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By: Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO:
	)	
UNITED STATES OF AMERICA,	)	1:09-CV-02027-WSD
JUDGE ORINDA D. EVANS,	)	
HAWKINS PARNELL THACKSTON	)	
YOUNG, CARL HUGO ANDERSON,	)	
PHILLIPS LYTLE, LLP,	)	
CHRISTOPHER M. GLYNN,	)	
TIMOTHY P. RUDDY,	)	
ROBERT J. SCHUL,	)	
JUDITH L. BERRY,	)	
MAID OF THE MIST	)	
CORPORATION,	)	
MAID OF THE MIST	)	
STEAMBOAT COMPANY, LTD.,	)	
SANDRA CARLSON,	)	
MARC W. BROWN,	)	
ARTHUR RUSS.	)	
AND DOES 1 TO 100,	)	
Defendants.	)	
	)	

MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT; MOTION FOR DISCOVERY; MOTION FOR IN CAMERA INSPECTION; AND MOTION FOR AN EVIDENTIARY HEARING

Petitioner and Plaintiff, William M. Windsor ("Windsor"), hereby moves the Court for an extension of time to respond to the "Motions to Dismiss" filed by the Defendants [Dos. 130 and 131]. Windsor seeks discovery. Windsor requests an in camera inspection of documents in the custody of Judge Orinda D. Evans ("Judge Evans"). Windsor requests an evidentiary hearing. Windsor shows this Court as follows:

1. Windsor filed the Verified Complaint in this case on July 27, 2009.

2. The case was stayed from July 30, 2009 until July 8, 2010, and activity in the case remains severely restricted even now.

3. A motion titled "Motion to Dismiss by Carl Hugo Anderson, Marc W. Brown, Sandra Carlson, Christopher M. Glynn, Hawkins Parnell Thackston Young, Maid of the Mist Corporation, Maid of the Mist Steamboat Company Ltd., Phillips Lytle LLP, Timothy P. Ruddy, Arthur Russ, and Robert J. Schul was filed on August 4, 2010 [Doc. 131] as was a Motion for Joinder by Judith L. Berry [Doc. 132]. These motions will be referred to as "MOTIONS FOR SUMMARY JUDGMENT." These Defendants will be referred to as the "MAID DEFENDANTS." This response will be referred to as RESPONSE TO MOTIONS FOR SUMMARY JUDGMENT.

4. A "Motion to Dismiss" was filed by the USA and Judge Evans on August 4, 2010 [Doc. 130] ("EVANS MOTION"). Windsor's RESPONSE TO MOTION TO DISMISS OF USA AND JUDGE ORINDA D. EVANS AND A MOTION FOR EXTENSION OF TIME TO RESPOND ("Response to Judge Evans") filed contemporaneously with this Response/Motion. This RESPONSE TO JUDGE EVANS is referenced and incorporated herein as if attached hereto.

MOTION FOR EXTENSION OF TIME TO RESPOND

5. Windsor is pro se, has no assistance of any type, and he cannot read at this time. Windsor has been having serious eye problems for several months. He has undergone two surgeries thus far with two more to come. Windsor has filed requests for specific approval to file motions for extensions of time, a "stay" (which should have said continuance), and an emergency motion for a continuance. These were filed on July 21, August 6, and August 12, 2010. The Emergency Motion for Continuance was filed on August 12, 2010 after Windsor was informed that he must undergo additional surgical procedures on his left eye. [Docs. 127, 128, 135, 136, 138, and 139 are referenced and incorporated herein as if attached hereto as are all docket numbers referenced herein.] This Court has not yet responded. So, Windsor is typing this as best he can. He is unable to read so he has

not been able to do any research. The only citations herein are from research done on motions to dismiss prior to the eye problems.

6. Windsor's inability to read and medical emergency is a primary reason for the Motion for Extension included herein. This is the best of reasons for an extension of time, and after a year of this case under a stay, a few weeks certainly will not disadvantage any of the Defendants.

7. While Windsor cannot read, he was able to flip to the back of the MOTIONS FOR SUMMARY JUDGMENT. It includes affidavits and extensive "evidence" that is not in the pleadings.

8. This Court previously denied Windsor's motion to allow judicial notice of the dockets in other cases. On July 31, 2009, Windsor requested: "that the evidence filed in Civil Action No. 1:06-CV-0714-ODE ("MIST-1") is to be considered as part of the Plaintiff's filings in the Civil Action by this Court and appellate courts. If the evidence must be filed again in this Court, the Plaintiff requests leave of the court to file this evidence." This Court denied that motion.

