Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2390

VALERIE ARROYO,

Plaintiff - Appellant,

v.

DANIEL J. ZAMORA, Attorney at Law; CHAD DIAMOND, Attorney at Law; NORTH CAROLINA STATE BAR ASSOCIATION; MECKLENBURG COUNTY CLERK OF SUPERIOR COURT; JUDICIAL STANDARD COMMISSION; ETHICS COMMISSION; STATE OF NORTH CAROLINA, DEPARTMENT OF JUSTICE,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Chief District Judge. (3:17-cv-00721-FDW-DCK)

Submitted: January 22, 2019 Decided: January 24, 2019

Before MOTZ, KEENAN, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Valerie Arroyo, Appellant Pro Se. Matthew Christopher Burke, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Valerie Arroyo seeks to appeal the district court's order enjoining her for one year from filing in her underlying civil case. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court's order was entered on the docket on June 19, 2018. The notice of appeal was filed, at the earliest, on September 10, 2018. Because Arroyo failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal and deny all pending motions. 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.

DISMISSED

Appendix B

FILED: February 26, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2390
(3:17-cv-00721-FDW-DCK)

VALERIE ARROYO

Plaintiff - Appellant

v.

DANIEL J. ZAMORA, Attorney at Law; CHAD DIAMOND, Attorney at Law; NORTH CAROLINA STATE BAR ASSOCIATION; MECKLENBURG COUNTY CLERK OF SUPERIOR COURT; JUDICIAL STANDARD COMMISSION; ETHICS COMMISSION; STATE OF NORTH CAROLINA, DEPARTMENT OF JUSTICE

Defendants - Appellees

O R D E R

The court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc in accordance with Local Rule 40(c). The petition in this case is denied as untimely.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

[redacted]

Appendix C

FILED: February 20, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2390
(3:17-cv-00721-FDW-DCK)

VALERIE ARROYO

Plaintiff - Appellant

v.

DANIEL J. ZAMORA, Attorney at Law; CHAD DIAMOND, Attorney at Law; NORTH CAROLINA STATE BAR ASSOCIATION; MECKLENBURG COUNTY CLERK OF SUPERIOR COURT; JUDICIAL STANDARD COMMISSION; ETHICS COMMISSION; STATE OF NORTH CAROLINA, DEPARTMENT OF JUSTICE

Defendants - Appellees

M A N D A T E

The judgment of this court, entered January 24, 2019, 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 D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17-cv-721-FDW-DCK

VALERIE ARROYO,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**ORDER**
	)	
DANIEL ZAMORA, et al.,	)	
	)	
Defendants.	)	
	)	

THIS MATTER is before the Court on Plaintiffs' "Order, Memorandum, and Recommendation," which is construed as a Motion for Reconsideration, (Doc. No. 10).

Regarding motions to alter or amend a judgment under Rule 59(e), the Fourth Circuit has stated:

> A district court has the discretion to grant a Rule 59(e) motion only in very narrow circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or to prevent manifest injustice."

Hill v. Braxton, 277 F.3d 701, 708 (4th Cir. 2002) (quoting Collison v. Int'l Chem. Workers Union, 34 F.3d 233, 236 (4th Cir. 1994)). Furthermore, "Rule 59(e) motions may not be used to make arguments that could have been made before the judgment was entered." Id. Indeed, the circumstances under which a Rule 59(e) motion may be granted are so limited that "[c]ommentators observe 'because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied.'" Woodrum v. Thomas Mem'l Hosp. Found., Inc., 186 F.R.D. 350, 351 (S.D. W. Va. 1999) (quoting 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 2810.1 (2d ed. 1995)).

On March 21, 2018, the Court dismissed the Complaint as frivolous, for failure to state a claim on which relief can be granted, and for seeking damages against immune parties. Plaintiff presently seeks to challenge that Order, but has not shown the existence of the limited circumstances under which a Rule 59(e) motion may be granted. The motion does not present evidence that was unavailable when the Complaint was filed, nor does the motion stem from an intervening change in the applicable law. Furthermore, the Plaintiff has not shown that a clear error of law has been made, or that failure to grant the motion would result in manifest injustice. See Hill, 277 F.3d at 708. For these reasons, the Court will deny the Plaintiffs' Motion for Reconsideration.

IT IS, THEREFORE, ORDERED that Plaintiffs' Motion for Reconsideration, (Doc. No. 10), is **DENIED.**

Signed: April 27, 2018

Frank D. Whitney
Chief United States District Judge

Appendix E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17-cv-721-FDW-DCK

VALERIE ARROYO,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER**
	)	
DANIEL J. ZAMORA, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

THIS MATTER is before the Court on initial review of the Complaint, (Doc. No. 1), Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, (Doc. No. 2), Plaintiff's Motion for a Preliminary Injunction, (Doc. No. 3), and Plaintiff's Verified Motion for Entry of [Default] Judgment, (Doc. No. 5).

