

CASE NO. 23-12488-HH

In The  
Supreme Court of the United States

JULIA M. ROBINSON,

PETITIONER,

V.

THE UNITED STATES OF AMERICA,  
FEDEX INC., FEDEX, JANE DOES,  
AND JOHN DOES

RESPONDENTS,

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

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APPENDIX

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## APPENDIX

**APPENDIX A**

In the United States Court of Appeals For the Eleventh Circuit

No. 23-12488

JULIA M. ROBINSON, Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, U.S. Department of Justice, Defendants,

FEDEX INC.

FEDEX,

JOHN DOES,

JANE DOES,

THE UNITED STATES OF AMERICA,

FEDEX OFFICE,

Order of the Court Filed 10/31/2024

23-12453

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

DC. Docket No. 1:23-cv-0004-MHC

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before Jill PRYOR, BRANCH, and Luck, 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 Panel Rehearing also is DENIED. FRAP 40. In the [DOT NOT PUBLISH] United States Court of Appeals For the Eleventh Circuit

**APPENDIX B**

In the United States Court of Appeals For the Eleventh Circuit

No. 23-12488

JULIA M. ROBINSON, Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, U.S. Department of Justice, Defendants,

FEDEX INC.

FEDEX,

JOHN DOES,

JANE DOES,

THE UNITED STATES OF AMERICA,

FEDEX OFFICE,

Opinion Order of the Court Filed 08/30/2024

23-12453

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia  
DC. Docket No. 1:23-cv-0004-MHC

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC  
Before Jill PRYOR, BRANCH, and Luck, Circuit Judges.

PER CURIAM:

Julia Robinson appeals the district court's orders dismissing the United States as a defendant for lack of service and dismissing the rest of her lawsuit for failure to comply with a court order. After careful review, we affirm. **FACTUAL BACKGROUND AND PROCEDURAL HISTORY** Robinson's forty-page complaint

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mostly single-spaced with repeated paragraph numbers—sought \$280,570,900 and injunctive relief. While we won't delve into the specifics, it alleged FedEx, FedEx Office and Print Services, Inc. (collectively, FedEx), the United States, and several John and Jane Does conspired against her. Robinson's complaint asserted a litany of claims lumped into a single paragraph that didn't distinguish between any of the defendants. It also didn't specify the causes of action brought against 23-12488 of the Court 3 FedEx specifically. FedEx moved to dismiss the complaint, arguing that it was a shotgun pleading. Soon after, the district court ordered Robinson to demonstrate why it shouldn't dismiss the United States for lack of timely service because she didn't comply with the requirements for service on the United States. She responded by filing 455 pages of briefing and documents, but she never provided sufficient proof of service on the United States. The district court then dismissed the United States for lack of service, dismissed certain claims against FedEx with prejudice, and dismissed all other claims without prejudice because the complaint was a shotgun pleading. The district court directed Robinson to file an amended complaint that addressed the deficiencies in her complaint, including by "identify[ing] each of her legal causes of action against FedEx based on separate occurrences in separate counts of the amended complaint, each with its own heading identifying it as a count" and "identify[ing] by reference which specific factual allegations . . . support[ed] each cause of action." It also warned Robinson that failure to comply would result in dismissal. Robinson filed an amended complaint that largely mirrored her first one and failed to cure the deficiencies identified by the district court. The district court sua sponte dismissed Robinson's lawsuit with prejudice under Northern District of Georgia Local Rule 41.3A(2) because she failed to comply with its order. Robinson appealed forty-six days later.

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Opinion of the Court STANDARD OF REVIEW 23-12488 We review de novo our jurisdiction. *Thomas v. Phoebe Putney Health Sys., Inc.*, 972 F.3d 1195, 1200 (11<sup>th</sup> Cir. 2020). A district court's dismissal for failure to timely serve a defendant or for failure to follow a court order is reviewed for an abuse of discretion. *Bilal v. Geo Care, LLC*, 981 F.3d 903, 918 (11<sup>th</sup> Cir. 2020) (lack of service); see *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333, 1337 (11<sup>th</sup> Cir. 2005) (failure to follow court order). Typically, we also review for an abuse of discretion a district court's recusal decision. *Murray v. Scott*, 253 F.3d 1308, 1310 (11<sup>th</sup> Cir. 2001). But if the plaintiff did not move for recusal, we only review for plain error. See *Hamm v. Members of Bd. of Regents of State of Fla.*, 708 F.2d 647, 651 (11<sup>th</sup> Cir. 1983).

DISCUSSION Giving Robinson's brief a liberal reading, as we must, *Timson v. Sampson*, 518 F.3d 870, 874 (11<sup>th</sup> Cir. 2008), she appears to raise three challenges to the district court's orders. First, she argues that the district court erred in dismissing her claims against the United States for lack of service. Second, she contends the district court erred in dismissing her amended complaint as a shotgun pleading. And third, she asserts the district court was biased against her. FedEx responds that we don't have jurisdiction because Robinson's notice of appeal was. We start with jurisdiction and then take Robinson's arguments in turn. 23-12488 Opinion of the Court Jurisdiction 5 FedEx argues that we don't have Jurisdiction because Robinson didn't timely appeal the district court's order. The company acknowledges that a party has sixty days to appeal in cases where the United States is a party, but it contends that the United States never became a party because it wasn't served. See Fed. R. App. P. 4(a)(1)(B)(i). Robinson, thus, had thirty days to file her notice of appeal under the rule for run-of-the-mill civil cases where the United States is not a party. See *id.* R. 4(a)(1)(A). Because Robinson filed

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her notice forty-six days after the district court dismissed the case, FedEx contends, her appeal must be dismissed as untimely. A untimely notice of appeal is a

jurisdictional requirement. *Green v. DEA*, 606 F.3d 1296, 1300 (11th Cir. 2010). “[I]f one of the parties” in a civil case “is . . . the United States,” a party can file a notice of appeal “within 60 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(B)(i). The relevant phrase—“one of the parties” was in 2011. Fed. R. App. P. 4(a)(1)(B) (2011). “One . . . against whom a lawsuit is brought” is a “party.” *Party*, Black’s Law Dictionary (9th ed. 2009); see also *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 933 (2009) (interpreting Federal Rule of Appellate Procedure 4). Robinson brought this lawsuit against the United States, so it was clearly “one of the parties.” Thus, the sixty day, rather than the thirty-day, time limit for filing the notice of appeal applied. See Fed. R. App. P. 4(a)(1)(B)(i). Because Robinson filed her notice of Opinion of the Court 23-12488 appeal within sixty days of the district court’s final order, her appeal was Timely and we have jurisdiction to consider it.<sup>1</sup> Service on the United States Robinson first argues that the district court erred in dismissing her claims against the United States for lack of service. Federal Rule of Civil Procedure 4 provides that, to serve the United States, a party must either (1) deliver a copy of the summons and complaint to “the United States attorney for the district where the action is brought,” an assistant United States attorney, or a designated clerical employee; or (2) send a copy of the summons and complaint “by registered or certified mail to the civil-process clerk at the United States attorney’s office.” Fed. R. Civ. P. 4(i)(1)(A). Additionally, the party must “send a copy of each by registered or certified mail to the Attorney General.” Fed. R. Civ. P. 4(i)(1)(B). “If a defendant

