(Memorandum Opinion and Judgment, decided May 18, 2021, DC Court of Appeals)

APPENDIX A

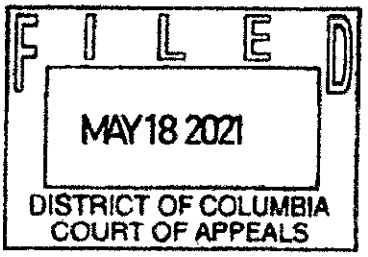
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 19-CV-1253

MECHELE R. PARKER, APPELLANT,

V.

SARA LAROSA, *et al.*, APPELLEES.



Appeal from the Superior Court
of the District of Columbia
(CAB-5601-19)

(Hon. Kelly A. Higashi, Trial Judge)

(Submitted March 31, 2021 Decided May 18, 2021)

Before THOMPSON and DEAHL, *Associate Judges*, and FERREN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Mechele Parker sued several security and police officers who she claims conspired to prevent her from returning to her job at the Pension Benefit Guaranty Corporation. They did so, she maintains, by issuing her a "bogus" barring notice and preventing her from entering PBGC's headquarters. Parker asserts this conduct violated her civil rights, defrauded her, and otherwise wronged her in a variety of ways. The trial court dismissed her complaint for failure to state a claim on which relief might be granted. Parker now appeals that ruling. Because we agree with the trial court that Parker has not articulated a viable cause of action, we affirm the court's dismissal of her suit.

I.

Parker worked for the Pension Benefit Guaranty Corporation from 1997 to 2009. She claims PBGC wrongfully terminated her employment, but later in 2009, an administrative tribunal ordered the agency to reinstate her. She asserts that PBGC never complied with that order. So in August 2019, Parker visited PBGC's

headquarters intent on meeting with the agency's human resources department to "begin processing" the 2009 order. She was precluded from entering, however, by the building's security officers, including appellee Sara LaRosa of Admiral Security. The officers informed Parker that she was not an employee and issued her a barring notice, as they had done in the past. The officers then asked Parker to leave, and ultimately had her removed from the building.

Parker initiated this lawsuit against LaRosa and four other security and/or law enforcement officers.[1] The gravamen of her complaint is that the officers conspired to prevent her from restoring her employment with PBGC. The complaint lists five causes of action: (1) "Law Enforcement Oath of Honor" / "Law Enforcement Oath of Office"; (2) "Color of Law"; (3) "Probable Cause"; (4) violation of 18 U.S.C. § 242; and (5) "Constitutional Violations." Her pleadings also make reference to other tortious behavior, such as unlawful arrest, fraud, and negligence. She initially prayed for $1.5 million in damages from each defendant, but later claimed losses to the tune of $700 million. She additionally seeks $1.7 billion in punitive damages.

LaRosa moved to dismiss the complaint for failure to state a claim, and the court granted her motion.[2] "[E]ven when accepting the allegations as true and making all reasonable inferences in [Parker]'s favor," the court explained, her "vague allegations do not state a claim for relief." Parker now appeals that ruling.[3]

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[1] The complaint identifies these individuals as "Officer Mabry," "D. Collins" from PBGC's "Special Forces," "Officer A. Brown, Badge No. 4284," and "Officer A. Brown, Badge No. 15797." From Parker's pleadings, it's unclear which allegations pertain to which individuals. Rather than specifying who did what, she lumps the officers together throughout the complaint, referring to them collectively as "Defendants" and "Defendants/Officers." With the exception of LaRosa, *see infra* note 2, we follow course and refer to them as "the officers."

[2] It seems LaRosa is the only defendant who made an appearance in the trial court. That is perhaps because she was the only defendant who was properly served, though the record is unclear.

[3] Parker also purports to challenge a court order "denying" her motion for a preliminary injunction "to enjoin the co-conspirators" from, among other things, barring her entry to PBGC's office. The court never entered such an order, however. It instead dismissed the entire action, thereby obviating Parker's motion. Because

II.

Parker first challenges the court's holding that her complaint fails to "clearly identify what claims are being brought." Although she does not indicate *how* that ruling is erroneous, we nonetheless consider her assertion below and disagree with it. Afterward, we take up Parker's remaining contentions—namely, that the court misinterpreted 18 U.S.C. § 242, overlooked evidence corroborating her claims, and violated her due process rights by dismissing her suit.[4] Perceiving no error, we affirm.

A.

To withstand a motion to dismiss, a complaint must state sufficient facts to establish the elements of a plausible claim for relief. *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544-45 (D.C. 2011); *see also* Super. Ct. Civ. R. 12(b)(6). This court reviews de novo an order dismissing a complaint for failure to meet that standard. *Peterson v. Washington Teachers Union*, 192 A.3d 572, 575 (D.C. 2018) In doing so, we accept as true all factual allegations in the complaint and "construe all facts and inferences in favor of the plaintiff." *Solers, Inc. v. Doe*, 977 A.2d 941, 947 (D.C. 2009).

The trial court correctly held that Parker's complaint failed to state a claim upon which relief could be granted. Even construing the pleadings liberally, as we do in this jurisdiction for *pro se* litigants, *Black v. D.C. Dep't of Human Servs.*, 188 A.3d 840, 847 (D.C. 2018), Parker's complaint fails to give the officers "fair notice" of what she claims. *See In re Est. of Curseen*, 890 A.2d 191, 194 (D.C. 2006) (complaint is sufficient if it contains a "short and plain statement" giving the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests") (citing, *inter alia*, Super. Ct. Civ. R. 8(a)(2)). Her complaint centers on five purported theories of liability, most of which have no basis in law. The first—that

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that ruling was correct, *see infra*, we have no occasion to consider whether the court erred in impliedly rejecting Parker's motion.

[4] Parker's brief identifies twenty issues she is raising in this appeal. We address only those that assign some error to the trial court's dismissal order.

the officers violated their oaths of office—was properly rejected by the trial court as lacking a legal foundation. Because "[t]he oaths that government officials take in assuming their office do not create any private right of action," claims premised on a violation of such oaths "must be dismissed." *Caldwell v. Obama*, 6 F. Supp. 3d 31, 47 (D.D.C. 2013) (collecting cases).

Parker's second and third theories are equally meritless. Neither "Color of Law" nor "Probable Cause" is a viable cause of action. To be sure, acting under "color of law," meaning under a "pretense of law," *Screws v. United States*, 325 U.S. 91, 111 (1945), is an essential element of certain constitutional tort claims against law enforcement, *see Woodward & Lothrop v. Hillary*, 598 A.2d 1142, 1145 (D.C. 1991). But it is not a tort in and of itself. Similarly, "probable cause" is a legal standard in the criminal realm[5]; it is not a civil cause of action. *See Jefferson v. United States*, 906 A.2d 885, 887 (D.C. 2006). To the extent Parker intended to assert that the officers arrested her without probable cause, thus infringing upon her Fourth Amendment rights and/or falsely imprisoning her, she failed to plead essential elements of those claims.[6] In particular, nowhere does her complaint indicate that she was either arrested or detained, only that the officers *threatened* to have her arrested and subsequently "had [her] removed from the building." But even if she was in fact arrested or detained, Parker pled no facts (as opposed to vague accusations) that would place the officers on notice as to how the arrest comprised anything but the lawful removal of a trespasser. *See* D.C. Code § 22-3302 (2020 Supp.).

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[5] An officer has probable cause to arrest an individual when she has "reasonably trustworthy information . . . sufficient to warrant a reasonably prudent person" to believe the suspect has "has committed or is committing an offense." *District of Columbia v. Minor*, 740 A.2d 523, 529 (D.C. 1999) (cleaned up).

[6] *See Minor*, 740 A.2d at 529-31 (affirming jury verdict for false arrest in violation of the Fourth Amendment where officer arrested individual without probable cause and was not shielded from liability by qualified immunity); *Enders v. District of Columbia*, 4 A.3d 457, 461 (D.C. 2010) ("[T]he essential elements of false imprisonment are: (1) the detention or restraint of one against his or her will, and (2) the unlawfulness of the detention or restraint.") (citation omitted).

Parker's "Constitutional Violations" cause of action is likewise inadequate. Most fundamentally, she fails to identify which of her constitutional rights the officers allegedly violated. Equally problematic, as the trial court pointed out, the only language set forth under the "Constitutional Violations" rubric appears to be guidance from the Department of Justice describing the agency's policy of prosecuting obstruction of justice by law enforcement officers.[7] Such guidance does not confer a civil remedy upon private citizens.

At times, Parker's pleadings mention in passing other torts, such as fraud, negligence, and invasion of privacy. But even assuming she meant to raise them, none of those claims is adequately pled either.[8] For each tort, Parker fails to assert any facts pertaining to certain essential elements. Take fraud, for example: While she claims the officers issued her a "bogus" barring notice, which one might read to mean it was predicated on a false statement, she does not allege the statement was made with "knowledge of its falsity" or an "intent to deceive," nor does she suggest that she detrimentally relied on it. *See Bennett*, 377 A.2d at 59-60. Each of the other alluded-to claims suffers from similar defects.

B.

We turn to Parker's remaining contentions. She first suggests the court misconstrued 18 U.S.C. § 242 as a "penal statute" that creates no private right of action. While it is not clear the trial court endorsed that view of § 242, it is in any event a correct view. On its face, § 242 is a criminal statute that creates no private right of action. *See* 18 U.S.C. § 242 ("Whoever [commits proscribed conduct] . . . shall be fined under this title, or imprisoned"); *see also, e.g.*, *Lewis v. Green*, 629 F. Supp. 546, 554 (D.D.C. 1986) (section 242 does not "give rise to a civil action for

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[7] *Compare* Compl. at 7 *with* U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., LAW ENFORCEMENT MISCONDUCT, www.justice.gov/crt/law-enforcement-misconduct https://perma.cc/58EP-PUU9 (last visited May 13, 2021).

[8] *See Bennett v. Kiggins*, 377 A.2d 57, 59-60 (D.C. 1977) (setting forth elements of common law fraud); *Toy v. District of Columbia*, 549 A.2d 1, 6 (D.C. 1988) (elements of negligence); *Wolf v. Regardie*, 553 A.2d 1213, 1216-20 (D.C. 1989) (discussing the various invasion-of-privacy torts and their elements).

damages") (collecting cases). The court thus committed no error in rejecting Parker's claim under § 242.

Parker next contends that, in dismissing her suit, the trial court's findings were not supported by the record and ignored evidence corroborating her claims. She is mistaken. Because this suit never made it past the motion-to-dismiss stage, the trial court correctly assumed the facts pled by Parker were true. *See Solers, Inc.*, 977 A.2d at 947 ("Since we take the facts alleged in the complaint as true, the presentation of evidence . . . is not required.") (citation and alterations omitted). Despite that assumption, the court concluded Parker failed to assert any plausible claim for relief, a conclusion we agree with. *See infra.* There was simply no question of evidentiary sufficiency before the trial court; it made no factual findings that could be undermined by any amount of evidence.

Finally, Parker argues the court denied her due process by dismissing her suit without providing her an opportunity to contest dismissal at an in-person hearing. It did not. Civil litigants are not "entitle[d] . . . to a hearing on the merits in every case." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982). Courts "may erect reasonable procedural requirements for triggering" certain due process protections. *Id.*; *see generally* Super. Ct. Civ. R. 8(a). Courts are permitted to rule on motions to dismiss absent in-person hearings without offending due process. *E.g.*, *Greene v. WCI Holdings Corp.*, 136 F.3d 313, 316 (2d Cir. 1998) ("Every circuit to consider the issue" has held in-person hearings are not required so long as litigants have "the opportunity to present [their] views to the court," often through "written rather than oral argument") (collecting cases).

III.

The order of the trial court is affirmed.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies sent to:

Honorable Kelly A. Higashi

Director, Civil Division
QMU

Mechele R. Parker

Tiffany M. Releford, Esquire

THIS IS THE CASE OF MECHELE R. PARKER, APPELLANT/PETITIONER VS. SARA LAROSA, ETAL.

THESE ARE SOME EXHIBITS AS EVIDENCE THAT I WAS NOT ABLE TO PRODUCE WITH MY APPELLATE BRIEF.

I DO NOT HAVE ENOUGH MONEY TO MAKE THE REQUISITE PAPER COPIES TO ATTACH TO THIS PETITION.

Date: June 3, 2021 Signature: Mechele R. Parker

Mechele R. Parker, Appellant/Petitioner

Pro Se

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION—CIVIL ACTIONS BRANCH

MICHELE R. PARKER,	*	
	*	
Plaintiff,	*	Civil Case No. 2019 CA 005601 B
	*	Civil II, Calendar I
v.	*	Judge Kelly A. Higashi
	*	
SARA LAROSA, et al.,	*	
	*	
Defendants.	*	

ORDER GRANTING MOTION TO DISMISS PLAINTIFF'S COMPLAINT

This matter comes before the Court on Defendant Sara LaRosa's Motion to Dismiss Plaintiff's Complaint, filed on October 9, 2019 and Plaintiff's opposition thereto. For the reasons stated herein, the Court grants Defendant's Motion.

Background

On August 26, 2019, Plaintiff Parker, *pro se*, filed a complaint against several Officers stationed at or around the Pension Benefit Guaranty Corporation ["PBGC"] Office at 1200 K Street, NW, Washington, DC 20005. Plaintiff's complaint appears to allege that Defendants have conspired to utilize a variety of illegal or otherwise impermissible methods to prevent Plaintiff from being restored to her Administrative Officer position and receiving back-pay pursuant to a 2009 Order from AJ Elizabeth J. Bogle. More specifically, Defendants allegedly harassed Plaintiff by issuing five-year "bogus barring notices," removing Plaintiff from the PBGC premises, and generally "conning, threatening, harassing, and gang-stalking" her.

Plaintiff's Complaint does not clearly identify what claims are being brought, but does attach the Law Enforcement Oath of Honor, the Law Enforcement Oath of Office, the definition of "Color of Law," an iteration of the 4th Amendment of the U.S. Constitution and its demand that law enforcement prove probable cause, the text of a statute criminalizing the deprivation of

rights under color of law (18 U.S.C. Section 242), and the text of what appears to be Department of Justice ["DOJ"] guidance expressing the policy of the agency to prosecute "instances of obstruction of justice" by law enforcement officers.

Standard

A motion to dismiss under Super. Ct. Civ. R. 12 (b)(6) tests the legal sufficiency of a complaint. *Carey v. Edgewood Mgmt. Corp.*, 754 A.2d 951, 954 (D.C. 2000). To withstand a motion to dismiss, a complaint must state sufficient facts to establish the elements of a plausible, legally cognizable claim. *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011). When determining whether to grant the motion, the court must accept all allegations within the complaint as true and view all facts and draw all reasonable inferences in the plaintiff's favor. *Hillbroom v. PricewaterhouseCoopers LLP*, 17 A.3d 566, 572 (D.C. 2011).

The District of Columbia is a notice pleading jurisdiction. *Sarete, Inc. v. 1344 U Street Limited Partnership*, 871 A.2d 480, 497 (D.C. 2005). A complaint will be deemed legally sufficient if it contains "a short and plain statement of the claim showing that the pleader is entitled to relief," Super. Ct. Civ. R. 8 (a)(2), and "fairly puts the defendant on notice of the claim against [it]." *Scott v. District of Columbia*, 493 A.2d 319, 323 (D.C. 1985). However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" for a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

"Courts in this jurisdiction are required to construe *pro se* pleadings liberally." *Black v. District of Columbia Dep't of Human Servs.*, 188 A.3d 840, 847 (D.C. 2018). "A court's duty to construe a *pro se* complaint liberally does not permit a court to uphold completely inadequate complaints." *Elmore v. Stevens*, 824 A.2d 44, 46 (D.C. 2003). Furthermore, this duty "does not

require that the court 'conjure up unpled allegations.'" *Vaughn v. United States*, 579 A.2d 170, 176 (D.C. 1990) (quoting *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979)).

Analysis

Defendant LaRosa requests that the Court dismiss Plaintiff's complaint for failure to state a claim under Super. Ct. R. 12(b)(6) and for failure to provide a "short and plain statement of the claim" that gives the Defendant "fair notice of what the ... claim is and the grounds upon which it rests." *Tingling-clemmons v. D.C.*, 133 A3d 241, 245 (D.C. 2016) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The Court notes that while Rule 8(a) does not necessarily provide an independent cause of action, "[a] complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the pleading standard in Rule 8(a)." *Potomac*, 28 A.3d at 543. In support of its Motion to Dismiss, Defendant argues that the Complaint is "replete with conclusory statements which fail to contain any factual allegations which reasonably would put Defendant on notice of claims against her." According to Defendant, Plaintiff has failed to allege sufficient facts to state a claim for relief that is plausible on its face. Furthermore, some of the claims implied by Plaintiff's Complaint have no basis in law. Specifically, Defendant asserts that Plaintiff's allusion to Title 18 U.S.C. § 242 cannot show Plaintiff is entitled to relief as that law "is a penal statute which does not create a private right of action, civil cause of action, nor an action for damages for violation." Additionally, Plaintiff's references to "oath of honor and oath of office, probable cause, and constitutional violations" merely "recit[e] the supposed law with regard to these principles, Plaintiff has not stated any factual allegations to support such causes of action."

Plaintiff's Response contends that she "has set forth detailed allegations that fulfill each and every pleading requirement under 9(b)" and that the "Complaint is sufficiently clear and

detailed" insomuch as Plaintiff has "adequately alleged the 'who, what, where, when, and how'" of the Defendant's fraudulent scheme. Plaintiff's Response states that the Complaint describes that various Admiral Security Officers, MPD employees, and PBGC Security employees agreed to a conspiratorial agreement to perpetuate fraud on Plaintiff "via making false accusations, drafting bogus barring notices, protecting employees and themselves that capitalized via the fraud, gangstalking, bullying, and various egregious acts from 2008 through 2019." This fraud featured the repeated abuse of a "mind-bending technology for scripting and staging the same routines for favors ... from 2008 to May 28, 2009 forward" causing over "$700 million" in damages. Plaintiff further seeks $1 billion in punitive damages.

The Court grants Defendant LaRosa's Motion to Dismiss Plaintiff's Complaint. Reading the Complaint in the light most favorable to Plaintiff and taking all allegations as true, Plaintiff's complaint simply lacks the factual allegations sufficient to constitute a claim entitling Plaintiff to relief. Plaintiff's complaint essentially asserts, with very little factual substance, that Defendants conspired in their refusal to comply with a Court Order reinstating Plaintiff's position with the PBGC. "Liability for civil conspiracy depends on performance of some underlying tortious act"; "[civil] conspiracy is not independently actionable; rather it is a means for establishing vicarious liability for the underlying tort." *Halberstam v. Welch*, 705 F.2d 472, 479 (D.C. Cir. 1983).

Plaintiff's Response provides more detail concerning the alleged fraud, but aside from the Complaint's indication that Defendants are issuing "bogus barring notices," the Court and Defendants are left to guess at the form this fraud is alleged to have taken. Even if the Court were to construe the issuance of a false "barring notice" as fraud, Plaintiff's Complaint fails to sufficiently allege common law fraud as required by DC Super. Ct. R. 9.

The elements of common law fraud are: "(1) a false representation (2) in reference to material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action is taken in reliance upon the representation." *Bennett v. Kiggins*, 377 A.2d 57, 59-60 (D.C. 1997). Satisfaction of Rule 9(b) ordinarily requires a plaintiff to "'state the time, place and content of the false misrepresentations [sic], the fact misrepresented and what was retained or given up as a consequence of the fraud.'" *D'Ambrosio v. Colonnade Council of Unit Owners*, 717 A.2d 356, 357, 361 (D.C. 1998) (quoting *Kowal v. MCI Commc'ns. Corp.*, 16 F.3d 1271, 1278 (D.C. Cir. 1994)). "One pleading fraud must allege such facts as will reveal the existence of all the requisite elements of fraud. Facts which will enable the court to draw an inference of fraud must be alleged, and allegations in the form of conclusions on the part of the pleader as to the existence of fraud are insufficient." *Bennett v. Kiggins*, 377 A.2d 57, 60 (D.C. 1977).

Plaintiff's Complaint does not indicate the material facts made by Defendants constituting the false representation of the purported fraud claim, nor does it indicate an action Plaintiff has taken in reliance upon a false representation. Further, regarding the time Plaintiff received a fraudulent barring notice, the Complaint only relates that they were issued for "five year periods ... from 2009-2014, 2014-2019, 2019-2024;" providing the year in which a fraud occurred is not adequate particularity that would enable a defendant to prepare a defense.

Plaintiff's recitation of the "Law Enforcement Oath of Honor" and "Oath of Office" provide no cognizable claim for legal relief. Similarly, the allegation in the Complaint that "Defendants/Officers violated the 'Color of Law' code in that there was no probable cause for them to appear onsite at the PBGC [location]" because Plaintiff had documents proving her right to work there does not state a valid claim. Plaintiff's Complaint does not contain an allegation

that she was falsely arrested under color of law or detained without probable cause in violation of the 4th Amendment of the US Constitution.

In conclusion, the Court finds that Plaintiff's vague allegations do not state a claim for relief even when accepting the allegations as true and making all reasonable inferences in Plaintiff's favor. The Complaint simply lacks "a short and plain statement of the claim showing that the pleader is entitled to relief," Super. Ct. Civ. R. 8 (a)(2), and fails to put "the defendant on notice of the claim against [it]." *Scott v. District of Columbia*, 493 A.2d 319, 323 (D.C. 1985). Indeed, the Complaint does not even include "threadbare recitals of the elements" of a civil cause of action or "conclusory statements" that would establish a viable civil claim, let alone facts to support such a claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (threadbare recitals and conclusory statements are insufficient without supporting facts). Therefore, as Plaintiff's Complaint fails to state a claim showing Plaintiff is entitled to relief, the Court grants Defendant's Motion to Dismiss Plaintiff's Complaint as to all Defendants, even those which have not been properly served to this point. It is this **27th** day of **November, 2019**, hereby

ORDERED that Defendant LaRosa's Motion to Dismiss is **GRANTED**; and it is further

ORDERED that the Complaint is **DISMISSED** and this case is **CLOSED**.

Kelly A. Higashi
Associate Judge
(Signed in Chambers)

COPIES TO:
Tiffany Releford
Via CaseFileXpress

Mechele Parker
170 Moore Street
Norman, NC 28367

(Order Denying Ms. Parker's Petition for Rehearing or Rehearing En Banc, dated July 19, 2021)

APPENDIX E

District of Columbia
Court of Appeals

No. 19-CV-1253

MECHELE R. PARKER,

Appellant,

v.

CAB5601-19

SARA LA ROSA, *et al.*,

Appellees.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Thompson, * Beckwith, Easterly, McLeese, and Deahl, * Associate Judges; Ferren, * Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing *en banc*, and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

ORDERED by the merits division* that appellant's petition for rehearing is denied. It is

FURTHER ORDERED that appellant's petition for rehearing *en banc* is denied.

PER CURIAM

No 19-CV-1253

Copies emailed to:

Honorable Kelly Higashi

Director, Civil Division

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Silver Spring, MD 20920

Copy e-served to:

Tiffany M. Releford, Esquire

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