

**APPENDIX A**

**TENTH CIRCUIT COURT OF APPEALS  
OPINION DATED AUGUST 9, 2018**

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

August 9, 2018

Elisabeth A. Shumaker  
Clerk of Court

JOAN E. FARR,

Plaintiff - Appellant,

v.

DARYL DAVIS; DENNIS MOON;  
DEANN COOTE; JOHN PATRICK  
HALL; HUCKLEBERRY  
HOMEOWNERS ASSOCIATION,

Defendants - Appellees.

No. 18-3041  
(D.C. No. 2:16-CV-02180-CM)  
(D. Kan.)

**ORDER AND JUDGMENT\***

Before BACHARACH, MURPHY, and MORITZ, Circuit Judges.

Proceeding pro se,<sup>1</sup> Joan Farr appeals the district court's order granting summary judgment on her 42 U.S.C. § 1983 claim in favor of the Huckleberry Homeowners Association and its board members (collectively, HOA). She also

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\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument wouldn't materially assist in the determination of this appeal. *See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G)*. The case is therefore ordered submitted without oral argument. This order and judgment isn't binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See Fed. R. App. P. 32.1; 10th Cir. R. 32.1*.

<sup>1</sup> We construe pro se pleadings liberally, but we won't act as Farr's advocate. *See French v. Adams Cty. Det. Ctr.*, 379 F.3d 1158, 1159 (10th Cir. 2004).

challenges the district court's order denying her motion for reconsideration. We affirm.

### **Background**

Farr and the HOA have been embroiled in a series of disagreements for much of the past two decades, the details of which aren't strictly relevant here. Tensions reached a boiling point in June 2015, when the Sedgwick County Sheriff's Office attempted to serve an arrest warrant on Farr's son for violating a no-contact order with his ex-spouse. Specifically, Farr says that approximately eight members of the Sheriff's Office surrounded her home, guns drawn, and banged on her doors demanding that her son exit the home. Farr then brought this action against the HOA, alleging that the HOA violated her constitutional rights by conspiring with the Sheriff's Office to arrest her son without probable cause in retaliation for certain protected First Amendment activity. She also alleged state-law claims for conversion and intentional infliction of emotional distress.<sup>2</sup>

After the close of discovery, Farr and the HOA each moved for summary judgment. The district court granted summary judgment in favor of the HOA and denied Farr's motion as moot. It then declined to exercise supplemental jurisdiction over the remaining state-law claims. Farr filed a motion for reconsideration, which

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<sup>2</sup> Farr actually alleged a federal conversion claim below. Here, she concedes that she mistakenly asserted a federal conversion claim and instead asks that we interpret that federal claim as a state conversion claim. For purposes of this appeal, we assume Farr raised a state conversion claim below.

the district court denied. It also denied Farr's request for permission to proceed in forma pauperis (IFP) on appeal.

### **Analysis**

We review de novo the district court's order granting summary judgment and draw all reasonable inferences in favor of Farr as the non-moving party. *See Doe v. City of Albuquerque*, 667 F.3d 1111, 1122 (10th Cir. 2012). Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

To state a § 1983 claim, a plaintiff must show "the deprivation of [a federal] right by a person acting under color of state law." *Wittner v. Banner Health*, 720 F.3d 770, 773 (10th Cir. 2013); *see also* § 1983. In determining whether a nominally private person or entity acted under color of state law, we employ one of four tests: (1) nexus, (2) symbiotic relationship, (3) joint action, or (4) public function. *See Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1447 (10th Cir. 1995). The joint-action test applies when a plaintiff alleges, as Farr does in this case, that "state officials and private parties have acted in concert in effecting a particular deprivation of constitutional rights." *Id.* at 1453.

Here, the district court not only found that Farr failed to present any evidence that the Sheriff's Office acted in concert with the HOA when it attempted to arrest Farr's son, the evidence was to the contrary. In particular, the district court cited a report from the Sheriff's Office indicating that the ex-spouse informed the Sheriff's

Office that Farr's son violated a no-contact order. Notably, that report didn't even reference the HOA.

Farr contends the district court overlooked evidence showing that (1) the Sheriff's Office lacked probable cause for her son's arrest warrant, (2) the HOA harbored a vendetta against her, and (3) an HOA official was acquainted with certain officials in the Sheriff's Office. And she says this circumstantial evidence shows that it "was obvious" the HOA and the Sheriff's Office willfully acted together against her and her family. Aplt. Br. 5.

We disagree. Even assuming the Sheriff's Office lacked probable cause, Farr must show the HOA had some involvement in issuing the arrest warrant. And no reasonable jury could infer the existence of a conspiracy between the Sheriff's Office and the HOA from the mere facts that Farr experienced conflicts with the HOA in the past and there was some acquaintance between officials from the HOA and the Sheriff's Office. As such, the district court properly granted summary judgment in favor of the HOA on Farr's § 1983 claim and properly denied her motion for reconsideration.

Moreover, Farr fails to challenge the district court's refusal to exercise supplemental jurisdiction over her state-law claims. *See Exum v. U.S. Olympic Comm.*, 389 F.3d 1130, 1138 (10th Cir. 2004) (explaining that when a district court dismisses federal-law claims, it "may decline to exercise supplemental jurisdiction over" remaining state-law claims). Thus, she has waived any argument that the district court abused its discretion in doing so. *See United States v. Almaraz*, 306

F.3d 1031, 1041 (10th Cir. 2002) (explaining that “arguments not briefed on appeal are waived”).

Accordingly, we affirm the district court’s orders granting summary judgment in favor of the HOA and denying Farr’s motion for reconsideration. As a final matter, we deny Farr’s request to proceed IFP because she has sufficient assets to pay the filing fees on appeal. *See Treff v. Galetka*, 74 F.3d 191, 197 (10th Cir. 1996).

Entered for the Court

Nancy L. Moritz  
Circuit Judge

**APPENDIX B**

**KANSAS DISTRICT COURT MEMORANDUM AND  
ORDER ON MOTION FOR RECONSIDERATION  
DATED FEBRUARY 14, 2018**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

JOAN E. FARR,	)
	)
Plaintiff,	)
	)
v.	)
	)
DARYL DAVIS, et al.,	)
	)
Defendants.	)

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Case No. 16-2180-CM

**MEMORANDUM AND ORDER**

Plaintiff Joan E. Farr brought this action pro se, claiming defendants Daryl Davis, Dennis Moon, DeAnn Coote, John Patrick Hall, and the Huckleberry Homeowners Association violated her constitutional rights under 42 U.S.C. § 1983. On January 26, 2018, the court granted summary judgment to defendants on plaintiff's federal claims and dismissed her state law claims without prejudice. The case is now closed. Plaintiff filed a motion for reconsideration (Doc. 136).

Plaintiff claims that she is entitled to relief because she is the victim of misconduct of an adverse party (the court) or for any other reason justifying relief. Plaintiff believes that this court is biased against her because it has denied "almost all" of her motions. Specifically with respect to the court's decision granting defendants' motion for summary judgment, plaintiff claims that the court failed to consider plaintiff's evidence and acted in an arbitrary, capricious, and unreasonable manner. She claims that the court's actions have caused her manifest injustice.

A motion for reconsideration is not recognized by the Federal Rules of Civil Procedure, but may be construed as either a motion to alter or amend the judgment pursuant to Rule 59(e), or as a motion seeking relief pursuant to Rule 60(b). *Price v. Philpot*, 420 F.3d 1158, 1167 n.9 (10th Cir.

1991). Here, plaintiff specifies that she seeks relief under Rule 60(b), so the court will analyze her motion under that rule.

