STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally came and appeared before me, Notary Public, C. Holmes, who upon being duly sworn did depose and say the following:

1) I am the petitioner, over the age of eighteen (18) years, and competent to state the matters herein. This affidavit is based on personal knowledge and on information and belief. It is submitted in support of the attached petition.

2) As set forth more fully below, it is respectfully submitted that the record reflects a pattern and practice of impropriety in fact as well as appearance of impropriety by the magistrate.

3) Specifically, the magistrate herein admitted he helped himself to an internet search outside the record which formed the basis of wrongful Report and Recommendation (R&R) for dismissal. Timely reasonable request for opportunity to respond to the unknown, unverified content over the internet and outside the record was unreasonably denied. The Federal Court system has access to the magistrate's search history in the browser on Federal Court devices which can easily be retrieved in order to provide the petitioner an opportunity to respond. The magistrate's unlawful search and solicitation of impermissible ex parte communication outside the record over the internet led to wrongful R&R dismissal. But for the prejudicial error the outcome should and would be different.

4) In addition, pejorative code words in the R&R are weaponized by the magistrate to prejudice the case evidencing bias: petitioner is a "frequent filer." For the record, there are three cases: a Medicare appeal from 2011 which was pending with the ALJ for years(!); a complete diversity case; and the instant case.

5) The above reference to unrelated cases outside the record by the magistrate suggests the impropriety and impermissible ex parte communication outside the record over the internet adversely affected other cases as well. This magistrate has not been straight forward or forthcoming about his apparent pattern and practice of wrongful search and solicitation of impermissible ex parte

communication outside the record over the internet in another United States District Court for the District of South Carolina Case No. 2:16-CV-3969. That wrongful R&R dismissal was filed the same day as dismissal herein indicating the two cases were considered during the same time frame and were subjected to the same wrongful search and solicitation of impermissible ex parte communication outside the record over the internet. Petitioner is prejudiced thereby.

6) Significantly and materially, in that Case No. 2:16-CV-3969, the attached copy of the Docket Sheet shows the magistrate entered a text order on 07/02/18 directing both sides to "file a confirmation with the Court that the required mediation was held, including the date on which it was held, by Thursday, July 5, 2018." The Docket Sheet, however, shows only one side filed a response: petitioner timely filed through the mail on July 12, 2018. The petitioner was not copied on Defendant LLC's required response. On information and belief, the other side engaged in direct or indirect impermissible ex parte communication with the Presiding District Court Judge by and through the magistrate regarding that mediation. Petitioner is prejudiced thereby.

7) Entry 98 on page 11 of the attached Docket Sheet references petitioner's motion for subpoena for deposition of defendant's expert which the magistrate denied without comment.

8) In addition, this magistrate has not been straight forward or forthcoming about his apparent pattern and practice of wrongful search and solicitation of impermissible ex parte communication outside the record over the internet in a third case. Wrongful R&R dismissal in that case was filed the day before the wrongful R&R dismissal herein indicating the cases were considered during the same time frame and were subjected to the same wrongful search and solicitation of impermissible ex parte communication outside the record over the internet. The record reflects the magistrate's failure to disclose. Petitioner is prejudiced thereby.

FURTHER THE AFFIANT SAITH NOT.

Subscribed and sworn to before me,
Notary Public, this 26 day

of May, 2020.

Elizabeth Anderson

NOTARY PUBLIC
My commission expires: 4/4/2023

APPEAL,CLOSED,PROSE

U.S. District Court
District of South Carolina (Charleston)
CIVIL DOCKET FOR CASE #: 2:16-cv-03969-BHH

Holmes v. Granuaile LLC et al
Assigned to: Honorable Bruce Howe Hendricks
Case in other court: USCA, 19-01248
Cause: 28:1332 Diversity-Torts to Land

Date Filed: 12/21/2016
Date Terminated: 01/29/2019
Jury Demand: Plaintiff
Nature of Suit: 240 Torts to Land
Jurisdiction: Federal Question

Plaintiff

Cynthia Holmes

represented by **Cynthia Holmes**
P.O. Box 187
Sullivans Island, SC 29482
PRO SE

V.

Defendant

Granuaile LLC

represented by **Irish Ryan Neville**
Stevens and Lee
151 Meeting Street
Suite 350
Charleston, SC 29401
843-414-8864
Fax: 610-371-8594
Email: irn@stevenslee.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John Allen Massalon
Wills Massalon and Allen
PO Box 859
Charleston, SC 29402
843-727-1144
Email: jmassalon@wmalawfirm.net
TERMINATED: 12/07/2017
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph Calhoun Watson
Robinson Gray Stepp and Laffitte LLC
1310 Gadsden Street
Columbia, SC 29201
803-929-1400

		MOTION for Reconsideration re 93 Order on Motion for Issuance of Subpoena, by Cynthia Holmes. Response to Motion due by 7/12/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Envelope)Motions referred to Bristow Marchant.(cwhi,) (Entered: 06/28/2018)
06/29/2018	99	MOTION to Strike 77 Plaintiff's ID of Expert Witnesses *Motion to Strike Plaintiff's Rebuttal Witnesses Joseph Kavanagh and Michael Woo* by Granuaile LLC, James P Walsh, L Walsh. Response to Motion due by 7/13/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Memo in Support, # 2 Exhibit A - Jason Gregorie's Report, # 3 Exhibit A-1 - Jason Gregorie's Report, # 4 Exhibit A-2 - Jason Gregorie's Report, # 5 Exhibit B - Expert Report of Joseph Kavanagh, # 6 Exhibit C - Deposition Excerpts of Joseph Kavanagh, # 7 Exhibit D - Deposition Excerpts of Michael Woo)No proposed order.Motions referred to Bristow Marchant.(Watson, Joseph) (Entered: 06/29/2018)
06/29/2018	100	MOTION for Summary Judgment by Granuaile LLC, James P Walsh, L Walsh. Response to Motion due by 7/13/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (Attachments: # 1 Memo in Support, # 2 Exhibit 1 - Affidavit of James Walsh, # 3 Exhibit 2 - Deposition Excerpts of William Rogan, # 4 Exhibit 3 - BZA Minutes, # 5 Exhibit 4 - Deposition Excerpts of Cynthia Holmes, # 6 Exhibit 5 - Affidavit of Jason Gregorie, # 7 Exhibit A- Jason Gregorie's Report, # 8 Exhibit A1- Jason Gregorie's Report, # 9 Exhibit A2- Jason Gregorie's Report, # 10 Exhibit 6 - Deposition Excerpts of Jimmy Carroll, # 11 Exhibit 7 - Deposition Excerpts of Connie Cooper, # 12 Exhibit 8 - Affidavit of Lauren Walsh)No proposed order.Motions referred to Bristow Marchant.(Watson, Joseph) (Attachment 12 replaced on 8/13/2018) (cwhi,). Modified on 8/13/2018 to replace with corrected document provided by the filing user (cwhi,). (Entered: 06/29/2018)
07/02/2018	101	**TEXT ORDER. On June 1, 2018, the Court specifically directed the parties to complete mediation in this case prior to the dispositive motions deadline. That deadline was June 29, 2018, a dispositive motion has been filed by the Defendants, but the Court has received no information concerning mediation. Therefore, it is ordered that the parties file a confirmation with the Court that the required mediation was held, including the date on which it was held, by Thursday, July 5, 2018. Signed by Magistrate Judge Bristow Marchant on 7/02/2018. (elac,)** (Entered: 07/02/2018)
07/02/2018	102	***DOCUMENT MAILED 101 Order placed in U.S. Mail to Cynthia Holmes. (elac,) (Entered: 07/02/2018)
07/03/2018	104	**ROSEBORO ORDER directing clerk to forward summary judgment explanation to the opposing party and directing that party to respond in 31 days. Response due to 100 MOTION for Summary Judgment by 8/3/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. Signed by**

		Magistrate Judge Bristow Marchant on 7/2/2018. (cwhi,) (Entered: 07/03/2018)
07/03/2018	105	***DOCUMENT MAILED 104 Roseboro Order, placed in U.S. Mail to Cynthia Holmes. (cwhi,) (Entered: 07/03/2018)
07/12/2018	107	Letter from Cynthia Holmes. (Attachments: # 1 Redacted Mediation Letter, # 2 Envelope)(cwhi,) (Entered: 07/12/2018)
07/12/2018	108	RESPONSE in Opposition re 98 MOTION for Reconsideration re 93 Order on Motion for Issuance of Subpoena, Response filed by Granuaile LLC, James P Walsh, L Walsh.Reply to Response to Motion due by 7/19/2018 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Watson, Joseph) (Entered: 07/12/2018)
07/13/2018	109	**TEXT ORDER denying 98 Motion for Reconsideration. See Order (Court Docket No. 93). See also Aloe Creme Laboratories, Inc. v. Francine Co., 425 F.2d 1295, 1296 (5th Cir. 1970). [The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time. Once was sufficient.]. Entered at the direction of Magistrate Judge Bristow Marchant on 7/13/2018.(cwhi,)** (Entered: 07/13/2018)
07/13/2018	110	***DOCUMENT MAILED 109 Order on Motion for Reconsideration, placed in U.S. Mail to Cynthia Holmes. (cwhi,) (Entered: 07/13/2018)
07/16/2018	111	APPEAL OF MAGISTRATE JUDGE DECISION to District Court by Cynthia Holmes re 96 Order on Motion to Compel. (cwhi,) (Entered: 07/16/2018)
07/16/2018	112	RESPONSE in Opposition re 99 MOTION to Strike 77 Plaintiff's ID of Expert Witnesses *Motion to Strike Plaintiff's Rebuttal Witnesses Joseph Kavanagh and Michael Woo* Response filed by Cynthia Holmes.Reply to Response to Motion due by 7/23/2018. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6. (Attachments: # 1 Supporting Documents)(cwhi,) (Entered: 07/16/2018)
07/23/2018	113	REPLY to Response to Motion re 99 MOTION to Strike 77 Plaintiff's ID of Expert Witnesses *Motion to Strike Plaintiff's Rebuttal Witnesses Joseph Kavanagh and Michael Woo* Response filed by Granuaile LLC, James P Walsh, L Walsh. (Watson, Joseph) (Entered: 07/23/2018)
07/24/2018	114	**TEXT ORDER denying, without prejudice 99 Motion to Strike. The Court may consider this evidence as part of its review of the pending motion for summary judgment, to the extent necessary or appropriate. However, whether or not this evidence should be stricken and not allowed at trial is a matter for the trial Court to decide at the appropriate time. As such, the motion is premature but may be re-filed if the case proceeds to trial. Entered at the direction of Magistrate Judge Bristow Marchant on 7/24/2018.(cwhi,)** (Entered: 07/24/2018)
07/24/2018	115	***DOCUMENT MAILED 114 Order on Motion to Strike, placed in U.S. Mail to Cynthia Holmes. (cwhi,) (Entered: 07/24/2018)
08/07/2018	116	

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-1444

Holmes

PLAINTIFF(S)

Haynesworth Sinkler Boyd, et al.

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2017 FEB -9 AM 9:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

JUDGMENT INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: **Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

3062
Judge Code

2/8/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 306
CHARLESTON, S.C. 29401-3258
(843) 958-5000
(843) 958-5020 FAX
clerkofcourt.charlestoncounty.org

CHARLESTON COUNTY
SOUTH CAROLINA

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2201
(843) 958-4400
(833) 958-4434 FAX
clerkofcourt.charlestoncounty.org

The enclosed document is being returned for the following reason(s);

_____ The document is not signed / notarized.

_____ The filing fee is insufficient. The correct amount is: _____

_____ The check or money order must be made payable to the Clerk of Court.

_____ This document is a copy. We must have an original.

_____ This is not a Charleston County case.

_____ The case has been transferred/remanded to: _____

_____ Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27.

_____ The document is refused for filing pursuant to S.C. Code of Laws §30-9-30(B)(1).

Name of submitting party: _____

_____ There is not a case listed in our system that matches this caption.

_____ Information may be obtained from our web-site at http://clerkofcourt.charlestoncounty.org

_____ The required **new case** coversheet is not included. (SCCA234)

_____ The required **motion/order** coversheet is not included. (SCCA/233)

_____ The required **order (Form 4)** coversheet is not included. (SCRCP Form 4C)

X Other: This motion has been stricken. See attached order of Judge Scarborough.

Staff initials CB **Date** 2/24/12

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Appellant,

v.

Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker. Respondents.

The Honorable Thomas L. Hughston, Jr.
Charleston County
Trial Court Case No. 2007-CP-10-01444

ORDER

Appellant filed a notice of appeal from the order of the trial court sanctioning Appellant in the amount of $200,000. Appellant filed a petition for supersedeas. Pursuant to the supreme court's December 2, 2009 order in Doe v. Duncan, we cannot accept Appellant's petition. See Doe v. Duncan. ("Because we find petitioner has engaged, and continues to engage in, vexatious litigation related to [the revocation of her medical staff privileges at East Cooper Community Hospital] we hereby direct the Clerks of Court in this state to refuse accept further filings from petitioner . . . unless they are filed by an attorney, other than petitioner, licensed to practice law in this state."). Accordingly, Appellant's petition for supersedeas will not be accepted.

AND IT IS SO ORDERED.

Kaye G. Hearn

Columbia, South Carolina

Dec 16, 2009

cc: Cynthia Collie, Esquire
John Wilkerson, III, Esquire
Richard S. Dukes, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

C/A NO: 2007-CP-10-01444

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker

Defendants.

DEFENDANTS' MOTION TO DISMISS CERTAIN PARTIES

Defendants Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, the "Defendants") hereby move this Court to dismiss Manton Grier and James Y. Becker as petitioners under the Verified Petition filed on January 3, 2017. Messrs. Becker and Grier are employees of Haynsworth Sinkler Boyd, P.A. and do not have any ownership rights or interests in the sanctions judgment that is the subject of the Verified Petition. As a result, they request that they be dismissed as Petitioners, and that Haynsworth Sinkler Boyd, P.A. be the sole remaining petitioner in this action. There are no pending claims asserted by Plaintiff against Defendants in this matter. A proposed order is attached.

HAYNSWORTH SINKLER BOYD, P.A.

Mary M. Caskey, SC Bar No: 76198
Post Office Box 11889
Columbia, South Carolina 29211
Telephone: (803) 779-3080
Facsimile No: (803) 765-1243
ATTORNEYS FOR DEFENDANTS

September 22, 2017

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

C. Holmes
Petitioner,
v.

James Y. Becker, M. M. Caskey,
Mikell R. Scarborough, and
Haynsworth Sinkler Boyd, PA,
as successor to Sinkler & Boyd, PA,
Respondents,

APPENDIX

C. Holmes
P.O. Box 187
Sullivans Island, SC 29482
843.883.3010

INDEX TO APPENDICES

Appendix A	USAP4 decision
Appendix B	US District Court for the District of SC decision and Report & Recommendation
Appendix C	USAP4 denial of Petition for Rehearing
Appendix D	State court decision filed February 9, 2017

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1572

CYNTHIA HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, M.D.,

Plaintiff - Appellant,

v.

JAMES Y. BECKER, Individually; M.M. CASKEY, Individually; HAYNSWORTH SINKLER BOYD, P.A.; MIKELL R. SCARBOROUGH, in official capacity and, as indicated, individually re: unofficial acts,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Bruce H. Hendricks, District Judge. (2:17-cv-02949-BHH)

Submitted: November 21, 2019 Decided: November 25, 2019

Before KEENAN and DIAZ, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Cynthia C. Holmes, Appellant Pro Se. Mary McFarland Caskey, Mary Cothonneau Eldridge, HAYNSWORTH SINKLER BOYD, PA, Columbia, South Carolina; Andrew Lindemann, LINDEMANN, DAVIS & HUGHES, PA, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

APP-A

PER CURIAM:

Cynthia Holmes appeals the district court's orders accepting the recommendation of the magistrate judge and dismissing her civil action and denying her Fed. R. Civ. P. 59(e) motion. Holmes' action related to a state court sanctions award and a related discovery and sanction order. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Holmes v. Becker*, No. 2:17-cv-02949-BHH (D.S.C. Mar. 29, 2019 & May 23, 2019). We grant Holmes' motions to exceed the page limitations for the informal brief and to amend her notice of appeal to include an appeal from the denial of the Rule 59(e) motion and deny Holmes' motion to correct the record and for clarification. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Cynthia Holmes, Plaintiff, v. James Y. Becker, M.M. Caskey, Haynsworth Sinkler Boyd, P.A., and Mikell R. Scarborough, Defendants.	)	Civil Action No. 2:17-2949-BHH **ORDER**

This matter is before the Court upon Plaintiff Cynthia Holmes ("Holmes" or "Plaintiff") pro se complaint against Defendants James Y. Becker ("Becker"); M.M. Caskey ("Caskey"); Haynsworth Sinkler Boyd, P.A. ("HSB"); and Mikell R. Scarborough ("Scarborough"). Plaintiff's original complaint was only five pages, but her second amended complaint consists of a 54-page complaint with 87 pages of attached exhibits, and Plaintiff alleges 12 causes of action based on, *inter alia*, the Fair Debt Collections Practices Act , 15 U.S.C. § 1692, *et seq.*, ("FDCPA"); the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-101, *et seq.*; and the United States Constitution.

On July 11, 2018, Defendants Becker, Caskey, and HSB filed a motion to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure. On August 14, 2018, Defendant Scarborough also filed a motion to dismiss pursuant to Rule 12. Plaintiff filed responses in opposition to Defendants' motions, and Defendants filed replies. In accordance with 28 U.S.C. § 636(b)(1)(A) and (B) and Local Civil Rule 73.02(B)(2) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary

APP. B

review.

On October 31, 2018, the Magistrate Judge issued a Report and Recommendation ("Report") outlining the issues and recommending that the Court grant Defendants' motions. Plaintiff filed a motion for extension of time to file objections along with a motion to stay pending the resolution of a prior interlocutory appeal to the Fourth Circuit Court of Appeals. The Court granted Plaintiffs' motion for an extension of time, instructing her to file her objections by December 13, 2018, but denied her motion to stay on December 11, 2018. The Court also granted Plaintiff additional time to file objections, instructing her to file them on or before January 2, 2019.

On December 27, 2018, Plaintiff filed a motion for reconsideration with respect to the Court's order denying her motion to stay, and on January 2, 2019, Plaintiff filed objections to the Magistrate Judge's Report. Defendants have filed responses to Plaintiff's motion to reconsider and to Plaintiff's objections, and Plaintiff has filed a reply and supplemental affidavit. For the reasons set forth herein, the Court denies Plaintiff's motion to reconsider and finds Plaintiff's objections wholly without merit. Accordingly, the Court adopts the Magistrate Judge's Report and grants Defendants' motions to dismiss as outlined herein.

STANDARDS OF REVIEW

I. The Magistrate Judge's Report

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to

which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'") (quoting Fed. R. Civ. P. 72 advisory committee's note).

II. Federal Rule of Civil Procedure 12

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). As the Supreme Court held in *Bell Atl. Corp. v. Twombly*, the pleading standard set forth in Rule 8 "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. 544, 555 (2007)). Thus, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement." *Id.* (quoting *Twombly*, 550 U.S. at 557).

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of a plaintiff's complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The "complaint must contain sufficient factual matter, accepted

as true, to 'state a claim to relief that is plausible on its face.' " *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. *Id*. When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

In reviewing a Rule 12(b) motion, a court may consider, in addition to the factual allegations of the complaint, any document that is "integral to and explicitly relied on in the complaint." *Phillips v. LCI International, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999); *Olson v. Midland Funding, LLC*, 578 F. App'x 248, 250 (4th Cir. 2014) ("In considering a Fed. R. Civ. P. 12(b)(6) motion, a court may consider the complaint itself and any documents that are attached to it . . . .") (internal citations omitted).

ANALYSIS

I. Plaintiff's Motion to Reconsider

As previously outlined, Plaintiff filed a motion to reconsider the Court's December 11 order, which denied her motion to stay this action pending resolution of the interlocutory appeal she filed on October 22, 2018. In the December 11 order, the Court determined that Plaintiff's interlocutory appeal did not require a stay of this action because the appeal involves issues entirely distinct from the issues addressed in the Magistrate Judge's Report. Thus, the Court denied Plaintiff's motion to stay finding that the appeal does not involve any controlling question of law that would affect the Court's consideration of the Report. (ECF No. 80 at 2.) In her motion to reconsider, Plaintiff again asks the Court to stay this case pending resolution of her interlocutory appeal.

Ordinarily, a court may grant a motion to alter or amend pursuant to Rule 59(e) for

only three reasons: (1) to comply with an intervening change in controlling law; (2) to account for new evidence not available previously; or (3) to correct a clear error of law or prevent manifest injustice. *See Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008). Here, after review, the Court finds that Plaintiff's motion to reconsider simply rehashes the arguments the Court previously rejected, and the Court finds that Plaintiff does not point to any intervening change in controlling law or new evidence sufficient to alter the Court's prior decision. In addition, the Court does not believe that relief is warranted to correct a clear error of law or to prevent manifest injustice. Accordingly, the Court denies Plaintiff's motion to reconsider and proceeds to consider Plaintiff's objections to the Magistrate Judge's Report.

II. Plaintiff's Objections to the Magistrate Judge's Report

The allegations of Plaintiff's second amended complaint stem from a case that Plaintiff, who is a physician, initially brought against East Cooper Community Hospital ("East Cooper") in connection with the revocation of her medical staff privileges in 1997. Defendants HSB and Becker (along with another attorney employed by HSB) represented Plaintiff in that action. Plaintiff's litigation with East Cooper ultimately resulted in subsequent litigation filed by Plaintiff, including a malpractice action against HSB, Becker, and the other attorney who represented her. As a result of the aforementioned litigation, a number of orders have been entered against Plaintiff, including a circuit court order sanctioning Plaintiff and entering judgment against her in the amount of $200,000.00 and an order from the South Carolina Supreme Court finding that Plaintiff has engaged in vexatious litigation related to the revocation of her medical staff privileges at East Cooper

and specifically directing the Clerks of Court in South Carolina to refuse to accept further filings from Plaintiff in actions related in any way to the revocation of her medical staff privileges at East Cooper unless they are filed by an attorney licensed to practice law in South Carolina. (*See* ECF No. 27-2; ECF No. 46-3.)

Although the claims in Plaintiff's second amended complaint are difficult to decipher, she alleges that HSB's efforts to collect on the previously-mentioned court-ordered sanctions award against her violates the FDCPA and the South Carolina Consumer Protection Code. Plaintiff also alleges that Defendant Scarborough, Master-in-Equity for Charleston County, wrongfully issued two orders in connection with HSB's efforts to collect on the sanctions award, specifically, an alleged "ex parte" order issued by Judge Scarborough on February 9, 2017, and a discovery and sanctions order issued by Judge Scarborough on June 23, 2017. (*See* ECF No. 33 ¶¶ 7, 19; ECF Nos. 46-5 and 46-11.) In addition, Plaintiff claims, *inter alia*, that Judge Scarborough's acts were non-judicial and were without jurisdiction and that *all* Defendants have conspired against her and have denied her of various constitutional rights.

In his Report, the Magistrate Judge outlined Plaintiff's claims as follows:

> In her **First Cause of Action**, Plaintiff asserts a claim under the South Carolina Constitution seeking injunctive relief requiring the Defendants to "refrain from enacting, executing, enforcing or attempting to enforce the February 9, 2017, Order", a copy of which is attached to the Second Amended Complaint. Id., ¶¶ 31-36. In her **Second Cause of Action**, Plaintiff seeks this same injunctive relief asserted as a federal constitutional claim. Id., ¶¶ 37-42. In her **Third Cause of Action**, Plaintiff seeks this same injunctive relief under South Carolina tort or common law. Id., ¶¶ 43-47. In her **Fourth Cause of Action**, Plaintiff seeks damages against the Defendants under 42 U.S.C. § 1983 for a violation of her constitutional right of access to the courts and to free speech. Id., ¶¶ 48-59. In her **Fifth Cause of Action**, Plaintiff seeks declaratory and injunctive relief, again pursuant to

> 42 U.S.C. § 1983. Id., ¶¶ 60-73. In her **Sixth Cause of Action**, Plaintiff seeks damages against the Defendants pursuant to 42 U.S.C. § 1985 for having engaged in an illegal conspiracy against her. Id., ¶¶ 74-88. In her **Seventh Cause of Action**, Plaintiff asserts a cause of action for negligence against the Attorney Defendants, specifically with respect to correspondence sent by the Defendant Caskey on November 1, 2016 seeking payment of the judgment amount that had been entered against the Plaintiff. Id., ¶¶ 89-90, and Plaintiff's attached Exhibit B. In her **Eighth Cause of Action**, Plaintiff asserts "Equitable Claims" against the Attorney Defendants for falsely claiming or misrepresenting amounts of money owed. Id., ¶¶ 91-92. In her **Ninth Cause of Action**, Plaintiff asserts a claim under the FDCPA against the Attorney Defendants for falsely representing the character, amount, and/or legal status of the debt owed, again referencing counsel's correspondence of November 1, 2016. Id., ¶¶ 93-97. In her **Tenth Cause of Action**, Plaintiff asserts this same claim against the Attorney Defendants pursuant to the South Carolina Consumer Protection Code. Id., ¶ ¶ 98-102. In her **Eleventh Cause of Action**, Plaintiff asserts a claim under the SCUTPA (S.C. Code Ann. § 39-5-10, et. seq.), again relating to the correspondence of November 1, 2016. Id., ¶¶ 103-107. Finally, in her **Twelfth Cause of Action**, Plaintiff asserts a state law claim for civil conspiracy against all of the named Defendants. Id., ¶¶ 108-118. Plaintiff seeks declaratory and/or injunctive relief and monetary damages, including fees and costs. See generally, Plaintiff's Second Amended Complaint, with attached Exhibits.

(ECF No. 71 at 4-6.)

Next, the Magistrate Judge proceeded to consider the merits of the parties' motions to dismiss. First, with respect to Defendant Scarborough's motion to dismiss, the Magistrate Judge agreed with Scarborough that he is entitled to judicial immunity because the actions for which he is being sued all concern judicial acts made within his jurisdiction. In so finding, the Magistrate Judge specifically rejected Plaintiff's arguments that Scarborough is not entitled to judicial immunity because he is not a circuit court judge; that Scarborough is not entitled to judicial immunity because the complained-of acts were non-judicial in nature; and that Scarborough is not entitled to judicial immunity because he lacked jurisdiction to issue the complained-of orders.

In addition, the Magistrate Judge determined that, pursuant to the *Rooker-Feldman* doctrine, Plaintiff cannot, through the filing of this lawsuit, effectively seek review of judgments entered in her previous state court cases, as lower federal courts do not hear "appeals" from state court actions. *See Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997). (noting that "jurisdiction to review such decisions lies exclusively with superior state courts and ultimately the United States Supreme Court").

In addition, with respect to the remaining Defendants' motion to dismiss, the Magistrate Judge determined: (1) that Plaintiff's constitutional claims asserted under 42 U.S.C. § 1983 are subject to dismissal because the remaining Defendants are not state actors and Plaintiff's complaint contains no plausible allegations that these Defendants' actions constituted anything other than private conduct or that these Defendants otherwise conspired with a state actor; (2) that the Anti-Injunction Act bars Plaintiff's claims for injunctive relief; (3) that any attempts by Plaintiff to raise claims that she could have presented in the earlier state court litigation fail because Plaintiff is barred by the doctrines of *res judicata* and collateral estoppel from re-litigating claims in this suit; (4) that to the extent any state court actions are still pending, the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37, 91 (1971), and its progeny bars this Court from interfering with ongoing state court proceedings; and (5) that Plaintiff fails to allege sufficient facts to state a claim under the FDCPA because there is nothing false, deceptive, or unfair about Defendants' attempt to collect on a sanctions award entered by a court, because Plaintiff is not a "consumer" under the FDCPA, and because the alleged debt does not arise out of a transaction entered primarily for person, family, or household purposes. Having found that Defendants were entitled to dismissal of all of Plaintiff's claims that arise under federal

law, the Magistrate Judge further recommended that the Court decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims.

Plaintiff filed 70 pages of objections, along with 28 pages of exhibits, essentially objecting to the Magistrate Judge's Report in whole. For the most part, Plaintiff's objections are rambling and largely incoherent, and she simply rehashes arguments raised in response to Defendants' motions to dismiss and rejected by the Magistrate Judge. For example, it appears that pages 37 through 70 of her objections correspond almost exactly to pages 5 through 36 of her response to Defendants' motions. (*Cf.* ECF No. 69 at 5-36 and ECF No. 87 at 37-70.) The Court finds this portion of Plaintiff's objections wholly without merit, as it simply seeks reconsideration of her entire case under the guise of objecting.[1] In addition, Plaintiff raises several irrelevant arguments in her objections regarding other litigation in which she has been involved and having little to do with the claims raised in this action, and the Court also finds these portions of Plaintiff's objections without merit. Finally, however, to the extent the Court can decipher specific objections to the Magistrate Judge's Report, this order tries to address them.

First, with respect to the Magistrate Judge's findings as to Defendant Scarborough's motion to dismiss, Plaintiff objects that Scarborough is not entitled to judicial immunity

---

[1] The United States District Court for the Western District of Virginia once reviewed objections to a Magistrate Judge's Report that were copied directly from prior pleadings and determined that this practice does not constitute the submission of specific, written objections and does not entitle a plaintiff to *de novo* review. *See Veney v. Astrue*, 539 F. Supp. 2d 841, 845 (W.D. Va. 2008). In *Veney*, the plaintiff's objections were "an almost verbatim copy of the 'Argument' section" of the plaintiff's brief, and the court explained that it was improper for Plaintiff "to seek re-argument and reconsideration of her entire case in the guise of objecting." *Id.* at 844; *see also Hobek v. Boeing Company*, 2017 WL 3085856, *2 (D.S.C. July 20, 2017). As the Court explained in *Veney*: "The functions of the district court are effectively duplicated as both the magistrate and the district court perform identical tasks. This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrates Act." 539 F. Supp. 2d at 845 (citation omitted); *see also United States v. Midgette*, 478 F.3d 616, 621-22 (4th Cir. 2007).

because he is not a judge. (*See* ECF No. 87 at 23). Plaintiff raised this exact argument to the Magistrate Judge, and the Court finds that the Magistrate Judge properly rejected it because in South Carolina a master-in-equity is part of the unified court system and is equivalent to a circuit court judge for purposes of judicial immunity. *See* S.C. Code Ann. §§ 15-11-10 and -15; *see also Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985) ("It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions.").

Next, Plaintiff objects that Scarborough is not entitled to judicial immunity because his actions fall within an exception to judicial immunity. Again, Plaintiff raised this argument before the Magistrate Judge, and the Court finds that the Magistrate Judge properly rejected it. From a review of Plaintiff's second amended complaint, it is clear that she is suing him for judicial acts he made as the master-in-equity in connection with state court litigation in which Plaintiff was a party. Moreover, after considering the court orders and records from Plaintiff's prior state court proceedings–all matters of public record of which the Court may properly take judicial notice in considering Defendants' motions–it is clear that Scarborough issued the orders in question in his judicial capacity and not in the absence of jurisdiction, as they were made pursuant to orders of reference from the circuit court. (*See* ECF Nos. 46-2 and 46-4.) Plaintiff objects to the validity of the circuit court orders of reference, but the Court finds Plaintiff's objection wholly unsupported. Furthermore, the Court notes that, pursuant to the *Rooker-Feldman* doctrine, this Court is without jurisdiction to review the merits of state court decisions because "jurisdiction to review such decisions lies exclusively with superior state courts and ultimately the United States Supreme Court." *Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997). In all, the

Court finds Plaintiff's objections as to the Magistrate Judge's findings regarding Scarborough's motion to dismiss without merit.

Plaintiff also objects to the Magistrate Judge's findings as to the remaining Defendants' motion to dismiss, again essentially rearguing her claims and making entirely conclusory and often nonsensical allegations against these Defendants. For example, Plaintiff asserts that the record reflects that Defendants all acted in concert to conspire against her and fix the outcome of the case by:

> impermissible ex parte judge shopping, impermissible ex parte contact, wrongful taking of plaintiff's property and unearned filing fees, wrongfully striking of R. 60 SCRCP and other motions, denial of right to self-representation, denial of ability to file, denial of request to be heard as per the transcript excerpt included herein, *infra*, denial of adequate for meaningful review on appeal, and/or denial of due process, and other state and Federal constitutional and statutory due process and other protections, rights, and laws.

(ECF No. 87 at 10.) Plaintiff repeats allegations like these throughout her objections but nowhere in her second amended complaint does she allege sufficient facts to state any plausible federal claims. As the Supreme Court has explained, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. 544, 555 (2007)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement." *Id.* (quoting *Twombly*, 550 U.S. at 557).

Here, with respect to Plaintiff's assertion that Defendants violated her rights pursuant to 42 U.S.C. § 1983, the Court agrees with the Magistrate Judge that there are no plausible allegations in Plaintiff's complaint to suggest that the law firm Defendants' actions were anything other than purely private conduct. Moreover, with respect to Plaintiff's repeated

assertion that the law firm Defendants conspired with Scarborough to violate her rights, the Court finds Plaintiff's claims entirely conclusory and wholly without substance. (*See, e.g.*, ECF No. 87 at 13, 18-19, 21, 25-27.) Likewise, the Court finds no merit to Plaintiff's newly raised claim that Defendants somehow conspired to discriminate against her based on her gender, as Plaintiff's complaint fails to allege any facts indicating a discriminatory motive on the part of Defendants. (*See id.* at 29.) Thus, the Court agrees with the Magistrate Judge that Plaintiff has failed to allege a plausible claim under either § 1983 or § 1985.

Plaintiff next objects that the Anti-Injunction Act does not preclude the relief she seeks and/or is inapplicable, but she provides no support for this assertion, and the Court finds Plaintiff's objection without merit. (*See* ECF No. 86 at 30.) Rather, as the Magistrate Judge properly concluded, 28 U.S.C. § 2283 provides that, with certain exceptions that do not apply here, "[a] court of the United States may not grant an injunction to stay proceedings in a State court. . . ." In addition, Plaintiff also summarily asserts that the *Younger* abstention doctrine does not apply, but again, she provides no support for this assertion, and the Court again finds Plaintiff's objection without merit. (*Id.* at 34.) Instead, the Court agrees with the Magistrate Judge that to the extent that any state court actions remain pending, the *Younger* abstention doctrine bars the Court from interfering with the ongoing state court proceeding. Moreover, the Court fully agrees with the Magistrate Judge that to the extent Plaintiff seeks to re-litigate matters already decided in state court proceedings, or matters that Plaintiff had the opportunity to litigate in state court proceedings, the doctrines of *res judicata* and collateral estoppel bar such claims.

Finally, with respect to Plaintiff's claims under the FDCPA, the Court finds that that Plaintiff is not a "consumer" for purposes of the FDCPA; that Plaintiff has failed to allege

sufficient facts to show that Defendants' attempt to collect on a sanctions award is deceptive or unfair, and that this case does not involve a "debt" arising out of a transaction entered primarily for personal, family, or household purposes, notwithstanding Plaintiff's wholly unsupported objections to the contrary.

In all, the Court finds that Plaintiff's objections fail to point to any legal or factual error in the Magistrate Judge's analysis sufficient to alter the outcome of this case. Leaving aside Plaintiff's non-specific objections, or those that are impossible to decipher, the remainder of Plaintiff's objections are conclusory and lack both legal and factual support. The Court ultimately agrees with the Magistrate Judge that Plaintiff's federal claims either fail to allege sufficient factual matter to state a plausible claim for relief or are simply unavailable to Plaintiff in this action as a matter of law. The Court also agrees with the Magistrate Judge that, having determined that Plaintiff's federal claims are subject to dismissal, it is appropriate to decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims. *See, e.g.*, *Mills v. Leath*, 709 F. Supp. 671, 675-76 (D.S.C. 1988) (noting that federal courts should generally decline to exercise pendant jurisdiction over remaining state law claims after the dismissal of federal claims in a lawsuit).

CONCLUSION

Based on the foregoing, it is hereby **ORDERED** that Plaintiff's motion to reconsider (ECF No. 86) is denied; the Magistrate Judge's Report (ECF No. 71) is adopted and specifically incorporated herein; Plaintiff's objections (ECF No. 87) are overruled; Defendant Scarborough's motion to dismiss (ECF No. 46) is granted, and he is dismissed as a party from this action; the remaining Defendants' motion to dismiss (ECF No. 35) is

granted; Plaintiff's federal causes of action under § 1983, § 1985, and the FDCPA (Plaintiff's second, fourth, fifth, sixth, and ninth causes of action) are dismissed; and Plaintiff's remaining state law claims are dismissed without prejudice.

AND IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce H. Hendricks
United States District Judge

March 28, 2019
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Cynthia Holmes, Plaintiff, v. James Y. Becker, M. M. Caskey, Haynsworth Sinkler Boyd, P.A., and Mikell R. Scarborough, Defendants.	C/A 2:17-2949-BHH-BM **REPORT AND RECOMMENDATION**

This action has been filed by the Plaintiff, pro se,[1] originally asserting claims pursuant to the Fair Debt Collections Practices Act (FDCPA), 15 U.S.C. § 1692, et. seq., and the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-101, et seq. Plaintiff amended her original pro se Complaint on July 3, 2018 to include additional claims. See Court Docket Nos. 30 and 33; see also Court Docket No. 31.

