UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF FLORIDA
MIAMI DIVISION

Case No. 1:18-cv-24145-WILLIAMS/TORRES

JOHN DOES, *et al*.,

Plaintiffs,

v.

MARK GLASS,

Defendant.

_____/

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE

COMES NOW, Defendant MARK GLASS, in his official capacity as Commissioner for the Floria Department of Law Enforcement ("FDLE"), by and through his undersigned counsel, responds to Plaintiff's Motion to Strike (D.E. 264). In support thereof, Defendant provides the following memorandum of law.

MEMORANDUM OF LAW

"[M]otions to strike are only appropriately addressed towards matters contained in the pleadings." *Polite v. Dougherty Cnty. Sch. Sys*., 314 F. App'x 180, 184 n. 7 (11th Cir. 2008). Federal Rule of Civil Procedure 12(f) "authorizes a court to strike from a *pleading"* and nothing more. *Keira v. Berry*, No. 13-60990, 2013 WL 5416900, at *1(S.D. Fla Sept. 26. 2013) (emphasis in the original). "[N]umerous courts in the Eleventh Circuit…have held that a motion to strike filings that are not pleadings is improper." *Id*. (cleaned up). Under the rule, "pleadings consist of only: of a complaint, an answer to a complaint, an answer to a counterclaim, an answer to a crossclaim, a third-party complaint and a reply to an answer." *Id*. A reply to a response to a

motion to dismiss is not a pleading. *See* Fed.R.Civ.P. 7(a), 12(f). Therefore, Plaintiff's Motion to Strike Defendant's Reply is procedurally improper.

Furthermore, "motions to strike are generally disfavored…they are not the proper vehicle for resolving disputed issues of fact, or for deciding substantial questions of law." *One on One Basketball, Inc. v. Global Payments Direct, Inc*., No. 1:14-CV-01352, 2016 WL 11746047, at *1(N.D. Ga. Aug. 29, 2016) (cleaned up). "A motion to strike is a drastic remedy[.]" *Keira,* 2013 WL 5416900, at *1 (cleaned up). Plaintiffs argue in their motion to strike that Defendant has a) raised new arguments in their Reply and b) rehashed arguments from their Motion to Dismiss. In their Motion to Strike, which could be read as a sur-reply to Defendant's Reply, Plaintiffs state that Defendant has brought up two new arguments that were not brought up in his Motion to Dismiss. However, the standing argument that was newly raised was based on the statutory construction and thus is just one new argument. The issue was raised because standing is a "threshold jurisdictional question." *Muransky v. Godiva Chocolatier, Inc*., 979 F.3d 917, 923 (11th Cir. 2020). This Court has stated that "[s]tanding is a matter that can be raised at any time in a case…[a]nd certainly, before any final judgment is ever entered, Plaintiff's standing…cannot be in doubt." *Kennedy v. Carnival Corporation*, 385 F.Supp.3d 1302, 1313, Case No. 18-20829-civ-Williams/Torres (S.D. Fla. Mar.6, 2019). Standing "in its broadest sense…is no more than having a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution to that controversy." *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So.2d 1178, 1182(Fla. 3d DCA 1985)(citing *Sierra Club v. Morton*, 405 U.S. 727, 731 (1972). Courts have found that the standing issue was sufficiently preserved for appeal when raised for the first time in a motion for summary judgment and in a memorandum filed in opposition to a motion for summary judgment, despite it having not been pled as an affirmative defense. See *McLagan v.*

Federal Home Loan Mortg.Corp., 145 So.3d 943, 945 (Fla. 2d DCA 2014). This Court has found that "[t]he plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements [of standing]." *MSPA Claims I, LLC v. Tenet Florida, Inc.*, 318 F. Supp. 3d 1349, 1353 (S.D. Fla. 2018), *aff'd sub nom*. *MSPA Claims 1, LLC v. Tenet Florida, Inc.*, 918 F.3d 1312 (11th Cir. 2019). Plaintiffs, having failed to establish that they have had a direct injury in fact or real risk of harm, cannot establish standing. *Muransky*, 979 F.3d at 927.

Additionally, in their Motion, Plaintiffs argue that their reading of § 943.0435(2)(a) means that the (9)(d) does not apply solely to initial registration and claim that Defendant distorted the text. D.E. 264:6. "The starting point for all statutory interpretation is the language of the statute itself." *United States, et al. v. DBB, Inc*. 180 F. 3d 1277, 1281 (11th Cir. 1999). The court will not look beyond the plain language unless the language is ambiguous or applying it would lead to an absurd result or there is clear evidence of contrary legislative intent. *Id*. In this case, the term "initial registration" is unambiguous and there is no need to inquire further. "[W]hen an interpretation would make a word or phrase wholly superfluous" the court should "reject the interpretation." *In re Sandifer*, 603 B.R. 648, 652, 18-40959-JTL (Bankr. M.D. Ga. July 17, 2019). Interpreting the statute in the manner asked by Plaintiff renders the phrase "initial registration" superfluous.

Finally, Plaintiffs claim that Defendant was rehashing arguments from its Motion to Dismiss. Local rule 7.1 (c)(1) limits the Reply to rebuttal of matters raised in opposition without reargument. Plaintiffs fail to acknowledge that Defendant spent a "hefty portion" of their Reply rebutting and distinguishing the case law argued by Plaintiff, which is certainly permitted under the rule as rebuttal.

Wherefore, the Defendant asks that the Court deny Plaintiffs' Motion to Strike based on the grounds argued above. And should the Court be inclined to permit Plaintiffs a sur-reply, Defendant requests that it be limited to the Standing argument.

Respectfully submitted,

JAMES UTHMEIER
Florida Attorney General

/s/*Martha Hurtado*
Martha Hurtado
Florida Bar No. 103705
Chief Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
110 S.E. 6th Street, 10th Floor
Fort Lauderdale, Florida 33301
Telephone: 954-712-4600
Facsimile: 954-527-3702
Martha.Hurtado@myfloridalegal.com
Attorney for Defendant Mark Glass

CERTIFICATE OF SERVICE

Pursuant to Local Rule 5.1(b), I hereby certify that on October 6, 2025, I electronically filed a true and correct copy of the foregoing with the Clerk of Court and on all counsel or parties of record via CM/ECF.

/s/*Martha Hurtado*
Martha Hurtado
Chief Assistant Attorney General