IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COFACE NORTHERN AMERICA INSURANCE COMPANY,	:	
Plaintiff,	:	**CIVIL ACTION**
v.	:	**FILE NO.: 1:19-CV-0242-AT**
JAMES WENDELL DAVIS, III, and JOHN DOES 1-50,	:	
Defendants.	:	

DEFENDANT JAMES WENDALL DAVIS, III'S RESPONSE TO PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION AND BRIEF IN OPPOSITION THERETO

COMES NOW Defendant James Wendall Davis, III (hereinafter "Defendant Davis") and files this his Response to Plaintiff's Emergency Motion for Temporary Restraining Order or Preliminary Injunction and Brief in Opposition Thereto as follows:

A.

INTRODUCTION

The Plaintiff in this case, an insurance company with egg on its face for its own gross negligence in failing to pick up the telephone to verify a grammatically incorrect change in payment instructions, has lost $550,000.00. To avoid and obscure such negligence and its embarrassment, Plaintiff has filed a "Verified" complaint without any personal knowledge – a violation of Rule 11 – and in the process threatens to destroy the reputation of a lawyer who lacked any knowledge of any fraud.[1] The damage to the lawyer is far greater than $550,000.00 because he could never undo the damage to his reputation. The remedy for such reckless pleading starts with Rule 11 sanctions and denial of the Plaintiff's motion for a temporary restraining order or preliminary injunction. A Rule 11 letter is being sent to Plaintiff's counsel and sanctions will be sought at a later date should Plaintiff persist in its unfounded allegations.

Defendant Davis, just like the Plaintiff, is a victim of the fraud scheme alleged in Plaintiff's Complaint. As a practicing attorney and member in good standing of

[1] Attached hereto is the foreseeable result of Plaintiff's cavalier filing. A front-page article in the Fulton Daily Report in which Defendant Davis' professional reputation is unfairly and unjustifiably besmirched. See Exhibit 1.

the Georgia Bar, Defendant Davis vehemently denies any suggestion that he knowingly or willfully engaged in any fraudulent activity directed against the Plaintiff. Indeed, as the County Administrator for Douglas County, Georgia, Defendant Davis is very much aware of the duties any lawyer has with respect to an IOLTA escrow account. It appears from the scant information provided to him in the Complaint that Davis was unwittingly used as a dupe by the same "impostors" who successfully conned the Plaintiff. Despite the complete absence of any evidence that Defendant Davis knowingly conspired to defraud Plaintiff, simply because he received monies under false pretenses, he is alleged to be in on the fraud. This is false.

Prior to being afforded any opportunity to defend his professional reputation, at the very outset of this litigation, Plaintiff seeks the extraordinary provisional remedy of freezing all of Davis' assets. See Complaint, ¶ 81.[2] The relief plaintiff seeks is abusive, unprecedented, and unjustified, and should be denied.

[2] ¶ 81 of Plaintiff's Complaint reads as follows: "Accordingly, Coface requests that the Court preliminarily enjoin Davis from disposing of any of his assets or substantial sums of money, in order that he would be able to pay an ultimate judgment of at least $552,766.20." (Emphasis Supplied).

This is not a case in which a plaintiff has properly invoked the Court's equity jurisdiction to safeguard an equitable remedy to which the plaintiff is entitled. This is a case in which the Plaintiff is entitled only to money damages. Moreover, the Plaintiff has presented no evidence, other than rank speculation, of wrongdoing or the likelihood of diversion that would justify an asset freeze to protect its property.

As set forth herein, Plaintiff's motion, directed at another victim of the fraud scheme described, lacks any legal or factual foundation and must be denied.

B.

PLAINTIFF'S DEFICIENT COMPLAINT

Rule 9(b) of the Federal Rules of Civil Procedure provides that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." The Eleventh Circuit has found that Rule 9(b) is satisfied if a complaint sets forth:

(1) precisely what statements were made in what documents or oral representations or what omissions were made, and

(2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same, and

(3) the content of such statements and the manner in which they misled the plaintiff, and

(4) what the defendants obtained as a consequence of the fraud.

Ziemba v. Cascade International, Inc., 256 F.3d 1194, 1202 (11th Cir. 2001) (quoting *Brooks v. Blue Cross and Blue Shield of Florida*, 116. F.3d 1364, 1371 (11th Cir. 1997)). The cases that the parties cite indicate that, in light of these requirements, when alleging fraudulent conduct and statements, a plaintiff may not lump together defendants when it will obscure the identity of the party that has committed the alleged act. *See Centrifugal Air Pumps Australlia v. TCS Obselete, LLC,* No. 6:10-CV-820-Orl-31DAB, 2010 WL 3584948, at *2 (M.D. Fla. Sept. 9, 2010) (criticizing the practice of "lumping" when it rendered "the factual underpinnings of the [c]omplaint practically incomprehensible" and created a conflicting description of events); *Cordova v. Lehman Brothers, Inc.*, 526 F. Supp. 2d 1305, 1313 (S.D. Fla. 2007) ("Rule 9(b) does not allow a complaint to merely 'lump' multiple defendants together but 'require[s] plaintiffs to differentiate their allegations when suing more than one defendant. . .and inform each defendant separately of the allegations surrounding his alleged participation in the fraud.'")

(alteration in original) (quoting *Bruhl v. PricewaterhouseCoopers International,* No. 03-23044-Civ, 2007 WL 997362, *3 (S.D. Fla. March 27, 2007)).

Plaintiff asserts that at some unspecified time in December 2018, Coface agreed to pay an unspecified policyholder $3,093,085.50 in connection with a claim made under a commercial trade cleared insurance policy it had issued. The Plaintiff has not provided the Court or the defendant with any information as to when the policy was issued or the identity of the alleged policyholder. Nonetheless, it is further asserted in paragraph 10 of the Complaint that on or about December 18, 2018, an unidentified representative of Coface requested payment instructions from its policyholder's insurance brokers. Again, the Complaint is devoid of any factual information as to who the policyholder is or who the insurance brokers are. After requesting payment instructions from the policyholder's insurance brokers, it is further alleged that later on December 18, an unknown or unspecified representative for Coface's policyholder (not the broker) sent payment instructions to Coface's representative via email including specific wire transfer information for an account in the policyholder's name held at Citibank, N.A.

The reason these background facts are repeated herein is simply to assist the Court in understanding the difficulty this defendant faces in responding to such

vague and ambiguous allegations. Virtually no specifics are provided as to what this defendant did or failed to do as part of the alleged fraudulent scheme. For example, in paragraph 11, the day after the alleged wiring instructions were sent to Coface, it is alleged that unknown defendants acting in concert and aiding and abetting each other impersonated the unnamed policyholder and sent an unnamed Coface's "representative" another email purporting to be from the same policyholder representative (is this the broker or representative?). It is alleged that as part of the scheme the text of an original December 18, 2018 email was included as part of the chain. (Complaint ¶ 11).

Somehow, whoever defrauded the Plaintiff had to have known of the settlement with the policyholder. It is not specified how this privileged information could possibly have been known outside of Coface. In any event, someone knew of the settlement and knew of the payment instructions of December 18 and were clever enough to get a copy of the original wire transfer instructions to attach to the "imposter" email. There is no explanation as to how this was done, how defendant Davis could be known about this, or how such privileged information could even have been obtained. Nonetheless, whoever was involved in the fraudulent scheme diverted the settlement funds away from the intended wire transfer destination to Citi

Bank to the IOLTA account in the name of the defendant Davis. Whether defendant Davis was an innocent dupe who was deceived just as the Plaintiff is not addressed by Plaintiff despite the language of Plaintiff's agent in attached Exhibit 2 describing Davis as a "victim" of the scheme. Which is exactly what he is. Allegations of fraud against Davis are set forth in conclusory fashion asserting that Davis conspired with the impostor fraudsters without any specifics whatsoever.

Rule 9(b) clearly applies to all of the claims asserted by the Plaintiff in this action in that they all arise from allegations of fraud. However, the Plaintiff has not alleged any specific facts showing Defendant Davis' involvement in any attempt to impersonate anyone who works for Coface or any representative of Coface's client who is not even identified. Plaintiff does not even allege that Davis had direct knowledge of any attempt by these unidentified impostors to steal the funds (other than in conclusory fashion). In short, no fact is alleged with any particularity which shows any misconduct or breach of duty by Davis, who was himself also used unwittingly by the so-called "impostors." Indeed, Exhibit 2 is an email sent to Mr.

Davis from a fraud investigator for Citibank, Plaintiff's agent, in which Mr. Davis is properly characterized as a victim of the scheme.[3]

Even though Plaintiff asserts that it is a worldwide leader in its industry, clearly it was victimized by the impostors. Query, how it would not be possible that the Plaintiff himself might similarly be victimized by the same impostors – one of whom posed as a representative of Coface? Davis was duped in acting as an escrow agent/paymaster for funds wire transferred into his IOLTA Escrow Account. It is undisputed per Exhibit B to Plaintiff's Complaint that once Defendant Davis was notified that he had become involved in a fraudulent scheme that he cooperated with the Plaintiff and returned the monies remaining in his Escrow Account that had not then been distributed. With respect to other funds that already left the account, those funds are alleged to have been obtained by Mr. Davis under fraudulent pretenses as part of a vague and ambiguous fraud conspiracy which identifies no one and provides no virtually specifics as to the acts of the impostors.

Rather than duping Mr. Davis into allowing his escrow account to be used for what appears to be international business transaction, imagine if the impostors had

[3] This email (Exhibit 2) is not hearsay, but rather, an authorized statement of the agent of the Plaintiff acting in the scope of its authority in this matter. See Fed.R.Evid. 801(d)(2)(C) and (D).

simply used an account at a different bank and wired the money offshore to themselves. Would the Plaintiff say that the bank that received and disbursed the funds had engaged in fraud/racketeering activities simply by transmitting the funds as directed? That would be frivolous and yet there are no more allegations of fact showing Davis' wrongdoing than that. He simply received and distributed the funds as directed. Fortunately, before all the funds were distributed, Coface and/or its agent, uncovered the fraud and Davis assisted them in returning the remaining funds.

In its Complaint, the Plaintiff has trashed defendant Davis' reputation and gone so far as to casually accusing him of misappropriating $3,500.00 from other clients (Compliant ¶s 26, 77 and 78.) Despite the Verification attached, this is a reckless pleading without a factual basis, certain to harm Davis' reputation and adheres to his fiduciary obligations as an attorney. Clearly, per Exhibit B attached to Plaintiff's Complaint, what happened was that other monies that were properly in Mr. Davis' Escrow Account were also sent back by Wells Fargo, where his IOLTA account is located, to Citibank, over Mr. Davis' protest. This has caused Mr. Davis considerable distress as also set forth in the same Exhibit B.

The Court is asked to contrast the knowledge of Coface and/or its policyholder with the paucity of information provided as to Mr. Davis' alleged acts or omissions.

Having received actual wiring instructions, the Plaintiff ignored numerous grammatical errors in the December 19 email directing the transfer that should have alerted it that the communications were not from the same persons. All it had to do was to pick up the phone to call and verify that the request was legitimate. Coface also apparently never attempted to verify the signature of the President/CEO of the policyholder (Complaint ¶ 14). The policyholder apparently also allowed its emails to be hacked. All of this was gross negligence and no reasonable person would have relied on these identifiable false representations by the "imposters." Why is this mentioned? Because justifiable reliance is an element of the fraud claim being asserted. Moreover, the Plaintiff has sued Mr. Davis apparently because his firm received the funds as a direct result of the Plaintiff's grossly negligent lack of security over funds entrusted to its care. Clearly the Plaintiff was negligent in wiring $3 million when the email address was changed from ".com" to ".2cf." It was as if the Plaintiff left its money in a public place where anyone could obtain it.

Again, Exhibit B is the communication from Mr. Davis to Plaintiff's attorney. Mr. Davis' email was professional and temperate and in it he said he was retaining counsel to deal with this matter. Plaintiff intentionally mischaracterized Defendant's cooperation as actions which stifled them in their efforts to seek the return of funds

negligently sent to Defendant Davis in the first instance. Again, were it not for the cooperation and assistance of Davis the Plaintiff would not have received over $2.5 million per Plaintiff's own showing in its Complaint.

C.

LEGAL ARGUMENT AND CITATION OF AUTHORITY

It is well-settled in this Circuit that any injunctive relief, whether in the form of a preliminary injunction or a temporary restraining order, is "an extraordinary and drastic remedy." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998); *United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir. 1983).

1. The Proper Remedy in this Case is Attachment and Plaintiff Cannot Meet Standard for Attachment under Georgia Law

Federal courts must, "[w]hen faced with motions appearing to call for an attachment but labelled something else, … look past the terminology to the actual nature of the relief requested." Mitsubishi, 14 F.3d at 1521. *See also United States ex rel. Bibby v. Mortgage Investors Corporation*, 2017 WL 8218294 (N.D. Ga. Sept. 8, 2017) (stating that the Eleventh Circuit's admonishment to district courts to "look past the terminology" of a request purporting to seek equitable relief means, in

practical terms, "that a request for injunctive relief in a damages case should often be reframed as a request for prejudgment attachment under Fed. R. Civ. P. 64.").

Rule 64 of the Federal Rules of Civil Procedure authorizes the prejudgment attachment of property for the benefit of a plaintiff in certain situations and provides the proper vehicle for plaintiffs seeking to restrain a defendant's assets with an eye towards satisfying a potential money judgment. Accordingly, Rule 64, and not Rule 65 (which governs injunctions generally), provides the standard for evaluating a request for preliminary injunctive relief that is, in reality, no more than a request for prejudgment attachment; Rule 64 thus controls the disposition of this case. *Rosen*, 21 F.3d at 1530; *Mitsubishi*, 14 F.3d at 1521.

"Rule 64 makes available to district courts 'all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action' and provides that, except as otherwise provided by the Constitution or an applicable federal statute, such remedies 'are available under the circumstances and in the manner provided by the law of the state in which the district court is held.' The rule expressly lists attachment as one such available remedy, along with 'other corresponding or equivalent remedies, however designated.' The rule expressly lists attachment as one such available remedy, along

with "other corresponding or equivalent remedies, however designated.'" *Mitsubishi*, 14 F.3d at 1521 (quoting 7 James W. Moore et al., Moore's Federal Practice ¶ 64.04[1] (2d ed. 1993); 11 *Wright & Miller*, *supra*, § 2932). "[A]s the Supreme Court has explained, 'long-settled federal law provid[es] that in all cases in federal court, ... state law is incorporated to determine the availability of prejudgment remedies for the seizure of person or property to secure satisfaction of the judgment ultimately entered.'" Id. at 1530-31 (quoting *Granny Goose Foods, Inc. v. Brotherhood of Teamsters Local 70*, 415 U.S. 423, 436 n. 10, 94 S. Ct. 1113, 1123 n. 10 (1974)).

In actions at law, plaintiffs in Georgia have a prejudgment remedy for the sequestration of assets under the attachment statute, O.C.G.A. § 18-3-1, provided they can satisfy the enumerated statutory grounds for relief. Accordingly, the use of injunctive relief as a substitute for the remedy of prejudgment attachment, with its attendant safeguards, is improper.

In Georgia, prejudgment attachment may only be granted where the movant demonstrates that the defendant:

> (1) Resides out of the state;
> (2) Moves or is about to move his domicile outside the limits of the county;
> (3) Absconds;

(4) Conceals himself;
(5) Resists legal arrest; or
(6) Is causing his property to be removed beyond the limits of the state.

O.C.G.A. § 18–3–1.

In *Rosen*, the Court rejected the plaintiff's request for injunctive relief in a damages case, finding that prejudgment attachment under Rule 64 was the "proper vehicle for plaintiffs seeking to restrain a defendant's assets with an eye towards satisfying a potential money judgment." 21 F.3d at 1531. Nonetheless, plaintiffs had not attempted to invoke, nor did the district court at any time address, Florida attachment law. Because "plaintiffs in Florida possess[ed] an adequate, exclusive prejudgment remedy for the sequestration of assets under the attachment statute, … provided that they can satisfy the enumerated statutory grounds for relief[,] … the use of injunctive relief as a substitute for the remedy of prejudgment attachment, with its attendant safeguards, [was] improper." *Id.*

It is clear in this case that the remedy Plaintiff seeks is "equivalent to a writ of attachment," notwithstanding its labelling as a request for a preliminary injunction. *Mitsubishi*, 14 F.3d at 1521. As was true in *Rosen*, because Georgia law, O.C.G.A. 18-3-1, provides Plaintiff with an adequate, exclusive prejudgment remedy for the sequestration of assets, so long as Plaintiff can satisfy the enumerated

statutory grounds for relief, injunctive relief as a substitute for the remedy of prejudgment attachment, is improper.

Plaintiff has not invoked the Georgia attachment statute, however, and, even if it had, would not be entitled to prejudgment attachment of Mr. Davis' assets as it has not demonstrated that any of the statutory grounds for attachment apply in this case. Moreover, the Georgia statute speaks in permissive and not mandatory terms when granting courts the authority to order prejudgment attachment when these circumstances are present. *Mitsubishi,* 14 F.3d at 1522.

2. Neither a Preliminary Injunction or TRO is Proper in this Case

"Where the state attachment statute does not authorize prejudgment attachment in a given case, a district court is not authorized ... to attempt to accomplish the same result by issuing a preliminary injunction." *Rosen*, 21 F.3d at 1531 (quoting *Mitsubishi*, 14 F.3d at 1522 n. 24)). Because O.C.G.A. § 18-3-1 does not authorize prejudgment attachment in this case, the Court is not authorized to accomplish the same ends by granting a TRO or preliminary injunction. Even assuming *arguendo* this Court had such authority, Plaintiff would not be entitled the relief sought.

First, Plaintiff has failed to demonstrate that it is entitled to a final equitable remedy, which is a necessary prerequisite to the provisional remedy of an asset freeze. The Eleventh Circuit has repeatedly counseled against granting preliminary injunctions "in order to establish a [general] fund with which to satisfy a potential judgment for money damages," which is generally "simply not an appropriate exercise of a federal district court's authority." *Rosen*, 21 F.3d at 1530-31 (an injunction may not issue to protect a potential money damages award); *Mitsubishi,* 14 F.3d at 1522. See also *Reebok Intern., Ltd. v. Marnatech Enterprises, Inc.*, 970 F.2d 552, 558-59 (9th Cir. 1992) ("[T]he injunction is authorized by the district court's inherent equitable power to issue provisional remedies *ancillary to its authority to provide final equitable relief*.") (emphasis added)).

Where, as here, plaintiff is without a final equitable remedy, there is no basis to grant a preliminary injunction freezing assets. *See also Mitsubishi*, 14 F.3d at 1518 (unrelated assets cannot be frozen to satisfy nonequitable money judgment and "c]ases in which the remedy sought is the recovery of money do not fall within the jurisdiction of equity") (citation omitted); *Reebok International, Ltd. v. Marnatech Enterprises*, 970 F.2d 552, 560 n.11 (9th Cir. 1992) (expressing doubt that court can freeze assets not available for final equitable relief); *M.L. Aslan, LLC v. Stadco, Inc.*,

2013 WL 12070097, at *1–2 (N.D. Ga. Oct. 15, 2013) (stating the "general federal rule of equity is that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential money judgment.").

Second, even where an equitable remedy is sought, a Plaintiff is entitled to the extraordinary remedy of a TRO or preliminary injunction, only upon showing that: "(a) there is a substantial likelihood of success on the merits; (b) the TRO or preliminary injunction is necessary to prevent irreparable injury; (c) the threatened injury outweighs the harm that the TRO or preliminary injunction would cause to the non-movant; and (d) the TRO or preliminary injunction would not be averse to the public interest." *Parker v. State Bd. of Pardons and Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001). A TRO will not to be granted unless the movant "clearly carries the burden of persuasion" as to these four requirements. *Jefferson County*, 720 F.2d at 1519 (quoting *Canal Authority v. Callaway*, 489 F.2d 567 (5th Cir. 1974)). "The burden of persuasion in all of the four requirements is at all times upon the plaintiff." Id. (internal quotation marks and citation omitted). See also *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179 (5th Cir. 1975) (grant of preliminary

injunction "is the exception rather than the rule," and movant must clearly carry the burden of persuasion).

A showing of irreparable injury is "'the sine qua non of injunctive relief.'" *Northeastern Florida Chapter of the Association of General Contractors v. City of Jacksonville, Florida*, 896 F.2d 1283, 1285 (11th Cir. 1990) (quoting *Frejlach v. Butler*, 573 F.2d 1026, 1027 (8th Cir. 1978)). See also *Sampson v. Murray*, 415 U.S. 61, 88, 94 S. Ct. 937 (1974) ("The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies."). The party seeking an injunction thus must establish an actual and imminent injury that "cannot be undone through monetary remedy." *City of Jacksonville*, 896 F.2d at 1285. "'The possibility that adequate compensatory or other corrective relief will be available at a later date ... weighs heavily against a claim of irreparable harm.'" *Id.* (quoting *Sampson v. Murray*, 415 U.S. 61, 90, 94 S. Ct. 937 (1974).

Plaintiff has failed to meet the strict requirements for a preliminary injunction. It has failed to demonstrate any probability of success on the merits - indeed, Plaintiff's banking agent has described Davis as being a victim "in this nasty situation." See Exhibit 2 attached. Moreover, it has failed to make any showing of

irreparable harm (i.e., that Mr. Davis dissipated or transferred or intends to dissipate or transfer his assets so as to avoid payment of any judgment).

To grant a preliminary injunction on these grounds would run afoul of the Eleventh Circuit's requirement that the injury be irreparable. Here, any injury to Plaintiff can be undone through monetary penalties at a later date. *Id.* See also *BellSouth Telecomm., Inc. v. MCIMetro Access Transmiss. Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) ("Economic losses alone do not justify a preliminary injunction").

3. Plaintiff's Request for an Asset-Freeze Injunction

The Supreme Court's decision in *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.,* 527 U.S. 308 (1999) controls Plaintiff's request for an asset freeze injunction. In *Grupo Mexicano*, the Supreme Court rejected an asset freeze injunction in a business dispute. The court relied on the "historical principle that before judgment (or its equivalent) an unsecured creditor has no rights at law or in equity in the property of his debtor." 57 U.S. at 330. It observed that the "requirement that the creditor obtained a prior judgment is a fundamental protection in debtor-creditor law – rendered at the more important in our federal system by the debtor's right to a jury trial on the legal claim." *Id.* And it held that the Judiciary

Act of 1789 only conferred "the jurisdictional in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution," 527 U.S. at 318, and such jurisdiction "did not include the power to create remedies previously unknown to equity jurisprudence" like a prejudgment asset freeze injunction in a damages case. *Id.* at 332.

The Supreme Court further observed that permitting prejudgment asset freeze injunctions in damages cases poses significant policy problems. "By adding, through judicial fiat, a new and powerful weapon to the creditor's arsenal, the new rule could radically alter the balance between the debtor's and creditor's rights which has been developed over centuries through many laws—including those relating to bankruptcy, fraudulent conveyances, and preferences." *Id.* at 331. Such a remedy "might induce creditors to engage in a 'race to the courthouse' in cases involving insolvent or near-insolvent debtors." *Id.*

CONCLUSION

Granting Plaintiff's motion to freeze Defendant's assets would set a dangerous precedent. By simply pleading "fraud by hindsight," plaintiff seeks to freeze an individual defendant's assets. Such relief, if granted, would wreak havoc on Davis' law practice, his obligations to other clients, to his own creditors and otherwise. The

Federal Rules of Civil Procedure do not permit the abusive tactic Plaintiff seeks to employ.

For the above and foregoing reasons, having failed to carry its burden for the extraordinary and drastic remedy being sought, Plaintiff's Motion should be denied.

This 22nd day of January, 2019.

Respectfully submitted,

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CERTIFICATION OF FONT

This certifies that pursuant to LR 5.1, N.D., GA, the above and foregoing has been prepared using Times Roman New font, 14 point.

This 22nd day of January, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on today's date I electronically filed **foregoing pleadings** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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