

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-20152-CIV-ALTONAGA/SIMONTON

GUSTAVO A. ABELLA,

Plaintiff,

v.

NANCY SIMON, et al.,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO MAKE CORRECTION AND  
PLAINTIFF'S MOTION REQUESTING EXTENSION OF TIME, AND  
DENYING DEFENDANT'S MOTION TO STRIKE

Before the Court are (a) Plaintiff's Motion to Make Correction on Defendant Nancy Simon Inclusion of the Amended Complaint (DE # 37), (b) Plaintiff's Motion Requesting Extension of Time to Respond (DE # 38), and (c) Defendant Nancy Simon's Motion to Strike or, in the Alternative, Response to Plaintiff's Motion to Deny Simon's Motion to Dismiss (DE # 51). The Honorable Cecilia M. Altonaga, United States District Judge, has referred this case to the undersigned Magistrate Judge with respect to rulings on all pretrial, non-dispositive matters, and for issuance of a report and recommendation with respect to any dispositive matter (DE # 8, 24). This Order sets forth the rulings on these Motions and the reasons for such rulings. It is hereby

**ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion to Make Correction on Defendant Nancy Simon Inclusion of the Amended Complaint (DE # 37) is **GRANTED**. "*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (citation omitted). The undersigned notes that while the capacity in which Defendant Nancy

Simon has been sued is unclear in the caption of the Amended Complaint, the allegations of the Amended Complaint address Ms. Simon in her individual capacity and as an elected official. Moreover, the undersigned notes that Defendant Simon's Motion to Dismiss or for a More Definite Statement has addressed both capacities (DE # 36). Therefore, the caption of this case shall be amended by interlineation to include as a Defendant "Nancy Simon, in both her individual and official capacities," thus clarifying the Amended Complaint. This Order, however, does not constitute a ruling on the merits of Defendant's pending Motion to Dismiss or for a More Definite Statement, nor does this amendment by interlineation constitute a new pleading. Since it is merely a clarification of the intent of the pro se Plaintiff, the pending Motions to Dismiss are unaffected and remain pending.

2. Plaintiff's Motion Requesting Extension of Time to Respond (DE # 38) is **GRANTED**. Plaintiff's Motion to Deny Defendant Nancy Simon's Motion to Dismiss or for a More Definite Statement (DE # 42) shall be deemed a timely response to Defendant's Motion. Defendant Simon may reply to Plaintiff's response within seven days of this Order.

3. Defendant Nancy Simon's Motion to Strike or, in the Alternative, Response to Plaintiff's Motion to Deny Simon's Motion to Dismiss (DE # 51) is **DENIED**, based on the undersigned's ruling above that Plaintiff's Motion to Deny (DE # 42) shall be deemed a timely response to Defendant's Motion to Dismiss, and that Defendant Simon shall have an opportunity to file a reply.

**DONE AND ORDERED** in chambers in Miami, Florida, on June 15, 2011.

  
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ANDREA M. SIMONTON  
UNITED STATES MAGISTRATE JUDGE

**Copies furnished via CM/ECF to:  
The Honorable Cecilia M. Altonaga,  
United States District Judge  
All counsel of record**