

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Donnahue George -Petitioner

vs.

Westway Towing
William Snyder
Fort Lauderdale Code Enforcement
John Doe

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court Of Appeals 11th Circuit

APPENDIX

Donnahue George

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11648
Non-Argument Calendar

D.C. Docket No. 0:19-cv-61827-RAR

DONNAHUE GEORGE,

Plaintiff-Appellant,

versus

WILLIAM SNYDER,
WESTWAY TOWING,
FORT LAUDERDALE CODE ENFORCEMENT,
JOHN DOE,

Defendants-Appellees.

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

(February 12, 2021)

Before WILSON, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

Federal pleading rules serve a dual purpose. First, they ensure that the defendants have fair notice of the claims against them so that they can frame an appropriate defense. And, second, they guarantee that the district court will have “a clear and definitive response before it,” so it can “recognize the parties’ claims and defenses, identify the issues of fact to be litigated, and proceed to a just result.” *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979 (11th Cir. 2008). The district court found that Donnahue George, a pro se plaintiff, violated those pleading rules when he submitted a threadbare and conclusory complaint, leaving the court and the defendants unable to discern and analyze his claims. So it dismissed his complaint.

George believes that this dismissal was in error. He also contends that the court erred in other ways, including incorrectly setting aside the clerk’s entry of default against the defendants and striking the defendants’ separate motions to dismiss and ordering them to file a joint motion. Because we find that the district court did not abuse its discretion in any of these decisions, we will affirm.

I.

Donnahue George alleges that on March 18, 2019, William Snyder entered his property and, with the help of West Way Towing Co., stole his vehicle from his covered driveway. George’s neighbors called to alert him that his vehicle was being towed. When they put Snyder on the phone, George informed him that the vehicle was his and that it was parked legally on his own property. But rather than

return the vehicle, Snyder hung up and “proceeded to tow the vehicle and submit the false report to his department that stated he did not know who the owner of the vehicle was and that it was derelict.”

George spent the next several months trying to recover his vehicle. He went to the Fort Lauderdale Police Department and to “code enforcement,” but was told only that his vehicle was towed because it was derelict. So he called West Way Towing. They put him on hold three times and never returned his call. He wrote to “code enforcement” and to the City of Fort Lauderdale. Again, no reply.

As a last resort, he filed this lawsuit. In his first attempt at drafting his complaint, he completed a handwritten five-page form, alleging generally that “William Snyder conspired with [West Way] Towing to deprive Plaintiff of his constitutional rights by illegally stealing his property from his premises without legal authority and fabricating information to cover up the theft.” The district court promptly *sua sponte* dismissed the case without prejudice because the “Plaintiff’s Complaint fail[ed] to state a claim upon which relief may be granted.” Specifically, the court noted that Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to contain a “short and plain statement of the claim” showing that the plaintiff is entitled to relief. In that first complaint, George had not included “sufficient factual matter, that if accepted as true, allows the Court to reasonably infer that Defendants are liable for any misconduct or wrongdoing, or what the claim or claims against each of them may be.”

A few months later, George moved to reopen his case and to file an amended complaint. The district court granted that motion. The case then sat; no

defendants appeared. George eventually filed affidavits showing that he had served the defendants and asked the clerk to enter default. After the clerk's entry of default was noted on the docket, George moved for a default judgment against all the defendants.

Within days of that motion being filed, counsel for West Way Towing, Snyder, and Fort Lauderdale Code Enforcement entered their appearances and moved to set aside the clerk's entry of default. George, they explained, had only served his original complaint on them—not the amended complaint. Once they discovered that the case had been dismissed *sua sponte* by the court, they assumed the matter was closed. But when they were notified of the clerk's entry of default against them, they quickly entered their appearances and moved to set aside the default. The district court found that the defendants had established good cause for failing to appear, so it set aside the entry of default and allowed the case to proceed.

The defendants then filed separate motions to dismiss the amended complaint. But the district court struck those motions because the court's policies and procedures prohibited "filing of separate motions, unless there are clear conflicts of positions." It instructed the defendants to refile with a joint motion.

After briefing on the motion to dismiss was completed, the court dismissed George's amended complaint. Again repeating the Rule 8(a) requirements, the court noted that George had "failed to remedy the deficiencies noted by this Court in its prior Order Dismissing Case."

II.

The district court dismissed George's complaint as a shotgun pleading, violating the Federal Rules of Civil Procedure's pleading requirements. A district court possesses "inherent authority to control its docket and ensure the prompt resolution of lawsuits, which in some circumstances includes the power to dismiss a complaint for failure to comply with Rule 8(a)(2) and Rule 10(b)" of the Federal Rules of Civil Procedure. *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). We review those dismissals for abuse of discretion. *Id.*

Though pro se parties' pleadings are liberally construed by courts, the litigants are not relieved from following procedural rules. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007). Rule 8(a) sets standards for the content of pleadings, requiring complaints to provide a "short and plain statement of the grounds for the court's jurisdiction," a "short and plain statement of the claim showing that the pleader is entitled to relief," and a "demand for the relief sought." Fed. R. Civ. P. 8(a)(1)–(3). Rule 10(b) regulates the form of those pleadings, stating that a "party must state its claims or defenses in numbered paragraphs" and must assert "each claim founded on a separate transaction or occurrence" in a "separate count." Fed. R. Civ. P. 10(b). Pleadings that violate these rules are known as "shotgun pleadings."

Shotgun pleadings take many different forms, but their "unifying characteristic" is that they fail to give the defendants "adequate notice of the claims against them and the grounds upon which each claim rests." *Weiland*, 792 F.3d at

1323. The most common type is a complaint that contains “multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.” *Id.* at 1321. But a complaint that commits the “sin of not separating into a different count each cause of action or claim for relief” or the “sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against,” is equally prohibited. *Id.* at 1323.

The district court determined George’s amended complaint fell into this latter category. The complaint did not “include sufficient factual matter that would allow the Court to reasonably infer that Defendants are liable for any misconduct or wrongdoing, or what the claim or claims against each of them may be.” It recited facts but did “not contain any counts,” nor did it make any attempt to tether the factual allegations to the various claims. It did not contain enough factual allegations for the court to determine the “basis of its subject matter jurisdiction.” And it set forth only “vague and conclusory allegations.” The district court dismissed the complaint because, in sum, it failed to “comply with the Federal Rules of Civil Procedure and federal pleading standards, and does not provide a sufficient basis for this Court to find subject matter jurisdiction.”

We find no abuse of discretion in this decision. Though George’s amended complaint is an improvement upon his first, it still did not provide the defendants adequate notice of the claims against them, for the reasons the district court outlined. George’s brief on appeal now does a better job tethering his factual

allegations to his particular causes of action, but that information is lacking in his pleading. He cannot amend his complaint now through his appellate briefing.

We emphasize, though, that the district court dismissed this case on procedural grounds and, it appears, without prejudice.¹ George may have real and valid claims against West Way Towing, Snyder, or the Fort Lauderdale Code Enforcement. He remains free to try again with a new complaint that contains clear factual allegations tethered to specific counts against particular defendants, as required by Rules 8(a) and 10(b).

III.

George also claims two other errors by the district court. First, he suggests that the district court incorrectly set aside the clerk's entry of default, and second, he argues that the court impermissibly struck the defendants' separate motions to dismiss. We review both orders for abuse of discretion. *Compania Interamericana Exp.-Imp., S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996); *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1320 (11th Cir. 2013). Under this standard, we must "affirm unless we find that the district court has made a clear error of judgment, or has applied the wrong legal

¹ The district court never stated whether the dismissal was with or without prejudice. A district court may dismiss a case for failure to comply with court rules "under the authority of either Rule 41(b) or the court's inherent power to manage its docket." *Weiland*, 792 F.3d at 1321 n.10. To dismiss with prejudice under Rule 41(b), the court must find that "(1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice." *Betty K Agencies, LTD. v. M/V Monada*, 432 F.3d 1333, 1337–38 (11th Cir. 2005) (quotation omitted). Because the "order does not cite Rule 41(b)" or "make the findings necessary to justify a dismissal under that provision," we will assume it dismissed under its inherent power to manage its docket and that it was done without prejudice. *See Weiland*, 792 F.3d at 1319–20.

standard.” *Robinson v. Tyson Foods, Inc.*, 595 F.3d 1269, 1273 (11th Cir. 2010) (quotation omitted).

Under Federal Rule of Civil Procedure 55(c), the district court “may set aside an entry of default for good cause.” Good cause is not precisely defined and often depends upon the court’s consideration of whether “the default was culpable or willful, whether setting it aside would prejudice the adversary, and whether the defaulting party presents a meritorious defense.” *Compania*, 88 F.3d at 951.

The district court correctly applied that standard here, finding good cause for vacating the entry of default. The defendants, it said, were not “properly served with the Amended Complaint; as such their default was not culpable or willful.” More, the court noted that the defendants “acted promptly to vacate the Clerk’s Entry of Default” and that “vacating the Clerk’s Default will not unduly prejudice Plaintiff.” Because George has not identified any clear error in the district court’s judgment, we will affirm.

Finally, the district court did not err in striking the defendants’ separate motions to dismiss and ordering that they file a joint motion. District courts have “broad discretion” in managing their cases. *Chrysler Int’l Corp. v. Chemaly*, 280 F.3d 1358, 1360 (11th Cir. 2002). Because of the “caseload of most district courts and the fact that cases can sometimes stretch out over years,” district courts may use this discretion to ensure that their cases “move to a reasonably timely and orderly conclusion.” *Id.* That is all that the district court’s order did here. By striking the separate motions and requiring a joint motion to be filed in compliance with the court’s rules, it tried to streamline the case. Contrary to George’s

contentions, nothing in this order gave “defense strategies to the defendants,” evidenced any sort of bias toward the defendants, or suggested in any way that the court abused its discretion.

* * *

Because we find no abuse of discretion in any of the district court’s orders challenged by George, we AFFIRM.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 12, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-11648-JJ
Case Style: Donnahue George v. William Snyder, et al
District Court Docket No: 0:19-cv-61827-RAR

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against appellant.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tiffany A. Tucker, JJ at (404)335-6193.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1A Issuance of Opinion With Costs

APPENDIX B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 19-CIV-61827-RAR

DONNAHUE GEORGE,

Plaintiff,

v.

**WILLIAM SNYDER, WESTWAY
TOWING, FORT LAUDERDALE
CODE ENFORCEMENT, and JOHN
DOE,**

Defendants.

ORDER GRANTING JOINT MOTION TO DISMISS

THIS CAUSE comes before the Court on Defendants Fort Lauderdale Code Enforcement, William Snyder, and West Way Towing's Motion to Dismiss ("Motion") [ECF No. 39], filed on December 19, 2020. Defendants ask the Court to dismiss Plaintiff's Amended Complaint [ECF No. 11] pursuant to Federal Rule of Civil Procedure 12(b)(6). Having reviewed the parties' submissions, the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that Defendants' Motion is hereby **GRANTED**, as explained herein.

BACKGROUND

On July 22, 2019, *pro se* Plaintiff Donnahue George filed a Complaint alleging that Defendants violated his constitutional rights when they improperly towed his vehicle without his permission. *See* Comp. [ECF No. 1]. The Court dismissed Plaintiff's Complaint *sua sponte* for failure to state a claim. *See* Order Dismissing Case [ECF No. 7]. In doing so, the Court noted that Plaintiff's Complaint lacked any detail regarding the purported theft and was entirely conclusory in nature. *Id.* Plaintiff then filed a Request to Reopen Case and to File an Amended Complaint

[ECF No. 9], alleging that he could remedy the pleading deficiencies identified by the Court. The Court granted Plaintiff's request, afforded Plaintiff an opportunity to file an amended complaint, and noted that "failure to file an amended complaint that comports with the Federal Rules of Civil Procedure . . . will result in an order of dismissal without further notice." Order Granting Plaintiff's Request to Reopen Case [ECF No. 10].

On October 21, 2019, Plaintiff filed an Amended Complaint. *See* Am. Comp. On November 6, 2019, Plaintiff filed a Motion for Clerk's Entry of Default [ECF No. 13], which the Clerk denied for failure to file executed summons [ECF No. 14]. Plaintiff then filed executed summons [ECF Nos. 15-17] and renewed his request for a Clerk's Entry of Default [ECF No. 18], which was granted [ECF No. 19]. Plaintiff then filed a Motion for Default Final Judgment [ECF No. 22]. Days later, Defendants filed Motions to Set Aside or Vacate the Clerk's Default [ECF No. 23, 25] on grounds that Plaintiff had never served the Amended Complaint. Because this case had been closed, Defendants had not received notice of the Amended Complaint or the Order Granting Plaintiff's Motion to Reopen.

Accordingly, the Court granted Defendants' Motions to Set Aside or Vacate the Clerk's Default, denied Plaintiff's Motion for Default Final Judgment, and ordered Defendants to file a response to Plaintiff's Amended Complaint. *See* Order Vacating Clerk's Default [ECF No. 27]. Defendants subsequently filed the instant Motion to Dismiss, which is ripe for disposition.

LEGAL STANDARD

A motion to dismiss for failure to state a claim merely tests the sufficiency of the complaint; it does not adjudicate the merits of the case. *Milburn v. United States*, 734 F.2d 762, 765 (11th Cir. 1984). At the pleading stage, a complaint must contain "a short and plain statement of the claim showing the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). Although Rule 8(a) does

not require “detailed factual allegations,” it does require “more than labels and conclusions;” a “formulaic recitation of the cause of action will not do.” *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 555 (2007). To survive a motion to dismiss, “factual allegations must be enough to raise a right to relief above the speculative level” and must be sufficient “to state a claim for relief that is plausible on its face.” *Id.* at 555, 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In considering a 12(b)(6) motion to dismiss, a court must review the complaint in the light most favorable to the plaintiff, and it must generally accept the plaintiff’s well-pleaded facts as true. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir. 2007). Although generally, *pro se* complaints are held to a less stringent pleading standard than pleadings drafted by lawyers, *see Abele v. Tolbert*, 130 F. App’x 342, 343 (11th Cir. 2005), “liberal construction of *pro se* pleadings does not give a court license to serve as de facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.” *Smitherman v. Decatur Plastics Prod. Inc.*, 735 F. App’x 692, 692-93 (11th Cir. 2018) (quoting *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014)) (internal quotations omitted).

ANALYSIS

Plaintiff’s Amended Complaint alleges that Defendants unlawfully towed his vehicle and falsified paperwork to justify their illicit behavior. *See generally* Am. Comp. However, even under the relaxed pleading standard afforded to *pro se* litigants, Plaintiff’s Amended Complaint fails to meet the foregoing standards. The Amended Complaint does not include sufficient factual matter that would allow the Court to reasonably infer that Defendants are liable for any misconduct

or wrongdoing, or what the claim or claims against each of them may be. To begin, Plaintiff's Amended Complaint is a recitation of facts that does not contain any counts, and therefore does not permit Defendants—or the Court—to properly analyze the same.

Moreover, while Plaintiff alleges certain constitutional violations, his factual allegations are untethered to his constitutional claims. The Court cannot discern which Defendants are alleged to have violated the Constitution and what the basis for these allegations may be. Indeed, it appears that Plaintiff does not appreciate that private individuals and corporations cannot generally be found liable for constitutional violations absent certain circumstances, *see Smartt v. First Union Nat'l Bank*, 245 F. Supp. 2d 1229, 1233 (M.D. Fla. 2003), and that departments of city government are normally not considered legal entities capable of being sued, *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992).

While it is clear from Plaintiff's Amended Complaint that he believes his vehicle was unlawfully towed, what remains decidedly *unclear* is how such actions translate into the legal claims Plaintiff alleges. Plaintiff's conclusory allegations that "Defendants committed trespass by entering my property to steal my vehicle" or that "Defendants caused me intentional infliction of emotional distress by stealing my vehicle" simply do not suffice to state a plausible claim. Because Plaintiff does not specify which Defendant is liable for each barebone allegation, the Court cannot discern the basis of Plaintiff's claims. *See Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015) ("The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests."); *see also* Fed. R. Civ. P. 8(a) ("A pleading that states a claim for relief must contain . . . *a short and plain statement* of the claim showing that the pleader is entitled to relief.") (emphasis added).

Further, the Court cannot determine the basis of its subject matter jurisdiction from Plaintiff's allegations. Federal courts are "'empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution,' and which have been entrusted to them by a jurisdictional grant authorized by Congress." *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999) (quoting *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994)). Accordingly, once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue. *Id.* at 410. Here, Plaintiff alleges that the Court has federal question jurisdiction pursuant to his constitutional claims and his claim under 42 U.S.C. section 1983. But both of these jurisdictional bases present challenges for Plaintiff.

With respect to his constitutional claims, Plaintiff concedes that he cannot proceed against Defendant Westway Towing, a private corporation. Similarly, and perhaps in recognition of his inability to pursue claims against Defendant Fort Lauderdale Code Enforcement, Plaintiff offers to substitute the same for the City of Fort Lauderdale.¹ Additionally, to the extent Plaintiff is raising constitutional claims against the last remaining Defendant—William Snyder—said claims lack any *indicia* to suggest Snyder was acting as an agent of the City such that a viable constitutional claim against him may exist.

Plaintiff's alleged section 1983 claim is similarly problematic. While Plaintiff sets forth section 1983 as a basis for the Court's subject matter jurisdiction, even under the most liberal construction of the Amended Complaint, Plaintiff has not alleged an action under section 1983. Beyond his jurisdictional allegation, Plaintiff's Amended Complaint never mentions section 1983, contains no allegations against the City of Fort Lauderdale, and does not allege a custom or policy

¹ The Court notes that even if Plaintiff were permitted to substitute the City of Fort Lauderdale as a defendant in this case, such substitution would not cure the pleading deficiencies identified herein.

that caused Plaintiff's injury.

In sum, Plaintiff has failed to remedy the deficiencies noted by this Court in its prior Order Dismissing Case [ECF No. 7]. Plaintiff's Amended Complaint continues to set forth vague and conclusory allegations, fails to comply with the Federal Rules of Civil Procedure and federal pleading standards, and does not provide a sufficient basis for this Court to find subject matter jurisdiction.

CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendants' Motion to Dismiss [ECF No. 39] is **GRANTED**. Plaintiff's Amended Complaint [ECF No. 11] is **DISMISSED**. The Clerk is directed to **CLOSE** this case.

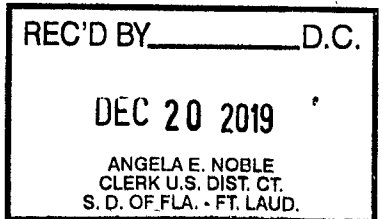
DONE AND ORDERED in Fort Lauderdale, Florida, this 27th day of April, 2020.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-CV-61827-RUIZ/SELTZER



DONNAHUE GEORGE

MOTION IN OPPOSITION

Plaintiff

v.

WILLIAM SNYDER

WESTWAY TOWING

FORT LAUDERDALE CODE ENFORCEMENT

Defendant

**PLAINTIFF OPPOSITION MOTION TO DEFENDANT FORT LAUDERDALE CODE
ENFORCEMENT. DEFENDANT WILLIAM SNYDER AND DEFENDANT WESTWAY
TOWING JOINT MOTION TO DISMISS PLAINTIFFS AMENDED COMPLAINT
(ECF#39)**

Come now the Plaintiff Donnahue George who requests that this honorable court deny the Defendant Fort Lauderdale Code Enforcement, Defendant William Snyder and Defendant Westway Towing motion to dismiss Plaintiffs Amended Complaint(ECF No. 39) and in support therefore states as follows

Procedural History

1. July 22, 2018 Plaintiff Donnahue George filed his complaint against, City of Fort Lauderdale code enforcement, Westway Towing, William Snyder and John Doe (See ECF1.)
2. Defendants Westway Towing was served with the summons on July 23, 2019 and Plaintiff Donnahue George filed a motion to reopen the case on September 23, 2019 and served Westway Towing representative by US mail (ECF 16)
3. Plaintiff Donnahue George filed a Motion to Re-Open the case on September 23, 2019 (ECF 9)

4. Donnahue George filed his Amended Complaint on October 21, 2019 (ECF 11) Plaintiff Donnahue George served a copy of the Amended Complaint to Westways registered agent as required by Florida Statute
5. A Clerks Default was entered based on the Amended Complaint not the original complaint. (ECF 19)
6. The allegations in the pleadings essentially accuse Westway towing of stealing plaintiffs vehicle in cahoots with Defendant William Snyder, violating Florida state towing laws and Penal laws and then fabricating evidence to coverup the theft.

Memorandum of Law

I. Standard on a motion to dismiss.

To defeat a motion to dismiss under Rule 12(b) (6), a plaintiff bears the burden of providing grounds of his entitlement to relief. *In Bell Atlantic Corp v. Twombly 550 U.S. 544 (2007)* the courts held that there must be sufficient facts in a complaint to state a claim to relief that is plausible on its face for it to avoid dismissal for failure to state a claim. Plaintiffs Donnahue George facts are plausible on its face to state a claim for relief. Defendant Westway Towing in Cahoots with Defendant William Snyder entered my property illegally on March 18, 2019 at approximately 0930 and stole my perfectly running limo that was clean and covered and legally parked in my paved driveway. Defendant has failed to give a legal reason why they entered my property and stole my vehicle. Florida Statute 715.07 (2)(a)(2) states that if you tow a vehicle in the state of florida without the owners permission you have to notify the local police department within 30 minutes. West way towing has years in the business and is familiar with the statute yet no one notified the Fort Lauderdale police department in 30 minutes so at that point, the tow truck driver committed a misdemeanor by violating Florida statute 715.07 (2)(a)(2). What someone did do was report to the fort Lauderdale police department that my vehicle was found abandoned in the street in fort Lauderdale a few hours after it was stolen from my property. There are sufficient facts concerning the actions and

inactions of the defendants on March 18, 2019 to state a claim by which relief can be granted.

A court considering a Rule 12(b) Motion is generally limited to the facts contained in the complaint and attached exhibits. (see Wilchcombe v Teevee Toons Inc, 555 F.3d 949, 959 (11th Cir 2009) The facts contained in the complaint are very precise as to the illegal actions which was entering my property and stealing my vehicle and the illegal inactions not notifying the fort lauderdale police department as required by statute. Westway Towing entered my property stole my vehicle violated florida statutes in order to cover up the theft and they still have not presented any evidence to the contrary.

II. Plaintiff Donnahue George Amended Complaint sets forth multiple factual allegations upon which relief must be granted.

Plaintiff Donnahue George original complaint was vague because he knew that the Defendants Westway Towing and Defendant William Snyder had no moral problem with fabricating evidence, ignoring florida statutes and penal code in order to cover up their felonious actions and inactions.

While the defendant Westway towing is correct that the constitutional rights violations cant be attributed to them, They still entered my property illegally on March 18, 2019 which was a trespass, stole my perfectly running vehicle out my driveway which made it trespass to chattel and Conversion. They committed fraud by totally ignoring Florida Statute 715.07 (2)(a)(2) which required them to notify the local police department in 30 minutes which they did not do. Violation of this statute is a misdemeanor. Then someone a few hours later notified Fort Lauderdale police department that they found by vehicle abandoned in the street. The illegal actions and illegal inactions of Defendant Westway towing was the proximate cause of my intentional emotional distress. They knew what they were doing was illegal, by their own evidence they submitted (see exhibit B) they knew that I was the owner of the vehicle and it was registered at the address that they towed it from. It appears they then dropped it in the street then someone called Fort Lauderdale Police department reported my vehicle abandoned and then it was towed again. These are issues that will be

answered during the discovery process. I am very confident that Fort Lauderdale police department has very accurate records.

In alleging Fraud or Mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent knowledge and other conditions of a persons mind may be alleged generally (see State Farm Mut. Auto Ins. Co. v. Performance Orthopedics & Neurosurgery, LLC, 278 F. Supp. 3d 1307, 1317 (S.D. Fla. 2017))

Westway Towing entered the property illegally without plaintiff Donnahue George expressed authority which created the trespass. The facts are very clear on its face. Westway Towing knew plaintiff Donnahue George was the owner of the vehicle by their own evidence they presented to the courts (see Exhibit B) Westway Towing even armed with that information still removed Plaintiffs Donnahue George vehicle from his premises in direct violation of Florida State Statutes. Westway towing knew that they were required to notify the local police department within 30 minutes of towing my vehicle and they did not which is a misdemeanor and further evidence of their fraud.

In Dagerath v. State, 100 So. 3d 1260, 1263 (Fla. 4th DCA 2012) the courts held that the defendant had to meet the following elements for trespass (1) the defendant willfully entered the structure conveyance or other property. Westway towing willfully entered the property and stole my vehicle. (2) the structure, conveyance or other property was owned by or in the lawful possession of another. Plaintiff Donnahue George is the legal owner of 1012 NW 2nd st Fort Lauderdale FL and he is the legal registered owner of the perfectly good clean running vehicle that defendants stole out of his property.

In order for co-conspirators to commit a crime together they do not have to have a legal relationship. Defendant William Snyder and Defendant Westway Towing committed the trespass together. Committed the trespass of Chattel together along with the conversion. Employer employee relationship not required to commit a crime. Defendant William Snyder committed part of the fraud alone by submitting a report to his department that he did not know who the owner of the vehicle was and that it was

derelict. Westway towing committed part of the fraud on their own by not notifying the local police department in 30 minutes as required by Florida state statutes. Someone later notified Fort Lauderdale Police Department that they found my vehicle abandoned in the street.

Conversion may be demonstrated by a Plaintiffs demand and a Defendants Refusal (See Goodrich v Malowney, 157 So. 2d 829, 832 (Fla. 2d DCA 1963) The generally accepted rule is that demand and refusal are unnecessary where the act complained of amounts to conversion regardless whether a demand was made". While Defendant William Snyder And his Coconspirator Westway towing was in the process of stealing plaintiff vehicle, plaintiff neighbor called plaintiff Donnahue George and told him about the theft in progress. Plaintiff Donnahue George spoke to defendant William Snyder and told him he did not have permission to remove my vehicle from my property and defendant William Snyder simply ignored my request and hung up the phone.

In order for Plaintiff Donnahue George to state an action for intentional infliction of emotional distress a complaint must allege four elements. These elements do not have to be proven in the complaint. Plaintiff Donnahue George must allege (1) reckless or deliberate infliction of Mental suffering (2) outrageous conduct (3) the conduct caused the emotional distress (4) the distress was severe

In regards to (1) Defendant William Snyder in conspiracy with Westway towing reckless and deliberately trespassed on my property and stole my vehicle under the color of law. When I asked Defendant William Snyder to stop stealing my vehicle he just hung up the phone on me leaving me helpless without any recourse . Defendant William Snyder and Westway Towing actions intentionally caused me mental suffering.

In regards to (2) The fact that Defendant West way Towing trespassed on my property and stole my vehicle and then lied to cover up the theft, a reasonable person would find that conduct to be outrageous.

In regards to (3) The actions of Defendant Westway Towing entering my premises illegally with the intent to steal my vehicle was the actual cause of my mental distress

In regards to (4) the distress was very severe because I did not know what to do I was not in a position to do anything at the time and when I went to the police station and they told me my car was found abandoned in the street I was distressed. I attempted to call Westway Towing and after I gave them the vin # for my vehicle they just put me on hold and never came back on the phone putting me in further distress. Hart v. United States, 894 F.2d 1539, 1548 (11th Cir. 1990)

The Defendant Westway Towing own intentional disregard of Florida state Statutes is further evidence that their actions were willful and intentional.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

7. Plaintiff Donnahue George alleges that on March 18, 2019 at approximately 0930. Defendant William Snyder without any legal authority and with the assistance of Westway towing stole my perfectly running covered limo out of my paved driveway. Plaintiff Donnahue George has presented proof that Defendant William Snyder then submitted a erroneous report to Fort Lauderdale Code enforcement stating that the vehicle was derelict and that he did not know who the owner was (See Exhibit A) Yet Defendant Westway Towing submitted a title search that the ran on plaintiffs car that same day and time that lists the plaintiff as the owner and the car was registered at the address from where it was towed. (see exhibit B). Plaintiff Donnahue George does not allege that he filed a police report. Plaintiff Donnahue George states that he went to the Fort Lauderdale Police department to file a report and that police officer Rivera Shield # 1625 informed Plaintiff Donnahue George that his car was found abandoned on NE 5th street and NE 2nd ave. Plaintiff Donnahue George has no idea who reported his vehicle abandoned in the street but after a discovery period plaintiff is confident that the Fort Lauderdale Police department has accurate records. Defendant William Snyder and Defendant Westway entered my property illegally with the intent to trespass of chattel and violated Plaintiff Donnahue George constitutional rights arising under the 4th, 5th and 14th amendments plus 42 USC 1983, by committing grand theft auto, fraud , trespass, trespass of chattel, intentional infliction of emotional distress and conversion.

As Demonstrated below, Plaintiff Donnahue George claims should be granted in its entirety because:

First, Fort Lauderdale Code Enforcement is an entity that is capable of being sued because the process server informed me that the statute required her to serve the director of Code enforcement, and even if the courts even wanted to entertain that allegation, the City of Fort Lauderdale is on notice and has had ample time to provide an answer and defense. Plaintiff Donnahue George added John Doe to his Complaint because he knew after discovery there would be more defendants. It is a very simple issue to add City of Fort Lauderdale as a defendant if that will make the Defendant happy.

Second, to the extent that Plaintiff Donnahue George does state a claim against defendant William Snyder who was supposed to be acting in his official capacity as a City of Fort Lauderdale employee. Plaintiff Donnahue George notified Fort Lauderdale Police Department, Fort Lauderdale Code enforcement, Fort Lauderdale City hall and Broward county commission on June 24, 2019 (See exhibit C) in complete compliance of pre-suit requirements 768.28(6)(a), Fla. Stat. (2017) warranting this court granting all of plaintiff Donnahue George claims.

Third, Plaintiff Donnahue George claims are very specific and the facts are overwhelming. Defendant William Snyder entered my property and with the assistance of Westway Towing stole my perfectly good running limo that was clean and covered and legally parked on my paved driveway. While Defendant William Snyder was in the process of stealing my vehicle in violation of Florida towing statutes 715.07 (2)(a)(3) which is a felony, my neighbors saw him and immediately called me. I had my neighbor put Defendant William Snyder on the phone and I explained to him that he did not have my permission to remove my legally parked covered car from my paved driveway. Westway towing and William Snyder then stole my vehicle. Defendant William Snyder then submitted an erroneous report with his department (see Exhibit A) which he signed stating that a covered vehicle on private property was derelict and that he did not know who the owner was. He knew it wasn't derelict he knew who the owner was and he still removed the vehicle from my private property and lied about it. Westway towing have provided me with documentation(See Exhibit B) that

proves that they knew who the owner of the vehicle was, they knew it was registered at that address and they still towed the vehicle in violation of Florida Towing Statutes. They were in possession of the correct information and Defendant William Snyder still submitted that report to his department alleging that the vehicle was derelict and he did not know who the owner was. This is further evidence that the fraud perpetrated by Defendant William Snyder and Defendant Westway Towing was deliberate, intentional and willful. Florida Statute 715.07 (2)(a)(2) states that if you tow a vehicle in the state of Florida without the owners permission you have to notify the local police department in 30 minutes. Violation of this statute is a misdemeanor. Nobody notified Fort Lauderdale police department in 30 minutes in violation of Florida state statute, instead someone notified Fort Lauderdale police department dispatcher that they found my vehicle abandoned in the street blocks from my house.

Fourth, Plaintiff specifically states a cause of action against Defendant William Snyder and the City. Defendant William Snyder had no legal reason to enter my property and steal my vehicle. The City of Fort Lauderdale as the employer of Defendant William Snyder is responsible for training him and supervising his actions. Its obvious to a reasonable person that either they failed in training him properly, supervising him properly or both. By entering my property to commit a felony by stealing my vehicle and then fabricating evidence to cover up the felony, Defendant William Snyder committed Grand theft auto, trespass, trespass of chattel, fraud and conversion. Only through a court ordered discovery period will we be able to determine if this was a one-time incident, or a pattern of behavior that has been going on unsupervised and unchecked for years.

Fifth, Plaintiff Donnahue George spoke to Defendant William Snyder while he was in the process of towing my car and explained to defendant William Snyder that he did not have my authority to remove my perfectly running covered vehicle from my paved driveway. Defendant William Snyder hung up on plaintiff Donnahue George and proceeded to steal the plaintiffs vehicle. The plaintiff Donnahue George felt weak and helpless at that point because there was nothing he could do to stop Defendant William Snyder from violating his Constitutional rights. The emotional helplessness that he felt at that point can not be overstated and then to return home and see

that his vehicle is missing, and then to add insult to injury to be informed by Officer Rivera shield#1625 that his vehicle was found abandoned in the road sent Plaintiff Donnahue George in a sense of panic and he immediately went to Fort Lauderdale code enforcement to find out what was going on. Defendant William Snyder handed Plaintiff Donnahue George a paper stating that he did not know who the owner of the vehicle was and that it was derelict. Plaintiff Donnahue George told defendant William Snyder that he knows who owned it because you spoke to me while you were towing it and you hung up on me. Defendant William Snyder just walked away.

ARGUMENT AND MEMORANDUM OF LAW

I. Fort Lauderdale Code Enforcement is an entity capable of being sued and the case must not be dismissed. The City of Fort Lauderdale should be added as a defendant in the case

Amended Complaint Fort Lauderdale Code Enforcement was the employer of Defendant William Snyder and was responsible or supervising and training him. In *Monell v. Dep't. of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), the Supreme Court held that "municipalities and other local government *1132 units" are "persons" subject to liability for violating 42 U.S.C. § 1983. Defendant Fort Lauderdale Code enforcement violated my rights under 42 U.S.C 1983 through the actions of their employee William Snyder so they are units and persons subject to liability under the law.

In Post v. City of Fort Lauderdale 750 F. Supp. 1131, 1132-33 (S.D. Fla. 1990)

The Courts held that until the court is apprised of the factual involvement of the defendants they will remain parties in the case. There has not been enough evidence presented for the court to know the factual involvement of Fort Lauderdale Code enforcement and therefore Fort Lauderdale Code enforcement should not be removed from the lawsuit. They were specifically the ones required to train and supervise defendant William Snyder. There should be a discovery period to determine how complicit Fort Lauderdale Code enforcement was in illegal felony actions of Defendant William Snyder. Plaintiff Donnahue George agrees with

Defendant that The City of Fort Lauderdale should be added as a defendant in this lawsuit.

II. **Plaintiff Donnahue George has Compiled with Pre-suit Requirements and Thus all his Allegations in his Amended Complaint Must be Granted**

Plaintiff Donnahue George is asserting state law tort claims and Federal Constitutional Rights violation claims and has met the pre-suit requirements in 768.28(6)(a), Fla. Stat. (2017). Plaintiff Donnahue George on June 24, 2019 notified Fort Lauderdale code enforcement, The Fort Lauderdale Police department, Fort Lauderdale City Hall and the Broward County Commission (See exhibit C) No one responded. Plaintiff Donnahue George notice to the appropriate agency was within the 3 years as required by statute. In section 768.28, the Florida legislature has waived the sovereign immunity of the state and its subdivisions from tort action provided, among other things, that the claimant present a written claim to the appropriate agency within 3 years after the accrual of the claim.

The Actions of Defendant William Snyder goes outside the norms of Qualified Immunity and as to his actions he there is no pre-suit prerequisite. *In Hutton v. Strickland, 919 F.2d 1531, 1536 (11 Cir. 1990)* the courts state that Qualified immunity protects government officials performing discretionary functions from civil liability if their conduct violates no "clearly established statutory or constitutional rights of which a reasonable person would have know". A reasonable person would know that they should not enter a persons property to steal someone elses property. A reasonable person would know that entering a property with the intent to commit a crime is trespass and would violate a persons constitutional rights. A reasonable person would know that if you fabricate evidence to cover up a crime that would be fraud. Defendant William Snyders actions were clearly outside the Norms of Qualified Immunity.

A Plaintiff facing Qualified Immunity must produce evidence that would allow a fact finder to find that no reasonable person in the defendants position could have thought the facts were such that the justified the defendants actions. *(See Sims v Metropolitan Dade County, 972 F.2d 1230,*

1234-35 (11th Cir. 1992) Defendant William Snyders actions were clearly outside the norms of qualified immunity and a fact finder would find that no reasonable person would find the fact that he fabricated evidence to cover up his crime justified.

III. Plaintiff Donnahue George has Stated a Claim Upon Which Relief can be Granted and all the Allegations in his Amended Complaint should be Granted

The facts that Plaintiff Donnahue George has asserted state very specific facts about the actions of Defendant William Snyder and the theft of Plaintiffs vehicle from his paved driveway in front his house. Florida state statute 715.07 (2)(a)(3) states that if a person is removing a vehicle or vessel from the premises or parking lot in which the vehicle is not lawfully parked must stop when a person seeks return of the vehicle. Violation of this statute is a Felony. First Defendant William Snyder had no authority to remove the vehicle from the premises and while he was unlawfully removing the vehicle from my property I told him to stop and he did not. He hung up the phone on me and continued to commit 2 felonies first grand theft auto second violation of Florida statute 715.07(2)(a)(3) which is also a felony. Defendant Fort Lauderdale Code enforcement was responsible for the supervision and training of Defendant William Snyder so they are culpable in his actions.

Defendant William Snyder in his own fraudulent paperwork establishes the date and time that he trespassed on my property and stole my vehicle.(see Exhibit A) Florida statute 18-3 definitions establishes that derelict means any motor vehicle or vessel which is in a state of evident disuse , neglect or abandonment is wrecked or partially dismantled having no motor. My vehicle was working running and cleaned and covered in my paved driveway it was clearly not a derelict vehicle according to the definition established by the State of Florida. Defendant William Snyder stole plaintiffs perfectly running vehicle with the assistance of West way towing and then fabricated evidence to cover up the theft. A reasonable person would know that Defendant Williams Snyders action were illegal and outrageous and the fact that he lied in his paperwork to his department is

further proof that he knew that his actions were illegal and outside accepted norms.

IV. Plaintiff Donnahue George States Multiple Causes of Actions Against Defendant William Snyder and All his Allegations are supported by Facts.

Plaintiff Donnahue George Fourth, Fifth and Fourteenth Amendment rights were violated by Defendant William Snyder. Defendant West way towing own submitted evidence proves that I was the owner of the vehicle (see Exhibit B) and the trespass of my property with the intent to steal my vehicle under the color of law violated my Fourth, Fifth and Fourteenth Amendment rights

The 4th Amendment provides: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure. Defendant William Snyder entered my property unlawfully stole my vehicle under the color of law and then fabricated evidence to cover up the theft

The Fifth Amendment provides: that no person shall be deprived of life , liberty or property without due process of law. Defendant William Snyder entered my property stole my vehicle gave me no advance warning of the theft or no do process but most thieves do not tell you in advance that they are coming to steal your property. He stole my vehicle under the color of law with no due process and without just compensation

The 14th Amendment provides : All persons born or naturalized in the United States , and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. Nor shall any state deprive any person of life liberty or property without due process of law:

Defendant William Snyder denied me the due process of the law by stealing my vehicle under the color of law and when caught in the act of stealing my vehicle by my neighbors simply hung up the phone on me and continued with the theft. There was no due process of law as required by the Constitution but as stated before a thief is not going to give you advance notice that they are going to steal. There is no ordinance that allows a Code

enforcement Officer to enter a property to steal a vehicle with or without prior notice. The defendant can cite all the cases that they want regarding neutrality of ordinances but in this particular case there was no ordinance that was followed. Defendant William Snyder entered my property by trespass stole my vehicle and then lied to cover up the theft. There is no ordinance or statute that allows him to steal my property.

V. Plaintiff Donnahue George States a Cause of Action For His Emotional Distress.

In order for Plaintiff Donnahue George to state an action for intentional infliction of emotional distress a complaint must allege four elements. These elements do not have to be proven in the complaint. Plaintiff Donnahue George must allege (1) reckless or deliberate infliction of Mental suffering (2) outrageous conduct (3) the conduct caused the emotional distress (4) the distress was severe

In regards to (1) Defendant William Snyder in conspiracy with Westway towing reckless and deliberately trespassed on my property and stole my vehicle under the color of law. When I asked Defendant William Snyder to stop stealing my vehicle he just hung up the phone on me leaving me helpless without any recourse . Defendant William Snyder intentionally caused me mental suffering.

In regards to (2) The fact that Defendant William Snyder trespassed on my property and stole my vehicle and then lied to cover up the theft, a reasonable person would find that conduct to be outrageous.

In regards to (3) The actions of Defendant William Snyder entering my premises illegally with the intent to steal my vehicle was the actual cause of my mental distress

In regards to (4) the distress was very severe because I did not know what to do I was not in a position to do anything at the time and when I went to the police station and they told me my car was found abandoned in the street I was distressed. I attempted to call Westway Towing and after I gave them the vin # for my vehicle they just put me on hold and never came

back on the phone putting me in further distress. Hart v. United States, 894 F.2d 1539, 1548 (11th Cir. 1990)

The Defendant William Snyders own fraudulent papers state that the vehicle was stolen from my house plus he also has pictures of my vehicle before he stole it under the color of law.

VI. Plaintiff Donnahue George States a Cause of Action Under 42 U.S.C. 1983

To state a cause of action under section 1983 a plaintiff must allege two elements (1) Challenged conduct by a person acting under the color of law (2) challenged conduct that deprived the plaintiff of federal rights.

In regards to(1) Defendant William Snyder trespassed on my property under the color of law as a Code enforcement officer and stole my perfectly good running vehicle that was clean and covered and parked on my paved driveway.

In regards to (2) By stealing my vehicle Defendant William Snyder deprived of my 4th , 5th and 14th Amendment rights.

A Municipality may not be held liable under 1983 Solely because it employs a tortfeasor (see Monell v New York City Dept of Social Services 436 U.S. 658, 692 instead the plaintiff must identify municipal policy or custom that caused the injury (See Pembaur v Cincinnati 475 U.S. 469, 480-481. Until plaintiff is given an opportunity to submit interrogatories and depose other City employees plaintiff will not be able to establish if this was a one time incident or if the Fort Lauderdale Code Enforcement has established customs and or policys that allow code enforcement officers think they can just trespass and steal citizens personal property

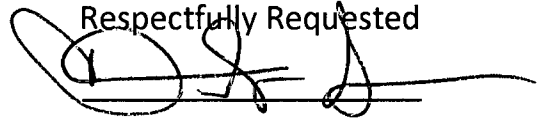
CONCLUSION

Based on the authority cited and the arguments presented herein. Plaintiff Donnahue George respectfully requests that this deny defendant Florida Code Enforcement, Defendant William Snyder and Defendant Westway Towing motion to dismiss and this honorable court grant everything that

Plaintiff Donnahue George requests in his Amended complaint or order a schedule so that we can start discovery proceedings.

Date December 19, 2019

Respectfully Requested

A handwritten signature in black ink, appearing to be 'Donnahue George', written over a horizontal line.

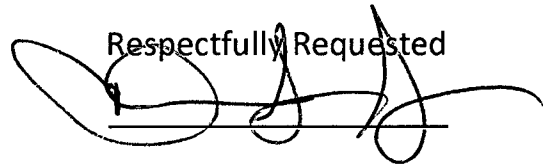
Donnahue George

Conclusion

Based on the authority cited and the arguments presented herein. Plaintiff Donnahue George respectfully requests that this honorable court deny defendant Fort Lauderdale Code Enforcement, defendant William Snyder and Defendant Westway Towing motion to dismiss Plaintiffs Amended Complaint and this honorable court grant everything that Plaintiff Donnahue George requests in his Amended complaint or order Defendants to file an Answer to Plaintiffs Complaint.

Date December 19, 2019

Respectfully Requested

A handwritten signature in black ink, appearing to be 'Donnahue George', written over a horizontal line.

Donnahue George

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of Dec, 2019. I mailed this foregoing document to the Clerk of the court and this Document is being served this day by US Mail to Defendant Attorney: Robert Oldershaw at City Attorney 100 North Andrews av Fort Lauderdale Florida 33301 and Harrison T Bergman 2001 Hollywood Blvd, Suite 200 Hollywood Florida 33020

December 20, 2019

A handwritten signature in black ink, appearing to read 'Donnahue George', written over a horizontal line.

Donnahue George

Exhibit A

FORT LAUDERDALE POLICE TOWED VEHICLE/VEHICLE PROCESSING

10:27am

OR# CE 19030397

OFFENSE Derelict Vehicle		LOCATION 1012 NW 2 ST		UNIT 7533	ZONE	RA
DATE 3/18/2019	DAY Monday	TIME OF OCCURRENCE 9:58am		TIME DISP 9:58am	ARRIVE 10:18am	CLR
VEHICLE						
YR/MAKE/MODEL Lincoln Royale		LIC	STATE	YEAR	COLOR(S) Black	VIN 1F1FM88W664626679
UNUSUAL ACCESSORIES 1 2 3						
OTHER PROPERTY 954 731-1115						
GENERAL CONDITION OF VEHICLE Good		KEY WITH VEHICLE <input checked="" type="checkbox"/>		TOWED BY Westway		REASON FOR TOW Derelict Vehicle
HOLD <input type="checkbox"/> DET CON <input type="checkbox"/> VICE <input type="checkbox"/> PATROL <input type="checkbox"/> O.J.		OJ OR NEG		OFFICER AUTH. HOLD		REASON FOR HOLD
<input checked="" type="checkbox"/> RELEASE ON PROOF OF OWNERSHIP		REGISTERED OWNER OF VEHICLE		ADDRESS		
NAME OF PERSON ARRESTED (IF ANY)		REASON FOR ARREST				
SUSPECTS FOR LATENT COMPARISON						
NAME, R/S, DOB		NAME, R/S, DOB				
NARRATIVE						
PERSON REPORTING CASE		ADDRESS		PHONE		Processing Required <input type="checkbox"/> None <input type="checkbox"/> Latents <input type="checkbox"/> Photos
NE						
<p>At 11:00am, physical damage. Tag missing. Teletype unable to determine registration or ownership. No suspension in rear; air bags blown.</p>						
VEHICLE DISPOSITION UPON COMPLETION OF PROCESSING: <input type="checkbox"/> TOT Confiscation <input type="checkbox"/> TOT Owner <input type="checkbox"/> Continue to Hold for:						
OFFICER MAKING INVENTORY Will Snyder		WITNESS		DATE & TIME		INVESTIGATOR
TOW DRIVER 0678		HOLD RELEASED BY		DATE & TIME		
VEHICLE CLAIMED BY		ADDRESS		PHONE		DATE & TIME
OWNER REQUEST PVT TOW		SIGN RELEASE OF RESPONSIBILITY				

Exhibit B

Page 9

Invoice # 623027

ADD



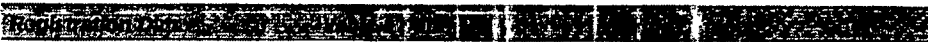
Scan or visit verify.addi.23.com to verify



Verification Code: VP98559

Florida Vehicle Record

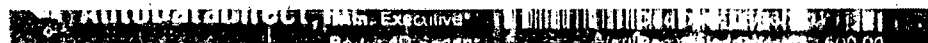
Retrieved On: Mon March 18, 2019 11:12:09 AM EDT



Tag:	VIN: 1L1FM88W66Y626679	Title: 0096421127
	Year: 2006	Issue Date: 06/16/2017
	Make: LINC	Odo Read: 98533
	Model: Town Car	Odo Type: ACTUAL
	Trim: Executive	Odo Mileage: 61,117
	Body: 4D Sedan	Reg. Sales Price: \$2,500.00
	Weight: 4271	Sales Date: 06/07/2017
	Color: BLACK	Prev. State: FL
	Vehicle Type: AUTO	Prev. Issue Date: 10/13/2016
		No. of Owners: 0
		City: ... State: ...



Last Title Transaction Type: TRANSFER



Owner 1: DONNAHUE GARY GEORGE	DELID: 0620167652160
1012 NW 2ND STREET	Sex: M
PORT LAUDERDALE, FL 33411	DOB: 02141935

(DPPA 7) Owner name regarding towing of impounded vehicles.

This information is provided by the Florida Department of Highway Safety and Motor Vehicles (DHSMV), Auto Data Direct, Inc. (ADDI), and the Florida Department of Transportation (FDOT). This information is provided for informational purposes only and is not to be used for any other purpose. The information is provided as is and is not guaranteed to be accurate or complete. The information is provided for informational purposes only and is not to be used for any other purpose. The information is provided as is and is not guaranteed to be accurate or complete.

This Motor Vehicle Record is extracted directly from the State or Jurisdiction's official Motor Vehicle Records database, in real time. The authenticity of these records may be authenticated in real time using the ADD on-line authorization system.

Personal information including, but not limited to, name, sex, date of birth, address, appearing on driver and vehicle records is protected by the Driver Privacy Protection Act (DPPA). The use of such information for reasons not allowed by the DPPA will result in loss of information access privileges and may result in legal action.

Any person who knowingly obtains or attempts to obtain information from the Driver Privacy Protection Act (DPPA) may be subject to criminal sanctions and civil liability specified in law for unauthorized use of the data.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT

No. 20-11648

Donnahue George, Plaintiff -Appellant

v.

WestWay Towing

William Snyder

Fort Lauderdale Code Enforcement

John Doe

Defendant- Appellee

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

Case No. 19-CV- 61827

INITIAL BRIEF OF PLAINTIFF- APPELLANT

Donnahue George

1012 NW 2nd Street

Fort Lauderdale Fl 33311

(347) 216-5257

Email: DonnahueGeorge@gmail.com

**STATEMENT OF INTERESTED PARTIES AND CORPORATE
DISCLOSURE STATEMENT**

Plaintiff- Appellant does not have a parent corporation and is not a publicly held corporation.

Interested parties are as follows:

Fort Lauderdale Code Enforcement, Defendant- Appellee

Westway Towing, Defendant-Appellee

William Snyder, Defendant-Appellee

John Doe, Defendant-Appellee

Donnahue George, Plaintiff- Appellant

Richard Bergman, Attorney for Defendant-Appellee

Micheal Bostick, Attorney for Defendant-Appellee

Robert Oldershaw, Attorney for Defendant Appellee

Honorable Judge Rodolfo A. Ruiz II U.S. District Court Judge

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not warranted because the case law is very clear on its face. The Plaintiff-Appellant was very specific in his description of the fraudulent actions by the Defendants in his Complaint and he has met the legal threshold required by statute and case law for the case to move forward. Defendants Westway Towing and William Snyder entered by residential property under the color of law stole my property and denied me my constitutional rights to due process and the unjust seizure of my property. Florida statute 713.78 is very clear that the only person that can tow vehicles from private property are the Owner the owners representative or a law enforcement officer. The statutes are very clear that a code enforcement officer is not a law enforcement officer and therefore is not authorized to tow any vehicles from private property.

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JURISDICTIONAL STATEMENT

Jurisdiction is proper in this case under 28 U.S.C. 1331, as this appeal arises from a judgment dismissing Plaintiff Donnahue George case for failure to state a claim in United States District Court for the Southern District of Florida. When Defendants illegally entered Plaintiff Donnahue George premises under the color of law and stole his vehicle. The court has appellate jurisdiction pursuant to 28 U.S.C 1291. The District Court entered a final judgment dismissing Plaintiffs case on April 27, 2020. A notice of appeal was timely filed on April 30, 2020.

STATEMENT OF ISSUES ON APPEAL

- (1) Whether the District Court erred by dismissing Plaintiff- Appellant Donnahue George case for failure to state a claim when defendants were properly served, and Plaintiff- Appellant Donnahue George was very specific in his Amended complaint about Defendants unconstitutional actions. The Defendants entered Plaintiff Donnahue George premises illegally under the color of law and stole his personal property, thereby denying him his constitutional rights to due process and violating his constitutional rights against unjust seizure of his property.
- (2) Whether the District Court erred by setting aside the Clerks entry of Default and not issuing the Default Judgment, when it was filed before defendants filed motion to set aside Clerks entry of Default. Defendants were properly served and (1) the defaulting party didn't have a meritorious defense (2) the default was culpable and willful; and (3) and setting it aside prejudice the Plaintiff-Appellant
- (3) Whether the District Court erred by striking the Defendants separate motions to dismiss and ordering that they file a joint motion to dismiss, unless they had conflicting interests, and issuing orders before plaintiff has time to respond, which gives the impression that the District court is acting like co-counsel for the defense and becoming the architect of the defendants defense

strategy and denying Plaintiff Donnahue George Constitutional rights to a fair and impartial trial.

STATEMENT OF THE CASE

1. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

Plaintiff Donnahue George filed a complaint against Defendants William Snyder, Westway Towing and Fort Lauderdale code enforcement on July 22, 2019. It was dismissed for failure to state a claim 2 days later July 24, 2019. Plaintiff Donnahue George filed an amended complaint on October 21, 2019. All defendants were properly served and never answered the amended complaint. On November 6, 2019 plaintiff Donnahue George filed a motion for Clerks entry of Default. On November 8, 2019 plaintiff Donnahue George filed a motion for Default Judgment in person, but for some reason it wasn't entered for 4 days On November 12, 2019. During the 4 days when Plaintiff Donnahue George Motion for Default Judgment was lost even though he personally walked it into the Clerk of the Court. The Default Judgment was never entered. The defendants who never answered the Amended Complaint became aware of the Clerks entry of Default and the Motion for Default Judgement and filed Attorney appearances. Defendants filed motions to set aside the Clerks entry of Default and the District Court granted the motion and set aside the clerks entry of default without giving Plaintiff Donnahue George time to file his opposition motion, This denied plaintiff Donnahue George his due

process rights to a fair hearing on the motion and eroded the Plaintiffs confidence in the impartiality of the Judiciary.

2. STATEMENT OF FACTS

Plaintiff Donnahue George states that on March 18, 2019 at approximately 0930. Defendant William Snyder a city employee without any legal authority to enter private property and with the assistance of Westway towing who was a state actor stole my perfectly running covered limo out of my paved driveway. Plaintiff Donnahue George has presented proof that Defendant William Snyder then submitted an erroneous report to Fort Lauderdale Code enforcement stating that the vehicle was derelict and that he did not know who the owner was (See ECF/Tab#11 Exhibit B) Yet Defendant and state actor Westway Towing submitted a title search that they ran on plaintiffs car that same day and time that lists the plaintiff as the owner and the car was registered at the address from where it was towed. (see ECF/Tab #25 exhibit 2). Plaintiff Donnahue George does not allege that he filed a police report. Plaintiff Donnahue George states that he went to the Fort Lauderdale Police department to file a report and that police officer Rivera Shield # 1625 informed Plaintiff Donnahue George that his car was found abandoned on NE 5th street and NE 2nd ave. Plaintiff Donnahue George has no idea who reported his vehicle abandoned in the street but

after a discovery period plaintiff is confident that the Fort Lauderdale Police department has accurate records. Defendant William Snyder and Defendant and state actor Westway entered my property illegally with the intent to trespass of chattel, violated Plaintiff Donnahue George constitutional rights arising under the *4th, 5th and 14th amendments plus 42 USC 1983*, by committing grand theft auto, fraud , trespass, trespass of chattel, intentional infliction of emotional distress and conversion.

As demonstrated below, Plaintiff Donnahue George claims should be granted in its entirety because:

First, Fort Lauderdale Code Enforcement is an entity that is capable of being sued because the process server informed me that the statute required her to serve the director of Code enforcement, and even if the courts even wanted to entertain that allegation, the City of Fort Lauderdale is on notice and has had ample time to provide an answer and defense. Plaintiff Donnahue George added John Doe to his Complaint because he knew after discovery there would be more defendants. It is a very simple issue to add City of Fort Lauderdale as a defendant if that will make the Defendant happy.

Second, to the extent that Plaintiff Donnahue George does state a claim against defendant William Snyder who was supposed to be acting in his official capacity as a City of Fort Lauderdale employee, Westway Towing

who was acting as an agent for the state. Plaintiff Donnahue George notified Fort Lauderdale Police Department, Fort Lauderdale Code enforcement, Fort Lauderdale City hall and Broward county commission on June 24, 2019 (See exhibit C) in complete compliance of pre-suit requirements 768.28(6)(a), *Fla. Stat. (2017)* warranting this court granting all of plaintiff Donnahue George claims.

Third, Plaintiff Donnahue George claims are very specific and the facts are overwhelming. Defendant William Snyder and state actor Westway Towing entered my property illegally and with the assistance of state actor Westway Towing stole my perfectly good running limo that was clean and covered and legally parked on my paved driveway. While Defendant William Snyder and state actor WestWay Towing were in the process of stealing my vehicle in violation of Florida towing statutes 715.07 (2)(a)(3) which is a felony, and *Florida statute 713.78* which is very clear that the only person that can tow vehicles from private property are the Owner the owners representative or a law enforcement officer. The statutes are very clear that a code enforcement officer is not a law enforcement officer and therefore is not authorized to tow any vehicles from private property. Plaintiff Donnahue George neighbors saw Defendant William Snyder and immediately called Plaintiff. I had my neighbor put Defendant William Snyder on the phone and

I explained to him that he did not have my permission to remove my legally parked covered car from my paved driveway. State actor Westway towing and William Snyder then stole my vehicle. Defendant William Snyder then submitted an erroneous report with his department (see ECF/Tab #11 exhibit B) which he signed stating that a vehicle on private property was derelict and that he did not know who the owner was. He knew it wasn't derelict he knew who the owner was and he still removed the vehicle from my private property and lied about it. Westway towing have provided me with documentation(See ECF/Tab #25 exhibit 2) that proves that they knew who the owner of the vehicle was, they knew it was registered at that address and they still towed the vehicle in violation of Florida Towing Statutes. They were in possession of the correct information and Defendant William Snyder still submitted that report to his department alleging that the vehicle was derelict and he did not know who the owner was. This is further evidence that the fraud perpetrated by Defendant William Snyder and Defendant Westway Towing was deliberate, intentional and willful. Florida Statute 715.07 (2)(a)(2) states that if you tow a vehicle in the state of Florida without the owners permission you have to notify the local police department in 30 minutes. Violation of this statute is a misdemeanor. Nobody notified Fort Lauderdale police department in 30 minutes in

violation of Florida state statutes, instead someone notified Fort Lauderdale police department dispatcher that they found my vehicle abandoned in the street blocks from my house.

Fourth, Plaintiff specifically states a cause of action against Defendant William Snyder, state actor Westway Towing and Fort Lauderdale Code enforcement. Defendant William Snyder and state actor Westway Towing had no legal reason to enter my property and steal my vehicle. The City of Fort Lauderdale as the employer of Defendant William Snyder is responsible for training him and supervising his actions. Its obvious to a reasonable person that either they failed in training him properly, supervising him properly or both. By entering my property to commit a felony by stealing my vehicle and then fabricating evidence to cover up the felony, Defendant William Snyder and state actor Westway Towing committed Grand theft auto, trespass, trespass of chattel, fraud and conversion. Only through a court ordered discovery period will we be able to determine if this was a one-time incident, or a pattern of behavior that has been going on unsupervised and unchecked for years.

Fifth, Plaintiff Donnahue George spoke to Defendant William Snyder while he was in the process of towing my car and explained to defendant William Snyder that he did not have my authority to remove my perfectly running

covered vehicle from my paved driveway. Defendant William Snyder hung up on plaintiff Donnahue George and proceeded to steal the plaintiffs vehicle. The plaintiff Donnahue George felt weak and helpless at that point because there was nothing he could do to stop Defendant William Snyder from violating his Constitutional rights. The emotional helplessness that Donnahue George felt at that point cannot be overstated, and then to return home and see that his vehicle is missing, and then to add insult to injury to be informed by Officer Rivera shield#1625 that his vehicle was found abandoned in the road sent Plaintiff Donnahue George in a sense of panic and he immediately went to Fort Lauderdale code enforcement to find out what was going on. Defendant William Snyder handed Plaintiff Donnahue George a paper stating that he did not know who the owner of the vehicle was and that it was derelict. Plaintiff Donnahue George told defendant William Snyder that he knows who owned it because you spoke to me while you were towing it and you hung up on me. Defendant William Snyder just walked away.

3. STANDARD OF REVIEW

The Standard of Review is Abuse of Discretion. “ An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgement that is clearly against the logic and effect of the facts

as are found (*see Rabkin v. Oregon Health Sciences Univ.* 350 F.3d 967, 977 (9th Cir 2003))

In some cases the court has elected not to decide which standard of review is applicable on the ground that the outcome would not be changed by applying different standards of review (*See E, T v, Cantil- Sakauye, No. 10-15248, F.3d 2012 WL 76351 (9th Cir. March 12 2012) U.S. v. Laurienti, 611 F.3d 530, 551 (9th Cir 2010)*)

The Law states to defeat a motion to dismiss under Rule 12(b) (6), a plaintiff bears the burden of providing grounds of his entitlement to relief. *In Bell Atlantic Corp v. Twombly* 550 U.S. 544 (2007) the courts held that there must be sufficient facts in a complaint to state a claim to relief that is plausible on its face for it to avoid dismissal for failure to state a claim.

Plaintiffs Donnahue George facts are plausible on its face to state a claim for relief.

For all these reasons, this honorable Court should reverse the District Courts dismissal of the case reverse the District court order setting aside the Clerks entry of default enter the default Judgment and setting the line that Judges cannot cross so it does not give the appearance that the Court is acting as Co-counsel for the defense.

SUMMARY OF THE ARGUMENT

The District Court's decision should be reversed because its legal conclusion is contrary to the facts and the law. Plaintiff Donnahue George filed an initial complaint on July 22, 2019, the complaint that was not specific enough because Plaintiff Donnahue George did not want to give the defendants all the evidence that he had. Just 2 days later on July 24, 2019(See ECF/Tab# 7) The District Court Judge said it was not specific enough and Dismissed it for failure to state a claim for which relief can be granted. Plaintiff Donnahue George filed an Amended complaint(See ECF/Tab #11) and was very specific and detailed about the actions of the defendants. The District Court Judge obviously accepted it as legally sufficient to state a claim for which relief could be granted, because District Court did not dismiss the Amended Complaint in 2 days as they did the prior complaint. The District Court Judge is now reversing his own decision. After the Defendants Attorneys got involved all of a sudden the Amended Complaint failed to state a claim for which relief can be granted.

Plaintiff Donnahue George served the defendants with the amended complaints and when they did not answer, Plaintiff Donnahue George filed for a clerks entry of Default (See ECF/Tab # 13). On November 18, 2018 Plaintiff Donnahue George presented himself to the clerk of the court and filed his Motion for default Judgment.(see ECF/Tab # 22) Somehow it took 4 days for the Plaintiffs Motion for

Default judgment to be entered in the system, but during those 4 days while Plaintiffs Default Judgment motion was sitting somewhere, the defendants Attorneys were notified about the Notice of Default and the Default Judgment and entered Notice of Attorney Appearance.(See ECF #20 and #21) The Defendants never answered the Amended Complaint but after the Clerks entry of Default was entered and the Motion for Default Judgment was filed, somehow miraculously Defendants became aware of the Lawsuit. Defendants filed a motion to set aside the Clerks entry of Default (See ECF/Tab # 25). Before Plaintiff Donnahue George had an opportunity to file his opposition to the motion for setting aside the default. The District court judge set aside the Clerks entry of default on both parties, denying Plaintiff Donnahue George his constitutional rights to a fair and impartial hearing on the motion.(See ECF/Tab #27)

Defendants filed separate motions to dismiss but the District Court Judge struck the motions and ordered Defendants to file a joint motion to dismiss.(see ECF/Tab #36) Telling them they should only file separate complaints only if they have conflicting interests. The Judge actions were more like a co-counsel for the Defense not an impartial advocate for justice. If no papers were filed about who did what and why, How could an impartial court determine whether or not the Defendants had conflicting interest. The District court Judge was being the Architect of the Defendants Defense. I believe that the purpose of the joint motion

was to try to cloud the constitutional violations by Defendant William Snyder who entered my property illegally under the color of law and stole my vehicle and then submitted fraudulent paperwork to his department to cover up the theft. Westway towing as a state actor can violate my constitutional rights while acting as an agent for the City.

Defendants then filed a Joint motion for Dismissal with prejudice (See ECF/Tab # 39). Plaintiff Donnahue George filed a motion in opposition (See ECF/Tab # 40). There was absolutely no evidence to support the dismissal of my case for failure to state a claim. The District Court Judge granted the Motion to Dismiss with prejudice making it a final disposition (See ECF/Tab #42). Plaintiff Donnahue George filed a timely Notice of Appeal on April 30, 2020.

ARGUMENT

I. The District Court erred by Dismissing Plaintiffs Amended Complaint for Failing to state a claim for which relief can be granted.

Fort Lauderdale Code Enforcement is an entity capable of being sued and the case should not have been dismissed.

Fort Lauderdale Code Enforcement was the employer of Defendant William Snyder and was responsible for supervising and training him. *Monell v. Dep't. of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611

(1978), the Supreme Court held that "municipalities and other local government *1132 units" are "persons" subject to liability for violating 42 U.S.C. § 1983. Defendant Fort Lauderdale Code enforcement violated my rights under 42 U.S.C 1983 through the actions of their employee William Snyder so they are units and persons subject to liability under the law.

In Post v. City of Fort Lauderdale 750 F. Supp. 1131, 1132-33 (S.D. Fla. 1990) The Courts held that until the court is apprised of the factual involvement of the defendants they will remain parties in the case. There has not been enough evidence presented for the court to know the factual involvement of Fort Lauderdale Code enforcement and therefore Fort Lauderdale Code enforcement should not be removed from the lawsuit. They were specifically the ones required to train and supervise defendant William Snyder. There should be a discovery period to determine how complicit Fort Lauderdale Code enforcement was in illegal felony actions of Defendant William Snyder. Plaintiff Donnahue George agrees with Defendant that The City of Fort Lauderdale should be added as a defendant in this lawsuit.

1. **Plaintiff Donnahue George has Compiled with Pre-suit Requirements and Thus all his Allegations in his Amended Complaint Must be Granted**

Plaintiff Donnahue George is asserting state law tort claims and Federal Constitutional Rights violation claims and has met the pre-suit requirements in 768.28(6)(a), Fla. Stat. (2017). Plaintiff Donnahue George on June 24, 2019 notified Fort Lauderdale code enforcement, The Fort Lauderdale Police department, Fort Lauderdale City Hall and the Broward County Commission (See ECF/Tab #40) No one responded. Plaintiff Donnahue George notice to the appropriate agency was within the 3 years as required by statute. In section 768.28, the Florida legislature has waived the sovereign immunity of the state and its subdivisions from tort action provided, among other things, that the claimant present a written claim to the appropriate agency within 3 years after the accrual of the claim.

The Actions of Defendant William Snyder goes outside the norms of Qualified Immunity and as to his actions so there is no pre-suit prerequisite. *In Hutton v. Strickland*, 919 F.2d 1531, 1536 (11 Cir. 1990) the courts state that Qualified immunity protects government officials performing discretionary functions from civil liability if their conduct violates no “clearly established statutory or constitutional rights of which a reasonable person would have know”. A reasonable person would know that they should not enter a persons property to steal someone elses property. A reasonable person would know that entering a property with the intent to

commit a crime is trespass and would violate a persons constitutional rights. A reasonable person would know that if you fabricate evidence to cover up a crime that would be fraud. Defendant William Snyders actions were clearly outside the Norms of Qualified Immunity.

A Plaintiff facing Qualified Immunity must produce evidence that would allow a fact finder to find that no reasonable person in the defendants position could have thought the facts were such that the justified the defendants actions. (*See Sims v Metropolitan Dade County, 972 F.2d 1230, 1234-35 (11th Cir. 1992)*) Defendant William Snyders actions were clearly outside the norms of qualified immunity and a fact finder would that no reasonable person would find the fact that he fabricated evidence to cover up his crime justified.

2. **Plaintiff Donnahue George has Stated a Claim Upon Which Relief can be Granted and all the Allegations in his Amended Complaint should be Granted**

The facts that Plaintiff Donnahue George has asserted state very specific facts about the actions of Defendant William Snyder and the theft of Plaintiffs vehicle from his paved driveway in front his house. Florida state statute 715.07 (2)(a)(3) states that if a person is removing a vehicle or vessel

from the premises or parking lot in which the vehicle is not lawfully parked must stop when a person seeks return of the vehicle. Violation of this statute is a Felony. First Defendant William Snyder had no legal authority to enter my premises and remove the vehicle from the premises, and while he was unlawfully removing the vehicle from my property I told him to stop and he did not. He hung up the phone on me and continued to commit 2 felonies first grand theft auto second violation of Florida statute 715.07(2)(a)(3) which is also a felony. Defendant Fort Lauderdale Code enforcement was responsible for the supervision and training of Defendant William Snyder so they are culpable for his actions.

Defendant William Snyder in his own fraudulent paperwork establishes the date and time that he trespassed on my property and stole my vehicle.(see ECF/ Tab #11 Exhibit B) Florida statute 18-3 definitions establishes that derelict means any motor vehicle or vessel which is in a state of evident disuse , neglect or abandonment is wrecked or partially dismantled having no motor. My vehicle was working running and cleaned and covered in my paved driveway it was clearly not a derelict vehicle according to the definition established by the State of Florida. Defendant William Snyder stole plaintiffs perfectly running vehicle with the assistance of state actor Westway towing and then fabricated evidence to cover up the theft. A

reasonable person would know that Defendant Williams Snyders action were illegal and outrageous and the fact that he lied in his paperwork to his department is further proof that he knew that his actions were illegal and outside accepted norms.

3. Plaintiff Donnahue George States Multiple Causes of Actions Against Defendant William Snyder and Westway Towing and All his Allegations are supported by Facts.

Plaintiff Donnahue George Fourth, Fifth and Fourteenth Amendment rights were violated by Defendant William Snyder and Westway Towing acting as employee and agent of the state. Defendant Westway towing own submitted evidence proves that I was the owner of the vehicle (see ECF/Tab #25 Exhibit 2) and the trespass of my property with the intent to steal my vehicle under the color of law violated my Fourth, Fifth and Fourteenth Amendment rights

The 4th Amendment provides: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure. Defendant William Snyder along with Westway Towing entered my property unlawfully stole my vehicle under the color of law and then fabricated evidence to cover up the theft

The Fifth Amendment provides: that no person shall be deprived of life , liberty or property without due process of law. Defendant William Snyder along with Westway towing entered my property stole my vehicle gave me no advance warning of the theft and due process but most thieves do not tell you in advance that they are coming to steal your property. He stole my vehicle under the color of law.

The 14th Amendment provides : All persons born or naturalized in the United States , and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. Nor shall any state deprive any person of life liberty or property without due process of law:

Defendant William Snyder along with Westway towing as agents of Fort Lauderdale Code Enforcement denied me the due process of the law by stealing my vehicle under the color of law and when caught in the act of stealing my vehicle by my neighbors simply hung up the phone on me and continued with the theft. There was no due process of law as required by the Constitution but as stated before a thief is not going to give you advance notice that they are going to steal. There is no ordinance that allows a Code enforcement Officer to enter private property to steal a vehicle with or without prior notice. The defendant can cite all the cases that they want regarding neutrality of ordinances but in this particular case there was no

ordinance that was followed. Defendant William Snyder entered my property by trespass stole my vehicle and then lied to cover up the theft. There is no ordinance or statute that allows him to steal my property.

4. **Plaintiff Donnahue George States a Cause of Action For His Emotional Distress.**

In order for Plaintiff Donnahue George to state an action for intentional infliction of emotional distress a complaint must allege four elements. These elements do not have to be proven in the complaint. Plaintiff Donnahue George must allege (1) reckless or deliberate infliction of Mental suffering (2) outrageous conduct (3) the conduct caused the emotional distress (4) the distress was severe

In regards to (1) Defendant William Snyder in conspiracy with Westway towing reckless and deliberately trespassed on my property and stole my vehicle under the color of law. When I asked Defendant William Snyder to stop stealing my vehicle he just hung up the phone on me leaving me helpless without any recourse . Defendant William Snyder intentionally caused me mental suffering.

In regards to (2) The fact that Defendant William Snyder and Westway Towing trespassed on my property and stole my vehicle and then lied to

cover up the theft, a reasonable person would find that conduct to be outrageous.

In regards to (3) The actions of Defendant William Snyder and Westway towing entering my premises illegally with the intent to steal my vehicle was the actual cause of my mental distress

In regards to (4) the distress was very severe because I did not know what to do I was not in a position to do anything at the time and when I went to the police station and they told me my car was found abandoned in the street I was distressed. I attempted to call Westway Towing and after I gave them the vin # for my vehicle they just put me on hold and never came back on the phone putting me in further distress. *Hart v. United States, 894 F.2d 1539, 1548 (11th Cir. 1990)*

The Defendant William Snyders own fraudulent papers state that the vehicle was stolen from my house plus he also has pictures of my vehicle before he stole it under the color of law.

5. **Plaintiff Donnahue George States a Cause of Action Under 42 U.S.C. 1983**

To state a cause of action under section 1983 a plaintiff must allege two elements (1) Challenged conduct by a person acting under the color of law (2) challenged conduct that deprived the plaintiff of federal rights.

In regards to (1) Defendant William Snyder trespassed on my property under the color of law as a Code enforcement officer and stole my perfectly good running vehicle that was clean and covered and parked on my paved driveway.

In regards to (2) By stealing my vehicle Defendant William Snyder and Westway Towing deprived Plaintiff Donnahue George of his 4th, 5th and 14th Amendment rights.

A Municipality may not be held liable under 1983 Solely because it employs a tortfeasor (see *Monell v New York City Dept of Social Services* 436 U.S. 658, 692 instead the plaintiff must identify municipal policy or custom that caused the injury (See *Pembaur v Cincinnati* 475 U.S. 469, 480-481. Until plaintiff is given an opportunity to submit interrogatories and depose other City employees plaintiff will not be able to establish if this was a one time incident or if the Fort Lauderdale Code Enforcement has established customs and or policys that allow code enforcement officers think they can just trespass and steal citizens personal property.

In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961) The courts said that “Constitutional standards are invoked when it can be said that the State is responsible for the specific conduct to which the Plaintiff Complains” The Court also said a challenged action may be state action when it results from the states exercise of coercive power, when the state provide significant encouragement, either covert or overt or when a private actor operates as a willful participant in joint activity with the state. Fort Lauderdale code enforcement hired William Snyder as Code enforcement officer and therefore was responsible for his actions. Westway towing entered my property and stole my vehicle under the supervision of William Snyder therefore Westway towing was a state actor and violated my constitutional rights to due process under the law Violating my 4th 5th and 14th amendment rights along with William Snyder.

Florida statute 713.78 is very clear that the only person that can tow vehicles from private property are the Owner the owners representative or a law enforcement officer. The statutes are very clear that a code enforcement officer is not a law enforcement officer and therefore is not authorized to tow any vehicles from private property.

II. The District Court erred by setting aside the clerks entry of default and not entering the default judgment

Federal Rule of Civil procedure 55 (c) allows the court to set aside the clerks entry of default “ for good cause shown” The court is vested with considerable discretion to set aside an entry of default. (*See Griffin IT, Inc Media v. inteligente Corp., No. 07-80535-CIV, 2009 WL162754, at *2 (S.D. Fla. Jan 16, 2008)*) The Eleventh Circuit reasoned: that if a party willfully defaults by displaying either an intentional or reckless disregard for the judicial proceedings, the courts need make no findings in denying relief. (*See Compania Interamericana Export-import, S.A. Compania Dominicana de Aviacion, 88 F.3d 948, 951-952 (11th Cir. 1996)*)

1. The Defendants Fort Lauderdale Code enforcement and William Snyder showed a willfull and intentional disregard for the judicial proceedings by being properly served and never answering any of plaintiffs motions. They were legally served with the motion to reopen the case and did nothing. They were also legally served with the Amended Complaint and did nothing. Only after Plaintiff got the entry of Default on November 7, 2019 and filed his motion for Default Judgment on November 8, 2019 did the Defendants respond to this lawsuit. They did not do anything until 7 days after the entry of judgment was signed by the clerk.
2. To determine whether good cause exists , the Court may consider (1) whether the defaulting party presents a meritorious defense (2) whether

the default was culpable or willful; and (3) whether setting it aside would prejudice the adversary. (*See Longhini v. Hayday. Inc., No. 17-230330-CIV, 2017 WL 1401316, . at *1 (S.D. Fla. Apr. 19, 2017)*)

3. In regards to (1) the defendants do not have a meritorious defense to their actions they violated Florida civil Statutes and Penal Statutes by entering my property and stealing my vehicle. They then fabricated evidence to cover up the theft. William Snyder submitted a report that he did not know who the owner of the vehicle was and that it was a derelict vehicle, (see ECF/Tab #11 exhibit B) when he knew exactly who the owner was and knew it was not a derelict vehicle. Someone also committed fraud by notifying Fort Lauderdale police department that they found my vehicle abandoned in the street far away from my house. If they had a meritorious defense for their actions they would not have to fabricate evidence to justify their actions
4. In regards to (2) The default on the part of the defendants was culpable and willful. They were served with the motion to reopen the case and then refused to respond. After the courts reopened the case they were again served with the amended motion and they still refused to respond. They willfully and intentionally refused to respond to the motions filed by the plaintiff when they were properly served.

5. In regards to (3) The plaintiff would be unduly prejudice because the defendants had more than enough time to respond to the plaintiffs motions and refused to do so in a timely manner.

III. The District Court erred by striking Defendants Separate Motions to Dismiss and ordering them to file a joint motion.

The Defendants William Snyder and Fort Lauderdale Code filed a motion to dismiss(See ECF#34) and Westway Towing filed a separate motion to dismiss see (ECF#35). The District Court Judge ordered that the separate motions for dismissal are to be striked. The Judge ordered the Defendants to file a joint motion to dismiss unless they had conflicting interests.

The Defendants had not filed an Answer to the Complaint how could the judge determine if they had or didn't have conflicting interests. In *Lcasio v U.S. 473 F.3d 493, 495-96 (2nd Cir. 2007)* "The courts should not display a deep seated favoritism or antagonism that would make fair judgment impossible" The courts held in *In re Holocaust Victim Assets litigation, 2010 WL 4038794 (quoting Grinnell Corp , 384 U.S. at 583)* personal bias is an attitude arising from extrajudicial sources that results " in an opinion on the merits on some basis other than what the judge learned from his participation in the case" The District had learned nothing from the case because no answers were filed but the District

Court was giving defense strategies to the defendants (See ECF/Tab#27) and issuing orders before Plaintiff had an opportunity to respond (see ECF/ #28 and #29) *Canon 2 of the Judicial Code of Conduct* requires federal Judges to” respect and comply with the law” and to “ act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. If the District Court is giving Defendants defense strategies and making decisions without giving plaintiff time to respond, How can these actions promote public confidence in the integrity and impartiality of the judiciary.

The District Court stepped out of the shoes of impartial pursuer of justice and became a part of both defense teams. The District Court was coaching the Defendants on how to prepare their Defense therefore denying Plaintiff Donnahue George an opportunity to have a fair and impartial trial.

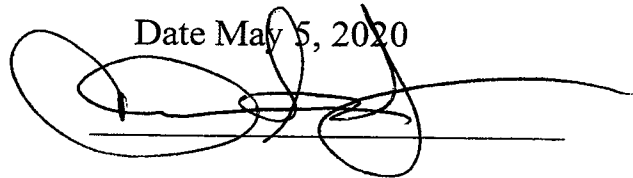
CONCLUSION

Wherefore Plaintiff Donnahue George respectfully submits that his Amended Complaint was legally sufficient and stated a claim by which relief could be granted. The defendants were properly served and the Clerks entry of default should not have been set aside, and the default judgment should have been entered. The District court should not be giving defense

strategies to the defendants or making decisions before Plaintiff has an opportunity to respond, giving the appearance the court is co-counsel for the defense. For all the reasons presented Plaintiff requests that this Honorable Court reinstate the Clerks entry of Default order the lower court to enter the Default Judgment, reverse the District Courts Dismissal of Plaintiffs case and grant plaintiff Donnahue George all he asked for in his amended complaint, require Fort Lauderdale Code enforcement to release their code enforcement training manual and whatever else the courts find fair and equitable.

Respectfully Submitted

Date May 5, 2020

A handwritten signature in black ink, appearing to read 'Donnahue George', written over a horizontal line.

Donnahue George
1012 NW 2nd Street
Fort Lauderdale FL
33311
(347) 216-5257

Email: DonnahueGeorge@gmail.com

CERTIFICATE OF COMPLIANCE WITH FED .R.APP.P.32(a)

1. This brief complies with the type-volume limitations of Fed. R. App.P.

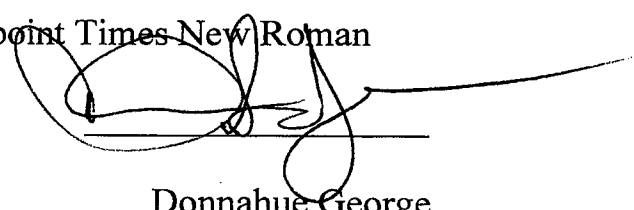
32 and Fed. R. P. 29 because it is less than 30 pages.

2. This brief complies with the typeface requirements of Fed.R. App. P.

32(a)(6) because it has been prepared in a proportionally- spaced

typeface using Microsoft Word in 14- point Times New Roman

Dated May 5, 2020

A handwritten signature in black ink, appearing to read "Donnahue George", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

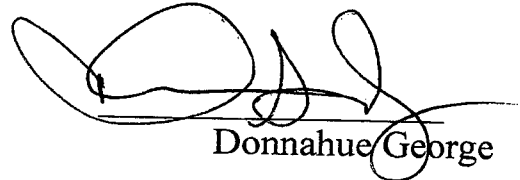
Donnahue George

CERTIFICATE OF SERVICE

I Donnahue George certify that I mailed a copy of this Appellants Brief and Appendix to the Clerk of the Court on May 5, 2020 and I also mailed a copy to Richard Bergman 2001 Hollywood Blvd suite 200 Hollywood Florida 33020,

Micheal Bostick 100 N Andrews Ave Fort Lauderdale Florida 33301 and Robert Oldershaw 100 N Andrews Ave Fort Lauderdale Florida 33301 on May 5, 2020

Dated May 5, 2020



Donnahue George