UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 15-cv-80388-MIDDLEBROOKS

LARRY KLAYMAN,

Plaintiff,

v.

HILLARY CLINTON, *et al.*,

Defendants.
_____/

ORDER GRANTING MOTIONS TO DISMISS

THIS CAUSE comes before the Court upon a Motion to Dismiss [DE 43] filed by Hillary Rodham Clinton and William Jefferson Clinton (collectively, the "Individual Defendants"), and a Motion to Dismiss [DE 44] filed by the Clinton Foundation ("Clinton Foundation"). Both Motions are fully briefed. For reasons that follow, the Motions are granted.

I. BACKGROUND

Plaintiff Larry Klayman ("Plaintiff") filed action under the Racketeer Influenced and Corrupt Organizations ("RICO") Act action against the Individual Defendants and the Clinton Foundation on March 24, 2015. [DE 1]. Plaintiff is "an attorney active in the public interest and is Chairman and General Counsel of Freedom Watch, Inc." [Am. Compl., DE 32-1 at ¶ 15]. Plaintiff has filed numerous "requests for public records created or held by the U.S. Department of State," under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. [*Id.* at ¶ 5]. The Amended Complaint[1] focuses on two of those FOIA requests in particular. Specifically, Plaintiff alleges

[1] On May 29, 2015, the Court granted Plaintiff's Motion to Amend the Complaint and instructed Plaintiff to file the Amended Complaint by June 2, 2015. [DE 39]. As of the date of this Order, Plaintiff has not filed the Amended Complaint. Since the briefings on the present Motions refer to the proposed Amended Complaint as the operative complaint in this action, the Court construes the proposed Amended Complaint as the operative complaint. References to the "Amended

Defendants have unlawfully withheld from Plaintiff documents concerning: (1) "the granting of waivers by the U.S. Secretary of State for persons, companies, countries, and other interests to do business with Iran," and (2) Defendants' leakage of "Israeli war plans and cyber-warfare methods and sources to David Sanger of The New York Times." [*Id.* at ¶ 6].

Plaintiff contends he did not receive these documents primarily because "Defendant Hillary Clinton – upon information and belief together with Cheryl Mills and Defendant Bill Clinton and other Clinton 'loyalists' – set up a private computer file server ('server') operating a private, stand-alone electronic mail ('email') system." [*Id.* at ¶ 7]. Plaintiff alleges that Defendants used the personal email account to "operate a covert enterprise of trading political favors and government acts in exchange for donations, which are in effect bribes," and to conceal "public records to which the Plaintiff was entitled [] under the FOIA Act." [DE 32-1 at ¶¶ 12-13].

Based on the foregoing, the Amended Complaint alleges the following six counts against Defendants: (1) common law misappropriation of chattel property; (2) acquisition and maintenance of an interest in and control of an enterprise engaged in a pattern of racketeering activity under 18 U.S.C. §§ 1961(5), 1962(b); (3) conduct and participation in a RICO enterprise through a pattern of racketeering activity under 18 U.S.C. §§ 1961(5), 1962(c); (4) conspiracy to engage in a pattern of racketeering activity under 18 U.S.C. §§ 1961(5), 1962(d); (5) Fifth Amendment violation under *Bivens v. VI Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); and (6) First Amendment violation under *Bivens v. VI Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Defendants move to dismiss the Amended Complaint for lack of subject matter jurisdiction and for failure to state a claim. *See* [DE 43, 44].

Complaint" in this Order are to the proposed Amended Complaint attached to Plaintiff's First Motion to Amend [DE 32, Ex. 1].

II. LEGAL STANDARD

A. 12(b)(1)

A defendant can move to dismiss a complaint under Rule 12(b)(1) for lack of subject matter jurisdiction by either facial or factual attack. *McElmurray v. Consol. Gov't of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007). "A facial attack on the complaint requires the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Id.* "By contrast, a factual attack on a complaint challenges the existence of subject matter jurisdiction using material extrinsic from the pleadings, such as affidavits or testimony." *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1233 (11th Cir. 2008). "When defending against a facial attack, the plaintiff has 'safeguards similar to those retained when a Rule 12(b)(6) motion to dismiss for failure to state a claim is raised,' and 'the court must consider the allegations in the plaintiff's complaint as true.'" *Id.* (quoting *McElmurray*, 501 F.3d at 1251); *see also Lawrence v. Dunbar,* 919 F.2d 1525, 1529 (11th Cir.1990). A motion to dismiss for lack of standing is properly brought pursuant to Rule 12(b)(1) because standing is a jurisdictional matter. *See State of Ala. v. U.S. E.P.A.*, 871 F.2d 1548, 1554 (11th Cir. 1989).

B. 12(b)(6)

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of a complaint. *See* Fed. R. Civ. P. 12(b)(6). In assessing the legal sufficiency of a complaint's allegations, the Court is bound to apply the pleading standard articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). That is, the complaint "must . . . contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 570). "Dismissal is therefore permitted when on the basis of a dispositive issue of law, no

construction of the factual allegations will support the cause of action." *Glover v. Liggett Grp., Inc.*, 459 F. 3d 1304, 1308 (11th Cir. 2006) (internal quotations omitted) (citing *Marshall Cnty. Bd. of Educ. v. Marshall Cnty. Gas Dist.*, 992 F. 2d 1171, 1174 (11th Cir. 1993)).

When reviewing a motion to dismiss, a court must construe plaintiff's complaint in the light most favorable to plaintiff and take the factual allegations stated therein as true. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F. 3d 1364, 1369 (11th Cir. 1997). However, pleadings that "are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal*, 556 U.S. at 678; *see also Sinaltrainal v. Coca-Cola Co.*, 578 F. 3d 1252, 1260 (11th Cir. 2009) (stating that an unwarranted deduction of fact is not considered true for purpose of determining whether a claim is legally sufficient).

Generally, a plaintiff is not required to detail all the facts upon which he bases his claim. Fed. R. Civ. P. 8(a)(2). Rather, Rule 8(a)(2) requires a short and plain statement of the claim that fairly notifies the defendant of both the claim and the supporting grounds. *Twombly*, 550 U.S. at 555-56. However, "Rule 8(a)(2) still requires a 'showing,' rather than a blanket assertion, of entitlement to relief." *Id.* at 556 n.3. Plaintiff's "obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (citation omitted). "Factual allegations must be enough to raise [plaintiff's] right to relief above the speculative level, on the assumption that all of the allegations in the complaint are true." *Id.*

III. DISCUSSION

A. Article III Standing

Federal courts are of limited jurisdiction and are empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution. *Lance v. Coffman*, 549 U.S. 437, 439 (2007). Article III of the Constitution confines the "judicial Power" of the United States to "Cases" and "Controversies." U.S. Const. art. III, § 2. Federal courts "have always taken this to mean cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998). "The 'irreducible constitutional minimum of standing' contains three requirements": (1) "an 'injury in fact' – a harm suffered by the plaintiff that is 'concrete' and 'actual or imminent, not 'conjectural' or 'hypothetical;'" (2) causation – a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant;" and (3) "redressability – a likelihood that the requested relief will redress the alleged injury." *Id.* at 102-03 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)); *see also Vermont Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000); *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990).

Beyond the constitutional requirements, the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing. Thus, the Supreme Court has held that "the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). In addition, "federal courts have abjured appeals to their authority which would convert the judicial process into 'no more than a vehicle for the vindication of the value interests of concerned bystanders.'" *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982) (quoting *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 687 (1973)). Therefore, "even when the plaintiff has alleged redressable injury sufficient to meet the requirements of Article III, the court has refrained from

adjudicating 'abstract questions of wide public significance,' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." *Id.* at 474-75. Finally, the law presumes that "a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994) (citation omitted).

1. Injury in Fact

Article III requires the party invoking the Court's authority to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 99 (1979), and that the injury can be "fairly . . . traced to the challenged action of the defendant." *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 41 (1976).

Relying solely upon the allegations in the Amended Complaint, it would be difficult to ascertain what injury Defendants' putatively illegal conduct caused Plaintiff. However, when pressed by Defendants' Motions to Dismiss, Plaintiff points to two specific injuries in fact: (1) "Defendants are liable to Plaintiff for theft in taking and refusing to turn over property belonging to Plaintiff;" and (2) that Plaintiff "has been harmed in his business or property." [Response, DE 57 at 29].

i. Property Interest

First, Plaintiff argues that FOIA creates a "property interest" in government records, and that Defendants' use of a personal email account to conceal government records as a part of their alleged racketeering activity deprived him of that interest. *See* [Response at 29-32].

FOIA "vests jurisdiction in federal district courts to enjoin an '*agency* from withholding agency records and to order the production of any agency records improperly withheld from the complainant.'" *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)

(quoting 5 U.S.C. § 552(a)(4)(b)) (emphasis added). FOIA does not create a general property interest in government records, and does not provide for "private actions to recover records wrongfully removed from Government custody." *See id.* at 137. Here, Plaintiff alleges that Defendants (none of whom are a government agency) "concealed official government documents" Plaintiff requested,[2] such that they were not available to be searched by the State Department and produced to Plaintiff under FOIA. [Am. Compl. at ¶ 13].

In other words, Plaintiff does not bring this action under FOIA, but rather appears to allege that FOIA creates a constitutional "property interest" in government records generally. *See* [Response at 29-30] (citing procedural due process cases). However, Plaintiff fails to cite to any case recognizing such a FOIA-created constitutional property interest. *But see Leib v. Hillsborough Cnty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1306 n.4 (11th Cir. 2009) (statutory rights under FOIA do "not enjoy substantive due process protection"); *Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1236-37 (10th Cir. 2007) (Integrity Committee's failure to provide citizen with documents requested pursuant to FOIA did not violate citizen's due process rights because citizen had no "life, liberty, or property interest in the materials at issue.").

To prove the existence of a due process property interest in a "benefit" created by statute, a plaintiff "must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). Because Plaintiff cannot bring an action under

[2] The Amended Complaint alleges that "Plaintiff initially signed *and requested*, pursuant to FOIA, the records set forth with regard to the two FOIA requests at issue here." [Am. Compl. at ¶ 15] (emphasis added). However, as Defendants note, both FOIA requests at issue were submitted by Freedom Watch. *See Freedom Watch, Inc. v. Nat'l Security Agency*, Case No. 14-5174 (D.C. Cir. 2015); *Freedom Watch, Inc. v. Dep't of State*, Case No. 15-5048 (D.C. Cir. 2015). Therefore, to the extent Plaintiff alleges harm resulting from not receiving records requested under FOIA, that harm was suffered by Freedom Watch, the named requester associated with both FOIA requests, and not by Plaintiff. *See McDonnell v. United States*, 4 F.3d 1227, 1239 (3d Cir. 1993) (holding plaintiff lacked standing to sue under FOIA where his name did not appear on FOIA request for records because he had "not administratively asserted a right to receive [the documents] in the first place.").

FOIA,[3] he cannot prove a legitimate claim of entitlement to a benefit created by FOIA. *See Kissinger*, 445 U.S. at 139 ("We hold today that even if a document requested under the FOIA is wrongfully in the possession of a party not an 'agency,' the agency which received the request does not 'improperly withhold' those materials by its refusal to institute a retrieval action."). Given that Plaintiff has no property interest in the government records allegedly under Defendants' control, he cannot allege an injury resulting from the alleged deprivation of those records.

ii. Business Injury

Plaintiff also contends that Defendants' use of a personal email account to conceal government records as a part of the alleged criminal racketeering activity harms his ability to earn a living. [Response at 32].

While "economic injury" is generally recognized as a "cognizable injury," the economic injury must be sufficiently "concrete and imminent" to establish standing. *See, e.g.*, *Alabama-Tombigbee Rivers Coal. v. Norton*, 338 F.3d 1244, 1253 (11th Cir. 2003). The Amended Complaint does not allege any facts to support Plaintiff's assertion that he has experienced any professional harm attributable to Defendants' conduct, or any actual financial loss. When pressed by Defendants' Motions to Dismiss to better articulate the injury he has suffered, Plaintiff responded:

> If Plaintiff can no longer disseminate information to the public, Plaintiff will no longer receive the support of the public and earn a living doing his chosen profession as a public advocate who uncovers and prosecutes government corruption and abuse. It is through the support of the public, through their financial support, that Plaintiff is able to earn a living.

[Response at 33-34].

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[3] Plaintiff concedes that he cannot seek relief under FOIA. *See* [Response at 35] ("The documents . . . are in the custody and possession of the Defendants and have never been in the possession of the State Department . . . . This lawsuit against the private Defendants [as opposed to Freedom Watch's pending FOIA actions against the State Department] is the only means for the Plaintiff to obtain redress.").

Thus, even according to Plaintiff's own words, his economic injury is speculative at best. It is unclear whether the records allegedly withheld from Plaintiff exist at all, and if they do exist, whether they are in Defendants' possession. Similarly, it is unknown whether the contents of any alleged records would be of any interest to the public. Even assuming such records exist and are of interest to the public, it is unclear whether such public interest would translate into public support of Plaintiff. Finally, if all of this somehow garnered public support for Plaintiff, it is unclear how such public support would translate into financial support. "[P]urely speculative, nonconcrete injuries" are insufficient to establish an injury in fact for purposes of Article III standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 556, 112 S. Ct. 2130, 2134, 119 L. Ed. 2d 351 (1992). Further, "a possible financial loss is not by itself a sufficient interest to sustain a judicial challenge." *Abbott Labs. v. Gardner*, 387 U.S. 136, 153 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977)); *see also Love Church v. City of Evanston*, 896 F.2d 1082, 1086 (7th Cir. 1990) ("Claims of such vague economic harm are precisely the type of 'abstract' or 'conjectural' allegations spurned by the Supreme Court in *Warth*," and "cannot constitute distinct and palpable injury for purposes of standing."). Accordingly, Plaintiff has not met his burden of demonstrating an injury to establish Article III standing to bring this case.

B. Rule 12(b)(6)

1. RICO Standing[4]

Defendants also argue that even if Plaintiff could maintain Article III standing, he lacks RICO standing. RICO standing is narrower than Article III standing. "RICO provides a private cause of action for '[a]ny person injured in his business or property by reason of a violation of

[4] Despite the label "standing," courts typically review the question of RICO standing under Rule 12(b)(6), not Rule 12(b)(1). *See, e.g., Ironworkers Local Union 68 v. AstraZeneca Pharm., LP*, 634 F.3d 1352, 1358 (11th Cir. 2011).

section 1962 of this chapter.'" *Hemi Grp., LLC v. City of New York, N.Y.*, 559 U.S. 1, 6 (2010) (quoting 18 U.S.C. § 1964(c)). To have standing under RICO, a plaintiff must meet two requirements. First, the plaintiff must have suffered "an injury to business or property." *Simpson v. Sanderson Farms, Inc.*, 744 F.3d 702, 708 (11th Cir. 2014) (quotation marks omitted). Second, the asserted injury must have come about "by reason of a violation of [a predicate racketeering act listed in] section 1962 of this chapter." 18 U.S.C. § 1964(c).

i. Injury to Business or Property

To state an injury to business or property under RICO, a plaintiff "must allege economic injury arising from the defendant's actions." *Ironworkers Local Union 68*, 634 F.3d at 1361 (citing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)). Noneconomic injuries do not give rise to RICO standing. *Id.* The only economic injury Plaintiff alleges is that Defendants' conduct may have compromised Plaintiff's ability to earn a living. *See* [Response at 34]. However, for the same reasons discussed *supra*, such vague and speculative allegations of economic injury are insufficient to state an injury to business or property under RICO.

ii. Causation

Even if Plaintiff's conjectural allegations of his compromised ability to earn a living were sufficient to state an injury, Plaintiff fails to allege that his economic injury was caused by a predicate racketeering act under RICO. RICO standing requires a plaintiff's injury to be *directly* caused by a predicate racketeering act prohibited under § 1962. *See Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 452 (2006). Specifically, a plaintiff is required to show:

> that a RICO predicate offense not only was a 'but for' cause of his injury, but was the proximate cause as well. Proximate cause for RICO purposes . . . should be evaluated in light of its common-law foundations; proximate cause thus requires some direct relation between the injury asserted and the injurious conduct alleged. A link that is too remote, purely contingent, or indirect is insufficient.

Hemi Grp., LLC, 559 U.S. at 9 (internal quotations and citations omitted).

The Amended Complaint alleges seven "predicate criminal acts": (1) "anticipatory obstruction of justice," in violation of 18 U.S.C. § 1519; (2) "conspiracy to conceal and remove official records," in violation of 18 U.S.C. § 2071; (3) "conspiracy to defraud United States," in violation of 18 U.S.C. § 371; (4) "federal mail fraud," in violation of 18 U.S.C. §1341; (5) "federal wire fraud," in violation of 18 U.S.C. § 1343; (6) "false statements," in violation of 18 U.S.C. § 1001; and (7) "mishandling of classified information," in violation of 18 U.S.C. § 793. *See* [Am. Compl. at ¶¶ 247 – 278]. However, only Sections 1341 (mail fraud) and 1343 (wire fraud) are included in RICO's exhaustive list of predicate racketeering acts. *See* 18 U.S.C. § 1961; *see also St. Clair v. Citizens Fin. Grp.*, 340 F. App'x 62, 66 (3d Cir. 2009) ("The list is exhaustive.").

Mail fraud and wire fraud are essentially identical except for the method of execution. *United States v. Bradley*, 644 F.3d 1213, 1238 (11th Cir. 2011); *see* 18 U.S.C. §§ 1341, 1343. "Both offenses require that [Defendants]: (1) intentionally participate[d] in a scheme or artifice to defraud another of money or property, and (2) use[d] or cause[d] the use of the mails or wires for the purpose of executing the scheme or artifice." *Bradley*, 644 F.3d at 1283.

Plaintiff does not allege that Defendants defrauded Plaintiff of money or property through mail or wire fraud. Instead, Plaintiff alleges that Defendants engaged in mail and/or wire fraud by "utiliz[ing] false or fraudulent pretense, representations, and/or promises in order to defraud and/or obtain money from illicit payments disguised as donations." [Am. Compl. at ¶¶ 258, 264]. Critically, Plaintiff fails to allege how Defendants' mail or wire fraud, which allegedly involved obtaining money from others, directly injured Plaintiff. Therefore, the relationship between Defendants' mail or wire fraud and Plaintiff's alleged compromised ability to earn a living is "too remote to satisfy RICO's direct relationship requirement." *See Hemi Grp., LLC*, 559 U.S. at 9 (city's causal theory could not show direct relationship between city's lost tax revenue and vendor's failure to report cigarette sales to state where city's theory of liability rested on separate

actions carried out by separate parties). Accordingly, in addition to lacking Article III standing, Plaintiff lacks RICO standing to bring this action.

2. Other Claims

In addition to his RICO claims, Plaintiff brings the following claims: (1) misappropriation of chattel property; (2) violation of his Fifth Amendment rights; and (3) violation of his First Amendment rights. [Am. Compl.]. Plaintiff's misappropriation of chattel property and Fifth Amendment claims are based upon Plaintiff's alleged "vested property right to a copy of the records responsive to Plaintiff's FOIA request." [Am. Compl. at ¶ 280, 307]. However, as explained *supra*, because Plaintiff does not possess a property interest in the government records allegedly under Defendants' control, these claims fail.

Turning to Plaintiff's First Amendment claim, Plaintiff alleges that Defendants violated:

> Plaintiff's First Amendment right of freedom of speech and association by significantly disallowing the public and Plaintiff discord to discuss and disseminate to the public and citizenry in the public interest what the Defendants have done and will do with regard to Iran and their criminal enterprises by not providing the misappropriated records and documents which Plaintiff is entitled to under FOIA law.

[DE 32-1 at 310]. However, the Supreme Court has repeatedly rejected the argument that FOIA endows citizens with a constitutional right to access government records. *See, e.g.*, *McBurney v. Young*, 133 S. Ct. 1709, 1718 (2013) ("This Court has repeatedly made clear that there is no constitutional right to obtain all the information provided by FOIA laws."); *Houchins v. KQED, Inc.*, 438 U.S. 1, 15 (1978) (plurality op.) ("Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control."); *see also Foto USA, Inc. v. Bd. of Regents of Univ. Sys. of Fla.*, 141 F.3d 1032, 1035 (11th Cir. 1998) ("There is no First Amendment right of access to public information."). Accordingly, Plaintiff has failed to state a claim under the First Amendment.

C. Motion to Amend

On July 2, 2015, Plaintiff filed a Motion for Leave to Amend the Amended Complaint. [DE 56]. Defendants filed a Joint Response in Opposition [DE 64] on July 13, 2015, to which Plaintiff filed a Reply [DE 86] on July 30, 2015.[5] On May 29, 2015, the Court granted Plaintiff's Motion to Amend the Complaint [DE 32]. *See* [DE 39]. The Order required that Plaintiff file his Amended Complaint **by June 2, 2015**. [DE 39]. As of this date, Plaintiff has not filed his First Amended Complaint.[6] Plaintiff now seeks to file a Second Amended Complaint.

Under Rule 15(a)(1), a party may amend its pleading once as a matter of course within 21days of serving it or 21 days after service of any responsive pleading or motion under Rule 12(b), (e), or (f). *See* Fed. R. Civ. P. 15. When a party can no longer amend its pleading as of right, it "may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Nevertheless, a motion for leave to amend may appropriately be denied "(1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001).

Plaintiff contends that he does not seek leave to amend the Amended Complaint to "ma[ke] any real substantive changes to the Amended Complaint," but rather "to include more precise pleading language[.]" [DE 56 at 2]. Having reviewed the proposed Second Amended Complaint [DE 56-1], the Court finds it suffers from the same deficiencies as the Amended Complaint. Because amendment would be futile, it is hereby

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[5] On July 24, 2015, the Court granted Plaintiff's motion for an extension of time to file his reply, giving Plaintiff until July 30, 2015 to file his reply.

[6] The Amended Complaint is attached to Plaintiff's Motion to Amend the Complaint [DE 32] as Exhibit 1, but has not been filed on the docket as an Amended Complaint. *See* [DE 32-1].

ORDERED AND ADJUDGED as follows:

1. The Motion to Dismiss filed by Defendants Hillary Rodham Clinton and William Jefferson Clinton [DE 43] is **GRANTED**;
2. The Motion to Dismiss filed by Defendant the Clinton Foundation [DE 44] is **GRANTED**;
3. Plaintiff's Motion for Leave to Amend the Amended Complaint [DE 56] is **DENIED**;
4. Plaintiff's Amended Complaint is **DISMISSED**; and
5. The Clerk of Court shall **CLOSE THIS CASE** and **DENY** all pending motions **AS MOOT**.

SO ORDERED in Chambers at West Palm Beach, Florida, this 10 day of August, 2015.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record