UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CAROL G. EDWARDS,
Plaintiff,
v.

CITY OF ALTAMONTE SPRINGS, FLORIDA,
Defendant,

Civil Action No.
6:22-cv-689-PGB-DCI

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

INTRODUCTION

Plaintiff, Carol G. Edwards ("Carol"), filed her Fourth Amended Complaint ("FAC") on December 22, 2025, alleging that Defendant City of Altamonte Springs ("City") imposed excessive fines, took her property without just compensation, and imposed an unconstitutional condition on a permit for her dock. The City then filed a motion to dismiss, arguing throughout that Carol's FAC is an impermissible collateral attack on the underlying Code Enforcement Board ("CEB") order under state law. However, for the reasons argued below, including that the City fails to make a meaningful argument that Carol has failed to allege sufficient facts to state a plausible claim for relief, the City's motion should be denied.

BACKGROUND

In 1989, Carol and her now-late husband built a dock next to their house on a cove of Prairie Lake. Dkt. No. 63 ¶¶ 14-15. Upon completion, City inspectors conducted a final inspection, approved the permit, and submitted the closed permit to the County Property Appraiser; the dock thereafter appeared on the tax roll. *Id.* ¶ 22. The family, friends, and neighbors used and enjoyed the dock for nearly thirty years. *Id.* ¶ 23.

In 2017, Hurricane Irma significantly damaged the dock. *Id.* ¶ 24. Carol, then the sole owner, contacted the City to ask whether a permit was required to repair the dock, and a City official told her permits were not necessary to repair hurricane damage. *Id.* ¶¶ 25-27. Relying on that assurance, she rebuilt the dock in the same footprint, size, shape, and location, and believing she could make limited

improvements subject to inspections, converted a storage area into a small restroom. *Id.* ¶¶ 28-29.

Around 2018, James Randy Myers and his son, Daniel Myers, purchased the adjacent Lot 251 with knowledge and a survey that the existing dock footprint intruded onto that lot. *Id.* ¶¶ 30-31. They complained to the City that the dock extended into their property, and a City inspector stated the dock would be torn down due to the encroachment and renovations without a permit. *Id.* ¶ 32.

Throughout 2018, Carol attempted to work with City officials. *Id.* ¶¶ 34-36, 42-44. However, despite Carol providing evidence of the original permit, her prescriptive easement, and riparian rights, City officials maintained that no permit had ever been issued for the original dock and thus the dock was considered new residential construction that had to meet the ten-foot side-yard setback, and the dock would have to be torn down. *Id.* ¶¶ 34, 42-44.

The City held a hearing regarding Carol's dock in September 2018. *Id.* ¶¶ 48-49. However, shortly before the hearing, a City official told prior counsel "there is no need for you or your client to attend the Code Enforcement Hearing," and neither Carol nor her attorney attended. *Id.* ¶¶ 50-53. The Board nonetheless proceeded, heard only the City's presentation, found Carol in violation of Land Development Code § 3.3.1.6, set a December 13, 2018, compliance deadline, and imposed a $100/day fine plus $250 in costs. *Id.* ¶¶ 54-60. The resulting order required either removal of the dock or obtaining permits and passing all final

inspections (which would require Carol to tear down the dock to meet the setback requirements). *Id.* ¶¶ 41, 43, 64-66.

On April 11, 2019, the CEB convened to impose fines at $100/day beginning December 13, 2018, plus costs and recording fees. *Id.* ¶¶ 71-73. Carol and her son were present and requested a continuance due to unavailable counsel/engineer; the City attorney objected. *Id.* ¶¶ 74-75. When it was clear that the hearing would continue, Carol's son attempted to introduce evidence of the original permit, but the City's inspector shut him down, stating that "the case has already been litigated," even though the City had previously told Carol that there was "no need . . . to attend" the prior September 13 hearing. *Id.* ¶¶ 74-77. The CEB did not discuss the statutory factors for setting fines and imposed the fines to accrue until compliance, plus imposed a lien on all real or personal property owned by Carol. *Id.* ¶¶ 78-79, 84-85. The CEB on April 11, 2019 entered its order ("2019 Order"), which was later recorded, requires "[r]emoving the boat dock and house structure completely and disposing of all construction materials; and/or obtain Building, Electrical, and Plumbing Permits for the boat dock and house structure passing all final inspections related to each permit." *Id.* ¶¶ 80-85.

Carol continued to try to work with the City by submitting further building plans for the permit application, but the City continued to maintain that the dock would have to be destroyed. *Id.* ¶¶ 69-70, 86-88. On August 26, 2019, Carol filed a declaratory action against the Myers to establish a prescriptive easement and riparian rights over the portion of the dock footprint on Lot 251. *Id.* ¶ 89. On

November 7, 2024, the circuit judge adopted the magistrate's report and recommendation in full, which found that Carol established a prescriptive easement over the location of the dock, the dock was originally permitted in 1989, the repaired dock had not moved from its original location, and the repair did not increase size or intrusion. *Id.* ¶¶ 93-95.

Carol is an 83-year-old widow living on a fixed income comprised of Social Security and rental proceeds from a non-homestead investment property. *Id.* ¶¶ 6, 96. Because of the lien, she cannot sell or refinance any of her property to pay the fine. *Id.* ¶¶ 97-99. As fines have accrued to over $250,000, Carol has no ability to pay and faces foreclosure and bankruptcy absent judicial relief. *Id.* ¶¶ 1, 7, 100.

On December 8, 2022, the Court granted Carol's motion to stay this case pending resolution of the above-referenced state-court action she had filed against the Myers. Dkt. No. 26 at 2. Shortly after the stay concluded, on November 24, 2025, Plaintiff moved to extend two lapsed scheduling deadlines and for leave to amend, which the court granted in part. Dkt. No. 62. On December 22, 2025, Plaintiff filed the operative FAC asserting three counts: Eighth Amendment (Excessive Fines), Fifth Amendment (Takings), and Unconstitutional Conditions under the Fifth and Fourteenth Amendments. Dkt. No. 63. The City moved to dismiss. Dkt. No. 65.

LEGAL STANDARD

To survive a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter "to state a claim to relief that is

plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).[1] In applying that standard, courts must accept all well-pleaded facts as true and draw all inferences in the plaintiff's favor. *Carollo v. Boria*, 833 F.3d 1322, 1328 (11th Cir. 2016).

ARGUMENT

I. Carol's Constitutional Claims Are Not Barred

The City maintains that each of Carol's claims must be dismissed as an "impermissible collateral attack" on the 2019 Order because she did not avail herself of the options to appeal to the Board of Zoning Appeals ("BZA") or file a petition in the state circuit court under Florida Statute § 162.11.[2] This argument fails for three reasons. First, Carol's claims accrued years after the 30-day deadline expired. Second, a Section 162.11 appeal is not required to preserve constitutional claims. And finally, Florida's 30-day administrative appeal cannot bar Carol's Section 1983 claims.

A. Carol's Claims Accrued Years After the 2019 Order

This lawsuit is not a "collateral attack" on the 2019 Order because the asserted constitutional claims arise well after that 2019 Order was issued. Moreover, the City excluded from the administrative record critical facts regarding

[1] The City failed to specify under which rule and accompanying legal standard it is moving for dismissal. The arguments are construed as 12(b)(6) arguments for failure to state a claim. Defendant's failure renders its motion procedurally deficient and provides sufficient reason to deny the motion outright.

[2] The City cites repeatedly to the Second and Third Amended Complaints to discuss facts not alleged in the FAC. Dkt. No. 65 at 8-9. "As a general matter, an amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary." *Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1243 (11th Cir. 2007) (cleaned up).

the original permit and Carol's property rights, so any appellate review of that record would have been incomplete.

Florida state courts have distinguished a collateral attack from a direct state-court appeal under Section 162.11.[3] But that interpretation of Section 162.11 has no bearing on later-accruing Section 1983 claims relating to new facts and circumstances that arise after the 30-day appeal deadline has expired.

In Carol's case, certain pivotal facts occurred after the entry of the Order and the expiration of the appeal deadline. Most notably, her state-court action against her neighbor resolved fully in Carol's favor in 2024. Meanwhile, the City's fines continued to balloon to an enormous and unmanageable amount. Only after Carol established her prescriptive easement and riparian rights to the portion of the neighboring property over which her dock extends did the excessiveness of the City's aggregate fine become evident. Any appeal Carol could have taken within 30 days of the April 2019 Order would have been confined to the administrative record, which concluded long before the violations alleged here accrued and did not include the critical evidence of Carol's valid original permit, or her prescriptive easement and riparian rights. Constitutional claims are not barred as "collateral attacks" on an administrative order where, as here, they arose after the 2019 Order and could not have been reviewed on direct appeal.

[3] *See, e.g.*, *Kirby v. City of Archer*, 790 So. 2d 1214, 1214-15 (Fla. 1st DCA 2001).

B. Declining to Appeal a Code Enforcement Order Does Not Waive Constitutional Claims

The question here is whether a party who chooses not to appeal under Section 162.11 forever waives any and all constitutional claims raised in federal court under Section 1983. The answer is no. But the City focuses on inapposite cases about whether a state circuit court improperly exercised jurisdiction over a code enforcement order.[4]

Several cases confirm that declining to appeal under Section 162.11 is not fatal to a constitutional claim brought later in federal court. In *Innova Investment* the district court dismissed a federal excessive fines claim as a "collateral attack" for failure to appeal the initial code enforcement order.[5] But the Eleventh Circuit did not affirm on that basis, instead holding that the federal claim was barred by the four-year statute of limitations.[6] Critically, the court noted that the excessive fines claim accrued once the owner knew "the aggregate amount" due. *Id. Innova* plainly supports the proposition that Carol's excessive fines claim accrued several years after the 30-day appeal deadline. *See id.*

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[4] *See, e.g.*, *Brevard Cnty. v. Obloy*, 301 So. 3d 1114, 1116-18 (Fla. 5th DCA 2020) (circuit court lacked jurisdiction to "entertain [the] transparent collateral attack" on order's facts and findings); *see also City of Miami v. Cortes*, 995 So. 2d 604, 606 (Fla. 3d DCA 2008) ("enforcement order was outside the scope of the circuit court's review" where property owner did not appeal the original order but only the subsequent order mitigating fines)*; accord Hardin v. Monroe Cnty.*, 64 So. 3d 707, 710 (Fla. 3d DCA 2011) (circuit court lacked jurisdiction to set aside final order of enforcement board because it had not been appealed); *see also City of Plantation v. Vermut*, 583 So. 2d 393, 394 (Fla. 4th DCA 1991) (same); *City of Fort Lauderdale v. Bamman*, 519 So. 2d 37, 38 (Fla. 4th DCA 1987) (same).

[5] *Innova Inv. Grp., LLC v. Vill. of Key Biscayne*, No. 1:19-cv-22540, 2020 WL 6781821, at *3 (S.D. Fla. Nov. 18, 2020),

[6] *See Innova Inv. Grp., LLC v. Vill. of Key Biscayne*, No. 21-11877, 2024 WL 2748480, at *3 (11th Cir. May 29, 2024).

This Court also rejected arguments like the City's in *Ross v. City of Orlando*.[7] There, the owner did not appeal an order to the state circuit court but rather brought suit in federal court under Section 1983. *Id.* The Court held that applying the 30-day deadline would violate the "paramount role that Congress has assigned to the federal courts to protect constitutional rights" through Section 1983.[8]

Most recently, this Court rejected the very same "collateral attack" arguments the City raises here. In *DJB Rentals, LLC v. City of Largo*, a property owner was prohibited from bringing constitutional defenses in a foreclosure action because he had not appealed the code enforcement order pursuant to Section 162.11 and therefore waived the arguments. 373 So. 3d 405, 413 (Fla. 2d DCA 2023). The property owner later brought Excessive Fines and Procedural Due Process claims in federal court, which the city challenged as improper collateral attacks on the underlying code enforcement order. In a one-page order, the court summarily denied the city's motion to dismiss "for the reasons stated in DJB's response." Order, *DJB Rentals, LLC v. City of Largo*, No. 8:25-cv-01221-SDM-CPT (M.D. Fla. Oct. 22, 2025), Dkt. No. 28 (Merryday, J.)[9]

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[7] 141 F. Supp. 2d 1360, 1364-65 (M.D. Fla. 2001) (Presnell, J.).

[8] *Id.* at 1364; *see also Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1209 (11th Cir. 2008) (considering constitutional claims brought in federal court rather than by direct appeal); *cf. Baggs v. City of S. Pasadena*, 947 F. Supp. 1580, 1582 (M.D. Fla. 1996); *Marfut v. City of N. Port*, No. 8:08-CV-2006-T-27-EAJ, 2009 WL 790111, at *5-6 (M.D. Fla. Mar. 25, 2009) (Whittemore, J.) (holding that an owner's Eighth Amendment challenge to an aggregated fine was not barred despite the failure to appeal the daily-fine orders, because the later-accrued penalties—escalating from $25/$50 per day to tens of thousands in total—could not have been litigated at the code-enforcement hearings and constituted a distinct claim).

[9] https://pacificlegal.org/wp-content/uploads/2025/05/DJB-Rentals-v.-City-of-Largo_Order-Denying-Motion-to-Dismiss_10.22.25.pdf.

C. Florida's 30-Day Administrative Appeal Deadline Cannot Bar Federal Section 1983 Claims

The City argues that collateral attack is not permissible because Carol's sole remedy for any constitutional harm related to its imposition of excessive fines was for her to "exhaust her administrative remedies," Dkt. No. 65 at 10, by raising all possible claims in an appeal to the BZA within thirty days of the April 11, 2019 Order. However, the Supreme Court has repeatedly made clear that plaintiffs are not required to exhaust state administrative remedies prior to bringing a Section 1983 suit.[10] Thus, Carol was not required to appeal to the BZA prior to filing this Section 1983 suit.

In *Burnett v. Grattan*, for example, the Court held that a state's six-month statute of limitations could not apply to constitutional claims brought through Section 1983 because it violated Congress's intent to protect rights. 468 U.S. 42, 55 (1984). Six months were insufficient for an aggrieved individual to realize the "constitutional dimensions of his injury," obtain a lawyer, "conduct enough investigation to draft pleadings," and bring a claim. *Id.* at 50-51. Similarly, in *Felder v. Casey,* 487 U.S. 131, 142 (1998), the Supreme Court refused to give effect to a Wisconsin statute that barred Section 1983 claims unless arrestees filed an

[10] *See Knick v. Twp. Of Scott*, 588 U.S. 180, 194 (2019) (internal citations and quotations omitted) ("The general rule is that plaintiffs may bring constitutional claims under § 1983 without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior."); *Patsy v. Bd. of Regents of Fla.*, 457 U.S. 496, 501 (1982) ("[We] ha[ve] stated categorically that exhaustion is not a prerequisite to an action under § 1983"); *McNeese v. Bd. of Ed. For Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 672 (1963) (It would defeat the purpose of § 1983 if "assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in state court."); *Monroe v. Pape*, 365 U.S. 167, 183 (1961) (overruled in part on other grounds) ("The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.").

administrative notice of claim within 120 days of the government's violation of their rights. *Id.* States possess "no authority to override" Congress's "decision to subject state" officials "to liability for violations of federal rights." *Id.* at 143. States "may no more condition the federal right to recover for violations of civil rights than bar that right altogether[.]" *Id.* at 144. The same logic applies to Carol here. The 30-day deadline here is even more egregious than the deadlines in *Felder* and *Burnett*, and would require Carol, an 83-year-old widow, to coordinate with an attorney, gather information to prepare and identify her federal constitutional claims (which hadn't fully accrued yet, *supra* Section I.A), and initiate the appeal.[11]

The City cites only Florida state-law cases about exhaustion. Dkt. No. 65 at 8-12. However, *Felder* makes clear that when a plaintiff brings a Section 1983 claim, "enforcement of the [exhaustion requirement] . . . so interferes with and frustrates the substantive right Congress created that, under the Supremacy Clause, it must yield to the federal interest." 487 U.S. at 151. The state of Florida may set a trap "for those who are endeavoring to assert rights that the State confers, [but] the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Id.* at 152 (quotation omitted). Carol was not required to exhaust her administrative remedies by appealing to the BZA or state circuit court prior to filing suit here, as the City argues, and may bring her Section 1983 claims in federal court.

[11] *See Burnett*, 468 U.S. at 50-51 (describing the difference in difficulty between filing a civil rights claim and seeking administrative remedies).

II. The City's Res Judicata and Collateral Estoppel Arguments Are Improper

The City argues that Carol is prohibited from using the state court final judgment against it under the doctrines of res judicata and collateral estoppel. However, deciding the merits of those defenses is not relevant to the Rule 12(b)(6) inquiry about whether a plaintiff has failed to state a claim under *Twombly* and *Iqbal*. The question at this stage is whether the FAC contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570), and whether the pleading advances more than "labels and conclusions" or a "formulaic recitation of the elements," *Twombly*, 550 U.S. at 555.

Measured against that standard, the City's preclusion discussion is immaterial to the sufficiency of the pleadings. Plaintiff pleaded the underlying facts that establish her property rights and the City's conduct; later, if the City attempts to relitigate the easement or the original permitting history, Plaintiff may invoke offensive collateral estoppel to foreclose re-litigation of those adjudicated issues. Whether preclusion will ultimately apply turns on proof and party/privity analysis, not on the facial sufficiency of the complaint. Rule 12(b)(6) asks only whether, taking the well-pleaded facts as true, the complaint crosses the "line from conceivable to plausible."[12] Critically, as explained further below, the allegations related to the state court judgment that the City complains about are cumulative

[12] *Iqbal*, 556 U.S. at 680 (quoting *Twombly*, 550 U.S. at 570).

of facts pled elsewhere, and the claims do not depend on the state-court judgment's preclusive effect. The City's motion does not demonstrate that these factual allegations are conclusory or legally insufficient under the governing standards. Instead, it tries to defeat the complaint by previewing why, in the City's view, the state judgment should not bind it. That invites the Court to decide an evidentiary dispute that is not relevant to deciding a motion to dismiss.

III. Carol Properly Alleges an Excessive Fines Claim

The Eighth Amendment's Excessive Fines Clause "limits the government's power to extract payments . . . 'as punishment for some offense,'" prohibiting fines that are "grossly disproportionate to the offense."[13] The City does not dispute that the fines here were punitive and fall within the ambit of the Eighth Amendment. *See* Dkt. No. 65 at 16. The City also does not directly address the excessiveness of the fine against Carol but instead relies on a restatement of its collateral attack argument and a "strong presumption" of constitutionality for a fine that falls within the range established by the Florida Legislature.[14] *Id.* at 16-19.

For the reasons outlined above in Parts I and II, the collateral attack arguments fail. And the presumption—applied in the municipal civil fine context in a few *unpublished* Eleventh Circuit cases—lacks any foundation in Supreme Court precedent, contradicts the original meaning and purpose of the Excessive Fines Clause, and improperly delegates Article III judicial power to the Florida

[13] *United States v. Bajakajian*, 524 U.S. 321, 327-28, 334 (1998) (citation omitted).
[14] A municipal enforcement board may "order [a] violator to pay a fine . . . for each day the violation continues past the date set . . . for compliance." Fla. Stat. § 162.09(1). Such fines "shall not exceed $250 per day for a first violation [or] $500 per day for a repeat violation." *Id.* § 162.09(2)(a).

Legislature, resulting in a "hyper-deferential posture" that "[s]eems a bit like letting the driver set the speed limit."[15] Even if the presumption were appropriate, Carol overcomes it.

A. No Presumption of Constitutionality Should Apply to Civil Municipal Fines Under the Eighth Amendment

In the criminal forfeiture context, the Eleventh Circuit construed *Bajakajian* to impose a strong presumption of constitutionality to fines within legislative limits.[16] It has only applied this presumption in the context of daily accruing municipal fines in three *unpublished*[17] opinions.[18] But nothing in *Bajakajian* mandates, let alone encourages, this presumption.[19] Indeed, as Justice Kennedy observed, "The [*Bajakajian*] majority's assessment of the crime accords no deference, let alone substantial deference, to the judgment of Congress." *Bajakajian*, 524 U.S. at 348.

Instead of directing district courts to defer to a legislatively enacted fine range, *Bajakajian* instructed "district courts *in the first instance*" to compare the fine to the gravity of the offense and declare it unconstitutional if it is "grossly disproportional." *Id.* at 336-37 (emphasis added). That comparison is a

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[15] *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1318 (11th Cir. 2021) (Newsom, J., concurring).
[16] *See United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1309 (11th Cir. 1999).
[17] "Unpublished cases do not constitute binding authority and may be relied on only to the extent they are persuasive." *Searcy v. R.J. Reynolds Tobacco Co.*, 902 F.3d 1342, 1355 n.5 (11th Cir. 2018)); 11th Cir. R. 36-2.
[18] *See Ficken v. City of Dunedin*, No. 21-11773, 2022 WL 2734429, at *3-4 (11th Cir. July 14, 2022); *Lindbloom v. Manatee Cnty.*, 808 F. App'x 745, 750 (11th Cir. 2020); *Moustakis v. City of Fort Lauderdale*, 338 F. App'x 820, 822 (11th Cir. 2009).
[19] *See Robson 200, LLC v. City of Lakeland*, 593 F. Supp. 3d 1110, 1120-22 (M.D. Fla. 2022) (Mizelle, J.).

predominantly factual, triable inquiry. *See id.* at 338-39; *Yates*, 21 F.4th at 1314-15. In other words, presumptions are routinely rebutted through factual development; they aren't inexorable commands that require dismissal.

Crucially, the justification for the "strong presumption" does not apply in the municipal fining context. In *817 N.E. 29th Drive*—the criminal forfeiture case from which the presumption originated—the Eleventh Circuit emphasized that the sentencing guidelines are "designed to proportion punishments to crimes with even greater precision than criminal legislation." 175 F.3d at 1310. For federal criminal forfeitures, two independent, "very competent bodies" operate to ensure that basic proportionality exists before a court even considers excessiveness. *Id.* at 1309.

No comparable secondary safeguard exists in Florida's municipal code enforcement context. While the state Legislature made an initial judgment about maximum amounts for municipal fines, no independent body weighs the gravity of various offenses to accurately proportion the punishments. Instead, fines are largely subject to the whims of code enforcement bureaucrats.[20] Additionally, local governments often rely on fines to fund portions of their budgets, creating an incentive for overreach.[21] Thus, particularly aggressive municipalities are free to impose ruinous fines on vulnerable people for harmless infractions like peeling

[20] Here, the CEB did not publicly discuss the statutory factors for setting fines before imposing a $100 daily accruing fine and imposing a lien on Carol's properties. FAC ¶¶ 78-79, 84-85.
[21] *See* Jessica L. Asbridge, *Fines, Forfeitures, and Federalism*, 111 Va. L. Rev. 67, 91-92 (2025).

paint and broken outlet covers.[22] It beggars belief that these determinations warrant a "strong presumption of constitutionality" simply because no individual daily fine exceeds a limit established by the state.[23] Therefore, this Court should reject the City's invitation to apply a presumption of constitutionality in this civil fines case because it is unfounded and unfairly prejudices plaintiffs bringing claims under the Excessive Fines Clause.[24]

B. Even Under a Presumption of Constitutionality, the City's Fines Are Unconstitutionally Excessive

The presumption-of-constitutionality inquiry is immaterial here because the FAC plainly pleads facts that are sufficient to state an excessive-fines claim. Whether the total fine here is excessive is a factual inquiry that should go to trial. The City's motion to dismiss conflates the gross-disproportionality inquiry that occurs based on evidence developed at trial with the standard for dismissing claims under Rule 12(b)(6). The City's premature argument should therefore be rejected.

A fine is excessive if it is "grossly disproportionate" to the gravity of the offense it is designed to prevent. *Bajakajian*, 524 U.S. at 326, 334. To decide if the fine is grossly disproportionate, courts consider the gravity of the offense, culpability of the offender, harshness of the penalty, how the fine compares with

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[22] *E.g.*, *South Florida elderly couple faces $366,000 in fines over duplex code violations in Lauderdale Lakes*, CBS News Miami (May 14, 2025), https://www.cbsnews.com/miami/news/elderly-couple-faces-366000-in-fines-over-duplex-code-violations-in-lauderdale-lakes/.

[23] *See Yates*, 21 F.4th at 1329 (Tjoflat, J., concurring in part and dissenting in part) ("[T]he strong presumption of constitutionality should only apply when Congress and/or the Sentencing Commission bring their expertise to bear.").

[24] In *DJB Rentals*, noted above in Part I.b., the defendant city also relied on the presumption of constitutionality in an effort to avoid scrutiny under the Eighth Amendment. Those arguments were rejected. *DJB Rentals*, No. 8:25-cv-01221-SDM-CPT (M.D. Fla. Oct. 22, 2025).

other fines, as well as other factors that vary based on the circumstances. *See id.* at 338-39; *Yates*, 21 F.4th at 1314-15. A court should also consider whether the fine would deprive an individual of his livelihood or exceed his ability to pay—a critical inquiry inherent to the original meaning of the Excessive Fines Clause.[25] This inquiry is predominantly factual.

The Excessive Fines Clause has long constrained the government's power to impose financial penalties beyond an individual's capacity to bear them. As the Supreme Court has explained, the Clause traces its roots to Magna Carta, which required that economic sanctions be "proportioned to the wrong" and "not be so large as to deprive an offender of his livelihood."[26] From the outset, the principle was not merely abstract proportionality, but preservation of subsistence: a fine could not exceed what the offender's "circumstances or personal estate will bear." 4 William Blackstone, *Commentaries on the Laws of England* 379. Modern courts have reaffirmed that this constraint applies regardless of the gravity of the offense or the balancing of the other factors. *See, e.g.*, *Levesque*, 546 F.3d at 83-85.

Here, Carol alleges facts sufficient to establish that the magnitude of the fines and the application of the lien to Carol's rental condominium grossly exceeds her ability to pay and serves to "deprive [her] of [her] livelihood." *Timbs*, 586 U.S. at 151. Carol is an 83-year-old widow living on a fixed income that consists of Social

[25] *See id.* at 1318, 1321-23 (Newsom & Jordan, JJ., concurring); *id.* at 1333-34 (Tjoflat, J., concurring); *see also United States v. Levesque*, 546 F.3d 78, 83-85 (1st Cir. 2008); *United States v. Viloski*, 814 F.3d 104, 111-12 (2d Cir. 2016).
[26] *Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (cleaned up) (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 271 (1989)).

Security payments and modest rental proceeds from the condominium. Dkt. No. 63 ¶¶ 6, 96. Now that the fines have reached over $250,000, they are orders of magnitude greater than anything Carol could pay now or in the future. She has no reasonable prospect of increasing her earnings at this time in her life. And the authorization of the lien on Carol's homestead and all other real property she owns effectively forecloses the very avenue by which she might otherwise address mounting debt, such as sale or refinancing. *Id.* ¶¶ 97-99. This virtually ensures foreclosure or bankruptcy for Carol. *Id.* ¶¶ 1, 7, 100. The fine is therefore not calibrated to induce compliance or ensure restitution—it is punitively disproportionate and unconstitutional.

IV. Carol Properly Alleges a Takings Claim

The City does not argue that Carol has failed to allege a regulatory taking, as it argues only that the takings claim fails to show the necessary element of causation. Section 1983 requires an "affirmative causal connection" between the government actor's conduct and the alleged constitutional deprivation.[27] The government is liable only for the "natural and foreseeable consequences" of its actions.[28] A takings injury must be the intended or objectively foreseeable result of authorized government action, and the property owner bears the burden to prove that causal link; causation is not established by a "mere causal link through the

[27] *Troupe v. Sarasota Cnty.*, 419 F.3d 1160, 1165 (11th Cir. 2005).
[28] *Jackson v. Sauls*, 206 F.3d 1156, 1168 (11th Cir. 2000).

agency of a third force," nor where the chain is broken by intervening, deliberative choices.[29]

The FAC properly pleads causation. The September 2018 Order commanded Carol to remove the dock or obtain permits that were conditioned on a showing that necessarily required removal or relocation; the April 2019 Order then implemented the very enforcement the City had announced—daily fines and a recorded lien—to coerce demolition. Those are government-authored directives and enforcement mechanisms, not private choices, and they are pleaded as the cause of the loss of use and economic value.[30]

Spencer v. Benison is not to the contrary. There, a sheriff's verbal, temporary public-safety directive to move cones did not order or authorize the neighbor's alleged encroachment. 5 F.4th at 1233-34. The injury in *Benison* only occurred after the plaintiff chose to stop opposing the encroachment—an intervening decision that broke the chain of causation. *Id.* In contrast to *Benison*, the City issued a formal order that required demolition of the dock and then imposed daily fines and a cross-property lien to compel that outcome, making the harm the direct, natural, and probable result of the City's own action. Dkt. No. 63 ¶¶ 61-64. Carol, unlike the plaintiff in *Spencer*, never stopped opposing the City's requirement that she destroy her dock. *Id.* at ¶¶ 65, 69-70, 74-77. Here, the City's demand that the dock be torn down is the government appropriating the dock.

[29] *Spencer v. Benison*, 5 F.4th 1222, 1232-34 (11th Cir. 2021).
[30] *See* Dkt. No. 63 ¶¶ 60-85, 129-35, 148-52 (alleging removal mandate; "permit" route conditioned on non-encroachment; fines/lien imposed to compel demolition).

Purposeful destruction of the dock obliterates the Plaintiff's right to use the dock and relinquishes her prescriptive easement rights.

In short, the City set the unconstitutional demand. Arguing that the harm happened because Carol refused to comply just assumes she had to yield to the taking without just compensation. For these reasons, Count II plausibly alleges a taking and a direct causal connection between the City's orders and the constitutional injury. The motion to dismiss should be denied.

V. Carol Properly Alleges an Unconstitutional Conditions Claim

The unconstitutional conditions claim survives the City's motion to dismiss because it states a claim on which relief can be granted. The City's motion misstates the unconstitutional-conditions doctrine by reducing it to just easement dedications. The Supreme Court has squarely held that the doctrine applies whenever permitting officials leverage permit approval to coerce the surrender of constitutional property rights without an essential nexus and rough proportionality between the "property that the government demands and the social costs of the applicant's proposal."[31]

Here, the FAC alleges that City officials conditioned Carol's permits on demolishing or relocating the dock—i.e., on Carol surrendering her vested prescriptive-easement and riparian rights—or else face escalating fines and a lien. Dkt. No. 63 ¶¶ 138-41. That is a classic exaction triggering *Nollan*/*Dolan* analysis

[31] *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605–06 (2013) (explaining that the doctrine polices coercive permit leverage, not just easements); *see also Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

and does not become lawful merely because the City re-labels it as "code compliance." Dkt. No. 65 at 24. The City's assertion that it received nothing (and thus there was no exaction) ignores that conditioning permits on forfeiting a property right is enough to invoke the unconstitutional conditions doctrine.

The City cannot demonstrate the requisite "essential nexus" because conditioning permits on demolition or relocation of the existing dock does not mitigate any new public impact from Carol's project—the dock has occupied the same footprint and size since 1989 and is protected by a prescriptive easement. *Koontz*, 570 U.S. at 605–06. Nor can the City establish "rough proportionality," because forcing complete demolition or relocation—backed by daily fines and a property-wide lien—is grossly out of proportion to the zero incremental externality from maintaining the decades-old dock in place. *Id.*

CONCLUSION

The City's motion does not show how the FAC fails to state a claim upon which relief can be granted as to all three claims. The motion should be denied.

DATED: January 26, 2026.

Respectfully submitted,
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I hereby certify that on January 26, 2026, I served this document via the Court's electronic filing system to the Defendant:

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CAROL G. EDWARDS, Plaintiff, v. CITY OF ALTAMONTE SPRINGS, FLORIDA, Defendant,	Civil Action No. 6:22-cv-689-PGB-DCI **PLAINTIFF'S REQUEST FOR ORAL ARGUMENT**

Plaintiff, Carol G. Edwards, pursuant to Local Rule 3.01(i), respectfully requests oral argument on its Opposition to Defendant's Motion to Dismiss filed contemporaneously with this request. Plaintiff estimates that a total of 40 minutes (20 minutes per side) would be sufficient for argument on this Motion.

Defendant, City of Altamonte Springs filed a Motion to Dismiss Plaintiff's Fourth Amended Complaint on January 5, 2026. Defendant's Motion and Plaintiff's Opposition raise several unique and complex issues of law and Plaintiff believes that oral argument on these matters will aid the Court in ruling on the Motion to Dismiss.

DATED: January 26, 2026.

Respectfully submitted,
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