APPENDIX A

Order Denying Rehearing — September 22, 2026

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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

David J. Smith
Clerk of Court

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

September 22, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-13898-JJ
Case Style: Jeevan Malhotra v. Ajit Kumar, et al
District Court Docket No: 2:24-cv-00945-SPC-NPM

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

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

REHG-1 Ltr Order Petition Rehearing

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13898

JEEVAN MALHOTRA,
a.k.a. M. Jeevan Prakash,

Plaintiff-Appellant,

versus

AJIT KUMAR,
individually and as Executor of the
Estate of Ramesh Kumar,
AJAY KUMAR,
RAJ KUMAR,
RENU KUMAR,
VIJAY KUMAR, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:24-cv-00945-SPC-NPM

Before ABUDU, ANDERSON, and BLACK, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Jeevan Malhotra is DENIED.

APPENDIX B

Eleventh Circuit Opinion — August 24, 2026

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13898
Non-Argument Calendar

JEEVAN MALHOTRA,
a.k.a. M. Jeevan Prakash,

Plaintiff-Appellant,

versus

AJIT KUMAR,
individually and as Executor of the
Estate of Ramesh Kumar,
AJAY KUMAR,
RAJ KUMAR,
RENU KUMAR,
VIJAY KUMAR, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:24-cv-00945-SPC-NPM

Before ABUDU, ANDERSON, and BLACK, Circuit Judges.

PER CURIAM:

Jeevan Malhotra, *pro se*, appeals the district court's order dismissing his third amended complaint with prejudice. He alleges that members of his extended family worked in concert to prevent him from receiving an inheritance by giving false testimony and executing a fraudulent sales deed and a fraudulent will. Malhotra brings several issues on appeal, which we address in turn. After review, we affirm in part and vacate and remand in part.

I. BACKGROUND

The parties are familiar with the facts of this case, so we do not recount them in detail. Instead, we quote the district court's summary of the facts leading to this property-interest dispute.

> Plaintiff's father was M. Om. Prakash. Prakash's sister (Plaintiff's aunt) was Ramesh Kumar. Ramesh married Defendant Ajit Kumar (Plaintiff's uncle). Together, Ramesh and Ajit had four children—Defendants Ajay, Raj, Renu, and Vijay Kumar (Plaintiff's cousins, hereinafter referred to as the "Cousin Defendants"). Prakash's and Ramesh's father, Mukundlal Malhotra (Plaintiff's grandfather), owned property in India, including the Moti Mahal

Hotel ("Hotel"). This dispute largely concerns Plaintiff's claimed entitlement to an interest in the Hotel.

According to Plaintiff, his father (Prakash) was unemployed and struggled to get by. So out of affection for her brother, Ramesh relinquished her share of their father's estate (including her interest in the Hotel) to Prakash in 1983. Because Ramesh relinquished her share in the Hotel to Plaintiff's father, Plaintiff stood to acquire this interest upon his father's death. But that is not what occurred.

Despite Ramesh's relinquishment to Prakash, she executed a sales deed in 2015 conveying her interest in the Hotel to her cousin, Defendant Anand Kumar Dhull. . . . Her action hindered Plaintiff's claim to Ramesh's interest in the Hotel. Trying to salvage his interest, Plaintiff insists the 2015 sales deed is invalid. And because Cousin Defendants made various assertions that the sales deed was valid, Plaintiff believes they committed fraud.

Plaintiff also takes issue with Ramesh's testamentary will. In a summary administration proceeding in state court, Cousin Defendants filed affidavits stating Ramesh did not have a will (presumably so her estate would pass intestate). However, they later made contrary assertions indicating Ramesh had a valid will. Plaintiff believes this also constituted fraud.

II. DISCUSSION

A. Suggestion of Death

On March 25, 2025, the Cousin Defendants filed a Suggestion of Death stating that Ajit Kumar had passed away. Because no party timely moved to substitute Ajit, the district court directed Malhotra to show cause why the court should not dismiss him. The district court determined Malhotra's arguments were unconvincing and dismissed Ajit from the action. On appeal, Malhotra contends the Cousin Defendants violated Federal Rule of Civil Procedure 25 by failing to serve non-party Anand Kumar Dhull[1] with the suggestion of death for Ajit.

Rule 25 of the Federal Rules of Civil Procedure provides that if a motion for substitution of a deceased party is not made within 90 days after service of a statement noting the death, "the action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1). "A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4." Fed. R. Civ. P. 25(a)(3). "Under Rule 25, the party serving the suggestion of death must look to state law, identify the decedent's representative or successor, and notify that party of the death and the lawsuit. Only after that notice can the 90-day period begin." *Silas v. Sheriff of Broward Cnty., Fla.*, 55 F.4th 872, 876 (11th Cir. 2022). However, "when the decedent lacks a

[1] Anand was listed as a Defendant in Malhotra's Third Amended Complaint, but was never properly served. Thus, for purposes of this analysis, he is a nonparty to this lawsuit.

legal successor or representative, Rule 25 does not require service on 'nonparties' who lack the legal authority to serve as a substitute party." *Id.* A decedent's representative or successor is "not necessarily the decedent's surviving family members." *Id.*

The district court did not err in dismissing Ajit. *Lizarazo v. Miami-Dade Corr. & Rehab. Dep't*, 878 F.3d 1008, 1010 (11th Cir. 2017) (reviewing de novo a district court's interpretation of the Federal Rules of Civil Procedure). It was not unreasonable for the district court to find that Malhotra failed to show good cause to continue his claims against Ajit as a deceased party after 90 days under Rule 25(a)(1). After the Cousin Defendants filed the suggestion of death, Malhotra failed to move to substitute Ajit or to extend the deadline. In response to the district court's show cause order, he failed to raise excusable neglect. Malhotra belatedly raised excusable neglect in his motion to alter or amend the judgment, but this claim should have been raised earlier.[2] *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (stating parties cannot use a motion for reconsideration or a motion to alter or

[2] Malhotra's contentions, which were reflected in his motion to alter or amend the judgment, are unavailing. The record does not indicate that Anand was Ajit's successor or representative. Their familial connection is insufficient, and the holder of a power of attorney does not become the successor or representative of the principal after their death. *See Silas*, 55 F.4th at 876. It was not incumbent for the Cousin Defendants to serve Anand with the suggestion of death when Malhotra failed to serve Anand per the district court's order. *See id.* Malhotra fails to identify controlling precedent in support of the proposition that anyone with a direct and substantial financial interest is a proper party.

amend a judgment "to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment" (quotations omitted)); *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) (stating pro se litigants are not relieved from following procedural rules). Thus, the 90-day deadline was triggered by the filing of the suggestion of death because the deceased party lacked a successor or representative. Accordingly, we affirm on this issue.

B. Dismissal of Third Amended Complaint

Malhotra contends the district court erred in dismissing his third amended complaint because he stated a claim for fraud and fraudulent misrepresentation, the civil conspiracy claim was supported by independent torts, there was good cause to depart from the scheduling order and add an unjust enrichment claim, and the invalid sales deed claim was governed by Florida law because, based on the intentions of the parties, the subject hotel in India was classified as personal property.

To survive a Rule 12(b)(6) motion to dismiss, a complaint must allege sufficient facts to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Generally, a complaint need not contain detailed factual allegations, but a plaintiff must provide

"more than labels and conclusions." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

The district court did not err by dismissing Malhotra's third amended complaint. *See Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003) (stating we review a district court's ruling on a Rule 12(b)(6) motion de novo, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff"). To the extent Malhotra relies on purported contradictions between the district court's order dismissing the second amended complaint and its order dismissing the third amended complaint, that reliance is misplaced because the latter is the operative complaint. *See Reynolds v. Behrman Cap. IV L.P.*, 988 F.3d 1314, 1319 (11th Cir. 2021) ("An amended complaint supersedes and replaces the original complaint."); *Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016) (explaining when a party files an amended complaint, the original complaint is "abandoned," and the prior complaint and its attached exhibits become "a legal nullity").

As to Count 1 for fraudulent misrepresentation, Malhotra makes conclusory allegations about the Cousin Defendants' knowledge that their representations were false. *See Butler v. Yusem*, 44 So. 3d 102, 105 (Fla. 2010) (stating a fraudulent misrepresentation claim under Florida law has four elements: "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the

representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation" (quotations marks and emphasis omitted)); *Twombly*, 550 U.S. at 555. Even under the relaxed particularity standard of Rule 9(b), Malhotra fails to articulate a basis for the allegation's factual content. *See* Fed. R. Civ. P. 9(b) (requiring that, for complaints alleging fraud or mistake, "a party must state with particularity the circumstances constituting fraud or mistake," although "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally"); *Iqbal*, 556 U.S. at 678. He generally alleges the Cousin Defendants "knew that Ramesh Kumar signed blank papers" without any allegation that they were present or otherwise informed of this fraudulent scheme. Malhotra asserts knowledge is evinced by testimony in Florida state court given by Ramesh and Ajit, but the third amended complaint relies on the conclusory assertion that the Cousin Defendants knew the 2015 sales deed was fraudulent without evidence of their knowledge. *See Campbell v. Air Jam., Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014) (stating the leniency granted to *pro se* litigants "does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action" (quotation marks omitted)).

As to Count 2 for fraud,[3] Malhotra alleges the false statement of fact was that Ramesh had a will but that he was induced to act

[3] Under Florida law, the "elements of common-law fraud are (1) a false statement of fact; (2) known by the person making the statement to be false at the time it was made; (3) made for the purpose of inducing another to act in reliance thereon; (4) action by the other person in reliance on the correctness of

"under the impression that there is No Will for Ramesh Kumar." *See Iqbal*, 556 U.S. at 678. He fails to specify who made the false statement, where it was made, when it was made, and how it was made. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555; *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1291 (11th Cir. 2010) (explaining a plaintiff must plead "(1) the precise statements, documents, or misrepresentations made; (2) the time, place, and person responsible for the statement; (3) the content and manner in which these statements misled the Plaintiffs; and (4) what the defendants gained by the alleged fraud" (quotation marks omitted)); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1381 (11th Cir. 1997) ("Because fair notice is perhaps the most basic consideration underlying Rule 9(b), the plaintiff who pleads fraud must reasonably notify the defendants of their purported role in the scheme." (quotation marks and internal citation omitted)); *Ambrosia Coal & Constr. Co. v. Pages Morales*, 482 F.3d 1309, 1317 (11th Cir. 2007) ("In a case involving multiple defendants . . . the complaint should inform each defendant of the nature of his alleged participation in the fraud." (quotation marks omitted)). Even if the false statements were the powers of attorney stating that Ramesh had a will, Malhotra's allegations are logically and temporally impossible. *See Campbell*, 760 F.3d at 1168-69. The powers of attorney were issued in May 2024, and the probate action concluded in April 2024, meaning that, under Malhotra's construction of events, the Defendants

---

the statement; and (5) resulting damage to the other person." *Gandy v. Trans World Comput. Tech. Grp.*, 787 So. 2d 116, 118 (Fla. 2d DCA 2001).

issued the powers of attorney in order to induce Malhotra to refrain from interfering in a proceeding that had already concluded by the time the Defendants issued the powers of attorney. *See Iqbal*, 556 U.S. at 678. Finally, as to both Counts 1 and 2, given that the Defendants were not beneficiaries of the will, it is unclear what the Defendants would have gained from passing it off as authentic. *See Am. Dental Ass'n*, 605 F.3d at 1291.

As to Count 3 for civil conspiracy,[4] because the district court did not err by dismissing Counts 1 and 2, it also did not err by dismissing the civil conspiracy claim. *See Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. 3d DCA 1997) ("[A]n actionable conspiracy requires an actionable underlying tort or wrong."). Malhotra contends this claim is supported by independent acts of wrongdoing, but he appears to conflate claim with conduct. Specifically, he alleges the claim is supported by defamation, slander of title, and interference with existing and prospective business relationships, but he does not raise these causes of action. *See Raimi*, 702 So. 2d at 1284.

As to Count 4 for unjust enrichment, Malhotra added an unjust enrichment claim after the amendment deadline without leave

---

[4] Under Florida law, the elements of a civil conspiracy are: (1) "an agreement between two or more parties," (2) "to do an unlawful act or to do a lawful act by unlawful means," (3) "the doing of some overt act in pursuance of the conspiracy," and (4) "damage to plaintiff as a result of the acts done under the conspiracy." *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1271 (11th Cir. 2009) (quoting *Charles v. Fla. Foreclosure Placement Ctr., LLC*, 988 So. 2d 1157, 1159-60 (Fla. 3d DCA 2008)).

of court. *See* Fed. R. Civ. P. 15(a)(1), (2) (providing a party may freely amend their complaint once within 21 days, but, once that period has passed, the party must seek the opposing party's consent or the court's leave, and "[i]n all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave," and "[t]he court should freely give leave when justice so requires"). The district court did not err by refusing to grant leave retroactively. *See Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc.*, 556 F.3d 1232, 1241 (11th Cir. 2009) (stating in deciding whether to grant leave, a district court may consider factors "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment" (quotation marks omitted)). Even if the scheduling order became "unworkable" after Ajit's death, Malhotra could have moved for leave to amend in an effort to secure the district court's consent. *See* Fed. R. Civ. P. 16(b)(3)(A), (4) (providing a scheduling order "must limit the time to . . . amend the pleadings" and "may be modified only for good cause and with the judge's consent"). Finally, contrary to Malhotra's contentions, the Defendants did not appear to consent to the unjust enrichment claim. *See* Fed. R. Civ. P. 15(a)(2).

As to Count 5 for a sale deed invalid under Florida law, under Florida's conflict of laws rule, Indian law governs the sales deed. *See Colonial Life & Accident Ins. Co. v. Hartford Fire Ins. Co.*, 358 F.3d 1306, 1308 (11th Cir. 2004) ("A federal court in a diversity

case is required to apply the laws, including principles of conflict of laws, of the state in which the federal court sits." (quotation marks omitted)); *In re Est. of Nicole Santos*, 648 So. 2d 277, 280 (Fla. 4th DCA 1995) (providing in Florida, the law of the situs of the real property governs). The parties do not dispute that the Hotel is located in India. Malhotra fails to identify case law for the proposition that property can be reclassified as personal property based on the intent of the parties to a contract. Even if the intent of the parties could transform real property into personal property, a power of attorney does not meet the traditional requirements of a contract, as it is basically a grant of authority by the principal to the agent to act on their behalf. *See Hughes v. Pro. Ins. Corp.*, 140 So. 2d 340, 345 (Fla. 1st DCA 1962) (stating the construction of a contract is governed by the intention of the parties); *Royal Oak Landing Homeowner's Ass'n, Inc. v. Pelletier*, 620 So.2d 786, 788 (Fla. 4th DCA 1993) (stating contract interpretation begins with a review of the plain language of the agreement because the contract language is the best evidence of the parties' intent at the time of the execution of the contract).

Finally, the district court did not abuse its discretion by dismissing the case with prejudice against the Cousin Defendants. *See Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337 (11th Cir. 2005) (stating we review the dismissal of an action for failure to comply with court rules for abuse of discretion and a district court may dismiss an action with prejudice under its "inherent power to manage its docket"). In its order dismissing the second amended complaint, the district court admonished Malhotra about

the deficiencies of his claims and how to remedy them. It was not required to give Malhotra yet another opportunity to cure these deficiencies. *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (explaining where a more carefully drafted complaint might state a claim, a pro se plaintiff "must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice," but a district court is not required to permit amendment if, inter alia, "there has been . . . repeated failure to cure deficiencies by amendments previously allowed" or "amendment would be futile"). However, the district court lacked the authority to dismiss the case with prejudice against Anand, a defendant who was sued but not properly served. *See Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990) ("Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served."); *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1501 (11th Cir. 1990) (stating a "dismissal of a complaint with prejudice" counts as a "final judgment on the merits"). The record does not indicate that Anand waived any objection to service of process. The district court thus reversibly erred by dismissing the claims against Anand with prejudice. *See, e.g., Betty K*, 432 F.3d at 1341-43 (vacating and remanding a dismissal with prejudice claims against unserved defendants).

III. CONCLUSION

The 90-day deadline was triggered by the filing of the suggestion of death because the deceased party lacked a successor or representative. Additionally, Malhotra failed to state a claim for

fraudulent misrepresentation; the fraud claim is marred by logical and temporal inconsistencies; the civil conspiracy claim lacked support from an independent tort; the unjust enrichment claim was added without leave of court; and, under the Florida conflict of laws rule, the invalid sales deed claim is governed by Indian law. The district court did not abuse its discretion by dismissing the case with prejudice because Malhotra received an opportunity to fix these deficiencies. However, the district court lacked authority to dismiss the case with prejudice against an unserved defendant.

Accordingly, we affirm the district court's dismissal with prejudice as to the served defendants; and vacate and remand the dismissal with prejudice as to the unserved defendant with instructions to reenter judgment dismissing without prejudice.[5]

AFFIRMED IN PART. VACATED AND REMANDED IN PART.

[5] The Appellees' motion to impose sanctions is **DENIED**. The Appellant's motions to impose sanctions, to take judicial notice, and to set oral argument and to show cause why sanctions should not be imposed are **DENIED**.