24-873

No.

ORIGINAL

In the Supreme Court of the United States

ANGELA W. DEBOSE, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ANGELA W. DEBOSE
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December 26, 2024

QUESTIONS PRESENTED

Federal Rule of Civil Procedure 65(a) provides that a preliminary injunction may issue only on notice to the adverse party. Rule 65(a)(2) requires that the issuing court must preserve "any party's right to a jury trial." Rule 65(b) provides that a temporary restraining order may issue without written or oral notice to the adverse party under certain circumstances—(i.e., specific facts in an affidavit or a verified complaint that show immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition and the movant's attorney certifies should not be required). If a preliminary injunction is issued without notice, "an expedited hearing must be set on the motion for a preliminary injunction at the earliest possible time, taking precedence over all other matters..." Rule 65(b)(3). The order expires at or before 14 days—unless the court, for good cause, extends it for a like period (presumably up to 14 days) or the adverse party consents to a longer extension. Rule 65(b)(2). The adverse party may appear and move to dissolve or modify the order on 2 days' notice; the motion must be heard and decided as promptly as justice requires. Rule 65(b)(4).

The questions presented are:

(1) Whether the "with" and/or "without" notice rules of Rule 65 for a preliminary injunction or temporary restraining order require a hearing?

(2) Is Rule 65(a)(2), preservation of adverse party's right to a jury trial, violated when the time set for the injunction / TRO is undefined, indefinite, or "held out" as permanent with no specific end in sight?

(3) Does Florida's Vexatious Litigant Law "[a]ny person or entity previously found to be a vexatious litigant pursuant to this section" require a final and adversely determined action?

(4) Whether Rule 12(b)(6), failure to state a claim upon which relief can be granted, allows for mass dismissal of all parties and an entire lawsuit against multiple parties on the premise that none of the claims against any of the defendants could potentially succeed based on the facts alleged in the complaint, even when considering the allegations in the most favorable light for the plaintiff.

PARTIES TO THE PROCEEDING

Petitioner Angela DeBose is the appellant in the court below. Respondents are the United States of America; the Thirteenth Judicial Circuit Court, Hillsborough County Florida; Ronald Ficarrotta, in his official capacity, Elizabeth G. Rice, individually and in her official capacity, Gregory P. Holder, individually and in his official capacity, James M. Barton, individually and officially; the University of South Florida Board of Trustees, Ralph Wilcox in his official capacity, Paul Dosal in his official capacity, Gerard Solis in his official capacity, Lois Palmer in her official capacity; and Greenberg Traurig, P.A. and Richard McCrea, were appellees in the court below.

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Petitioner Angela DeBose respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

Debose v. United States, No. 22-13380 (11th Cir. Feb. 8, 2024), (a29-a34), is unreported. The ruling of the district court entering an injunction and granting respondent's motion to dismiss (a35-a61), is unreported.

JURISDICTION

The court of appeals entered its judgment in Appeal No. 22-13380 on February 8, 2024. On March 20, 2024, the Petitioner timely filed a motion for rehearing. On August 28, 2024, the court of appeals issued a written order denying rehearing and rehearing en banc. On October 5, 2024, the Petitioner applied for extension of time within which to file a petition for writ of certiorari in the United States Supreme Court from November 26, 2024 to January 26, 2025. On October 18, 2024, the Associate Justice Clarence Thomas extended the time within which to file a petition for a writ of certiorari to and including December 26, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), writ of certiorari granted upon the petition of any party to any civil case, after rendition of judgment, and 28 U.S.C. § 1257 because the appellate court's decision also qualifies as a "judgment or decree" within the meaning of Fla. Stat. § 68.093; see e.g., *Michigan v. Bryant*, 131 S. Ct. 1143, 1151-52 (2011) (granting review when finding Confrontation Clause violation and remanding for new trial).

STATUTORY PROVISION

Rule 65, Injunctions and Restraining Orders, states as follows in part:

(a) Preliminary Injunction.

(1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order.

(1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character...

(4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

...

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) *Contents.* Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

68.093 Florida Vexatious Litigant Law provides in pertinent part:

(1) This section may be cited as the "Florida Vexatious Litigant Law."

(2) As used in section, the term:

(d) "Vexatious litigant" means:

1. A person as defined in s. 1.01(3) who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity; or

2. Any person or entity previously found to be a vexatious litigant pursuant to this section.

An action is not deemed to be "finally and adversely determined" if an appeal in that action is pending. If an action has been commenced on behalf of a party by an attorney licensed to practice law in this state, that action is not deemed to be pro se even if the attorney later withdraws from the representation and the party does not retain new counsel.

STATEMENT OF THE CASE

In December 2014, Angela DeBose ("Ms. DeBose") filed a discrimination complaint with the EEOC against her employer and state university, the University of South Florida. In January 2015, the EEOC informed the university of the charges. On February 4, 2015, Angela DeBose ("Ms. DeBose") filed a motion for a temporary restraining order (TRO) and preliminary injunction in the U.S. Middle District of Florida, Tampa Division as Case No. 8:15-mc-18-T-EAK-MAP after the situation with her employer escalated, seeking to preserve the status quo during the pendency of the EEOC investigation under Section 706(f)(2) of Title VII of the Civil Rights Act of 1964. On May 19, 2015, while the case was in progress and the EEOC investigation was underway, the university separated Ms. DeBose from her employment and terminated her, effective August 19, 2015. In December 2015, Ms. DeBose voluntarily dismissed Case 8:15-mc-18-T-EAK-MAP at hearing, (Doc. 98), and by subsequent notice, (Doc. 96).[1]

On December 4, 2015, Ms. DeBose filed suit in the Middle District of Florida alleging discrimination (race, gender, promotion, etc.), per se retaliatory termination[2], retaliation interference with a business opportunity, conspiracy with a third party, Ellucian, LP, and spoliation, in Case No. 8:15-cv-02787-EAK-AEP. In April 2016, the district court entered an Opinion and Order, (Doc. 38), dismissing the Amended Complaint's,

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[1] "Doc. No." refers to the document numbers assigned by ECF System.

[2] "Per se" retaliation means that a finding of retaliation can be made without needing to prove a causal link between the protected activity and the adverse action taken by the employer, as the conduct itself is considered inherently retaliatory and unlawful; essentially, the act of retaliation is so egregious that it is considered a violation regardless of the employer's intent or motivation.

(Doc. 5), spoliation claim; a Second Amended Complaint, (Doc. 39), was filed by Ms. DeBose's counsel. In November 2016, Ms. DeBose, by and through new counsel, presented irrefutable evidence that USF hired a third party company to destroy her employment files as part of a first-time destruction of such files in her department and that her files contained evidence relevant to the litigation as alleged, (02/08/2017 Transcript Proceeding, Doc. 103, pg. 39:17-20). In August 2017, the magistrate judge entered an Order, (Doc. 144), denying sanctions, an adverse inference, and Ms. DeBose's request to present evidence of the destruction at trial on the basis that it was not established that the "Defendant acted with bad faith and that Plaintiff was prejudiced by Defendant's destruction of her departmental personnel file."

In September 2017, the district judge entered an Order, (Doc. 210), on USFBOT's and Ellucian's summary judgment motions—dismissing Ellucian, LP as a party and dismissing all claims against the USFBOT except race discrimination and retaliation interference with a business opportunity. The district judge excluded ~550 pages of factual evidence for failure to authenticate each page *and* Ms. DeBose's pleadings. On September 1, 2017, Ms. DeBose filed notice of appeal of the magistrate's order, (Doc. 144), Appeal No. 17-14025; the court of appeals dismissed 17-14025 for lack of jurisdiction but subsequently granted Ms. DeBose's motion for reconsideration in part, to the extent of considering the matter upon the filing of a later appeal, (Doc. 244). On October 26, 2017, Ms. DeBose appealed, (Doc. 229), the summary judgment Opinion and Order, Appeal No. 17-14793. While 17-14793 was in progress, Ellucian, LP produced pursuant to a state court order, 249 pages of contract-related documents, including the

alleged conspiratorial agreement with USFBOT, pursuant to Ms. DeBose's public record case(s)[3].

On December 8, 2017, Ms. DeBose filed a motion for relief from judgment, (Doc. 238), of the summary judgment Opinion and Order. On December 28, 2017, the court of appeals dismissed 17-14793, (Doc. 241). On January 12, 2018, Ms. DeBose moved the district court to certify its summary judgment Opinion and Order as "final and appealable", (Doc. 245). On May 29, 2018, Ms. DeBose appealed the Order, (Doc. 263), denying the motion for relief from judgment and denying certification, Appeal No. 18-12226; the appeal was subsequently dismissed sua sponte for lack of jurisdiction.[4]

After a period of inactivity, on March 4, 2018, Ms. DeBose moved to recuse the presiding judge, (Doc. 250); the presiding judge issued a written order on March 9, 2018, denying the motion for recusal, (Doc. 252). On March 24, 2018, Ms. DeBose noticed the court of her Petition for Mandamus or alternatively Prohibition relief, (Doc. 265), Appeal No. 18-11238. On June 1, 2018, the Eleventh Circuit denied mandamus and/or prohibition relief as *moot*, relief on grounds that Ms. DeBose would have "full review" of the presiding judge's denial of the recusal motion on appeal; therefore, exceptional circumstances for mandamus relief were not available, (Doc. 278).

The trial was moved up from October 1, 2018 to September 10, 2018 through September 26, 2018. The district court failed impose any sanction or compel a key witness with Ellucian LP and fact witnesses with the University of North Florida to appear pursuant to Rule

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[3] 15-CA-5663 against state agency USFBOT, 17-CA-2114 against contractor Ellucian, LP.

[4] September 10, 2018, Day 1 of the trial against USFBOT.

45 and Ms. DeBose's subpoenas, (Doc. 488, pg. 80:18-25). A prior motion by USFBOT for the witness to appear by videotaped deposition *de bene esse* was denied, (Doc. 273). As a concession, the district court admitted the deposition of the witness and that it would read to the jury. USFBOT's representative gave an alleged *"race neutral"* reason for moving to strike a black female juror, (Doc. 487, pg. 132:1-22, *"she seems to be -- she's a housekeeper"*). While the district judge denied the strike, (Doc 487, pg. 132:20-24, *"Well, I'm not buying it..."*), the juror later requested to be excused for purported medical reasons, resulting in a non-diverse or "all white" jury, (Doc. 491, pg. 34:4-5). The district court expressed that the jurors "have said they can be fair and impartial," (Doc. 491, pg. 34:6-8). Following testimony supporting Ms. DeBose's prima facie case, (Docs. 489-491), USFBOT made an oral motion for a mistrial, (Doc. 447). The district court excluded direct evidence of USFBOT's Provost's involvement in USFBOT's alleged conspiracy with Ellucian, LP, (Doc. 410, Exhibit 216). In USFBOT's Objections, (Doc. 414) to Plaintiff's Exhibits, Exhibit 216 was not excepted. The district court put Ms. DeBose on a chess clock and would not allow her to testify on the merits but only as to damages, (Docs. 467, 495). At trial, USFBOT made an oral pre-verdict motion for Judgment as a Matter of Law ("JMOL"), as did Ms. DeBose, (Doc. 456, 464, 465). The district court "deferred" ruling on September 24, 2018, (Doc. 466) but on September 26, 2018, denied the motions, (Doc. 468), and submitted the case to the jury, (Doc. 470).

On September 26, 2018, a unanimous jury entered a verdict for Ms. DeBose, (Doc. 471). On October 2, 2018, judgment was awarded in favor of Angela W. DeBose in the amount of $310,500.00 and against University of South Florida Board of Trustees ("USFBOT") on Plaintiff's "disparate treatment race discrimination and retaliation claims, in accordance with the jury's verdict,"

(Doc. 475). On October 4, 2018, USFBOT filed a motion to Alter/Amend the Judgment, arguing it was a split verdict—where one party wins some claims and the other party wins others or when a jury makes a decision that is not unanimous, (Doc. 479). Rule 59 of the Federal Rules of Civil Procedure allows a court to reconsider and modify the judgment if there are compelling reasons to do so, such as a clear error of law or fact made during the trial (e.g., clear mistake in the jury's verdict or newly discovered evidence that could significantly change the outcome). The district judge granted the motion in part, altering the judgment on October 5, 2018 to: "Plaintiff Angela DeBose in the amount of $310,500.00... *on Plaintiff's retaliation claim*, in accordance with the jury's verdict," (Doc. 482). Stating separately: "Judgment is entered in favor of Plaintiff... on her disparate treatment race discrimination claim, in accordance with the jury's verdict; *Plaintiff takes nothing on her claim for compensatory or back pay damages*, (Id.) The district court stopped short of declaring a split verdict, stating, "[t]o the extent that the requests made in Defendant's motion are inconsistent with 482 the Court's amended final judgment, the motion is DENIED," (Doc. 486).

On October 29, 2018, USFBOT submitted a post-verdict motion for JMOL or alternatively a new trial, (Doc. 504). The standard for deciding a motion for JMOL is: [JMOL] is warranted when no "legally sufficient evidentiary basis" exists for a reasonable jury to have found in favor of a party on an issue on which the party has been fully heard. Though the great weight of the evidence was in Ms. DeBose's favor, on February 14, 2019, five months after the verdict and failing to hold any post-judgment proceeding, the district court reversed the jury that could be "fair and impartial" and granted USF's JMOL, (Doc. 548).

Ms. DeBose filed a motion for a new trial, (Doc. 551). On February 28, 2019, the district court ordered that USFBOT would have 10 additional pages to oppose DeBose's motion for new trial because of a technical error (i.e. font), (Doc. 556), and granted USFBOT an extension to time to respond to the new trial motion over Ms. DeBose's Objection, (Doc. 558). The district judge ordered mediation with USFBOT and Ellucian, LP, (Doc. 555). On March 18, 2019, the mediator disclosed USFBOT's representative 8-page *ex parte* letter to her. There were no consequences to USFBOT for compromising the mediator's neutrality, creating an unfair advantage, and invalidating the mediation process.[5] Ms. DeBose was asked at mediation, "*What do you think will happen* to your pending actions in federal and state court if you don't settle?" On March 10, 2019, Ms. DeBose appealed, (Doc. 561). On April 24, 2019, the district court denied Ms. DeBose, the verdict winner against USFBOT, a new trial, (Doc. 571). The Eleventh Circuit Clerk consolidated the new Appeal No. 19-10865 (overturning jury verdict and denying new trial) with briefed Appeal No. 18-14637 (summary judgment Order and Opinion dismissing Ellucian LP as a party), despite Ms. DeBose's Objection. The Eleventh Circuit panel subsequently affirmed the district court:

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[5] Similar conduct tainted prior efforts to settle the matter. 11/18/2016 mediation, (Doc. 56), the mediator scoffed at allegations by Plaintiff's counsel that USFBOT destroyed Ms. DeBose's personnel file; 03/18/2017 mediation, (Doc. 85), the mediator asked Ms. DeBose for proof during the mediation that she notified USFBOT of its deficient response for her supervisor's emails, which USFBOT denied. Ms. DeBose provided the 9/14/2015 email as requested, abruptly resulting in a failed mediation. 08/13/2018 mediation, (Doc. 344), mediator informed Ms. DeBose that the judge would be "*madder than you could ever imagine*" if the case didn't settle today.

DeBose also challenges the district court's refusal to consider 550 unauthenticated documents. She is correct that Federal Rule of Civil Procedure 56 does not require authentication of documents at the summary-judgment stage, and that neither defendant objected to the documents as inadmissible. The court's error in excluding these documents, however, did not affect DeBose's substantial rights, as a review of the documents shows that they would not have affected the outcome. Any error was therefore harmless.

While the panel can review evidence, it was Ellucian, LP's burden to demonstrate that the district court's mass exclusion of evidence and Ms. DeBose's pleadings was harmless error and did not affect the outcome of the case. The court of appeals did not discuss or make any findings as to how Ellucian, LP satisfied its burden. The pleadings Ms. DeBose filed concerning her overturned jury verdict and denial of a new trial were not reviewed. Ms. DeBose filed a Petition for Writ of Certiorari, Case No. 20-1140, to the Supreme Court of the United States. The court of appeals declared Appeal No. 18-14637 was Ms. DeBose's chief case—not 19-10865. The Supreme Court of the United States (SCOTUS) will review an overturned jury verdict if it meets certain criteria, including: (1) the case involves an unusually important legal principle; (2) two or more federal appellate courts have interpreted a law differently; (3) the case falls under a small number of special circumstances where SCOTUS is required by law to hear an appeal; or (4) the defendant appeals the decision. The consolidation made the petition a challenge to a summary judgment decision instead of a constitutional question concerning the Seventh Amendment (Bill of Rights) protection of the right to a

jury trial in certain civil cases, preventing courts from overturning a jury's findings of fact—where Ellucian, LP was the respondent. Ms. DeBose's petition was not selected for Certiorari Review.

Ms. DeBose filed litigation against Ellucian, LP in state court that was subsequently removed, as Case No. 8:18-cv-00473-EAK-AAS, *DeBose v. Ellucian, L.P. et al.* Ms. DeBose contested the removal and prevailed; the case was subsequently remanded but removed by Ellucian, LP a second time, as Case 8:19-cv-00200-JSM-AEP, *Debose v. Ellucian, LP* et al. All matters between Ellucian, LP and Ms. DeBose were resolved in a joint stipulation approved by the court(s)—including cases 8:15-cv-02787-EAK-AEP, (Doc. 595), 8:19-cv-00200-JSM-AEP, (Doc. 42), and state action 19-CA-4473.

Ms. Debose filed the instant case below, *Debose v. United States* et al, Case No. 8:21-cv-02127-SDM-AAS, on September 7, 2021 in the Middle District of Florida under the Federal Tort Claims Act (FTCA)—which authorizes plaintiffs to obtain compensation from the United States for the torts of its employees, (Doc. 1). See, e.g., 28 U.S.C. § 2674 ("The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances."). At that time, Ms. DeBose was not found or listed by any court for being vexatious.

The complaint was stricken for technical reasons, and Ms. DeBose was ordered and filed an Amended Complaint, (Doc. 11), on September 20, 2021. On September 30, 2021, Ms. DeBose filed a Second Amended Complaint, (Doc. 13), which was stricken as unauthorized, (Doc. 16). Ms. DeBose filed a motion for leave to file her Second Amended Complaint, (Doc. 17). On October 25, 2021, Defendants Greenberg Traurig,

P.A. and Richard McCrea, (aka GTLAW), filed a motion to dismiss all claims against them, and for other relief, (Doc. 18). After filing the motion, the Defendants' attorneys filed Notice of Appearance, (Doc. 19). On October 29, 2021, the Court issued an Order granting Ms. DeBose leave to file her Second Amended Complaint, (Doc. 24), but failed to simultaneously strike GTLAW's October 25, 2021 motion to dismiss. On November 2, 2021, Ms. DeBose filed a Response in Opposition, (Doc. 26), to contest special appearance or a jurisdictional challenge since the motion to dismiss was filed before appearance by counsel against the *stricken* Amended Complaint that was "*moot*" or not ripe for adjudication. Ms. DeBose disputed the allegation of vexation because moving party GTLAW failed to demonstrate vexation or make an affirmative showing of repetitive actions against GTLAW with no legitimate purpose or that the case against them had little chance of prevailing on the merits. The litigation cited by GTLAW failed to satisfy the "four identities," was not decided by a competent court of jurisdiction, and was not "finally or adversely" determined against Ms. DeBose. On November 3, 2021, Ms. DeBose filed a Second Amended Complaint, (Doc. 27). Because GTLAW's prior motion to dismiss was in error, on November 16, 2021, a second successive 12(b)(6) motion to dismiss requesting other relief was filed, (Doc. 30), identifying the Second Amended Complaint as the active complaint under review. On January 13, 2022, Plaintiff filed a motion to compel GTLAW to Answer, (Doc. 54), on grounds that it was error to insulate the defendants in anticipation of a forgiving appellate court by considering a successive pre-answer motion to dismiss for failure to state a claim. *Leyse v. Bank of Am. Nat'l Ass'n*, 804 F.3d 316, 321 (3d Cir. 2015); *Albers v. Bd. of Cty. Comm'rs of Jefferson Cty.*, 771 F.3d 697, 703 (10th Cir. 2014); *English v. Dyke*, 23 F.3d 1086, 1090-91 (6th Cir. 1994). The district court immediately denied the Motion to Compel the same day,

(Doc. 55), similar to the district court's conduct in granting an indefinite stay of discovery and the requirement to file a Case Management Report, (Doc. 37). The District Court stated in the order granting the stay, that it had the potential to dispose of the entire action, based on its "preliminary peek" at the GTLAW Defendant's motion to dismiss, (Doc. 30), on the basis of *Feldman v. Flood,* 176 F.R.D. 651 (M.D. Fla. 1997). Plaintiff timely sought clarification, (Doc. 42), asserting the stay granted by the District Court was not like *Feldman* because the case did not order an immediate stay of discovery, but instead set a hearing on the motion. The court in *Feldman* held a stay of discovery not appropriate unless pending dispositive motion would dispose of entire action. At the time of the district court's preliminary peek, only one other defendant, the Thirteenth Judicial Circuit, filed notice of appearance but filed no response nor answered the Second Amended Complaint. Ms. DeBose moved for entry of a default against Defendant United States of America, which file no paper and was subject to default judgment. GTLAW's pending motion was insufficient to automatically stay discovery or automatically halt the discovery process under Feldman. The district court failed to consider other factors based on the principle established in *Feldman.*

On January 22, 2022, Ms. DeBose responded in opposition, (Doc. 58), to GTLAW's Motion to Dismiss, (and filed new evidence, (Doc. 58, #1-6) to show that the state court's orders and/or judgment were not rendered by a court of competent jurisdiction but a phantom or sham court, (Doc. 83-3, pgs. 1-11). On January 13, 2022 Ms. DeBose filed a motion for leave to file a Third Amended Complaint, (Doc. 53). On February 1, 2022, DeBose moved for entry of a default, (Doc. 62), against the United States. The United States filed documents in the case two months later on April 1, 2022, making a

Greenberg Traurig, P.A.; and 19-CA-4473, *DeBose v. Ellucian, LP, Littler Mendelson, P.C., Greenberg Traurig, P.A., Richard McCrea, University of South Florida Board of Trustees, and Gerard Solis.*

The underlying state court injunction order was appealed in 2D22-2779 on July 25, 2022 and still pending appeal when the district court issued its injunction on September 12, 2022. Therefore, the state court actions were not "finally and adversely determined" because an appeal pending would not qualify as "final" under Florida Vexatious Litigant Law, § 68.093, Fla. Stat. Additionally, Thirteenth Judicial Circuit Administrative Order (S-2017-038) prevented Frivolous Litigation Sanction Order from being applied in prefiling orders issued under Florida Vexatious Litigant Law (§ 68.093, Fla. Stat.). Therefore, the underlying injunction order issued in the three state court cases was invalid and thus invalidated the district court injunction order.

