**Appendix**

In the United States Court of Appeals For the Eleventh Circuit

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No. 23-11739
Non-Argument Calendar

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BRIAN D. SWANSON,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 1:22-cv-00119-JRH-BKE

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Opinion of the Court

Before WILSON, NEWSOM, and GRANT, Circuit Judges. PER CURIAM:

Brian Swanson, proceeding pro se, appeals from the district court's order dismissing for lack of subject matter jurisdiction and failure to state a claim his pro se civil suit seeking a refund of income taxes. Swanson argues that his wages received were not taxable income. He also asserts that 26 U.S.C. § 1 violated the Uniformity Clause and the tax imposed by § 1 was unconstitutional, first, because it was not a duty, impost or an excise, and second, because gross income was calculated differently for American citizens living in different geographical regions of the United States. He also noted that American citizens who live in the Territories, like Puerto Rico, were excluded from the federal income tax, and that asking him to pay more federal income tax than other American citizens based solely on geographical location was unfair and violated the constitutional rule for geographical uniformity.

The government, in turn, moves for summary affirmance and for $8,000 in sanctions for Swanson's maintaining frivolous arguments for which he has twice been sanctioned before. We will address the government's motion for summary affirmance, followed by the motion for sanctions.

I.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those

where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." Groendyke Transp., Inc. v. Davis, 406 F.2d 1158, 1161–62 (5th Cir. 1969).[1] A motion for summary affirmance postpones the due date for the filing of any remaining brief until we rule on the motion. 11th Cir. R. 31-1(c).

We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Leib v. Hillsborough Cnty. Pub. Transp. Comm'n, 558 F.3d 1301, 1305 (11th Cir. 2009). We also review questions of constitutional law de novo. Kentner v. City of Sanibel, 750 F.3d 1274, 1278 (11th Cir. 2014). We liberally construe pro se pleadings, holding them to a less stringent standard than those prepared by attorneys. Miller v. Donald, 541 F.3d 1091, 1100 (11th Cir. 2008).

The United States has sovereign immunity from suit unless it consents to be sued, and the statute consenting to suit defines the district court's jurisdiction to entertain the suit. Christian Coal. of Fla., Inc. v. United States, 662 F.3d 1182, 1188 (11th Cir. 2011). A district court has original jurisdiction to

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[1] We are bound by decisions of the United States Court of Appeals for the Fifth Circuit issued before October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc).

hear a civil action against the United States "for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws." 28 U.S.C. § 1346(a). However, before a taxpayer may bring such an action against the Internal Review Service (IRS), the taxpayer must first file an administrative claim with the IRS for a refund. 26 U.S.C. § 7422(a). To qualify as a tax return, a document must: (1) "purport to be a return"; (2) "be executed under penalty of perjury"; (3) "contain sufficient data to allow calculation of tax"; and (4) "represent an honest and reasonable attempt to satisfy the requirements of the tax law." In re Justice, 817 F.3d 738, 740–41 (11th Cir. 2016).

The Sixteenth Amendment provides that "Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." U.S. Const. amend. XVI. The Internal Revenue Code provides that "gross income means all income from whatever source derived," followed by a non-exhaustive list that includes compensation for services, including fees, commissions, fringe benefits, and similar items, and gross income derived from business. 26 U.S.C. § 61(a)(1), (2). Arguments "that wages are not taxable income . . . have been rejected by courts at all levels of the judiciary and are patently frivolous." Stubbs v. Comm'r, 797 F.2d 936, 938 (11th Cir. 1986) (per curiam). We have specifically held as frivolous "an arsenal of arguments," including:

> that [taxpayers'] wages are not income subject to tax but are a tax on property such as their labor; that only public servants are subject to tax liability; [and] that withholding of tax from wages is a direct tax on the source of income without apportionment in violation of the Sixteenth Amendment . . . .

*Motes v. United States*, 785 F.2d 928, 928 (11th Cir. 1986) (per curiam); see also *Biermann v. Comm'r*, 769 F.2d 707, 708 (11th Cir. 1985) (per curiam) (rejecting as frivolous the argument that wages are not "income"). In *Brushaber v. Union Pacific Railroad Co.*, the U.S. Supreme Court recognized that the Sixteenth Amendment authorizes a direct, non-apportioned income tax on United States citizens. 240 U.S. 1, 12–19 (1916).

The Uniformity Clause provides that "all Duties, Imposts and Excises shall be uniform throughout the United States." U.S. Const. art. I, § 8, cl. 1. The Supreme Court has noted that "the qualification of uniformity is imposed, not upon all taxes which the Constitution authorizes, but only on duties imposts, and excises." Knowlton v. Moore, 178 U.S. 41, 88 (1900).

The Supreme Court has noted, in a case involving Supplemental Security Income (SSI), that Congress has not required residents of Puerto Rico to pay most federal income, gift, estate, and excises taxes, and likewise, has not extended certain federal benefits programs to residents of Puerto Rico. United States v. Vaello Madero, 142 S. Ct. 1539, 1541 (2022). The Court explained that the Territory Clause of the

Constitution, Art. IV, § 3, cl. 2, affords Congress broad authority to legislate with respect to the U.S. Territories. Id. The Court held that its precedents, as well as the constitutional text and historical practice, established that Congress may distinguish the Territories from the States in tax and benefits programs such as SSI, so long as Congress has a rational basis for doing so. Id. at 1542–43.

First, as to Swanson's first argument on appeal, that his wages as a school teacher are not taxable because they constitute a return of capital, this argument is plainly frivolous, as we have routinely rejected such arguments as being frivolous. See Groendyke Transp., Inc., 406 F.2d at 1161–62; Motes, 785 F.2d at 928; Beirmann, 768 F.2d at 708. Therefore, Swanson's argument that he properly invoked the district court's jurisdiction and established a plausible claim for refund is meritless, as he failed to report all of his $86,317 in wages as taxable income, and, therefore, his return was not a valid claim for refund. In re Justice, 817 F.3d at 740–41.

Second, Swanson's argument that the income tax is unconstitutional under the Uniformity Clause of the Constitution is also frivolous. Groendyke Transp., Inc., 406 F.2d at 1161–62. First, it is not clear that the Uniformity Clause applies to income taxes, as the Supreme Court has noted that the uniformity requirement is not imposed on all taxes authorized by the Constitution, but only to "duties, imposts and excises." Knowlton, 178 U.S. at 88. Further, Swanson's reliance on the differential treatment of Puerto Rico is misplaced. As he acknowledged in his brief, the majority opinion in Vaello Madero still permits Puerto Rico to be treated differently based on

current precedent. Vaello Madero, 142 S. Ct. at 1541–43.

Thus, because Swanson's appeal is frivolous, we GRANT the government's motion for summary affirmance.

II.

Federal Rule of Appellate Procedure 38 allows a court of appeals, after a separately filed motion and reasonable opportunity to respond, to award just damages and single or double costs to an appellee if the court determines that the appeal is frivolous. Fed. R. App. P. 38; see also 28 U.S.C. § 1912 (providing that, when a judgment is affirmed by the Supreme Court or a circuit court, the court may exercise its discretion to award just damages to the prevailing party for their delay, and single or double costs). In Waters v. Commissioner, we awarded double costs plus reasonable attorneys' fees against a pro se appellant who had raised the "patently frivolous" argument that his wages were not income. 764 F.2d 1389, 1389–90 (11th Cir. 1985) (per curiam). In making the award, we noted that (1) it was "well established and long settled that wages are includable in taxable income"; (2) the notice of deficiency warned the taxpayer that his position was frivolous; (3) the Tax Court expressly found that the taxpayer's position was frivolous, and awarded damages; and (4) the Tax Court's "opinion provided a detailed statement of reasons and citations of authority." Id. at 1390.

Although we generally prefer that the government establish its costs and attorney's fees by affidavit, we have previously granted the government's motion for

lump-sum sanctions in the interest of judicial economy. See, e.g., King v. United States, 789 F.2d 883, 884– 85 (11th Cir. 1986) (per curiam) (accepting the government's representation of the amount of the average award in similar cases because the taxpayer did not dispute that amount); see also Stubbs, 797 F.2d at 938–39 (same). We explained that "this procedure is in [the appellant's] interest since would be liable for the additional costs and attorney's fees incurred during any proceedings on remand." King, 789 F.2d at 884–85.

We have previously twice sanctioned Swanson for raising similar frivolous arguments. As in those cases, the district court here warned Swanson that "should he continue to file frivolous lawsuits," his ability to seek redress with the court would be curtailed. In light of these warnings, as well as his previous frivolous appeals raising the same arguments regarding the taxability of his employment wages, another Rule 38 sanctions award is appropriate. Additionally, even though the government's motion does not contain any calculations regarding its proposed $8,000 figure, we previously have granted lump-sum sanctions. See Stubbs, 797 F.2d at 938–39; King, 789 F.2d at 884–85. Similarly, although Swanson argues that awarding $8,000 in sanctions is inappropriate, he does not explain why, and, in any event, that is the same amount we have twice previously awarded as sanctions against him, and other taxpayers, for raising frivolous arguments on appeal.

Thus, we GRANT the government's motion for sanctions, and award $8,000 as sanctions.
AFFIRMED.

No.

IN THE
# Supreme Court of the United States

Brian D. Swanson

*Petitioner,*

v.

United States of America,

*Respondent.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit**

## SUPPLEMENTAL APPENDIX

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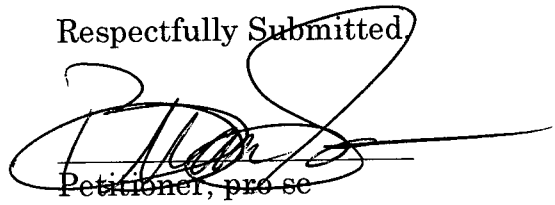
Respectfully Submitted,



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October 2, 2023

# SUPPLEMENTAL APPENDIX

**Supplemental Appendix**

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA AUGUSTA DIVISION

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|---|---|---|
| BRIAN D. SWANSON, | * | |
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| Plaintiff, | * | |
| | * | |
| V. | * | CV 122-119 |
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| UNITED STATES OF AMERICA, | * | |
| | * | |
| Defendant. | * | |
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ORDER

Before the Court is Defendant's motion to dismiss. (Doc. 9.) For the following reasons. Defendant's motion is GRANTED.

I. BACKGROUND

The following factual assertions come from Plaintiff's Amended Complaint, Defendant's motion to dismiss and attached documents, and Plaintiff's response to the motion to dismiss. (Docs. 8-10.) Plaintiff Brian Swanson, proceeding pro se, filed his Complaint against the Commissioner of the Internal Revenue Service ("IRS") on September 2, 2022 and subsequently filed an Amended Complaint on

September 23, 2022, as a matter of right, against Defendant United States of America. (Docs. 1, 8.) Plaintiff is a public school teacher employed by the McDuffie County Board of Education in McDuffie County, Georgia. (Doc. 10, at 1.) In 2020; he earned the following income: wages of $86,317 from McDuffie County Board of Education; retirement distributions of $32,844 from Defense Finance and Accounting Service; and distributions aggregating $2,550 from National Financial Services, LLC. (Doc. 9, at 2 (citing Doc. 9-1).) Plaintiff filed a 2020 federal tax return and did not report any of his wages from the McDuffie County Board of Education as income, and reported $5 of interest income, $32,844 of retirement income, and a primary economic impact payment of $1,700. (Id. at 3 (citing Doc. 9-2).) In the present action. Plaintiff seeks: (1) payment of a refund of $6,151.63 that he alleges he is owed for the 2020 tax year because "Defendant has failed to issue the requested refunds"; and (2) a refund of $2,254 of "erroneously paid tax" he was assessed in 2020 because he argues the tax imposed was not "uniform throughout the United States and [is] constitutionally void." (Doc. 8, at 5.) Defendant moves to dismiss the present action under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and under Rule 12(b)(6) for failure to state a claim. (Doc. 9, at 1.) Plaintiff responded in opposition to Defendant's motion (Doc. 10), Defendant replied in support (Doc. 12), and Plaintiff responded to Defendant's reply (Doc. 13). The Court addresses Defendant's arguments below.

## II. LEGAL STANDARDS

Defendant moves to dismiss Plaintiff's Amended Complaint under Rules 12(b)(1) and 12(b)(6).

### A. 12(b)(1) - Subject Matter Jurisdiction

"Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction can be asserted on either facial or factual grounds." Carmichael v. Kellogg; Brown & Root Servs., Inc., 572 F.3d 1271, 1279 (11th Cir. 2009) (citation omitted). "Facial challenges to subject matter jurisdiction are based solely on the allegations in the complaint[; w]hen considering such challenges, the court must, as with a Rule 12(b)(6) motion, take the complaint's allegations as true." Id. (citation omitted). "However, where a defendant raises a factual attack on subject matter jurisdiction, the district court may consider extrinsic evidence such as deposition testimony and affidavits." Id. (citation omitted). Here, Defendant makes a facial challenge to the Court's subject-matter jurisdiction over this action.[1] Thus, for the purposes of its analysis, the Court accepts as true all facts alleged in the Amended Complaint and construes all reasonable inferences in

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[1] Defendant attached two documents to its motion to dismiss, first, a "Wage and Income Transcript," which is a document showing the wage and income information reported by third parties to the IRS for Plaintiff, and second, a "Tax Return Transcript," which shows the line items reported on Plaintiff's 2020 tax return. (Doc. 9, at 2; Doc. 9-1; Doc. 9-2.) The Court may consider these documents because the documents are central to Plaintiff's claims and their authenticity is not challenged. See McClure v. Oasis Outsourcing II, Inc., 674 F. App'x 873, 875 (11th Cir. 2016).

the light most favorable to Plaintiff. See Belanger v. Salvation Army, 556 F.3d 1153, 1155 (11th Cir. 2009). Nevertheless, Plaintiff, as the party invoking the Court's jurisdiction, "bears the burden of proving, by a preponderance of the evidence, facts supporting the existence of federal jurisdiction." See McCormick v. Aderholt, 293 F.3d 1254, 1257 (11th Cir. 2002) (citation omitted).

B. 12(b)(6) - Failure to State a Claim

In considering a motion to dismiss under Rule 12(b)(6), the Court tests the legal sufficiency of the complaint. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by Davis V. Scherer, 468 U.S. 183 (1984). Pursuant to Federal Rule of Civil Procedure 8(a)(2), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" to give the defendant fair notice of both the claim and the supporting grounds. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Although "detailed factual allegations" are not required. Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555).

A plaintiff's pleading obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555. "Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557). The Court need not accept the pleading's legal conclusions as true, only its well-pleaded facts. Id. at 611-IS. Furthermore, "the court may dismiss a complaint pursuant to [Rule

12(b) (6)] when, on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." Marshall Cnty. Bd. of Educ. v. Marshall Cnty. Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993) (citing Exec. 100, Inc. v. Martin Cnty., 922 F.2d 1536, 1539 (11th Cir. 1991))

## III. DISCUSSION

The Court first addresses whether it has subject matter jurisdiction over Plaintiff's claims.

### A. Claim for Refund of $6,151.63

Defendant moves to dismiss Plaintiff's Amended Complaint for lack of subject matter jurisdiction because Plaintiff filed a frivolous tax return by reporting his 2020 wage income as zero dollars. (Doc. 9, at 4-5, 7.) In response. Plaintiff argues he filed a valid claim for a refund because his "employment earnings as a public school teacher are excluded by law from gross income in accordance with 26 C.F.R. § 1.61-1." (Doc. 10, at 2.)

"The United States has sovereign immunity from suit unless it consents to be sued, and the statute consenting to suit 'define[s] [the district] court's jurisdiction to entertain the suit." Enax V. Comm' r, 476 F. App'x 857, 859 (11th Cir. 2012) (per curiam) (quoting Christian Coal, of Fla., Inc. v. United States, 662 F.3d 1182, 1188 (11th Cir. 2011)). As a limited waiver of sovereign immunity, the United States allows a taxpayer to sue for a tax refund but only if the taxpayer first files a refund claim with the government. 28 U.S.C. § 1346(a)(1); 26 U.S.C. § 7422(a); see Enax, 476 F. App'x at 859 (if taxpayer does not first file properly executed refund claim

under section 7422(a), "the district court does not have jurisdiction to entertain the tax refund suit"); Ruble V. U.S. Gov't, Dep't of Treasury, I.R.S., 159 F. Supp. 2d 1381, 1383 (N.D. Ga. 2001) (citing Charter Co. v. United States, 971 F.2d 1576, 1579 (11th Cir. 1992)). Although an income tax return may qualify as a refund claim, the tax return must be "properly executed" and "must at a minimum 'identify . . . 'the essential requirements' of each and every refund demand.'" Ruble, 159 F. Supp. 2d at 1383 (quoting 26 C.F.R. § 301.6402-3 (a)(5) ; Thompson v. United States, No. 1:98-CV-1838, 1999 WL 302453, at *2 (N.D. Ga. Mar. 22, 1999) (quoting In re Ryan, 64 F.3d 1516, 1521 (11th Cir. 1995))). When a taxpayer claims a refund based on arguments that are "nothing short of frivolous and fraudulent," the tax return does not constitute a properly executed refund claim. Thompson, 1999 WL 302453, at *2; see 26 U.S.C. § 6702(a)(1)(B) (defining a frivolous return as one which "contains information that on its face indicates that the self-assessment is substantially incorrect").

Plaintiff's 2020 tax return is not a properly executed tax return that constitutes a refund claim. Plaintiff cites various statutes and regulations in support of his argument that his return is valid, but the crux of his argument is that "[m]oney received as compensation for service is property," and under 26 U.S.C. § 83, he is only required to report "any compensation in excess of the 'fair market value' [of property] as 'gross income.'" (Doc. 10, at 3-4.) He argues the fair market value for his "service" is the amount of his salary, and therefore, he is not required to report the entire amount he earned as "gross income"; rather, he only has to report payments received "in addition to [his] regular paycheck." (Id. at 4.) He asserts the amount of compensation he received

in 2020 in addition to his regular paycheck was zero dollars, so his tax return where he reported zero dollars in wages from the McDuffie Board of Education is not frivolous. (Id.)

Plaintiff has already been informed by this Court that his wages as a public school teacher are subject to income tax.[2] See Swanson v. United States, 1:19-cv-013, 2019 WL 7880022, at *1-2 (S.D. Ga. May 3, 2019), aff'd, 799 F. App'x 668 (11th Cir. 2020); Swanson v. United States, 1:18-cv-196, 2019 WL 5390863, at *1 (S.D. Ga. Sept. 27, 2019). Nevertheless, Plaintiff reported zero dollars of income wages from the McDuffie County Board of Education on his 2020 tax return. (Doc. 9-1, at 1; Doc. 9-2, at 1.) In Swanson, the Eleventh Circuit rejected a variation of the argument Plaintiff now asserts. 799 F. App'x at 670. The court stated it already "rejected as frivolous arguments that there is no gain in compensation for labor because the value of the compensation equals the value of the labor." Id. (citing Lonsdale v. Comm'r, 661 F.2d 71, 72 (5th Cir. 1981)). Here, Plaintiff's argument that he was only required to report compensation in excess of his salary as income is equally unavailing. Plaintiff's wages of $86,317 from the McDuffie County Board of Education were reportable as wage income, yet he reported zero dollars in wage income on his 2020 tax return. (Doc. 9-1, at 1; Doc. 9-2, at 1.) As such. Plaintiff failed to follow the procedure required to bring this suit against the United States, and the Court lacks jurisdiction over this matter. See Thompson, 1999 WL

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[2] Plaintiff asserts he "has made no arguments in this suit that his earnings are not income or that he is not subject to the income tax, or other similar claims." (Doc. 10, at 1.) Despite this contention. Plaintiff argues exactly that.

302453, at *2 (court lacks jurisdiction because frivolous tax return did not qualify as refund claim); Ruble, 159 F. Supp. 2d at 1384. Therefore, Plaintiff's claim for a refund of $6,151.63 based on his 2020 tax return is DISMISSED for lack of subject matter jurisdiction.

B. Claim for Refund of $2,254.00

Additionally, Plaintiff argues that the tax imposed on him "is not uniform throughout the United States and [is] constitutionally void" and as such, he is entitled to a return of the $2,254 he paid in taxes for tax year 2020.[3] (Doc. 8, at 5.) This argument is frivolous. See Buchbinder v. Comm'r, 60 T.C.M. (CCH) 1421 (1990) (rejecting the petitioner's argument that Federal income tax violates the uniformity clause as one of "a multitude of arguments that have been rejected as frivolous by this Court and every court"). Therefore, Defendant's motion to dismiss is GRANTED and Plaintiff's claim for a refund of $2,254 is DISMISSED.[4]

Finally, the Court warns Plaintiff that should he continue to file frivolous lawsuits, his ability to seek redress with this Court will be sharply limited. See Cofield v. Ala. Pub. Serv. Comm'n, 936 F.2d 512, 517 (11th Cir. 1991) (holding that access to courts "may be

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[3] Plaintiff does not specifically cite the Uniformity Clause in Article I, Section 8 of the Constitution, however, he argues "[t]he tax imposed on Plaintiff is not uniform throughout the United States and [is] constitutionally void." (Doc. 8, at 5.)

[4] Because the Court lacks subject matter jurisdiction over Plaintiff's claims, the Court need not address Defendant's remaining arguments.

counterbalanced by the traditional right of courts to manage their dockets and limit abusive filings").

## IV. CONCLUSION

For the foregoing reasons. Defendant's motion to dismiss (Doc. 9) is GRANTED. The Clerk is DIRECTED to TERMINATE all pending motions and deadlines, if any, and CLOSE this case.

ORDER ENTERED at Augusta, Georgia, this 15th day of May, 2023

J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA