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# [***Haile v. Bombulie***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PN1-3P61-F04D-102F-00000-00&context=)

United States District Court for the Southern District of Florida

October 4, 2017, Decided; October 4, 2017, Entered on Docket

CASE NO. 17-14332-Civ-ROSENBERG

**Reporter**

2017 U.S. Dist. LEXIS 165431 \*

JAY J. HAILE, SR., et al., Plaintiff, vs. J. BOMBULIE, et al., Defendants.

**Subsequent History:** Adopted by, Dismissed by, Motion denied by, As moot [*Haile v. Bombulie, 2017 U.S. Dist. LEXIS 177747 (S.D. Fla., Oct. 25, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PTG-S5X1-F04D-11TX-00000-00&context=)

**Core Terms**

courts, fail to state a claim, inmate, deprivation, entities, constitutional right, pro se, allegations, rights, subject to dismissal, injunctive relief, denial of access, requires, prison, district court, irreparable, capability, injunction, Bounds, color, state law, certification, declaratory, attorneys, actual injury, state action, confinement, violations, citations, pleadings

**Counsel:** **[\*1]**John Jay Haile, Sr., Plaintiff, Pro se, Raiford, FL.

**Judges:** PATRICK A. WHITE, UNITED STATES MAGISTRATE JUDGE.

**Opinion by:** PATRICK A. WHITE

**Opinion**

**REPORT OF MAGISTRATE JUDGE**

**I. Introduction**

The Plaintiff, **Jay J. Haile, Sr.**, while confined at Union Correction Institution, in Raiford, Florida, has filed this *pro se* civil rights complaint, pursuant to *42 U.S.C. §1983*. (DE#1). As can best be discerned from review of the complaint and as noted in the complaint's caption, he sues the following Defendants: **J. Bombulie, Esquire, his prior counsel**, currently employed with U.S. Life Insurance Company of New York; **J. Felman, Esquire, his prior appellate counsel and K. Yanes, Esquire**, both currently employed with Kynes, Markman & Felman, P.A.; **Dr. R. Campbell**, with Family Medical Group, P.A.; **R. Rosen; J. Kromholz; Florida Hospital; KMEF, P.A.; the State of Florida's Florida Insurance Commissioner; and, the United States of America**.

He has filed an application to proceed *in forma pauperis* ("IFP") pursuant to the provisions of *28 U.S.C. §1915*. (DE#3). Although he has not attached his 6-month inmate account statement showing his prison account balance, Plaintiff clearly intends to proceed IFP. Under the circumstances, by separate court order, the plaintiff has**[\*2]** been granted IFP status. Thus, Plaintiff is now proceeding IFP and is subject to *§1915(e)(2)* screening requirements.

It is only where a Plaintiff is not proceeding IFP, that his pleadings are not subject to the screening provision of *28 U.S.C. §1915(e)(2)*. See [*Farese v. Scherer, 342 F.3d 1223, 1228 (11th Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:49BJ-4SJ0-0038-X4VX-00000-00&context=) ("Logically, *§1915(e)* only applies to cases in which the plaintiff is proceeding IFP"); see also, [*Thompson v. Hicks, 213 Fed.Appx. 939, 942 (11th Cir. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MVF-0260-0038-X372-00000-00&context=)(citations omitted). Regardless, whether the plaintiff is proceeding IFP or not, since Plaintiff is a prisoner seeking redress against governmental entities, employees, or officers, his pleadings are subject to screening under [*28 U.S.C §1915A*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GT31-NRF4-43X4-00000-00&context=), which does not distinguish between IFP plaintiffs and non-IFP plaintiffs. See [*28 U.S.C. §1915A*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GT31-NRF4-43X4-00000-00&context=); [*Thompson v. Hicks, 213 Fed.Appx. 939, 942 (11th Cir. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MVF-0260-0038-X372-00000-00&context=)(*per curiam*).

It is noted that pleadings drafted by *pro se* litigants must be liberally construed, [*Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DB70-003B-S53V-00000-00&context=)(*per curiam*), but the Court may review plaintiff's complaint and dismiss the complaint, or any part thereof, if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. See [*28 U.S.C. §1915A*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GT31-NRF4-43X4-00000-00&context=).

This Cause is presently before the Court for screening of the plaintiff's **Complaint (DE#1)**, pursuant to *28 U.S.C. §1915(e)* and [*28 U.S.C. §1915A*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GT31-NRF4-43X4-00000-00&context=).

**II. Standard of Review**

The Prison Litigation Reform Act ("PLRA") requires that the court review "as soon as practicable after docketing, a complaint in a civil action**[\*3]** in which a prisoner seeks redress from a governmental entity or officers or employee of a governmental entity." [*28 U.S.C. §1915A(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GT31-NRF4-43X4-00000-00&context=). On review, the district court is required to "identify cognizable claim or dismiss the complaint, or any portion of the complaint," if it "is frivolous, malicious, or fails to state a claim upon which relief can be granted; or, seeks monetary relief against a defendant who is immune from such relief. See [*28 U.S.C. §1915A(b)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GT31-NRF4-43X4-00000-00&context=), *(b)(2)*.

In essence, [*§1915A*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GT31-NRF4-43X4-00000-00&context=) is a screening process to be applied *sua sponte* and at any time during the proceedings. In reviewing the complaint, the court views all allegations as true. [*Brown v. Johnson, 387 F.3d 1344, 1347 (11th Cir. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4DK6-R430-0038-X3T7-00000-00&context=). Complaints that lack any arguable basis in law or fact, nonetheless, may be dismissed. [*Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BDG0-003B-42B7-00000-00&context=); [*Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4344-1NF0-0038-X035-00000-00&context=), cert. denied, *534 U.S. 1044, 122 S. Ct. 624, 151 L. Ed. 2d 545 (2001)*. Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," [*Neitzke, 490 U.S. at 327*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BDG0-003B-42B7-00000-00&context=); when the claims rely on factual allegations that are "clearly baseless," [*Denton v. Hernandez, 504 U.S. 25, 31, 112 S. Ct. 1728, 118 L. Ed. 2d 340 (1992)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XDX0-003B-R3RC-00000-00&context=); or, when it appears that the plaintiff has little or no chance of success. [*Bilal, 251 F.3d at 1349*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4344-1NF0-0038-X035-00000-00&context=).

Dismissals for failure to state a claim are governed by the same standard as [*Fed.R.Civ.P. 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=). [*Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H0M0-00B1-D3JK-00000-00&context=)("The language of *section 1915(e)(2)(B)(ii)* tracks the language of [*Fed.R.Civ.P. 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=)"). Thus, a court may dismiss a complaint if the facts as pleaded do not state a claim for relief that is plausible**[\*4]** on its face. [*Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 560-61, 127 S.Ct. 1955, 1968-69, 167 L.Ed.2d 929 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=)(abrogating [*Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J5D0-003B-S1MW-00000-00&context=). Additionally, the court may dismiss a case when the allegations in the complaint on their face demonstrate that an affirmative defense bars recovery of the claim. [*Marsh v. Butler County, Ala., 268 F.3d 1014, 1022 (11th Cir.2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:442Y-JFG0-0038-X2F1-00000-00&context=).

In order to state a [*§1985*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKJ1-NRF4-4103-00000-00&context=) or *§1983* claim, a plaintiff must demonstrate that (1) the defendant(s) deprived plaintiff of a right secured under the Constitution or federal law, and (2) that such a deprivation occurred under color of state law. See [*Bingham v. Thomas, 654 F.3d 1171, 1175 (11th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:833D-XVB1-652R-B2JB-00000-00&context=)(quoting [*Arrington v. Cobb County, 139 F.3d 865, 872 (11th Cir. 1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3STF-7350-0038-X0F9-00000-00&context=).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" [*Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1979)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9NJ0-003B-S50V-00000-00&context=)(quoting [*Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DB70-003B-S53V-00000-00&context=). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. [*Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-D5W0-00B1-D3V4-00000-00&context=).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. [*Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that**[\*5]** are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.[[1]](#footnote-0)1

**III. Facts Set Forth in the Complaint**

Plaintiff sues the following named Defendants: **J. Bombulie, Esquire, his prior counsel**, currently employed with U.S. Life Insurance Company of New York; **J. Felman, Esquire, his prior appellate counsel and K. Yanes, Esquire**, both currently employed with Kynes, Markman & Felman, P.A.; **Dr. R. Campbell**, with Family Medical Group, P.A.; **R. Rosen; J. Kromholz; Florida Hospital; KMEF, P.A.; the State of Florida's Florida Insurance Commissioner; [\*6]  and, the United States of America**.

Construing the plaintiff's arguments liberally as afforded *pro se* litigants pursuant to [*Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DB70-003B-S53V-00000-00&context=), as can best be discerned, the Plaintiff appears to be complaining in conclusory form that his constitutional rights are being violated and he has been denied his right to access to the courts from February 1, 2007 while confined in numerous Florida counties enumerated in the Complaint. (DE#1:2). He also asserts that Attorneys Felman and Yanes have denied him his legal right to access to the courts and were otherwise negligent. (Id.).

He seeks compensatory damages, declaratory and injunctive relief, and the certification of a class action that would be "so large that it would not be practical for everyone in it to bring a suit and appear in court. (Id.). He suggests that he has attorneys wiling and ready to protect the interests of the class. (Id.). However, he states he will request additional counsel to represent other class plaintiffs who are unable to afford counsel and a trial in this case.

**IV. Discussion**

It is well settled law that federal courts must "look behind the label" of an inmate's *pro se* filings and determine whether there is any framework under which**[\*7]** his claims might be cognizable. [*United States v. Nickson, 521 Fed.Appx. 867, 868 (11th Cir. 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58KS-28W1-F04K-X00C-00000-00&context=)(quoting, [*United States v. Jordan, 915 F.2d 622, 624-25 (11th Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1YJ0-003B-52N6-00000-00&context=).

A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief. [*Jones v. Bock, 549 U.S. 199, 215, 127 S.Ct. 910, 920, 166 L.Ed.2d 798 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MW8-VPD0-004C-101D-00000-00&context=). "*Section 1983* creates no substantive rights; it merely provides a remedy for deprivations of federal statutory and constitutional rights." [*Almand v. DeKalb County, Ga., 103 F.3d 1510, 1512 (11th Cir. 1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JJG0-00B1-D0CR-00000-00&context=)(citation omitted). Further, *§1983* is not meant to replace state tort law, it is only meant to provide a remedy for violations of federally protected rights. [*Id. at 1513*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JJG0-00B1-D0CR-00000-00&context=) (citing [*Baker v. McCollan, 443 U.S. 137, 145-146, 99 S.Ct. 2689, 2695, 61 L.Ed.2d 433 (1979))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8110-003B-S11X-00000-00&context=). A successful *§1983* imposes liability on anyone who, under color of state law, deprives a person "of any rights, privileges, or immunities secured by the Constitution and laws." See [*Arrington v. Cobb County, 139 F.3d 865, 872 (11th Cir. 1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3STF-7350-0038-X0F9-00000-00&context=); [*U.S. Steel, LLC v. Tieco, Inc., 261 F.3d 1275, 1288 (11th Cir. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43SF-GDF0-0038-X4RB-00000-00&context=).

Thus, to state a viable claim for relief in a *42 U.S.C. §1983* action, the conduct complained of must have deprived the plaintiff of rights, privileges or immunities secured by the Constitution. *American Manufacturers Mutual Ins. Co. v. Sullivan, 526 U.S. 40, 119 S.Ct. 977, 985, 143 L.Ed.2d 130 (1999)*; [*Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6J80-003B-S169-00000-00&context=); [*Willis v. University Health Servs., 993 F.2d 837, 840 (11th Cir. 1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FNC0-003B-P364-00000-00&context=). The complaint is subject to dismissal for failure to state a claim upon which relief can be granted.

**A. Summary Dismissal**

The complaint is subject to dismissal under 1915(e) because it fails to state a claim against any of the named defendants. The plaintiff does not provide any details when or how his constitutional rights were violated by certain defendants,**[\*8]** and he sues entities which are not persons for purposes of *§1983* actions.

**B. Claims Against His Attorneys**

Briefly, however, even if the court were to consider that he is attempting to sue his former counsel, Defendants, J. Felman, K. Yanes, and J. Bombulie, because they were negligent in their representation of the Plaintiff and/or otherwise denied Plaintiff access to the court, as suggested, the complaint fails to state a claim upon which relief can be granted. The Plaintiff's attorneys are immune from *§1983* suit, because they are not a state actor, as the statute requires. [*Polk County v. Dodson, 454 U.S. 312, 325, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5Y50-003B-S2RF-00000-00&context=) (public defenders do not act as state actors, and they are thus not suable under *§1983*). Consequently, the Plaintiff has failed to state a claim upon which relief can be granted and the complaint should be dismissed against under *§1915(e)*.

**C. Claim Against Corporations/Government**

Plaintiff sues Florida Hospital, the United states of America, and KMEF, P.A., all government or corporate entities no subject to suit under *§1983*. He also does not identify or state how these entities violated his rights.

*Section 1983* provides, in pertinent part:

Every person who, under color of any statute, ordinance, ***regulation***, custom, or usage, of any State or Territory or the**[\*9]** District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

See *42 U.S.C. §1983*; see also, [*Focus on the Family v. Pinellas Suncoast Transit Auth., 344 F.3d 1263, 1276 (11th Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:49H1-HMF0-0038-X1MB-00000-00&context=).

In order to state a claim, a plaintiff must plead that he was (1) deprived of a right; (2) secured by the Constitution or laws of the United States; and, (3) that the alleged deprivation was committed under color of state law. See *Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50, 119 S. Ct. 977, 143 L. Ed. 2d 130 (1999)*; [*Rayburn v. Hogue, 241 F.3d 1341, 1348 (11th Cir. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:42CM-SY10-0038-X2SX-00000-00&context=). To establish a deprivation under "color of state law" or "state action," a Plaintiff must allege a "constitutional deprivation caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible, *and* that the party charged with the deprivation must be a**[\*10]** person who may fairly be said to be a state actor." See *Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. at 50* (internal questions omitted)(emphasis in original). "Only in rare circumstances can a private party be viewed as a state actor for *section 1983* purposes." [*Rayburn, 241 F.3d at 1347*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:42CM-SY10-0038-X2SX-00000-00&context=) (internal quotations and alterations omitted).

More specifically, when determining whether actions of a private entity are attributable to the state or government, the Eleventh Circuit employs three distinct tests to ascertain whether state action exists to support a *§1983* action: "'(1) the public function test; (2) the state compulsion test; and (3) the nexus/joint action test. The public function test limits state action to instances where private actors are performing functions 'traditionally the exclusive prerogative of the state.' The state compulsion test limits state action to instances where the government 'has coerced or at least significantly encouraged the action alleged to violate the Constitution' The nexus/joint action test applies where 'the state has so far insinuated itself into a position of interdependence with the [private party] that it was a joint participant in the enterprise.'" [*Focus on the Family v. Pinellas Suncoast Transit Auth., 344 F.3d 1263, 1277 (11th Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:49H1-HMF0-0038-X1MB-00000-00&context=). The determination whether a state action is present from a non-state actor is made on a**[\*11]** case-by-case basis. See Id. (citing [*Willis v. Univ. Health Services, Inc., 993 F.2d 837, 840 (11th Cir. 1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FNC0-003B-P364-00000-00&context=)(quoting [*National Broad. Co., ("NBC") v. Communications Workers of Am., AFL-CIO, 860 F.2d 1022, 1026-27 (11th Cir. 1988))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XHS0-001B-K2HY-00000-00&context=) (other citations omitted).

Plaintiff provides absolutely no factual support why these entities are being sued. Further, nowhere does the Plaintiff demonstrate that he meets one of the three tests that permit allowing a private entity to be viewed as a state/federal actor. See [*Brown v. Lewis, 361 Fed.Appx. 51, 54 (11th Cir. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7XHY-G3V0-YB0V-S03B-00000-00&context=). Moreover, as applied here, he has also not demonstrated how the United States of America is a person, amenable to suit, under *§1983*. See Id.; [*Rayburn, 241 F.3d at 1347*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:42CM-SY10-0038-X2SX-00000-00&context=). Thus, the complaint is subject to dismissal for failure to state a claim upon which relief can be granted.

The fundamental problem with Plaintiff's claims for violation of his constitutional rights is that he seeks to hold the Defendants, private companies, and the United States of America, responsible for purported undisclosed violations of his constitutional rights. The Plaintiff here does not have a viable claim for relief against the Defendants, private run corporate entities, or the United States of America, under either *§1983* or Bivens.

*Section 1983* does not provide a cause of action against federal officers for violating a party's federal constitutional rights. See *42 U.S.C. §1983*. Rather, such a cause of action arises**[\*12]** under [*Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 397, 91 S.Ct. 1999, 2005, 29 L.Ed.2d 619 (1971)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DF70-003B-S21D-00000-00&context=). Nevertheless, the Supreme Court has declined to expand Bivens to encompass a suit against private corporations acting under color of federal law. [*Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 71, 74, 122 S.Ct. 515, 521, 523, 151 L.Ed.2d 456 (2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:44HY-DRG0-004B-Y058-00000-00&context=). Regardless, the Plaintiff has not alleged, let alone demonstrated that the named Defendants were acting under color of federal law. See [*Wilkie v. Robbins, 551 U.S. 537, 550, 127 S.Ct. 2588, 2598, 168 L.Ed.2d 389 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4P24-96H0-004C-101T-00000-00&context=). For this alternative reason, the complaint is subject to dismissal.

**D. Remaining Defendants, Rosen, Kromhatz, and Florida Insurance Commissioner**

This suit is also subject to dismissal against Defendants Rosen, Kromhatz, and Florida's Insurance Commissioner because the Plaintiff fails to state a claim against these individuals upon which relief can be granted. In fact, Plaintiff provides no factual support whatsoever against these named Defendants. Therefore, they are entitled to summary dismissal under *§1915(e)*.

**E. Denial of Access to Courts Claim**

Plaintiff suggests that he has been denied access to the courts by Defendants Felman, Yanes, and Bombulie. It is well recognized that inmates have a constitutional right of access to courts, which mandates that they be provided with reasonable access to law libraries or persons trained in the law. [*Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9GT0-003B-S2KP-00000-00&context=); see also, [*Cline v. Tolliver, 434 Fed.Appx. 823 (11 Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:539S-VDW1-JCNJ-60D1-00000-00&context=)(unpublished)(citing [*Barbour v. Haley, 471 F.3d 1222, 1225 (11 Cir. 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4MHR-YXW0-0038-X0V1-00000-00&context=)).**[\*13]** Further, this right requires institutions to ensure that an inmate has "a reasonable adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." [*Id. at 825*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:539S-VDW1-JCNJ-60D1-00000-00&context=).

In order to state a claim for denial of access to courts, a plaintiff "must not only show that prison authorities failed to provide such access or assistance, but that the failure 'hindered [the plaintiff's] efforts to pursue a legal claim.'" *Scruggs v. Squadrito, 165 F.3d 33 (7 Cir. 1998)*(quoting, [*Lewis v. Casey, 518 U.S. 343, 351, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RP80-003B-R23X-00000-00&context=). In other words, courts have required that a "[p]laintiff must plead prejudice to state a claim when challenging minor interferences with access tot he courts...." [*Martin v. Davies, 917 F.2d 336, 341 (7 Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1GR0-003B-515W-00000-00&context=)(affirming district court's dismissal of claim that prison official's refusal to notarize forms resulted in denial of access to courts); see also *Scruggs, 165 F.3d 33* (concluding that the plaintiff could not prevail on claim of denial of access to courts based on defendants refusal to provide notary services because plaintiff failed to point to an actual injury).

Here, Plaintiff has not demonstrated a plausible denial of access to courts claim. Access to the courts is clearly a constitutional right, grounded in the *First Amendment*, the Article IV Privileges and Immunities Clause, the *Fifth Amendment*, and/or the *Fourteenth Amendment*. [*Chappell v. Rich, 340 F.3d 1279, 1282 (11th Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:498T-JFJ0-0038-X44G-00000-00&context=) (citing [*Christopher v. Harbury, 536 U.S. 403, 415 n.12, 122 S. Ct. 2179, 153 L. Ed. 2d 413 (2002))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:463N-H410-004C-2006-00000-00&context=). In order to pass constitutional muster, the**[\*14]** access allowed must be more than a mere formality. [*Bounds v. Smith, 430 U.S. 817, 822, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9GT0-003B-S2KP-00000-00&context=); [*Chappell, 340 F.3d at 1282*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:498T-JFJ0-0038-X44G-00000-00&context=). The access must be "adequate, effective, and meaningful." [*Bounds, 430 U.S. at 822*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9GT0-003B-S2KP-00000-00&context=).

For an inmate to state a claim that he was denied access to the courts, he must establish that he suffered "actual injury" by showing that the defendant's actions hindered his ability to pursue a nonfrivolous claim. [*Christopher, 536 U.S. at 415*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:463N-H410-004C-2006-00000-00&context=); [*Jackson v. State Bd. of Pardons & Paroles, 331 F.3d 790, 797 (11th Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48N4-VX20-0038-X428-00000-00&context=); see also, [*Bass v. Singletary, 143 F.3d 1442, 1445 (11 cir. 1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3T0J-XBM0-0038-X3K7-00000-00&context=). The pursuit of claims which are protected are those in which a plaintiff is attacking his sentence, directly or collaterally, or challenging the conditions of his confinement. See [*Lewis v. Casey, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RP80-003B-R23X-00000-00&context=). In other words, the "only specific types of legal claims [which] are protected by this right [are] the nonfrivolous prosecution of either a direct appeal of a conviction, a habeas petition, or a civil rights suit." [*Hyland v. Parker, 163 Fed.Appx. 793, 798 (11th Cir. 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4HYF-BT10-TVRT-V38M-00000-00&context=) (citing [*Bass v. Singletary, 143 F.3d 1442, 1445 (11th Cir. 1998))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3T0J-XBM0-0038-X3K7-00000-00&context=).

As noted previously, "actual injury" is an essential element to a claim asserting the denial of access to the courts. See [*Christopher, 536 U.S. at 415*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:463N-H410-004C-2006-00000-00&context=). In Casey, the Supreme Court recognized that its decision in Bounds did not require "that the State ... enable the prisoner to discover grievances, and to litigate effectively once in court.... To demand the conferral of such sophisticated legal capabilities upon a mostly uneducated and indeed largely illiterate**[\*15]** prison population is [not something] ... the Constitution requires." [*Lewis v. Casey, Id. at 354*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RP80-003B-R23X-00000-00&context=). Further, the Supreme Court in Casey acknowledged that "Bounds...guarantees no particular methodology but rather the conferral of a capability" the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts. When any inmate ... shows that an actionable claim of this nature which he desired to bring has been lost or rejected, or that the presentation of such a claim is currently being prevented, because this capability of filing suit has not been provided, he demonstrates" the requisite actual injury. [*Lewis v. Casey, 518 U.S. at 356*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RP80-003B-R23X-00000-00&context=) (emphasis added).

Moreover, the Supreme Court held that the injury requirement is satisfied only when an inmate has been denied "reasonably adequate opportunity to file nonfrivolous legal claims challenging [his] convictions or conditions of confinement.... [I]t is that capability, rather than the capability of turning pages in a law library, that is the touchstone." [*Id. at 356-357*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RP80-003B-R23X-00000-00&context=) (emphasis added).

However, "[T]he Constitution does not require that prisoners ... be able to conduct generalized research, but only that they be able to present their grievances to the courts--a more limited capability**[\*16]** that can be produced by a much more limited degree of legal assistance." [*Id. at 360*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RP80-003B-R23X-00000-00&context=). The Court cautioned that federal courts should allow prison officials to determine the best method of ensuring that inmates are provided a reasonably adequate opportunity to present their nonfrivolous claims of constitutional violations to the courts. [*Id. at 356*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RP80-003B-R23X-00000-00&context=). A federal district court must "scrupulously respect[ ] the limits on [its] role," by "not ... thrust[ing] itself into prison administration," but rather permitting "[p]rison administrators [to] exercis[e] wide discretion within the bounds of constitutional requirements." [[*Bounds, 430] U.S. at 832-833, 97 S.Ct. at 1500*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9GT0-003B-S2KP-00000-00&context=). [*Id. at 363*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RP80-003B-R23X-00000-00&context=).

The Plaintiff here presents only a conclusory allegation regarding his denial of access to the courts. He fails to identify how he was denied access to the courts since 2007, nor has he alleged, let alone demonstrated, that an actual injury has resulted from such purported action. Consequently, the Plaintiff's claim against Felman, Yanes, and Bombulie arising from a denial of access to the courts should be dismissed for failure to state a claim upon which relief can be granted under 1915(e).

**F. Negligence**

To the extent the Plaintiff means to sue his attorneys, Felman, Yanes, and Bombulie for negligence under Florida**[\*17]** law, that claim is subject to dismissal. First, he provides no factual support whatsoever regarding how, when, and where this negligence occurred. Regardless, the State of Florida has provided a tort claims procedure which may be utilized to recover damages for personal injury caused by the negligent or wrongful act or omission of any employee of a state agency or subdivision while acting within the scope of his office or employment. [*Fla.Stat. §768.28*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5JDN-SSY1-DXC8-03HH-00000-00&context=) (1987). This procedure is available to inmates in the Florida Department of Corrections and in county jail facilities. [*West v. Wainwright, 380 So.2d 1338 (Fla. 1 Dist. 1980)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-DKR0-003C-X2SM-00000-00&context=); [*White v. Palm Beach County, 404 So.2d 123 (1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-CN50-003C-X35B-00000-00&context=).

Accordingly, the plaintiff may not recover damages for injuries he allegedly suffered as a result of the negligent acts of his counsel. His appropriate remedy may be under Florida law, and not a suit for damages under *§1983*. This claim is therefore subject to dismissal pursuant to *28 U.S.C. §1915(e)(2)(B)(ii)*.

Alternatively, pursuant to [*28 U.S.C. §1367(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=), in any civil action in which a federal district court has original jurisdiction, the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the Constitution. However, under [*§1367(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=), a district court may**[\*18]** decline to exercise such supplemental jurisdiction if the district court has dismissed all claims over which it has original jurisdiction.

The Eleventh Circuit in [*Palmer v. Hospital Authority of Randolph Co., 22 F.3d 1559, 1569 (11th Cir. 1994)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5490-003B-P4JG-00000-00&context=), held that whenever a federal court has supplemental jurisdiction under [*§1367(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=) that jurisdiction should be exercised unless [*§1367(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=) or [*(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=) applies. When [*subsection (c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=) permits a court to decline to exercise its jurisdiction, the court's discretion should be guided by the factors set forth in [*United Mine Workers v. Gibbs, 383 U.S. 715, 725-27, 86 S.Ct. 1130, 1138-39, 16 L.Ed.2d 218 (1966)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PK-00000-00&context=). In United Mine Workers, the Supreme Court made clear that the court's discretion should be guided by (1) judicial economy, (2) convenience, (3) fairness to the parties, and (4) comity. [*Palmer, 22 F.3d at 1569*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5490-003B-P4JG-00000-00&context=).

Notwithstanding, where federal claims are dismissed before trial, the foregoing factors will favor dismissal of the state claims. See, e.g., [*Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7, 108 S.Ct. 614, 619 n.7, 98 L.Ed.2d 720 (1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FXP0-003B-413X-00000-00&context=); [*United Mine Workers, 383 U.S. at 726, 86 S.Ct. at 1139*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PK-00000-00&context=); [*Baggett v. First National Bank of Gainesville, 117 F.3d 1342, 1352-53 (11th Cir. 1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DTN0-00B1-D4TF-00000-00&context=). Since it is recommended that the federal claims be dismissed for failure to state a claim upon which relief can be granted, the undersigned finds that in the alternative, to the extent plaintiff attempts to raise a negligence claim against Sheriff Israel, that the state law claim remaining in this action should be resolved by the Florida state courts. The remaining claims raise issues of state law only, including state law regarding sovereign**[\*19]** and official immunity, that do not implicate federal interests in any manner. Because [*28 U.S.C. §1367(d)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GSN1-NRF4-44MM-00000-00&context=) tolls the state statute of limitations, there is no unfairness to plaintiffs resulting from dismissal.

**G. Class Certification**

Construing Plaintiff's arguments liberally, it appears he seeks class certification pursuant to *Fed.R.Civ.P. 23*. (DE#1). *Federal Rule Civil Procedure 23* "establishes the legal roadmap courts must follow when determining whether class certification is appropriate." [*Valley Drug Co. v. Geneva Pharmaceuticals, Inc., 350 F.3d 1181, 1187 (11 Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4B12-ST50-0038-X1WB-00000-00&context=). The party seeking to maintain the class action bears the burden of demonstrating that all the requirements of *Rule 23* have been met. Id.

Courts have repeatedly held that a *pro se* plaintiff "cannot be an adequate class representative" or litigate on behalf of others. See e.g., [*Johnson v. Brown, 581 Fed.Appx. 777, 781 (11th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5D48-3DP1-F04K-X0K2-00000-00&context=) (holding that a *pro se* prisoner could not bring an action on behalf of his fellow inmates); [*Bass v. Benton, 408 Fed. Appx. 298, 299, 2011 WL 118246, \*1 (11th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:51Y5-9NB1-652R-B01F-00000-00&context=) (affirming dismissal of former prisoner's *pro se* *§1983* complaint because he "may not represent the plaintiffs in a class action suit"); [*Massimo v. Henderson, 468 F.2d 1209, 1210 (5th Cir. 1972)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-34X0-0039-X0J2-00000-00&context=) (concluding that a *pro se* inmate could not bring a petition for equitable relief on behalf of his fellow inmates).

"A prerequisite for class action certification is a finding by the Court that the representative party or parties can 'fairly and adequately protect**[\*20]** the interest of the class.'" *Fed.R.Civ.P. 23(a)(4)*. However, it is well settled that a *pro se* plaintiff "cannot be an adequate class representative." [*Andrews v. Dep't of Corr., 2013 U.S. Dist. LEXIS 182028, 2014 WL 28799, at \*1 (N.D. Fla. Jan. 2, 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5B6F-2501-F04D-114N-00000-00&context=) (Stampelos, M.J.) (citation omitted); [*Gray v. Levine, 455 F.Supp. 267, 268 (D. Md. 1978)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-K650-0054-734G-00000-00&context=)(citing [*Oxendine v. Williams, 509 F.2d 1405, 1407 (4 Cir. 1975)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-4710-0039-M3BF-00000-00&context=). "[T]he competence of a layman is 'clearly to limited to allow him to risk the rights of others.'" [*Oxendine, 509 F.2d at 1407*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-4710-0039-M3BF-00000-00&context=) (quoted in [*Fymbo v. State Farm Fire & Casualty Co., 213 F.3d 1320, 1321*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40F1-FR70-0038-X0YS-00000-00&context=) (10 Cir. 2000)); see also [*Hussein v. Sheraton New York Hotel, 100 F.Supp.2d 203, 205-06 (S.D. N.Y. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40DD-NW10-0038-Y3DM-00000-00&context=); [*Klocek v. Gateway, Inc., 104 F.Supp.2d 1332, 1343-44 (D. Kan. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40SD-7RX0-0038-Y2DX-00000-00&context=). As applied here, the record does not reflect that the Plaintiff would be an adequate class representative. Therefore, to the extent the Plaintiff seeks class certification, this claim should be denied.

Furthermore, to the extent the Plaintiff, John J. Haile, Sr., seeks to add his son, Hail, Jr., as a party Plaintiff, that request should also be denied. Each *pro se* prisoner must file a separate *§1983* action, and file an application to proceed *in forma pauperis*. Plaintiff's son has not joined in the IFP motion filed herein, nor has he executed the complaint. Therefore, this case is only proceeding as to the Plaintiff, John J. Haile, Sr.

**H. Declaratory and Injunctive Relief**

The standard for issuing a preliminary injunction, which is the same as is required for a temporary restraining order, is an extraordinary remedy. See [*California v. American Stores Company, et al., 492 U.S. 1301, 110 S. Ct. 1, 106 L. Ed. 2d 616 (1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9N90-003B-40JX-00000-00&context=); [*Johnson v. U.S. Dept. of Agriculture, 734 F.2d 774 (11th Cir. 1984)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-WV40-003B-G3BV-00000-00&context=). In order**[\*21]** for a preliminary injunction to issue, the party seeking relief must demonstrate the following four factors: 1) a substantial likelihood that he will prevail on the merits, 2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, 3) that the threatened injury to him outweighs the potential harm the injunction may do to the defendant, and 4) that the public interest will not be impaired if the injunction is granted. [*DeYoung v. Owens, 646 F.3d 1319, 1324 (11th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:82V0-JMH1-652R-B1B5-00000-00&context=); [*Keeton v. Anderson-Wiley, 664 F.3d 865, 868 (11th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:54GV-D9M1-F04K-X0V2-00000-00&context=); [*Alabama v. United States Army Corps of Eng'rs, 424 F.3d 1117, 1128 (11th Cir. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4H4V-Y0G0-0038-X4CK-00000-00&context=) (citations omitted), cert. denied, *126 S.Ct. 2862, 547 U.S. 1192, 165 L. Ed. 2d 895 (2006)*.

Moreover, a preliminary injunction is an extraordinary and drastic remedy that should not be granted unless the movant clearly establishes the burden of persuasion as to all four prerequisites. [*LSSi Data Corp. v. Comcast Phone, LLC, 696 F.3d 1114, 1119 (11th Cir. 2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:56NJ-PK31-F04K-X3YN-00000-00&context=); [*Forsyth County v. U.S. Army Corps of Engineers, 633 F.3d 1032, 1039 (11th Cir. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:525T-0261-652R-B164-00000-00&context=)(citations omitted); [*Siegel v. LePore, 234 F.3d at 1176*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:41V6-B4K0-0038-X4Y1-00000-00&context=); [*McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3T8F-8FY0-0038-X3XW-00000-00&context=); [*All Care Nursing Service v. Bethesda Memorial Hosp., 887 F.2d 1535, 1537 (11th Cir. 1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8KP0-003B-52JV-00000-00&context=)(quotations omitted). Granting or denying a temporary restraining order or preliminary injunction rests in the discretion of the district court. [*LSSi Data Corp. v. Comcast Phone, LLC, 696 F.3d at 1119*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:56NJ-PK31-F04K-X3YN-00000-00&context=); [*Carillon Importers, Ltd. v. Frank Pesce Intern. Group Ltd., 112 F.3d 1125, 1126 (11th Cir. 1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GSP0-00B1-D28V-00000-00&context=)(citations omitted).

The purpose of preliminary injunctive relief is to preserve the *status quo* between the parties and to prevent irreparable injury until the merits of the lawsuit itself can be reviewed. [*Devose v. Herrington, 42 F.3d 470, 471 (8th Cir. 1994)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-09G0-003B-P2S6-00000-00&context=); [*All Care Nursing Serv., 887 F.2d at 1537*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8KP0-003B-52JV-00000-00&context=); [*United States v. State of Ala., 791 F.2d 1450, 1457 n.9 (11th Cir. 1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5260-0039-P1KY-00000-00&context=). This necessitates that the relief sought in the motion be closely related to the conduct complained of in the actual complaint.**[\*22]** [*Devose, 42 F.3d at 471*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-09G0-003B-P2S6-00000-00&context=); [*Penn v. San Juan Hosp., 528 F.2d 1181, 1185 (10th Cir. 1975)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2B30-0039-M2BF-00000-00&context=). It should further be noted that the persons from whom the injunctive relief is sought must be a party to the underlying action. See [*In re Infant Formula* ***Antitrust*** *Litig., MDL 878 v. Abbott Laboratories, 72 F.3d 842, 842-43 (11th Cir. 1995)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9970-001T-D30N-00000-00&context=).

A showing of irreparable harm is "the *sine qua non* of injunctive relief." [*Northeastern Florida Chapter of Ass'n of General Contractors of America v. City of Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6N00-003B-50G6-00000-00&context=); citing [*Frejlach v. Butler, 573 F.2d 1026, 1027 (8th Cir. 1978)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-YNM0-0039-M264-00000-00&context=). The injury must be "neither remote nor speculative, but actual and imminent". [*Northeastern, at 1285*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6N00-003B-50G6-00000-00&context=); citing [*Tucker Anthony Realty Corp. v. Schlesinger, 888 F.2d 969, 973 (2d Cir.1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8M80-003B-52TW-00000-00&context=). An injury is "irreparable" only if it cannot be undone through monetary remedies. [*Cunningham v. Adams, 808 F.2d 815, 821 (11th Cir. 1987)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CT80-001B-K20F-00000-00&context=); citing [*Cate v. Oldham, 707 F.2d 1176, 1189 (11th Cir. 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-04S0-003B-G3X6-00000-00&context=). "The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." [*Northeastern at 1285*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6N00-003B-50G6-00000-00&context=); citing [*Sampson v. Murray, 415 U.S. 61, 90, 94 S.Ct. 937, 953, 39 L.Ed.2d 166 (1974)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CFC0-003B-S4D1-00000-00&context=).; accord [*United States v. Jefferson County, 720 F.2d 1511, 1520 (11th Cir. 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-Y280-003B-G1B4-00000-00&context=).

At this stage of the proceedings, the plaintiff does not state a prima facie case for preliminary injunctive relief. He has also not demonstrated that he is entitled to declaratory relief. Plaintiff has not demonstrated that he currently faces a "substantial threat" of "immediate and irreparable injury" from the Defendants. At best, the motion presents only prospective, speculative allegations,**[\*23]** which is not even specific as to the cause or nature, but merely asserted in legalese as to his attorneys. Thus, the requested relief is far too tenuous and speculative. Finally, at this juncture, Plaintiff has not demonstrated a substantial likelihood of success in this case. consequently, the claim for declaratory and injunctive relief should be dismissed for failure to state a claim upon which relief can be granted.

**V. Conclusion**

For all of the foregoing reasons, it is recommended that this case be dismissed, pursuant to *28 U.S.C. §1915(e)(2)(b)(ii)*, for failure to state a claim upon which relief can be granted and as frivolous, [*Carroll v. Gross, et al., 984 F.2d 392, 393 (11th Cir. 1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HMC0-003B-P1MT-00000-00&context=); and, that this case be closed.

Dismissal with leave to amend would not be appropriate here because an amendment would be futile in that any amended complaint on the basis of the allegations now presented and attempted claims would still be properly dismissed. See [*Judd v. Sec'y of Fla., 2011 U.S. Dist. LEXIS 75923, 2011 WL 2784422, \*2 (M.D.Fla. June 1, 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:539X-F071-JCNB-9120-00000-00&context=)(recommending that Plaintiff not be permitted to file an amended complaint in light of the Eleventh Circuit's decision in Johnson in that any amended complaint would be frivolous). See generally [*Spaulding v. Poitier, 548 Fed.Appx. 587, 594 (11th Cir. 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5B16-DD41-F04K-X1G4-00000-00&context=)(holding that magistrate judge did not abuse his discretion in denying Plaintiff leave to amend his complaint because such an amendment**[\*24]** would have been futile)(citing, [*Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RD4-6FJ0-TXFX-G20W-00000-00&context=).

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report. Failure to file timely objections shall bar plaintiff from a *de novo* determination by the district judge of an issue covered in this report and shall bar the parties from attacking on appeal factual findings accepted or adopted by the district judge except upon grounds of plain error or manifest injustice. See *28 U.S.C. §636(b)(1)*; [*Thomas v. Arn, 474 U.S. 140, 149, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8XP0-0039-N1VY-00000-00&context=); [*Henley v. Johnson, 885 F.2d 790,794 (1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-92S0-003B-553Y-00000-00&context=); [*LoConte v. Dugger, 847 F.2d 745 (11th Cir. 1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-0H30-001B-K1XP-00000-00&context=); [*RTC v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DW50-003B-P34T-00000-00&context=).

Signed this 4th day of October, 2017.

/s/ Patrick A. White

UNITED STATES MAGISTRATE JUDGE

**End of Document**

1. 1The application of the Twombly standard was clarified in [*Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=). [↑](#footnote-ref-0)