

**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’]

‘No. 8:24-cv-01626-KKM-AAS’

[Judge] Kathryn K. Mizzle
Hon. Amanda A. Sansone

**REQUEST FOR
JUDICIAL NOTICE**

(verified)

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**PREEMPTIVE BRIEF IN SUPPORT OF
JUDICIAL NOTICE AND RECONSIDERATION**

Judicial discretion is not an unchecked power to disregard procedural contradictions, adjudicative misstatements, or due process violations. Courts are bound by legal principles that ensure procedural integrity and factual accuracy in all rulings. *See Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) (“Due process violations must be corrected where procedural missteps affect fundamental rights.”). Mizzle’s handling of Hamlet’s intervention and ADA accommodations request, raises fundamental concerns that must be addressed.

Plaintiff’s lead counsel, Nathan Nash, orchestrated procedural maneuvering that circumvented due process safeguards, while the Court’s rulings rest on material legal and factual missteps necessitating correction. This brief preempts any attempt to obscure judicially noticeable facts and forecloses mischaracterization of the record. ¹

¹ Courts must correct due process violations and adjudicative inconsistencies or allow meaningful briefing. *See Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012); *McBryde v. Comm. to Review Circuit Council Conduct & Disability Orders*, 264 F.3d 52, 64 (D.C. Cir. 2001).

LEGAL STANDARD

I. JUDICIAL NOTICE UNDER FED. R. EVID. 201

Judicial notice is mandatory where a fact is (1) not subject to reasonable dispute and (2) derived from verifiable sources, such as court records. See *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999). Once properly invoked, judicial notice cannot be ignored or recharacterized to avoid adjudication of the facts.²

II. RECONSIDERATION UNDER RULES 59(e) & 60(b)

Reconsideration is warranted where:

1. Controlling law was overlooked (*Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994)).
2. The Court committed clear error (*Am. Home Assur. Co. v. Glenn Estess & Assoc.*, 763 F.2d 1237, 1239 (11th Cir. 1985)).
3. The ruling resulted in manifest injustice (*McCoy v. Macon Water Auth.*, 966 F. Supp. 1209, 1223 (M.D. Ga. 1997)).

A court’s failure to correct factual misstatements, procedural inconsistencies, or legally unsound rulings constitutes reversible error.

² Judicial notice is not discretionary where the facts at issue are embedded in the court’s own records. See *Shahar v. Bowers*, 120 F.3d 211, 214 (11th Cir. 1997) (“Courts must not adjudicate in ignorance of indisputable facts within their own records.”). the Court cannot acknowledge indisputable facts while simultaneously neutralizing their legal implications. Courts must integrate noticed facts into the adjudication of pending motions.” *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) (Holding that judicially noticed facts must be given due weight in legal determinations).

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ARGUMENT WARRANTING JUDICIAL NOTICE

Judicial notice is not a procedural courtesy—it is a safeguard against factual distortion and adjudicative inconsistency. When court records reveal contradictions that undermine due process, they must be formally acknowledged and corrected. The following errors are not mere irregularities but legally consequential missteps warranting immediate judicial scrutiny.

I. Dual Termination of Intervention Defies Procedural Logic

PACER records reflect two separate terminations of Petitioner’s intervention—December 31, 2024, and January 31, 2025. A party cannot be twice removed from the same litigation absent intervening justification. This procedural inconsistency renders the status of intervention legally indeterminate, violating due process.³

2. MISATTRIBUTION OF PETITIONER’S LEGAL INTEREST

Order 126 at ¶3 erroneously attributes Petitioner’s asserted interest to CORE, despite filings establishing direct, personal economic, regulatory, and reputational stakes.⁴ This misrepresentation invalidates the court’s standing analysis and conflicts with Eleventh Circuit precedent.⁵

³ *Ref. Simmons v. Conger*, 86 F.3d 1080, 1086 (11th Cir. 1996) (inconsistent rulings constitute reversible error).

⁴ *Cf. Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989) (economic and financial interests justify intervention).

⁵ *See e.g., Mt. Hawley Ins. v. Sandy Lake Props.*, 425 F.3d 1308, 1311 (11th Cir. 2005) (protectable interests extend beyond property ownership).

3. PREMATURE GRANT OF PLAINTIFF'S "UNOPPOSED" MOTION

Plaintiff filed Doc. 125 at 1:11 PM on January 31, 2025, labeling it “unopposed” before Order 126 issued at 3:21 PM, denying intervention. If Plaintiff’s motion was filed before intervention was denied, how could it be unopposed? This suggests procedural foreknowledge and contradicts due process principles. *See EEOC v. STME, LLC*, (11th Cir. 2019) (“Preemptive rulings deprive litigants of due process.”).

4. DISMISSAL OF [] ACCOMMODATIONS VIOLATED FEDERAL LAW

Order 126 at ¶4 dismisses Doc. 123 as "moot" without an individualized assessment, violating 42 U.S.C. § 12132, Fla. Stat. § 760.07, and 28 C.F.R. § 35.160(b)(1). Federal law mandates individualized assessments before denying ADA accommodations. *See Tennessee v. Lane*, 541 U.S. 509 (2004).

II. PROCEDURAL AND LEGAL ERRORS WARRANTS RECONSIDERATION⁶

A. DENIAL OF INTERVENTION CONTRADICTS RULE 24

The court misapplied Rule 24(a) and (b) by disregarding binding Eleventh Circuit precedent: *See Fund for Animals v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (“An interest sufficient for independent litigation necessarily satisfies intervention requirements.”).

B. PROCEDURAL DUE PROCESS VIOLATIONS

The court denied intervention before adversarial briefing was completed, violating fundamental fairness. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). Judicial economy should never override due process; *Cf. Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) (Clarifying that due process violations must be remedied regardless of perceived inefficiencies).

⁶ Reconsideration is not a forum for duplicative arguments but is warranted where the Court misapplied law, misrepresented material facts, or committed procedural irregularities affecting rights. Petitioner’s request is not a reiteration, but an effort to correct fundamental adjudicative errors.

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C. FAILURE TO JUSTIFY PROCEDURAL INCONSISTENCIES

The record lacks factual findings supporting the denial of permissive intervention under Rule 24(b). See McDonald v. Means, 309 So. 3d 130, 136 (Fla. 1st DCA 2020) (denial of intervention requires “findings demonstrating undue delay or prejudice.”). ⁷

CONCLUSION & RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests the Court:

- ✓ Take Judicial Notice under Fed. R. Evid. 201(b).
- ✓ Vacate Order 126 and Grant Intervention under Rule 24(a).
- ✓ Alternatively, grant permissive intervention under Rule 24(b).
- ✓ Correct the procedural inconsistencies in prior rulings. ⁸
- ✓ Vacate the improper denial of ADA accommodations.
- ✓ Permit oral argument to ensure adversarial testing.

Respectfully submitted:

/s/ Hamlet Garcia II

i: [a] man

Executed: this 15th day of February, 2025.

⁷ Even if the Court deems its prior procedural missteps ‘harmless,’ due process violations affecting substantive rights require reversal. Courts must correct adjudicative errors where procedural irregularities create material prejudice: *See McCoy v. Macon Water Auth.*, 966 F. Supp. 1209, 1223 (M.D. Ga. 1997) (Manifest injustice standard for reconsideration).

⁸ Judicial impartiality is paramount. A court’s refusal to acknowledge procedural contradictions and due process violations raises concerns under 28 U.S.C. § 455(a), requiring judges to disqualify themselves where impartiality might reasonably be questioned.

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VERIFICATION OF SERVICE⁹

i: hereby *verify* that on February 15, 2025 a true and correct copy of the foregoing Preemptive Brief in Support of Request for Judicial Notice 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

Executed: February 15th, 2025

⁹ Per Fed. R. Civ. P. 5(d)(1) and M.D. Fla. Local Rule 1.08.