APPENDICES:

Appendix A – Per Curiam of the United States Court of Appeals for the Fourth Circuit; Unpublished Opinion, Notice of Judgment, Judgment:

FILED: December 29, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2047, Dora Adkins v. Dulles Hotel Corporation
1:20-cv-00361-RDA-IDD

NOTICE OF JUDGMENT

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

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

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

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

FILED: December 29, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2047
(1:20-cv-00361-RDA-IDD)

DORA L. ADKINS

Plaintiff - Appellant

v.

DULLES HOTEL CORPORATION

Defendant - Appellee

JUDGMENT

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

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

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2047

DORA L. ADKINS,

Plaintiff - Appellant,

v.

DULLES HOTEL CORPORATION,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Rossie David Alston, Jr., District Judge. (1:20-cv-00361-RDA-IDD)

Submitted: December 22, 2020 Decided: December 29, 2020

Before NIEMEYER, FLOYD, and RICHARDSON, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Dora L. Adkins, Appellant Pro Se. Richard W. Souther, LAW OFFICE OF RICHARD W. SOUTHER, Fairfax, Virginia, for Appellee.

PER CURIAM:

Dora L. Adkins appeals the district court's orders dismissing her civil action for lack of subject matter jurisdiction and denying reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Adkins v. Dulles Hotel Corp.*, No. 1:20-cv-00361-RDA-IDD (E.D. Va. Sept. 16, 2020 & Sept. 25, 2020). However, because the dismissal was for lack of subject matter jurisdiction, we modify the judgment to reflect that the dismissal is without prejudice. *See S. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013) ("A dismissal for . . . [a] defect in subject matter jurisdiction . . . must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits."). We grant Adkins' motion to file an amended informal brief and deny as moot her motion to expedite. 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 AS MODIFIED

Appendix B – In the U. S. District Court for the Eastern District of Virginia, Orders; Order, Dated, September 16, 2020 and Order, Dated, September 25, 2020:

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

DORA L. ADKINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:20-cv-00361 (RDA/IDD)
	)	
DULLES HOTEL CORPORATION,	)	
	)	
Defendant.	)	

ORDER

This matter comes before the Court on Defendant Dulles Hotel Corporation's ("Defendant") Motion to Dismiss for Lack of Jurisdiction (Dkt. 17); Defendant's Motion to Dismiss for Failure to State a Claim (Dkt. 30); Plaintiff Dora L. Adkins's ("Plaintiff") Corrected Motion for Leave of Court to File Amended Motion for Default Judgment ("Second Motion for Leave to Amend") (Dkt. 46); Plaintiff's Motion for Leave from the Court for Reconsideration of its Order Dated, July 30, 2020 ("Motion for Reconsideration") (Dkt. 48); Plaintiff's Motion to Withdraw the Motion for Leave from the Court for Reconsideration of its Order Dated, July 30, 2020 ("Motion to Withdraw") (Dkt. 52); Plaintiff's motion entitled "Amended on August 14, 2020 to the Motion for Leave from the Court for Reconsideration of its Order Dated, July 30, 2020" ("Amended Motion for Reconsideration") (Dkt. 56); and Plaintiff's Motion for Summary Judgment ("Summary Judgment Motion") (Dkt. 61).

Considering Plaintiff's Amended Complaint Against Dulles Hotel Corporation ("Amended Complaint") (Dkt. 7); Defendant's Motion to Dismiss for Lack of Jurisdiction (Dkt. 17); Plaintiff's Brief in Opposition to Motion to Dismiss for Lack of Jurisdiction ("Opposition to Motion to Dismiss for Lack of Jurisdiction") (Dkt. 20-1) and the accompanying attachments (Dkt. Nos. 20;

20-2; 20-3); Defendant's Reply to Opposition to Motion to Dismiss for Lack of Jurisdiction ("Reply in Support of Motion to Dismiss for Lack of Jurisdiction") (Dkt. 22); Defendant's Motion to Dismiss for Failure to State a Claim (Dkt. 30); Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss for Failure to State a Claim ("Opposition to Motion to Dismiss for Failure to State a Claim") (Dkt. 41); Plaintiff's Second Motion for Leave to Amend (Dkt. 46); Plaintiff's Motion for Reconsideration (Dkt. 48); Defendant's Opposition to Motion to Reconsider Order Denying Plaintiff's Motions for Default Judgement ("Opposition to Motion for Reconsideration") (Dkt. 51); Plaintiff's Motion to Withdraw the Motion for Leave from the Court for Reconsideration of its Order Dated July 30, 2020 ("Motion to Withdraw") (Dkt. 52); Plaintiff's Cancellation of the Withdrawal on August 10, 2020 ("Cancellation of Motion to Withdraw") (Dkt. 54); Plaintiff's Amended Motion for Reconsideration (Dkt. 56); Defendant's Opposition to Plaintiff's Amended Motion to Reconsider Order Denying Plaintiff's Motions for Default Judgment ("Opposition to Amended Motion for Reconsideration") (Dkt. 58); and Plaintiff's Summary Judgment Motion (Dkt. 61), and for the following reasons, it is hereby ORDERED that Defendant's Motion to Dismiss for Lack of Jurisdiction (Dkt. 17) is GRANTED; Defendant's Motion to Dismiss for Failure to State a Claim (Dkt. 30) is DENIED as moot; Plaintiff's Second Motion for Leave to Amend (Dkt. 46) is DENIED as moot; Plaintiff's Motion for Reconsideration (Dkt. 48) is DENIED; Plaintiff's Motion to Withdraw (Dkt. 52) is DENIED as moot; Plaintiff's Amended Motion for Reconsideration (Dkt. 56) is DENIED; and Plaintiff's Summary Judgment Motion (Dkt. 61) is DENIED as moot.

I. BACKGROUND

A. Factual Background

The facts as alleged in Plaintiff's Amended Complaint are taken as true for the purposes of evaluating the instant Motions to Dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Plaintiff stayed at Defendant's Hilton Washington Dulles Airport hotel ("the Hotel"), located in Herndon, Virginia, non-consecutively from May of 2019 through March of 2020. Dkt. 7, ¶ 1. Plaintiff timely paid a total of approximately $30,000.00 over an eleven-month timeframe for guest rooms in the Hotel, accommodations including daily breakfast in the Hotel's Old Ox Grille Restaurant ("the Restaurant"), and breakfast and dinner in the Hotel's Executive Lounge. *Id.* at ¶ 2.

In her Amended Complaint, Plaintiff asserts various allegations. Plaintiff accuses Defendant of providing her with sixteen different guest rooms that were "filthy." *Id.* at ¶ 3. She asserts that as a guest at the Hotel, she breathed in mold, and that the guest rooms at the Hotel had extremely dirty carpets with "pet feces and urine" that could potentially cause Plaintiff "respiratory issues." *Id.* Plaintiff also alleges when she resided in the Hotel's guest room #571 during the winter months, that room did not have a heating system. *Id.* Plaintiff further claims that the Hotel's employees never cleaned the Hotel's Executive Lounge computer area nor wiped down the cabinets there. *Id.* Plaintiff also contends that after she reported her concerns of the cleanliness of the Executive Lounge, on March 9, 2020, Mario Alarcon, the Hotel's Executive Housekeeper, merely provided Plaintiff with "Clorox wipes." *Id.* Plaintiff avers that, like those in the guest rooms she stayed in, the carpets in the common areas of the Hotel were "infested with dog feces [and] urine" that employees never cleaned up. *Id.*

Plaintiff's central allegation, though, is that Defendant intentionally contaminated her food approximately nine times, thus giving Plaintiff food poisoning. *Id.* at ¶¶ 3, 4. The first alleged incident of premeditated food contamination aimed at poisoning Plaintiff purportedly occurred on February 16, 2020, when Plaintiff went to the Restaurant for breakfast. *Id.* at ¶ 5. Plaintiff's also contends that on February 17, 2020, Defendant's employees intentionally contaminated her food in an attempt to kill her. *Id.* at ¶ 4. Plaintiff asserts on that day, the Hotel's employees contaminated the potatoes served at the restaurant's breakfast buffet bar. *Id.* at ¶ 5. Plaintiff alleges that the food contamination aimed at her was "premeditated" "because other [g]uests and/or patrons of the Hotel were ordering from the [Restaurant's] menu and Plaintiff ate from the [b]reakfast [b]uffet [b]ar." *Id.* at ¶ 6.

Plaintiff contends that on February 16, 2020, February 17, 2020, and throughout the duration of her stay at the Hotel, the Hotel's employees contaminated her food at the Restaurant in the following ways. The employees wore their aprons in the restroom; handled guests' used plates, utensils, glasses and menus; never washed their hands before providing to-go containers to guests; handled and/or changed trash and recycling bins and returned to handling food without washing their hands; coughed directly inside the restaurant without covering their mouths with their arms when sick with a cold and did not use tissues when their noses were running; allowed guests to return to the buffet bars with their used plates and utensils; allowed guests to eat directly from the buffet bars with their hands; allowed unattended children to pick up food items from the buffet bars and then return the food items back to the bars; let adults return food items back to the buffet bar after first taking those food items to their tables; allowed guests to transport food from the Executive Lounge using a luggage cart; never fixed the broken door to the Executive Lounge, thus making entry available to the public; one employee tapped the dipper for soups into the palm

of his hands and then placed the dipper into the soups; allowed guests to have pets inside their guest rooms; and did not use the proceeds from the "Pet Clean-Up Fee" that guests are charged to clean up pets' feces and urine. *Id.* at ¶¶ 8, 16, 25.

Plaintiff also attempts to link Defendant's alleged actions to the actions of other entities purportedly directed at her. These other entities include Chipotle Mexican Grill and Starbucks Corporation, which engaged in 600 instances of food contamination and/or food poisoning. *Id.* at ¶¶ 7, 9, 13, 17, 22, 26.

Plaintiff further claims that, as a result of Defendant contaminating her food, Plaintiff suffered the following symptoms: extreme emotional distress, and severe and debilitating physical pain in her stomach that has caused severe swelling and itching, violent and severe vomiting, and rectal bleeding. *Id.* at ¶¶ 3-4. Plaintiff alleges that she has consequently become bed-ridden and was thus unable to file her Complaint until February 2020. *Id.* at ¶¶ 4, 31-32. Plaintiff also alleges that she has gone without food or a place to live due to her fear of food poisoning and chemical poisoning. *Id.* at ¶¶ 8, 26.

B. Procedural Background

On March 13, 2020, Plaintiff filed her original Complaint, which she later amended on April 10, 2020. Dkt. Nos. 1; 7. On May 14, 2020, Defendant was served with Plaintiff's Amended Complaint. Dkt. 16. On June 24, 2020, the Court ordered that Defendant file its Answer within 20 days. Dkt. 25.

On June 2, 2020, Defendant filed its Motion to Dismiss for Lack of Jurisdiction. Dkt. 17. On June 12, 2020, Plaintiff filed her Opposition to Motion to Dismiss for Lack of Jurisdiction, and on June 17, 2020, Defendant filed its Reply in Support of Motion to Dismiss for Lack of Jurisdiction. Dkt. Nos. 20-1; 22.

In compliance with the Court's June 24, 2020 order, on July 14, 2020, Defendant filed its Answer, which incorporated its Motion to Dismiss for Failure to State a Claim. Also, on July 14, 2020, Defendant separately filed its Motion to Dismiss for Failure to State a Claim. Dkt. Nos. 30; 31. In response, on July 23, 2020, Plaintiff filed her Opposition to Motion to Dismiss for Failure to State a Claim. Dkt. 41.

Subsequently, Plaintiff filed her first motion for default judgment. Dkt. 26. Plaintiff subsequently filed two more motions for default judgment—on July 17, 2020, she filed her second motion for default judgment, Dkt. 35, and on July 20, 2020, she filed her third motion for default judgment. Dkt. Nos. 35; 38. Then, on July 29, 2020, Plaintiff filed her first motion for leave to amend. Dkt. 43. On July 30, 2020, the Court ordered that Plaintiff's first motion for default judgment, second motion for default judgment, third motion for default judgment, and first motion for leave to amend be denied. Dkt. 45. Later that same day, Plaintiff filed her Second Motion for Leave to Amend. Dkt. 46.

On August 5, 2020, Plaintiff filed her Motion for Reconsideration. Dkt. 48. On August 6, 2020, Defendant filed its Opposition to Motion for Reconsideration. Dkt. 51. On August 10, 2020, Plaintiff filed her Motion to Withdraw, but then on August 11, 2020, she filed her Cancellation of Motion to Withdraw. Dkt. Nos. 52; 54.

Yet, Plaintiff filed an Amended Motion for Reconsideration, Dkt. 56, to which Defendant opposed, Dkt. 58.

Defendant's Motion to Dismiss for Lack of Jurisdiction (Dkt. 17); Defendant's Motion to Dismiss for Failure to State a Claim (Dkt. 30); Plaintiff's Second for Leave to Amend (Dkt. 46); Plaintiff's Motion for Reconsideration (Dkt. 48); Plaintiff's Motion to Withdraw (Dkt. 52); and Plaintiff's Amended Motion for Reconsideration (Dkt. 56), are all ripe for resolution. Because

oral argument would not aid in the decisional process, in accordance with Local Civil Rule 7(J), this Court will decide each of these motions based on the briefs.

II. STANDARD OF REVIEW

A. Motion to Dismiss for Lack of Jurisdiction

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, an action must be dismissed if the court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The burden of proving subject matter jurisdiction lies with the plaintiff, as the party asserting such jurisdiction. *See J.E.C.M. ex rel.*, 352 F. Supp. 3d 559, 575 (E.D. Va. 2018) (citing *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982)).

Challenges to subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) may be either facial or factual. *See id.* Under a facial challenge, a defendant asserts that:

> a complaint simply fails to allege facts upon which subject matter jurisdiction can be based[,] . . . all the facts alleged in the complaint are assumed to be true and the plaintiff, in effect, is afforded the same procedural protection as he would receive under a Rule 12(b)(6) consideration.

Id.

Accordingly, where a defendant disputes the existence of subject matter jurisdiction under a factual challenge, "the court may consider evidence outside the complaint 'without converting the proceeding to one for summary judgment.'" *Id.* Under this method of attack, "[n]o presumptive truthfulness attaches to the plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *A.W. ex rel. Wilson v. Fairfax Cty. Sch. Bd.*, 548 F. Supp. 2d 219, 221 (E.D. Va. 2008) (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)).

Evaluating Defendant's Rule 12(b)(1) Motion to Dismiss for Lack of Jurisdiction, this case appears to fall into the latter category.

B. Motion to Dismiss for Failure to State a Claim

A Federal Rule of Civil Procedure 12(b)(6) motion should be granted unless an adequately stated claim is "supported by showing any set of facts consistent with the allegations in the complaint." *Bell Alt. Corp. v. Twombly*, 550 U.S. 544, 561 (2007) (internal citations omitted); *see* Fed. R. Civ. P. 12(b)(6). "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. at 555). A complaint is also insufficient if it relies upon "'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

To survive a Rule 12(b)(6) motion to dismiss, a complaint must set forth "a claim to relief that is plausible on its face." *Id.*; *Twombly*, 550 U.S. at 570. A claim is facially plausible "when the plaintiff pleads factual content that allows the [C]ourt to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). The Court need not accept "[c]onclusory allegations regarding the legal effect of the facts alleged." *Labram v. Havel*, 43 F.3d 918, 921 (4th Cir. 1995); *see also E. Shore Mkts., Inc. v J.D. Assoc. Ltd. P'ship*, 213 F.3d at 180 ("[w]hile we must take the facts in the light most favorable to the plaintiff, we need not accept the legal conclusions drawn from the facts . . . . Similarly, we need not accept as true unwarranted inferences, unreasonable conclusions, or arguments.").

In considering a Rule 12(b)(6) motion, the Court must construe the complaint in the light most favorable to the plaintiff, read the complaint as a whole, and take the facts asserted therein as true. *E. Shore Mkts., Inc.*, 213 F.3d 175, 180 (4th Cir. 2000); *Mylan Lab., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). In addition to the complaint, the Court may also examine "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

That a *pro se* complaint should be liberally construed neither excuses a *pro se* plaintiff of her obligation to "clear the modest hurdle of stating a plausible claim" nor transforms the court into her own advocate. *Green v. Sessions*, No. 1:17–cv–01365, 2018 WL 2025299, at *8 (E.D. Va. May 1, 2018), *aff'd*, 744 F. App'x 802 (4th Cir. 2018). Moreover, the Court is not required to accept "obscure or extravagant claims" in a *pro se* complaint as plausible. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990) (quoting *Beaudett v. Hampton*, 775 F.2d 1274, 1277 (4th Cir. 1985)).

C. Motion for Reconsideration

Pursuant to Federal Rule of Civil Procedure 59(e), a party may move "to alter or amend a judgment . . . no later than 28 days after the entry of the judgment." Fed. R. Civ. P. 59(e). Whether to grant a motion for reconsideration "is within the sole discretion of the Court . . . ." *United States v. Dickerson*, 971 F. Supp. 1023, 1024 (E.D. Va. 1997). The Fourth Circuit has recognized three distinct grounds on which to grant a Rule 59(e) motion: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993).

"In general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citation and internal quotation marks omitted). Under a Rule 59(e) motion, the moving party is not permitted to "raise arguments which could have been raised prior to the issuance of the judgment." *Id.* Neither may the moving party merely request the court to "rethink what the [c]ourt ha[s] already thought through—rightly or wrongly." *Dickerson*, 971 F. Supp. at 1024 (citing *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)).

III. ANALYSIS

Before the Court are six motions: Defendant's Motion to Dismiss for Lack of Jurisdiction, Defendant's Motion to Dismiss for Failure to State a Claim, Plaintiff's Second Motion for Leave to Amend, Plaintiff's Motion for Reconsideration, Plaintiff's Motion to Withdraw, and Plaintiff's Amended Motion for Reconsideration. Dkt. Nos. 17; 30; 46; 48; 52; 58. First, Defendant brought its Motion to Dismiss for Lack of Jurisdiction, asserting that the Court lacked subject-matter jurisdiction over the action. Dkt. 17. Following this Court's June 24, 2020 Order that allowed Defendant to file its Answer within 20 days of that Order, Defendant filed its Answer, which incorporated its Motion to Dismiss for Failure to State a Claim. Dkt. Nos. 25; 31. Defendant also filed its Motion to Dismiss for Failure to State a Claim separately, asserting that Plaintiff's Amended Complaint fails to allege facts that state a plausible claim for relief for intentional infliction of emotional distress. Dkt. 30.

Plaintiff subsequently filed a series of motions for default judgment, contending that Defendant improperly filed its Answer and its Motion to Dismiss for Failure to State a Claim 40 days after the Fed. R. Civ. P. 12(a)(1)(A)(i) deadline had elapsed. *See* Dkt. Nos. 26; 35; 38; 43. On July 30, 2020, the Court entered an Order denying each of these motions. Dkt. 45. Later that same day, though, Plaintiff filed her Second Motion for Leave to Amend, which reiterated the arguments set forth in her three previously-filed motions for default judgment and her first motion for leave to amend. Dkt. 46. Additionally, Plaintiff filed her Motion for Reconsideration, urging the Court to find Defendant in default because Defendant should have submitted its Answer and Motion to Dismiss for Failure to State a Claim alongside its preliminary motion to dismiss before the purported June 4, 2020 deadline. Dkt. 48.

Prior to considering the aforementioned motions, it is important to note that Plaintiff's filings in the instant case fit squarely within her pattern of filing frivolous pleadings and motions in federal and state courts in Virginia. *See, e.g.*, *Adkins v. HBL, LLC*, No. 1:17-cv-774, 2017 WL 4484259 (E.D. Va. Aug. 11, 2017); *Adkins v. Pub. Storage*, No. 1:16-cv-1556 , 2017 WL 3449583 (E.D. Va. Jan. 24, 2017); *Adkins v. Whole Foods Mkt. Grp., Inc.*, No. 1:16-cv-00031, 2016 WL 1367170 (E.D. Va. Apr. 5, 2016); *see also Adkins v. CP/IPERS Arlington Hotel LLC*, 799 S.E.2d 929, 930 (Va. 2017) (observing that Plaintiff "has filed at least 41 *pro se* civil actions in the circuit courts of Northern Virginia, including 20 cases in the Circuit Court of Fairfax County, 17 cases in the Circuit Court of the City of Alexandria, and four cases in the Circuit Court of Arlington County"). This string of lawsuits that Plaintiff filed in Virginia even led the Supreme Court of Virginia to admonish her for "(1) filing duplicative, vexatious lawsuits, (2) without any objective good faith basis, and (3) at the expense of the court system and opposing parties." *Adkins*, 799 S.E.2d at 933. Even in light of the aforementioned 12(b)(6) standard and giving due deference to Plaintiff at this stage of litigation, Plaintiff's Amended Complaint consists of numerous outrageous and unsubstantiated claims, such as that Defendant intended to kill Plaintiff by contaminating her food and that Defendant, and other entities who are not parties to this action, were involved in over *600* cases of food poisoning directed towards Plaintiff. Dkt. 7, ¶¶ 4, 7, 9, 13, 17, 22, 26. Furthermore, the Court finds that Plaintiff's Second Motion to Amend is duplicative of her motions for default judgment and first motion to amend, and that Plaintiff's Motion for Reconsideration and Amended Motion for Reconsideration are meritless. The Court cautions Plaintiff against continuing to file such frivolous pleadings and motions, as doing so may result in this Court imposing sanctions against Plaintiff pursuant to Federal Rule of Civil Procedure 11(c). *See* Fed. R. Civ. P. 11(c).

A. Motion to Dismiss for Lack of Jurisdiction

Defendant first moves to dismiss the action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on the ground that this Court does not have diversity jurisdiction because the parties are not completely diverse. Dkt. 17. Plaintiff's Virginia citizenship is undisputed—both parties agree that she is a citizen of Virginia because she resides in Fairfax County, Virginia. *See* Dkt. Nos. 17, 3; 20-1, 1. The critical point of contention here is whether Defendant is also a citizen of Virginia.

Defendant asserts that, pursuant to 28 U.S.C. § 1332(c)(1), Defendant is a citizen of Virginia because it was incorporated under the laws of Virginia. 28 U.S.C. § 1332(c)(1). Furthermore, Defendant's principal place of business is in Virginia, given that its only business operation is the Hotel in Herndon, Virginia, and the activities of the Hotel are directed, controlled, and coordinated by the General Manager of the Hotel, who is also located in Herndon, Virginia. Dkt. 17, 3.

Plaintiff, however, contends that Defendant is not a citizen of Virginia as its principal place of business is in California. Dkt. 20-1, 2-6. Plaintiff argues that Defendant's principal office is located at 433 California Street, 7th Floor, San Francisco, California 94104-2011. *Id.* at 2. Moreover, Plaintiff avers that Defendant's officers who direct, control, and coordinate Defendant's activities all work in Defendant's principal office in San Francisco, California. *Id.* at 4-6. Those officers include: Lawrence Yuinam Lui, Defendant's President; Joyce Marie Weible, Defendant's Secretary; Julius Helvey III, Defendant's Treasurer; and Gorretti Lui (whose title is unknown). *Id.* at 4-5. Plaintiff also notes that although the General Manager of the Hotel in Herndon, Virginia works from the Hotel in Virginia, the General Manager is not one of Defendant's principals. *Id.* at 5; *see* 20-3, 8.

Pursuant to 28 U.S.C. § 1332(a)(1), this Court has diversity jurisdiction over "all civil actions where the matter in controversy exceeds . . . $75,000 . . . and is between . . . citizens of different States." 28 U.S.C. § 1332(a)(1). Furthermore, 28 U.S.C. § 1332(c)(1) establishes that a corporation is "deemed to be a citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business. . . ." 28 U.S.C. § 1332(c)(1). In determining a corporation's principal place of business, the Supreme Court, "in an effort to find a single, more uniform interpretation of the statutory phrase [principal place of business]," adopted the "nerve center" approach in *Hertz Corp. v. Friend*, 559 U.S. 77, 92 (2010). Under this test, a corporation's principal place of business is "the place where a corporation's officers direct, control, and coordinate the corporation's activities." *Hertz*, 559 U.S. at 92–93. The Supreme Court in *Hertz*, further noted that:

> in practice[, the principal place of business] should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the 'nerve center,' and not simply an office where the corporation holds its board meetings . . . .

Id. at 93.

This Court finds that pursuant to 28 U.S.C. § 1332(c)(1), Defendant is a citizen of Virginia both because Defendant was incorporated under the laws of Virginia and because Defendant's principal place of business is in Virginia, consistent with the Supreme Court's the "nerve center" approach. While Defendant's principal office is located in San Francisco, California, that office does not appear to be "the *actual* center of direction, control, and coordination" of Defendant's business activities. *Id.* (emphasis added). Defendant's sole business operation is the Hotel in Herndon, Virginia. Dkt. 17, 3. Irrespective of whether the Hotel's General Manager holds the title of "principal," the General Manager, who works at the Hotel, not any of Defendant's officers who work at its principal office, is the individual who directs, controls, and coordinates

Defendant's business activities. *Id.*; *see also* Dkt. 20-3, 8-9. Accordingly, because the Court finds that both Plaintiff and Defendant are citizens of Virginia, granting Defendant's Motion to Dismiss for Lack of Jurisdiction is appropriate.

B. Motion to Dismiss for Failure to State a Claim

Because this Court has determined that it lacks subject matter jurisdiction over this matter, this Court will not address Defendant's Motion to Dismiss for Failure to State a Claim as it is moot.

C. Plaintiff's Summary Judgment Motion

Similarly, the Court will not address Plaintiff's Summary Judgment Motion because this Court does not have jurisdiction over this action. Therefore, Plaintiff's Summary Judgment Motion is denied as moot.

D. Second Motion for Leave to Amend

In her Second Motion for Leave to Amend, Plaintiff moves the Court to enter default judgment against Defendant because Defendant failed to file its Answer and its Motion to Dismiss for Failure to State a Claim by the deadline to do so pursuant to Federal Rule of Civil Procedure 12(a)(1)(A)(i). Dkt. 46, 11-12. Plaintiff explains that Federal Rule of Civil Procedure 12(a)(1)(A)(i) in general provides, *inter alia*, that "[a] defendant must serve an answer . . . within 21 days after being served with the summons and complaint . . . ." Fed. R. Civ. P. 12(a)(1)(A)(i). Accordingly, Defendant should have filed its Answer and motions to dismiss by June 4, 2020–21 days after Defendant was served with Plaintiff's Amended Complaint. Dkt. 46, 4, 11-12. Instead, Defendant filed its Answer and Motion to Dismiss for Failure to State a Claim on July 14, 2020, 40 days after the deadline to do so pursuant to Federal Rule of Civil Procedure 12(a)(1)(A)(i) had passed. *Id.* at 11-12.

The Court finds that it need not resolve Plaintiff's Second Motion for Leave to Amend on its merits. In the July 30, 2020, Order, this Court denied Plaintiff's three motions for default judgment and first motion for leave to amend. *See* Dkt. 45. In that July 30, 2020 Order, the Court already rejected the argument for default judgment that Plaintiff now reasserts. *See id.* Consequently, the Court concludes that Plaintiff's Second Motion for Leave to Amend is moot.

E. Motion for Reconsideration and Amended Motion for Reconsideration

Finally, Plaintiff urges the Court to reconsider its Order denying Plaintiff's three motions for default judgment and her first motion for leave to amend. Dkt. 48; *see* Dkt. 45. First, Plaintiff maintains that Defendant improperly filed its Answer and Motion to Dismiss for Failure to State a Claim on July 14, 2020, 40 days after the deadline for doing so pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i) had expired. Dkt. 48, 21. Second, Plaintiff asserts that Defendant waived its Rule 12(b)(6) defense of failure to state a claim upon which relief can be granted by failing to assert that defense in conjunction with its preliminary Motion to Dismiss for Lack of Jurisdiction. *Id.* at 16-20; *see* Fed. R. Civ. P. 12(g)(2). Plaintiff explains that a defendant only has two options for raising a defense under Federal Rule of Civil Procedure 12(b): (1) a defendant may raise any and all of his defenses in the answer, or (2) a defendant may raise any and all of its Rule 12(b) defenses in a motion filed before the answer. Dkt. 48. Plaintiff thus asserts that Defendant should have filed its Answer and Motion to Dismiss for Failure to State a Claim alongside its Motion to Dismiss for Lack of Jurisdiction. Dkt. 48, 20.

Defendant counters that its Answer and Motion to Dismiss for Failure to State a Claim were both properly filed on July 14, 2020, pursuant to Rule 12 of the Federal Rules of Civil Procedure. Dkt. 51, ¶ 7. Defendant concedes that, typically, Rule 12(a)(4)(A) of the Federal Rules of Civil Procedure provides that a responsive pleading is due "within 21 days after being served

with the summons and complaint." *Id.* at ¶ 2. However, pursuant to Rule 12(a)(4)(A) of the Federal Rules of Civil Procedure, "[u]nless the court sets a different time," if the Defendant "serv[es] a motion under this rule [the deadline to file an Answer is altered] as follows: if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after the notice of the court's action." Fed. R. Civ. P. 12(a)(4)(A).

Here, on June 2, 2020, Defendant filed its Motion to Dismiss for Lack of Jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Dkt. 51, ¶ 3. Subsequently, on June 24, 2020, the Court entered a Scheduling Order directing all parties to file an Answer within 20 days, thus setting a different time for Defendant to submit its Answer. *Id.* at ¶ 5. In compliance with this Court's June 24, 2020 Scheduling Order, Defendant timely filed an Answer to Plaintiff's Amended Complaint along with a 12(b)(6) Motion to Dismiss for Failure to State a Claim on July 14, 2020. *Id.* at ¶ 6.

In her Motion for Reconsideration, Plaintiff does not articulate any intervening change in controlling law or newly discovered evidence such that reconsideration would be proper. Accordingly, the Court will construe Plaintiff's motion as being brought "to correct a clear error of law." *See Hutchinson*, 994 F.2d at 1081.

The Court finds that Plaintiff has done nothing more than merely "relitigate [an] argument[] already considered and rejected by the Court" and raise a new argument that she had the opportunity to raise with her three motions for default judgment and in her first motion for leave to amend. *Kessler v. Charlottesville*, No. 3:19-cv-00044, 2020 WL 3302967, at *3 (W.D. Va. June 18, 2020); *see Pac. Ins. Co.*, 148 F.3d at 403 (noting that a motion for reconsideration "may not be used . . . to raise arguments which could have been raised prior to the issuance of the judgment").

Here, Plaintiff asks the Court to reconsider an argument that she had already raised in her three motions for default judgment and first motion for leave to amend: that Defendant improperly filed its Answer and Motion to Dismiss for Failure to State a Claim 40 days after the deadline for doing so had passed. Dkt. 48, 21. The record reflects that the Court already rejected this argument. Dkt. 45, 2. Moreover, Plaintiff cannot prevail on a motion for reconsideration by now raising for the first time her argument that Defendant waived its Rule 12(b)(6) defense of failure to state a claim by failing to join it with its preliminary Motion to Dismiss for Lack of Jurisdiction.

Additionally, in her Amended Motion for Reconsideration, Plaintiff merely reiterates her arguments contained within her original Motion for Reconsideration. *See* Dkt. 56.

Therefore, the Court concludes that there was no clear error of law that warrants reconsideration of its Order denying Plaintiff's first motion for default judgment, second motion for default judgment, third motion for default judgment, and first motion for leave to amend

IV. CONCLUSION

Accordingly, for the foregoing reasons, it is hereby ORDERED that Defendant's Motion to Dismiss for Lack of Jurisdiction (Dkt. 17) is GRANTED;

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss for Failure to State a Claim (Dkt. 30) is DENIED as moot;

IT IS FURTHER ORDERED that Plaintiff's Second Motion for Leave to Amend (Dkt. 46) is DENIED as moot;

IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration (Dkt. 48) is DENIED;

IT IS FURTHER ORDERED that Plaintiff's Motion to Withdraw (Dkt. 52) is DENIED as moot;

IT IS FURTHER ORDERED that Plaintiff's Amended Motion for Reconsideration (Dkt. 56) is DENIED; and

IT IS FURTHER ORDERED that this matter be DISMISSED with prejudice.

To appeal this decision, the movant must file, within (60) days of the date of this Order, a written Notice of Appeal with the Clerk of this Court. A written Notice of Appeal is a short statement stating a desire to appeal this Order and noting the date of the Order that he wants to appeal. The movant need not explain the grounds for appeal unless directed by the Court. Failure to file a timely Notice of Appeal waives movant's right to appeal this decision.

The Clerk is directed to forward copies of this order to counsel of record and Plaintiff at her address of record.

It is SO ORDERED.

Alexandria, Virginia
September 16, 2020

/s/
Rossie D. Alston, Jr.
United States District Judge

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

DORA L. ADKINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Case No. 1:20-cv-00361
	)	
DULLES HOTEL CORPORATION,	)	
	)	
Defendant.	)	

ORDER

This matter comes before the Court on Plaintiff Dora L. Adkins's ("Plaintiff") Motion for Leave from Court for Reconsideration ("Motion for Reconsideration"). Dkt. 71. Considering the Motion for Reconsideration, it is hereby ordered that the same is DENIED.

In her Motion for Reconsideration, Plaintiff takes issue with this Court's September 16, 2020 Order wherein the Court granted Defendant Dulles Hotel Corporation's ("Defendant") Motion to Dismiss on the basis of lack of subject matter jurisdiction. *See* Dkt. 65. As this Court explained in that Order, the Court was constrained to dismiss this action because this Court lacks subject matter jurisdiction over this case. *See* Dkt. 65 ("Accordingly, because the Court finds that both Plaintiff and Defendant are citizens of Virginia, granting Defendant's Motion to Dismiss for Lack of Jurisdiction is appropriate.").

Yet, Plaintiff has filed the instant Motion for Reconsideration, essentially arguing that the Court erred in granting Defendant's Motion to Dismiss because Defendant's "principle office is not [t]he Hilton Washington Dulles Airport located at 13869 Park Center Rd., Herndon, Virginia." Dkt. 71, 3. Instead, Plaintiff maintains that Defendant's principle place of business is "433 California St[.,]7th Floor, San Francisco, CA, 94104-2011, USA[.]" *Id.* This is the *same*

argument Plaintiff advanced in her Opposition to Defendant's Motion to Dismiss, Dkt. 20-1, 2-6 and which this Court rejected, Dkt. 65, 12-13. Accordingly, Plaintiff's Motion for Reconsideration is meritless. *See Dickerson*, 971 F. Supp. at 1024 (citing *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)) (finding that it is not appropriate for a party to move for reconsideration to request a court to "rethink what the [c]ourt ha[s] already thought through—rightly or wrongly.").

The Court recognizes that Plaintiff is a *pro se* litigant, and under traditional circumstances, such designation might warrant a significant degree of latitude. However, the Court in its September 16, 2020 Order specifically explained to Plaintiff that a motion for reconsideration is not the appropriate vehicle by which to reiterate an argument that the Court has already considered and rejected.

Further, in that same Order, bearing in mind Plaintiff's history of filing frivolous pleadings in this matter, the Court warned Plaintiff not to submit frivolous motions. Dkt. 65, 10. In the September 16, 2020 Order, this Court observed that:

> Plaintiff [had] [ ] filed a series of motions for default judgment, contending that Defendant improperly filed its Answer and its Motion to Dismiss for Failure to State a Claim 40 days after the Fed. R. Civ. P. 12(a)(1)(A)(i) deadline had elapsed. *See* Dkt. Nos. 26; 35; 38; 43. On July 30, 2020, the Court entered an Order denying each of these motions. Dkt. 45. Later that same day, though, Plaintiff filed her Second Motion for Leave to Amend, which reiterated the arguments set forth in her three previously-filed motions for default judgment and her first motion for leave to amend. Dkt. 46. Additionally, Plaintiff filed her Motion for Reconsideration, urging the Court to find Defendant in default because Defendant should have submitted its Answer and Motion to Dismiss for Failure to State a Claim alongside its preliminary motion to dismiss before the purported June 4, 2020 deadline. Dkt. 48.

Dkt. 65, 10. The Court also noted that, "Plaintiff's filings in the instant case fit squarely within her pattern of filing frivolous pleadings and motions in federal and state courts in Virginia." *Id.* at 11 (citing *Adkins v. HBL, LLC*, No. 1:17-cv-774, 2017 WL 4484259 (E.D. Va. Aug. 11, 2017);

Adkins v. Pub. Storage, No. 1:16-cv-1556 , 2017 WL 3449583 (E.D. Va. Jan. 24, 2017); *Adkins v. Whole Foods Mkt. Grp., Inc.*, No. 1:16-cv-00031, 2016 WL 1367170 (E.D. Va. Apr. 5, 2016); *see also Adkins v. CP/IPERS Arlington Hotel LLC*, 799 S.E.2d 929, 930 (Va. 2017) (observing that Plaintiff "has filed at least 41 *pro se* civil actions in the circuit courts of Northern Virginia, including 20 cases in the Circuit Court of Fairfax County, 17 cases in the Circuit Court of the City of Alexandria, and four cases in the Circuit Court of Arlington County")). In light of these seriatim and frivolous filings in this matter and in others, the Court cautioned "Plaintiff against continuing to file such frivolous pleadings and motions, as doing so may result in this Court imposing sanctions against Plaintiff pursuant to Federal Rule of Civil Procedure 11(c)." Dkt. 65, 11 (citing Fed. R. Civ. P. 11(c)).

This Court reiterates that cautionary guidance and adds that should Plaintiff continue to file meritless motions despite this case being closed, this Court may also enter a prefiling injunction against Plaintiff as it pertains to this matter.

Accordingly, for the reasons above, it is hereby ORDERED that Plaintiff's Motion for Reconsideration (Dkt. 71) is DENIED.

It is SO ORDERED.

Alexandria, Virginia
September 25, 2020

/s/
Rossie D. Alston, Jr.
United States District Judge

Appendix C – Relevant State Statutory and Rule Provisions:

Diversity Jurisdiction pursuant to 28 U.S.C. § 1332.

Synopsis of Rule of Law. "The term "principal place of business" in the federal diversity jurisdiction statute means the location from which the major activities of the corporation are directed, coordinated, and controlled by the high-level officers of the corporation."

Issue. "The question is whether the phrase "principal place of business" in the federal diversity jurisdiction statute refers to the place which serves as headquarters or the center of operations planning."