UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT) ND 4:22-cv-00315
Plaintiff,	)	
vs.	)	
MARTIN FITZPATRICK; CHARLES SCHREIBER; MARK WALKER; USFLND; MICHAEL FRANK; ALLEN WINSOR; HOPE CANNON;	)	
	)	
Defendants,	)	

PLAINTIFF'S RESPONSE IN OPPOSITION TO THE UNITED STATES' MOTION TO DISMISS

Plaintiff, ELIAS MAKERE, on this 16th day of September 2022, respectfully asks this Court to deny the "*Motion and Memorandum to Dismiss Amended Complaint... Defendants Fitzpatrick and Walker"* (hereinafter "That Motion") (filed on-or-around 8/26/22).

Key Points:

A.) Points untimely; proper forum (no alternatives; no special fx);

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Dawn breaks and the judges step closer to their robes of purported invincibility; so, they do a two-step.

Yet, two-steps haven't been good enough so they do a three-step. Oh, but three steps are to the rhythm of the constitution aching beneath their feet. Bump-Bump-Bump.

So, may this Court take this first step towards letting these judges evince their dance to a public jury. Whereby the group's bump-in-the-night can see the justice of light.

Background:	Defendants got sued for creating an unconstitutional rule
Problem:	Defendants seek dismissal; claiming they are above the law
Request:	Court denies Defendants' 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;"

Precedence

- 4:15-cv-00053-RH-CAS - USFLND (7/7/16)
- 5:16-cv-00069-RH-GRJ - USFLND (4/21/16)
- 4:17-cv-00249-RH-CAS - USFLND (8/1/18)
- 4:18-cv-00207-RH-MAF - USFLND (7/23/19)
- 3:19-cv-01653-LC-EMT - USFLND (1/25/22)
- 5:20-cv-00199-MCR-MJF - USFLND (4/21/21)
- 4:21-cv-00420-AW-MAF - USFLND (1/20/22)

USFLND regularly denies similar motions to dismiss

Abbreviations

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

RESPONSE

I. Background

1. On-or-around April 26, 2022, Plaintiff sued the above-captioned Defendants for constitutional violations. Therein, Plaintiff levied one count against each of the following six defendants (hereinafter "Defendants Fitzpatrick/etc"): Defendant Fitzpatrick (1); Defendant Walker (1); Defendant USFLND (1); Defendant Frank (1); Defendant Winsor (1); and Defendant Cannon (1).
    a. Importantly, Plaintiff initiated this action in state court (Florida; Duval County; 2022-CA-2333).[1/]
    b. Notably, the final three defendants were added via complaint amendment.
    c. Lastly, all defendants – save for Defendant USFLND – were sued in both their individual capacities as well as their official capacities.
2. After seeking an agreed-upon extension (via the US Attorney), Defendants Fitzpatrick/etc set August 12, 2022 as the due date for their responsive pleading.
3. On August 22, 2022 – and due to Defendants Fitzpatrick/etc's failure to meet their own deadline – Plaintiff moved the Court for entry of clerk default.
4. Four days later (ie, 8/26/22), Defendants Fitzpatrick/etc filed That Motion.
5. Following that, USFLMD transferred this case ("This Case") into this Court.

A. Ultimate Facts

6. Defendants Fitzpatrick/etc entered into a pre-suit pact to deprive Plaintiff of Plaintiff's constitutional rights **[C088]**. Their plan was pockmarked by invidious discrimination on the bases of race & sex. Plus, they were motivated by unlawful contributions (bribes).

7. Among other things, Defendants Fitzpatrick/etc committed the following acts:

    a. lying **[C058] [C082]**;

    b. ratifying lies **[C062]**;

    c. altering the federal docket **[C058d]**;

    d. entering orders without authority **[C058] [C062]**;

    e. shunning their duties to disqualify themselves **[C058]**;

    f. drafting unconstitutional local rules **[C058] [C062] [C078]**; and

    g. enforcing unconstitutional local rules **[C058] [C062] [C078]**

8. Doing so, importantly, "*under the guise of federal authority*" in order to "*deprive Plaintiff of Plaintiff's constitutional rights*". **[C107]-[C108] [C117]-[C118] [C122] [C125]-[C126] [C129]-[C130] [C133]-[C134]**.

9. As such, Plaintiff sought nominal, compensatory, punitive, injunctive, and declaratory relief against Defendants Fitzpatrick/etc **[C145][C147-152]**. Declaratory relief, importantly, that was aimed at '*Declaring that'* Defendants

Fitzpatrick/etc violated Plaintiff's constitutional rights (under *Bivens* and 28 USC §1343) in the *Makere v Early* case[5/].

II. Factual Analysis & Summary

10. Defendants Fitzpatrick/etc neglected to file a responsive pleading on time.[2/] In other words, That Motion was late.
    a. Forty-eight (48) days after the original due date; and ten (10) days after the extended due date.[3/]
11. Thus, by operation of law, Plaintiff is entitled to default against Defendant Fitzpatrick, Defendant Walker, and Defendant USFLND.
12. Lastly, Plaintiff's complaint detailed how Defendants Fitzpatrick/etc acted under the color of law to hamper/hinder/deprive Plaintiff of Plaintiff's constitutional rights (¶8).

III. Segue into Direct Rebuttals

13. By virtue of that default – and the subsequent onus to strike That Motion – Defendants Fitzpatrick/etc's arguments for dismissal are moot.
14. Nevertheless – and without forfeiting any strikes/prohibitions – Plaintiff hereby rebuts That Motion.
15. The law-of-the-land on *Bivens* actions affords plaintiffs the right to sue the federal employees who violate those plaintiffs' constitutional rights:

> *"The District Court treated the complaint as raising claims under Bivens v. Six Unknown Fed. Narcotics Agents, 403 U. S. 388, in which this Court recognized for the first time an implied private action for damages against federal officers alleged to have violated a citizen's constitutional rights."*
>
> – Corr. Servs. Corp v. Malesko, 534 US 61 (2001)

16. Since then, many circuits have explained the need to present two elements in a *Bivens* action (highlights added):

> *"Although Tavarez brought the action under § 1983, the district court properly construed the complaint as an action under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), which requires a plaintiff to allege that a defendant acted under color of federal law to deprive plaintiff of a constitutional right."*
>
> – Corr. Servs. Corp v. Malesko, 534 US 61 (2001)

17. In other words, Plaintiff must show that Defendants Fitzpatrick/etc:

    a. acted under color of federal law; and

    b. deprived Plaintiff of a constitutional right.

18. Plaintiff did that; multiple times in fact (¶8 supra).

19. Yet, That Motion argues that – since the 1971 *Bivens* decision – the US Supreme Court has restricted the expansion of Bivens **[M006]**. Therein, Defendants Fitzpatrick/etc cited the Egbert v Boule, 142 S. Ct. 1793 (2022) case as well as the Ziglar v Abbasi, 137 S. Ct. 1843 (2017) case.

20. Two cases which – according to That Motion – are supposed to mark the dawn of a new day for *Bivens* suits. What dawns on the reader of the Egbert decision is the "**Two-Step Inquiry**" for handling these types of lawsuits:

> *"To inform a court's analysis of a proposed Bivens claim, our cases have framed the inquiry as proceeding in two steps… First, we ask whether the case presents "a new Bivens context… Second, if a claim arises in a new context, a Bivens remedy is unavailable if there are "special factors" indicating that the Judiciary is at least arguably less equipped than Congress to "weigh the costs and benefits of allowing a damages action to proceed."*
>
> – Egbert v Boule, 14 S. Ct. 1793 (2022)

Stepping into Ziglar, on the other hand, evinces a third (intermediary) step:

> *"At Step One, the court must determine whether the case before it arises in a "new context,"... If the context is new, then the court proceeds to Step Two and asks "whether any alternative, existing process for protecting the interest amounts to a convincing reason for the Judicial Branch to refrain from providing a new and freestanding remedy in damages." If there is none, then the court proceeds to Step Three and asks whether there are " 'any special factors counselling hesitation before authorizing a new kind of federal litigation.' "'*
>
> – Ziglar v. Abbasi, 137 S. Ct. 1843 (2017)

21. In laymen's terms, the "**Two/Three Step Inquiry**" encompasses:

    a. asking '*has the plaintiff's complaint been grandfathered in?''*

        i. if 'YES' then proceed with litigation; else examine next step

    b. asking '*can somebody else deal with this?*'

i. if 'YES' then dismiss case; else examine next step

c. asking '*can the Court find some other excuse to dismiss this?*'

i. if 'YES' then dismiss case; else proceed with litigation.

22. Evaluating the instant action under this "Two/Three Step Inquiry" shows that Defendants Fitzpatrick/etc's request mis-stepped. The footprints of what they did in the dark remains for redress; even at the early dawn of this new day.

IV. Direct Rebuttal: First Amendment Availability

23. That Motion began the day by arguing that *Bivens* has not been extended to First Amendment claims **[M004]**. Albeit true, this was still a misstep. First Amendment claims have been made available under *Bivens* despite not being used to extend the doctrine.

24. In Mack v Warden, 839 F.3d 286 (3d Cir.), the Third Circuit Court of Appeals allowed a first amendment claim to proceed under *Bivens* (highlights added):

> *"Although the Supreme Court has never formally extended Bivens to First Amendment claims, it seems to have occasionally assumed that First Amendment retaliation claims can proceed under Bivens. Our Court, however, has explicitly recognized a Bivens action when a prisoner has been retaliated against for exercising his or her First Amendment right to petition."*
>
> – Mack v Warden, 839 F.3d 286 (3d Cir.)

25. Notwithstanding, That Motion's argument against Plaintiff's 1st Amendment charge also missteps by failing to identify an alternative remedy. In Carlson,

the US Supreme Court mandated that a *Bivens* defendant must show that such a remedy has been "*explicitly declared*":

> *"The Court now volunteers the view that a defendant cannot defeat a Bivens action simply by showing that there are adequate alternative avenues of relief. The defendant also must show that Congress "explicitly declared [its remedy] to be a substitute for recovery directly under the Constitution and viewed [it] as equally effective."*
>
> – Carlson v. Green, 446 US 14 (1980)

26. Thus, in the instant case, That Motion's argument against 1st Amendment *Bivens* availability is unavailing. What *is* availing, however, is a trial-by-jury; which is what a denial of That Motion will make available to This Case.

V. Direct Rebuttal: Seventh Amendment Availability

27. A trial-by-jury is also where the next argument lands. At page 4 of That Motion, Defendants Fitzpatrick/etc argue for dismissal of Plaintiff's Seventh Amendment claims. Their reasoning is because *Bivens* has not been extended to that constitutional passage (about trials-by-jury) **[M004]**.

28. For starters, Bivens can cover many constitutional violations:

> *"Bivens is not confined to Fourth Amendment claims"*
>
> – Wilkie v. Robbins, 551 US 537 (2007)

29. The "Two/Three Step Inquiry" has not foreclosed this. In fact – and acquiescing on this being a "*new Bivens context*" – the second step reveals

that there are no other "*explicitly declared*" alternative remedies. Nor are there any special factors for hesitating to deny That Motion.

30. Defendants Fitzpatrick/etc did not proffer any; and Plaintiff has not found any. With nowhere to seat That Motion's 7th Amendment argument, this Court is well-positioned to make it stand for trial.

VI. Direct Rebuttal: Fourteenth Amendment Availability

31. What is also apt for standing trial is Plaintiff's Fourteenth Amendment claim **[M004]**. That Motion's proffer of musical chairs only revealed that this seat has been taken.

32. It was taken by the Davis decision. Therein, the Supreme Court established that *Bivens* has been extended for (a) equal protection claims; and (b) due process claims:

> *"The equal protection component of the Fifth Amendment's Due Process Clause confers on petitioner a federal constitutional right to be free from gender discrimination that does not serve important governmental objectives or is not substantially related to the achievement of such objectives"*
>
> – Davis v. Passman, 442 US 228 (1979)

33. The Fourteenth Amendment, of course, deals with both of these tenets.

34. And Davis, of course, is one of the cases which That Motion acknowledged as being automatically *Biven*-permissible.

35. Permissibility of This Case is further strengthened by the fact that (a) That Motion failed to disclose any "*explicitly declared*" alternatives (¶25 *supra*); and (b) That Motion failed to express any "*special factors*" counseling hesitation.

36. Thus, none of the three elements are present to confer dismissal of Plaintiff's 14th Amendment claim (¶21). What *is* present, though, is Defendants Fitzpatrick/etc's *grandfathered-in* seat.

    a. Where their grandfather sits is where they must stand.

And Plaintiff hereby asks this Court to command them to stand trial, because That Motion's 14th Amendment argument has had its last dance.

VII. Direct Rebuttal: Judicial Immunity

37. In fact, at the last dance (ie Plaintiff's complaint), That Motion's subsequent argument met its match. At page 8 of That Motion, Defendants Fitzpatrick/etc argued that they were absolutely immune to suit **[M008]**. This is not the case.

38. The ultimate facts of Plaintiff's complaint showed that Defendants Fitzpatrick/etc' are being sued for non-judicial acts:

> *"136. The Doctrine of Judicial Immunity does not attach to this case for several fundamental reasons.*
> *137. First, none of the complained-of conduct were judicial acts. The document manipulation that Defendant Fitzpatrick engaged in was an administrative task; one which USFLND's clerical employees normally do. The*

> *unconstitutional rulemaking that Defendants engaged in was akin to a legislative act.*
>
> – **[C136]-[C137]**

39. As the Forrester court held, "administrative" and "legislative" tasks are non-judicial:

> *"The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform."*
>
> – Forrester v White, 484 US 219 (1988)

40. Non-Judicial acts, of course, are not available for judicial immunity:

> *"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)

41. Thus, absolute judicial immunity is not applicable to this case; so, this Court is well-positioned to deny That Motion's argument on it.

VIII. Acquiescence: Individual Capacity vs Official Capacity

42. Page 14 of That Motion moves onto Defendants Fitzpatrick/etc's argument against official capacity. Plaintiff has not found any missteps in this argument.

43. Plaintiff, nonetheless, has not found much harm in the argument either. Mainly because he has sued Defendants Fitzpatrick/etc in their individual capacities as well.

44. So, in short, Plaintiff will not argue this point today.[4/] Nevertheless, when the DJ plays his song he will revisit Defendants Fitzpatrick/etc's official capacity tap dance; and perhaps realign it with their individual capacity three-step.

IX. Direct Rebuttal: Cited Statutes and Causes of Action

45. May this District Judge find that Defendants Fitzpatrick/etc's argument on *cited-statutes/causes-of-action* to be academic only **[M016]**. None of the twelve cases cited therein matched the ultimate facts of this case (eg, federal judges crafting/enforcing unconstitutional local rules).

46. Instead, those citations dealt with FOIA, arbitration agreements, court reporters, Washington DC, gun dealers, finance charges, prisoner exercise, FICA, police officers, natural gas acts, and mailmen.

47. Failure to connect to the facts of this case is fatal to That Motion (please see Eidson v Arenas, 910 F. Supp. 609 (USFLMD 1995)).

48. Thus, That Motion's *cited-statutes/causes-of-action* argument was inapplicable to this case.

X. Direct Rebuttal: Allegations Conspiracy

49. What was also inapplicable to This Case was That Motion's argument about Plaintiff's allegations of conspiracy **[M020]**.

50. As is well known, a movant in a motion-to-dismiss cannot refute the factual allegations of the complaint. Instead, he/she must accept all allegations as true (Parkhurst v Hiring 4 U, USFLMD, 2:19-cv-00863; 9/29/20):

51. Likewise, upon accepting all facts as true, Defendants Fitzpatrick/etc cannot litigate the merits (Johnson v Nocco, USFLMD, 8:20-cv-01370; 2/18/21):

52. Thus, That Motion's argument against Plaintiff's factual allegations is muted by the operation of law.

XI. Direct Rebuttal: Proper Venue

53. Last, a moot point also operates to quell That Motion's argument on proper venue **[M021]**. USFLMD has since transferred This Case into this Court.

XII. Legal Standard | Plaintiff's Argument Against Dismissal

54. Speaking of courts, federal courts have a well-established method for adjudicating Rule 12(b)(6) motions to dismiss. That Motion, importantly, was filed under that rule **[M001]**.

55. That method starts off by only evaluating 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 | USFLMD | 8:20-cv-02951 | 3/23/21

56. 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. | USFLMD | 2:19-cv-00863 | 9/29/20

57. Third, federal courts 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))."*

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

58. In performing this examination, 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. | USFLMD | 2:19-cv-00863 | 9/29/20

59. 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 Suite Corp v GM Company | USFLMD | 8:20-cv-00762 | 3/10/21

60. Plus, the Court must afford leeway to layperson litigants:

> *"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)."*

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

61. 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 | USFLMD | 8:20-cv-01370 | 2/18/21

XIII. Analysis

62. 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 for propriety.

a. Four Corners of the Complaint

63. In the instant matter, the 'four corners of the complaint' include (i) The Complaint (with all 9 exhibits); (ii) That Motion (with 0 exhibits); and (iii) this response.

b. Short & Plain Statements

64. The Complaint – although detailed – still contained short & plain statements describing Defendants Fitzpatrick/etc's guilt (¶6-9 *supra*). As such, Plaintiff has satisfied element "b" for denial of That Motion.

c. Sufficient Facts

65. Notably, The Complaint had 152 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 (see Rule 12(f) Fed. R. Civ. P.); and

        ii. The fact that That Motion did not claim otherwise.

66. Moreover, Plaintiff's complaint had 9 exhibits and 9 direct quotes.

    a. All of which, importantly, are public record (ie, not subject to dispute because they are readily verifiable from sources whose accuracy cannot be questioned – Rule 201(b)(2) Fed. R. Evid.)

