IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WILLIAM M. WINDSOR, Plaintiff, v. FULTON COUNTY, OFFICE OF THE FULTON COUNTY DISTRICT ATTORNEY, PAUL HOWARD, JR., CYNTHIA NWOKOCHA, NAOMI FUDGE, REBECCA KEEL, WAVERLY SETTLES, LIEUTENANT ENGLISH, DEPUTY BETTS, DEPUTY ROYE, STEVE BROADBENT, AND UNKNOWN DOES, Defendants.	)	CIVIL ACTION FILE NO. 2011CV206243

DEFENDANTS' NOTICE OF FILING OF ORIGINAL EVIDENCE

Comes now the Office of the Fulton County Attorney, by special appearance on behalf of the putative defendants[1], without waiving any affirmative or other defenses, including insufficiency of service of process, pursuant to O.C.G.A. §§ 9-11-8 and 12, and hereby files the following original evidence for purposes of the October 7, 2011, hearing on Plaintiff's

[1] To date, none of the putative defendants has been served. However, since Plaintiff advised the Office of the Fulton County Attorney of the filing of this matter and of the October 7 hearing on his request for injunctive relief, in an abundance of caution, the Office of the County Attorney will appear at the October 7 hearing on behalf of Fulton County.

Requests for a Preliminary Injunction and Temporary Restraining Order:

1. Order, William M. Windsor v. James Hatten et al., Civil Action No. 1:11-CV-1923-TWT (N.D. Ga.), Docket No. 74.

2. Order, Maid of the Mist Corp. et al v. Alcatraz Media, LLC, et al., Civil Action No. 1:09-CV-1543-WSD (N.D. Ga.), Docket No. 99.

3. Order, Maid of the Mist Corp, et. al. v. William M. Windsor, Civil Action File No. 1:09-CV-01543-WSD (N.D. Ga.), Docket No. 52.

4. Order, William N. Windsor v. Christopher Huber, et al., Civil Action File No. 1:11-CV-2326-TWT, Docket No. 38.

Respectfully submitted, this the 6th day of October, 2011.

OFFICE OF THE FULTON COUNTY ATTORNEY

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WILLIAM M. WINDSOR,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 2011CV206243**
	)	
v.	)	
	)	
FULTON COUNTY, OFFICE OF THE FULTON COUNTY DISTRICT ATTORNEY, PAUL HOWARD, JR., CYNTHIA NWOKOCHA, NAOMI FUDGE, REBECCA KEEL, WAVERLY SETTLES, LIEUTENANT ENGLISH, DEPUTY BETTS, DEPUTY ROYE, STEVE BROADBENT, AND UNKNOWN DOES,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing **NOTICE OF FILING OF ORIGINAL EVIDENCE** upon Plaintiff via electronic mail and by depositing a true and correct copy of the same in the United States mail, proper postage affixed thereto, addressed as follows:

William M. Windsor
PO Box 681236
Marietta, GA 30068

This 6th day of October, 2011.

Lanna R. Hill

Georgia Bar No. 354357

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ATTACHMENT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,
Plaintiff,
v.

JAMES N. HATTEN, et al.,
Defendants.

CIVIL ACTION FILE
NO. 1:11-CV-1923-TWT

ORDER

This is a pro se civil action against the Clerk of this Court and various judges of this Court and the Eleventh Circuit Court of Appeals and others. It is before the Court on the Defendant United States' Motion for Modification of Protective Order [Doc. 40]. The Court notes that in a related case where the Plaintiff's appeal was dismissed as frivolous, the Court of Appeals described the Plaintiff's abuse of the judicial system as follows:

> [The Plaintiff's] litigious behavior [has] undermined the integrity of the judgments and orders in this case. Although the case is closed, Windsor has repeatedly filed unsubstantiated, duplicative pleadings, many after the district court issued an order denying them. Moreover, his pleadings are long and repetitive, and the volume of his filings poses a burden to clerical and judicial operations and is an impediment to the administration of justice.

The Defendant United States' Motion for Modification of Protective Order [Doc. 40] is GRANTED. It is necessary to issue an injunction in this case because of the Plaintiff's extraordinary abuse of the federal judicial system by repeatedly filing frivolous, malicious and vexatious lawsuits against the judges assigned to his many cases, because of the burden to clerical and judicial operations caused by his voluminous frivolous filings, and because his continuing course of conduct has become an impediment to the administration of justice. The administration of justice will suffer irreparable harm if the Plaintiff is allowed to continue filing frivolous, malicious and vexatious lawsuits against the judges and others involuntarily involved in his litigious campaigns. The balance of the harms and the public interest demands that the Plaintiff be stopped.

IT IS HEREBY ORDERED that the Plaintiff, William M. Windsor, and any parties acting in concert with him or at his behest, are PERMANENTLY ENJOINED from filing any complaint or initiating any proceeding, including any new lawsuit or administrative proceeding, in any court (state or federal) or agency in the United States without first obtaining leave of a federal district court in the district in which the new complaint or proceeding is to be filed. In seeking such leave, the Plaintiff must present any such court with a copy of this Order. If the lawsuit or administrative proceeding names federal judges or court employees, the Plaintiff must also tender a

$50,000.00 cash bond or a $50,000.00 corporate surety bond sufficient to satisfy an award of Rule 11 sanctions since such actions are presumably frivolous. Failure to obey this Order, including by attempting to avoid or circumvent the intent of this Order, will be grounds for sanctions including contempt.

SO ORDERED, this 15 day of July, 2011.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

ATTACHMENT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAID OF THE MIST CORPORATION, et al., Plaintiffs,	:	
v.	:	CIVIL ACTION NO. 1:09-CV-1543-WSD
ALCATRAZ MEDIA, LLC, et al., Defendants.	:	

OPINION AND ORDER

This matter is before the Court for resolution of a large number of motions [60, 64, 65, 78, 80, 95-1] and specific requests for approval to file additional motions [85, 86, 87, 88, 89, 90, 92, 93, 94, 97] filed by *pro se* defendant William M. Windsor. This matter is also before the Court for resolution of a motion [96-1] filed by Windsor's wife, who is also *pro se*. For the reasons set forth below, those motions and specific requests for approval – with one exception [97] – will be denied.

Windsor and his co-defendants were the losing parties in *Maid of the Mist Corp. v. Alcatraz Media, LLC*, 1:06-CV-714-ODE (N.D. Ga. filed Mar. 28, 2006) ("*Maid of the Mist I*"). Because they were found to be "stubbornly litigious," Windsor and his co-defendants were ordered by United States District Judge Orinda D. Evans to pay the plaintiffs' attorneys' fees [*Maid of*

the Mist I 251 at 43]. The United States Court of Appeals for the Eleventh Circuit affirmed Judge Evans' finding that Windsor and his co-defendants had been "stubbornly litigious." *See Maid of the Mist Corp. v. Alcatraz Media, LLC*, 294 F. App'x 463, *passim* (11th Cir. 2008). On remand to determine the amount of those attorneys' fees, all parties, including Windsor, negotiated and signed a Consent Final Order and Judgment fixing the attorneys' fees award at $395,000 [*Maid of the Mist I* 354]. The Consent Final Order and Judgment that Windsor voluntarily signed in November 2008 further provided that: "The case is hereby closed all issues having been decided. . . . No appeals shall be taken from this Judgment, and the parties waive all rights to appeal" [*Id.* at 4].

In early 2009, Windsor – but none of the other defendants – launched a post-judgment collateral attack on the Consent Final Order and Judgment that he had voluntarily signed less than six months earlier. Among other things, Windsor sought to take Judge Evans' deposition. This case originated when Judge Evans moved to quash Windsor's deposition subpoena [1]. This Court stayed proceedings [4] and, after full briefing, quashed the deposition subpoena [32]. Windsor then moved for reconsideration [34] and change of venue [36], which this Court denied [42].

Windsor appealed [44]. The Eleventh Circuit "*sua sponte* DISMISS[ED] [Windsor's] appeal AS FRIVOLOUS AS BRIEFED" [52 at 2 (emphasis in original)]. "After review of the matters pending, [the Eleventh Circuit] readily conclude[d] that [Windsor's] conduct . . . met the requirements for imposition of Rule 38 sanctions" and directed the plaintiffs to file a statement of costs and expenses [52 at 4]. A few months later, the Eleventh Circuit granted plaintiffs' "application for Rule 38 sanctions in the form of attorneys' fees and single costs in the amount of $37,333.67" [54 at 2]. "As a final matter, [the Eleventh Circuit] DIRECT[ED] [its] Clerk to accept no further filings from [Windsor] in this closed appeal" [54 at 3 (emphasis in original)].

The Eleventh Circuit's judgment in the amount of $37,333.67 was signed by a deputy clerk and entered on this Court's docket on May 7, 2010. After Windsor failed to pay or appeal further, the Clerk of this Court issued a Writ of Execution on June 16, 2010.

The following day, the plaintiffs served post-judgment interrogatories and a request for production of documents on Windsor [55]. Windsor responded by filing a "Notice of Appeal to the United States Supreme Court" [58]. Windsor also filed an Emergency Motion for Protective Order and to

Quash Interrogatories and Request for Production of Documents [60], a Motion to Expunge Writ of Execution and Motion for Stay [64], and a Motion for Recusal [65]. The plaintiffs responded [75, 76 & 77]. Windsor then filed an Emergency Motion for Extension of Time and Stay [78], and a Second Emergency Motion for Extension of Time and for Stay [80]. The plaintiffs again responded [82].

When the plaintiffs, still seeking to collect on the judgment against Windsor, expanded the post-judgment discovery they sought by serving subpoenas on, among others, Windsor's wife and Windsor's son [83], Windsor's dispatched a courier to this Court, prompting the entry of an Oral Order providing as follows:

> Mr. Windsor's courier appeared today [September 23, 2010] in the Clerk's Office to file several pleadings, including motions, in the above-styled action. This action was closed and judgment was entered on June 30, 2009. Based on the history and current disposition of this case and [Windsor's] previous request to stay all action in his cases because of issues with his eye, the Court directed the Clerk's Office not to accept the pleadings for filing in their present form. The Court instead ordered Mr. Windsor to first request permission to file the pleadings in this closed case and further ordered that any request for permission to file in this case be limited to five pages or less in length. The purpose of this 'request' procedure is so the Court can evaluate if the

> pleadings are appropriate to be filed in this closed case and, if so, the proper form in which the pleadings should be submitted, if allowed.

[Docket Entry of September 24, 2010].

Windsor then submitted a Request for Specific Approval to File William M. Windsor's Emergency Motion for Production of Documents For In Camera Inspection by this Court [85], a Request for Specific Approval to File Notice of Filing of William M. Windsor's Motion for Stay with the United States Supreme Court [86], a Request for Specific Approval to Obtain Subpoenas [87], a Request for Specific Approval to File William M. Windsor's Emergency Motion for Sanctions [88], and a Request for Specific Approval to File Motion to Expunge the Writ of Execution [89; *see also* 90 (duplicate)]. Windsor later submitted a Notice of Filing of Request for Specific Approval to File Motion for Stay[92], a Notice of Filing of Request for Specific Approval to File William M. Windsor's Emergency Motion for Conference [93], a Notice of Filing of Request for Specific Approval to File Motion to Compel Production of Documents for In Camera Inspection [94], and (without seeking or receiving specific approval to file) a Motion to Expunge Writ of Execution and Motion for Stay [95-1]. Windsor's wife (also without seeking or receiving specific

approval to file) filed Non-Party Barbara G. Windsor's Motion for Protective Order and Motion to Quash Subpoena [96-1].

Windsor correctly notes that "[i]f a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give." Fed. R. Civ. P. 62(f); *see also* 28 U.S.C. § 1962. And Windsor correctly notes that Georgia law provides that "[i]n civil cases, the notice of appeal . . . shall serve as supersedeas upon payment of all costs in the trial court." O.C.G.A. § 5-6-46(a).

But the notice of appeal on which Windsor says he principally relies is his September 15, 2009 notice of appeal in the Eleventh Circuit [*see, e.g.*, 64 at 3]. As the Eleventh Circuit has already made quite clear, Windsor *lost* that appeal in February 2010 [52]. Indeed, the Eleventh Circuit imposed Rule 38 sanctions on Windsor *because* that appeal was frivolous. The amount of those sanctions was finally determined in April 2010 [54]. At that point, Windsor's appeal to the Eleventh Circuit was concluded and the stay pending appeal ended.

Windsor seems not to grasp that the judgment of the Eleventh Circuit imposing Rule 38 sanctions in the amount of $37,333.67 on him for filing a frivolous appeal is not automatically stayed while he pursues relief in the United States Supreme Court. Federal law provides that to the extent that a specific federal statute applies, that statute rather than state law governs "[t]he procedure on execution – and in proceedings supplementary to and in aid of judgment or execution." Fed. R. Civ. P. 69(a)(1). There is no automatic stay while a party seeks review in the Supreme Court; a stay must be affirmatively granted. *See* 28 U.S.C. § 2101(f) ("In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution of and enforcement of such judgment *may* be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court.") (emphasis added). In this case, neither the Eleventh Circuit nor the Supreme Court has issued any such stay, or, if either has, Windsor has not brought that stay to this Court's attention.

At this point, there is no stay preventing the plaintiffs from collecting the $37,333.67 Rule 38 sanctions judgment entered against Windsor. As is readily apparent from the docket, Windsor has sought to impede and complicate the

collection of that judgment by filing (or seeking approval to file) a large number of frivolous motions. It is past time for Windsor to pay the plaintiffs $37,333.67, plus accrued interest. Windsor is **ORDERED** to do so immediately. In the extremely unlikely event that Windsor persuades the United States Supreme Court to reduce or eliminate the Rule 38 sanctions imposed on him by the Eleventh Circuit, he may seek to recover any overpayment from the plaintiffs.

Windsor's motions [60, 64, 65, 78, 80][1] and his requests for specific approval to file additional motions [85, 86, 87, 88, 89, 90, 92, 93, 94] are **DENIED** as frivolous.[2]

The motions that William M. Windsor [95-1] and Barbara G. Windsor [96-1] filed after entry of this Court's oral Order of September 24, 2010

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[1] Windsor's motions for recusal and stay in this case repeat arguments that he made in a related case. *See Windsor v. United States*, No. 1:09-CV-2027 (N.D. Ga. filed July 27, 2009) ("*Windsor*"). Windsor's motions for recusal and stay in this case are denied for the reasons set forth in that case as well [*see Windsor* 22, 70, 150, 161].

[2] In light of the denial of Windsor's motions, Plaintiffs Maid of the Mist Corporation and Maid of the Mist Steamboat Company, Ltd.'s Motion for Leave to File Response in Opposition to Defendant William M. Windsor's First Emergency Motion for Extension of Time and Stay Out of Time and Indwelling Memorandum of Law [84] is **DENIED** as moot.

requiring that specific approval to file motions be requested and received from this Court are also **DENIED**; neither Windsor nor his wife sought – let alone received – specific approval before filing those two motions.

Windsor's Request for Specific Approval to File Notice of Filings with the United States Supreme Court [97] is **GRANTED**.

Windsor is advised that if he persists in presenting filings that violate Federal Rule of Civil Procedure 11(b), he risks subjecting himself to additional sanctions.

The Clerk is **DIRECTED**, in the future, to discard any Request for Specific Approval that does not comply with the terms of this Court's September 24, 2010 Order and to discard any other filing for which this Court has not granted specific approval.

SO ORDERED, this 3rd day of November, 2010.

William S. Duffey

WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

ATTACHMENT 3

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

1:09-cv-1543

No. 09-14735-DD

MAID OF THE MIST CORPORATION,
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,

Plaintiffs-Appellees,

versus

WILLIAM M. WINDSOR,

Defendant-Appellant,

JUDGE ORINDA D. EVANS,

Movant-Appellee.

On Appeal from the United States District Court for the
Northern District of Georgia

BEFORE: CARNES, BARKETT and HULL, Circuit Judges.

BY THE COURT:

Now pending before the Court are numerous motions filed both by Appellant and by Appellees Maid of the Mist, et al. ("Maid"). Included in those motions are Appellant's "Emergency Motion to Disqualify Eleventh Circuit Judges and Motion to Change Venue" and Maid's Motion for Sanctions for Filing a Frivolous Appeal. We turn first to Appellant's motion to disqualify the members

of this Court and for transfer to another venue.

It is plain from review of Appellant's motion, as well as this history of this appeal and the previous cases filed by Appellant in this Court, that he seeks to disqualify the members of this Court based on his belief that previous adverse rulings were the result of bias, dishonesty or some other improper motivation or intent, up to and including relationships with Judges Evans and Duffey of the Northern District of Georgia.

However, as the Supreme Court stated in Liteky v. U.S., 510 U.S. 540 555, 114 S.Ct. 1147, 1157 (1994), "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." see also Byrne v. Nezhat, 261 F.3d 1075, 1103 (11th Cir. 2001); McWhorter v. City of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990). Appellant's motion to disqualify and the other motions filed by Appellant fail to allege any valid basis for disqualification. Consequently, Appellant's motion to disqualify this Court is without merit and is DENIED

In reviewing the motions filed with the Court, we have also reviewed Appellant's brief, which fails to meaningfully challenge the orders on appeal. Consequently, we sua sponte DISMISS this appeal AS FRIVOLOUS AS BRIEFED. See 11th Cir. R. 42-4.

With the exception of Maid's Motion for Sanctions for Filing a Frivolous

Appeal, all remaining motions are DENIED AS MOOT.

We now turn to Maid's Motion for Sanctions for Filing a Frivolous Appeal. Although this motion initially cites to 11th Cir. Rule 27-4 (sanctions for filing a frivolous motion), the motion later cites to Fed.R.App.P. 38 and was filed contemporaneously with Maid's brief as required by Rule 38. We therefore consider this motion filed pursuant to Rule 38 and analyze it under that rule. We take into consideration the fact that, despite Appellant's prolific filings, Appellant is a pro se litigant.

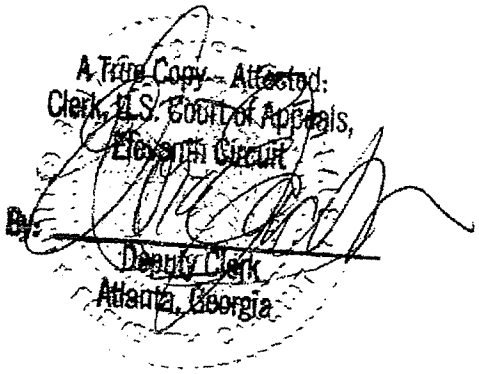
Rule 38 provides that: "If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." "The purpose of Rule 38 damages is to compensate appellees who are forced to defend judgments awarded them in the trial court from appeals that are wholly without merit, and to 'preserve the appellate court calendar for cases worthy of consideration.' . . . Another important purpose is to discourage litigants from unnecessarily wasting their opponents' time and resources." See Nagle v. Alspach, 8 F.3d 141, 145 (3rd Cir. 1993).

We have imposed Rule 38 sanctions upon "appellants who raise 'clearly frivolous claims' in the face of established law and clear facts." See Farese v.

Scherer, 342 F.3d 1223, 1232 (11th Cir. 2003) citing Misabec Mercantile, Inc. De Panama v. Donaldson, Lufkin & Jenrette ACLI Futures, Inc., 853 F.2d 834, 841 (11th Cir. 1988).

After review of the matters pending before us, we readily conclude that Appellant's conduct in this Court meets the requirement for imposition of Rule 38 sanctions. Therefore, Maid's Rule 38 motion is GRANTED.

Maid is DIRECTED to file a statement of costs and expenses within twenty-one (21) days of the date of this Order. Appellant's response to Maid's statement will be due within fourteen (14) days of service of Maid's statement.



