UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1566

LATASHA BOYD,

Plaintiff - Appellant,

v.

UNITED STATES,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Bruce H. Hendricks, District Judge. (7:19-cv-00376-BHH)

Submitted: July 16, 2019 Decided: July 18, 2019

Before MOTZ, WYNN, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Latasha Boyd, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Appendix (C)

FILED: July 18, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1566
(7:19-cv-00376-BHH)

LATASHA BOYD

Plaintiff - Appellant

v.

UNITED STATES

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.

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

PER CURIAM:

Latasha Boyd appeals the district court's order dismissing without prejudice her civil complaint as frivolous and for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(i), (ii) (2012).* The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). The magistrate judge recommended that the complaint be dismissed and advised Boyd that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140 (1985). Boyd has waived appellate review by failing to file specific objections after receiving proper notice. Accordingly, we affirm the judgment of the district court.

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

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* Because "the grounds of the dismissal make clear that no amendment could cure the defects in [Boyd's] case," the district court's order in final and appealable. *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015) (internal quotation marks omitted).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Latasha Boyd,	)	C/A: 7:19-cv-00376-BHH-JDA
	)	
Plaintiff,	)	
	)	
v.	)	**REPORT AND RECOMMENDATION**
	)	
United States,	)	
	)	
Defendant.	)	
	)	

Latasha Boyd ("Plaintiff"), proceeding pro se and in forma pauperis, files this action purportedly alleging a claim for violations of her civil rights. This matter is before the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C. Having reviewed the Complaint in accordance with applicable law, the undersigned concludes that this action should be summarily dismissed without issuance and service of process.

BACKGROUND

Plaintiff commenced this action by filing a Complaint against the United States pursuant to 42 U.S.C. § 1983. [Doc. 1 at 4.] The allegations in the Complaint are nonsensical and difficult to decipher. However, it appears that Plaintiff contends she is being harassed by Defendant. [Doc. 1-1 at 1.] Specifically, Plaintiff alleges, "[t]hey are using technology and giving me depression and put energy in my body to keep me up all night long . . ." [*Id.*]

Plaintiff alleges that, when she was a little girl, she witnessed her mother being abused. [*Id.*] However, the man who committed the abuse was allowed back into her mother's home. [*Id.*] Plaintiff contends that she pulled a gun on the abuser when she was

17, but "they" removed her gun and the abuser purchased a gun, putting Plaintiff's life and her mother's life at risk. [*Id.*] In April 2018, Plaintiff was scared and called the Spartanburg County Sheriff's Department, but they would not send anyone out other than an ambulance, because they thought she was crazy. [*Id.*]

When Plaintiff was 16, she was subpoenaed to a murder trial, where she witnessed "them" let six or seven murderers walk free. [*Id.*] Plaintiff also had to go to court in 2018 for child support concerning her first child, but the State of South Carolina said that the father did not have to support his child. [*Id.*] Plaintiff also went to court on her birthday, but that court appearance was handled unprofessionally. [*Id.*] The father of Plaintiff's children kidnaped Plaintiff and beat her. [*Id.*] Plaintiff went to court on that case, and the judge gave the children's father a fine, stating that he did not see any reason to take any further action. [*Id.*] According to Plaintiff, the judge treated the case as if Plaintiff's life did not matter, even though the man had beaten her, her face was swollen, and she had marks on her body. [*Id.*]

One day, according to Plaintiff, she received a letter in the mail saying she needed to get some tests done because of an "abnormal pap test." [*Id.*] Plaintiff went to Mary Black Health System in Spartanburg and "the lady cut the inside of me," but when Plaintiff called for the test results, they said they did not know the results and that Plaintiff needed to come back in for more tests. [*Id.*] Plaintiff contends doctors "are not here to heal so why let them cause a problem and I pay for it, I'm sure this system would [have] slowly killed me, I found some natural her[b]s to heal my pain that they created." [*Id.* at 2.]

Plaintiff alleges that her grandmother "supposedly had cancer" and that she "went through the process." [*Id.*] However, after her grandmother went through chemotherapy

treatment, an "illiterate man forge[d] her name to sign some papers and next she was sen[t] to hospice to end the process, she stayed drug[ged] up, getting rob[bed by] this system and her husband." [*Id.*]

Plaintiff alleges that the food service is bad and the fees are unreasonable in the "District [s]ix" school district. [*Id.*] The school system "pick[s] at the brown colored kids." [*Id.*] Plaintiff went to school in "District [s]ix" and "could have been great if my profile was not label[ed] so weak and if the information was helpful and allowed me to heal instead of continu[ing] to abuse me, about false history." [*Id.*]

Plaintiff alleges she took an online course through Kaplan University, which placed a $6,000 loan in her name, but she had no knowledge of the loan until she received a letter in the mail in 2018. [*Id.*] According to Plaintiff, the IRS garnished her taxes, even though she had a $600 water bill to pay. [*Id.*]

Plaintiff contends that she received a "few over the limit speeding ticket" and the fine was over $500. As a result, the "city" took Plaintiff's car and told her she would have to pay $1500 to get it back. [*Id.*]

Plaintiff contends that she is being harassed by "D[SS] people" who are reporting false information about her to try to take her child away. [*Id.*] These people are trying to make Plaintiff look crazy and using the system to ruin her life. [*Id.*] According to Plaintiff, they have violated her rights "to walk me through this system for Age of Aquarius using MK Ultra a mind control program." [*Id.*]

For her injuries, Plaintiff alleges, verbatim, "Anxiety, depression, Forced in a mental Ho[spital] and Forced to take the[ir] medical treatment, Bipolar, Harassed so the world can think [I']m crazy, Damaging my Nerves." [Doc. 1 at 6.] For her relief, Plaintiff seeks $200

million in damages and asks that the Court stop the harassment and keep her out of the "government ideological agenda." [*Id.*]

STANDARD OF REVIEW

Under established local procedure in this judicial district, a careful review has been made of the pro se Complaint. Pursuant to the provisions of 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C., the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Further, Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the in forma pauperis statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

As a pro se litigant, Plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, the pro se Complaint is subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the Court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but the Court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff's legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417–18 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the Court can

ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

Further, this Court would possess the inherent authority to review a pro se complaint to ensure that subject matter jurisdiction exists and that a case is not frivolous, even if the complaint were not subject to the prescreening provisions of 28 U.S.C. § 1915. *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 307–08 (1989) ("Section 1915(d) . . . authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision."); *Ross v. Baron*, 493 F. App'x 405, 406 (4th Cir. 2012) ("[F]rivolous complaints are subject to dismissal pursuant to the inherent authority of the court, even when the filing fee has been paid . . . [and] because a court lacks subject matter jurisdiction over an obviously frivolous complaint, dismissal prior to service of process is permitted.") (citations omitted); *see also Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000) ("[D]istrict courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee[.]"); *Ricketts v. Midwest Nat'l Bank*, 874 F.2d 1177, 1181 (7th Cir. 1989) ("[A] district court's obligation to review its own jurisdiction is a matter that must be raised *sua sponte*, and it exists independent of the 'defenses' a party might either make or waive under the Federal Rules."); *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981) (providing a judge may dismiss an action *sua sponte* for lack of subject matter jurisdiction without issuing a summons or following other procedural requirements).

DISCUSSION

The Complaint purports to assert a claim for violations of Plaintiff's civil rights and seeks money damages. However, this case is subject to summary dismissal because the

Complaint is frivolous and fails to allege facts to support a plausible claim for relief. Liberally construed, the Complaint appears to assert that Defendant has harassed Plaintiff by, among other things, ignoring abusive behaviors against Plaintiff, systematically denying Plaintiff and her relatives proper medical care and educational opportunities, imposing unfair loans and fees against Plaintiff, trying to take Plaintiff's children away from her, making Plaintiff look crazy, and using a "mind control program" to systematically harass Plaintiff for an improper "government ideological agenda." [*See generally* Docs. 1, 1-1.] Based on these allegations, Plaintiff appears to assert a claim pursuant to 42 U.S.C. § 1983.

As noted, 28 U.S.C. § 1915 ("§ 1915") permits an indigent litigant to proceed in forma pauperis, which allows the litigant to commence a federal court action without prepaying the administrative costs of proceeding with the lawsuit. *See Staley v. Witherspoon*, No. 9:07-cv-195-PMD-GCK, 2007 WL 1988272, at *1 (D.S.C. July 3, 2007). However, the statute provides limitations to such actions by permitting the Court to dismiss the case upon a finding that the action "fails to state a claim on which relief may be granted" or is "frivolous or malicious." *Id.* (quoting 28 U.S.C. § 1915(e)(2)(B)). A complaint is deemed frivolous when it is "clearly baseless" and includes allegations that are "fanciful," "fantastic," or "delusional." *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992) (internal quotation marks omitted) (citing *Neitzke v. Williams*, 490 U.S. 319, 325, 327–28 (1989)).

Here, Plaintiff's Complaint contains assertions that are barely comprehensible and manifestly delusional. Presuming that Plaintiff has set forth these statements sincerely, as assertions of fact, they cannot be given credibility. A district court's review of a case for factual frivolousness under § 1915 is guided by the Supreme Court's decision in *Denton*.

See Thomas v. Barri, No. 8:10-cv-0431-MBS-BHH, 2010 WL 1993881, at *2–3 (D.S.C. Mar. 3, 2010), *Report and Recommendation adopted by* 2010 WL 1993860 (D.S.C. May 18, 2010). When a plaintiff proceeds in forma pauperis, § 1915 "gives courts the authority to 'pierce the veil of the complaint's factual allegations[,]' mean[ing] that a court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations." *Denton*, 504 U.S. at 32. The "initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in favor of the plaintiff," *id.*, and "[a]n *in forma pauperis* complaint may not be dismissed . . . simply because the court finds the plaintiff's allegations unlikely." *Id.* at 33. However, the district court is entrusted with the discretion to dismiss the case for factual frivolousness "when the facts alleged rise to the level of the irrational or the wholly incredible." *Id.* "[A] court may dismiss a claim as factually frivolous only if the facts alleged are 'clearly baseless', a category encompassing allegations that are 'fanciful,' 'fantastic,' and 'delusional.'" *Id.* at 32–33 (citations omitted) (quoting *Neitzke*, 490 U.S. at 325, 328). In reviewing for frivolousness or malice, the Court looks to see whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. *Harley v. United States*, 349 F. Supp. 2d 980, 981 (M.D.N.C. 2004) (citing *Neitzke*, 490 U.S. 319). The Court must accept all well-pled allegations and review the Complaint in a light most favorable to plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). Nevertheless, it is well-settled that the Court has the authority to dismiss claims that are obviously "fantastic" or "delusional." *Adams v. Rice*, 40 F.3d 72, 74 (4th Cir. 1994); *Raiford v. FBI*, No. 1:10-cv-2751-MBS-JRM, 2010 WL 6737887, at *3 (D.S.C. Nov. 17, 2010), *Report and*

Recommendation adopted by 2011 WL 2020729 (D.S.C. May 23, 2011) (explaining a finding of factual frivolousness is appropriate when "the facts alleged rise to the level of the irrational or the wholly incredible").

The present action is comprised of factual allegations that are "wholly incredible," and which fail to state a claim for relief. As noted, the Complaint asserts that Defendant harassed Plaintiff by, among other things, ignoring abusive behaviors against Plaintiff, systematically denying Plaintiff and her relatives proper medical care and educational opportunities, imposing unfair loans and fees against Plaintiff, trying to take Plaintiff's children away from her, making Plaintiff look crazy, and using a "mind control program" to systematically harass Plaintiff for an improper "government ideological agenda." The Court finds these bare allegations clearly fall within the statute's definition of frivolity. *McLean v. United States*, 566 F.3d 391, 399 (4th Cir. 2009) (noting examples of frivolous claims include those whose factual allegations are "so nutty," "delusional," or "wholly fanciful" as to be simply "unbelievable." (internal quotation marks and citations omitted)); *Simmons v. Clinton Police Dep't*, No. 7:14-cv-248-BO, 2014 WL 7151242, at *2 (E.D.N.C. Dec. 12, 2014). Plaintiff's conclusory assertions fail to show any arguable basis in fact or law and Plaintiff presents no other allegations of any kind to support a claim for relief. *See, e.g., Brock v. Angelone*, 105 F.3d 952, 953–54 (4th Cir. 1997) (finding a prisoner's claim, that he was being poisoned or experimented upon via an ingredient in pancake syrup served at his prison, was fanciful or delusional, and dismissing the appeal as frivolous with sanctions); *Neal v. Duke Energy*, No. 6:11-cv-1420-HFF-KFM, 2011 WL 5083181, at *4 (D.S.C. June 30, 2011), *Report and Recommendation adopted by* 2011 WL 5082193 (D.S.C. Oct. 26, 2011) (dismissing action upon finding plaintiff's factual allegations were

frivolous, fanciful, and delusional where plaintiff claimed defendants clandestinely placed a GPS device in her car while it was in the shop for repairs and that she was being stalked by the defendants, noting the allegations were "made without any viable factual supporting allegations and appears to be the product of paranoid fantasy"); and *Feurtado v. McNair*, No. 3:05-cv-1933-SB, 2006 WL 1663792, at *2 (D.S.C. Jun. 15, 2006) (noting that frivolousness encompasses inarguable legal conclusions and fanciful factual allegations), *aff'd*, 227 F. App'x 303 (4th Cir. 2007).

In any case, Plaintiff has failed to allege any facts to support a claim for relief under 42 U.S.C. § 1983. Plaintiff has likewise failed to make any specific allegations against the United States, the entity she purports to sue in this action.

Therefore, this case should be dismissed as frivolous under § 1915(e)(2)(B)(i) and for failure to state a claim under which relief may be granted pursuant to § 1915(e)(2)(B)(ii). *See Thomas v. Berry*, No. 8:10-cv-698-MBS-BHH, 2010 WL 4008333, at *2 (D.S.C. Apr. 27, 2010), *Report and Recommendation adopted by* 2010 WL 4007189 (D.S.C. Oct. 13, 2010); *Shuler v. Neely*, No. 3:11-cv-182-RJC, 2011 WL 9879176, at *2 (W.D.N.C. Apr. 19, 2011).

RECOMMENDATION

Accordingly, it is recommended that the District Court dismiss this action without issuance and service of process. **Plaintiff's attention is directed to the important notice on the next page.**

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

February 14, 2019
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Latasha Boyd, Plaintiff, vs. United States, Defendant.	)	Civil Action No. 7:19-376-BHH **OPINION AND ORDER**

This matter is before the Court for review of the Report and Recommendation of United States Magistrate Judge Jacquelyn D. Austin made in accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 for the District of South Carolina. On February 14, 2019, the Magistrate Judge issued a Report and Recommendation ("Report") recommending that this case be dismissed without prejudice and without issuance and service of process. (ECF No. 11.) The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report. Plaintiff filed late objections on March 14, 2019, and a supplement on March 21, 2019. (ECF Nos. 14 & 15.)

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court must make a *de novo* determination of those portions of the Report, or specified proposed findings or recommendations to which specific objection is made. 28 U.S.C. § 636(b)(1)(C). The Court may accept, reject, or modify, in whole or in part, the Report or

may recommit the matter to the Magistrate Judge with instructions. *Id.* In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *De novo* review is also "unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

In reviewing these pleadings, the Court is mindful of the plaintiff's *pro se* status. This Court is charged with liberally construing the pleadings of a *pro se* litigant. *See, e.g., De'Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003). The requirement of a liberal construction does not mean, however, that the Court can ignore a plaintiff's clear failure to allege facts that set forth a cognizable claim, or that the Court must assume the existence of a genuine issue of material fact where none exists. *See United States v. Wilson*, 699 F.3d 789, 797 (4th Cir. 2012).

DISCUSSION

After a careful review of Plaintiff's "objections," it is fair to say that Plaintiff does not make any specific objections to the Report. Rather, Plaintiff's responses and attachments to the Report are rambling and nonsensical.

Out of an abundance of caution, the Court has carefully reviewed Plaintiff's objections and has made a *de novo* review of the entire Report and Recommendation and finds that the Magistrate Judge fairly and accurately summarized the facts and applied the

correct principles of law. Upon review, the Court finds Plaintiff's objections have no merit and are hereby overruled.

CONCLUSION

For the reasons stated above and by the Magistrate Judge, the Court overrules Plaintiff's objections and adopts and incorporates by reference the Magistrate Judge's Report and Recommendation (ECF No. 11). Accordingly, this action is DISMISSED without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

April 26, 2019
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1567

LATASHA BOYD,

Plaintiff - Appellant,

v.

STATE OF SOUTH CAROLINA; SPARTANBURG; GOVERNMENTS,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Bruce H. Hendricks, District Judge. (7:19-cv-00867-BHH)

Submitted: July 16, 2019 Decided: July 18, 2019

Before MOTZ, WYNN, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Latasha Boyd, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

FILED: July 18, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1567
(7:19-cv-00867-BHH)

LATASHA BOYD

Plaintiff - Appellant

v.

STATE OF SOUTH CAROLINA; SPARTANBURG; GOVERNMENTS

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

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

PER CURIAM:

Latasha Boyd appeals the district court's order dismissing without prejudice her civil complaint as frivolous and for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(i), (ii) (2012).[1] The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). The magistrate judge recommended that the complaint be dismissed and advised Boyd that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140 (1985). Boyd has waived appellate review by failing to file objections to the magistrate judge's recommendation after receiving proper notice.[2] Accordingly, we affirm the judgment of the district court.

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[1] Because "the grounds of the dismissal make clear that no amendment could cure the defects in [Boyd's] case," the district court's order in final and appealable. *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 623 (4th Cir. 2015) (internal quotation marks omitted).

[2] Even if we construed as objections the letter and affidavit Boyd filed within the objections period, we would find these pleadings inadequate to preserve appellate review. *See United States v. Midgette*, 478 F.3d 616, 622 (4th Cir. 2007) (holding that, "to preserve for appeal an issue in a magistrate judge's report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection").

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

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Latasha Boyd, Plaintiff, v. State of South Carolina, Spartanburg, Governments, Defendants.	)	C/A: 7:19-cv-00867-BHH-JDA **REPORT AND RECOMMENDATION**

Latasha Boyd ("Plaintiff"), proceeding pro se and in forma pauperis, files this action purportedly alleging a claim for violations of her civil rights. This matter is before the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C. Having reviewed the Complaint in accordance with applicable law, the undersigned concludes that this action should be summarily dismissed without issuance and service of process.

BACKGROUND

Plaintiff commenced this action by filing a Complaint against certain Defendants. [Doc. 1.] While it is unclear which Defendants Plaintiff intends to sue, she lists the State of South Carolina, Spartanburg, and "[G]overnments" in the caption of her Complaint, and the Clerk of Court listed these Defendants as the named Defendants on the docket. [Doc. 1 at 1–2.] Plaintiff has filed a proposed summons form, which lists the following additional entities: Department of Social Services, Department of Revenue, Spartanburg County Clerk of Court, Spartanburg Municipal Court, Spartanburg County Sheriff, Spartanburg Detention Center, Anderson Mill Elementary School, and Spartanburg Medical Center.

[Doc. 5 at 1–2.] However, Plaintiff does not name these additional entities in the caption of her Complaint and she makes not allegations against them in the body of the Complaint.

Plaintiff purports to assert her claims under 18 U.S.C. §§ 241, 242, 245, 247, 248, and 249, and 42 U.S.C. §§ 3631 and 14141. [Doc. 1 at 3.] Petitioner alleges that the amount in controversy for this action is $200 million "because of repeated pattern and practice[,] because of money laundering, [and] because of domestic operations." [*Id.* at 5.]

The allegations in the Complaint are nonsensical and difficult to decipher. In the Statement of Claim section on the Complaint form, Plaintiff alleges "[her] cousin was almost Beat to Death 03/17/2019, Spirit[ua]l War I Read on All the Document for Case Number 7:19-cv-00376-BHH-JDA."[1] [*Id.*] In an attachment to the Complaint, Plaintiff makes the following additional allegations. [Doc. 1-1.] Plaintiff has witnessed violence and abuse and is trying to raise awareness of a spiritual war. [*Id.* at 1.] Plaintiff contends the CIA is "playing like God using technology to create hell on earth . . . and to money laundry" and that "[her] family do[es] not deserve this type of treatment." [*Id.*] Plaintiff contends that the "system is using it[]s created infrastructure to take people out one by one using different government created entities knowing we all act and behave difference so the agencies [are] a weapon, created to attack the people." [*Id.*] Plaintiff appears to argue that various Government agencies have created a system to abuse people in order to get money. [*Id.*] The Government, according to Plaintiff, is forcing people to "walk with this program this is

[1]The Court takes judicial notice of Plaintiff's other case filed in this Court at case number 7:19-cv-00376-BHH-JDA, in which Plaintiff makes nearly identical claims as those raised in the instant case. *See Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (explaining courts "may properly take judicial notice of matters of public record"); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'").

a messed up matrix, use the media to influence this behavior, so they can profit and pay off and debt that's made to keep us enslaved." [*Id.*] Plaintiff makes other similar allegations about the Government's abuse of power to enslave people. [*Id.*]

For her relief, Plaintiff states that she would like her land back, to recover all of the damages that she lost, and asks for an Order requiring the "governments to leave my family alone." [Doc. 1 at 5.]

STANDARD OF REVIEW

Under established local procedure in this judicial district, a careful review has been made of the pro se Complaint. Pursuant to the provisions of 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C., the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Further, Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the in forma pauperis statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

Further, this Court would possess the inherent authority to review a pro se complaint to ensure that subject matter jurisdiction exists and that a case is not frivolous, even if the complaint were not subject to the prescreening provisions of 28 U.S.C. § 1915. *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 307–08 (1989) ("Section 1915(d) . . . authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision."); *Ross v. Baron*, 493 F. App'x 405, 406 (4th Cir. 2012) ("[F]rivolous complaints are subject to dismissal pursuant to the inherent authority of the court, even when the filing fee has been paid . . . [and]

because a court lacks subject matter jurisdiction over an obviously frivolous complaint, dismissal prior to service of process is permitted.") (citations omitted); *see also Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000) ("[D]istrict courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee[.]"); *Ricketts v. Midwest Nat'l Bank*, 874 F.2d 1177, 1181 (7th Cir. 1989) ("[A] district court's obligation to review its own jurisdiction is a matter that must be raised *sua sponte*, and it exists independent of the 'defenses' a party might either make or waive under the Federal Rules."); *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981) (providing a judge may dismiss an action *sua sponte* for lack of subject matter jurisdiction without issuing a summons or following other procedural requirements). Accordingly, in addition to the screening requirements of § 1915(e)(2)(B), "[t]he present Complaint is subject to review pursuant to the inherent authority of this Court to ensure that subject matter jurisdiction exists and that the case is not frivolous." *Trawick v. Med. Univ. of S.C.*, No. 2:16-cv-730-DCN-MGB, 2016 WL 8650132, at *4 (D.S.C. June 28, 2016) (citing *Carter v. Ervin*, No. 0:14-cv-00865-TLW-PJG, 2014 WL 2468351, *3 (D.S.C. June 2, 2014); *Mayhew v. Duffy*, No. 2:14-cv-24-RMG, 2014 WL 468938, at *1 (D.S.C. Feb. 4, 2014) (exercising inherent authority to summarily dismiss a frivolous case where pro se plaintiff filed new case seeking to vacate a previously-adjudicated case)).

As a pro se litigant, Plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent

standard, the pro se Complaint is subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the Court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but the Court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff's legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417–18 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

DISCUSSION

As an initial matter, this action should be dismissed because the statutes cited by Plaintiff do not provide any jurisdictional basis for this action and Plaintiff lacks standing to enforce the statutes cited. First, Plaintiff cannot institute a civil action based on the criminal statutes cited, 18 U.S.C. §§ 241–249. These federal statutes authorize criminal prosecution for various acts, such as conspiracy against rights, federally protected activities, damage to religious property, and hate crimes, among others, but they do not authorize a private right of action. *See, e.g., Stanfield v. Secrest*, No. 2:13-cv-2702-MBS-BHH, 2013 WL 7156271, at *3 (D.S.C. Dec. 13, 2013), *Report and Recommendation adopted in part by* 2014 WL 507266 (D.S.C. Feb. 6, 2014) (explaining no private cause of action for alleged violations of 18 U.S.C. § 241). "The Supreme Court historically has been loath to infer a private right of action from 'a bare criminal statute,' because criminal statutes are usually couched in terms that afford protection to the general

public instead of a discrete, well-defined group." *Doe v. Broderick*, 225 F.3d 440, 447–48 (4th Cir. 2000) (citing *Cort v. Ash*, 422 U.S. 66, 80 (1975)). Where, as here, criminal statutes bear "no indication that civil enforcement of any kind was available to anyone," a civil complaint alleging violations of such statutes cannot be sustained as a matter of law. *Cort*, 422 U.S. at 80; *see also United States v. Oguaju*, 76 F. App'x 579, 581 (6th Cir. 2003) (finding that the district court properly dismissed defendant's claim filed pursuant to 18 U.S.C. §§ 241 and 242 because he had no private right of action under either of those criminal statutes); *Alexander v. Hendrix*, No. RDB-14-2666, 2015 WL 3464145, at *3 (D. Md. May 29, 2015) (finding that 18 U.S.C. § 241 is "criminal in nature [and] does not provide a private right of action"); *Logan v. Black Lives Matter Org.*, No. 6:16-cv-2599-TMC-KFM, 2016 WL 8929076, at *2 (D.S.C. Aug. 30, 2016), *Report and Recommendation adopted by* 2017 WL 1955414 (D.S.C. May 11, 2017) (finding no private right of action under 18 U.S.C. § 249); *Smith v. Spears*, No. 2:17-cv-3384-PMD-BM, 2018 WL 4523201, at *4 (D.S.C. Feb. 8, 2018), *Report and Recommendation adopted by* 2018 WL 2772668 (D.S.C. June 11, 2018).

Second, and similarly, the Court notes that 42 U.S.C. § 14141(a), which is now codified at 34 U.S.C. § 12601(b), authorizes the Attorney General to bring suit when he "has reasonable cause to believe that a violation of [§ 14141(a)] has occurred." *Id.* § 14141(b). Thus, a private citizen may not bring suit under 42 U.S.C. § 14141. *See Dyson v. Le'Chris Health Sys. Inc.*, No. 4:13-cv-224-BO, 2014 WL 271660, at *6 (E.D.N.C. Jan. 24, 2014); *Ferrer v. Garasimowicz*, No. 1:13-cv-797-LMB, 2013 WL 5428110, at *4 (E.D. Va. Sept. 27, 2013) ("Only the Attorney General of the United States, rather than a private citizen like plaintiff, is authorized to bring suit."). Accordingly, Plaintiff may not pursue a

private cause of action under 42 U.S.C. § 14141. *See Curtis v. S.C. Dep't of Pub. Safety*, No. 3:15-cv-3753-MGL-PJG, 2016 WL 1273881, at *2 (D.S.C. Feb. 26, 2016), *Report and Recommendation adopted by* 2016 WL 1258324 (D.S.C. Mar. 31, 2016); *see also Minner v. Shelby Cty. Gov't*, No. 2:17-cv-2714-JPM-CGC, 2018 WL 4762136, at *4 (W.D. Tenn. Oct. 2, 2018) (explaining the Violent Crime Control and Law Enforcement Act, 34 U.S.C. § 12601(b), can be enforced only by the United States government, not by private citizens). Therefore, this action should be dismissed because Plaintiff lacks standing to enforce the statutes cited, and she therefore fails to state a claim upon which relief may be granted.

Additionally, even if the Court construes this action as asserting a civil rights claim under 42 U.S.C. § 1983, the Complaint would still be subject to summary dismissal. This is so because the Complaint is frivolous and fails to allege facts to support a plausible claim for relief. Liberally construed, the Complaint appears to assert that Defendants, all Government agencies, have conspired to engage in a pattern and practice of abuse, using technology to control Plaintiff to deprive her consciousness, in order to enslave Plaintiff and take her money and land. [*See generally* Docs. 1; 1-1.]

As noted, 28 U.S.C. § 1915 permits an indigent litigant to proceed in forma pauperis, which allows the litigant to commence a federal court action without prepaying the administrative costs of proceeding with the lawsuit. *See Staley v. Witherspoon*, No. 9:07-cv-195-PMD-GCK, 2007 WL 1988272, at *1 (D.S.C. July 3, 2007). However, the statute provides limitations to such actions by permitting the Court to dismiss the case upon a finding that the action "fails to state a claim on which relief may be granted" or is "frivolous or malicious." *Id.* (quoting 28 U.S.C. § 1915(e)(2)(B)). A complaint is deemed frivolous when it is "clearly baseless" and includes allegations that are "fanciful," "fantastic," or

"delusional." *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992) (internal quotation marks omitted) (citing *Neitzke v. Williams*, 490 U.S. 319, 325, 327–28 (1989)).

Here, Plaintiff's Complaint contains assertions that are barely comprehensible and manifestly delusional. Presuming that Plaintiff has set forth these statements sincerely, as assertions of fact, they cannot be given credibility. A district court's review of a case for factual frivolousness under § 1915 is guided by the Supreme Court's decision in *Denton*. *See Thomas v. Barri*, No. 8:10-cv-0431-MBS-BHH, 2010 WL 1993881, at *2–3 (D.S.C. Mar. 3, 2010), *Report and Recommendation adopted by* 2010 WL 1993860 (D.S.C. May 18, 2010). When a plaintiff proceeds in forma pauperis, § 1915 "gives courts the authority to 'pierce the veil of the complaint's factual allegations[,]' mean[ing] that a court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations." *Denton*, 504 U.S. at 32. The "initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in favor of the plaintiff," *id.*, and "[a]n *in forma pauperis* complaint may not be dismissed . . . simply because the court finds the plaintiff's allegations unlikely." *Id.* at 33. However, the district court is entrusted with the discretion to dismiss the case for factual frivolousness "when the facts alleged rise to the level of the irrational or the wholly incredible." *Id.* "[A] court may dismiss a claim as factually frivolous only if the facts alleged are 'clearly baseless', a category encompassing allegations that are 'fanciful,' 'fantastic,' and 'delusional.'" *Id.* at 32–33 (citations omitted) (quoting *Neitzke*, 490 U.S. at 325, 328). In reviewing for frivolousness or malice, the Court looks to see whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. *Harley v. United States*, 349 F.

Supp. 2d 980, 981 (M.D.N.C. 2004) (citing *Neitzke*, 490 U.S. 319). The Court must accept all well-pled allegations and review the Complaint in a light most favorable to plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). Nevertheless, it is well-settled that the Court has the authority to dismiss claims that are obviously "fantastic" or "delusional." *Adams v. Rice*, 40 F.3d 72, 74 (4th Cir. 1994); *Raiford v. FBI*, No. 1:10-cv-2751-MBS-JRM, 2010 WL 6737887, at *3 (D.S.C. Nov. 17, 2010), *Report and Recommendation adopted by* 2011 WL 2020729 (D.S.C. May 23, 2011) (explaining a finding of factual frivolousness is appropriate when "the facts alleged rise to the level of the irrational or the wholly incredible").

The present action is comprised of factual allegations that are "wholly incredible," and which fail to state a claim for relief. As noted, the Complaint asserts that Defendants violated Plaintiff's rights by, among other things, engaging in abusive behaviors against Plaintiff, enslaving Plaintiff and taking her money and land, and using a program to systematically control, harass, and abuse Plaintiff. The Court finds that these bare allegations clearly fall within the statute's definition of frivolity. *McLean v. United States*, 566 F.3d 391, 399 (4th Cir. 2009) (noting examples of frivolous claims include those whose factual allegations are "so nutty," "delusional," or "wholly fanciful" as to be simply "unbelievable." (internal quotation marks and citations omitted)); *Simmons v. Clinton Police Dep't*, No. 7:14-cv-248-BO, 2014 WL 7151242, at *2 (E.D.N.C. Dec. 12, 2014). Plaintiff's conclusory assertions fail to show any arguable basis in fact or law and Plaintiff presents no other allegations of any kind to support a claim for relief. *See Neitzke*, 490 U.S. at 325 ("A suit is frivolous if it lacks an arguable basis in law or fact."); *see also Brock v. Angelone*, 105 F.3d 952, 953–54 (4th Cir. 1997) (finding a prisoner's claim, that he was being

poisoned or experimented upon via an ingredient in pancake syrup served at his prison, was fanciful or delusional, and dismissing the appeal as frivolous with sanctions); *Neal v. Duke Energy*, No. 6:11-cv-1420-HFF-KFM, 2011 WL 5083181, at *4 (D.S.C. June 30, 2011), *Report and Recommendation adopted by* 2011 WL 5082193 (D.S.C. Oct. 26, 2011) (dismissing action upon finding plaintiff's factual allegations were frivolous, fanciful, and delusional where plaintiff claimed defendants clandestinely placed a GPS device in her car while it was in the shop for repairs and that she was being stalked by the defendants, noting the allegations were "made without any viable factual supporting allegations and appears to be the product of paranoid fantasy"); *Feurtado v. McNair*, No. 3:05-cv-1933-SB, 2006 WL 1663792, at *2 (D.S.C. Jun. 15, 2006) (noting that frivolousness encompasses inarguable legal conclusions and fanciful factual allegations), *aff'd*, 227 F. App'x 303 (4th Cir. 2007). In any case, Plaintiff has failed to allege any facts to support a claim for relief under 42 U.S.C. § 1983 or under any other statute or basis for jurisdiction. Plaintiff has likewise failed to make any specific allegations against any of the named Defendants, other than vague allegations that they have collectively abused her and taken her land and money. *See Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) ("Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed."); *Newkirk v. Circuit Court of City of Hampton*, No. 3:14-cv-372-HEH, 2014 WL 4072212, at *2 (E.D. Va. Aug. 14, 2014) (finding the complaint was subject to summary dismissal where plaintiff made no factual allegations against the named defendants within the body of the pleading).

Additionally, because it is well settled that only "persons" may act under color of state law, a defendant in a § 1983 action must qualify as a "person." The State of South Carolina is not a "person" amenable to suit under § 1983. *See Will v. Michigan State Police*, 491 U.S. 58 (1989); *Weller*, 901 F.2d at 396 (4th Cir. 1990); *Drake v. Ham*, No. 3:06-1611-MJP-JRM, 2007 WL 2580629, at *5 (D.S.C. Aug. 16, 2007). Therefore, because the State of South Carolina is not a person under § 1983, the Complaint should be dismissed against this Defendant for failure to state a claim upon which relief may be granted to the extent this action is construed as seeking relief under § 1983.[2]

Finally, Plaintiff has already filed a separate action concerning the claims she raises here, which remains pending in the District Court at Case No. 7:19-cv-0376. Here, Plaintiff again makes similar allegations concerning Defendants' abuse, harassment, and attempts

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[2]Likewise, the named Defendants, to the extent they are properly named as Defendants in this action, would also be entitled to Eleventh Amendment immunity. The Eleventh Amendment to the United States Constitution divests this Court of jurisdiction to entertain a suit for damages brought against the State of South Carolina or its integral parts. U.S. Const. Amend. XI; *see also Harter v. Vernon*, 101 F.3d 334, 338–39 (4th Cir. 1996); *Bellamy v. Borders*, 727 F. Supp. 247, 248–50 (D.S.C.1989). The law is clear that a state must expressly consent to suit in a federal district court. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984). However, the State of South Carolina has not consented to suit in federal court. *See* S.C. Code § 15-78-20(e) (1976) (South Carolina statute expressly providing that the State of South Carolina does not waive Eleventh Amendment immunity, consents to suit only in a court of the State of South Carolina, and does not consent to suit in a federal court or in a court of another State); *see also McCall v. Batson*, 329 S.E.2d 741, 743 (S.C. 1985) (abolishing sovereign immunity in tort "does not abolish the immunity which applies to all legislative, judicial and executive bodies and to public officials who are vested with discretionary authority, for actions taken in their official capacities"), *superseded by statute*, S.C. Code Ann. § 15-78-100(b), *as recognized in Jeter v. S.C. Dep't of Transp.*, 633 S.E. 2d 143 (S.C. Ct. App. 2006). Since the Eleventh Amendment bars the relief that Plaintiff requests against the named Defendants, the Complaint fails to state a claim on which relief may be granted against these Defendants. Accordingly, Defendants are entitled to summary dismissal to the extent Plaintiff seeks money damages against them under 42 U.S.C. § 1983.

to engage in mind control, like she does in her other pending action. Thus, the Court finds that Plaintiff's claims in the instant Complaint are substantially duplicative of the other action she previously filed in this Court, which remains pending at this time. "Because district courts are not required to entertain duplicative or redundant lawsuits, they may dismiss such suits as frivolous pursuant to [section] 1915(e). Generally, a lawsuit is duplicative of another one if the parties, issues and available relief do not significantly differ between the two." *Cottle v. Bell*, No. 00-6367, 2000 WL 1144623, at *1 (4th Cir. 2000) (per curiam) (citations omitted). Given the similarities between the allegations in the prior action and those in the present action, Plaintiff's claims in this action should be dismissed without prejudice as duplicative. *See, e.g., Harrison v. South Carolina*, 126 F. App'x 100, 101 (4th Cir. 2005) (per curiam); *see also Shaw v. Byars*, No. 9-12-cv-2830-RBH, 2012 WL 6138325, at *2 (D.S.C. Dec. 11, 2012) (dismissing action as duplicative where remedies were available in the identical action); *Noonsab v. N.C. Gov't*, No. 5:16-CT-3122-FL, 2016 WL 7650591, at *1 (E.D.N.C. July 8, 2016), *aff'd*, 669 F. App'x 664 (4th Cir. 2016) (same).

In light of all the foregoing, this case should be dismissed as frivolous under § 1915(e)(2)(B)(i) and for failure to state a claim under which relief may be granted pursuant to § 1915(e)(2)(B)(ii). *See Thomas v. Berry*, No. 8:10-cv-698-MBS-BHH, 2010 WL 4008333, at *2 (D.S.C. Apr. 27, 2010), *Report and Recommendation adopted by* 2010 WL 4007189 (D.S.C. Oct. 13, 2010); *Shuler v. Neely*, No. 3:11-cv-182-RJC, 2011 WL 9879176, at *2 (W.D.N.C. Apr. 19, 2011).

RECOMMENDATION

Accordingly, it is recommended that the District Court dismiss this action pursuant to § 1915(e)(2)(B)[3] without issuance and service of process.[4]

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

March 27, 2019
Greenville, South Carolina

Plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

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[3]*See Michau v. Charleston Cty.*, 434 F.3d 725, 728 (4th Cir. 2006) (affirming the district court's dismissal of two complaints pursuant to § 1915(e)(2)(B), even though the plaintiff was not a prisoner, because the plaintiff was proceeding in forma pauperis).

[4]The undersigned finds that, in light of all of the foregoing, Plaintiff cannot cure the deficiencies in her Complaint and that allowing Plaintiff to amend her pleadings therefore would be futile. *See Goode v. Central Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 624 (4th Cir. 2015). This is so because, on the face of the Complaint, Plaintiff's allegations are frivolous. Therefore, the undersigned recommends that the District Court decline to give Plaintiff an opportunity to amend. *See Workman v. Kernell*, No. 6:18-cv-00355-RBH-KFM, 2018 WL 4826535, at *2 n.7 (D.S.C. Oct. 2, 2018); *Young v. Santos*, No. GLR-16-cv-1321, 2018 WL 1583557, at *6 (D. Md. Apr. 2, 2018); *McSwain v. Jobs*, No. 1:13-cv-00890, 2014 WL 12672619, at *1 (M.D.N.C. Jan. 6, 2014) ("[G]iven the preposterous and frivolous nature of [the plaintiff's] complaint, it would be a waste of limited judicial resources to give him an opportunity to amend.").

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Latasha Boyd, Plaintiff, vs. State of South Carolina, Spartanburg, Governments, Defendants.	)	Civil Action No. 7:19-867-BHH **OPINION AND ORDER**

This matter is before the Court for review of the Report and Recommendation of United States Magistrate Judge Jacquelyn D. Austin made in accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 for the District of South Carolina. On March 28, 2019, the Magistrate Judge issued a Report and Recommendation ("Report") recommending that this case be dismissed without issuance and service of process. (ECF No. 11.) The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report. No objections were filed.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court must make a *de novo* determination of those portions of the Report, or specified proposed findings or recommendations to which specific objection is made. 28 U.S.C. § 636(b)(1)(C). The Court may accept, reject, or modify, in whole or in part, the Report or may recommit the matter to the Magistrate Judge with instructions. *Id.* In the absence of

a timely filed objection, a district court need not conduct a *de novo* review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *De novo* review is also "unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

Plaintiff filed no objections and the time for doing so expired on April 15, 2019. In the absence of objections to the Magistrate Judge's Report, this Court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, the Court need only satisfy itself that there is no clear error on the face of the record. *Diamond*, 416 F.3d at 315.

Here, because no objections have been filed, the Court has reviewed the Magistrate Judge's findings and recommendations for clear error. Finding none, the Court agrees with the Magistrate Judge that Plaintiff's claims are subject to summary dismissal. Accordingly, the Report and Recommendation is adopted and incorporated herein by reference, and the Court dismisses this action *without prejudice* and without issuance and service of process.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

May 9, 2019
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1568

LATASHA BOYD, a/k/a Latesha Boyd,

Plaintiff - Appellant,

v.

BILL DIANGIKES,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Bruce H. Hendricks, District Judge. (7:19-cv-01077-BHH)

Submitted: July 16, 2019 Decided: July 18, 2019

Before MOTZ, WYNN, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Latasha Boyd, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

FILED: July 18, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1568
(7:19-cv-01077-BHH)

LATASHA BOYD, a/k/a Latesha Boyd

Plaintiff - Appellant

v.

BILL DIANGIKES

Defendant - Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

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

PER CURIAM:

Latasha Boyd appeals the district court's order dismissing her civil complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii) (2012). The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). The magistrate judge recommended that the complaint be dismissed and advised Boyd that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140 (1985). Boyd has waived appellate review by failing to file objections to the magistrate judge's recommendation after receiving proper notice. Accordingly, we affirm the judgment of the district court.

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

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Latasha Boyd, Plaintiff,	)	C/A No. 7:19-cv-1077-BHH-JDA
v.	)	**REPORT AND RECOMMENDATION**
Bill Diangikes, Defendant.	)	

Latasha Boyd ("Plaintiff"), proceeding pro se and in forma pauperis, files this action purportedly to assert a claim for breach of contract under 41 U.S.C. § 6503. Pursuant to the provisions of 28 U.S.C. § 636(b), and Local Civil Rule 73.02(B)(2), D.S.C., the undersigned Magistrate Judge is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Having reviewed the Complaint in accordance with applicable law, the undersigned finds this action is subject to summary dismissal.

BACKGROUND

Plaintiff commenced this action by filing a Complaint along with attachments. [Docs. 1; 1-1; 1-2.] Plaintiff sues her landlord, Bill Diangikes ("Defendant"), asserting claims related to the rental of her home and an eviction proceeding initiated by Defendant in the state magistrate's court. [Doc. 1 at 4.] As an attachment to the Complaint, Plaintiff filed a copy of a Rule to Vacate or Show Cause (Eviction) filed by Defendant against Plaintiff in the Spartanburg County Magistrate's Court at case number 2019CV4210102554, along with what appears to be Plaintiff's filings in the state court proceedings. [Doc. 1-1.] According to the Rule to Vacate or Show Cause, Plaintiff was ordered to appear before the

Spartanburg County Magistrate's Court on April 12, 2019, for an eviction/ejectment action commenced by Defendant for nonpayment of rent. [*Id.* at 2–3.] Upon review of the state court documents, it appears that Plaintiff argued in the state court that she should not be evicted because Defendant breached his contract, presumably the lease agreement, with Plaintiff. [*Id.* at 4.] The Court takes judicial notice[1] that the state magistrate's court ruled in Defendant's favor in the underlying eviction/ejectment action on April 12, 2019.[2] Liberally construing the allegations in the Complaint, Plaintiff appears to assert a claim for breach of contract and also seeks to enjoin and/or challenge the state magistrate's court's rulings in the underlying eviction proceedings.

STANDARD OF REVIEW

Under established local procedure in this judicial district, a careful review has been made of the pro se Complaint. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the in forma pauperis statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

Because Plaintiff is a pro se litigant, her pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. *See*

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[1]*See Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (explaining that courts "may properly take judicial notice of matters of public record"); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'").

[2]*See* Spartanburg County Seventh Judicial Circuit Public Index, *available at* https://publicindex.sccourts.org/Spartanburg/PublicIndex/PISearch.aspx (search case number 2019cv4210102554) (last visited Apr. 15, 2019).

Erickson v. Pardus, 551 U.S. 89, 94 (2007). However, even under this less stringent standard, Plaintiff's Amended Complaint is subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff's legal arguments for her, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

Although the Court must liberally construe the pro se Complaint and Plaintiff is not required to plead facts sufficient to prove her case as an evidentiary matter in her pleadings, the Complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (explaining that a plaintiff may proceed into the litigation process only when his complaint is justified by both law and fact); *cf. Skinner v. Switzer*, 562 U.S. 521, 530 (2011) (holding that plaintiff need not pin his claim for relief to precise legal theory). "A claim has 'facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable

for the misconduct alleged.'" *Owens v. Baltimore City State's Attorneys Office*, 767 F.3d 379, 388 (4th Cir. 2014).

Further, this Court possesses the inherent authority to review a pro se complaint to ensure that subject matter jurisdiction exists and that a case is not frivolous, even if the complaint were not subject to the prescreening provisions of 28 U.S.C. § 1915. *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 307–08 (1989) ("Section 1915(d) . . . authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision."); *Ross v. Baron*, 493 F. App'x 405, 406 (4th Cir. 2012) (unpublished) ("[F]rivolous complaints are subject to dismissal pursuant to the inherent authority of the court, even when the filing fee has been paid . . . [and] because a court lacks subject matter jurisdiction over an obviously frivolous complaint, dismissal prior to service of process is permitted.") (citations omitted); *see also Fitzgerald v. First E. Seventh Street Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000) ("[D]istrict courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee[.]"); *Ricketts v. Midwest Nat'l Bank*, 874 F.2d 1177, 1181 (7th Cir. 1989) ("[A] district court's obligation to review its own jurisdiction is a matter that must be raised *sua sponte*, and it exists independent of the 'defenses' a party might either make or waive under the Federal Rules."); *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981) (providing a judge may dismiss an action sua sponte for lack of subject matter jurisdiction without issuing a summons or following other procedural requirements).

DISCUSSION

Plaintiff filed this action purportedly under 41 U.S.C. § 6503, asserting a claim for breach of contract. It appears, however, that Plaintiff's claim arises from a state court eviction proceeding, and the crux of this action is a challenge to that state court proceeding. In any case, the Complaint is subject to summary dismissal because Plaintiff fails to demonstrate that this Court has federal subject matter jurisdiction over her claim.

Federal courts are courts of limited jurisdiction, "constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute." *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Accordingly, a federal court is required, sua sponte, to determine if a valid basis for its jurisdiction exists, "and to dismiss the action if no such ground appears." *Id.* at 352; *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Although the absence of subject matter jurisdiction may be raised at any time during the case, determining jurisdiction at the outset of the litigation is the most efficient procedure. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999). There is no presumption that a federal court has jurisdiction over a case, *Pinkley, Inc. v. City of Frederick*, 191 F.3d 394, 399 (4th Cir. 1999), and a litigant must allege facts essential to show jurisdiction in his pleadings. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *see also Dracos v. Hellenic Lines, Ltd.*, 762 F.2d 348, 350 (4th Cir. 1985) ("[P]laintiffs must affirmatively plead the jurisdiction of the federal court."). As such, Federal Rule of Civil Procedure 8(a)(1) requires that the complaint provide "a short and plain statement of the grounds for the court's jurisdiction[.]"

Generally, federal district courts have original jurisdiction over two types of cases, referred to as (1) federal question cases, pursuant to 28 U.S.C. § 1331, and (2) diversity cases, pursuant to 28 U.S.C. § 1332. As discussed below, the allegations contained in Plaintiff's Complaint do not fall within the scope of either form of this Court's limited jurisdiction.

Federal Question Jurisdiction

First, federal question jurisdiction arises from 28 U.S.C. § 1331, which provides that the "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. To determine whether a plaintiff's claims "arise under" the laws of the United States, courts typically use the "well-pleaded complaint rule," which focuses on the allegations of the complaint. *Prince v. Sears Holdings Corp.*, 848 F.3d 173, 177 (4th Cir. 2017) (citing *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004)). "In other words, federal question jurisdiction exists 'only when a federal question is presented on the face of the plaintiff's properly-pleaded complaint.'" *Burbage v. Richburg*, 417 F. Supp. 2d 746, 749 (D.S.C. 2006) (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); *King v. Marriott Int'l, Inc.*, 337 F.3d 421, 426 (4th Cir. 2003)).

In the Complaint, Plaintiff alleges that federal question jurisdiction exists over this action because this case involves a breach of contract in violation of 41 U.S.C. § 6503. Pursuant to 41 U.S.C. § 6502, section 6503(a) applies only to contracts made by an agency of the United States for manufacture or furnishing of materials, supplies, articles, or equipment in an amount exceeding $10,000. Because Plaintiff alleges a violation of a lease agreement that does not pertain to the manufacture or furnishing of materials,

supplies, articles, or equipment, and because Defendant is not an agency of the United States, 41 U.S.C. § 6503 is inapplicable to this case. *Maddox v. CitiFinancial Mortg. Co.*, No. 5:18-cv-00041, 2018 WL 1547362, at *1 n.2 (W.D. Va. Mar. 29, 2018) (explaining that 41 U.S.C. § 6503 "'concerns public contracts made with a United States agency,' and is therefore inapplicable to [a mortgage contract case]") (citing *Griffin v. Compass Grp. USA, Inc.*, No. 3:16-cv-917-JAG, 2017 WL 2829619, at *2 (E.D. Va. June 30, 2017); *Scott v. Chrome Capital, LLC*, No. 3:15-cv-2692-CMC-SVH, 2016 WL 7638135, at *7 (D.S.C. July 25, 2016) (explaining that 41 U.S.C. § 6503 is inapplicable to consumer debt contract disputes), *Report and Recommendation adopted by* 2016 WL 4430854 (D.S.C. Aug. 22, 2016). Therefore, 41 U.S.C. § 6503 does not provide a basis for federal question jurisdiction in this case.[3]

[3]As noted, Plaintiff attached to the Complaint a copy of the state magistrate's court Rule to Vacate and Show Cause Order for an eviction proceeding. It does not appear from the allegations in the Complaint that Plaintiff is attempting to remove the state court action to this Court, and Plaintiff has not filed a notice of removal. However, to the extent the instant action could be construed as a removal action from the state magistrate's court, the state court documents attached to the Complaint provide nothing to suggest that the state court proceedings present a federal question to demonstrate federal court subject matter jurisdiction. As such, the eviction action could not have been brought originally in federal court. Any attempt by Plaintiff to raise federal issues pursuant to 41 U.S.C. § 6503 simply does not create federal jurisdiction. This is so because "actions in which [state court] defendants merely claim a substantive federal defense to a state-law claim do not raise a federal question." *In re Blackwater Sec. Consulting, LLC*, 460 F.3d 576, 584 (4th Cir. 2006). "The basis of federal question jurisdiction [ ] must appear upon the face of the state court complaint, and it cannot be supplied by reference to the answer or petition." *Eure v. NVF Co.*, 481 F. Supp. 639, 642 (E.D. N.C. 1979) (citing *Gully v. First Nat'l Bank*, 299 U.S. 109 (1936)). Accordingly, federal question jurisdiction does not exist in this case to accept removal from the state court to consider Plaintiff's breach of contract claims to the extent that Plaintiff is attempting to remove the state court action.

Diversity Jurisdiction

Likewise, Plaintiff fails to plead any facts showing the diversity statute's requirements are satisfied. The diversity statute requires complete diversity between the parties and an amount in controversy in excess of $75,000.00. *See* 28 U.S.C. § 1332(a); *Anderson v. Caldwell*, No. 3:10-cv-1906-CMC-JRM, 2010 WL 3724752, at *4 (D.S.C. Aug. 18, 2010), *Report and Recommendation adopted by* 2010 WL 3724671 (D.S.C. Sept. 15, 2010). Complete diversity of the parties means that no party on one side may be a citizen of the same state as any party on the other side. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 372–74 (1978). Here, because all of the parties named in this action are citizens of South Carolina [Doc. 1 at 4], complete diversity of the parties is not present. Further, Plaintiff has not alleged facts showing that the amount in controversy requirement is met under the statute. Dismissal of a diversity action for want of jurisdiction is justified where it appears to a legal certainty that the plaintiff cannot recover the jurisdictional amount. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). Accordingly, the Court finds that the Complaint fails to satisfy the amount in controversy requirement of 28 U.S.C. § 1332(a).

CONCLUSION and RECOMMENDATION

In light of the forgoing, the Court finds Plaintiff has failed to allege facts to establish that this Court has subject matter jurisdiction over her claims under either federal question or diversity grounds, and, therefore, the Complaint should be dismissed. It is therefore recommended that the Complaint be summarily **DISMISSED** without issuance and service

of process pursuant to 28 U.S.C. § 1915.[4] *See Neitzke v. Williams*, 490 U.S. 319, 324–25 (1989). **Plaintiff's attention is directed to the important notice on the next page.**

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

April 16, 2019
Greenville, South Carolina

[4]The undersigned finds that Plaintiff cannot cure the defects in her Complaint by mere amendment and therefore recommends that the instant action be dismissed with prejudice and without affording Plaintiff an opportunity to amend because amendment would be futile. *See Fisher v. Walgreens*, No. 1:17-cv-00225-MOC-WCM, 2019 WL 1440320, at *7 (W.D.N.C. Mar. 29, 2019) ("Where an error resulting in dismissal cannot be cured by amendment, dismissal should be with prejudice.") (citing *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 624 (4th Cir. 2015)); *Thomas v. Drive Auto. Indus. of Am., Inc.*, No. 6:18-cv-169-AMQ, 2018 WL 5258811, at *2 (D.S.C. July 25, 2018) (declining to automatically give plaintiff leave to amend pursuant to *Goode* because plaintiff could not cure the defects in his claims against defendant by mere amendment), *Report and Recommendation adopted by* 2018 WL 5255183 (D.S.C. Oct. 22, 2018). Likewise, to the extent Plaintiff seeks to enjoin or challenge the state magistrate's court's rulings and proceedings, this Court would still not have jurisdiction and the case would be subject to summary dismissal. *See Lockhart v. White*, No. 1:18-cv-1229-LO-TCB, at *2 (E.D. Va. Oct. 1, 2018) (summarily dismissing case with prejudice because claims were barred by the *Rooker-Feldman* doctrine), *aff'd* 2019 WL 1239796, at *1 (4th Cir. Mar. 18, 2019).

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Latasha Boyd,	)	Civil Action No. 7:19-1077-BHH
Plaintiff,	)	
vs.	)	**OPINION AND ORDER**
Bill Diangikes,	)	
Defendant.	)	

This matter is before the Court for review of the Report and Recommendation of United States Magistrate Judge Jacquelyn D. Austin made in accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 for the District of South Carolina. On April 16, 2019, the Magistrate Judge issued a Report and Recommendation ("Report") recommending that this case be dismissed without issuance and service of process. (ECF No. 12.) The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report. No objections were filed.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court must make a *de novo* determination of those portions of the Report, or specified proposed findings or recommendations to which specific objection is made. 28 U.S.C. § 636(b)(1)(C). The Court may accept, reject, or modify, in whole or in part, the Report or may recommit the matter to the Magistrate Judge with instructions. *Id.* In the absence of

a timely filed objection, a district court need not conduct a *de novo* review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *De novo* review is also "unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

Plaintiff filed no objections and the time for doing so expired on May 3, 2019. In the absence of objections to the Magistrate Judge's Report, this Court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, the Court need only satisfy itself that there is no clear error on the face of the record. *Diamond*, 416 F.3d at 315.

After thorough review of the Report, the record, and the applicable law, the Court finds no error. The Court agrees with the Magistrate Judge that Plaintiff's claims are subject to summary dismissal. Accordingly, the Report is adopted and incorporated herein by reference. This action is dismissed *with prejudice* because the Court finds that Plaintiff cannot cure the defects in her complaint by amendment. (*See* ECF No. 12 at 9 n.4.)

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

May 9, 2019
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

In the United States Court of Federal Claims

No. 19-583C
(Filed: April 24, 2019)

****
*
LATASHA BOYD, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
*
****

DISMISSAL ORDER

WHEELER, Judge.

On April 15, 2019, *pro se* plaintiff Latasha Boyd filed a complaint in this Court requesting money damages and injunctive relief for various alleged violations of her statutory and constitutional rights. Pursuant to its inherent authority, this Court *sua sponte* DISMISSES Ms. Boyd's complaint for failure to state a claim on which relief can be granted and for lack of subject-matter jurisdiction.

Background

Ms. Boyd is a South Carolina resident who alleges various claims based on 42 U.S.C. § 1983, "opression" [sic], racial and "sex discrimination," "deprivation of rights and liberty," and "Amendment 14" of the United States Constitution. Compl. at A-6. She requests $200 billion in money damages and asks the Court to "[t]ell them to stop using MK Ultra on Me, Stop influence, Advertising sickest, and promoting sickest, Food and so many Recalls, and Mess in our water." Compl. at A-3, A-7. Ms. Boyd does not identify the perpetrators of these alleged acts. Ms. Boyd's complaint also includes a number of attachments, including articles about the influence of mass media and social media on society, a list of the symptoms of a rare nerve disorder, the lyrics of a rap song, a map of Native American territories in 1492 and a short description of the history of oppression of

Appendix (B)

Native Americans, and three mainly first-person ruminations on governance, corruption, the CIA, Ms. Boyd's mental health, and human, civil, and political rights.

Discussion

A. Failure to State a Claim on Which Relief Can Be Granted

A court may *sua sponte* dismiss a complaint for failure to state a claim if "it is patently obvious that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." Rockefeller v. Chu, 471 Fed. Appx. 829, 830 (10th Cir. 2012). To survive dismissal, the complaint must "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2009). "*Pro se* plaintiffs are given some leniency in presenting their case," and courts "liberally construe[]" a complaint filed *pro se*. Stroughter v. United States, 89 Fed. Cl. 755, 760 (2009) (citation omitted).

Nevertheless, the Court cannot discern facts on the face of Ms. Boyd's complaint that would support a plausible claim for relief. Ms. Boyd alleges some unnamed persons are "using MK Ultra" against her and apparently contaminating the water and food supply. Without identifying a perpetrating actor or clearly identifying the offending acts, these statements are too vague to plead a cause of action. Further, the Court cannot discern how Ms. Boyd's legal bases for her complaint (i.e., 42 U.S.C. § 1983, "Amendment 14", etc.) are related to the operative facts she alleges. Therefore, the complaint fails to state a claim on which relief can be granted.

B. Lack of Subject-Matter Jurisdiction

Subject-matter jurisdiction may be challenged at any time by the court *sua sponte*. Toohey v. United States, 105 Fed. Cl. 97, 98 (2012). In deciding whether it has subject-matter jurisdiction, the Court "accepts as true all uncontroverted factual allegations in the complaint, and construes them in the light most favorable to the plaintiff." Estes Express Lines v. United States, 739 F.3d 689, 692 (Fed. Cir. 2014). Although *pro se* pleadings are held to a lower standard, a *pro se* plaintiff must still prove subject-matter jurisdiction by a preponderance of the evidence. See Lengen v. United States, 100 Fed. Cl. 317, 328 (2011).

Except for bid protest cases, this Court only has jurisdiction over claims against the United States that allege a specific entitlement to monetary relief based upon "money-mandating" provisions of federal law. See Stephenson v. United States, 58 Fed. Cl. 186, 192 (2003). Because Ms. Boyd's complaint does not identify a money-mandating source of law, the Court does not have subject-matter jurisdiction over her claims.

Moreover, Ms. Boyd's complaint does not clearly identify any government agent or agency as the perpetrator of the conduct giving rise to her alleged cause of action. Other

than briefly alluding to the CIA and to former FBI Director James Comey, Ms. Boyd's complaint does not even mention a particular government actor. Therefore, because the Court of Federal Claims only hears lawsuits against the United States, and Ms. Boyd does not allege a cause of action against the United States or its agents, this Court does not have subject-matter jurisdiction for this reason as well.

Conclusion

For the reasons above, the Court *sua sponte* DISMISSES Ms. Boyd's complaint for failure to state a claim on which relief can be granted and for lack of subject-matter jurisdiction. The Clerk is directed to dismiss Plaintiff's complaint without prejudice. Further, the Court DISMISSES AS MOOT Ms. Boyd's application to proceed *in forma pauperis*.

IT IS SO ORDERED.

Thomas C. Wheeler

THOMAS C. WHEELER
Judge

In the United States Court of Federal Claims

No. 19-583 C
(Filed: April 24, 2019)

B

LATASHA BOYD

Plaintiff

v **JUDGMENT**

THE UNITED STATES

Defendant

Pursuant to the court's Order, filed April 24, 2019, granting defendant's motion to dismiss,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's complaint is dismissed without prejudice for failure to state a claim on which relief can be granted and for lack of subject-matter jurisdiction.

Lisa L. Reyes
Clerk of Court

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $505.00.

Orders on Motions

7:19-cv-00376-BHH Boyd v. United States **CASE CLOSED on 04/26/2019**

APPEAL,CLOSED,LC 1,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 5/24/2019 at 9:04 AM EDT and filed on 5/24/2019

Case Name: Boyd v. United States
Case Number: 7:19-cv-00376-BHH
Filer:
WARNING: CASE CLOSED on 04/26/2019
Document Number: 27(No document attached)

Docket Text:
TEXT ORDER finding as moot [24] Motion for Leave to Appeal in forma pauperis. IFP Status Previously granted, see entry [9] Signed by Honorable Bruce Howe Hendricks on 5/24/2019.(kric,)

7:19-cv-00376-BHH Notice has been electronically mailed to:

7:19-cv-00376-BHH Notice will not be electronically mailed to:

Latasha Boyd
1543 Old Anderson Mill Road
Moore, SC 29369

Appendix (A)

Orders on Motions

7:19-cv-00867-BHH Boyd v. State of South Carolina et al **CASE CLOSED on 05/09/2019**

APPEAL,CLOSED,JURY,LC 1,PRIOR,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 5/24/2019 at 9:14 AM EDT and filed on 5/24/2019

Case Name: Boyd v. State of South Carolina et al

Case Number: 7:19-cv-00867-BHH

Filer:

WARNING: CASE CLOSED on 05/09/2019

Document Number: 24(No document attached)

Docket Text:

TEXT ORDER finding as moot [21] Motion for Leave to Appeal in forma pauperis. IFP Status Previously granted, see entry [9]. Signed by Honorable Bruce Howe Hendricks on 5/24/2019.(kric,)

7:19-cv-00867-BHH Notice has been electronically mailed to:

7:19-cv-00867-BHH Notice will not be electronically mailed to:

Latasha Boyd
1543 Old Anderson Mill Road
Moore, SC 29369

Orders on Motions

7:19-cv-01077-BHH Boyd v. Diangikes **CASE CLOSED on 05/09/2019**

APPEAL,CLOSED,JURY,LC 1,PRIOR,PROSE

A

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 5/24/2019 at 9:17 AM EDT and filed on 5/24/2019

Case Name: Boyd v. Diangikes

Case Number: 7:19-cv-01077-BHH

Filer:

WARNING: CASE CLOSED on 05/09/2019

Document Number: 25(No document attached)

Docket Text:

TEXT ORDER finding as moot [22] Motion for Leave to Appeal in forma pauperis. IFP Status Previously granted, see entry [10] Signed by Honorable Bruce Howe Hendricks on 5/24/2019.(kric,)

7:19-cv-01077-BHH Notice has been electronically mailed to:

7:19-cv-01077-BHH Notice will not be electronically mailed to:

Latasha Boyd
1543 Old Anderson Mill Road
Moore, SC 29369

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Latasha Boyd *Plaintiff* v. Bill Diangikes *Defendant*	)	Civil Action No. 7:19-cv-1077-BHH

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

■ other: this action is DISMISSED with prejudice.

This action was *(check one)*:

■ decided by the Honorable Bruce H. Hendricks.

Date: May 9, 2019

CLERK OF COURT

s/Angela Lewis, Deputy Clerk

Signature of Clerk or Deputy Clerk