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IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA)

Plaintiff,)

)

vs.)

Case No (LT): 2022-CA-3804-XXXX

STANLEY GORSICA; EDWARD)

Division: CV-E

GARY EARLY; ALLSTATE)

INSURANCE COMPANY)

Defendant,)

**PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S MOTION TO DISMISS
(AS UNTIMELY)**

Plaintiff, ELIAS MAKERE, on this 30th day of August 2022, hereby moves this Court - pursuant to Rule 1.140(f) Fla. R. Civ. P. - to strike the "*Motion to Dismiss*" that Defendant STANLEY GORSICA filed in this court (see Doc #17; 8/24/22).[1/](#)

Key Points:

A.) Points untimely; prejudicial;

B.) Grounds immaterial; waived defense;

Table of Contents:

Context	3 rd Page
Motion	4 th Page
Certificates	8 th Page
Exhibits	10 th Page

Background: Defendant defaulted
Problem: OAG filed an untimely *motion to dismiss* for Defendant
Request: Court strikes Defendant's motion

Rule 1.140(f) Fla. R. Civ. P. | Motion to Strike (highlights added)

A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time.

Rule 1.500(c) Fla. R. Civ. P. | Right to Plead (highlights added)

A party may plead or otherwise defend at any time before default is entered.

State v. Lenoir; AHCA; 2015-3178 (highlights added)

"Indeed, if the Agency were to consider Respondent's exceptions despite their untimeliness, it would open the floodgates for other parties to ignore deadlines."

Precedence

- 2010-CA-014727-XXXX - CV-A (8/20/14)
- 2011-CA-006258-XXXX - FC-F (2/14/13)
- 2012-CA-000129-XXXX - FC-D (11/6/12)
- 2012-CA-004530-XXXX - CV-C (11/28/12)
- 2018-CA-005232-XXXX - CV-H (7/8/20)
- 2019-CA-002448-XXXX - CV-H (6/5/19)
- 2019-CA-004213-XXXX - CV-D (10/22/19)

Duval regularly grants similar motions to strike

Abbreviations

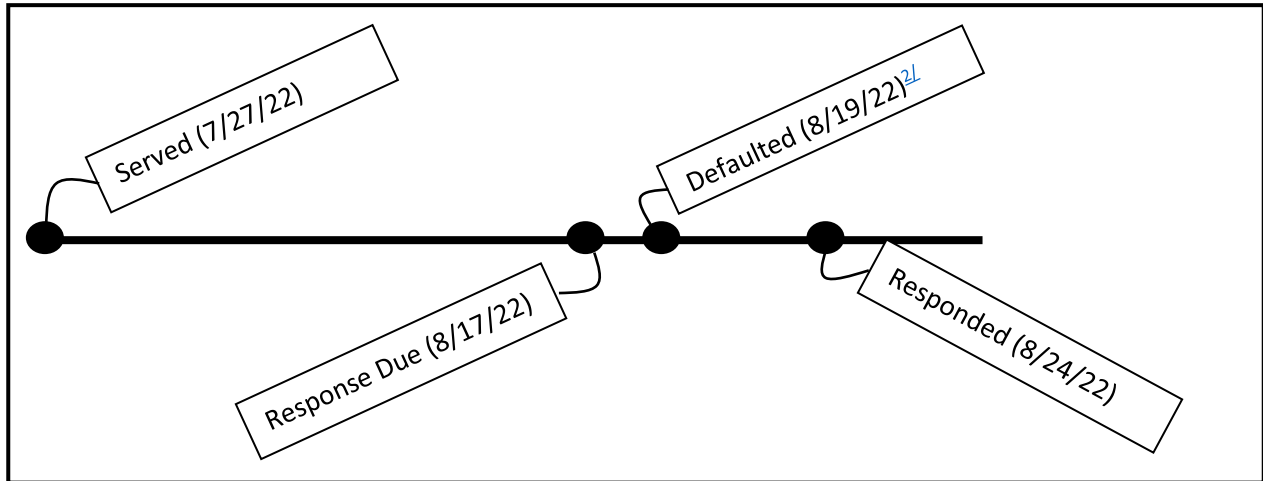
- 4DCA - Fourth District Court of Appeals (FL)
- AHCA - Agency for Healthcare Administration (FL)
- OAG - Office of Attorney General (FL)
- USFLMD - US District Court, Florida, Middle District

MOTION**I. Pertinent History**

1. On June 30, 2022, Plaintiff sued Defendant Gorsica - in Defendant Gorsica's individual capacity only [**Exhibit A**] - under the '*Ku Klux Klan Act of 1871*' (42 USC §1983) [**Exhibit B**].
 - a) The facts detailed - among other things - Defendant Gorsica's **ratification of perjury**; which abridged Plaintiff's constitutional rights (1st, 7th, 14th Amendments).
 - b) Plaintiff's complaint also disclosed the underlying legal case that Defendant Gorsica's acts & omissions have hampered (ie, *Makere v Allstate*; 3:20-cv-00905; USFLMD)
2. On July 27, 2022, a process server duly served Defendant Gorsica [**Exhibit C**] (§48.031(1) FS, §48.21(1) FS).
3. Twenty-two (22) days later - on August 18, 2022 - Plaintiff moved the Honorable Jody Phillips (Clerk of the Circuit Court) for entry of default.
4. This Court's Clerk obliged; entering default against Defendant soon thereafter (Rule 1.500(a) Fla. R. Civ. P.) [**Exhibit D**].
5. The following week (on August 24, 2022), a man named Charles Schreiber filed a *Notice of Appearance* {#13} in this case; citing Rule 2.505(e)(2)/(e)(5) Fla. R. Jud. Admin. Mr. Schreiber presented himself as a lawyer at OAG, and purported to be counsel for Defendant.
6. Soon thereafter, OAG added a *Motion to Dismiss* (hereinafter "That Motion") {#17}. That Motion was filed on August 24, 2022 [**Exhibit E**].

II. Analysis

7. That Motion was untimely.



8. Pursuant to Rule 1.140(a) Fla. R. Civ. P., Defendant Gorsica **had twenty (20) days** (from **July 27, 2022**) to file it. And - pursuant to Rule 2.514(a) Fla. R. Jud. Admin. - that **twenty (20) day** window closed on **August 17, 2022**.

9. Upon Plaintiff's duly filed motion ({#12} 8/18/22), the Clerk of Court properly entered default against Defendant Gorsica; doing so **on August 19, 2022**.²¹

10. Five days after default (and seven days after his due date), Defendant Gorsica filed That Motion. It was docketed the same day - **August 24, 2022**.

11. Moreover, Plaintiff never sued Defendant Gorsica under §768 FS (§1 *supra*). Therefore, the twenty-day window was the only window governing Defendant Gorsica.

12. In sum, That Motion was **more-than five days late** (8/24/22 vs 8/18/22; 8/24/22 vs 8/19/22)²¹.

III. Arguments in Favor of Striking That Motion

Defendant Waived his Defense

13. Defendant's failure to appear/answer on time - and the consequent entry of default - rendered That Motion a **nullity**. This point has been codified in the rules of civil procedure (highlights added):

"(c) Right to Plead. A party may plead or otherwise defend at any time before default is entered."

- Rule 1.500(c) Fla. R. Civ. P.

14. Rule 1.140 (ie, the rule which That Motion was filed under^{3/}) further emphasizes this point (highlights added):

*"(h) **Waiver of Defenses.***

(1) A party waives all defenses and objections that the party does not present either by motion under subdivisions (b), (e), or (f) of this rule or, if the party has made no motion, in a responsive pleading except as provided in subdivision (h) (2)."

- Rule 1.140(h)(1) Fla. R. Civ. P.

15. Put together, Defendant waived his right to defend **by failing to defend** before default was entered. 4DCA engraved this legal operation in its JAB Enterprises decision:

"All other defenses are waived if not raised by motion or responsive pleading."

- JAB Enterprises v. Gibbons, 596 So.2d 1247 (4DCA 1992)

16. Waived defenses, of course, are immaterial; and unavailable for adjudication (internal citations omitted) (highlights added):

"A motion for set-off is an affirmative defense. Affirmative defenses are waived if not pled. Accordingly, the trial court erred in granting the set-off based on DBR's untimely post-trial motion."

- Jojo's Clubhouse v. DBR, 860 So.2d 503 (2003)

17. In the instant case, That Motion was an affirmative defense. This is so due to: (a) **its own admission** (see That Motion at page 1); and (b) **rule** (ie, Rule 1.140(b) Fla. R. Civ. P.).

18. In the instant case, Defendant Gorsica waived his affirmative defense (§13-15 *supra*). This is due to the fact that (a) Defendant Gorsica was untimely (§7-12); and (b) Defendant Gorsica never offered any *excusable neglect, meritorious defense, due diligence, or intent to defend on the merits* (for being untimely).

19. As such, Defendant Gorsica has admitted Plaintiff's entitlement to recover from the damages Defendant Gorsica inflicted. And, similarly, Defendant Gorsica is entitled to a hearing on damages:

"the supreme court held that by failure to plead the defendant admitted the plaintiff's right to recover on the pleaded cause of action but nothing more and therefore the defendant was entitled to be heard as to damages."

- Bowman v Kingsland, 432 So. 2d 660 (Fla. 5th DCA 1983)

Prejudice to Plaintiff

20. That Motion, however, has just been obstructive to these entitlements. Currently, this Court is contemplating a hearing on it. A contemplation exhibiting bias against Plaintiff (and affinity for Defendant Gorsica). More importantly, That Motion is interfering with the declaratory relief Plaintiff is seeking to cure the *Makere v Allstate* case (§1b *supra*).

21. For those reasons - among others - That Motion has been an unjust, expensive, and dilatory tactic. A ploy that this Honorable Court is poised to bar (highlights added):

"These [rules of civil procedure] shall be construed to secure the just, speedy, and inexpensive determination of every action."

- Rule 1.010 Fla. R. Civ. P.

The 11th Circuit emphasized this point in Martin (highlights added):

"Courts have the inherent authority to control the proceedings before them"

- Martin v Automobili, 307 F. 3d 1332 (11th Cir. 2002)

In Hutto, the US Supreme Court focused this control on attorneys who delay/disrupt/hamper legal proceedings (highlights added):

"An equity court has the unquestioned power to [punish someone] who shows bad faith by delaying or disrupting the litigation or hampering enforcement of a court order."

- Hutto v Finney, 437 US 678 (1978)

Here, OAG is that *dilatory bad actor* which the US Supreme Court warned of; and Plaintiff's entitlement to a full recovery of defaulted damages is what OAG is trying to hamper. A hampering that has already **prejudiced Plaintiff**. An injury that this Court is well-positioned to prevent.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to strike "*Defendant Stanley G. Gorsica's Motion to Dismiss*" {#17} for being untimely and prejudicial.

Dated this 30th day of August 2022.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Plaintiff

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

P: (904) 294-0026

E: justice.actuarial@gmail.com

W: TextBookDiscrimination.com

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CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Rule 9.210(a)(2) Fla. R. App. P.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August 2022, I electronically filed the foregoing by using the Florida Courts E-filing Portal which will send a notice of filing to the attached service list.

/s/ Elias Makere

Endnotes:

^{1/} a text-searchable, electronic copy of this document can be found here:

TextBookDiscrimination.com/Files/Duval/22003804_GMOT_20220830_163007.pdf

^{2/} For some unwarranted/undisclosed/unequal reason, the Clerk entered Default on August 19th (instead of August 18th - when it was due). Nevertheless, despite getting preferential treatment from the Clerk, Defendant Gorsica still defaulted.

^{3/} see That Motion at Page 1 (paragraph 1).

SERVICE LIST

Charles Schreiber, Jr., Esquire (0843075)
John Bennett

E: Charles.Schreiber@MyFloridaLegal.com
E: John.Bennett@MyFloridaLegal.com
P: 850.414.3300
F: 850.488.4872

Office of the Attorney General
The Capitol PL-01
Tallahassee, FL 32399-1050

EXHIBIT A

Document

Showing Plaintiff Declare 'Individual Capacity'
as the only manner in which he was suing Defendant Gorsica

Florida
In the Circuit Court, 4th Judicial Circuit, Duval County

16-2022-CA-002763-XXXX-MA
Makere v Gorsica
42 USC §1983
(*'Ku Klux Klan Act of 1871'*)

Doc #3
2nd Page Only

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Elias Makere, FSA, MAAA		
Address	3709 San Pablo Rd S #701		
	Jacksonville	FL	32224
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Duval		
Telephone Number	904.294.0026		
E-Mail Address	Justice.Actuarial@gmail.com		

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name	Stanley George Gorsica		
Job or Title (if known)	Former Staff Attorney (FCHR)		
Address	PO Box 13612		
	Tallahassee	FL	32317
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Leon		
Telephone Number	850.907.6809		
E-Mail Address (if known)	SGorsica@GorsicaLaw.com		

☒ Individual capacity ☐ Official capacity

Defendant No. 2

Name	Edward Early		
Job or Title (if known)	Administrative Law Judge (DOAH)		
Address	1230 Apache Pkwy		
	Tallahassee	FL	32399
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Leon		
Telephone Number	850.488.9675 x5462		
E-Mail Address (if known)	Edward.Early@DOAH.State.FL.US		

☒ Individual capacity ☐ Official capacity

EXHIBIT B

Document

Showing Plaintiff Indicate that This Cause of Action
Was Never Filed Under §768 FS

Florida
In the Circuit Court, 4th Judicial Circuit, Duval County

16-2022-CA-002763-XXXX-MA
Makere v Gorsica
42 USC §1983
(*'Ku Klux Klan Act of 1871'*)

Doc #3
3rd Page Only

Defendant No. 3

Name Allstate Insurance Compny
 Job or Title (if known) Corporation (Publicly Traded)
 Address 1776 American Heritage Life Dr.
 Jacksonville FL 32224
 City State Zip Code
 County Duval
 Telephone Number 407.393.2900
 E-Mail Address (if known) KDoud@Littler.com

☐ Individual capacity ☐ Official capacity

Defendant No. 4

Name _____
 Job or Title (if known) _____
 Address _____
 City State Zip Code
 County _____
 Telephone Number _____
 E-Mail Address (if known) _____

☐ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- ☐ Federal officials (a *Bivens* claim)
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

28 USC §1343; 28 USC §1346; 42 USC §1981; 42 USC §1983; 42 USC §1985.

1st Amendment - Access to the Courts
 7th Amendment - Trial by Jury
 14th Amendment - Equal Protection, Due Process

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

EXHIBIT C

Return of Service

Florida

In the Circuit Court, 4th Judicial Circuit, Duval County

16-2022-CA-003804-XXXX-MA

Makere v Gorsica

42 USC §1983

(*'Ku Klux Klan Act of 1871'*)

Doc #11

RETURN OF SERVICE

SHERIFF NUMBER: 22010486

PARTY TO BE SERVED

STANLEY GORSICA
1833 HALSTEAD BOULEVARD APT 1409
TALLAHASSEE, FL 32309

ATTORNEY /
PETITIONER

PLAINTIFF: ELIAS MAKERE, FSA, MAAA

-VS-

DEFENDANT: STANLEY GORSICA, EDWARD GARY EARLY, ALLSTATE INSURANCE COMPANY

TYPE OF WRIT: ALIAS SUMMONS, COMPLAINT FOR VIOLATION CIVIL RIGHTS

COURT: CIRCUIT / DUVAL
CASE #: 2022CA3804

COURT DATE:

Received the above-named writ on July 26, 2022, at 2:27 PM, and SERVED the same on the 27th day of July 2022, at 12:22 PM. Service was completed at 1833 HALSTEAD BOULEVARD APT 1409 TALLAHASSEE, FL 32309 in LEON County, Florida, as follows:

INDIVIDUAL

By delivering a true copy of this writ together with a copy of the initial pleadings, if any, with the date and hour of service endorsed thereon by me to: STANLEY GORSICA.

Attempts:

SERVICE COST: \$0.00
C.R., CIVIL CLERK

WALT MCNEIL, SHERIFF
LEON COUNTY, FLORIDA

COURT:

DUVAL COUNTY
CLERK OF COURT

BY:  1504

EXHIBIT D

Default Entry

Rendering 'That Motion' Immaterial/Waived

Florida

In the Circuit Court, 4th Judicial Circuit, Duval County

16-2022-CA-003804-XXXX-MA

Makere v Gorsica

42 USC §1983

(*'Ku Klux Klan Act of 1871'*)

Doc #13

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA

)

Plaintiff,

)

)

vs.

)

Case No (LT): 2022-CA-3804-XXXX

STANLEY GORSICA; EDWARD

)

Division: CV-E

GARY EARLY; ALLSTATE

)

INSURANCE COMPANY

)

Defendant,

)

DEFAULT

Default is hereby entered in this action against Defendant
STANLEY GORSICA for failure to respond as required by law.

DATED ON:

Aug 19 2022

20

JODY PHILLIPS



Angela Smith

Deputy Clerk

EXHIBIT E

Defendant's Motion to Dismiss

Showing Defendant's Untimeliness

Florida

In the Circuit Court, 4th Judicial Circuit, Duval County

16-2022-CA-003804-XXXX-MA

Makere v Gorsica

42 USC §1983

(*'Ku Klux Klan Act of 1871'*)

Doc #17

Excerpt

Pages 1 and 17 only

Filing # 155983849 E-Filed 08/24/2022 09:15:45 AM



IN THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA,

Plaintiff,

vs.

Case No.: 2022-CA-3804

STANLEY GORSICA,
HON. E. GARY EARLY, ALJ, and
ALLSTATE INSURANCE COMPANY,

Defendants.

DEFENDANT STANLEY G. GORSICA'S MOTION TO DISMISS

Without waiver of any objections, responses, defenses, or immunities to any complaint of Plaintiff, Elias Makere ("Plaintiff"), Defendant, Stanley G. Gorsica ("Defendant Gorsica"), hereby moves the Court, pursuant to Fla. R. Civ. P. 1.110(b), (f), 1.120(c), 1.130, 1.140(b), to dismiss or drop him with prejudice, and states:

BACKGROUND

On June 30, 2022, Plaintiff filed his Complaint for Violation of Civil Rights ("Complaint"). Plaintiff names Defendant Gorsica as a former staff attorney (FCHR) who he sues in an individual capacity.¹ [Complaint at 1; 2, ¶I.B.No.1.] He

¹ FCHR is the Florida Commission on Human Relations.

Respectfully Submitted,

**ASHLEY MOODY
ATTORNEY GENERAL**

/s/ Charles J. F. Schreiber, Jr.

Charles J. F. Schreiber, Jr.

Senior Assistant Attorney General

Fla. Bar No.: 0843075

charles.schreiber@myfloridalegal.com

Office of the Attorney General

State Programs Litigation Bureau

The Capitol PL-01

Tallahassee, Florida 32399-1050

Telephone: (850) 414-3300

Telefacsimile: (850) 488-4872

Attorney for the Defendant Stanley G. Gorsica

CERTIFICATE OF SERVICE



I HEREBY CERTIFY that a true and correct copy hereof has been furnished this
24th day of August 2022, via the CM/ECF System, U.S. Mail, & e-mail to:



Elias A. Makere a/k/a Elias Makere, FSA, MAAA
3709 San Pablo Road S #701
Jacksonville, Florida 32224-4809
justice.actuarial@gmail.com
Plaintiff, *pro se*

/s/ Charles J. F. Schreiber, Jr.

Charles J. F. Schreiber, Jr.

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