

ATTACHMENT A

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early* | 42 USC §1983, 42 USC §1985

DATE ENTERED: 3/11/2022

SHORT TITLE: 'That Motion' from 'That Case'

PURPOSE: Show Appellee Schreiber's Material Lie

LINK: ecf.flnd.uscourts.gov

PAGE(S): 1, 7, 25, 34, 35

{Pertinent Pages Only} {not the entire document}

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA,

Plaintiff,

vs.

Case No.: 4:21-cv-96-MW-MAF

HON. E. GARY EARLY, ALJ,

Defendant.

DEFENDANT JUDGE EARLY'S MOTION TO DISMISS AND STRIKE

Defendant, Administrative Law Judge ("ALJ") E. Gary Early, Managing Judge, Northern District, Division of Administrative Hearings ("DOAH"), State of Florida ("Judge Early"), moves this Court, pursuant to Fed. R. Civ. P. 7(b), 8(a)(2), 10(b), 12(b)(1), 12(b)(6), 12(e), 12(f), and N.D. Fla. Loc. R. 7.1, to dismiss ("Motion to Dismiss") the Second Amended Complaint ("Second Amended Complaint") of Plaintiff Elias A. Makere ("Plaintiff"), and to strike attorney's fees, prejudgment interest, punitive damages and certain spurious, impertinent, and scandalous allegations against the presiding judges in this case, and states:

cover legal violations.” [ECF. 26 at 21, 22.] He sues Judge Early only in an individual capacity. [ECF. 26 at 22, 23.]

16. Plaintiff alleges he suffers “loss of earning capacity”, “mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses”, and legal fees. [ECF. 26 at 23.] He seeks punitive and compensatory damages, attorney’s fees, costs, interest, pre-judgment interest, and declaratory and injunctive relief. [ECF. 26 at 24, 25.]

ANALYSIS

Standard of review – A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); Stevens v. Osuna, 877 F.3d 1293, 1309 (11th Cir. 2017). A plaintiff must articulate “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted).

to the federal courts authority to entertain a suit brought by private parties against a state without its consent.” Ford Motor Co. v. Dep’t of Treasury of St. of Ind., 323 U.S. 459, 462, 464 (1945) (citations omitted), *overruled on other grounds by*, Lapides v. Bd. of Regents of Univ. Sys. of Ga., 535 U.S. 613 (2002). Eleventh Amendment immunity extends to lawsuits against state officials acting in their official capacities. Seminole Tribe of Fla., 517 U.S. 44. Since Judge Early is a state official acting in an official capacity in the DOAH Case, Eleventh Amendment immunity extends to this suit.

Absent consent, waiver, or abrogation, which are not present in this case, the Eleventh Amendment bars suit in federal court against a state. Hans v. La., 134 U.S. 1 (1890); Ford Motor Co., 323 U.S. 459. A lawsuit bringing a § 1983 claim against a state official [Judge Early] in an official capacity is a suit against the State of Florida for Eleventh Amendment purposes and is barred as a matter of law. Will v. Mich. Dep’t of St. Police, 491 U.S. 58, 71 (1989). Section 1983 does not abrogate such immunity since a state is not a “person” for purposes of the statute. Will, 491 U.S. at 71. Plaintiff sues Judge Early in his official capacity, and in essence, the claims against Judge Early are claims against the State of Florida precluded by the Eleventh

to Dismiss by agreement; the parties disagree on resolution of this Motion to Dismiss. The parties conferred via teleconference.

N.D. Fla. Local Rule 7.1(F) Certification

I hereby certify that the word count in this Motion to Dismiss is 6,799.

Respectfully Submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

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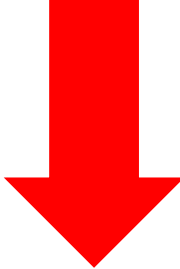
Attorney for the Defendant
Administrative Law Judge E. Gary Early

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished this 11th day of March 2022, via the Florida E-Portal System, U.S. Mail, & e-mail (as applicable), to:

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