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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CARREA CHRISTOPHER,  
  
Plaintiff,  
  
v.  
  
REACHING FOURTH  
MINISTRIES,  
*et al.*,  
  
Defendants.

Case No. 17-cv-00726-BAS-BLM

**ORDER:**

- (1) GRANTING MOTION FOR COURT TO REVIEW *DE NOVO* SUBJECT MATTER JURISDICTION [ECF No. 20];**
- (2) GRANTING DEFENDANTS’ MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION [ECF No. 21];**

**AND**

- (3) DISMISSING CASE WITHOUT PREJUDICE**

Plaintiff Carrea Christopher, proceeding *in forma pauperis* (“IFP”), has filed a Second Amended Complaint (“SAC”). (ECF No. 18.) Defendants Buffco Production, Inc. (“Buffco”), Frank M. Bufkin III, Jason Moore, John Rich, and Arthur “Eric” Swanson (the “Appearing Defendants”) have moved to dismiss the

1 SAC for lack of personal jurisdiction. (ECF No. 21.) Plaintiff has opposed (ECF  
2 No. 24) and the Appearing Defendants have replied (ECF No. 29.) In addition,  
3 Plaintiff has filed motions to (1) conduct a *de novo* review of subject matter  
4 jurisdiction over the SAC (ECF No. 20) and (2) transfer the case to the Eastern  
5 District of Texas pursuant to 28 U.S.C. §1406 (ECF No. 26). For the reasons herein,  
6 the Court grants Plaintiff’s motion to conduct a *de novo* review of subject matter  
7 jurisdiction and grants the Appearing Defendants’ motion to dismiss for lack of  
8 personal jurisdiction. The Court dismisses Plaintiff’s claims without prejudice and  
9 terminates as moot all other motions pending before this Court. (ECF Nos. 26, 28.)

## 10 **I. BACKGROUND**

11 On April 10, 2017, Plaintiff, proceeding *pro se*, commenced this action  
12 alleging claims of fraud, negligence, and “illegal drainage of resources” in  
13 connection with land located in Cherokee County, Texas and claimed by Plaintiff.  
14 (ECF No. 1.) The case has twice been dismissed for failure to properly invoke  
15 diversity jurisdiction. (ECF Nos. 3, 14.) In its last dismissal of the case, the Court  
16 cautioned Plaintiff that venue in the Southern District might be improper under 28  
17 U.S.C. §1391 because none of the Defendants reside in California and the property  
18 that Plaintiff’s claims concern is located in Texas. (ECF No. 14.) Plaintiff  
19 subsequently filed the SAC on November 14, 2017. (ECF No. 18.) The SAC alleges  
20 the foregoing claims against the Appearing Defendants as well as Defendants  
21 Reaching Fourth Ministries, Cattle Oil Co. (“Cattle Oil”), Sharon Christopher and  
22 Gary Christopher. (*Id.*) The Appearing Defendants have made a special appearance  
23 in this Court for the limited purpose of moving to dismiss for lack of personal  
24 jurisdiction. (ECF No. 21.)

## 25 **II. DISCUSSION**

### 26 **A. The Court Possesses Subject Matter Jurisdiction**

27 The Court first considers Plaintiff’s request for a *de novo* determination of  
28 whether this Court has subject matter jurisdiction over the action. (ECF No. 20.)

1 Separate from the pre-screening requirements Section 1915(e) imposes on a  
2 complaint where a plaintiff proceeds IFP, “federal courts have a duty to raise and  
3 decide issues of subject matter jurisdiction *sua sponte* if at any time it appears that  
4 subject matter jurisdiction may be lacking.” *Bank Julius Baer & Co. Ltd v. Wikileaks*,  
5 535 F. Supp. 2d 980, 984 (N.D. Cal. 2008) (citations omitted). “Where a court lacks  
6 subject matter jurisdiction, it must dismiss the complaint in its entirety.” *Adames v.*  
7 *Taju*, 80 F. Supp. 3d 465, 467 (E.D.N.Y. 2015) (citing *Arbaugh v. Y & H Corp.*, 546  
8 U.S. 500, 514 (2006)). Subject matter jurisdiction may exist where the pleadings  
9 present a federal question, *see* 28 U.S.C. §1331, or where the plaintiff invokes  
10 diversity jurisdiction, *see* 28 U.S.C. §1332. On two occasions, the Court determined  
11 that it lacked subject matter jurisdiction over Plaintiff’s Complaint for failure to  
12 properly invoke diversity jurisdiction. (ECF Nos. 3, 14.) Plaintiff filed the SAC to  
13 cure the subject matter deficiencies of the First Amended Complaint.

14 After a review of the SAC, the Court finds that Plaintiff has now properly  
15 invoked diversity jurisdiction by pleading complete diversity. Complete diversity  
16 exists when “the citizenship of each plaintiff is diverse from the citizenship of each  
17 defendant.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Plaintiff alleges that  
18 he is a resident of Washington and all Defendants are residents of Texas. (ECF No.  
19 18 at 2.) Although Plaintiff refers to residence, the Court, liberally construing the  
20 pleadings, believes that Plaintiff is referring to domicile, which is what a court  
21 reviews to determine whether complete diversity exists insofar as the individual  
22 defendants are concerned. *See Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857  
23 (9th Cir. 2001) (a natural person’s citizenship is determined by the state of domicile,  
24 not the state of residence). Plaintiff also alleges that the corporate Defendants are  
25 incorporated in and have principal places of business in Texas. (SAC at 2.)  
26 Accordingly, there is complete diversity among the parties and this Court has subject  
27 matter jurisdiction.

28

1           **B.     The Court Lacks Personal Jurisdiction Over the Defendants**

2           The Appearing Defendants move to dismiss the action under Rule 12(b)(2) on  
3 the ground that this Court lacks personal jurisdiction over them. (ECF No. 21.) The  
4 Appearing Defendants have also filed declarations in support of their motion. (*See*  
5 ECF No. 21-2 (“Bufkin Decl.”); ECF No. 21-2 (“Moore Decl.”); ECF No. 21-3  
6 (“Rich Decl.”); ECF No. 21-4 (“Swanson Decl.”).) The Court agrees that it lacks  
7 personal jurisdiction over the Appearing Defendants and further concludes that it  
8 lacks such jurisdiction over the Defendants who have not yet appeared.<sup>1</sup>

9                   **1.     Legal Standard**

10           Rule 12(b)(2) allows a party to move for dismissal based on a lack of personal  
11 jurisdiction. FED. R. CIV. P. 12(b)(2). Personal jurisdiction is an essential element  
12 of a court’s jurisdiction and, without it, a court is “powerless to proceed to an  
13 adjudication.” *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 575 (1999).  
14 “Personal jurisdiction over an out-of-state defendant is appropriate if the relevant  
15 state’s long arm-statute permits the assertion of jurisdiction without violating federal  
16 due process.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800–01 (9th  
17 Cir. 2004). Because California’s long arm statute is co-extensive with federal due  
18 process requirements, the jurisdictional analyses under California law and federal  
19 due process are the same. *Id.* at 801. Therefore, absent traditional bases for personal  
20 jurisdiction (*i.e.*, physical presence, domicile, and consent), the Due Process Clause  
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23           <sup>1</sup> For all Defendants who have not yet been served with the SAC, the Court’s  
24 personal jurisdiction analysis proceeds from Section 1915(e)’s mandatory screening  
25 requirement for an IFP complaint. An IFP complaint which can allege no set of facts  
26 that would support personal jurisdiction may be deemed frivolous and dismissed *sua*  
27 *sponte*. *Sanders v. U.S.*, 760 F.2d 869, 871 (11th Cir. 1985); *see also Brimm v.*  
28 *Genao-Gomez*, CV 14-197-M-DLC, 2014 WL 5471969, at \*2 (D. Mont. Oct. 28,  
2014). “In determining whether a complaint is frivolous, a court is *not* bound, as it  
usually is when making a determination based solely on the pleadings, to accept  
without question the truth of the plaintiff’s allegations.” *Denton v. Hernandez*, 504  
U.S. 25, 32 (1992) (emphasis in original).

1 requires that nonresident defendants have certain “minimum contacts” with the  
2 forum state, “such that the exercise of personal jurisdiction does not offend traditional  
3 notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S.  
4 310, 316 (1945).

5 As the party seeking to invoke this Court’s jurisdiction, Plaintiff bears the  
6 burden of establishing that this Court has personal jurisdiction over Defendants.  
7 *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (citing *Data Disc, Inc. v. Sys.*  
8 *Tech. Assocs.*, 557 F.2d 1280, 1285 (9th Cir. 1977)). The *prima facie* showing is  
9 achieved by producing admissible evidence which, if believed, would sufficiently  
10 establish personal jurisdiction. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir.  
11 1995). The court accepts uncontroverted facts in the complaint as true. *Mavrix*  
12 *Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). Jurisdictional  
13 facts, however, cannot be established by nonspecific, conclusory statements.  
14 *Butcher’s Union Local No. 498, United Food & Commercial Workers v. SDC Inv.,*  
15 *Inc.*, 788 F.2d 535, 540 (9th Cir. 1986) (although liberally construed, the complaint  
16 “must contain something more than mere conclusory statements that are unsupported  
17 by specific facts”).

## 18 2. The Court Lacks General Jurisdiction Over the Defendants

19 General jurisdiction exists if a nonresident’s contacts with the forum are  
20 “continuous” and “systematic.” *Ziegler v. Indian River Cty.*, 64 F.3d 470, 473 (9th  
21 Cir. 1995). These continuous and systematic contacts with a state allow a court to  
22 exercise general jurisdiction over defendants even for causes of action that are  
23 “entirely distinct” from acts which confer such jurisdiction. *Goodyear Dunlop Tires*  
24 *Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2849 (2011). Given the nature of general  
25 jurisdiction, a plaintiff must meet an “exacting standard” because a finding of general  
26 jurisdiction would “permit[] a defendant to be haled into court in the forum state to  
27 answer for any of its activities elsewhere in the world.” *Schwarzenegger*, 374 F.3d  
28 at 801.

1                   **a.     The Corporate Defendants**

2           A court may assert jurisdiction over a foreign corporation to hear any and all  
3 claims against it “only when the corporation’s affiliations with the State in which suit  
4 is brought are so constant and pervasive ‘as to render it essentially at home in the  
5 forum state.’” *Goodyear*, 131 S. Ct. at 2850. This requires a corporation to be “at  
6 home” in the State, which is ordinarily shown when the defendant is incorporated in  
7 the jurisdiction or its principal place of business is located there. *Daimler AG v.*  
8 *Bauman*, 134 S. Ct. 746, 753 (2014). Contacts such as a “long-established presence,”  
9 generation of “substantial revenue” from a state, and having “many in-state  
10 consumers” have all also been used to establish general jurisdiction. *Tuazon v. R.J.*  
11 *Reynolds Tobacco Co.*, 433 F.3d 1163, 1169 (9th Cir. 2006).

12           In his SAC, Plaintiff concedes that Buffco is incorporated in and has its  
13 principal place of business in Texas. (SAC at 2.) In seeking to dismiss the Complaint  
14 for lack of personal jurisdiction, Buffco’s founder, Defendant Frank M. Bufkin III,  
15 corroborates this point. (*See* Bufkin Decl. ¶4.) He further represents that Buffco  
16 lacks property, assets, operations, employees, or offices in California and does not  
17 pay taxes to any California entity. (*Id.* ¶3.) Plaintiff’s opposition to Defendants’  
18 motion offers no specific facts controverting these representations. (*See generally*  
19 ECF Nos. 18, 24.) Accordingly, the Court finds that Plaintiff has failed to meet his  
20 burden to show that this Court has general jurisdiction over Buffco.

21           Although Defendants Reaching Fourth Ministries and Cattle Oil have not  
22 moved to dismiss and have not appeared in this case, the SAC concedes that these  
23 Defendants are also incorporated in and have their principal places of business in  
24 Texas. (SAC at 2.) There are otherwise no allegations in the SAC which show that  
25 either Defendant has extensive business activities in California such that this Court  
26 may exercise general jurisdiction over them. Accordingly, Plaintiff has failed to  
27 make a *prima facie* case of general jurisdiction over these corporate Defendants as  
28 well.

1                   **b.     The Individual Defendants**

2           The Court also lacks general jurisdiction over the individual Defendants in this  
3 case. In moving to dismiss for lack of personal jurisdiction, the Appearing  
4 Defendants represent they do not consent to the exercise of jurisdiction by a state or  
5 federal court in California. (*See* Bufkin Decl. ¶8; Moore Decl. ¶7; Rich Decl. ¶7;  
6 Swanson Decl. ¶4.) They state that they are residents of Texas and not citizens of  
7 California. (*See* Bufkin Decl. ¶2; Moore Decl. ¶2; Rich Decl. ¶2; Swanson Decl. ¶2.)  
8 The SAC concedes that all individual Defendants are residents of Texas. (SAC at 2.)  
9 The SAC otherwise lacks allegations showing that any individual Defendant has  
10 engaged in “continuous and systematic” contacts with the state of California. In  
11 moving to dismiss, each Appearing Defendant declares that he does not conduct  
12 business in California, own property or assets in the state, or pay California taxes.  
13 (*See* Bufkin Decl. ¶3; Moore Decl. ¶4; Rich Decl. ¶3; Swanson Decl. ¶7.) Given  
14 these facts and Plaintiff’s failure to offer any other facts about these Defendants,  
15 Plaintiff has not shown that the Court has general jurisdiction over the Appearing  
16 Defendants.

17           The Court further concludes that it lacks general jurisdiction over Defendants  
18 Gary Christopher and Sharon Christopher. Although these Defendants have not yet  
19 been served or moved to dismiss for lack of personal jurisdiction, the Court may look  
20 to the pleadings to determine whether general jurisdiction may be exercised over  
21 them. Plaintiff alleges that these Defendants are residents of Texas. (SAC at 2.) He  
22 does not make allegations showing that these Defendants have continuous and  
23 systematic contacts with California. Accordingly, Plaintiff has also failed to show  
24 that this Court may exercise general jurisdiction over them.

25                   **C.     This Court Lacks Specific Jurisdiction over the Defendants**

26           In the absence of general jurisdiction over a defendant, a court may  
27 nevertheless be able to exercise specific jurisdiction over a nonresident. *See Farmers*  
28 *Ins. Ex. v. Portage at LaPrairie Mut. Ins. Co.*, 907 F.2d 911, 913 (9th Cir. 1990).

1 Specific jurisdiction requires that a defendant have specific contacts with the state,  
2 *see Goodyear*, 131 S. Ct. at 2851, which gives a court jurisdiction over claims  
3 “arising out of or related to” the contacts with the state, *see Burger King Corp. v.*  
4 *Rudzewicz*, 471 U.S. 462, 473 (1985). “[S]uit-related conduct must create a  
5 substantial connection with the forum State.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121  
6 (2014). The Ninth Circuit has articulated a three-prong test to determine whether a  
7 party has sufficient minimum contacts to be susceptible to specific personal  
8 jurisdiction: (1) the nonresident defendant must purposefully direct his activities or  
9 consummate some transaction within the forum, or perform some act by which he  
10 purposefully avails himself of the privilege of conducting activities in the forum,  
11 thereby invoking the benefits and protections of its laws; (2) the claim must be one  
12 which arises out of or relates to the defendant's forum-related activities; and (3) the  
13 exercise of jurisdiction must be reasonable. *Schwarzenegger*, 374 F.3d at 802  
14 (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)). Plaintiff has not  
15 satisfied these requirements.