The Defendants Becker, Caskey and Haynsworth Sinkler Boyd, P.A., filed a motion to dismiss pursuant to Rule 12, Fed.R.Civ.P., on July 11, 2018. As the Plaintiff is proceeding pro se, a Roseboro order was entered by the Court on July 12, 2018, advising Plaintiff of the importance of a dispositive motion and of the need for her to file an adequate response. Plaintiff was specifically

[1]Plaintiff is a frequent filer of litigation in this Court. Aloe Creme Laboratories, Inc. v. Francine Co., 425 F.2d 1295, 1296 (5th Cir. 1970)[a federal court may take judicial notice of the contents of its own records].

APP-B

advised that if she failed to file an adequate response, the Defendants' motion may be granted. Plaintiff thereafter filed for an extension of time to respond, which in light of Plaintiff's pro se status, was granted on August 8, 2018. The time for Plaintiff to respond to these Defendants' motion to dismiss was extended to September 13, 2018.

The remaining Defendant (Scarborough) filed a motion to dismiss on April 14, 2018, following which a second Roseboro order was entered on August 16, 2018. Plaintiff filed a motion for an extension of time to respond to Scarborough's motion to dismiss, which was granted by the Court on September 24, 2018. In that order, Plaintiff was granted to October 19, 2018 to file her responses to the pending motions to dismiss. Plaintiff thereafter filed her response to the Defendants motions, out of time, on October 23, 2018.

The Defendants' motions are now before the Court for disposition.[2]

Plaintiff's Allegations

Although Plaintiff's original Complaint was only five (5) pages (with an attached two (2) page exhibit), her Second Amended Complaint (filed on July 3, 2018) totals one hundred forty one (141) pages (a fifty-four (54) page Complaint, with eighty-seven (87) pages of attached exhibits).[3] In her Second Amended Complaint, Plaintiff cites several additional federal code sections, as well as the United States Constitution, as being the bases for her claims. Plaintiff's

---

[2]This case was automatically referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(e), D.S.C. The Defendants have filed motions to dismiss. As these are dispositive motions, this Report and Recommendation is entered for review by the Court.

[3]Plaintiff had also filed a proposed First Amended Complaint (totaling seventy-one (71) pages, including exhibits) on June 18, 2018. That motion was mooted when Plaintiff filed a motion to amend with her proposed Second Amended Complaint on July 2, 2018. See Order (Court Docket No. 31).

Second Amended Complaint asserts twelve (12) Causes of Action against these Defendants.

Plaintiff's claims in this lawsuit arise out of a state law malpractice action Plaintiff brought against the Defendant Haynsworth Sinkler Boyd, P.A. (and associated attorneys). The Defendant Scarborough (Master in Equity for Charleston County) is alleged to have "wrongfully" issued some orders in related state law litigation arising out of that case. Plaintiff's allegations show that she had hired the Defendant law firm to represent her in a case she brought against East Cooper Community Hospital. Plaintiff lost that case, and even had a sanctions order issued against her. See also Order [Court Docket No. 27-2]. Plaintiff then filed a malpractice action against the Defendant law firm and the Defendant Becker (along with another attorney, Manton Grier), which was also decided against her and which resulted in a second award of sanctions against her. That Order also enjoined the Plaintiff from filing any other suit on her own behalf. See also Order [Court Docket No. 27-1].

Plaintiff now alleges in the instant law suit that the Defendant law firm's efforts to collect on the court ordered sanctions award is a violation of the FDCPA and the South Carolina Consumer Protection Code. Second Amended Complaint, ¶ ¶ 14-17. Further, as part of the litigation through which the Defendant law firm was attempting to levy on the sanctions imposed against the Plaintiff, some of the proceedings were referred to Judge Scarborough, and Plaintiff references two rulings made by Judge Scarborough during these proceedings as being improper and in violation of her rights: a sua sponte (Plaintiff uses the term "ex parte") order issued by Judge Scarborough on February 9, 2017, and a discovery and sanctions order issued by Judge Scarborough on June 23, 2017. Second Amended Complaint, ¶ ¶ 7, 19. See also Attorney Defendants Exhibits D and J. Plaintiff also asserts that because Scarborough is not a circuit court judge, he has no

judicial immunity, and further argues in her Complaint that the conduct of which she complains consisted of "non-judicial acts" in any event. Second Amended Complaint, ¶ ¶ 21, 23. Plaintiff alleges that the Attorney Defendants' actions with respect to the order of February 9, 2017 (which Plaintiff alleges caused Scarborough to issue the "wrongful" order) denied her her constitutional rights of access to the Courts and of free speech. Second Amended Complaint, ¶ ¶ 18, 20. Plaintiff then goes on to assert that the attorney Defendants failed to pay required fees in the state court litigation, that Scarborough had improper ex parte communications and issued improper rulings which denied Plaintiff her rightful access to the courts, and that the summary manner in which her state court litigation was handled violated her constitutional rights. Id., ¶ ¶ 24-30.

In her **First Cause of Action**, Plaintiff asserts a claim under the South Carolina Constitution seeking injunctive relief requiring the Defendants to "refrain from enacting, executing, enforcing or attempting to enforce the February 9, 2017, Order", a copy of which is attached to the Second Amended Complaint. Id., ¶ ¶ 31-36. In her **Second Cause of Action**, Plaintiff seeks this same injunctive relief asserted as a federal constitutional claim. Id., ¶ ¶ 37-42. In her **Third Cause of Action**, Plaintiff seeks this same injunctive relief under South Carolina tort or common law. Id., ¶ ¶ 43-47. In her **Fourth Cause of Action**, Plaintiff seeks damages against the Defendants under 42 U.S.C. § 1983 for a violation of her constitutional right of access to the courts and to free speech. Id., ¶ ¶ 48-59. In her **Fifth Cause of Action**, Plaintiff seeks declaratory and injunctive relief, again pursuant to 42 U.S.C. § 1983.[4] Id., ¶ ¶ 60-73.[5] In her **Sixth Cause of Action**, Plaintiff seeks

[4]42 U.S.C. § 1983 "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" Albright v. Oliver, 510 U.S. 266, 271 (1994) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." City of (continued...)

damages against the Defendants pursuant to 42 U.S.C. § 1985 for having engaged in an illegal conspiracy against her. Id., ¶ ¶ 74-88.[6] In her **Seventh Cause of Action,** Plaintiff asserts a cause of action for negligence against the Attorney Defendants, specifically with respect to correspondence sent by the Defendant Caskey on November 1, 2016 seeking payment of the judgment amount that had been entered against the Plaintiff. Id., ¶ ¶ 89-90, and Plaintiff's attached Exhibit B. In her **Eighth Cause of Action,** Plaintiff asserts "Equitable Claims" against the Attorney Defendants for falsely claiming or misrepresenting amounts of money owed. Id., ¶ ¶ 91-92. In her **Ninth Cause of Action,** Plaintiff asserts a claim under the FDCPA against the Attorney Defendants for falsely representing the character, amount, and/or legal status of the debt owed, again referencing counsel's correspondence of November 1, 2016. Id., ¶ ¶ 93-97. In her **Tenth Cause of Action,** Plaintiff asserts this same claim against the Attorney Defendants pursuant to the South Carolina Consumer Protection Code. Id., ¶ ¶ 98-102. In her **Eleventh Cause of Action,** Plaintiff asserts a claim under the SCUTPA[7] (S.C.Code Ann. § 39-5-10, et. seq.), again relating to the correspondence of November 1, 2016. Id., ¶ ¶ 103-107. Finally, in her **Twelfth Cause of Action,** Plaintiff asserts a state law

---

[4](...continued)
Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

[5]Although Plaintiff indicates that she is seeking declaratory and injunctive relief in this cause of action, she then states in the last paragraph of this cause of action that she is seeking "damages and punitive damages in the an amount to be determined by a jury . . . .". . Id., ¶ 73.

[6]This cause of action also seeks attorneys fees and costs pursuant to 42 U.S.C. § 1988. Id., ¶ 88.

[7]South Carolina Unfair Trade Practices Act.

claim for civil conspiracy against all of the named Defendants. Id., ¶ ¶ 108-118. Plaintiff seeks declaratory and/or injunctive relief and monetary damages, including fees and costs. See generally, Plaintiff's Second Amended Complaint, with attached Exhibits.[8]

Discussion

The Defendants seek dismissal of all of Plaintiff's claims. When considering a Rule 12 motion to dismiss, the Court is required to accept the allegations in the pleading as true, and draw all reasonable factual inferences in favor of the party opposing the motion. The motion can be granted only if the party opposing the motion has failed to set forth sufficient factual matters to state a plausible claim for relief "on its face". Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009); see also Vogt v. Greenmarine Holding, LLC, 318 F.Supp. 2d 136, 144 (S.D.N.Y. 2004) ["[O]n a motion to dismiss, the Court does not weigh the strength of the evidence, and simply considers whether the [claim] alleges sufficient facts which, if true, would permit a reasonable fact finder to find [the party seeking dismissal of the claim] liable."]. Further, the Federal Court is also charged with liberally construing a complaint filed by a pro se litigant to allow for the development of a potentially meritorious case. See Cruz v. Beto, 405 U.S. 319 (1972); Haines v. Kerner, 404 U.S. 519 (1972).

Even so, the requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to allege facts which set forth a Federal claim, nor can the

---

[8]In addition to the factual allegations of the Complaint, the Court may also consider as part of a review of a 12(b) motion any document that is "integral to and explicitly relied on in the complaint." Phillips v. LCI International, Inc., 190 F.3d 609, 618 (4th Cir. 1999) [In addition to the factual allegations of the Complaint, the Court may also consider as part of the review of a 12(b) motion any documents that are "integral to and explicitly relied on in the complaint"]; Olson v. Midland Funding, LLC, 578 Fed.Appx. 248, 250 (4th Cir. 2014) ["In considering a Fed.R.Civ.P. 12(b)(6) motion, a court may consider the complaint itself and any documents that are attached to it . . . ."] (internal citations omitted).

Court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Social Services, 901 F.2d 387 (4th Cir. 1990). Here, after careful review and consideration of the pleadings in this case and the arguments of the parties, and in compliance with the requirements of Rule 12 and the liberal construction given to pro se pleadings, the undersigned finds for the reasons set forth hereinbelow that the Defendants' motions should be **granted**, and that his case should be **dismissed**.

Damage Claims against the Defendant Scarborough

Initially, it is readily apparent that the Defendant Scarborough is entitled to dismissal as a party Defendant because he has immunity from suit for all actions taken in his judicial capacity. See Mireles v. Waco, 502 U.S. 9 (1991); Stump v. Sparkman, 435 U.S. 349, 351-64 (1978); Pressly v. Gregory, 831 F.2d 514, 517 (4th Cir. 1987)[a suit by South Carolina inmate against two Virginia magistrates]; see also Siegert v. Gilley, 500 U.S. 226 (1991) [immunity presents a threshold question which should be resolved before discovery is even allowed]; accord Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000)[discussing judicial immunity of United States District Judges and United States Circuit Judges].

Plaintiff's arguments for why the Defendant Scarborough is not entitled to judicial immunity are patently without merit. First, Plaintiff argues that because Scarborough is not a circuit court judge, he has no judicial immunity. However, Scarborough does not need to be a circuit court judge, or any other particular type of judge. The fact that he is a judge is sufficient. Chu v. Griffith, 771 F.2d 79, 81 (4th Cir. 1985)["It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions."].

Plaintiff's additional contention that Scarborough is not entitled to immunity because

the conduct of which she complains were "non-judicial acts" is also without merit. The exhibits provided[9] show that after Plaintiff lost her lawsuit against the East Cooper Community Hospital, she filed a legal malpractice lawsuit against the Defendant law firm and the Defendant Becker, which she also lost. Further, in addition to losing her malpractice case, the Court sanctioned Plaintiff in the amount of $200,000 due to her "unreasonable and ill-considered frivolous lawsuit" and her "pattern of abusing the legal process in bringing frivolous actions . . . .". See Exhibit [Court Docket No. 27-1]. As a result of her state court conduct, the Supreme Court of South Carolina also issued a separate order directing Clerks of Court in South Carolina to refuse to accept any further pro se filings from the Plaintiff that were related in any way to her East Cooper Community Hospital litigation, which included her related malpractice litigation. See Exhibit [Court Docket No. 27-3]. The malpractice Defendants then commenced supplemental proceedings to collect on the $200,000 sanction award, and on December 30, 2016, South Carolina Circuit Court Judge Roger Young referred the matter to the Defendant Judge Scarborough to handle supplementary proceedings in the case. See Exhibit [Court Docket No. 46-2]. A second State Circuit Judge, Deandra Jefferson,

---

[9]In addition to the exhibits Plaintiff attached to her Complaint, the Defendants have also provided copies of numerous court orders and related documents from Plaintiff's state court proceedings, all of which may be properly considered by the Court in ruling on the motions to dismiss. See, n. 8, supra. See also Philips v. Pitt Cnty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009) [Courts "may properly take judicial notice of matters of public record"]; American Chiropractic Ass'n v. Trigon Health Care, Inc., 367 F.3d 212, 234 (4th Cir. 2002) [Court may consider evidence of which the Plaintiff has notice, relies on in framing the Complaint, or does not dispute its authenticity]; Tisdale v. South Carolina Highway Patrol, C/A No. 0:09–1009–HFF–PJG, 2009 WL 1491409, *1 n. 1 (D.S.C. May 27, 2009), aff'd 347 F. App'x 965 (4th Cir. Aug. 27, 2009); In re Katrina Canal Breaches Consolidated Litigation, No. 05–4182, 2008 WL 4185869 at * 2 (E.D.La. September 8, 2008)[noting that courts may take judicial notice of governmental websites including other courts' records]; Williams v. Long, 585 F.Supp.2d 679, 687–88 (D.Md. 2008)[noting that some courts have found postings on government web sites as inherently authentic or self-authenticating].

entered a similar order of reference to Judge Scarborough in January 2017. See Exhibit [Court Docket No. 46-4].

Both of the orders issued by Judge Scarborough (of which Plaintiff complains) were issued in his judicial capacity pursuant to these orders of reference of the case to him.[10] As such, these were not "non-judicial" actions by Judge Scarborough. Cf. Mireles, 502 U.S. at 11 [Noting that a judge is immune from liability except for "non-judicial actions, i.e., actions not taken in the judge's judicial capacity"]; King v. Myers, 973 F.2d 354, 357 (4th Cir. 1992) [whether a judge's conduct is a "judicial act" rests on "whether the function is one normally performed by a judge, and whether the parties dealt with the judge in his or her judicial capacity"]. Further, it is also clear that Judge Scarborough had jurisdiction to handle the matters before him and to issue the complained of orders. Cf. Mireles, 502 U.S. at 11 [Noting that in order for a judge not to be immune for their judicial actions, the actions taken must have been "in the complete absence of all jurisdiction"]. Finally, Judge Scarborough cannot be held liable for damages in this case just because Plaintiff disagrees with his rulings, or because she believes he otherwise acted improperly or even maliciously in the handling of her case. Stump, 435 U.S. at 356 ["A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority;

---

[10]It is noted that Plaintiff appealed both of Judge Scarborough's orders. Plaintiff's appeal of Judge Scarborough's order of February 9, 2017; see Exhibit [Court Docket No. 46-5]; was dismissed by the South Carolina Court of Appeals, dismissed again by the Court of Appeals on reconsideration, and then ultimately denied again by the South Carolina Supreme Court. See Exhibit [Court Docket Nos. 46-7, 46-8, and 46-10]. With respect to the order of June 23, 2017; see Exhibit [Court Docket No. 46-11]; Plaintiff appealed that order to the South Carolina Court of Appeals, which was denied as being an interlocutory appeal. See Exhibit [Court Docket No. 46-14]. Petitioner then filed a petition for rehearing, which was denied by the Court of Appeals. A remittitur was filed on October 18, 2018. https://www.charlestoncounty.org/departments/clerk-of-court/online-services.php.

rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction"].

Therefore, the Defendant Scarborough is entitled to dismissal as a party Defendant in this case.

Claims of Constitutional Violations against the Law Firm and Attorney Defendants

Plaintiff's constitutional claims against the Attorney and Law Firm Defendants asserted under 42 U.S.C. § 1983 are also subject to dismissal. Because the United States Constitution regulates only the government, not private parties, a litigant asserting a § 1983 claim that his or her constitutional rights have been violated must first establish that the challenged conduct constitutes "state action." See, e.g., Blum v. Yaretsky, 457 U.S. 991, 1002 (1982). See also, n. 4, supra. To qualify as state action, the conduct in question "must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," and "the party charged with the [conduct] must be a person who may fairly be said to be a state actor." Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937 (1982); see U. S. v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO, 941 F.2d 1292 (2d Cir.1991). Private attorneys are not government actors for purposes of § 1983 lawsuits just because they participate in court proceedings in a state judicial system. See Jackson v. State of South Carolina, 498 F.Supp. 186, 192-193 (D.S.C. 1979)[Retained attorney does not act under color law within in the meaning of §1983]. Therefore, such actions are not "under color of state law," and this purely private conduct, no matter how allegedly wrongful or injurious, is not actionable under § 1983. See Lugar v. Edmondson Oil Co., 457 U.S. at 936.

While a private individual or corporation (such as the Defendants here) can act under color of state law, his, her, or its actions must occur where the private individual or entity is "a

willful participant in joint action with the State or its agents." Dennis v. Sparks, 449 U.S. 24, 27-28 (1980). However, there are no "plausible" allegations here to suggest that these Defendants' actions were anything other than purely private conduct. Iqbal, 129 S.Ct. at 1949 [to survive a motion to dismiss, the plaintiff must set forth sufficient factual matters to state a plausible claim for relief "on its face"]. Plaintiff alleges that the law firm and attorney Defendants all engaged in a "conspiracy" with Scarborough to violate her rights, but this conclusory claim is not sufficient to state a "plausible" claim of joint action with an agent of the State to survive the Defendants' motions to dismiss. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)[While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, factual allegations must be enough to raise a right to relief above the speculative level]; Johnson v. Bank of America, No. 09-1600, 2010 WL 1542560, at * 2 (D.S.C. April 16, 2010)["Mere legal conclusions [are] not entitled to a presumption of truth"]. To establish a civil conspiracy under § 1983, a Plaintiff must show that the Defendants acted jointly in concert, and that some overt act was done in furtherance of the conspiracy which resulted in the deprivation of a constitutional right. Glassman v. Arlington Cnty., 628 F.3d 140 (2010)(citing Hinkle v. City of Clarksburg, 81 F.3d 416 (4th Cir.1996)). Each member of the alleged conspiracy must have shared the same conspiratorial objective, and the factual allegations must reasonably lead to the inference that the Defendants came to a mutual understanding to try to "accomplish a common and unlawful plan." Hinkle, 81 F.3d at 421. As such, Plaintiff's allegations must be more than just "rank speculation and conjecture," especially when the actions are capable of innocent interpretation. Id. at 422; see also Frey v. City of Herculaneum, 44 F.3d at 671 ["Complaint must contain facts which state a claim as a matter of law and must not be conclusory"]. Here, however, the attorney and law firm Defendants were within their rights to

18

pursue collection through the state court system of the sanctions judgment that had been issued against the Plaintiff, and the Defendant Judge Scarborough was within his rights to issue orders and otherwise handle proceedings in that case. See, also, discussion, supra.

Hence, no "plausible" claim of an unlawful or improper "conspiracy" between these Defendants has been presented. See Johnson v. Holder, No. 11-2650, 2012 WL 4587355, * 1 (D.S.C. Sept. 28, 2012) ["More than labels and conclusions [are required], and a formulaic recitation of the elements of a cause of action will not do"] (quoting Twombly, 550 U.S. at 555), adopted by, 2013 WL 314753 (D.S.C. Jan. 28, 2013); Harper v. United States, 423 F.Supp. 192, 196 (D.S.C. 1976)["[W]here the claims in a complaint are insufficiently supported by factual allegations, these claims may be properly dismissed by summary dismissal"]; Marshall v. Odom, 156 F.Supp. 2d 525, 532 (D. MD. 2001)["To establish a civil conspiracy under § 1983, [the plaintiff] must present evidence that the [defendants] acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in [his] deprivation of a constitutional right."], citing Hinkle, 81 F.3d at 421; Wetherington v. Phillips, 380 F. Supp. 426, 428-429 (E.D.N.C. 1974), aff'd., 526 F.2d 591 (4th Cir. 1975)[The generalized allegations of a civil conspiracy are not sufficient to maintain a claim under § 1983].

Therefore, Plaintiff has failed to state a claim under 1983 against the law firm and attorney Defendants.[11]

---

[11]It is noted that in her Sixth Cause of Action, Plaintiff asserts a separate "conspiracy" claim under 42 U.S.C. § 1985. However, Plaintiff has failed to set forth any "plausible" claim of a violation of that statute. See Griffin v. Breckenridge, 403 U.S. 88, 102-103 (1971)[Setting forth criteria for maintaining a conspiracy claim under 42 U.S.C. § 1985(3)];Simmons v. Poe, 47 F.3d 1370, 1376-1377 (4th Cir. 1995)[Same]. Specifically, Plaintiff has failed to set forth a "plausible" claim that the (continued...)

Claims for Injunctive and/or Declaratory Relief

Plaintiff also seeks to have this Court enjoin the execution of various state court orders that have be entered relating to her state court litigation. However, the Anti-Injunction Act precludes such an injunction. Section 2283 of Title 28 of the United States Code mandates that except in certain circumstances "[a] court of the United States may not grant an injunction to stay proceedings in a State court...." The Act constitutes "an absolute prohibition against any injunction of any state-court proceedings, unless the injunction falls within one of the three specifically defined exceptions Act." Vendo Co. v. LektroVend Corp., 433 U.S. 623, 630 (1977) (plurality opinion). These three exceptions are injunctions: (1) expressly authorized by statute; (2) necessary to aid the court's jurisdiction; or (3) required to protect or effectuate the court's judgments. Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 146 (1988); Atlantic Coast Line R.R. Co. v. Board of Locomotive Eng'rs, 398 U.S. 281, 287-88 (1970). None of these exceptions applies here.

Moreover, to the extent Plaintiff is attempting to raise or present defenses to the decisions and rulings of the state courts through the filing of this lawsuit, she had the opportunity to present those defenses and arguments in the hearings held before the state courts, and she may not

---

[11](...continued)
Defendants conspired together to deny her the equal protection of the laws, her equal privileges and immunities under the laws, or otherwise deprived her of exercising any right or privilege of a citizen of the United States. Griffin, 403 U.S. at 102. Additionally, the Supreme Court has held that in order to maintain a conspiracy claim under §1985(3), a Plaintiff must show that the alleged conspiracy was motivated by "some racial, or perhaps otherwise class-based invidiously discriminatory animus." Griffin, 403 U.S. at 102; see also Trerice v. Summons, 755 F.2d 1081, 1084 (4th Cir. 1985). Plaintiff has failed to allege any facts to indicate any discriminatory motive on the part of the Defendants. Therefore, Plaintiff's Sixth Cause of Action asserting a claim under § 1985 is subject to summary dismissal. Cf. Johnson v. Flores, No. 05-1628, 2009 WL 606263, at * 6 (N.D.Cal. March 9, 2009).

re-litigate those claims now in this federal lawsuit. Hilton Head Center of South Carolina, Inc. v. Public Service Commission of South Carolina, 362 S.E.2d 176, 177 (S.C. 1987) [Under the doctrine of res judicata "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit"']; see In re Dewayne, No. 18-2163, 2018 WL 4056986 at * 4 (D.S.C. Aug. 24, 2018). Under 28 U.S.C. § 1738, known as the Full Faith and Credit Statute, federal courts must give the same preclusive effect to a state court judgment as another court of that state would give. Therefore, any such claims are subject to dismissal pursuant to the doctrine of res judicata, as the pleadings in the case at Bar and in the state court litigation show that the parties or such parties' privies[12] in this action and the state court actions are essentially the same, there is identity of the subject matter, and there was an adjudication on the merits in the state court action. Riedman Corp. v. Greenville Steel Structures, Inc., 419 S.E.2d 217, 218 (S.C. 1992) [res judicata established where there is identity of the parties, identity of the subject matter, and there was an adjudication of the issue in the former suit]. Plaintiff is also barred by the doctrine of collateral estoppel "from re-litigating in a subsequent suit an issue actually and

---

[12]Privies are persons who have mutual or successive relationships to the same property rights and were legally represented at trial. South Carolina Dep't of Social Servs v. Winyah Nursing Homes, 320 S.E.2d 464, 468-469 (S.C.Ct.App. 1984) (citing First Nat'l Bank of Greenville v. U.S. Fidelity & Guaranty Co., 35 S.E.2d 47 (S.C. 1945); see Ex Parte Allstate Ins. Co., 528 S.E.2d 679, 681 (S.C. Ct. App. 2000) [When applied to a judgment or decree, the term "privity" means "one so identified in intent with another that he represents the same legal right"]; Briggs v. Newberry County Sch. Dist., 838 F. Supp. 232, 235 (D.S.C.1992) [Res judicata precludes a party from litigating in a second action identical claims against the same parties or their privies on which a final determination on the merits was issued]. Cf. Weinberger v. Tucker, 510 F.3d 486, (4th Cir. Dec. 20, 2007) ["Courts have held that the attorney-client relationship itself establishes privity."] (quoting Henry v Farmer City State Bank, 808 F.2d 1228, 1235 n. 6 (7th Cir. 1986) ["Even though the Bank was the only actual party to the state court mortgage foreclosure proceedings, the other defendants, as . . . and attorneys of the Bank, are in privity with the Bank for purposes of res judicata."]).

necessarily litigated and determined in a prior action". Jinks v. Richland County, 585 S.E. 2d 281, 285 (S.C. 2003); Nelson v. QHG of S.C., Inc., 608 S.E. 855, 858 (S.C. 2005) [Holding that plaintiff's claims were barred by collateral estoppel due to grant of summary judgment in prior state court action]; see also Stone v. Roadway Express, 627 S.E.2d 695, 698 (S.C. 2006) ["Collateral estoppel prevents a party from re-litigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action"] (quoting Jinks v. Richland County, supra); cf. United States v. Mendoza, 464 U.S. 154, 159 n. 4 (1984) ["Defensive use of collateral estoppel occurs when a defendant seeks to prevent a plaintiff from relitigating an issue the plaintiff has previously litigated unsuccessfully in another action against ... a different party"]; Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326 (1979); see Meyer v. McGowen, No. 16-777, 2018 WL 4300121 at * 2 (D.S.C. Sept. 10, 2018).

Further, to the extent Plaintiff is seeking, through the filing of this lawsuit, a review of the judgements entered in her cases by the state courts, federal district courts do not hear "appeals" from state court actions. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476-82 (1983)[a federal district court lacks authority to review final determinations of state or local courts because such review can only be conducted by the Supreme Court of the United States under 28 U.S.C. § 1257]; Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Thus, Plaintiff may not use this civil action to challenge the determinations or rulings of the state courts. See Anderson v. Colorado, 793 F.2d 262, 263 (10th Cir. 1986) ["It is well settled that federal district courts are without authority to review state court judgments where the relief sought is in the nature of appellate review."]; Brinkmann v. Johnston, 793 F.2d 111, 113 (5th Cir. 1986); see also Wise v. Bravo, 666 F.2d 1328, 1333 (10th Cir.1981); Gurley v. Superior Court of Mecklenburg County, 411 F.2d 586,

587–588 & nn. 2–4 (4th Cir. 1969) [holding that federal district courts and United States Courts of Appeals have no appellate or supervisory authority over state courts]. Therefore, to the extent that Plaintiff is requesting relief in this lawsuit that would require this Court to overrule and reverse orders and rulings made in the state courts, such a result is prohibited under the Rooker–Feldman doctrine. Davani v. Virginia Dep't. of Transp., 434 F.3d 712, 719-720 (4th Cir. 2006); see Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 293-294 (2005); Jordahl v. Democratic Party of Va., 122 F.3d 192, 201 (4th Cir. 1997).[13]

Alternatively, to the extent that the state court actions are still pending,[14] the abstention doctrine set forth in Younger v. Harris, 401 U.S. 37, 91 (1971), and its progeny preclude this Court from interfering with ongoing proceedings, as Plaintiff can raise these issues in those state court proceedings. The Younger doctrine applies to civil proceedings that "implicate a State's interest in enforcing the orders and judgment of its courts." Sprint Commc'ns, Inc. v. Jacobs, 134 S.Ct. 584, 588 (2013)(internal quotation marks omitted). Thus, to the extent that Plaintiff is seeking injunctive or declaratory relief relating to the decisions and rulings covering the subject matter of the underlying action in state court, her claim is barred under the Younger doctrine, although the abstention principles established in Younger may not require dismissal of Plaintiffs' claims for damages. See, e.g., Lindsay v. Rushmore Loan Mgmt., Servs., LLC, No. 15-1031, 2017 WL 167832, at *1, 4 (D. Md. Jan. 17, 2017)["causes of action for damages, such as Plaintiffs', may be stayed but

---

[13]The Rooker-Feldman doctrine is jurisdictional, so it may be raised by the Court sua sponte. American Reliable Ins. Co. v. Stillwell, 336 F.3d 311, 316 (4th Cir. 2003).

[14]The proceedings in the judgment enforcement action filed against Plaintiff by the Defendant Law firm are apparently still proceeding. See 2007-CP-100144, https://www.charlestoncounty.org/departments/clerk-of-court/online-services.php.

not dismissed on Younger abstention grounds](citing Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 721 (1996)).

Therefore, Plaintiff's requests for injunctive and/or declaratory relief as set forth in her Second Amended Complaint are without merit, and should be dismissed.

Federal Claims under the FDCPA

Plaintiff alleges in her Complaint that the Defendant law firm's efforts to collect the state court judgment entered against her violates the Fair Debt Collections Practices Act. To establish a prima facie case for violation of the FDCPA, Plaintiff must establish: (1) she is a 'consumer' as defined by the FDCPA; (2) the debt arises out of a transaction entered primarily for personal, family, or household purposes; (3) the defendant is a 'debt collector' as defined by the FDCPA; and (4) the defendant has violated, by act or omission, a provision of the FDCPA. See Creighton v. Emporia Credit Service, Inc., 981 F. Supp. 411, 414 (E.D. Va. 1997). While attorneys can be considered "debt collectors" as that term is defined by the FDCPA under some circumstances, Plaintiff's allegations fail to provide sufficient facts to establish a plausible claim that the Defendants used "any false, deceptive, or misleading representation or means in connection with the collection of any debt," or used "unfair or unconscionable means to collect or attempt to collect any debt". 15 U.S.C. § § 1692(e) and (f).

There is nothing "false", "deceptive", "misleading" or "unfair or unconscionable" about the Defendant law firm attempting to collect a sanctions award that had been entered in its favor against the Plaintiff by a court order. Moreover, Plaintiff is not a "consumer" under the FDCPA for purposes of the debt collection attempt at issue here, nor does the "debt" arise out of "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in

which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment'. 15 U.S.C. § 1692a(5). Therefore, Plaintiff's claims asserted under the FTCPA should be dismissed. Johnson, 2012 WL 4587355, * 1 ["More than labels and conclusions [are required], and a formulaic recitation of the elements of a cause of action will not do"] (quoting Twombly, 550 U.S. at 555), adopted by, 2013 WL 314753 (D.S.C. Jan. 28, 2013); see also Dickson v. Microsoft Corp., 309 F.3d 193, 213 (4th Cir. 2002)[Plaintiff has burden of alleging facts sufficient to state all the elements of a claim].

Remaining State Law Claims

Finally, Plaintiff asserts various state law claims against the Defendant law firm and Attorneys. See generally, Plaintiff's First, Third, Seventh, Eighth, Tenth, Eleventh and Twelfth Causes of Action. The law firm and attorney Defendants correctly note in their motion that if the Court dismisses Plaintiff's federal claims from this lawsuit, these pendant state law claims should all also be dismissed under United Mine Workers v. Gibbs, 383 U.S. 715 (1966), and its progeny. See In Re Conklin, 946 F.2d 306, 324 (4th Cir. 1991); Nicol v. Imagematrix, Inc., 767 F.Supp. 744, 746, 749 (E.D.Va. 1991); Mills v. Leath, 709 F.Supp. 671, 675-676 (D.S.C. 1988) [Noting that federal courts should generally decline to exercise pendant jurisdiction over remaining state law claims after dismissal of federal claims in a lawsuit]; Carnegie-Melon v. Cohill, 484 U.S. 343 (1988); Taylor v. Waters, 81 F.3d 429, 437 (4th Cir. 1996); see also Lovern v. Edwards, 190 F.3d 648, 655 (4th Cir. 1999) ["[T]he Constitution does not contemplate the federal judiciary deciding

issues of state law among non-diverse litigation"].[15]

Gibbs provides that where federal claims in a lawsuit originally filed in United States District Court are dismissed, leaving only state law causes of action, dismissal of the remaining state law claims without prejudice is appropriate in order to allow the Plaintiff to pursue and obtain a ruling as to the viability of their state law claims in a more appropriate forum. See generally, Gibbs, 383 U.S. at 726 ["Certainly, if the federal claims are dismissed before trial, ... the state claims should be dismissed as well"]; Carnegie–Mellon, 484 U.S. at 350, n. 7 ["[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine ... will point toward declining to exercise jurisdiction over the remaining state law claims."]. Here, this case is in its early stages (being before the court on motions to dismiss), and if Plaintiff's state law claims were to survive, it would be much more appropriate for those claims to be tried by the state courts.

Finally, dismissal of Plaintiff's state law claims would also not prejudice the Plaintiff, as federal law provides for tolling of statutes of limitation for state claims during the period they were pending in federal court and for thirty days afterwards. See 28 U.S.C. § 1367(d); Jinks v. Richland County, 538 U.S. 456 (2003); Hedges v. Musco, 204 F.3d 109, 123–124 (3rd Cir. 2000); Beck v. Prupis, 162 F.3d 1090, 1099–1100 (11th Cir.1998) ["a dismissal under section 1367 tolls the statute of limitations on the dismissed claims for 30 days"]. Therefore, Plaintiff would be able to refile her state claims in state court, if she chooses to do so, assuming of course that they were

[15]All of the parties in this case are alleged to be South Carolina residents. See Second Amended Complaint, p. 2. Therefore, there is no diversity jurisdiction in this case. See 28 U.S.C. § 1332(a).

timely asserted initially through the filing of this action.

Conclusion

Based on the foregoing, it is recommended that the Defendant Mikell Scarborough be **dismissed** as a party Defendant in this case. It is further recommended that Plaintiff's federal causes of action asserting claims under the United States Constitution, 42 U.S.C. §1983, 42 U.S.C. §1985, and the FDCPA (Plaintiff's Second, Fourth, Fifth, Sixth and Ninth Causes of Action) all be **dismissed** for the reasons stated. Plaintiff's remaining state law causes of action should then be **dismissed**, without prejudice. Plaintiff may then refile her state law claims in state claims in state court, if she chooses to do so. Seabrook v. Jacobson, 153 F.3d 70, 72 (2d Cir. 1998)["Section 1367(d) ensures that the plaintiff whose supplemental jurisdiction is dismissed has at least thirty days after dismissal to refile in state court."].

The parties are referred to the Notice Page attached hereto.

Bristow Marchant
United States Magistrate Judge

October 31, 2018
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Cynthia Holmes, Plaintiff, v. James Y. Becker, M.M. Caskey, Haynsworth Sinkler Boyd, P.A., and Mikell R. Scarborough, Defendants.	)	Civil Action No. 2:17-2949-BHH **ORDER**

This matter is before the Court upon Plaintiff Cynthia Holmes ("Holmes" or "Plaintiff") motion to alter or amend the judgment entered in favor of Defendants in this case. Specifically, in an order filed on March 29, 2019, the Court adopted the Magistrate Judge's Report and overruled Plaintiff's objections to that Report, ultimately granting Defendants' motions to dismiss and dismissing any remaining state law claims without prejudice. In her instant motion to reconsider, filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Plaintiff asserts that "there is no jurisdiction for the Report and Recommendation (R&R) or its adoption" (ECF No. 100 at 2) and simply rehashes the arguments she raised in prior filings.

Reconsideration of a judgment pursuant to Rule 59(e) is an extraordinary remedy that should be used sparingly. *See Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir.1998); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008). Ordinarily, a court may grant a motion to alter or amend pursuant to Rule 59(e) for only three reasons: (1) to comply with an intervening change in controlling law; (2) to account for new evidence

not available previously; or (3) to correct a clear error of law or prevent manifest injustice. *Pac. Ins. Co.*, 148 F.3d at 403. Importantly, after review, the Court finds that Plaintiff has failed to point to any change in controlling law, any new evidence not available previously, or any clear error of law or manifest injustice. Accordingly, the Court denies Plaintiff's motion to reconsider (ECF No. 100).

AND IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce Howe Hendricks

May 23, 2019
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The right to appeal this order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.

FILED: January 21, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1572
(2:17-cv-02949-BHH)

CYNTHIA HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, M.D.

Plaintiff - Appellant

v.

JAMES Y. BECKER, Individually; M. M. CASKEY, Individually; HAYNSWORTH SINKLER BOYD, P. A.; MIKELL R. SCARBOROUGH, in official capacity and, as indicated, individually re: unofficial acts

Defendants - Appellees

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc. The court denies the motions to exceed length limitations for petition for rehearing and for disposition on outstanding motion. The court denies as moot the motion to review record on appeal.

For the Court

/s/ Patricia S. Connor, Clerk

APP. C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-1444

Holmes

PLAINTIFF(S)

Haynesworth Sinkler Boyd, et al.

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2017 FEB -9 AM 9:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate N/A in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062
Judge Code

2/8/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: