

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

WILFRED RAUSCH, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 2:15-CV-0818-VEH
)	
INTUITIVE SURGICAL, INC.,)	
)	
Defendant.)	

MEMORANDUM OPINION

In the Memorandum Opinion and Order dated January 21, 2016, this court wrote:

Although the parties have not raised this issue, “there is an obligation on the court to examine its own jurisdiction . . . at each stage of the proceedings.” *Am. Civil Liberties Union of Florida, Inc. v. Dixie Cty., Fla.*, 690 F.3d 1244, 1249 (11th Cir. 2012) (emphasis omitted). The First Amended Complaint alleges subject matter jurisdiction based on 28 U.S.C. § 1332(d), which applies to class actions. Since the class allegations are to be stricken, it appears that this court may not have jurisdiction over this matter, as each plaintiff may not, separately, meet the amount in controversy requirement of 28 U.S.C. § 1332(a).

* * *

No later than February 3, 2016, the plaintiffs shall **SHOW CAUSE** why this action should not be dismissed for lack of subject matter jurisdiction.

(Doc. 54 at 21-22). To date, the plaintiff has failed to file any response to the order. The defendant has filed a motion to dismiss (doc. 55) based on that lack of a response.

“[W]here jurisdiction is based on a claim for indeterminate damages . . . the party seeking to invoke federal jurisdiction bears the burden of proving by a preponderance of the evidence that the claim on which it is basing jurisdiction meets the jurisdictional minimum.” *Federated Mut. Ins. Co. v. McKinnon Motors, LLC*, 329 F.3d 805, 807 (11th Cir. 2003). The plaintiff has failed to meet this burden. Accordingly, the motion to dismiss will be **GRANTED**, and this case will be **DISMISSED without prejudice**.¹

DONE this 1st day of March, 2016.



VIRGINIA EMERSON HOPKINS
United States District Judge

¹ The defendant seeks dismissal “with” prejudice. However, “[a] dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice.” *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008).