

**IN THE
SUPREME COURT OF THE UNITED STATES**

MARGUERITE SMTIH,

Petitioner,

vs.

SECRETARY OF VETERANS AFFAIRS, et al

Respondent(s)

On Petition for

A WRIT OF CERTIORARI to the United States Court of Appeals

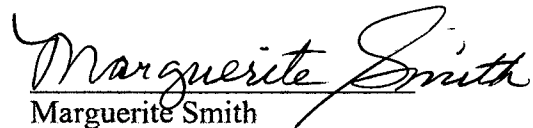
for the 11th Circuit

INDEX TO APPENDICES

Docket Case # 3:19-cv-00161-BJD-JRK

Docket Case # 3:19-cv-01420-BJD-JBT

Respectfully submitted,


Marguerite Smith

10522 Maidstone Cove Drive

Jacksonville, FL 32218

(904) 609-5779

mmgsmith11@gmail.com

**U.S. District Court
Middle District of Florida (Jacksonville)
CIVIL DOCKET FOR CASE #: 3:18-cv-01420-BJD-JBT
Internal Use Only**

Smith v. Watson et al
Assigned to: Judge Brian J. Davis
Referred to: Magistrate Judge Joel B. Toomey
Demand: \$9,999,000
Cause: 42:1983 Civil Rights Act

Date Filed: 11/30/2018
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Marguerite Smith
Widow

represented by **Marguerite Smith**
10522 Maidstone Cove Drive
Jacksonville, FL 32218
904-609-5779
PRO SE

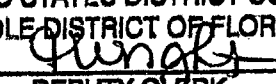
V.

Defendant

Jay B. Watson
in his individual capacity
TERMINATED: 12/11/2018

Defendant

Mark H. Mahon
in his individual capacity

I CERTIFY THE FOREGOING TO BE A TRUE
AND CORRECT COPY OF THE ORIGINAL
CLERK OF COURT
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
BY: 
DEPUTY CLERK

Date Filed	#	Docket Text
11/30/2018	<u>1</u>	COMPLAINT against Mark H. Mahon, Jay B. Watson with Jury Demand Filing fee \$ 400.00, receipt number JAX029619 filed by Marguerite Smith. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Civil Cover Sheet)(AEJ) Modified on 12/4/2018 - STRICKEN per Court Order, Doc. 3. (AEJ) (Entered: 11/30/2018)
11/30/2018	<u>2</u>	SUMMONS issued as to Mark H. Mahon, Jay B. Watson. (AEJ) (Entered: 11/30/2018)
12/03/2018	<u>3</u>	ORDER STRIKING <u>1</u> Complaint. No later than December 17, 2018, Plaintiff shall file an amended complaint consistent with the directives of this order. Failure to do so may result in dismissal of this action. Signed by Judge Brian J. Davis on 12/3/2018. (AMP) (Entered: 12/03/2018)
12/05/2018	<u>5</u>	RETURN of service executed on 12/3/18 by Marguerite Smith as to Mark

		H. Mahon, Jay B. Watson. (AEJ) (Entered: 12/12/2018)
12/11/2018	<u>4</u>	AMENDED COMPLAINT against Mark H. Mahon with Jury Demand. Terminating Jay B. Watson (in his individual capacity) filed by Marguerite Smith. (Attachments: # <u>1</u> Exhibit)(PAM) (Entered: 12/11/2018)
01/15/2019	<u>6</u>	NOTICE of designation under Local Rule 3.05 - track 2. Signed by Deputy Clerk on 1/15/2019. (Attachments: # <u>1</u> Case Management Report Form, # <u>2</u> Consent Letter and Form)(CKS) (Entered: 01/15/2019)
01/16/2019	5 <u>7</u>	MOTION for default judgment against Mark H. Mahon by Marguerite Smith. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit)(AEJ) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 01/17/2019)

CLOSED, MAGAPP

**U.S. District Court
Middle District of Florida (Jacksonville)
CIVIL DOCKET FOR CASE #: 3:19-cv-00161-BJD-JRK
Internal Use Only**

Smith v. Wilkie
Assigned to: Judge Brian J. Davis
Referred to: Magistrate Judge James R. Klindt
Demand: \$50,000
Cause: 28:1343 Violation of Civil Rights

Date Filed: 02/06/2019
Date Terminated: 07/25/2019
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

Plaintiff**Marguerite Smith**


represented by **Marguerite Smith**
10522 Maidstone Cove Drive
Jacksonville, FL 32218
904-609-5779
PRO SE

V.

Defendant

Robert Wilkie
Secretary of Veterans Affairs

represented by **Sean Michael Powers**
US Attorney's Office - FLM
Suite 700
300 N Hogan St
Jacksonville, FL 32202
904/301-6254
Fax: 904/301-6310
Email: sean.powers@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

I CERTIFY THE FOREGOING TO BE A TRUE
AND CORRECT COPY OF THE ORIGINAL
CLERK OF COURT
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
BY: 
DEPUTY CLERK

Defendant

Director Julianna Boor
*Director, Department of Veterans
Administration St Petersburg Office: in her
individual personal capacity*

represented by **Sean Michael Powers**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/06/2019	<u>1</u>	COMPLAINT against Robert Wilkie with Jury Demand filed by Marguerite Smith. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(PAM) (Additional attachment(s) added on 2/6/2019: # <u>9</u> Civil Cover Sheet) (PAM). (Entered: 02/06/2019)
02/06/2019	<u>2</u>	MOTION for leave to proceed in forma pauperis/affidavit of indigency (short form) by Marguerite Smith. (PAM) Motions referred to Magistrate Judge James R. Klindt. (Entered: 02/06/2019)
02/08/2019	<u>3</u>	ORDER taking under advisement <u>2</u> The Application to Proceed in District Court Without Prepaying Fees or Costs, construed as a Motion to Proceed In Forma Pauperis; on or before 3/7/2019, Plaintiff shall complete the enclosed Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) and file it with the Clerk of Court; alternatively, Plaintiff may pay the \$400 filing fee by 3/7/2019. Signed by Magistrate Judge James R. Klindt on 2/8/2019. (Attachments: # <u>1</u> Application to Proceed in District

