

APPENDICES:

Appendix A – Per Curiam of the United States Court of Appeals for the Fourth Circuit; Unpublished Opinion, Judgment, Notice of Judgment, and Mandate:

FILED: March 19, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2067
(1:17-cv-01023-AJT-JFA)

DORA L. ADKINS

Plaintiff - Appellant

v.

WHOLE FOODS MARKET GROUP, INC.

Defendant - Appellee

M A N D A T E

The judgment of this court, entered February 26, 2020, takes effect today.

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

/s/Patricia S. Connor, Clerk

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No. 19-2067
(1:17-cv-01023-AJT-JFA)

DORA L. ADKINS

Plaintiff - Appellant

v.

WHOLE FOODS MARKET GROUP, INC.

Defendant - Appellee

JUDGMENT

In accordance with the decision of this court, the district court order entered September 19, 2019, is vacated. This case is remanded to the district court for further proceedings consistent with the court's decision.

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

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-2067

DORA L. ADKINS,

Plaintiff - Appellant,

v.

WHOLE FOODS MARKET GROUP, INC.,

Defendant - Appellee.

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

Submitted: January 28, 2020

Decided: February 26, 2020

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

Vacated and remanded by unpublished per curiam opinion.

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

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dora L. Adkins appeals from the district court's September 19, 2019, order issuing a prefilming injunction,¹ which was ordered in response to her civil actions filed in the Eastern District of Virginia against Whole Foods Market Group, Inc. ("Whole Foods") and a variety of actions filed in the district and in state court in Virginia. Adkins argues that the injunction is too broad. We vacate the district court's order and remand for further proceedings.

We review the district court's issuance of a prefilming injunction for abuse of discretion. *Cromer*, 390 F.3d at 817. This "drastic remedy" must be used in a manner "consistent with constitutional guarantees of due process of law and access to the courts."

Id. Accordingly,

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

¹ We previously affirmed the district court's January 2018 orders dismissing Adkins' civil action against Whole Foods and denying reconsideration but vacated the portion of the court's dismissal order imposing a prefilming injunction against Adkins on the bases that the court failed to consider all the factors mandated by *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004), and failed to afford Adkins notice and an opportunity to be heard before imposing the injunction and remanded for further proceedings. *Adkins v. Whole Foods Mkt. Grp., Inc.*, 732 F. App'x 238, 239 (4th Cir.) (No. 18-1102), *cert. denied*, 139 S. Ct. 646 (2018).

Id. at 818. Even where a prefilming injunction has been deemed warranted pursuant to a consideration of the above factors, the district court “must ensure that the injunction is narrowly tailored to fit the specific circumstances at issue. Absent this narrowing, a prefilming injunction . . . will not survive appellate review.” *Id.* (internal citations omitted). Here, the district court afforded Adkins notice and an opportunity to be heard before imposing the prefilming injunction, and Adkins does not identify any reversible error in the district court’s consideration of the *Cromer* factors. Nevertheless, we conclude that the injunction is defective for being overbroad. It prevents Adkins from filing any further claims—in related or unrelated cases—against Whole Foods or “any other defendant” in the district without obtaining the services of a practicing attorney or leave of court. This language “has no boundaries.” *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990) (reaching conclusion in case where order prohibited litigant from filing any further action without first obtaining leave of court). Thus, the terms of the injunction are not “narrowly tailored” to the circumstances giving rise to the injunction. *See Cromer*, 390 F.3d at 819

(holding that prefilings injunction barring future filings in unrelated cases in district court constitutes overbroad and impermissible restriction).

Accordingly, we vacate the injunction and remand for further proceedings consistent with this opinion. 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.

VACATED AND REMANDED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2067,

Dora Adkins v. Whole Foods Market Group, Inc.
1:17-cv-01023-AJT-JFA

NOTICE OF JUDGMENT

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

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

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:

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

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

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC:

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

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

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

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

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

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

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

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

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

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

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

Signature: _____ Date: _____

Certificate of Service

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

Signature: _____ Date: _____

**Appendix B - In the U. S. District Court for the Eastern District of Virginia,
Orders; Order, Dated, September 19, 2020 and Order, Dated, March 24, 2020:**

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

DORA L. ADKINS,)
Plaintiff,)
v.) Civil Action No. 1:17-cv-1023 (AJT/JFA)
WHOLE FOODS MARKET GROUP, INC.,)
Defendant.)

)

ORDER

In an unpublished opinion dated July 30, 2018, the United States Court of Appeals for the Fourth Circuit vacated in part the Court's January 10, 2018 Order with respect to the pre-filing injunction imposed against *pro se* Plaintiff Dora L. Adkins on the grounds that "litigants are entitled to notice and opportunity to be heard prior to imposition of a pre-filing injunction." [Doc. No. 108]. The case was remanded for proceedings consistent with the Fourth Circuit's opinion and, after the mandate issued on August 21, 2018 [Doc. No. 110], the Court ordered the Plaintiff to show cause why she should not be enjoined from further filings in this Court. [Doc. No. 111] (the "Show Cause Order"). On September 6, 2018, Plaintiff filed a response to the Show Cause Order, in which she reiterated the allegations in her original complaint and stated that she should not be enjoined from further filings because her prior complaints were "well-pled" and supported by "overwhelming evidence." [Doc. No. 112] (the "Response"). Plaintiff subsequently filed a Motion for Leave From Court for (9/10/2018) Plaintiff's Memorandum in Support of Plaintiff's Motion to the Order to Show Cause Why Plaintiff Should Not Be Enjoined For Further Filings [Doc. No. 114], which largely echoed the arguments made in the Response, and which the Court therefore construes as a supplemental response. The Court held a show

cause hearing on October 5, 2018, at the conclusion of which it took this matter under advisement.

Under the All Writs Act, 28 U.S.C. § 1651(a), federal courts have the authority to impose prefilings injunctions in order “to limit access to the courts by vexatious and repetitive litigants.” *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004). But “[s]uch a drastic remedy must be used sparingly” in light of the importance of the “constitutional guarantees of due process of law and access to the courts.” *Id.* “In determining whether a prefilings injunction is substantively warranted, a court must weigh all the relevant circumstances, including (1) the party’s history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party’s filings; and (4) the adequacy of alternative sanctions. *Id.* at 818. If, after weighing these factors, the Court determines that a prefilings injunction is appropriate, the injunction must still be “narrowly tailored to fit the specific circumstances at issue.” *Id.* Before a prefilings injunction is issued, a litigant must be afforded “notice and an opportunity to be heard.” *Id.* at 819.

Plaintiff has now received notice of the possible issuance of a prefilings injunction and the opportunity to oppose the injunction before it was instituted, and applying the *Cromer* factors, the Court concludes that a pre-filing injunction is appropriate in this case. First, Plaintiff has a long history of vexatious, harassing, and duplicative lawsuits. Though they arise out of a different incident, the allegations in this case are substantially similar to those in another case filed in this district by the Plaintiff against the same Defendant on December 1, 2015, in which she alleged, *inter alia*, that Defendant participated in “a scheme to provide her with contaminated duck wraps and Whole Body products,” as a result of which she died and was then resurrected. *Adkins v. Whole Foods Mkt. Group, Inc.*, 2016 WL 1367170, at *1-2 (E.D. Va. Apr. 5, 2016)

(Hilton, J.). The Court did not impose a pre-filing injunction in that case, as it was, at the time, the only lawsuit filed by the Plaintiff against this Defendant in this Court. *Id.* at 4. Plaintiff has now filed a second meritless lawsuit against the same Defendant. She has also filed at least 17 other lawsuits in the Eastern District of Virginia, none of which appear to have any merit.¹

Furthermore, Plaintiff represented to the Court at the October 5 show cause hearing that she has filed approximately sixty-five lawsuits in various courts in the state of Virginia in the past five years and has not prevailed in a single one; and that she has not sought advice from a lawyer in connection with any of these claims.² Plaintiff therefore does not have any objective good faith basis for pursuing these lawsuits, which have imposed a significant burden on the courts and the other parties to these actions. *See Adkins v. CP/IPERS Arlington Hotel LLC*, 799 S.E.2d 929, 932 (Va. 2017) (imposing a pre-filing injunction against the Plaintiff, whose lawsuits had “subjected dozens of innocent individuals and entities to the cost of defending against her meritless claims” and caused the Virginia Supreme Court to “expend[] significant judicial resources in docketing, reviewing, hearing oral argument, and disposing of [her] frivolous petitions”). While the Court has the authority to impose monetary sanctions, they would not be appropriate here because the Court’s objective “is not to punish [Plaintiff] financially, but rather to protect . . . citizens and business from the harassment and expense of unfounded litigation and

¹ See *Adkins v. Public Storage*, 1:16-cv-01556-JCC-IDD; *Adkins v. Alexandria Towers Investor, LLC*, 1:16-cv-00491-JCC-TCB; *Adkins v. Whole Foods Market Group Inc.*, 1:16-cv-00031-CMH-JFA; *Adkins v. City Of Fairfax - GMU Crimesolvers, Inc.*, 1:15-cv-00879-ICC-MSN; *Adkins v. Bank of America, N.A.*, 1:14-cv-00563-GBL-JFA; *Adkins v. Fairfax County School Board*, 1:09-mc-00027-GBL-TCB; *Adkins v. Fairfax County School Board, et al.*, 1:08-cv-00091-JCC-JFA; *Adkins v. Fairfax County School Board*, 1:08-mc-00050-GBL-TRJ; *Adkins v. Fairfax County School Board*, 1:07-mc-00035-GBL-TCB; *Adkins v. Fairfax County School Board*, 1:05-mc-00005-GBL-BRP; *Adkins v. Fairfax County School Board*, 1:04-mc-00048-GBL-TCB; *Adkins v. Fairfax County School Board*, 1:03-cv-01177-GBL; *Adkins v. Fairfax County School Board*, 1:04-mc-00053-JCC-TRJ; *Adkins v. Fairfax County School Board*, 1:99-cv-00304-LMB; *Adkins v. Fairfax County School Board*, 1:98-cv-01071-LMB; *Adkins v. Fairfax County Board of Education*, 1:97-cv-00835-AVB; *Adkins v. HBL, LLC*, 1:17-cv-0074-TSE-TCB.

² Subsequently, by letter dated October 11, 2018, Plaintiff represented to the Court that she has “won” a breach of contract claim in a state court case that is still pending, and has been granted permission by the Fairfax Circuit Court to file a complaint against PAG Chantilly, MI, LLC.

also to preserve valuable judicial resources.” *Id.* at 933. Imposing a pre-filing injunction is therefore the only appropriate sanction.

Finally, given the Plaintiff’s long history of filing frivolous lawsuits without consulting an attorney, and for substantially the same reasons stated by the Virginia Supreme Court in *Adkins*, 799 S.E.2d at 933-934, the Court concludes that a pre-filing injunction enjoining the Plaintiff from filing any further claims against the Defendant or any other defendant in the Eastern District of Virginia without obtaining the services of a practicing attorney or obtaining leave of Court to file any *pro se* pleading is “narrowly tailored to fit the specific circumstances at issue.” Accordingly, it is hereby

ORDERED that Plaintiff be, and the same hereby is, ENJOINED from filing any further claims against Defendant or any other defendant in the Eastern District of Virginia without obtaining the services of a practicing attorney or obtaining leave of Court to file any *pro se* pleading.

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

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

Alexandria, Virginia
September 19, 2019



Anthony J. Trenga
United States District Judge

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

DORA L. ADKINS)
v. Plaintiff,)
FOODS MARKET GROUP,) Civil Action No. 1:17-cv-1023 (AJT/JFA)
INC.)
Defendant.)

) WHOLE

ORDER

By Order dated September 19, 2019 [Doc. No. 117], the Court enjoined the Plaintiff from filing any further claims against Defendant or any other defendant in the Eastern District of Virginia without obtaining the services of a practicing attorney or obtaining leave of the Court to file any *pro se* pleading. This pre-filing injunction, entered after a hearing at which the Plaintiff appeared and participated, was based on the Court's findings concerning Plaintiff's history of filing frivolous, vexatious, and duplicative lawsuits in this Court, the lack of a good faith basis for pursuing those lawsuits, the burden on the Court and the other parties resulting from Plaintiff's filings, and the inadequacy of alternative sanctions. *See Cromer v. Kraft Foods N. Am., Inc.* 390 F.3d 812 (4th Cir. 2004) (listing the factors to be considered before issuing a pre-filing injunction). The Court also considered her future intentions with respect to additional filings, as disclosed during that hearing.

By Unpublished Opinion and Judgment, issued February 26, 2020, the United States Court of Appeals for the Fourth Circuit vacated the Court's September 19, 2019 Order with

respect to the Court's pre-filing injunction. [Doc. Nos. 122, 123]. In that regard, the Fourth Circuit concluded that although the Court had adequately considered the *Cromer* factors, the entered injunction ““has no boundaries”” and ran afoul of the holding in *Cromer* “that prefilng injunction barring future filings in unrelated cases in district court constitutes overbroad and impermissible restriction[.]” [Doc. No. 122] at 3. The injunction was “[t]hus . . . not ‘narrowly tailored’ to the circumstances giving rise to the injunction[,]” and “. . . is defective for being overbroad.” *Id.*¹

In accordance with the Fourth Circuit's February 26, 2020 Opinion, and upon further consideration of the *Cromer* factors, it is hereby

ORDERED that the Court's September 19, 2019 Order [Doc. No. 117] be, and the same hereby is, VACATED; and the Plaintiff is advised that Court will consider monetary or other sanctions, as appropriate, to address any future frivolous, vexatious, or harassing lawsuits that she may file.

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



Anthony J. Trenga
United States District Judge

Alexandria, Virginia March
24, 2020

¹ Previously, the Fourth Circuit also vacated the Court's January 1, 2018 Order with respect to Plaintiff Adkin's prefilng injunction on the grounds that “litigants are entitled to notice and opportunity to be heard prior to imposition of a pre-filing injunction.” [Doc. No. 108]; *see also* [Doc. No. 109].