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# [***God v. Duke Energy Inc.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5S5J-NRJ1-FG68-G14W-00000-00&context=)

United States District Court for the Middle District of Florida, Jacksonville Division

December 8, 2017, Decided; December 8, 2017, Filed

CASE NO. 3:17-cv-1252-J-32JBT

**Reporter**

2017 U.S. Dist. LEXIS 220386 \*; 2017 WL 8809478

GOD, aka MICHAEL WALLER, Plaintiff, v. DUKE ENERGY INC., et al., Defendants.

**Subsequent History:** Magistrate's recommendation at [*God v. Duke Energy, Inc., 2018 U.S. Dist. LEXIS 42820 (M.D. Fla., Feb. 13, 2018)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RWB-RTJ1-FCYK-24BW-00000-00&context=)

**Core Terms**

monthly, spouse, Prepayment, costs, amended complaint, in forma pauperis, expenses, services

**Counsel:** **[\*1]**God, also known as Michael Waller, Plaintiff, Pro se, Jacksonville, FL USA.

For Duke Energy Indiana, Llc, Defendant: Michael P. Silver, LEAD ATTORNEY, Shutts & Bowen, LLP, Tampa, FL USA.

**Judges:** JOEL B. TOOMEY, United States Magistrate Judge.

**Opinion by:** JOEL B. TOOMEY

**Opinion**

**ORDER**

**THIS CAUSE** is before the Court on Plaintiff's Consolidated Motion to Proceed in this Matter and on Appeal In Forma Pauperis (Doc. 2), which the Court construes as a Motion for Leave to Proceed *In Forma Pauperis* ("IFP Motion"), and Plaintiff's Motion for the Prepayment of Fee's [sic] for Litigation per Constitutional Right ("Motion for Prepayment") (Doc. 4). For the reasons stated herein, the Motion for Prepayment will be **DENIED**, the IFP Motion will be **TAKEN UNDER ADVISEMENT**, and Plaintiff will be directed to file an amended complaint and the attached Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) **on or before December 29, 2017**.

**I. Standard**

The Court may, upon a finding of indigency, authorize the prosecution of an action without requiring the prepayment of costs, fees, or security. *28 U.S.C. § 1915(a)(1)*. The Court's decision to grant *in forma pauperis* status is discretionary. *See* [*Pace v. Evans, 709 F.2d 1428, 1429 (11th Cir. 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-YX50-003B-G1XJ-00000-00&context=). While a litigant need not show he is "absolutely**[\*2]** destitute" to qualify for *pauper* status under *§ 1915*, a litigant does need to show an inability "to pay for the court fees and costs, and to support and provide necessities for himself and his dependents." [*Martinez v. Kristi Kleaners, Inc., 364 F.3d 1305, 1307 (11th Cir. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4C2S-HP70-0038-X1WC-00000-00&context=).

A court receiving an application to proceed *in forma pauperis* must dismiss the case *sua sponte* if it determines that the action "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." *28 U.S.C. § 1915(e)(2)(B)*. The Court must also dismiss *sua sponte* an action if, at any time, it determines that it lacks subject matter jurisdiction. [*Fed. R. Civ. P. 12(h)(3)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=).

To avoid a dismissal, the "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" [*Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=) (citing [*Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=). "Labels and conclusions" or "a formulaic recitation of the elements of a cause of action" that amount to "naked assertions" will not do. *Id.*

A complaint must contain a short and plain statement of the claim showing that a plaintiff is entitled to relief, which means that Plaintiff must include a short and plain statement of facts in support of his claims. *See* [*Fed. R. Civ. P. 8(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=). "Each allegation must be simple, concise,**[\*3]** and direct." [*Fed. R. Civ. P. 8(d)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=). In addition, "[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." [*Fed. R. Civ. P. 10(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YR-00000-00&context=). "If doing so would promote clarity, each claim founded on a separate transaction or occurrence . . . must be stated in a separate count . . . ." *Id.* A complaint must also include a demand for the relief that Plaintiff hopes to obtain at the end of the litigation, and a statement of the grounds for the Court's jurisdiction. [*Fed. R. Civ. P. 8(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=).

While pleadings submitted by a pro se plaintiff "are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed," [*Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3TB5-TH50-0038-X4YH-00000-00&context=) (per curiam), "[a] [pro se] complaint that fails to articulate claims with sufficient clarity to allow the defendant to frame a responsive pleading constitutes a 'shotgun pleading.' . . . prohibited by [*Rule 8(a)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=).'" [*Lampkin-Asam v. Volusia Cty. Sch. Bd., 261 F. App'x 274, 277 (11th Cir. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RK2-3C30-TX4N-G02P-00000-00&context=).[[1]](#footnote-0)1 As such, even pro se complaints that are "disjointed, repetitive, disorganized and barely comprehensible" may be dismissed. [*Id. at 276*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RK2-3C30-TX4N-G02P-00000-00&context=).

**II. Analysis**

**A. Complaint**

Plaintiff's Complaint (Doc. 1) does not meet the above requirements and is otherwise deficient. The Complaint is a shotgun pleading that is disjointed, disorganized, and incomprehensible.**[\*4]** It does not constitute a short and plain statement of a claim showing that the pleader is entitled to relief. In fact, it is difficult to discern what causes of action Plaintiff intends to bring against each Defendant.

Plaintiff is attempting to sue several energy companies, the State of Indiana, and the State's ***regulatory*** commission. (*Id.* at 1.) Plaintiff describes the "Nature of the Action" as follows:

The defendants and their affiliate organization, committed and continue to commit, Federal and State Constitutional Violations, utilizing, Monopolistic business tactics, which include using State Law, State ***Regulating*** and Rule Making; called, The IURC, to eliminate competition, segregate citizens of the United States of America, hinder commercial expansion and commercial price reduction. Their actions violate the Sherman Act, the Clayton Act, and other ***Anti-Trust*** laws, and are Unconstitutional.

(*Id.* at 3.)

Plaintiff appears to be complaining about high-priced electrical services and an alleged monopoly over those services. For example, Plaintiff alleges in conclusory fashion that Defendant "Duke Energy, did and does now, sell power to customers in other States for 40% to 60% percent [sic] less than residents**[\*5]** in Indiana. This clearly violates, The Sherman ***Antitrust*** Act, Clayton ***Antitrust*** Act, and Robinson-Patman Act." (*Id.* at 24.) Plaintiff also alleges that electricity is a basic human right for which he should not have to pay. For example, Plaintiff states that Defendant "Nipsco forced Plaintiff against my will to obtain services and to pay for the basic necessities of life as guaranteed by the Declaration of Independence . . . Nipsco continued to withdraw funds from my Bank account against my will for services that were part of my daily existence." (*Id.* at 15.) However, Plaintiff's 14-page statement of facts fails to provide any discernable factual information that, even liberally construed, could support a constitutional violation or a claim for relief under the federal acts cited in his Complaint. (*See id.* at 14-28.)

Moreover, the Complaint does not set forth individual counts against each Defendant. Instead, the Complaint contains one section entitled "Constitutional Violations" and one section entitled "***Anti-Trust*** Violations." (*Id.* at 5, 7.) However, Plaintiff does not state exactly what federal law or provision of the Constitution each Defendant has allegedly violated or how. In short, even liberally construed, the Complaint**[\*6]** is an incomprehensible shotgun pleading that fails to state a claim upon which relief may be granted.[[2]](#footnote-1)2

The Court also notes that venue may not be proper in the Middle District of Florida.

A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

[*28 U.S.C. § 1391(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTT1-NRF4-4066-00000-00&context=). From the Complaint, it appears that all of the named Defendants are located in Indiana. (*See* Doc. 1 at 11-12.) In addition, it appears that the events giving rise to Plaintiff's Complaint occurred in Indiana. Plaintiff even describes himself as being domiciled in both Indiana and Florida. (*Id.* at 14.) Thus, it appears that venue is not proper in this Court.[[3]](#footnote-2)3

Before dismissing an action for failure to state a claim the Court should permit**[\*7]** a pro se litigant, who is seeking *in forma pauperis* status, the opportunity to amend the pleading. [*Troville v. Venz, 303 F.3d 1256, 1260 n.5 (11th Cir. 2002)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:46P4-BFN0-0038-X38H-00000-00&context=); *see also* [*Gomez v. USAA Fed. Sav. Bank, 171 F.3d 794, 795 (2d Cir. 1999)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3W4P-W8B0-0038-X2MD-00000-00&context=) (per curiam) ("Certainly, the court should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated."). Therefore, Plaintiff will be provided with an opportunity to file an amended complaint in accordance with this Order. However, Plaintiff is cautioned that the Court will not rewrite his Complaint, or any amended complaint, to find a claim. [*Peterson v. Atlanta Hous. Auth., 998 F.2d 904, 912 (11th Cir. 1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DDW0-003B-P17R-00000-00&context=).

**B. IFP Motion**

In addition, Plaintiff's IFP Motion (Doc. 2) does not provide the Court with enough information to determine whether he is without sufficient financial resources to prosecute this case. For example, Plaintiff states that he does "not use Money" and has "no income or expenses." (*Id.* at 1.) However, Plaintiff goes on to detail his many outstanding debts, but does not state his monthly payment obligations for those debts. (*See id.* at 2, 3.) Plaintiff also lists several monthly expenses, including $600 in hotel room bills and a "webhosting account bill of around 100 to 150 dollars." (*Id.* at 4.) Although Plaintiff states that he has "access to ten US Dollars**[\*8]** in cash and a business that Waller had previously owned has a lot of unpaid debt," the IFP Motion is silent as to Plaintiff's monthly income. (*Id.* at 2.)

Therefore, Plaintiff will be directed to carefully, legibly, and completely fill out and file the attached form, which is entitled "Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)" ("Long Form Application"), so that the Court can determine if he is indigent for purposes of *section 1915*. Failure to comply with these instructions may result in a recommendation to the District Judge that the Motion be denied and the case be dismissed.

**C. Motion for Prepayment**

In the Motion for Prepayment (Doc. 4), Plaintiff states that he has a right to be paid for his "time and services and to be reimbursed any and all expense for this litigation." (*Id.* at 2.) Plaintiff then asks that the Court order the State of Indiana to prepay his litigation fees. (*Id.*) The constitutional authority cited by Plaintiff does not support this request, and the Motion is otherwise frivolous. Therefore, it will be denied.

Accordingly, it is **ORDERED**:

1. The Motion for Prepayment (**Doc. 4**) is **DENIED**.

2. The IFP Motion (**Doc. 2**) is **TAKEN UNDER ADVISEMENT**.

3. **On or before [\*9]  December 29, 2017**, Plaintiff shall file a proper amended complaint and Long Form Application in compliance with this Order and all applicable rules and law. Failure to comply with these instructions will likely result in a recommendation to the District Judge that the IFP Motion be denied and that this case be dismissed.

**DONE AND ORDERED** at Jacksonville, Florida, on December 8, 2017.

/s/ Joel B. Toomey

JOEL B. TOOMEY

United States Magistrate Judge

United States District Court for the

    *Plaintiff/Petitioner* v.     Defendant/Respondent

Civil Action No.

**APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS**

**(Long Form)**

**Affidavit in Support of the Application**

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.

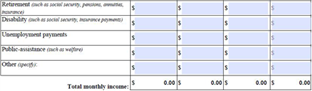
Signed:

**Instructions**

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need**[\*10]** more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.



2. List your employment history for the past two years, most recent employer first. *(Gross monthly pay is before taxes or other deductions.)*



3. List your spouse's employment history for the past two years, most recent employer first. *(Gross monthly pay is before taxes or other deductions.)*



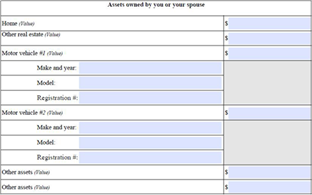
4. How much cash do you and your spouse have? $

Below, state any money you or your spouse have in bank accounts or in any other financial institution.



If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps**[\*11]** because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.



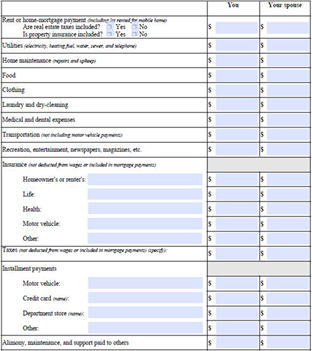
6. State every person, business, or organization owing you or your spouse money, and the amount owed.



7. State the persons who rely on you or your spouse for support.



8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.



9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

❐ Yes ❐ No If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in conjunction with this lawsuit? ❐ Yes ❐ No

If yes, how much? $

11. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

12. Identify the city and state of your legal residence.

Your daytime phone number:

Your age:     Your years of schooling:

**End of Document**

1. 1Although unpublished Eleventh Circuit opinions are not binding precedent, they may be persuasive authority on a particular point. ***Rule 32.1 of the Federal Rules of Appellate Procedure*** expressly permits a court to cite to unpublished opinions that have been issued on or after January 1, 2007. ***Fed. R. App. P. 32.1(a)***. [↑](#footnote-ref-0)
2. 2The Complaint may be deficient in other respects as well. It is Plaintiff's responsibility to ensure that any amended complaint complies with all applicable rules and law. [↑](#footnote-ref-1)
3. 3The Complaint also raises issues regarding whether the Court would have personal jurisdiction over Defendants and whether certain Defendants would have [*Eleventh Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP01-NRF4-44G4-00000-00&context=) immunity. [↑](#footnote-ref-2)