		Court Without Prepaying Fees or Costs) (BHC) (Entered: 02/08/2019)
02/11/2019	<u>4</u>	MOTION for Leave to Proceed in forma pauperis by Marguerite Smith. (Attachments: # <u>1</u> Exhibit)(PAM) Motions referred to Magistrate Judge James R. Klindt. (Entered: 02/11/2019)
02/11/2019	<u>5</u>	AFFIDAVIT of indigency (long form) by Marguerite Smith. (PAM) Modified on 2/12/2019 to edit text (PAM). (Entered: 02/11/2019)
02/14/2019	<u>6</u>	ORDER taking under advisement the <u>2</u> Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), <u>4</u> Motion to Proceed In Forma Pauperis, and the <u>5</u> Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), construed collectively as a Motion to Proceed In Forma Pauperis; on or before 3/13/2019, Plaintiff shall file an Amended Complaint consistent with this Order; as an alternative to filing an Amended Complaint, Plaintiff may pay the \$400 filing fee by 3/13/2019. Signed by Magistrate Judge James R. Klindt on 2/14/2019. (BHC) (Entered: 02/14/2019)
03/04/2019	<u>7</u>	AMENDED COMPLAINT against Robert Wilkie with Jury Demand. filed by Marguerite Smith. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit D, # <u>11</u> Exhibit E, # <u>12</u> Exhibit F, # <u>13</u> Exhibit G, # <u>14</u> Exhibit H) Related document: <u>1</u> Complaint filed by Marguerite Smith.(AEJ) (Entered: 03/04/2019)
03/05/2019	<u>8</u>	NOTICE of filing page 8 re <u>7</u> Amended Complaint by Marguerite Smith (PAM) (Entered: 03/05/2019)
03/05/2019	<u>9</u>	APPEAL of Magistrate Judge ruling to District Court (Titled: Plaintiff's Notice of a Non-Final Order of Appeal/Interlocutory Appeal by Marguerite Smith re <u>6</u> Order on motion for leave to proceed in forma pauperisOrder on motion for leave to proceed in forma pauperis/affidavit of indigency (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(EAM) Modified text on 3/6/2019 (EAM). (Entered: 03/06/2019)
03/11/2019	<u>10</u>	ORDERED: Plaintiff's Notice of a Non-Final Order of Appeal/Interlocutory Appeal <u>9</u> is premature and the Court will proceed with this case. Signed by Judge Brian J. Davis on 3/11/2019. (AMP) (Entered: 03/11/2019)
03/19/2019		FEES paid by Marguerite Smith (Filing fee \$400 receipt number JAX030364) (TMC) (Entered: 03/19/2019)
03/20/2019	<u>11</u>	ORDER denying as moot <u>2</u> Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), <u>4</u> Motion to Proceed In Forma Pauperis, and <u>5</u> Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), construed collectively as a Motion to Proceed In Forma Pauperis; Plaintiff shall have up to and including 6/17/2019 to properly serve Defendants and file a certificate of service to that effect. Signed by Magistrate Judge James R. Klindt on 3/20/2019. (BHC) (Entered: 03/20/2019)
03/20/2019	<u>12</u>	NOTICE of designation under Local Rule 3.05 - track 2. Signed by Deputy Clerk on 3/20/2019. (Attachments: # <u>1</u> Case Management Report Form, # <u>2</u> Consent Letter and Form)(CKS) (Entered: 03/20/2019)
04/04/2019	<u>13</u>	SUMMONS issued as to Robert Wilkie (Only).(PAM) (Entered: 04/04/2019)
04/04/2019	<u>14</u>	SUMMONS issued as to U.S. Attorney and U.S. Attorney General. (AEJ) (Entered: 04/04/2019)
04/30/2019	<u>15</u>	SUMMONS returned executed US Attorney's Office served on 4/25/2019, answer due 6/24/2019. (PAM) (Entered: 04/30/2019)
05/07/2019	<u>16</u>	NOTICE of pendency of related cases per Local Rule 1.04(d) by Robert Wilkie. Related case (s): yes (Powers, Sean) (Entered: 05/07/2019)
06/04/2019	<u>17</u>	MOTION to Amend certificate of service dated May 7, 2019 by Marguerite Smith. (PAM) (Entered: 06/04/2019)

06/04/2019	<u>18</u>	AFFIDAVIT in support of Federal Rules of Civil Procedure, R. 4 of Marguerite Smith re: <u>7</u> Amended Complaint by Marguerite Smith. (Attachments: # <u>1</u> Exhibit)(PAM) (Entered: 06/04/2019)
06/04/2019	<u>19</u>	SUMMONS returned executed by Marguerite Smith. Robert Wilkie served on 5/6/2019, answer due 7/5/2019. (PAM) (Entered: 06/04/2019)
06/04/2019	<u>20</u>	PROOF of service on 5/6/19 as to the Attorney General of the United States by Marguerite Smith (PAM) (Entered: 06/04/2019)
06/04/2019	<u>21</u>	SUMMONS returned executed by Marguerite Smith. U.S. Attorney served on 4/25/2019, answer due 6/24/2019. (PAM) (Entered: 06/04/2019)
06/06/2019	<u>22</u>	OPPOSITION re <u>16</u> Notice of pendency of related cases by Marguerite Smith (Attachments: # <u>1</u> Exhibit)(PAM) (Entered: 06/06/2019)
06/10/2019	<u>23</u>	ORDER DENYING <u>22</u> Plaintiff's Opposition to the Defendant's Notice of Pendency of Related Actions Dated 5/07/2019, construed as a motion for sanctions. Signed by Judge Brian J. Davis on 6/10/2019. (AMP) (Entered: 06/10/2019)
06/17/2019	<u>24</u>	MOTION to Dismiss the order of the defendant's notice of pendency of related actions dated 05/07/2019 by Marguerite Smith. (Attachments: # <u>1</u> Exhibit)(PAM) (Entered: 06/17/2019)
06/18/2019	<u>25</u>	ORDER denying <u>17</u> Plaintiff's Motion to Amend Certificate of Service Dated May 7, 2019. Signed by Magistrate Judge James R. Klindt on 6/18/2019. (BHC) (Entered: 06/18/2019)
06/18/2019	<u>26</u>	ORDER directing that Plaintiff shall have up to and including 7/31/2019 to properly serve Defendant Julianna Boor and file a certificate of service to that effect. Signed by Magistrate Judge James R. Klindt on 6/18/2019. (BHC) (Entered: 06/18/2019)
06/24/2019	<u>27</u>	MOTION to Dismiss Amended Complaint by Robert Wilkie. (Powers, Sean) Modified on 6/24/2019 to edit filer (PAM). (Entered: 06/24/2019)
06/24/2019	<u>28</u>	MOTION for miscellaneous relief, specifically for judicial notice of the FRE 201 Article II and FRCP on the pleading by Marguerite Smith. (Attachments: # <u>1</u> Exhibit A)(PAM) Modified on 6/24/2019 to edit text (PAM). (Entered: 06/24/2019)
06/25/2019	<u>29</u>	ENDORSED ORDER: On or before July 12, 2019, Plaintiff shall respond to <u>27</u> the United States' Motion to Dismiss, or the Motion to Dismiss will be treated as unopposed. Signed by Judge Brian J. Davis on 6/25/2019. (AMP) (Entered: 06/25/2019)
07/01/2019	<u>30</u>	MOTION to Strike <u>27</u> MOTION to Dismiss Amended Complaint by Marguerite Smith. (PAM) Motions referred to Magistrate Judge James R. Klindt. Titled: Memorandum of Law thereof to support..... (Entered: 07/01/2019)
07/08/2019	<u>31</u>	MOTION to Dismiss Amended Complaint by Robert Wilkie. (Powers, Sean) (Entered: 07/08/2019)
07/12/2019	<u>32</u>	MOTION to Strike <u>31</u> MOTION to Dismiss Amended Complaint and MOTION for default judgment by Marguerite Smith. (Attachments: # <u>1</u> Exhibit)(AEJ) Motions referred to Magistrate Judge James R. Klindt. (Entered: 07/12/2019)
07/15/2019	<u>33</u>	RESPONSE to Motion re <u>32</u> MOTION to Strike <u>31</u> MOTION to Dismiss Amended Complaint filed by Robert Wilkie. (Powers, Sean) (Entered: 07/15/2019)
07/15/2019	<u>34</u>	MOTION for miscellaneous relief, specifically judicial notice by Marguerite Smith. (Attachments: # <u>1</u> Exhibit)(PAM) (Entered: 07/15/2019)
07/25/2019	<u>35</u>	ORDER GRANTING <u>27</u> United States' Motion to Dismiss. The Amended Complaint <u>7</u> is DISMISSED WITH PREJUDICE. The Clerk is directed to TERMINATE pending motions and CLOSE this case. Signed by Judge Brian J. Davis on 7/25/2019. (AMP) (Entered: 07/25/2019)

General Docket
United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 19-10942 Nature of Suit: 3440 Other Civil Rights Marguerite Smith v. Mark Mahon Appeal From: Middle District of Florida Fee Status: Fee Paid	Docketed: 03/13/2019
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Case Type Information:

- 1) Private Civil
- 2) Federal Question
- 3) -

Originating Court Information:

District: 113A-3 : 3:18-cv-01420-BJD-JBT
Civil Proceeding: Brian J. Davis, U.S. District Judge
Secondary Judge: Joel Barry Toomey, U.S. Magistrate Judge
Date Filed: 11/30/2018
Date NOA Filed:
 03/13/2019

Prior Cases:

None

Current Cases:

None

MARGUERITE SMITH, widow

Appellant

Plaintiff -

Marguerite Smith

Direct: 904-609-5779

[NTC Pro Se]

10522 MAIDSTONE COVE DR

JACKSONVILLE, FL 32218

versus

MARK H. MAHON, in his individual capacity

Appellee

Defendant -

MARGUERITE SMITH,
widow,

Plaintiff - Appellant,









versus

JAY B. WATSON,
in his individual capacity,

Defendant,

MARK H. MAHON,
in his individual capacity,

Defendant - Appellee.

- | | |
|---|---|
| <p>04/18/2019 <input type="checkbox"/> 
2 pg, 12.78 KB</p> | ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R. 42-2(c), this appeal is DISMISSED for want of prosecution because the appellant Marguerite Smith failed to file an appendix within the time fixed by the rules [Entered: 04/18/2019 02:08 PM] |
| <p>04/09/2019 <input type="checkbox"/> 
2 pg, 17.7 KB</p> | Briefing Notice issued to Appellant Marguerite Smith and Appellee Mark H. Mahon. The appellant's brief is due on or before 05/20/2019. The appendix is due no later than 7 days from the filing of the appellant's brief. [Entered: 04/09/2019 02:27 PM] |
| <p>04/09/2019 <input type="checkbox"/></p> | Motion to proceed in forma pauperis is MOOT due to the appellate paying the filing fee [8739904-2] [Entered: 04/09/2019 11:15 AM] |
| <p>04/09/2019 <input type="checkbox"/> 
1 pg, 10.8 KB</p> | Appellate fee was paid on 04/04/2019 as to Appellant Marguerite Smith. [Entered: 04/09/2019 11:00 AM] |
| <p>04/08/2019 <input type="checkbox"/> 
10 pg, 380.99 KB</p> | Appellant's brief filed by Marguerite Smith. Service date: 04/02/2019. [Entered: 04/12/2019 08:17 AM] |
| <p>04/04/2019 <input type="checkbox"/> 
38 pg, 3.02 MB</p> | <i>MOTION to proceed IFP filed by Appellant Marguerite Smith. Opposition to Motion is Unknown [8739904-1]</i> [Entered: 04/08/2019 03:23 PM] |
| <p>03/28/2019 <input type="checkbox"/> 
1 pg, 12.88 KB</p> | NOTICE OF CIP FILING DEFICIENCY to Marguerite Smith. You are receiving this notice because you have not completed the Certificate of Interested Persons (CIP). Failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. [Entered: 03/28/2019 12:03 PM] |
| <p>03/25/2019 <input type="checkbox"/> 
1 pg, 330.47 KB</p> | Appellant's Certificate of Interested Persons and Corporate Disclosure Statement filed by Appellant Marguerite Smith. [Entered: 03/29/2019 03:01 PM] |
| <p>03/19/2019 <input type="checkbox"/> 
5 pg, 402.03 KB</p> | USDC order denying IFP as to Appellant Marguerite Smith was filed on 03/15/2019. Docket Entry 14. [Entered: 03/19/2019 10:49 AM] |

03/13/2019



13 pg, 1.69 MB

CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Marguerite Smith on 03/13/2019. Fee Status: IFP Pending. USDC motion pending: Motion for leave to appeal in forma pauperis. No hearings to be transcribed. Awaiting Appellant's Certificate of Interested Persons due on or before 03/27/2019 as to Appellant Marguerite Smith. Awaiting Appellee's Certificate of Interested Persons due on or before 04/10/2019 as to Appellee Mark H. Mahon [Entered: 03/14/2019 11:33 AM]

- ☒ **Documents and Docket Report**
☐ **Documents and Docket Summary**
☐ **Documents Only**

☐ **Include Page Numbers**

Selected Pages: Selected Size:

Totals reflect accessible documents only and do not include unauthorized restricted documents.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13189
Non-Argument Calendar

D.C. Docket No. 3:19-cv-00161-BJD-JRK

MARGUERITE SMITH,

Plaintiff - Appellant,

versus

SECRETARY OF VETERANS AFFAIRS,
JULIANNA BOOR,
Director, Department of Veterans Administration
St Petersburg Office: in her individual personal capacity,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(April 3, 2020)

Before WILSON, BRANCH, and ANDERSON, Circuit Judges

PER CURIAM:

Marguerite Smith, proceeding *pro se*, appeals the district court's dismissal with prejudice of her complaint on the grounds that her claims failed to state a claim and were barred by *res judicata*. The Secretary of Veterans Affairs has moved for summary affirmance and to stay the briefing schedule.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," 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, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). An appeal is frivolous if it is "without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

We review *de novo* a district court's grant of a motion to dismiss with prejudice. *Young Apartments, Inc. v. Town of Jupiter, FL*, 529 F.3d 1027, 1037 (11th Cir. 2008). To prevent dismissal under Rule 12(b)(6), the plaintiff must allege sufficient facts to state a claim for relief that is "plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Claims are plausible when the plaintiff pleads facts that allow the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *Pro se* pleadings are held to a less-strict standard than counseled pleadings and are

liberally construed. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

When ruling on a Rule 12(b)(6) motion to dismiss, the district court is permitted to take judicial notice of public records without needing to convert the motion into a motion for summary judgment, an action which would require that the non-moving party receive notice of the movant's submissions in order to address their relevance. *See Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1276-78 (11th Cir. 1999). Under Federal Rule of Evidence 201, the district court may take judicial notice of a fact that is (1) generally known within the court's jurisdiction, and (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201.

Under the doctrine of *res judicata*, or claim preclusion, a claim is barred by a prior suit if: "(1) there is a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the parties . . . are identical in both suits; and (4) the same cause of action is involved in both cases." *Griswold v. Cnty. of Hillsborough*, 598 F.3d 1289, 1292 (11th Cir. 2010) (quotation omitted). Generally, an order dismissing a complaint is not final and appealable unless the order holds that it dismisses the entire action or that the complaint cannot be saved by amendment. *Garfield v. NDC Health Corp*, 466 F.3d 1255, 1260 (11th Cir. 2006). However, where a complaint is dismissed without prejudice and the plaintiff files an

appeal instead of amending the complaint, the dismissal becomes final and appealable and the plaintiff waives the right to later amend the complaint. *Id.* at 1260-61. Two cases are the same for purposes of *res judicata* “if a case arises out of the same nucleus of operative facts, or is based upon the same factual predicate, as a former action.” *Griswold*, 598 F.3d at 1293.

In *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), the Supreme Court held that injured plaintiffs could bring a cause of action for damages against federal officers based on violations of their constitutional rights. *Id.* at 395-96. We generally apply the same law to both *Bivens* and 42 U.S.C. § 1983 cases. *Abella v. Rubino*, 63 F.3d 1063, 1065 (11th Cir. 1995). However, the Supreme Court has held that “[g]overnment officials may not be held liable [under *Bivens*] for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*.” *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

As an initial matter, while the parties argue on appeal as if the district court converted the motion to dismiss into a motion for summary judgment, the fact that the district court looked at prior court records, which were referenced by the Secretary in his motion to dismiss, did not require the court to convert the motion. *See Bryant*, 187 F.3d at 1276-78. The district court implicitly took judicial notice of Smith’s prior action because the prior orders were public record, known within the trial court’s jurisdiction—as it was the court that issued the orders, and can be

accurately and readily determined. *See* Fed. R. Evid. 201. However, even if the district court erred in not converting the motion to dismiss into a motion for summary judgment, such an error is harmless because Smith was already on notice of her prior case, the district court gave her 17 days to respond to the Secretary's motion, and she responded. Additionally, although Smith's complaint purports to bring a cause of action under § 1983, because Smith is suing a federal officer, it is construed as a claim brought pursuant to *Bivens*.

Here, there is no substantial question that Smith's complaint is barred by *res judicata* and that her complaint failed to state a claim. *See Groendyke Transp., Inc.*, 406 F.3d at 1162. First, despite the fact that Smith's prior case was dismissed without prejudice, the case constitutes a final judgment on the merits because Smith waived her right to further amend her complaint by seeking to appeal the dismissal, which we summarily affirmed, and because the district court's dismissal was for failure to state a claim. *See Garfield*, 466 F.3d at 1260-61. Further, Smith's prior case (1) involved the same parties—namely, Smith and the Secretary, and (2) involved the same claim because both cases arise out of the same loan guarantee and the alleged actions of VA employees in relation to that loan guarantee. (*See* doc. 27 at 1-4). Thus, Smith's present complaint is barred by *res judicata*. *See Griswold*, 598 F.3d at 1292.

Additionally, there is no substantial question that Smith's complaint failed to state a claim. Smith purported to sue the Secretary in his individual capacity, yet the complaint never alleged actions that the Secretary himself committed, only referring to the actions of VA employees in general. Even construing the complaint liberally, as suing the Secretary in his official capacity, Smith has failed to state a claim because government officials cannot be held liable for any unconstitutional conduct by their subordinates under *Bivens*. *Iqbal*, 566 U.S. at 676. According, summary affirmance is appropriate. *See Groendyke Transp., Inc.*, 406 F.3d at 1162.

Moreover, the arguments raised by Smith in her appeal are frivolous because they are without arguable merit in law or fact. *See Napier*, 314 F.3d at 531. First, her argument that the Secretary was barred from obtaining summary judgment because he failed to timely file an answer is meritless because the Secretary timely filed a motion to dismiss and, thus, did not have to file an answer until 14 days after the district court resolved his pending motion. Second, her argument that the district court denied her procedural due process rights by failing to grant her a default judgment is meritless because the Secretary was not in default, as he had filed a timely motion to dismiss. Her third argument that the district court failed to give her 10 days' notice is moot because the district court gave her 17 days to respond to the Secretary's dispositive motion, and she responded within 6 days. Lastly, Smith's

fourth argument is meritless because district courts do have the power to reverse orders.

Therefore, because there is no substantial question that Smith's complaint fails to state a claim and is barred by *res judicata*, and because her arguments on appeal are frivolous, we GRANT the appellees' motion for summary affirmance. *See Groendyke Transp., Inc.*, 406 F.2d at 1162. Accordingly, we DENY the accompanying motion to stay the briefing schedule as moot.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MARGUERITE SMITH,

Plaintiff,

v.

Case No. 3:19-cv-161-J-39JRK

ROBERT WILKIE, Secretary of
Veterans Affairs and JULIANNA BOOR,
Director, Department of Veterans
Administration St Petersburg Office: in
her individual personal capacity,

Defendants.

ORDER

THIS CAUSE is before the Court on the United States' Motion to Dismiss (Doc. 27) and Plaintiff's Memorandum of Law Thereof to Support Plaintiff's Motion to Strike Defendant's Motion to Dismiss, construed as an opposition to the Motion to Dismiss (Doc. 30; Opposition). Plaintiff, preceding pro se, initiated this action by filing the Complaint (Doc. 1) against Defendant, Secretary of Veterans Affairs for alleged violations of 42 U.S.C. § 1983. Plaintiff filed an Amended Complaint (Doc. 7) adding Defendant Julianna Boor, Director of the Department of Veterans Administration St. Petersburg Office, for alleged violations of 42 U.S.C. § 1983. See Am. Compl. ¶¶ 4, 13, 19–20.

I. Standard of Law

Pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure ("Rule(s)"), a district court may dismiss a complaint for "failure to state a claim upon which relief can be granted." When reviewing a motion to dismiss, the Court must take the complaint's allegations as true and construe them in the light most favorable to the plaintiff. Rivell v.

Private Health Care Sys., Inc., 520 F.3d 1308, 1309 (11th Cir. 2008). While the Court is required to accept well-pleaded facts as true at this stage, it is not required to accept a plaintiff's legal conclusions. Chandler v. Sec'y of Fla. Dep't of Transp., 695 F.3d 1194, 1199 (11th Cir. 2012). It is insufficient for a plaintiff's complaint to put forth merely labels, conclusions, and a formulaic recitation of the elements of the cause of action. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). While a complaint's factual allegations need not be detailed, the complaint must still allege sufficient facts to render the claim plausible on its face. Id. at 570. "The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully." Moore v. Grady Mem'l Hosp. Corp., 834 F.3d 1168, 1171 (11th Cir. 2016) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). "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." Iqbal, 556 U.S. at 678.

II. Background

In December 2017, Plaintiff sued the Department of Veterans Affairs (the "VA") and the Director of the VA's Regional Office in St. Petersburg, Florida—Julianna Boor. See Smith v. Department of Veterans Affairs & Juliana Boor, Case No. 3:17-CV-1362-HES-MCR (Doc. 1) ("Smith 1"). On May 30, 2018, the Honorable Harvey E. Schlesinger, United States District Judge, granted the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim. (Doc. 17; Smith 1). Judge Schlesinger permitted Plaintiff to file an amended complaint. See id. Plaintiff failed to amend the complaint and instead appealed to the Eleventh Circuit. (Doc. 21; Smith 1). On appeal, the Eleventh Circuit granted summary affirmance because Plaintiff failed to

show exhaustion of administrative remedies, failed to allege fraud with particularity, and failed to state a Bivens¹ claim against Boor. (Doc. 28 at 4–6; Smith 1). The Eleventh Circuit described Plaintiff's appeal as "frivolous" four times. Id. at 5–8. On remand, Judge Schlesinger directed the clerk to close the case. (Doc. 29; Smith 1). Plaintiff appealed a second time, but the Eleventh Circuit dismissed that appeal for lack of jurisdiction and because the appeal was duplicative. (Doc. 34; Smith 1).

While Plaintiff's second appeal in Smith 1 was pending, Plaintiff initiated the instant case. After the appeal (Doc. 34; Smith 1), Plaintiff filed the Amended Complaint in this case bringing a 42 U.S.C. § 1983 claim against VA employees for terminating on August 1, 1999 the loan guarantee secured by 9591 Villiers Drive South, Jacksonville, Florida without notification of any claims or benefits. See Am. Compl. ¶ 6. Plaintiff alleges that on May 31, 2000, Plaintiff sold her home to Gail Rivers pursuant to a Conditional Sale Agreement. See id. ¶ 22. Plaintiff alleges that Mrs. Rivers did not honor the Conditional Sale Agreement and Plaintiff's home was fraudulently taken without the consent of the VA. See id. ¶¶ 22–23. Plaintiff also alleges that after hiring an attorney, she filed a foreclosure action against Mrs. Rivers, but "[d]ue to false documents filed into the lower court from an improper probate of the deceased estate . . . Mrs. Rivers . . . sold the property . . . to Williams J. Toller and Toni C. Toler [sic] in 2004 who also holds illegal title of ownership" Id. ¶ 26. Plaintiff alleges that Mr. and Mrs. Toller "willfully and intentionally sold the property to Irongate Holdings, LLC. from a Final Judgment . . . to avoid prosecution against the deceased, Floyd A. Smith's GI Bill from [the VA]" Id.

¹ Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 389 (1971).

Plaintiff requests that the Court “restore administration of the estate for misrepresentation of a deceased . . . and in punitive damages [in] the amount of \$60,000,000” Id. at 7–8.

III. Discussion

Defendant argues that the Court should dismiss the Amended Complaint because the Eleventh Circuit determined that Plaintiff’s appeal was frivolous, and Plaintiff should not “be permitted a do-over for the same reasons articulated in Smith 1 and because res judicata precludes any new claims.” See Motion at 1, 5–6. In Plaintiff’s Opposition, she merely cites various legal standards, requests “an oral argument to subpoena witness,” argues that the Court should impose a \$1,000,000.00 sanction against Assistant United States Attorney Sean Powers, and argues that the Motion is moot. See generally Opp. 1–4.

The Court is mindful that Plaintiff is proceeding pro se but is nonetheless unable to determine the precise cause or causes of action against Defendants. As the Court previously found in Smith 1, Plaintiff again fails to state a cognizable claim against Defendants despite at least four opportunities in two cases to do so. For the reasons stated in Smith 1, (Doc. 17; Smith 1) and affirmed by the United States Court of Appeals for the Eleventh Circuit (Docs. 28 and 34; Smith 1), the Amended Complaint is due to be dismissed with prejudice.

The Amended Complaint is also due to be dismissed under the doctrine of res judicata. “The doctrine of res judicata ‘bars the filing of claims which were raised or could have been raised in an earlier proceeding.’” Maldonado v. U.S. Atty. Gen., 664 F.3d 1369, 1375 (11th Cir. 2011) (quoting Ragsdale v. Rubbermaid, Inc., 193 F.3d 1235, 1238 (11th

Cir. 1999)). For res judicata to bar a subsequently filed case, the following four elements must be present: “(1) there is a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the parties, or those in privity with them, are identical in both suits; and (4) the same cause of action is involved in both cases.” Id.

Satisfying elements one and two, Judge Schlesinger entered a final judgment in Smith 1. See (Docs. 17 and 28; Smith 1). Regarding element three, the Court finds that the parties in Smith 1 are effectively the same as, or are in privity with, the parties in this case. Finally, element four is satisfied because in Smith 1 Plaintiff argues that the same loan guarantee for a home located at 9591 Villiers Drive South, Jacksonville, Florida was fraudulent. See (Doc. 1 ¶ 5, Ex. A; Smith 1). While the cause or causes of action are not clear in either Smith 1 or in the instant case, it appears that both cases surround the same loan guarantee and a Bivens action for alleged constitutional violations. The Amended Complaint is therefore due to be dismissed.²

Accordingly, after due consideration, it is

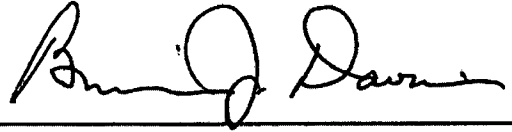
ORDERED:

1. The United States' Motion to Dismiss (Doc. 27) is **GRANTED**.
2. The Amended Complaint (Doc. 7) is **DISMISSED with prejudice**.
3. The parties shall bear their own costs and attorneys' fees.

² To the extent that res judicata does not apply, the Amended Complaint is still due to be dismissed for failure to state a claim. Plaintiff was on notice of the deficiencies and has had at least four opportunities to state a claim. Granting leave for further amendment in this case would be futile. See Grider v. Cook, 522 F. App'x 544, 548 (11th Cir. 2013) (“Although a pro se litigant must generally be permitted to amend h[er] complaint, a district court need not allow amendment where amendment would be futile, or in other words, still subject to dismissal.” (citing Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007))).

4. The Clerk of the Court is directed to **TERMINATE** any pending motions in this matter and **CLOSE** this case.

DONE and **ORDERED** in Jacksonville, Florida this 25th day of July, 2019.

A handwritten signature in black ink, appearing to read "Brian J. Davis", written over a horizontal line.

BRIAN J. DAVIS
United States District Judge

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Copies furnished to:

Counsel of Record

Marguerite Smith
10522 Maidstone Cove Drive
Jacksonville, FL 32218

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MARGUERITE SMITH, Widow,

Plaintiff,

v.

