

Appendix 1

No. 18-2344

In the

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NEVENKA OBUSKOVIC,
Appellant

v.

KATHLEEN L. WOOD, ESQ.; ALTMAN LEGBAND
& MAYRIDES; JOEY H. PARNETT; WOW
ENTERTAINMENT INC; MICHAEL
NIESCHMIDT, ESQ., NIESCHMIDT LAW OFFICE

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 15-cv-07520)
District Judge: Michael A. Shipp

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
November 16, 2018

Before: GREENAWAY, JR., RESTREPO, and
FUENTES, Circuit Judges

(Opinion filed: January 11, 2019)

JUDGEMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on November 16, 2018. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered on May 16, 2018 be, and the same is, hereby affirmed. Costs taxed against the Appellant.

All of the above in accordance with the Court.

ATTEST:

s/ Parricia S. Dodszuweit
Clerk

Dated: January 11, 2019

OPINION¹

Nevenka Obuskovic appeals from an order of the District Court dismissing her amended complaints pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons that follow, we will affirm.

Obuskovic and her husband, Joey H. Parnett, were parties to divorce proceedings in 2013 in the New Jersey Superior Court, Chancery Division, Family Part, Mercer County. The Honorable Catherine Fitzpatrick was assigned to the matter. Parnett retained Kathleen L. Wood and her firm, Altman Legband & Mayrides, to represent him. Parnett also retained Michael Nieschmidt and his firm, Nieschmidt Law Office. Obuskovic retained a series of attorneys and then dismissed them because she was not satisfied with their services. On September 21, 2015, the day of the divorce trial, Obuskovic filed objections with the Superior Court claiming that she could no longer attend any hearings due to her anxiety and because she was no longer represented by counsel. On September 29, 2015, Judge Fitzpatrick informed Obuskovic that the trial had proceeded without her.

On October 15, 2015, Obuskovic filed a pro se civil rights complaint in the United States District Court for the District of New Jersey against Parnett, Judge Fitzpatrick and the Superior Court, Wood and

¹This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

her firm Altman Legband, WOW Entertainment,²³ and Nieschmidt and his firm. She alleged a violation of her due process rights and asserted a claim of intentional infliction of emotional distress. Obuskovic specifically alleged that Parnett obtained a home equity loan of \$58,000 and, at Wood's direction, distributed this money for attorney fees and mediation costs. She alleged that Judge Fitzpatrick conspired with Wood and the other defendants to deprive her of any of this money, and that the defendants interfered with her right to independent legal representation by denying her funds to retain counsel. Obuskovic further alleged that Wood deprived her of access to WOW Entertainment's assets; and that Parnett was being coerced by Wood to cause her (Obuskovic) mental anguish and extreme emotional distress, all in an attempt to drive her to suicide. Obuskovic sought money damages from each defendant in the amount of \$250,000.00, and an order enjoining the defendants from continuing to cause her emotional distress.

The defendants moved to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1), and Obuskovic moved for leave to file an amended complaint. In an order filed on October 31, 2016, the District Court granted the defendants' motions but granted leave to Obuskovic to amend her complaint, see

²³ The assets of WOW Entertainment, Inc., the couple's company, were in dispute in the divorce proceedings.

Obuskovic v. Wood, 2016 WL 6471023 (D.N.J. Oct. 31, 2016). The Court dismissed all claims against the Superior Court of New Jersey under the Eleventh Amendment, and all claims against Judge Fitzpatrick pursuant to the doctrine of judicial immunity.⁴ With respect to Obuskovic's § 1983 claim, the Court determined that the allegations in the complaint did not plausibly state an agreement among the defendants to conspire against Obuskovic in connection with the matrimonial proceedings in state court.

Obuskovic then filed an amended complaint, naming as defendants only Parnett, Wood and her firm Altman Legband, WOW Entertainment, and Nieschmidt and his firm. She alleged a violation of her right to due process and equal protection; a conspiracy to violate 26 U.S.C. § 529; and intentional infliction of emotional distress. Obuskovic's § 1983 due process and equal protection claims again were based on an alleged conspiracy between the defendants and Judge Fitzpatrick, although Judge Fitzpatrick was no longer named as a defendant. With respect to § 529, Obuskovic alleged that the defendants had improperly refused to transfer the college fund account to her, which the couple's son needed because he was starting college.

The defendants moved to dismiss the

⁴ The Eleventh Amendment immunizes States and their agencies from suits for damages in federal court, see Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 100- 02 (1984). In addition, a judge is absolutely immunized from a suit for money damages under § 1983 when she acts in a judicial capacity, Pierson v. Ray, 386 U.S. 547 (1967).

amended complaint. In an order filed on August 9, 2017, the District Court again granted the defendants' motions but again granted leave to Obuskovic to amend her complaint, see Obuskovic v. Wood, 2017 WL3429386 (D.N.J. Aug. 9, 2017). The Court concluded that the allegations in the amended complaint did not plausibly state an agreement between the defendants and Judge Fitzpatrick to conspire against Obuskovic in violation of her federal constitutional rights; and that § 529 of the Internal Revenue Code did not provide her any basis for relief from state court equitable distribution orders in federal court. The Court declined to exercise supplemental jurisdiction over the intentional infliction of emotional distress claim.

Obuskovic then filed a second amended complaint, which was essentially the same as her first amended complaint, although she added a claim under 42 U.S.C. § 1985(3) and a claim for common law fraud. The defendants moved to dismiss the second amended complaint. In an order entered on May 16, 2018, the District Court granted the defendants' motions and dismissed Obuskovic's second amended complaint with prejudice.⁵ See Obuskovic v. Wood, 2018 WL 2234898 (D.N.J. May 16, 2018).

Obuskovic appeals. We have jurisdiction under 28 U.S.C. § 1291. In her Informal Brief, Obuskovic has argued generally that the District Court incorrectly decided the claims she raised in

⁵ Meanwhile, a Final Judgment of Divorce was entered by the state court on March 2, 2018.

her amended complaints, and she has added a new claim on appeal for “slavery” and “peonage.” Specifically, she contends that she was “forced” to represent herself as a result of the defendants’ actions. We exercise plenary review over a Rule 12(b)(6) dismissal. See *Weston v. Pennsylvania*, 251 F.3d 420, 425 (3d Cir.2001). We “are free” to affirm the judgment “on any basis which finds support in the record.” *Bernitsky v. United States*, 620 F.2d 948, 950 (3d Cir. 1980).

We will affirm. A Rule 12(b)(6) motion tests the sufficiency of the factual allegations contained in the complaint. See *Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3d Cir. 1993). A motion to dismiss should be granted if the plaintiff is unable to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). We look for “enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary elements of” a claim for relief. *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (quoting *Twombly*, 550 U.S. at 556). Section 1983 provides a cause of action to redress federal constitutional violations caused by officials acting under color of state law. *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 941 (1982). Here, Obuskovic alleges a deprivation of her property in violation of due process, Appellant’s Informal Brief, at 24-25, but the defendants named in both amended complaints are private citizens and not state actors. Liability would attach if a private

party conspired with a state actor, Dennis v. Sparks, 449 U.S. 24, 27-28, but the District Court properly concluded that Obuskovic's vague allegations of a conspiracy involving the defendants and Judge Fitzpatrick to defraud her of her share of the marital property did not satisfy the plausibility standard of Rule 12(b)(6). "To properly plead an unconstitutional conspiracy, a plaintiff must assert facts from which a conspiratorial agreement can be inferred." *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 178 (3d Cir. 2010) (citing *D.R. v. Middle Bucks Area Vocational Technical School*, 972 F.2d 1364, 1377 (3d Cir. 1992)). The amended complaints allege nothing more than Obuskovic's dissatisfaction with the rulings of the matrimonial court. "[M]erely resorting to the courts and being on the winning side of a lawsuit does not make [the winning] party a co-conspirator or joint actor with the judge." *Id.* (quoting *Dennis*, 449 U.S. at 28). Moreover, although "[f]ees in family actions are normally awarded to permit parties with unequal financial positions to litigate (in good faith) on an equal footing," *Kelly v. Kelly*, 620 A.2d 1088, 1090 (N.J. 1992), notably, Obuskovic was represented by numerous attorneys; her assertion that she was "forced" to proceed pro se at the divorce trial is not plausible.

Section 1985(3) of title 42 provides a cause of action where a conspiracy, even by private actors, violates a plaintiff's federal rights. See *Wilson v. Rackmill*, 878 F.2d 772, 775 (3d Cir. 1989). It requires a plaintiff to allege that invidious racial or otherwise class-based discriminatory animus lay behind the defendants' actions, and she must set

forth facts from which a conspiratorial agreement between the defendants can be inferred. See *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 267-68 (1993).⁶ Even if Obuskovic is a member of a protected class, her conclusory statements of a conspiracy to deprive her of her constitutional rights in connection with the divorce proceedings are insufficient under *Twombly*, 550 U.S. at 570, to state a section 1985(3) claim. Obuskovic alleged no facts in her two amended complaints from which a conspiratorial agreement can be inferred.

Last, the District Court's decision not to exercise supplemental jurisdiction is reviewed for an abuse of discretion. See *Hudson United Bank v. LiTenda Mortgage Corp.*, 142 F.3d 151 (3d Cir. 1998). A District Court has discretion to "decline to exercise supplemental jurisdiction over a claim ... if ... (3) the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c) (3). Because the Court dismissed all claims over which it had original jurisdiction, it properly declined to exercise supplemental jurisdiction over Obuskovic's intentional infliction of emotional

⁶ The District Court noted further that, in *Brown v. Philip Morris Inc.*, 250 F.3d 789, 805 (3d Cir. 2001), we stated with respect to private conspiracies, that the United States Supreme Court has recognized only two protected rights under § 1985(3): the right to be free from involuntary servitude and the right to interstate travel. It appears that this reference has given rise to Obuskovic's new claim on appeal of "slavery" and "peonage." Although we generally do not consider arguments that were not raised before the District Court, see *Appalachian States Low-Level Radioactive Waste Commission v. Pena*, 126 F.3d 193, 196 (3d Cir. 1997), Obuskovic's assertion that she was "forced" to proceed pro se at the divorce trial is not plausible.

distress and fraud claims.⁷

For the foregoing reasons, we will affirm the orders of the District Court dismissing Obuskovic's amended complaints.

⁷ Section 1367(d) provides for tolling of the limitation periods where appropriate. 28 U.S.C. § 1367(d).

Appendix 2

Civil Action No. 15-7520 (MAS) (TJB)

In the

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

NEVENKA OBUSKOVIC,
Plaintiff,

v.

KATHLEEN L. WOOD; ALTMAN, LEGBAND AND
MAYRIDES; JOEY H. PARNETT; WOW
ENTERTAINMENT INC.; MICHAEL
NIESCHMIDT; NIESCHMIDT LAW OFFICE,
Defendants.

Dated: May 16, 2018

MEMORANDUM OPINION
SHIPP, District Judge

This matter comes before the Court on three separate motions to dismiss Plaintiff Nevenka Obuskovic's ("Plaintiff") Second Amended Complaint filed by Defendants (1) Kathleen L. Wood ("Wood") and her law firm, Altman Legband and Mayrides ("Altman") (ECF No. 66); (2) Joey Parnett ("Parnett") and WOW Entertainment, Inc. ("WOW") (ECF No. 67); and (3) Michael Nieschmidt ("Nieschmidt") and his law firm, Nieschmidt Law Office (ECF No. 68) (collectively, "Defendants"). Plaintiff opposed the motions (ECF No. 75), and Defendants replied (ECF Nos. 76, 77, 78). Plaintiff also filed additional correspondence with the Court providing supplemental information about the ongoing divorce proceedings, including additional allegations about how her rights have been violated, and attached documents relate to the divorce. (ECF Nos. 85, 88.) Defendants objected to Plaintiff's correspondence, asked the Court to disregard the "nonsensical" and "unsupported" allegations, and specifically denied all of Plaintiff's claims set forth in the correspondence. (ECF Nos. 86, 89.)

The Court has carefully reviewed the parties' submissions and decides the matter without oral argument pursuant to Local Civil Rule 78.1. After careful consideration of the submissions, Defendants' Motions to Dismiss are granted.

I. Background

The full factual background has been recited in detail in the Court's prior decisions. (Oct. 31, 2016

Mem. Op., ECF No. 36; Aug. 9, 2017 Letter Op., ECF No. 60.) Essentially, this matter stems from Plaintiffs divorce from her now ex-husband, Parnett¹. The crux of Plaintiff's Second Amended Complaint is that Parnett and his attorneys deprived Plaintiff of income, assets, marital property, and her right to be heard during the divorce proceedings². Plaintiffs Second Amended Complaint also brings claims against: Wood, Woods' law firm, Altman; WOW, the entity owned by Plaintiffs husband; Nieschmidt, Parnett's attorney in this matter, who also assisted in Parnett's representation in the divorce proceedings; and Mr. Nieschmidt 's law office. By way of procedural background, Plaintiff filed an initial complaint on October 15, 2015³. (ECF No. 1.) All Defendants moved to dismiss and, on October 31, 2016, the Court granted the motions⁴

¹A Final Judgment of Divorce was entered by the state court on March 2, 2018. (Mar. 12, 2018 Correspondence, ECF No. 87.)

²Although not a defendant in this action, several of Plaintiff's allegations relate to the conduct of Judge Fitzpatrick- the judge presiding over Plaintiffs divorce. Judge Fitzpatrick was previously named as a Defendant but was dismissed by the Court in a prior decision. (Oct. 31, 2016 Mem. Op. 11-12.)

³The Plaintiffs initial complaint, filed against the current Defendants, Judge Fitzpatrick, and the Superior Court of New Jersey, set forth two causes of action: (i) violation of her due process rights; and (ii) intentional infliction of emotional distress during the divorce proceedings. (Compl.,r,i 108-11, 129, ECF No. 1.)

⁴The Court found that sovereign immunity barred the claim against the State of New Jersey and judicial immunity barred the claim against Judge Fitzpatrick. The Court further found that Plaintiff did not adequately plead the existence of a conspiracy between the private parties and Judge Fitzpatrick. Finally, the Court declined to exercise supplemental

dismissed the Complaint without prejudice, and provided Plaintiff an opportunity to amend. (ECF Nos. 36, 37). On November 30, 2016, Plaintiff filed an Amended Complaint⁵ (ECF No. 38) and all Defendants again moved to dismiss (ECF Nos. 45, 46, 47, 48, 49). The Court dismissed the Amended Complaint, without prejudice, and gave Plaintiff a final opportunity to amend. Plaintiff filed a Second Amended Complaint⁶ on September 8, 2017. (ECF No. 62.) All Defendants again move to dismiss and ask that the dismissal be with prejudice. (ECF Nos. 66, 67, 68.)

II. Legal Standard

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief, 'in order to' give the defendant fair notice of what the claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). In

jurisdiction over the state law claim. (Oct. 31, 2016 Mem. Op.)

⁵Plaintiff's Amended Complaint set forth the following causes of action: (i) due process and equal protection violations under 42 U.S.C. § 1983; (ii) conspiracy to violate 26 U.S.C. § 529; and (iii) intentional infliction of emotional distress and outrage through violations of the Commerce Clause of the United States Constitution. (Am. Comp. 129-71, ECF No. 38.)

⁶The Court found that Plaintiff did not adequately plead a agreement between Defendants and Judge Fitzpatrick to state a claim under Section 1983, Plaintiff failed to establish a viable claim under the qualified tuition program, and Plaintiff's fourth count failed as a commerce clause claim or, to the extent it was a state law claim, the Court declined to exercise jurisdiction. (ECF No. 60.)

addressing a motion to dismiss under Rule 12(b)(6), the Court must accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008). While a complaint does not need to contain detailed factual allegations to withstand a Rule 12(b)(6) motion to dismiss, a pleader must "provide the 'grounds' of [her] 'entitle[ment] to relief,' [which] requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 545; *see also* Fed. R. Civ. P. 8(a)(2)." Whereas here, a plaintiff is proceeding pro se, the complaint is 'to be liberally construed,' and, 'however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Walsh v. Household Fin. Corp. Ill*, No. 15-4112, 2016 WL 6826161, at *2 (D.N.J. Nov. 17, 2016) (quoting *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007)). "While a litigant's pro se status requires a court to construe the allegations in the complaint liberally, a litigant is not absolved from complying with *Twombly* and the federal pleading requirements merely because s/he proceeds pro se." *Id.* (quoting *Thakar v. Tan*, 372 F. App'x 325, 328 (3d Cir. 2010)).

Discussion

Plaintiffs Second Amended Complaint pleads five counts: (1) violation of due process under 42 U.S.C. § 1983, and the Fifth and Fourteenth Amendments of the United States Constitution (2)

conspiracy to violate 42 U.S.C. §1985(3) ; (3) conspiracy to violate 42 U.S.C. § 1985(3) and 42 U.S.C. § 1983; (4) "conspiracy to violate 42 U.S.C. §1985(3) and 42 U.S.C. §1983 (denial of substantive and procedural due process, denial of equal protection, and malicious abuse of process)"; and (5) deceit. (Sec. Am. Comp. 1 n185, ECF No. 62.)

Sufficiency of the Pleadings

The Court finds that Plaintiffs Second Amended Complaint fails, in many respects, to meet the notice pleading requirements of Federal Rule of Civil Procedure 8(a). Plaintiff s Second Amended Complaint brings all counts against all Defendants, but does not set forth factual allegations to explain how certain defendants are implicated in each claim, thereby failing to satisfy Rule 8(a). *See Galicki v. New Jersey*, No. 14-169, 2015 WL 3970297, at *4 (D.N.J. June 29, 2015). For example, the factual allegations relating to WOW, Nieschmidt, and the Nieschmidt Law Office, specifically lack a basis to hold any of these Defendants liable for the causes of action et forth. Outside of conclusory statements that Nieschmidt was involved in a conspiracy against Plaintiff (Sec. Am. Compl. 149, 175, 183), Plaintiff only alleges that Nieschmidt was involved in the representation of Parnett in the divorce proceedings, was paid from the home equity line (*id.* tjj 14, 69), Plaintiff notified Nieschmidt that she would file a federal lawsuit if Parnett did not settle (*id.* 99), and Nieschmidt "in concert" with Wood and Parnett, made false representations to mislead Judge Fitzpatrick (*id.* tjj 183). The allegations regarding Mr. Nieschmidt's law firm are even scarcer

(see, e.g., *id.* 7, 15) and the allegations about WOW essentially amount to claims that Parnett and his counsel in the divorce, "drained" assets from the entity by paying for the costs of the divorce (*id.* **tjjtjj** 69, 105, 128, 142, 168). These allegations do not sufficiently present facts to support any of the constitutional causes of action against these Defendants.

In addition, the allegations are often conclusory and lack specificity. For example, although Plaintiff refers to "conspiracies" throughout her Second Amended Complaint, it is often not clear what the conspiracies were and which Defendants are alleged to have participated in each of the conspiracies. (See, e.g., Sec. Am. Compl. **tjj** 150, 151, 152, 160, 161) (referring to non-specific conspiracies between "Defendants").) These allegations are clearly insufficient under the pleading requirements of Federal Rule of Civil Procedures 8(a).

Plaintiff's Substantive Causes of Action

In addition to Plaintiff's failure to plead a plausible cause of action pursuant to the Federal Rules, Plaintiff's federal causes of action fail as a matter of law, and therefore the Second Amended Complaint must be dismissed. Counts I through IV of the Second Amended Complaint are premised on 42 U.S.C. § 1983 ("Section 1983") and/or 42 U.S.C. § 1985 ("Section 1985")⁷. As discussed below, none of

⁷The remainder of Plaintiff's Second Amended Complaint is based on state law. Count V is a fraud claim. (Pl.'s Opp'n Br. 29, ECF No. 75.) In addition, although not

these claims are viable.

Section 1983

In order to recover under Section 1983, Plaintiff must establish that Defendants: (i) were acting under color of state law; and (2) deprived her of rights, privileges, or immunities secured by the Constitution or laws of the United States. *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1141 (3d Cir. 1995); *Great W Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175-76 (3d Cir. 2010) ("To prevail on a [Section] 1983 claim a plaintiff must allege that the defendant acted under color of state law, in other words, that there was state action.").

Plaintiff's claims fail on the first element-state action. All Defendants here are private actors. As previously noted by the Court, a private party can act under color of law for purposes of Section 1983 if he or she conspires with a judge in connection with an official judicial act⁸ (Oct. 31, 2016 Mem. Op. 12.); *see*

identified as a Count in the Second Amended Complaint, it appears that Plaintiff is alleging intentional infliction of emotional distress. (*See, e.g.*, Sec. Am. Compl. ¶¶ 152, 155, 156; Wood's Moving Br. 26-28, ECF No. 66-1; Pl.'s Opp'n Br. 31-38.) As discussed below, the Court declines to exercise jurisdiction over the state law claims. The Court's discussion of the merits, therefore, is limited to the federal claims.

⁸ Plaintiff's Second Amended Complaint does not bring any claims against Judge Fitzpatrick, as the Court previously determined that the doctrine of judicial immunity would apply to any claims relating to Judge Fitzpatrick's between Attorney Wood and her client (Plaintiff's ex-husband), Mr. Parnett. (*See, e.g.*, Sec. Am. Compl. ¶¶ 145, 171 ("Defendants Wood and

also *Hauptmann v. Wilentz*, 570 F. Supp. 351, 381 (D.N.J. 1983) Here, however, as with each prior version of Plaintiff's Complaint, Plaintiff failed to adequately plead an agreement between Defendants and Judge Fitzpatrick. Although Plaintiff, in conclusory fashion, repeatedly claims there was a "conspiracy" (*see* Sec. Am. Comp! 43, 148, 149, 165), Plaintiff does not plead any factual allegations pertaining to the purported agreement and, in fact, pleads factual allegations that contradict any assertion that Defendants were acting in concert with Judge Fitzpatrick. For example, Plaintiff alleges that Defendants: (i) were actively deceiving Judge Fitzpatrick; (ii) lied to Judge Fitzpatrick (*id.* 62, 125); and (iii) made statements "with the purpose of inducing another (Judge Fitzpatrick) to act on the false representations and misrepresentations" (*id.* 184). Plaintiff's Second Amended Complaint, therefore, does not adequately allege a conspiracy between the private Defendants and Judge Fitzpatrick to plead state action for the Section

Parnett conspired in depriving me of my property [,] Due Process[,] and Equal Protection [r]ights."); (*id.* ii159 "Defendant Parnett and Kate Wood conspired to deprive Plaintiff of her half of the monies ... ").) To the extent any of Plaintiff's 1983 claims are premised on these "conspiracies," Plaintiff has failed to plead state action and the claims fail as a matter of law. *See Polk Cty. v. Dodson*, 454 U.S. 312, 318-19 (1981) ("[T]he Courts of Appeals are agreed that a lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law' within the meaning of § 1983."); *Ange lico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 277-78 (3d Cir. 1999) ("Attorneys performing their traditional functions will not be considered state actors solely on the basis of their position as officers of the court."), judicial capacity. (Oct. 31, 2016 Mem. Op. 12.)

1983.⁹ Plaintiffs' Section 1983 claims contained in Count I, III, and IV, accordingly are dismissed.

Section 1985

Plaintiff includes a claim under Section 1985(3) in three separate counts-Counts II, III, and IV.¹⁰ Although these counts appear duplicative, factually it appears that Count II relates to the use of force. It also appears that Plaintiff is attempting to allege a conspiracy between Attorney Wood and her client (Plaintiff's ex-husband), Mr. Parnett. (*See, e.g.*, Sec. Am. Compl. ¶¶ 145, 171 ("Defendants Wood and Parnett conspired in depriving me of my property [.] Due Process[,] and Equal Protection [r]ights."); (*id.* ¶ 159 "Defendant Parnett and Kate Wood conspired to deprive Plaintiff of her half of the monies ... ").) To the extent any of Plaintiff's 1983 claims are premised on these "conspiracies," Plaintiff has failed to plead state action and the claims fail as a matter of law. *See Polk Cty. v. Dodson*, 454 U.S. 312, 318-19 (1981)

⁹It also appears that Plaintiff is attempting to allege a conspiracy

¹⁰Count II is for "42 USC §1985(3) Conspiracy to Violate Plaintiffs Rights"; Count III is for "Conspiracy to Violate Rights 42 U.S.C. [S]ection 1985(3) and 42 USC Section 1983"; and Count VI is "Conspiracy to Violate Rights 42 USC 1985(3) and 42 USC Section 1983 (Denial of Substantive and Procedural Due Process, Denial of Equal Protection Under the Law, Malicious Abuse of Process)." mortgage against the marital residence to pay legal fees related to the divorce, Count III relates to a college fund for Plaintiff's 18-year-old son, and Count IV relates to Judge Fitzpatrick's orders and Wood and Nieschmidt's representation of Parnett in the divorce action (*Id.* ¶¶ 165-76.)

("[T]he Courts of Appeals are agreed that a lawyer representing a client is not, by virtue of being an officer of the court, a state actor ' under color of state law ' within the meaning of § 1983."); *Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 277-78 (3d Cir. 1999) ("Attorneys performing their traditional functions will not be considered state actors solely on the basis of their position as officers of the court.").

Section 1985 makes it unlawful for "two or more persons (to) conspire for the purpose of depriving any person of the equal protection of the laws, or the equal privileges and immunities under the laws." 42 U.S.C. § 1985(3). Section 1985 can apply to private conspiracies,¹¹ *Griffin v. Breckenridge*, 403 U.S. 88, 101 (1971); however, Section 1985(3) "does not itself create any substantive rights." *Park v. Tsiavos*, 679 F. App'x 120, 124 (3d Cir. 2017) (internal citation omitted). "[A] private conspiracy claim must rely on the violation of a right 'constitutionally protected against private interference.'" *Id.* (quoting *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 274 (1993)). "[T]he Supreme Court has recognized only two rights protected from private conspiracy under § 1985(3): 'the right to be free from involuntary servitude and the right to interstate travel.'" *Id.* (quoting *Brown v. Phillip Morris, Inc.*, 250 F.3d 789, 805 (3d Cir. 2001)). Here, Plaintiff has not identified any right protected from private action.

¹¹As the Court has already determined that Plaintiff failed to sufficiently allege state action, the Court focuses the Section 1985 analysis on private action.

Plaintiffs allegations essentially stem from the Fourteenth Amendment. Plaintiff alleges that Defendants deprived her of: property rights (*see, e.g.*, Sec. Am. Compl. ¶¶ 143, 145, 149, 153); equal protection of the law (*id.* ¶¶ 141, 171); and substantial and procedural due process (*id.* ¶¶ 139, 145, 148, 160, 165, 174, 179), which resulted in deprivation of her "right to counsel" (*id.* ¶¶ 147, 173). In addition, Plaintiff claims, without any supporting factual allegations, that Defendants discriminated against her "on the basis of gender, nationality, and marital status, pursuant to the Fourteenth Amendment Equal Protection Clause." (*Id.* at 151.) "[I]t is 'firmly embedded in our constitutional law' that the equal protection guaranteed by the Fourteenth Amendment erects no shield against merely private conduct, however discriminatory or wrongful." *Park*, 679 F. App'x at 124 (quoting *United States v. Morrison*, 529 U.S. 598, 21 (2000)). Plaintiff, therefore, has failed to state a claim against private actors on any of these cases.¹²

¹²Plaintiff also alleges that it was malicious abuse of process for Judge Fitzpatrick to enter an "unappealable order which contained false findings that ignored [Plaintiffs] objections ... [and] violated [her] constitutional rights." (Sec. Am. Compl. ¶¶ 144, 170; *see also id.* ¶¶ 139, 165.) Judge Fitzpatrick, however, is not a defendant and, as discussed above, Plaintiff has failed to adequately allege a conspiracy with the private defendants. To the extent this claim is intended to be asserted directly against the private Defendants, the Second Amended Complaint fails to adequately plead such a claim. In addition, as Plaintiff does identify a right protected from private intrusion, this claim also must be dismissed.

This was Plaintiffs third attempt to state a plausible federal cause of action. The Court previously indicated, when dismissing Plaintiffs Amended Complaint, that it would provide Plaintiff with one final opportunity to amend. As the Court finds that Plaintiff has again failed to plead a federal claim, and any further amendment would be futile, the Court dismisses Plaintiffs federal causes of action with prejudice.

State Law Claim(s)

Count Five of Plaintiffs Second Amended Complaint states a claim for "deceit," which is a claim of common law fraud. (Pl.'s Opp'n Br. 29.) In addition, although not specifically listed as a count, Plaintiff believes that she has pled an intentional infliction of emotional distress claim. (Id at 31-38.) As the Court has granted Defendants' Motion to Dismiss with regard to Plaintiffs federal claims, the Court declines to exercise jurisdiction over any remaining state law claims. The state law claims , therefore, are dismissed without prejudice.

Conclusion

For the reasons set forth above, Defendants' Motions to Dismiss are granted. The federal claims set forth in Counts One, Two, Three, and Four, are dismissed with prejudice. The Court declines to exercise jurisdiction over the state law claim(s) and dismisses any state law claim(s) without prejudice.¹³ An Order consistent with this Memorandum Opinion

¹³Plaintiff must comply with the state court filing deadlines should she choose to file her remaining claims in state court.

will be entered on the docket.

s/ Michael A. Shipp

MICHAEL A. SHIPP

UNITED STATES DISTRICT JUDGE

Appendix 3

Civil Action No. 15-7520 (MAS) (TJB)

In the

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

NEVENKA OBUSKOVIC,
Plaintiff,

v.

KATHLEEN WOOD, et al.,
Defendants.

Filed August 7, 2017

ORDER

This matter comes before the Court on four separation motions to dismiss Plaintiff Nevenka Obuskovic's ("Plaintiff") Amended Complaint, which were filed by: (1) Defendants Kathleen Wood and Altman, Legband & Mayrides (ECF No. 45); (2) Defendants Michael Nieschmidt and Nieschmidt Law Office (ECF No. 46); (3) Joey Parnett and Wow Entertainment, Inc. (ECF No. 47); and (4) a second Motion to Dismiss filed by Defendants Kathleen Wood and Altman, Legband & Mayrides (ECF No. 49)¹ (collectively, "Defendants"). Plaintiff filed opposition (ECF No. 50), and Defendants replied (ECF Nos. 55, 56, 57, 59). The Court has carefully considered the parties submissions and decides the matter without oral argument pursuant to Local Civil Rule

78.1. For the reasons set forth in the accompanying Letter Opinion, and good cause shown,

IT IS on this Day of August 2017, **ORDERED** that:

1. Defendants Kathleen Wood and Altman, Legband & Mayrides's first Motion to Dismiss (ECF No. 45) is terminated.
2. Defendants' Motions to Dismiss (ECF Nos. 46, 47, 49) are GRANTED.

¹It appears that the two Motions to Dismiss filed by Defendants Kathleen Wood and Altman, Legband & Mayrides present the same arguments and that they differ only in the attached exhibits. Accordingly, the Court terminates the first Motion (ECF No. 45) and considers only the more recently filed Motion (ECF No. 49).

Plaintiffs Amended Complaint is dismissed on all counts without prejudice.

78 Plaintiff may have one **final opportunity** to file an amended complaint by **September 8, 2017**. If Plaintiff does not file an amended complaint by this deadline, the Court will dismiss Plaintiffs federal claims with prejudice.

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UNITED STATES DISTRICT JUDGE

LETTER OPINION

August 9, 2017

Dear Ms. Obuskovic and Counsel:

This matter comes before the Court on four separation motions to dismiss Plaintiff Nevenka Obuskovic's ("Plaintiff") Amended Complaint, which were filed by: (1) Defendants Kathleen Wood and Altman, Legband & Mayrides (ECF No. 45); (2) Defendants Michael Nieschmidt and Nieschmidt Law Office (ECF No. 46); (3) Joey Parnett and Wow Entertainment, Inc. (ECF No. 47); and (4) a second Motion to Dismiss filed by Defendants Kathleen Wood and Altman, Legband & Mayrides (ECF No. 49)¹ (collectively, "Defendants"). Plaintiff filed opposition (ECF No. 50), and Defendants replied (ECF Nos. 55, 56, 57, 59). The Court has reviewed the parties' submissions and decides the matter without oral argument pursuant to Local Civil Rule 78.1. After careful consideration of the submissions, Defendants' Motions to Dismiss are GRANTED.

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what

¹It appears that the two Motions to Dismiss filed by Defendants Kathleen Wood and Altman, Legband & Mayrides present the same arguments and that they differ only in the attached exhibits. Accordingly, the Court terminates the first Motion (ECF No. 45), and considers only the more recently filed Motion (ECF No. 49).

the ... claim is and the grounds upon which it rests.' " *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). In addressing a motion to dismiss under Rule 12(b)(6), the Court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008). While a complaint does not need to contain detailed factual allegations to withstand a Rule 12(b)(6) motion to dismiss, a pleader must "provide the 'grounds' of[her] 'entitle[ment] to relief,' [which] requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 545; *see also* Fed. R. Civ. P. 8(a)(2).

"Where, as here, a plaintiff is proceeding prose, the complaints 'to be liberally construed,' and, 'however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Walsh v. Household Fin. Corp. III*, No. 15-4112, 2016 WL 6826161, at *2 (D.N.J. Nov. 17, 2016) (quoting *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007)). " While a litigant's pro se status requires a court to construe the allegations in the complaint liberally, a litigant is not absolved from complying with *Twombly* and the federal pleading requirements merely because s/he proceeds prose." *Id.* (quoting *Thakar v. Tan*, 372 F. App'x 325, 328 (3d Cir. 2010)).

Plaintiff filed her original two-count

Complaint pro se on October 15, 2015, alleging that Defendants, the Honorable Catherine Fitzpatrick, and the Superior Court of New Jersey violated Plaintiff's due process rights and intentionally inflicted emotional distress upon Plaintiff during divorce proceedings in state court.² (Comp!., r. 108-11, 129, ECF No. 1.) The Court dismissed all claims against the Superior Court of New Jersey under Eleventh Amendment sovereign immunity and all claims against Judge Fitzpatrick under judicial immunity. (See Mem. Op. 11-12, ECF No. 36.) With respect to Plaintiff's due process claims under 42 U.S.C. § 1983, and the Fifth and Fourteenth Amendments of the United States Constitution, the Court determined that Plaintiff's allegations did not adequately plead an agreement between Defendants and Judge Fitzpatrick to conspire against Plaintiff. (*Id.* at 12-15.) Finally, the Court dismissed Plaintiff's pendent state tort claims for lack of jurisdiction. (*Id.* at 15.)

Plaintiff's Amended Complaint no longer brings claims against the Superior Court of New Jersey or Judge Fitzpatrick, and pleads four counts: (1) violation of due process under 42 U.S.C. § 1983, and the Fifth and Fourteenth Amendments of the United States Constitution; (2) violation of equal protection under 42 U.S.C. § 1983, and the

²As Plaintiff did not add any allegations to the Amended Complaint that are material to the Court's disposition, the Court does not set forth the allegations in the Amended Complaint. A full summary of the allegations is set forth in the Court's prior decision on Defendants' prior motions to dismiss. (See Mem. Op. 2-5, ECF No. ECF No. 36.)

Fourteenth Amendment of the United States Constitution; (3) conspiracy to violate 26 U.S.C. § 529; and (4) intentional infliction of emotional distress/tort of outrage through violations of the Commerce Clause of the United States Constitution. (Am. Compl., r, r 129-71, ECF No. 38.) Plaintiffs' claims do not survive Defendants' Motions to Dismiss.

As to Counts One and Two, Plaintiffs' due process and equal protection claims are based on the alleged conspiracy between Defendants and Judge Fitzpatrick. Plaintiff, however, has failed to address the deficiencies set forth by the Court in its prior decision, and does not adequately plead an agreement between Defendants and Judge Fitzpatrick. (See Mem. Op. 12-15.) To the contrary, Plaintiff alleges that Defendants "deceived" Judge Fitzpatrick and that they made misrepresentations to the court. (See, e.g., Am. Compl., r, r 42, 62.) Accordingly, Plaintiff does not adequately plead that Defendants were acting under color of state law. See *Great W Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175-76 (3d Cir. 2010) ("To prevail on a [Section] 1983 claim, a plaintiff must allege that the defendant acted under color of state law, in other words, that there was state action."). Counts One and Two, therefore, are dismissed.

Next, the Court considers Count Three-- conspiracy to violate 26 U.S.C. § 529. According to the Amended Complaint, Defendants have improperly refused to transfer Plaintiff's son's account, which contains college funds, to Plaintiff's son. (Am. Compl., i, i 149-59.) 26 U.S.C. § 529, however, is a provision that defines "qualified tuition program" for the

purposes of the Internal Revenue Code. Accordingly, Plaintiff has failed to establish any viable claim under the statute and the Court, therefore, dismisses Count Three.

As to Count Four- intentional infliction of emotional distress/tort of outrage through violations of the Commerce Clause- the Court similarly finds that Plaintiff has failed to state a claim. The Commerce Clause, which appears in Article I, Section 8, of the United States Constitution, states that the United States Congress shall have the power "[t]o regulate Commerce with foreign Nations, and among the several States , and wit the Indian Tribes." As the Commerce Clause regulates Congress, Plaintiff has failed to state a claim against Defendants under the Commerce Clause. To the extent Count Four is brought under state law, the Court declines to exercise supplemental jurisdiction. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) ("[I]f the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well."). Accordingly, Count Four is dismissed.

For the foregoing reasons, the Court GRANTS Defendants ' Motions to Dismiss without prejudice. The Court will provide Plaintiff one **final opportunity** to amend her pleading and will set forth the deadline to file a second amended complaint in the accompanying order.

/s Michael A Shipp

MICHAEL A. SHIPP