

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

**DON MITCHELL WILBORN,**           )  
  )  
      **Pro Se Plaintiff,**            )  
  )  
**v.**    )  
  )  
**ROBERT B. TUTEN, et al,**        )  
  )  
      **Defendants.**                    )

**Civil Action No.:**  
**4:16-CV-106-VEH**

**MEMORANDUM OPINION**

The record reflects that, on August 5, 2016, the magistrate notified the Plaintiff that the face of his Complaint was insufficient to meet his burden to establish federal question or diversity jurisdiction. (Doc. 16). The magistrate gave the Plaintiff thirty (30) days to show cause why his Complaint should not be dismissed for lack of subject matter jurisdiction. (*Id.* at 3). The plaintiff filed a First Amended Complaint on August 17, 2016. (Doc. 17). That document is now the operative complaint. Additionally, on September 2, 2016, the Plaintiff filed a response to the Order To Show Cause. (Doc. 19). Thereafter, he filed three untimely responses. (Docs. 20, 21, and 22). On May 9, 2017, in an extensive order, the magistrate demonstrated that this Court lacks subject matter jurisdiction over this action and determined that it was due to be dismissed without prejudice. (Doc. 23). Thereafter, the case was reassigned to the undersigned.

On May 22, 2017, this Court agreed with the magistrate that this Court did not have subject matter jurisdiction over this case and dismissed this case without prejudice. (Docs. 27, 28). Thereafter, the Plaintiff filed a “Motion To Vacate Memorandum Opinion and Final Order” (doc. 29) in which he stated that “[a] copy of the magistrate judge’s [Report and Recommendation (“R & R”)] has **NOT** ever been provided to Mr. Wilborn. As such, Mr. Wilborn has **NOT** ever been provided an opportunity to file written objections to the magistrate judge’s R & R[.]” (Doc. 29 at 1). The Court then entered the following order:

[B]ecause the Plaintiff states that he never saw the magistrate’s Order, the motion to vacate is hereby **GRANTED**. The Court’s memorandum opinion (doc. 27) and Order dismissing this case (doc. 28) are hereby **VACATED**.

The clerk of court is **DIRECTED** to reopen this case. **The Plaintiff may file any response to the magistrate’s Order (doc. 23) no later than June 22, 2017.**

(Doc. 30 at 2). To date, the Plaintiff has filed nothing.

The Court has, again, reviewed the entire file in this case, *de novo*, and agrees with the magistrate that the Plaintiff has failed to establish that this Court has subject jurisdiction over this matter. The magistrate’s Order of May 9, 2017, is **ADOPTED** as the opinion of this Court. By separate order, this matter will be **DISMISSED** without prejudice.

**DONE** this 26th day of June, 2017.

A handwritten signature in black ink, appearing to read "V. Emerson Hopkins", written in a cursive style.

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**VIRGINIA EMERSON HOPKINS**  
United States District Judge