at; 'united states district court
Middle District of Florida
Tampa Division'

'FEDERAL TRADE COMMISSION' '600 Pennsylvania Avenue, NW Washington, DC 20580' [' Plaintiff'] v. 'Start Connecting LLC; et al ['Defendants']	[Civil] Action 'No. 8:24-cv-01626-KKM-AAS' [Judge] Kathryn K. Mizzle Hon. Amanda A. Sansone **MEMORANDUM OF LAW** (*verified*)

MEMORANDUM OF LAW IN SUPPORT OF *VERIFIED* OBJECTIONS TO [U.S. JUDGE] MIZZLE'S FINDING, CONCLUSIONS, AND ORDER 126-8

NOW COMES; Intervenor-Defendant, Hamlet Garcia Jr., present before this matter: in line with Federal Rule of Civil Procedure 72(a) and (b), hereby objects to Dkt. No. 126-8 as being contrary to law, predicated upon material factual misstatements, and violative of due process. Mizzle's misapplication of Rule 24(a) and (b), premature denial of intervention, failure to adjudicate ADA accommodations, and disregard of unopposed motions render the ruling legally defective. Intervenor respectfully requests *de novo* review, vacatur of Order No. 126, and reconsideration of his intervention and ADA accommodation requests.

I. VEXATIOUS LITIGANT FINDING [1]

[1] No principle is more settled in the Eleventh Circuit than the Court's inherent authority under 28 U.S.C. § 1651 (the "All Writs Act") to curb vexatious litigation and sanction parties engaging in procedural manipulation. See *Copeland v. Green, 949 F.2d 390 (1991)* ('Courts have a responsibility to prevent abuse of judicial process and maintain the integrity of the system.').

Records and pleadings reveal procedural gamesmanship and irregularities warranting judicial scrutiny. *Dual* terminations of defendant-intervention (on December 31, 2024, and January 31, 2025), granting an 'unopposed' motion filed before the ruling it benefits from, and dismissing Intervenor's motion without justification reflect the very conduct courts deem vexatious when committed by litigants. *See Procup v. Strickland*, 792 F.2d 1069, 1072 (11th Cir. 1986) (courts have inherent power to curb abuse of process).

A. Plaintiff's Procedural Gamesmanship and Bad-Faith Tactics [2]

Binding Eleventh Circuit precedent leaves no doubt that a pattern of procedural maneuvering, inconsistent filings, and disregard for due process constitutes vexatious litigation. Here, Plaintiff's actions reflect such tactics:

Plaintiff's maneuvering reflects hallmarks of vexatious litigation:

- ➢ Filed an "unopposed" motion at 1:11 PM—before intervention was denied—strongly suggesting foreknowledge of the ruling.
- ➢ Evaded substantive engagement, filing no opposition yet benefitting from judicial action terminating intervention.
- ➢ PACER records reveal *dual* termination of Petitioner's motion—on December 31, 2024, and January 31, 2025—exposing procedural irregularities and coordinated timing.
- ➢ Violated M.D. Fla. Local Rule 3.01(g) by failing to engage in good faith before filing the **'<u>unopposed</u>'** motion.

[2] A vexatious litigant finding is appropriate when there is a clear pattern of bad-faith conduct, strategic procedural maneuvers to delay or manipulate outcomes, or repeated misrepresentations to the court. See *Harrelson v. United States*, 613 F.2d 114, 116 (5th Cir. 1980) (holding that vexatious litigation includes conduct that is "abusive, repetitive, or improperly motivated"). *See* ECF No. 35; 41; 50; 69; 80-3.

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B. Procedural Irregularities Indicate a Pre-Determined Outcome

A pattern of judicial inconsistencies, selective procedural enforcement, and unexplained timing anomalies raises serious due process concerns. Court Mizzle granted Plaintiff's unopposed motion—filed prematurely—while simultaneously disposing of Intervenor's motion without requiring opposition. If a 'pro se' litigant engaged in such procedural evasion, courts would swiftly impose a vexatious litigant designation. See *Harrelson v. United States*, 613 F.2d 114, 116 (5th Cir. 1980) (sanctioning procedural abuse for strategic gain).

Intervenor does not impugn the Court but seeks procedural parity. The law forbids selective application of rules, and these irregularities demand judicial review and correction to preserve the integrity of these proceedings. [3]

II. STANDARD OF REVIEW

The Court's January 31st order on a dispositive motion—including denial of intervention—is subject to *de novo* review under 28 U.S.C. § 636(b)(1). *Davis v. Apfel*, 93 F. Supp. 2d 1313, 1316 (M.D. Fla. 2000). Non-dispositive orders, including those concerning ADA accommodations, are reviewed under a 'clearly erroneous or contrary to law' standard under Rule 72(a). See *Merritt v. Int'l Broth. of Boilermakers*, 649 F.2d 1013, 1017 (5th Cir. 1981). Moreover, a ruling based on material factual misstatements is reversible error. [4]

[3] The Eleventh Circuit reserves extreme sanctions for only the most egregious abuses. *See Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008) ("Vexatious litigant restrictions are an extraordinary remedy, imposed only when lesser sanctions have failed."). Intervention cannot be denied as a procedural sanction absent a clear showing of abuse. *Cf. Thomas v. Fulton Cnty. Bd. of Educ.*, 818 F. App'x 916, 919 (11th Cir. 2020)

[4] *Cf. Florida Dep't of Child. & Fam. Servs. v. P.E.*, 14 So. 3d 228, 230 (Fla. 3d DCA 2009).

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III. ERRORS IN DENYING INTERVENTION

Intervention exists to prevent exclusion, not to be wielded as a gatekeeping tool. Rule 24 imposes clear standards, yet the ruling erects artificial barriers, distorts precedent, and denies a legally protectable interest without justification. Judicial discretion cannot override established rights—where intervention is warranted, denial is error.

A. Kimball's Finding That Petitioner Lacks a Protectable Interest Contradicts Eleventh Circuit Precedent

Order Doc. No. 126 at ¶¶2-3 states:

> 'Garcia has not shown that he has the kind of 'interest' required by Rule 24(a).'

This conclusion misapplies Federal Rule of Civil Procedure 24(a)(2), which allows intervention where an applicant "claims an interest relating to the property or transaction that is the subject of the action" and is "so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest" unless adequately represented by existing parties.[5]

Binding authority forecloses any dispute—economic, regulatory, and financial interests warrant intervention under Rule 24(a). See *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989) ("The inadequacy of representation is a minimal burden requiring only that the intervenor show that representation 'may be inadequate.'"). Likewise, in *Mt. Hawley Ins. v. Sandy Lake Props.*, 425 F.3d 1308, 1311 (11th Cir. 2005), the court held:

> "A protectable interest must be 'direct, substantial, and legally protectable,' but intervention is not limited to property ownership alone." - Senior Circuit Judge Tjoflat

[5] *Cf. Athens Lumber Co. v. Federal Election Commission*, 690 F.2d 1364 (11th Cir. 1982)

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Here, Petitioner's stake in the underlying regulatory enforcement action is direct and substantial, as the outcome will materially impact his financial and legal interests. Court Mizzle's ruling mischaracterizes the standard and contradicts governing precedent. [6]

B. [Her] Conclusion of Law That '[His] Claims Are Better Suited for a Separate Challenge' Contradicts Rule 24

Order 126 asserts:

> "His claims are better suited for a separate challenge of the regulations." (Doc. 126 at ¶4).

Said statement directly contradicts the Court's own conclusion that Petitioner lacks a protectable interest. If Petitioner lacks an interest sufficient for intervention, then he logically cannot sustain an independent lawsuit on the same grounds. This internal contradiction renders the ruling legally unsound.

Under Rule 24, an interest sufficient to sustain independent litigation necessarily satisfies intervention requirements. See *Fund for Animals v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003). This forum of law failure to apply this principle constitutes reversible error.

C. The Court Failed to Provide Factual Findings Justifying Its Denial of Permissive Intervention

Under Rule 24(b), permissive intervention is warranted where an applicant, *inter alia*, asserts a claim or defense interwoven with the primary action through a common question of law or fact.

> Order 126 at ¶4 states: "Regardless, intervention will certainly delay the proceedings without benefit to the primary acion's resolution."

[6] See *United States v. Jefferson County*, 720 F.2d 1511 (11th Cir. 1983).

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This assertion is unsubstantiated and contrary to law. In *McDonald v. Means*, 309 So. 3d 130, 136 (Fla. 1st DCA 2020), the court held:

> "Permissive intervention cannot be denied without factual findings demonstrating a clear risk of undue delay or prejudice."

Here, the record contains no factual findings demonstrating that intervention would delay proceedings, rendering the denial legally infirm. [7]

IV. PROCEDURAL VIOLATIONS & DUE PROCESS ERRORS

Due process is neither optional nor elastic—it is the bedrock of judicial integrity. A ruling untethered from procedural fairness undermines confidence in the adjudicative process. The record here reveals a pattern of premature determinations, unexplained denials, and procedural maneuvers that demand correction. [*Cf.* 28 U.S.C. § 2241; Fla. Stat. § 57.105; ABA Mod. C. Jud. Cond. R. 2.6].

A. Premature Ruling Without Adversarial Testing Violates Due Process

Order 126 at ¶1 states:

> "Garcia moves to intervene under Rule 24(a) or 24(b). For the reasons below, the motion is denied on both grounds."

This ruling was issued before responses were due, violating Fed. R. Civ. P. 24(c) and M.D. Fla. Local Rule 3.01(c). Courts have repeatedly held that a motion may not be denied before the movant has had an opportunity to address Court's concerns. See *EEOC v. STME, LLC*, 938 F.3d 1305, 1313 (11th Cir. 2019).

B. Denial of Oral Argument Lacks Justification

Order 126 at ¶4 states:"The Request for Oral Argument (Doc. 120-6) is DENIED as moot."

[7] *Cf.* Georgia v. U.S. Army Corps of Engineers, 302 F.3d 1242 (11th Cir. 2002)

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Ruling fails to provide any justification for denying oral argument. Courts have consistently held: oral argument is required during *contested* intervention. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982) (Due process requires adversarial testing before final determination of contested issues).

C. The Court's Grant of an Unopposed Motion Was Procedurally Defective

Order 126 dismisses Doc. 123 as 'moot' while granting Plaintiff's **'unopposed'** motion, ECF. No. 125, filed at 1:11 PM—before Order 126 was issued at 3: [ ] PM. This sequence suggests improper foreknowledge of the ruling, undermining judicial integrity and procedural fairness. [8]

Further, PACER records show defendant-intervention was 'terminated' twice—on December 31, 2024, and January 31, 2025. Dual terminations make no legal sense. If intervention ended at 3 PM on January 31 , why did Plaintiff file an *unopposed* motion on 1:11 PM Jan. 31, without addressing or opposing Petitioner's filings? The record reflects a breakdown in the judicial process. [9]

- A motion cannot be dismissed without findings. *Tech. Training Assocs., Inc. v. Buccaneers Ltd. P'ship*, 874 F.3d 692, 696 (11th Cir. 2017) ("A court must substantiate procedural rulings with record-based justification.").
- Mr. Nathan's motion violated M.D. Fla. Local Rule 3.01(g), which requires a good faith conference before filing. None occurred.

[8] *Cf.* Royal Palm Properties v. Pink Palm Properties, LLC, 950 F.3d 776 (11th Cir. 2020).

[9] *Ref. Shipley v. Helping Hands Therapy,* 996 F.3d 1157 (11th Cir. 2021).

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Therefore, the Court must vacate Order 126 or account for these irregularities—if termination was proper, why the contradictions, dual rulings, and premature filings? These errors warrant reconsideration and correction.

V. THE COURT ERRED IN DISMISSING INTERVENORS' ADA ACCOMMODATION REQUEST WITHOUT INDEPENDENT REVIEW

A request for ADA accommodations must be adjudicated independently of other issues. See *Tennessee v. Lane*, 541 U.S. 509 (2004). Order 126 dismisses Petitioner's ADA accommodation demand (Doc. 123) as 'moot', in direct violation of 42 U.S.C. § 12132; Fla Stat. § 760.07; and; 28 C.F.R. § 35.160(b)(1). The ruling lacks any individualized assessment, making it legally unsustainable.

VI. RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests the District Judge to:

A. Vacate Order 126-7 & grant intervention as of right under Rule 24(a); or;

B. Alternatively, grant permissive intervention under Rule 24(b); and;

C. Addressing procedural irregularities and vexatious litigation; and;

D. Direct the Court to evaluate its findings independently; and/or;

E. Schedule oral argument to ensure proper adversarial testing; and;

F. Vacate the [legally] infirm denial of ADA accommodations.

i: say here and [shall] verify in open court that all herein be true;

/s/ Hamlet Garcia II

i: [a] man

Hamlet Garcia II

Executed: February 13th, 2025

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VERIFICATION OF SERVICE [10]

i: hereby *verify* that on February 13, 2025 a true and correct copy of the foregoing Verified Objection to Order No. 126; 127; & 128 was filed via CM/ECF, which *purportedly* effectuates automatic service upon all counsel of record.

Respectfully submitted,

/s/ Hamlet Garcia II

i: [a] man

Hamlet Garcia II

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[10] **Per Fed. R. Civ. P. 5(d)(1) and M.D. Fla. Local Rule 1.08.**

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