

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA**

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**PLAINTIFF'S MOTION TO DENY DEFENDANTS HORKAN AND PERDUE'S  
MOTION TO DISMISS**

**DENNY C. CORMIER**

**PLAINTIFF,**

**CASE NO: 7:09-CV-68 (HL)**

**v.**

**FRANK D. HORKAN, et al.,**

**DEFENDANTS.**

**COMES NOW** Plaintiff in response to “Defendants’ Motion to Dismiss” whereby he disputes contentions by Defendants that Plaintiff has not adequately plead the instant case, and related arguments. On the contrary, Plaintiff adequately plead and stated his case that he was repeatedly denied his civil rights, under color of law, especially to a Fair Trial and to Due Process and Equal Protection and freedom from Involuntary Servitude under both the U.S. and Georgia Constitutions. Indeed, Defendant Horkan has not denied having acted *ultra vires* without authority or jurisdiction and outside judicial capacity during the period of June and July, 2005 in state civil case #03-CVD-2211. There were no denials on merits by named Defendants who deliberately conspired to continue forcing Plaintiff into an unlawful alimony-peonage contract in violation of 42 U.S.C. § 1994 and RICO Statutes 18 U.S.C. § 1961 et seq, thereby causing him to endure perpetual bankruptcy and peonage under threats of fines and jail, and that Defendants filed a domestication order in Virginia on October 5, 2007 to continue, expand and exacerbate their tortous actions.

Instead, Defendants have attempted to obfuscate their unlawful conduct against Plaintiff by alleging the following technicalities: 1) that Plaintiff filed his case beyond the statute of limitations, 2) that Plaintiff should be blocked by a Rooker-Feldman abstention, 3) that Plaintiff did not adequately state his constitutional and statutory

claims, 4) that Defendants have 11<sup>th</sup> Amendment immunity, and 5) that Plaintiff is barred by doctrine of laches. Plaintiff counters Defendants' allegations as follows:

1. **Statute of Limitations Inapplicable:** Although, 42 U.S.C. § 1983 technically has no specific statute of limitations, it has often been associated with statutory limitations governing state tort law, including principles of tolling and continuing torts. Georgia is a continuing tort state and permits tort-tolling as well. Plaintiff has suffered continuing damages to his personal property in the form of a perpetual, unlawful alimony-peonage contract, for which there is no provision under Contract Law, due to its illegality under Federal law. Hence, Plaintiff refers the Court to the four-year statute of limitations under O.C.G.A. 9-3-30 and 9-3-32 governing personal property torts in Georgia. In addition, Plaintiff calls attention to O.C.G.A. 9-3-99 which provides for a six-year statute of limitation whenever probable criminal conduct is involved by tortfeasors, as is true in the instant case due to violations of the Federal Anti-Peonage and RICO statutes, as held in Tucker v Southern Wood 28 F.3d 1089 (11<sup>th</sup> Cir. 1994). Furthermore, Defendants filed an order to domesticate their unlawful alimony-peonage contract in Virginia in October 5, 2007 against Plaintiff as part of continuing tort, well within statute of limitations for personal and personal property injury, as noted by Defendants. Moreover, Plaintiff only became aware of Defendants' political quid pro quo relationship in 2008 and consequently tort-tolling provides that statute of limitations for damages alleged by Plaintiff have only tolled for one year. Therefore, Plaintiff has filed his case well within the statute of limitations pursuant to his 42 U.S.C. § 1983 case.
2. **Eleventh Amendment Immunity Invalidated:** Defendants maintain that they cannot be held accountable for violations of law because they are state officials and therefore immune from prosecution under the Eleventh Amendment to the U.S. Constitution. However, contrary to their contentions, under Ex Parte Young, 209 U.S. 123 (1908), Defendants can be held accountable when they act unlawfully, without authority, without jurisdiction or outside judicial capacity. In the case of Defendants Horkan and May, they clearly acted *ultra vires* during a proper Federal removal during the period of June to July, 2005 and Defendant

Horkan displayed contempt and reckless disregard for Federal law in his order of June 14, 2005, stating that he was not required to obey Federal law, specifically ignoring 28 U.S.C. § 1446 requiring that a state trial must be halted during a Federal removal. As a consequence, Plaintiff has been forced into a perpetual alimony-peonage contract and perpetual bankruptcy. In addition, Defendants Horkan and May deliberately concealed their political relationship, whereby Defendant May acted as Defendant Horkan's campaign manager and treasurer for his re-election campaign during the time of Federal removal from May to July, 2005, making Plaintiff's right to a Fair Trial impossible. Moreover, Defendant Horkan, under color of law, awarded thousands of dollars to his political crony, Defendant Dwight May, in his *ultra vires* order of June 14, 2005, without jurisdiction or authority during said Federal removal in 2005, and therefore Defendants lose immunity as held in Stump v. Sparkman, 435 U.S. 349 (1978). Moreover, Defendants have forfeited their Eleventh Amendment immunity under Ex Parte Young because they unlawfully acted *ultra vires*, without jurisdiction and without proper authority, and outside their judicial capacity and engaged in corrupt practices. Defendant Perdue is the responsible actor for Defendant Horkan's *ultra vires* conduct.

3. **Claim for 42 U.S.C. § 1983 Adequately Stated:** Plaintiff has adequately stated his 42 U.S.C. § 1983 claim alleging impermissible infringements of 5<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Amendments due to denial and obstruction of his rights to a Fair Trial, Due Process, Equal Protection and Freedom from Involuntary Servitude. Plaintiff has also alleged suffering irreparable damages due to Defendants' *ultra vires* conduct during a Federal removal in violation of 28 U.S.C. § 1446 and consequent continuing tort damages thereafter in the form of an unlawful perpetual alimony-peonage contract. Furthermore, in Monroe v. Pape, 365 U.S. 167 (1961) the U.S. Supreme Court articulated three purposes that underlay the 42 U.S.C. § 1983 statute: "1) 'to override certain kinds of state laws'; 2) to provide 'a remedy where state law was inadequate'; and 3) to provide 'a federal remedy where the state remedy, though adequate in theory, was not available in practice.'" All three of these situations have been encountered in the instant case.

4. **Claim for 42 U.S.C. § 1982 Adequately Stated:** Plaintiff asserts that his Section 1982 claim was adequately stated because he alleges that Defendants deprived Plaintiff of his property rights and any future rights of conveyance through discriminatory practices whereby Section 1982 is a statutory arm of the Equal Protection provisions of the 14<sup>th</sup> Amendment. Plaintiff has been relegated to a discriminated class of ex-spouses that no longer have the rights of average “white citizens” or otherwise, and he has been deprived of his Equal Protection rights by Defendants, by being forced into an unlawful alimony-peonage contract. The Defendants erred by narrowly interpreting the statute as only pertaining to the Civil War era instead of a broad interpretation as was intended by the U.S. Supreme Court in Orr v. Orr, 440 U.S. 268 (1979) where the Justices held that all citizens were entitled to Equal Protection under the Constitution and freedom from Gender Bias in particular, and not just as applied to residents of Alabama where that case originated.
5. **Claim for 42 U.S.C. § 1985 Adequately Stated:** Plaintiff asserts that under 42 U.S.C. § 1985(3) that Defendants conspired to willfully and maliciously deprive him, both directly and indirectly, of the Equal Protection of the laws, and of equal privileges and immunities under the laws. Further, Plaintiff alleges that Defendants have conspired to prevent Plaintiff by force, intimidation, and threats, to injure his person and property, and to deprive him of having and exercising rights and privileges of a citizen of the United States. Plaintiff claims an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the Defendants.
6. **Thirteenth Amendment and Peonage Claims Adequately Stated:** In his Complaint, Plaintiff asserts that he has been and continues to be forced and coerced, under threat of jail, into an unlawful alimony-peonage contract, under color of law, by Defendants. Because Plaintiff lacks a means of independent income, and because he has been forced into a state of perpetual bankruptcy, Plaintiff must now and forever labor to satisfy the obligation created by Defendants’ unlawful alimony-peonage contract, in a state of involuntary servitude. Consequently, Defendants have impermissibly infringed the 13<sup>th</sup>

Amendment and have violated the Federal Anti-Peonage statutes, 42 U.S.C. § 1994 et seq. to the detriment of Plaintiff. Defendants' erroneous citation of Loubser v. United States, 606 F. Supp. 2d 897 (N.D. Ind. 2009) refers to voluntary, legal alimony agreements, and not an unlawful peonage contract derived through corrupt and *ultra vires* conduct without jurisdiction, proper authority or outside judicial capacity. Loubser originated from the same Indiana district court that issued the now infamous Stump v Sparkman decision whereby an incapacitated woman was ordered to be involuntarily sterilized because the judge felt she was "somewhat retarded"; this case was subsequently reversed by the U.S. Supreme Court which determined that the judge involved was not immune, and indeed liable for prosecution. Furthermore, Loubser errs by narrowly interpreting involuntary servitude and peonage as only pertaining to "African slavery". Quite the opposite, the U.S. Supreme Court clearly articulated in Bailey v Alabama, [219 U.S. 219](#) (1911) and United States v. Kozminski, [487 U.S. 931](#), 942 (1998) that peonage contracts and involuntary servitude were not restricted to Civil War injustices, but that the 13<sup>th</sup> Amendment and 42 U.S.C. § 1994 et seq statutes were to be interpreted broadly to apply to all U.S. citizens, and to all situations involving forced or coerced obligations. Moreover, peonage in any form has been deemed illegal under Federal law, and shall be considered an abomination against constitutional protections, civil rights and human rights. The Defendants would have this Court believe the preposterous assertion that alimony supersedes the U.S. Constitution, Federal Statutory Law and all the principles of Contract Law.

7. **Federal RICO Statute Claims Adequately Stated:** Plaintiff has alleged that Defendants have forced him into an unlawful, perpetual alimony-peonage contract and have endeavored to coerce and force him into paying this unlawful debt through fines and false imprisonment. Forced payment of an unlawful debt is a violation of 18 U.S.C. § 1962(a). In addition, corruption and extortion involving public officials under color of law is a violation of 18 U.S.C. § 1951(1).
8. **Rooker-Feldman Abstention Inapplicable:** Reiterating from Plaintiff's Complaint, the Rooker-Feldman abstention is inapplicable because infringements

of the 5<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Amendments and violations of the Federal statutes addressed in the instant case have never been reviewed on merits before this court, nor have they been reviewed in the state court. In addition, this court has jurisdiction to review the instant case based upon the decision in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 125 S. Ct. 1517, 1527 (2005). Even the Defendants concede this point in their “Motion to Dismiss”.

9. **Doctrine of Laches Inapplicable:** Because the doctrine of laches is an affirmative defense, Defendants have the burden of proof to show prejudice against them. They offered no such proof. Furthermore, the doctrine of laches is inapplicable because timely notice was given to adverse parties, prejudice was lacking against Defendants, and Plaintiff made his claims in good faith and exhibited good-faith conduct. However, because Defendants have raised the issue of prejudice, Plaintiff is constrained to direct the Court’s attention to the fact that Defendants have chosen to make prejudicial remarks by referring to Plaintiff as an “inmate” on page 16 of their “Motion to Dismiss”, with the obvious intent of intimidating Plaintiff and prejudicing the Court against him. Therefore, Plaintiff respectfully requests that this Honorable Court permit him wider latitude on discovery and with regard to questioning Defendants and their witnesses.
10. **Defendants’ State Statutory Citations Inapplicable:** Defendants cited numerous Georgia statutes which are inapplicable because they were outside the purview and jurisdiction of instant Federal case.

### **STANDARD OF REVIEW**

When a Federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one, Scheuer v. Rhodes, 416 U.S. 232 (1974). The issue is not whether a Plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims. Indeed, it may appear on the face of the pleading that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, whether on the grounds of lack of jurisdiction over the subject matter

or for failure to state a cause of action, the allegation of the complaint should be construed favorably to the pleader.

### **MEMORANDUM OF LAW**

Defendants contend that the pleadings raise no claim for relief against them or state a claim as found in Defendant's Motion to Dismiss under Rule 12. However, this Court is required to accept all well-pled factual allegations and reasonable inference therefrom as true. *See Jackson v. Birmingham Bd. of Educ.*, 309 F.3d 1333, 1335 (11<sup>th</sup> Cir. 2002), *Rosner v. U.S.*, 231 F. Supp.2d 1202, 1206 (S.D. Fla. 2002), *Morrison v. Amway Corp.*, 323 F. 3d 920, 924, n.5 (11<sup>th</sup> Cir. 2003) and *Oxford Asset Mgt. Ltd. V. Jaharis*, 297 F.3d 1182, 1188 (11<sup>th</sup> Cir. 2002). This Court is limited in its' review to only those averments found in the Complaint or reference therein. *See Brooks v. Blue Cross & Blue Shield of Fla.*, 116 F.3d 1364, 1368-69 (11<sup>th</sup> Cir. 1997), *Rhodes v. Omega Research, Inc.*, 38 F. Supp.2d 1353, 1357-58 (S.D. Fla 1999), *Future Tech Int'l, Inc. v. Tae II Media, Ltd.*, 944 F. Supp. 1538, 1561 (S.D. Fla. 1996). Therefore, Plaintiff's Complaint is only subject to dismissal if the Defendants can prove no set of facts support Plaintiff's claims, which they cannot. Furthermore, Plaintiff's alleged facts state a cognizable theory for relief and therefore his Complaint is not subject to dismissal, *See Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385 (11<sup>th</sup> Cir. 1998), *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 703 (11<sup>th</sup> Cir. 1985), *Glen v. Club Mediterranee S.A.*, 365 F.Supp.2d 1263, 1273 (S.D. Fla. 2005); or if the Plaintiff's allegations present a dispositive legal issue precluding relief, *See Marshall County Bd. of Educ. V. Marshall County Gas. Dist.*, 992 F.2d 1171, 1174 (11<sup>th</sup> Cir. 1993).

### **CONCLUSION**

WHEREFORE for the above reasons, the "Defendants' Motion to Dismiss" must be denied because all Plaintiff's claims have been adequately plead and the Defendants Horkan and Perdue have not denied any of the allegations by the Plaintiff. Furthermore, considering that Plaintiff has systematically been denied Due Process and Equal

Protection in the state court system, Plaintiff respectfully requests this Court to order the Georgia Attorney General's office to provide him with legal assistance for prosecution of the instant case as has been provided to Defendants.

Respectfully submitted,

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Dated: June 29, 2009.

## CERTIFICATE OF SERVICE

This is to hereby certify that a true and correct copy of the foregoing “Motion to Deny Defendants Horkan and Perdue’s Motion to Dismiss” has been served this 29<sup>th</sup> day of June, 2009 via U.S. mail to: Meghan R. Davidson, Assistant Attorney General for Defendants Horkan and Perdue, 40 Capitol Square SW, Atlanta, GA 30334, Dwight May, Esq., P.O. Box 1660, Moultrie, GA 31776, John B. Alderman, Post Office Box 517, Moultrie, GA 31776, Nancy Cormier and Ann V. Buechler, 3030 Northwind Dr., Eustis, FL 32726.

Dated this 29<sup>th</sup> day of June, 2009.

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