

**APPENDIX TO  
PETITION FOR A WRIT OF CERTIORARI**

**8.5"x 11"**

No. \_\_\_\_\_

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**In The**  
**Supreme Court of The United States**

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**Samuel Ghee**

*Petitioner*

**Vs.**

**COMCAST CABLE  
COMMUNICATIONS, LLC.**

*Respondent*

**Magistrate Albert L. Norton,  
personal capacity**

*Respondent*

**On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the 11<sup>th</sup> Circuit**

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**APPENDIX TO**  
**PETITION FOR A WRIT OF CERTIORARI**

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**A**

**District Court Order  
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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SAMUEL GHEE,

Plaintiff,

COMCAST CABLE  
COMMUNICATION  
Defendants.

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1 :21-CV-04561 -ELR

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**ORDER**

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There are several matters pending before the Court. The Court's reasoning and conclusions are set forth below.

**1. Background**

This case stems from an unsuccessful assault claim Plaintiff Samuel Ghee brought against Defendant Comcast Cable Communications, LLC ("Comcast") in Gwinnett County Magistrate Court on May 12, 2021 ("Gwinnett County Action").<sup>1</sup> See generally Compl. [Doc. 1]. The Gwinnett County Action arose from an alleged

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<sup>1</sup> Plaintiff's complaint in the Gwinnett County Action improperly named "Xfinity/Comcast Cable Phone and Internet Communications LLC" as the defendant, instead of Comcast Cable Communication LLC. See Compl. At 20; [Doc. 4-1]. Understanding that Comcast was the

altercation Plaintiff had with Comcast's employees in one of its retail locations that was related to Plaintiff's apparent violation of the store's mask policy. Sgg 8. In the Gwinnett County Action, Plaintiff alleged that he was assaulted while visiting Comcast's store and suffered "mental and emotional problems" as a result. See id..

Comcast denied these allegations. [Seg Doc. 4-1 at 2].

On May 25, 2021, Plaintiff issued four (4) subpoenas to Comcast seeking contact information for customers and employees who witnessed the purported altercation, video footage of the incident, and Comcast's policy for maintaining video storage. Compl. 9. On June 8, 2021, Comcast filed a motion to quash the subpoenas in the Gwinnett county Action, which Plaintiff opposed. Id. 10-11.

On September 23, 2021, Defendant Magistrate Judge Albert L. Norton of the

Gwinnett County Magistrate Court held a hearing on the motion prior to ruling on it (the "September 23 Hearing"). 12—13. At the September 23 Hearing, Comcast produced a video of the alleged incident and the testimony of two (2) employees that were involved in the altercation. See 13; [see also Docs. 4-1 at 3; 12-1 at 3]. After watching the video and hearing testimony from Plaintiff and the employee witnesses, Judge Norton entered judgment in favor of Comcast. See Compl. at 20; [see also Docs. 4-1 at 3; 12-1 at 3].

After the adjudication of the Gwinnett County Action, on November 4, 2021, Plaintiff filed an action in this Court. See generally Compl. Proceeding pro se, Plaintiff titles his Complaint "Conspiracy to Conspire with a Private Party Under the Color of State law under 42 USC 1983." See

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Party defendant in the Gwinnett County Action, the Court refers to both the defendant in that action and Defendant in the present action as "Comcast."

Compl. at 1. The Complaint purports to state two (2) causes of action: (1) "Right to Due Process of Law; 42 U.S.C. 1983 Fifth and Fourteenth Amendments; Art. I" and (2) "Right to Equal Protection; 42 U.S.C. 1983 Fifth and Fourteenth Amendments; Section I." 18-19. From what the Court can discern, Plaintiff alleges that Defendants Comcast and Judge Norton conspired to deprive him of his rights to due process of law and equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution when they purportedly refused to respond to or enforce

Hearing, "the first issue the Plaintiff addressed [to] the [M]agistrate [Judge] Albert

L. Norton was why subpoenas have not been answered and not being enforced." Compl. II 12. He alleges that Judge Norton "gloss[ed] over the main issue about the failure [to] respond [to] subpoenas," but admits that Comcast produced the video footage and witnesses that Plaintiff requested in those subpoenas. Id.13. Plaintiff further alleges that Judge Norton "awarded victory to the Defendant's counsel depriving Plaintiff of a statutory right of due process and equal protection." Id.

In support of his claims, Plaintiff seems to allege that because Judge Norton and counsel for Comcast are members of the State Bar of Georgia, they have conspired together to dismiss Plaintiff's action. See id. 15-17. Specifically, Plaintiff alleges that "[u]nder a great deal of circumstances there has to be some type of relationship between the [M]agistrate [Judge] Albert L. Norton and defendant attorney....it is highly circumstantial that these two individuals mingle in private together because they both hold bar cards." Id 16-17. Plaintiff seeks compensatory damages in the amount of \$900,000.00 as well as litigation fees, costs and pre- and post-judgement interest. Id 21-23

On November 24, 2021, Comcast moved to dismiss this action, arguing that Plaintiff failed to state a claim upon which relief could be granted. [Doc. 4]. On December 2, 2021, Plaintiff requested an extension of time to respond to Comcast's Motion to dismiss, which Comcast opposed. [Docs. 7, 8].<sup>2</sup> Thereafter, Plaintiff timely submitted a response to Comcast's motion to dismiss, to which Comcast timely replied. [Docs. 9, 9-2, 10]. On January 4, 2022, and without leave of the Court, Plaintiff filed a surreply to Comcast's motion to dismiss. [Doc. 18]. On January 7, 2022, Comcast moved to strike Plaintiff's surreply, and Plaintiff timely opposed this motion. [Docs. 20, 25]. Additionally, on December 7, 2021, Comcast filed a notice indicating its intent to move for sanctions pursuant to Federal Rule of Civil Procedure 11(c) against Plaintiff. [Doc. 6]. Though not a formal motion, this notice is also opposed by Plaintiff. [Doc. 17].

On December 30, 2021, Judge Norton moved to dismiss Plaintiff's Complaint, arguing that Plaintiff's claims against him are barred by judicial immunity. [Doc. 12]. Plaintiff submitted a response that was executed on January 12, 2022, and filed with the Court on January 20, 2022. [Doc. 22]. Thereafter, on April 14, 2022, Judge Norton filed a "Motion to Stay Discovery," which the Court granted on April 28, 2022. [Docs. 30, 37].

Most recently, on April 15, 2022, Plaintiff filed a "Motion for Recusal," arguing that the undersigned should recuse herself because she has holdings in a mutual fund that is managed by an entity that holds stock

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<sup>2</sup> Plaintiff's motion for an extension of time is dated December 2, 2021, but was not filed on the docket until December 13, 2021. [See Doc. 8 at 1,3]



in Comcast Corporation. [Doc. 31]. On April 28, 2022, Comcast filed a timely response in opposition. [Doc.38]. On May 11, 2022, Plaintiff timely replied. [Doc. 39].

Thus, several motions have been fully briefed and are ripe for the Court's determination. [See Docs. 4, 6, 8, 12, 20, 31]. Of these outstanding matters, the Court first addresses Plaintiff's pending "Motion for Recusal." [Doc. 31].

**11. Plaintiff's Motion for Recusal [Doc. 31]**

Plaintiff has filed a "Motion for Recusal" requesting that the undersigned recuse herself pursuant to 28 U.S.C. 455(b)(4). [Doc. 31]. Section 455(b)(4) requires a judge to recuse herself when she has "a financial interest in a party to the proceeding." A "financial interest" is defined by the statute as:

ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs

of a party, except that . . . ownership in a mutual or common investment fund that holds securities is not a 'financial interest' in such securities unless the judge participates in the management of the fund.

**28 U.S.C.455(d)**

Plaintiff argues that the undersigned should recuse herself because she has holdings in a mutual fund that is managed by an entity that holds stock in Comcast Corporation. [See Doc. 31]. The interest Plaintiff challenges is an ownership interest in a mutual fund and the undersigned does not participate in the management of the fund. Therefore, the investment does not qualify as a "financial interest" pursuant to the recusal statute. See

Guthrie v. Wells Fargo Home Mortg. NA, Civil Action No. 1 : 13-CV-4226-RWS, 2015 WL 1401660, at (N.D. Ga. Mar. 26, 2015) (denying motion for recusal pursuant to 455(b)(4) where the challenged interest was an investment in a mutual fund and the judge did not participate in managing the fund). Accordingly, the Court denies Plaintiffs motion for recusal.

Having found that the undersigned need not recuse herself, the Court next turns to Defendants' respective motions to dismiss and two (2) other filings Plaintiff made related to Comcast's motion to dismiss.

### **III. Defendants' Motions to Dismiss and Related Filings**

[Docs. 4, 8, 12, 20]

Both Defendants contend that Plaintiffs Complaint is due to be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

[See id:] In particular, Comcast argues that Plaintiff fails to assert sufficient factual allegations to support his Section 1983 claims. [See Doc. 4-1]. Judge Norton argues that Plaintiffs claims against him are barred by the doctrine of judicial immunity. [See Doc. 12-1]. Before addressing the merits of each of these motions, the Court addresses two (2) motions ancillary to Comcast's motion to dismiss.

#### **A. Preliminary Matters**

- 1 . Plaintiff's request for additional time to respond to Comcast's motion to dismiss and for electronic filing [Doc. 8]

As noted above, by a filing dated December 2, 2021, Plaintiff asks the Court for an unspecified amount of additional time to respond to Comcast's motion to dismiss because, as a pro se filer, he receives pleadings by mail. [See generally Doc. 8]. Additionally, Plaintiff requests that he have at least some degree of access to the Court's electronic filing system. [Seg Comcast responds that, while it does not oppose Plaintiff receiving electronic notifications of filings, Plaintiff should not be afforded extra time to respond to its motion to dismiss because the "mailbox rule" of Federal Rule of Civil Procedure 6(d) already adequately accounts for the method by which Plaintiff is served. [See generally Doc. 7].

Upon review, the Court finds that Plaintiffs request for additional time to respond to Comcast's motion to dismiss is moot because Plaintiff's response in opposition to that motion is timely. The Court agrees with Comcast that Federal Rule of Civil Procedure 6(d) provides adequate accommodations for litigants who are served by mail by allowing a party an additional three (3) days to file when service is made via mail. See FED. R. CIV. P. 6(d). Plaintiff's situation is a case in point as it is pursuant to this Rule that Plaintiff's response brief, which was filed on December 13, 2021, is timely.<sup>3</sup> Thus, the Court denies as moot Plaintiff's request for extension of time.

Plaintiffs request for leave to file electronically is foreclosed by Appendix H of the Local Rules of this Court. Section I(A)(2) of that appendix provides that the only pro se parties who may file electronically are "attorney[s]" in

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<sup>3</sup> Plaintiff's response was due on Saturday, December 11, 2021. Pursuant to Federal Rule of Civil Procedure 6(a), if the last day of the period to file a response is a Saturday, the period continues until the end of the next business day. See FED. R. CIV. P. 6(a). Here, the next business day would have been Monday, December 13. Because Plaintiff's response was filed on December 13, it was timely.

good standing admitted to practice before this Court." Because there is no indication in the record that Plaintiff is an such an attorney, the Court would deny Plaintiffs request to file electronically on the merits. But like his request for an extension of time, Plaintiff's request for electronic filing is moot because, as discussed below, the Court is dismissing Plaintiff's claims on the merits, thus negating any need for future filings by Plaintiff in this case.

2.Comcast's motion to strike Plaintiff's surreply [Doc. 20]

As noted above, Comcast has moved to strike Plaintiffs "Reply to Defendant Comcast Cable Communications, LLC's Reply In Support of its Motion to Dismiss Plaintiffs Complaint" because Plaintiff did not first obtain leave of the Court to file this document and it is not appropriate because Comcast's reply did not introduce new arguments or issues. [Doc. 20]. Plaintiff disagrees, arguing that Comcast did raise new issues its in reply. [Seg Doc. 25].

"Neither the Federal Rules of Civil Procedure nor this Court's Local Rules authorize the filing of sur-replies." Fedrick v. Mercedes-Benz USA LLC, 366 F. Supp. 2d 1190, 1197 (N.D. Ga. 2005). Generally, surreplies are disfavored because "to allow such sur-replies as a regular practice would put the court in the position of refereeing an endless volley of briefs." Seg Byrom v. Delta Fam. Care—Disability & Survivorship Plan, 343 F. Supp. 2d 1163, 1188 (N.D. Ga. 2004). The decision to allow a surreply is fully within the Court's discretion. Sgg Fredrick, 366 F. Supp. 2d at 1197. And where a reply brief merely responds to arguments in the other party's response brief and "does not advance new arguments," judges in this district generally will not allow a surreply. See Henley v. Turner Broad. Sys. Inc., 267 F. supp. 3d 1341, 1349 (N.D. Ga. 2017).

Upon review, the Court finds that rather than raising new arguments, Comcast's reply brief responds to Plaintiffs arguments and allegations that Defendants colluded in the Gwinnett County Action to deny Plaintiffs claim and not enforce his subpoenas. [Seg Doc. 10]. Thus, in its discretion, the Court will grant Comcast's motion and strike Plaintiff's surreply. See Roelle v. Cobb Cnty.

Sch. Dist., Civil Action No. 1: 13-CV-3045, 2014 WL 4457235, at \*9 (N.D. Ga. sept.10, 2014) ("If the new arguments raised in a reply brief directly address arguments raised in the non-movant's response, no surreply is warranted.").

**B. The Merits of Each Motion to Dismiss**

Having resolved the preliminary matters related to Comcast's motion to dismiss, the Court now turns to the merits of that motion and Judge Norton's motion to dismiss. The Court sets forth the relevant legal standard before analyzing Comcast and Judge Norton's motions in turn.

**1. Legal standard**

Dismissal for failure to state a claim is appropriate if the facts—as pleaded --fail to state a claim for relief that is "plausible on its face." See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citation omitted); see also Rembert v. Florida, 572 F. App'x 908, 909 (11th Cir. 2014). A complaint fails to state a claim when it lacks "enough factual matter (taken as true)" to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555—56 (2007). A plaintiff is required to provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." See *id.* Additionally, a plaintiff must offer "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." See Iqbal,

556 U.S. at 678. "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.' See (quoting Twombly, 550 U.S. at 557) (alteration in original).

As is relevant here, complaints pleaded pro se are "held to a less stringent standard than pleadings drafted by attorneys and are liberally construed." See Bingham v. Thomas, 654 F.3d 1 171, 1 175 (1 Ith Cir. 2011) (internal citation and quotation marks omitted). The Court "must look beyond the labels of filings by pro se plaintiffs to interpret them under whatever [cause of action] would provide relief." See Wilkerson v. Georgia, 618 F. App'x 610, 611 (11th Cir. 2015) (alterations omitted). However, the Court cannot rewrite a deficient pleading, and pro se plaintiffs are required to comply with the threshold requirements of the Federal Rules of Civil Procedure. See Lizana-Jackson v. U.S.-Dept of the Treasury, Civil Action No. 1:13-CV-3815-AT, 2013 WL 71 181 15, at \*2 (N.D. Ga. Nov. 25, 2013).

2. Comcast's motion to dismiss [Doc. 41]

By its motion, Comcast proffers that Plaintiff's Complaint fails to state a claim upon which relief be granted because it "contains scant factual allegations against Comcast" and "the bulk of the Complaint consists of mere legal conclusions, recitations of elements of claims, general descriptions of various 'exhibits,' and other extraneous material." [Doc. 4-1 at 2]. In his response, Plaintiff repeats his allegations of a conspiracy between counsel for Comcast and Judge Norton in the adjudication of the Gwinnett Magistrate Action because both are members of the State Bar of Georgia. [See Doc. 9-2 at 10]. Comcast then proceeds to argue the underlying merits of his motion to quash filed in the Gwinnett Magistrate Action.

[See Doc. 10 at 4]

To state a claim for conspiracy pursuant to S 1983, a plaintiff must allege "(1) a violation of his federal rights; (2) an agreement among the defendants to violate such rights; and (3) an underlying actionable wrong." Malone v. Cherokee Cnty., Civil Action No. 1:17-CV-1666-WSD, 2018 WL 830170, at \*7 (N.D. Ga. Feb. 9, 2018). A plaintiff must allege facts that show "the defendants reached an understanding to violate [the plaintiff's] constitutional rights." Grider v. City of Auburn, 618 F.3d 1240, 1260 (11th Cir. 2010) (internal citation omitted); see also Bailey v. Bd. of Cnty. Comm'rs of Alachua Cnty., 956 F.2d 1112, 1122 (11th Cir.

1992) ("[T]he linchpin for conspiracy is agreement."). A plaintiff "must make particularized allegations that a conspiracy exists." Hansel v. All Gone Towing Co., 132 F. App'x 308, 308 (11th Cir. 2005). "Vague and conclusory allegations suggesting a 1983 conspiracy are insufficient to withstand a motion to dismiss." Id.

Here, Plaintiff fails to allege any facts indicating that a conspiracy exists or that Defendants reached an agreement to deprive Plaintiff of a constitutional right. Plaintiffs only relevant allegations are that Judge Norton and counsel for Comcast are both members of the Georgia Bar, that "there has to be some type of relationship between [them]," and that they "mingle in private together because they both hold bar cards." See Compl. II 15—17. None of these allegations suggest that a conspiracy exists or that Defendants came to any agreement, let alone an agreement to deny Plaintiff a constitutional right. Thus, the Court finds that Plaintiffs' allegations are "merely vague, conclusory statements that fail to even minimally show Defendants entered into" a conspiracy. See Malone, 2018 WL 830170, at \*7. Therefore, Plaintiff's Complaint lacks enough factual matter (even taking Plaintiffs' allegations as

true) to state a plausible claim for relief. See Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 555—56; see also Malone, 2018 WL 830170, at \*7 (dismissing the plaintiff's 1983 conspiracy claim for—among other things—failing to allege that the defendants reached an agreement to violate the plaintiff's constitutional rights). Accordingly, the Court grants Comcast's motion to dismiss.

3. Judge Norton's motion to dismiss [Doc. 12]

Next, the Court considers Judge Norton's motion. Judge Norton argues that Plaintiffs' claims against him are barred by judicial immunity and should, therefore, be dismissed. [Seg Doc. 12-1 at 4—7]. The Court agrees.

The doctrine of judicial immunity protects judges from being held civilly liable for actions taken in their judicial capacity. See Mireles v. Waco, 502 U.S. 9,

11 (1991). "[I]mmunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though

judicial in nature, taken in the complete absence of all jurisdiction." at 11-12 (citations omitted).

Here, Plaintiff has failed to allege any grounds that would overcome judicial immunity. Plaintiff alleges that "on September 23, 2021, in court room I(c), Gwinnett Magistrate Court," Judge Norton "hear[d] the case[,] glossing over the main issue about the failure [to] respond [to] subpoenas" and "awarded victory to Defendant's counsel." See Compl. 12—14. "Ruling on motions and delivering judgments in civil and criminal proceedings are functions normally, if not exclusively, performed by a judge. They are clearly judicial acts." Jarallah v.



Simmons, Civil Action No.1:04-CV-3636-JEC, 2006 WL 8431953, at \*5 (N.D. Ga. Jan. 12, 2006), aff'd, 191 F. App'x 918 (1 Cir. 2006). Thus, the acts Plaintiff complains of— Judge Norton 's rulings at the September 23 Hearing and adjudication of the assault claim in favor of Comcast— constituted judicial functions carried out in open court. Therefore, by Plaintiff's own allegations, Judge Norton was acting within his judicial capacity when in engaging in the conduct described in the Complaint.

Further, Plaintiff does not allege that Judge Norton acted in the complete absence of all jurisdiction. See generally Compl. At the very most, Plaintiff's

"allegations indicate that [Judge Norton] may have exceeded [his] authority or erred by making the rulings of which Plaintiff complain[s], not that [he] acted in the clear absence of all jurisdiction". Holt v. Floyd Cnty., Civil Action No. 4: 18-CV-OI 12I-LM, 2018 WL 8966814, at (N.D. Ga. Aug. 17, 2018), aff'd, 747 F. App'x 832 (1 Ith Cir. 2019). Because Plaintiff's claims against Judge Norton are barred by the doctrine of judicial immunity, Plaintiff fails to state a claim against him. See Jarallah, 2006 WL 8431953, at \*4—6 (granting a defendant judge's motion to dismiss on judicial immunity grounds where the actions challenged by the plaintiff were judicial acts within the judge's jurisdiction). Accordingly, the Court grants Judge Norton's motion to dismiss. [Doc. 12].

#### IV. Comcast's Notice of Motion for Rule 11 Sanctions

[Doc. 61]

Lastly, by its December 7, 2021 filing, it appears that Comcast is not presently moving for sanctions pursuant to Federal Rule of Civil Procedure I 1(c), but is attempting to comply with the "safe harbor provision" in Rule I 1(c)(2), which requires the moving party to serve a motion for

sanctions on the opposing party at least twenty-one (21) days prior to filing it with the court. See FED. R. CIV. P. I 1(c)(2) ("The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets."); In re Miller, 414 F. App'x 214, 216 (1 Ith Cir. 201 1). Comcast's filing made on December 7, 2021, provides that it "will" through its undersigned attorney move this Court "for an Order granting Comcast's Motion for Sanctions against Plaintiff." [See Doc. 6 at 2]. However, since this filing, Comcast has filed no such motion for sanctions. Thus, because it does not appear to the Court that Comcast's filing providing notice of its intent to file a motion for Rule I 1 sanctions itself seeks any relief, the Court denies it as moot.

#### V. Conclusion


For the reasons set forth above, the Court DENIES Plaintiffs "Motion for Recusal" [Doc. 3 1], GRANTS Comcast's "Motion to Dismiss Complaint" [Doc. 4], and GRANTS Judge Norton's "Motion to Dismiss Plaintiff's Complaint Titled Conspiracy to Conspire with a Private Party Under the Color of State Law Under 42 U.S.C. 1983 in Lieu of His Answer and Affirmative Defenses." [Doc. 12]. Additionally, the Court DENIES AS MOOT Plaintiff's "Request for Extension of Time [t]o Give a Response to Defendant's Motion to Dismiss Along with the Consent to Electronic Service" [Doc. 8], and the "Notice of Motion by Defendant Comcast Cable Communications, LLC's for Sanctions Pursuant to Fed. R. Civ. P. I 1(c)." [Doc. 6].

The Court GRANTS Comcast's "Motion to Strike Plaintiff's Reply to Defendant Comcast Cable

Communications, LLC's Reply in Support of Its Motion to Dismiss Plaintiff's Complaint as an Impermissible Surreply" [Doc. 20] and STRIKES "Plaintiffs Reply To Defendant Comcast Cable Communications, LLC's Reply In Support of its Motion to Dismiss Plaintiffs Complaint." [Doc. 18].

Finally, the Court DIRECTS the Clerk to CLOSE this case.

SO ORDERED, this 10th day of August, 2022.

A handwritten signature in black ink, reading "Eleanor L. Ross". The signature is written in a cursive style with a horizontal line underneath.

Eleanor L. Ross  
United States District Judge  
Northern District of Georgia

**B**

**11<sup>th</sup> Circuit United States Court of Appeals**  
**1-7 Pages**

[DO NOT PUBLISH]

In The

**United States Court of Appeals**

For the 11<sup>th</sup> Circuit

No. 22-12867

Non-Argument Calendar

**SAMUEL GHEE,**

**Plaintiff-Appellant,**

**versus**

**COMCAST CABLE COMMUNICATIONS, LLC,**

**ALBERT L. NORTON,**

**Defendants-Appellees.**

**Appeal from the United States District Court**

**for the Northern District of Georgia**

**D.C. Docket-No. 1:21-cv-04561-ELR**

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Before GRANT, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

After an altercation over a retail store's mask policy, Samuel Ghee sued Comcast in a Georgia state court. The state magistrate judge conducted a hearing and ruled in favor of Comcast. Ghee responded by suing Comcast and the magistrate judge in federal court, alleging a conspiracy to violate his Fifth and Fourteenth Amendment rights under 42 U.S.C. 1983. The district court dismissed his claim under Federal Rule of Civil Procedure 12(b)(6). In this pro se appeal of the district court's grant of the motion to dismiss, Ghee argues that the district court erred because (1) he sufficiently alleged a conspiracy between the defendants and (2) the magistrate judge was not entitled to judicial immunity. But Ghee's complaint did not show plausible collusion between the defendants. And absolute immunity shielded the magistrate judge for his judicial acts. Accordingly, we affirm.

1.

Ghee's federal complaint alleges that, as he attempted to return a product at a Comcast retail store, Comcast employees berated, assaulted, and threw him out of the store because he was wearing a non-compliant face covering. In May 2021, Ghee sued Comcast in a Georgia state court and provided the Gwinnett County Sheriff with four subpoenas to serve on Comcast. Those subpoenas sought (1) the names of other customers in the store

during the incident, (2) video surveillance footage, (3) the names and addresses of the employees involved, and (4) a copy of the store's video surveillance policy. Comcast never answered the subpoenas; after a hearing, the magistrate judge entered judgment in favor of Comcast.

Ghee then sued Comcast and the magistrate judge, Albert Norton, in federal court under 42 U.S.C. 1983. Ghee's complaint alleged that Comcast and Norton conspired to violate his Fifth and Fourteenth Amendment rights to due process and equal protection. Ghee demanded costs, pre- and post-judgment interest, attorney's fees, and \$900,000 in compensatory damages.

Comcast and Norton each moved to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The district court granted both motions, concluding that (1) Ghee failed to allege a plausible conspiracy and (2) judicial immunity barred his suit against Norton. Ghee timely appealed.

11.

We review a district court's grant of a Rule 12(b)(6) motion de novo, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008).

Whether a judicial officer is entitled to absolute judicial immunity also receives de novo review. *Stevens v. Osuna*, 877 F.3d 1293, 1301 (11th Cir. 2017).

111.

On appeal, Ghee argues that the district court erred in dismissing his complaint for two reasons. First, he contends that he pleaded sufficient facts to establish a plausible conspiracy between Ghee and Norton. Second, he posits that Norton, by willfully refusing to enforce state subpoena law, exceeded his authority and was not entitled to judicial immunity.

We start with the standard for evaluating a Rule 12(b)(6) motion and then address Ghee's two arguments in turn.

A.

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a court to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The purpose of a motion to dismiss under Rule 12(b)(6) "is to test the facial sufficiency of a complaint. *Brooks v. Blue Cross & Blue Shield*, 116 F.3d 1364, 1368 (11th Cir. 1997). formulaic recitation of the elements of a cause of action will not" suffice. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A plaintiff must "state a claim to relief that is plausible on its face." *Id.* at 570 (emphasis added). Though we must accept as true any factual allegation within a complaint, we are not so bound with legal conclusions masked in a veneer of facts. *Id.* at 555. In short, a complaint need not include "detailed factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 678

(2009) (quoting *Twombly*, 550 U.S. at 555). But surviving a Rule 5



12(b)(6) motion requires "more than an unadorned, the defendant unlawfully-harmed-me accusation." *Id.*

We hold pro se complaints "to a less stringent standard than pleadings drafted by attorneys" and construe them liberally. *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011) (quoting *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998)). Still, we cannot rewrite a deficient complaint or "serve as defacto counsel for a party." *Campbell v. AirJam, Ltd.*, 760 F.3d 1165, 1168—69 (11th Cir. 2014) (quoting *GJR Invs., Inc. v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998)).

Ghee contends that, because he pleaded sufficient facts to show a plausible conspiracy by Comcast and Norton to deprive him of constitutional rights, the district court erred in dismissing his claims against Comcast. We disagree.

Section 1983 prohibits conspiring to violate another's constitutional rights. *Rowe v. Fort Lauderdale*, 279 F.3d 1271, 1283 (11th Cir. 2002). A prima facie section 1983 conspiracy case requires (1) a violation of a constitutional right, (2) an agreement to deprive the plaintiff of a constitutional right, and (3) "an actionable wrong to support the conspiracy." *Grider v. City of Auburn*, 618 F.3d 1240, 1260 (11th Cir. 2010) (quoting *Bendiburg v. Dempsey*, 909 F.2d 463, 468 (11th Cir. 1990)). Thus, to state a plausible conspiracy claim under section 1983, a plaintiff must allege facts suggesting that the defendants "reached an understanding to deny" a constitutional right. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970).

Though circumstantial evidence can help prove a section 1983 conspiracy, *Grider*, 618 F.3d at 1260, the complaint must "make particularized allegations that a conspiracy existed," *GJR Invs.*, 132 F.3d at 1370. Vague and conclusory allegations will not survive a motion to dismiss. See *Fullman v. Graddick*, 739 F.3d 553, 556—57 (11th Cir. 1984).

Ghee's complaint lacks any particularized factual allegations of a conspiracy to violate his constitutional rights. Instead, it suggests that Norton could not adjudicate Ghee's case impartially because Comcast's counsel and Norton both belong to the State Bar of Georgia. Thus, so the argument goes, there must be a relationship between them, which caused Norton to rule in Comcast's favor. Ghee also asserts that Norton and Comcast's counsel may interact privately in light of their shared bar membership.

Though circumstantial evidence can support a section 1983 conspiracy inference, Ghee does not allege that Norton and Comcast ever "reached an agreement" to deprive him of a constitutional right. *Grider*, 618 F.3d at 1260. His allegations hinge on the assumption that attorneys who are members of the same state bar mingle privately and collude against certain litigants. But absent specific facts, we cannot infer a conspiracy from mandatory bar membership. Ghee's complaint needs more to "nudge[] [his] claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. Accordingly, the district court properly granted Comcast's motion to dismiss.

## C

Turning to Ghee's argument that Norton is not entitled to judicial immunity, we again disagree.

Judges enjoy absolute immunity from damages when performing in a judicial capacity "unless they act in the 'clear absence of all jurisdiction.'" *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356—57 (2000)). Absolute judicial immunity applies to acts that are erroneous, "malicious, or . . . in excess" of a judge's jurisdiction. *Id.* To determine whether a judge acted in a judicial capacity, we consider whether: (1) the act complained of was "a normal judicial function"; (2) the events happened in open court or in the judge's chambers; (3) the controversy stemmed from a case pending before the judge; and (4) "the confrontation arose immediately out of a visit to the judge in his judicial capacity." *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005).

Ghee alleges that Norton glossed over Comcast's failure to respond to subpoenas and improperly entered judgment in its favor. But ruling on motions and delivering judgments fall squarely within the scope of judicial conduct. See, e.g., O.C.G.A. 15-6-21 (stating that judges have a duty to decide all motions "of any nature" in a timely fashion); Ga. Const. art. VI, 1 (establishing judicial authority in state courts). And judges are not liable for erroneous decisions. *Bolin*, 225 F.3d at 1239. Ghee's own allegations confirm that Norton was exercising "a normal judicial function" in

open court when he decided Ghee's case, which was pending before him. See Sibley, 437 F.3d at 1070.

Ghee's complaint also alleges that Norton's demeanor changed when Ghee inquired about the basis for his ruling. According to Ghee, this behavior corroborated Norton's nefarious motives. Even accepting these allegations as true, Ghee's suit still cannot proceed because absolute judicial immunity shields judges for malicious acts. Bolin, 225 F.3d at 1239. At most, Ghee's complaint alleges that Norton exceeded his authority and acted maliciously, conduct protected by absolute judicial immunity. Because Ghee does not point to an act that was in the "clear absence of all jurisdiction," Norton is entitled to absolute judicial immunity. See *id.* (quoting Stump, 435 U.S. at 356—57). Ghee failed to state a claim against him, and the district court correctly granted Norton's Rule

12(b)(6) motion.

The district court is AFFIRMED

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**Re Hearing En Banc**  
**11<sup>th</sup> circuit United States Court of Appeals**  
**1-2 Pages**

**In The  
United States Court of Appeals  
For the 11<sup>th</sup> Circuit**

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No. 22-12867

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SAMUEL GHEE,

Plaintiff-Appellant,

versus

COMCAST CABLE COMMUNICATIONS, LLC,  
ALBERT L. NORTON,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Georgia  
D.C. Docket No. 1:21-cv-04561-ELR

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2

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR  
REHEARING EN BANC

Before GRANT, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is  
DENIED, no judge in regular active service on the  
Court having requested that the Court be polled on  
rehearing en banc. FRAP 35. The Petition for  
Rehearing En Banc is also treated as a Petition for  
Rehearing before the panel and is DENIED. FRAP  
35, IOP 2.