

NOTICE OF FILING SECOND AMENDED COMPLAINT

**IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA**

MARCIO SOUSA SALES,
Plaintiff,

CASE NO: 50-2025-CA-000969-XXXX-MB

vs.

ANTONIO DE ANDRADE,
Defendant,

**NOTICE OF FILING SECOND AMENDED
COMPLAINT**

Plaintiff, MARCIO SOUSA SALES, a pro se litigant, hereby moves this Honorable Court for leave to file his Second Amended Complaint pursuant to Fla. R. Civ. P. 1.190(a), and in support thereof states as follows:

In the matter of Marcio Sousa Sales vs. Antonio de Andrade

50-2025-CA-000969-XXXX-MB

PLAINTIFF'S SECOND AMENDED COMPLAINT TO CURE PROCEDURAL DEFICIENCIES,
CLARIFY CLAIMS, AND CONFORM TO FLORIDA RULES OF CIVIL PROCEDURE PURSUANT
TO LEAVE AND LIBERAL CONSTRUCTION STANDARD

**IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA**

MARCIO SOUSA SALES,

Plaintiff,

CASE NO: 50-2025-CA-000969-XXXX-MB

vs.

ANTONIO DE ANDRADE,

Defendant,

**PLAINTIFF'S SECOND AMENDED COMPLAINT TO
CURE PROCEDURAL DEFICIENCIES, CLARIFY
CLAIMS, AND CONFORM TO FLORIDA RULES OF
CIVIL PROCEDURE PURSUANT TO LEAVE AND
LIBERAL CONSTRUCTION STANDARD**

Plaintiff, MARCIO SOUSA SALES, a pro se litigant, hereby moves this Honorable
Court for leave to file his Second Amended Complaint pursuant to Fla. R. Civ. P.
1.190(a), and in support thereof states as follows:

PLAINTIFF'S SECOND AMENDED COMPLAINT TO CURE PROCEDURAL DEFICIENCIES,
CLARIFY CLAIMS, AND CONFORM TO FLORIDA RULES OF CIVIL PROCEDURE PURSUANT
TO LEAVE AND LIBERAL CONSTRUCTION STANDARD

1. Plaintiff seeks leave in good faith to amend his initial Complaint and First Amended Complaint in order to clarify the causes of action already pled, without asserting any new legal theories or facts outside the scope of the original pleading.

2. The Second Amended Complaint maintains the same core allegations—that Defendant wrongfully sued Plaintiff personally for obligations arising from a business transaction involving Plaintiff's son's LLC and continued such prosecution despite being placed on notice of this error.

3. This case is in an early procedural posture. No answer has been filed, and discovery is minimal. Defendants will suffer no prejudice as a result of this amendment.

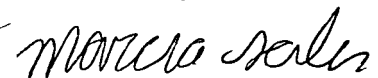
4. Florida law strongly favors liberal amendment to pleadings. See Fla. R. Civ. P. 1.190(a); *Caduceus Properties, LLC v. Graney*, 137 So. 3d 987 (Fla. 2014); *Thompson v. Publix Supermarkets, Inc.*, 615 So. 2d 796 (Fla. 1st DCA 1993).

PLAINTIFF'S SECOND AMENDED COMPLAINT TO CURE PROCEDURAL DEFICIENCIES,
CLARIFY CLAIMS, AND CONFORM TO FLORIDA RULES OF CIVIL PROCEDURE PURSUANT
TO LEAVE AND LIBERAL CONSTRUCTION STANDARD

5. Plaintiff's amendment is timely, made in good faith, and necessary to allow the claims to proceed clearly on the merits, in line with Florida's public policy to resolve disputes on substantive grounds rather than procedural technicalities.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant leave to file the attached Second Amended Complaint and deem it filed as of the date of the Court's Order.

Respectfully Submitted,



Marcio Sousa Sales
22187 Aquila Street
Boca Raton, FL 33528
(561) 909-8184

PLAINTIFF'S SECOND AMENDED COMPLAINT TO CURE PROCEDURAL DEFICIENCIES,
CLARIFY CLAIMS, AND CONFORM TO FLORIDA RULES OF CIVIL PROCEDURE PURSUANT
TO LEAVE AND LIBERAL CONSTRUCTION STANDARD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Plaintiff's PLAINTIFF'S
SECOND AMENDED COMPLAINT TO CURE PROCEDURAL
DEFICIENCIES, CLARIFY CLAIMS, AND CONFORM TO FLORIDA RULES
OF CIVIL PROCEDURE PURSUANT TO LEAVE AND LIBERAL
CONSTRUCTION STANDARD was served on Antonio de Andrade, at his e-mail
tjlmable@yahoo.com as well his attorney seth@kellergibson.com on this March 27,
2025.



Marcio Sousa Sales
22187 Aquila Street
Boca Raton, FL 33528
(561) 909-8184

**IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA**

MARCIO SOUSA SALES,

Plaintiff,

CASE NO: 50-2025-CA-000969-XXXX-MB

vs.

ANTONIO DE ANDRADE,

Defendant,

_____ /

**ORDER GRANTING LEAVE TO FILE SECOND
AMENDED COMPLAINT**

THIS MATTER came before the Court on Plaintiff's Motion for Leave to File Second Amended Complaint, and the Court being fully advised in the premises, it is

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion is hereby GRANTED.
2. The Second Amended Complaint attached to the Motion is deemed filed as of the date of this Order.
3. Defendant shall file a responsive pleading within the time prescribed by the Florida Rules of Civil Procedure.

DONE AND ORDERED in Chambers at _____, Florida on this ____ day of _____, 2025.

EXHIBIT A

SECOND AMENDMENT MOTION

NOT A CERTIFIED COPY

AMENDED COMPLAINT

**IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA**

MARCIO SOUSA SALES,
Plaintiff,

CASE NO: 50-2025-CA-000969-XXXX-MB

vs.

ANTONIO DE ANDRADE,
Defendant,

SECOND AMENDED COMPLAINT

Plaintiff, MARCIO SOUSA SALES, by and through undersigned
counsel, hereby files this Amended Complaint against Defendant,
ANTONIO DE ANDRADE, and alleges as follows:

Preliminary Statement

This is an action to hold Defendant accountable for egregious abuses of
the judicial system – including fraudulent and malicious prosecution,
abuse of process, and fraud upon the court – arising from Defendant's

AMENDED COMPLAINT

wrongful lawsuit against Plaintiff. Defendant knowingly sued the wrong person (Plaintiff, the father) instead of the actual party in interest (Plaintiff's son's LLC), and then maliciously continued the baseless litigation even after being repeatedly notified of his error. Defendant's misconduct perverted the legal process and undermined the integrity of the court, causing severe harm to Plaintiff and forcing Plaintiff to seek relief herein.

As detailed below, Defendant filed and prosecuted a lawsuit without any factual or legal basis against Plaintiff, who had no involvement in the underlying dispute. Even when confronted with evidence and court rulings highlighting his mistake, Defendant persisted in targeting Plaintiff and even attempted to ensnare Plaintiff's son in the punitive machinery of the court without any legal justification. Such conduct constitutes malicious prosecution (indeed, a fraudulent misuse of civil proceedings), abuse of process (using judicial process for an ulterior, improper purpose), and fraud upon the court (an unconscionable scheme to mislead the court and obtain an unjust judgment) under well-established Florida law.

Plaintiff seeks to hold Defendant liable for all damages proximately caused by this misconduct, including the attorneys' fees, costs, and other losses

AMENDED COMPLAINT

The plaintiff was forced to incur to defend against and unwind Defendant's baseless action, as well as compensation for the personal humiliation, stress, and reputational injury resulting from being wrongfully haled into court and even threatened with contempt for a judgment that never should have existed. Moreover, given the willful, wanton, and malicious nature of Defendant's actions, Plaintiff will, upon the requisite showing under Florida law, seek the maximum punitive damages allowable to punish Defendant and deter such abusive behavior. Defendant's actions were undertaken with actual malice and in knowing disregard of Plaintiff's rights, warranting severe punitive sanctions in addition to full compensatory relief.

No technical or procedural defense can excuse or justify Defendant's conduct. Florida law does not allow the litigation privilege or any immunity to shield a party who maliciously misuses legal proceedings in the manner described. Likewise, the fact that Defendant obtained a judgment against Plaintiff through fraud and misrepresentation does not insulate Defendant from liability – to the contrary, such a judgment is voidable and cannot bar Plaintiff's claims for redress. Plaintiff brings this

AMENDED COMPLAINT

action to finally set the record straight, to void the wrongfully-obtained judgment, and to obtain justice for the torment Defendant has inflicted through his abuse of the courts.

Parties

Plaintiff Marcio Sousa Sales (“Plaintiff”) is an individual residing in Palm Beach County, Florida. Plaintiff is the father of Marcio Luis Sales Jr., but has never been an owner, member, agent, or participant in his son’s automotive repair business. Plaintiff had no involvement whatsoever in the business transaction or events that gave rise to Defendant’s prior lawsuit – a lawsuit in which Plaintiff was erroneously named as the defendant. Plaintiff at all relevant times was an innocent bystander wrongfully dragged into legal proceedings due to Defendant’s misidentification and misconduct.

Defendant Antonio De Andrade (“Defendant” or “Andrade”) is an individual who, upon information and belief, resides in Florida (with significant contacts in Palm Beach County). Defendant was the plaintiff in the underlying small claims case described below. In that prior action, Defendant personally sued Plaintiff for damages related to an automotive

AMENDED COMPLAINT

repair, despite the fact that the repair work was performed (if at all) by a separate legal entity operated by Plaintiff's son. At all material times, Defendant acted pro se or through counsel in initiating and prosecuting the prior lawsuit. Defendant is thus responsible for the decisions and representations made in that litigation, and he is being sued herein in his personal capacity for his tortious conduct during and in connection with that litigation.

Non-Parties: This case centers on Defendant Andrade's wrongdoing and does not seek any relief against Plaintiff's son (Marcio Luis Sales Jr.) or the son's company (STR Sunrise Truck Repair LLC d/b/a Union Motor Sports). Those entities and individuals were the proper subjects of Defendant's underlying claim, but they are not joined here because Plaintiff asserts no claim against them and their presence is unnecessary for a full adjudication of Defendant's misconduct. Indeed, Plaintiff and his son were the victims of Defendant's misdirected litigation. To the extent Defendant may argue that the son or his LLC is an "indispensable party," such argument is meritless – Plaintiff's causes of action can be resolved completely by determining Defendant's liability for his own actions, and any issues regarding the underlying contract or repair can be addressed

AMENDED COMPLAINT

without adding the son or LLC as parties. Plaintiff expressly disclaims any request for relief against those non-parties, and their rights and liabilities vis-à-vis Defendant are not at issue in this suit.

Jurisdiction and Venue

Subject Matter Jurisdiction: This Court has subject matter jurisdiction over this action. Plaintiff's causes of action are based on Florida common law torts (malicious prosecution, abuse of process, and fraud upon the court) and seek damages and equitable relief well in excess of the jurisdictional threshold of the Circuit Court (exclusive of interest and costs). Although the underlying wrongful acts occurred in a previously adjudicated small claims matter, Plaintiff brings this as an independent action for damages and equitable relief. Florida courts recognize the right to bring an independent tort action (and/or an independent action in equity) to address fraud on the court and malicious abuse of legal process, notwithstanding a prior judgment. To the extent necessary, this action also serves as an independent action for relief from the prior judgment due to extrinsic fraud, as authorized by Florida Rule of Civil Procedure 1.540 and the Court's inherent equity jurisdiction. The prior small claims case (Case

AMENDED COMPLAINT

No. 50-2023-SC-011007-XXXX-SB) was not a bona fide adjudication on the merits as to Plaintiff due to Defendant's fraud (see *infra*), and thus this Court has authority to hear Plaintiff's claims and grant relief without running afoul of any principles of res judicata or collateral estoppel.

Personal Jurisdiction: Defendant is subject to the personal jurisdiction of this Court because he initiated and litigated the underlying lawsuit in Palm Beach County, Florida, and committed the tortious acts described herein in Florida. By abusing the Florida court system and obtaining a Florida judgment against a Florida resident, Defendant purposefully availed himself of the jurisdiction of Florida's courts. Additionally, upon information and belief, Defendant resides and/or conducts business in the State of Florida (including Palm Beach County). In any event, the claims herein arise from Defendant's actions within Florida's jurisdiction.

Venue: Venue is proper in Palm Beach County, Florida pursuant to §§47.011 and 47.051, Florida Statutes. The cause of action accrued in this County because the underlying small claims case was filed and adjudicated in Palm Beach County. The fraudulent judgment was entered in this County, and Plaintiff suffered harm in this County. Moreover, Plaintiff resides in Palm Beach County. To the extent Defendant is a resident of

AMENDED COMPLAINT

Florida, he is believed to reside in Palm Beach County, or at minimum he voluntarily chose this County as the forum for the underlying proceedings. Thus, the venue in this Court is appropriate.

Conditions Precedent: All conditions precedent to the filing of this Amended Complaint have been satisfied, excused, or waived. (By way of clarification, Plaintiff's claims for relief are timely and appropriately brought now that Defendant's malfeasance has fully materialized. Any necessary leave to amend to assert punitive damages will be separately sought pursuant to Florida Statutes §768.72 at the appropriate juncture, as noted herein. The plaintiff expressly reserves the right to seek such leave and does not waive any claims to punitive damages by not having previously obtained the Court's permission.)

Factual Background

The Underlying Dispute and Defendant's Wrongful Lawsuit

On or about August 8, 2023, Defendant Andrade initiated a lawsuit in the Small Claims Division of the County Court in and for Palm Beach County, styled Antonio De Andrade v. Marcio Sousa Sales, Case No. 50-2023-SC-011007-XXXX-SB (the "underlying case"). In that action, Andrade sought

AMENDED COMPLAINT

to recover approximately \$8,000 in damages allegedly arising from an automotive repair transaction. Specifically, Andrade claimed that he had paid money to have his Mercedes-Benz Sprinter work van repaired (including installation of a motor with a warranty and other services), but that the repair was allegedly mishandled, causing him losses. Crucially, however, the repair services in question were not performed by Plaintiff Sales (the father), but rather by a business known as “Union Motor Sports” which was owned and operated by Plaintiff’s son, Marcio Sales Jr., via a Florida limited liability company (STR Sunrise Truck Repair LLC). Public records readily available to Andrade – and in fact referenced within Andrade’s own Small Claims Statement of Claim – showed that Union Motor Sports was a fictitious business name registered to STR Sunrise Truck Repair LLC, with Marcio Sales Jr. listed as the registered agent and principal of that company. Plaintiff Sales (the father) had no ownership interest or role in that company or the transaction.

Notwithstanding these facts, Defendant Andrade named “Marcio Sousa Sales” (the father) as the sole defendant in the small claim’s lawsuit. Upon information and belief, Andrade either conflated Plaintiff with his son or deliberately chose to sue the father as a strategy to find a convenient target

AMENDED COMPLAINT

for recovery. At the time of filing the underlying case, Andrade had no reasonable factual basis to believe that Plaintiff was personally liable for any aspect of the van repair dispute. Any competent investigation or even a plain reading of the business records would have made clear that the party responsible for the van repair (if any) was Marcio Sales Jr. or his LLC, not Plaintiff. Thus, from the very outset, Andrade's lawsuit was directed at the wrong defendant.

Plaintiff Sales was served with the small claims Complaint and was understandably confused, since he had never dealt with Andrade or performed any car repairs for him. Initially, it appears there was miscommunication or a lack of proper defense on Plaintiff's part, as Plaintiff (who is not sophisticated in legal matters) did not promptly retain counsel and may not have understood how to respond to the lawsuit that he knew was misguided. Andrade, however, pressed forward aggressively.

On information and belief, Andrade obtained a default and/or proceeded to a contested hearing without Plaintiff being properly heard, resulting in a Final Judgment dated February 14, 2024, entered in favor of Andrade and against Plaintiff Sales for approximately the full amount Andrade demanded (the "Final Judgment"). This Final Judgment was, in truth,

AMENDED COMPLAINT

wrongfully imposed on an innocent party; it was a direct product of Andrade's inaccurate pleadings and failure to correct the record. The Court in the small case of the small claims, acting on the misinformation before it, unknowingly adjudicated Plaintiff liable for his son's alleged business debt. In essence, Plaintiff was held liable for actions in which he had no part – a patent injustice cultivated by Andrade's actions.

Importantly, at the time the Final Judgment was entered, Andrade was already on notice that Plaintiff was not the correct defendant. Through various filings and documents in the underlying case, it had been made apparent that Union Motor Sports was linked to Marcio Sales Jr. and STR Sunrise Truck Repair LLC. Indeed, Andrade himself had attached or referenced the corporate and fictitious name documents in his Statement of Claim, which specifically identified "MARCIO SALES JR." as the registered agent/owner of the business. Thus, by February 2024, Andrade either knew or absolutely should have known that he had sued the wrong individual. At minimum, once the error came to light, any reasonable plaintiff would have ceased pursuing the wrong party and sought to correct the defendant's identity (for example, by amending the complaint to name

AMENDED COMPLAINT

the correct entity or by voluntarily dismissing the case against the innocent party). Tragically, Andrade did not do so.

Instead of acknowledging his mistake, Defendant Andrade doubled down. After obtaining the Final Judgment against Plaintiff, Andrade undertook efforts to enforce that judgment, effectively treating Plaintiff as a judgment debtor for a liability that plainly belonged (if at all) to someone else. Andrade's enforcement efforts included, upon information and belief, post-judgment discovery and motions aimed at coercing payment from Plaintiff. By this time, Plaintiff had retained legal help and was actively protesting the injustice. Multiple motions were filed in the small claims case by Plaintiff's as a pro se in an attempt to alert the Court to the fundamental error and to obtain relief. These included motions under Florida Rule of Civil Procedure 1.540(b) to vacate the Final Judgment on grounds of mistaken identity and lack of due process, and motions for sanctions (including under section 57.105, Florida Statutes) to penalize Andrade for continuing to pursue a baseless claim once the truth was known. Each of these filings further put Andrade on notice – in no uncertain terms – that he had sued the wrong party and that his continued prosecution was wrongful.

AMENDED COMPLAINT

Notice Ignored: Defendant's Continued Malicious Conduct After Being Informed of His Error. A hearing was held in or about November 2024 (the "November 2024 Hearing") in the underlying case, at which time the issue of Defendant's misidentification of the defendant was squarely before the Court. At this hearing, Plaintiff (through translate) presented evidence and argument that Plaintiff was not and could not be liable for the debt underlying the judgment, because the actual contracting party was Plaintiff's son's LLC. Rather than concede the obvious error, Defendant Andrade incredibly attempted to argue that both the father and the son should be held accountable. Upon information and belief, Andrade urged the Court to enforce the judgment against Plaintiff and implied that Plaintiff's son might also be liable or should be brought in to satisfy the judgment. This position was legally and factually untenable – there was and is no legal basis to hold Plaintiff responsible for his adult son's business dealings, and conversely one cannot simply insert a new defendant (the son or his company) at the judgment-enforcement stage of a lawsuit without having ever sued them properly. Andrade's conduct at the November 2024 Hearing demonstrated a willful refusal to correct his mistake; instead, he sought to exploit the court system to punish both an

AMENDED COMPLAINT

innocent father and the real target (the son) interchangeably, as if the distinction between them did not matter.

The November 2024 Hearing put Andrade on full notice – if he somehow was not aware earlier – that he had sued the wrong party. The Court itself expressed concern (as reflected in the hearing transcript, if needed) that the wrong defendant might have been sued. Any reasonable litigant, hearing a judge question whether the right party was before the court, would feel compelled to investigate and, if warranted, take remedial action. Andrade, however, persisted in his course. Although the Court did not immediately vacate the judgment at that hearing (perhaps due to procedural complexities or a need for further evidence), Andrade was expressly warned that the judgment was problematic and that proceeding against Plaintiff was improper. Still, Andrade continued to press.

In early 2025, with the judgment still not paid (understandably, as Plaintiff justly refused to pay a judgment for someone else's debt), Andrade sought to ratchet up the pressure. He moved the Court to hold Plaintiff in contempt for failing to satisfy the judgment or comply with post-judgment discovery orders. The Court set a Contempt Hearing on March 11, 2025 (the "March 11, 2025 Hearing"), requiring Plaintiff to show cause why he should not

AMENDED COMPLAINT

be held in contempt of court. This was an extraordinarily harrowing development for Plaintiff: he faced the threat of fines or even imprisonment for not paying a debt that was not his. From Plaintiff's perspective, Defendant Andrade was now leveraging the judicial process to threaten Plaintiff's liberty and property, all based on a fraudulently obtained judgment.

At the March 11, 2025, Hearing, Plaintiff (through counsel) once again laid out the entire scenario: Plaintiff was not the correct judgment debtor; the real party in interest was the son's LLC; Plaintiff had been wrongly sued and wrongly subjected to a judgment. This was essentially Plaintiff's last resort to avoid being held in contempt for disobeying an order that never should have applied to him. A more stark example of injustice is hard to imagine. In response, Defendant Andrade's conduct was nothing short of outrageous. Rather than relent, Andrade falsely asserted that Plaintiff's son (Marcio Sales Jr.) should be held accountable for the judgment. In doing so, Andrade implicitly acknowledged the core error – that the son was the one who should have been sued – yet he attempted to transpose liability in a procedurally improper way. Specifically, Andrade urged the Court to somehow extend the reach of the existing judgment to

AMENDED COMPLAINT

the son, or to find the son in contempt alongside the father. Such a request had no basis in law or fact, and it amounted to an attempted end-run around the requirement that a defendant be properly sued, adjudicated liable, and afforded due process. It was a blatant misuse of the Court's contempt power. Andrade was effectively saying: "Yes, I got the judgment against the father, but I really want the son to pay or be punished too," all the while maintaining the judgment against the wrong man. This strategy was as incoherent as it was malicious. It demonstrated that Andrade's purpose was not a legitimate use of process to obtain a just debt, but *an illegitimate use of judicial authority to bludgeon whomever he could — father or son — into paying money neither rightfully owed.

By this point, it was clear to all involved that a grave mistake had occurred in the underlying case. The presiding court, recognizing the severity of the issue, indicated an inclination to grant relief to Plaintiff. Indeed, the facts and posture presented a textbook case for invoking the court's inherent power to rectify a fraud upon the court. While the formal ruling from March 11, 2025 Hearing is still pending (or while the matter has been taken under advisement), Plaintiff has initiated this separate action to ensure that Defendant Andrade is held fully accountable for his actions. The harm to

AMENDED COMPLAINT

Plaintiff is ongoing and cannot be fully remedied within the confines of the small claims case alone. Even if that court vacates the judgment (as it should), Plaintiff has incurred significant damages and deserves compensation; moreover, additional sanctions (punitive damages) are warranted to punish Andrade's abuse of the judicial system.

In summary, Defendant Andrade: (a) commenced a civil proceeding against Plaintiff without probable cause and with gross negligence or intent in identifying the proper defendant; (b) after learning that Plaintiff was not the proper party, continued the proceeding and misused court processes (such as hearings and contempt motions) for an ulterior purpose – namely, to coerce payment from someone he knew did not legally owe the debt; (c) misrepresented and omitted material facts to the court, effectively perpetrating a fraud on the court to obtain and maintain a judgment against Plaintiff; and (d) caused Plaintiff to suffer substantial damages as a result of these actions. No privilege or excuse shields this conduct. Defendant's malicious continuation of a baseless lawsuit provides a classic basis for a malicious prosecution claim, and his perversion of the court's processes (especially the contempt process) for a collateral aim constitutes abuse of process in the clearest terms. Further, the intentional deception of the

AMENDED COMPLAINT

tribunal amounts to fraud upon the court. Plaintiff will now enumerate the causes of action and how Defendant's actions satisfy each element, supported by legal authority.

Count I – Fraudulent and Malicious Prosecution

Plaintiff re-alleges and incorporates by reference paragraphs 1 through 22 above as if fully set forth herein.

Cause of Action: This is a claim for malicious prosecution (sometimes termed malicious use of process) against Defendant Andrade for wrongfully initiating and continuing civil proceedings against Plaintiff. Defendant's actions were "fraudulent and malicious" in that he not only lacked any probable cause, but also persisted in the prosecution with malice and deceit even after the lack of merit became clear.

Elements: Under Florida law, to prevail on a claim of malicious prosecution, a plaintiff must establish: (1) an original civil or criminal judicial proceeding was commenced or continued against the present plaintiff; (2) the present defendant was the legal cause of that original proceeding; (3) the termination of the original proceeding resulted in a bona fide termination in favor of the present plaintiff; (4) there was an

AMENDED COMPLAINT

absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant; and (6) the plaintiff suffered damage as a result of the original proceeding (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352, 1355 (Fla. 1994), and other authorities). As set forth below, each of these elements (to the extent applicable) is satisfied in this case:

(1) Commencement or Continuation of Original Proceeding: Defendant Andrade unquestionably commenced a civil judicial proceeding against Plaintiff by filing the small claims lawsuit (*De Andrade v. Sales*, Case No. 50-2023-SC-011007) in August 2023. Moreover, Andrade continued that proceeding well beyond its initiation – through trial or default judgment in February 2024 and onward through post-judgment motions and hearings – even when it should have been clear that the case was baseless. Florida law recognizes that malicious prosecution claims can arise not only from the wrongful commencement of a suit but also from the wrongful continuation of a suit after its lack of merit becomes apparent. Here, Defendant's liability stems from both the filing of the unfounded lawsuit and his decision to relentlessly continue it in bad faith.

(2) Legal Causation by Defendant: Defendant Andrade was the plaintiff and the driving force behind the underlying case. He personally prepared

AMENDED COMPLAINT

(or caused to be prepared) the Statement of Claim naming Plaintiff as defendant, filed the suit, and prosecuted it to judgment. He likewise took affirmative steps to pursue post-judgment remedies. There is no question that Andrade was the legal cause of the prior proceeding being instituted against Plaintiff – absent Andrade’s actions, Plaintiff would never have been hailed into court. Andrade is therefore responsible for the malicious prosecution of that case.

(3) Termination in Favor of Plaintiff: The underlying proceeding has effectively terminated favorably to Plaintiff or will be deemed to have terminated as a matter of law and equity. Although a Final Judgment was entered into against Plaintiff due to Defendant’s fraud, that judgment is void or voidable, and Plaintiff is in the process of having it vacated. Florida courts require a “bona fide termination” in the malicious prosecution plaintiff’s favor, meaning the first proceeding ended in a manner indicating the innocence of the accused party. In this case, the only outcome of the underlying action is a termination in Plaintiff’s favor, because Plaintiff did nothing wrong and was not a proper defendant. The termination requirement exists to ensure that the underlying claim lacked merit – here, we know it lacked merit because Plaintiff had no involvement whatsoever

AMENDED COMPLAINT

in the alleged wrongdoing. The fact that a judgment was initially entered (wrongly) does not preclude this malicious prosecution claim, because that judgment was procured by fraud and is subject to nullification. The termination produced by fraud is not a bona fide termination on the merits. Once the judgment is vacated (as it must be due to fraud on the court), the proceeding will formally be terminated in Plaintiff's favor. Even in the absence of a formal vacatur, equity regards the situation as if Plaintiff prevailed, since allowing Defendant to benefit from his fraud would be inequitable. Accordingly, the Court should treat the underlying case as having terminated favorably to Plaintiff for purposes of this claim. (To the extent necessary, Plaintiff seeks here a declaration that the Final Judgment is void ab initio, which itself would constitute a favorable termination.)

(4) Absence of Probable Cause: There was a complete absence of probable cause for Defendant to initiate and continue the prior lawsuit against Plaintiff. "Probable cause" in the malicious prosecution context means a reasonable ground of suspicion supported by circumstances sufficient to warrant a cautious person to believe the accused party is guilty of the alleged wrongdoing. No reasonable person in Defendant's position would have believed that Plaintiff – who had no role in the business transaction –

AMENDED COMPLAINT

was liable. In fact, Defendant's own evidence identified someone else (Plaintiff's son or his company) as the actor. Defendant had no factual basis at all to sue Plaintiff. The payments Defendant made for the van repair were directed to accounts associated with STR Sunrise Truck Repair LLC and a company called M&J Transportation Services Corp., not to Plaintiff. Public business filings showed the repair shop's owner was the LLC, not Plaintiff. Plaintiff's only connection was being the father of the actual individual in charge, which is legally insufficient to impose liability. Moreover, even if at the moment of filing Andrade was unclear about the relationship, he certainly lacked probable cause to persist once documents and inquiries made it evident Plaintiff was uninvolved. By continuing the lawsuit after such knowledge (for example, after the November 2024 Hearing), Defendant demonstrated a gross absence of probable cause. In sum, no reasonable litigant in Defendant's shoes would have believed Plaintiff was the correct defendant, especially not after multiple clarifications. This element is overwhelmingly established in Plaintiff's favor.

(5) Malice: Defendant acted with malice in prosecuting the underlying case against Plaintiff. Malice, in this context, means not only ill-will or spite,

AMENDED COMPLAINT

but also, any primary purpose other than that of bringing a guilty party to justice. Here, Defendant's improper purpose is evident: after a point, he was no longer trying to resolve a legitimate claim against the truly responsible party, but was using the lawsuit to harass and pressure an innocent person (and to indirectly leverage the true party). Florida law permits malice to be inferred from a lack of probable cause-- and given the glaring lack of probable cause here, malice is presumed. Indeed, the inference of malice is inescapable; Defendant's conduct, especially post-notice, can only be explained by malicious motives (such as extortionate pressure, frustration, or a vindictive desire to make someone pay regardless of the truth). At the November 2024 and March 2025 hearings, Defendant's insistence on pursuing Plaintiff and dragging the son in can only be described as wanton and willful misconduct. The defendant exhibited a callous disregard for Plaintiff's rights and for the truth. Such deliberate misuse of the courts is the epitome of malice. It is also telling that Defendant refused to correct the defendant even when it would have been easy to do so; this obstinance bespeaks an improper motive (e.g., perhaps he thought Plaintiff, as a father, might feel compelled to pay to protect his son -- a motive entirely collateral to the merits of the claim). In

AMENDED COMPLAINT

Any event, Plaintiff has ample evidence of actual malice, and malice is further implied by law due to the want of probable cause.

(6) Damages: Plaintiff has suffered significant damages as a direct and proximate result of Defendant's malicious prosecution of the underlying case. These damages include, but are not limited to:

Attorney's Fees and Legal Expenses: Plaintiff was forced to incur substantial legal fees to defend himself in the small claims case (to file motions to vacate the judgment, oppose contempt, etc.) and now to bring this action to clear his name and seek redress. Under the malicious prosecution tort, attorney's fees expended in the defense of the prior wrongful suit are a recoverable element of damages (as "special injury" beyond the ordinary burdens of litigation). Here, those fees are considerable, as Plaintiff had to engage counsel to undo a wrongly obtained judgment and to protect himself from enforcement actions.

Emotional Distress and Mental Anguish: Being sued for someone else's debt and even threatened with contempt incarceration caused Plaintiff severe stress, anxiety, and humiliation. Plaintiff, a law-abiding citizen, had to stand before a court as an accused judgment debtor and face the prospect of being sanctioned or jailed for non-payment of a debt he did not owe.

AMENDED COMPLAINT

This ordeal took a significant psychological toll. Malicious prosecution plaintiffs may recover for such mental suffering and humiliation caused by the defendant's actions.

Reputational Injury: The existence of a judgment against Plaintiff and the public allegations that he failed to pay a debt or breached a duty (when in fact he was never involved) have tarnished Plaintiff's reputation. Friends, family, or business associates who became aware of the judgment or proceedings may have thought less of Plaintiff, not knowing it was all a mistake. Additionally, any credit reports or background checks listing the judgment could have impaired Plaintiff's credit or business opportunities.

Time and Lost Income: Plaintiff has spent considerable time addressing this matter – attending court hearings, consulting with lawyers, gathering evidence – time that otherwise would have been spent on his work and personal affairs. If Plaintiff missed work or business opportunities because of court dates or the stress of this case, those lost earnings are also attributable to Defendant's actions.

Other Pecuniary Losses: Plaintiff had to bear costs such as travel to court, copying and filing fees, etc., all as a result of being wrongfully sued. Also,

AMENDED COMPLAINT

if any bond or payment was required to stay enforcement during the challenge of the judgment, that too would be damage incurred.

Prospective/Continuing Harm: Until the fraudulent judgment is formally vacated and removed, Plaintiff remains under its shadow. This Amended Complaint also seeks relief to nullify that judgment; the persistence of that judgment on the record constitutes ongoing harm (e.g., a lien on Plaintiff's property or credit) for which Defendant is responsible.

In malicious prosecution, all losses proximately caused by the wrongful suit are recoverable, and Plaintiff intends to prove each item of damage at trial. For pleading purposes, it suffices that Plaintiff has been forced to expend money, endure emotional pain, and suffer reputational and personal harm due to Defendant's actions – which clearly he has.

Privilege/Incorporation: Plaintiff expressly alleges that Defendant's actions in the underlying case were not privileged or immune. The Florida Supreme Court has held that the litigation privilege cannot be applied to bar a well-founded malicious prosecution claim, otherwise the tort would be eviscerated. Malicious prosecution by definition addresses wrongful acts in the course of litigation, and public policy favors allowing redress for such misconduct to maintain the integrity of the legal system.

AMENDED COMPLAINT

Therefore, Defendant cannot hide behind the fact that his misdeeds occurred in a courtroom or legal setting – those misdeeds are exactly what give rise to his liability here.

Malicious and Fraudulent Conduct: This Count is denominated “Fraudulent and Malicious Prosecution” to underscore the extreme nature of Defendant’s behavior. Not only did Defendant act without probable cause and with malice, but he also made fraudulent representations to the court in the course of the prosecution (for example, implying that Plaintiff was the liable party, and later that the son could be held to the father’s judgment). While the malicious prosecution tort does not strictly require a showing of fraud, the presence of fraud further aggravates Defendant’s liability and supports the imposition of punitive damages. It also vitiates any claim that the outcome of the prior case (the erroneous judgment) should be respected – fraud vitiates everything it touches. In essence, Defendant weaponized a lawsuit under false pretenses, which is malicious prosecution in its most reprehensible form.

Damages and Relief Sought (Count I): As a direct result of Defendant’s malicious prosecution, Plaintiff has suffered the damage enumerated above. Plaintiff is entitled to recover compensatory damages from

AMENDED COMPLAINT

Defendant in an amount to be determined by the jury, which amount is well in excess of the jurisdictional minimum of this Court. Furthermore, because Defendant acted willfully, wantonly, and with actual malice, Plaintiff also seeks to recover punitive damages under this Count in an amount sufficient to punish Defendant and deter others from similar abuse of the legal system. Plaintiff acknowledges that, under Florida Statutes §768.72, punitive damages cannot be claimed without leave of court; Plaintiff will formally move for leave to amend to conform to that statute's requirements at the appropriate time. For now, Plaintiff states that Defendant's conduct was undertaken with such malice, fraud, and outrageous disregard for Plaintiff's rights that punitive damages are warranted (malicious prosecution involves misuse of legal machinery for improper purpose, a form of legal malice). Finally, Plaintiff seeks any equitable relief needed to fully terminate the effects of the malicious prosecution – including an order voiding the wrongfully obtained judgment as discussed further in Count III below, to ensure the termination element is satisfied and Plaintiff is made whole.

Wherefore, Plaintiff Marcio Sousa Sales demands judgment in his favor and against Defendant Antonio De Andrade on Count I for malicious

AMENDED COMPLAINT

prosecution, for compensatory damages (plus interest and costs) and, upon obtaining leave of court, punitive damages in the highest amount allowed by law, and for such other relief as the Court deems just and proper.

Count II – Abuse of Process

Plaintiff re-alleges paragraphs 1 through 22 as if fully set forth herein and further incorporates the allegations of Count I to the extent they support this Count.

Cause of Action: This is a claim for Abuse of Process against Defendant Andrade. Whereas malicious prosecution concerns the wrongful initiation of a lawsuit, abuse of process focuses on the misuse of legal process after a suit has been filed, for some collateral purpose not intended by law. In Florida, the tort of abuse of process has three elements: (1) an illegal, improper, or perverted use of process by the defendant, (2) an ulterior motive or purpose behind such use, and (3) actual harm to the plaintiff as a result (citing *Wolfe v. Foreman*, 128 So.3d 67 (Fla. 3d DCA 2013), among others). Unlike malicious prosecution, abuse of process does not

AMENDED COMPLAINT

require the prior proceeding to have terminated in favor of the plaintiff, nor does it require proving lack of probable cause. The essence of abuse of the process is the willful misuse of judicial process for an end other than that which it was designed to accomplish.

Legal Standard: Florida courts have described abuse of process as occurring when a party employs legal process (such as subpoenas, motions, orders, or other court procedures) primarily to achieve a purpose outside the scope of the proceeding. As explained in Cline v. Flagler Sales Corp., 207 So.2d 709 (Fla. 3d DCA 1968), “in an action for abuse of process it is not essential to show a termination of the proceeding in favor of the person against whom the process was issued... or to show want of probable cause or malice. The cause of action consists of the willful or intentional misuse of process... for some wrongful or unlawful object, or ulterior purpose not intended by law”. In other words, if a litigant uses the machinery of the court for a purpose other than that for which it is intended, and harm results, it is abuse of process. Notably, even if a lawsuit was legitimately initiated, abuse of process can occur during the proceedings if a party misuses tools like discovery, subpoenas, or court orders for improper ends. A classic example is using a legal process as a threat or

AMENDED COMPLAINT

club to coerce something unrelated to the litigation's merits (e.g., extorting money or action by means of the process).

Improper Use of Process by Defendant: Defendant Andrade engaged in multiple improper uses of legal process in the course of the underlying case. These include, inter alia:

a. Continuing to prosecute the case against Plaintiff knowing Plaintiff

was not liable: After becoming aware that Plaintiff was not the correct defendant, the only proper use of process would have been to dismiss or correct the defendant. Instead, Andrade improperly used the ongoing court processes (hearings, motions, the judgment itself) to try to extract something from Plaintiff that he was not entitled to. For example, Andrade appeared at the November 2024 Hearing and argued in a manner intended to pervert the court's process – he effectively tried to use the hearing (which presumably was set to address the status of the case given the defendant misnomer) as an opportunity to pressure both Plaintiff and his son. The process (a motion hearing) was designed for resolving claims on their merits, not for threatening non-parties or entangling an unrelated person in the judgment. Andrade's pleas to hold

AMENDED COMPLAINT

the son accountable despite him not being a party, and to keep the judgment against the father

who was not liable, show a perversion of the process's purpose. The court's processes are designed to adjudicate real disputes between proper parties; Andrade sought to use them as a weapon against an improper target.

b. Invocation of Contempt Process for a collateral purpose: Perhaps the most egregious abuse was Andrade's misuse of the contempt power. He moved for an Order to Show Cause and participated in the March 11, 2025, Contempt Hearing with an ulterior agenda. The process of contempt (especially in the context of enforcing a judgment) is intended to compel compliance with a court's lawful order or judgment by a party who is able but unwilling to comply. It is a drastic measure, meant only to ensure obedience to court directives when justified. Andrade perverted this process by seeking to hold Plaintiff in contempt of a judgment that was fundamentally unlawful and erroneous. He attempted to use the threat of jailing Plaintiff as leverage to either force payment from Plaintiff (who did not owe the debt) or to force Plaintiff's son to step in. This is a textbook "improper purpose." The contempt proceeding was not used to uphold the law or the court's authority in a

AMENDED COMPLAINT

rightful manner: it was used as a cudgel to intimidate and extort. Using a court's contempt power to achieve something it was not intended for (extracting payment from a person who does not legally owe it) is an illegal and improper use of process in every sense of the term. c. General misuse of judicial forms and procedures: Throughout the case, Andrade misused various filings and procedures. By naming the wrong defendant in the Complaint, he effectively used the summons process to drag an uninvolved person into court under false pretenses – an arguable abuse at the inception. Further, after judgment, Andrade likely used processes such as a Fact Information Sheet (Florida Small Claims Rule Form 7.343) or discovery in aid of execution against Plaintiff. Such processes are meant to help a judgment creditor identify assets of a judgment debtor. Andrade using those against Plaintiff – who should not have been a judgment debtor at all – is an improper use, especially after being informed of the mistake. The only purpose served by forcing Plaintiff to disclose personal financial information or appear for debtor's examination would be to harass or pressure him, which is not the intended purpose of those post-judgment procedures.

AMENDED COMPLAINT

Ulterior Motive or Purpose: The above-described uses of process by Defendant were done with clear ulterior motives. They were not aiming to legitimately resolve a dispute (because the legitimate dispute would have been with the son/LLC, not Plaintiff). Instead, Andrade's motives included: (a) to coerce Plaintiff into paying money not owed (perhaps reasoning that Plaintiff might pay to avoid trouble or to protect his son), (b) to leverage the fear of judicial sanctions to force involvement or payment by the son (using Plaintiff as a pawn or pressure point), and (c) to punish or retaliate against Plaintiff for resisting the lawsuit (out of spite that Plaintiff dared contest the judgment). In short, Andrade's primary purpose was not to adjudicate a genuine claim, but to abuse the court process as a tool of oppression and extortion.

If Andrade's motive were pure (i.e., to get compensation from the responsible party), he would have simply corrected the defendant and pursued the proper party. The fact that he refused to do so and instead tried to strong-arm Plaintiff indicates an improper agenda.

Additionally, statements and actions at the hearings reflect his ulterior intent: for instance, arguing that "someone needs to pay" or "the son should be held accountable too" (paraphrasing what is believed to have been

AMENDED COMPLAINT

Andrade's stance) reveals that he was using the process to cast a wide net of punishment, not to fairly resolve a dispute.

Florida law emphasizes that there is no abuse of process when the process is used for its intended purpose, even if there is spite involved, but there is abuse when the process is used for an end not contemplated by law. Here, the legal processes (summons, judgment, contempt) were intended to resolve legitimate disputes and enforce lawful orders – not to extort money from an innocent or to terrorize a family. Andrade's endgame was outside the scope of what those processes were meant to achieve, satisfying this element fully.

Damages from Abuse of Process: Plaintiff suffered actual damages as a result of Defendant's abuse of process, much of which overlaps with the damages from malicious prosecution stated earlier. In an abuse of process claim, the plaintiff may recover for the harm caused by the misuse of process itself, which can include attorneys' fees incurred to counteract the misuse, emotional distress, and any specific losses (such as loss of employment or imprisonment if it occurred). **Here:** Plaintiff incurred additional attorneys' fees specifically to defend against the abusive tactics (e.g., having counsel prepare for and attend the contempt hearing, file

AMENDED COMPLAINT

emergency motions to quash subpoenas or stave off improper discovery, etc.).

Plaintiff endured additional emotional trauma directly tied to the abusive processes – for example, the fear and anxiety of the looming contempt hearing (distinct from the original suit itself) and the humiliation of having to possibly explain to a judge why he shouldn't be jailed for something he didn't do.

There was a deprivation of Plaintiff's liberty and peace of mind even if momentary: being under a court order to show cause is a serious strain, and had the judge not been understanding, Plaintiff could have been wrongfully held in contempt (which would be a damage per se). Even the risk of this outcome is harm inflicted by Andrade's abuse.

Plaintiffs may have been required to take time off work or make extraordinary efforts to comply with improper court demands (like compiling financial documents or attending depositions) solely due to Defendant's misuse of those legal procedures. This translates to lost income or opportunities, which are recoverable.

AMENDED COMPLAINT

Additionally, the abuse of process exacerbated Plaintiff's reputational harm and stress – for instance, if word got out that Plaintiff was facing a contempt hearing, that could severely harm his standing in the community. All such damages were proximately caused by Defendant's abuse of process. They are distinct in that they flow from the processes improperly used (such as the contempt motion) rather than the mere fact of being sued.

Illegality/Impropriety of Defendant's Acts: It should be noted that Defendant's conduct during the litigation was not only improper but arguably illegal in its own right. Florida law does not allow a party to lie to the court or to misuse court orders; doing so can amount to contempt of court or other violations. While this Amended Complaint is a civil claim, the degree of impropriety in Defendant's acts underscores that they were beyond the pale of any legitimate conduct. For abuse of process, this element is satisfied by showing the use of process was improper or perverted – and using a contempt proceeding to extort is both improper and a serious abuse of judicial authority. Thus, Defendant's actions meet the threshold of an "illegal, improper or perverted" use of process.

Privilege and Litigation Immunity: As with malicious prosecution, Plaintiff asserts that no litigation privilege protects Defendant's conduct

AMENDED COMPLAINT

from an abuse of process claim. Historically, some Florida decisions extended privilege to abuse of process, but the better-reasoned view (and likely the approach the Florida Supreme Court would take) is that abuse of process, like malicious prosecution, is not barred by litigation privilege. This is because abuse of process inherently addresses conduct within litigation that is wrongful; to immunize such conduct would negate the cause of action. In any event, Defendant's actions (such as suborning the court's contempt powers through deceit) are so egregious and so outside the normal confines of litigation that they should not be deemed privileged. Fraud and bad-faith misuse of process are never protected. Accordingly, Defendant cannot avoid liability on this Count by claiming his actions were part of normal litigation duties – they were a corruption of the judicial process, not a legitimate part of it.

Conclusion as to Abuse of Process: Defendant Andrade willfully misused the processes of the court in the underlying case for purposes those processes were not intended to serve. He had an ulterior motive divorced from the merits of his claims. His abuse of the process caused Plaintiff substantial injury. This is precisely the scenario the tort of abuse of process is meant to remedy. The plaintiff has thus stated a valid claim for relief.

AMENDED COMPLAINT

Damages and Relief Sought (Count II): Plaintiff seeks to recover all damages resulting from Defendant's abuse of process. This includes compensation for attorneys' fees and costs incurred to resist the improper processes, emotional distress damages (for the fright and stress caused by the abuse), any pecuniary losses (such as lost income or expenses due to attending to the abuse), and punitive damages to the extent the law allows. Notably, abuse of process claims can support punitive damages when the defendant's conduct is egregious, as it is here (acting with willful misconduct and malice). The plaintiff will seek leave under §768.72 to assert punitive damages for this claim as well, based on the same malicious intent described. Additionally, Plaintiff seeks appropriate equitable relief: for example, an order enjoining Defendant from further enforcing the wrongfully obtained judgment or using any process in the underlying case against Plaintiff pending resolution here (though practically, the underlying processes have been stayed due to the fraud revelations). In short, Plaintiff asks for full compensation and punitive relief to address the harm from Defendant's abuse of process.

Wherefore, Plaintiff Marcio Sousa Sales demands judgment in his favor and against Defendant Antonio De Andrade on Count II for abuse of

AMENDED COMPLAINT

process, awarding compensatory damages (including attorneys' fees expended in the prior action due to the abuse, to the extent recoverable as damages), and upon the Court's leave, punitive damages for Defendant's malicious misuse of process, plus any other relief deemed just and proper.

Count III – Fraud Upon the Court (Intrinsic and Extrinsic Fraud)

Plaintiff re-alleges paragraphs 1 through 22 above as if fully set forth herein and additionally incorporates the allegations of Counts I and II to the extent they demonstrate Defendant's fraudulent conduct.

Cause of Action: This is a claim for Fraud upon the Court, alternatively pleaded as an independent action for relief from judgment due to fraud.

While "fraud upon the court" is sometimes discussed as a doctrine or remedy rather than an independent tort, the facts here are such that

Defendant's conduct—intentionally deceiving the court and subverting the judicial process—gives rise to a cause of action in equity to vacate the prior

judgment and to award damages caused by the fraud. Furthermore, to the

extent a separate tort claim for "fraud" is cognizable, Defendant's actions also constitute common law fraud (he made knowing misrepresentations

to the court and, indirectly, to Plaintiff, intending to and succeeding in

AMENDED COMPLAINT

causing harm). The plaintiff pleads this Count to ensure that all aspects of Defendant's fraudulent scheme are addressed and that the Court exercises its full powers to undo the results of that scheme.

Facts Constituting Fraud on the Court: Defendant Andrade engaged in an unconscionable scheme to improperly influence the judicial process and defraud the court, consisting of the following acts:

Misrepresentation in Pleadings: By naming Plaintiff (Marcio Sousa Sales) as the defendant in the small claims Complaint, Defendant effectively represented to the court that Plaintiff was the person responsible for the debt or wrongdoing at issue. This was a false representation of material fact. Defendant either knew it was false (if he knew the son/LLC were the real party) or made it with reckless disregard for the truth. This misled the court from the outset about the proper alignment of the parties.

Omissions of Material Fact: Defendant failed to disclose to the court that the repair business was actually owned by an LLC and run by the son. In his Statement of Claim narrative, he mentioned those facts, but he omitted to sue the actual entity/person indicated by those facts, creating a misleading impression. The court was never explicitly told "I sued the father even though the documents show the son/LLC is responsible." This

AMENDED COMPLAINT

omission was deceptive and prevented the court from properly adjudicating the case on the merits (since the actual liable party was absent). False Testimony or Statements: Upon information and belief, at any trial or hearing leading to the Final Judgment, Defendant must have provided testimony or statements implying Plaintiff's liability. If there was a default, Defendant likely submitted an affidavit or sworn statement for damages, again implicitly reaffirming that "Marcio Sousa Sales" was the correct debtor. Any such statements were knowingly false in substance. Later, at the post-judgment hearings, Defendant falsely asserted that Plaintiff should be made to pay and/or that Plaintiff's son could be held responsible under the existing judgment. These assertions to the court were intentionally misleading. Defendant knew that by keeping the judgment against Plaintiff and simultaneously pointing to the son, he was creating confusion and misusing the court's authority.

Improper Conduct Calculated to Mislead the Court: Fraud upon the court is characterized by a deliberate scheme that subverts the integrity of the court's ability to adjudicate impartially. Here, Defendant's scheme was to obtain a judgment by suing a party who was not present (the real defendant) and ensuring the actual merits were never tried. He secured a judgment that did not actually resolve the real dispute (because the real

AMENDED COMPLAINT

defendant wasn't in court). Then he tried to use that judgment to snare the real defendant outside of normal procedure. This is an abuse and corruption of the judicial process itself. The court was essentially used as a pawn in Defendant's game: he got the court to enter an order against an innocent man and then tried to use the court's contempt power to indirectly get at the guilty man. This convoluted strategy indicates a "sentiently set in motion... unconscionable scheme" to interfere with the court's function. It was unconscionable because it affronted the court's fundamental role of adjudicating between the correct parties based on truthful facts.

Knowledge and Intent: Defendant's fraudulent conduct was done knowingly and intentionally. From at least the time of the November 2024 Hearing, Defendant knew the truth of the matter (wrong defendant), yet he continued to deceive the court by maintaining the false posture of the case. His intent was to deceive the court into enforcing the judgment as if it were legitimate. When he urged the court to hold Plaintiff in contempt or to somehow reach the son through that judgment, he was attempting to perpetuate the court's mistake for his advantage. This goes beyond an advocate's zealous representation or a mistake; it is active fraud. Andrade intended the court to rely on his misrepresentations (and the already

AMENDED COMPLAINT

misbegotten judgment) and to take action (contempt, etc.) accordingly. But for the courageous efforts of Plaintiff's counsel to expose the truth, Defendant might have succeeded in getting the court to unwittingly commit a grave injustice (like jailing Plaintiff or forcing payment).

Intrinsic vs. Extrinsic Fraud: Florida law distinguishes between "intrinsic" fraud (fraudulent acts pertaining to issues in the case, e.g., perjury, that could have been refuted at trial) and "extrinsic" fraud (conduct that prevents an adversary from fully participating in the case, such as keeping them away or deceiving them about the suit). In this scenario, Defendant's actions have elements of both:

To the extent Defendant perjured himself or presented false evidence in the case regarding Plaintiff's involvement, that is intrinsic fraud. Normally, relief for intrinsic fraud must be sought within one year under Fla. R. Civ. P. 1.540(b). However, when intrinsic fraud rises to the level of "fraud on the court (a term often applied to pervasive fraud that undermines the proceeding), courts can invoke their inherent authority to address it even beyond one year. Defendant's lies were so fundamental (misidentifying the defendant) that they effectively obliterated the adversarial process, making it akin to extrinsic fraud in effect.

AMENDED COMPLAINT

It can be argued this was extrinsic fraud as well, because Plaintiff was not able to properly defend himself on the merits of the transaction since he wasn't the transacting party. In a way, Defendant's fraud kept the real defendant (the son/LLC) out of the courtroom – that party never had its day in court, meaning the proceedings were a sham with respect to the true controversy. Also, if Plaintiff did not initially respond due to confusion or thinking it was a mistake, one could say Defendant's misnomer lulled Plaintiff or otherwise interfered with a proper defense (extrinsic to the merits).

Regardless of classification, Florida courts hold that any fraud which subverts the integrity of the court process can justify relief at any time. The standard is whether "by clear and convincing evidence, the court is convinced that the improper behavior of the party has foreclosed the impartial administration of justice" (this paraphrases case law). Here, that standard is met tenfold.

Relief Sought – Vacatur/Nullification of Judgment: As a direct consequence of Defendant's fraud on the court, the Final Judgment entered on February 14, 2024, in Case No. 50-2023-SC-011007 must be declared void and of no effect. A judgment obtained through fraud on the court is

AMENDED COMPLAINT

not a product of a fair adjudicative process and thus cannot be allowed to stand. Plaintiff seeks, as part of this Count, a declaratory judgment and order from this Court declaring the Final Judgment to be null, void, and unenforceable, due to Defendant's fraud. Although the small claims court may also address this via its own ruling on the 1.540 motion, Plaintiff requests this relief here to ensure it is granted and because this Court, sitting in equity, has concurrent power to void a judgment procured by fraud (particularly where, as here, the fraud also gives rise to independent tort claims being adjudicated in this forum). Such relief is necessary to restore Plaintiff's rights and to prevent Defendant from profiting from his misconduct. It will also serve as evidence of the "favorable termination" of the prior proceeding, satisfying that element for Count I unequivocally.

Damages from Fraud: Beyond the equitable relief of voiding the judgment, Plaintiff has suffered damages as a result of the fraud on the court. There is an overlap with the damages from malicious prosecution and abuse of process, but to the extent any of those might not be recoverable under those theories, they certainly are recoverable as compensatory damages for fraud. For instance:

AMENDED COMPLAINT

Plaintiff's attorneys' fees and costs incurred in uncovering and addressing the fraud (including the work done in the small claims case to reveal the truth and set aside the judgment) are a direct result of Defendant's fraud. Generally, in an independent action for fraud on the court, a court may award the aggrieved party for the expenses incurred due to the fraud.

The emotional distress and other personal harms inflicted by fraud (being subject to a false judgment, etc.) are also recoverable, as in any fraud case where such harm is the natural consequence.

Notably, Florida courts have inherent power to award sanctions against a litigant who perpetrates fraud on the court, which can include attorney's fees and even dismissal of their claims. Here, Defendant's entire prior claim should effectively be dismissed (which equates with the judgment being void). But in this independent action, the sanction translates to damages to make Plaintiff whole.

Additionally, because this fraud was intentional and egregious, punitive damages are warranted under this Count as well. Fraud is one of the categories of wrongdoing for which punitive damages are expressly authorized (fraud implies malice or moral turpitude). Defendant's fraud on the court was particularly reprehensible as it exploited the public

AMENDED COMPLAINT

institution of the courts. As such, punitive damages should be assessed to punish this conduct and deter others.

Legal Support: Fraud upon the court has been recognized in numerous cases. For example, Florida courts have stated: “Where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter, by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense, that party has committed fraud upon the court.”. Defendant’s actions fall squarely within this definition – he intentionally set in motion a chain of events (suing the wrong party, lying about it, leveraging the mistake) that hampered the court’s ability to adjudicate impartially. The impartial adjudication was hampered because the court was adjudicating the wrong dispute (father’s liability instead of son’s) and was being fed false information by Andrade. The integrity of the judicial process was affronted; an empty judgment was rendered. Few scenarios present a clearer fraud on the court.

AMENDED COMPLAINT

Therefore, Defendant is liable for fraud on the court, and Plaintiff is entitled to relief including the voiding of the prior judgment, compensatory damages, and punitive damages.

Wherefore (Count III): Plaintiff Marcio Sousa Sales respectfully requests that this Court:

(a) Declare and adjudge that the Final Judgment entered on Feb. 14, 2024, in Case No. 50-2023-SC-011007-XXXX-SB was procured by fraud upon the court and is therefore vacated, void, and unenforceable as to Plaintiff.

(If necessary, the Court may direct Defendant to join in appropriate motions in the small claims case or otherwise ensure the judgment's cancellation, but given this is an independent action, the Court can directly enjoy Defendant from enforcing it and declare it null.)

(b) Award Plaintiff compensatory damages in an amount to be determined at trial for the losses and expenses incurred due to Defendant's fraudulent misrepresentations and scheme, including the attorney fees and costs to address the fraud in the prior proceeding.

(c) Award Plaintiff punitive damages for Defendant's fraud, subject to the procedures of §768.72. Defendant's conduct was intentional, malicious, and in reckless disregard of Plaintiff's rights and the integrity of the

AMENDED COMPLAINT

judicial system, justifying an award of punitive damages to punish and deter.

(d) Award any additional relief in law or equity that is just and proper, such as issuing a permanent injunction barring Defendant from ever attempting to enforce the void judgment or from pursuing Plaintiff for the underlying claim and awarding Plaintiff his costs of this action.

The plaintiff also notes that by pursuing this Count, he does not seek any double recovery; any damages awarded under this Count for items like emotional distress or fees would be intended to complement, not duplicate, the damages under Counts I and II. Ultimately, all counts together tell one story of harm, and Plaintiff seeks one full compensation for that harm, plus appropriate punitive.

Demand for Relief (Prayer for Relief)

WHEREFORE, Plaintiff MARCIO SOUSA SALES prays that this Honorable Court enters Judgment in his favor and against Defendant ANTONIO DE ANDRADE on all counts, and grant the following relief:

A. Compensatory Damages: An award of compensatory damages against Defendant in an amount to be proven at trial, which amount is fair and

AMENDED COMPLAINT

just to compensate Plaintiff for the losses he suffered due to Defendant's

B. wrongful conduct. This includes, but is not limited to: reimbursement of attorneys' fees and costs incurred by Plaintiff in the underlying action and in this action; payment for emotional distress, mental anguish, and humiliation suffered by Plaintiff; damages for harm to Plaintiff's reputation and standing; compensation for any economic losses (such as lost income or opportunities) resulting from Defendant's actions; and any other actual damages shown by the evidence.

C. Declaratory and Equitable Relief (Vacatur of Judgment): A declaration and order that the Final Judgment entered on Feb. 14, 2024, against Plaintiff in Case No. 50-2023-SC-011007-XXXX-SB is VOID and unenforceable, having been procured through fraud and improper conduct. The Court's order should nullify that judgment and prohibit Defendant from taking any steps to enforce or utilize that judgment in any manner. (If the judgment has already been vacated by the county court by the time of judgment in this case, then this relief may be adjusted to an acknowledgment of that fact; the goal is to ensure no wrongful judgment remains against Plaintiff.)

AMENDED COMPLAINT

D. Punitive Damages: Upon Plaintiff's compliance with Florida Statute §768.72, an award of punitive damages in the maximum amount allowable by law, in order to punish Defendant for his intentional, malicious, and fraudulent misuse of the legal system and to deter him and others from similar misconduct. Plaintiff specifically intends to seek leave of court at the appropriate time to assert punitive damages, and upon such leave being granted, asks that the trier of fact assess a substantial sum against Defendant that reflects the egregiousness of his conduct (Plaintiff alleges that Defendant's conduct warrants punitive damages at the high end of the spectrum given the abuse of public justice mechanisms).

E. Attorneys' Fees and Costs of this Action: An award of Plaintiff's reasonable attorneys' fees and costs incurred in bringing this action, to the extent permitted by law. While there is no conventional fee-shifting statute for malicious prosecution or abuse of process, the Court may award fees as part of compensatory damages for fraud on the court (covering fees spent to address the fraud). Additionally, the Court has discretion to award fees as a sanction for Defendant's bad faith litigation conduct under the inherent authority doctrine (see Moakley v. Smallwood, 826 So.2d 221 (Fla. 2002)). Plaintiff respectfully requests the Court to exercise such

AMENDED COMPLAINT

authority here, given the extraordinary bad faith and frivolous nature of Defendant's actions, which effectively forced Plaintiff to resort to litigation to clear his name. (Plaintiff also reserves the right to seek fees under §57.105, Fla. Stat., by separate motion, for having to defend a frivolous prior proceeding.)

F. Any Other Relief: Such other and further relief as this Court deems just, equitable, and proper. This may include, but is not limited to, injunctive relief preventing Defendant from initiating any similar baseless claims against Plaintiff in the future, orders to expunge any public records of the fraudulent judgment, and any relief necessary to restore Plaintiff as nearly as possible to the position he would have been in had Defendant's tortious conduct not occurred.

Jury Trial Demand: Plaintiff hereby demands a trial by the jury on all issues so triable as a matter of right, including the determination of liability and the assessment of damages. Respectfully submitted,

Marcio Sousa Sales
Plaintiff, Pro Se
160 W Camino Real, 102
Boca Raton, FL 33432
Phone Number: (561) 770-8909
Email Address: info@legalhelp4y.com



AMENDED COMPLAINT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the AMENDED COMPLAINT was served on Antonio de Andrade, at his e-mail tjmarble@yahoo.com as well his attorney seth@kellergibson.com on this March 19, 2025.



Marcio Sousa Sales
Plaintiff, Pro Se
160 W Camino Real, 102
Boca Raton, FL 33432
Phone Number: (561) 770-8909
Email Address: info@legallhelp4y.com