IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JADEN RASHADA,

Plaintiff,

v. Case No. 3:24-cv-219-MCR-HTC

HUGH HATHCOCK; WILLIAM "BILLY" NAPIER; MARCUS CASTRO-WALKER; and VELOCITY AUTOMOTIVE SOLUTIONS, LLC,

Defendants.
_____/

DEFENDANT CASTRO-WALKER'S MOTION TO DISMISS
AND INCORPORATED MEMORANDUM OF LAW

Defendant Marcus Castro-Walker ("Castro-Waker"), moves under Federal Rules of Civil Procedure 9(b) and 12(b)(6), as well as Florida Statute §768.28(9)(a), to dismiss Plaintiff Jaden Rashada's Complaint, stating as follows:

INTRODUCTION

Plaintiff's Complaint reads like a Harlan Coben novel, replete with facts that lead the reader down an obvious path, only to have the reader caught completely off guard by an unexpected plot twist at the very end. The Complaint begins with Marcus Castro-Walker, a University of Florida ("UF") recruiter, professing his desire to have Jaden Rashada ("Jaden") play for UF. In paragraph after paragraph, the

reader sees factual evidence in text messages and phone conversations confirming that Castro-Walker is making his best effort to persuade Jaden to attend UF. There is simply no questioning the sincerity of Castro-Walker's dogged pursuit.

Finally, our reader reaches what appears to be the culmination of the story, celebrating internally alongside the protagonists as Jaden enters into a multimillion-dollar written contract that will allow all of the Complaint's characters to live happily ever after at UF. Or so it seems.

As fate would have it, the harmonious bliss is short-lived when one of the contract's signatories -- The Gator Collective, LLC -- misses a required payment. This leads to an eventual parting of the ways, leaving our reader with the logical conclusion that the Complaint will end with Jaden filing an open-and-shut breach of contract lawsuit against this collective... along with an equally viable malpractice lawsuit against the professional agents who allowed him to willingly breach an existing contract allegedly worth $9.5 million and enter into a new contract with an undercapitalized *limited liability* company.

But, instead of this predictable conclusion, we get an ending that no reader could have seen coming, one that was never even remotely telegraphed by a single fact within the story. Rather, the Complaint does a complete reversal and ends with Jaden suing Marcus Castro-Walker on the premise that Castro-Walker had never really wanted Jaden to attend UF and was only pretending to recruit Jaden in order

to prevent him from attending the University of Miami and from receiving the accompanying $9.5 million in benefits.

Not only does this attempted plot twist defy credulity, given that it was literally Castro-Walker's job to recruit Jaden to UF, it also requires the Court to read Jaden's Complaint through Alice's looking-glass, attributing meanings to statements and actions that are the *exact opposite* of what they appear to be on their face. Even a thorough re-reading of the Complaint *after* knowing how the story ends would fail to uncover even a single bread crumb of evidence that even remotely supported the ending. Harlan Coben would be proud.

But alas, a Complaint is not a work of fiction that can be crafted and manufactured to reach a desired ending incongruent with the facts themselves. As President John Adams said, "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence." The facts in this case -- as plead by the Plaintiff himself -- simply do not support the cunning conspiracy theories being alleged against Marcus Castro-Walker and others. Accordingly, while the Complaint might make for a juicy bestseller in the fiction genre, it fails in the eye of the law and must therefore be dismissed.

ARGUMENT AND MEMORANDUM OF LAW

I. SOVEREIGN IMMUNITY

Before analyzing whether or not the Complaint is deficient in its factual pleadings, the Court must determine whether or not it is even proper for Marcus Castro-Walker to be a party in this action at all. Every count alleged against Castro-Walker in the complaint is based in tort, and Florida Statute §768.28(9)(a) specifically states:

> An officer, employee, or agent of the state or of any of its subdivisions may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Because it has not been sufficiently alleged or shown that Castro-Walker acted with actual malice, Castro-Walker may not be held personally liable or named as a party defendant and the action against him must therefore be dismissed.

Courts apply a two-pronged approach when considering a motion to dismiss. *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir.2010). First, a court must "eliminate any allegations in [a] complaint that are merely legal conclusions." *Id*. A court must then take any remaining well-pleaded factual allegations, "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* (internal quotations omitted). A complaint that does not "contain sufficient factual matter, accepted as true, to state a claim ... plausible on its face" is

subject to dismissal. *Id.* at 1289. Further, dismissal is warranted under Rule 12(b)(6) if, assuming the truth of the complaint's factual allegations, a dispositive legal issue precludes relief. *Neitzke v. Williams*, 490 U.S. 319, 326, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

Castro-Walker was at all relevant times the Director of Player Engagement and NIL at the University of Florida. (*see* Complaint ¶ 17.) Technically, however, Castro-Walker was at all relevant times an employee of The University Athletic Association, Inc. ("UAA"), a UF direct-support organization (DSO) pursuant to Florida Statute §1004.28.

UF and the UAA are both "state agencies and subdivisions" entitled to sovereign immunity protection under Florida Statute §768.28. *Plancher v. UCF Athletics Ass'n, Inc.,* 175 So. 3d 724 (Fla. 2015), wherein the Florida Supreme Court held that university athletic associations primarily act as instrumentalities of the state and thus are entitled to limited sovereign immunity under section 768.28.

All of Castro-Walker's communications with Jaden's representatives were conducted in good faith and within the course and scope of his employment position at UF in an effort to recruit Jaden Rashada to attend UF. Castro-Walker occasionally passed messages back and forth between Jaden's representatives and others, but Castro-Walker repeatedly made it clear to everyone that he was only acting as a conduit of information and was in no way acting as an agent or representative of any

collective or individual. Castro-Walker knew that colleges were not allowed by the NCAA to use monetary "NIL" (Name, Image & Likeness) promises as inducements to convince prospective recruits to sign with their school, so Castro-Walker repeatedly included the following language in his communications with Jaden's representatives: *"I refuse to be involved in prospect dealing."*

Accordingly, Castro-Walker may not be sued or named a party defendant to this action because nowhere in the complaint is it alleged or proven that Castro-Walker acted with the level of malice or evil intent necessary to take him outside the protection granted by Florida Statute §768.28(9)(a).

Florida law shields governmental agency employees from liability in tort actions for conduct taken "in the scope of her or his employment." See *Fla. Stat*. § 768.28(9)(a). However, those employees have no immunity where they acted "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." *Id.* Thus, courts must dismiss such claims unless the plaintiff makes "a good faith allegation in the complaint" that the public official either acted outside the scope of his employment or "acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." See *Forrest v. Pustizzi*, No. 16-cv-62181, 2017 WL 2472537, at *6 (S.D. Fla. June 7, 2017) (Gayles, J.) (quoting *Brown v. McKinnon*, 964 So.2d 173, 175 (Fla. 3d DCA Case 9:16-cv-81247-RNS Document

92 Entered on FLSD Docket 06/17/2022 Page 5 of 10 2007)). In other words, at the pleading stage, a plaintiff must allege that the public official acted out of "ill will, hatred, spite, or an evil intent" or that the official "knew, or reasonably should have known . . . that his or her conduct would naturally or probably result in injury and, with such knowledge, disregarded the foreseeable injurious consequences." *Id*.

The question of whether an act was committed with malicious purpose, bad faith, or with wanton and willful disregard is not a question that must be submitted to a jury, but rather, can be decided by the Court depending on the facts. *Prieto v. Malgor*, 361 F.3d 1313, 1320 (11th Cir. 2004) (determining that the Florida Supreme Court "explicitly disavowed the proposition that the question of bad faith must always be submitted to the fact finder").

The 11th Circuit recently addressed this issue in *Coleman v. Riccardo*, 41 F.4th 1319 (11th Cir. 2022), wherein the court defined the level of malice required to overcome sovereign immunity protection for individuals, stating:

> The first two exceptions [of §768.28(9)(a)], "in bad faith" and "with malicious purpose" are "synonymous with each other under Florida law." Another way to put it is that Florida courts have equated bad faith with "the actual malice standard." The "actual malice" and "malicious purpose" exceptions apply when the conduct was committed with "ill will, hatred, spite, or an evil intent." We will refer to this Florida sovereign immunity carve-out as the actual malice exception. *Id.* at 1325.

Having defined "actual malice" in regards to §768.28(9)(a), the *Coleman* court went on to clarify that the lesser standard of "legal malice" does not apply in such cases:

> Legal malice requires only "proof of an intentional act performed without legal justification or excuse" and "does not require proof of evil intent or motive." The district court erred in this case when it applied the legal malice standard – instead of the actual malice standard – and determined that an arrest without probable cause by itself establishes that the officers acted with malice for the purposes of §768.28(9)(a). It doesn't. *Id.* at 1326.

Having determined that the lower court had not properly analyzed the actual malice issue, the court went on to say:

> We will go ahead and resolve the immunity issues now instead of remanding the case for the district court to do so in the first instance. See *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (explaining that it is important to resolve issues of immunity from suit "at the earliest possible stage in litigation"). *Id.*

In conducting a de novo review, the *Coleman* court found that plaintiff's complaint alleged that police officers made repeated visits to his house prior to his arrest, and that this created a genuine issue of "bad faith or malice" in that the defendant officers were part of "some kind of plan" to kill or capture him. These conclusory allegations and speculations -- which are remarkably similar to the unsubstantiated "conspiracy" claims alleged in the instant complaint -- were found by the 11th Circuit to be insufficient to create a genuine issue of material fact on the presence of "malice." Id., citing *Glasscox v. City of Argo*, 903 F.3d 1207, 1213 (11th Cir. 2018) ("Conclusory allegations and speculation are insufficient to create a

genuine issue of material fact."). Accordingly, the Court stated that "speculation is no substitute for evidence" and ruled that the officers were entitled to sovereign immunity protection. Id.

Moreover, the court in *Coleman* then went on to rule that even the act of *battery* would not automatically rise to the level of actual malice required to overcome sovereign immunity, stating:

> Even assuming for present purposes that the officers' physical contact with Coleman during the course of his arrest was a battery, there is no genuine issue of material fact that the defendant officers acted "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property." *Id.*

Accordingly, the *Coleman* court granted the defendants' motion for sovereign immunity protection.

In the instant case, even a reading of the complaint in the light most favorable to the plaintiff fails to show any allegations of conduct that rise to the level of actual malice. If the act of battery cannot not even overcome the threshold, then certainly none of the allegations against Castro-Walker do either. Because no reasonable jury could find that Castro-Walker was acting with ill-will, hatred, spite, or an evil intent, the case against him must be dismissed at the earliest possible stage in litigation – which is now.

Even if allegations of fraud alone *were* grounds to overcome sovereign immunity, the fraud would have to be plead properly. Moving forward, we will show why this was not accomplished in the instant Complaint.

II. Fraud Related Counts I-IV

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court must accept all of the complaint's allegations as true, construing them in the light most favorable to the plaintiff. See *Pielage v. McConnell,* 516 F.3d 1282, 1284 (11th Cir. 2008). A pleading need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quotation omitted). A plaintiff must articulate "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). "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." *Iqbal,* 556 U.S. at 678. "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." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. Thus, a

pleading that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" will not survive dismissal. See *Twombly*, 550 U.S. at 555.

In addition, Federal Rule of Civil Procedure 9(b) requires a party alleging fraud "to state with particularity the circumstances constituting fraud." The purpose of the rule is to protect a defendant's good will and reputation when the defendant's conduct is alleged to have been fraudulent." *Wagner v. First Horizon Pharm. Corp.,* 464 F.3d 1273, 1278 (11th Cir. 2006). This requirement "serves an important purpose in fraud actions by alerting defendants to the precise misconduct with which they are charged and protecting defendants against spurious charges of immoral and fraudulent behavior." *Ziemba v. Cascade Int'l, Inc.,* 246 F.3d 1194, 1202 (11th Cir. 2001). Failure to meet the requirements, as we see done in the instant Complaint, "is a ground for dismissal of a complaint." *Corsello v. Lincare, Inc.,* 428 F.3d 1008, 1012 (11th Cir. 2005)(per curium).

A false statement of fact, to be ground for fraud, must be of a past or material fact, not a promise to do something in the future. *Bailey v. Covington*, 317 So. 3d 1223, 1228 (Fla. 3d DCA 2021). Nowhere in the Complaint is it alleged that Castro-Walker ever made any promise that Castro-Walker himself would ever pay or do anything. Even in a light most favorable to the Plaintiff, all Castro-Walker did was predict what he thought others would do. This is why the Plaintiff made a futile

effort to plead agency, apparent agency and conspiracy theories, because without them the fraud counts against Castro-Walker fail on their face.

Under Florida law, an agency relationship requires "acknowledgement by the principal that the agent will act for him, the agent's acceptance of the undertaking, and control by the principal over the actions of the agent. *Marchiso v. Carrington Mortg. Servs., LLC*, 919 F.3d 1288, 1311. The Complaint is completely devoid of any facts that meet these elements. In fact, the facts plead in the Complaint contradict any such conclusion, as Castro-Walker is clearly an agent for his employer, the UAA/UF, while Defendant Hugh Hancock is clearly an independent businessman with no affiliation to the university other than being one of more than 500,000 Gator fans worldwide. Likewise, Castro-Walker was never an agent of the Gator Collective, LLC. There are simply no showings of Castro-Walker being controlled by anyone other than the UAA/UF, which is precisely why the Complaint should be dismissed on sovereign immunity grounds as previously stated. The Plaintiff has stated no facts that specifically prove an agency theory, or even an *apparent* agency theory, but merely a bare assertion that Jaden "believed" that such a relationship existed. A belief is not a fact, and no such facts meeting the necessary elements were plead. The Complaint must be dismissed on this basis.

Moreover, a Complaint also must not "lump together all of the defendants in allegations of fraud" as we see done repeatedly in the instant case. *Ambrosia Coal & Constr. Co. v. Pages Morales,* 482 F.3d 1309, 1317 (11th Cir. 2007). The instant Complaint is an "impermissible shotgun pleading" in that "it asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions." *Weiland v. Palm Beach Cnty. Sheriff's Office,* 792 F.3d 1313, 1323 (11th Cir. 2015). The Plaintiff clearly does this in an attempt to bolster its improper conspiracy and agencies theories, but such claims must be broken down and plead against each defendant separately so that they may be defended properly. Failure to do so calls for dismissal.

The instant Complaint also fails in that it improperly asks the Court to assign scienter to the defendants' actions using improper *post hoc ergo propter hoc* logic. The Plaintiff makes conclusory allegations of fraud and the defendants' mental state based solely on how the timeline ended and not on any supporting facts or evidence. *Losey v. Warden,* 521 F. Appendix 717, 719 (11th Cir. 2013). The mere fact that a marriage ultimately ends in divorce cannot be used to prove that a party had fraudulent intentions when they proclaimed "'til death do us part" at the altar years earlier. There is not a single fact plead in the Complaint that truly evidences any degree of scienter on the part of Marcus Castro-Walker, so the heightened pleading standards of Rule 9(b) require dismissal of Counts I though IV. *Am. United Life Ins.*

Co. v. Martinez, 480 F.3d 1043, 1064-65 (11th Cir. 2007); *Wilding v. DNC Servs. Corp.,* 941 F.3d 1116, 1127 (11th Cir. 2019).

The simple truth is that overly-optimistic "promises" are made every day in college football recruiting. Players are told all the time that they "will be starting by their sophomore season" or that they "will win the Heisman Trophy if they play in this offense" or that they "will be a first-round NFL draft pick if they attend this school." Opening the doors of the federal courthouse to every college football player seeking injunctive relief or specific performance of an "oral contract" when their dream doesn't materialize would only lead to a class of plaintiffs larger than any mass tort action on record.

Jaden Rashada voluntarily chose to make a public commitment to UF on November 10, 2022, yet he had full and complete freedom to change his mind at any time before he later signed his NCAA Letter of Intent to attend UF on December 21, 2022. The Gator Collective LLC had terminated its contract on December 6, 2022, so Jaden and his professional agents still had more than two weeks in which to shop his services to any school or NIL collective in the country and procure another written contract. More importantly, there is nothing magical or mandatory about the December 21, 2022 signing date; it is only the *first* day on which recruits can sign, not the last. Accordingly, had Jaden received sound advice from his agents, he would have waited to sign his NCAA Letter of Intent until *after* a new written contract for

NIL benefits had been obtained -- whether it was with a collective associated with UF, or one associated with the dozens of other schools that were also offering an athletic scholarship to Jaden.

Ironically, the Complaint (*see* ¶ 96) refers to a written draft instrument entitled "Assignment" as evidence of the monetary "promises" that were being made to Jaden during this time period... but the Complaint fails to mention that this "Assignment" was a self-serving document prepared entirely by Jaden's agents and their attorney. It was never approved, adopted or signed by any of the Defendants, and it was merely another desperate attempt by Jaden's representatives to greedily salvage a legally terminated contract rather than go out and mitigate damages by finding a new contract for their client elsewhere. Then again, it was that same attorney who had also drafted the original NIL contract with the Gator Collective that allowed for unilateral termination and which contained unagreed-upon monetary amounts, so perhaps that attorney was more interested in protecting himself than his client at that point.

Regardless, Jaden was allowed by his agents to sign a Letter of Intent with UF without any written NIL contract in place... and then voluntarily elected to *leave UF less than a month later* (*see* ¶ 66) before any future payments could be made. How can Jaden possibly prove that he never would have been paid when his own actions rendered those payments impossible?

III. Tortious Interference Counts V-VI

Counts V and VI both involve tortious interference, which would require the Plaintiff to prove that Castro-Walker acted improperly to either cause a third party (Miami's NIL booster) to breach its contract with Jaden, or to impede Jaden's performance of the NIL contract with Miami's NIL booster. Neither could be further from the truth. Jaden admits in his Complaint that it was his sole decision to walk away from the alleged $9.5 million Miami contract (of which no proof has yet to surface) on November 10, 2022.

Prior to this November 10, 2022 breach by Jaden of the Miami NIL contract, the only communications alleged in the Complaint to have been made by Castro-Walker were:

"You already know what we need to do over the next few days!! Get us the QB." (*see* ¶ 31)

"We need to lock down Jaden!" (*see* ¶ 32)

"[UF would] want [Jaden] to flip this week." (*see* ¶ 32)

Nothing about these communications could be considered improper in the realm of recruiting, especially since they were made to Jaden's representatives rather than to Jaden himself.

The Restatement (Second) of Torts section 766 (1979) states:

> One who intentionally and <u>improperly</u> interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise <u>causing the third person not to perform the contract</u>, is

> subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract. (emphasis added)

A clear reading of the Restatement shows that the only party who might have had legal standing to bring a claim for tortious interference would have been the third-party Miami NIL booster -- John Ruiz – and not Jaden Rashada. (*see* ¶56.) This appears to have been acknowledged by Jaden in his Complaint where he references a $150,000 payment allegedly made by Co-Defendant Hugh Hathcock for the purpose of satisfying any such claim by Mr. Ruiz. (*see* ¶56.) Interestingly, the Complaint fails to mention that the making of this alleged $150,000 payment by Mr. Hathcock would be entirely inconsistent with Jaden's contrived "conspiracy" theory in which the Defendants were only *pretending* to want Jaden to attend UF.

Under any reading of the Complaint, the only possible interpretation is that Jaden got greedy and voluntarily turned down guaranteed money in order to take whatever was behind Door #2. In today's version of *Let's Make a (NIL) Deal*, just as in the original television show, the contestant has no legal recourse when their own decision results in them ultimately leaving with only a Billy goat or a block of cheese. Accordingly, Counts V and VI must be dismissed.

CONCLUSION

The Complaint accuses Castro-Walker of fraud without sufficient allegations of fact, and therefore must be dismissed for all of the grounds stated herein.

Certificate of Word Count

I hereby certify that the foregoing contains 4,187 words, based on the word count of the word-processing system used to prepare same.

Dated July 23, 2024.

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