

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ROSA M. PEREZ,

Plaintiff,

v.

**JOSEPH ANTONIO ALVAREZ,
YAH DINAH ALVAREZ,
NANCY CORDERO,**

Defendants.

1:25-cv-00035-RAM-EAH

TO: Rosa M. Perez, Pro Se

ORDER

THIS MATTER comes before the Court on a “Motion for Extension of Time to Complete Service” and a “Motion for Issuance of Alias Summons,” filed by Plaintiff Rosa M. Perez, appearing pro se, on February 25, 2026. Dkt. Nos. 21, 22, respectively. Ms. Perez also filed a third Amended Complaint on October 30, 2025. Dkt. No. 16. For the reasons that follow, the Court will deny the Motion for Extension of Time and the Motion for Issuance of Alias Summons. The Court will construe the third Amended Complaint as a motion for leave to file an amended complaint and will deny it.

BACKGROUND

I. Complaint and Court Order

On September 15, 2025, the Court lodged Ms. Perez’s Complaint naming Joseph Antonio Alvarez, Yahdinah Alvarez, and Nancy Cordero as Defendants. Dkt. No. 1. Ms. Perez asserted diversity jurisdiction as the basis for the Court’s subject matter jurisdiction over this Complaint. Dkt. No. 1 at 1. She stated that she was a resident of Florida (although she

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formerly lived on St. Croix), that Defendant Jose Antonio Alvarez was a resident of Puerto Rico, and that Defendants Yahdinah Alvarez and Nancy Cordero were residents of Florida. *Id.* Her state law claims of fraud, breach of contract, conversion/theft, and illegal eviction are based on events that occurred in February 2021 when her brother attempted to recover her personal belongings from her home on St. Croix (that she was evacuated from in 2017 following Hurricane Maria) and discovered that all of her property had been removed and disposed of by the Defendants. *Id.* at 2. She alleged that her residential lease agreement covered December 1, 2016 through December 31, 2021, and that she was wrongfully evicted during the federal COVID-19 eviction moratorium. Ms. Perez sought compensatory damages “exceeding \$250,000” for lost property, emotional distress, and breach of lease, punitive damages, and costs of suit. *Id.* She attached numerous exhibits to her Complaint. Dkt. Nos. 1-1 to 1-7. The Court granted her application to proceed in forma pauperis (“IFP”). Dkt. No. 4.

The Court sua sponte reviewed the Complaint to ensure that it set forth a proper basis of subject matter jurisdiction. Dkt. No. 4 at 3-4. Although construing Ms. Perez’s allegations liberally, the Court concluded that it appeared to lack subject matter jurisdiction over the Complaint, given that it did not show complete diversity among the parties because Ms. Perez was a citizen of Florida and at least two of the Defendants were also citizens of Florida. *Id.* at 4-5. The Court provided Ms. Perez an opportunity to cure the subject matter jurisdiction issue by permitting her to file an amended complaint by October 24, 2025. *Id.* at 5. The Order warned that if the subject matter jurisdiction issue was not cured in the Amended Complaint,

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the Court would submit a Report and Recommendation to the District Judge recommending dismissal of this case for lack of subject matter jurisdiction. *Id.* at 5-6.

II. Amended Complaints and Report & Recommendation

On September 30, 2025, Ms. Perez filed her initial Amended Complaint. Dkt. No. 6. She again asserted that the Court had jurisdiction over the Amended Complaint because the amount in controversy exceeded \$75,000 “and the parties are *citizens* of different states and territories.” *Id.* at 1 (emphasis added). She stated that she resided in Florida, Defendant Jose Antonio Alvarez was a resident of Puerto Rico, and Defendants Yahdinah Alvarez and Nancy Cordero were residents of Florida. *Id.* She reiterated the events leading up to her filing suit and sought compensatory damages “in excess of \$35,000 for lost property and expenses” and punitive damages for “willful and malicious conduct,” as well as the costs of suit.¹ *Id.* at 2.

On October 6, 2025, Ms. Perez also filed another “Amended Complaint,” although it consisted of a one and one-half page “Statement of Facts” in which she reiterated details surrounding the lease of her apartment on St. Croix, her leaving the island following Hurricane Maria, her return to St. Croix in 2019 where she found certain property missing, and her efforts to determine who was responsible. Dkt. No. 9.

¹ Ms. Perez alleged that her last physical residence at the property at issue (her St. Croix apartment) was in April 2019. Dkt. No. 6 at 1.

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In an R&R issued on October 28, 2025, the Court concluded that, once again, Ms. Perez had not pleaded diversity jurisdiction. Dkt. No. 15. The Court opined:

As a preliminary matter, it appears that Ms. Perez uses the terms “citizen” and “resident” interchangeably. At one point, she states that “the parties are citizens of different states and territories,” Dkt. No. 6 at 1, and, later on the same page, that she resides in Florida, Defendant Jose Antonio Alvarez was a resident of Puerto Rico, and Defendants Yahdinah Alvarez and Nancy Cordero were residents of Florida. *Id.* She provides Florida addresses for herself Defendants Alvarez and Cordero, also suggesting that they are Florida citizens. While residency alone is generally insufficient to adequately allege citizenship, *McNair v. Synapse Grp. Inc.*, 672 F.3d 213, 219 n.4 (3d Cir. 2012) (noting that use of the term “resident,” rather than “domiciliary” or “citizen,” is an improper means of pleading citizenship for purposes of diversity jurisdiction), the Court considers, in this instance, that Ms. Perez’s initial statement invoking citizenship as properly pleading diversity jurisdiction, even if she later used the term “resident.” And here, because she, as the Plaintiff, is a citizen of Florida, and two of the Defendants, Yahdinah Alvarez and Cordero, are also citizens of Florida, she has not pleaded diversity jurisdiction where “every plaintiff must be of diverse state citizenship from every defendant.” *In re Briscoe*, 448 F.3d at 215. Having been given an opportunity to amend her complaint to specifically cure the subject matter jurisdiction issue, and having failed to do so, the Court recommends dismissal of the Amended Complaint for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3).

Id. The R&R is currently pending.

III. Another Amended Complaint

Two days after the Court issued the R&R recommending dismissal, Ms. Perez filed yet another Amended Complaint. Dkt. No. 16. In this iteration, she alleged that the parties were citizens of different states and territories: she was “domiciled” in St. Croix “where she maintained her legal residence and intent to remain, though she temporarily relocated to Florida after Hurricane Maria for medical treatment and housing stability.” Her current

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mailing address was in Florida. *Id.* at 1. Defendant Jose Antonio Alvarez is believed to reside in Puerto Rico, and Defendants Yahdinah Alavarez and Nancy Cordero reside on St. Croix. *Id.* at 2. She reiterated her causes of action and sought \$250,000 in compensatory damages. *Id.* at 3.

IV. The Instant Motions

In the Motion for Extension of Time, Ms. Perez seeks a sixty-day extension of time to effect service of process on Defendants Joseph Antonio Alvarez, Yahdinah Alvarez, and Nancy Cordero. Dkt. No. 21. She states that she is undertaking “reasonable efforts to determine valid physical addresses for proper personal service through professional process servers.” *Id.* She has not identified *which* Amended Complaint she seeks the extension of time for in order to complete service.

In the Motion for Issuance of Alias Summons, Ms. Perez seeks “Alias Summons for each Defendant for purposes of effecting proper personal service.” Dkt. No. 22. She does not explain why “alien summonses” may be needed.

DISCUSSION

I. The Instant Amended Complaint

Federal Rule of Civil Procedure 15(a)(1) permits a party, inter alia, to amend a complaint within 21 days as a matter of course. Beyond that time period, “a party 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). The Defendants

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have not been served in this case, and Ms. Perez did not seek leave to amend before filing her (third) Amended Complaint on October 30, 2025. Dkt. No. 16.

Although the Court may grant leave to amend when justice so requires, *id.*, leave may be denied if amendment would be futile. *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008). If an amended complaint lacks subject matter jurisdiction, amendment would be futile, and dismissal is required. *Smith v. Allied Retail Props.*, 802 F. App'x 734, 736 n.2 (3d Cir. 2020) (affirming dismissal of complaint for lack of subject matter jurisdiction); *see also Roberts v. Mayor & Burgesses of London Borough of Brent*, 70 F. App'x 615, 619 (3d Cir. 2003) (“[W]here the absence of subject matter jurisdiction is apparent from the face of a complaint, any amendment would be futile, and hence dismissal without leave to amend is proper.”); *Whetstone v. Deblasio*, No. 23-cv-447, 2023 WL 2743447, at *2 (W.D. Pa. Mar. 31, 2023) (leave to amend would be futile where court lacked subject matter jurisdiction over the action).

Here, liberally construing Ms. Perez’s third Amended Complaint as a motion for leave to file an amended complaint and accepting her changing allegations of citizenship in that Complaint as true, the Court will deny leave to amend, given this Complaint’s lack of subject matter jurisdiction. Ms. Perez asserts that she is a citizen/domiciliary of St. Croix (Virgin Islands) and Defendants Yahdinah Alvarez and Nancy Cordero are residents of St. Croix (Virgin Islands). As the Court concluded in its October 28, 2025 R&R, Ms. Perez uses citizen/domiciliary and residency in her Complaints, just as she has done in the third

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Amended Complaint, as equivalents because she introduces the instant Complaint as pleading that “the parties are citizens of different states and territories.” Dkt. No. 15 at 1. Thus, because she as the Plaintiff, and Ms. Alvarez and Ms. Cordero as Defendants, are all citizens of the Virgin Islands, the third Amended Complaint does not plead complete diversity, and must be dismissed without prejudice for lack of subject matter jurisdiction. *Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 104 (3d Cir. 2015) (explaining that “no plaintiff may be a citizen of the same state as any defendant” for purposes of diversity jurisdiction; see also *In re Briscoe*, 448 F.3d 201, 215 (3d Cir. 2006) (complete diversity is required, meaning that “every plaintiff must be of diverse state citizenship from every defendant.”)).

Thus, construing the third Amended Complaint as a motion for leave to amend, the motion is denied as futile.

II. The Motions Regarding Service

It is against that backdrop that Ms. Perez has filed the “Motion for Extension of Time to Complete Service” and the “Motion for Issuance of Alias Summons.” Dkt. Nos. 21, 22. As indicated above, it is unclear which Amended Complaint she is seeking an extension of time to serve and to issue alias summonses for. But the answer to that question does not matter because, whichever Amended Complaint Ms. Perez has intended the two motions to accompany, the Court will deny them because all iterations of the Complaints in this matter

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lack subject matter jurisdiction. Therefore, any motion seeking to serve the infirm complaints must be denied.

CONCLUSION

Accordingly, it is hereby **ORDERED** that Ms. Perez's third Amended Complaint, Dkt. No. 16, be construed as a motion for leave to amend and, so construed, is **DENIED**.

It is further **ORDERED** that the Motion for Extension of Time to Complete Service, Dkt. No. 21, and the Motion for Issuance of Alias Summons, Dkt. No. 22, are both **DENIED**.

The Clerk of Court shall mail a copy of this Order to the pro se Plaintiff by certified mail, return receipt requested.

ENTER:

Dated: March 6, 2026

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE