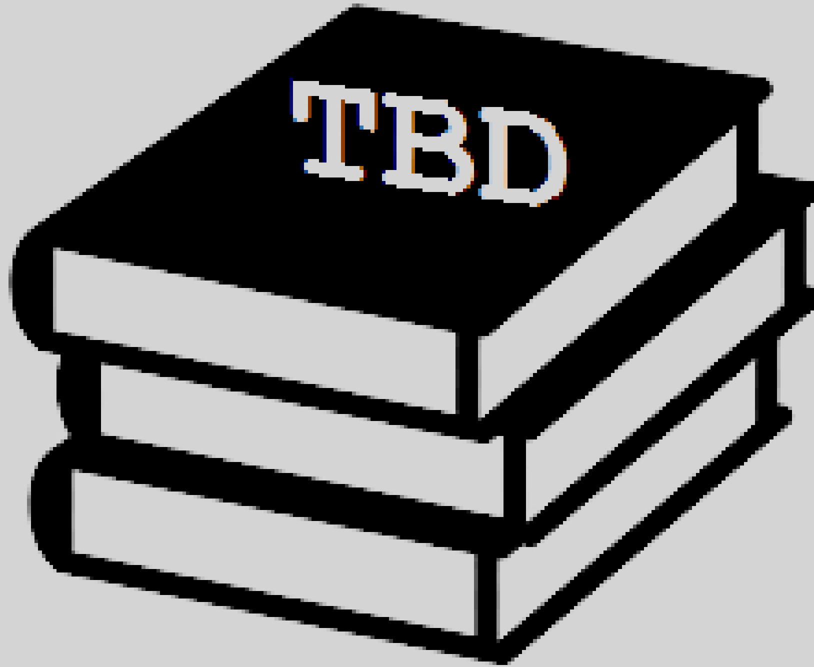

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT) **4:21-cv-00096**
Plaintiff	)	
	)	
v.	)	
	)	
HON. E. GARY EARLY, ALJ	)	
Defendant	)	

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff, ELIAS MAKERE, on this 28th day of March 2022, respectfully asks this Court to deny "*Defendant Judge Early's Motion to Dismiss and Strike*" (hereinafter "That Motion").

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Key Points

- Defendant had zero factual/precedential support
- Defendant authored another material lie
- Immunity is unavailable against declaratory relief

$$\frac{\pi}{6} + \frac{\pi}{3} + \frac{\pi}{2} \cdots$$

Defendant solved nothing yet claimed that all was solved/
formulaic recitations without similar value at all/

like cookie-cutting; like copying & pasting…/
…copious pastries from boilerplate bakeries/

to serve his neverending Pis/
may this court deny admission into his buffet of neverending lies//

$$\cdots \frac{\pi}{6} + \frac{\pi}{3} + \frac{\pi}{2} \cdots$$

Background:	Defendant got sued for his perjury (*inter alia*)
Problem:	Defendant moved to dismiss the case
Request:	This Court denies Defendant's motion

Rule 8 | Fed. R. Civ. P. | General Rules of Pleadings

"(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain: (1) a short and plain statement... (2) a short and plain statement... and (3) a demand for the relief sought..."

Rule 12 | Fed. R. Civ. P. | Defenses and Objections...

"(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: ... (6) failure to state a claim upon which relief can be granted;"

Genentech v Eli Lilli, 998 F.2d 931 (Fed. Cir. 1993)

"When there is an actual controversy and a declaratory judgment would settle the legal relations in dispute and afford relief from uncertainty or insecurity, in the usual circumstance the declaratory action is not subject to dismissal."

Precedence

- 1:16-cv-00054-MW-GRJ - USFLND (6/20/16)
- 1:17-cv-00103-MW-CAS - USFLND (9/7/17)
- 4:18-cv-00237-RH-EMT - USFLND (11/5/19)
- 4:19-cv-00053-RH-MAF - USFLND (2/17/21)
- 5:20-cv-00199-MCR-MJF - USFLND (4/21/21)

USFLND recently denied similar motions to dismiss

Abbreviations

[C###]	-	Paragraph ### from The Complaint[1/]
[M###]	-	Page ### from That Motion
FS	-	Florida Statute
USFLMD	-	US District Court, Florida, Middle District
USFLND	-	US District Court, Florida, Northern District

REBUTTAL

I. **Background**

1. On-or-around January 31, 2021, Plaintiff initiated this lawsuit against Defendant. Suing him under 42 USC §1983 ('*Ku Klux Klan Act of 1871*') and 42 USC §1985 for violating Plaintiff's constitutional rights (1st, 5th, 7th, and 14th amendments) while Defendant acted under the '*color of state law*'. Acts which included – but were not limited to – (a) **destruction of evidence**; (b) **perjury**; and (c) **bribery**.
2. Almost one year later – and after an 11th Circuit mandate – Plaintiff served Defendant with the requisite summons (2/23/22). Soon thereafter, an attorney appeared on Defendant's behalf.
3. That attorney's first order of business was a dismissal request. Filing as much on March 11, 2022; pursuant to Rule 12 Fed. R. Civ. P..

II. **Segue into Direct Rebuttals**

4. As is well-established, motions to dismiss (ie, 'That Motion') must make it clear – "beyond a reasonable doubt" – that a non-movant cannot produce any set of facts to justify case continuance:

> *"A complaint should not be dismissed for failure to state a claim unless it appears beyond a reasonable doubt that the plaintiff*

can prove no set of facts that would entitle him or her to relief."

\- Fletcher v. Florida, 858 F. Supp. 169 (1994)

5. Fletcher – which Defendant cited **[M029]** – thereby set the bar for what Defendant needed to prove. Defendant's 'proof', however, lacked the insertable facts to transform a formulaic recitation into a solution.

III. Direct Rebuttal: Short & Plain Statement

6. Defendant began his dismissal argument with the customary line about "short & plain" statements **[M007]** (Rule 8 Fed. R. Civ. P.). Of course, short & plain statements about Defendant's unconstitutional misconduct formed the ultimate facts of The Complaint (bold-text in original):

> *"48. Defendant broke the law in his quest to deny Plaintiff relief. Defendant:*
> *a. **hid evidence** (see ¶18-21);*
> *b. **committed perjury** (see ¶22-38); and*
> *c. bequested/**bribed others** to further his crimes (¶39-47)."*

\- **[C048]**

> *"51. Thereafter, Defendant rallied his companions-of-the-cloth to ratify his lies & obstructions. Altogether, Defendant violated Plaintiff's 1st, 5th, 7th, and 14th amendment rights... His companions, among others, were Martin Fitzpatrick (another Tallahassee judge) and Mark Walker (another Tallahassee-based judge)."*

\- **[C051]**

7. Plaintiff hereby contends that those statements (*supra*) cannot be anymore short & plain than they already are. None of paragraph 48's subparts have more than eight (8) words. None of them lack a verb-noun pair. Each one, though, points back to prior passages; passages which provided concrete facts.

8. In fact, Defendant quoted many of those concrete statements & facts in That Motion (**[M003]-[M007]**). Resulting in the following, simple acknowledgement:

> *"15. Plaintiff contends that [Defendant's] unlawful actions violated and abridged [Plaintiff's constitutional] rights..."*
>
> \- **[M006]**

So, it is obvious that Plaintiff gave Defendant "*short & plain*" statements that '*put Defendant on notice*' as to what '*Defendant's misconduct*' was (thereby satisfying Rule 8) (please see Conley v. Gibson, 355 US 41 (1957)).

9. Especially considering how That Motion cited Stevens v. Osuna, 877 F. 3d 1293 (11th Cir. 2017). An Eleventh Circuit opinion outlining the government functions that are judicial in nature:

> *"These powers include the power to subpoena witnesses and evidence, to administer oaths, to receive and rule on evidence, to question parties and witnesses, to issue sanctions, to make credibility determinations, and to render decisions."*
>
> \- Stevens v. Osuna, 877 F.3d 1293 (11th Cir. 2017)

10. None of these functions, importantly, included (a) **photocopying** transcript pages (**[C018]-[C021]**). None included (b) **ministerial acts** (**[C022]-[C038]**). And none of them included (c) **bribing** public officials (**[C039]-[C047]**). Doubly important is the fact that Defendant's motion never contended that Plaintiff's "short & plain" statements of fact were worthy of Rule 8 criticism; nor worthy of immunity (see ¶31, *infra*).

11. Thus, when Defendant invoked Rule 8, Defendant was not supplying this Court with any valuable information for making a determination on Plaintiff's "short & plain" statements. No. He was only performing a formulaic recitation; using a formula that this Court has no compelling reason to approve in this case.

IV. Direct Rebuttal: Scope for Standard of Review

12. Nor is this Court in any meaningful position to hydrate the barren citations that Defendant proffered in That Motion's "Standard of review" section.

13. Those pages cited seven decisions. Two were constants (Twombly, Iqbal)[2/], while five were variables of Defendant's own implementation.[3/] An implementation, as will be shown, that failed to connect with the facts of this case.

a. The Lenbro Holding case was about a breach of contract. Plus, it suffered from an admitted statute of limitations bar.
   i. Moreover, the non-movant was granted leave to amend.
b. The James River Insurance case dealt with pollution and the breach of an insurance contract.
   i. Plus, the Eleventh Circuit vacated the dismissal.
c. Third, the Ironworkers case was about prescription drugs and fraud.
d. The Camm case was based on foreclosure and the unconstitutionality of a Florida statute. Additionally, it was an official capacity suit against an entire state agency.
   i. Of note: the Camm court dismissed it *without* prejudice.
e. Lastly, the Neitzke decision was for an IFP case. Indigent cases, of course, are subject to 28 USC §1915(e).

14. The instant case, by comparison, is not about a breach of contract. It is not about pollution, prescription drugs, fraud, foreclosures, or state legislation. Nor is it a case proceeding *in forma pauperis*; meaning that Plaintiff has

never been subject to 28 USC §1915(e) (see ¶2, *supra*). It is a case about a judge who (a) **destroyed evidence**; (b) **committed perjury**; and (c) **bribed others** to advance his unlawful violations of Plaintiff's constitutional rights.

15. Therefore, the five citations that Defendant proffered made zero connection to the instant case. Five times Zero is Zero; zero digestible content from an empty cookie-cutter. A hollow offering that this Court is well-positioned to reject.

V. Direct Rebuttal: Pro Se Attacks

16. This Court is also well-positioned to reject That Motion's attack on *pro se* litigants **[M009]**. In the section titled "Pro se appearance", Defendant listed four cases as support for dismissing this case.[4/] None of which, however, are applicable.

    a. The plaintiff in the Romine case never claimed that his constitutional rights were violated. The Romine court dismissed his complaint for that specific reason.

    b. The Campbell case was about the *Montreal Convention*, a heart attack on an international flight, and equitable tolling.

        i. Plus, the Eleventh Circuit reversed the dismissal.

c. The Loren case was a housing dispute between two private actors. The district court in that case dismissed the §1983 charge for that specific reason.

d. The Eidson case was about a residential lease agreement for a church.

   i. Importantly, the Eidson court permitted complaint amendment (ie, no dismissal-with-prejudice occurred).

17. In contrast, the instant case shares none of these material factors. Plaintiff stated that Defendant violated his constitutional rights; explicitly. In fact, That Motion recognized this distinction (¶8 *supra*, **[M006]**). The instant case does not involve international travel, the *Montreal Convention*, equitable tolling, housing discrimination, private parties, or residential lease agreements. Instead, this case is about a judge who (a) **destroyed evidence**; (b) **committed perjury**; and (c) **bribed others** to advance his unlawful violations of someone's constitutional rights.

18. Plus, half of Defendant's cited cases failed to produce the result that Defendant seeks here. Neither the Campbell case nor the Eidson case featured a dismissal-with-prejudice. Which means that Defendant is asking this Court to ingest matter that other courts have vomited.

19. Unappetizing imagery aside, none of Defendant's four proffered citations connected to the instant case. Four times Zero is Zero; zero digestible content from a boilerplate of emptiness. Another barren offering that this Court is well-positioned to reject.

VI. Direct Rebuttal: Article III Jurisdiction

20. The same can be said about That Motion's argument for dismissal on the grounds of "Article III Jurisdiction" **[M010]**. In that section, Defendant pushed seven citations onto this Court's plate for deliberations.[5/] None of which, however, added nutritional content.

    a. The Kokkonen case dealt with a breach of contract. It also featured a settlement agreement; one which was the meat & potatoes of the matter.

    b. The Lewis case dealt with banking charters, constitutionality of state laws, and mootness. In fact, the Lewis court's decision was based on the matter being moot.

    c. The Deakins case revolved around a search warrant, seized property, comity, and the plaintiff's withdrawal from his federal action.

    d. Fourth, the Firefighters case regarded a policy against badmouthing city officials. The ruling,

importantly, was based on the lack of actual/imminent harm.

e. Fifth, the ACLU case dealt with a political candidate, protected speech, and mootness.
    i. Plus, the Eleventh Circuit reversed USFLND's dismissal.
f. The Christian Coal case was based on a non-profit engaging in politics.
g. Finally, the Babbitt case was about an ambiguous state statute.

21. The *Makere v Early* case (ie, the instant case), on the other hand, does not deal with a breach of contract. Nor does it deal with a settlement agreement, banking charters, legislative constitutionality, mootness, search warrants, seized property, comity, federal withdrawal, city-wide policies on badmouthing officials, politics, protected speech, or non-profits. So, once again, That Motion has failed to make any connection to the matter at hand. A matter that is based on Judge Edward Gary Early (a) **destroying evidence**; (b) **committing perjury**; and (c) **bribing others** to advance his unlawful violations of Plaintiff Makere's constitutional rights.

22. Four times Zero is still Zero. That Motion continues to be academic only (instead of probative). An instructional piece

for teaching students the angles, triangles, and rectangles needed to build the grader's coffin.

they know what the axe brings/
they see how the axe swings/
they go out to axe things/
the pupils are axing//

And this pupil is asking this Court to chop down this Defendant's argument on Article III Jurisdiction, because it is inapplicable to the facts of this case.

VII. Direct Rebuttal: Standing

23. Plaintiff also asks this Court to reject That Motion's argument on standing **[M011]-[M015]**. Therein, Defendant erected ten citations for support; none of which sustain the weight of this case's material facts.[6/]

   a. The Linda RS case is a spousal dispute. And the ruling was based on a private citizen's desirous prosecution of another.

   b. The Jones case dealt with an undisclosed method for prisoner execution. That plaintiff failed to allege a concrete injury.

   c. The Bochese case involved residential property, land usage, and a plaintiff's desire to recover from an action that he was not party to.

   d. Fourth, the Lewis case dealt with a state law competing with a city ordinance. Moreover, the Lewis

court held that the plaintiffs should have sued a different party.

e. The Lujan case dealt with rulemaking for endangered species on foreign land.

f. The Jacobson case was about arranging political candidates on a ballot. That court held that the wrong plaintiff filed suit.

g. Seventh, the Valley Forge case dealt with the use of surplus government land. Plus, the plaintiffs never claimed personal injury.

h. The Gallardo case came next; it dealt with a Medicaid recipient who became incapacitated from a car accident.

    i. Moreover, the Gallardo court granted summary judgment to the plaintiff. The appellate court merely amended it.

i. Ninth is the Warth case; which dealt with discriminatory zoning and the legal rights of third parties. Similar to Bochese and Jacobson (*supra*), the Warth court held that the wrong plaintiff filed suit.

j. Tenth, the Socialist Workers Party case dealt with politics and an advisory opinion. Like before, this case featured the wrong plaintiff.

24. By comparison, the instant case does not involve a wrong plaintiff, a wrong defendant, or a third party. Nor does it deal with spousal prosecution, prisoner execution, residential property, land usage, city ordinances, state statutes, endangered species, political ballots, Medicaid, zoning, or advisory opinions. Moreover, none of Defendant's ten citations dealt with an administrative law judge who (a) **destroyed evidence**; (b) **committed perjury**; and/or (c) **bribed others** to violate someone's constitutional rights (1st, 5th, 7th, 14th amendment).
25. Importantly, Defendant's perjury is concrete; and it has been captured with direct evidence.
26. Importantly, Plaintiff's injuries are traceable to Defendant; because it was Defendant who broke the law.
    a. No one else intercepted the trial transcript. No one else removed a crucial transcript page.

Just Edward Gary Early.

27. Importantly, Defendant is the actor-in-state-clothing who has bribed others to continue his bidding. Defendant is also the actor who has conspired with other government officials to further his invidious discrimination against Plaintiff. Biddings & conspiracies that have ratified past perjury and proliferated new lies (to this day).

28. Importantly, Defendant can redress the injuries that he inflicted on Plaintiff. He can do this by declaring that he violated Plaintiff's constitutional rights (due process, equal protection, etc.). He can do this by paying Plaintiff for the lost time and lost wages that Plaintiff incurred due to Defendant's perjury. The Court can order him to do both. These remedies – along with others – are outlined in The Complaint.

29. As the math principle holds, Ten times Zero equals Zero. The legal principle of standing that Defendant tried to invoke did not produce anything of value. Just zeroes. Justice holds that an argument with zero value yields zero results.

30. Therefore, this Court is well-positioned to zero-out That Motion's argument on standing.

VIII. Direct Rebuttal: Judicial Immunity

31. As before, this Court is still well-positioned to reject That Motion's argument for judicial immunity (**[M015]-[M021]**). The default stance for all courts – when faced with a motion to dismiss – is to stand firm. The onus, therefore, is on the moving party. Defendant, as the moving party, pushed forth fifteen citations.[7/] None of which, however, were aimed at the position that The Complaint fixed for this case.

a. The Pierson case involved a bus boycott, police officers, and a police judge (Spencer). The Pierson court held that the plaintiffs never alleged any specific acts from the judge.
b. The Cleavinger case revolved around prison officials who were angered by an inmate's press release. Judicial immunity was rescinded, and a jury found the government officials 'guilty'.
c. Third, the Sibley case focused only on the results of an incarceration order. The Sibley plaintiff, notably, did not allege any illegal acts committed by the judge.
d. The Bolin case stemmed from a criminal conviction for a drug conspiracy. That court ruled that the plaintiff had other adequate remedies.
e. Similarly, the Lloyd case stemmed from a criminal conviction for cocaine possession. The Lloyd court held that the plaintiff failed to provide any evidence regarding the judge's improprieties.
f. Sixth, the Mireles case involved a judge who ordered two courtroom bailiffs to seize a public defender.
    i. One of the dissenting opinions, importantly, stated that ordering an assault/battery (ie, a crime) would be deemed a non-judicial act.

ii. Another dissenter said that the facts of the Mireles case were unique enough to permit trial.

g. The Hyland case alleged only vicarious liability for a subordinate clerk's document manipulation.

h. The Simmons case was based on a judge directing a trial visitor to exit the courtroom. That visitor's subsequent lawsuit maintained that the defendant judge neither (a) followed an unconstitutional law; nor (b) broke a constitutional one.

i. Ninth, the Cashion case was an attack on the results of four orders from a commercialized litigation docket.

j. The Mordkofsky citation was a reversal on appeal.

k. The Kay case was about a state judge who recused himself before resigning; thereby rendering the subsequent lawsuit moot.

l. Twelfth, the Mitchell case was about unconstitutional wiretaps.

    i. Importantly, none of the courts (trial, appellate, supreme) attached judicial immunity to the defendant.

m. The Hunter case was about an assassination attempt, qualified immunity, and summary judgment.

n. The Fuller case was a class action suit about orders to revoke drivers' licenses.

o. Lastly, the Silva case was a lawsuit against a popular singer. It was not a §1983 case.

32. By comparison, the instant case does not fail to allege "specific acts" of a judge's transgressions. Nor does it focus on the results of a judge's order(s); instead, it focuses on a judge's perjured statement. Unlike Bolin, Plaintiff does not have any alternative remedies for recouping the damages that Defendant inflicted upon him. Nor is this case suffering from a lack of evidence, directions to courtroom bailiffs, seizures, wiretaps, vicarious liability, absence of allegations of unconstitutionality, a moot point, wiretaps, drivers licenses, or a pop singer. To the contrary: the instant case revolves around a state actor who (a) **destroyed evidence**; (b) **committed perjury**; and (c) **bribed others** to violate someone's constitutional rights (1st, 5th, 7th, 14th amendment). None of Defendant's cited cases had these facts.

33. The evidence is clear; and the evidence is on the record.

34. What is also on the [appellate] record is the standard for reviewing claims of judicial immunity (highlights added):

> *"A judge is absolutely immune from a section 1983 suit for damages only for (a) judicial acts (b) for which the judge has at least a semblance of subject matter jurisdiction. See*

Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978)"

- Lerwill v. Joslin, 712 F.2d 435 (10th Cir. 1983)

Jurisprudence – via the US Supreme Court – holds that if an act is non-judicial then the judicial actor is not immune. That is the reality of the instant case.

35. Defendant's photocopying – and subsequent evidence destruction – was not a judicial act. It did not require knowledge, discretion, or judgment. Furthermore, it was normally performed by non-judges (ie, clerks, assistants).

    a. For starters, common sense obviates that scanning paper is clerical.

    b. §27.0061 FS states that court reporters are responsible for transcripts (the paper Defendant scanned).

    c. §28.13 FS goes on to say that clerks "*must maintain all papers*", and ought not "*permit an attorney or other person*" to interfere.

    d. §120.65 FS, in contrast, creates no such power for administrative law judges (ie, Defendant).

    e. In fact, DOAH itself (ie, Defendant's employer), maintains that handling paperwork is a non-judicial task.

i. 28-106.104(3) FAC states that the division clerk (ie, not judges) handle all documents received.

ii. 28-106.214(1) FAC goes further by stating that the preservation (ie, non-spoliation) of trial transcripts is not even within DOAH's jurisdiction. Rather it is up to the administrative agencies that submit cases to DOAH:

> *"Responsibility for preserving the testimony at final hearings shall be that of the agency transmitting the petition to the Division of Administrative Hearings pursuant to Sections 120.569 and 120.57, F.S.,"*

- 28-106.214(1) Florida Administrative Code

f. In practical application, public record shows that Florida appellate courts, litigants, and government staff all expect transcript handling to be completed by non-judges.[13/]

Thus, common sense, statutory authority, state regulation, and history converge to show that Defendant was not performing a judicial act when he photocopied/hid the trial transcript. None of the citations from That Motion rebut this reality. On that factor alone, judicial immunity does not attach.

36. The same can be said about the act in which Defendant perjured himself. When Defendant recited the FCHR's determination he was performing a ministerial act; one which conferred zero subject matter jurisdiction. Federal Courts say so:

> *"Federal courts do not have subject matter jurisdiction to hear Title VII claims unless the claimant explicitly files the claim in an EEOC charge or the claim can reasonably be expected to grow out of the EEOC charge."*
>
> - Abeita v TransAmerica, 159 F.3d 246 (6th Cir. 1998)

The FCHR, of course, is Florida's equivalent to the EEOC. Equally, reducing the FCHR's determination to writing is a ministerial act:

> *"the judge retains the authority to perform the ministerial act of reducing that ruling to writing."*
>
> - Fischer v. Knuck, 497 So.2d 240 (Fla. 1986)

Ministerial acts, of course, are non-judicial. In Ex Parte Virginia, the US Supreme Court stated that these two acts are mutually exclusive (highlights added):

> *"In such cases, it surely is not a judicial act, in any such sense as is contended for here. It is merely a ministerial act..."*
>
> - Ex Parte Virginia, 100 US 339

37. In the Fuller v Truncale, 50 So.3d 110 (2011) case which Defendant cited, Florida's Supreme Court held that judicial immunity does not attach to ministerial acts:

> *"A judge's act may be viewed as "judicial" unless the conduct in question was purely ministerial. Ministerial acts "involve[] obedience to instructions or laws instead of discretion, judgment, or skill."*

- Fuller v Truncale, 50 So.3d 110 (2011)

Thus, controlling authority shows that Defendant's ministerial recitation of the FCHR's determination was a non-judicial act. Instead, controlling authority holds that it was a ministerial task; requiring no judgment; no discretion. None of the citations from That Motion rebut this reality. On that factor alone, Defendant is not entitled to judicial immunity for the act in which he perjured himself.

38. Third, the bribery that Defendant engaged in was of pure illegality. Ex Parte Young holds that judicial immunity does not protect illegal acts (highlights added):

> *"If the act which the [state officer] seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."*

- Ex Parte Young, 209 US 123 (1908)

39. Moreover, judicial immunity was rejected in three of the cases that Defendant cited. The Cleavinger defendants faced trial and lost. Mordkofsky's dismissal got reversed. And all of the Mitchell courts refused to attach judicial immunity.

40. So, the math has not changed; Fifteen times Zero is still Zero. The fifteen '*judicial immunity*' decisions from That Motion fall short.

41. What will run long – and eternal – are the specific facts of Defendant's unlawful conduct. Evidence exists to show that Defendant removed a transcript page in violation of state law (§918 FS). Evidence exists to show that he committed perjury (§837 FS). Evidence also exists to show Defendant's commission of bribery (§838 FS).

42. What does not exist, on the other hand, is any connection between That Motion's '*judicial immunity*' argument and the facts of this case. Thus, good reason exists for this Court to reject it.

IX. Direct Rebuttal: Failure to State a Claim

43. Defendant's incalculable arguments continue in the section he titled "Failure to State a Claim" **[M021]-[M023]**. Those pages featured only one citation (Micro v. Shabanett, 878 F.3d 1291 (11th Cir. 2018)). A case which dealt with a shotgun pleading. A case, also, that saw its dismissal get remanded.

44. Plaintiff's case does not feature a shotgun pleading. And contrary to what That Motion claimed, The Complaint seeks injunctive relief to prevent Defendant – and Defendant's co-conspirators **[C044]-[C051]** – from continuing to violate Plaintiff's constitutional rights:

> *"89. WHEREFORE Plaintiff [seeks] an Order…*
> *d. Enjoining Defendant from committing further violations of §1983;*
> *e. Enjoining Defendant from committing further violations of §1985"*
>
> – **[C089]**

Thus, Defendant's argument is contradicted by the very record it has attacked.

45. Recorded math holds that One times None is None. And 'none' is the value that That Motion's '*failure to state a claim*' argument has in Defendant's quest for dismissal. And 'none' is also the consideration that this Court is well-positioned to give it.

X. <u>Direct Rebuttal: Sovereign Immunity</u>

46. The next section of That Motion was titled "Sovereign immunity bar' **[M023]-[M027]**. Where Defendant put considerable effort into a 19-citation argument. None of Defendant's citations, though, are worthy of analysis here, because the entire argument is based on a false notion.

47. At page 25, Defendant claimed that he is being sued in his **official capacity**:

> *"Plaintiff sues [Defendant] Early in his official capacity, and in essence, the claims against [Defendant] Early are claims against the State of Florida precluded by [sovereign immunity]..."*

– **[M025]**

48. **That statement, of course, is false.** Plaintiff is suing Defendant in Defendant's **individual capacity <u>only</u>**. The Complaint – in a section titled "Individual Capacity" – detailed how/why (underlines in original):

> *"80. Defendant is being sued in his <u>individual capacity only</u>. His misconduct & illegalities do not compute back to the state. This is the case because Florida expressly prohibited his actions (ie, evidence destruction, perjury, bribery).*
>
> *...*
>
> *83. Since the [people of Florida] never granted Defendant the power to commit such acts, the [people of Florida] cannot be held responsible for resolving them."*

– **[C080]-[C083]**

49. Defendant – at Page 7 of That Motion – even acknowledged this fact:

> *"Plaintiff sues [Defendant] Early only in an individual capacity. [ECF 26 at 22, 23]"*

– **[M007]**

Thus, Defendant knew he was making a false statement.

50. **Defendant lied (again)**.

51. Synopsis: Defendant got sued for lying; and – in his very first pleading – lied again. Then he based his entire '*sovereign immunity*' argument on that lie (a lá April 2019).

52. On March 28, 2022, Plaintiff asked Defendant to rescind his lie (pursuant to Rule 11(c) Fed. R. Civ. P., Rule 1 Fed. R. Civ. P., etc.). Defendant, however, refused to do so; characterizing these facts as "*subjective*" and "*speculative*".
    a. When Plaintiff followed up via phone, Defendant acknowledged that the facts revealed Defendant saying "*official capacity*" on page 25 and "*only in an individual capacity*" on page 7.

53. So, Defendant's whole argument was a contradicted zero. The nineteen citations therein were also zeroes.
    a. Suffice to say that his cited cases ranged from: inapplicable state laws, respondeat superior, and car accidents; to: traffic fines, taxes, and the Dictionary Act.

54. Zero multiplied by Nineteen-times-Zero is still Zero (0•(19 x 0) = 0). The copy & paste formula that Defendant used yielded nothing, because it was based on a lie.

55. Based on Judicial Estoppel, Rule 11(c), and common sense, this Court is well-positioned to strike, sanction, and/or

rebuke Defendant's "*sovereign immunity*" argument. And Plaintiff hereby asks that it does.

XI. <u>Direct Rebuttal: Injunctive Relief</u>

56. Likewise, Plaintiff asks this Court to reject That Motion's argument on injunctive relief **[M027]**. In that section, Defendant injected two citations as lifeblood; neither of which carried any oxygen to his argument.[8/]
    a. The <u>Abbott</u> case dealt with drug labeling, statutes, and regulations.
    b. The <u>Califano</u> case revolved around disability benefits.
57. By comparison, the instant case does not involve drug labeling, statutes, regulations, or disability benefits. In fact, there are no similarities between Plaintiff's case and either of Defendant's two cases. Neither of which dealt with a judge who (a) **destroyed evidence**; (b) **committed perjury**; and/or (c) **bribed others** to violate someone's constitutional rights (1st, 5th, 7th, 14th amendment).
58. Importantly, Defendant is being sued for continuing his illegal conduct to this day; via a conspiracy with other public/private actors. A conspiracy that shares the same DNA as the Ku Klux Klan's.

a. A discriminatory organization long-dedicated to infringing the rights of black people (and black men in particular).

59. A conspiracy, importantly, that featured a clear-cut act of illegality: perjury.

60. To be even clearer, Defendant Edward Gary Early:

a. conspired with others (eg, Martin Fitzpatrick, etc.);

b. aimed that conspiracy at depriving black people equal protections of the law (directly and indirectly);

c. furthered that motive with an unlawful act (perjury - §837); and

d. injured Plaintiff.

61. The injunctive relief that Plaintiff requested in The Complaint was to enjoin "*Defendant from committing further violations*" that violate Plaintiff's rights. Nothing in Defendant's argument changes this fact.

62. And nothing in human logic changes the fact that Two times Zero is Zero. And zero is the amount of life that Defendant's citations resurrected into his asphyxiated argument. Asphyxiated by the facts of this case.

63. Given that this Court cannot breathe life into Defendant's plea, Plaintiff hereby asks that it reject doing so.

XII. **Direct Rebuttal: Qualified Immunity**

64. Similarly, this Court is also in no position to resurrect Defendant's immunity argument; this time in the *zombied* form of qualified immunity **[M028]**. In That Motion's section, Defendant summoned two citations for his bloodthirsty attack.[9/] Neither of which, however, can sink fangs into the facts of this case.

    a. The Thrower case dealt with prison visitors and prison guards.

    b. The Harlow case revolved around President Nixon and his cabinet.

65. By comparison, the instant case does not involve prison visitors or prison guards. Nor does it involve presidents or presidential aides. So, once again, Defendant cited cases with no similarity to Plaintiff's case. Neither case dealt with a judge who (a) **destroyed evidence**; (b) **committed perjury**; and/or (c) **bribed others** to violate someone's constitutional rights (1st, 5th, 7th, 14th amendment).

66. Moreover, none of Defendant Early's similarly-situated comparators (ie, DOAH ALJs) would have been empowered to commit those acts.

    a. Defendant's destruction of evidence stemmed from handling a transcript two months after trial; a non-

judicial act. One that normally is *not* performed by DOAH ALJs (eg, by clerks, by assistants, etc.).

b. Defendant's perjury stemmed from his "Statement of the Issue". A statement which multiple DOAH ALJs – including Defendant himself – have asserted is issued *ministerially*. Ministerial acts, of course, are non-judicial acts (highlights added):

> *"A judge's act may be viewed as "judicial" unless the conduct in question was purely ministerial. Ministerial acts "involve[] obedience to instructions or laws instead of discretion, judgment, or skill."*

- Fuller v. Truncale, 50 So. 3d 110 (Fla. 2011)

c. Plus, Defendant's bribery and conspiratorial bane have origins of pure illegality. Illegality prohibited by statute (§838 FS), by the US Code of Judicial Conduct (Canon 2C), and by the Florida Code of Judicial Conduct (Canon 2C).

67. Thus, That Motion's argument for qualified immunity was dead on arrival. And neither one of Defendant's citations could bring it back to life.

68. Nor can any amount of sorcery make Two times Zero become anything besides Zero. And besides zero is an equal sign adjacent to Defendant's qualified immunity plea (*0 = qualified immunity*).

69. Therefore, this Court is equally positioned to leave that argument in the graveyard from which it came.

XIII. Direct Rebuttal: Attorney Fees

70. In a nearby ditch – of That Motion's cemetery for lifeless arguments – lies Defendant's protest on attorney fees **[M028]-[M029]**. In a section titled "No attorney's fees", Defendant glued together five citations for prohibition.[10/] Five citations, however, which only formed the air-seeping walls & floors of his argument's coffin.

    a. The Kay case was about a lawyer who sued *pro se* then sought legal fees.

    b. The Celeste, Cofield, Stephens, and Price cases all involved *pro se* litigants attempting to recover legal fees for their self-representation.

        i. Importantly, the Cofield court explained that 42 USC §1988 was designed to entice attorneys to represent civil rights litigants.

        ii. Notably, the Cofield dissent declared that §1988 allows legal fees to be paid to *pro se* parties.

71. By comparison, Plaintiff – in the instant case – does not seek legal fees for self-representation (highlights added):

> *"87. Plaintiff may retain attorneys to represent him in prosecuting this action and if so will be obligated to pay them a reasonable fee for their services.*

a. Pursuant to 42 USC §1988, Plaintiff is entitled to request that the Court allow him to recover his reasonable attorney's fees incurred in successfully prosecuting this cause, should he retain an attorney."

- [C087]

72. Instead, Plaintiff will only seek attorney fees if-and-only-if he retains an attorney **[C087a]**.

73. Therefore, That Motion's protest against *pro se* attorney fees is based on a false notion. So, similar to Defendant's defunct argument on sovereign immunity (¶46), this argument – based on a false premise – is zeroed out from its root.

74. Let there be zero doubt that Defendant's five citations built him a zero-top, open-air coffin; soiling his argument's fate.

as Spring springs forth April and May/
may the Earth from above rest where it may/
and may the court from above put a rest to debate:/
attorney fees are for attorneys, even Pro Se had that say//

   a. Zero times Five-times-Zero is Zero (0•(5 x 0) = 0).

75. And may this lower Court moot out Defendant's attorney fee self-protest.

XIV. <u>Direct Rebuttal: Punitive Damages/Prejudgment Interest</u>

76. Likewise, may this Court find that Defendant's subsequent argument against punitive damages/prejudgment interest to be a moot point as well **[M029]-[M031]**. In That Motion's "Punitive damages or prejudgment interest" section, Defendant turned

the volume up six notches with six more citations.[11/] Six citations which offered nothing but noise.

a. The Smith court iterated that punitive damages are available to §1983 actions.

b. As did the Fletcher court.

    i. Fletcher also distinguished treatment under §768 FS.

c. The Hewett court took it a step further by remanding for the calculation of punitive damages.

d. The Berek, Marcus, and Wilson courts centered their decisions on §768.28 FS; a state law.

77. By comparison, the instant case does not involve §768 FS; thereby rendering Defendant's last three citations as noise worthy of being muted. Defendant's first three citations, by contrast, explain that punitive damages ***are*** available under §1983; thereby rendering Defendant's argument a moot point.

78. Moreover, neither §1983 nor §1985 place any conditions/restrictions on prejudgment interest. Revealing that Defendant's assertion was worse than boilerplate, it was bare, conclusory contention.

79. In short, Defendant made a lot of noise about nothing when it argued against punitive damages. May this Court hit the mute button on that section; and may this Court also hit the

calculate button on Defendant's formulaic recitation. A calculation that will display the number zero.

a. Six citations times Zero value equals Zero value.

80. And zero value is what this Court is well-positioned to attribute to That Motion's argument against punitive damages/prejudgment interest.

XV. Direct Rebuttal: Amendment

81. May this Court also assign zero value to Defendant's argument on futile amendment **[M032]**. That Motion went to sub-zero extremes to put a preemptive freeze on any potential amendments; citing two iced cases for support.[12/]

a. The Hollis case was about a company's internal dissemination of an employee's final four SSN digits.

b. The Henry case was about an inmate declaring sovereign citizenship as justification for release.

82. By comparison, the instant case does not involve SSN dissemination. Nor does it have anything to do with sovereign citizenship (or prison release). There are no similarities between Plaintiff's action and the two actions that Defendant cited. The cold hard facts of Plaintiff's case encompass a judge who (a) **destroyed evidence**; (b) **committed perjury**; and (c) **bribed others** to violate someone's constitutional rights (1st, 5th, 7th, 14th amendment).

83. In short, what Defendant did was cite two mercurial cases that failed to raise the millimeters needed to match the heat of Plaintiff's case. Defendant's formula equates to nothing.

    a. Two iced citations times Zero equals Zero.

84. Thus, this Court can assign zero degrees of validity to the degree-of-emptiness that Defendant sank into his "*futile amendment*" argument.

XVI. Direct Rebuttal: Spurious, Impertinent, Scandalous

85. What is also sunk is the battleship that Defendant floated onto That Motion's 31st coordinate **[M031]**. Therein, Defendant claimed that Plaintiff's allegations against [soon-to-be-defendant] Martin Fitzpatrick were "spurious, impertinent, and scandalous".[14/]

86. To the contrary, Mr. Fitzpatrick's collaboration in abridging Plaintiff's constitutional rights is concrete. Plaintiff has witnessed Mr. Fitzpatrick engage in invidious discrimination – against black men in particular. A demographic that Plaintiff belongs.

> *"a. Defendant has exhibited a devotion to the unconstitutional rituals of the Ku Klux Klan. Namely, the Klan's practice of subverting the constitutional rights of black people (and black men in particular)."*

– **[C043a]**

87. Mr. Fitzpatrick has also exhibited an anti-black devotion to the unconstitutional rituals of the *Ku Klux Klan*.

   a. It was Mr. Fitzpatrick who stratified two classes of government petitioners:

      i. one class worthy of common access to the Court;

      ii. another destined for unequal hardships.

   It was Mr. Fitzpatrick who assigned Plaintiff to that second class; thereby violating Plaintiff's 14th amendment rights.

   b. It was Mr. Fitzpatrick who – upon rendering Plaintiff a second-class litigant – breached his own authority to abridge Plaintiff's 1st amendment rights.

   c. It was Mr. Fitzpatrick who misrepresented his own words to effectuate that infringement.

   d. It was Mr. Fitzpatrick, **crucially**, who **predetermined** all of these injurious acts via his *klan*-like pact with Defendant.

Quite simply, Mr. Fitzpatrick conspired with Defendant to violate Plaintiff's constitutional rights. Then he carried out his anti-black agenda.

88. Thematically, Mr. Fitzpatrick shares an oar with Defendant Early. They row the same anti-black boat. And their anti-black devotion is what makes their boat float. The facts reveal it.

89. Mr. Walker – another soon-to-be-defendant – oars, steers, and captains that same boat.[14/] And Plaintiff seeks injunctive relief from the boatmen's discriminatorily-fueled voyage:

> *"Plaintiff reserves the right to amend his pleadings to assert a claim for punitive damages against Defendant (as well as to add other defendants – [[C044]], [[C045]])"*

– **[C086]**

90. It is also important to note that That Motion failed to specify <u>what</u> was "spurious", "impertinent", or "scandalous". It neither cited any decisions nor supplied any affidavits to that effect. Thus, it was just another one of Defendant's conclusory labels.

    a. 0 proof with 0 value equals 0 argument.

91. Nevertheless, the facts are the facts, Defendant Early:

    a. **destroyed evidence**;

    b. **committed perjury**; and

    c. **bribed others** to violate Plaintiff's constitutional rights (1st, 5th, 7th, 14th amendment).

92. This Court can play neither vessel nor sea to the feelings that Defendant shallowed its way. Feelings which have been drowned by the facts of this case. Therefore, Defendant's claim of 'scandalous material' must lay shipwrecked at bay.

XVII. Summary of Direct Rebuttals

93. Altogether, Defendant made eight arguments and one claim; invoking 80 citations along the way. His sole claim was empty ("*spurious...*"); one argument was moot ("*punitive damages*"); another was judicially estopped ("*sovereign immunity*"); and the remaining six failed to meet the material facts of this case. Facts about a judge who (a) **destroyed evidence**; (b) **committed perjury**; and (c) **bribed others** to violate someone's constitutional rights (1st, 5th, 7th, 14th amendment).

94. Moreover, none of the 80 citations featured any of those three central facts. Meaning that – despite all of his formulas and formulaic recitations – Defendant failed to show that Plaintiff "*can prove no set of facts*" to justify relief. A necessary proof; as quoted in a different Defendant citation (see ¶4, *supra*):

> *"A complaint should not be dismissed for failure to state a claim unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts that would entitle him or her to relief."*
>
> \- Eidson v. Arenas, 910 F. Supp. 609 (USFLMD 1995)

$$(80 \times 0 = 0)$$

Eighty times Zero is still Zero

95. These numbers prove fatal to Defendant's motion.

XVIII. Legal Standard | Plaintiff's Argument Against Dismissal

96. Although Defendant's motion is dead letter, Plaintiff will hereby present why Plaintiff's complaint is alive & well. A complaint which Defendant attacked via Rule 12(b)(6) Fed. R. Civ. P. **[M001]**.

97. History shows that this Court has a well-established method for resolving 12(b)(6) motions to dismiss.

98. To start out, the Court's review is limited to the "four corners" of the complaint (highlights added):

> *"The scope of review must be limited to the four corners of the complaint" and attached exhibits. St. George v. Pinellas County, 285 F.3d 1334, 1337 (11th Cir. 2002).""*
>
> \- Braun v TD Bank | 8:20-cv-02951 | 3/23/21
>
> *"In considering the motion, courts should limit their "consideration to the well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed." La Grasta v. First Union Sec., Inc., 358 F.3d 840, 845 (11th Cir. 2004) (citation omitted)."*
>
> \- Parkhurst v Hiring 4 U, Inc. | 2:19-cv-00863 | 9/29/20

99. Then, the Court looks to see if a complaint satisfies the requirements set out in Rule 8(a)(2) Fed. R. Civ. P. (highlights added):

"The Federal Rules of Civil Procedure require a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The rules also require plaintiffs to set out their claims in separate, numbered paragraphs, "each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b).""

- Parkhurst v Hiring 4 U, Inc. | 2:19-cv-00863 | 9/29/20

100. Third, USFLND judges look to see if a complaint contains sufficient facts (highlights added):

"To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient facts to state a claim that is "plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff need not recite "detailed factual allegations," but must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Id. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Id. (quoting Twombly, 550 U.S. at 555).

- CRM v GM| 8:20-cv-00762 | 3/10/21 | USFLMD

101. In performing this examination, the judges lend all deference to the non-movant (highlights added):

"Likewise, the Court must accept all factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Pielage v. McConnell, 516 F.3d 1282, 1284 (11th Cir. 2008) (citation omitted). But the Court "need not accept factual claims that are internally inconsistent; facts which run counter to facts of which the court can take judicial notice;"

- Parkhurst v Hiring 4 U, Inc. | 2:19-cv-00863 | 9/29/20

102. Importantly, the factual allegations must be "plausible"; which is defined as follows:

"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." Id.""

- CRM v GM| 8:20-cv-00762 | 3/10/21 | USFLMD

103. Plus, the Court must afford leeway to laymen:

"The pleadings of pro se litigants are "liberally construed" and held to a less exacting standard as those complaints drafted by attorneys. Tannenbaum v Untied States, 148 F. 3d 1262, 1263 (11th Cir. 1998). "However, a pro se litigant must still meet minimal pleading standards." Pugh v Farmers Home Admin., 846 F. Supp. 60, 61 (MD Fla. 1994) (citation omitted). And the courts are not tasked with drafting or rewriting a complaint to locate a claim. Peterson v Atlanta Hous. Auth., 998 F. 2d 904 (11th Cir. 1993)"

- Daley v Florida Blue | 2:20-cv-00156 | 12/8/20 | USFLMD

104. Similarly, this Court stresses that motions to dismiss must be confined to the legal sufficiency of the complaint (highlights added):

> "*[A] motion to dismiss should concern only the complaint's legal sufficiency, and is not a procedure for resolving factual questions or addressing the merits of the case." Am. Int'l Specialty Lines Ins. Co. v. Mosaic Fertilizer, LLC, 8:09-cv-1264-T-26TGW, 2009 WL 10671157, at *2 (M.D. Fla. Oct. 9, 2009) (Lazzara, J.)."*

- Johnson v Nocco, et al | 8:20-cv-01370 | 2/18/21

XIX. Analysis

105. Altogether, a methodical review of a 12(b)(6) motion to dismiss encompasses:

   a. Looking only at the "*four corners of the complaint*";

   b. Checking the complaint against Rule 8(a) Fed. R. Civ. P.;

   c. Determining whether it has sufficient facts;

   d. Construing all facts as true;

   e. Concluding that the claims are plausible; and

   f. Double-checking against impropriety.

a. Four Corners of the Complaint

106. In the instant matter, the '*four corners of the complaint*' include (i) The Complaint (with all 9 exhibits); (ii) That Motion (with 0 exhibits); (iii) 10 judicially noticed records;[13/] and (iii) this filing (with 1 affidavit).

b. Short & Plain Statements

107. The Complaint – although detailed – still contained short & plain statements describing Defendant's culpability **[C048]-[C051]:**

> *"48. Defendant broke the law in his quest to deny Plaintiff relief. Defendant:*
> *a.* ***hid evidence*** *(see ¶18-21);*
> *b.* ***committed perjury*** *(see ¶22-38); and*
> *c. bequested/****bribed others*** *to further his crimes (¶39-47)."*
>
> **- [C048]**

> *"51. Thereafter, Defendant rallied his companions-of-the-cloth to ratify his lies & obstructions. Altogether, Defendant violated Plaintiff's 1st, 5th, 7th, and 14th amendment rights... His companions, among others, were Martin Fitzpatrick (another Tallahassee judge) and Mark Walker (another Tallahassee-based judge)."*
>
> **- [C051]**

As such, Plaintiff has satisfied element "b" for denial of That Motion.

c. Sufficient Facts

108. Notably, The Complaint had 89 numbered paragraphs. Many of which had subparts. None of which were redundant.

    a. This assertion of non-redundancy is buoyed by two things:

        i. Plaintiff's active statement that The Complaint was neither "*redundant, immaterial, impertinent, or scandalous*" in any respects (Rule 12(f) Fed. R. Civ. P.); and

        ii. The Certificate of Good Faith contained therein **[C026]**.

109. Put together, the four corners of Plaintiff's complaint had details that were sufficiently in-depth.

110. Notably, The Complaint covered an **evidence destruction** charge (§918 FS), a **perjury** charge (§837 FS), and a **bribery** charge (§838 FS). Three charges that Defendant failed to defeat with any case law or precedent. In other words, Plaintiff pled a set of facts – from those three charges at least – that he can prove at trial.

111. According to the Eleventh Circuit, dismissal would be improper for this reason alone:

"Dismissal is not appropriate unless it is plain that the plaintiff can prove no set of facts that would support the claims in the complaint."

\- Next Century v Ellis, 318 F. 3d 1023 (11th Cir. 2003)

112. Thus, Plaintiff has objectively satisfied element "c" in the multi-step analysis for denying That Motion.

d. Construing All Facts as True

113. For the purposes of evaluating That Motion's attempt to dismiss Plaintiff's cause of action, this Court must accept The Complaint's 45 factual allegations as true (**[C007-C051]**).

114. Pertinently, the following facts operate:

   a. Defendant destroyed evidence;
   b. Defendant committed perjury;
   c. Defendant bribed others to further his crimes;
   d. Defendant was infused with invidious discrimination for black men who assert their constitutional/statutory rights;
   e. Defendant was not performing a judicial act when he destroyed evidence – he was performing an administrative one;

f. Defendant was not performing a judicial act when he committed perjury – he was performing a ministerial one;

g. Defendant's illegal acts were prohibited by state law;

h. Defendant knew his acts were prohibited;

i. Defendant carried out his illegal acts & conspiracies to violate Plaintiff's constitutional rights to (1) access the courts; (2) a trial-by-jury; (3) due process; and (4) equal protection (1st, 5th, 7th, 14th amendment of the US Constitution).

e. Plausibility

115. Now, this analysis turns to the plausibility of these facts.

116. Generally, "*A claim is facially plausible when a court can draw a reasonable inference, based on facts pled, that the opposing party is liable for the alleged misconduct. See Iqbal, 556 U.S. at 678.*"

117. USFLMD – in Strange-Gaines v Jacksonville, 3:20-cv-00056 (1/26/21) – further set out the "*two-pronged approach*" for determining plausibility:

> *"When applying the plausibility standard, a court should undertake a "two-pronged approach." [Iqbal]. First, the court should identify and disregard legal conclusions not entitled to the assumption of truth. Id. Second, the court should identify and assume the truth of well-pleaded factual allegations and "determine whether they plausibly give rise to an entitlement to relief." Id. An example of a legal conclusion is, "the defendant was negligent." An example of a factual allegation is, "the defendant was driving 90 m.p.h. on a road with a speed limit of 45 m.p.h.""*

- Strange-Gaines | 3:20-cv-00056 | 1/26/21 | USFLMD

118. First, this Court must discard any legal conclusions masquerading as facts. Plaintiff hereby states that the fundamental fact (ie, '*Defendant committed perjury to violate Plaintiff's constitutional rights*') is a stone-cold, verifiable fact.

119. Thus, Plaintiff has satisfied the first prong in the two-pronged plausibility test.

120. Next, this Court should determine whether Plaintiff's *well-pleaded* facts rise to an entitlement of relief. The very example that USFLMD gave fits Plaintiff's circumstances well.

> *"An example of a [plausible fact entitled to relief], "the defendant was driving 90 m.p.h. on a road with a speed limit of 45 m.p.h.""*

- Strange-Gaines | 3:20-cv-00056 | 1/26/21 | USFLMD

121. As previously detailed, Defendant (a) **destroyed evidence**; (b) **committed perjury**; and (c) **bribed others** in order to violate Plaintiff's constitutional rights.

122. Thus, Plaintiff has passed the second prong in the plausibility test. And as such, he has satisfied element "e" in the overarching analysis for denying That Motion.

f. Double-Check Against Impropriety

123. Lastly, the analysis must safeguard against injecting impropriety into the review (highlights added):

> *"The pleading standard should not be confused with the evidentiary standard; detailing all evidence in a pleading or attaching evidence to a pleading could run afoul of the "short and plain statement" requirement. Presenting arguments and all evidence in a complaint generally is improper."*

- Strange-Gaines | 3:20-cv-00056 | 1/26/21 | USFLMD

124. In other words, this Court has deemed it improper for a *motion to dismiss* to apply an evidentiary standard. A standard from Rule 56 (motions for summary judgment).

125. Pursuant to Donaldson v. Clark, 819 F. 2d 1551 (11th Cir. 1987), any conversion of a Rule 12 motion into a Rule 56 motion must be formally noticed (which has not happened in the instant case).

126. As the controlling law in Twombly holds, the four corners of Plaintiff's complaint need only raise the inference that discovery will reveal evidence:

> *"While the facts need not be detailed, they must "raise a reasonable expectation that discovery will reveal evidence" for the plaintiff's claim. Twombly, 550 US at 556"*

- Cooper v Murphy | 2:18-cv-00675 | 11/6/20 | USFLMD

Quite simply, a deposition – among other things – will probably result in Defendant admitting his crimes.

127. Plus, Defendant cannot dismiss Plaintiff's request for declaratory relief. As the record shows, "Plaintiff seeks declaratory relief..." **[C002]**.

128. Public record also shows that Plaintiff has another federal lawsuit which – due to Defendant's misconduct – continues to this day **[C038]**.

    a. A case that has featured a *Motion in Limine* for the express purpose of striking Defendant's perjured material.

b. A case that will be impacted by declaratory relief against Defendant.

129. Case Law empowers this Court to deny on that ground (highlights added):

> *"To meet the requirements of the Declaratory Judgment Act there must be a "case of actual controversy", as the Constitution requires for any invocation of federal judicial authority... The case must be "of sufficient immediacy and reality" to warrant declaratory relief."*

- Genentech v. Eli Lilly, 998 F.2d 931 (Fed. Cir. 1993)

In the instant case, Plaintiff satisfies all requirements set out in Genentech. He has an 'actual case' that is being 'immediately' litigated in 'real life'.

130. Dismissal is rendered improper once that criteria gets met:

> *"When there is an actual controversy and a declaratory judgment would settle the legal relations in dispute and afford relief from uncertainty or insecurity, in the usual circumstance the declaratory action is not subject to dismissal."*

- Genentech v. Eli Lilly, 998 F.2d 931 (Fed. Cir. 1993)

131. So, upon double-checking for impropriety, Plaintiff has placed the final piece of the 12(b)(6) review standard squarely onto the pile for motion denials.

132. Moreover, this 12(b)(6) analysis operates the same for Rule 12(b)(1) motions:

> *"Rule 12(b)(1) authorizes a motion to dismiss an action if the court lacks subject matter jurisdiction. Such challenges can be asserted on either facial or factual grounds. Morrison v. Amway Corp., 323 F.3d 920, 925 n. 5 (11th Cir.2003)."*
>
> *"Facial challenges to subject matter jurisdiction are based solely on the allegations in the complaint. When considering such challenges, the court must, as with a Rule 12(b)(6) motion, take the complaint's allegations as true. However, where a defendant raises a factual attack on subject matter jurisdiction, the district court may consider extrinsic evidence such as deposition testimony and affidavits."*

- Camm v Scott, 834 F. Supp. 2d 1342

133. Thus, all of the shields that Defendant raised have fallen to pieces upon experiencing the factual force of the same piercing sword. A shield which came from Defendant's factory of formulaic recitations and conclusory labels. Reinforced with zero factual/precedential support.

...

$$\cdots \frac{\pi}{6} + \frac{\pi}{3} + \frac{\pi}{2} \cdots$$

...roofed up at angles from varying decrees/
with arcs adding up to one-hundred eighty degrees/

subtracting from this Court; placed beneath Defendant's seat/
where his lies lie as the jury eats, sees, and speaks/

"hear ye, hear ye"/
is how they'll eulogize his deeds//

π

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to deny *"Defendant Judge Early's Motion to Dismiss and Strike"*, because Plaintiff has submitted a well-pled set of factual elements pointing to Defendant's constitutionally-violative conduct.

Dated this 28th day of March 2022.

Respectfully submitted,

/s/ Elias Makere
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Get ***Booked Up*** on Justice!

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New (contents); thus complying with the font requirements of Local Rule 5.1(C) USFLND. Also, pursuant to Local Rule 7.1(F), this document has less than 8,000 words (6,911).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this __ day of April 2022, I mailed the foregoing (via FedEx) to the Clerk of Courts. Which will send an electronic copy to the people on the attached service list.

/s/ Elias Makere

Electronic Copy: (text-searchable)

TextBookDiscrimination.Com/Files/USFLND/21000096_GRSP_20220328_221344.pdf

TextBookDiscrimination.Com/Info/Misc/ALJPerjury/ResponseDismiss01.html

Link to Complaint (HTML, PDF, Video)

Endnotes:

[1] "*Plaintiff's Verified Civil Complaint (Amended)*" (filed on-or-around 12/31/21).

[2]
Bell Atl. v. Twombly, 550 US 544 (2007)
Ashcroft v. Iqbal, 556 US 662 (2009)

[3]
Lenbro Holding Inc. v. Falic, 503 F. App'x 906 (11th Cir. 2013)
James River Ins. v. Ground Down, 540 F.3d 1270 (11th Cir. 2008)
Ironworkers v. AstraZeneca, 634 F.3d 1352 (11th Cir. 2011)
Camm v. Scott, 834 F. Supp. 2d 1342
Neitzke v. Williams, 490 US 319 (1989)

[4]
Romine v. Athens Clarke County, 774 F. App'x 620 (11th Cir. 2019)
Campbell v. Air Jamaica, 760 F.3d 1165
Loren v. Sasser, 309 F.3d 1296 (11th Cir. 2002)
Eidson v. Arenas, 910 F. Supp. 609 (USFLMD, 1995)

[5]
Kokkonen v. Guardian Life, 511 US 375 (1994)
Lewis v. Cont'l, 494 US 472 (1990)
Deakins v. Monaghan, 484 US 193 (1988)
Firefighters v. Hallandale, 922 F.2d 756 (11th Cir. 1991)
ACLU v. Fla. Bar, 999 F.2d 1486 (11th Cir. 1993)
Christian Coal v. US, 662 F.3d 1182 (11th Cir. 2011)
Babbitt v. United Farm Workers National Union, 442 US 289 (1979)

[6]
Linda RS v. Richard D., 410 US 614 (1973)
Jones v. Comm of GA, 811 F. 3d 1288 (11th Cir.)
Bochese v. Town of Ponce Inlet, 405 F. 3d 964 (11th Cir.)
Lewis v. Governor of AL, 944 F.3d 1287 (11th. Cir. 2019)
Lujan v. Def of Wildlife, 504 US 555 (1992)
Jacobson v. Fla Sec of State, 974 F.3d 1236 (11th Cir. 2020)
Valley Forge Christian College v. AM United Separation, 454 US 464 (1982)
Gallardo v. Senior, 2017 WL 3081816 (USFLND 7/18/17)
Warth v. Seldin, 422 US 490 (1975)
Socialist Workers Party v. Leahy, 145 F.3d 1240 (11th Cir. 1998)

[7]
Pierson v. Ray, 356 US 547 (1967)
Cleavinger v. Saxner, 474 US 193 (1985)
Sibley v. Lando, 437 F. 3d 1067 (11th Cir. 2005)
Bolin v. Story, 225 F. 3d 1234 (11th Cir. 2000)
Lloyd v. Foster, 298 F. App'x 836 (11th Cir. 2008)
Mireles v. Waco, 502 US 9 (1991)
Hyland v. Kolhage, 267 F. Appp'x 836 (11th Cir.)
Simmons v. Conger, 86 F. 3d 1080 (11th Cir. 1996)
Cashion v. Vance, 552 F. App'x 884 (11th Cir. 2014)
Mordkofsky v. Calabresi, 159 F. App'x 938 (11th Cir. 2005)
Kay v. Erskine, 710 So. 2d 751 (Fla. 4th DCA 1998)
Mitchell v. Forsyth, 471 US 511 (1985)
Hunter v. Bryant, 502 US 224 (1991)
Fuller v. Truncale, 50 So. 3d 110 (Fla. 2011)
Silva v. Swift, 2020 WL 3287884 (USFLND 6/18/20)

[8]

Abbott v. Gardner, 387 US 136 (1967)
Califano v. Sanders, 430 US 99 (1977)

[9]

Thrower v. Ziegler, 514 F. App'x 941 (11th Cir. 2013)
Harlow v. Fitzgerald, 457 US 800 (1982)

[10]

Kay v. Ehrler, 499 US 432 (1991)
Cofield v. Atlanta, 648 F. 2d 986 (5th Cir. 1981)
Celeste v. Sullivan, 988 F. 2d 1069 (11th Cir. 1992)
Stephens v. US Postal Serv., 2006 WL 2729654 (USFLMD 9/25/06)
Price v. Tyler, 890 So. 2d 246 (Fla. 2004)

[11]

Fletcher v. State of Florida, 858 F. Supp. 169 (USFLMD 1994)
Smith v. Wade, 461 US 30 (1983 8th Cir.)
Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986)
Berek v. Metro Dade, 396 So. 2d 756 (3d DCA 1981)
Marcus v. Carrasquillo, 782 F. Supp 593 (USFLMD 1992)
Wilson v. Edenfield, 968 F. Supp. 681 (USFLMD 1997)

[12]

Hollis v. W. Acad Charter, 782 F. App'x 951 (11th Cir. 2019)
Henry v. Fernandez-Fundle, 773 F. App'x 596 (11th Cir. 2019)

[13] see Attachments E-H in "*Plaintiff's Motion for Judicial Notice of Ten (10) Pertinent Records"* (filed on-or-around March 31, 2022).

[14] Fitzpatrick and Walker were formally added as defendants in Plaintiff's '*Full Verified Complaint*' (filed on-or-around April 11, 2022)"

SERVICE LIST

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(appearing for Defendant)

PLAINTIFF'S AFFIDAVIT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT) **4:21-cv-00096**
Plaintiff	)	
	)	
v.	)	
	)	
HON. E. GARY EARLY, ALJ	)	
Defendant	)	

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT EARLY'S MOTION TO DISMISS

The affiant, Elias Makere, swears or affirms as follows:

Background

1. I am over the age of eighteen (18).
2. I am a plaintiff in the above-captioned case.
3. This affidavit is made in good faith.

Familiarity

4. I have read the Federal Rules of Civil Procedure, the Local Rules of Court (USFLND), USCA11's eFiling handbook; USFLMD's eFiling handbook, and many other rules & regulations pertinent to civil litigation in federal court.

Overarching Facts

5. The 'Honorable' Edward Gary Early violated my 1st amendment right to access the court.
6. The 'Honorable' Edward Gary Early violated my 7th amendment right to a trial-by-jury.
7. The 'Honorable' Edward Gary Early violated my 14th amendment right to due process.
8. The 'Honorable' Edward Gary Early violated my 14th amendment right to the equal protections of the law.

Overarching Details

9. He did this by breaking state law while operating under the *color* of state law.
    a. To be more specific, the 'Honorable' Edward Gary Early destroyed evidence in 2018/2019. That evidence destruction:
        i. precluded my access to a court of competent jurisdiction;
        ii. prevented me from securing a trial-by-jury;
        iii. irreparably damaged my chances at a fair trial; and
        iv. eliminated my chance at receiving the equal protection under the law.

10. In April 2019, the 'Honorable' Edward Gary Early took it a step further by committing perjury. Like above (9ai-iv), his illegal act prevented me from accessing court, accessing a trial-by-jury, receiving a fair trial, and enjoying the equal protections under the law.
    i. The evidence of his perjury is public record.
11. The 'Honorable' Edward Gary Early was motivated by racial animus when he committed those illegalities. Animus towards black people; and animus most-deeply held for black men specifically.
12. Consistent with his invidious discrimination towards black people, the 'Honorable' Edward Gary Early has commandeered his companions-of-the-cloth to further advance his attacks on my constitutional rights. One such companion is Martin Fitzpatrick (Tallahassee, FL). Another is Mark Walker (Tallahassee, FL). There are more whom I will name at the appropriate time.
13. All of Edward Gary Early's companions have either (a) ratified his lies; and/or (b) manufactured their own. All in an effort to subdue my constitutional rights.
14. Lies & obstruction are their M-O.

Additional Facts & Details

15. On March 11, 2022, the 'Honorable' Edward Gary Early filed a motion to dismiss this case (doing so via an ill-begotten attorney).

16. In it, he recited a quote about my former employer firing me because I 'failed to secure another position with the company'.
17. That statement is false.
    a. I never failed to secure another position with my former employer.
    b. I was never given an opportunity; nor did I ever try.
18. There's no evidence supporting that quote. There never has been.
    a. My former employer fired me on August 12, 2016.
    b. At the meeting, the HR Manager told me I could re-apply *after* 30 days; and be evaluated like the general population.
    c. I walked out of the building on August 12, 2016 without ever doing another ounce of work for my former employer; nor ever wanting to.
19. Importantly, that same employer never fired any of its non-black-male employees; and never required them to secure other positions either.
20. By robbing me of due process and a fair trial, Edward Gary Early's been able to disseminate an assembly line of lies about me.

21. He told more lies in his March 11th pleading. On Page 7 he admitted that he was being sued "*only in an individual capacity*". On the 25th page, however, he turned around and said "*Plaintiff sues Judge Early in his official capacity*".
    a. He used that lie to spur his largest argument (19 citations) in support of dismissal.

22. Of course, the most harmful and depraved lie was the perjured one that I sued him for. The one he told back in April 2019. The one that said I didn't sue my former employer for sex discrimination (a statement borne out of ministerial duties). The one that was refuted by:

    a. my initial complaining document;
    b. my former employer's initial response document;
    c. the state agency's determination letter; and
    d. Mr. Early's own self-signed acknowledgement of the truth.

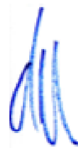
Bottom Line

23. Edward Gary Early's lies, false statements, perjury, and illegalities have subverted the constitution. He has many people who love his lies (ie, his companions-of-the-cloth), and they are continuing to violate my constitutional rights to this day.

Verification Under Oath Pursuant to 28 USC §1746

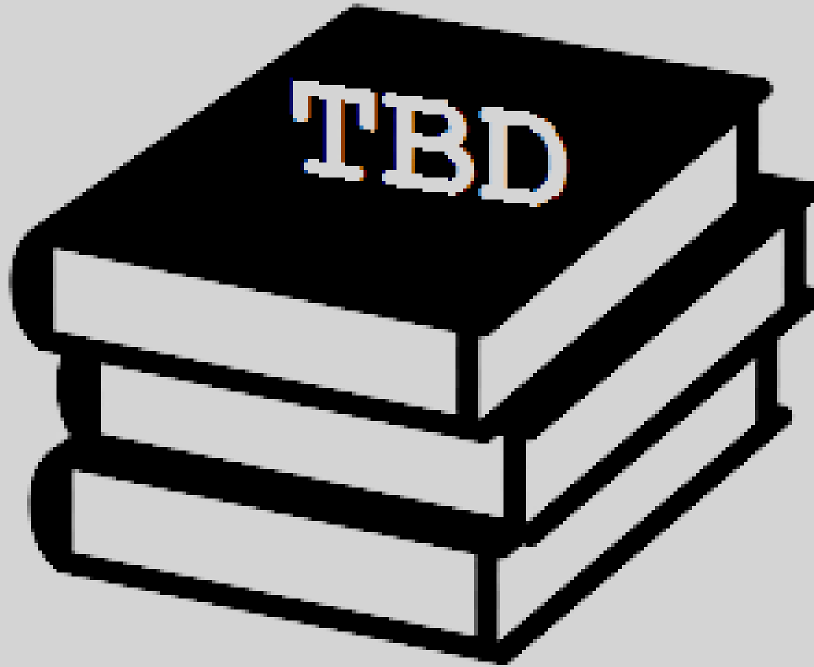
I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of March 2022.

UNITED STATES OF AMERICA



3/28/2022

Elias Makere, Plaintiff/Affiant



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