

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA)	No
Appellant/Plaintiff)	23-11231-F
v.)	
MARTIN FITZPATRICK; CHARLES SCHREIBER; MARK WALKER; USFLND; MICHAEL FRANK; ALLEN WINSOR; HOPE CANNON;)	<u>LT Case No (USFLND)</u>
)	4:22-cv-00315
Appellees/Defendants)	

**APPELLANT’S MOTION FOR JUDICIAL NOTICE OF THE
PUBLIC RECORD EXHIBITING
APPELLEE CHARLES SCHREIBER’S LIE OF MATERIAL FACT**

Appellant, ELIAS MAKERE, on this 9th day of May 2023, respectfully moves this Honorable Court to take judicial notice of one pertinent item of public record. It represents a core fact substantiating the two counts that Appellant levied against Appellee Schreiber (below).

Key Points:

- A.) Points Appellee’s demonstrable lie of material fact;
B.) Grounds supplement appendix; substantiate main issue-on-appeal;

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Background: Appellant presented facts of Appellee's transgressions

Problem: LT punished Appellant by ignoring the facts

Request: This Court officially recognizes the pertinent facts

Rule 201 | Fed. R. Evid. | Judicial Notice

"(b) KINDS OF FACTS THAT MAY BE JUDICIALLY NOTICED. The court may judicially notice a fact that...

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

Rule 10(e)(2) | Fed. R. App. P. | ...Modification of the Record

"(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded"

Rule 28(j) | Fed. R. App. P. | ...Supplemental Authorities

"If pertinent and significant authorities come to a party's attention after the party's brief has been filed [he] may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations."

Local Rule 27-1 | 11th Cir. R. | Motions for Procedural Orders...

"[(c)] The clerk is authorized, subject to review by the court, to act for the court on the following unopposed procedural motions...[(6)] to supplement or correct records"

Precedence

- 02-16215 - 11th Cir. (1/30/04)
- 07-12874 - 11th Cir. (2/4/09)

This Circuit usually grants motions for judicial notice

Abbreviations

- DOAH - Division of Administrative Hearings (FL)
- LT - Lower Tribunal
- USFLMD - US District Court, Florida, Middle District
- USFLND - US District Court, Florida, Northern District

MOTION

I. Background

A. Underlying Federal Action (*Makere v Allstate*)

1. On August 12, 2020, Appellant sued Allstate Insurance Company for employment discrimination (3:20-cv-00905; USFLMD). The action was/is on the bases of race/sex/color/retaliation; and brought under many state & federal statutes. His case evidenced disparate/discriminatory/hostile-treatment that included - but was not limited to:

- a. Unwanted date requests; racist dolls; racist characterizations;
- b. sabotaged work;
- c. disparate pay; denied-work-from-home privileges;
- d. forcing Appellant to pay for a \$1,025 actuarial exam fee while never doing the same to other employees; and
- e. much more.

2. The case continues to this day; albeit hampered by unconstitutional (and illegal) conduct of state actors.

B. Preceding Federal Action (*Makere v Early*)

3. On February 16, 2021, Appellant sued Edward Gary Early (a state hearing officer) for constitutional deprivations (4:21-cv-00096; USFLND) (hereinafter "That Case"). The action was brought under federal law. It - like the underlying lawsuit

which Mr. Early impeded (ie, ¶1, *supra*) – continues to this day; albeit, hampered by unconstitutional conduct of the above-charged public officials.^{1/}

a. Crucially, Appellant sued Mr. Early in Mr. Early's individual capacity **only**.

4. On March 11, 2022, a man named Charles JF Schreiber, Jr. ("Appellee Schreiber") made an appearance on Mr. Early's behalf. Therein, Appellee Schreiber moved for dismissal; presenting himself as an attorney for Florida's Attorney General's office.

5. Appellee Schreiber's motion ("That Motion"), importantly, featured **a known false statement of material fact**. The details of which are as follows:

a. In his motion (#4 *supra*), Appellee Schreiber admitted (to USFLND) that Appellant had sued Mr. Early in Mr. Early's individual capacity only.

This was true.

b. However, on that same day (ie, 3/11/22) – and in that same court document – Appellant Schreiber said the opposite.

6. Simply put, **Appellee Schreiber lied**, and he used that lie as the basis for his appearance/interference with That Case.

7. So, on March 28, 2022, Appellant asked Appellee Schreiber (via phone/email) to self-correct his material lie; citing

Rule 11(c) Fed. R. Civ. P.. Appellee Schreiber, however, refused. Thus, Appellant took legal action.

C. Immediate Federal Action (Makere v Fitzpatrick, et al)

8. On April 26, 2022, Appellant sued the above-captioned defendants for constitutional violations. Therein, Appellant levied two counts (2) against Appellee Schreiber; doing so under 42 USC §1983 ('*Ku Klux Klan Act of 1871*') and 42 USC §1985.^{2/}

9. On-or-around November 21, 2022, the LT adopted its magistrate's recommendation of dismissal. Plus, it retained jurisdiction; threatening further action.

10. Then, upon committing a self-induced (and forewarned) infraction, the LT followed through with its threat. Thereby leading to this appeal.

II. Pertinent Charges

11. Appellee Schreiber impeded (and continues to impede) Appellant's constitutional rights (trial by jury, due process, etc.). Doing so by committing acts that Appellee Schreiber was/is unauthorized to commit; accomplishing such transgressions with lies & obstructions.

Doing so, importantly, "*under the color of state law*" in order to "*deprive [Appellant] of [Appellant]'s constitutional rights*".

III. Application to the Matters for Judicial Notice

12. Page 4 of the magistrate's recommended order claimed that Appellant's lawsuit had no reasonable factual basis:

"...far-fetched government conspiracy that had no reasonable factual basis"

- Magistrate's R&R, 4:22-cv-00315, (2/9/23)

13. **This is false.**

14. The perjurious/unauthorized nature of Appellee Schreiber's interference is clear. In fact, Appellant outlined its unlawfulness in his complaint (highlights removed):

"49. On March 11, 2022, [Appellee] Schreiber appeared in That Case; purporting to be [Mr.] Early's representative. He did so via motion ("That Motion").

50. On Page 7 of That Motion, he acknowledged the truth: that [Appellant] has been suing Judge Early in Judge Early's individual capacity only:

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

- Charles J.F. Schreiber, Jr. | 3/11/22

51. On Page 25 of That Motion, though, Defendant Schreiber stated the opposite:

- Charles J.F. Schreiber, Jr. | 3/11/22"

- Complaint, §49; 4:22-cv-00315

15. Importantly, Appellant explained the harm he suffered from

Appellee Schreiber's lie of material fact:

"54. The bottom line is that [Appellee] Schreiber is prohibited from appearing in That Case on behalf of Judge Early. He lied to evade that prohibition, though. And his lies have been borne out of the same invidious discrimination that compelled Judge Early to commit perjury. [Appellee] Schreiber's aims - as well as those of his companions - have been to abridge Plaintiff's constitutional rights."

- Complaint, ¶54; 4:22-cv-00315

16. Moreover, Appellant only took legal action after giving

Appellee Schreiber ample time to self-correct.

a. March 28, 2022 marked the date that Appellant formally notified Appellee Schreiber of Appellee Schreiber's transgressions.^{3/}

b. Twenty-nine days later, (ie, 4/26/22) Appellant filed suit (¶8 *supra*).

17. Put simply, evidence of Appellee Schreiber's lie-filled interference with Appellant's constitutional rights has a deep basis in fact.

18. This factual basis is important because it refutes the LT's contention for punishment (¶10, *supra*). For a long time now, courts have held that sanctions are inapplicable when a factual basis [for a complaint] exists (highlights added):

"[Appellant] also argues that Rule 11 sanctions were not appropriate because [Appellee] failed to provide the district court with evidence that [Appellant]'s case or pleadings (1) had no reasonable factual basis...

...We therefore VACATE the order imposing sanctions and REMAND to the district court for further proceedings consistent with this opinion."

- Massengale v Ray, 267 F.3d 1298 (11th Cir. 2001)

19. Thus, since the LT's order (which is the subject of this appeal) is based on a materially false statement this Court will benefit from seeing the truth.

20. This truth can be found in the attachment. Which shows Appellee Schreiber authoring a known false statement of material fact (for the purpose of interfering with Appellant's constitutional rights). Thereby proving:

- a. that a reasonable factual basis existed for Appellant's charges against Appellee Schreiber; and
- b. that Appellant collected the facts which showed Appellee Schreiber perverting state authority in order to infringe on Appellant's constitutional rights.

IV. Nature of Relief Sought

21. Appellant hereby asks this Honorable Court to judicially notice the attached public record (**Attachment A**) only to the following extent:

- a. It is a fact that this record existed prior to April 26, 2022 (ie, prior to the lawsuit below).
- b. It is a fact that Appellant observed & quoted this record in his complaint.
- c. It is a fact that - on March 11, 2022 - Appellee Schreiber admitted that Appellant had sued Edward Gary Early in Edward Gary Early's **individual capacity** "only".
- d. It is a fact that - on March 11, 2022 - Appellee Schreiber also stated that Appellant had sued Edward Gary Early in Edward Gary Early's official capacity ("**Second Statement**").
- e. It is a fact that Appellee Schreiber's Second Statement was false.
- f. It is a fact that **Appellee Schreiber knew his Second Statement was false.**
- g. It is a fact that **Appellee Schreiber's lie was material** to his purported representation of Edward Gary Early.

V. Argument in Support of Taking Judicial Notice

22. Rule 201(b) Fed. R. Evid. bestows this Court with the power to take judicial notice of "*a fact that is not subject to reasonable dispute*".

- a. Here, in the instant case, no one can reasonably dispute the proffered item. Primarily because it is public

record (ie, it is 'not subject to dispute because it is capable of accurate and ready determination from sources whose accuracy cannot be questioned').

23. In Horne v. Potter, 392 F. App'x 800 (11th Cir. 2010), this Court stated that courts can take judicial notice of items that are **public record** (highlights added):

"The district court properly took judicial notice of the documents in [the plaintiff's] first case, which were public records that were "not subject to reasonable dispute" because they were "capable of accurate and ready determination by resort to sources whose accuracy could not reasonably be questioned."

- Horne v Potter, 392 F. App'x 800 (11th Cir. 2010)

24. Plus, the US Supreme Court ruled that a court can take limited/pertinent judicial notice:

"Accordingly, a court may take notice of another court's order only for the limited purpose of recognizing the "judicial act" that the order represents or the subject matter of the litigation."

- United States v Jones, 29 F.3d 1549 (11th Cir. 1994)

25. In short, these appellate decisions fit Appellant's motion perfectly. As he is only asking for this Court to take recognition of material that is public record.

CONFERRAL

On May 9, 2023, Appellant asked Appellees whether they had any opposition to this motion. Appellee Schreiber replied that he did; reciting his retreat from direct verbal conversation. Yet, when asked (via email) whether he disputed the facts, Appellee Schreiber failed to give an answer.

Counsel for the federal appellees, on the other hand, was out of office (at trial until end-of-week).^{4/} Notably, this motion does not address any of the federal appellees' transgressions. It only addresses the material lie that Appellee Schreiber transgressed on the court below.

Thus, Appellant believes the foregoing presents a compelling (ie, *pertinent public record*) and important (ie, *support the main issue-on-appeal*) reason for obtaining the requested relief.

CONCLUSION

WHEREFORE, Appellant respectfully asks this Honorable Court to take judicial notice of **the lie of material fact that Appellee Charles JF Schreiber Jr. proffered in the LT** (attached hereto).

Dated this 9th day of May 2023.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Appellant

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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 32(a)(5) Fed. R. App. P. Also, I certify that the word count for this document is 1,822 words (Rule 27(d)(2)).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May 2023, I filed the foregoing with the Clerk of Courts via PACER; which will send a copy to the attached service list.

/s/ Elias Makere

Endnotes:

^{1/} in fact, the case has traversed into this Court (twice: 21-11901; 22-13613); where it currently resides. ^{2/} after beginning in state court, the action below got transferred into federal court (USFLMD; 3:22-cv-734; 7/5/22). USFLMD later transferred the action into USFLND (8/30/22; 4:22-cv-315).
^{3/} please see Rule 11 Fed. R. Civ. P.
^{4/} counsel's assistant relayed this information to Appellant (via phone)

An electronic copy of this file can be found here (text-searchable):

[TextBookDiscrimination.com/Files/CA11/23011231_GMOT_20230509_143749.pdf](https://www.TextBookDiscrimination.com/Files/CA11/23011231_GMOT_20230509_143749.pdf)

Link to Complaint ([HTML](#), [PDF](#)) | *Makere v Fitzpatrick, et al*

HTML: [TextBookDiscrimination.com/Info/Misc/CrookedCourt/Complaint](https://www.TextBookDiscrimination.com/Info/Misc/CrookedCourt/Complaint)

PDF: [TextBookDiscrimination.com/Files/USFLMD/22000734_AAC_20220729_234622.pdf](https://www.TextBookDiscrimination.com/Files/USFLMD/22000734_AAC_20220729_234622.pdf)

Link to Underlying Coverup ([HTML](#), [PDF](#), [Video](#)) | *Makere v Early*

HTML	TextBookDiscrimination.com/Info/Misc/ALJPerjury/Complaint-Amended.html
PDF	TextBookDiscrimination.com/Files/USFLND/21000096_AAC_20211231_123954.pdf
Video	https://youtu.be/ RaJXFfXOCE

Link to Originating Case ([HTML](#), [PDF](#), [Video](#)) | *Makere v Allstate*

HTML	TextBookDiscrimination.com/Allstate/Complaint-Full.html
PDF	TextBookDiscrimination.com/Files/USFLMD/20000905_AAC_20211104_230439.pdf
Video	https://youtu.be/e3mgBPHesXg

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CIP

United States Court of Appeals
Eleventh Circuit

23-11231-F
Makere v Fitzpatrick, et al

{unchanged}

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Makere v Fitzpatrick et al, 23-11231

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Lower Tribunal:

Bolitho, Zachary	Magistrate
Winsor, Allen	District Judge

Non-Parties:

Early, Hon. E. Gary (ALJ)

Parties:

Cannon, Hon. Hope	Appellee
Fitzpatrick, Hon. Martin	Appellee
Frank, Hon. Michael	Appellee
Schreiber, Charles JF (Jr.)	Appellee
Walker, Hon. Mark	Appellee
Winsor, Hon. Allen	Appellee
USFLND	Appellee
Makere, Elias (FSA, MAAA)	Appellant

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11th Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

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}

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).

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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**

/s/ Charles J. F. Schreiber, Jr.
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Attorney for the Defendant
Administrative Law Judge E. Gary Early

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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a/k/a Elias Makere, FSA, MAAA
3709 San Pablo Road S #701
Jacksonville, Florida 32224-4809
justice.actuarial@gmail.com;
00elias000@gmail.com
Plaintiff, *pro se*

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

