APPENDIX

APPENDIX A (**José Yeyille v. Cecilia M. Altonaga, Walter Harvey, Alberto Carvalho**,19-14835 [February 26th, 2020](2020))

APPENDIX B (**José Yeyille v. Cecilia Altonaga, Walter Harvey, and Alberto Carvalho,**19-cv-24869[Document 10](2019))(December 5, 2019)(**ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**)

APPENDIX C (**José Yeyille v. Cecilia Altonaga, Walter Harvey, and Alberto Carvalho,** 19-cv-24869[Document 7](November 26, 2019))(**ORDER ON MOTION PURSUANT TO FED. R. CIV. P 60(b)(6)**)

APPENDIX D (**José Yeyille v. Cecilia Altonaga, Walter Harvey, and Alberto Carvalho,** 19-cv-24869[Document 4](November 26, 2019))(ORDER DISMISSING CASE AND DENYING AS MOOT MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14835-A

JOSE YEYILLE,

Plaintiff-Appellant,

versus

CECILIA M. ALTONAGA,
in her individual capacity (Counts 1 through 33 and Second Claim);
in her individual capacity, and in her official capacity (Counts 100 through 102),
WALTER HARVEY,
in his individual capacity (Counts 34 through 66 and Second Claim),
ALBERTO CARVALHO,
in his individual capacity (Counts 67 through 99 and Second Claim),

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Jose Yeyille's motion for leave to proceed on appeal *in forma pauperis* is DENIED because the appeal is frivolous. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

/s/ Robert J. Luck
UNITED STATES CIRCUIT JUDGE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-24869-BLOOM/Louis

JOSE YEYILLE,

Plaintiff,

v.

CECILIA ALTONAGA, WALTER HARVEY, and ALBERTO CARVALHO,

Defendants.
_____/

ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL

THIS CAUSE is before the Court upon Plaintiff's Motion for Leave to Proceed *in Forma Pauperis* on Appeal, ECF No. [9] (the "Motion"). Plaintiff's Motion is due to be denied because Plaintiff's appeal is not taken in good faith.

"An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "A party demonstrates good faith by seeking appellate review of any issue that is not frivolous when examined under an objective standard." *Ghee v. Retailers Nat'l Bank*, 271 F. App'x 858, 859 (11th Cir. 2008). A claim is frivolous "where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In other words, an appeal filed *in forma pauperis* is frivolous "when it appears the plaintiff has little or no chance of success," meaning that the "factual allegations are clearly baseless or that the legal theories are indisputably meritless." *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (internal quotation marks omitted).

As the Court's Order of dismissal makes clear, Plaintiff's Complaint is frivolous, fails to state a claim, and the legal theories presented are meritless. *See* ECF No. [4]. Moreover, the Motion

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simply reasserts Plaintiff's previous meritless claims and simply disagrees with the Court's Order of dismissal. As such, the Court certifies that this appeal is not taken in good faith, and the Motion, **ECF No. [9]**, is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, on December 5, 2019.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Jose Yeyille, *pro se*
5505 SW 135th Court
Miami, Florida 33175

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-24869-BLOOM/Louis

JOSE YEYILLE,

Plaintiff,

v.

CECILIA ALTONAGA, WALTER HARVEY, and ALBERTO CARVALHO,

Defendants.
_____/

ORDER ON MOTION PURSUANT TO FED. R. CIV. P. 60(b)(6)

THIS CAUSE is before the Court upon Plaintiff's Motion Pursuant to Fed. R. Civ. P. 60(b)(6) Demanding that the U.S. District Court Vacate Its Judgment Dismissing Plaintiff's Complaint ECF No. [1] and Denying Plaintiff's Motion to Proceed in forma pa[u]peris ECF [3] Because it Violated Plaintiff's Constitutional Rights To Equal Protection, and a Jury Trial; and Petition to this Court, and the U.S. Eleventh Circuit Court to Exercise their Supervisory [. . .] Power over Its Judgment to Entertain an Independent Action to Relieve Plaintiff From this Court's Judgment Pursuant to Fed. R. Civ. P. 60(D)(1), ECF No. [6] ("Motion"). The Court has carefully reviewed the Motion, the record in this case and the applicable law, and is otherwise fully advised. For the following reasons, the Motion is denied.

In the Motion, Plaintiff requests that the Court vacate its Order Dismissing Case, ECF No. [4]. In that Order, the Court conducted a screening under 28 U.S.C. § 1915(e) and determined that Plaintiff's Complaint should be dismissed as frivolous, for failure to state a claim, and because it seeks monetary relief against a defendant who is immune from such relief. Plaintiff contends that

relief is appropriate pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, arguing that the Court's Order violates his rights to equal protection and a jury trial.

Pursuant to Rule 60, the Court may grant relief from a judgment or order based upon "mistake, inadvertence, surprise, or excusable neglect; . . . or any other reason that justifies relief." *See* Fed. R. Civ. P. 60(b)(1), (6). "By its very nature, the rule seeks to strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the 'incessant command of the court's conscience that justice be done in light of all the facts.'" *Seven Elves, Inc. v. Eskenazi,* 635 F.2d 396, 401 (5th Cir.1981)[1] (quoting *Bankers Mortg. Co. v. United States,* 423 F.2d 73, 77 (5th Cir.1970)). "Rule 60(b)(6) motions must demonstrate that the circumstances are sufficiently extraordinary to warrant relief." *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 741 F.3d 1349, 1355 (11th Cir. 2014) (internal quotations and citations omitted). "It is well established, . . . that relief under Rule 60(b)(6) is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances." *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984) (internal citation and quotations omitted); *see also Frederick v. Kirby Tankships, Inc.*, 205 F. 3d 1277, 1288 (11th Cir. 2000) ("Federal courts grant relief under Rule 60(b)(6) only for extraordinary circumstances."). Whether to grant relief pursuant to Rule 60(b) is ultimately a matter of discretion. *Aldana*, 741 F.3d at 1355 (citing *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006) (internal citation and quotations omitted)).

Rule 60(d)(1) states that the Court may also "entertain an independent action to relieve a party from a judgment, order, or proceeding[.]" In order to obtain relief under Rule 60(d)(1), a party must show the following elements:

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[1] In *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent former Fifth Circuit decisions handed down prior to September 30, 1981.

> (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of defendant; and (5) the absence of any remedy at law.

Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1151 (11th Cir. 1985) (citation omitted). However, "[t]he Supreme Court has made clear that such independent actions must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of res judicata." *Aldana*, 741 F.3d at 1359 (quoting *United States v. Beggerly*, 524 U.S. 38, 46 (1998)) (internal quotations and citation omitted). Indeed, "Rule 60(d)(1) relief is only available if relief is required to prevent a grave miscarriage of justice." *Id.* (citation and internal quotations omitted).

Upon review, the Motion fails to demonstrate extraordinary circumstances necessary to justify relief under Rule 60(b)(6), or entitlement to relief under Rule 60(d)(1). Accordingly, the Motion, **ECF No. [6]**, is **DENIED**. This case shall remain **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida on December 2, 2019.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

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Miami, Florida 33175

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-24869-BLOOM/Louis

JOSE YEYILLE,

Plaintiff,

v.

CECILIA ALTONAGA, WALTER HARVEY, and ALBERTO CARVALHO,

Defendants.
_____/

ORDER DISMISSING CASE

THIS CAUSE is before the Court upon Plaintiff Jose Yeyille's ("Plaintiff") Motion for Leave to proceed *in forma pauperis*, ECF No. [3] (the "Motion"), filed in conjunction with Plaintiff's Complaint, ECF No. [1]. The Court has carefully considered the Motion and the record in this case, and is otherwise fully advised. For the reasons that follow, Plaintiff's Complaint is dismissed, and the Motion is denied as moot.

Plaintiff has not paid the required filing fee and, thus, the screening provisions of 28 U.S.C. § 1915(e) are applicable. Fundamental to our conception and system of justice is that the courthouse doors will not be closed to persons based on their inability to pay a filing fee. Congress has provided that a court "may authorize the commencement . . . or prosecution of any suit, action or proceeding . . . or appeal therein, without the prepayment of fees . . . therefore, by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees . . . ." 28 U.S.C. § 1915(a)(1); *see Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 n.1 (11th Cir. 2004) (interpreting statute to apply to all persons seeking to proceed *in forma pauperis* ("IFP")). Permission to proceed *in forma pauperis* is committed to the sound

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discretion of the court. *Camp v. Oliver*, 798 F.2d 434, 437 (11th Cir. 1986); *see also Thomas v. Chattahoochee Judicial Circuit*, 574 F. App'x 916, 916 (11th Cir. 2014) ("A district court has wide discretion in ruling on an application for leave to proceed IFP."). However, "proceeding *in forma pauperis* is a privilege, not a right." *Camp*, 798 F.2d at 437.

In addition to the required showing that the litigant, because of poverty, is unable to pay for the court fees and costs, *Martinez*, 364 F.3d at 1307, upon a motion to proceed *in forma pauperis* the Court is required to examine whether "the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). If the Court determines that the complaint satisfies any of the three enumerated circumstances under Section 1915(e)(2)(B), the Court must dismiss the complaint.

A pleading in a civil action 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). Although a complaint "does not need detailed factual allegations," it must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that Rule 8(a)(2)'s pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation"). Nor can a complaint rest on "'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557 (alteration in original)). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). Importantly, "*[p]ro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and [are] liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). "But the leniency

accorded *pro se* litigants does not give a court license to serve as *de facto* counsel for a party or to rewrite an otherwise deficient pleading to sustain an action." *Matthews, Wilson & Matthews, Inc. v. Capital City Bank*, 614 F. App'x 969, 969 n.1 (11th Cir. 2015) (citing *GJR Invs., Inc. v. Cty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled in part on other grounds by Randall v. Scott*, 610 F.3d 701, 709 (11th Cir. 2010)). Even under the relaxed pleading standard afforded to pro se litigants, *see Abele v. Tolbert*, 130 F. App'x 342, 343 (11th Cir. 2005), the Complaint fails here.

The Complaint must be dismissed for all three reasons enumerated under section 1915(e)(2)(B). Plaintiff seeks to assert various claims against United States District Judge Cecilia Altonaga, Miami-Dade County School Board attorney Walter Harvey, and Miami Dade County Schools Superintendent Alberto Carvalho—and includes nearly 80 pages and 102 counts—for civil RICO violations and violations of his constitutional rights to due process, equal protection, and jury trial, arising from an alleged agreement among Defendants to deprive Plaintiff of his salary and redirect it to the law firm of Holland & Knight, LLP. The Court notes that Plaintiff previously filed a case against Carvalho and others pursuant to 42 U.S.C. § 1983, asserting claims for alleged discriminatory practices, harassment, and other wrongful conduct to which he was subjected during his time as a substitute teacher. *See Yeyille v. Miami Dade County Public Schools*, Case No. 14-cv-24624-CMA. Judge Altonaga presided over Plaintiff's previous case, which was dismissed with prejudice, *see* Case No. 14-cv-24624-CMA, ECF No. [42].

In the Complaint, Plaintiff accuses Judge Altonaga of "agree[ing] with Harvey and Carvalho to dismiss Plaintiff's lawsuit with prejudice in exchange for Harvey and Carvalho agreeing to give Plaintiff's money to the law firm of Holland & Knight, LLP; whereupon Altonaga dismissed Plaintiff's lawsuit with prejudice and Harvey and Carvalho gave Plaintiff's money to

the law firm of Holland & Knight, LLP." ECF No. [1] at 3. Plaintiff alleges further that Judge Altonaga offered to dismiss Plaintiff's previous lawsuit with prejudice in exchange for their promise to hire, and give his money to, Holland & Knight to represent the Miami Dade County School Board because her husband is an attorney at Holland & Knight. *Id.* at 6 ¶ 10. In essence, Plaintiff takes issue with Judge Altonaga's ultimate conclusion that his previous claims be dismissed. Nevertheless, Plaintiff appealed Judge Altonaga's dismissal of his previous case to the Eleventh Circuit, which affirmed the dismissal with prejudice. Case No. 14-cv-24624-CMA ECF No. [56].

As pled, the Complaint is devoid of actionable claims. First, Judge Altonaga is immune from civil liability for damages for acts taken in her judicial capacity. *Simmons v. Conger*, 86 F.3d 1080, 1084-85 (11th Cir. 1996). "A judge will not be deprived of immunity because the action [s]he took was in error, was done maliciously, or was in excess of [her] authority." *Stump v. Sparkman,* 435 U.S. 349, 356-57 (1978) (internal quotations omitted). In addition, the Complaint's legal theories, as presented here, are indisputably meritless, as Plaintiff's claims amount to nothing more than dissatisfaction with the outcome of his previous case. *See Davis v. Kvalheim*, 261 F. App'x 231, 234 (11th Cir. 2008) (holding that complaint may be dismissed before service of process where its legal theories are indisputably meritless).

In addition, upon the Court's review, Plaintiff's additional claims are baseless and, thus, must be dismissed. *See Denton v. Hernandez*, 504 U.S. 25, 32 (1992) (under 28 U.S.C. § 1915, a federal court may dismiss a complaint whose factual contentions describe "fantastic or delusional scenarios, claims with which federal judges are all too familiar"); *Neitzke v. Williams*, 490 U.S. 319, 328 (1989) (a complaint is legally frivolous when it contains "claims of infringement of a legal interest which clearly does not exist"); *Gallop v. Cheney*, 642 F.3d 364, 366, 368-69 (2d Cir.

2011) (district court properly *sua sponte* dismissed complaint as factually frivolous where plaintiff alleged that senior government officials caused the September 11, 2001 attacks).

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that the Complaint, **ECF No. [1]**, is **DISMISSED**, and the Motion, **ECF No. [3]**, is **DENIED AS MOOT**. The Clerk of Court shall **CLOSE** this case.

DONE AND ORDERED in Chambers at Miami, Florida on November 25, 2019.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

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