

# **APPENDICES FOR WRIT OF CERTIORARI**

USCA11 Case: 23-12428 Document: 11 Date Filed: 02/26/2024 Page: 1 of 2

**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

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February 26, 2024

Clerk - Southern District of Alabama  
U.S. District Court  
155 ST JOSEPH ST  
STE 123  
MOBILE, AL 36602

Appeal Number: 23-12428-H  
Case Style: Noel Thomas v. North Carolina Mutual Insurance Life Insurance Co., et al  
District Court Docket No: 1:22-cv-00011-TFM-N

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	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 23-12428-H

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NOEL VINCENT THOMAS,

Plaintiff - Appellant,

versus

NORTH CAROLINA MUTUAL INSURANCE LIFE INSURANCE COMPANY,  
MICHAEL L. LAWRENCE,  
NCMLIC, CEO,  
ALABAMA DEPARTMENT OF INSURANCE,  
JAMES FINN,  
ALDOI, CID,  
NORTH CAROLINA DEPARTMENT OF INSURANCE,  
JOHN HOOMANI,  
NCDOI, GC,

Defendants - Appellees.

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Appeal from the United States District Court  
for the Southern District of Alabama

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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 26, 2024.

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

FOR THE COURT - BY DIRECTION

USCA11 Case: 23-12428 Document: 10-1 Date Filed: 02/05/2024 Page: 1 of 1

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303David J. Smith  
Clerk of CourtFor rules and forms visit  
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February 05, 2024

Noel Thomas  
14004 NEPHI PL APT 103  
TAMPA, FL 33613Appeal Number: 23-12428-H  
Case Style: Noel Thomas v. North Carolina Mutual Insurance Life Insurance Co., et al  
District Court Docket No: 1:22-cv-00011-TFM-N

The enclosed order has been ENTERED.

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.

**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](http://www.pacer.gov). Information and training materials related to electronic filing are available on the Court's website.

**Clerk's Office Phone Numbers**

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CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

MOT-2 Notice of Court Action

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 23-12428

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NOEL VINCENT THOMAS,

Plaintiff-Appellant,

*versus*

NORTH CAROLINA MUTUAL INSURANCE LIFE INSURANCE  
COMPANY,

MICHAEL L. LAWRENCE,

NCMLIC, CEO,

ALABAMA DEPARTMENT OF INSURANCE,

JAMES FINN,

ALDOI, CID,

NORTH CAROLINA DEPARTMENT OF INSURANCE,

JOHN HOOMANI,

NCDOI, GC,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Alabama  
D.C. Docket No. 1:22-cv-00011-TFM-N

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ORDER:

Noel Thomas filed an initial complaint against the North Carolina Mutual Life Insurance Company ("North Carolina Mutual"), the Alabama Department of Insurance ("ALDOI"), and the North Carolina Department of Insurance ("NCDOI"). He alleged that, after he informed North Carolina Mutual that someone had fraudulently taken out a loan on his sister's behalf, North Carolina Mutual refused his request for information on such loan, and ALDOI and NCDOI failed to investigate the fraud and conspired with North Carolina Mutual to "illegally confiscate funds from the policy in question."

Based on these allegations, Thomas brought the following counts: (1) conspiracy, in violation of 18 U.S.C. § 241; (2) negligence; (3) fraud; and (4) breach of contract. He also cited "equal protection, and due process clauses of the fourteen amendment[,] pursuant to 42 U.S.C. [§] 1983, 42 U.S.C. [§] 1985, 18 U.S.C. [§] 241, 18 U.S.C. [§§] 1030, 1037 and 1038, 18 U.S.C. [§§] 1341[,] 1349 and various Alabama and North Carolina state laws." Thomas noted

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Order of the Court

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that: (1) he resides in Florida; (2) North Carolina Mutual “is a business that provided insurance coverage”; and (3) ALDOI and NCDOI “are state[] agencies that regulate policies and protect customers in the insurance market.”

A magistrate judge *sua sponte* reviewed the initial complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B), and ultimately ordered Thomas to file an amended complaint, identifying several deficiencies in the initial complaint. First, the judge explained that Thomas could not seek to enforce the federal criminal prohibition on conspiracies to deprive individuals of their rights. Second, the judge noted that Thomas’s other federal claims lacked factual support. Third, the judge stated that his remaining state-law claims lacked independent grounds for subject-matter jurisdiction, as Thomas failed to allege more than \$75,000 in damages and failed to properly allege the defendants’ citizenships.

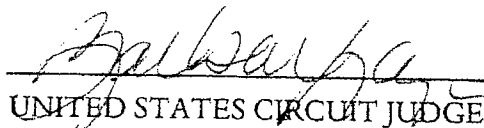
After Thomas filed an amended complaint, in a report and recommendation (“R&R”), the magistrate judge recommended dismissing it without prejudice. The judge explained that Thomas had failed to resolve the previously identified deficiencies. After Thomas filed objections, the district court overruled them, adopted the R&R, and dismissed the complaint without prejudice.

Thomas has filed a financial affidavit, which shows that he is unable to pay the appellate filing fee. *See Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 (11th Cir. 2004). Because he seeks leave to proceed IFP from this Court, his appeal is subject to a frivolity determination. *See* 28 U.S.C. § 1915(e)(2). An action “is frivolous

if it is without arguable merit either in law or fact.” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

Here, the district court properly dismissed Thomas’s amended complaint. First, his assertions that the defendants violated federal criminal law failed to state a claim because such law does not confer any rights upon Thomas. *See Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1167 n.7 (11th Cir. 2003). Second, his listing of various federal laws or statutes, most of which were criminal statutes, was insufficient to state any claims based on federal law. *See Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

Third, Thomas failed to properly allege diversity jurisdiction for his state-law claims, as he failed to allege: (1) in what state North Carolina Mutual was incorporated or had its principal place of business, *see Hertz Corp. v. Friend*, 559 U.S. 77, 88 (2010), such that complete diversity existed, *see Lincoln Property Co. v. Roche*, 546 U.S. 81, 89 (2005); and (2) that neither ALDOI, nor NCDOI, was simply an “arm or alter ego” of Alabama or North Carolina, such that they could be citizens of those states for diversity purposes, *see University of South Florida Board of Trustees v. CoMentis, Inc.*, 861 F.3d 1234, 1235 (11th Cir. 2017). As such, there are no issues of arguable merit for Thomas to pursue on appeal, and his motion for leave to proceed *in forma pauperis* is DENIED.

  
UNITED STATES CIRCUIT JUDGE



USCA11 Case: 23-12428 Document: 8-1 Date Filed: 09/12/2023 Page: 1 of 1

**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

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September 12, 2023

Noel Thomas  
14004 NEPHI PL APT 103  
TAMPA, FL 33613

Appeal Number: 23-12428-H

Case Style: Noel Thomas v. North Carolina Mutual Insurance Life Insurance Co., et al  
District Court Docket No: 1:22-cv-00011-TFM-N

We have received a copy of the order of the district court which does not allow this appeal to proceed in forma pauperis. Rule 24(a)(5) of the Federal Rules of Appellate Procedure provides:

A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

You may within thirty (30) days from this date either pay to the DISTRICT COURT clerk the docketing and filing fee or you may move in this court for leave to proceed on appeal as a pauper (form enclosed). See 11th Cir. R. 24-2.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DKT-6A IFP denied by DC after docketing

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF ALABAMA  
 SOUTHERN DIVISION**

**NOEL VINCENT THOMAS,**

**Plaintiff,**

**vs.**

**NORTH CAROLINA MUTUAL LIFE  
 INSURANCE COMPANY, et al.,**

**Defendants.**

**CIV. ACT. NO. 1:22-cv-11-TFM-N**

**MEMORANDUM OPINION AND ORDER**

Pending before the Court is Plaintiff's Motion for a New Trial (Doc. 25, filed 7/20/23) which the Court construes as a motion for reconsideration. Also, pending is his motion to proceed without the prepayment of fees (Doc. 23, filed 7/25/23). Having reviewed the motion, the Court finds that no response is necessary prior to the issuance of this opinion. For the reasons discussed below, both motions are **DENIED**.

"The only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact." *United States v. Marion*, 562 F.3d 1330, 1335 (11th Cir. 2009) (per curiam) (quoting *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (per curiam), *cert. denied*, 552 U.S. 1040, 128 S. Ct. 660, 169 L. Ed. 2d 511 (2007)). "[A] Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Arthur*, 500 F.3d at 1343 (quoting *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005)). Further, a motion under Rule 59 must be filed no later than 28 days after the entry of judgment. FED. R. CIV. P. 59(b). The Rule 59 motion was timely filed as the judgment was entered on June 28, 2023.

The Court finds nothing in the Rule 59 motion for reconsideration that causes it to question

its determinations in the prior opinion. Further, the Court finds no manifest errors of law or fact. Rather, the matters are all matters that were previously litigated or could have been raised previously. Therefore, they are not entitled to relief pursuant to Fed. R. Civ. P. 59. Accordingly, Plaintiff's motion for reconsideration (Doc. 25) is **DENIED** under Rule 59.

Though not specifically referenced, because he is *pro se*, the Court also considered the Plaintiff's motion as one brought under Fed. R. Civ. P. 60(b). Rule 60(b) provides a party, on motion, relief from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b)(1)-(6). A motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than a year after the entry of judgment. FED. R. CIV. P. 60(c)(1).

Even reviewing under Rule 60(b), the Court finds no basis to grant Plaintiff relief. As such, the motion for reconsideration (Doc. 102) is **DENIED** under Rule 60.

Finally, Plaintiff requests to proceed on appeal *in forma pauperis*. See Doc. 23. 28 U.S.C. § 1915(a) provides that, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," *Coppedge v. United States*, 369 U.S. 438, 445, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962), or "has no substantive merit."

*United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam);<sup>1</sup> *see also Rudolph v. Allen*, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam); *Morris v. Ross*, 663 F.2d 1032 (11th Cir. 1981). Stated differently:

This circuit has defined a frivolous appeal under section 1915(d) as being one "without arguable merit." *Harris v. Menendez*, 817 F.2d 737, 739 (11th Cir.1987) (quoting *Watson v. Ault*, 525 F.2d 886, 892 (5th Cir.1976)). "Arguable means capable of being convincingly argued." *Moreland v. Wharton*, 899 F.2d 1168, 1170 (11th Cir.1990) (per curiam) (quoting *Menendez*, 817 F.2d at 740 n.5); *see Clark*, 915 F.2d at 639 ("A lawsuit [under section 1915(d)] is frivolous if the 'plaintiff's realistic chances of ultimate success are slight.'" (quoting *Moreland*, 899 F.2d at 1170)).

*Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991); *see also Weeks v. Jones*, 100 F.3d 124, 127 (11th Cir. 1996) (stating that "[f]actual allegations are frivolous for purpose of [28 U.S.C.] § 1915(d) when they are 'clearly baseless;' legal theories are frivolous when they are 'indisputably meritless.'" (citations omitted).

The Court certifies that any appeal would be without merit and not taken in good faith and therefore, Horton is not entitled to proceed *in forma pauperis* on appeal. Nothing in this order precludes Plaintiff from filing a motion to proceed *in forma pauperis* directly with the Eleventh Circuit Court of Appeals should he decide to do so.

**DONE and ORDERED** this 7th day of September, 2023.

/s/Terry F. Moorers  
 TERRY F. MOORER  
 UNITED STATES DISTRICT JUDGE

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<sup>1</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit that were handed down prior to the close of business on September 30, 1981.

**CIV. ACT. NO. 1:22-cv-11-TFM-N**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**NOEL VINCENT THOMAS,**

**Plaintiff,**

**vs.**

**NORTH CAROLINA MUTUAL LIFE  
INSURANCE COMPANY, *et al.*,**

**Defendants.**

**CIV. ACT. NO. 1:22-cv-11-TFM-N**

**MEMORANDUM OPINION AND ORDER**

On March 2, 2023, the Magistrate Judge issued a Report and Recommendation in which she recommends the Plaintiff's amended complaint be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). *See* Doc. 16. On March 13, 2023, Plaintiff filed his objections to the Report and Recommendation. *See* Doc. 18. As such, the Report and Recommendation and objections are ripe for review.

The Court reviewed the objections filed and find they do not overcome the concerns previously raised by the Magistrate Judge in the prior deficiency orders nor do they offset the well-reasoned analysis of the Report and Recommendation. Put simply, Plaintiff's amended complaint still fails to properly invoke this Court's jurisdiction. Though he references several federal statutes in passing, Plaintiff still does not indicate how the Southern District of Alabama is an appropriate court for his grievances against these defendants. As such, his objections are overruled.

Therefore, after due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Recommendation to which objection is made, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of this Court. Accordingly, it is **ORDERED** that Plaintiff Noel Thomas's amended

complaint (Doc. 15) is **DISMISSED without prejudice** for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. 1915(e)(2)(B)(ii).

Final judgment shall issue separately in accordance with this order and Fed. R. Civ. P. 58.

**DONE** and **ORDERED** this 28th day of June, 2023.

/s/Terry F. Moorers  
TERRY F. MOORER  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>NOEL VINCENT THOMAS</b> <b>Plaintiff,</b>	) ) )	
<b>v.</b>	)	<b>CIVIL ACTION NO. 1:22-00011-TFM-N</b>
<b>NORTH CAROLINA MUTUAL LIFE</b> <b>INSURANCE COMPANY et al.,</b> <b>Defendants.</b>	) ) )	

**REPORT AND RECOMMENDATION**

This action is before the Court on review of a second amended complaint filed by Plaintiff Noel Thomas – who is proceeding *pro se* and *in forma pauperis* (“IFP”) – on October 11, 2022.<sup>1</sup> (Doc. 15). For the reasons stated herein, the undersigned **RECOMMENDS** Thomas’s amended complaint be **DISMISSED without prejudice**.

***I. Background***

Plaintiff initiated this civil action on January 14, 2022, by filing: (1) a complaint, (2) notice of proposed summons, (3) an IFP motion and (4) a motion requesting appointment of counsel. (Docs. 1, 2, 3, 4). The undersigned looked to Plaintiff’s IFP motion first and determined more information was needed to make an informed decision on IFP status. Accordingly, the undersigned instructed Thomas to either (1) pay the statutory filing fee or (2) file an amended IFP motion filling out all

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<sup>1</sup> The assigned District Judge referred this case to the undersigned Magistrate Judge for appropriate action on all pretrial matters under 28 U.S.C. § 636(a)-(b), Federal Rule of Civil Procedure 72, and S.D. Ala. GenLR 72(a). See S.D. Ala. GenLR 72(b); (1/18/22 electronic reference).



the requisite information. (Doc. 6). Thomas was instructed to do so by no later than February 22, 2022. (*Id.*).

On February 10, 2022, Thomas filed both a response to the Court's order (Doc. 7)<sup>2</sup> and an amended IFP motion (Doc. 8). However, the amended IFP motion remained deficient, as the undersigned explained in an order dated February 25, 2022. (Doc. 9). This order addressed the relevant standards and rules for IFP applications at length and concluded by ordering Thomas to file a second amended IFP motion by March 18, 2022. (Doc. 9, PageID.94-99). Thomas timely filed a second amended IFP motion (Doc. 11) as well as another response to the Court's order. (Doc. 10).<sup>3</sup> On review of the second amended IFP motion, IFP status was granted by order dated March 30, 2022. (Doc. 12). In granting IFP status, the undersigned instructed the Clerk to withhold service of the complaint until review could be conducted pursuant to 28 U.S.C. § 1915(e)(2)(B). (Doc. 12, PageID.112).

On May 31, 2022, Plaintiff filed a motion requesting service of summons and the complaint (Doc. 13), which was denied by order dated September 2, 2022. (Doc. 14).<sup>4</sup> In the Court's order on this date, the undersigned explained that because of Plaintiff had been granted IFP status, service could not be issued until his complaint was screened pursuant to 28 U.S.C. § 1915(e)(2)(B). (Doc. 14, PageID.119). This order

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<sup>2</sup> Plaintiff's response to the Court's order is best characterized as a letter in which he explains his rationale for why he answered questions on his IFP application the way he did. (*See* Doc. 7).

<sup>3</sup> This filing is also best characterized as a letter. (*See* Doc. 10).

<sup>4</sup> The Court's September 2, 2022, order (Doc. 14) also denied Thomas's outstanding motion for appointment of counsel after determining extraordinary circumstances had not been presented which would warrant the appointment of counsel at that time. (Doc. 4, PageID.128-29).

further articulated the screening process and explained in detail how Plaintiff's complaint was deficient on numerous grounds. (Doc. 14, PageID.122-27). Specifically, the undersigned stated:

Upon review of the complaint, the Court discovered several defects: (A) Thomas's only detailed claim that invokes original jurisdiction under § 1331 fails to state a claim upon which relief may be granted; (B) the other federal claims that Thomas mentions in passing also fail to state a claim upon which relief may be granted; and (C) Thomas's remaining state law claims lack independent grounds for jurisdiction.

(Doc. 14, PageID.123). The undersigned proceeded to address and explain each of these above-noted deficiencies at length and granted Thomas leave to file an amended complaint addressing those defects by no later than October 7, 2022. (Doc. 14, PageID.1222-28). On October 11, 2022, Thomas filed an untimely "Amended Complaint with Demand for Jury Trial." (Doc. 15). This filing is now subject to review pursuant to 28 U.S.C. § 1915(e)(2)(B).

## ***II. Legal Standards***

After a party is granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, the Court must screen the underlying complaint for various defects. Specifically, this screening procedure mandates the following:

"Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal— (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). Federal Rule of Civil Procedure 12(b)(6) standards apply in determining whether a claim screened under § 1915(e)(2)(B) fails to state a claim upon which relief may be granted. *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir.

1997). A district court explained the framework for screening a *pro se* complaint under § 1915(e)(2)(B)(ii) as follows:

Of course, courts hold complaints authored by *pro se* litigants to a less stringent standard, and construe them more liberally than pleadings drafted by attorneys. *See, e.g., Boxer X v. Harris*, 437 F.3d 1107, 1110 (11th Cir. 2006). Nevertheless, a *pro se* litigant's complaint still "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). All litigants, regardless of whether they are proceeding with the aid of counsel or *pro se*, must assert "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not" suffice. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Furthermore, even though a district court must interpret the pleadings of *pro se* litigants more liberally than those drafted by counsel, it "may not serve as de facto counsel for a party . . . or rewrite an otherwise deficient pleading in order to sustain an action." *Ausar-El ex rel. Small, Jr. v. BAC (Bank of America) Home Loans Servicing LP*, 448 Fed. Appx. 1, 2 (11th Cir. 2011) (internal quotations and citations omitted).

*Stone v. Stone*, No. 5:18-CV-867-CLS, 2018 WL 3368978, at \*2 (N.D. Ala. July 10, 2018). While pleadings filed by *pro se* litigants are to be construed liberally, they are still required to "conform to procedural rules." *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) (quoting *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002)).

### **III. Analysis**

This section will proceed by briefly addressing Plaintiff's initial complaint (Doc. 1), as the undersigned's original analysis of this filing under 28 U.S.C. § 1915 remains relevant for purposes of analysis of the current amended complaint. (Doc. 15).

#### **A. The Initial Complaint (Doc. 1)**

Plaintiff's initial complaint was not a model of clarity. This 56-page filing (including attachments) named three defendants in the case caption – North Carolina

Mutual Insurance Company ("NCMLIC"), the Alabama Department of Insurance ("ALDOI") and the North Carolina Department of Insurance ("NCDOI") – and asserted four counts: (1) Conspiracy, (2) Negligence of Duty, (3) Fraud and (4) Breach of Contract. (Doc. 1, PageID.14-19). In the section of Plaintiff's complaint entitled "Jurisdiction and Venue," he asserted the following:

1. This action is for claims of fraud, conspiracy, negligence, violations of privacy, equal protection, and due process clauses of the fourteenth amendment of the U.S. Constitution pursuant to 42 U.S.C. 21 section 1983, 42 U.S.C. 21 section 1985, 18 U.S.C. 13 section 241, 18 U.S.C. 47 sections 1030, 1037 and 1038, 18 U.S.C. 63 sections 1341 and 1349 and various Alabama and North Carolina state laws.
2. Under the Constitution and laws of the United States, Alabama and North Carolina state laws does this action arise. This court has jurisdiction pursuant to 28 U.S.C. sections 1331, 1332, 1343 and 1367.

(Doc. 1, PageID.2). Construing his complaint liberally, the undersigned found the complaint raised the following potential grounds for relief: "fraud, conspiracy, negligence, violations of privacy, equal protection, and due process clauses of the Fourteenth Amendment of the U.S. Constitution pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. §§ 1030, 1037 and 1038, 18 U.S.C. §§ 1341 and 1349 and various Alabama and North Carolina state laws." (Doc. 14, PageID.119-20). However, on review pursuant 28 U.S.C. § 1915, several defects were discovered, and the undersigned specifically determined that:

(A) Thomas's only detailed claim that invokes original jurisdiction under § 1331 fails to state a claim upon which relief may be granted; (B) the other federal claims that Thomas mentions in passing also fail to state a claim upon which relief may be granted; and (C) Thomas's remaining

state law claims lack independent grounds for jurisdiction. Each issue is discussed in turn.

(Doc. 14, PageID.123). The undersigned went on to address these findings at length, explaining the complaint's deficiencies and ultimately determining the complaint failed to state any viable claim(s) pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). (Doc. 14). As such, the undersigned instructed Thomas to correct the deficiencies noted by the Court and granted leave to amend the complaint by no later than October 7, 2022. (Doc. 14, PageID.127-28).

*B. The Amended Complaint (Doc. 15)*

Thomas untimely filed the most recent "Amended Complaint with Jury Demand" on October 11, 2022 – four days after his deadline to do so. This amended complaint includes the same four counts for (1) Conspiracy, (2) Negligence of Duty, (3) Fraud and (4) Breach of Contract, and a verbatim recitation of the "Jurisdiction and Venue" section. (*Compare* Doc. 1, PageID.2 *with* Doc.15, PageID.132). However, the case caption now includes six defendants – NCMLIC, ALDOI and NCDOI remain, and Michael Lawrence, CEO of NCMLIC, James Finn and John Hoomani are added.<sup>5</sup>

Despite the title of Thomas's document, his filing is not really an amended complaint at all; rather, it is best characterized as an argumentative response to the Court's September 8, 2022, order – replete with references to that order, to Plaintiff's initial complaint and to the exhibits included with the original complaint (but not attached to the most recent filing). While Plaintiff purports to resolve the deficiencies

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<sup>5</sup> In the case caption, Thomas includes "James Finn, ALDOI, CID" and "John Hoomani, NCDOI, GC." (Doc. 15, PageID.131). However, the case caption is the only mention of these two individuals in Plaintiff's filing.

of his original complaint by way of this filing, he has failed to do so. For example, instead of re-styling the allegations of his complaint to conform to the Court's instructions, Thomas makes a self-styled "Argument in Support of Jurisdiction," which attempts to explain why Plaintiff is right, and the Court was wrong in finding that jurisdiction was not properly alleged in his initial complaint. (Doc. 15, PageID.133-34). Not only has he failed to establish this Court's jurisdiction in both instances, but he has also failed to comply with the Court's instruction to resolve those deficiencies.

Construed liberally, Thomas's "amended complaint" raises the same grounds for relief as his original complaint: fraud, conspiracy, negligence, violations of privacy, equal protection, and due process clauses of the Fourteenth Amendment of the U.S. Constitution pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. §§ 1030, 1037 and 1038, 18 U.S.C. §§ 1341 and 1349 and various Alabama and North Carolina state laws. However, Thomas's most recent filing provides no new justification or basis for the undersigned to reverse its prior interpretations. As such, the undersigned incorporates its prior position here.

Upon review of the complaint, the Court discovered several defects: (A) Thomas's only detailed claim that invokes original jurisdiction under § 1331 fails to state a claim upon which relief may be granted; (B) the other federal claims that Thomas mentions in passing also fail to state a claim upon which relief may be granted; and (C) Thomas's remaining state law claims lack independent grounds for jurisdiction.

