APPENDIX

FILED: May 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1045
(2:20-cv-00953-RMG-MGB)

In re: JIMMIE WASHINGTON, a/k/a Jim Washington

Petitioner

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Richardson, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: May 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1296
(2:20-cv-00953-RMG)

JIM WASHINGTON

Plaintiff - Appellant

v.

TRIDENT MEDICAL CENTER, LLC

Defendant - Appellee

ORDER

Appellant's motion to reconsider this court's order denying his motion to suspend the informal briefing schedule and extending the deadline for his informal opening brief to May 14, 2021, is denied as moot in light of this court's order denying his petition for rehearing in No. 21-1045, In re: Washington. The due date for appellant's informal opening brief is extended to May 28, 2021.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: April 14, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1296
(2:20-cv-00953-RMG)

JIM WASHINGTON

Plaintiff - Appellant

v.

TRIDENT MEDICAL CENTER, LLC

Defendant - Appellee

ORDER

The court denies the motion to suspend the proceedings in this case and extends the time for filing the informal opening brief to 05/14/2021.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: March 23, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1045
(2:20-cv-00953-RMG-MGB)

In re: JIMMIE WASHINGTON, a/k/a Jim Washington

Petitioner

J U D G M E N T

In accordance with the decision of this court, the petition for writ of mandamus is denied.

/s/ PATRICIA S. CONNOR, CLERK

PER CURIAM:

Jimmie Washington petitions for a writ of mandamus, alleging that the district court has unduly delayed acting on his 42 U.S.C. § 1983 action. He seeks an order from this court directing the district court to act. Our review of the district court's docket reveals that the district court dismissed Washington's second amended complaint on January 28, 2021. Accordingly, because the district court has recently decided Washington's case, we deny the mandamus petition and amended mandamus petition as moot. 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.

PETITION DENIED

FILED: March 23, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1045
(2:20-cv-00953-RMG-MGB)

In re: JIMMIE WASHINGTON, a/k/a Jim Washington

Petitioner

ORDER

After the district court entered judgment and denied post-judgment relief in the underlying matter, petitioner filed a notice of appeal in the district court and a motion for leave to file a second amended mandamus petition in this court.

The motion for leave to file a second amended mandamus petition is denied without prejudice to petitioner's appeal in the case.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1045

In re: JIMMIE WASHINGTON, a/k/a Jim Washington,

Petitioner.

On Petition for Writ of Mandamus. (2:20-cv-00953-RMG-MGB)

Submitted: March 18, 2021 Decided: March 23, 2021

Before WILKINSON and RICHARDSON, Circuit Judges, and SHEDD, Senior Circuit Judge.

Petition denied by unpublished per curiam opinion.

Jimmie Washington, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Filed: March 18, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEFING ORDER

No. 21-1296, Jim Washington v. Trident Medical Center, LLC
2:20-cv-00953-RMG

This case has been placed on the court's docket under the above-referenced number, which should be used on papers subsequently filed in this court. The case shall proceed on an informal briefing schedule pursuant to Local Rule 34(b). The Informal Brief Form is attached. Informal briefs shall be served and filed within the time provided in the following schedule. Only the original informal brief is required; no copies need be filed unless requested by the court.

Informal opening brief due: 04/12/2021

Informal response brief permitted within 14 days after service of informal opening brief (filing of an informal response brief is not required).

Informal reply brief permitted within 10 days after service of informal response brief, if any.

If the informal opening brief is not served and filed within the scheduled time, the case will be subject to dismissal pursuant to Local Rule 45 for failure to prosecute. Extensions of briefing deadlines are not favored by the court and are granted only for good cause stated in writing.

The court will not consider issues that are not specifically raised in the informal opening brief. If a transcript is necessary for consideration of an issue, appellant must order the transcript within 14 days of filing the notice of appeal, using the court's **Transcript Order Form**. Parties who qualify to proceed without prepayment of fees and costs may apply for preparation of the transcript at government expense. In direct criminal appeals in which the appellant has waived the right to counsel and elected to proceed pro se, the motion for transcript at government expense is filed in the Court of Appeals and transcript is ordered by the Court of Appeals. In other cases, the motion should be filed in the district court

in the first instance and must be accompanied by the requisite demonstration of a particularized need for the transcript to decide non-frivolous issues presented on appeal. The motion may be renewed in the Court of Appeals and must be accompanied by the informal brief.

The Court of Appeals reviews the district court or agency record in informally briefed cases. Therefore, no appendix is necessary. District court records are available to the parties through the Public Access to Court Electronic Records (PACER) system. See **https://www.pacer.gov**. Agency records are filed with the court of appeals in electronic or paper form. The parties may make advance arrangements to review agency records in pending appeals in the clerk's office.

The court will not appoint counsel or schedule a case for oral argument unless it concludes, after having reviewed the informal opening brief, that the case cannot be decided on the basis of the informal briefs and the record.

Counsel filing an informal brief on behalf of appellee must also complete and file an **Appearance of Counsel** form. Counsel for appellee will not appear on the court's opinion if an Appearance of Counsel form is not filed with the court.

Parties in civil and agency appeals **must** file a **Disclosure Statement** within **14 days** of the informal briefing order, except that a disclosure statement is **not** required from the United States, from indigent parties, or from state or local governments in pro se cases.

Parties are responsible for ensuring that social security numbers, juvenile names, dates of birth, and financial account numbers are redacted from any documents filed with the court and that any sealed materials are filed in accordance with the enclosed **Memorandum on Sealed and Confidential Materials**. Attorneys are required to file electronically in the Fourth Circuit. Information on obtaining an electronic filer account is available at **www.ca4.uscourts.gov**.