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

68. According to the Eleventh Circuit, dismissal would be improper:

> *"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)

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

d. Construing All Facts as True

70. For the purposes of evaluating That Motion's attempt to dismiss Plaintiff's civil rights Counts, this Court must accept The Complaint's 95 factual allegations as true (**[C009-C105]**).

71. Pertinently, the ultimate facts operate [¶6-9 supra].

e. Plausibility

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

73. 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.*"

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

75. First, this Court must discard any legal conclusions masquerading as facts. Plaintiff hereby states that the fundamental fact (ie, '*Defendants Fitzpatrick/etc created & enforced an unconstitutional local rule to deprive Plaintiff of Plaintiff's constitutional rights – while motivated by invidious discrimination on the bases of race & sex'*) is a clearcut fact.

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

77. Next, this Court should determine whether Plaintiff's well-pleaded facts rise to an entitlement of relief. Breaking the law (ie, bribery, docket spoliation), of course, entitles a plaintiff to relief (Ex Parte Young, 209 US 123 (1908)).

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

f. Double-Check for Propriety

79. 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 v Jacksonville | 3:20-cv-00056 | 1/26/21

80. This Court has deemed it improper for a *motion to dismiss* to apply an evidentiary standard. Which, unfortunately, is what That Motion nearly did:

> *"Equally important, any alleged acts for which any Federal Defendant is entitled to immunity cannot form the basis for a conspiracy claim. Indeed, Aa person may not be prosecuted for conspiring to commit an act that he may perform with impunity." Jones v. Cannon, 174 F.3d 1271, 1289 (11th Cir. 1999)"*
>
> – **[M020]**

81. This quote from That Motion came from an appellate court decision on a motion for **summary judgment** (highlights added).

> *"Defendants Sheriff Lee Cannon, Detective Timothy Powers, and Detective Rodney Bishop appeal the magistrate judge's order granting in part and denying in part their motions for summary judgment."*
>
> – Jones v. Cannon, 174 F.3d 1271 (11th Cir. 1999)

82. Summary judgment, of course, is governed by Rule 56 Fed. R. Civ. P. (not Rule 12(b)). Such requests are based on unconquerable fact. And – importantly – they occur *after* discovery. Doubly important: 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).

83. Thus, Defendants Fitzpatrick/etc mis-stepped: Plaintiff does not need to meet an evidentiary burden at the motion-to-dismiss stage. Evidentiary determinations are the exclusive province of the fact finder (ie, the jury).

84. Instead, as the controlling law in Twombly holds, Plaintiff's complaint only needs to 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, et al | 2:18-cv-00675 | 11/6/20

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

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to deny the "*Motion and Memorandum to Dismiss Amended Complaint... Defendants Fitzpatrick and Walker"*, because Plaintiff has submitted a well-pled set of factual elements pointing to Defendants Fitzpatrick/etc's unlawful and unauthorized infringements on Plaintiff's constitutional rights. Moreover, That Motion was untimely; and Plaintiff is entitled to default as a matter of law.

Dated this 16th day of August 2022.

Respectfully submitted,

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

CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point font (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 (4,184).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of September 2022, I mailed the foregoing to the Clerk of Courts (via ____). I also emailed an electronic copy to the people on the attached service list.

/s/ Elias Makere

Endnotes:

[1/] the case began in state court before getting transferred to federal court (USFLMD; 7/5/22). USFLMD later transferred This Case into this Court (USFLND; 8/30/22)

[2/] please see *"Plaintiff's Motion to Strike the United States' Motion to Dismiss"* filed on-or-around September 15, 2022.

[3/] Rule 4(e) Fed. R. Civ. P. confers authority to Rule 1.140(a) Fla. R. Civ. P.; which states that Defendants Fitzpatrick/etc had twenty (20) days to file a responsive pleading. Also see Rule 2.514(a)(1) Fla. R. Jud. Admin. (also see Rule 6(a)(1) Fed. R. Civ. P.)

[4/] Plaintiff will note, however, that this is one of the first times (and the most spotlit time) that Plaintiff has witnessed any of these witnesses operate with honesty and integrity.

[5/] 4:21-cv-00096; USFLND; ongoing

Link to Underlying Coverup (HTML, PDF, Video)

HTML	TextBookDiscrimination.com/Info/Misc/ALJPerjury/Complaint-Amended.html
PDF	TextBookDiscrimination.com/Files/USFLND/20000096_AAC_20211231_123954.pdf
Video	https://youtu.be/LkfFHLyqg_g

Electronic Copy: (text-searchable)

TextBookDiscrimination.com/Files/USFLND/22000315_GRSP_20220915_150607.pdf

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