(See Doc. 14, PageID.123).<sup>6</sup>

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<sup>6</sup> Additionally, since ordering Thomas to re-file his complaint on September 2, 2022, the undersigned has learned that Plaintiff's claims against NCMLIC and Michael Lawrence for civil conspiracy, negligence, fraud and breach of contract have already been litigated in the Hillsborough County Small Claims Court, where final judgment was entered by Judge Miriam Valkenburg against Thomas for

#### IV. Conclusion

Upon consideration, and for the reasons articulated herein, the undersigned **RECOMMENDS** that Plaintiff Noel Thomas's amended complaint dated October 11, 2022 (Doc. 15), be **DISMISSED without prejudice** for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

#### NOTICE OF RIGHT TO FILE OBJECTIONS

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to this recommendation or anything in it must, within 14 days of the date of service of this document, file specific written objections with the Clerk of this Court. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); S.D. Ala. GenLR 72(c). The parties should note that under Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice." In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the Magistrate Judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the Magistrate Judge is not specific.

DONE this the 2nd day of March 2023.

/s/ Katherine P. Nelson

KATHERINE P. NELSON

UNITED STATES MAGISTRATE JUDGE

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civil conspiracy, negligence and fraud, and in favor of Thomas for breach of contract. *See Thomas v. North Carolina Mutual Life Insurance Company*, No. 20-CC-043897 (Fla. May 4, 2021). This final judgment was affirmed by the Florida District Court of Appeals. *See Thomas v. N.C. Mut. Life Ins. Co.*, 330 So. 3d 535 (Fla. Dist. Ct. App. 2021) (per curiam) (affirming final judgment). Accordingly, each of Thomas's present claims for (1) Conspiracy, (2) Negligence of Duty, (3) Fraud and (4) Breach of Contract against NCMLIC and Lawrence are also barred from review under the doctrine of collateral estoppel. *See Clark v. Georgia Pardons & Paroles Bd.*, 915 F.2d 636, 640-41 (11th Cir. 1990) (explaining dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii) is appropriate "if the district court sees that an affirmative defense would defeat the action.").

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

NOEL VINCENT THOMAS,	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 1:22-00011-TFM-N
	)	
NORTH CAROLINA MUTUAL LIFE	)	
INSURANCE COMPANY <i>et al.</i> ,	)	
Defendants.	)	

**ORDER**

This civil action is before the Court sua sponte on review of the complaint (Doc. 1) filed by Plaintiff Noel Vincent Thomas for screening under 28 U.S.C. § 1915(e)(2).<sup>1</sup> The Court will also address Thomas's motions for the appointment of counsel (Doc. 4) and for the complaint to be served (Doc. 13). Thomas is proceeding without counsel (*pro se*) and in forma pauperis. Upon consideration, Thomas is **ORDERED** to file an amended complaint addressing the defects described below no later than **OCTOBER 7, 2022**. Further, Thomas's motions for the appointment of counsel (Doc. 4) and the complaint to be served (Doc. 13) are **DENIED**.

**I. Background**

Construing Thomas's pleading liberally in light of his *pro se* status, the complaint raises the following grounds for relief: fraud, conspiracy, negligence, violations of privacy, equal protection, and due process clauses of the Fourteenth Amendment of the U.S. Constitution pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1985,

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<sup>1</sup> Thomas's complaint must be screened under 28 U.S.C. § 1915(e)(2) because the Court granted his request for leave to proceed in forma pauperis (*see* Doc. 12).



18 U.S.C. § 241, 18 U.S.C. §§ 1030, 1037 and 1038, 18 U.S.C. §§ 1341 and 1349 and various Alabama and North Carolina state laws.<sup>2</sup> Thomas alleges the following facts, which are presented in the light most favorable to him, *see Speaker v. U.S. Dep't of Health & Hum. Servs. Centers for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010).

In February of 2018, Thomas went through his sister's belongings after she passed away and discovered a letter from North Carolina Mutual Life Insurance Company ("NCMLIC"). The letter concerned a life insurance policy belonging to Willie A. Sullen, an Alabama prisoner. The letter indicated that a loan had been taken out against the policy and that any death benefits would be reduced by the amount of the loan balance. Sullen contacted NCMLIC regarding potential fraud surrounding the loan and requested information and documentation from the company.

Due to Sullen's incarceration, Thomas took over communicating with NCMLIC. Thomas received a letter from NCMLIC explaining that it needs authorization from Sullen—the policy owner—for Thomas to communicate on his behalf. Thomas claims that his efforts to prove this authorization were rejected by NCMLIC on two separate occasions before Thomas ultimately acquired possession of the policy in question. In taking ownership of the policy, Thomas discovered an outstanding loan balance of \$262.33 "supposedly granted" against the policy on July 22, 2002. NCMLIC explained

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<sup>2</sup> Given Thomas's pro se status, the Court liberally construes these grounds for relief from the list of claims at the beginning of the complaint (Doc. 1, PageID.2) and the more detailed claims set out at the end of the complaint (Doc. 1, PageID.14–20).

that this loan predated their acquisition of the subject policy and that it did not have the original loan documents.

Thomas then wrote to several regulatory agencies regarding the alleged fraud, including the Alabama Department of Insurance (“ALDOI”). After Thomas’s initial inquiry with ALDOI, the agency responded via email that it was referring the matter to its consumer services division. Thomas then sent ALDOI many of his records from his interactions with NCMLIC to emphasize the need for a criminal investigation. ALDOI did not open a criminal investigation. It did, however, send Thomas a letter “containing the exact words of the letter that was sent” to him by NCMLIC.

While Thomas pursued an ALDOI investigation, he initiated legal proceedings in Florida state courts and several United States district courts—including this Court—against NCMLIC.<sup>3</sup> The company continued to send Thomas documentation, but not related to the loan. Thomas’s family eventually paid off the loan to free up the policy in the event that Sullen passed away.

On July 1, 2020, Thomas received a letter from NCMLIC informing him that the company had been placed in rehabilitation by order of the Wake County Superior Court in North Carolina. This order had been unsealed on February 1, 2019, and froze all of the company’s assets—including Thomas’s insurance policy. NCMLIC sent Thomas a hardship waiver to determine if he qualified for relief.

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<sup>3</sup> One of Thomas’s civil actions was dismissed by this Court without prejudice for lack of subject matter jurisdiction because, at the time he filed suit, Thomas lacked standing to pursue his claims. (See 1:18-cv-00445-TFM-N PageID.60).

While Thomas continued his litigation against NCMLIC in Florida court, Thomas received an email from the North Carolina Department of Insurance's ("NCDOI's") Fraud Division. Thomas claims the letter attempted to negotiate a deal to alleviate criminal liability of NCMLIC and acknowledges his correspondence with the company.<sup>4</sup>

## II. *Legal Standards*

After a party is granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, courts must screen the underlying complaint for various defects. Specifically, this screening procedure mandates the following:

"Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal— (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). Federal Rule of Civil Procedure 12(b)(6) standards apply in determining whether a claim screened under § 1915(e)(2)(B) fails to state a claim upon which relief may be granted. *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997). A district court explained the framework for screening a pro se complaint under § 1915(e)(2)(B)(ii) as follows:

Of course, courts hold complaints authored by *pro se* litigants to a less stringent standard, and construe them more liberally than pleadings drafted by attorneys. *See, e.g., Boxer X v. Harris*, 437 F.3d 1107, 1110 (11th Cir. 2006). Nevertheless, a pro se litigant's complaint still "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). All litigants, regardless of

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<sup>4</sup> Details of Thomas's grievances with the Florida courts' handling of his claims against NCMLIC are omitted from this factual background because they are not relevant to any of the claims that he brings now.

whether they are proceeding with the aid of counsel or *pro se*, must assert “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not” suffice. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Furthermore, even though a district court must interpret the pleadings of *pro se* litigants more liberally than those drafted by counsel, it “may not serve as de facto counsel for a party . . . or rewrite an otherwise deficient pleading in order to sustain an action.” *Ausar-El ex rel. Small, Jr. v. BAC (Bank of America) Home Loans Servicing LP*, 448 Fed. Appx. 1, 2 (11th Cir. 2011) (internal quotations and citations omitted).

*Stone v. Stone*, No. 5:18-CV-867-CLS, 2018 WL 3368978, at \*2 (N.D. Ala. July 10, 2018). While pleadings filed by *pro se* litigants are to be construed liberally, *pro se* parties are still required to “conform to procedural rules.” *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) (quoting *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002)).

### III. *Analysis of Thomas’s Complaint*

Upon review of the complaint, the Court discovered several defects: (A) Thomas’s only detailed claim that invokes original jurisdiction under § 1331 fails to state a claim upon which relief may be granted; (B) the other federal claims that Thomas mentions in passing also fail to state a claim upon which relief may be granted; and (C) Thomas’s remaining state law claims lack independent grounds for jurisdiction. Each issue is discussed in turn.

#### A. *Conspiracy Claim*

Thomas claims that Defendants worked together “to illegally confiscate funds” from his family and from the subject insurance policy. (Doc. 1, PageID.14). Specifically, Defendants conspired to deny or restrict Thomas’s access to information about the policy while covering up “a clear case of fraud.” (Doc. 1, PageID.15). Thomas

alleges that these acts violate 18 U.S.C. § 241, which prohibits conspiracy to deprive individuals of their federal rights.

However, Thomas's only cited cause of action—the federal criminal prohibition of conspiracies to deprive individuals of their rights—does not provide for enforcement by civil litigants. *See* 18 U.S.C. § 241. “Absent some expression of Congressional intent to create a private right of action, a plaintiff cannot maintain a civil claim against a defendant for violation of a federal criminal statute.” *Johnson v. Champions*, 990 F. Supp. 2d 1226, 1245 (S.D. Ala. 2014) (citing *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1303 (11th Cir. 2008)). Even viewing Thomas's well-pleaded allegations in the light most favorable to him, the undersigned's review of Thomas's conspiracy claim fails to reveal any other plausible cause of action related to his conspiracy allegations. Accordingly, Thomas's conspiracy claim fails to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(ii).

#### **B. Other Federal Claims and Jurisdiction**

Other than Thomas's purported federal claim under 18 U.S.C. § 241, he offers only the following conclusory invocation of various federal laws:

This action is for claims of fraud, conspiracy, negligence, violations of privacy, equal protection, and due process clauses of the fourteenth amendment of the U.S. Constitution pursuant to 42 U.S.C. 21 section 1983, 42 U.S.C. 21 section 1985, 18 U.S.C. 13 section 241, 18 U.S.C. 47 sections 1030, 1037 and 1038, 18 U.S.C. 63 sections 1341 and 1349 and various Alabama and North Carolina state laws.

(Doc. 1, PageID.2). Other than the misplaced federal claim under 18 U.S.C. § 241 and Thomas's state law claims for negligence, fraud, and breach of contract, Thomas fails to offer any other factual allegations to support the causes of action cited above.

Conclusory legal allegations are insufficient to state a claim upon which relief may be granted. *Iqbal*, 556 U.S. at 679. Accordingly, Thomas's federal claims under the statutes cited above fail under 28 U.S.C. § 1915(e)(2)(B)(ii).

### C. Remaining State Law Claims

In light of the deficiencies with Thomas's federal claims outlined above, the Court need not address his state law claims—namely, his claims for negligence, fraud, and breach of contract—other than to note that Thomas has failed to adequately allege an independent basis for this Court's jurisdiction over these claims.<sup>5</sup> Thomas alleges only that this Court has jurisdiction over his claims “pursuant to 28 U.S.C. sections 1331, 1332, 1343 and 1367.” (Doc. 1, PageID.2). Without any federal claim apparent in Thomas's claims of negligence, fraud, and breach of contract, the only independent grounds for jurisdiction over these state law claims would stem from 28 U.S.C. § 1332.

When a plaintiff files suit in federal court, [the plaintiff] must allege facts that, if true, show federal subject matter jurisdiction over [the] case exists. *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994). Those allegations, when federal jurisdiction is invoked based upon diversity, must include the citizenship of each party, so that the court is satisfied

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<sup>5</sup> “It is . . . axiomatic that the inferior federal courts are courts of limited jurisdiction. They are ‘empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution,’ and which have been entrusted to them by a jurisdictional grant authorized by Congress.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999) (quoting *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994)). Accordingly, “it is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.” *Id.* at 410. “[A] court should inquire into whether it has subject matter jurisdiction at the earliest possible stage in the proceedings.” *Id.*; see also *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, (2006) (“[C]ourts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.”).

that no plaintiff is a citizen of the same state as any defendant. *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998) (“Diversity jurisdiction requires complete diversity; every plaintiff must be diverse from every defendant.”). Without such allegations, district courts are constitutionally obligated to dismiss the action altogether if the plaintiff does not cure the deficiency. *Stanley v. C.I.A.*, 639 F.2d 1146, 1159 (5th Cir. Unit B Mar. 1981); *see also DiMaio v. Democratic Nat’l Comm.*, 520 F.3d 1299, 1303 (11th Cir. 2008) (“Where dismissal can be based on lack of subject matter jurisdiction and failure to state a claim, the court should dismiss on only the jurisdictional grounds.” (internal quotation marks omitted)). **That is, if a complaint’s factual allegations do not assure the court it has subject matter jurisdiction, then the court is without power to do anything in the case.** *See Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1331, n.6 (11th Cir. 2001) (“[A district] court must dismiss a case without ever reaching the merits if it concludes that it has no jurisdiction.” (quoting *Capitol Leasing Co. v. FDIC*, 999 F.2d 188, 191 (7th Cir. 1993))); *see also Belleri v. United States*, 712 F.3d 543, 547 (11th Cir. 2013) (“We may not consider the merits of [a] complaint unless and until we are assured of our subject matter jurisdiction.”).

*Travaglio v. Am. Exp. Co.*, 735 F.3d 1266, 1268 (11th Cir. 2013) (emphasis added) (footnote omitted). *See also, e.g., Ray v. Bird & Son & Asset Realization Co., Inc.*, 519 F.2d 1081, 1082 (5th Cir. 1975) (“The burden of pleading diversity of citizenship is upon the party invoking federal jurisdiction . . .” (citing *Mas v. Perry*, 489 F.2d 1396 (5th Cir. 1974))).<sup>6</sup>

Under § 1332(a), a district court has subject matter jurisdiction “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.” 28 U.S.C. § 1332(a)(1). However, a

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

complaint's "allegations, when federal jurisdiction is invoked based upon diversity, must include the citizenship of each party, so that the court is satisfied that no plaintiff is a citizen of the same state as any defendant." *Travaglio*, 735 F.3d at 1268. "Diversity jurisdiction requires complete diversity; every plaintiff must be diverse from every defendant." *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998). Here, Thomas fails to allege more than \$75,000 in damages exclusive of interests and costs, he fails to properly allege Defendants' citizenships. *See Travaglio*, 735 F.3d at 1268 (A complaint's "allegations, when federal jurisdiction is invoked based upon diversity, must include the citizenship of each party, so that the court is satisfied that no plaintiff is a citizen of the same state as any defendant."). Thomas's amended complaint, if any, should allege independent bases for jurisdiction for these state law claims.

#### **D. Leave to Amend**

The general rule in this Circuit is, "[w]hen it appears that a *pro se* plaintiff's complaint, if more carefully drafted, might state a claim, the district court should give the *pro se* plaintiff an opportunity to amend his complaint instead of dismissing it with prejudice." *Jemison v. Mitchell*, 380 F. App'x 904, 907 (11th Cir. 2010) (per curiam) (unpublished) (emphasis added) (citing *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991) (per curiam) ("Where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice."), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (en banc)



(overruling Bank as to counseled parties)). Here, the undersigned will grant Thomas an opportunity to submit an amended complaint addressing the defects described above no later than **OCTOBER 7, 2022**.

#### IV. *Thomas's Motion for the Appointment of Counsel*

Thomas requests that the Court appoint him counsel, explaining that he “is unable to litigate this case with efficiency on [his] behalf because [he] does not fully understand the law and its procedural processes . . . .” (Doc. 4, PageID.69). Thomas also chronicles his efforts to hire several attorneys without success. (Doc. 4, PageID.70). “Appointment of counsel in a civil case is not a constitutional right.” *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985). Under 28 U.S.C. § 1915(e)(1), however, “[t]he court may request an attorney to represent any person unable to afford counsel.” “The trial court has broad discretion in making the determination” of whether to appoint counsel in a civil action. *Smith v. Fla. Dep't of Corr.*, 713 F.3d 1059, 1063 (11th Cir. 2013) (per curiam); *see also Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999) (“A court may, . . . pursuant to 28 U.S.C. § 1915(e)(1), appoint counsel for an indigent plaintiff. The district court has broad discretion in making this decision, *see Killian v. Holt*, 166 F.3d 1156, 1157 (11th Cir. 1999), and should appoint counsel only in exceptional circumstances, *see Dean v. Barber*, 951 F.2d 1210, 1216 (11th Cir. 1992).”).

A review of the record reveals no exceptional circumstances warranting appointment of counsel at this time. Thomas's indigent status, his inability to afford counsel, and lack knowledge about the law are not exceptional circumstances—

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

NOEL VINCENT THOMAS,	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 1:22-00011-TFM-N
	)	
NORTH CAROLINA MUTUAL	)	
INSURANCE LIFE INSURANCE	)	
COMPANY <i>et al.</i> ,	)	
Defendants.	)	

**ORDER**

This action is before the Court on Plaintiff Noel Vincent Thomas's second amended motion for leave to proceed without prepayment of fees and costs, or in forma pauperis ("IFP"), under 28 U.S.C. § 1915 (Doc. 11) as well as the corresponding supplement. (Doc. 10). Thomas is proceeding without counsel (pro se) in this civil action. The assigned District Judge referred this motion to the undersigned Magistrate Judge for appropriate action under 28 U.S.C. § 636(a)–(b), Federal Rule of Civil Procedure 72, and S.D. Ala. GenLR 72(a). *See* S.D. Ala. GenLR 72(b); (3/4/2022 electronic reference). Upon consideration, Thomas's second amended IFP motion (Doc. 11) is **GRANTED**.

Authority for granting a plaintiff permission to proceed without prepayment of fees and costs is found at 28 U.S.C. § 1915, which provides as follows:

[Generally], any court of the United States 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, by a person who submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall

state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

28 U.S.C. § 1915(a)(1); *see also Troville v. Venz*, 303 F.3d 1256, 1260 (11th Cir. 2002) (affirming the application of § 1915's provisions to a non-prisoner's complaint).

"The in forma pauperis statute, 28 U.S.C. § 1915, ensures that indigent persons will have equal access to the judicial system." *Attwood v. Singletary*, 105 F.3d 610, 612–13 (11th Cir. 1997) (citing *Coppedge v. United States*, 369 U.S. 438, 446 (1962)). However, "[t]here is no question that proceeding in forma pauperis is a privilege, not a right," *Camp v. Oliver*, 798 F.2d 434, 437 (11th Cir. 1986),<sup>1</sup> and "should not be a broad highway into the federal courts." *Phillips v. Mashburn*, 746 F.2d 782, 785 (11th Cir. 1984) (per curiam). Nevertheless, "while a trial court has broad discretion in denying an application to proceed in forma pauperis under 28 U.S.C.A. § 1915, it must not act arbitrarily and it may not deny the application on erroneous grounds." *Pace v. Evans*, 709 F.2d 1428, 1429 (11th Cir. 1983) (per curiam) (citing *Flowers v. Turbine Support Div.*, 507 F.2d 1242, 1244 (5th Cir. 1975)); *see also Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306–07 (11th Cir. 2004) (per curiam) ("[A] trial court has wide discretion in denying an application to proceed IFP under 28 U.S.C. § 1915. . . . However, in denying such applications a court must not act arbitrarily. Nor may it deny the application on erroneous grounds." (quotation omitted)).

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<sup>1</sup> *Accord Rivera v. Allin*, 144 F.3d 719, 722, 724 (11th Cir. 1998) ("Leave to proceed IFP is, and always has been, the exception rather than the rule. To commence a civil lawsuit in federal district court, the general rule is that initiating parties must prepay a filing fee . . . . To be sure, proceeding IFP in a civil case is a privilege, not a right—fundamental or otherwise."), *abrogated on other grounds, Jones v. Bock*, 549 U.S. 199 (2007).

When considering a motion filed pursuant to § 1915(a), “[t]he only determination to be made by the court . . . is whether the statements in the affidavit satisfy the requirement of poverty.” *Watson v. Ault*, 525 F.2d 886, 891 ([5]th Cir. 1976). An affidavit addressing the statutory language should be accepted by the court, absent a serious misrepresentation, and need not show that the litigant is “absolutely destitute” to qualify for indigent status under § 1915. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 338–40, 69 S. Ct. 85, 88–89, 93 L. Ed. 43 (1948). Such an affidavit will be held sufficient if it represents that the litigant, because of his poverty, is unable to pay for the court fees and costs, and to support and provide necessities for himself and his dependents. *Id.* at 339, 69 S. Ct. at 89. In other words, the statute is not to be construed such that potential litigants are forced to become public charges or abandon their claims because of the filing fee requirements. *Id.* at 339–40, 69 S. Ct. at 89. . . . The district court must provide a sufficient explanation for its determination on IFP status to allow for meaningful appellate review. *O’Neal v. United States*, 411 F.2d 131, 138 (5th Cir. 1969); *Phipps v. King*, 866 F.2d 824, 825 (6th Cir. 1988); *Besecker v. State of Ill.*, 14 F.3d 309, 310 (7th Cir. 1994) (per curiam).

*Martinez*, 364 F.3d at 1307 (footnotes omitted).

“A court may not deny an IFP motion without first comparing the applicant’s assets and liabilities in order to determine whether he has satisfied the poverty requirement.” *Thomas v. Chattahoochee Judicial Circuit*, 574 F. App’x 916, 917 (11th Cir. 2014) (per curiam) (unpublished)<sup>2</sup> (citing *Martinez*, 364 F.3d at 1307–08). “When a claim of poverty is made under section 1915 ‘it is proper and indeed essential for the supporting affidavits to state the facts as to affiant’s poverty with some particularity, definiteness and certainty.’” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)).

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<sup>2</sup> In this Circuit, “[u]npublished opinions are not considered binding precedent, but they may be cited as persuasive authority.” 11th Cir. R. 36-2.

Upon consideration of the representations in Thomas's second amended IFP motion (Doc. 11) and supplement (Doc. 10), which are in substantial compliance with 28 U.S.C. § 1746 and thus constitutes an unsworn declaration made under penalty of perjury, the undersigned finds it is reasonably apparent that Thomas lacks the means to pay the \$402 filing fee and other related costs without being deprived of the basic necessities of life. *See Martinez*, 364 F.3d at 1307 (holding that one need not be "absolutely destitute" to qualify for indigent status under § 1915"). Accordingly, it is **ORDERED** that Thomas's second amended IFP motion (Doc. 11) is **GRANTED**. The Clerk of Court is **DIRECTED** to withhold service of the complaint until otherwise ordered to allow for review under 28 U.S.C. § 1915(e)(2)(B).

In light of his *pro se* status, Thomas is reminded that "[a]ll persons proceeding *pro se* shall be bound by, and must comply with, all Local Rules of this Court," as well as the applicable federal rules of procedure, "unless excused by Court order." S.D. Ala. GenLR 83.5(a). Federal Rule of Civil Procedure 11(a) requires that any paper he files with the Court be signed by him personally and provide his "address, e-mail address, and telephone number."<sup>3</sup> *See* Rule 12 of the § 2255 Rules ("The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules."). Under this Court's local rules, "[a]ny person proceeding *pro se* must, at all times during the pendency of the action to which

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<sup>3</sup> "The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention." Fed. R. Civ. P. 11(a).

he or she is a party, keep the Clerk informed of his or her current address and . . . must promptly notify the Clerk of any change of address . . . . Failure to comply with this Rule may result in sanction, including dismissal of a *pro se* plaintiff's action . . . .” S.D. Ala. GenLR 83.5(b). Additionally, any “request for Court action must be presented by motion and may not be presented by informal means such as a letter.” S.D. Ala. GenLR 7.

**DONE and ORDERED** this the 30th day of March 2022.

/s/ Katherine P. Nelson  
**KATHERINE P. NELSON**  
**UNITED STATES MAGISTRATE JUDGE**