16 The SAC identifies no forum-based conduct of Defendants that would enable  
17 this Court to exercise specific jurisdiction over them. Plaintiff raises claims of fraud,  
18 negligence, and illegal drainage of natural resources by the Defendants. (ECF No.  
19 18.) In particular, Plaintiff alleges that Defendants Gary Christopher, Sharon  
20 Christopher, and Reaching Fourth Ministries fraudulently placed as in their care  
21 Plaintiff’s father’s property in Cherokee County, Texas by going to the Assessor’s  
22 Office located there. (*Id.* at 2–3.) Plaintiff alleges that Defendant Buffco and its  
23 staff—without identification of the specific staff members involved—encouraged  
24 this conduct. (*Id.* at 9.) Plaintiff further alleges that Buffco and Cattle Oil have  
25 illegally drained his father’s property in Texas of natural resources since 1982. (*Id.*  
26 at 13–14.) None of this conduct occurred in California, nor does Plaintiff plead  
27 specific facts showing that any Defendant purposefully directed this conduct to the  
28 state of California.



1 In his opposition to the Appearing Defendants’ motion to dismiss, Plaintiff  
2 makes generalized allegations that Defendants signed fraudulent documents in San  
3 Diego, California and provides copies of documents notarized in San Diego,  
4 California between 2000 and 2016. (ECF No. 24 at 7, 18–22.) None of these  
5 documents bears the name of any Defendant in this action, nor does Plaintiff identify  
6 who allegedly signed the documents. To the extent these documents concern  
7 Defendants Reaching Fourth Ministries, Sharon Christopher and Gary Christopher,  
8 the documents do not in fact pertain to their alleged misconduct of fraudulently  
9 placing Plaintiff’s father’s property in their care in Cherokee County, Texas.

10 In the absence of any specific and non-conclusory allegations regarding any  
11 Defendants’ contacts with California, it appears that the sole connection between  
12 Defendants and California is the Plaintiff and the injury he alleges he suffered in this  
13 state. Indeed, Plaintiff’s opposition to the Appearing Defendants’ motion to dismiss  
14 and the Third Amended Complaint he seeks leave to file largely turn on Plaintiff’s  
15 alleged injury in California. (*See* ECF Nos. 24, 28.) “But the plaintiff cannot be the  
16 only link between the defendant and the forum,” for a court to exercise specific  
17 jurisdiction over a defendant consistent with due process. *Walden*, 134 S. Ct. at 1122.  
18 Accordingly, this Court concludes that it lacks specific jurisdiction over the  
19 Defendants.

20 **D. Transfer Is Not Appropriate**

21 The Appearing Defendants request dismissal due to a lack of jurisdiction.  
22 Plaintiff has requested a transfer to the Eastern District of Texas pursuant to 28  
23 U.S.C. §1406 if this Court finds that venue is improper. (ECF No. 26.) In reply, the  
24 Appearing Defendants argue without explanation that dismissal is appropriate, rather  
25 than a transfer. (ECF No. 29 at 2.) The Court concludes that this case should be  
26 dismissed, rather than transferred.

27 Generally, when a court lacks personal jurisdiction over a party, it may either  
28 dismiss the case or transfer the case to a court that would have jurisdiction pursuant

1 to 28 U.S.C. §1631. *See Pamplona v. Hernandez*, No. 08-cv-2205-IE-BLM, 2009  
2 WL 578578, at \*3 (S.D. Cal. Mar. 5, 2009); *see also* 28 U.S.C. §1631. Section 1631  
3 provides that if “th[e] court finds that there is a want of jurisdiction, the court shall,  
4 if it is in the interest of justice, transfer such action . . . to any other such court in  
5 which the action . . . could have been brought at the time it was filed.” *Id.* A Section  
6 1631 transfer is appropriate if “(1) the transferring court lacks jurisdiction; (2) the  
7 transferee court could have exercised jurisdiction at the time the action was filed; and  
8 (3) the transfer is in the interest of justice.” *Cruz-Aguilera v. INS*, 245 F.3d 1070,  
9 1074 (9th Cir. 2001). Because this Court lacks jurisdiction, the immediate issue is  
10 whether the transferee court could have exercised jurisdiction over Plaintiff’s claims  
11 at the time the action was filed. Whether the transferee court could have exercised  
12 jurisdiction in part turns on whether any applicable statute of limitations in the  
13 transferee court would bar a plaintiff’s claims. *See Lietzke v. Cty. of Montgomery*,  
14 12-cv-00268-DN-EJF, 2013 WL 1033037, at \*5 n.4 (D. Utah Feb. 21, 2013)  
15 (recommending dismissal of IFP action rather than transfer under Section 1631  
16 because claims would be barred by statute of limitations).

17 Here, Plaintiff could not have brought his “illegal drainage of land”—properly  
18 construed as a conversion claim—and negligence claims in the Eastern District of  
19 Texas at the time this case was filed. Texas law imposes a two-year statute of  
20 limitations on claims concerning negligence and conversion of property, TEX. CIV.  
21 PRAC. & REM. CODE §16.003(a). Although Plaintiff alleges ongoing and continuing  
22 drainage of land, (SAC at 13), Texas courts do not apply the continuing tort doctrine  
23 to postpone the statute of limitations for tort claims based on permanent injury to  
24 land. *See Mitchell Energy Corp. v. Bartlett*, 958 S.W.2d 430, 443 (Tex. App. 1997).  
25 Rather, claims must be brought within two years of the discovery of the first injury.  
26 *Id.* Although Plaintiff alleges that he did not fully know all the details of Defendants’  
27 alleged conduct (SAC at 10), the SAC makes clear that discovery of the misconduct  
28 first occurred on March 27, 2015 (*id.* at 9). This case was filed outside of the two-

1 year time period and therefore these claims are barred. (ECF No. 1 (filed on April  
2 10, 2017).) However, Plaintiff’s fraud claim would be well within the four-year  
3 statute of limitations period under Texas law. *See* TEX. CIV. PRAC. & REM. CODE  
4 §16.004(a)(4).

5 That only Plaintiff’s fraud claim could have been brought in the Eastern  
6 District of Texas raises the issue of whether this Court may effect a “partial transfer”  
7 of the case under Section 1631. Section 1631 permits the transfer of a civil action,  
8 not the transfer of a claim. *See* 28 U.S.C. §1631 (“the court shall, if it is in the interest  
9 of justice, transfer *such action*” if it lacks jurisdiction over the case (emphasis  
10 added)). There is a lack of agreement among the courts about whether a court has  
11 authority to transfer certain claims or can only transfer an entire action. *Contrast*  
12 *FDIC v. McGlamery*, 74 F.3d 218, 222 (10th Cir. 1996) (finding transfer appropriate  
13 only after a Rule 21 severance), *with Hill v. United States Air Force*, 795 F.2d 1067,  
14 1070, (D.C. Cir.1986) (finding the statute authorizes the transfer of an action, not a  
15 claim). This Court will adhere to the express text of Section 1631 and declines to  
16 sever Plaintiff’s negligence and conversion claims. Rather, in its discretion, the  
17 Court dismisses the entire action without prejudice to Plaintiff refile his claims in  
18 an appropriate forum in Texas. *See, e.g., Thomas v. Thomas*, No. SACV 14-1096-  
19 JLS (RNBx), 2015 U.S. Dist. LEXIS 182157, \*17 (C.D. Cal. May 8, 2015) (finding  
20 dismissal appropriate rather than partial transfer of a case under Section 1631).

### 21 **III. CONCLUSION & ORDER**

22 For the foregoing reasons, the Court **HEREBY ORDERS** that:

23 1. The Court **GRANTS** Plaintiff’s Motion for a *De Novo* Determination  
24 of Subject Matter Jurisdiction. (ECF No. 20.)

25 2. The Court **GRANTS** the Appearing Defendants’ Motion to Dismiss for  
26 Lack of Personal Jurisdiction (ECF No. 21).

27 3. The Court **DISMISSES** Plaintiff’s claims without prejudice. (ECF No.  
28 18.) **Plaintiff may refile his claims in an appropriate state or federal court in**

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**Texas.**

4. The Court **TERMINATES AS MOOT** Plaintiff’s Motion to Transfer pursuant to 28 U.S.C. §1406 (ECF No. 26) and Plaintiff’s Motion for Leave to Amend the Pleadings (ECF No. 28).

**IT IS SO ORDERED.**

**DATED: January 22, 2018**

  
**Hon. Cynthia Bashant**  
**United States District Judge**