APPENDIX

Appendix A

-Justice Sotomayor for 2nd Circuit grant of an extension to file of Writ of Certiorari

-Mandate of the 2nd Circuit Appeals Court - Denial of en banc reconsideration, - Grant of en banc consideration Denial of submitting a brief? - Denial of "Appeal as a Right"

-Holding of a "28 sect 1915 Motion in abeyance" await of the district judge contradiction (eClinical works, a NY crime file in VT, but with Taal defrauded by defendants, "WKS" aka j Session violated plaintiff's and family substantive Rights per *Lane v Frank*

Appendix B

-Orders of district court; -Motion to reassign for the appellant 28 sect 1915(e) filing at 2nd Circuit held in abeyance; until the very district judge rules. -Denied; Order of Dismissal by "WKS". contradiction (filer of eClinical works and a NY crime file in VT)

Appendix C

-Provident Bank commitment to extend loan to pay-cover the $235,000 mortgage left on the property amount due to my ex of $145,000-$155,000 where my home my share need not be loan. Home worth $1.2M had no problem securing less than a mere $400,000 mortgage

-Defendant's Cronin et al own statement/ scheme called "... Second Motion for interim Award of Attorney's Fees"? -THERE WAS NEVER A 1st MOTION FILED NOR SERVED ON RECORD NOR VICTIM(S) RATHER IN A "FRAUD ON THE COURT" AFTER I FILED OUR COMPLAINT AT VTDC. MY EX GOT HER SHARE WEEKS AFTER THEY STOLE/SOLD MY HOME ALONG WITH $110,000 WORTH OF BUILDING HOUSEHOLD EQUIPMENTS

-Preservation Notice I sent to Welt White..., as Raudonis, Tecza, White(NH licensed "court officers") suborn the intercept of my US Mail addressed to me.

-Emails with the Marital Mediator Greg Martin confirming the knowing- willful artifice/plan to get the case before state actor Defendants atty Raudonis, White et al to perfect the fraud where Derby brought in Cronin, who brought in defendants Weidacher, Edwards, Keller Williams; Labrecques(last two their chosen buyers) in the scheme.

-NH AG stating they will not grant "Extension on the Statute of Limitation" nor investigate? One supposes for the conflicts and connection to defendant tencza, state actor Derby.

D. Vt.
22-cv-217
Sessions, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of February, two thousand twenty-four.

Present:

Pierre N. Leval,
Reena Raggi,
Joseph F. Bianco,
Circuit Judges.

Baboucar B. Taal,

Plaintiff-Appellant,

v. 23-1012

John Cronin, et al.,

Defendants-Appellees.

Appellant, pro se, moves for leave to proceed in forma pauperis, appointment of counsel, and recusal of the district court. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of April, two thousand twenty-four.

Baboucar B. Taal,

Plaintiff - Appellant,

v.

John Cronin, Cronin, Bisson & Zalinsky, P.C, Danette Labrecque, Nathan Labrecque, Valerie Raudonis, Welst, White & Fontaine P.C., David Tencza, Welts, White & Fontaine P.C., Jack S. white, Welts, White & Fontaine P.C., Cronin, Bisson & Zalinsky, P.C., Welts, White & Fontaine P.C., Bill Weidacher, Keller William Bedford NHRealty, Kathleen Edwards, Keller-Williams, Keller Williams Bedford NH-Realty, Metropolitan,

Defendants- Appellees.

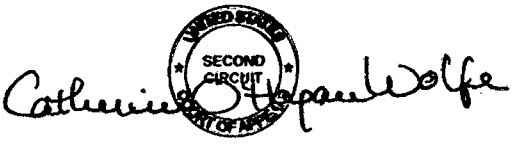
ORDER

Docket No: 23-1012

Appellant, Baboucar B. Taal, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and denied panel reconsideration by order filed on February 23, 2024. The active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



UNITED STATES DISTRICT COURT

for the
District of Vermont

BABOUCAR B. TAAL

Plaintiff(s)

v.

JOHN CRONIN et al

Defendant(s)

Civil Action No. 2:22-cv-217

JUDGMENT IN A CIVIL ACTION

☐ **Jury Verdict.**

☑ **Decision by Court.**

IT IS ORDERED AND ADJUDGED that pursuant to the court's Order (Document 24) filed June 6, 2023, defendants John Cronin and Cronin, Bisson & Zalinsky, P.C.'s Motion to Dismiss (Document 10), defendants Danette Labrecque and Nathan Labrecque's **Motion to Dismiss (Document 11), defendants Keller Williams Metropolitan, Bill Weidacher and Kathleen Edwards' Motion to Dismiss (Document 12), defendant Welts, White & Fontaine, P.C.'s Motion to Dismiss (Document 15), and defendant Valerie Raudonis' Motion to Dismiss (Document 17) are GRANTED. The Complaint (Document 1) is DISMISSED without prejudice against all defendants and leave to amend is DENIED.**

Date: June 6, 2023

JEFFREY S. EATON
CLERK OF COURT

JUDGMENT ENTERED ON DOCKET
DATE ENTERED: 6/6/2023

/s/ Lisa Wright
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF VERMONT
FEDERAL BUILDING
BURLINGTON, VERMONT 05402-0945

☒ P.O. BOX 945
BURLINGTON 05402-0945
(802) 951-6301

☐ P.O. BOX 607
RUTLAND 05702-0607
(802) 773-0245

JEFFREY S. EATON
CLERK

Civil Action: 2:22-cv-217

Date: June 6, 2023

Taal v. Cronin et al

NOTICE TO LITIGANTS

If you wish to appeal the enclosed judgment or order, you must file a Notice of Appeal within 30 days after entry of the judgment or order appealed from (or 60 days if the United States or an officer or agency of the United States is a party). Fed. R. App. P. 4(a)(1). The fee for filing an appeal is $505.00.

If you wish to appeal but are unable to file your Notice of Appeal within 30 days [or 60 days if applicable] after the date of **entry shown on line 2 below, then you have an additional 30 days to file a Motion for Extension of Time. The Motion for Extension of Time must be filed within 30 days after the date on line 3 below. Every Motion for Extension of Time must contain an explanation which demonstrates "good cause" or "excusable neglect" for failure to file the Notice of Appeal within** the time limit required. Fed. R. App. P. 4(a)(5).

PLEASE TAKE NOTICE

1. Judgment filed — June 6, 2023
2. **Date of Entry of Judgment on the docket of this court** — **June 6, 2023**
3. Notice of Appeal **MUST** be **filed on or before** — **July 6, 2023**

/s/ Lisa Wright
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Baboucar B. Taal, **Plaintiff,** v. **John Cronin; Danette Labrecque; Nathan Labrecque; Valerie Raudonis; David Tencza; Jack S. White; Cronin, Bisson &** Zalinsky, P.C.; Welts, White & Fontaine **P.C.; Bill Weidacher; Kathleen Edwards; Keller Williams Bedford NH-Realty,** Defendants.	)	Case No. 2:22-cv-217

ORDER GRANTING
DEFENDANTS' MOTIONS TO DISMISS
(Docs. 2, 10, 11, 12, 13, 15, 17, 22)

On December 14, 2022, Plaintiff Baboucar B. Taal, proceeding pro se, commenced this action against a group of New Hampshire defendants in connection with the sale of his New Hampshire home and disposition of personal property. Plaintiff has filed a motion for "the Clerk to Forward Copy of Complaint to Defendants for Refusal of Service and Deem Them Served" and a motion to file under seal. (Docs. 2, 22.) Many Defendants have moved to dismiss the case against them for lack of jurisdiction, improper venue, insufficient service of process, and failure to state a claim under Federal Rule of Civil Procedure 12 as well as for failure to plead fraud with particularity under Rule 9(b).[1] *See* Docs. 10, 11, 12, 15, 17. Plaintiff has responded to

[1] David Tencza and Jack S. White have not responded to the Complaint. Defendants Keller-Williams Bedford NH-Realty, responding as Keller Williams Metropolitan ("KW Metro"), Bill Weidacher, and Kathleen Edwards filed a partially assented-to motion seeking permission to respond to the Complaint one day late due to a technical difficulty with the court's e-filing system. (Doc. 13.) This motion is GRANTED. *See* Fed. R. Civ. P. 6(b)(1)(B).

some of these motions with "objections." *See* Docs. 18, 19. For the reasons explained below, Defendants' motions to dismiss are GRANTED and Plaintiff's motions are DENIED.

I. Allegations of Plaintiff's Complaint

Plaintiff asserts that this Court has both federal question and diversity subject matter jurisdiction. He does not, however, allege that this district is a proper venue for his action. He alleges defendants conspired to defraud him and his children by selling his property—a 3,500 square foot house with three-car garage with apartment on 5.6 acres of land at 59 Essex Road, Bedford, New Hampshire worth $1.1 million—to Danette and Nathan Labrecque for $575,000.[2] The sale occurred in connection with a divorce action in New Hampshire. Plaintiff states: "[I]t was fraud that w[as] engineer[ed] by Raudonis, Tencza, White, Welt White et al, Cronin, state actor Derby, Weidacher, Edwards with Labrecque[s] in willful fraud against a minority black man to make money off this defraud him of his home, personal possessions and property." (Doc. 1 at 9.) Plaintiff references various federal statutes including: 18 U.S.C. §§ 241, 242, 371, 1341 and 42 U.S.C. § 1983. He seeks both compensatory and punitive damages.

II. This Court is not the Proper Venue for this Action.

Defendants John Cronin, Cronin, Bisson & Zalinsky, P.C., Danette and Nathan Labrecque, KW Metro, Bill Weidacher, and Kathleen Edwards move to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(2) arguing that it fails to establish that venue is proper in this district. *See* Docs. 10–12. Plaintiff responded only to the motion of KW Metro, Mr. Weidacher, and Ms. Edwards, however, he did not address the venue argument. *See* Doc. 18.

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[2] This property has been the subject of multiple cases stretching back a decade. *See, e.g., In re Taal*, 520 B.R. 370, 372–74 (D.N.H. Oct. 14, 2014) (describing "the filing and dismissal dates of Mr. and Ms. Taal's bankruptcy cases, and Mr. Taal's extra-bankruptcy attempts to stop the Bank's forecosure").

Federal law allows for venue in "a judicial district in which any defendant resides, . . . [or] a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." 28 U.S.C. § 1391(b)(1)–(2).[3] The plaintiff must demonstrate that venue is proper. *Nat'l Un. Fire Ins. Co. of Pittsburgh v. Wynn Las Vegas, LLC*, 509 F. Supp. 3d 38, 49 (S.D.N.Y. 2020) ("When a defendant challenges either the jurisdiction or venue of the court, the plaintiff bears the burden of showing that both are proper.") (internal quotation marks omitted). "[T]he purpose of statutorily defined venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Daniel v. Am. Bd. of Emergency Med.*, 428, F.3d 432 (2d Cir. 2005) (internal quotation marks omitted).

According to Plaintiff's Complaint, none of the Defendants are Vermont residents, as all are alleged to have New Hampshire addresses, the property that is the principal subject of the Complaint is situated in New Hampshire, and none of the alleged events occurred in Vermont. From what the court can discern, this action appears to have no connection to Vermont other than Plaintiff's purported residence here.[4] Thus, Plaintiff has not met his burden to show that venue is proper is this district.

III. Certain Defendants have not been Properly Served with Process.

Defendants Welts, White & Fontaine, P.C. and Valerie Raudonis move to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(5) asserting that Plaintiff's attempted

[3] Subsection (b)(3) allows for venue in "any judicial district in which any defendant is subject to the court's personal jurisdiction," however, only "if there is no district in which an action may otherwise be brought." 28 U.S.C. § 1391(b)(3). Here, all defendants are alleged to be New Hampshire residents, thus, venue would be proper in the single-judicial district of New Hampshire and subsection (b)(3) is inapplicable.

[4] Plaintiff does not allege his state of residence in his Complaint other than in his signature block but his Civil Case Cover Sheet asserts that he is a citizen of Vermont. *See* Doc. 1-1.

service of process by certified mail was insufficient. *See* Doc. 15 at 2–5; Doc. 17 at 2–5. Although Plaintiff responded to their motions to dismiss, he did not address the insufficiency of service of process argument. *See* Doc. 19.

Rule 12(b)(5) provides for dismissal of a complaint if it has not been properly served. On a Rule 12(b)(5) motion to dismiss, the plaintiff bears the burden of establishing that service was sufficient. *See Dickerson v. Napolitano*, 604 F.3d 732, 752 (2d Cir. 2010) (observing that "the plaintiff bears the burden of proving adequate service" when a defendant "moves to dismiss under Rule 12(b)(5)") (internal quotation marks omitted). "In deciding a Rule 12(b)(5) motion, a Court must look to Rule 4, which governs the content, issuance, and service of a summons." *Felton v. Monroe Cmty. Coll.*, 528 F. Supp. 3d 122, 132 (W.D.N.Y. 2021) (internal quotation marks omitted). "[T]he Court may look beyond the pleadings, including to affidavits and supporting materials, to determine whether service was proper." *Vega v. Hastens Beds, Inc.*, 339 F.R.D. 210, 215 (S.D.N.Y. 2021).

On January 3, 2023, Plaintiff filed a Proof of Service form purportedly demonstrating service on Welts, White & Fontaine, P.C. *See* Doc. 4 at 2 (although the space for the name was left blank, the summons that was also filed lists "Welt White & Fontaine" and a New Hampshire address). No method of service box was checked, however, the document states "via USPS Certified Mail" and includes copies of a U.S. Postal Service Certified Mail Receipt and a return receipt card signed by Orion Weissflogg. *Id.* at 2–6. There is no separate Proof of Service for Ms. Raudonis, David Tencza, or Jack S. White.

A. Welts, White & Fontaine, P.C.

Mr. Michael J. Fontaine, President and Managing Shareholder of Welts, White & Fontaine, P.C., has submitted an affidavit stating that Orion Weissflogg is "a file clerk who at

times works at the reception desk. He is not an officer, managing or general agent[,] or an agent authorized by law to be served with process." (Doc. 15-1 at 2, ¶ 4.) Welts, White & Fontaine, P.C. argues that service by certified mail is insufficient. The Court agrees.

Service on a corporation, partnership or association is addressed under Federal Rule of Civil Procedure 4(h). Plaintiff was required to effect service either: (1) by delivering a copy of the summons and complaint to certain corporate officers or an agent authorized to receive service of process or (2) in the manner required under Vermont or New Hampshire law. *See* Fed. R. Civ. P. 4(h)(1). Plaintiff "does not contend that he personally served [Welts, White & Fontaine, P.C.], as required under Federal Rule of Civil Procedure 4(h)(1)(B)," which leaves only Federal Rule of Civil Procedure 4(e)(1) requiring Plaintiff effect service under either Vermont or New Hampshire law. *Obot v. Navient Solutions, Inc.*, 726 F. App'x 47, 48 (2d Cir. Mar. 19, 2018); *see also Jordan v. Forfeiture Support Assocs.*, 928 F. Supp. 2d 588, 595–96 (E.D.N.Y. 2013) (noting "nothing in Rule 4(h)(1)(B) provides that service by certified mail constitutes adequate service of process") (internal quotation marks omitted).

Service by mail is generally insufficient under state law. Under Vermont law, Plaintiff was required to "deliver[] a copy of the summons and of the complaint to an officer, a director, a managing or general agent, a superintendent, or to any other agent authorized by appointment or by law to receive service of process." Vt. R. Civ. P. 4(d)(7). Although in certain circumstances service by certified mail may be allowed under Vermont law, Plaintiff must show that service cannot be made personally with due diligence. *See id.* 4(f)(1). This Plaintiff has not done.[5]

[5] Additionally, Plaintiff's attempt to serve Welts, White & Fontaine, P.C. fails because it appears that he attempted to serve the summons via certified mail himself. *See* Doc. 4 at 6 (U.S. Postal Service Return Receipt to B. Taal); *see also* Fed. R. Civ. P. 4(c)(2) ("Any person who is at least 18 years old and *not a party* may serve a summons and complaint.") (emphasis added).

Finally, New Hampshire law requires service on a corporation's registered agent or by delivery to someone of higher standing than a receptionist. *See* R.S.A. 510:14. Accordingly, Plaintiff's attempted service of process on Welts, White & Fontaine, P.C. was insufficient.

B. Valerie Raudonis, Esq.

According to her affidavit, Ms. Raudonis is a retired New Hampshire attorney who last worked at Welts, White & Fontaine, P.C. in Nashua, New Hampshire. Although Plaintiff did not file a separate Proof of Service as required by Federal Rule of Civil Procedure 4(l)(1),[6] Ms. Raudonis confirms that, on December 23, 2022, she received a certified mailing from Plaintiff that contained a summons and the Complaint. *See* Doc. 17-1 at 2, ¶ 3. Ms. Raudonis argues that service by certified mail is not sufficient.

Under both the federal and Vermont rules, service of process on an individual may be made by: (1) delivering a copy of the summons and of the complaint to the individual personally; (2) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process. Fed. R. Civ. P. 4(e)(2)(A)–(C). Under New Hampshire law, "[a]ll . . . processes shall be served by giving to the defendant or leaving at his abode an attested copy thereof." R.S.A. 510:2. Because a certified mailing is not personal delivery, Plaintiff has not complied with the applicable rules for serving Ms. Raudonis.

C. David Tencza and Jack S. White.

Plaintiff's Complaint also names David Tencza and Jack S. White of Welts, White & Fontaine P.C. The docket shows no proofs of service for these individuals. Plaintiff has,

[6] *See also* Fed. R. Civ. P. 4(l)(3) ("Failure to prove service does not affect the validity of service.").

however, filed a motion requesting the Court "order" the "clerk to forward copies of the filed complaint and deem [Mr. Tencza and Mr. White] served." (Doc. 2 at 3.) Plaintiff asserts that on December 20, 2022, "the law offices of Welt White & Fontaine P.C. were served [P]laintiff's [C]omplaint, said employers of attorney Jack White the managing partner and attorney David Tencza employed by Welt White et al." *Id.* at 2. In his objection to the motions to dismiss of Welts, White & Fontaine and Ms. Raudonis, Plaintiff states that "Att[orneys] White & Tencza couldn't be bothered to respond upon being made aware of [the] case." (Doc. 19 at 2.)

As explained above, a certified mailing to a place of employment is not sufficient service of process on an individual. In his motion, Plaintiff also requests that other named Defendants who have since responded to his Complaint be "deemed served." *See id.* Under Rule 4, a "summons must be served with a copy of the complaint" and the "plaintiff is responsible for having the summons and complaint served." Fed. R. Civ. P. 4(c)(1). Unless a named defendant agrees to waive service, a summons is required to direct an individual or entity to participate in a civil action or forego procedural or substantive rights. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) ("[S]ervice of process [i]s the official trigger for responsive action by an individual or entity named defendant[.]"). Because Plaintiff has not provided any authority permitting the Court to "deem" a defendant served in the absence of proper service of process, and the Court can perceive of none, Plaintiff's motion (Doc. 2) is DENIED.

D. Whether the Improperly Served Defendants Should be Dismissed.

If a plaintiff fails to serve a defendant in accordance with Rule 4 "within 90 days after the complaint is filed," the court "must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). Plaintiff has been on

notice since the filing of the motions to dismiss over four months ago of the potential insufficiency of his service of process but has not attempted further service or requested additional time from the Court to do so. Because Plaintiff failed to properly serve them, Welts, White & Fontaine, P.C., Ms. Raudonis, Mr. Tencza, and Mr. White have not been properly brought before the Court. *See Murphy Bros.*, 526 U.S. at 350 ("In the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant."). As the remainder of the action is also dismissed as discussed herein, the Court declines to order that service be made and GRANTS the motions to dismiss under Rule 12(b)(5) for insufficient service of process. (Docs. 15, 17.) Accordingly, Welts, White & Fontaine, P.C., Ms. Raudonis, Mr. Tencza, and Mr. White are DISMISSED from this action without prejudice.

IV. This Court does not have Personal Jurisdiction over the Remaining Defendants.

Defendants John Cronin, Cronin, Bisson & Zalinsky, P.C., Danette Labrecque, Nathan Labrecque, KW Metro, Bill Weidacher, Kathleen Edwards, Welts, White & Fontaine, P.C., and Valerie Raudonis, all New Hampshire domiciliaries, move to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(2) arguing that the court lacks personal jurisdiction over them. Plaintiff responds that this Court, as a federal district court, has "personal jurisdiction to hear violations of Federal Law." (Doc. 18 at 2; Doc. 19 at 2.)

On a motion to dismiss for lack of personal jurisdiction filed under Rule 12(b)(2), the plaintiff bears the burden of showing jurisdiction. *See Nat'l Un. Fire*, 509 F. Supp. 3d at 49. A plaintiff can make this showing through their "own affidavits and supporting materials containing an averment of facts that, if credited, would suffice to establish jurisdiction over the defendant." *S. New England Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 138 (2d Cir. 2010)

(internal quotation marks omitted). When the Court chooses not to hold an evidentiary hearing on the jurisdiction allegations, the Court construes all pleadings and affidavits in the light most favorable to plaintiff, and "where doubts exist, they are resolved in the plaintiff's favor." *Hoffritz for Cutlery, Inc. v. Amajac, Ltd.*, 763 F.2d 55, 57 (2d Cir. 1985).

Vermont's long arm statute, 12 V.S.A. § 913(b), allows courts to exercise jurisdiction over nonresident defendants within reach of the Due Process Clause of the United States Constitution. *Fox v. Fox*, 2014 VT 100, ¶ 9. Thus, to subject a defendant to this Court's jurisdiction, Plaintiff must allege "(1) that [ ] [D]efendant has certain minimum contacts within the relevant forum, and (2) that exercise of jurisdiction is reasonable in the circumstances." *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013) (internal quotation marks omitted).

The standards for the Court's general and specific personal jurisdiction are distinct. *Metro. Life Ins. Co. v. Robertson–Ceco Corp.*, 84 F.3d 560, 566 (2d Cir. 1996). Specific jurisdiction "exists when a State exercises personal jurisdiction in a suit arising out of or related to the defendant's contacts with the forum," *Jenkins v. Miller*, 983 F. Supp. 2d 423, 442 (D. Vt. 2013), while "a court's general jurisdiction . . . is based on the defendant's general business contacts with the forum state," *id.*, and arises when the "defendant's minimum contacts are so 'continuous and systematic' as to render [the defendant] essentially at home in the forum State," *Irving v. Rivera, Inc.*, 2011 WL 5329726, at *2 (D. Vt. Nov. 4, 2011) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 916 (2011)) (internal citations omitted).

"The assessment of minimum contacts is fact-specific and must necessarily be tailored to the circumstances of each case." *Metro. Life*, 84 F.3d at 570. For purposes of a court's general jurisdiction, a corporation's place of incorporation or principal place of business are the two

"paradigm bases" for a forum's authority over a non-resident entity. *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014). In an "exceptional case," a corporation could become subject to the personal jurisdiction of an additional forum if the corporation's contacts with that state are "so continuous and systematic as to render [it] essentially at home." *Id.* at 138–39 (internal quotation marks omitted). The Supreme Court instructs that a corporation's principal place of business—it's "nerve center"—is "the place where a corporation's officers direct, control, and coordinate the corporation's activities." *Hertz Corp v. Friend*, 559 U.S. 77, 92–93 (2010).

Once a plaintiff has demonstrated that a defendant has sufficient minimum contacts with the forum under either specific or general jurisdiction, the Court turns to the "reasonableness" prong of the due process analysis: a plaintiff must show that the Court's jurisdiction over defendant would be reasonable under the circumstances of the case and corresponds with "traditional notions of fair play and substantial justice." *Metro. Life*, 84 F.3d at 568 (internal citations omitted). The Court's reasonableness assessment balances five factors: (1) the burden to the defendant; (2) the interest of the forum state in the dispute; (3) the plaintiff's interest in convenient and effective relief; (4) the interstate judicial system's interest in efficient case resolution; and (5) the collective interest of the states in furthering their shared social policies. *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 242 (2d Cir. 2007).

As Welts, White & Fontaine, P.C. and Ms. Raudonis have been dismissed from the case, the remaining Defendants are discussed below.

A. John Cronin and Cronin, Bisson & Zalinsky, P.C.

Mr. Cronin and Cronin, Bisson & Zalinsky, P.C. have submitted a motion to dismiss arguing that Plaintiff has failed to allege facts to support minimum contacts required for the Court to have personal jurisdiction over them and stating that neither of them "have any contacts

with the State of Vermont." (Doc. 10 at 1, ¶¶ 3–4.) Plaintiff did not respond to the motion. As Plaintiff's Complaint does not allege that either Defendant has any contacts with Vermont and as both are asserted to be New Hampshire domiciliaries, the Court cannot exercise personal jurisdiction over them. Thus, Mr. Cronin and Cronin, Bisson & Zalinsky, P.C.'s motion to dismiss for lack of personal jurisdiction is GRANTED and they are DISMISSED from this action without prejudice.

B. Danette and Nathan Labrecque

Danette and Nathan Labrecque have submitted a motion to dismiss arguing that Plaintiff fails to adequately allege personal jurisdiction "including the Labrecques' minimum contacts with the State of Vermont." (Doc. 11 at 1, ¶ 3.) Plaintiff did not respond to the motion. As Plaintiff's Complaint does not allege that either Danette or Nathan Labrecque has any contacts with Vermont and as both are asserted to be New Hampshire domiciliaries, the Court cannot exercise personal jurisdiction over them. Thus, the Labrecques' motion to dismiss for lack of personal jurisdiction is GRANTED and they are DISMISSED from this action without prejudice.

C. KW Metro, Bill Weidacher, and Kathleen Edwards

KW Metro, Mr. Weidacher, and Ms. Edwards have submitted a motion to dismiss arguing that because none of them had any contact with the state of Vermont as part of "the sale of New Hampshire real estate to buyers living in New Hampshire in accordance with a Court order arising out of a New Hampshire divorce proceeding," the Court should dismiss all three of them for lack of personal jurisdiction. (Doc. 12 at 1, ¶ 2.) Plaintiff objected to the motion to dismiss.[7]

[7] Plaintiff also objects that the law firm representing KW Metro, Mr. Weidacher, and Ms. Edwards is conflicted as a result of its representation of Plaintiff and his company. *See* Doc. 18 at 1, ¶ 1. Given the lack of jurisdiction over Defendants, the Court does not reach this argument.

Both Ms. Weidacher and Ms. Edwards have submitted affidavits stating that they are licensed real estate agents working as independent contractors for KW Metro, a real estate agency located in Bedford, New Hampshire. *See* Docs. 12-2, 12-3. Neither is licensed to sell real estate in Vermont or has undertaken any business activities within Vermont. KW Metro was hired to sell the 59 Essex Road property by Attorney John Cronin in connection with an ongoing New Hampshire divorce case.

Construing the Complaint and affidavits in the light most favorable to him, Plaintiff has not met his burden to show that the Court can exercise personal jurisdiction over KW Metro, Mr. Weidacher, or Ms. Edwards. He has failed to show that KW Metro's nerve center lies in Vermont or that either Mr. Weidacher or Ms. Edwards, New Hampshire domiciliaries, have any contacts with Vermont. As a result, the Court cannot exercise general personal jurisdiction over them. Neither can it exercise specific personal jurisdiction because this suit does not arise out of the defendants' contacts with Vermont.

Plaintiff's assertion that this Court has "personal jurisdiction to hear violations of Federal Law," (Doc. 18 at 2, ¶ 4), misses the mark because personal jurisdiction "is concerned with the relationship of a given defendant to the particular geographic area in which a case is brought." *U.S. ex rel. Thistlethwaite v. Dowty Woodville Polymer, Ltd.*, 110 F.3d 861, 864 (2d Cir. 1997). "Jurisdiction to resolve cases on the merits requires both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction), so that the court's decision will bind them." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999). Thus, even if the Court had subject matter jurisdiction, a lack of personal jurisdiction over the defendants against whom the claims are brought would require dismissal, or transfer, of the action.

KW Metro, Mr. Weidacher, and Ms. Edwards' motion to dismiss for lack of personal jurisdiction is GRANTED and they are DISMISSED from this action without prejudice.

V. The Complaint Fails to State a Claim Upon Which Relief Can Be Granted

To state a claim for relief, "a complaint 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). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id.* A plausible claim requires factual allegations that permit the court "to infer more than the mere possibility of misconduct." *Id.* at 679. Although a self-represented litigant's complaint must be liberally construed, it must state a plausible claim for relief. *See Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013); *Geldzahler v. N.Y. Med. Coll.*, 663 F. Supp. 2d 379, 387 (S.D.N.Y. 2009) (explaining the "duty to liberally construe a plaintiff's complaint is not the equivalent of a duty to re-write it") (cleaned up).

Plaintiff seeks to bring claims under 18 U.S.C. §§ 241, 242, 371, 1341. These are federal criminal statutes. A private individual may sue under a federal statute only when Congress intended to create a private right of action. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 284–85 (2002) ("where the text and structure of a statute provide no indication that Congress intends to create new individual rights, there is no basis for a private suit"). With regard to criminal statutes, the Second Circuit "has long recognized that crimes are prosecuted by the government, not by private parties." *Hill v. Didio*, 191 F. App'x 13, 14–15 (2d Cir. 2006). Indeed, there is no private right of action for the criminal statutes Plaintiff cites. *See Storm-Eggink v. Gottfried*, 409 F. App'x 426, 427 (2d Cir. 2011) (noting "nothing in the language or structure of § 241 suggests that Congress intended to create a private right of action under that section"); *Robinson v.*

Overseas Military Sales Corp., 21 F.3d 502, 511 (2d Cir. 1994) (holding there is no private right of action under § 242); *McCann v. Falato*, 2015 WL 6445859, at *3 (D.N.J. Oct. 23, 2015) (explaining 18 U.S.C. § 371 is a "criminal statute[] that do[es] not contain [a] private right[] of action"); *Eliahu v. Jewish Agency for Israel*, 919 F.3d 709, 713 (2d Cir. 2019) (no private right of action under the mail fraud statute, 18 U.S.C. § 1341).

Congress enacted 42 U.S.C. § 1983 to provide a statutory remedy for violations of the Constitution and other federal laws. The statute authorizes suit against a "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. To state a claim under § 1983, a plaintiff "must allege (1) 'that some person has deprived him of a federal right,' and (2) 'that the person who has deprived [the plaintiff] of that right acted under color of state . . . law.'" *Velez v. Levy*, 401 F.3d 75, 84 (2d Cir. 2005) (quoting *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)). "The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). Section 1983, however, generally does not reach the conduct of private individuals. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (noting that "the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful" (internal quotation marks omitted)). Plaintiff has not plausibly alleged that any defendant was acting under color of state law when he or she allegedly acted in a manner that deprived him of his constitutional rights.

Finally, Plaintiff seeks to allege fraud claims in connection with the sale of his home. To assert a common law fraud claim under Vermont law, a plaintiff must plead with particularity

that a defendant: (1) made an "intentional misrepresentation of a material fact; (2) that was known to be false when made; (3) that was not open to the defrauded party's knowledge; (4) that the defrauded party acted in reliance on that fact; and (5) is thereby harmed." *Felis v. Downs Rachlin Martin PLLC*, 2015 VT 129, ¶ 13 (cleaned up). Federal Rule of Civil Procedure 9(b) further requires that allegations of fraud be pled with particularity. *Krys v. Pigott*, 749 F.3d 117, 129 (2d Cir. 2014). Plaintiff's allegations fail to satisfy these particularized pleading requirements because he does not identify any specific misrepresentations or identify who made them. *See Sutton v. Vt. Reg'l Ctr.*, 2019 VT 71A, ¶ 73 (holding that a plaintiff "may not lump separate defendants together in vague and collective fraud allegations" but must describe the nature of each defendant's "alleged participation in the fraud") (internal quotation marks omitted); *DiVittorio v. Equidyne Extractive Indus., Inc.*, 822 F.2d 1242, 1247 (2d Cir. 1987) ("Where multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud.").

VI. Whether this Action Should be Transferred

The Court may, in its discretion, transfer the case rather than dismiss it outright. 28 U.S.C. § 1406(a) (requiring dismissal or, "if it be in the interest of justice," transfer to a proper district). The Court may consider a transfer sua sponte. *Trujillo v. Williams*, 465 F.3d 1210, 1217, 1222 (10th Cir. 2006) (internal quotation marks omitted) ("A court may *sua sponte* cure jurisdictional and venue defects by transferring a suit under the federal transfer statutes, 28 U.S.C. §§ 1406(a) and 1631, when it is in the interests of justice."). "Courts enjoy considerable discretion in deciding whether to transfer a case in the interest of justice." *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 435 (2d Cir. 2005).

The Court concludes transfer of this case to another district is not in the interest of justice. Plaintiff's Complaint, in its current form, is highly unlikely to survive a motion to dismiss in a proper venue. The above discussed "peek at the merits" of the case reveals the court would "waste judicial resources by transferring a case that is clearly doomed." *See Daniel*, 428 F.3d at 436 ("If a peek at the merits reveals that the case is a sure loser in the court that has jurisdiction (in the conventional sense) over it, then the court in which it is initially filed—the court that does not have jurisdiction—should dismiss the case rather than waste the time of another court.") (cleaned up). Because Plaintiff's Complaint fails to state a claim upon which relief can be granted, the court finds that transfer of this action to a district in which the action could have been brought, specifically the District of New Hampshire, would not be in the interest of justice. *See* 28 U.S.C. § 1631 (providing for transfer to cure want of jurisdiction, "if it is in the interest of justice," to "any other such court in which the action . . . could have been brought").

VII. Leave to Amend

The Second Circuit has cautioned that a court "should not dismiss a pro se complaint 'without granting leave to amend at least once,' unless amendment would be futile." *Garcia v. Super. of Great Meadow Corr. Facility*, 841 F.3d 581, 583 (2d Cir. 2016) (per curiam) (quoting *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000)). "Amendment is futile where the problems with the complaint's claims are substantive and not the result of inartful pleading." *Biswas v. Rouen*, 808 F. App'x 53, 55 (2d Cir. 2020) (internal quotation marks and alterations omitted).

The Court finds that amendment would be futile. First, this district is not a proper venue for this action. Second, even if any of the Defendants had any contacts with the state of

Vermont, the Court would be unable to exercise jurisdiction over them as it would likely be unreasonable under the circumstances of this case. The fact of Plaintiff's residence in Vermont is insufficient to transform the Defendants' connection with the sale of the New Hampshire property that is the subject of this action into a connection with Vermont such that Defendants could "reasonably anticipate being haled into court" here. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) ("the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."). Thus, the Court's assertion of personal jurisdiction over any of these New Hampshire defendants would not comport with "traditional notions of fair play and substantial justice." *Metro Life*, 84 F.3d at 568 (internal quotation marks omitted). Accordingly, Plaintiff is denied leave to amend.

CONCLUSION

For the reasons explained above, the motion for extension (Doc. 13) and Defendants' motions to dismiss (Docs. 10, 11, 12, 15, 17) are GRANTED. Plaintiff's motions (Doc. 2, 22) are DENIED. The Complaint (Doc. 1) is DISMISSED without prejudice against all Defendants and leave to amend is DENIED.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 5th day of June 2023.

/s/ William K. Sessions III

William K. Sessions III
District Court Judge

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