ATTACHMENT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR, Plaintiff, v. CHRISTOPHER HUBER, et al., Defendants.	CIVIL ACTION FILE NO. 1:11-CV-2326-TWT

ORDER

This is a pro se civil action against the Clerk of this Court, various judges of this Court and the Eleventh Circuit Court of Appeals, and others. It is before the Court on the Defendant Paul Howard's Motion to Dismiss [Doc. 16]. For the reasons set forth below, the Court GRANTS the Defendant's motion.

I. Background

The Plaintiff, William Windsor, has sued judges in the Northern District of Georgia, the Eleventh Circuit Court of Appeals, and others, including Fulton County District Attorney Paul Howard [See Doc. 1]. The Plaintiff claims that the Defendants violated the Georgia RICO statute, O.C.G.A. § 16-4-1 *et seq.* Windsor alleges that he "presented criminal charges against 11 federal judges in Fulton County to the Fulton County District Attorney, Mr. Howard, and [Howard] did nothing and has

aided the racketeering enterprise." (Compl. ¶ 95.) That is the only allegation specifically applicable to Howard.

On July 15, 2011, the Defendants removed the action to this Court. On July 28, 2011, the Plaintiff filed a Motion for Leave to Conduct Discovery [Doc. 13] and a Motion to Vacate the Notice of Removal [Doc. 15]. On August 29, 2011, the Court denied both motions [Doc. 33]. Howard has filed a Motion to Dismiss [Doc. 16]. The Defendant contends that he is entitled to official and prosecutorial immunity. See FED. R. CIV. P. 12(b)(6). Further, Howard argues that Windsor has failed to properly state a claim for conspiracy. See id.

II. Failure to State a Claim Standard

A complaint should be dismissed under Rule 12(b)(6) only where it appears that the facts alleged fail to state a "plausible" claim for relief. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009); Fed. R. Civ. P. 12(b)(6). A complaint may survive a motion to dismiss for failure to state a claim, however, even if it is "improbable" that a plaintiff would be able to prove those facts; even if the possibility of recovery is extremely "remote and unlikely." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556 (2007) (citations and quotations omitted). In ruling on a motion to dismiss, the court must accept factual allegations as true and construe them in the light most favorable to the plaintiff. See Quality Foods de Centro America, S.A. v. Latin American

Agribusiness Dev. Corp., S.A., 711 F.2d 989, 994-95 (11th Cir. 1983). Generally, notice pleading is all that is required for a valid complaint. See Lombard's, Inc. v. Prince Mfg., Inc., 753 F.2d 974, 975 (11th Cir. 1985), cert. denied, 474 U.S. 1082 (1986). Under notice pleading, the plaintiff need only give the defendant fair notice of the plaintiff's claim and the grounds upon which it rests. See Erickson v. Pardus, 551 U.S. 89, 93 (2007) (citing Twombly, 550 U.S. at 555).

III. Discussion

A. Prosecutorial/Official Immunity

Howard argues that he is entitled to prosecutorial immunity. Under the Georgia Constitution, "[d]istrict attorneys shall enjoy immunity from private suit for actions arising from the performance of their duties." GA. CONST. art. VI, § 8, para. 1(e). "The rationale behind this immunity is that prosecutors, like judges, should be free to make decisions properly within the purview of their official duties without being influenced by the shadow of liability. Therefore, a district attorney is protected by the same immunity in civil cases that is applicable to judges, provided that his acts are within the scope of his jurisdiction. The determining factor appears to be whether the act or omission is intimately associated with the judicial phase of the criminal process." Mosier v. State Board of Pardons & Paroles, 213 Ga. App. 545, 546 (1994) (quoting Robbins v. Lanier, 198 Ga. App. 592, 593 (1991)). "[T]here is no question

that a prosecutor's decision to file formal criminal charges against an individual is an act intimately associated with the judicial phase of the criminal process." Robbins v. Lanier, 198 Ga. App. 592 (1991).

Here, the Plaintiff alleges that Howard "did nothing" when "Windsor presented criminal charges against 11 federal judges." (Compl. ¶ 95.) The Defendant's decision not to pursue criminal charges, however, is intimately associated with the judicial phase of the criminal process. See id. (dismissing claims against prosecutor based on decision to file criminal charges). Indeed, deciding whether or not to pursue criminal charges is directly tied to Howard's duties as a district attorney. See GA. CONST. art. VI, § 8, para. 1(e). ("District attorneys shall enjoy immunity from private suit for actions arising from the performance of their duties.")

Windsor, however, argues that his "claims have absolutely nothing to do with initiating a prosecution and presenting the State's case." (Pl.'s Resp. in Opp'n to Def.'s Mot. to Dismiss, at 17.) Rather, the Plaintiff claims that Howard violated RICO. To the extent that Windsor has abandoned his claim that Howard failed to prosecute judges, the Complaint does not include *any* facts supporting a RICO claim against Howard. Indeed, the bare allegation that Howard violated RICO does not provide the Defendant sufficient notice of the grounds upon which Windsor's claim rests. See Erickson, 551 U.S. at 93 (citing Twombly, 550 U.S. at 555); Randall v.

Scott, 610 F.3d 701, 709-710 (11th Cir. 2010) ("A district court considering a motion to dismiss shall begin by identifying conclusory allegations that are not entitled to an assumption of truth-legal conclusions must be supported by factual allegations."). For these reasons, the Defendant is entitled to prosecutorial immunity.

B. Failure to State a Claim

To the extent the Plaintiff alleges that Howard engaged in a conspiracy to violate RICO, the Complaint fails to state a claim upon which relief can be granted.[1] To establish a conspiracy, the Plaintiff must "(1) prove the parties had a 'meeting of the minds' or reached an understanding to violate the plaintiff's rights and (2) prove an actionable wrong to support the conspiracy." Thomas v. Kemp, No. CV 310-019, 2010 WL 4867537, at *5 (S.D. Ga. Sept. 14, 2010). "[T]he linchpin for conspiracy is agreement, which presupposes communication." Id. (quoting Bailey v. Board of County Comm'rs of Alachua County, 956 F.2d 1112, 1122 (11th Cir. 1992)). "In conspiracy cases, a defendant must be informed of the nature of the conspiracy which is alleged. It is not enough to simply aver in the complaint that a conspiracy existed." Fullman v. Graddick, 739 F.2d 553, 557 (11th Cir. 1984).

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[1]The Complaint alleges that Howard "aided the racketeering enterprise." (Compl. ¶ 95.) In his Response, however, Windsor states that he is not bringing a conspiracy claim against Howard. Nevertheless, the Court will address this claim.

Here, Windsor does not allege any facts concerning the nature of the conspiracy. He does not state when, where, or how the Defendants reached an agreement to violate RICO. See Kemp, 2010 WL 4867537, at *5 (dismissing conspiracy claim where "Plaintiff [did] not offer any specifics on when or how an agreement between any of the Defendants may have been reached to violate Plaintiff's rights."). Indeed, the only allegation relating to Howard is that he "did nothing" in response to Windsor's information. (Compl. ¶ 95.) As discussed above, Howard is entitled to prosecutorial immunity with respect to that claim. For these reasons, the Plaintiff's claims against Howard are dismissed.

C. Discovery

In his response, Windsor argues that the Motion to Dismiss introduces matters outside the pleadings.[2] Thus, the Plaintiff contends, the Court should convert the Defendant's Motion to Dismiss into a motion for summary judgment and order discovery. The Defendant's motion, however, only addresses allegations in the Complaint. For that reason, no discovery is necessary.

IV. Conclusion

[2]Windsor also argues that the Court should remand this case to the Superior Court of Fulton County. The Court, however, denied Windsor's Motion to Vacate Notice of Removal on August 29, 2011 [Doc. 33].

For the reasons set forth above, the Defendant Paul Howard's Motion to Dismiss [Doc. 16] is GRANTED. The request for leave to amend is denied on the grounds of futility.

SO ORDERED, this 21 day of September, 2011.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge