORIST SERVICES,
AND FLORIDA ATTORNEY GENERAL,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff Noel Vincent Thomas, proceeding *pro se*, requests to proceed *in forma pauperis*. (Doc. 12).

Proceeding *in forma pauperis* in federal court is permitted by 28 U.S.C. Section 1915, which authorizes any court of the United States to allow indigent persons to prosecute, defend, or appeal suits without prepayment of costs. *See Coppededge v. United States*, 369 U.S. 438, 441 (1962). However, an appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not

taken in good faith. 28 U.S.C. § 1915(a)(3). Good faith requires that the appeal present a nonfrivolous question for review. *Cruz v. Hauck*, 404 U.S. 59, 62 (1971). An appeal is frivolous if the plaintiff has little or no chance of success. *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993). An appeal is also frivolous when it is “without arguable merit either in law or fact.” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

Mr. Thomas’s appeal and application to proceed *in forma pauperis* fail to establish the existence of a reasoned, nonfrivolous argument to raise on appeal. See (Doc. 12). Mr. Thomas attempts to appeal the September 8, 2022 order dismissing his case without prejudice.

In his notice of appeal, Mr. Thomas fails to identify how the September 8, 2022 order erred. As a result, it does not appear that Mr. Thomas’s appeal contains reasoned, nonfrivolous arguments for appellate review. Therefore, it is **RECOMMENDED** that Mr. Thomas’s request to proceed *in forma pauperis* on appeal (Doc. 12) be **DENIED**.

ENTERED in Tampa, Florida on September 16, 2022.



AMANDA ARNOLD SANSONE
United States Magistrate Judge

NOTICE TO PARTIES

The parties have fourteen days from the date they are served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1. A party's failure to object timely in accordance with 28 U.S.C. § 636(b)(1) waives that party's right to challenge on appeal the district court's order adopting this report's unobjected-to factual findings and legal conclusions. 11th Cir. R. 3-1.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NOEL VINCENT THOMAS,

Plaintiff,

v.

Case No. 8:22-cv-1610-KKM-AAS

FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES, FLORIDA DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES INSPECTOR GENERAL,
FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES, BUREAU OF RECORDS,
DIVISION OF MOTORIST SERVICES,
AND FLORIDA ATTORNEY GENERAL,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff Noel Vincent Thomas, proceeding *pro se*, requests to proceed *in forma pauperis*. (Doc. 2). It is **RECOMMENDED** that Mr. Thomas's motion be **DENIED**, and this action be dismissed without prejudice.

I. BACKGROUND

Mr. Thomas requested to proceed *in forma pauperis* and filed a complaint against multiple Florida state government officials and agencies. (Doc. 1). Based on deficiencies in Mr. Thomas's complaint, the undersigned took Mr. Thomas's motion to proceed *in forma pauperis* under advisement and directed

Mr. Thomas to amend his complaint to state a viable cause of action to proceed *in forma pauperis*. (Doc. 4). Mr. Thomas filed an amended complaint. (Doc. 6). Mr. Thomas's amended complaint does not improve upon his original complaint and still fails to state a claim on which relief can be granted.¹ (*Id.*).

II. STANDARD

A plaintiff may be allowed to commence a civil action *in forma pauperis*, i.e., without payment of court filing fees, when that plaintiff declares in an affidavit to the court that she "is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). The court receiving such a case, however, must dismiss a case *sua sponte* if, at any time, it determines that the action "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e) (2)(B).

With respect to failing to state a claim on which relief may be granted, the language of section 1915(e)(2)(B)(ii) mirrors the language of Federal Rule of Civil Procedure 12(b)(6) and courts apply the same standard in both contexts. *Mitchell v. Farcess*, 112 F.3d 1483, 1490 (11th Cir. 1997). A properly stated claim "may be supported by showing any set of facts consistent with the

¹ Mr. Thomas may pay the filing fee at any time and proceed under the operative complaint.

allegations in the complaint.” *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1969 (2007) (citation omitted). Pleadings submitted by a *pro se* plaintiff “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*). Nevertheless, a court is under no duty to “re-write” a plaintiff’s complaint to find a claim. *Peterson v. Atlanta Housing Authority*, 998 F.2d 904, 912 (11th Cir. 1993).

III. DISCUSSION

Mr. Thomas’s amended complaint fails to comply with the Federal Rules of Civil Procedure and fails to state a claim. Federal Rule of Civil Procedure 8 establishes “[t]he bare minimum a plaintiff must set forth in the complaint.” *Hunter v. Woods*, No. 5:17-cv-482-JSM-PRL, 2017 WL 6610889, at *1 (M.D. Fla. Nov. 3, 2017). It requires that a complaint contain both “a short and plain statement of the grounds for the court’s jurisdiction,”² and “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.

² Federal courts are courts of limited jurisdiction and therefore have an obligation to inquire into their subject matter jurisdiction. *See Kirkland v. Midland Mortgage Co.*, 243 F.3d 1277, 1279-80 (11th Cir. 2001). “Subject-matter jurisdiction in a federal court may be based upon federal question jurisdiction or diversity jurisdiction.” *Walker v. Sun Trust Bank of Thomasville, Ga.*, 363 F. App’x 11, 15 (11th Cir. 2010). For federal question jurisdiction, federal district courts have jurisdiction to hear cases “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. The essential elements of diversity jurisdiction are diverse residence of all parties and an amount-in-controversy over \$75,000. 28 U.S.C. § 1332.

Civ. P. 8(a)(1)-(2). Rule 10 requires that the complaint “state its claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances,” and that “each claim founded on a separate transaction or occurrence . . . be stated in a separate count.” Fed. R. Civ. P. 10(b). Rules 8 and 10 “work together to require the pleader to present his claims discretely and succinctly, so that his adversary can discern what he is claiming and frame a responsive pleading, [and] the court can determine which facts support which claims and whether the plaintiff has stated any claims upon which relief can be granted.” *Fikes v. City of Daphne*, 79 F.3d 1079, 1082 (11th Cir. 1996) (quotation omitted).

Mr. Thomas’s amended complaint does not meet these threshold pleading requirements. Although Mr. Thomas’s amended complaint now includes numbered “paragraphs,” each extends for multiple pages and is not limited to a single set of circumstances as required by Fed. R. Civ. P. 10(b). *See* (Doc. 6). Instead of making the remaining corrections, Mr. Thomas has chosen to contest the undersigned’s assertion that his complaint does not comply with the pleading requirements of Fed. R. Civ. P. 8(b). (*Id.* at 3–6).

The only substantive changes to Mr. Thomas’s amended complaint appear to be an additional five pages at the front of Mr. Thomas’s “statement of facts and allegations” lamenting the undersigned for “misus[ing] its authority and conspir[ing] with the Defendants to assist them in criminal

conduct." (*Id.* at 2).

Mr. Thomas still fails to state a basis for this court's jurisdiction and failed to state a clear and concise cause of action with facts supporting his claims against *each* of the named defendants. Instead, Mr. Thomas's complaint contains forty-six pages of unclear claims and statements, mostly about the Florida Department of Highway Safety and Motor Vehicles and Alabama Law Enforcement Agency. *See* (Doc. 6).

Beyond noting certain changes in the length of his complaint and what defendants Mr. Thomas is suing (*Id.* at 6), Mr. Thomas does not appear to contest that his amended complaint raises the same facts and claims dismissed in a previously dismissed action against the same defendants. *See Thomas v. Florida Highway Safety and Motor Vehicles et al.*, No. 8:18-cv-2497-CEH-CPT, Doc. 14 (M.D. Fla. Jan. 13, 2020). To the contrary, Mr. Thomas now appears to claim he is also pursuing a separate lawsuit in Florida state court on the same claims he presently raises before this court. (*Id.* at 6–7). Thus, Mr. Thomas may also be precluded from bringing these claims in the present case. *See I.A. Durbin, Inc. v. Jefferson Nat'l Bank*, 793 F.2d 1541, 1549 (11th Cir. 1986) (describing claim preclusion, otherwise known as *res judicata*); *Gold-Fogel v. Fogel*, 16 F.4th 790, 799 (11th Cir. 2021) (examining situations where federal courts abstain from interfering with certain state proceedings).

Mr. Thomas's complaint thus does not state cognizable grounds for

federal jurisdiction or a valid cause of action.

IV. CONCLUSION

Mr. Thomas fails to state a claim for relief that is “plausible on its face.”

See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Thus, it is **RECOMMENDED**:

1. Mr. Thomas’s Motion to Proceed in Forma Pauperis (Doc. 2) be **DENIED**.
2. Mr. Thomas’s amended complaint (Doc. 6) be **DISMISSED** without prejudice, and the Clerk be directed to **CLOSE** this case.

ENTERED in Tampa, Florida on August 17, 2022.

NOTICE TO PARTIES

The parties have fourteen days from the date they are served a copy of this report to file written objections to this report’s proposed findings and recommendations or to request an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1. A party’s failure to object timely in accordance with 28 U.S.C. § 636(b)(1) waives that party’s right to challenge on appeal the district court’s order adopting this report’s unobjected-to factual findings and legal conclusions. 11th Cir. R. 3-1.

cc:

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