/s/ PATRICIA S. CONNOR, CLERK
By: Kirsten Hancock, Deputy Clerk

Copies: Jim Washington
209 Signet Drive
Eutawville, SC 29048

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

Jim Washington, Plaintiff, v. Trident Medical Center, LLC Defendant.	)	**Civil Action No. 2:20-00953-RMG** **ORDER AND OPINION**

Before the Court is Plaintiff's motion for reconsideration, (Dkt. No. 32). Plaintiff's motion is denied.

On January 28, 2021, the Court dismissed Plaintiff's Seconded Amended Complaint with prejudice, denied Plaintiff's motion for certification of interlocutory appeal and denied Plaintiff's motion to stay. *See* Order and Opinion, (Dkt. No. 28) (adopting the Report and Recommendation of the Magistrate Judge, (Dkt. No. 21), recommending this action dismissed with prejudice).

Plaintiff now moves the Court to reconsider in whole its prior order and opinion. Rule 59(e) of the Federal Rules of Civil Procedure permits a party to move to alter or amend a judgment within twenty-eight days of the judgment's entry. Fed. R. Civ. P. 59(e). "A district court has the discretion to grant a Rule 59(e) motion only in very narrow circumstances." *Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002). Specifically, the Court may reconsider its prior order only "(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." *Collison v. Int'l Chm. Workers Union*, 34 F.3d 233, 236 (4th Cir. 1994) (internal quotation marks omitted). However, "[a] Rule 59(e) motion should not be used as an opportunity to rehash issues already ruled upon because a litigant is displeased with the result." *Cooper v.*

Spartanburg Sch. Dist. Seven, No. 7:13-CV-00991-JMC, 2016 WL 7474380, at *2 (D.S.C. Dec. 29, 2016), *aff'd sub nom. Cooper v. Spartanburg Cty. Sch. Dist. No 7*, 693 F. App'x 218 (4th Cir. 2017) (citations omitted).

Plaintiff has not identified any change in controlling law or any new evidence not previously available. Instead, Plaintiff argues that that the Court's ruling was in clear error. Plaintiff's arguments, however, rehash those he already presented to this Court and which this Court analyzed and rejected. The ruling to dismiss Plaintiff's Second Amended Complaint was not a clear error of law nor was it manifestly unjust. Nor was the Court's ruling to deny Plaintiff's motion for interlocutory appeal and a stay pending that appeal.

Accordingly, there is no basis to reconsider the Court's prior order and opinion dismissing this case. The Court **DENIES** the motion for reconsideration. (Dkt. No. 32).

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
United States District Judge

February 16, 2021
Charleston, South Carolina

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

Jim Washington, Plaintiff, v. Trident Medical Center, LLC, Defendant.	Case No. 2:20-cv-953-RMG **ORDER AND OPINION**

This matter is before the Court on the Report and Recommendation ("R&R") of the Magistrate Judge (Dkt. No. 21) recommending that this Court dismiss Plaintiff Jim Washington's Seconded Amended Complaint with prejudice and without issuance and service of process. Also before the Court are motions by Plaintiff for (1) certification of interlocutory appeal and for (2) a stay of this case pending such an appeal. (Dkt. No. 25). For the reasons set forth below, the Court adopts the R&R as the order of the Court, dismisses Plaintiff's Second Amended Complaint with prejudice, denies Plaintiff's motion for interlocutory appeal, and denies Plaintiff's motion to stay.

I. Background and Relevant Facts

Plaintiff, proceeding *pro se* and *in forma pauperis*, brings this action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights to procedural due process and equal protection of the law under the Fourteenth Amendment. As the Magistrate Judge succinctly stated, the Seconded Amended Complaint ("SAC")—which centers around an underlying medical malpractice case initially filed in 2015 by Plaintiff—is best summarized as follows: "Defendant['s] attorneys had a meeting of the mind with each state court officials in

their individual capacities to conspire against Plaintiff to act under color of law of state laws as set forth herein at each stages of the Court proceedings to arbitrarily invoke the rules, policies, practices, procedures, statutes and customs of State of South Carolina as set forth herein for no rational or legitimate reason but solely for the purpose to cover-up all evidence that would entitle Plaintiff to relief from judgment with intent to discriminate against Plaintiff to treat him unequally to prevent him from enjoying his constitutional rights to equal protection and due process of law." (Dkt. No. 21 at 7) (citing Dkt. No. 19 at 4 (errors in original)).

Plaintiff filed his complaint on March 5, 2020. The Magistrate Judge issued a proper form order to Plaintiff on March 18, 2020. (Dkt. No. 6). Plaintiff filed an amended complaint on April 10, 2020. (Dkt. No. 12). On November 4, 2020, Plaintiff moved to amend his complaint. (Dkt. No. 16). The Court granted Plaintiff's motion, (Dkt. No. 17), and Plaintiff subsequently filed the SAC on November 11, 2020, (Dkt. No. 19).

On January 6, 2021, Plaintiff filed motions for (1) certification of interlocutory appeal and (2) a stay pending appellate review of the order granting interlocutory appeal. (Dkt. No. 25). "With respect to certification, Plaintiff identif[ies] as a controlling question of law whether he has met the sufficient plausibility standard of *Ashcroft v. Iqbal* and *Bell Atl. Corp. v. Twombly*." (*Id.* at 6). Plaintiff also seeks certification as to "whether the Rooker-Feldman doctrines bars" Plaintiff's claims. (*Id.* at 7).

On January 11, 2021, the Magistrate Judge issued an R&R recommending the SAC be dismissed with prejudice. (Dkt. No. 21). On January 25, 2021, Plaintiff filed objections to the R&R. (Dkt. No. 26).

II. Legal Standards

a. *Pro Se* Pleadings

This Court liberally construes complaints filed by *pro se* litigants to allow the development of a potentially meritorious case. *See Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972). 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 viable federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists. *See Weller v. Dep't of Social Services*, 901 F.2d 387 (4th Cir. 1990).

b. Magistrate Judge's Report and Recommendation

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, "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." *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). Plaintiff filed objections to the R&R, so it is reviewed *de novo*.

III. Discussion

The Court finds that the Magistrate Judge ably addressed the issues and correctly concluded that Plaintiff's SAC should be dismissed with prejudice. Namely, the Magistrate Judge correctly determined that Plaintiff has failed to allege plausibly a claim for civil conspiracy under either 42 U.S.C. § 1983 or 42 U.S.C. § 1985(3). *See* (Dkt. No. 21 at 9-10)

(explaining that the SAC's allegations that Defendant's attorneys' committed "extrinsic" fraud on the state court hearing Plaintiff's case "fatally undermines" the allegation that Defendant's attorneys *conspired* with court officials to deny Plaintiff his constitutional rights); *see also* (*Id.* at 10-12) (rejecting as "untenable" Plaintiff's contention that the state court's adverse rulings against Plaintiff constitute over acts in furtherance of a conspiracy with Defendant because, to find otherwise, would "deem plausible the idea that each of the state court judges involved in Plaintiff's underlying malpractice action independently rendered their respective judicial determinations in favor of Defendant, based not on their legal analyses of the case, but rather, on their participation in a clandestine conspiracy with Defendant"). Plaintiff filed objections to the R&R and the Court addresses them below.

The Court overrules Plaintiff's objections. (Dkt. No. 26 at 5-15). While numerous, Plaintiff's objections merely repeat the SAC's allegations and argue that these allegations successfully state various claims despite their conclusory nature. *See, e.g.*, (*Id.* at 5-6).[1] In sum, Plaintiff's objections are non-specific as they are "unrelated to the dispositive portions of the

[1] Plaintiff also argues that the Magistrate Judge incorrectly construed the SAC's "class of one" equal protection claim as a statutory claim under 42 U.S.C. § 1985(3). (Dkt. No. 26 at 9) ("Despite Plaintiff explicit notice on page 21 of his [SAC] that his cause of action is based under a class of one theory the magistrate judge R&R on pages 12-14 misconstrue Plaintiff class of one equal protection into a 24 U.S.C. statute 1985(3) class-based" claim) (errors in original). Assuming without finding that the Magistrate Judge incorrectly construed Plaintiff's "class of one" claim, the Court finds the error harmless. Plaintiff's "class of one" equal protection claim fails for many of the same reasons Plaintiff's § 1983 claim fails. For example, as noted by the Magistrate Judge in the R&R, Plaintiff has not allegedly plausibly that Defendant—a private entity—acted under color of state law. For this reason alone, Plaintiff's class of one claim fails. *See Cainhoy Athletic Soccer Club v. Town of Mount Pleasant*, 225 F. Supp. 3d 514, 524 (D.S.C. 2016) (noting "[a] [§ 1983] plaintiff must allege a deprivation of a federal right and must allege that the person who deprived plaintiff of that right acted under color of state law); *Id.* (noting"[a] single plaintiff may bring an equal protection claim as a 'class of one, where the plaintiff alleges that she has been intentionally treated differently from others similarly situated [by a government actor] and that there is no rational basis for the difference in treatment'") (*Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000)).

Report, or merely restate Plaintiff's claims" and the Court will not discuss them further. *Lester v. Michael Henthorne of Littler Mendleson PC*, No. CV 3:14-3625-TMC, 2014 WL 11531106, at *1 (D.S.C. Oct. 28, 2014), *aff'd sub nom. Lester v. Michael Henthorne of Littler Mendelson PC*, 593 F. App'x 239 (4th Cir. 2015).

Further, to the extent that Plaintiff asks this Court to certify an "interlocutory appeal" and to "stay" this case pending that appeal, the Court denies the request. Pursuant to 28 U.S.C. § 1292(b), when a district judge is of the opinion that an "order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order." The Court of Appeals may then, at its discretion, permit an interlocutory appeal after an appropriate application is made. Here, Plaintiff is attempting to use the interlocutory appeal mechanism to test whether the SAC states plausible claims for relief. (Dkt. No. 25 at 6-7). This is a patently improper use of § 1292(b). At bottom, Plaintiff is attempting to subvert this Court's review of his complaint as mandated by 28 U.S.C. § 1915(e)(2)(B) and the Court rejects the effort. *See Nagy v. FMC Butner*, 376 F.3d 252, 256 (4th Cir. 2004) (explaining that the granting of *in forma pauperis* status in a case triggers a district court's duty to "sift out claims that Congress found not to warrant extended judicial treatment").

IV. Conclusion

For the reasons set forth above, the Court **ADOPTS** the R&R (Dkt. No. 21) as the order of Court, **DISMISSES** Plaintiff's SAC **WITH PREJUDICE**, **DENIES** Plaintiff's motion for certification of interlocutory appeal and **DENIES** Plaintiff's motion to stay (Dkt. No. 25).

AND IT IS SO ORDERED.

AO 450 (SCD 04-2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Jim Washington *Plaintiff* v. Trident Medical Center LLC *Defendant*	)	Civil Action No. 2:20-cv-00953-RMG

JUDGMENT IN A CIVIL ACTION

The court has ordered that

X other: having adopted the Report and Recommendation of Magistrate Judge Mary Gordon Baker, dismissing Plaintiff's second amended complaint, denying Plaintiff's motion to stay, and denying Plaintiff's motion for certification of interlocutory appeal, this action is dismissed with prejudice and without issuance or service of process.

This action was

X decided by the Honorable Richard M. Gergel, United States District Judge, presiding.

Date: January 29, 2021 *CLERK OF COURT* Robin L. Blume

s/S. Shealy

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Jim Washington,	)	Case No. 2:20-cv-00953-RMG-MGB
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**REPORT AND RECOMMENDATION**
Trident Medical Center, LLC,	)	
	)	
Defendant.	)	
	)	

Plaintiff Jim Washington, proceeding *pro se* and *in forma pauperis*, brings this action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights to procedural due process and equal protection of the law under the Fourteenth Amendment. Under 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), the undersigned is authorized to review all pretrial matters in such *pro se* cases and submit findings and a recommendation to the assigned district judge. For the reasons discussed below, the undersigned recommends that this action be summarily dismissed with prejudice and without issuance or service of process.

BACKGROUND

The instant case centers around an underlying medical malpractice action filed by Plaintiff against Defendant in the South Carolina Court of Common Pleas on or around September 11, 2015.[1] (*See* Case No. 2015-CP-10-5000.) On January 14, 2016, the circuit court judge issued a check-the-box Form 4 ("Judgment in a Civil Case") granting Defendant's motion to dismiss Plaintiff's case. On January 27, 2016, Plaintiff filed a motion to reconsider the dismissal of his

[1] The Court takes judicial notice of Plaintiff's underlying state court action. *See Philips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (explaining that courts "may properly take judicial notice of matters of public record"); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'"). For Plaintiff's underlying state court action, *see generally* https://jcmsweb.charlestoncounty.org/PublicIndex/PISearch.aspx (with search parameters limited by Plaintiff's name).

action pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP"). Within the body of this motion, Plaintiff also included two requests "for relief from judgement or order" pursuant to Rule 60(b)(1) and (3), SCRCP. The circuit court then issued a written order on February 5, 2016, formally dismissing Plaintiff's lawsuit with prejudice. More specifically, the circuit court judge explained that, "having reviewed the pleadings and having considered arguments and legal memoranda of the parties," Plaintiff had clearly failed to comply with certain statutory pre-litigation requirements, including the filing of an expert witness affidavit pursuant to S.C. Code § 15-79-125(A), and his medical malpractice lawsuit was therefore subject to dismissal.[2]

Plaintiff filed a notice of appeal on March 4, 2016, and the South Carolina Court of Appeals affirmed the circuit court's decision by order dated January 10, 2018. The court of appeals then denied Plaintiff's subsequent petition for rehearing on February 22, 2018. (*See* Case No. 2016-000495.) The South Carolina Supreme Court denied Plaintiff's petition for a writ of certiorari shortly thereafter and the remittitur was issued on May 30, 2018. (*See* Case No. 2018-000489.)

Following the dismissal of his lawsuit, Plaintiff proceeded to file a series of unsuccessful motions in circuit court, which are now the focus of the present § 1983 action. Although Plaintiff's allegations are somewhat convoluted and difficult to follow, it appears Plaintiff filed a "motion to reconsider conclusion" with the circuit court on July 6, 2018, along with a subsequent letter requesting a hearing on said motion. In addition to challenging the merits of the circuit court's February 5, 2016 order, Plaintiff's motion raised allegations of extrinsic fraud against Defendant's attorneys for intentionally misrepresenting the facts of Plaintiff's medical treatment to the courts. Plaintiff also argued that the circuit court judge never explicitly adjudicated his Rule 60(b)

[2] Of relevance to Plaintiff's §1983 claim, the circuit court's order did not explicitly reference Plaintiff's January 27, 2016 motion to reconsider.

claims[3] contained within in his Rule 59(e) motion for reconsideration filed January 27, 2016 prior to issuing the final order of dismissal.[4]

On August 20, 2018, Defendant's attorneys filed a letter with the Clerk of Court objecting to Plaintiff's request for a hearing on his July 6, 2018 motion to reconsider. The letter stated, "[i]n light of the remittitur, this matter is concluded and no further proceedings should be permitted. Therefore, we respectfully request that the Clerk not set a hearing on the motion and that it be denied." Before the circuit court could respond, Plaintiff filed a separate motion to vacate the judgment and amend the pleadings, apparently labeled as a Rule 60(b) motion, reiterating those same arguments raised in his most recent motion for reconsideration. The parties briefed the issues raised in Plaintiff's motion to vacate and a hearing took place before a circuit court judge on February 7, 2018.

The circuit court ultimately rejected Plaintiff's arguments, explaining that matters decided by the appellate court cannot be reconsidered or relitigated in trial court and, thus, the circuit court lacked jurisdiction to rehear Plaintiff's contentions regarding the merits of his malpractice claims. The court also found that to the extent the trial court judge did not expressly resolve Plaintiff's "pending" Rule 60(b) claims in the final written order on February 5, 2016, Plaintiff did not raise the issue with the judge or with the appellate court during his subsequent appeal, and, thus, had

[3] Plaintiff appears to consider the two Rule 60(b) claims contained within his Rule 59(e) motion as actual "motions" separate and distinct from his Rule 59(e) motion that necessitated an independent analysis and ruling.

[4] Plaintiff seems to suggest that after the South Carolina Supreme Court issued the remittitur on May 30, 2018, he called the circuit court to inquire about his "pending" Rule 60(b) claims. The presiding circuit court judge eventually responded via letter dated June 22, 2018, "stating that the Court of Appeals affirmed his order and that all post trial motions were final and instructed Plaintiff to contact his law clerk for further questions on the matter." (Dkt. No. 19 at 37; *see also* Dkt. No. 1-1 at 2. "The above referenced matter has been closed. Enclosed is a copy of the Court of Appeals' opinion affirming my order and concluding all motions filed.") Plaintiff claims that at some point on or around October 20, 2018, he spoke with a law clerk who, according to Plaintiff, agreed that his Rule 60(b) claims from January 2016 were still pending and/or viable. (Dkt. No. 19 at 55.) The undersigned notes that while Plaintiff seems to characterize and/or interpret this alleged conversation with the law clerk as an "order" or "decision" of the court (*see, e.g., id.* at 9, 40-41, 51), there is nothing in the state court's records to suggest that any such order was issued by the assigned circuit court judge or that this communication even occurred.

effectively abandoned the argument. The court therefore concluded that it was not appropriate for Plaintiff to raise the issue at this stage, two years after-the-fact. And finally, with respect to Plaintiff's allegations of extrinsic fraud, the circuit court "thoroughly reviewed Plaintiff's filings and [found] no evidence of any fraud" as it pertained to Defendant's counsel. Plaintiff's motion to vacate was therefore denied.

On February 22, 2019, Plaintiff filed a motion for reconsideration of his motion to vacate under Rules 59(e) and 60(b), SCRCP, once again alleging extrinsic fraud with respect to Defendant's counsel and arguing that he was not given the opportunity to fully present his case in light of his unanswered Rule 60(b) claims. The parties briefed the issues and the circuit court issued an order on March 18, 2019, finding that Plaintiff had "presented no novel facts, arguments, or theories" in support of his motion, and that there was nothing in the record the court "may have misunderstood, failed to fully consider, or perhaps failed to rule on." Plaintiff's motion to reconsider was therefore dismissed.

Plaintiff filed a notice of appeal with the South Carolina Court of Appeals on April 18, 2019, but his claim was later dismissed on January 23, 2020, for failure to serve the record as required under Rule 210(c) of the South Carolina Appellate Court Rules ("SCACR").[5] (*See* Case No. 2019-000640.) Plaintiff then filed a petition for a writ of certiorari, which the South Carolina Supreme Court dismissed without prejudice on February 5, 2020, because Plaintiff had failed to file a petition for reinstatement or rehearing with the court of appeals. (*See* Case No. 2020-000173.)

Plaintiff now brings this federal action against Defendant pursuant to 42 U.S.C. § 1983, claiming that Defendant's attorneys violated his Fourteenth Amendment rights to due process and

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[5] Plaintiff claims that he filed a petition for supersedeas/stay under Rule 41, SCACR, on October 28, 2019, requesting a stay of the appeal proceeding and seeking remand in order to allow the circuit court to adjudicate his unresolved Rule 60(b) claims. (Dkt. No. 19, at 23–24.) The parties briefed the issues and the South Carolina Court of Appeals denied Plaintiff's motion.

equal protection of the law by conspiring with state court officials to "intentionally discriminate against Plaintiff" throughout the course of his underlying medical malpractice case. (Dkt. No. 19 at 4.) After reviewing Plaintiff's initial Complaint (Dkt. No. 1), the undersigned determined that Plaintiff's claims were subject to summary dismissal for failure to state a facially plausible claim for relief. The undersigned issued a proper form order notifying Plaintiff of this determination, explaining why his allegations failed to state a claim under § 1983, and providing him an opportunity to submit an amended complaint that resolved these deficiencies. (Dkt. No. 6.) Plaintiff filed an Amended Complaint shortly thereafter (Dkt. No. 12), followed by a Motion to Amend/Correct on November 4, 2020 (Dkt. No. 16), which the undersigned granted (Dkt. No. 17). Accordingly, the undersigned's assessment here is limited to Plaintiff's Second Amended Complaint (Dkt. No. 19), which replaces both of his previous complaints in this action.

STANDARD OF REVIEW

Under the established local procedure in this judicial district, a careful review has been made of Plaintiff's *pro se* Second Amended Complaint. Specifically, the undersigned has evaluated Plaintiff's claims pursuant to the procedural provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978).

Pursuant to 28 U.S.C. § 1915, an indigent litigant, like Plaintiff, may under certain circumstances commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action "fails to state a claim on which relief may be granted," "is frivolous or malicious," or "seeks monetary relief against a defendant

who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *see also Nagy v. FMC Butner*, 376 F.3d 252, 256 (4th Cir. 2004) (explaining that the granting of *in forma pauperis* status in a case triggers a district court's duty to "sift out claims that Congress found not to warrant extended judicial treatment"). A complaint is frivolous if it is "clearly baseless" and makes "fanciful allegations." *Denton*, 504 U.S. at 32–33 (internal citations and quotation marks omitted); *see also Neitzke*, 490 U.S. at 325 ("A suit is frivolous if it lacks an arguable basis in law or fact.")

In determining whether a *pro se* complaint states a claim on which relief may be granted, the court must look to the familiar pleading standard under Rule 8(a)(2) of the Federal Rules of Civil Procedure. Specifically, a complaint filed in federal court "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" rather than merely "conceivable." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court is not bound, however, to accept as true a complaint's bare legal conclusions. *Id.* When "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), the complaint fails to state a claim to relief for purposes of § 1915(e)(2)(B).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon*, 574 F.2d at 1151. A federal court is therefore charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure to allege facts that set forth a cognizable claim under Rule 8(a)(2). *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions").

DISCUSSION

Although Plaintiff's Second Amended Complaint is significantly longer than his previous two complaints, the convoluted 111-page pleading ultimately boils down to the same deficient, conclusory claims raised in those earlier filings:

> Defendant['s] attorneys had a meeting of the mind with each state court officials in their individual capacities to conspire against Plaintiff to act under color of law of state laws as set forth herein at each stages of the Court proceedings to arbitrarily **invoke the rules, policies, practices, procedures, statutes and customs of State of** South Carolina as set forth herein for no rational or legitimate reason but solely for the purpose to cover-up all evidence that would entitle Plaintiff to relief from judgment with intent to discriminate against Plaintiff to treat him unequally to prevent him from enjoying his constitutional rights to equal protection and due process of law.

(Dkt. No. 19 at 4 (errors in original).) Thus, for the reasons set forth below, the undersigned finds that Plaintiff's Second Amended Complaint fails to remedy the pleading deficiencies identified in the undersigned's prior order (Dkt. No. 6) and is therefore subject to summary dismissal.

I. Civil Conspiracy Pursuant to 42 U.S.C. § 1983

To state a claim to relief under 42 U.S.C. § 1983, the 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. *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012). In other words, a plaintiff suing under § 1983 must establish that his constitutional rights were violated through conduct that constitutes "state action." *See, e.g., Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982). Purely private conduct, no matter how wrongful, does not constitute state action under § 1983. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982) (explaining that 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").

As Plaintiff acknowledges in his Second Amended Complaint, Defendant is a private entity. (Dkt. No. 19 at 4.) Thus, Defendant's actions and those of its counsel are generally precluded from suit under § 1983. *See Jackson v. Williams*, No. 3:10-cv-3022-JFA, 2010 WL 5644798, at *2 (D.S.C. Dec. 9, 2010), *adopted*, 2011 WL 247883 (D.S.C. Jan. 26, 2011) ("An attorney, whether retained, court-appointed, or a public defender, does not act under color of state law, which is a jurisdictional prerequisite for any civil action brought under § 1983.") In some instances, however, a private entity that jointly participates in constitutional wrongdoing with a state official may be said to have engaged in state action under § 1983. *See Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980). Here, Plaintiff attempts to show such participation by alleging that Defendant's attorneys conspired with the various state court judges involved in his medical malpractice lawsuit "to discriminate against him with intent to treating him differently than other similarly situated petitioners . . . [and] to deprive him of his federal constitutional rights to equal protection of the law and due process of law." (Dkt. No. 19 at 106.) Plaintiff's allegations of conspiracy fall short of the requisite state action under § 1983 for several reasons.

A civil conspiracy under 42 U.S.C. § 1983 requires that the plaintiff prove: (1) defendants acted jointly in concert; (2) that some overt act was done in furtherance of the conspiracy; and (3) the conspiracy resulted in the deprivation of a constitutional right.[6] *See Hinkle v. City of*

[6] As noted above, Plaintiff bases his claims on the deprivation of two constitutional rights: (1) procedural due process and (2) equal protection under the law, the latter of which is generally governed by 42 U.S.C. § 1985(3). *See Cockrum v. Donald J. Trump for President, Inc.*, 365 F. Supp. 3d 652, 661 (E.D. Va. 2019), *dismissed*, No. 19-1398, 2019 WL 5152518 (4th Cir. July 5, 2019) (explaining that § 1985(3) protects against conspiracies that deprive persons of "the equal protection of the laws, or of equal privileges and immunities under the laws"). Although Plaintiff does not make this distinction in his Second Amended Complaint, his allegations suggest that he is invoking both §§ 1983 and 1985. *See United States v. Blackstock*, 513 F.3d 128, 131 (4th Cir. 2008) (holding that courts must consider *pro se* filings according to their contents, regardless of the label given). (*See also* Dkt. No. 6, in which the undersigned advised Plaintiff with respect to both §§ 1983 and 1985.) The undersigned therefore considers Plaintiff's allegations

Clarksburg, W. Va., 81 F.3d 416, 421 (4th Cir. 1996). "Where the complaint makes on conclusory allegations of a conspiracy under § 1983 and fails to demonstrate any agreement c meeting of the minds among the defendants, the court may properly dismiss the complaint." *Sc McNeill v. Jhonson*, No. 3:18-cv-188-FDW, 2018 WL 3868809, at *6 (W.D.N.C. Aug. 14, 201 (dismissing *pro se* § 1983 conspiracy claim during initial review); *see also Williams v. Caved* No. 3:13-cv-00672-HEH, 2014 WL 852038, at *2 (E.D. Va. Mar. 4, 2014), *aff'd*, No. 14-700 (4th Cir. Sept. 26, 2014) (explaining that for purposes of initial review under § 1915(e)(2)(B), *pro se* plaintiff alleging civil conspiracy must "plead facts that would reasonably lead to th inference that [defendants] positively or tacitly came to a mutual understanding to try t accomplish a common and unlawful plan") (internal citations and quotation marks omitted)).

In the instant case, Plaintiff's own allegations fatally undermine any showing of a agreement or meeting of the minds, as he repeatedly asserts that Defendant's attorneys perpetrate extrinsic fraud on the court, which influenced and ultimately resulted in the state courts' advers judicial determinations against Plaintiff. (*See, e.g.*, Dkt. No. 19, at 5–6 (alleging that Defendant' attorneys "committed extrinsic fraud upon the circuit court" by "deliberatel misrepresenting . . . facts that Defendant met the standard of care in treatment" and concealin certain "documents and information from the Court"); at 7 (alleging that Defendant's attorney "defrauded the Court of Appeals and the S.C. Supreme Court" by "deliberately misrepresenting i the first appellate proceedings" that the circuit court had dismissed Plaintiff's January 27, 201 motion to reconsider, despite the fact that his Rule 60(b) claims had not yet been adjudicated); a 17 (alleging that because Defendant "deliberately misrepresented the facts to the court," certain

under the lens of both statutes in this Report and Recommendation; this first section of the discussion addresses th alleged violations of Plaintiff's due process rights under § 1983, and the second section addresses the allege violations of his equal protection rights under § 1985(3).

documents "were excluded" from the record); at 46 (alleging that Defendant "obtained" the February 5, 2016 judgment "by extrinsic fraud upon the court"); at 76 (alleging that Defendant's attorneys attempted to "improperly influence" and "defraud the court" by sending the Clerk of Court a letter on or around September 4, 2018, opposing Plaintiff's request for a hearing on the basis that "all post-trial motions were concluded on appeal").)

As the undersigned noted in the proper form order, "misleading court officials is inconsistent with conspiring with them." (Dkt. No. 6.) To the contrary, Plaintiff's repeated allegations that Defendant's attorneys misled and defrauded the state court in order to violate his due process rights and obtain favorable judgments sound entirely in private action—not mutual understanding or joint concert. *See Ellison v. Proffit*, No. 4:16-cv-00847-BHH-KDW, 2017 WL 598511, at *7 (D.S.C. Jan. 24, 2017), *adopted*, 2017 WL 588734 (D.S.C. Feb. 13, 2017) (finding that plaintiff's allegations did not "establish a plausible § 1983 civil-conspiracy claim because they fail[ed] to show any agreement or mutual understanding" among the particular defendants); *Hinkle*, 81 F.3d at 421 (reiterating that the plaintiff must demonstrate that "each member of the alleged conspiracy shared the same conspiratorial objective"). Thus, Plaintiff's Second Amended Complaint fails to show that Defendant worked "jointly in concert" with a state actor as required under § 1983.

Moreover, notwithstanding Plaintiff's contradictory claims regarding Defendant's fraud on the court, the undersigned finds that Plaintiff's Second Amended Complaint also fails to allege an overt act in furtherance of the purported conspiracy sufficient to "nudge[] [his] claims across the line from conceivable to plausible" under Rule 8(a). *Twombly*, 550 U.S. at 555. In an attempt to show state action, Plaintiff points generally to the unfavorable rulings issued in his medical malpractice lawsuit, suggesting that the state courts' failure to adopt his legal positions reflects

their participation in the conspiracy. (*See, e.g.*, Dkt. No. 19, at 17 (alleging that the circuit court "had a meeting of the mind[s] and made an agreement with Defendant's attorney . . . to further the conspiracy" by adopting Defendant's legal position as set forth in its memorandum in opposition to Plaintiff's motion for reconsideration filed on March 8, 2019); at 24 (alleging that "the Court of Appeals officials agree[d] to conspire with Defendant's attorney" by rejecting "all of Plaintiff['s] grounds in the Supersedeas/Stay proceeding to deny stay of the appeal and remand solely for the purpose to discriminate. . . ."); at 70–74 (alleging furtherance of conspiracy by failing to rule in accordance with the "controlling law" as set forth in Plaintiff's motion to vacate); at 107–08 (alleging that the court intentionally adopted "Defendant's attorneys[']] grounds to deprive Plaintiff of his federal constitutional rights").)

Aside from the conclusory, speculative nature of the allegations above, it is well-established that Plaintiff's lack of success in the underlying state court litigation is insufficient to raise an inference of conspiracy under § 1983. To be sure,

> The nature of the judicial function in our adversarial system is to weigh competing arguments in light of the relevant facts and applicable law and, though often difficult, to decide which side wins and which side loses. The fact that a judge accepts one party's arguments and rejects another's cannot, without more, give rise to an inference that the judge conspired with the prevailing party. Were it otherwise, courts would be flooded with conspiracy claims against judges by disgruntled litigants.

Stephens v. Herring, 827 F. Supp. 359, 365–66 (E.D. Va. 1993); *see also Paul v. S.C. Dep't of Transp.*, No. 3:13-cv-1852-CMC-PJG, 2014 WL 5025815, at *5 (D.S.C. Oct. 8, 2014), *aff'd*, 599 F. App'x 108 (4th Cir. 2015) (summarily dismissing *pro se* § 1983 conspiracy claim because the state court's decision to ultimately accept the defendants' legal position over that of the plaintiff in the underlying state court action—despite possible misrepresentations by the defendants during those proceedings—was insufficient to state a plausible claim to relief); *Ellison*, 2017 WL 598511, at *7 (dismissing civil conspiracy claims as conclusory where plaintiff's only allegations of "overt

action" were the defendants' litigation tactics, including alleged misrepresentations and the withholding of information, that impacted the outcome of the lawsuit and "made it more difficult" for plaintiff to prevail in the litigation).

Based on the above, the undersigned finds that the allegations in Plaintiff's Second Amended Complaint are conclusory, frivolous, and therefore insufficient to state a claim upon which relief may be granted. To conclude otherwise would deem plausible the idea that each of the state court judges involved in Plaintiff's underlying malpractice action independently rendered their respective judicial determinations in favor of Defendant, based not on their legal analyses of the case, but rather, on their participation in a clandestine conspiracy with Defendant to deprive Plaintiff of his constitutional rights. Such a position is simply untenable. *See Paul*, 2014 WL 5025815, at *10 (citing *Hinkle*, 81 F.3d at 422) ("[F]actual allegations must reasonably lead to the inference that the defendants came to a mutual understanding to try to 'accomplish a common and unlawful plan,' and must amount to more than 'rank speculation and conjecture,' especially when the actions are capable of innocent interpretation."); *see also Nanni v. Aberdeen Marketplace, Inc.*, 878 F.3d 447, 452 (4th Cir. 2017) ("[T]o satisfy the plausibility standard, a plaintiff is not required to plead factual allegations in great detail, but the allegations must contain sufficient factual heft . . . to allow a court, drawing on judicial experience and common sense, to infer more than the mere possibility of that which is alleged."). The undersigned therefore recommends that the Court summarily dismiss Plaintiff's allegations of civil conspiracy under § 1983.

II. Civil Conspiracy Pursuant to 42 U.S.C. § 1985(3)

As noted above, Plaintiff's allegations that Defendant discriminated against him and violated his right to equal protection under the law suggest that he is also seeking relief pursuant to 42 U.S.C. § 1985(3). (*See supra* at pp. 8–9 n.6.) Claims raised under § 1985(3) are limited to

private conspiracies predicated on "racial, or perhaps otherwise class-based invidiously discriminatory animus." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). To state a claim under § 1985(3), a plaintiff must allege: (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy. *Simmons v. Poe*, 47 F.3d 1370, 1376 77 (4th Cir. 1995). Plaintiff's Second Amended Complaint fails to state a facially plausible claim to relief under § 1985(3) for several reasons.

At the outset, the law is well-settled that to establish a civil conspiracy pursuant to § 1985(3), the plaintiff must show an agreement or a "meeting of the minds" by the defendants to violate the plaintiff's constitutional rights. *See id.* at 1377. Thus, for the same reasons Plaintiff's conspiracy claim falls short under § 1983, Plaintiff's Second Amended Complaint likewise fails to allege facts sufficient to infer the mutual understanding or joint action required to raise a civil conspiracy claim under § 1985(3). (*See supra* at pp. 9 12.) *See, e.g., Gunn v. Cheeks*, No. 7:18-cv-3427-HMH-KFM, 2019 WL 831122, at *2 (D.S.C. Jan. 22, 2019), *adopted*, 2019 WL 804658 (D.S.C. Feb. 21, 2019) (dismissing § 1985(3) claim during initial review where *pro se* plaintiff "set forth only conclusory allegations," because "conjecture and speculation are insufficient to demonstrate a conspiratorial agreement" or "mutual understanding" as required § 1985(3)); *see also Simmons*, 47 F.3d at 1377 (noting that the Fourth Circuit has "specifically rejected section 1985 claims whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts").

Second, as the undersigned explained to Plaintiff in the proper form order (Dkt. No. 6), civil conspiracy under § 1985(3) must be motivated by a "class-based, invidiously discriminatory

animus." *Griffin*, 403 U.S. at 102; *see also Knight v. Johnson*, No. 2:15-cv-03199-DCN-MGB, 2018 WL 3615224, at *9 (D.S.C. May 9, 2018), *adopted*, 2018 WL 3611454 (D.S.C. July 26, 2018), *aff'd sub nom. Knight v. Chenega Sec., Inc.*, 757 F. App'x 286 (4th Cir. 2019) (recognizing that "Section 1985(3) does not encompass conspiracies motivated by economic, political or commercial animus") (internal citations omitted). Other than Plaintiff's general, conclusory accusations that Defendant conspired with state court officials to "discriminate against Plaintiff" and "treat him unequally," (*see, e.g.*, Dkt. No. 19 at 4), Plaintiff does not raise any factual allegations that indicate a class-based, invidiously discriminatory animus. *See Equity in Athletics, Inc. v. Dep't of Educ.*, 639 F.3d 91, 108 (4th Cir. 2011) (noting that "[i]n order to survive a motion to dismiss an equal protection claim, a plaintiff must plead sufficient facts to demonstrate plausibly that [it] was treated differently from others who were similarly situated and that the unequal treatment was the result of discriminatory animus"); *see also Twombly*, 550 U.S. at 555 (finding that a plaintiff cannot satisfy the basic pleading standard with complaints containing only "labels and conclusions" or a "formulaic recitation of the elements of a cause of action"). Without the requisite showing of unlawful discriminatory animus, the undersigned finds that Plaintiff cannot raise a plausible claim for civil conspiracy pursuant to § 1985(3) and therefore recommends that the Court summarily dismiss this cause of action as well.

CONCLUSION

It is therefore **RECOMMENDED** that the District Court summarily dismiss this action with prejudice and without issuance or service of process.[7]

[7] The Fourth Circuit Court of Appeals has found that where the district court has already afforded the *pro se* plaintiff an opportunity to amend his or her complaint, as the undersigned did here, the district court has the discretion to afford the plaintiff another opportunity to amend or may "dismiss the complaint with prejudice, thereby rendering the dismissal order a final, appealable order." *Workman v. Morrison Healthcare*, 724 F. App'x. 280 (4th Cir. June 4, 2018) (internal citations omitted). Because Plaintiff was given an opportunity to amend his claims and failed to cure

MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

January 11, 2021
Charleston, South Carolina

the identified deficiencies in his Second Amended Complaint, the undersigned recommends, in keeping with the Fourth Circuit precedent, that this action be dismissed with prejudice.