Relief is only proper under Rule 60(b) in “exceptional circumstances.” *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991) (citation omitted). Whether to grant or deny a 60(b) motion is committed to the court’s discretion. *Pelican Prod. Corp. v. Marino*, 893 F.2d 1143, 1145 (10th Cir. 1990). In exercising that discretion, courts generally recognize three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *See Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). A motion to reconsider is not a proper place to reargue arguments that the court previously rejected. *See Servants of Paraclete*, 204 F.3d at 1012.

Rule 60(b)(3) permits relief for misconduct of an adverse party. Plaintiff characterizes the court as an “adverse party” because of perceived bias against her. This is inaccurate. The court is neither an adverse party nor biased against plaintiff. To receive relief under subsection (b)(3), a litigant must prove misconduct by clear and convincing evidence. *Anderson v. Dep’t of Health & Human Servs.*, 907 F.2d 936, 952 (10th Cir. 1990). Plaintiff has not met this burden.

Rule 60(b)(6) permits relief for “any other reason justifying relief.” Subsection (6) is the rule’s “catchall” provision. It is reserved for situations in which it “offends justice” to deny relief, *Loum v. Houston’s Rests., Inc.*, 177 F.R.D. 670, 672 (D. Kan. 1998), and applies only in “extraordinary circumstances,” *Van Skiver*, 952 F.2d at 1244-45. Extraordinary circumstances are not present here. Plaintiff disagrees with the court’s assessment of her evidence. But disagreement with an outcome does not present the extraordinary circumstances necessary to justify relief under Rule 60(b)(6).

Plaintiff does not show a change in law, new evidence, or a valid basis for correcting clear error or preventing manifest injustice. She is not entitled to relief under Rule 60(b).

**IT IS THEREFORE ORDERED** that Plaintiff's Motion for Reconsideration ([Doc. 136](#)) is denied.

Dated this 14th day of February, 2018, at Kansas City, Kansas.

s/ Carlos Murgua  
**CARLOS MURGUIA**  
**United States District Judge**

**APPENDIX C**

**KANSAS DISTRICT COURT MEMORANDUM  
AND ORDER OPINION DATED  
JANUARY 25, 2018**

Appendix C

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

JOAN E. FARR,	)
	)
Plaintiff,	)
	)
v.	)
	)
DARYL DAVIS, et al.,	)
	)
Defendants.	)
	)

Case No. 16-2180-CM

**MEMORANDUM AND ORDER**

Plaintiff Joan E. Farr brings this action pro se, claiming that defendants Daryl Davis, Dennis Moon, DeAnn Coote, John Patrick Hall, and Huckleberry Homeowners Association (“HOA”) violated her constitutional rights under 42 U.S.C. § 1983. Plaintiff claims that defendants conspired to deprive her of her rights by stealing her property and influencing the police to harass plaintiff and her son. The case is before the court on a number of motions:

- Plaintiff’s Motion for Summary Judgment (Doc. 119);
- Defendants’ Motion for Summary Judgment (Doc. 120);
- Plaintiff’s Motion to Strike; or in the Alternative, to Exclude Evidence (Doc 126); and
- Plaintiff’s Motion to Exclude Evidence (Doc. 127).

The court takes up the motions to exclude first, followed by the motions for summary judgment.

**Motions to Exclude Evidence (Docs. 126 and 127)**

In these two motions, plaintiff asks the court to disregard evidence that defendants submitted in support of their summary judgment motion. She claims that the evidence is not relevant, and that it

was not timely submitted to plaintiff during the discovery period. Plaintiff asks the court to disregard the evidence under Fed. R. Civ. P. 37.

As plaintiff admits in her reply, much of evidence she seeks to exclude was, in fact, disclosed in discovery. But defendants disclosed some of it after discovery closed, in a supplemental response. And some of the evidence is in the nature of rebuttal evidence, and therefore was not given to plaintiff with initial disclosures.

The court concludes that the evidence should not be excluded. Defendants explained the oversight that led to their supplemental production of several documents. Supplemental discovery responses were appropriate under Fed. R. Civ. P. 26(e). Sanctions are therefore not warranted under Rule 37(c). The court will consider the evidence to the extent it is relevant and admissible for purposes of summary judgment.

#### **Defendants' Motion for Summary Judgment**

As they argued in a previously-filed motion to dismiss, defendants maintain that plaintiff's federal claims must fail because she cannot establish that defendants were acting under color of state law. When the court first considered this argument, the court concluded that plaintiff had adequately pleaded that defendants conspired with state actors—thereby potentially making defendants liable for constitutional claims as state actors. That conclusion, however, was based on the allegations in plaintiff's complaint. At this stage of the litigation, plaintiff must submit evidence in support of her conspiracy theory. Plaintiff has failed to do so, and the court now concludes that summary judgment is warranted in favor of defendants.

## **I. Factual Background**

Plaintiff resides in the Huckleberry Addition, which is managed by defendant HOA in Derby, Kansas. At all times relevant to this case, defendants Davis, Moon, Coote, and Hall were on the HOA's Board.

The court need not discuss in great detail the facts of the disputes between the parties. Highly summarized, plaintiff and members of the HOA Board have disagreed on a number of issues over the years. In early 2000, plaintiff placed a picnic table and sand (to create a sandy beach) in a common area of Huckleberry Addition. The HOA Board disputes whether this was with permission. The table and sandy beach fell into disrepair over time. Eventually, the HOA Board removed the picnic table (not the original one—a replacement table) and sand. Plaintiff claims that defendants converted these items, as well as a boat.

On or about June 25, 2015, Deputy Headings of the Sedgwick County Sheriff's Office contacted the ex-spouse of plaintiff's son, Garrison Moore. Deputy Headings, in coordination with other deputies of the Sedgwick County Sheriff's Office, attempted to execute arrest warrants on Moore on June 25 at plaintiff's house. Deputy Headings and other deputies were unable to enter the residence.

The events on June 25, 2015 occurred as a result of the investigation by Deputy Headings and the Sheriff's Office. There is no evidence of involvement of the HOA, Davis, Moon, Coote, or Hall in the events occurring on June 25, 2015 as they related to the deputies' attempt to arrest Moore.

## **II. Legal Standard**

Summary judgment is appropriate if the moving party demonstrates that there is "no genuine issue as to any material fact" and that it is "entitled to judgment as a matter of law." Fed. R. Civ. P.

56(a). In applying this standard, the court views the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

Where, as here, the plaintiff proceeds pro se, the court construes the pro se filings liberally. *Hall v. Doering*, 997 F. Supp. 1445, 1451 (D. Kan. 1998) (citing *Hughes v. Rowe*, 449 U.S. 9–10 (1980)). On the other hand, a plaintiff's pro se status does not relieve her from complying with this court's procedural requirements. *Barnes v. United States*, 173 F. App'x 695, 697 (10th Cir. 2006) (citations omitted); *see also Santistevan v. Colo. Sch. of Mines*, 150 F. App'x 927, 931 (10th Cir. 2005) (holding that a pro se litigant must follow the same rules of procedure as other litigants).

### III. Discussion

Defendants argue that they are entitled to summary judgment on plaintiff's claims under 42 U.S.C. § 1983. Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

Where the defendants are private citizens (as they are here), liability under 42 U.S.C. § 1983 requires a showing that defendants conspired with state actors—persons acting under color of state law—to deprive the plaintiff of her civil rights. *See Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980) (“Private persons, jointly engaged with state officials in the challenged action, are acting ‘under color’ of law for purposes of § 1983 actions.”). There are several tests for establishing the existence of state action under 42 U.S.C. § 1983, *see generally Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442 (10th Cir. 1995), but this court previously held that plaintiff's claims are best reviewed under the joint action test. The joint action test focuses on whether state officials and private parties have acted in

concert in effecting a particular deprivation of constitutional rights. *Id.* at 1453. Courts have applied the joint action test in two different ways; some courts have adopted the requirements for establishing a conspiracy under § 1983, and others have focused on the manner in which the alleged constitutional deprivation is effected. *Id.* at 1454.

Under the conspiracy approach, state action may be found if a state actor has participated in or influenced the challenged decision or action. *Id.* “The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of [the plaintiff’s] Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized, or lawful.” *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970). A private party who is involved in such a conspiracy may be liable under 42 U.S.C. § 1983. *Id.*

Under the alternative approach, if there is a “substantial degree of cooperative action” between state and private officials, or if there is “overt and significant state participation” in carrying out the deprivation of the plaintiff’s constitutional rights, state action is present. *Gallagher*, 49 F.3d at 1454 (internal citations omitted).

Under either approach, there is no joint action when private citizens have merely made complaints to police officers that resulted in arrests. *Carey v. Cont'l Airlines Inc.*, 823 F.2d 1402, 1404 (10th Cir. 1987). In contrast, courts have found state action when the private party was not a mere complainant, but possessed and exerted influence over the police, and conspired with them to have the plaintiff arrested and detained illegitimately. *Wagenmann v. Adams*, 829 F.2d 196, 211 (1st Cir. 1987); *see also Lusby v. T.G. & Y. Stores, Inc.*, 749 F.2d 1423, 1429 (10th Cir. 1984), *vacated on other grounds*, 474 U.S. 805 (1985), (concluding that a store security guard who reported a suspected shoplifter to the police was a state actor, noting that the arresting officer relied on the judgment of the security guard instead of making an independent investigation).

Plaintiff claims that on or about June 25, 2015, defendants conspired with the Sheriff's Office in order to retaliate against her and violate her constitutional rights. But this claim is without evidentiary support. Absent such support, the claim must fail. *Sooner Products Co. v. McBride*, 708 F.2d 510, 512 (10th Cir. 1983) ("When a plaintiff in a § 1983 action attempts to assert the necessary 'state action' by implicating state officials or judges in a conspiracy with private defendants, mere conclusory allegations with no supporting factual averments are insufficient."). The record evidence indicates no connection between defendants and the appearance of Sedgwick County Sheriff's deputies at plaintiff's house on June 25. A narrative report authored by Deputy Headings indicated that he was in contact with the ex-spouse of Moore, who said that Moore had contacted her in violation of a no-contact order. Deputy Headings's narrative report contains no reference to any involvement by defendants. Sedgwick County District Court records indicate that Moore had warrants issued on May 28, 2015 and June 5, 2015, before the events giving rise to plaintiff's claims arose. *See Wesley v. Don Stein Buick, Inc.*, 42 F. Supp. 2d 1192, 1202 (D. Kan. 1999) (noting "... the conduct giving rise to plaintiff's claims . . . occurred long before the police even arrived at the dealership").

Plaintiff cannot "avoid summary judgment by repeating conclusory opinions, allegations unsupported by specific facts, or speculation." *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1199 (10th Cir. 2006). Plaintiff's lack of evidence, combined with evidence presented by defendants, demonstrates that defendants had no involvement in the events occurring on or before the June 25, 2015 incident involving the attempted arrest of plaintiff's son. Plaintiff is unable to establish the defendants are state actors or that they acted in concert with state actors. Plaintiff's § 1983 claim for constitutional violations therefore fails. Defendants are entitled to summary judgment on plaintiff's § 1983 claim.

Plaintiff allegedly asserts one additional federal claim: a conversion claim under 28 U.S.C. § 2415(b). But that statute does not provide a cause of action upon which plaintiff may rely. In relevant part, this statute provides:

[E]very action for monetary damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: Provided, that an action to recover damages resulting from a trespass on lands of the United States [or] . . . an action for conversion of property of the United States may be brought within six years after the right of action accrues . . .

28 U.S.C. § 2415(b).

This statute is titled, “Time for commencing actions brought by the United States.” The title alone demonstrates the inapplicability of the statute. The plain language of the statute further indicates that the statute does not offer plaintiff a cause of action. This statute merely provides the time limitations if the United States were to bring an action in conversion. This lawsuit is not brought by the United States or an officer thereof. Defendants are therefore entitled to judgment on plaintiff’s claim under this statute.

The court “has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1337(c)(3). Defendants ask the court to exercise supplemental, or pendant, jurisdiction over plaintiff’s state law claims and grant summary judgment on those claims, as well. In determining whether to maintain jurisdiction, a federal district court should consider “the values of judicial economy, convenience, fairness and comity.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988).

First: judicial economy. This factor weighs slightly in favor of asserting jurisdiction over the remaining state law claims. Discovery is complete, and the only matters left for judicial involvement are resolution of the summary judgment motion and trial of the case, which is scheduled to begin in May of 2018. These facts “tip slightly in favor of the Court exercising supplemental jurisdiction.”

*Marker v. Retired Enlisted Ass’n, Inc.*, No. 08-00843-MSK-CBS, 2009 WL 812191, at \*3 (D. Colo.

Mar. 27, 2009). Dismissing plaintiff's state law claims without prejudice could result in "some minor duplication of effort" at the state court level. *Id.*

Second: convenience and fairness. These factors are neutral. The court does not see a difference in convenience between state court and federal court. Neither does the court believe that either court would be more fair than the other.

Finally: comity. In a case where all federal claims are dismissed before trial, courts should "generally decline to exercise pendent jurisdiction . . . because [n]otions of comity and federalism demand that a state court try its own lawsuits, absent compelling reasons to the contrary." *Brooks v. Gaenzle*, 614 F.3d 1213, 1230 (10th Cir. 2010) (citations omitted). Plaintiff's state law claims do not raise any issues that would implicate federal law, and the court determines that "notions of comity and federalism" dictate a dismissal without prejudice. *See Endris v. Sheridan Cnty. Police Dep't*, 415 F. App'x 34, 36 (10th Cir. 2011) ("[A]ny state-law claims . . . were inappropriate subjects for the exercise of pendent federal jurisdiction where all federal claims had been dismissed."); *see also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) ("Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties . . ."); *Koch v. City of Del City*, 660 F.3d 1228, 1248 (10th Cir. 2011) ("When all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims.") (citation omitted).

In this case, the court concludes that the Tenth Circuit's expressed preference for declining supplemental jurisdiction outweighs the parties' interest in preventing delay. Any delay can be mitigated by directing the parties to notify the state court of this case upon filing. Any discovery exchanged in this case should be utilized in state court. The court understands that defendants seek closure in this case. But there are no compelling circumstances that justify this court retaining

jurisdiction. The remaining claims involve purely state law issues that should be resolved by a state court. Because “[n]otions of comity and federalism demand that a state court try its own lawsuits, absent compelling reasons to the contrary,” the court declines to exercise supplemental jurisdiction over plaintiff’s state law claims for conversion and intentional infliction of emotional distress. *Brooks*, 614 F.3d at 1230 (citation omitted). The court dismisses these claims without prejudice. If plaintiff refiles her claims in state court, the parties are directed to so notify the state court and use the discovery already exchanged in this case.

**Plaintiff’s Motion for Summary Judgment**

In light of the ruling on defendants’ motion for summary judgment, the court denies plaintiff’s motion for summary judgment as moot.

**IT IS THEREFORE ORDERED** that Plaintiff’s Motion to Strike; or in the Alternative, to Exclude Evidence (Doc 126) is denied.

**IT IS FURTHER ORDERED** that Plaintiff’s Motion to Exclude Evidence (Doc. 127) is denied.

**IT IS FURTHER ORDERED** that Defendants’ Motion for Summary Judgment (Doc. 120) is granted in part. The court grants summary judgment on plaintiff’s federal claims. Plaintiff’s state law claims are dismissed without prejudice.

**IT IS FURTHER ORDERED** that Plaintiff’s Motion for Summary Judgment (Doc. 119) is denied as moot.

The case is closed.

Dated this 25th day of January, 2018, at Kansas City, Kansas.

s/ Carlos Murgua  
**CARLOS MURGUIA**  
**United States District Judge**