I. BACKGROUND

Pro se Plaintiff Valerie Arroyo, a resident of North Carolina, filed this action on December 15, 2017, pursuant to 42 U.S.C. §§ 1983 and 1985, and 18 U.S.C. §§ 241 and 242.[1] She names as Defendants: Attorney Daniel J. Zamora in his individual and official capacities, and the following in their official capacities: Attorney Chad Diamond, the North Carolina State Bar; the Mecklenburg County Clerk of Superior Court, Civil Division; and the State of North Carolina. (Doc. No. 1 at 1-2). She additionally names in the body of her Complaint the North Carolina

[1] Plaintiff characterizes this action as one pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotis, 403 U.S. 388 (1971), however, she does not name any federal actors as defendants. Therefore, it is liberally construed as an action brought under § 1983.

Judicial Standard Commission and the North Carolina, Department of Justice. (Doc. No. 1 at 8).

Plaintiff alleges that the Defendants violated her rights under the United States Constitution and North Carolina law in relation to two lawsuits in North Carolina Superior Court.[2] The first was apparently a negligence action that Plaintiff brought against Zamora, and a second action brought by Zarmora against Plaintiff. Zamora was apparently represented in both actions by Mr. Diamond. Plaintiff alleges that Zamora and Diamond used false affidavits to defeat her in both actions without a jury trial, that the other Defendants displayed favoritism towards Zamora and Diamond, and that all the Defendants violated North Carolina laws and procedures as well as Plaintiff's federal civil rights. She seeks declaratory judgment, compensatory and punitive damages, injunctive relief, and any other relief the Court deems just and equitable.

Plaintiff filed a motion for preliminary injunction, (Doc. No. 3), to prevent Defendants "from violation of civil right act, deprivation of rights under color of law, and violation of constitutional amendments, and abuse of process, and failure to act, and breach of fiduciary duties, and intentional infliction of emotional distress, and negligence, and false malicious prosecution, or contacting Plaintiff or her family during the pendency of this case, and for other relief." (Doc. No. 3 at 1-2).

She also seeks default judgment, claiming that Defendants' response was due on January 10, 2018, and their failure to do so warrants entry of default judgment in her favor pursuant to Rule 55. (Doc. No. 5).

II. STANDARD OF REVIEW

Because Plaintiff seeks to proceed *in forma pauperis*, the Court must review the Complaint

[2] Plaintiff identifies the claims as: (1) violation of the civil rights act; (2) deprivation of rights under the color of law; (3) violation of Constitutional Amendments 1, 7, and 14; (4) abuse of process; (5) failure to act; (6) breach of fiduciary duty; (7) intentional infliction of emotional distress; and (8) negligence.

to determine whether it is subject to dismissal on the grounds that it is "frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). The Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989).

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Erickson v. Pardus, 551 U.S. 89, 93 (2007). The statement of the claim does not require specific facts; instead, it "need only 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.' " Id. (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). However, the statement must assert more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." Twombly, 550 U.S. at 555.

A *pro se* complaint must be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972); see also Smith v. Smith, 589 F.3d 736, 738 (4th Cir. 2009) ("Liberal construction of the pleadings is particularly appropriate where ... there is a *pro se* complaint raising civil rights issues."). However, the liberal construction requirement will not permit a district court to ignore a clear failure to allege facts in the complaint which set forth a claim that is cognizable under federal law. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

III. DISCUSSION

(1) 18 U.S.C. §§ 241, 242

First, Plaintiff attempts to invoke two federal statutes criminalizing conspiracies and deprivation of rights under the color of law. However, "in American jurisprudence ..., a private

citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973)); Harris v. Salley, 339 Fed. Appx. 281 (4th Cir. 2009) (prisoner lacked equal protection right to have criminal proceedings instituted against § 1983 defendants).

Plaintiff, as a private citizen, is not authorized to bring criminal charges. Therefore, her claims under §§ 241 and 242 are dismissed with prejudice as frivolous.

(2) 42 U.S.C. §§ 1983, 1985

"Section 1983 imposes liability on state actors who cause the deprivation of any rights, privileges or immunities secured by the Constitution." Loftus v. Bobzien, 848 F.3d 278, 284 (4th Cir. 2017) (quoting Doe v. Rosa, 795 F.3d 429, 436 (4th Cir. 2015)). To state a claim under § 1983, a plaintiff must allege that the defendant, acting under the color of law, violated her federal constitutional or statutory rights and thereby caused injury. Crosby v. City of Gastonia, 635 F.3d 634, 639 (4th Cir. 2011).

Section 1985 prohibits civil conspiracies that interfere with civil rights. To state a claim under § 1985, a plaintiff must show:

> (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyments of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

Thomas v. The Salvation Army So. Territory, 841 F.3d 632, 637 (4th Cir. 2016) (quoting Simmons v. Poe, 47 F.3d 1370, 1376 (4th Cir. 1995)).

Plaintiffs making claims under §§ 1983 and 1985 must show that their constitutional rights were violated under the color of law. Willis v. Town of Marshall, 293 F.Supp.2d 608, 613 (W.D.N.C. Nov. 25, 2003) (citing Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 924 (1982);

Adickes v. S.H. Kress & Co., 398 U.S. 144, 166 n.31 (1970)). If the defendant is not a state actor, there must be a "sufficiently close relationship with state actors such that a court would conclude that the non-state actor is engaged in the state's actions." DeBauche v. Trani, 191 F.3d 499, 506 (4th Cir. 1999); see Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).

Plaintiff's conclusory allegations are insufficient to state a violation of §§ 1983 or 1985. See, e.g., Willis v. Ashcroft, 92 Fed. Appx. 959 (4th Cir. 2004) (conclusory allegations of conspiracy give no basis for relief).

Moreover, Plaintiff has not named a single Defendant against whom her civil rights action can proceed.

(A) State of North Carolina/Official Capacity Claims

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of Another State, or by Citizens of any Foreign State." U.S. Const. Amend. 11. Neither a State nor its officials acting in the official capacities are "persons" under § 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). Thus, civil rights suits against a state, its agencies, and its officials sued in their official capacities for damages are barred absent a waiver by the State or a valid congressional override. Kentucky v. Graham, 473 U.S. 159, 169 (1985);

Plaintiff names "North Carolina" in the caption of his Complaint, and names all of the Defendants in their official capacities except for Zamora, whom he names in his official and individual capacities. However, Plaintiff's claims against the State of North Carolina and against Defendants in their official capacities are barred by sovereign immunity.

Any attempt to amend and name the Defendants in their individual capacities would be

futile for the reasons set forth in the following sections.

(B) Zamora and Diamond

Defendants Zamora and Diamond are private attorneys who litigated against Plaintiff in two North Carolina actions; Zamora as a litigant and Diamond as his counsel.

To implicate §§ 1983 and 1985, conduct must be "fairly attributable to the State." DeBauche, 191 F.3d at 506. Plaintiff's bald assertions that Zamora and Diamond were treated favorably in the two North Carolina cases fail to allege a sufficiently close relationship between the private Defendants and a state actor under the color of state law for purposes of this lawsuit. Id. Therefore, the claims against Zamora and Diamond are dismissed with prejudice.[3]

(C) Mecklenburg County Clerk of Superior Court, Civil Division

Clerks of Court are generally entitled to quasi-judicial immunity. See Briscoe v. LaHue, 460 U.S. 325, 334-35 (1983) (noting that quasi-judicial immunity is accorded to individuals who play an integral part in the judicial process). This immunity extends to claims involving "tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." Bush v. Rauch, 38 F.3d 842, 847 (6th Cir. 1994); see also Ross v. Baron, 493 Fed. Appx. 405, 406 (4th Cir. 2012) (Clerk of Court is generally entitled to quasi-judicial immunity).

Plaintiff's allegations that the Clerk of Court failed to follow law and procedures with regards to its handling of Plaintiff's two North Carolina cases, including the setting of hearings, provision of notice, and handling of notices of appeal, are duties that are integral to the judicial process. Therefore, quasi-judicial immunity applies and the Clerk of Courts is immune from suit.

[3] The dismissal is with prejudice because any attempt to amend the claims against Zamora and Diamond would be futile. Plaintiff's claims against Zamora and Diamond are an attempt to invalidate the two state court proceedings, which this Court is prohibited from doing for the reasons set forth in Section (3), *infra*.

See, e.g., Martin v. Rush, 2013 WL 2285948 at *5 (D.S.C. 2013) (applying quasi-judicial immunity to clerk who allegedly failed to provide a requested hearing transcript); Wiley v. Buncombe County, 846 F.Supp.2d 480, 485 (W.D.N.C. 2012) (quasi-judicial immunity applied to clerk who allegedly failed to deliver judge's writ of habeas corpus to the proper parties).

Plaintiff's claims against the North Carolina Clerk of Courts are, therefore, dismissed with prejudice.

(D) North Carolina State Bar[4]

The North Carolina State Bar is an agency of the State of North Carolina. See N.C. Gen. Stat. § 84-15. A State Bar is an "arm of the [State] Supreme Court in connection with disciplinary proceedings [and] is an integral part of the judicial process and is therefore entitled to the same immunity which is afforded to prosecuting attorneys in that state." Clark v. State of Wash., 366 F.2d 678, 681 (9th Cir. 1966) (quotations omitted).

The North Carolina State Bar acted as an arm of the State in handling Plaintiff's grievance against Zamora and denying it. See Slavin v. Curry, 574 F.2d 1256, 1266 (5th Cir.) (members of bar association's grievance committee were absolutely immune from damages liability under § 1983 because they were performing as agents of the state's judicial department), *modified on other grounds*, 583 F.2d 779 (5th Cir. 1978); Hoke v. Bd. of Med. Examiners of N.C., 445 F.Supp. 1313, 1315-16 (W.D.N.C. 1978) (medical board members absolutely immune from liability for damages because their role was analogous to a state prosecutor's initiation of criminal proceedings); see

[4] The Complaint refers to this Defendant as both the "North Carolina State Bar" and the "North Carolina State Bar Association." (Doc. No. 1 at 1, 8). It appears that Plaintiff intends to sue the North Carolina State Bar, which is a government agency. The North Carolina Bar Association, on the other hand, is a non-governmental, voluntary professional association against which a § 1983 civil rights action cannot generally proceed. See DeBauche v. Trani, 191 F.3d 499, 506 (4th Cir. 1999) (to implicate 42 U.S.C. § 1983, conduct must be 'fairly attributable to the State.'") (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)).

also Werle v. Rhode Island Bar Ass'n, 755 F.2d 195 (1st Cir. 1985) (even if State Bar and its former committee on the unauthorized practice of law were state actors, they were the equivalent of prosecutors and were immune from damages liability).

Thus, the North Carolina State Bar is immune from suit and Plaintiff's claim against it is dismissed with prejudice.

(E) North Carolina Judicial Standard Commission & Department of Justice

The Federal Rules of Civil Procedure provide that, "[i]n the complaint the title of the action shall include the names of all the parties." Fed. R. Civ. P. 10(a); see Myles v. United States, 416 F.3d 551 (7th Cir. 2005) ("to make someone a party the plaintiff must specify him in the caption and arrange for service of process."). Although *pro se* litigants are entitled to have their pleadings liberally construed, Haines, 404 U.S. at 520, "[d]istrict judges have no obligation to act as counsel or paralegal to *pro se* litigants," Pliler v. Ford, 542 U.S. 225 (2004).

The body of the Complaint Contains allegations against the North Carolina Judicial Standards Commission and the North Carolina Department of Justice; however, neither is named as a defendant in the caption as required by Rule 10(a). This failure renders Plaintiff's allegations against these Defendants nullities. See, e.g., Londeree v. Crutchfield Corp., 68 F.Supp.2d 718 (W.D. Va. Sept. 29, 1999) (granting motion to dismiss for individuals who were not named as defendants in the compliant but who were served).

The Court would ordinarily afford Plaintiff the opportunity to file an Amended Complaint and include this party in the caption. Amendment would be futile in this case, however, because the Judicial Standards Commission and Department of Justice are arms of the State that are immune from suit for the same reasons stated in Sections (2)(C)-(D), *supra*; see, e.g., Cannell v. Oregon Dep't of Justice, 811 F.Supp. 546, 548 n.1 (D. Or. 1993) (Oregon Department of Justice

is an arm of the state than cannot be a defendant in a § 1983 action). Therefore, the claims against the North Carolina Judicial Standards Commission and Department of Justice are dismissed with prejudice.

(3) Jurisdiction

Even if Plaintiff had named a Defendant against whom this suit could proceed, the Court would lack jurisdiction to review the North Carolina courts' judicial decisions that Plaintiff seeks to attack.

Congress has vested the Supreme Court with exclusive jurisdiction to review state court decisions. 28 U.S.C. § 1257. The Rooker-Feldman[5] doctrine divests the district court of subject-matter jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). That is, a district court lacks jurisdiction where "entertaining the federal claim should be the equivalent of an appellate review of [the state court] order." Jordahl v. Dem. Pty. of Va., 122 F.3d 192, 202 (4th Cir. 1997). "[W]here plaintiffs' claims are 'inextricably intertwined' with the merits of a state court decision, then the district court is being asked to review the state court decision, a result prohibited by Rooker-Feldman." Id. (quoting Leonard v. Suthard, 927 F.2d 168, 169-70 (4th Cir. 1991)).

The gist of Plaintiff's Complaint is that two civil suits in the North Carolina Superior Court were decided adversely to her due to misconduct by Zamora and Diamond, the North Carolina Courts' failure to follow laws and procedures. She further claims that the North Carolina Bar and

[5] Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

Judicial Commission failed to investigate and punish the alleged misconduct, and that the North Carolina Courts failed to grant relief on review of those decisions. See (Doc. No. 1 at 17-18). Her prayer for relief is telling; Plaintiff seeks "relief for the original complaint allegations," and asks that "[a]ll allegation[s] and cases be close[d] against [her]...." (Doc. No. 1 at 30).

The Court's grant of relief in this action would necessarily require it to overrule various orders and rulings made in the state court, which the Court is prohibited from doing.[6] See Exxon Mobile, 544 U.S. at 293–94; Feldman, 460 U.S. at 462 (district court lacked jurisdiction to review state court's allegedly unconstitutional denial of an applicant's admission to sit for the Bar examination because the state-court action was judicial in nature and final state-court judgments can only be reviewed by the Supreme Court).

Therefore, even if Plaintiff had named a Defendant against whom this suit could proceed, it would be dismissed for lack of subject-matter jurisdiction.

(4) North Carolina Claims

The district courts have supplemental jurisdiction over claims that are so related to the claims over which the court has original jurisdiction that they "form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). A court may decline to exercise supplemental jurisdiction if: (1) the claim raises a novel or complex issue of state law; (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction; (3) the district court has dismissed all claims over which it has original jurisdiction; or (4) in exceptional circumstances, there are other compelling reasons for

[6] Plaintiff appears to suggest that one of the North Carolina cases is not yet final. Plaintiff has failed to allege any facts that demonstrate extraordinary circumstances that would warrant this Court's interference with ongoing state court proceedings. See Younger v. Harris, 401 U.S. 37 (1971); Gilliam v. Foster, 75 F.3d 881, 903 (4th Cir. 1996). Therefore, even if the Court had jurisdiction over this action, it would abstain from interfering in the State court proceedings.

declining jurisdiction. 28 U.S.C. § 1367(c)(1)-(4).

None of Plaintiff's federal claims have passed initial review, therefore, the Court will not exercise supplemental jurisdiction over Plaintiff's claims under North Carolina law.

(5) Temporary Restraining Order/Preliminary Injunction

A preliminary injunction is an extraordinary remedy afforded before trial at the discretion of the district court. Pashby v. Delia, 709 F.3d 307, 319 (4th Cir. 2013). It is an extraordinary remedy that is never awarded as of right. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). In each case, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 542 (1987). "[C]ourts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." Winter, 555 U.S. at 24. To obtain a preliminary injunction, a plaintiff must establish (1) that he is likely to succeed on the merits; (2) that he is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. Id. at 20; Di Biase v. SPX Corp., 872 F.3d 224, 229 (4th Cir. 2017).

Plaintiff's rambling and conclusory allegations fail to set forth facts supporting any of the elements for granting an injunction and, therefore, her motion for temporary restraining order/ preliminary injunction will be denied.

(6) Motion for Default Judgment

The Complaint has not been served on Defendants and, for the reasons set forth in this Order, it does not pass initial review. Defendants have not yet appeared in the case and had no

obligation to file an Answer. Therefore, they are not in default and Plaintiff's Motion for the entry of default judgment will be denied.

IV. CONLUSION

For the reasons stated herein, this action is dismissed with prejudice and Plaintiff is granted *in forma pauperis* status for the limited purpose of initial review. The Complaint is dismissed as frivolous, for failure to state a claim upon which relief can be granted, and for seeking damages against immune parties, and for lack of subject-matter jurisdiction.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, (Doc. No. 2), is **GRANTED** for the limited purpose of this initial review.

2. Plaintiff's Motion for Preliminary Injunction, (Doc. No. 3), is **DENIED**.

3. Plaintiff's Motion for Default, (Doc. No. 5), is **DENIED**.

4. The Complaint is **DISMISSED** with prejudice as frivolous, for failure to state a claim upon which relief can be granted, and for seeking damages against immune parties pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), and for lack of subject-matter jurisdiction.

5. The Clerk is directed to close the case.

Signed: March 21, 2018

Frank D. Whitney
Chief United States District Judge

United States District Court
Western District of North Carolina
Charlotte Division

Valerie Arroyo,	)	JUDGMENT IN CASE
	)	
Plaintiff(s),	)	3:17-cv-00721-FDW-DCK
	)	
vs.	)	
	)	
Daniel J. Zamora	)	
,		
Defendant(s).	)	

DECISION BY COURT. This action having come before the Court and a decision having been rendered;

IT IS ORDERED AND ADJUDGED that Judgment is hereby entered in accordance with the Court's March 21, 2018 Order.

March 21, 2018

Frank G. Johns, Clerk
United States District Court

Appendix F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17-cv-721-FDW-DCK

VALERIE ARROYO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER**
	)	
DANIEL ZAMORA, et al.,	)	
	)	
Defendants.	)	
	)	

THIS MATTER is before the Court on Plaintiff's *pro se* "Motion to Vacate Sua Sponte Order," which is construed as a Second Motion for Reconsideration, (Doc. No. 13).

With regard to motions to alter or amend a judgment under Rule 59(e), the United States Court of Appeals for the Fourth Circuit has stated:

> A district court has the discretion to grant a Rule 59(e) motion only in very narrow circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or to prevent manifest injustice."

Hill v. Braxton, 277 F.3d 701, 708 (4th Cir. 2002) (quoting Collison v. Int'l Chem. Workers Union, 34 F.3d 233, 236 (4th Cir. 1994)). Furthermore, "Rule 59(e) motions may not be used to make arguments that could have been made before the judgment was entered." Id. Indeed, the circumstances under which a Rule 59(e) motion may be granted are so limited that "[c]ommentators observe 'because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied.'" Woodrum v. Thomas Mem'l Hosp. Found., Inc., 186 F.R.D. 350, 351 (S.D. W. Va. 1999) (quoting 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 2810.1 (2d ed. 1995)).

On March 21, 2018, the Court dismissed the Complaint as frivolous, for failure to state a claim on which relief can be granted, and for seeking damages against immune parties. Plaintiff, for the second time, seeks to challenge that Order, but has not shown the existence of the limited circumstances under which a Rule 59(e) motion may be granted. The motion does not present evidence that was unavailable when the Complaint was filed, nor does the motion stem from an intervening change in the applicable law. Furthermore, the Plaintiff has not shown that a clear error of law has been made, or that failure to grant the motion would result in manifest injustice. See Hill, 277 F.3d at 708. For these reasons, the Court will deny the Plaintiff's Second Motion for Reconsideration. Plaintiff is cautioned that continued frivolous and duplicative *pro se* filings may result in the imposition of sanctions.

IT IS, THEREFORE, ORDERED that Plaintiff's Second Motion for Reconsideration, (Doc. No. 13), is **DENIED**.

Signed: May 1, 2018

Frank D. Whitney
Chief United States District Judge

Appendix G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:17-cv-00721-FDW-DCK

VALERIE ARROYO, Plaintiff, vs. DANIEL ZAMORA, et. al., Defendants.	)	ORDER

THIS MATTER is before the Court on *pro se* Plaintiff's filing of an "Amended Complaint" in Docket Number 3:17-cv-00721 after this Court has twice warned that the Court may impose sanctions, including a pre-filing injunction, if Plaintiff continues to file frivolous and duplicative *pro se* filings.

Plaintiff commenced this case *pro se* and moved to proceed *in forma pauperis* on December 15, 2017. (Doc. Nos. 1, 2). On March 21, 2018, the Court, after granting Plaintiff *in forma pauperis* status for the limited purpose of initial review, dismissed Plaintiff's complaint with prejudice "as frivolous, for failure to state a claim upon which relief can be granted, and for seeking damages against immune parties pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), and for lack of subject-matter jurisdiction" and directed the Clerk to close the case. (Doc. No. 8 at 12). On the same day, the Clerk's Judgment was entered in accordance with the Court's order and the case closed. (Doc. No. 9). Plaintiff then filed a *pro se* "Order, Memorandum, and Recommendation" on March 27, 2018, which the Court construed as a motion to reconsider and denied on April 27, 2018. (Doc. Nos. 10, 12). Plaintiff filed three days later on April 30, 2018 a *pro se* "Motion to Vacate Sua Sponte Order," which the Court construed as Second Motion for Reconsideration and

denied. (Doc. Nos. 13, 14). In its May 1, 2018 order denying the Second Motion for Reconsideration, the Court "cautioned that continued frivolous and duplicative *pro se* filings may result in the imposition of sanctions." (Doc. No. 14 at 2). On May 2, 2018, Plaintiff filed a *pro se* "Motion to Alter, Amend a Judgment under FRCP 59(e)." (Doc. No. 15). On May 7, 2018, the Court denied Plaintiff's "Motion to Alter, Amend a Judgment under FRCP 59(e)" and further warned that it "may impose sanctions, including a pre-filing injunction, if Plaintiff continues to file frivolous and duplicative *pro se* filings." (Doc. No. 16 at 2). Plaintiff filed this "Amended Complaint" on May 18, 2018. (Doc. No. 17).

This case docketed as number 3:17-cv-00721 is closed. Plaintiff has not cited nor can the Court recall any authority or basis for a Plaintiff filing an Amended Complaint after judgment is entered and the case is closed. Additionally, sufficient time has passed for Plaintiff to have received the Court's May 1, 2018 and May 7, 2018 orders warning Plaintiff on the possibility of sanctions for frivolous filings. Plaintiff has previously filed repetitive meritless motions that continue to consume the Court's time as previously summarized in this Order. Therefore, it would appear that Plaintiff's filing of the "Amended Complaint" on May 18, 2018 (Doc. No. 17) was filed for an improper purpose, including but not limited to being frivolous. See Fed. R. Civ. P. 11(b). Further, based on Plaintiff's application to proceed in district court without prepaying fees or costs, the Court does not believe any monetary sanctions could adequately address Plaintiff's conduct.

THEREFORE, the Court ORDERS Plaintiff to show cause why her filing of the "Amended Complaint" does not warrant sanctions, including but not limited to an injunction enjoining her from filing in this closed case docketed as number 3:17-cv-00721. Plaintiff is hereby **ORDERED to show cause no later than Monday, June 13, 2018.** Plaintiff is further advised that a failure to

show cause or a failure to respond to this Order may result in the entry of sanctions, including but not necessarily limited to a pre-filing injunction.

The Clerk is respectfully DIRECTED to send a copy of this Order to Plaintiff's address of record.

IT IS SO ORDERED.

Signed: May 30, 2018

Frank D. Whitney
Chief United States District Judge

Appendix H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:17-cv-00721-FDW-DCK

VALERIE ARROYO, Plaintiff, vs. DANIEL ZAMORA, et. al., Defendants.	)	ORDER

THIS MATTER is before the Court on the Court's Order to Show Cause entered on May 30, 2018. (Doc. No. 18). The Court ordered Plaintiff to show cause why her filing of the "Amended Complaint" does not warrant sanctions. (Doc. No. 18). The Court stated the failure to show cause or respond, "may result in the entry of sanctions, including but not necessarily limited to a pre-filing injunction." (Doc. No. 18 at 2-3). Plaintiff filed a response on June 13, 2018. (Doc. No. 19).

As previously summarized by the Court in its May 30, 2018 order:

> Plaintiff commenced this case *pro se* and moved to proceed *in forma pauperis* on December 15, 2017. (Doc. Nos. 1, 2). On March 21, 2018, the Court, after granting Plaintiff *in forma pauperis* status for the limited purpose of initial review, dismissed Plaintiff's complaint with prejudice "as frivolous, for failure to state a claim upon which relief can be granted, and for seeking damages against immune parties pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), and for lack of subject-matter jurisdiction" and directed the Clerk to close the case. (Doc. No. 8 at 12). On the same day, the Clerk's Judgment was entered in accordance with the Court's order and the case closed. (Doc. No. 9). Plaintiff then filed a *pro se* "Order, Memorandum, and Recommendation" on March 27, 2018, which the Court construed as a motion to reconsider and denied on April 27, 2018. (Doc. Nos. 10, 12). Plaintiff filed three days later on April 30, 2018 a *pro se* "Motion to Vacate Sua Sponte Order," which the Court construed as Second Motion for Reconsideration and denied. (Doc. Nos. 13, 14). In its May 1, 2018 order denying the Second Motion for Reconsideration, the Court "cautioned that continued frivolous and duplicative *pro se* filings may result in the imposition of sanctions."

> (Doc. No. 14 at 2). On May 2, 2018, Plaintiff filed a *pro se* "Motion to Alter, Amend a Judgment under FRCP 59(e)." (Doc. No. 15). On May 7, 2018, the Court denied Plaintiff's "Motion to Alter, Amend a Judgment under FRCP 59(e)" and further warned that it "may impose sanctions, including a pre-filing injunction, if Plaintiff continues to file frivolous and duplicative *pro se* filings." (Doc. No. 16 at 2). Plaintiff filed this "Amended Complaint" on May 18, 2018. (Doc. No. 17).

(Doc. No. 18).

Courts have authority to sanction the filings or advocation by counsel or unrepresented persons if they have violated Fed. R. Civ. P. 11(b) and "to limit access to the courts by vexatious and repetitive litigants" pursuant to the All Writs Act, 28 U.S.C. § 1651(a). Cromer v. Kraft Foods N. Am. Inc., 390 F.3d 812, 817 (4th Cir. 2004) (citations omitted). Rule 11(b) states:

> By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

When considering sanctions limiting access to the courts, courts must proceed in accordance "with constitutional guarantees of due process of law and access to the courts" and should employ such authority "sparingly[.]" Cromer, 390 F.3d at 817 (citing U.S. Const. amend. XIV, § 1). Therefore, courts provide the "litigant notice and an opportunity to be heard[,]" id. at 819 (citations omitted), which may be in the form of an order "to show cause[,]" Fed. R. Civ. P. 11(c)(3).

Then, the Court "must weigh all the relevant circumstances, including (1) the party's history of litigation, in particular whether 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." Cromer, 390 F.3d at 818 (citing Safir v. United States Lines, Inc., 792 F.2d 19, 24 (2d Cir. 1986); Green v. Warden, United States Penitentiary, 699 F.2d 364, 368-69, 370 n.8 (7th Cir. 1983); Pavilonis v. King, 626 F.2d 1075, 1078-79 (1st Cir. 1980)). Further, the court must narrowly tailor the injunction "to fit the specific circumstances at issue." Cromer, 390 F.3d at 818 (citations omitted).

The Court gave Plaintiff notice and an opportunity to be heard through its issuance of the Show Cause Order, which warned that sanctions, including but not limited to a prefiling injunction may be imposed. Plaintiff's response to the Show Cause Order admits she has received all orders from this Court. (Doc. No. 19 at 1). Plaintiff contends she has not abused the Court or acted in bad faith because she could file an Amended Complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure. (Doc. No. 19 at 3).

Plaintiff's belief in her authority to file of the Amended Complaint is not supported by Rule 15 of the Federal Rules of Civil Procedure. Rule 15 provides:

> (a) Amendments Before Trial.
>
> (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
>
> (A) 21 days after serving it, or
>
> (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
>
> (2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Neither the Plaintiff nor the record shows that service on the complaint occurred, and Plaintiff neither had the opposing parties' written consent nor sought the court's leave to file an amended complaint. Plaintiff's complaint only certifies that the "Complaint & Summons will be served . .

. ." Further, Plaintiff filed her complaint without paying the fee required under 28 U.S.C. § 1914(a) and instead sought the court's authorization to commence and prosecute the suit by submitting "an affidavit that includes a statement of all assets such [plaintiff] possesses that the person is unable to pay such fees or give security therefor[,]" 28 U.S.C. § 1915(a). Upon consideration of Plaintiff's affidavit, the Court dismissed Plaintiff's complaint with prejudice "as frivolous, for failure to state a claim upon which relief can be granted, and for seeking damages against immune parties pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), and for lack of subject-matter jurisdiction" and directed the clerk of court to close the case after granting Plaintiff *in forma pauperis* status for the limited purpose of initial review. (Doc. No. 8 at 12). The clerk of court subsequently closed the case and entered judgment. Accordingly, summons was never issued.

Finally, after entry of a final judgment, district courts lack subject matter jurisdiction over an amended complaint or any request to amend a complaint due to mootness. See Combs v. PriceWaterhouse Coopers, LLP, 382 F.3d 1196, 1205 (10th Cir. 2004); National Petrochemical Co. of Iran v. The M/T Stolt Sheaf, 930 F.3d 240, 244 (2d Cir. 1991) (citations omitted); FDIC v. Weise Apartments—44457 Corp., 192 F.R.D. 100, 103 (S.D.N.Y. 2000) (citing Paganis v. Blonstein, 3 F.3d 1067, 1072 (7th Cir. 1993)). The entry of final judgment "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945) (defining final decision). Although other Federal Rules of Civil Procedure may provide relief after entry of a final judgment, Rule 15 does not. See Combs, 382 F.3d at 1205; FDIC, 192 F.R.D. at 103.

The filing of the Amended Complaint, along with all the other filings before this Court reflect a lack of understanding of the law. This fundamental misunderstanding has resulted in numerous frivolous filings with no good faith basis under the law. The burden on the Court to

address these filings, therefore, is not justified, and given Plaintiff's consistency in filing frivolous motions or pleadings, unduly heavy. Plaintiff's response suggests Plaintiff's meritless filings will not cease but continue indefinitely and her representation of her limited means shows that monetary sanctions could not adequately address Plaintiff's conduct. The Court also has already addressed and denied Plaintiff's post-judgment motions under Rule 59(e) of the Federal Rules of Civil Procedure. Thus, the Court concludes Plaintiff's filing of the "Amended Complaint" was filed for an improper purpose and was not warranted by existing law or by a nonfrivolous argument. Fed. R. Civ. P. 11(b). Having considered the record and all four Cromer factors, the Court concludes the only adequate remedy is a prefiling injunction.

As Plaintiff's conduct has been limited to this case, the Court will only impose a prefiling injunction as to this closed case with docket number 3:17-cv-00721 for one year. The injunction will not extend to any filing by Plaintiff that has been reviewed and signed by an attorney licensed in the state of North Carolina certifying that the filing is not in violation of Rule 11 of the Federal Rules of Civil Procedure. The attorney shall list their bar number but need not represent the Plaintiff. By limiting the injunction in this manner, the Court ensures that nonfrivolous filings may be made.

THEREFORE, the Court hereby ORDERS and ENJOINS Plaintiff from filing in the above-captioned case, docket number 3:17-cv-00721, for one year unless Plaintiff's filing includes a certification from an attorney licensed in the state of North Carolina certifying that the filing is not in violation of Rule 11 of the Federal Rules of Civil Procedure. Plaintiff is advised that any filing that is made in violation of this Order may be punishable as a contempt of this court and could result in sanctions, that could include imprisonment.

In the event Plaintiff files papers in violation of this Order, upon such notice, the clerk of court will, under authority of this court, immediately and summarily strike the pleading or filings.

The clerk of court is respectfully DIRECTED to send a copy of this Order to Plaintiff's address of record and to maintain a copy of this Order for its records.

IT IS SO ORDERED.

Signed: June 18, 2018

Frank D. Whitney
Chief United States District Judge

Additional material from this filing is available in the Clerk's Office.