

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

| | | |
|----------------------------|---|------------------------------------|
| PAUL E. FALLON, |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 16-00540-N |
| |) | |
| RICHARD LEO MARLER, |) | |
| Defendant. |) | |

ORDER

This action is before the Court *sua sponte* on review of its subject matter jurisdiction.¹ The Plaintiff initiated this action by filing a Complaint (Doc. 1) with the Court, alleging diversity of citizenship under 28 U.S.C. § 1332(a) as the sole basis for jurisdiction. *See* Fed. R. Civ. P. 8(a)(1) (“A pleading that states a claim for relief must contain a short and plain statement of the grounds for the court’s jurisdiction...”).

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 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

¹ “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.*

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)).² Upon consideration, the undersigned finds that the Plaintiff should be ordered to supplement his allegations as to the parties’ citizenships.³

The Plaintiff has only alleged the states of residence of the two natural person parties. (see Doc. 1 at 1, ¶¶ 1 – 2). The Eleventh Circuit Court of Appeals has repeatedly stressed that “[c]itizenship, not residence, is the key fact that **must be**

² “In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), [the Eleventh Circuit] adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.” *Travaglio*, 735 F.3d at 1268 n.1.

³ For purposes of *sua sponte* review, the undersigned finds that the Plaintiff has alleged sufficient facts indicating that § 1332(a)’s requisite amount in controversy is satisfied.

alleged . . . to establish diversity for a natural person.” *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994) (emphasis added). *See also Travaglio*, 735 F.3d at 1269 (“As we indicated in remanding this case for jurisdictional findings, the allegations in Travaglio’s complaint about her citizenship are fatally defective. Residence alone is not enough.”); *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1342 n.12 (11th Cir. 2011) (“Ordinarily, the complaint must allege the citizenship, not residence, of the natural defendants.”); *Beavers v. A.O. Smith Elec. Prods. Co.*, 265 F. App’x 772, 778 (11th Cir. 2008) (per curiam) (unpublished) (“The plaintiffs’ complaint alleges only the residence of the nearly 100 plaintiffs, not their states of citizenship. Because the plaintiffs have the burden to affirmatively allege facts demonstrating the existence of jurisdiction and failed to allege the citizenship of the individual plaintiffs, the district court lacked subject matter jurisdiction on the face of the complaint.” (internal citation and quotation omitted)); *Crist v. Carnival Corp.*, 410 F. App’x 197, 200 (11th Cir. 2010) (per curiam) (unpublished) (“The allegation that Crist is a ‘resident’ of Florida is insufficient for diversity jurisdiction purposes because residency is not the equivalent of citizenship.”).

“Citizenship is equivalent to ‘domicile’ for purposes of diversity jurisdiction. A person’s domicile is the place of his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.” *McCormick v. Aderholt*, 293 F.3d 1254, 1257-58 (11th Cir. 2002) (citations, quotations, and footnote omitted). *See also Travaglio*, 735 F.3d at 1269 (“‘Citizenship is equivalent to “domicile” for purposes of diversity jurisdiction.’ And

domicile requires both residence in a state and ‘an intention to remain there indefinitely....’” (quoting *McCormick*, 293 F.3d at 1257-58 (internal quotation marks omitted)) (internal citation omitted); *Mas*, 489 F.2d at 1399 (“For diversity purposes, citizenship means domicile; mere residence in the State is not sufficient.”).

“Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.” 28 U.S.C. § 1653. “[L]eave to amend should be freely granted when necessary to cure a failure to allege jurisdiction properly.” *Majd-Pour v. Georgiana Cmty. Hosp., Inc.*, 724 F.2d 901, 903 n.1 (11th Cir. 1984). Upon consideration, the Plaintiff is **ORDERED** to file, no later than **Tuesday, November 1, 2016**, an amended complaint that sufficiently demonstrates the existence of diversity under § 1332(a) by alleging the states of citizenship (i.e. domicile) for the natural person parties, or that alleges some alternative basis for subject matter jurisdiction. In filing the amended complaint, the Plaintiff must abide by the following directives:

- The amended complaint shall reproduce the entire original complaint as amended, *see* S.D. Ala. CivLR 15(a) (“Any amendment to a pleading ... must reproduce the entire pleading as amended and may not incorporate any prior pleading by reference.”), and will become the operative complaint in this action.⁴

⁴ “As a general matter, ‘[a]n amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader’s averments against his adversary.’” *Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1243 (11th Cir. 2007) (*per curiam*) (quoting *Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER*, 463 F.3d 1210, 1215 (11th Cir. 2006) (citation and quotation omitted)). *See also, e.g., Fritz v. Standard Sec. Life Ins. Co. of New York*, 676 F.2d 1356,

- The Plaintiff must file his amended complaint as a freestanding pleading and not as an exhibit attached to a motion.

Any filing made in contravention of these directives will be deemed nonresponsive to this Order and will be summarily ordered stricken. Moreover, the failure to file an amended complaint as ordered may result in dismissal of this action for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

DONE and **ORDERED** this the 25th day of October 2016.

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

1358 (11th Cir. 1982) (“Under the Federal Rules, an amended complaint supersedes the original complaint.”).