APPENDICES:

Appendix A – Per Curiam of the United States Court of Appeals for the Fourth Circuit; Unpublished opinion, Notice of Judgment, Judgment, and Mandate:

18-1102

Dora L. Adkins
P. O. Box 3825
Merrifield, VA 22116

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517
www.ca4.uscourts.gov

August 9, 2018

NOTICE

No. 18-1102, Dora L. Adkins v. Whole Foods Market Group, Inc.
1:17-cv-01023-AJT-JFA

TO: Dora L. Adkins

In light of this court's July 30, 2018, decision affirming in part, vacating in part, and remanding this case for further proceedings, the court will take no action on your proposed supplemental informal reply brief. Enclosed for your review is an additional copy of the opinion, notice of judgment, and judgment order, filed July 30, 2018.

Emily Borneisen, Deputy Clerk
804-916-2704

Enclosure

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1102

DORA L. ADKINS,

Plaintiff - Appellant,

v.

WHOLE FOODS MARKET GROUP, INC.,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, District Judge. (1:17-cv-01023-AJT-JFA)

Submitted: July 26, 2018 Decided: July 30, 2018

Before GREGORY, Chief Judge, FLOYD, Circuit Judge, and HAMILTON, Senior Circuit Judge.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Dora L. Adkins, Appellant Pro Se. Christopher Eric Humber, OGLETREE DEAKINS NASH SMOAK & STEWART, PC, Washington, D.C., for Appellee.

PER CURIAM:

Dora L. Adkins appeals the district court's order dismissing her civil action against Whole Foods Market Group, Inc. ("Whole Foods") and imposing a prefiling injunction and order denying reconsideration. We have reviewed the record and find no reversible error in the court's dismissal of Adkins' action or its denial of relief on reconsideration. Therefore we affirm the denial of relief in these orders for the reasons stated by the district court. *See Adkins v. Whole Foods Market Group, Inc.*, No. 1:17-cv-01023-AJT-JFA (E.D. Va. January 10, 2018; January 23, 2018).

In its order dismissing Adkins' action the district court also granted Whole Foods' motion for sanctions, enjoining Adkins from filing any further claims against the company without leave of court. The court also expanded the scope of the prefiling injunction to prohibit Adkins from filing claims against any defendant in the Eastern District of Virginia. Federal courts may issue prefiling injunctions when vexatious conduct hinders the court from fulfilling its constitutional duty, and we review those prefiling injunctions for abuse of discretion. *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004). This "drastic remedy must be used sparingly, . . . consistent with constitutional guarantees of due process of law and access to the courts." *Id.* Thus,

> [i]n determining whether a prefiling injunction is substantively warranted, a court must weigh all the relevant circumstances, including (1) the party's history of litigation, in particular whether [s]he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions.

Id. at 818. Even where a prefiling injunction has been deemed warranted pursuant to a consideration of the above factors, "the judge must ensure that the injunction is narrowly tailored to fit the specific circumstances at issue. Absent this narrowing, a prefiling injunction . . . will not survive appellate review." *Id.* (citations omitted).

The district court appears to have considered some of the *Cromer* factors—discussing Adkins' history of filing vexations and duplicative lawsuits and her prior action against Whole Foods—but it is not clear the court considered the other specific factors, and it failed to properly limit the scope of the prefiling injunction to the specific circumstances. *Id.* We also note litigants are entitled to notice and opportunity to be heard prior to imposition of a prefiling injunction. *Id.* at 819-20. Thus, we vacate the portion of the court's order imposing the prefiling injunction and remand for proceedings consistent with this opinion.

Accordingly, we affirm in part, and vacate in part and remand for further proceedings. We grant Adkins' motions for leave to proceed in forma pauperis and to file a supplemental reply brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART,
VACATED IN PART, AND REMANDED

FILED: July 30, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1102, Dora L. Adkins v. Whole Foods Market Group, Inc.
1:17-cv-01023-AJT-JFA

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM

(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is $500 (effective 12/1/2013). The $5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed $.15 per page) for copying the necessary number of formal briefs and appendices. . (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
- Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			**Amount Requested:** _____			**Amount Allowed:** _____	
Document	**No. of Pages**		**No. of Copies**		**Page Cost (≤$.15)**	**Total Cost**	
	Requested	**Allowed** (court use only)	**Requested**	**Allowed** (court use only)		**Requested**	**Allowed** (court use only)
TOTAL BILL OF COSTS:						$0.00	$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than $.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ **Date:** _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ **Date:** _____

FILED: July 30, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1102
(1:17-cv-01023-AJT-JFA)

DORA L. ADKINS

Plaintiff - Appellant

v.

WHOLE FOODS MARKET GROUP, INC.

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed in part and vacated in part. This case is remanded to the district court for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: August 21, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1102
(1:17-cv-01023-AJT-JFA)

DORA L. ADKINS

Plaintiff - Appellant

v.

WHOLE FOODS MARKET GROUP, INC.

Defendant - Appellee

MANDATE

The judgment of this court, entered July 30, 2018, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

Appendix B - – In the U. S. District Court for the Eastern District of Virginia, Orders; Order, Dated, January 10, 2018 and Order, Dated, January 23, 2018:

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DORA L. ADKINS,

Plaintiff,

v.

WHOLE FOODS MARKET GROUP, INC.

Defendant.

Case Number 1:17-cv-1023 (AJT/JFA)

ORDER

On September 14, 2017, Plaintiff, appearing *pro se*, filed a Complaint [Doc. No. 1] against Defendant, which was not served on Defendant. On September 18, 2017, she filed her Amended Complaint [Doc. No. 3], which she served on Defendant, who on October 10, 2017, filed the pending Defendant Whole Food Market Group, Inc.'s Motion to Dismiss for Failure to State a Claim and for Sanctions [Doc. No. 6] (the "Motion"). In the Motion, Defendant seeks dismissal of Amended Complaint and also an injunction precluding the Plaintiff from filling any further actions against it in this Court without prior approval. For the reasons stated herein, the Motion is GRANTED, this action is DISMISSED and Plaintiff is ENJOINED from filing any further claims against Defendant or any other defendant in the Eastern District of Virginia without seeking and obtaining prior Court approval.

In the Motion, the Defendant references the Complaint as opposed to the Amended Complaint, and as an initial matter, Plaintiff contends that Defendant's Motion should be denied as moot because she filed an Amended Complaint which "superseded and/or replaced the Complaint." Pl.'s Opp'n Br. 1 [Doc. No.15]. Because the Plaintiff never served the original Complaint, Defendant filed the Motion *after* receiving service of the Amended Complaint (the

first and only Complaint that has been served on it) and the Amended Complaint is nearly identical to the original Complaint, Defendant's Motion is clearly directed to the operative Amended Complaint and will not be denied because of its references to the "Complaint."

In her Amended Complaint, Plaintiff alleges a wide range of complaints about her interactions and treatment by the Defendant, including, *inter alia*, that Defendant attempted "premeditated murder" after monitoring her food purchases. *See* Am. Compl. ¶ 16 (stating that an employee of Defendant followed her for "approximately 2-months to determine Plaintiff's intake of food purchased from the Hot Bar for attempted premeditation murder of the Plaintiff through [f]ood [p]oisoning"). Based on these allegations, Plaintiff alleges a breach of contract (Count I), gross negligence (Count II), and intentional infliction of emotional distress (Count III). Plaintiff has failed to allege facts that make any of these or any other cognizable claims plausible.

Although a *pro se* party's complaint must be construed liberally, it must nevertheless allege some comprehensible basis for the Court's jurisdiction. *See Giarratano v. Johnson*, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (a *pro se* complaint must provide "more than labels and conclusions") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (internal quotations omitted); *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990) ("The 'special judicial' with which a district court should view such *pro se* complaints does not transform the court into an advocate. Only those questions which are squarely presented to a court may be properly addressed."); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) ("Principles requiring generous construction of *pro se* complaints are not, however, without limits .... District judges ... cannot be expected to construct full blown claims from sentence fragments....").

With respect to her breach of contract claim (Count I),[1] Plaintiff fails to plead facts sufficient to make a plausible any claim that she and the Defendant entered into a contractual relationship as alleged or that Defendant breached any such contractual relationship. With respect to her gross negligence claim (Count II), [2] she has failed to allege facts that show the alleged degree of negligence. With respect to her intentional infliction of emotional distress claim (Count III),[3] Plaintiff fails to allege facts, as opposed to conclusions, that establish sufficiently outrageous conduct as well as other elements of that claim.

Although the Amended Compliant fails to state a claim with respect to the specifically alleged causes of action, because of the plaintiff's *pro se* status, the Court has also considered whether her factual allegations may plausibly sustain any other cause of action. In that regard, Plaintiff's only claim of actual injury arising from her consumption of allegedly contaminated food purchased from the Defendant is that on September 19, 2015, she became ill from eating "two duck wraps" and on September 3, 2017, she became ill after eating collard greens and some chicken that she had purchased earlier that day from the "hot bar." Am. Compl. ¶¶ 1, 10. The

[1] Under Virginia law, "'[t]he essential elements of a cause of action for breach of contract are: (1) a legal obligation of a defendant to the plaintiff, (2) a violation or breach of that right or duty, and (3) a consequential injury or damage to the plaintiff.'" *Albanese v. WCI Communities, Inc.*, 530 F.Supp.2d 757, 760 (E.D. Va. 2007) (quoting *Westminster Investing Corp. v. Lamps Unlimited, Inc.*, 237 Va. 543, 379 S.E.2d 316, 317 (Va.1989)).

[2] Under Virginia law, "[g]ross negligence is that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another." *Frazier v. City of Norfolk*, 234 Va. 388, 393 (1987) (internal quotation marks omitted). Moreover, allegations of willful or malicious conduct are held to even higher standards of proof than allegations of gross negligence. *See e.g., Doe v. Isaacs*, 265 Va. 531, 538 (2003) (holding that complete neglect of others' safety amounted to gross negligence, but was less than willful recklessness); Va. Code § 29.1–509(D) (permitting claims for "gross negligence or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity").

[3] Under Virginia law, to state a claim for intentional infliction of emotional distress, a plaintiff must allege: (1) the conduct was intentional or reckless; (2) the conduct was outrageous and intolerable; (3) the conduct caused emotional distress; and (4) the emotional distress was severe. *Russo v. White,* 241 Va. 23, 26, 400 S.E.2d 160, 162 (1991). The tort of IIED is not favored in Virginia. *Almy v. Grisham,* 639 S.E.2d 182, 187 (Va.2007). In order to qualify as actionable conduct for the purposes of an IIED claim, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Russo v. White,* 400 S.E.2d 160, 162 (Va.1991) (internal citation and quotation marks omitted).

"duck wrap" incident was the subject of prior litigation; and her claim based on that incident is barred under the doctrine of *res judicata. See Adkins v. Whole Foods Market Group, Inc.*, No. 1:16-cv-31-CMH-JFA, 2016 WL 1367170 (E.D. Va. Apr. 5, 2016) (granting Defendant's motion to dismiss for failure to state a claim), *appeal dismissed,* 655 F. App'x 977 (4th Cir. 2016), *cert. denied,* 137 S. Ct. 1579 (2017), *reh'g denied,* 137 S. Ct. 2235 (2017). With respect to the collard greens/chicken incident, the Plaintiff's claims are conclusory and do not satisfy the elements for the particular causes of action that she has alleged or any other cognizable claim. Moreover, regardless of the cause of action that she alleged or could have alleged, she does not allege any facts that would make plausible that she incurred the requisite damages necessary for the Court's subject matter jurisdiction. In that regard, although she asks for at least $25 million under each Count, and $25 million in punitive damages,[4] the only fact she has alleged to support her damages is an expense incurred of approximately $26.00 in compensatory damages. *See* Am. Compl. at 36. Overall, the Plaintiff has failed to allege facts that make plausible that she has sustained damages in an amount sufficient to satisfy the jurisdiction requirement of $75,000 in damages; and based on the facts alleged, the Court concludes to a legal certainty that Plaintiff cannot recover damages in at least that amount necessary to establish the Court's subject matter jurisdiction. For the above reasons, the Amended Complaint will be dismissed.

Defendant has also requested that the Plaintiff be enjoined from filing any additional claims against it without leave of court. Courts have the constitutional obligation and the inherent power to protect against conduct that impairs the court's ability to conduct their functions. *Tucker v. Seiber*, 17 F. 3d 1434, 1994 WL 66037 at *1 (4th Cir. 1994) ("A federal court has the power to issue prefiling injunctions where vexations conduct hinders the court from fulfilling its constitutional duty") (citing *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir.

[4] *But see also* Amend. Compl. at 37 (Plaintiff demands a $100 million judgment against the Defendant).

1986); *Graham v. Riddle*, 554 F. 2d 133, 135 (4th Cir. 1977)); *see also* Fed. R. Civ. P. 11(b)(2) (providing for sanctions against a party that files frivolous lawsuits lacking cognizable "legal contentions" and stating that sanctions may be imposed through "directives of a nonmonetary nature"). The injunction must not, however, "effectively deny access to the courts." *Tucker*, 17 F. 3d 1434 (citation omitted). The factors to be considered in evaluating whether to issue a pre-filing injunction are: (1) the litigant's history of vexatious litigation; (2) whether the litigant has an objective good faith belief in the merit of the action; (3) whether the litigant is represented by counsel; (4) whether the litigant had caused needless expense or unnecessary burdens on the opposing party and/or the court; and (5) the adequacy of other sanctions. *Id.* (citing *Safir v. United States Lines, Inc.*, 792 F. 2d 19, 24 (2d Cir. 1986), *cert. denied*, 479 U.S. 1099 (1987)).

Applying the above factors, the Court finds that a pre-filing injunction is appropriate in this case. This lawsuit is not the first time that the Plaintiff has made such allegations against the Defendant. As referenced above, on December 1, 2015, Plaintiff filed another lawsuit against the Defendant, alleging, *inter alia*, that Defendant participated in "a scheme to provide her with contaminated duck wraps and Whole Body products." *Adkins*, 2016 WL 1367170, at *2. The Court denied Defendant's request for an injunction prohibiting the Plaintiff from filing further lawsuits without leave of Court. *Id.* at 4 (noting "Plaintiff has filed only one lawsuit against Defendant in this Court"). Plaintiff, however, has now filed an additional highly suspect claim against Defendant and at least 17 other lawsuits in the Eastern District of Virginia.[5] Accordingly, it is hereby

[5] *See Adkins v. Public Storage*, 1:16-cv-01556-JCC-IDD; *Adkins v. Alexandria Towers Investor, LLC*, 1:16-cv-00491-JCC-TCB; *Adkins v. Whole Foods Market Group, Inc.*, 1:16-cv-0031-CMH-JFA (EDVA); *Adkins v. City Of Fairfax - GMU Crimesolvers, Inc.*, 1:15-cv-00879-ICC-MSN; *Adkins v. Bank of America, N.A.*, 1:14-cv-00563-GBL-JFA; *Adkins v. Fairfax County School Board*,1:09-mc-00027-GBL-TCB (EDVA); *Adkins v. Fairfax County School Board, et al.*, 1:08-cv-00091-JCC-JFA; *Adkins v. Fairfax County School Board*, 1:08-mc-00050-GBL-TRJ; *Adkins v. Fairfax County School Board*,1:07-mc-00035-GBL-TCB; *Adkins v. Fairfax County School Board*, 1:05-mc-00005-GBL-BRP; *Adkins v. Fairfax County School Board*, 1:04-mc-00048-GBL-TCB; *Adkins v. Fairfax County*

ORDERED that Defendant Whole Foods Market Group, Inc.'s Motion to Dismiss for Failure to State a Claim [Doc. No. 6] be, and the same hereby is GRANTED, and this action is DISMISSED; and it is further

ORDERED that Plaintiff be, and the same hereby is, ENJOINED from filing any further claims against Defendant or any other defendant in the Eastern District of Virginia without leave of Court.

The Clerk is directed to forward copies of this Order to all counsel of record and to *pro se* Plaintiff at the address on record and to enter judgment in Defendant's favor pursuant to Fed. R. Civ. P. 58.

This is a final order for the purposes of appeal. To appeal, Plaintiff must file a written Notice of Appeal with the Clerk of the Court within thirty (30) days of the date of this Order. A Notice of Appeal is a short statement stating a desire to appeal an order and identifying the date of the order Plaintiff wishes to appeal. Failure to timely Notice of Appeal waives Plaintiff's right to appeal this decision.

Anthony J. Trenga
United States District Judge

Alexandria, Virginia
January 10, 2018

School Board, 1:03-cv-01177-GBL; *Adkins v. Fairfax County School Board*, 1:04-mc-00053-JCC-TRJ; *Adkins v. Fairfax County School Board*, 1:99-cv-00304-LMB; *Adkins v. Fairfax County School Board*, 1:98-cv-01071-LMB; *Adkins v. Fairfax County Board of Education*, 1:97-cv-00835-AVB; *Adkins v. HBL, LLC*, 1:17-cv-0074-TSE-TCB.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DORA L. ADKINS,

Plaintiff,

v.

WHOLE FOODS MARKET GROUP, INC.

Defendant.

Case Number 1:17-cv-1023 (AJT/JFA)

ORDER

Pending before the Court are *pro se* Plaintiff's Motion for Leave Form [sic] for Reconsideration of the Court's Order Dated January 10, 2018 [Doc. No. 100] and Motion for Leave Form [sic] to Present Evidence to Support the Defendant Whole Foods Market Group, Inc.'s Documents are in Response to the Complaint Dated September 14, 2017 and not the Amended Complaint Dated September 18, 2017 [Doc. No. 102] (collectively, the "Motions"). Plaintiff asks the Court to reconsider its January 10, 2018 Order dismissing the case [Doc. No. 97]. In that Order, the Court concluded that Defendant's Motion to Dismiss was directed to the operative Amended Complaint and would not be denied because of its references to the "Complaint." In the Motions, Plaintiff contends that Defendant's Motion to Dismiss should have been denied as moot because it was responsive to her original Complaint.

Upon consideration of the Motions, the Court finds that there are no valid grounds upon which to reconsider its Order; and it appearing that oral argument will not assist in the decisional process, it is hereby

ORDERED that the hearing on the Motions currently scheduled for January 26, 2018 at 10:00 a.m. be, and the same hereby is, CANCELLED; and it is further

ORDERED that *pro se* Plaintiff's Motion for Leave Form [sic] for Reconsideration of the Court's Order Dated January 10, 2018 [Doc. No. 100] and Motion for Leave Form [sic] to Present Evidence to Support the Defendant Whole Foods Market Group, Inc.'s Documents are in Response to the Complaint Dated September 14, 2017 and not the Amended Complaint Dated September 18, 2017 [Doc. No. 102] be, and the same hereby are, DENIED.

The Clerk is directed to forward copies of this Order to all counsel of record and to the *pro se* Plaintiff at her listed address.

/s/
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
January 23, 2018

Appendix C – Relevant State Statutory and Rule Provisions:

N/A.

The "abuse-of –discretion" standard of review applies to conclusions that are not mandated by **rule or statute**, but that are made within a range of permissible choices, such as whether to admit or exclude evidence, to award attorneys' fees, to allow a motion to amend pleadings, to award attorney's fees, to allow a motion to amend pleadings, to exclude an expert witness, or to certify an issue for immediate appeal. *Highmark Inc., v. Allcare Health Mgmt. Sys., Inc.*, 134 S. Ct. 1744, 1749 (2014); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997); *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 12-13 (1980).

Appendix C – Relevant State Statutory and Rule Provisions:

N/A.

The "abuse-of –discretion" standard of review applies to conclusions that are not mandated by **rule or statute**, but that are made within a range of permissible choices, such as whether to admit or exclude evidence, to award attorneys' fees, to allow a motion to amend pleadings, to award attorney's fees, to allow a motion to amend pleadings, to exclude an expert witness, or to certify an issue for immediate appeal. *Highmark Inc., v. Allcare Health Mgmt. Sys., Inc.*, 134 S. Ct. 1744, 1749 (2014); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997); *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 12-13 (1980).