""A Rule 12(b)(6) motion is intended to test the legal sufficiency of the complaint. However, the complaint need only set forth 'a short and plain statement of the claim, . . . giving the defendant fair notice of the claim and the grounds upon which it rests.'" Rule 8(a)(2); *See also Evans v. McClain of Ga., Inc.*, 131 F.3d 957, 964 n.2 (11th Cir. 1997). The Defendant's MTD prematurely asked the Court to restrict the disputed facts and issues *before* a case management scheduling order has been issued and discovery ordered. Such simplified "notice pleading" should be made possible after the liberal opportunity for discovery and the other pretrial procedures established by the Rules. Under Rule 12(b)(6), a court can dismiss an entire lawsuit and all parties involved if the complaint fails to state a legally viable claim upon which relief can be granted, essentially meaning that even if all alleged facts are

true, the law does not provide a basis for the plaintiff's requested remedy; however, courts typically scrutinize such motions carefully and will not dismiss a case unless there is a clear lack of a legal basis for the claim. In considering a Rule 12(b)(6) motion, a court must accept all the allegations in a plaintiff's complaint as true and construe them in the light most favorable to the plaintiff. *Morris v. SSE, Inc.*, 843 F.2d 489, 492 (11th Cir. 1988); *DeLong Equipment Company v. Washington Mills Abrasive Co.*, 840 F.2d 843, 847 (11th Cir. 1988). "Rule 12(b)(6) is not a device for testing the truth of what is asserted or for determining whether a plaintiff has any evidence to back up what is in the complaint. . . . The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. It may even appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. "Dismissal under Rule 12(b)(6) is proper when, taking the material allegations of the complaint as admitted, and construing them in plaintiff's favor, the court finds that the plaintiff has failed to allege all the material elements of her cause of action." *Financial Sec. v. Stephens, Inc.*, 500 F.3d 1276 (11th Cir. 2007).

Considering that the grounds for Plaintiff's theories of recovery are largely dependent upon factual circumstances, it was premature and improper to grant GTLAW the relief it requested. A review of the four cases shows that neither GTLAW nor USFBOT had a finally and adversely determined judgment in its favor and against Ms. DeBose. Because of the joint stipulation between Ellucian, LP and Ms. DeBose, 8:19-cv-00200-JSM-AEP and 19-CA-4473 was not adversely determined against Ms. DeBose.

In sum, the District Court followed an irregular procedure and misapplied the principles established in *Feldman* to dismiss all claims and all parties. The District Court violated Rule 65, Fla. Stat. § 68.093, and Administrative Order (S-2017-038) to issue a prefiling injunction against Ms. DeBose on the basis of alleged vexatiousness. The injunction has resulted in irreparable harm because it has been used to completely foreclose Ms. DeBose's access to the courts. The district court has "held out" the injunction order as permanent—not temporary, in effect—not expired; the District Court prevented Ms. DeBose's efforts for declaratory relief or to dissolve/set aside the injunction order.

ARGUMENT

The injunction has not been temporary but "an ongoing injury for which there can be no compensation later." The Seventh Amendment to the U.S. Constitution guarantees the right to a jury trial in certain civil cases. "Deprivation of a jury trial" is generally considered "irreparable harm" because the right to a jury trial is a fundamental constitutional right that cannot be adequately compensated with money damages if denied, meaning the harm caused cannot be fully rectified later on; therefore, courts may view it as a significant factor when deciding to grant injunctive relief.

The rules of civil procedure require every order granting a temporary injunction to: (1) specifically state the reasons for its issuance and state, with reasonable detail and not by reference to the complaint or other document, the acts sought to be restrained; and (2) contain a trial setting date. The procedural requirements of this rule are mandatory. A temporary injunction that does not meet these requirements is "subject to being declared void and dissolved." ... Here,

the temporary injunction does not contain any statement explaining the reasons for its issuance, and it does not set a trial date. Therefore, the temporary injunction is void.

Injunctions designed to protect against abusive and vexatious litigation cannot "completely foreclose[ ] ... any access to the court." *Martin-Trigona v. Shaw*, 986 F.2d 1384 (11th Cir. 1993) (per curiam) (quotation omitted). When imposing injunctions for this purpose, "courts must carefully observe the fine line between legitimate restraints and an impermissible restriction" on the right to access the courts. *Procup v. Strickland*, 792 F.2d 1069, 1072 (11th Cir. 1986). The injunction has resulted in manifest injustice or a clear and unmistakable unfairness in the decision or legal ruling, warranting this Court's review or reconsideration.

I. Whether the "with" and/or "without" notice rules of Rule 65 for a preliminary injunction or temporary restraining order require a hearing?

Under Rule 65 of the Federal Rules of Civil Procedure, a hearing is generally required before a court can issue a preliminary injunction, meaning that notice must be given to the adverse party and a hearing will typically be held to determine if the injunction should be granted. In certain emergency situations, a temporary restraining order can be issued without prior notice, but a hearing to confirm the injunction must then be held promptly. A preliminary injunction cannot be issued without providing notice to the opposing party. Under Rule 65, "acceptable notice" generally means providing the opposing party with written or oral notification before a court issues a preliminary injunction, unless there are exceptional circumstances where immediate and irreparable harm is likely to occur, allowing for a temporary restraining order without prior notice with

specific justifications provided to the court; in such cases, the moving party must still demonstrate reasonable efforts to provide notice as soon as possible. The notice should clearly state the purpose of the injunction request, the hearing date and time, and the potential consequences of non-compliance. If seeking a temporary restraining order without notice, the attorney must certify in writing the attempts made to provide notice and the reasons why immediate notice is not possible. The court may hold a hearing to determine if the injunction should be granted, which can sometimes be considered a "mini-trial" on the merits of the case.

In this case, the district court strayed from Rule 65 and issued an injunction based on the mere existence of litigation—without notice or a showing of immediate and irreparable injury, loss, or damage to the movant before the Petitioner could be heard in opposition. The movant's attorney did not certify in writing any efforts made to give notice and the reasons why it should not be required. There was no injunction hearing nor any proceeding where the Petitioner was heard or had opportunity to challenge. Neither on 2 days' notice nor at any other timeframe has the Petitioner been allowed to appear or dissolve/modify the injunction order. The district court denied the motion to dissolve the injunction, without a hearing.

If a Temporary Restraining Order ("TRO") under Rule 65 was issued rather than an injunction, the TRO expired 14 days after its issuance; however, the district court continues to hold out the injunction order as though it is still in effect, giving it the effect of a "universal" injunction against the Petitioner to prevent the regular progression of cases, in federal and state court—offending the standard for issuing such injunctions, articulated in *Winter v. Natural Resources*

Defense Council, Inc., 555 U.S. 7 (2008), requiring that a party seeking a preliminary injunction must establish: (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest. This is a high burden, as courts recognize that a preliminary injunction is an extraordinary equitable remedy that is never awarded as of right. The Supreme Court found that "nothing ... overcomes the presumption that the four traditional criteria govern a preliminary-injunction request by the Board." While Section 10(j) authorizes a district court "to grant to the Board such temporary relief . . . as it deems just and proper," the Supreme Court stated that, "***we do not understand the statutory directive to grant relief when the district court 'deems' it 'just and proper' to jettison the normal equitable rules.***"

Under Rule 65(b)(2), the injunction order expires at the time after entry—not to exceed 14 days. The court can extend it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record. Ms. DeBose did not consent; the injunction/TRO should have expired on September 26, 2022. The district judge continued to enforce the injunction after 14 days and has prompted/promoted his "universal" injunction locking Ms. DeBose out of court:

- 10/14/2022 – denied motion to set aside judgment (Doc. 89);

- 11/08/2022 – denied motion to compel Greenberg Traurig, P.A. and McCrea to Answer—having dismissed the Second Amended and mass denying all outstanding orders (including Ms. DeBose's motion for

leave to file her proposed Third Amended Complaint), (Doc. 96);

- 12/08/2022 – denied motion to reopen case; if the injunction or TRO expired, the district judge continued to enforce it, making the motion to reopen the administratively closed case necessary, (Doc. 106);

- 01/17/2023 – denied motion to set aside judgment based on newly discovered evidence, (Doc. 107); and

- 03/03/2023 - denied Motion to Disqualify Judge and Dissolve/Vacate Injunction Order, (Doc. 109) based on nonwaivable and/or undisclosed actual or potential conflicts of interest;

In *Martin-Trigona*, the plaintiff had already filed at least 250 civil suits throughout the United States. The accusation of vexation against the Petitioner concerns one federal case and three state court cases that fail to satisfy § 68.093. Ms. DeBose filed appeals, as a matter of right or discretionary review under 28 U.S.C. 1292(b), because waiting would be prejudicial to her rights. Ms. DeBose requested certification, when appropriate or if there were doubts about finality of a judgment. Neither the district court nor the court of appeals analyzed the appeals—e.g., to consider whether the interlocutory appeals were of an order(s) that conclusively determined the disputed question; "resolve[d] an issue completely separate from the merits of the action"; or was "effectively unreviewable on appeal from a final judgment."

II. Is Rule 65(a)(2), preservation of adverse party's right to a jury trial, violated when the time set for

the injunction / TRO is indefinite or "held out" as permanent with no specific end in sight.

If a court sets an indefinite or undefined time for an injunction under Rule 65(a)(2), it could potentially violate a party's right to a jury trial, as the rule explicitly states that the court must "preserve any party's right to a jury trial" when consolidating a preliminary injunction hearing with the trial on the merits; an indefinite timeframe could effectively deny a party the opportunity to have their case decided by a jury within a reasonable time frame.

The purpose of Rule 65(a)(2) is to allow a court to consolidate a hearing on a preliminary injunction with the trial on the merits, which can be efficient when much of the evidence would be relevant to both stages. However, when consolidating hearings, the court must ensure that neither party is deprived of the right to a jury trial. An indefinite period, it could significantly delay the trial on the merits, potentially causing a *de facto* denial of a jury trial for the party seeking it.

Ms. DeBose raised objections, sought clarification, requested relief from judgment, and appealed the decision. Dissolution / modification of the injunction order has not permitted, nor has declaratory relief that the injunction order is expired and was invalid and overbroad. The case is administratively closed and, Ms. DeBose, the adverse party has not been permitted to reopen the case. The jury trial demanded was not set, as no case management scheduling order was issued. See *Procup v. Strickland*, 792 F.2d 1069 (11th Cir. 1986) where Eleventh Circuit recognized the authority of the district court to impose serious restrictions but held that the district court's injunction was overbroad. The court's central holding is that civil litigants "cannot be completely foreclosed from any access to the court". The

district court incorporated an invalid, overbroad order with its order. This made its order invalid, overbroad, and not narrowly tailored to achieve a compelling government interest—subject to strict scrutiny. The corporate disclosures statements submitted by GTLAW, (Docs. 47, 48), show they are private actors and not an arm of the government.

III. Does Florida's Vexatious Litigant Law "[a]ny person or entity previously found to be a vexatious litigant pursuant to this section" require a final and adversely determined action.

Under Florida's Vexatious Litigant Law, Florida Statute 68.093, to be considered a "vexatious litigant" and fall under this designation, a person or entity must have had previous actions "finally and adversely determined" against them, meaning the case must have been concluded with a final judgment against them; an appeal pending would not qualify as "final" under this law. Cases 15-CA-5663, 17-CA-1652, 19-CA-4473 were pending appeal in 2D22-2779 before the Florida Second District Court of Appeals. There are other factual disputes that the district court did not consider that show the four cases were not "final" or "adverse" against DeBose. The law requires both prongs to be met.

IV. Whether Rule 12(b)(6), failure to state a claim upon which relief can be granted, allows for mass dismissal of all parties and an entire lawsuit.

Under Rule 12(b)(6), a court can dismiss an entire lawsuit and all parties involved if the complaint fails to state a legally viable claim upon which relief can be granted—that even if all alleged facts are true, the law does not provide a basis for the plaintiff's requested remedy. However, courts typically scrutinize such motions carefully and will not dismiss a case unless

there is a clear lack of a legal basis for the claim. See *Neitzke v. Williams*, 490 U.S. 319, 109 S. Ct. 1827 (1989).

The court must accept all factual allegations in the complaint as true and determine whether, even with those facts, the plaintiff has stated a plausible claim for relief under the law. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 127 S.Ct. 1955, 1959, 167 L.Ed.2d 929 (2007); *See also Neitzke v. Williams,* 490 U.S. 319, 326–27, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) (When reviewing a motion to dismiss under Rule 12(b)(6), a court will accept all well-pleaded facts in the complaint as true and construe them in the light most favorable to the plaintiff.)

A dismissal under Rule 12(b)(6) is usually "with prejudice," meaning the plaintiff cannot refile the same claim unless the court specifies otherwise. However, the dismissal of Ms. DeBose's state court actions "with prejudice" does not in and of itself render the claims in the action(s) preclusive if they otherwise would not be. The "with prejudice" label does not itself determine a dismissal's preclusive effect. *See Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001) (noting that while a dismissal "without prejudice" will "ordinarily (though not always) have the consequence of not barring the claim from other courts," its "primary meaning relates to the dismissing court itself"); *see also Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 396, 116 S.Ct. 873, 134 L.Ed.2d 6 (1996) (Ginsburg, J., concurring in part and dissenting in part) ("A court conducting an action cannot predetermine the res judicata effect of the judgment; that effect can be tested only in a subsequent action.").

The court of appeals erred by holding that the District Court's dismissal of Ms. DeBose's claims in her second

amended complaint required dismissal under the doctrine of res judicata. The doctrine of res judicata fails if a case was dismissed for lack of jurisdiction, improper venue, a voluntary dismissal by the plaintiff, or if the prior judgment was not final on the merits. Ms. DeBose presented evidence to show the cases were not decided based on the core issues involved and by judge(s) exceeding their jurisdiction. The essential elements of a valid claim preclusion were not met in the initial case(s). Specifically, the state court judges lacked jurisdiction in the first case; therefore, the doctrine of res judicata cannot be used to bar a subsequent lawsuit.

Furthermore, Federal Rules of Civil Procedure 15 promotes liberal amendment practices to ensure cases are decided on their merits, not technicalities. Unless there are exceptional circumstances, a plaintiff should be given an opportunity to correct flaws in her complaint through amendment before dismissing the case. Leave to amend is to "be freely given when justice so requires." Fed.R.Civ.Pro. 15(a). *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).

Ms. DeBose requested leave to file a Third Amended Complaint. The district court's injunction order included a mass denial of all parties, all claims, and all pending motions—including Ms. DeBose's motion to file a Third Amended Complaint.

CONCLUSION

The Court is respectfully requested to grant the petition for a writ of certiorari. The judgment of the district court should be reversed.

Respectfully submitted,

Angela W. DeBose, Petitioner