

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA CIVIL DIVISION**

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et al.,

Defendants.

PLAINTIFF'S EMERGENCY MOTION FOR CONTINUANCE

OF JUNE 26, 2025, HEARING

Plaintiff John William Liccione ("Plaintiff"), pro se, pursuant to Florida Rule of Civil Procedure 1.460, Florida Rule of Judicial Administration 2.545(e), and Sixth Judicial Circuit Administrative Order No. 2021-011 PA/PI-CIR, moves on an emergency basis for a continuance of the hearing scheduled for June 26, 2025, at 1:30 P.M. before the Honorable Patricia A. Muscarella, as set forth in Defendants' Notice of Hearing (Dkt. #137), which addresses the Motion to Dismiss the Second Amended Complaint ("2AC Motion," Filing #225713655) and the Motion to Dismiss the First Amended Complaint ("FAC Motion," Dkt. No. 41). Plaintiff requests the hearing be continued to the week of July 7, 2025, or as soon as possible thereafter, due to surprise caused by Defendants' failure to confer on the expanded scope and length of the hearing to include the FAC Motion, in violation of Florida Rule of Civil Procedure 1.202, Florida Rule of Judicial Administration 2.545(e), Administrative Order 2021-011, and Judge Muscarella's Judicial Practice Preferences (effective May 27, 2025). This surprise, combined with the high probability of a scheduling conflict/overlap with another case hearing, prejudices Plaintiff and could warrant relief from any adverse final order under Florida Rule of Civil Procedure 1.540(b)(1). The

emergent nature of this motion arises from the imminent hearing date, Defendants' bad-faith sandbagging of a pro se litigant, Plaintiff's concurrent hearing obligations, and the Response to the 2AC Motion due today, June 24, 2025. In support, Plaintiff states:

I. BACKGROUND

1. On September 5, 2024, Plaintiff filed the First Amended Complaint (FAC) against Defendants Julie Marcus, Jennifer Griffith (transferred), Whitney Fox, Mark Weinkrantz, Cathy Salustri-Loper, Patrick Heinzen, and other unknown co-conspirators (all defendants except Cathy Salustri-Loper were ultimately removed), alleging violation of Florida Statute § 104.041 (election fraud), conspiracy to commit election fraud, violation of 52 U.S.C. § 20511 (federal election fraud), civil rights violations under 42 U.S.C. § 1983, Computer Fraud and Abuse Act violation under 18 U.S.C. § 1030, intentional interference with prospective economic advantage, voter intimidation and suppression, request for injunctive relief, and violation of Florida's Public Records Sunshine Law, all arising from a malicious campaign to suppress Plaintiff's 2024 Congressional candidacy (FAC ¶¶ 1-75) and commit election fraud and other election-related violations. The FAC amended the original complaint solely to correct the misspelling of Cathy Salustri-Loper's last name (from "Lopes" to "Loper").
2. On April 12, 2025, Plaintiff filed a Motion for Leave to File a Second Amended Complaint (2AC) with a Proposed 2nd Amended Complaint attached as Exhibit A (Dkt. #125), which was granted by Order of the Court at the June 10, 2025 hearing. At that hearing, the Honorable Judge Patricia Muscarella stated that a half-hour-long Zoom hearing starting at 1:30 P.M. on June 26, 2025 was ordered to address the anticipated motion to dismiss the Second Amended Complaint. The Judge gave Defendants 10 days (6/20/25) to file their 2AC Motion to Dismiss, but gave Plaintiff only 4 days to file his Response (6/24/25).

3. The 2AC superseded the First Amended Complaint (FAC), rendering the FAC arguable moot as to dismissal and fees, as the 2AC adds counts (Defamation and Defamation by Omission, updated Tortious Interference, Conspiracy (with new co-conspirators), drops counts, and added two new defendants.
4. Defendants filed their FAC Motion (Dkt. No. 41) to Dismiss the First Amended Complaint and seek attorneys' fees under Florida's Anti-SLAPP statute (§ 768.295, Fla. Stat.). The 2AC Motion to Dismiss targets the operative 2AC and includes the same Anti-SLAPP grounds for dismissal and attorney's fees demand.
5. Without further conferral with Plaintiff, on June 11, 2025, Mr. Lake filed a Notice of Hearing (Dkt. #137), scheduling a ***one-hour*** Zoom hearing on June 26, 2025, 1:30-2:30PM to address *both the FAC Motion and the 2AC Motion*. The Notice states the hearing will cover "Motion to Dismiss First Amended Complaint and For Attorneys' Fees (Dkt. No. 41) (Supporting Memorandum of Law at Dkt. No. 132)" and "Motion to Dismiss Second Amended Complaint (to be filed on or before June 20, 2025)."
6. Plaintiff's Response to the 2AC Motion is now due today, June 24, 2025, and Plaintiff's preparation of his Response has been unfairly prejudiced against for the reasons stated herein.

Plaintiff's Good Faith Conferral Efforts

7. On June 23, 2025, Plaintiff emailed Defendants' counsel, James B. Lake, objecting to the inclusion of the FAC Motion and the one-hour hearing length, noting a high probability of a scheduling conflict with his in-person hearing at 3:00 P.M. before Judge Rebecca Hamilton in *Liccione v. Pascale Places, LLC*, Case No. 25-001624-CI, and requesting a consent on

continuance. Mr. Lake refused, claiming the Notice was consistent with Judge Muscarella's instructions (it was not to Plaintiff's recollection) and that Plaintiff's objection was untimely (**Exhibit A**, Email Exchange, June 23-24, 2025).

8. Plaintiff did not receive final JAWS email confirmation of the hearing's scope and length until June 18, 2025, the ramifications of which he did not fully comprehend until yesterday, June 23rd, leaving insufficient time to address the procedural violations (**Exhibit B**, JAWS Hearing Confirmation Email, June 18, 2025).
9. Plaintiff attempted to mitigate the potential scheduling conflict this morning by contacting opposing counsel in *Liccione v. Pascale Places, LLC* - Alexander Lewis - to consent to continuance of the 3PM hearing, but he also refused.

II. LEGAL ARGUMENT

A. Emergency Nature of the Motion

10. The emergent nature of this motion arises from the imminent June 26, 2025, hearing, the prejudice caused by Defendants' failure to confer, and Plaintiff's inability to prepare for a hearing on a moot FAC Motion while facing a 3:00 P.M. hearing in *Liccione v. Pascale Places, LLC*, Case No. 25-001624-CI, and the Response to the 2AC Motion to Dismiss, being due today, June 24, 2025. The late JAWS confirmation (June 18, 2025) and Defendants' refusal to reschedule exacerbate the prejudice to Plaintiff, a pro se litigant.

B. The Element of Surprise Due to Defendants' Failure to Seek Conferral

11. Defendant Counsel Lake's failure to confer on the expanded hearing scope and length constitutes surprise, which prejudices Plaintiff and could warrant relief from any adverse

final order under Florida Rule of Civil Procedure 1.540(b)(1). Surprise under Rule 1.540(b)(1) arises from unexpected procedural irregularities that prevent a party from presenting their case. *Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998). Here, the unilateral and non-consented inclusion of the FAC Motion and the extension to a one-hour hearing, contrary to Judge Muscarella's instruction for a half-hour hearing on the 2AC Motion only, blindsided Plaintiff, causing a scheduling conflict risk, producing Plaintiff and hindering preparation.

12. Florida Rule of Civil Procedure 1.202: Rule 1.202(a) requires the movant to confer in good faith before filing most motions, including motions to dismiss, to resolve issues. Rule 1.202(b) mandates a certificate of conferral. Defendants' failure to confer on including the FAC Motion in the hearing violates Rule 1.202.

13. Florida Rule of Judicial Administration 2.545(e): This rule mandates that parties confer in good faith before scheduling hearings to resolve issues and determine necessary time. Defendants violated Rule 2.545(e) by unilaterally scheduling a *one-hour* hearing on *both* motions without discussing it first with Plaintiff ...knowing that Plaintiff had his in-person motions hearing at 3PM in his other case – deprives Plaintiff of the critical half-hour he thought he had been originally afforded between the two hearings.

14. Sixth Judicial Circuit AO 2021-011: Administrative Order 2021-011 requires parties to confer on the scope, time, and issues of hearings before scheduling via JAWS. Plaintiff is pro se thus has no JAWS access. Defendants' failure to confer on the inclusion of the FAC Motion and the one-hour increase in hearing length violates this AO, as confirmed by the June 18th JAWS final hearing confirmation (**Exhibit B**), which shows a one-hour Zoom hearing and two motions.

15. Judge Muscarella’s Judicial Practice Preferences (effective May 27, 2025):

- a. JAWS Scheduling (Page 4):** Hearings must be scheduled via JAWS, and the moving party must not file a Notice of Hearing until receiving JAWS confirmation. Defendants scheduled a one-hour hearing without conferring, violating the preference that all counsel/parties be associated in JAWS to ensure notification (Page 4). Failure to comply “*can result in cancellation of your hearing.*” (emphasis added)
- b. Standards of Professional Courtesy (Page 5, 7):** Per AO 2015-052, parties must provide opposing counsel an opportunity to agree or object to procedural actions. Defendants’ unilateral action denied Plaintiff this opportunity, violating professional courtesy standards.

16. The surprise is compounded by Plaintiff’s pro se status, lack of access to JAWS, the delayed JAWS confirmation (June 18, 2025), and the scheduling conflict with a 3:00 P.M. hearing on June 26th in Liccione v. Pascale Places, LLC. This prejudice, coupled with the foreshortened 4-day deadline on Response to the 2AC Motion to Dismiss, could justify vacating any order granting the 2AC or FAC Motion and attorney fees under Rule 1.540(b)(1) if Plaintiff is unable to meet today’s filing deadline, attend or prepare. *Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998).

C. Motion to Dismiss FAC Arguably is Moot, Redundant, or Both: Wasting Judicial Resources

17. The FAC Motion is moot and or is superseded as to dismissal because the 2AC, filed on April 12, 2025, supersedes the FAC, rendering motions directed at the FAC irrelevant or at a minimum, redundant. Including a moot motion wastes judicial resources and burdens

Plaintiff, who must prepare for an obsolete issue under 4-day time constraints exacerbated by the scheduling conflict and today's Response deadline.

18. Defendants can seek Anti-SLAPP attorneys' fees for both the FAC and 2AC if they prevail, as § 768.295(4), Fla. Stat., allows fee recovery for defending against any complaint violating the Anti-SLAPP statute. Judge Muscarella confirmed Defendants' right to re-plead their Anti-SLAPP defenses and fee demands in the 2AC Motion. Thus, including the FAC Motion is redundant, serves no legitimate purpose, and constitutes bad-faith sandbagging of a pro se litigant.

D. Good Cause for Continuance Under Rule 1.460

19. Florida Rule of Civil Procedure 1.460 permits a continuance for good cause to prevent prejudice and ensure fairness. *Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998).
20. In *Fleming*, the Fourth District Court of Appeal emphasized that a motion for continuance is addressed to the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. The court outlined specific factors to consider when determining whether such an abuse has occurred:
 - a. Injustice to the Movant: Whether the denial of the continuance creates an injustice for the party requesting it.
 - b. Unforeseeability and Dilatory Practices: Whether the cause for the continuance was unforeseeable by the movant and not the result of dilatory practices.
 - c. Prejudice to the Opposing Party: Whether the opposing party would suffer any prejudice or inconvenience as a result of the continuance.

21. In the Fleming case, the appellate court found that the trial court's denial of the continuance did, in fact, cause an injustice to the movant under the unique circumstances presented. Specifically, the former wife's attorney withdrew close to the trial date, and she was left unrepresented, which hindered her ability to present her case adequately. The court concluded that the denial of the continuance was an abuse of discretion and reversed the trial court's decision.

22. Although the facts are different here, good cause exists due to:

- a. Surprise:** Defendants' failure to confer on the expanded scope and one-hour length, violating Rule 1.202, Rule 2.545(e), AO 2021-011, and Muscarella's preferences, blindsided Plaintiff, a pro se litigant.
- b. Prejudice:** The scheduling conflict with a 3:00 P.M. hearing in *Liccione v. Pascale Places, LLC*, combined with what is arguably an unusually short (4-day) Response deadline which is today, June 24, 2025, prevent Plaintiff from preparing adequately his Response, and preparing for the expanded hearing on a superseded/moot and otherwise redundant Motion to Dismiss FAC.
- c. Bad Faith:** Defendants' refusal to reschedule after Plaintiff's good-faith conferral attempt (Exhibit A) and their failure to originally confer on hearing scope and duration exploit Plaintiff's pro se status, confirms bad faith and in a paradoxical way, undermines the Anti-SLAPP statute's goal of expeditious resolution (§ 768.295(1), Fla. Stat.).
- d. Restoration of fairness:** A continuance to the week of July 7, 2025 restores due process, fairness, and aligns with Judge Muscarella's UMC calendar (e.g., July 8, 2025, at 2:00 or 3:00 P.M., Preferences, Page 1) and ensures compliance with Rule 2.545(e), AO 2021-

011, and Muscarella's practice preferences. Plaintiff is unavailable July 1-4, 2025, due to an out-of-state hearing in Maryland but is available any time during the week of July 7, 2025, and thereafter in July.

- e. No Prejudice to Defendants:** A two-week continuance will in no way prejudice Defendants, as the 2AC Motion can be fully addressed at a rescheduled hearing, no rights or defenses are waived, and Anti-SLAPP fee claims for both complaints remain viable. A continuance promotes judicial efficiency and fairness by focusing on the operative 2AC Motion, avoiding redundant arguments on a superseded/redundant FAC Motion.

III. CONCLUSION

23. Defendants' failure to confer on the expanded hearing scope and length violates Florida Rule of Civil Procedure 1.202, Florida Rule of Judicial Administration 2.545(e), Sixth Judicial Circuit Administrative Order 2021-011, and Judge Muscarella's Judicial Practice Preferences. This failure caused surprise, prejudicing Plaintiff by creating a significant probability of a scheduling conflict/overlap with a 3:00 P.M. hearing on June 26, 2025, in *Liccione v. Pascale Places, LLC*, and hindering preparation amidst the Response deadline today, June 24, 2025. The surprise could warrant appellate relief from any adverse final order under Rule 1.540(b)(1). The FAC Motion is superseded or moot, redundant, wasting judicial resources and constituting bad-faith sandbagging of a pro se litigant. Plaintiff respectfully requests that the Court continue the June 26, 2025, hearing to the week of July 7, 2025, or as soon as possible thereafter, preferably on July 8, 2025, at 2:00 or 3:00 P.M., and grant such other relief as the Court deems just and proper, including a case management conference to clarify the hearing's scope.

Respectfully submitted,

/s/ John W. Liccione

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CERTIFICATION OF COMPLIANCE WITH MEET AND CONFER REQUIREMENT

Pursuant to Florida Rule of Judicial Administration 2.545(e) and Administrative Order No. 2021-011 PA/PI-CIR, Plaintiff certifies that he attempted to confer with Defendants' counsel, James B. Lake, via email on June 23, 2025, regarding the inclusion of the FAC Motion in the June 26, 2025, hearing and requested a continuance, but Defendants refused.

/s/ John W. Liccione

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed via the Florida e-Filing Portal and served via email to Defendants' counsel, James B. Lake (jlake@tlolawfirm.com), on June 24, 2025.

/s/ John W. Liccione

Exhibits:

Exhibit A: Email Exchange between John Liccione and James B. Lake, June 23-24, 2025

Exhibit B: JAWS Hearing Confirmation Email, June 18, 2025