

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

DARIOUS J. CURNEY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO. 5:11-CV-239 CAR-MSH
	:	42 U.S.C. § 1983
DAN BLAKELY, <i>et al.</i> ,	:	
	:	
Defendants.	:	

NOTIFICATION OF MOTION TO DISMISS

Defendants Alston and Blakely filed a Motion to Dismiss and a brief in support of same on January 30, 2011. (ECF No. 24.) The Court is required to adequately advise the Plaintiff of the significance of the Defendants’ Motion pursuant to *Griffith v. Wainwright*, 772 F.2d 822 (11th Cir. 1985) (per curiam). In an effort to afford the Plaintiff, who is proceeding *pro se*, adequate notice and time to respond to the Defendants’ Motion, the following notice is given.

When considering a motion to dismiss, the Court must accept as true all facts set forth in the plaintiff’s complaint and limit its consideration to the pleadings and exhibits attached thereto. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007); *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570). The complaint must include sufficient factual

allegations “to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. “[A] formulaic recitation of the elements of a cause of action will not do[.]” *Id.* Although the complaint must contain factual allegations that “raise a reasonable expectation that discovery will reveal evidence of” the plaintiff’s claims, *id.* at 556, “Rule 12(b)(6) does not permit dismissal of a well-pleaded complaint simply because ‘it strikes a savvy judge that actual proof of those facts is improbable,’” *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 556).

Under the procedures and policies of this court, motions to dismiss are normally decided on briefs. The court considers the pleadings and the complaint in deciding whether dismissal is appropriate under Federal Rules of Civil Procedure Rule 12. The parties may submit their argument to this Court by filing briefs in support of or briefs in opposition to said motions.

The law provides that the party against whom dismissal is sought must be given ten (10) days notice of the dismissal rules. In addition, the party upon whom a motion to dismiss has been filed has the right to file a brief in opposition to a motion to dismiss. If he fails to file a brief in opposition to the motion to dismiss, a final judgment may be rendered against him if otherwise appropriate under law.

FAILURE OF THE PLAINTIFF HEREIN TO RESPOND TO AND REBUT THE LEGAL ARGUMENTS SET FORTH IN THE DEFENDANTS’ BRIEF MAY RESULT IN SAID STATEMENTS BEING ACCEPTED AS UNCONTESTED AND CORRECT. The Court could grant judgment to the Defendants and there would be no trial or further proceedings regarding this Defendants. Accordingly, Plaintiff is

NOTIFIED of his right to file a response to the Defendants' Motion to Dismiss in accordance with Rule 12 of the Federal Rules of Civil Procedure. Any such response should be filed **WITHIN THIRTY (30) DAYS** of receipt of this Order. Thereafter, the court will consider the Defendants' Motion to Dismiss and any opposition to same filed by the Plaintiff and issue its ruling thereon.

SO ORDERED, this 31st day of January, 2012.

S/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE