IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

APPENDIX

[ATTACHED TO: *"Petitioner Townsends"* **corrected** "WRIT OF MANDAMUS"]

ATTACHMENT

Aretha Townsend/Pro-se (IFP) Petitioner

P.O. Box 1197

Austell, GA 30168

(770)361-8359

APPENDIX A

The *"Order"* presiding Judge Michael L. Brown/District Court (State of Georgia)

"Order" dated August 16, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Aretha Townsend,

Plaintiff,

v.

District Judge Leigh Martin May,

Defendant.

_____/

Case No. 1:19-mi-00122

Michael L. Brown
United States District Judge

ORDER

Under Order at 8, *Townsend v. National Labor Relations Board*, No. 1:18-CV-05750-LMM (N.D. Ga. Jan. 23, 2019) (No. 4), Ms. Townsend is prohibited from filing any document in any matter before the District Court for the Northern District of Georgia unless she is represented by counsel or first obtains leave of the court. This is due to a history of frequently filing frivolous complaints. On July 30, 2019, Ms. Townsend filed an Application for Leave to Proceed in Forma Pauperis. (Dkt. 1.) On August 6, 2019, Judge Leigh Martin May recused herself from this matter (Dkt. 2) and the Clerk submitted the Application to the undersigned for review.

After reviewing the submission, the Court finds that the proposed complaint is frivolous. Therefore, the Court **DECLINES** to grant permission for Ms. Townsend to file her proposed complaint (Dkt. 1-1) and **DECLINES** to approve any request to proceed *in forma pauperis* (Dkt. 1). The Court **DIRECTS** the Clerk to send a copy of this Order to Ms. Townsend via certified mail, return receipt requested, to the address she provided: P.O. Box 1197, Austell, GA 30168. Receipt of delivery shall also be maintained in the miscellaneous file.

SO ORDERED this 16th day of August, 2019.

Michael L. Brown
United States District Judge

APPENDIX B

("Notice of Recusal") provided by District Judge Leigh Martin May (State of Georgia)

"Notice" dated August 6, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARETHA TOWNSEND, Plaintiff, v. DISTRICT JUDGE LEIGH MARTIN MAY, Defendant.	:	CIVIL ACTION NO. 1:19-mi-0122-LMM

ORDER

The undersigned hereby recuses herself and **DIRECTS** the Clerk of Court to reassign this matter in accordance with Internal Operating Procedure 905-1.

IT IS SO ORDERED, this 6th day of August, 2019.

Leigh Martin May
United States District Judge

APPENDIX C

("*Writ of Certiorari*"; to include attachment—APPENDIX) filed by "*Petitioner*")

Docketed July 30, 2019

APPENDIX D

[The *"Order"* presiding District Judge Leigh Martin May; dated January 23, 2019]

(Attached as *Record of Evidence*; attached to Appendix)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARETHA TOWNSEND, Plaintiff, v. NATIONAL LABOR RELATIONS BOARD, Defendant.	:	CIVIL ACTION NO. 1:18-CV-05750-LMM

ORDER

This case comes before the Court on a frivolity determination pursuant to 28 U.S.C. § 1915(e)(2). On January 2, 2019, Magistrate Judge Catherine M. Salinas granted Plaintiff *in forma pauperis* status for the purpose of allowing a frivolity determination. The case was then transferred to the undersigned on January 2, 2019. After due consideration, the Court enters the following Order:

I. LEGAL STANDARD

28 U.S.C. § 1915(e)(2) requires a federal court to dismiss an action if it (1) is frivolous or malicious, or (2) fails to state a claim upon which relief may be granted. The purpose of Section 1915(e)(2) is "to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." Neitzke v. Williams, 490 U.S. 319, 327 (1989). A dismissal

pursuant to Section 1915(e)(2) may be made *sua sponte* by the Court prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering frivolous complaints. Id. at 324.

A claim is frivolous "where it lacks an arguable basis either in law or in fact." Id. at 325. In other words, a complaint is frivolous when it "has little or no chance of success"—for example, when it appears "from the face of the complaint that the factual allegations are clearly baseless[,] the legal theories are indisputably meritless," or "seeks to enforce a right that clearly does not exist." Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993) (internal quotations omitted); see Neitzke, 490 U.S. at 327. Claims premised on allegations that are "fanciful" or "fantastic" are subject to dismissal for frivolity. Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at 325). In the context of a frivolity determination, the Court's authority to "'pierce the veil of the complaint's factual allegations' means 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 (quoting Neitzke, 490 U.S. at 325).

A complaint fails to state a claim when it does not include "enough factual matter (taken as true)" to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007) (noting that "[f]actual allegations must be enough to raise a right to relief above the speculative level," and the complaint "must contain

something more . . . than . . . statement of facts that merely creates a suspicion [of] a legally cognizable right of action"); see also Ashcroft v. Iqbal, 556 U.S. 662, 680-685 (2009); Oxford Asset Mgmt. v. Jaharis, 297 F.3d 1182, 1187-88 (11th Cir. 2002) (stating that "conclusory allegations, unwarranted deductions of facts[,] or legal conclusions masquerading as facts will not prevent dismissal"). While the Federal Rules do not require specific facts to be pled for every element of a claim or that claims be pled with precision, "it is still necessary that a complaint 'contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.'" Fin. Sec. Assurance, Inc. v. Stephens, Inc., 500 F.3d 1276, 1282-83 (11th Cir. 2007). A plaintiff is required to present "more than an unadorned, the-defendant-unlawfully-harmed-me accusation" and "'naked assertion[s]' devoid of 'further factual enhancement'" do not suffice. Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555).

The Court recognizes that Plaintiff is appearing *pro se*. Thus, the Complaint is more leniently construed and "held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted); Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998). However, nothing in that leniency excuses a plaintiff from compliance with threshold requirements of the Federal Rules of Civil Procedure. See Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1998), cert. denied, 493 U.S. 863 (1989). Neither does this leniency require or allow courts

"to rewrite an otherwise deficient pleading [by a *pro se* litigant] in order to sustain an action." Campbell v. Air Jamaica Ltd., 760 F.3d 1165, 1169 (11th Cir. 2014) (quoting GJR Invs., Inc. v. Cty. of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998)).

II. DISCUSSION

On August 29, 2016, Plaintiff filed an action in this district seeking review of the decision by the General Counsel of the National Labor Relations Board ("General Counsel") not to issue a complaint on her behalf. See Townsend v. NLRB, No. 1:16-cv-3169-WSD (N.D. Ga.) ("Townsend I"). On April 26, 2017, the Court dismissed Plaintiff's action pursuant to 28 U.S.C. § 1915(e)(2)(B) because the General Counsel's decision to decline to file a complaint is unreviewable by federal courts. Townsend I, Dkt. No. [5] at 3. Plaintiff filed a notice of appeal on May 5, 2017 and filed an application to appeal *in forma pauperis* (Plaintiff's "application") on May 19, 2017. Townsend I, Dkt. Nos. [11, 12]. The Court denied Plaintiff's application because Plaintiff's appeal was "not taken in good faith" as it lacked an affidavit reciting the issues to be reviewed upon appeal and was not "capable of being convincingly argued." Townsend I, Dkt. No. [12] at 3-4.

A. Motion for Reconsideration

Plaintiff seeks review of the order in Townsend I dismissing her application to appeal *in forma pauperis*. Dkt. No. [3] at 1. After thoroughly reviewing the Complaint, the Court construes Plaintiff's self-styled "Wrongful Dismissal" and "Amended Redress . . . and Reply Brief" as a Motion for Reconsideration

pursuant to Fed. R. Civ. P. 60(b). See Dkt. No. [3] at 1, 18, 25. However, a "motion for relief from final judgment [under Fed. R. Civ. P. 60(b)] must be filed in the district court and in the action in which the original judgment was entered." Bankers Mortg. Co. v. United States, 423 F.2d 73, 78 (5th Cir. 1970). Plaintiff's Motion fails because she filed her Motion in a different action than the one for which she seeks review. Id.

Plaintiff's Complaint can also be construed liberally as an independent action for relief pursuant to the "savings clause" in Fed. R. Civ. P. 60(d)(1). However, relief under this provision is "reserved for those cases of 'injustices which, in certain instances, are deemed sufficiently gross to demand a departure' from rigid adherence to the doctrine of res judicata." United States v. Beggerly, 524 U.S. 38, 46 (1998) (quoting Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244 (1944)). Further, "[an] independent action can not be made a vehicle for the relitigation of issues." Bankers Mortg. Co., 423 F.2d at 79. A party may not use an independent action to argue "issues that were open to litigation in the former action where he had a fair opportunity to make his claim or defense in that action." Id.; see also Gonzalez v. Sec'y for Dep't of Corr., 366 F.3d 1253, 1291-92 (11th Cir. 2004) (explaining that Rule 60's savings clause "was never intended to permit parties to relitigate the merits of claims or defenses, or to raise new claims or defenses that could have been asserted during the litigation of the case."). In Plaintiff's notice of appeal of the Townsend I Court's dismissal of her original complaint, Plaintiff alleged that the General Counsel's "unreviewable

discretion" was unconstitutional. Townsend I, Dkt. No. [7] at 5. Plaintiff reiterates the very same argument as her basis for requesting the Court to reconsider the denial of her previous application. Dkt. No. [3] at 11. Plaintiff cannot use Fed. R. Civ. P. 60(d) as a vehicle for relitigating claims that failed in a previous matter. Bankers Mortg. Co., 423 F.2d. at 79.