Case No. 3:18-cv-1420-J-39JBT

MARK H. MAHON, in his individual
capacity,

Defendant.

ORDER

THIS CAUSE is before the Court on Plaintiff's Motion for Permission to Appeal *In Forma Pauperis* and Affidavit (Doc. 12; Motion for IFP). In the Motion for IFP, Plaintiff requests permission to proceed *in forma pauperis* on appeal because she is unable to pay the filing fees. See id.

Federal Rule of Appellate Procedure 24(a)(1) requires the party requesting to proceed *in forma pauperis* on appeal to file a motion in the district court. See also 28 U.S.C. 1915(a)(1) (requiring a person who seeks to appeal a case *in forma pauperis* to include an affidavit describing "the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress"): Additionally, the motion to proceed *in forma pauperis* must include a financial affidavit as provided in Form 4 of the Appendix of Forms to the Federal Rules of Appellate Procedure. Fed. R. App. P. 24(a)(1)(A). An appeal is not taken in good faith where the appellant fails to articulate a basis for the appeal. Madura v. Lakebridge Condo. Ass'n, Inc., No. 8:07CV02274-T-17EAJ, 2009 WL 1659444, at *2 (M.D. Fla. June 15, 2009). When the basis of an appeal is given, the Court

looks to "whether, objectively speaking, there is any non-frivolous issue to be litigated on appeal." Knight v. Lane, No. CA 08-0301-KD-C, 2010 WL 1487806, at *2 (S.D. Ala. Apr. 7, 2010) (internal quotations and citations omitted) report and recommendation adopted, No. CIVA 08-0301-KD-C, 2010 WL 1487275 (S.D. Ala. Apr. 13, 2010). If there are not any non-frivolous issues to be litigated on appeal, then the appeal is also not taken in good faith. Id.

In the Motion for IFP, Plaintiff sets forth the grounds upon which her appeal rests. See Motion for IFP at 1 (Plaintiff "disagree[s] with all the ordered 2/25/2019 action by a vexatious litigant"). The Court has reviewed Plaintiff's Complaint (Doc. 1), Amended Complaint (Doc. 4), and has set forth its reasoning for dismissing this case in its Order dated February 25, 2019 (Doc. 10). The pertinent issues having been fully addressed in the Court's prior Orders (Docs. 3, 8, 10), the Court cannot now find that, objectively speaking, there are any non-frivolous issues to be litigated on appeal.

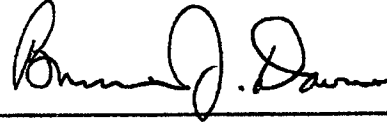
Accordingly, after due consideration, it is

ORDERED:

1. Pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies that this appeal is not taken in good faith.
2. Plaintiff's Motion for Permission to Appeal *In Forma Pauperis* and Affidavit (Doc. 12) is **DENIED**.
3. The Clerk of Court is directed to **immediately** notify the parties and the United States Court of Appeals for the Eleventh Circuit that Plaintiff's appeal is not taken in good faith.

4. Plaintiff shall pay the applicable appellate docketing and filing fees within thirty (30) days of the date of this Order, or move to proceed *in forma pauperis* before the Eleventh Circuit Court of Appeals.

DONE and **ORDERED** in Jacksonville, Florida this 15th day of March, 2019.



BRIAN J. DAVIS
United States District Judge

va

Copies furnished to:

Counsel of Record

Marguerite Smith
10522 Maidstone Cove Drive
Jacksonville, FL 32218

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Middle District of Florida

Notice of Electronic Filing

The following transaction was entered on 3/15/2019 at 5:20 PM EDT and filed on 3/15/2019

Case Name: Smith v. Watson et al

Case Number: 3:18-cv-01420-BJD-JBT

Filer:

WARNING: CASE CLOSED on 02/25/2019

Document Number: 14

Docket Text:

ORDER DENYING [12] Plaintiff's Motion for Permission to Appeal *In Forma Pauperis*. The Clerk is directed to immediately notify the parties and the United States Court of Appeals for the Eleventh Circuit that Plaintiff's appeal is not taken in good faith. Within 30 days of the date of this Order, Plaintiff shall pay the applicable appellate docketing and filing fees or move to proceed *in forma pauperis* before the Eleventh Circuit Court of Appeals. Signed by Judge Brian J. Davis on 3/15/2019. (AMP)

3:18-cv-01420-BJD-JBT Notice has been electronically mailed to:

3:18-cv-01420-BJD-JBT Notice has been delivered by other means to:

Marguerite Smith
10522 Maidstone Cove Drive
Jacksonville, FL 32218

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MARGUERITE SMITH, Widow,

Plaintiff,

v.

Case No. 3:18-cv-1420-J-39JBT

MARK H. MAHON, in his individual
capacity,

Defendant.

ORDER TO SHOW CAUSE

THIS CAUSE is before the Court sua sponte. On October 30, 2018, Plaintiff Marguerite Smith initiated this action by filing the Complaint (Doc. 1) against Defendants Jay B. Watson and Mark H. Mahon the Chief Judge for the Fourth Judicial Circuit. On December 3, 2018, the Court struck the Complaint as a shotgun pleading and directed Plaintiff to file an amended complaint consistent with the Federal Rules of Civil Procedure and the Local Rules for the Middle District of Florida. (Doc. 3). On December 11, 2018, Plaintiff filed an Amended Complaint (Doc. 4) against Defendant Judge Mahon involving claims pursuant to 42 U.S.C. § 1983. See Am. Compl. ¶ 1.

In the Amended Complaint, Plaintiff challenges a state court order (Doc. 4-1 at 8-13; Administrative Order) entered by Judge Mahon. See Am. Compl. ¶¶ 4-5. The Administrative Order involved a real property transaction for property located at 9591 Villiers Drive South, Jacksonville, Florida 32221 (the "9591 Villiers Property"). See Admin Order at 8. The Administrative Order declared Plaintiff a vexatious litigant and restricted

her court filings. See Admin. Order at 12-13. In the Amended Complaint, Plaintiff states that

the issue before this [C]ourt is United States Constitutional Tort that Mark H. Mahon, in his individual capacity did intentionally, deliberately and willfully violated the U.S. Constitutional Rights of the Fifth and Fourteenth Amendment[s] of due process . . . [and] did not give Plaintiff . . . the opportunity to challenge the Administrative Order No. 2018-02 without allowing Plaintiff a chance to reply to the order, or hearing, or a jury trial before prohibiting her from the courts suddenly.

Id. ¶ 4. Plaintiff alleges that Judge Mahon is not entitled to immunity from prosecution.

See id. ¶ 5.

"The Rooker-Feldman doctrine is a jurisdictional rule that precludes federal district courts from exercising appellate jurisdiction over final state court judgments." Macleod v. Zambrano, No. 17-10673, 2019 WL 516495, at *1 (11th Cir. Feb. 11, 2019) (citing Nicholson v. Shafe, 558 F.3d 1266, 1268 (11th Cir. 2009)) (unpublished). The doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 281 (2005); see also Macleod, 2019 WL 516495 at *1 (affirming this Court's sua sponte dismissal of the plaintiff's § 1983 complaint against Judge Zambrano for the lack of subject matter jurisdiction for claims involving the state court's order declaring the plaintiff a vexatious litigant and subjecting the plaintiff's filings to various restrictions). The court in Macleod found that the plaintiff "had a 'reasonable opportunity to bring his federal claim in state proceedings' because, under the vexatious litigant order, he was still allowed to file a claim in state court if he was represented by

counsel and paid fees." Macleod, 2019 WL 516495 at *1 (quoting Casale v. Tillman, 558 F.3d 1258, 1260 (11th Cir. 2009)).

Similar to the state court order in Macleod, the Amended Complaint challenges the Administrative Order declaring Plaintiff a vexatious litigant and subjecting Plaintiff's filings to various restrictions. The Administrative Order permitted Plaintiff to file legitimate claims in state court if she was represented by counsel, filed the appropriate recording or filing fee, and obtained an order from the Chief Judge permitting the filing pursuant to Section 68.093(5), Florida Statutes.¹ See Admin Order at 12-13. Plaintiff has not established that the Court has subject matter jurisdiction over this action. In light of the foregoing and that Plaintiff is proceeding pro se, Plaintiff will be given another opportunity to establish subject matter jurisdiction.²

¹ Section 68.093(5), Florida Statutes states the following:

The clerk of the court shall not file any new action by a vexatious litigant pro se unless the vexatious litigant has obtained an order from the administrative judge permitting such filing. If the clerk of the court mistakenly permits a vexatious litigant to file an action pro se in contravention of a prefiling order, any party to that action may file with the clerk and serve on the plaintiff and all other defendants a notice stating that the plaintiff is a pro se vexatious litigant subject to a prefiling order. The filing of such a notice shall automatically stay the litigation against all defendants to the action. The administrative judge shall automatically dismiss the action with prejudice within 10 days after the filing of such notice unless the plaintiff files a motion for leave to file the action. If the administrative judge issues an order permitting the action to be filed, the defendants need not plead or otherwise respond to the complaint until 10 days after the date of service by the plaintiff, by United States mail, of a copy of the order granting leave to file the action.

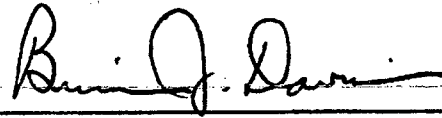
² The Court reminds Plaintiff for the second time (see Doc. 3 at n.1) that though proceeding pro se, she is still required to "conform to procedural rules." Riley v. Fairbanks Capital Corp., 222 F. App'x 897, 898 (11th Cir. 2007) (quoting Loren v. Sasser, 309 F.3d 1296, 1304 (11th Cir. 2002)). To assist unrepresented parties such as Plaintiff, the Court has added a section to its website designed to help pro se litigants, with a link entitled "Litigants Without Lawyers," which Plaintiff may access under the "For Litigants" tab at the following address: <http://www.flmd.uscourts.gov>. There, Plaintiff will find an overview of the litigation process and a link to the Guide for Proceeding Without a Lawyer. The website also provides links to the Federal Rules of Criminal Procedure and the Local Rules, and a link to the United States Court of Appeals for the Eleventh Circuit.

Accordingly, it is

ORDERED:

On or before **March 1, 2019**, Plaintiff shall **SHOW CAUSE** why this case should not be dismissed for the lack of subject matter jurisdiction. If Plaintiff fails to respond, the case may be dismissed without further notice.

DONE and ORDERED in Jacksonville, Florida this 15th day of February, 2019.

A handwritten signature in black ink, appearing to read "Brian J. Davis", is written over a horizontal line.

BRIAN J. DAVIS
United States District Judge

5

Copies furnished to:

Counsel of Record

Marguerite Smith
10522 Maidstone Cove Drive
Jacksonville, FL 32218

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13189-AA

MARGUERITE SMITH,

Plaintiff - Appellant,

versus

SECRETARY OF VETERANS AFFAIRS,
JULIANNA BOOR,
Director, Department of Veterans Administration
St Petersburg Office: in her individual personal capacity,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10942-DD

MARGUERITE SMITH,
widow,

Plaintiff - Appellant,

versus

JAY B. WATSON,
in his individual capacity,

Defendant,

MARK H. MAHON,
in his individual capacity,

Defendant - Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: ED CARNES, Chief Judge, JORDAN, and TJOFLAT, Circuit Judges:

BY THE COURT:

The requests in Appellant's filings docketed on April 3, 2020 and April 6, 2020 are
DENIED.