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is not served within 90 days after the complaint is filed, 1 We're not convinced by the three cases FedEx cites for the proposition that a defendant only becomes a party for Federal Rule of Appellate Procedure 4 purposes after it is served because those cases were not applying or interpreting appellate rule 4. See *Saucier v. Katz*, 533 U.S. 194, 211 n.1 (2001) (Ginsburg, J., concurring in the judgment) (explaining why one of defendants "did not become a party to th[e] litigation"); *Murphy Bros., Inc. v. Mithetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) (stating only that "one becomes a party officially . . . only upon service of a summons" when determining when a defendant's time to remove a case begins to run); *Loman Dev. Co., Inc. v. Daytona Hotel & Motel Suppliers, Inc.*, 817 F.2d 1533, 1536 (11th Cir. 1987) (holding that unserved defendants were not parties under an old version of Federal Rule of Civil Procedure 54). Eisenstein, on the other hand, was interpreting and apply appellate rule 4. of the Court 7 the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). At most, Robinson's proof of service showed that she served someone at the United States Attorney's office; there was no indication she also sent a copy to the Attorney General, as required by civil rule 4(i). By the time the district court considered the service issue, nearly 140 days had elapsed since Robinson filed her complaint and she was well outside of civil rule 4(m)'s time limit. Before dismissing the United States, the district court, as it was required to do, "consider[ed] whether any other circumstances warrant[ed] an extension of time" and determined there were none. See *Lepone-Dempsey v. Carroll Cnty. Comm'rs*, 476 F.3d 1277, 1282 (11th Cir. 2007). We see no abuse of discretion in that determination. Dismissal with Prejudice Next, Robinson contends that the district court abused its discretion when dismissing her amended complaint. "Dismissal of

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an action for failure to comply with” a court order “is permitted under” rule 41(b). *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989); see also N.D. Ga. L.R. 41.3 (stating the court “may . . . dismiss a civil case for want of prosecution if . . . [a] plaintiff . . . fail[s] or refuse[s] to obey a lawful order of the [c]ourt”). “While dismissal is an extraordinary remedy, dismissal [with prejudice] upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Moon*, 863 F.2d at 837. Before a district court dismisses a case with prejudice, it must find “a clear record of delay or willful conduct and that lesser sanctions are inadequate to correct such conduct.” *Betty K*, 432 F.3d at 1339. The district court does not need to make that finding explicitly and satisfies the requirement when its order contains an “implicit determination.” *Zocaras v. Castro*, 465 F.3d 479, 484 (11th Cir. 2006). Robinson hasn’t shown an abuse of discretion here. We have repeatedly condemned the use of “shotgun pleadings,” and Robinson’s initial complaint was a textbook shotgun pleading because it did “not separat[e] into a different count each cause of action or claim for relief.” *Weiland v. Palm Beach County Sherriff’s Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015). When dismissing the initial complaint, the district court “forewarned” Robinson that failure to correct the shotgun issue would result in dismissal. *Moon*, 863 F.2d at 837. And we find more than enough support for its implicit finding of a clear pattern of delay or willful conduct and that a lesser sanction would be inadequate. See *Zocaras*, 465 F.3d at 484. By the time of dismissal, the district court had previously ordered Robinson to demonstrate why the United States shouldn’t be dismissed and to amend her complaint. Robinson instead opted to file hundreds of pages not responsive to the first order and an amended complaint that didn’t cure the second order’s concerns. Bias Finally, Robinson asserts that the district judge assigned to her case was

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“bias[ed]” and that her “cases should’ve been split up amongst other [j]udges.” We read this part of Robinson’s brief as Opinion of the Court 9 an argument that the judge should have recused from the case. “Under [28 U.S.C.] section 455, a judge has a self-enforcing obligation to recuse himself where the proper legal grounds exist.” Murray, 253 F.3d at 1310 (quotation omitted). “Bias sufficient to disqualify a judge . . . must stem from extrajudicial sources, unless the judge’s acts demonstrate ‘such pervasive bias and prejudice that it unfairly prejudices one of the parties.’” United States v. Bailey, 175 F.3d 966, 968 (11th Cir. 1999) (quoting United States v. Ramos, 933 F.2d 968, 973 (11th Cir. 1991)). Since she didn’t move to recuse the district judge, Robinson must show plain error in the district judge’s decision to not recuse, Hamm, 708 F.2d at 651, and she hasn’t done so here. Robinson simply disagrees with the district court’s rulings in this case and another case Robinson brought before the same district court judge, and nothing in the district court’s decisions indicates any bias whatsoever against Robinson. See Bailey, 175 F.3d at 968. Accordingly, the district court did not plainly err in failing to recuse.

**CONCLUSION** Finding no error in the district court’s decisions to dismiss Robinson’s case and not recuse itself; we affirm the district court.

Affirmed

## APPENDIX C

In The United States District Court for The Northern District of Georgia  
Atlanta Division

JULIA M. ROBINSON Plaintiff,

v.

UNITED STATES OF AMERICA, U.S. Department of Justice, Defendants,

FEDEX INC.

FEDEX,

JOHN DOES,

JANE DOES,

THE UNITED STATES OF AMERICA,

FEDEX OFFICE,

CIVIL ACTION FILE CASE NO. 1:23-CV-00043-MHC

ORDER FILED 06/12/2023

On May 24, 2023, the Court granted in part FedEx Office and Print Services, Inc. ("FedEx Office and Print"),<sup>1</sup> and FedEx (collectively, "FedEx")'s Motion to Dismiss, dismissing Plaintiffs claims brought pursuant to the Federal Tort Claims Act (TTCA) and 42 U.S.C. § 1983. May 24, 2023, Order [Doc. 15] at 15-23, 3233. To the extent Plaintiff was attempting to assert some other claim against FedEx, the Court found that Plaintiffs Complaint was a shotgun pleading

replete with factual allegations and rambling legal conclusions . . . comprised of disjointed factual allegations coupled with myriad cut and pasted legal citations that make little sense and leave the Court (and 1 FedEx Office and Print is

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incorrectly identified in the Complaint [Doc. 1] as FedEx Inc. presumably any defendant) guessing as to what claim(s) she is asserting and making it impossible to discern what factual allegations might support any claim.

Id. at 23-26. "Due to the nature of the disjointed factual narrative, the myriad superfluous legal citations, and the fact that Plaintiff has not separately listed any cause of action, the Court is unable to discern a factual basis for any claim." Id. at 26. Given Plaintiffs pro se status, the Court gave Plaintiff an opportunity to amend her Complaint to cure the shortcomings identified by the Court, including her failure to identify any plausible legal cause of action against FedEx in separate numbered counts and to identify the factual allegations that supported any cause of action. Id at 27-28, 32-33. Plaintiff was warned that a "failure to amend her complaint in accordance with th[e] order will result In dismissal of plaintiff s complaint against FedEx." Id. at 33.

Plaintiff filed an Amended Complaint [Doc. 16] within the time permitted. However, The amended pleading does not comply with this Court's Order. Plaintiffs Amended Complaint fails to Identify any plausible legal cause of action against FedEx in separate numbered counts and fails to identify any factual allegations that would support any plausible cause of action.

Accordingly, it is hereby ORDERED that the Complaint is DISMISSED WITH PREJUDICE for failure to comply with a lawful order of the Court. LR 41.3A(2), NDGa. ("The court may, with or without notice to the parties, dismiss a civil case

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for want of prosecution if: .A plaintiff or plaintiffs attorney shall, after notice refuse to obey a lawful order of the Court in the case ... .");

May 24, 2023, Order.<sup>2</sup> The Clerk is DIRECTED to close this file. IT IS SO ORDERED this 12th of June, 2023. MARK H. COHEN United States District Judge

Because the remaining named Defendants are DISMISSED, the Jane and John Doe defendants are also DISMISSED. See Richardson v, Johnson, 598 F.3d 734, 738 (11th Cir. 2010) ("As a general matter, fictitious party pleading is not permitted in federal court."); Edwards v. Ala. Dep't of Corrections, 81 F. Supp.2d 1242, 125 (M.D. Ala. 2000) (dismissing fictitious defendants after the grant of named defendants' motion to dismiss).

**APPENDIX D**

In The United States District Court for The Northern District of Georgia  
Atlanta Division

JULIA M. ROBINSON Plaintiff,

v.

UNITED STATES OF AMERICA, U.S. Department of Justice, Defendants,

FEDEX INC.

FEDEX,

JOHN DOES,

JANE DOES,

THE UNITED STATES OF AMERICA,

FEDEX OFFICE,

CIVIL ACTION FILE CASE NO. 1:23-CV-00043-MHC

ORDER FILED 06/12/2023

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION, JULIA M. ROBINSON, Plaintiff, vs. FEDEX INC., FEDEX,  
FEDEX OFFICE, JANE DOES, and JOHN DOES, Defendant. CIVIL ACTION  
FILE NO. 1:23-CV-43-MHC J U D G M E N T This action having come before the  
court, Honorable Mark H. Cohen, United States District Judge, for consideration, it  
is ORDERED and Adjudged that the action be DISMISSED for failure to  
comply with a lawful order of the Court pursuant to LR 41.3A(2), NDGa. Dated at  
Atlanta, Georgia, this 12th day of June 2023. KEVIN P. WEIMER CLERK OF  
COURT By: Prepared, Filed, and Entered in the Clerk=s Office June 12, 2023

Kevin P. Weimer Clerk of Court By: s/Jill Ayers  
Ayers Deputy Clerk

Deputy Clerk s/Jill

**APPENDIX E**

In The United States District Court for The Northern District of Georgia  
Atlanta Division

JULIA M. ROBINSON Plaintiff,

v.

UNITED STATES OF AMERICA, U.S. Department of Justice, Defendants,

FEDEX INC.

FEDEX,

JOHN DOES,

JANE DOES,

THE UNITED STATES OF AMERICA,

FEDEX OFFICE,

CIVIL ACTION FILE CASE NO. 1:23-CV-00043-MHC

ORDER FILED 05/24/2023

Before the court are defendant FedEx Office and print service Inc. ("FedEx Office and print service"), and FedEx (collectively, "FedEx")'s Motion to Dismiss [Doc. 5], FedEx Motion to Unseal [Doc. 13], and Plaintiff's Verified Emergency Motion/Filing Petition for Temporary Retraining Order and/or Preliminary Injunction ("Mot. for TRO") [Doc. 11].

FedEx Office and Print is incorrectly identified in the complaint [Doc. 1] as FedEx Inc.

In FedEx's unopposed Motion to Unseal, it argues that it inadvertently filed a brief

## APPENDIX E

in opposition to Plaintiff's Motion for TRO under seal. For good cause shown, the Court GRANTS FedEx's Motion to Unseal.

### I. BACKGROUND

Plaintiff's Complaint, a forty-page, single spaced document that is difficult to follow, consists of allegations regarding an alleged government conspiracy to harm her and her family. Compl. Plaintiff filed a substantially similar in 2022, Which he acknowledges is related to this case: Robinson v. The United States of America, et al., Civil Action No. 1:22-CV-3080-MHC (the 2022 Lawsuit"). Id. 8 (page 35) (acknowledging that this case is related to the Lawsuit, which she alleges " details of all [the] crimes committed against the Plaintiff and her family."). Apart from several paragraphs that are unique to FedEx, see Compl. 7-16 (pages 12-15, 20-23), and the fact that she is seeking \$280,570,900.00 in this lawsuit, Compl. at 7, the allegations in the Plaintiff's two

Because this case is before the court on a motion to dismiss, the facts are presented as alleged in the Plaintiff's Complaint. See *Silberman v. Miami-Dade Transit*, 927 F.3d 1123, 1128 (11 Cir. 2019) (citation omitted).

Plaintiff repeats the numbered paragraphs throughout the complaint and several of the paragraphs are numbered incorrectly. Accordingly, the Court includes the page number corresponding to the cited paragraph for specific sites to that document.

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Compare 2022 Lawsuit Am. Compl. (Doc 7. in 1:22-CV-3080-MHC) 1 (page 32-33) (seeking 73,398,920.00 in damages).

Lawsuits are virtually identical. Compare Compl. 1-6, 17-21, 23-24, with 2022 Lawsuit Am. Compl. 1-6, 17-18, 20-22, 29-30.

Although plaintiff is invoking federal question jurisdiction, purporting to assert a claim under the Federal Tort Claims Act ("FTCA") see Civil Cover sheet [Doc. 1-1] (indicating that the "Federal Tort Claim Act" is her "cause of action"), she includes a litany of other other federal criminal and civil statutes as well as state law causes of action that are allegedly "at issue" in her case:

The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, and 2671 through 2680) (August 2, 1946, ch. 646, Title IV,

60 Stat. 812, 28 U.S.C. Part VI, Chapter 171 and 28 U.S.C. § 1346, Civil Rights

Lawsuit: Text of Section 1983, Personal Injury (Sec. 95.11

(3)(a)&(o)., Claims Against State & Local Governments (Sec.

768.28(6)., No Cap On Pain and Suffering (Sec. 768.28(5)., 768.73

Punitive Damages, 18 U.S. Code § 1964 Civil Remedies, Civil Rights Act Of 1964,

Official Misconduct under Florida Statute 838.022, Statute § 838.014(4), Florida

Statute § 838.014(5), 768.31 Contribution Among Tortfeasors, Florida Statute

768.0755, 18 U.S. Code § 2261A - Stalking, U.S. Code § 2332a - Use of weapons of

mass destruction, Title 18, U.S.C., Section 241 Conspiracy Against Rights, Title 18,

U.S.C., Section 242 Deprivation of Rights Under Color of Law,

784.011 Assault, 18 U.S. Code § 1505 - Obstruction of proceedings before

departments, agencies, and committees, 42 U.S. Code § 3617 - Interference,

coercion, or intimidation, 18 U.S. Code § 1512 - Tampering with a witness, victim,

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or an informant, Obstruction of Justice: Witness Tampering (18 U.S.C. § § 1512, 1503), 18 U.S. Code

§ 2441 - War crimes: intentional attacks against civilians; torture; unlawful confinement; 18 U.S. Code § 1038. False information and hoaxes, Future Medical Expenses, Household Services (In Home Services), Loss of Consortium, Loss of Enjoyment of Life, Loss of Society and Companionship, Lost Wages, Medical Expenses, Mental Anguish, Pain and Suffering, Special Damages, Lost Some Earning Capacity, Disfigurement, Loss of Affection, Intentional Tort, Invasion of Privacy, Intentional Infliction of Emotional Distress, Slander, Libel, Defamation, Breach of Duty too [sic] use Caution and Care, Hotel Security Negligence, and Other Charges.

Compl. at 10 (listing violations of the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments, as well). Plaintiff has not separately listed any cause of action or claim for relief in her Complaint, so it is difficult to discern what claims she is bringing in this case.

In addition to not clearly indicating what claims she is asserting in this case, the factual basis of her lawsuit is unclear. It appears that all of the allegations in Plaintiff's Complaint stem in some fashion from something she alleges she witnessed on July 8, 2019:

Plaintiff witnessed other rouge U.S. Government Employees in prior criminal cases against her family blatantly violate her families [sic] Constitutional Rights and break several laws in that state. The Plaintiff did proper internal affairs investigation complaints, sworn statements, and complaints with several U.S.

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Government Departments about what she saw and heard literally right in front of her performed with so much arrogance coupled with authoritarianism so effortlessly by these rouge U.S. Government Employee's [sic].

Compl. 12 (pages 11 and 19). Plaintiff does not elaborate on what she saw, what the "criminal cases against her family" involve or involved, or how any constitutional rights or laws were violated. To the extent the Court is able to discern, the crux of Plaintiff's Complaint appears to be related to alleged acts of retaliation and intimidation based on the aforementioned act of witnessing the unidentified "rogue U.S. Government Employees" on July 8, 2019. See generally, Compl.; see also id. T 6 (pages 12 and 20) (\*The Plaintiff was retaliated against by U.S. Government Employees for doing U.S. Government Complaints against U.S. Government Employees.")-

As it relates to FedEx, Plaintiff alleges that on October 25, 2019, while she was at a North Miami Beach, Florida, FedEx store she "was attacked with a biochemical weapon/toxin/pesticide that she was either sprayed with, purposely placed on surfaces, or inhaled. \* Compl. {7 (pages 12-13 and 20). Plaintiff alleges that this was a "CIA/FBI 007's setup/entrapment" and that there was "group people that participated including the FedEx Employee's [sic] in this racial hate crime against her, they all were white/European dissent except for one of them." Id. 117-8 (pages 12-13 and 20). Plaintiff further alleges that "[t]his was an inside job/staged/orchestrated by The Defendants at The North Miami Beach Police Department, The FedEx Employee's [sic] at this location, John Does and Jane Does, and other U.S. Government Employee's [sic]." Id, 1 10 (pages 14 and 21). The remainder of Plaintiff's Complaint is disjointed and replete with conclusory

## APPENDIX E

allegations related to some sort of conspiracy to kill Plaintiff and her family, none of which appears to be associated with any cause of action asserted in the Complaint. See, e.g., *id.* TT 17 (pages 16 and 24) (\*U.S. Government Employees along with Affiliates attempted to take The Plaintiff's life away."), 18 (pages 16 and 23) (\*The Plaintiff was physically and mentally tortured by corrupt U.S. Government employees and possibly murdered from these toxins. \*), 19 (pages 17 and 24-25) (\*The Plaintiff also has admissible evidence of footage and photos of someone using military Grade GPS tracking/spyware whom works for the U.S. Government tracking her locations down to the street name and numbers on the buildings. The Plaintiff was being unconstitutionally surveilled the whole time during those incidents. Thats [sic] why no officer properly investigated any of The Plaintiff['s] cases because they all work for The U.S. Government and Private Company Affiliates."), 18 (pages 17 and 24) (\*They collectively colluded to attempt to murder a black woman and her family to win a fraudulent criminal case.\*).

Plaintiff also alleges that "there have been several assassination attempts on The Plaintiff and her families [sic] lives since doing complaints with all U.S. Government Employee Departments involved." *Id.* 11 (page 26). For example, Plaintiff alleges that in February of 2022, her domestic partner was eating at a restaurant and "a flesh-eating bug (biochemical weapon) was strategically placed in his food (Assassination attempts), this pathogen ate out holes in his face within hours of leaving this restaurant." *Id.* 1 2 (page 28); see also *id.* 11 2 (page 29) (Alleging that in February of 2022 while in a hotel in Palm Beach County, Florida, "toxic chemical fumes" were introduced into Plaintiff's and her family's room), 3 (page 31) (alleging that toxic chemical fumes were introduced into Plaintiff's home! and car by "U.S. Government Employee's/Affiliates and Private Companies involved

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criminal hires."), 6 (page 32) (alleging that her car was hijacked and outfitted with a device that "zaps electrical charges to the top of whom ever is driving head [sic] every so often.").

Plaintiff seeks \$280,570,900.00 in damages, alleging that Defendants chose to participate until present day in on illegal, barbaric, and unconstitutional WAR CRIMES against The Plaintiff and her family. The Defendants had a duty and owed service to the plaintiff/victim. The Defendants failed that duty and violated a promise or obligation to the Plaintiff. The Plaintiff suffered actual losses, injuries, and damages that were directly caused by the Defendants actions or failure to act. The Plaintiff and her children are going to need hired security for the rest of their lives because of the amount of people, Companies, and U.S. Government Employee's [sic] involved in these WAR crimes against the Plaintiff. The facts above are showing that the Plaintiff is entitled to have this injunction and other relief sought in this complaint granted.

Compl. at 5, 7, 11 (page 37). Plaintiff does not clarify what sort of injunctive relief she is seeking.

## II. PROCEDURAL BACKGROUND

Plaintiff filed the above-styled case on January 4, 2023. Compl. On April 25, 2023, Plaintiff filed a Verified Emergency Motion/Filing Petition for Temporary Restraining Order And/or Preliminary Injunction, the first twenty pages of which, To a great extent are identical to her Complaint. See, e.g., Mot. for TRO 11 1-25.

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The remainder of Plaintiff's Motion for TRO appears to be random cut-and-pasted legal cites. See, e.g., *id.* at 36-132.

On March 23, 2023, FedEx filed its motion to dismiss, arguing that the claims asserted against it should be dismissed because Plaintiff has failed to state a claim against FedEx upon which relief can be granted. FedEx's Mot. to Dismiss at 7-11. On April 10, 2023, this Court ordered Plaintiff to show cause why this case should not be dismissed for failure to effectuate service pursuant to Rule 4(m) as to any defendant. April 10, 2023, Order ("Show Cause Order") [Doc. 8]. On April 25 and May 8, 2023, Plaintiff filed what purports to be responses to the Show Cause Order. See The Black African American Pro Se Plaintiff's Response To Order To Show Good Cause ("Apr. 25, Resp. to Order to Show Cause") [Doc. 10], and The Black African American Pro Se Plaintiffs Response To Order To Show Good Cause ("May 8 Resp. to Order to Show Cause") [Doc. 14].\*

### III. MOTION FOR TEMPORARY RESTRAINING ORDER

As detailed above, it is unclear what injunctive relief Plaintiff seeks in her Motion for TRO. See Pl.'s Mot. for TRO. Plaintiff's Motion is 132-pages, single-spaced, and includes of a verbatim recital of the allegations from her Complaint in addition to piecemeal allegations related to some conspiracy to harm her and her family. Pl.'s Mot. for TRO at 1-35. For example, Plaintiff contends that

[t]he Plaintiff is a CEO and there have been several assassination attempts on The Plaintiff and her families [sic] lives since doing complaints with all U.S. Government Employee Departments involved.

Between March 2021 and Present Day (August 2022) While The Plaintiff and her

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family visited other family and worked in Ga. U.S.

Government employees, FBI informants, FBI Agents, DHS Agents, Retired Ex-Military Employees, Off duty Police Officers, Off Duty Firefighters, Private security, Secret Police, U.S. Government Research/Illegal Human Experimentation Employee's/Affiliates, Private Company Research /Illegal Human Experimentation Employees/Affiliates, John Does, Jane Does, U.S. Government contractors, U.S. Government subcontractors, commandeering neighbors homes of my family in (Counties Fayette and Fulton) Palmetto Ga, in Tyrone Ga, PeachTree City Ga, (Cobb County) Atlanta Ga, Vinings Ga, Smyrna Ga, and other building structures in the name of "National security" fraudulently, illegally, and unconstitutionally in gain close proximity to The Plaintiff and her family. To illegally continue suppression of lawsuits and all crimes committed

\*Both purported responses are titled the same and contain much of the same content. against The Plaintiff and her family by rogue U.S. Government Employee's. The Plaintiff and her family were illegally and unconstitutionally subjected to Illegal Human Research/Human Experimentation on American soil. Illegal Human Research/Human Experimentation subjects are threatened, harassed, assaulted, stalked, poisoned, to inflict maximum torturous pain, and are illegally and unconstitutionally subjected to attempted assassinations repeatedly desperately by U.S. Governments rogue employee's to continue to cover up their crimes against innocent Plaintiffs whom are seeking legal civil lawsuits against The United States Government. A wide variety of military war crimes and domestic terrorist tactics illegally and unconstitutionally were attempted including, but not limited to disseminate misinformation and lies in order to further alienate

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and isolate The Plaintiff and her family so that they couldn't reach out to anyone for help to combat horrific events that The Plaintiff and her family were and still is being subjected too [sic] while in Georgia. The desired outcomes of these torture tactics are to desperately attempt to drive The Plaintiff and her family crazy, attempt to artificially induce medical conditions, attempt to artificially induce mental illness, and or to induce physical aggressiveness, desperately trying to cause The Plaintiff and her family to be jailed and or placed in a mental institution. If jailed or institutionalized unfortunately law-abiding American Citizens are discredited, illegally and unconstitutionally allowing the continuation of domestic-counter-terrorism tactics on persons of interest["] illegally and unconstitutionally by U.S. Government Employee's, FBI informants, FBI Agents, DHS Agents, Retired Ex-Military Employees, Off duty Police Officers, Off Duty Firefighters, Private security, Secret Police, U.S. Government Research/Illegal Human Experimentation Employee's/Affiliates, Private Company Research/Illegal Human Experimentation Employee's/Affiliates, John Does, Jane Does, U.S. Government contractors, U.S. Government subcontractors on American soil. The Plaintiffs clearly meets the requirements for their injunctions to be granted by this court from the crimes that are being repeatedly committed by The Defendant's explained by The Plaintiff in this motion. ... The Plaintiff, The Plaintiffs Family, and The Plaintiffs witnesses has and would continue to suffer irreparable injury if an injunction/(TRO) Temporary Retraining Order isn't granted.

Pl.'s Mot. for Second TRO at 21-22. Plaintiff's Motion also contains close to 100 pages of cut-and-pasted legal citations and definitions which are devoid of factual assertions or any argument. Id. at 35-132 While it is unclear what injunctive relief

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Plaintiff is seeking, it is clear that the motion fails as a matter of law.

In order to obtain a temporary restraining order or preliminary injunction, Plaintiff must demonstrate: (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the injunction is not granted; (3) that the threatened injury to Plaintiff absent an injunction outweighs the damage to Defendant if an injunction is granted; and (4) that granting the injunction would not be adverse to the public interest. *Four Seasons Hotels & Resorts v. Consorcio Bar*, 320 F.3d 1205, 1210 (11th Cir. 2003); *Morgan Stanley BW, Inc. v. Frisby*, 163 F. Supp. 2d 1371, 1374 (N.D. Ga. 2001). A temporary restraining order is "an extraordinary and drastic remedy" and should be granted only when the movant clearly carries the burden of persuasion as to each of the four prerequisites. *Id.* A court may issue a temporary restraining order without notice to the adverse party or its attorney? only if:

' There is no evidence before the Court that the United States has been served in this case.

(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.

FED. R. Civ. P. 65(b)(1). "The stringent restrictions imposed by [Rule 65] on the

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availability of ex parte temporary restraining orders reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 438-39 (1974). To the extent they are entered, ex parte temporary restraining orders \*should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer. \* *Id.*, at 439.

Although proceeding with an ex parte TRO as provided under Federal Rule of Civil Procedure 65(b) is permissible in some circumstances, Plaintiff has not shown that there are circumstances present in this case that would permit this Court to move forward with any injunctive relief against the United States without notice. Plaintiff's Complaint does not demonstrate specific facts that clearly show that immediate and irreparable injury will result before that Defendant can be heard in opposition. See Compl. Additionally, Plaintiff does not argue (let alone show) a sufficient reason for not affording the United States notice of the motion and an opportunity to respond.

Additionally, Plaintiff has not argued or demonstrated that she is Substantially likely to succeed on the merits of any claim against any Defendant. Indeed, it is not clear what claims Plaintiff is asserting in this case. Nor has she explained what injunctive relief she is seeking, or that she will suffer irreparable injury if an injunction is not granted. Accordingly, Plaintiff's Motion for TRO is DENIED.

## IV. FEDEX'S MOTION TO DISMISS

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### A. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a \*short and plain statement of the claim showing that the pleader is entitled to relief.\* Under Federal Rule of Civil Procedure 12(b)(6), a claim will be dismissed for failure to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Supreme Court has explained this standard as follows:

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully.

*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citation omitted). Thus, a claim will survive a motion to dismiss only if the factual allegations in the pleading are "enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

At the motion to dismiss stage, the court accepts all well-pleaded facts in the Plaintiffs' Complaint as true, as well as all reasonable inferences drawn from those facts. *McGinley v. Houston*, 361 F.3d 1328, 1330 (11th Cir. 2004); *Lotierzo v. Woman's World Med, Ctr. Inc.*, 278 F.3d 1180, 1182 (11th Cir. 2002). Not only must the court accept the well-pleaded allegations as true, but these allegations must

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also be construed in the light most favorable to the pleader. *Powell v. Thomas*, 643 F.3d 1300, 1302 (11th Cir. 2011). However, the court need not accept

legal conclusions, nor must it accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678. Thus, evaluation of a motion to dismiss requires the court to assume the veracity of well-pleaded factual allegations and "determine whether they plausibly give rise to an entitlement to relief." *Id.*, at 679.

### B. Discussion

FedEx moves to dismiss all of the claims asserted against it arguing that:

- (1) any FTCA claim against FedEx fails because that statute does not apply to FedEx.
- (2) any constitutional claim brought pursuant to 42 U.S.C. § 1983 fails because FedEx is not a state actor;
- (3) there are insufficient factual allegations asserted against FedEx regarding any incident that may have occurred on October 25, 2019, to support any cause of action; and
- (4) this Court should exercise its inherent power to dismiss frivolous lawsuits. FedEx's Mot. to Dismiss at 7-11.

#### 1. Plaintiff Fails to State a FTCA Claim Against Fed Ex.

"It is well settled that sovereign immunity bars suit against the United States except to the extent that it consents to be sued." *Means v. United States*, 176 F.3d

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1376, 1378 (11th Cir. 1999) (citing *United States v. Mitchell*, 445 U.S. 535, 538 (1980)). The existence of consent to be sued (a waiver of sovereign immunity) by the United States is a prerequisite for the exercise of subject matter jurisdiction over claims brought against the United States. *United States v. Sherwood*, 312 U.S. 584, 586 (1942) (\*[The terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.]). Congress has carved out a limited waiver of sovereign immunity under the FTCA. The FTCA applies to civil action claims against the United States

for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the  
-Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b)(1). In other words, the FTCA waives the sovereign immunity of the United States and renders the United States liable to private parties for torts committed by federal employees acting within the scope of their employment when state law of the place where the tort occurred would impose liability against a private individual under like circumstances. *Lawrence v. Dunbar*, 919 F.2d 1525, 1528 (11th Cir. 1990) (quoting 28 U.S.C. § 1346(b)); *S.J. & W. Ranch, Inc. v. Lehtinen* 913 F.2d 1538, 1542 (11th Cir. 1990).

Plaintiff appears to assert a claim pursuant to the FTCA. See Civil Cover Sheet

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(indicating that the "Federal Tort Claims Act" is her "cause of action"). To the extent Plaintiff is asserting a claim pursuant to the FTCA against FedEx, a private entity, the claim fails as a matter of law because "the FTCA is not a federal remedial scheme., but a waiver of sovereign immunity that permits an injured claimant to recover damages against the United States." *Denson v. United States*, 574 F.3d 1318, 1336 (11th Cir. 2009) (quotation and citation omitted, emphasis added). The Court is mindful that a pro se plaintiff "must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." *Woldeab v. Dekalb Cnty. Bd. of Educ.*, 885 F.3d 1289, 1291 (11th Cir. 2018). However, no opportunity to amend is warranted "if a more carefully drafted complaint could not state a claim." *Silberman*, 927 F.3d at 1133. There are no set of facts under which Plaintiff could allege a plausible FTCA claim against FedEx. Accordingly, FedEx's Motion to Dismiss Plaintiffs FTCA claim against FedEx is and that claim is DISMISSED WITH PREJUDICE.

### 2. Plaintiff Fails to State a § 1983 Claim Against Fed Ex.

Although the Complaint does not specifically allege that Plaintiff seeks relief pursuant to § 1983, Plaintiff alleges that her rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution were violated. Compl. at 10. Any claim Plaintiff is asserting alleging such a constitutional violation would need to be brought pursuant to 42 U.S.C. § 1983. See 42 U.S.C. § 1983 (\*Every person who, under color of any statute, ordinance, regulation, custom, or usage, ... subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights... secured by the Constitution and laws, shall be liable to the party injured in an action at law."). "A

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document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations and quotations omitted). In this vein, the Court will assume that Plaintiff is asserting a claim pursuant to § 1983.

Section 1983 creates no substantive rights. See *Baker v.*

*McCollan*, 443 U.S. 137, 140, 144 n.3 (1979). Rather, § 1983 provides a vehicle through which an individual may seek redress when his federally protected rights have been violated by an individual acting under color of state law. See *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994) (citations omitted). To state a claim for relief under § 1983, a plaintiff must satisfy two elements. First, a plaintiff must allege that an act or omission deprived him of a right, privilege, or immunity secured by the Constitution of the United States. *Hale v. Tallapoosa Cnty.*, 50 F.3d 1579, 1582 (11th Cir. 1995). Second, a plaintiff must allege that the act or omission was committed by a state actor or a person acting under color of state law. *Id.*

"The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992) (citation omitted). The Supreme Court has defined "acting under color of state law" as acting with "power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *West v. Atkins*, 487 U.S. 42, 49 (1988). "[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263,

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1277 (11th Cir. 2003), "Only in rare circumstances can a private party be viewed as a 'state actor' for section 1983 purposes." *Harvey v. Harvey*, 949 F.2d

1127, 1130 (11th Cir. 1992). For a private party to be considered a state actor, one of the following conditions must be met:

- (1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution ("State compulsion test"); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State ("public function test"); or (3) the State had so far insinuated itself into a position of interdependence with the private parties that it was a joint participant in the enterprise ("nexus/joint action test").

*Rayburn ex rel. Rayburn v. Hogue*, 241 F.3d 1341, 1347 (11th Cir. 2001) (citation and internal punctuation omitted).

Plaintiff has not sufficiently alleged that FedEx deprived her of any First, Fourth, Fifth, Sixth, Eighth, or Fourteenth Amendment rights, nor does she sufficiently allege that FedEx was a state actor or acting under color of state law. *Hale*, 50 F.3d at 1582. Although Plaintiff alleges that "(she was attacked with a biochemical weapon/toxin/pesticide" while she was in a FedEx store in North Miami Beach, Florida, Compl. 11 7-12, her Complaint does not contain sufficient plausible non-conclusory factual allegations establishing that it was FedEx (or a FedEx employee) who violated her constitutional rights. Nor does Plaintiff plausibly allege

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that FedEx was a state actor, or that it was acting under color of state law.

Assuming the veracity of Plaintiff's allegation that she was the subject of a biochemical attack on October 25, 2019, that was somehow in retaliation for her witnessing some unlawful act on July 8, 2019, and that this violated her constitutional rights, see Compl. 11 2, 6-7 (pages 11-13, 19-20), Plaintiff has not plausibly alleged that FedEx committed any such act. At best, Plaintiff has alleged that the "attack" occurred at a FedEx store, where FedEx employees were present, coupled with the conclusory allegation that FedEx employees were somehow involved. Id. 11 7-8 (pages 12-14 and 20-21). Specifically, she alleges that it "was a group of people that participated including the FedEx Employee's [sic] in this racial hate crime against her." Id. 17 (pages 12-13 and 20). Plaintiff also alleges that John Doe "passed the Latino Male FedEx Office Employee a note/ paper and money/cash and the FedEx Employee was happy (He smirked)," and that the "Latino Male FedEx Employee Defendant conveniently disappeared in a back room this store has behind the counter... when more of the toxins were released while The Plaintiff was in that area of the store." Id. 18 (pages 13-14 and 20-21). She then alleges in conclusory fashion that "[t]his was an inside job/staged/orchestrated by The Defendants at The North Miami Beach Police Department, The FedEx Employee's [sic] at this location, John Does and Jane Does, and other U.S. Government Employee's [sic].\* Id. 1 10 (pages 14 and 21).

(A)lthough Rule 8 of the Federal Rules of Civil Procedure does not require detailed factual allegations, it does demand more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Iqbal*, 556 U.S. at 678. A complaint must state a

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plausible claim for relief, and "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss. *Id.* The well-pled allegations must nudge the claim

"Across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

*Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009), abrogated on other grounds by *Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012).

In keeping with these principles, a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.

While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

*Iqbal*, 556 U.S. at 679. This language from the Supreme Court in *Iqbal* "suggests that even if a complaint's allegations are not conclusory, the trial court must further apply its common sense and judicial experience in determining whether the allegations are 'plausible,' and 'that the trial court must, to some extent, weigh or otherwise measure the allegations to determine plausibility.'" *Howard v. S. Health Partners, Inc.*, No. CV 10-PT-2203-M, 2011 WL 13186268, at \*18 (N.D. Ala. Apr. 12, 2011), *aff'd*, 446 F. App'x 261 (11th Cir. 2011); see also *Iqbal*, 556 U.S. at 696 (Souter J., dissenting) ("The sole exception to this rule [that a court must accept a

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complaint's allegations as true, no matter how skeptical the court may be] lies with allegations that are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel.").

Applying this standard, the Court disregards Plaintiff's unsupported conclusory allegation that FedEx (or its employees) were involved in the alleged biochemical attack. See Compl. 1 10 (pages 14 and 21) (\*This was an inside job/staged/orchestrated by The Defendants at The North Miami Beach Police Department, The FedEx Employee's (sic] at this location, John Does and Jane Does, and other U.S. Government Employee's [sic]."). Consequently, there are no plausible allegations that FedEx was responsible for any constitutional deprivation or that FedEx was a state actor. Accordingly, to the extent Plaintiff has asserted any claim against FedEx pursuant to § 1983, that claim fails as a matter of law.

As indicated above, while a pro se plaintiff must be given an opportunity to amend before an action is dismissed with prejudice, *Woldeab*, 885 F.3d at 1291, no such opportunity is warranted if any such amendment would be futile, *Silberman*, 927 F.3d at 1133. In this context, the Court notes that "[a]ll constitutional claims brought under § 1983 are tort actions, subject to the statute of limitations governing personal injury actions in the state where the § 1983 action has been brought." *Crowe v. Donald*, 528 F.3d 1290, 1292 (11th Cir. 2008) (citation and quotation omitted). In Georgia, the governing limitations period is two years. *Id.* (Citing *O.C.G.A. § 9-3-33* and *Porter v. Ray*, 461 F.3d 1315, 1323 (11th Cir. 2006)). Accordingly, any § 1983 claim arising out of the alleged biochemical attack occurring on October 25, 2019, would have to have been brought by October 25,

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2021. This lawsuit was filed on January 4, 2023. Therefore, the § 1983 claims asserted are barred by the statute of limitations. Moreover, any amendment would be futile as it would not save the § 1983 claim from the statute of limitations.

Accordingly, FedEx's Motion to Dismiss any § 1983 claim Plaintiff is asserting is and that claim is **DISMISSED WITH PREJUDICE**.

### 3. Plaintiff Fails to State a Claim Under any Theory of Liability Against FedEx.

FedEx argues that Plaintiff's Complaint is a shotgun pleading that fails to assert any plausible claim against FedEx under any theory of liability. FedEx's Mot. To Dismiss at 7, 9-11. The Court agrees. Plaintiff's Complaint is a shotgun pleading that does not separately list any cause of action and is "replete with factual allegations and rambling legal conclusions." *Osahar v. U.S. Postal Serv.*, 297 F. App'x 863, 864 (11th Cir. 2008) (citing *Strategic Income Fund, LLC v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 n.9 (11th Cir. 2002)). The Eleventh Circuit has routinely found that a shotgun pleading is the antithesis of the type of pleading required by Federal Rules of Civil Procedure: to wit, a "short and plain statement of the claim." FED. R. CIV. P. 8; *Strategic Income Fund*, 305 F.3d at 1295 n.9 (noting that the Eleventh Circuit "has addressed the topic of shotgun pleadings on numerous occasions..., often at great length and always with great dismay.").'

\* The court in *Strategic Income Fund* gave a history of cases condemning the practice of shotgun pleading. 305 F.3d at 1295 n.9 (citing *Byre v. Nezhat*, 261 F.3d 1075, 1128-34 (11th Cir. 2001) (\*Shotgun pleadings... impede [] the due administration of justice and, in a very real sense, amount [] to obstruction of

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justice.") (internal citation omitted); *Magluta v. Samples*, 256 F.3d 1282, 1284-85 (11th Cir. 2001) (refusing to address and decide serious constitutional issues on the basis of a "quintessential 'shotgun' pleading of the kind [this court has] condemned repeatedly, beginning at least as early as 1991" because "it is in no sense the 'short and plain statement of the claim' required by Rule 8"); *Anderson v. Dist. Bd. of Trustees of Cent. Fl. Comm. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996) ("[Plaintiff s] complaint is a perfect example of 'shotgun' pleading in that it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.") (internal citation omitted); *Pelletier v. Zweifel*, 921 F.2d 1465, 1518 (11th Cir. 1991) (describing "quintessential shotgun pleadings" complete with "rambling recitations" and "factual allegations that could not possibly be material" that force the "district court [to] sift through the facts presented and decide for [itself] which were material to the particular cause of action asserted").

The Eleventh Circuit has explained why shotgun pleadings are viewed with such disfavor:

[The aggregate negative effects of shotgun pleadings on trial courts have been noted with great concern by this court. See, e.g., *Byrne*, 261 F.3d at 1131 ("Shotgun pleadings, if tolerated, harm the court by impeding its ability to administer justice. The time a court spends managing litigation framed by shotgun pleadings should be devoted to other cases waiting to be heard."); *Cramer v. Fla.*, 117 F.3d 1258, 1263 (11th Cir. 1997) (noting that "shotgun pleadings... exact an intolerable toll on the trial court's docket"); *Ebrahimi v. City of Huntsville Bd. of Educ.*, 114 F.3d 162, 165 (11th Cir. 1997) (per curiam) ("Shotgun notice pleadings ... impede the orderly,

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efficient, and economic disposition of disputes."); Anderson, 77 F.3d at 367 (noting the "cumbersome task of sifting through myriad claims, many of which may be foreclosed by various defenses" that judges face in connection with shotgun pleading).

Strategic Income Fund, 305 F.3d at 1295 n. 10. Consequently, the Eleventh Circuit has repeatedly condemned the use of shotgun pleadings for "imped[ing] the administration of the district courts' civil dockets in countless ways." *PVC Windoors, Inc. v. Babbitbay Beach Const., N.V.*, 598 F.3d 802, 806 n.4 (11th Cir. 2010). Among other things, shotgun pleadings require courts to sift through rambling and often incomprehensible allegations in an attempt to separate the meritorious claims from the unmeritorious, resulting in a "massive waste of judicial and private resources." *Id.* "The Eleventh Circuit thus has established that shotgun pleading is an unacceptable form of establishing a claim for relief." *Graham v. Mortg. Elec. Registration Sys., Inc.*, No. 2:11-CV-00253-RWS, 2012 WL 527665, at \*1 (N.D. Ga. Feb. 17, 2012) (citing *Strategic Income Fund*, 305 F.3d at 1296).

Plaintiff's Complaint presents the precise problems the Eleventh Circuit identified as being characteristic of shotgun pleadings; it "is in no sense the 'short and plain statement of the claim' required by Rule 8 of the Federal Rules of Civil Procedure." *Magluta*, 256 F.3d at 1284 (citation omitted). Plaintiff's Complaint is comprised of disjointed factual allegations coupled with myriad cut and pasted legal citations that make little sense and leave the Court (and presumably any defendant) guessing as to what claims she is asserting and making it impossible to

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discern what factual allegations might support any claim. To the extent Plaintiff's Complaint includes allegations against any Defendant, they are general and conclusory allegations including large amounts of superfluous information, "most of which [is] immaterial to most of the claims for relief." *Johnson Enters. Of Jacksonville, Inc. v. FPL Grp., Inc.*, 162 F.3d 1290, 1333 (11th Cir. 1998).

Due to the nature of the disjointed factual narrative, the myriad superfluous legal citations, and the fact that Plaintiff has not separately listed any cause of action, the Court is unable to discern a factual basis for any claim. As such, dismissal of Plaintiff's entire lawsuit as a shotgun pleading is warranted. However, because Plaintiff is proceeding pro se, her "pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). This leniency "does not give a court license to serve as de facto counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1169-70 (11th Cir. 2014) (citation omitted). Although pro se pleadings are governed by less stringent standards than pleadings prepared by attorneys, pro se parties are still required to comply with minimum pleading standards set forth in the Federal Rules of Civil Procedure. *Dauphin v. McHugh*, No. CV409-156, 2009 WL 3851906, at \*1 (S.D. Ga. Nov. 16, 2009); see also *Beckwith v. Bellsouth Telecomms., Inc.*, 146 F. App'x 368, 371 (11th Cir. 2005) (citation omitted) (\*Although we construe them liberally, pro se complaints also must comply with the procedural rules that govern pleadings"). Although Plaintiff's Amended Complaint is subject to dismissal as a shotgun pleading, plaintiff is pro se and "must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice."

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Woldeab, 885 F.3d at 1291. Accordingly, this Court will give Plaintiff an opportunity to amend her Complaint in a manner consistent with this Order and Rule 8 of the Federal Rule of Civil Procedure so that she can state a claim for any cause of action against FedEx other than a claim pursuant to the FTCA or § 1983.

### V. FAILURE TO SERVE DEFENDANT THE UNITED STATES OF AMERICA

Pursuant to Federal Rule of Civil Procedure 4(m), a defendant must be served within ninety (90) days after the complaint is filed. If a defendant is not served within ninety days, "the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specific time." FED. R. CIV. P. 4(m).

This action was filed in this Court on January 4, 2023. Compl. Noting that Plaintiff had not filed any proof of service indicating that any defendant had been served in ninety days as prescribed by Rule 4(m), this Court ordered Plaintiff to show cause "why this Court should not dismiss this case without prejudice for failure to effectuate service pursuant to Federal Rule of Civil Procedure 4(m).<sup>TM</sup> Show Cause Order at 2. The Court cautioned Plaintiff that if she failed to respond to the Show Cause Order that the Court would dismiss this action without prejudice. Id. (citing LR 41.3(A)(2), NDGa (\*The Court may, with or without notice to the parties, dismiss a civil case for want of prosecution if ... (a) plaintiff. .. shall, after notice, ... fail or refuse to obey a lawful order of the Court in the case ... .")).

On April 25 and May 8, 2023, Plaintiff filed responses to this Court's Show Cause Order. The April 25 response is 350 pages, including 196 pages of single-

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spaced argument and recitation of legal principles. Apr. 25 Resp. to Order to Show Cause. Among numerous exhibits attached to her response, Plaintiff attached what appears to be an Affidavit of Service from Moonlighters Enterprises indicating that FedEx was served on March 2, 2023. Aff. of Service [Doc. 10-1 at 71-74]. The May 8 response consists of 105 pages of single-spaced argument and recitation of legal principles, largely repetitive of the April 25 response. May 8 Resp. to Order to Show Cause. There is no indication that the United States has been served. See Apr. 25 Resp. to Order to Show Cause; May 8 Resp. to Order to Show Cause. Plaintiff does not credibly argue that she has served the United States, nor does she demonstrate good cause for failing to do so. *Id.* Most importantly, as of the date of this Order, Plaintiff has not filed any valid proof of service indicating that the United States has been properly served within the time period prescribed by Rule 4(m).

\* Plaintiff filed a Return of Service purporting to serve the United States Government [Doc. 4]. Plaintiff's service is defective. Rule 4(i)(2) provides, "[to serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.\* FED. R. CIV. P. 4(i)(2). In order to serve the United States, a party must "deliver a copy of the summons and of the

Accordingly, the Court finds that Plaintiff has failed to demonstrate that she served the United States within the ninety days prescribed by Rule 4(m) and has also failed to satisfy the good cause showing for this failure to effectuate service despite being given multiple opportunities to do so. "[When a district court finds

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that a plaintiff fails to show good cause for failing to effect timely service pursuant to Rule 4(m), the district court must still consider whether any other circumstances warrant an extension of time based on the facts of the case." *Lepone-Dempsey v. Carroll Cnty. Comm'rs*, 476 F.3d 1277, 1282 (11th Cir. 2007). Such circumstances include "if the applicable statute of limitations would bar the refiled action, or if the defendant is evading service or conceals a defect in attempted service." *Id.*, "Only after considering whether any such factors exist may the district court exercise its discretion and either dismiss the case without prejudice or direct that service be effected within a specified time." *Id.* The Eleventh Circuit requires the Court to consider such factors, but the existence of any one factor, such as the running of the statute of limitations, is not determinative and "does not

complaint to the United States attorney for the district where the action is brought- or to an assistant United States attorney.... [and] send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C." FED. R. CIV. P. 4C)(1).

require that the district court extend time for service of process under Rule 4(m)." *Id.*

Plaintiff has not presented any circumstances that warrant an extension of time to serve the United States in this case. It is not clear what claims Plaintiff is asserting in this case so it is difficult to ascertain whether dismissing this case without prejudice would affect Plaintiff's ability to re-file any valid claim for relief within any applicable statute of limitations. However, even assuming that a

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particular of statute of limitations has expired or will expire, even combined with Plaintiff's pro se status, these are not circumstances that sufficiently aggregate to warrant an extension of time to allow Plaintiff to serve the United States.

Plaintiff's "pro se status does not exempt a party from compliance with relevant rules of procedural and substantive law." *Asad v. Crosby*, 158 F. App'x 166, 171 n.4 (11th Cir. 2005) (internal quotation and citation omitted).

After considering the factors surrounding Plaintiff's failure to timely perfect service, the Court declines to exercise its discretion to direct that service be effected within a specified time. Instead, the Court exercises its discretion to DISMISS the case against the United States without prejudice for failure to serve within the time prescribed by Rule 4(m). See *Lepone-Dempsey*, 476 F.3d at 1282; FED. R. CIV. P. 4(m).

## VI. CONCLUSION

For the foregoing reasons, it is hereby ORDERED that Plaintiff's Verified Emergency Motion/Filing Petition for Temporary Restraining Order and/or Preliminary Injunction [Doc. 11] is DENIED.

It is further ORDERED that FedEx's Motion to Unseal [Doc. 13] is GRANTED. The Clerk is DIRECTED to UNSEAL Document No. 12.

It is further ORDERED that FedEx's Motion to Dismiss [Doc. 5] is GRANTED IN PART. To the extent Plaintiff has asserted claims against FedEx pursuant to the FTCA and § 1983, those claims are DISMISSED WITH PREJUDICE. To the extent Plaintiff is asserting any other claim against FedEx,

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given Plaintiff's pro se status, the Court will provide Plaintiff fourteen (14) days from the date of this Order to amend her Complaint. Any amended complaint must

(1) address all the shortcomings noted in this Order;

(2) comply with the pleading requirements of the Federal Rules of Civil

Procedure;

(3) include a factual background section setting forth in specific numbered

paragraphs, non-conclusory factual allegations which directly pertain to his

case, are not legal conclusions, and suggest support for the required

elements of any claims asserted against FedEx;

(4) identify each of her legal causes of action against FedEx based on separate

occurrences in separate counts of the amended complaint, each with its own

heading identifying it as a count, and including the specific legal authority

under which she seeks relief; and

(5) identify by reference which specific Factual allegations and acts by FedEx

that support each cause of action against FedEx within each count of

Plaintiff's amended complaint. **FAILURE TO AMEND HER COMPLAINT**

**IN ACCORDANCE WITH THIS ORDER WILL RESULT IN DISMISSAL**

**OF PLAINTIFF'S COMPLAINT AGAINST FEDEX.**

It is further ORDERED that, as it relates to Defendant The United States of

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America, Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE for failure to serve within the time period prescribed by Rule 4(m) and for failure to obey a lawful order of this Court. See *Lepone-Dempsey*, 476 F.3d at 1282; FED. R. CIV. P. 4(m); LR 41.3(A)(2), NDGa.

IT IS SO ORDERED this 24th day of May, 2023.

Mark H. Cohen

MARK H. COHEN

United States District Judge

**APPENDIX F**

In The United States District Court for The Northern District of Georgia  
Atlanta Division

JULIA M. ROBINSON Plaintiff,

v.

UNITED STATES OF AMERICA, U.S. Department of Justice, Defendants,

FEDEX INC.

FEDEX,

JOHN DOES,

JANE DOES,

THE UNITED STATES OF AMERICA,

FEDEX OFFICE,

CIVIL ACTION FILE CASE NO. 1:23-CV-00043-MHC

ORDER FILED 04/10/2023

This action was filed in this Court on January 4, 2023. Compl. [Doc. 1).

Pursuant to Federal Rule of Civil Procedure 4(m), a defendant must be served within ninety (90) days after the complaint is filed. Plaintiff has not filed any valid proof of service indicating that any named Defendant has been properly served within this time period.' If a defendant is not served within ninety days, "the court

' Plaintiff filed a Return of Service purporting to serve the United States Government [Doc. 4]. Plaintiff's service is defective. Rule 4(i)(2) provides, "[to serve a United States agency or corporation, or a United States officer or employee sued

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only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee." FED. R. CIV. P. 4(i)(2). In order to serve the United States, a party must "deliver a copy of the summons and of the – on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specific time." FED. R. CIV. P. 4(m).

Therefore, it is hereby ORDERED that Plaintiff SHOW CAUSE, if any there be, within fourteen (14) days of the date of this Order why this Court should not dismiss this case without prejudice for failure to effectuate service pursuant to Federal Rule of Civil Procedure 4(m). A failure to respond to this Order or to show good cause for the failure to serve Defendants within the prescribed time period will result in this Court dismissing this action without prejudice. See LR 41.3(A)(2), NDGa (\*The Court may, with or without notice to the parties, dismiss a civil case for want of prosecution if ... (a) plaintiff... shall, after notice, ... fail or refuse to obey a lawful order of the Court in the case....").

IT IS SO ORDERED this 10<sup>th</sup> day of April, 2023.

Mark H. Cohen

MARK H. COHEN

United States District Judge

complaint to the United States attorney for the district where the action is brought- or to an assistant United States attorney.... [and] send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C."

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FED. R. CIV. P. 4(i)(1).

18-14-2025

A handwritten signature in black ink, featuring a large, stylized 'O' followed by a series of loops and a long horizontal stroke extending to the right.