B. Filing Restriction

Pursuant to the All Writs Act, district courts may enjoin litigants with a documented history of abusive litigation practices from pursuing further actions. See 28 U.S.C. § 1651(a); Vendo Co. v. Lekto-Vend Corp., 433 U.S. 623, 639 n.9 (1977) ("Federal courts are able to enjoin future repetitive litigation."). The Eleventh Circuit has explained:

> The [All Writs] Act allows courts to safeguard not only ongoing proceedings, but potential future proceedings, as well as already-issued orders and judgments. This includes the power to enjoin litigants who are abusing the court system by harassing their opponents. A court has a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others, and a litigant can be severely restricted as to what he may file and how he must behave in his applications for judicial relief.

Maid of the Mist Corp. v. Alcatraz Media, LLC, 338 F. App'x 940, 942 (11th Cir. 2010) (internal quotations and citations omitted). Nonetheless, a litigant may not be "completely foreclosed from *any* access to the court." Id.

The Court has reviewed Plaintiff's filing activity in this district. Since August 2015, Plaintiff has filed suit against various Defendants in eight separate

cases, including the instant case.[1] All of these cases have been dismissed as frivolous. Further, as she did in the present case, Plaintiff filed one of these suits in an attempt to relitigate the same claims already raised and rejected in a prior suit. See Townsend v. Staples, Inc., No. 1:15-cv-2835-WSD (N.D. Ga.); Townsend v. Staples, Inc., No. 1:18-cv-2635-LMM (N.D. Ga.).

Because of Plaintiff's long history of filing frivolous complaints against numerous defendants, the Court finds it appropriate to restrict Plaintiff from submitting further *pro se* filings in this or any other matter in the Northern District of Georgia without first obtaining leave of the Court. See Dinardo v. Palm Beach Cty. Circuit Court Judge, 199 F. App'x 731, 735-37 (11th Cir. 2006) (upholding a similar filing restriction where the plaintiffs in the action "had filed seven different *pro se* lawsuits in the District Court for the Southern District of Florida against various public officials and judicial officers over the preceding year"); see also Martin-Trigona v. Shaw, 986 F.2d 1384, 1387-88 (11th Cir. 1993) ("This Court has upheld pre-filing screening restrictions on litigious plaintiffs.") (citing Copeland v. Green, 949 F.2d 390, 391 (11th Cir. 1991) (per curiam) and

[1] These cases include Townsend v. Staples, Inc., No. 1:15-cv-2835-WSD (N.D. Ga.) (filed Aug. 11, 2015); Townsend v. NLRB, No. 1:16-cv-3169-WSD (N.D. Ga.) (filed Aug. 29, 2016); Townsend v. Waterford Point, *et al.*, No. 1:16-cv-4610-LMM (N.D. Ga.) (filed Dec. 15, 2016); Townsend v. Ga. State Revenue Dep't, No. 1:17-cv-0152-LMM (N.D. Ga.) (filed Jan. 13, 2017); Townsend v. Educ. Mgmt. Corp., *et al.*, No. 1:17-cv-0639-LMM (N.D. Ga.) (filed Feb. 21, 2017); Townsend v. Staples, Inc., No. 1:18-cv-2635-LMM (N.D. Ga.) (filed May 29, 2018); and Townsend v. Capital One Auto's, *et al.*, No. 1:18-cv-3952-LMM (N.D. Ga.) (filed Aug. 20, 2018).

Cofield v. Ala. Pub. Serv. Comm., 936 F.2d 512, 517-18 (11th Cir. 1991)). The Court finds that this restriction appropriately balances Plaintiff's right of access to the courts with the Court's need to manage its docket and limit abusive filings. See Cofield, 936 F.2d at 517 (citing In re McDonald, 489 U.S. 180 (1989) (per curiam)).

Accordingly, the Clerk is **DIRECTED** to **DISMISS** this action **WITHOUT PREJUDICE** as frivolous. The Clerk is **DIRECTED** to **CLOSE** this case.

In light of Plaintiff's documented history of frequent and frivolous litigation, **IT IS FURTHER ORDERED** that Plaintiff must either be represented by counsel or obtain leave of court before filing any documents in this matter or in any other matter before the Northern District of Georgia. The Clerk's Office is **DIRECTED** to submit any document that Plaintiff wishes to file to the Court for preliminary review.

IT IS SO ORDERED this 23rd day of January, 2019.

Leigh Martin May
Leigh Martin May
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARETHA TOWNSEND, Plaintiff, v. NATIONAL LABOR RELATIONS BOARD, Defendant.	:	CIVIL ACTION NO. 1:18-CV-05750-LMM

ORDER

This case comes before the Court on a frivolity determination pursuant to 28 U.S.C. § 1915(e)(2). On January 2, 2019, Magistrate Judge Catherine M. Salinas granted Plaintiff *in forma pauperis* status for the purpose of allowing a frivolity determination. The case was then transferred to the undersigned on January 2, 2019. After due consideration, the Court enters the following Order:

I. LEGAL STANDARD

28 U.S.C. § 1915(e)(2) requires a federal court to dismiss an action if it (1) is frivolous or malicious, or (2) fails to state a claim upon which relief may be granted. The purpose of Section 1915(e)(2) is "to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." Neitzke v. Williams, 490 U.S. 319, 327 (1989). A dismissal

pursuant to Section 1915(e)(2) may be made *sua sponte* by the Court prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering frivolous complaints. Id. at 324.

A claim is frivolous "where it lacks an arguable basis either in law or in fact." Id. at 325. In other words, a complaint is frivolous when it "has little or no chance of success"—for example, when it appears "from the face of the complaint that the factual allegations are clearly baseless[,] the legal theories are indisputably meritless," or "seeks to enforce a right that clearly does not exist." Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993) (internal quotations omitted); see Neitzke, 490 U.S. at 327. Claims premised on allegations that are "fanciful" or "fantastic" are subject to dismissal for frivolity. Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at 325). In the context of a frivolity determination, the Court's authority to "'pierce the veil of the complaint's factual allegations' means 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 (quoting Neitzke, 490 U.S. at 325).

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The Court recognizes that Plaintiff is appearing *pro se*. Thus, the Complaint is more leniently construed and "held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted); Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998). However, nothing in that leniency excuses a plaintiff from compliance with threshold requirements of the Federal Rules of Civil Procedure. See Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1998), cert. denied, 493 U.S. 863 (1989). Neither does this leniency require or allow courts

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pursuant to Fed. R. Civ. P. 60(b). See Dkt. No. [3] at 1, 18, 25. However, a "motion for relief from final judgment [under Fed. R. Civ. P. 60(b)] must be filed in the district court and in the action in which the original judgment was entered." Bankers Mortg. Co. v. United States, 423 F.2d 73, 78 (5th Cir. 1970). Plaintiff's Motion fails because she filed her Motion in a different action than the one for which she seeks review. Id.

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discretion" was unconstitutional. Townsend I, Dkt. No. [7] at 5. Plaintiff reiterates the very same argument as her basis for requesting the Court to reconsider the denial of her previous application. Dkt. No. [3] at 11. Plaintiff cannot use Fed. R. Civ. P. 60(d) as a vehicle for relitigating claims that failed in a previous matter. Bankers Mortg. Co., 423 F.2d. at 79.

B. Filing Restriction

Pursuant to the All Writs Act, district courts may enjoin litigants with a documented history of abusive litigation practices from pursuing further actions. See 28 U.S.C. § 1651(a); Vendo Co. v. Lekto-Vend Corp., 433 U.S. 623, 639 n.9 (1977) ("Federal courts are able to enjoin future repetitive litigation."). The Eleventh Circuit has explained:

> The [All Writs] Act allows courts to safeguard not only ongoing proceedings, but potential future proceedings, as well as already-issued orders and judgments. This includes the power to enjoin litigants who are abusing the court system by harassing their opponents. A court has a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others, and a litigant can be severely restricted as to what he may file and how he must behave in his applications for judicial relief.

Maid of the Mist Corp. v. Alcatraz Media, LLC, 338 F. App'x 940, 942 (11th Cir. 2010) (internal quotations and citations omitted). Nonetheless, a litigant may not be "completely foreclosed from *any* access to the court." Id.

The Court has reviewed Plaintiff's filing activity in this district. Since August 2015, Plaintiff has filed suit against various Defendants in eight separate

cases, including the instant case.[1] All of these cases have been dismissed as frivolous. Further, as she did in the present case, Plaintiff filed one of these suits in an attempt to relitigate the same claims already raised and rejected in a prior suit. See Townsend v. Staples, Inc., No. 1:15-cv-2835-WSD (N.D. Ga.); Townsend v. Staples, Inc., No. 1:18-cv-2635-LMM (N.D. Ga.).

Because of Plaintiff's long history of filing frivolous complaints against numerous defendants, the Court finds it appropriate to restrict Plaintiff from submitting further *pro se* filings in this or any other matter in the Northern District of Georgia without first obtaining leave of the Court. See Dinardo v. Palm Beach Cty. Circuit Court Judge, 199 F. App'x 731, 735-37 (11th Cir. 2006) (upholding a similar filing restriction where the plaintiffs in the action "had filed seven different *pro se* lawsuits in the District Court for the Southern District of Florida against various public officials and judicial officers over the preceding year"); see also Martin-Trigona v. Shaw, 986 F.2d 1384, 1387-88 (11th Cir. 1993) ("This Court has upheld pre-filing screening restrictions on litigious plaintiffs.") (citing Copeland v. Green, 949 F.2d 390, 391 (11th Cir. 1991) (per curiam) and

[1] These cases include Townsend v. Staples, Inc., No. 1:15-cv-2835-WSD (N.D. Ga.) (filed Aug. 11, 2015); Townsend v. NLRB, No. 1:16-cv-3169-WSD (N.D. Ga.) (filed Aug. 29, 2016); Townsend v. Waterford Point, *et al.*, No. 1:16-cv-4610-LMM (N.D. Ga.) (filed Dec. 15, 2016); Townsend v. Ga. State Revenue Dep't, No. 1:17-cv-0152-LMM (N.D. Ga.) (filed Jan. 13, 2017); Townsend v. Educ. Mgmt. Corp., *et al.*, No. 1:17-cv-0639-LMM (N.D. Ga.) (filed Feb. 21, 2017); Townsend v. Staples, Inc., No. 1:18-cv-2635-LMM (N.D. Ga.) (filed May 29, 2018); and Townsend v. Capital One Auto's, *et al.*, No. 1:18-cv-3952-LMM (N.D. Ga.) (filed Aug. 20, 2018).

Cofield v. Ala. Pub. Serv. Comm., 936 F.2d 512, 517-18 (11th Cir. 1991)). The Court finds that this restriction appropriately balances Plaintiff's right of access to the courts with the Court's need to manage its docket and limit abusive filings. See Cofield, 936 F.2d at 517 (citing In re McDonald, 489 U.S. 180 (1989) (per curiam)).

Accordingly, the Clerk is **DIRECTED** to **DISMISS** this action **WITHOUT PREJUDICE** as frivolous. The Clerk is **DIRECTED** to **CLOSE** this case.

In light of Plaintiff's documented history of frequent and frivolous litigation, **IT IS FURTHER ORDERED** that Plaintiff must either be represented by counsel or obtain leave of court before filing any documents in this matter or in any other matter before the Northern District of Georgia. The Clerk's Office is **DIRECTED** to submit any document that Plaintiff wishes to file to the Court for preliminary review.

IT IS SO ORDERED this 23rd day of January, 2019.

Leigh Martin May
Leigh Martin May
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARETHA TOWNSEND, Plaintiff, v. EDUCATION MANAGEMENT CORP., U.S. DEPARTMENT OF EDUCATION, AND FMS INVESTMENTS CORP. Defendants.	:	CIVIL ACTION NO. 1:17-CV-00639-LMM

ORDER

This case comes before the Court on a frivolity determination pursuant to 28 U.S.C. § 1915(e)(2). On February 22, 2017, Magistrate Judge Catherine M. Salinas granted Plaintiff *in forma pauperis* status for the purpose of allowing a frivolity determination. The case was then transferred to the undersigned on July 2, 2018. For the foregoing reasons, the Court finds Plaintiff's Complaint is frivolous.

I. LEGAL STANDARD

28 U.S.C. § 1915(e)(2) requires a federal court to dismiss an action if it (1) is frivolous or malicious, or (2) fails to state a claim upon which relief may be granted. The purpose of Section 1915(e)(2) is "to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil

Procedure 11." Neitzke v. Williams, 490 U.S. 319, 327 (1989). A dismissal pursuant to Section 1915(e)(2) may be made *sua sponte* by the Court prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering frivolous complaints. Id. at 324.

A claim is frivolous "where it lacks an arguable basis either in law or in fact." Id. at 325. In other words, a complaint is frivolous when it "has little or no chance of success"—for example, when it appears "from the face of the complaint that the factual allegations are clearly baseless[,] the legal theories are indisputably meritless," or "seeks to enforce a right that clearly does not exist." Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993) (internal quotations omitted); see Neitzke, 490 U.S. at 327. Claims premised on allegations that are "fanciful" or "fantastic" are subject to dismissal for frivolity. Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quoting Neitzke, 490 U.S. at 325). In the context of a frivolity determination, the Court's authority to "'pierce the veil of the complaint's factual allegations' means 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 (quoting Neitzke, 490 U.S. at 325).

A complaint fails to state a claim when it does not include "enough factual matter (taken as true)" to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007) (noting that "[f]actual allegations must be enough to raise a

right to relief above the speculative level," and the complaint "must contain something more . . . than . . . statement of facts that merely creates a suspicion [of] a legally cognizable right of action"); see also Ashcroft v. Iqbal, 556 U.S. 662, 680-685 (2009); Oxford Asset Mgmt. v. Jaharis, 297 F.3d 1182, 1187-88 (11th Cir. 2002) (stating that "conclusory allegations, unwarranted deductions of facts[,] or legal conclusions masquerading as facts will not prevent dismissal"). While the Federal Rules do not require specific facts to be pled for every element of a claim or that claims be pled with precision, "it is still necessary that a complaint 'contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.'" Fin. Sec. Assurance, Inc. v. Stephens, Inc., 500 F.3d 1276, 1282-83 (11th Cir. 2007). A plaintiff is required to present "more than an unadorned, the-defendant-unlawfully-harmed-me accusation" and "'naked assertion[s]' devoid of 'further factual enhancement'" do not suffice. Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555).

The Court recognizes that Plaintiff is appearing *pro se*. Thus, the Complaint is more leniently construed and "held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted); Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998). However, nothing in that leniency excuses a plaintiff from compliance with threshold requirements of the Federal Rules of Civil Procedure. See Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1998), cert.

denied, 493 U.S. 863 (1989). Neither does this leniency require or allow courts "to rewrite an otherwise deficient pleading [by a *pro se* litigant] in order to sustain an action." GJR Invs., Inc. v. County of Escambia, Fla., 132 F.3d 1359, 1369 (11th Cir. 1998).

II. DISCUSSION

Plaintiff attended the Art Institute of Atlanta (the "AIA"), owned by Defendant Education Management Corp., from April 1993 to May 1994. Plaintiff received three Federal Family Education Loans (FFEL) totaling $10,125.00 and one Federal Perkins Loan in the amount of $1,261.00. Dkt. No. [3] at 65. On May 10, 1994, Plaintiff was severely injured in a car accident which prevented her from completing the last six weeks of the quarter. Dkt. No. [3] at 9, 73. Plaintiff withdrew from the AIA on May 17, 1994 and alleges a financial aid representative told her the loans "were forgiven." Dkt. No. [3] at 9.

In 2000, Plaintiff received a phone call from the Federal Direct Loan Program, an affiliate of Defendant U.S. Department of Education, inquiring about the outstanding student loan debt. Dkt. No. [3] at 10-11. According to Plaintiff, a representative suggested consolidation of the student loans. Dkt. No. [3] at 10. On April 24, 2000, Plaintiff applied for and received a Federal Direct Consolidation Loan ("FDCL") in the amount of $10,358.98. Dkt. No. [3] at 67. Again, on October 19, 2003, Plaintiff applied for and received an FDCL in the amount of $15,101.67. Dkt. No. [3] at 34, 104. Plaintiff allegedly disputed the

validity of the underlying loans, but failed to raise those objections at the time because she "was young and not knowledgeable." Dkt. No. [3] at 10.

From April 2012 until November 2016, Plaintiff sent multiple letters disputing the validity of the underlying loans to Defendants. Dkt. No. [3] at 7-12, 18-22, 25-29, 32-33, 36-38, 42-47, 48-49, 52-56. In each correspondence, Plaintiff alleges the loans were forgiven in 1994 upon withdrawal from the AIA. As such, Plaintiff alleges that the Federal Direct Loan Program used manipulative tactics to encourage Plaintiff to apply for FDCLs on the basis of loans that allegedly did not exist. Subsequently, the U.S. Department of Education improperly reported that information to credit bureaus and debt collectors, such as Defendant FMS Investment Corp.

Plaintiff's Complaint does not list any causes of action against Defendants. Based on a review of the Exhibits, it appears at bottom Plaintiff AIA "fail[ed] to honor its word" to "forgive the student loan debt," or committed fraud. Dkt. No. [3] at 85. According to Plaintiff's affidavit, the U.S. Department of Education, therefore, committed fraud by using student loan debt that allegedly did not exist after May 1994 to "manipulate" her into consolidating the debt. Dkt. No. [3] at 86. Plaintiff discovered AIA failed to forgive the loans when she was contacted by the Federal Direct Loan program and, therefore, was aware of the basis for the fraud claims against Education Management Corp., the U.S. Department of Education, and FMS Investment Corp. in 2000. Dkt. No. [3] at 7. In Georgia, the statute of limitations for fraud is four years running from the time of the

plaintiff's discovery of the fraud. Hamburger v. PFM Capital Mgmt. Inc., 649 S.E.2d 779, 784 (Ga. Ct. App. 2007). Plaintiff knew about the alleged fraud in 2000 and, thus, the statute of limitations began tolling at that time. Dkt. No. [3] at 10. As a result, Plaintiff's fraud claims are barred by the four-year statute of limitations.

Plaintiff also appears to claim the U.S. Department of Education violated the Fair Credit Reporting Act by misrepresenting Plaintiff's outstanding student loan debt to credit reporting agencies. Dkt. No. [3] at 10-11. In compliance with the Higher Education Act of 1965, 20 U.S.C. § 1070 et. seq., the U.S. Department of Education reported information to credit bureaus once Plaintiff's FDCLs were declared in default. According to 15 U.S.C. § 1681p(1), the statute of limitations for FCRA violations is two years from the "date of discovery by plaintiff of the violation that is the basis for such liability." At the latest, Plaintiff knew about the alleged fraud in 2012 and, thus, the statute of limitations began tolling at that time. Dkt. No. [3] at 10. As a result, Plaintiff's FCRA claims are barred by the two-year statute of limitations. 15 U.S.C. § 1681p(1).

Accordingly, the Clerk is **DIRECTED** to **DISMISS** this action **WITHOUT PREJUDICE** as frivolous. The Clerk is **DIRECTED** to **CLOSE** this case.

IT IS SO ORDERED this 23rd day of July, 2018.

Leigh Martin May
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARETHA TOWNSEND,

Plaintiff,

v.

EDUCATION MANAGEMENT CORP., *et al.*,

Defendants.

CIVIL ACTION NO.
1:17-CV-0639-LMM

ORDER

This case comes before the Court on Plaintiff's Application for Leave to Appeal *In Forma Pauperis* [8]. On July 23, 2018, this Court dismissed Plaintiff's Complaint without prejudice as frivolous. Plaintiff now moves this Court to allow her to proceed *in forma pauperis* on appeal.

Applications to appeal *in forma pauperis* are governed by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24. In pertinent part, § 1915 provides:

> (a)(1) [A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.
>
> . . .
>
> (3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

Similarly, Federal Rule of Appellate Procedure 24 provides:

> (1) . . . [A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:
>
> (A) shows . . . the party's inability to pay or to give security for fees and costs;
>
> (B) claims an entitlement to redress; and
>
> (C) states the issues that the party intends to present on appeal.
>
> . . .
>
> (3) . . . A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith . . . and states in writing its reasons for the certification or finding. . . .

Thus, both §1915(a) and Rule 24 make clear that two requirements must be satisfied for a party to prosecute an appeal *in forma pauperis*. First, the party must show an inability to pay. Second, the appeal must be brought in good faith.

1. Ability to Pay

The Court has reviewed Plaintiff's Application and finds that she does not have an ability to pay the appeal filing fee.

2. The Good Faith Standard

But even if Plaintiff has shown an inability to pay, she would also have to demonstrate her appeal is brought in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(3). A party demonstrates good faith by seeking appellate review of any issue that is not frivolous judged under an objective standard. See Coppedge v.

United States, 369 U.S. 438, 445 (1962); Busch v. County of Volusia, 189 F.R.D. 687, 691 (M.D. Fla. 1999); United States v. Wilson, 707 F. Supp. 1582, 1583 (M.D. Ga. 1989), aff'd., 896 F.2d 558 (11th Cir. 1990). An issue is frivolous when it appears that the legal theories are "indisputably meritless." See Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993); see also Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002) (an *in forma pauperis* action is frivolous, and thus not brought in good faith, if it is "without arguable merit either in law or fact"); Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001) (same). "Arguable means capable of being convincingly argued." Sun v. Forrester, 939 F.2d 924, 925 (11th Cir. 1991) (per curiam). Where a claim is arguable, but ultimately will be unsuccessful, it should be allowed to proceed. See Cofield v. Alabama Pub. Serv. Comm'n., 936 F.2d 512, 515 (11th Cir. 1991).

Plaintiff's application states that her appeal grounds are as follows:

> Lower Court judge failed to discern appropriately, the "reset" statutory time; and wrongfully dismissed Plaintiff's Complaint.

Dkt. No. [8]. Plaintiff does not substantively challenge the Court's prior holding, that Plaintiff's claims are barred by the relevant statutes of limitations. Therefore, Plaintiff's Application to Proceed *In Forma Pauperis* [8] is **DENIED**.

IT IS SO ORDERED this 24th day of August, 2018.

Leigh Martin May
United States District Judge

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13560-H

ARETHA TOWNSEND,

Plaintiff-Appellant,

versus

EDUCATION MANAGEMENT CORPORATION,
agent of Art Institute of Atlanta,
U.S. DEPARTMENT OF EDUCATION,
and all associated names
other
Federal Student Aid
other
Default Resolutions Group
other
Ombudsman Group,
FMS INVESTMENTS CORP., (FMS),

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

ORDER:

Aretha Townsend moves for leave to proceed on appeal *in forma pauperis* ("IFP") in her appeal of the district court's dismissal without prejudice of her *pro se* civil suit against the Education Management Corporation, the U.S. Department of Education ("DOE"), and FMS Investments Corporation ("FMS") concerning the collection of her student loan debt. Townsend also moves for "summary judgment" on appeal and for appointment of counsel. Consequently, the appeal is subject to a frivolity determination. *See* 28 U.S.C. § 1915(e)(2)(B). "[A]n action is

frivolous if it is without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation marks omitted).

Here, any appeal from the district court's order dismissing Townsend's suit would be frivolous. The record supports that the district court properly dismissed all of Townsend's claims under the False Claims Act ("FCA") because, as a *pro se* party, Townsend could not maintain a *qui tam* action on behalf of the United States. *See Timson v. Sampson*, 518 F.3d 870, 873 (11th Cir. 2008) (holding that a *pro se* relator cannot maintain a *qui tam* action under the FCA). The record also supports the district court's dismissal of all of Townsend's claims under the Federal Trade Commission Act ("FTC Act") because the FTC Act does not create a private right of action. *See Fulton v. Hecht*, 580 F.2d 1243, 1248 n.2 (5th Cir. 1978) ("[T]here is no private cause of action for violation of the FTC Act.").

To the extent that Townsend raised a state-law fraud claim arising from the DOE's actions in convincing her to consolidate her federal student loans in 2000, such a claim would be barred by the applicable statute of limitations. *See Hamburger v. PFM Capital Mgmt. Inc.*, 649 S.E.2d 779, 784 (Ga Ct. App. 2007) (stating that the statute of limitations for fraud in Georgia is four years). Similarly, to the extent that Townsend raised a Fair Credit Reporting Act claim based on the DOE's reporting of her debt to credit agencies, such a claim was also barred by the statute of limitations. *See* 15 U.S.C. § 1681p(1) (providing that the statute of limitations for an FCRA claim is two years after the date of discovery by the plaintiff of the violation that is the basis for liability).

The record supports the district court's dismissal of Townsend's Fair Debt Collection Practices Act ("FDCPA") claims against the DOE because the DOE is not a "debt collector"

within the meaning of the Act. Specifically, the principal purpose of the DOE is not the collection of debts, nor does it collect debts on behalf of others. *See* 15 U.S.C. § 1692a(6).

To the extent that Townsend alleged in Claims 3 and 4 of her complaint that FMS violated the FDCPA by offsetting her 2015 federal income tax refund, denying her hardship waiver, or failing to process her student loan debt discharge application, Townsend did not plead any facts alleging that FMS, as a third-party debt collector, possessed the authority to compel the DOE to release her tax refund, or grant her hardship or discharge applications. Accordingly, Claims 3 and 4 failed to state a claim against FMS that was "plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a complaint must contain sufficient factual matter to allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct).

As to Townsend's motion for "summary judgment," summary disposition would be inappropriate because, as discussed above, she has not shown that her position is clearly right as a matter of law, or, because the district court did not err in dismissing her suit without prejudice, that any substantial right of hers is likely to be prejudiced by delay. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969) (holding that summary disposition is appropriate either where time is of the essence or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case"). Similarly, Townsend has not shown exceptional circumstances warranting the appointment of counsel, where, as here, her appeal is frivolous.

Accordingly, Townsend's motion for IFP status on appeal is DENIED. Townsend's motions for "summary judgment" and appointment of counsel also are DENIED.

UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 25, 2019

Aretha Townsend
PO BOX 1197
AUSTELL, GA 30168

Appeal Number: 18-13560-H
Case Style: Aretha Townsend v. Education Management Corp., et al
District Court Docket No: 1:17-cv-00639-LMM

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this appeal will be dismissed by the clerk without further notice unless you pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H
Phone #: (404) 335-6182

MOT-2 Notice of Court Action

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13560-H

ARETHA TOWNSEND,

Plaintiff-Appellant,

versus

EDUCATION MANAGEMENT CORPORATION,
agent of Art Institute of Atlanta,
U.S. DEPARTMENT OF EDUCATION,
and all associated names
other
Federal Student Aid
other
Default Resolutions Group
other
Ombudsman Group,
FMS INVESTMENTS CORP., (FMS),

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

Before: TJOFLAT and BRANCH, Circuit Judges.

BY THE COURT:

Aretha Townsend has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated January 25, 2019, denying her motions for leave to proceed on appeal *in forma pauperis*, for "summary judgment," and for appointment of counsel in the appeal of the district court's order dismissing her *pro se* civil complaint as frivolous. Because Townsend has

not alleged any points of law or fact that this Court overlooked or misapprehended in denying her motion, her motion for reconsideration is DENIED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

March 13, 2019

Aretha Townsend
PO BOX 1197
AUSTELL, GA 30168

Appeal Number: 18-13560-H
Case Style: Aretha Townsend v. Education Management Corp., et al
District Court Docket No: 1:17-cv-00639-LMM

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, this petition will be dismissed by the clerk without further notice unless the docketing fee is paid to the clerk of this court.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H/lt
Phone #: (404) 335-6182

MOT-2 Notice of Court Action

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