IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

KHADIDAH STONE, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:21-cv-1531-AMM
	)	
WES ALLEN, *et al.*,	)	
	)	
Defendants.	)	

SECRETARY ALLEN'S REPLY IN SUPPORT OF MOTION TO DISMISS

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The Voting Rights Act is considered by many to be "the most successful civil rights statute" in this nation's history. *Allen v. Milligan*, 599 U.S. 1, 10 (2023). Enforced against the States, the VRA succeeded where other statutes failed by giving sharp teeth to the constitutional right to vote free from racial discrimination. Still, the VRA is a statute subject to the same interpretative principles as any other law, including when determining who can enforce it and what it means to violate it. When moving to dismiss, the Secretary extensively discussed a handful of Supreme Court decisions that answer these questions—namely, *City of Boerne v. Flores*, *South Carolina v. Katzenbach*, *Chisom v. Roemer*, *Whitcomb v. Chavis*, and *White v. Regester*. Plaintiffs either ignore these cases entirely or shrug off their applicability as upsetting the status quo. They have no meaningful answer. Their Section 2 claim should be dismissed.

ARGUMENT

I. Section 2 Is Not Privately Enforceable.

Plaintiffs assume they can privately enforce Section 2 of the Voting Rights Act because Congress never said they could not. That's backwards. Unless Congress unambiguously creates a private right of action, Plaintiffs do not have one. The text, structure, and history are clear: Section 2 confers no private rights and no private remedies. The Supreme Court has never said otherwise, and non-binding cases suggesting a different conclusion are wrong.

A. Section 2 Creates No New Federal Rights.

Where Congress has refrained in a statute from creating "new individual rights, there is no basis for suit, whether under § 1983 or under an implied right of action." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 286 (2002); *accord Alexander v. Sandoval*, 532 U.S. 275, 289 (2001).

1. Plaintiffs never "identify with particularity the rights" they claim Congress created in Section 2. *Blessing v. Freestone*, 520 U.S. 329, 342 (1997). They note that Section 2 "protects the 'right of any citizen . . . to vote' free from discrimination." Doc. 138 at 23. But protecting an existing right is not creating a new one, and the constitutional right to vote free from discrimination has existed since Reconstruction. *See United States v. Reese*, 92 U.S. 214, 217-18 (1875). Also, there is no presumption of §1983 enforceability just because a statute "speaks in terms of 'rights.'" *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 18-20 (1981).

Elsewhere, Plaintiffs assert, with no supporting authority, that Congress created in Section 2 "a prophylactic right of individuals to be free from racial vote dilution." Doc. 138 at 39. Here as well, the right to be free from racial vote dilution is a constitutional right recognized long ago by the Supreme Court. *See Reynolds v. Sims*, 377 U.S. 533, 558 (1964). Its origin does not lie in the Voting Rights Act. And to the extent Section 2 constitutes "prophylactic legislation," the Supreme Court has emphasized that such remedial provisions may not "*substantively* redefine the

States' legal obligations." *Nev. Dep't of Hum. Res. v. Hibbs*, 538 U.S. 721, 722 (2003) (emphasis added). Section 2 doesn't create rights; rather, it protects *pre-existing* rights by delineating how States might violate them and by giving the Attorney General the tools and authority he needs to enforce them more effectively.

2. Plaintiffs have no response to *City of Boerne v. Flores*, which holds that Congress does not confer new individual rights when enforcing the Reconstruction Amendments. 521 U.S. 507, 527 (1997).[1] Instead, Congress provides "modes of relief against … State action" that violates preexisting constitutional "rights and privileges." *Civil Rights Cases*, 109 U.S. 3, 11 (1883). The VRA is enforcement legislation. *See South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966). Thus, as the Supreme Court has recognized from day one, the VRA contains "new remedies" for violations of constitutional rights. *Id.* at 308, 315, 329-31. To assume that Section 2—one of its "remedial portions"—creates new rights misunderstands Congress's enforcement power. *Id.* at 316.

Although "the distinction between rights and remedies is fundamental," *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372, 384 (1918), Plaintiffs suggest it doesn't matter in the context of the VRA. Doc. 138 at 38. They cite a footnote in *Allen v.*

[1] *See also* Erwin Chemerisnky, *The Assumptions of Federalism*, 58 STAN. L. REV. 1763, 1770 (2006) (recognizing that "Congress may not use its Section 5 powers to expand the scope of rights or to create new rights"); Michael W. McConnell, *Institutions and Interpretation: A Critique of City of Boerne v. Flores*, 111 HARV. L. REV. 153, 189 (1997) (Congress "cannot create new rights" when enforcing the Fourteenth Amendment.).

State Board of Elections, 393 U.S. 544, 556 n.20, dismissing the need to determine whether Section 5 conferred new rights or remedies, which the Court repeated in *Morse v. Republican Party of Virginia*, 517 U.S. 186, 232-33 (1996) (plurality opinion), when finding Section 10 privately enforceable. But the reasoning behind the *Allen* and *Morse* courts' refusal to reach the issue was the product of a method of statutory interpretation long since "abandoned"—namely, that "congressional purposes" and "contemporary legal context" determine a statute's meaning, not "text and structure." *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001); *see also Ziglar v. Abbasi*, 582 U.S. 120, 132 (2017). This Court need not extend those decisions' defunct reasoning when interpreting Section 2. *See Bourdon v. U.S. Dep't of Homeland Sec.*, 940 F.3d 537, 548 (11th Cir. 2019) ("[S]tare decisis doesn't apply to statutory interpretation unless the statute being interpreted is the same one that was being interpreted in the earlier case.").[2]

[2] Plaintiffs enlist the aid of *Schwier v. Cox*, 340 F.3d 1284 (11th Cir. 2003), and *Vote.Org v. Callanen*, 2023 WL 8664636 (5th Cir. 2023), where the Eleventh Circuit and Fifth Circuit, respectively, read a different statute, 52 U.S.C. § 10101 (a)(2)(B), as creating rights enforceable under § 1983. The *Schwier* and *Vote.Org* courts neither heard nor considered the argument that Congress creates new remedies, not new rights, when enforcing the Reconstruction Amendments. These cases concerned a different statute, different text, and different arguments. Because they do not "directly control," this Court is "not obligated to extend" their reach "by even a micron." *Jefferson Cnty. v. Acker*, 210 F.3d 1317, 1320 (11th Cir. 2000); *see also United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33 at 38 (1952) (A case is not "binding precedent" on points that were "not there raised in briefs or argument nor discussed in the opinion."); *Bourdon*, 940 F.3d at 548.

The same goes for *Turtle Mountain Band of Chippewa Indians v. Jaeger*, 2022 WL 2528256 (D.N.D. July 7, 2022), and *Coca v. City of Dodge City*, 2023 WL 2987708 (D. Kan. Apr. 18, 2023), where the courts concluded that Section 2 contains rights-creating language. The *Turtle* court received no push back on the issue, and the *Coca* court merely followed *Turtle*'s lead. Neither considered the arguments made here.

Plaintiffs' failure to identify any new right created by Congress in Section 2 is a sufficient ground on which to dismiss this VRA suit.

B. Section 2 Creates No Private Remedy.

No provision of the VRA contains "clear evidence that Congress intended to authorize" private citizens to seek judicial enforcement of Section 2. *In re Wild*, 994 F.3d 1244, 1256 (11th Cir. 2021) (en banc). Plaintiffs concede that Section 2 itself contains no such evidence, *see* doc. 115 at 25, so they jump elsewhere in the statute and to *Morse* again for help, but they run up hard against the "presumption against implied rights of action." *Wild*, 994 F.3d at 1274 (Pryor, C.J., concurring).

1. Plaintiffs' reading of Sections 3 and 14 is riddled with fallacies. First, it begs the question. Section 3 recognizes certain remedies in proceedings instituted by "the Attorney General or an aggrieved person" in actions brought "under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment." 52 U.S.C. § 10302. Similarly, Section 14 permits attorneys' fees for "the prevailing party, other than the United States," in such actions. *Id.* § 10310(e). Because Section 2 enforces the Fifteenth Amendment, Plaintiffs jump to the conclusion that a private right of action must exist. But that reading just assumes that actions may be instituted under Section 2 in the first instance.[3] Instead, the phrase "a proceeding

[3] This syllogistic fallacy also did the heavy lifting in *Georgia State Conference of NAACP v. Georgia*, 2022 WL 18780945, at *6 (N.D. Ga. Sept. 26, 2022), and in Justice Stevens's *Morse* opinion. 517 U.S. at 233-34.

under any statute" "most reasonably refers to statutes that already allow for private suits," because "instituting a proceeding requires the underlying cause of action to exist first." *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1211 (8th Cir. 2023).

Even more troubling, Plaintiffs would read Sections 3 and 14 as creating "new private rights of action for every voting-rights statute that did not have one, including § 2." *Id.* at 1212; Doc. 138 at 25, 28-29. In other words, Plaintiffs posit that Congress, by adding the phrases "or an aggrieved person" and "prevailing party, other than the United States," when amending Sections 3 and 14 in 1975, intended to "transform the enforcement of 'one of the most substantial' statues in history by the subtlest of implications." *Ark. NAACP*, 86 F.4th at 1213. The Supreme Court rebuffed a similar argument in the context of the 1995 amendments to the Securities Exchange Act of 1934. *See Stoneridge Inv. Partners, LLC v. Sci-Atlanta*, 552 U.S. 148, 165 (2008). The amendments "imposed heightened pleading requirements" in "any private action arising from the Securities Exchange Act." *Id.* Instead of reading "any private action" as creating new private causes of action, the Supreme Court opted for the more reasonable (and restrained) interpretation that the phrase simply referred to the implied right of action the Court had already recognized. *Id.* at 165-66; *see also Ark. NAACP*, 86 F.4th at 1212. Because "Congress typically does not

'hide elephants in mouseholes,'" Plaintiffs' reading of Sections 3 and 14 is utterly implausible. *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 274 (2023).[4]

2. The VRA is not silent about who can enforce its provisions. Section 12 provides the remedial framework—enforcement by the Attorney General—but any "mention of private plaintiffs or private remedies … is missing." *Ark. NAACP*, 86 F.4th at 1210. If the "statutory structure provides a discernible enforcement mechanism, *Sandoval* teaches that [the court] ought not to imply a private right of action because the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Love v. Delta Air Lines*, 310 F.3d 1347, 1353 (11th Cir. 2002). Section 12's express framework for enforcement is, at the very least, "a thumb on [the] scale against finding an implied private cause of action." *Ga. State Conf. of NAACP*, 2022 WL 18780945, at *7.

In response, Plaintiffs lean on *Allen* and *Morse*, which recognized implied rights of action in Sections 5 and 10, respectively, despite Section 12's enforcement mechanism. Doc. 138 at 31. The fractured decisions in *Morse* relied upon *Allen*'s legal reasoning, which was declared defunct by *Sandoval*. *See Sandoval*, 532 U.S.

[4] Also, by Plaintiffs' logic, if "an aggrieved person" can sue under every voting-rights statute, then so can the Attorney General, who is named first in Section 3. But that's just not so. Private parties may vindicate their constitutional rights under statutes like § 1983, but the Attorney General cannot do so on their behalf. *See Inyo County v. Paiute-Shoshone Indians*, 538 U.S. 701, 711-12 (2003). Section 3 should not be read in a way that would create such inconsistencies. The better interpretation is that "Private plaintiffs can sue under statutes like 42 U.S.C. § 1983, where appropriate, and the Attorney General can do the same under statutes like § 12. And then § 3 sets the ground rules in the types of lawsuits each can bring." *Ark. NAACP*, 86 F.4th at 1213.

at 287-88. The *Allen* Court's nonchalant setting aside of Section 12's express enforcement mechanism should not be extended to Section 2. "If the text and structure of § 2 and § 12 show anything, it is that Congress intended to place enforcement in the hands of the Attorney General, rather than private parties." *Ark. NAACP*, 86 F.4th at 1211 (quotation omitted).

3. Plaintiffs also latch on to the term "person" in Section 12(f), a jurisdictional provision, as evidence of Congress's intent to let private plaintiffs sue under Section 2. Doc. 138 at 29-30.[5] There are two problems with this. First, the "source of plaintiffs' rights must be found, if at all, in the substantive provisions of the [act] which they seek to enforce, not in the jurisdictional provision," which "creates no cause of action of its own force and effect." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 577 (1979). Second, the phrase "proceedings instituted pursuant to this section" most logically refers to the "fast-tracked lawsuits" the Attorney General may bring in federal court when notified by a federal observer of "'well-founded' allegations from people who allege that 'they have not been permitted to vote.'" *Ark. NAACP*, 86 F.4th at 1210 (quoting 52 U.S.C. § 10308(f)). In such proceedings, the Attorney General may bypass procedural encumbrances like exhaustion of remedies

[5] Section 12(f) states: "The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a *person* asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies …." 52 U.S.C. § 10308(f) (emphasis added).

by the "person asserting rights." 52 U.S.C. § 10308(f). Section 12(f) gives Plaintiffs no help.

4. Finally, according to Plaintiffs, the private enforceability of Section 2 has "been the undisputed law of the land" since 1965, and the 1975 amendments "assuage[d] any doubt" that may have persisted. Doc. 138 at 15. That confident position is hard to reconcile with statements by Supreme Court Justices to the contrary. *See Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring, joined by Thomas, J.) ("Our cases have assumed—without deciding—that the Voting Rights Act of 1965 furnishes an implied cause of action under § 2. Lower courts have treated this as an open question."); *see also City of Mobile v. Bolden*, 446 U.S. 55, 60 (1980) (plurality opinion) (Stewart, J., joined by two other Justices and the Chief Justice) ("Assuming, for present purposes, that there exists a private right of action to enforce [Section 2].").

Plaintiffs ignore these statements and instead rest their case on dicta in *Morse*, where Justice Stevens, announcing the judgment of the Court and joined by Justice Ginsburg, and Justice Breyer, concurring and joined by Justices O'Connor and Souter, mentioned Section 2 on the way to finding Section 10 privately enforceable. *See* 517 U.S. at 232, 240. Both opinions *assumed* "the existence of a private right of action under Section 2," and sought to avoid the "anomalous" result of permitting

private suits under Sections 2 and 5 but not Section 10. *Id.* at 232; *id.* at 240. Plaintiffs would treat these "background assumptions" as binding holdings. *Ark. NAACP*, 86 F.4th at 1215. There are at least three problems with that.

First, "[q]uestions … neither brought to the attention of the court nor ruled upon[] are not to be considered as having been so decided as to constitute precedents." *Webster v. Fall*, 266 U.S. 507, 511 (1925); *see also Permian Basin Area Rate Cases*, 390 U.S. 747, 775 (1968). No binding precedent from the Supreme Court or elsewhere requires this Court to do anything other than to "start with the text, apply first principles, and use the interpretive tools the Supreme Court has provided." *Ark. NAACP*, 86 F.4th at 1216 n.7. Second, the statements in *Morse* about Section 2 were "devoid-of-analysis," *Schwab v. Crosby*, 451 F.3d 1308, 1325 (11th Cir. 2006), making them "the least valuable kind" of dicta. *Ark. NAACP*, 86 F.4th at 1216. *Contra* Doc. 138 at 21. They are certainly not the kind of dicta the *Schwab* court touted as binding. Third, *Morse* itself is a "gravely wounded" decision. *Jefferson Cnty.*, 210 F.3d at 1320. Just "five years after *Morse*, the Supreme Court made clear that 'text and structure' are the guideposts, not 'contemporary legal context.'" *Ark. NAACP*, 86 F.4th at 1216 (quoting *Sandoval*, 532 U.S. at 287-88). The statements in *Morse* about Section 2 are owed no deference.[6]

[6] Plaintiffs' tag-on argument flying under the banner of "statutory stare decisis" is a non-starter because there is no "settled judicial interpretation" to which Congress has acquiesced. *AMG Capital Mgmt. v. FTC*, 141 S. Ct. 1341, 1351 (2021); Doc. 138 at 32-34.

In sum, the text of Section 2 demonstrates that Congress created no private rights and no private remedies. Plaintiffs' Section 2 claim should be dismissed.

II. Plaintiffs Fail To State A Claim Under The Text Of Section 2.

A. Plaintiffs Fail to Plead Facts Showing an Unequal Opportunity "to Participate in the Political Process".

Plaintiffs accuse Defendants of attempting to remake Section 2 jurisprudence anew. Doc. 138 at 40. To the contrary, Defendants appropriately focus on the text of the statute they have allegedly violated and the Supreme Court cases from which that text was pulled to derive its meaning. *Gingles* and *Milligan* remain unchallenged, and the "Senate factors" still apply. Defendants' point is simple: the "unequal opportunity to participate in the political process" carries a particular meaning. *Whitcomb v. Chavis* and *White v. Regester* supply that meaning. *See Allen v. Milligan*, 599 U.S. 1, 13 (2023) (discussing *White*). Both the *Whitcomb* and *White* plaintiffs were disadvantaged in many similar respects, yet the political process was equally open to the first but closed to the second. Thus, if Plaintiffs have not alleged the bare minimum—that black Alabamians in Huntsville and Montgomery today are at least as shut out of the political process as the *Whitcomb* plaintiffs were in Marion County, Indiana, in the 1960s—then they have necessarily failed to state a claim.

1. Plaintiffs question the relevance of *Whitcomb* and *White* to the Section 2 inquiry, going so far as to state that the results test applied in *Whitcomb* and *White* "is simply not the standard applied by the Supreme Court and circuit courts." Doc.

138 at 45, 47. This flies in the face of the Supreme Court's recognition in *Chisom v. Roemer* that Section 2's results test "is meant to restore the pre-*Mobile* standard … employed in *Whitcomb* … and *White*." 501 U.S. 380, 394 n.21 (1991) (quoting S. Rep. No. 97-417, at 27 (1982), and *Thornburg v. Gingles*, 478 U.S. 30, 83-94 (1986) (O'Connor, J., concurring in judgement)); *see also id.* at 397-98. The Court emphasized that Section 2 plaintiffs must show not only "the inability to elect representatives of their choice" but *also* that "the members of the protected class have less opportunity to participate in the political process." *Id.* at 397. Plaintiffs do not even cite *Chisom*.[7]

Because the phrase "participate in the political process" "is obviously transplanted from another legal source," standard rules of statutory interpretation mandate that "it brings the old soil with it." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019). Thus, *Whitcomb* and *White* are far from irrelevant; they inform what the text means when it requires plaintiffs to show "an unequal opportunity to participate in the political process." Plaintiffs' contrary view "becomes plausible only if *Whitcomb*

[7] Also, the lower courts have widely acknowledged that Congress, when amending section 2, "scrap[ped] the 'intent' test imposed by *City of Mobile v. Bolden*" and "insert[ed] in its place the 'results' test earlier adumbrated in *White v. Regester* and *Whitcomb v. Chavis*." *Uno v. City of Holyoke*, 72 F.3d 973, 982 (1st Cir. 1995); *see also Johnson v. DeSoto Cnty. Bd. of Com'rs*, 204 F.3d 1335, 1346 n.23 (11th Cir. 2000); *Nipper v. Smith*, 39 F.3d 1494, 1517 (11th Cir. 1994) (en banc) (plurality opinion); *LULAC v. Clements*, 999 F.2d 831, 851 (5th Cir. 1993) (en banc); *Smith v. Brunswick Cnty. Va. Bd. of Sup'rs*, 984 F.2d 1393, 1399 (4th Cir. 1993); *Alabama State Conf. of NAACP v. Merrill*, 6112 F. Supp. 3d 1232, 1251 (M.D. Ala. 2020); *Chapman v. Nicholson*, 579 F. Supp. 1504, 1506-07 (N.D. Ala. 1984).

is purged from … voting rights jurisprudence." *LULAC v. Clements*, 999 F.2d 831, 862 (5th Cir. 1993) (en banc) (discussing *Whitcomb* at length).

2. *Whitcomb* and *White* speak with a unified voice: a plaintiff must show that members of the minority group are "being denied access to the political system," *Whitcomb*, 403 U.S. at 155, in other words, that they are excluded "from effective participation in political life," *White*, 412 U.S. at 769. Thus, "the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics, and others" are probative, but only to the extent they show that the minority group is "effectively removed from the political process." *Id.* at 768-69. In *White*, for example, the effects of past discrimination and significant "cultural and language" barriers suffered by the Mexican-American residents of Bexar County, "conjoined with the poll tax and most restrictive voter registration procedures in the nation," were relevant because they explained why "Mexican-American voting registration remained very poor in the county" and why the county's "delegation in the House was insufficiently responsive to Mexican-American interests." *Id.* at 768.

In contrast, the Court in *Whitcomb* heard similar evidence of socioeconomic disparities, such as "[s]trong differences … in terms of housing conditions, income and education levels, rates of unemployment, juvenile crime, and welfare assistance," along with historical data showing "gross inequity of representation" in the

general assembly. 403 U.S. at 132-33. Nevertheless, plaintiffs' claim failed because "nothing in the record or in the court's findings indicated" that poor black residents in Marion County were "being denied access to the political system." *Id.* at 149, 155. Access to the "political system" meant access to those "traditional objective indicators of fair and effective participation," like voter registration,[8] voting, and participating in the political party of one's choosing. James F. Blumstein, *Racial Gerrymandering and Vote Dilution: Shaw v. Reno in Doctrinal Context*, 26 RUTGERS L.J. 517, 575 (1995). Thus, unless Plaintiffs allegations connect the dots between, for example, historical discrimination and a present denial of access to the political system, their claim fails. Sufficient allegations would necessarily demonstrate that black Alabamians in Huntsville and Montgomery are worse off in terms of access to the political system than were black Indianians in 1960s Marion County. Here, both thankfully and unsurprisingly, the allegations come nowhere close.

B. Plaintiffs Fail to Plead Facts Showing Less Opportunity to Elect.

To satisfy the third *Gingles* precondition at the pleading stage, Plaintiffs must allege facts showing, if true, (1) that "white bloc voting *regularly causes* the candidate preferred by black voters to lose," and (2) "that blacks and whites *consistently*

[8] Defendants' use of U.S. Census Bureau data is entirely appropriate because Plaintiffs' allegations necessarily incorporate it by reference; data showing registration disparities are "central to plaintiff's claim," and the "authenticity" of U.S. Census Bureau data is "undisputed." *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002).

prefer different candidates" in the challenged region. *Johnson v. Hamrick*, 196 F.3d 1216, 1221 (11th Cir. 1999); *see also Shaw v. Hunt*, 517 U.S. 899, 916 (1996).

Regarding "the Montgomery region," the Complaint is devoid of any factual allegation that "white bloc voting *regularly causes* the candidate preferred by black voters to lose." *Id.* Plaintiffs think the first sentence in paragraph 97 is all they need, but it contains nothing more than a "formulaic recitation of the elements" of a vote dilution claim and need not be accepted as true. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). And the allegation that black candidates have not won a District 25 election in ten years says nothing about whether white bloc voting caused those political defeats. Finally, regarding "the Huntsville region," Plaintiffs say there's vote dilution in Districts 2, 7, and 8, but then attempt to allege racial bloc voting in Madison County—a different region, which encompasses District 7, about half of District 2, and only a small part of District 8. These allegations are incomplete and insufficient.

CONCLUSION

The Fourth Amended Complaint is due to be dismissed.

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CERTIFICATE OF SERVICE

I certify that on January 25, 2024, I electronically filed the foregoing notice with the Clerk of the Court using the CM/ECF system, which will send notice to all counsel of record.

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