9. In an Order dated July 8, 2010 [Doc. 115], this Court allowed Windsor to amend his verified Action, but Windsor was ordered to delete all references to the court record inn other matters.

10. In the Order dated July 8, 2010 setting the dates for motions to dismiss to be filed, this Court again denied discovery.

11. The truth is that the only facts that could be considered by this Court in this matter are the sworn affidavits filed by Windsor in 2009 and 2010. Prior to the MOTIONS FOR SUMMARY JUDGMENT AND EVANS MOTION, none of the Defendants filed an affidavit as to the facts. The attorneys filed affidavits dealing only with legal procedural matters. Based upon the evidence, Windsor wins. Windsor's Verified Complaint filed on July 27, 2009 has been amended. However, the original Verified Complaint serves as a sworn affidavit, and it references and incorporates massive evidence in MIST-1. This overwhelming evidence stands uncontroverted against the MOTIONS FOR SUMMARY JUDGMENT AND EVANS MOTION.

12. MAID DEFENDANTS waived their right to file a motion to dismiss when they filed a Rule 11 motion on June 3, 2010 [Doc. 109], the MOTIONS FOR SUMMARY JUDGMENT ON AUGUST 4, 2010 [DOCS. 131 AND 132] and yet another Rule 11 motion on August 10, 2010 [Doc. 137]. This Court has already considered matters outside of the pleadings as shown by Docs. 108, 133, 109, 131, and 132.

13. A motion to dismiss must be based solely on matters contained in the pleading at issue. If matters outside the pleading are presented, it must be considered to be a motion for summary judgment. "...any oral or written evidence not already "in the record" — public or court, physically or by reference — is regarded as "extrinsic" and will spur a conversion."

> If the court considers matters outside of the pleadings, the motion is converted into a motion for summary judgment under Federal Rule of Civil Procedure 56. See Fed. R. Civ. P. 12(d). If such a conversion occurs, each party "must be given a reasonable opportunity to present all the material that is pertinent to the motion." Id. See ***Bryant v. Avado Brands, Inc.***, 187 F.3d 1271, 1278 (11th Cir. 1999);

14. See also ***Universal Express, Inc. v. S.E.C.***, 177 Fed. Appx. 52, 53--54 (11th Cir. 2006) (per curiam) (holding that a district court could take judicial notice of filing in a separate case without turning motion to dismiss into motion for summary judgment). However, judicial notice of other cases may not be taken in this matter because the central issue in this case is the fraud upon the courts in the other cases.

15. Windsor asked this Court to take action in regard to the material filed by the MAID DEFENDANTS on July 21, 2010 [Doc. 119], but this Court has ignored that request. The MAID DEFENDANTS' Request for Approval to file the Motion for Sanctions removed the opportunity for these Defendants to file a

motion to dismiss as these Defendants have presented information outside of the pleadings.

16. This Court must issue an order officially converting the Motion to Dismiss by Carl Hugo Anderson, Marc W. Brown, Sandra Carlson, Christopher M. Glynn, Hawkins Parnell Thackston Young, Maid of the Mist Corporation, Maid of the Mist Steamboat Company Ltd., Phillips Lytle LLP, Timothy P. Ruddy, Arthur Russ, and Robert J. Schul was filed on August 4, 2010 [Doc. 131] as was a Motion for Joinder by Judith L. Berry [Doc. 132] to Motions for Summary Judgment.

17. This Court has failed to provide Windsor with the mandatory express 10-day notice of the summary judgment rules.

> Whenever a judge considers matters outside the pleadings in a 12(b)(6) motion, that motion is thereby converted into a Rule 56 Summary Judgment motion. Fed. R. Civ. P. 12(b); ***Concordia v. Bendekovic***, 693 F.2d 1073, 1075 (11th Cir. 1982). When that conversion occurs, the district court must comply with the requirements of Rule 56. ***Jones v. Auto. Ins. Co.***, 917 F.2d 1528, 1532 (11th Cir. 1990). The district court is required to notify the parties that the motion has been converted, and give the parties 10 days in which to supplement the record. ***Herron v. Beck***, 693 F.2d 125, 126 (11th Cir. 1982).
>
> When a court considers matters outside of the pleadings in a Fed.R.Civ.P. 12(b)(6) motion to dismiss, the court converts that motion into a motion for summary judgment. See Fed.R.Civ.P. 12(b)*fn3 ; ***Trustmark Ins. Co. v. ESLU, Inc.*** 299 F.3d 1265, 1267 (11th Cir. 2002). And when conversion occurs, the adverse party must be "given express, ten-day notice of the summary judgment rules, of his right to file affidavits or other material in opposition to the motion, and of the consequences of default." ***Griffith v. Wainwright***, 772 F.2d 822, 825 (11th Cir. 1985). Whether the district court

complied with the rules for converting a motion to dismiss into a motion for summary judgment is an issue that this Court addresses sua sponte.*fn4 See id. at 824. We have interpreted this notice requirement strictly, see ***Jones v. Auto Ins. Co. of Hartford, Conn.***, 917 F.2d 1528, 1532 (11th Cir. 1990) (a "bright-line rule" of reversing and remanding applies when notice requirement not satisfied); and we have required district courts to "be particularly careful to ensure proper notice to a pro se litigant." ***Griffith***, 772 F.2d at 825 (quotation and citation omitted); see also ***Jones***, 917 F.2d at 1532 n.2.

We have held: Whenever a judge considers matters outside the pleadings in a 12(b)(6) motion, that motion is thereby converted into a Rule 56 Summary Judgment motion. When that conversion occurs, the district court must comply with the requirements of Rule 56. The district court is required to notify the parties that the motion has been converted, and give the parties 10 days in which to supplement the record. ***Herron v. Beck***, 693 F.2d 125, 126 (11th Cir.1982). ***Trustmark Ins. Co. v. ESLA, Inc.***, 299 F.3d 1265, 1267 (11th Cir. 2002) (internal citations omitted). (***Chong v. Healthtronics, Inc.***, No. 08-10160 (11th Cir. 07/17/2008).)

As a general rule, "[w]henever a judge considers matters outside the pleadings in a 12(b)(6) motion, that motion is thereby converted into a Rule 56 Summary Judgment motion." ***Trustmark Ins. Co. v. ESLU, Inc.***, 299 F.3d 1265, 1267 (11th Cir. 2002); Fed.R.Civ.P. 12(b); ***Day v. Taylor***, 400 F.3d 1272, 1275-76 (11th Cir. 2005). "When that conversion occurs, the district court must comply with the requirements of Rule 56. The district court is required to notify the parties that the motion has been converted, and give the parties 10 days in which to supplement the record." ***Trustmark***, 299 F.3d at 1267 (citations omitted). "[W]e are compelled by our own precedents to note sua sponte that the court below failed to adhere to the dictates of Fed.R.Civ.P. 56(c) . . . ." ***Griffith v. Wainwright***, 772 F.2d 822, 824 (11th Cir. 1985). We have "consistently enforced the strict notice requirements of Rules 12(b) and 56, creating a bright-line rule: If a district court fails to comply with the ten-day notice requirement, the case will be reversed and remanded so that the district court may provide the non-moving party with adequate notice." ***Jones v. Auto. Ins. Co. of Hartford, Conn.***, 917 F.2d 1528, 1532 (11th Cir. 1990) (emphasis in original).

The district court considered an affidavit outside of the complaint when granting the Judges Council's motion to dismiss, thus, we will construe the Judges Council's motion to dismiss as a converted motion for summary judgment. See ***Trademark Ins. Co. v. ESLU, Inc.***, 299 F.3d 1265, 1267 (11th Cir. 2002). (***Spann v. Cobb County Pretrial Court Services Agency***, 206 Fed.Appx. 910 (11th Cir. 11/15/2006).)

We begin by observing the district court could not have considered Appellees' motion under Rule 12(b)(6), because in rendering its decision the court relied on extrinsic evidence outside the pleadings. See Fed. R. Civ. P. 12(b); see also ***Trustmark Ins. Co. v. ESLU, Inc.***, 299 F.3d 1265, 1267 (11th Cir. 2002) ("Whenever a judge considers matters outside the pleadings in a 12(b)(6) motion, that motion is thereby converted into a Rule 56 Summary Judgment motion."). See ***Anderson v. Liberty Lobby, Inc.***, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986).

We have a "bright line rule" on this issue: "If a district court fails to comply with the ten-day notice requirement [of Rule 56(c)], the case will be reversed and remanded so that the district court may provide the non-moving party with adequate notice." ***Jones v. Auto. Ins. Co. of Hartford, Conn.***, 917 F.2d 1528, 1532 (11th Cir. 1990). In certain circumstances, we have concluded that the failure to provide the requisite notice was harmless. See ***Denis v. Liberty Mut. Ins. Co.***, 791 F.2d 846, 850 (11th Cir. 1986). We have noted, however, that this exception is appropriate in only the "very unique case" where: 1) all of the parties were well aware that the judge was converting the Rule 12(b)(6) motion; and 2) the parties would not have made additional arguments or submitted additional evidence had they received the required notice. See ***Property Mgmt. & Invs. Inc. v. Lewis***, 752 F.2d 599, 605 (11th Cir. 1985). In both ***Property Management*** and ***Denis***, the district court expressly stated that it was converting the motions to dismiss into motions for summary judgment because the parties had introduced evidence outside of the pleadings. See ***Denis***, 791 F.2d at 848; ***Property Mgmt.***, 752 F.2d at 602. In ***Denis***, we further noted that it was clear that the appellant was aware of the conversion because his motion to reconsider made arguments based on the summary judgment standard of "a genuine issue of material fact." ***Denis***, 791 F.2d at 850. By contrast, the record in this case does not demonstrate that the parties were aware that the district court was converting the motion to dismiss into one for summary judgment. Formalistic though

they may be, "[p]roper procedures must be followed" when motions to dismiss are converted to motions for summary judgment. Finn, 722 F.2d at 713. As in ***Finn***, "[w]e will not speculate on what actions the parties will take nor the possible rulings by the trial court. Nor do we make any comments upon the merits of the claims presented." Id. We hold only that the district court's consideration of matters outside of the pleadings converted the City's motion to dismiss regarding Lewis's Title VII claims into one for summary judgment and that the required notice was not provided. We AFFIRM the judgment of the district court insofar as it granted the motion to dismiss the § 1983 and state law tort claims. Insofar as the district court granted the motion to dismiss the Title VII claims, we REVERSE the judgment and REMAND for further proceedings consistent with this opinion. (***Lewis v. Asplundh Tree Expert Co.***, 305 Fed.Appx. 623 (11th Cir. 12/30/2008).)

18. Windsor must be given an extension of time to conduct discovery on the MOTIONS FOR SUMMARY JUDGMENT.

Similarly, motions to dismiss under Fed.R.Civ.P. 12 "should be granted sparingly," and only "where adequate time is given to complete discovery and all the jurisdictional facts are fully developed and placed before the Court." **Martin v. Morgan** ***Drive Away, Inc., 665 F.2d 598, 602 n. 1 (5th Cir. Unit A 1982) (quoting Chatham Condominium Associations v. Century Village, Inc.***, 597 F.2d 1002, 1012-13 (5th Cir. 1979).)

DEFENDANTS HAVE FAILED TO MEET THE REQUIREMENTS FOR MOTIONS TO DISMISS

19. This is a case of gargantuan wrongdoing by the Defendants. This has been well-established by the pleadings and the uncontroverted evidence before the Court.

The threshold for dismissal under Fed.R.Civ.P. 12 is high. "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond

doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ***Conley v. Gibson***, 355 U.S. 41, 46 (1957). "In analyzing the complaint, [the court] will accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff...the issue is not whether the plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claim." ***Jones v. Greninger***, 188 F.3d 322, 324 (5th Cir. 1999). "A motion to dismiss under rule 12(b)(6) is viewed with disfavor and rarely granted." ***Benal v. Freeport-Morgan, Inc.***, 197 F.3d 161, 164 (5th Cir. 1999). See also, ***Ramming v. United States***, 281 F.3d 158, 161 (5th Cir. 2001) cert. denied sub nom Cloud v. U.S., 122 S.Ct. 2665 (2002).

"A motion to dismiss does not test the merits of a case, but only requires that a plaintiff's factual allegations, when assumed to be true, must be enough to raise a right to relief above the speculative level." (***Young Apartments, Inc. v. Town of Jupiter***, 529 F.3d 1027, 1037 (11th Cir. 2008) (internal quotations/citation omitted). Thus, for purposes of a motion to dismiss, all factual allegations made in the Complaint must be accepted as true and construed in the light most favorable to Plaintiffs. Id.

As the Court knows, the purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the pleadings, not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." ***Edwards v. City of Goldsboro***, 178 F.3d 231, 244 (4th Cir. 1999). The burden is on the moving party to prove to the Court beyond certainty that "plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Id.* "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." ***Scheuer v. Rhodes***, 416 U.S. 232, 236 (1974) A trial court, in ruling on a motion to dismiss, is required to view the complaint in a light most favorable to the Plaintiff. ***Sofarelli v. Pinellas County***, 931 F.2d 718, 721 (11th Cir. 1991). "The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly

demonstrate this. Such simplified 'notice pleading' is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. . . . The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." **Conley v. Gibson**, 355 U.S. 41 at 47-48, 78 S.Ct. 99 at 102-103, 2 L.Ed.2d 80 (1957); as cited in **Kush v. Rutledge**, 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 413 (1983).

The **Conley** Court noted that "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." **Conley v. Gibson**, 355 U.S. 41 at 45-46, 78 S.Ct. 99 at 100-101, 2 LED.2d 80 (1957); as cited in **Kush v. Rutledge**, 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 413 (1983)

WINDSOR MOVES THE COURT TO ALLOW HIM TO AMEND THE VERIFIED COMPLAINT IF THE COURT FEELS ANY ASPECT OF THE PLEADINGS IS INADEQUATE

20. Because Windsor is pro se and has had no legal assistance whatsoever, Windsor moves this Court to allow him to amend the Verified Complaint should the Court feel that there is any merit whatsoever to the MOTIONS FOR SUMMARY JUDGMENT filed by all of the Defendants.

"Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed ." ***Tannenbaun v. United States***, 148 F .3d 1262, 1 263 (11 'h Cir. 1998) (per curiam). See also the following : "(A) motion to dismiss a complaint, including . . . a civil rights complaint, for failure to state a claim upon which relief can be granted is subject to a very strict standard .' ***Gray a Cramer***, 465 F .2d 179, 181 (3d Cir. 1973); [***Storm Systems, Inc. v. Kidd***, 157 Ga. App. 527, 528 (3) (278 S

.E.2d 109); ***Wright & Miller Fed. Practice & Procedure***: Civil §1357 .] A pro se complaint is not held to stringent standards of formal pleadings, ***Haines v. Kerner***, 404 U.S. 519, 92 S .Ct. 594, 30 L . Ed.2d 652 (1972) [***Vinnedge v. Gibbs***, 550 F.2d 926 (1) (0 Cir . 1977)], and the complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief .' ***Conley v. Gibson***, 335 U.S . 41, 45-46, 78 S . Ct . 99, 2L . Ed.2d 80 (1957) . See also J . Moore, 2A ***Moore's Federal Practice***, para. 12.08 at 2265-86 (1972)." ***Hughes v. Roth***, 371 F. Supp . 740, 741 (D .C. Pa. 1974).

MOTIONS TO DISMISS ARE UNCONSTITUTIONAL

21. The Seventh Amendment provides that "[i]n Suits at common law, . . . the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."19 Thus, the Seventh Amendment governs the question of when a case may be dismissed without a jury trial. As a preliminary matter, the Supreme Court has stated that "common law" in the Seventh Amendment is the English common law in 1791, when the Seventh Amendment was adopted.20 Under the English common law in 1791, a jury trial right existed in cases in which legal, rather than equitable, remedies were available.21 As a result, the Court has held that a jury trial right exists in cases in which legal remedies exist, regardless of whether the cause of action existed under the common law. (*See, e.g.*, ***Curtis v. Loether***, 415 U.S. 189, 192–94 (1974) (finding a right to a jury trial in a Title VIII case); ***Ross v. Bernhard***, 396 U.S. 531, 542 (1970) (finding a right to a jury trial in

a shareholder derivative suit). *See, e.g.*, ***Galloway***, 319 U.S. at 390–92.) The Supreme Court has further stated that, where a constitutional right to a jury trial exists, a new procedure that affects the jury trial right (including taking the right away) is constitutional if the procedure satisfies the substance of the English common law jury trial in 1791.23*See, e.g.*, ***Galloway v. United States***, 319 U.S. 372, 388–92 (1943). 21. *See, e.g.*, ***Parsons v. Bedford***, 28 U.S. (3 Pet.) 433, 446–47 (1830) (defining the right).

22. Windsor has a Constitutional right to a jury trial. This right is magnified in this case because it is the judicial system that is on trial. The judicial system should not be allowed to render a decision on itself.

MOTION FOR DISCOVERY

23. Upon its own initiative, this Court stayed the proceedings [Doc.31] on July 30, 2009 and September 3, 2009 [Doc. 61] due to appellate actions, and the stay was not lifted until July 8, 2010 [Doc. 115].

24. There has been no discovery allowed.

25. For the reasons expressed above, Windsor moves this Court to grant discovery. Windsor must be able to take the depositions of each of the Defendants who filed affidavits as part of the MOTIONS FOR SUMMARY JUDGMENT, and Windsor must be able to depose Judge Evans and her legal clerks and assistants.

Windsor moves this Court to order the Clerk of the Court to issue subpoenas to Windsor as needed.

26. Windsor must be allowed to obtain all communication between any of the Defendants from 2005 to the present. There is no attorney-client privilege in an action such as this one. Windsor must also be able to obtain copies of the contracts that Maid claims to have submitted to Judge Evans for an in camera inspection in 2007.

MOTION FOR IN CAMERA INSPECTION

27. Windsor moves this Court to require that Judge Evans produce the documents filed under seal by Maid of the Mist Corporation and Maid of the Mist Steamboat Company, Ltd. ("MAID") in MIST-1 in February 2007.

28. These documents will prove wrongdoing by Judge Evans and Maid. These documents should establish that the so-called "Motions to Dismiss" must be denied.

29. Windsor has previously filed copies of what the documents should be so this Court can compare them. Windsor will provide additional copies and a precise explanation of what the inspection should determine when this motion is granted.

MOTION FOR EVIDENTIARY HEARING

30. Windsor requests a hearing on the MOTIONS FOR SUMAMRY JUDGMENT.

MAID DEFENDANTS' MOTION FOR SANCTIONS MUST BE CONSIDERED AN ANSWER

31. The Request for Approval to file Motion for Sanctions [Doc. 109] must be considered an answer and thus eliminates these Defendants option to file a motion to dismiss. (FRCP Rule 12; ***Byrne v. Nezhat***, 261 F.3d 1075 (11th Cir. 08/14/2001). However, the Verified Complaint in this civil action requires a verified answer, and these Defendants have failed to file the required verified answer. This answer is insufficient, and Windsor moves to strike the answer of these Defendants.

MAID DEFENDANTS WAIVED DEFENSES NOT INCLUDED IN THE MOTION FOR SANCTIONS.

32. Maid Defendants have waived defenses not included in the Motion for Sanctions. (FRCP Rule 12(h).)

> As an affirmative defense under Fed.R.Civ.P. 8(c), res judicata ordinarily must be raised in the pleadings or else it is waived. However, this defense may properly be invoked in a motion, whether for summary judgment or failure to state a claim, if the motion is presented before the answer is filed. (***WELDON v. UNITED STATES***, 845 F. Supp. 72 (N.D.N.Y. 03/2/1994).)
>
> (***Yeldell v. Tutt***, 913 F.2d 533, 539 (8th Cir. 1990); ***Alger v. Hayes***, 452 F.2d 841, 844 (8th Cir. 1972).)

WHEREFORE, Windsor respectfully requests that this Court enter an order as follows:

a. grant this MOTION;

b. extend the time for Windsor's response;

c. deny the so-called "motions to dismiss" filed by the Defendants;

d. allow Windsor to amend the Verified Complaint if the Court feels it is needed;

e. grant Windsor's MOTION FOR DISCOVERY;

f. grant Windsor's MOTION FOR IN CAMERA INSPECTION;

g. grant Windsor's MOTION FOR AN EVIDENTIARY HEARING;

h. strike the answer filed by the MAID DEFENDANTS;

i. issue an order denying the MAID DEFENDANTS the right to raise any defenses not included in the MOTION FOR SANCTIONS; and

j. grant such other and further relief as to this Court may appear just and proper.

Respectfully submitted, this 18th day of August, 2010.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO:
	)	
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HAWKINS PARNELL THACKSTON	)	
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SANDRA CARLSON,	)	
MARC W. BROWN,	)	
ARTHUR RUSS.	)	
AND DOES 1 TO 100,	)	
Defendants.	)	
	)	

CERTIFICATE OF COMPLIANCE

As required by Local Rule 7.1D, N.D. Ga., I hereby certify that this pleading has been prepared in Times New Roman 14-point font, one of the font and point selections approved by this Court in Local Rule 5.1B, N.D. Ga.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,	)	
	)	
Plaintiff,	)	
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v.	)	CIVIL ACTION NO:
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AND DOES 1 TO 100,	)	
Defendants.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT; MOTION FOR DISCOVERY; MOTION FOR IN

CAMERA INSPECTION; AND MOTION FOR AN EVIDENTIARY HEARING

by depositing the same with the United States Postal Service with sufficient postage and addressed as follows:

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