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UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-2041  
(5:19-cv-00425-D)

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RANDY DINGLE

Plaintiff - Appellant

v.

TALMAGE S. BAGGETT, Judge; ELLEN B. HANCOX, Trial Clerk  
Administrator; RONNIE MONROE MITCHELL, Attorney; MICKEY  
LOCKLEAR, Deputy; OFFICER MORRISON; WALDEN; CLAVION  
MORNING, Deputy Sgt.; WILLIAM DANCY, Security Guard; JOE UTLEY,  
Administrator - Tax Office; TIMOTHY J. PETERKIN, Attorney; ENNIS W.  
WRIGHT, Sheriff; DEPUTY SHERIFF MURPHY, Deputy; TARDRA ADAMS,  
Chief Jailer - CC Detention Center; BRENDA ENGLIS, Capt. Deputy Jailer - CC  
Detention Center; NICHOLE HOKING, Capt. Deputy Jailer Adm. - CC Detention  
Center; DON WILLIAM, Capt. Deputy Jailer - CC Detention Center; JESSICA  
BOON, Jail Admin. CC Detention Center; T. COOPER, Deputy - CC Detention  
Center; PATRICIA ELLEN WATSON DINGLE, Individual; NATASHIA  
DINGLE, Individual; TORRY JESSUP, DMV Administrator Commission;  
ADDIE LEE SMALLWOOD, Individual; LARRY FREEMAN, Individual;  
JOSEPH NEWTON CALLAWAY, II; ALONZO DINGLE, Individual;  
JACQUELYN FAYE CARTER, Individual; W. R. DARDEN, Magistrate;  
MEGAN CHAVIS, Clerk - Deputy CSC; BRUCE BULLOCK, Long Branch /  
Southeastern Home Sale; WILLIAM R. WEST, JR., District Attorney, unknown  
Bill West; GINA V. HAWKINS; JEANNETTE M. COUNCIL, Chair - County  
Commission; W. MARSHALL FAIRCLOTH, Vice Chair - Cumberland Co.  
Commissioner; GLENN C. ADAMS, Board of Commissioners; MICHAEL C.  
BOOSE, Board of Commissioners; CHARLES EVANS, Board of  
Commissioners; JIMMY KEEFE, Board of Commissioners; LARRY  
LANCASTER, Board of Commissioners; MICHAEL B. STEIN, Attorney -  
Hutchens Law; SERGEANT MANNING, Sheriff Deputy; JOHN HOLLEY,

Sheriff; CARL WALL, SBI Agent; EARL MOOSE BUTLER, Retired Sheriff; MARK ROWDEN, Pastor; JOSEPH A. BLEDSOE, III, Trustee; LEE WARREN, Register of Deeds; R. GREGG EDWARDS, Attorney; WILLIAM ROB LEWIS, Judge; MERYL CARTER MAYNOR, Individual; MAYNOR CONNELL, Coach - Individual; TIM MANNING, Sheriff; LINWOOD EDWARDS, Individual; JOHNNIE MACK SPIVEY; JAMES EDWARD SPIVEY; JEFFERY JEROME SPIVEY; FRANCIS KEITH SPIVEY; LINWOOD JAMES, Pastor; OLLIE HOPKINS; ARLEATHIA CROSS; DENNIS PETERSON, Major - Sheriff's Dept.; BENJAMIN JAMES, Coach; JASON L. HARRELL, Aent - Sheriff; DONALD MELVIN; EUGENE BENJAMIN CARTER; TERRY RAY, Major; PETER ELLISON DINGLE, Retired; ELIZABETH JAMES KILGORE; MAXIN DENISE MELVIN; DARREN R. WHITEHURST; DAVID E. MOORE, JR.; STEPHEN C. STOKES; RICHARD JENKINS; HUBERT PETERKIN, Sheriff; BILL BUTLER, FBI Head Agent; DANICA LAWSON DINGLE, Individual

Defendants - Appellees

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ORDER

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The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge Diaz, and Senior Judge Keenan.

For the Court

/s/ Patricia S. Connor, Clerk

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Defendants - Appellees

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TEMPORARY STAY OF MANDATE

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Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-2041

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RANDY DINGLE,

Plaintiff - Appellant,

v.

TALMAGE S. BAGGETT, Judge; ELLEN B. HANCOX, Trial Clerk Administrator; RONNIE MONROE MITCHELL, Attorney; MICKEY LOCKLEAR, Deputy; OFFICER MORRISON; WALDEN; CLAVION MORNING, Deputy Sgt.; WILLIAM DANCY, Security Guard; JOE UTLEY, Administrator - Tax Office; TIMOTHY J. PETERKIN, Attorney; ENNIS W. WRIGHT, Sheriff; DEPUTY SHERIFF MURPHY, Deputy; TARDRA ADAMS, Chief Jailer - CC Detention Center; BRENDA ENGLIS, Capt. Deputy Jailer - CC Detention Center; NICHOLE HOKING, Capt. Deputy Jailer Adm. - CC Detention Center; DON WILLIAM, Capt. Deputy Jailer - CC Detention Center; JESSICA BOON, Jail Admin. CC Detention Center; T. COOPER, Deputy - CC Detention Center; PATRICIA ELLEN WATSON DINGLE, Individual; NATASHIA DINGLE, Individual; TORRY JESSUP, DMV Administrator Commission; ADDIE LEE SMALLWOOD, Individual; LARRY FREEMAN, Individual; JOSEPH NEWTON CALLAWAY, II; ALONZO DINGLE, Individual; JACQUELYN FAYE CARTER, Individual; W. R. DARDEN, Magistrate; MEGAN CHAVIS, Clerk-Deputy CSC; BRUCE BULLOCK, Long Branch/Southeastern Home Sale; WILLIAM R. WEST, JR., District Attorney, unknown Bill West; GINA V. HAWKINS; JEANNETTE M. COUNCIL, Chair-County Commission; W. MARSHALL FAIRCLOTH, Vice Chair - Cumberland Co. Commissioner; GLENN C. ADAMS, Board of Commissioners; MICHAEL C. BOOSE, Board of Commissioners; CHARLES EVANS, Board of Commissioners; JIMMY KEEFE, Board of Commissioners; LARRY LANCASTER, Board of Commissioners; MICHAEL B. STEIN, Attorney - Hutchens Law; SERGEANT MANNING, Sheriff Deputy; JOHN HOLLEY, Sheriff; CARL WALL, SBI Agent; EARL MOOSE BUTLER, Retired Sheriff; MARK ROWDEN, Pastor; JOSEPH A. BLEDSOE, III, Trustee; LEE WARREN, Register of Deeds; R. GREGG EDWARDS, Attorney; WILLIAM ROB LEWIS, Judge; MERYL CARTER MAYNOR, Individual; MAYNOR CONNELL, Coach - Individual; TIM MANNING, Sheriff; LINWOOD EDWARDS, Individual; JOHNNIE MACK

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Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:19-cv-00425-D)

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Submitted: August 31, 2021

Decided: September 28, 2021

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

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Affirmed by unpublished per curiam opinion.

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Randy Dingle, Appellant Pro Se. Rudy E. Renfer, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina; Ronnie Monroe Mitchell, CUMBERLAND COUNTY SHERIFF'S OFFICE, Fayetteville, North Carolina; Christopher John Derrenbacher, LEWIS BRISBOIS BISGAARD & SMITH, Raleigh, North Carolina; Robert Alford Hasty, Jr., Assistant County Attorney, CUMBERLAND COUNTY ATTORNEY'S OFFICE, Fayetteville, North Carolina; John W. Congleton, Assistant Attorney General, Bryan Grant Nichols, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina; Michael Rose Whyte, CITY OF FAYETTEVILLE, Fayetteville, North Carolina; Brian Florencio Castro, Raleigh, North Carolina; Bradley O. Wood, WOMBLE BOND DICKINSON (US) LLP, Winston-Salem, North Carolina; Joseph A. Bledsoe, III, CHAPTER 13 TRUSTEE, New Bern, North Carolina; Steven Andrew Bader, CRANFILL SUMNER, LLP, Raleigh, North Carolina; Kyle Abraham Smalling, CAPITAL CITY LAW, Raleigh, North Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Randy Dingle appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on Dingle's complaint arising from allegations concerning the forfeiture and sale of his mobile home and his eviction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Dingle v. Baggett*, No. 5:19-cv-00425-D (E.D.N.C. Sept. 1, 2020). 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*



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

In the Matter of

\*

Judicial Complaints

\*

Under 28 U.S.C. § 351

\*

Nos. 04-21-90101

04-21-90102

04-21-90103

MEMORANDUM AND ORDER

Complainant brings these judicial complaints against a district court judge and two magistrate judges pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, which provides an administrative remedy for judicial conduct that is “prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a).

Complainant alleges that the subject judges have deprived him of his fundamental rights by dismissing every case he has filed in the district court. Complainant believes he has been “discriminated against by the judicial system” and alleges that “one reason” his claims have not been successful “is that some of the people that are a part of [his] complaint[s] ha[ve] been involve[d] with the United States District Courts System.” Referencing the dismissal of his most recent civil complaint, complainant alleges that the district court judge failed to hold the defendants in that case liable for their criminal acts. Complainant believes the district court judge dismisses his cases because many of the judge’s colleagues have been named in the lawsuits, including judges, attorneys, and security guards who work for the courts and within the judicial system. He alleges that the

district court judge "and others" have violated the Code of Conduct for United States Judges and various Constitutional provisions.\*

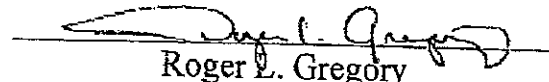
All of complainant's allegations are directly related to the merits of the rulings in the underlying cases. Under 28 U.S.C. § 352(b)(1)(A)(ii), claims that are "directly related to the merits of a decision or procedural ruling" are not subject to review through a complaint of judicial misconduct. The procedure that has been established to consider misconduct complaints "is not designed as a substitute for, or supplement to, appeals or motions for reconsideration." *In re Memorandum of Decision*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). It would be "entirely contrary" to the purpose of the Judicial Conduct and Disability Act "to use a misconduct proceeding to obtain redress for—or even criticism of—the merits of a decision with which a litigant or misconduct complainant disagrees." *Id.* To allow "judicial decisions to be questioned in misconduct proceedings would inevitably begin to affect the nature of those decisions and would raise serious constitutional issues regarding judicial independence under Article III of the Constitution." *Id.* Moreover, complainant's general allegations of favoritism, bias, and discrimination "lack[] sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii).

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\* Complainant does not raise any specific claims against the subject magistrate judges. To the extent that complainant is alleging misconduct by court staff, those "charges . . . must be dismissed because the misconduct procedure applies only to federal judges." *In re Complaint of Jud. Misconduct*, 631 F.3d 961, 963 (9th Cir. Jud. Council 2011).

Accordingly, this judicial complaint is dismissed as merits-related and lacking in evidentiary support pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

IT IS SO ORDERED.

  
Roger L. Gregory  
Chief Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:20-CV-541-D

RANDY DINGLE,

Plaintiff,

v.

JUDGE AMANDA L. MARIS, et al.,

Defendants.

**ORDER**

On October 9, 2020, Randy Dingle ("Dingle" or "plaintiff"), proceeding pro se, filed a complaint against a Durham County District Judge (Maris) and staff member (Flemmings); three attorneys (Dennis, Edwards, and Peterkin); the Durham County Sheriff (Birkhead) and two of his civil division officers (Whitaker and Fosters); and two of Dingle's family members (his ex-wife Patricia Dingle and their daughter Natashia Dingle). See Compl. [D.E. 1]. Seven of these defendants move to dismiss the complaint [D.E. 9, 16, 19, 30]. The court notified Dingle about the motions to dismiss and the consequences of failing to respond [D.E. 11, 18, 23, 33]. See Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975) (per curiam). Dingle responded in opposition to defendants' motions [D.E. 28, 38] and seeks "clarification" of a court order, which the clerk filed as a motion [D.E. 40]. Edwards and Peterkin move for sanctions [D.E. 21, 26]. As explained below, the court grants defendants' motions to dismiss and denies the remaining motions.

I

Dingle's complaint concerns his divorce from defendant Patricia Dingle and their bankruptcy case, and problems that he has had with the civil division of the Durham County Sheriff's Department. See Compl. at 4-6. Due to the bankruptcy proceedings, Dingle's lost his home and

"[m]oney that was in my house[.]" a retirement savings account, an inheritance, and unspecified property. *Id.* at 6. Dingle alleges that unspecified defendants filed "fraudulent documents" in the bankruptcy proceedings, committed "[f]orgery and using my name and social security number[.]" defamed his character, and "[c]onceal[ed] . . . evidence of fraud" concerning his children, Patricia Dingle and her sister. *Id.* at 6-7.

Defendant Maris "was the judge during an absolute divorce hearing" in which Dingle "was contesting the divorce, so that [he] could recoup . . . property that was stolen by [Patricia] Dingle and the children." *Id.* at 4. Dingle alleges that Maris "was playing the judge, attorney, and the jury from the bench . . . [and] failed to do her fiduciary duty as an administrator and not a Judge." *Id.* Dingle also alleges that Maris "knowingly and willfully showed bias and prejudice" against him by denying Dingle's request to speak on his own behalf, and issuing "a seal divo[r]ce decree with someone else's name" and an unclear signature, which "can not be a legal and binding document or contract." *Id.*

Dingle alleges that defendant Flemmings, the family court coordinator, "violated her code of ethics and her oath also, by receiving and filing fraudulent documents that she received from attorney India Dennis." *Id.* at 5. When Dingle "went to the Family Court to have my documents of contestment be added to the [court case] file[.]" Flemmings "[a]t first . . . did not want to take my documents, she was too busy trying to inform me about her personal life." *Id.*

Defendant Dennis represented Patricia Dingle in the divorce proceedings. *See id.* at 4-5. According to Dingle, Dennis advised Patricia Dingle to seek an absolute divorce and presented false documents to the family court and relied on hearsay during the hearing. *See id.* at 4. Dingle alleges that Dennis "is a part of a secret society of arcane, by guaranteeing the keeping of ordinary people

in political, economic and spiritual bon[d]age.” Id. at 4-5.

“During the absolute divorce Patricia Dingle brought up our bankruptcy case. She was the one who initiated the bankruptcy with the help of” defendants Edwards and Peterkin. Id. at 6. Defendant “Natashia Dingle even made an appearance in the Family court with her mama (Mrs. Dingle).” Id. at 5.

Dingle also describes problems with the civil division of the Durham County Sheriff’s Department. Defendant “Sheriff Clarence Birkhead is the CEO . . . for The Durham County Sheriff Department. He is responsible for his office, officers, and all other departments in his section.” Id. at 6. Dingle alleges that on an unspecified date, he “went to the Durham County Sheriff Department Civil Division to have them serve some summons for a case . . . in the United States Federal Courts in Raleigh.” Id. at 5. Dingle presented the sealed envelopes with the complaints and summonses to a cashier, who “open[ed] them . . . against the privacy act.” Id.

Defendant Fosters “was the deputy doing the services of my summons.” Id. Fosters was able to serve two people (Patricia Dingle and her sister), but “wrote and said he could not find Natashia Dingle, (who lives with her mother, Patricia Ellen Watson Dingle) or” two of Dingle’s other children, even though “Patricia Ellen Watson Dingle, their mother knew their whereabouts.” Id. at 5-6. Fosters “later sent back the summons, but not my Federal Complaint Packets for Natashia Dingle, Alonzo Dingle, and Danica Dingle[.]” Id. at 6.

Dingle contends that because the cashier opened his sealed service packets, “all my federal documents (complaint) were opened by the cashier and read by the Judge, Dennis, Sheriff Birkland, Whitaker, and Fosters and other individuals in the Durham County Sheriff Department[]” in “a violation of their fiduciary duties and their oath to uphold The Constitution of the United States of

America and the North Carolina Constitution, his ethics, code of conduct, morals, and principles.” Id. at 5–6. Dingle believes that Birkhead “decided to help Patricia Dingle (which is not her lawfully name) in her divorce, based on reading the Federal complaint and summon packet, which shows all the other sheriffs that are involved. All of the sheriffs in North Carolina are in a fraternity order which falls under the title of ‘The Good Old Boys System’.” Id. at 6.

Dingle “contacted [defendant] Capt. Whitaker by phone and informed him of how unprofessional the cashiers were. Whitaker even offered to refund my funds due to the mistakes of the cashier in his department.” Id. at 5. Dingle “later made a complaint to the Durham County Sheriff Department, which included Captain Whitaker’s name. As of this day it has yet to be answered.” Id. at 5–6. However, Fosters called Dingle after Dingle filed the complaint and said “(and I quote) ‘you better stop what you are doing.[.]’” Id. at 6.

Dingle asserts claims under 42 U.S.C. §§ 1983, 1985, and 1986, and various federal criminal statutes. See id. at 3–4, 7; [D.E. 14]. Dingle seeks “[t]wenty million dollars per occurrence, per office, official, agent or representative.” Compl. at 2.

## II.

### A.

On February 12, 2021, the court granted Maris and Flemmings’s motion to deem their motion to dismiss timely filed. See [D.E. 32, 39]. Dingle “would like to have more clarification of” that order, which the clerk filed as a motion. See [D.E. 40].

“When an act may or must be done within a specified time, the court may, for good cause, extend the time.” Fed. R. Civ. P. 6(b)(1). In analyzing a motion for extension of time to answer or otherwise respond to a complaint, the court considers such factors as prejudice to the plaintiff, the

length of the proposed delay, “its potential impact on judicial proceedings, the reason for the delay, and whether the movant had acted in good faith.” Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 395 (1993).

Defendants did not act in bad faith, and their slight delay in filing a motion to dismiss did not prejudice Dingle. Notably, Dingle sought and obtained an extension of time to respond to defendants’ motions. See [D.E. 24, 25]. Thus, to the extent Dingle seeks reconsideration of the order, the court denies the motion as meritless.

B.<sup>1</sup>

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) tests subject-matter jurisdiction, which is the court’s “statutory or constitutional power to adjudicate the case.” Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 89 (1998) (emphasis omitted); see Holloway v. Pagan River Dockside Seafood, Inc., 669 F.3d 448, 453 (4th Cir. 2012); Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 479–80 (4th Cir. 2005). A federal court “must determine that it has subject-matter jurisdiction over the case before it can pass on the merits of that case.” Constantine, 411 F.3d at 479–80. “[T]he party invoking federal jurisdiction bears the burden of establishing its existence.” Steel Co., 523 U.S. at 104; see Evans v. B.F. Perkins Co., 166 F.3d 642, 647 (4th Cir. 1999). In considering a motion to dismiss for lack of subject-matter jurisdiction, the court may consider evidence outside the pleadings without converting the motion into one for summary judgment. See, e.g., Richmond, Fredericksburg & Potomac R.R. Co. v. United States, 945 F.2d 765, 768 (4th Cir. 1991).

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<sup>1</sup> The court declines to address the argument of three defendants that Dingle failed to effect service on three defendants. See [D.E. 17] 2–3; [D.E. 31] 4–5; cf. Washington v. Cline, 233 N.C. App. 412, 420, 761 S.E.2d 650, 655 (2014).



A motion to dismiss under Rule 12(b)(6) tests the complaint's legal and factual sufficiency. See Ashcroft v. Iqbal, 556 U.S. 662, 677–80 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 554–63 (2007); Coleman v. Md. Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff'd, 566 U.S. 30 (2012); Giarratano v. Johnson, 521 F.3d 298, 302 (4th Cir. 2008). To withstand a Rule 12(b)(6) motion, a pleading “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (quotation omitted); see Twombly, 550 U.S. at 570; Giarratano, 521 F.3d at 302. In considering the motion, the court must construe the facts and reasonable inferences “in the light most favorable to the [nonmoving party].” Massey v. Ojaniit, 759 F.3d 343, 352 (4th Cir. 2014) (quotation omitted); see Clatterbuck v. City of Charlottesville, 708 F.3d 549, 557 (4th Cir. 2013), abrogated on other grounds by Reed v. Town of Gilbert, 576 U.S. 155 (2015). A court need not accept as true a complaint's legal conclusions, “unwarranted inferences, unreasonable conclusions, or arguments.” Giarratano, 521 F.3d at 302 (quotation omitted); see Iqbal, 556 U.S. at 678–79. Rather, a plaintiff's allegations must “nudge[ ] [the] claims,” Twombly, 550 U.S. at 570, beyond the realm of “mere possibility” into “plausibility.” Iqbal, 556 U.S. at 678–79.

“[W]hen a plaintiff does not allege capacity specifically, the court must examine the nature of the plaintiff's claims, the relief sought, and the course of proceedings to determine whether a state official is being sued in a personal capacity.” Biggs v. Meadows, 66 F.3d 56, 61 (4th Cir. 1995); see Chandler v. Forsyth Tech. Cmty. Coll., 294 F. Supp. 3d 445, 448 n.1 (M.D.N.C.), aff'd, 739 F. App'x 203 (4th Cir. 2018) (per curiam) (unpublished). Dingle does not identify any official policy or custom governing any defendant's actions, “bring[s] this complaint on . . . individuals[,]” alleges that “[t]he color of [l]aw was . . . broken[,]” and seeks monetary damages. Compl. at 2–4. Thus, the court construes Dingle's complaint as alleging claims against defendants in their individual capacities. See, e.g., Morris v. Taylor, No. CV CCB-20-342, 2021 WL 37661, at \*2 (D. Md. Jan.

5, 2021) (unpublished); Hudson v. Smith, No. 3:19-cv-1499-SAL, 2020 WL 6707609, at \*3 (D.S.C. Nov. 16, 2020) (unpublished); Combs v. Ashe Cnty., No. 5:14-CV-136, 2016 WL 3625551, at \*8 (W.D.N.C. July 6, 2016) (unpublished).

To the extent Dingle cites violations of federal criminal statutes, “the United States and its attorneys have the sole power to prosecute criminal cases in the federal courts,” and private citizens cannot petition federal courts to compel the criminal prosecution of another person. Maine v. Taylor, 477 U.S. 131, 136–37 (1986); see Linda R. S. v. Richard D., 410 U.S. 614, 619 (1973). Moreover, sections 241 and 242 of Title 18 of the United States Code “provide no basis for civil liability.” Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam); see Huston v. Slanina, No. 12 C 4582, 2012 WL 4464301, at \*2 (N.D. Ill. Sept. 24, 2012) (unpublished) (collecting cases). Accordingly, any claim under these statutes fails.

To the extent Dinkle alleges a conspiracy claim under 42 U.S.C. § 1985, to state a claim, Dinkle must plausibly allege “that the [defendants] acted jointly in concert and that some overt act was done in furtherance of the conspiracy which resulted in [the plaintiff’s] deprivation of a constitutional right.” Hinkle v. City of Clarksburg, 81 F.3d 416, 421 (4th Cir. 1996). To show joint, concerted action, Dinkle must, at minimum, provide “specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective.” Id. Conclusory allegations of a conspiracy do not satisfy this “meeting of the minds” element and therefore fail to state a claim. See, e.g., Simmons v. Poe, 47 F.3d 1370, 1377 (4th Cir. 1995); Gooden v. Howard Cnty., 954 F.2d 960, 970 (4th Cir. 1992) (en banc). Dinkle fails plausibly to allege a “meeting of the minds” between any of the named defendants or any shared objective of violating his constitutional rights. Cf. Iqbal, 556 U.S. at 677–84; Hankins v. Brunswick Cnty., No. 7:20-CV-16-D, 2020 WL 7390483, at \*3 (E.D.N.C. Oct. 27, 2020) (unpublished), report and

recommendation adopted, 2020 WL 7388434 (E.D.N.C. Dec. 16, 2020) (unpublished); Johnson v. City of Fayetteville, 91 F. Supp. 3d 775, 796–98 (E.D.N.C. 2015). Thus, Dinkle fails to state a claim under section 1985. Furthermore, because Dinkle’s section 1985 claims fail, his section 1986 claims also fail. See Trerice v. Summons, 755 F.2d 1081, 1085 (4th Cir. 1985) (“A cause of action based upon § 1986 is dependent upon the existence of a claim under § 1985.”); Hankins, 2020 WL 7390483, at \*3; Davis v. Hudgins, 896 F. Supp. 561, 571 (E.D. Va. 1995), aff’d, 87 F.3d 1308 (4th Cir. 1996).

“To state a claim under [section] 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988); see Philips v. Pitt Cnty. Mem’l Hosp., 572 F.3d 176, 180 (4th Cir. 2009). Additionally, a section 1983 plaintiff must allege the personal involvement of a defendant. See, e.g., Iqbal, 556 U.S. at 676–77; Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 691–94 (1978); Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985).

Dingle alleges that defendant Flemmings “receiv[ed] and fil[ed] fraudulent documents” in his divorce case and did not accept Dingle’s “documents of contestment” for filing until after having an unprofessional personal conversation with Dingle. Compl. at 5. Dingle alleges that defendant Fosters served two defendants (Dingle’s former wife and her sister) in a different federal civil action in a “totally different . . . manner” from each other and failed to serve three other defendants (Dingle’s three children), “saying that they could not be located.” Id. at 5–6. The court construes Dingle’s section 1983 claims against these defendants as asserting a denial of access to the courts and due process. See Gray v. Shedd, 559 F. App’x 621, 621 (9th Cir. 2014) (unpublished); Bullock v. Doe, 153 F. App’x 869, 870 (3d Cir. 2005) (per curiam) (unpublished); Jones v. Union Cnty., 296

F.3d 417, 425–26 (6th Cir. 2002); Carter v. McCarter, 915 F.2d 1570, 1990 WL 151123, at \*1 (6th Cir. 1990) (unpublished table decision); Khrapko v. Splain, 389 F. Supp. 3d 199, 204 (W.D.N.Y. 2019); Lee X v. Casey, 771 F. Supp. 725, 732 (E.D. Va. 1991). To state a claim for denial of access to the courts, Dingle must show actual injury or that the defendants' conduct hindered his efforts to pursue a legal claim. See, e.g., Lewis v. Casey, 518 U.S. 343, 351–57 (1996); Michau v. Charleston Cnty., 434 F.3d 725, 728 (4th Cir. 2006); Cochran v. Morris, 73 F.3d 1310, 1317 (4th Cir. 1996) (en banc). Moreover, the Constitution does not guarantee Dingle the ability to litigate effectively once in court. See Lewis, 518 U.S. at 354–55. “To state a claim for violation of a [procedural] Due Process right, a plaintiff must initially demonstrate conduct which rises to the level of a constitutional ‘deprivation’.” Lee X, 771 F. Supp. at 732 (citing Daniels v. Williams, 474 U.S. 327 (1986)); see Khrapko, 389 F. Supp. 3d at 204. A substantive due process claim requires action “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” Hawkins v. Freeman, 195 F.3d 732, 738 (4th Cir. 1999) (en banc) (quotation omitted); see Khrapko, 389 F. Supp. 3d at 204.

Dingle's allegation that Fosters failed to effect service of process “in another otherwise unrelated action . . . . asserts the infringement of a nonexistent legal interest.” Carter, 1990 WL 151123, at \*1; see Gray, 559 F. App'x at 621; Jones, 296 F.3d at 425–26; Moore v. Aycock, 71 F.3d 875, 1995 WL 725388, at \*1 (5th Cir. 1995) (per curiam) (unpublished table decision); cf. Evans v. Funderburk, No. CV 4:11-3232-RBH-BM, 2012 WL 571571, at \*2 (D.S.C. Jan. 4, 2012) (unpublished), report and recommendation adopted, 2012 WL 571075 (D.S.C. Feb. 22, 2012) (unpublished). Dingle has failed to state either a procedural or a substantive due process claim where he “has alleged nothing more than that defendants took certain actions, or failed to do certain things, that discomfited him or adversely affected him” and “has done little more than repackage

everything that he found objectionable in the state court[.]” Khrapko, 389 F. Supp. 3d at 204. Dingle has failed to plausibly allege any injury resulting from either Fosters’s or Flemmings’s conduct. See Minnick v. Lane, 570 F. App’x 416, 417 (5th Cir. 2014) (per curiam) (unpublished); Gray, 559 F. App’x at 621; Bullock, 153 F. App’x at 871; Catanzaro v. Davis, 686 F. App’x 91, 94 n.1 (3d Cir. 2017) (per curiam) (unpublished); Evans, 2012 WL 571571, at \*2. Moreover, Dingle has alleged that these defendants acted — at most — negligently, which is generally not actionable under section 1983. See, e.g., Daniels, 474 U.S. at 330–31; Pink v. Lester, 52 F.3d 73, 77–78 (4th Cir. 1995); Snyder v. Blankenship, 473 F. Supp. 1208, 1212–13 (W.D. Va. 1979), aff’d, 618 F.2d 104 (4th Cir. 1980) (unpublished table decision); cf. Williams v. Williams, 113 N.C. App. 226, 230, 437 S.E.2d 884, 887 (1994), aff’d, 339 N.C. 608, 453 S.E.2d 165 (1995).

As for Sheriff Birkhead and Captain Whitaker, Dingle names these defendants on a theory of supervisory liability. See Compl. at 5–6. The doctrine of respondeat superior does not generally apply to a section 1983 action. See, e.g., Iqbal, 556 U.S. at 677; Monell, 436 U.S. at 694; Carter v. Morris, 164 F.3d 215, 220–21 (4th Cir. 1999); Shaw v. Stroud, 13 F.3d 791, 798–99 (4th Cir. 1994). Instead, where a defendant is sued on the basis of supervisory liability, “[a] plaintiff must show actual or constructive knowledge of a risk of constitutional injury, deliberate indifference to that risk, and an affirmative causal link between the supervisor’s inaction and the particular constitutional injury suffered by the plaintiff.” Carter, 164 F.3d at 222 (quotations omitted); see Shaw, 13 F.3d at 799. Dingle has not alleged facts sufficient to state a claim based on supervisory liability. See, e.g., Wierzbic v. Cnty. of Erie, No. 13-CV-978S, 2018 WL 550521, at \*5 (W.D.N.Y. Jan. 25, 2018) (unpublished). Thus, the court grants these defendants’ motion to dismiss.

Additionally, Dingle has named several defendants who are immune from or not amenable to suit. State court judges are entitled to judicial immunity for actions taken as a judicial officer,

including acts that are alleged to have been done maliciously or corruptly. See, e.g., Pierson v. Ray, 386 U.S. 547, 553–54 (1967); Stump v. Sparkman, 435 U.S. 349, 355–57 (1978); King v. Myers, 973 F.2d 354, 356–57 (4th Cir. 1992). Dingle has not plausibly alleged facts sufficient to show that Judge Maris acted in clear absence of all jurisdiction. See, e.g., Campbell v. Bennett, No. CV 0:19-973-JFA-PJG, 2019 WL 4593567, at \*3 (D.S.C. Sept. 23, 2019) (unpublished), aff'd, 801 F. App'x 144 (4th Cir. 2020) (per curiam) (unpublished); Daniels v. Grady, No. 17 CV 6775, 2018 WL 1586243, at \*4 (N.D. Ill. Apr. 2, 2018) (unpublished). Accordingly, judicial immunity bars Dingle's claims against Judge Maris.

As for attorneys Edwards and Peterkin, private attorneys who participate in judicial proceedings do not act under color of state law. See, e.g., Pappas v. Lorintz, 832 F. App'x 8, 13 (2d Cir. 2020) (unpublished); Catanzaro, 686 F. App'x at 94; Yeh Ho v. Sabocik, 775 F. App'x 551, 554 (11th Cir. 2019) (per curiam) (unpublished); Anderson v. Anderson, 554 F. App'x 529, 531 (7th Cir. 2014) (unpublished). Thus, Dingle's section 1983 action against these defendants fails.

C.

Three defendants — Dingle's daughter Natasha Dingle, his former wife Patricia Dingle, and attorney India Dennis — have not answered the complaint or filed any motion to dismiss. See Pl. Aff. [D.E. 35]. However, “frivolous complaints are subject to dismissal pursuant to the inherent authority of the court, even when the filing fee has been paid.” Ross v. Baron, 493 F. App'x 405, 406 (4th Cir. 2012) (per curiam) (unpublished) (citing Mallard v. U.S. Dist. Ct., 490 U.S. 296, 307–08 (1989)). Dingle's claims against attorney Dennis fail for the reasons already discussed. Likewise, Dingle has not plausibly alleged that his daughter and former wife acted under color of state law. See, e.g., Pappas, 832 F. App'x at 13; Anderson, 554 F. App'x at 531. Thus, the court dismisses the action.


D.

Defendants Edwards and Peterkin move for sanctions against Dingle, including a prefilng injunction, under 28 U.S.C. § 1651(a) and Federal Rule of Civil Procedure 11 [D.E. 21, 26]. The court has considered the motions under Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 817-20 (4th Cir. 2004). A court must approach issuing a prefilng injunction against a *pro se* plaintiff "with particular caution." *Id.* at 818 (quotation omitted). In light of the entire record, the court declines to issue a prefilng injunction. The court warns Dingle, however, that future unsuccessful lawsuits filed in this district may result in sanctions, including monetary sanctions, dismissal, and a prefilng injunction. See Hathcock v. Navistar Int'l Transp. Corp., 53 F.3d 36, 40-41 (4th Cir. 1995).

III.

In sum, the court GRANTS the motions to dismiss [D.E. 9, 16, 19, 30] and DISMISSES the action for failure to state a claim. The court DENIES the motions for sanctions [D.E. 21, 26] and the motion to clarify [D.E. 40]. The clerk shall close the case.

SO ORDERED. This 7 day of June 2021.

  
JAMES C. DEVER III  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:19-CV-425-D

RANDY DINGLE,

Plaintiff,

v.

JUDGE TALMAGE S. BAGGETT, et al.,

Defendants.

**ORDER**

On September 24, 2019, Randy Dingle ("Dingle" or "plaintiff") filed a pro se complaint [D.E. 1]. On June 19 and July 20, 2020, the court referred the case to Magistrate Judge Numbers for a memorandum and recommendation on the parties' various motions and for a frivolity review [D.E. 203, 210]. On July 31, 2020, Magistrate Judge Numbers issued a Memorandum and Recommendation ("M&R") [D.E. 215], and recommended that the complaint be dismissed as frivolous, and that the court decline to exercise supplemental jurisdiction over the state law claims. On August 14, 2020, Dingle objected to the M&R [D.E. 216, 217]. On August 20, 2020, Dingle moved for a hearing [D.E. 218].


"The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge's report or specified proposed findings or recommendations to which objection is made." Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely objection, "a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond, 416 F.3d at 315 (quotation omitted).



The court has reviewed the M&R, the record, and plaintiff's objections. As for those portions of the M&R to which plaintiff made no objection, the court is satisfied that there is no clear error on the face of the record. As for the objections, the court has reviewed the objections and the M&R de novo. The complaint is frivolous, and his objections are overruled.

In sum, plaintiff's objections to the M&R [D.E. 216, 217] are OVERRULED, the court GRANTS defendants' motions to dismiss [D.E. 9, 28, 30, 36, 46, 52, 57, 60, 64, 77, 89, 95, 112, 117, 124, 133, 143, 148, 152, 156, 166, 168, 186], DISMISSES AS MOOT defendants' motions to dismiss [D.E. 157, 162, 205, 206], DISMISSES plaintiff's complaint as frivolous, and DENIES plaintiff's motion for a hearing [D.E. 218]. Alternatively, plaintiff has failed to state a claim upon which relief can be granted, and the court DISMISSES the complaint without prejudice.

SO ORDERED. This 1 day of September 2020.

  
JAMES C. DEVER III  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

RANDY DINGLE,

Plaintiff,

v.

JUDGE TALMAGE S. BAGGETT, et al.,

Defendants.

JUDGMENT IN A  
CIVIL CASE  
CASE NO. 5:19-CV-525-D

1 error  
(425-D)

**Decision by Court.**

This action came before this Court for ruling as follows.

**IT IS ORDERED, ADJUDGED, AND DECREED** that plaintiff's objections to the M&R [D.E. 216, 217] are **OVERRULED**, the court **GRANTS** defendants' motions to dismiss [D.E. 9, 28, 30, 36, 46, 52, 57, 60, 64, 77, 89, 95, 112, 117, 124, 133, 143, 148, 152, 156, 166, 168, 186], **DISMISSES AS MOOT** defendants' motions to dismiss [D.E. 157, 162, 205, 206], **DISMISSES** plaintiff's complaint as frivolous, and **DENIES** plaintiff's motion for a hearing [D.E. 218]. Alternatively, plaintiff has failed to state a claim upon which relief can be granted, and the court **DISMISSES** the complaint without prejudice.

**This Judgment Filed and Entered on September 1, 2020, and Copies To:**

Randy Dingle	(via US Mail)
Kathryn Shields	(via CM/ECF electronic notification)
Ronnie Mitchell	(via CM/ECF electronic notification)
Christopher Derrenbacher	(via CM/ECF electronic notification)
Robert Hasty, Jr.	(via CM/ECF electronic notification)
Antoine Marshall	(via CM/ECF electronic notification)
Patricia Ellen Watson Dingle	(via US Mail)
John Congleton	(via CM/ECF electronic notification)
Addie Lee Smallwood	(Via US Mail)
Larry Freeman	(Via US Mail)
Rudy Renfer	(via CM/ECF electronic notification)
Jacquelyn Faye Carter	(Via US Mail)
Michael Rose Whyte	(via CM/ECF electronic notification)
Michael Barry Stein	(via CM/ECF electronic notification)

Bradley Owen Wood

(via CM/ECF electronic notification)

Brian Castro

(via CM/ECF electronic notification)

Bryan Nichols

(via CM/ECF electronic notification)

Thomas Heller Hooper

(via CM/ECF electronic notification)

Eleanor Gilroy

(via CM/ECF electronic notification)

Maynor Connell

(Via US Mail)

Meryl Carter Maynor

(Via US Mail)

Kyle Smalling

(via CM/ECF electronic notification)

Linwood James

(Via US Mail)

Eugene Benjamin Carter

(Via US Mail)

Darren R. Whitehurst

(Via US Mail)

David Moore, Jr.

(Via US Mail)

DATE:

September 1, 2020

PETER A. MOORE, JR., CLERK

(By) /s/ Lindsay Stouch

Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:19-CV-425-D

RANDY DINGLE,

Plaintiff,

v.

TALMAGE S. BAGGETT, et al.,

Defendants.

**ORDER**


On September 24, 2019, Randy Dingle ("Dingle" or "plaintiff") filed a pro se complaint [D.E. 1]. On October 7, 2019, Michael B. Stein moved to dismiss [D.E. 9] and filed a supporting memorandum [D.E. 10]. On October 22, 2019, Torry Jessup moved to dismiss [D.E. 28] and filed a supporting memorandum [D.E. 29]. On October 23, 2019, Timothy J. Peterkin moved to dismiss [D.E. 30] and filed a supporting memorandum [D.E. 31]. On October 25, 2019, Hubert A. Peterkin moved to dismiss [D.E. 36] and filed a supporting memorandum [D.E. 37]. On October 29, 2019, John Holley moved to dismiss [D.E. 46] and filed a supporting memorandum [D.E. 47]. On October 30, 2019, Glenn Adams, Michael C. Boose, Jeannette M. Council, Charles Evans, W. Marshall Faircloth, Jimmy Keefe, Larry Lancaster, Joe Utley, and Lee Warren moved to dismiss [D.E. 52] and filed a supporting memorandum [D.E. 53]. On November 5, 2019, Joseph A. Bledsoe, III moved to dismiss [D.E. 57] and filed a supporting memorandum [D.E. 58]. On November 6, 2019, Gina V. Hawkins moved to dismiss [D.E. 60] and filed a supporting memorandum [D.E. 61]. On November 13, 2019, Darren R. Whitehurst moved to dismiss [D.E. 64]. On November 18, 2019, Tandra Adams, Jessica Boon, Earl Moose Butler, T Cooper, Brenda Englis, Nichole Hoking, Richard

Jenkins, Mickey Locklear, Sergeant Manning, Ronnie Mitchell, Clavion Morning, Lieutenant Morrison, Deputy Murphy, Dennis Peterson, Terry Ray, Deputy Walden, Don William, and Ennis W. Wright moved to dismiss [D.E. 77] and filed memorandum in support [D.E. 78]. On November 20, 2019, Dingle moved for entry of default against Darren Whitehurst [D.E. 85]. On November 22, 2019, William Dancey moved to dismiss [D.E. 89] and filed a supporting memorandum [D.E. 90]. On November 27, 2019, David E. Moore, Jr. moved to dismiss [D.E. 95]. On December 3, 2019, Dingle moved for entry of default against David E. Moore, Jr. [D.E. 98], Benjamin James [D.E. 99], Jeffery Jerome Spivey [D.E. 100], Johnnie Mack Spivey [D.E. 101], Linward James (Linwood) [D.E. 102], Francis Keith Spivey [D.E. 103], Linwood Edwards [D.E. 104], and Maxine Denise Melvin [D.E. 105]. On December 9, 2019, Talmage S. Baggett, Ellen B. Hancox, William Rob Lewis moved to dismiss [D.E. 112] and filed a supporting memorandum [D.E. 113]. On December 16, 2019, Linwood James moved to dismiss [D.E. 117]. On December 18, 2019, Jason L. Harrell and Tim Manning moved to dismiss [D.E. 124]. On December 30, 2019, Dingle moved to enter a letter into evidence [D.E. 127]. On January 2, 2020, Dingle moved for entry of default against Elizabeth James Kilgore [D.E. 129], Donald Melvin [D.E. 130], and Eugene Benjamin Carter [D.E. 131]. On January 2, 2020, Joseph N. Callaway moved to dismiss [D.E. 133] and filed a supporting memorandum [D.E. 134]. On January 10, 2020, Dingle moved for entry of default against Timothy J. Peterkin [D.E. 139]. On the same date, Megan Chavis, W.R. Darden, and Stephen C. Stokes moved to dismiss [D.E. 143] and filed a supporting memorandum [D.E. 144]. On January 17, 2020, R. Gregg Edwards moved to dismiss [D.E. 148] and filed a supporting memorandum [D.E. 149]. On January 17, 2020, Carl Wall moved to dismiss [D.E. 152] and filed a supporting memorandum [D.E. 153]. On January 23, 2020, Maynor Connell moved to dismiss [D.E. 156]. On the same date, Jacquelyn Faye Carter moved to dismiss [D.E. 157]. On January 24, 2020, Patricia Ellen Watson

Dingle moved to dismiss [D.E. 162]. On January 28, 2020, Meryl Carter Maynor moved to dismiss [D.E. 166]. On January 31, 2020, Eugene Benjamin Carter moved to dismiss [D.E. 168]. On February 11, 2020, Dingle moved for default judgment against Bill Butler [D.E. 172]. On February 12, 2020, Dingle moved for default judgment against Eugene Benjamin Carter, Meryl Carter Maynor, Connell Maynor, and Jacquelyn Faye Carter [D.E. 173], William R. West, Jr. [D.E. 174], Mark Rowden [D.E. 175], and for a second default judgment against Meryl Carter Maynor [D.E. 176], Connell Maynor [D.E. 177], Jacquelyn Faye Carter [D.E. 178], Bill Butler [D.E. 179]. On February 18, 2020, Dingle moved for a second default judgment against Eugene Benjamin Carter [D.E. 182]. On February 20, 2020, William R. West, Jr. moved to dismiss [D.E. 186] and filed a supporting memorandum [D.E. 187]. On March 5, 2020, Dingle moved for default judgment against Patricia Ellen Watson Dingle [D.E. 192]. On March 31, 2020, Dingle moved to enter evidence [D.E. 197]. On May 22, 2020, Dingle moved to submit a document into evidence [D.E. 202].

Pursuant to 28 U.S.C. § 636(b)(1), this matter is referred to Magistrate Judge Numbers for a memorandum and recommendation on the parties' various motions [D.E. 9, 28, 30, 36, 46, 52, 57, 60, 64, 77, 85, 89, 95, 98, 99, 100, 101, 102, 103, 104, 105, 112, 117, 124, 127, 129, 130, 131, 133, 139, 143, 148, 152, 156, 157, 162, 166, 168, 172, 173, 174, 175, 176, 177, 178, 179, 182, 186, 192, 197, 202] and for a frivolity review.

SO ORDERED. This 19 day of June 2020.

  
JAMES C. DEVER III  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:19-CV-00425-D

**Randy Dingle,**

Plaintiff,

v.

**Judge Talmage S. Baggett, et al.**

Defendants.

**Order**

Plaintiff Randy Dingle claims that the 75 Defendants named in his complaint conspired to take his home, destroy his marriage, and violate his rights. Pending before the court are several motions that seek to admit additional evidence and several others seeking entry of default or a default judgment. The court grants the motions to admit additional evidence and will consider those materials as appropriate. But Dingle is not entitled to entry of default or a default judgment against any of the defendants, so those motions are denied.

**I. Background**

From about 2015 to mid-2018, Dingle alleges that the Defendants worked together as a “criminal human organization” to violate his rights of life, liberty, and property. Compl. at 22–23, D.E. 1. His claims relate to a court proceeding in which Dingle lost his mobile home and other personal property to bankruptcy. He says the judge did not give him a fair and honest hearing and court staff prevented him from filing documents. *Id.* ¶¶2–3. Multiple judges and attorneys, including Dingle’s own attorneys, violated their oaths of office, conspired against him and tried to extort him. *Id.* ¶¶4–6, 10, 12, 19. Dingle had been to bankruptcy court before and believes he should not have been brought back to court a second time. *Id.* ¶11.

In August 2018, the Cumberland County Sheriff's Office arrested Dingle and his wife on their property without a warrant, took them to the detention center, and falsely charged them. *Id.*

¶13. Dingle paid bond for him and his wife, but they could not return to his mobile home because the Sheriff had confiscated it for failure to make mortgage payments. *Id.* ¶14.

His wife then disappeared. *Id.* ¶¶14–15. She was last seen with Addie Smallwood and Larry Freeman, and Dingle believes they were involved with his wife's kidnapping. *Id.* ¶15. Dingle says that his wife, his wife's children, and his wife's sister conspired to commit fraud against him by forging his signature, impersonating him, and tampering with state and federal documents. *Id.* ¶16. And at least two other defendants tried to disrupt Dingle's marriage. *Id.* ¶¶2, 7.

Dingle went to the Cumberland County Sheriff's Office to file a missing persons report for his wife, but deputies did not take the report and told Dingle to leave the building. *Id.* ¶20. Dingle mailed a complaint about the Sheriff's Office to the Cumberland County Commissioners but did not receive a response. *Id.* ¶22. The Bertie County Sheriff's Office also refused to take a missing persons report for Dingle's wife. *Id.* ¶25.

Dingle brings a slew of claims, including mortgage fraud, tampering and misleading of facts, abuse of authority, extortion, trespassing, aiding and abetting, mail fraud, electronic fraud, conspiracy, encroachment, failure to respond, false imprisonment, obstruction of justice, denial of due process, and deprivation of rights to property. *Id.* ¶27. He also alleges each defendant played a role in the disappearance of his wife of 43 years. *Id.*

## **II. Analysis**

### **A. Motions to Admit Evidence**

Dingle asks the court to admit certain evidence supporting his claims. D.E. 127, 197, 202. The first is a letter from Dingle to Gina Hawkins, several Sheriff's Office civil receipts, and various



receipts and certificates of mailing from the United States Postal Service. D.E. 127. The next consists of a letter from R. Gregg Edwards regarding Dingle's prior bankruptcy case, a certificate of title, an order and judgment by Judge Talmage Baggett, and additional USPS certified mail receipts. D.E. 197. And finally, Dingle submits a deed and more USPS receipts. D.E. 202.

These motions are granted. The court will consider them as appropriate in resolving Dingle's other pending motions.

**B. Motions for Entry of Default**

Dingle has filed nine motions for entry of default. These motions are against Darren Whitehurst (D.E. 85), David Moore, Jr. (D.E. 98), Benjamin James (D.E. 99), Jeffery Jerome Spivey (D.E. 100), Johnnie Mack Spivey (D.E. 101), Francis Keith Spivey (D.E. 103), Linwood James (D.E. 102), Linwood Edwards (D.E. 104), and Maxine Denise Melvin (D.E. 105). These defendants are all private individuals.

Under the Federal Rules, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). "It is axiomatic that service of process must be effective under the Federal Rules of Civil Procedure before a default . . . may be entered against a defendant." *Md. State Firemen's Ass'n v. Chaves*, 166 F.R.D. 353, 354 (D. Md. 1996). The plaintiff bears the burden of establishing that service of process was effective. *Ayres v. Ocwen Loan Servicing, LLC*, 129 F. Supp. 3d 249, 261 (D. Md. 2015).

According to this court's Local Rules, to obtain an entry of default under Rule 55(a), a party must file a motion, a proposed order, and an affidavit that "describes with specificity how each allegedly defaulting party was served with process in a manner authorized by Fed. R. Civ. P. 4 and the date of such service." Local Rule 55(a)(1), E.D.N.C. The moving party must also serve

his motion for entry of default and proposed order on any party that failed to appear and all other parties in accordance with Fed. R. Civ. P. 5. *Id.*

Rule 4 requires proof of service in the form of an affidavit by the server, unless service is by a United States Marshal or deputy marshal. Fed. R. Civ. P. 4(l). Dingle submits USPS certified mail receipts and return receipts as proof of service for these defendants. D.E. 42 & 44. Dingle completed no Rule 4(l) affidavits with any of his motions. And he has submitted no affidavits that comply with the requirements of this court's Local Rules.

Without proving that he properly served the defendants, Dingle is not entitled to an entry of default. *See, e.g., Dahl v. Kanawha Inv. Holding Co.*, 161 F.R.D. 673, 685 (N.D. Iowa 1995) (where plaintiffs "have never properly served the defendants, none of the defendants has failed to plead or defend as required by the rules of civil procedure, and neither entry of default nor entry of default judgment would be proper"). Dingle has not properly served these defendants. Thus, Dingle's motions for entry of default (D.E. 85, 98, 99, 100, 101, 102, 103, 104, 105) are denied.

### **C. Motions for Default Judgment**

Dingle also filed 14 motions for default judgment against Defendants Elizabeth James-Kilgore (D.E. 129), Donald Melvin (D.E. 130), Eugene Benjamin Carter (D.E. 131 & 182), Timothy Peterkin (D.E. 139), Bill Butler (D.E. 172 & 179), William West, Jr. (D.E. 174), Mark Rowden (D.E. 175), Meryl Carter Maynor (D.E. 176), Connell Maynor (D.E. 177), Jacquelyn Faye Carter (D.E. 178), Patricia Dingle (D.E. 192), and James Edward Spivey (D.E. 204). A separate motion for default judgment alleges Eugene Benjamin Carter, Meryl Carter Maynor, Connell Maynor, and Jacquelyn Faye Carter responses were untimely and thus the court should void their motions to dismiss. D.E. 173.

The court cannot grant a motion for default judgment if it has not first entered default. “[T]o obtain a default judgment, a party must first seek an entry of default under Federal Rule of Civil Procedure 55(a).” *Cameron v. MTD Prods., Inc.*, No. 5:03-CV-75, 2004 WL 3256003, at \*2 (N.D.W. Va. Jan. 7, 2004); accord *Eagle Fire, Inc. v. Eagle Integrated Controls, Inc.*, No. 3:06-CV-264, 2006 WL 1720681, at \*5 (E.D. Va. June 20, 2006) (“The entry of default is a procedural prerequisite to the entry of a default judgment.”). Dingle did not file a motion for entry of default for any of these Defendants. Thus, all of Dingle’s motions for default judgment (D.E. 129, 131, 139, 172, 173, 174, 175, 176, 177, 178, 179, 182, 192, 204) are denied.

### III. Conclusion

For all these reasons, Dingle’s motions to admit evidence (D.E. 127, 197, 202) are granted and his motions for entry of default (D.E. 85, 98, 99, 100, 101, 102, 103, 104, 105) and motions for default judgment (D.E. 129, 130, 131, 139, 172, 173, 174, 175, 176, 177, 178, 179, 182, 192, 204) are denied.

Dated: July 28, 2020



Robert T. Numbers, II  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:19-CV-425-D

RANDY DINGLE,

Plaintiff,

v.

TALMAGE S. BAGGETT, et al.,


Defendants.

**ORDER**

On June 29, 2020, this court referred this matter to Judge Numbers for a memorandum and recommendation on the parties' various motions and for a frivolity review. See [D.E. 203]. On June 26, 2020, Randy Dingle ("Dingle" or "plaintiff") moved for default judgment against James Edward Spivey [D.E. 204]. On June 29, 2020, Larry Freeman moved to dismiss [D.E. 205]. On that same date, Addie Lee Smallwood moved to dismiss [D.E. 206].

Pursuant to 28 U.S.C. § 636(b)(1), the court refers Dingle's motion for default judgment [D.E. 204], Freeman's motion to dismiss [D.E. 205], and Smallwood's motion to dismiss [D.E. 206] to Magistrate Judge Numbers for a memorandum and recommendation and for a frivolity review.

SO ORDERED. This 20 day of July 2020.

  
JAMES C. DEVER III  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:19-CV-129-D

RANDY DINGLE,

Plaintiff,

v.

BENJAMIN KHAN, et al.,

Defendants.

ORDER

On March 16, 2020, the court dismissed Randy Dingle's ("Dingle" or "plaintiff") claims [D.E. 137], and closed the case. See [D.E. 138]. On March 27, 2020, Dingle moved to recuse Judge Gates from the case [D.E. 139]. No defendant responded.

The court construes Dingle's filing as a motion for reconsideration concerning this court's dismissal order and judgment of March 16, 2020. See [D.E. 137, 138]. The court has considered Dingle's motion for reconsideration under the governing standard. See Fed. R. Civ. P. 59(e); Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007); Bogart v. Chapell, 396 F.3d 548, 555 (4th Cir. 2005); Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998); Hughes v. Bedsole, 48 F.3d 1376, 1382 (4th Cir. 1995). The court denies the motion as baseless. See Belue v. Leventhal, 640 F.3d 567, 572-76 (4th Cir. 2011).

Alternatively, Dingle's motion fails to meet Rule 60(b)'s threshold requirements and is denied as baseless. See id.; Fed. R. Civ. P. 60(b); Aikens v. Ingram, 652 F.3d 496, 500-01 & n.3 (4th Cir. 2011) (en banc); Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412 n.12 (4th Cir. 2010); Nat'l Credit Union Admin. Bd. v. Gray, 1 F.3d 262, 264 (4th Cir. 1993); cf. Luxama v. McHugh, 675 F. App'x 272, 273 (4th Cir. 2017) (per curiam) (unpublished).

In sum, the court DENIES the motion for reconsideration [D.E. 139] as baseless. The case remains closed.

SO ORDERED. This 4 day of May 2020.

  
JAMES C. DEVER III  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

RANDY DINGLE,

Plaintiff,

v.

BENJAMIN KHAN, TIMOTHY J. PETERKIN,  
RICHARD M. HUTSON, II, MICHAEL B. STEIN,  
WILLIAM HILL, PATRICIA ELLEN WATSON  
DINGLE, JOSEPH N. CALLAWAY, GREGG  
EDWARDS, NATASHIA DINGLE, JACQUELYN  
FAYE CARTER, ALONZO DINGLE, ALLEN  
KERR, MICKEY LOCKLEAR, BRAGG  
MUTUAL CREDIT UNION, BENJAMIN E.  
LOVELL, NATASHA BARONE, GREG  
MORRISON, TERRY RAY, SHAPIRO & INGLE,  
LLP, BRUCE BULLOCK, MITCH EDWARDS,  
and TWO MEN AND A TRUCK,

Defendants.

JUDGMENT IN A  
CIVIL CASE  
CASE NO. 5:19-CV-129-D

**Decision by Court.** This action came before this Court for ruling as follows.

**IT IS ORDERED, ADJUDGED, AND DECREED** that the court overrules plaintiff's objections [D.E. 136] and adopts the conclusions in the M&R. Dingle's complaint is **DISMISSED** as frivolous. The court **DENIES** the pending motions [D.E.13, 16, 41, 48, 75, 81, 85, 87, 92, 94, 98, 100, 103, 112, 116, 117, 118, 119, 120, 127, 128] as moot.

**This Judgment Filed and Entered on March 16, 2020, and Copies To:**

Randy Dingle	(Sent to PO Box 9485 Fayetteville, NC 2812 via US Mail)
Rudy E. Renfer	(via CM/ECF electronic notification)
Antoine Marshall	(via CM/ECF electronic notification)
Richard M. Hutson, II	(via CM/ECF electronic notification)
Michael Barry Stein	(via CM/ECF electronic notification)
Jack T. Brock, II	(via CM/ECF electronic notification)
Richard T. Boyette	(via CM/ECF electronic notification)

Eleanor Redhage Gilroy

(via CM/ECF electronic notification)

Brenee Wynett Orozco

(via CM/ECF electronic notification)

Ronnia M. Mitchell

(via CM/ECF electronic notification)

Jeffrey B. Kuykendal

(via CM/ECF electronic notification)

Jason K. Purser

(via CM/ECF electronic notification)

Kurt D. Schmidt

(via CM/ECF electronic notification)

H. Addison Winters, III

(via CM/ECF electronic notification)

DATE:

PETER A. MOORE, JR., CLERK

March 16, 2020

(By) /s/ Nicole Sellers

Deputy Clerk



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:19-CV-34-D

RANDY DINGLE,

Plaintiff,

v.

TALMAGES BAGGETT, JR., et al.,

Defendants.

**ORDER**

On February 28, 2019, Randy Dingle ("Dingle" or "plaintiff"), proceeding pro se, filed a complaint against Talmages Baggett, Jr. ("Baggett"), Ellen B. Hancox ("Hancox"), Ronnie Mitchell ("Mitchell"), Deputy Mickey Locklear ("Locklear"), the Cumberland County Detention Center (the "Center"), Timothy J. Peterkin ("Peterkin"), Ennis W. Wright ("Wright"), Deputy Murphy ("Murphy"), Lieutenant Morrison ("Morrison"), Deputy Walden ("Walden"), Clavion Morning ("Morning"), and William Dancy ("Dancy"; collectively, "defendants") [D.E. 7]. On April 11, 2019, Peterkin moved to dismiss Dingle's complaint for failure to state a claim [D.E. 37]. On May 6, 2019, the Center, Locklear, Mitchell, Morning, Morrison, Murphy, Walden, and Wright moved to dismiss for lack of jurisdiction and for failure to state a claim [D.E. 42] and filed a memorandum in support [D.E. 43]. On May 8, 2019, Baggett and Hancox moved to dismiss on the same grounds [D.E. 46] and filed a memorandum in support [D.E. 47]. On May 9, 2019, Dancy moved to dismiss on the same grounds [D.E. 49] and filed a memorandum in support [D.E. 49-1]. Dingle responded in opposition to defendants' motions [D.E. 41, 54-56]. No defendant replied. As explained below, the court grants defendants' motions to dismiss for lack of subject-matter jurisdiction.

I.

Although Dingle's complaint is not a model of clarity, Dingle alleges that, on or about July 24, 2017, and August 20, 2018, Dingle appeared before Baggett, then a state judge in Cumberland County. See Compl. [D.E. 7] 6-7. Dingle alleges that Baggett told Dingle that he would take Dingle's residence, was upset about Dingle's clothing, and threatened to hold Dingle in contempt of court for his appearance. See id. at 6-7. Dingle also alleges that Baggett refused to look at a decree from a federal bankruptcy judge that disallowed "Ditech Finance LLC" to foreclose on Dingle's residence that Hancox, the Trial Court Administrator for the Cumberland County courts, presented to him. Id. at 6-7. Additionally, Dingle alleges that Baggett and Hancox made various threatening remarks to Dingle because he identifies as Moorish American. See id. at 7.

During the hearing on August 20, 2018, Dingle alleges that Mitchell, an attorney, asked Baggett to order Dingle's eviction. See id. Baggett ordered Sheriff Wright and Lieutenant Morrison to evict Dingle and his wife, Patricia Ellen Watson Dingle ("Patricia"; collectively, the "Dingles"), from their residence. See id. On August 23, 2018, Deputy Locklear put an eviction notice on the front door of the Dingles' "mobile home." Id. On August 24, 2018, Dingle alleges that he went to the Cumberland County Sheriff Department and showed Lieutenant Morrison and Sergeant Morning the bankruptcy court order disallowing foreclosure. See id. at 7-8.

On August 30, 2018, the Dingles went to the North Carolina Division of Motor Vehicles ("DMV") to obtain Patricia's driver license. See id. at 8. While there, Dingle alleges that the "DMV officer" was rude and told him to sit down. See id. Dingle believes that this occurred because Dancy told the other workers who Patricia was when the Dingles entered. See id. Dingle alleges that Dancy is Patricia's "friend/boyfriend." Id.

Later that day, as the Dingles prepared to leave their residence to attend a family reunion, they heard banging noises. See id. While Dingle initially believed that someone was breaking into his home, he soon realized that the police had surrounded the home. See id. Deputy Locklear arrested Patricia and “patted and felt all over her.” Id. Deputy Murphy also patted down Dingle and put them both in police cars while Deputy Walden, Lieutenant Morrison, and several other unnamed deputies allegedly “ransack[ed]” the Dingles’ residence. Id. Dingle alleges that Deputy Murphy threatened to kill him, causing Dingle to “fear for [his] life.” Id. at 9. The police eventually took the Dingles to the Center and put them both on bond for what Dingle alleges are “senseless” criminal charges. See id. at 8–9.

Dingle alleges that he has not seen Patricia since August 31, 2018, because she left him for Dancy, who works as a part-time security guard at the federal bankruptcy court. See id. at 9. Dingle also alleges that, on September 4, 2018, various individuals told him that “they” would keep Patricia from him. Id.<sup>1</sup> Additionally, Dingle alleges that Peterkin, his attorney in the federal bankruptcy court, “should have handle[d] this issue in the Cumberland County courts” but “fail[ed] to do so in a timely manner” even though he “understood and knew that the house was paid for.” Id. At some point, Peterkin terminated his representation of Dingle. See id.

Dingle seeks approximately \$600 million in relief for claims including “disrespect by a judge or officer of the court,” “unlawful arrest,” “illegal arrest (no warrant),” trespass, excessive bail, cruel and unusual punishment, violation of Dingle’s right to a speedy trial, violation of Dingle’s freedom of speech, racketeering, and false imprisonment. Id. at 10; see id. at 6.

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<sup>1</sup> Dingle does not clarify who “they” are in his complaint. See Compl. [D.E. 7] 9 (stating that “Natashia [and] Alonzo Dingle, Jacklyn Faye Carter said that they had [Patricia] and they [were] going to keep her from [Dingle] (her husband)”).

## II.

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure tests subject-matter jurisdiction, which is the court's "statutory or constitutional power to adjudicate the case." Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 89 (1998) (emphasis omitted); see Holloway v. Pagan River Dockside Seafood, Inc., 669 F.3d 448, 453 (4th Cir. 2012); Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 479–80 (4th Cir. 2005). A federal court "must determine that it has subject-matter jurisdiction over the case before it can pass on the merits of that case." Constantine, 411 F.3d at 479–80. As the party invoking federal jurisdiction, Dingle bears the burden of establishing that this court has subject-matter jurisdiction in this action. See, e.g., Steel Co., 523 U.S. at 104; Evans v. B.F. Perkins Co., 166 F.3d 642, 647 (4th Cir. 1999); Richmond, Fredericksburg & Potomac R.R. v. United States, 945 F.2d 765, 768 (4th Cir. 1991). In considering a motion to dismiss for lack of subject-matter jurisdiction, the court may consider evidence outside the pleadings without converting the motion into one for summary judgment. See, e.g., Evans, 166 F.3d at 647. A court should grant a motion to dismiss under Rule 12(b)(1) "only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." Id. (quotation omitted).

As for whether federal jurisdiction exists over Dingle's claims, several defendants contend that Dingle's complaint does not raise a federal question. See [D.E. 42, 46, 49].<sup>2</sup> In his complaint, Dingle alleges that "Title 18 [and] Title 31" provide the bases for federal subject-matter jurisdiction. Compl. [D.E. 7] 5.

---

<sup>2</sup> Peterkin does not move to dismiss for lack of subject-matter jurisdiction. See [D.E. 37]. However, the court may raise the issue of subject-matter jurisdiction on its own. See United States v. Wilson, 699 F.3d 789, 793 (4th Cir. 2012); Brickwood Contractors, Inc. v. Datanet Eng'g, Inc., 369 F.3d 385, 390 (4th Cir. 2004).

Title 18 of the United States Code defines federal crimes and federal criminal procedure. Title 31 of the United States Code governs the United States Treasury, the federal budget, and related matters. Neither Title 18 nor Title 31 provides Dingle with an applicable federal cause of action. Moreover, the parties are not diverse under 28 U.S.C. § 1332. See Compl. [D.E. 7] 1–4. Thus, because Dingle has not met his burden to show that the court has subject-matter jurisdiction over his claims, the court dismisses Dingle’s complaint for lack of subject-matter jurisdiction.

Alternatively, to the extent that Dingle seeks to contest his eviction in this court, the “Rooker-Feldman doctrine applies to losers of state foreclosure proceedings.” Saimplice v. Ocwen Loan Servicing Inc., 368 F. Supp. 3d 858, 864 (E.D.N.C. 2019); see, e.g., Locklear v. Fed. Home Mortg. Corp., No. 7:16-CV-344-D, 2017 WL 1737634, at \*3 (E.D.N.C. May 1, 2017) (unpublished); Hardin v. Bank of Am., N.A., No. 7:16-CV-75-D, 2017 WL 44709, at \*3 (E.D.N.C. Jan. 3, 2017) (unpublished); Carmichael v. Irwin Mortg. Corp., No. 5:14-CV-122-D, 2014 WL 7205099, at \*3 (E.D.N.C. Dec. 17, 2014) (unpublished); Radisi v. HSBC Bank USA, Nat’l Ass’n, No. 511CV125-RLV, 2012 WL 2155052, at \*4 (W.D.N.C. June 13, 2012) (unpublished), aff’d, 479 F. App’x 468 (4th Cir. 2012) (per curiam) (unpublished). The Rooker-Feldman doctrine reflects that “federal district courts have ‘no authority to review final judgments of a state court in judicial proceedings.’” Saimplice, 358 F. Supp. 3d at 863 (quoting D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983)); see Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005); Rooker v. Fid. Tr. Co., 263 U.S. 413, 415–16 (1923). Thus, because the Rooker-Feldman doctrine bars this court from sitting in direct review of any state court order that authorized Dingle’s eviction, the court dismisses any claim challenging Dingle’s eviction for lack of subject-matter jurisdiction.<sup>3</sup>

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<sup>3</sup> In light of the court’s holding under Rule 12(b)(1), the court does not reach the defendants’ remaining arguments in support of their motions to dismiss.

In Dingle's responses to defendants' motions to dismiss, Dingle suggests that his claims are brought under 18 U.S.C. §§ 241 and 242. See [D.E. 41] 2-3; [D.E. 54] 2-3. A response brief "is not an appropriate means to request leave to amend a complaint." Jemsek v. N. Carolina Med. Bd., No. 5:16-CV-59-D, 2017 WL 696721, at \*12 (E.D.N.C. Feb. 21, 2017) (unpublished) (collecting cases), aff'd, 697 F. App'x 234 (4th Cir. 2017) (per curiam) (unpublished). Moreover, neither 18 U.S.C. § 241 nor 18 U.S.C. § 242 creates a private right of action. See 18 U.S.C. §§ 241, 242; United States v. Oguaju, 76 F. App'x 579, 581 (6th Cir. 2003) (per curiam) (unpublished); Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 511 (2d Cir. 1994); El Bey v. Celebration Station, No. 3:02CV461, 2006 WL 2811497, at \*3 (W.D.N.C. Sept. 28, 2006) (unpublished), aff'd, 242 F. App'x 917 (4th Cir. 2007) (per curiam) (unpublished). Accordingly, any claim under these statutes fails.

III.

In sum, the court GRANTS the defendants' motions to dismiss [D.E. 37, 42, 46, 49] and DISMISSES Dingle's complaint without prejudice [D.E. 7]. The clerk shall close the case.

SO ORDERED. This 12 day of July 2019.

  
JAMES C. DEVER III  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

RANDY DINGLE,

Plaintiff,

v.

TALMAGES BAGGETT, JR., ELLEN B.  
HANCOX, RONNIE MITCHELL, MICKEY  
LOCKLEAR, CUMBERLAND COUNTY  
DETENTION CENTER, TIMOTHY J.  
PETERKIN, SHERIFF ENNIS W. WRIGHT,  
DEPUTY MURPHY, LIEUTENANT MORRISON,  
DEPUTY WALDEN, CLAVION MORNING, and  
WILLIAM DANCY,

Defendants.

JUDGMENT IN A  
CIVIL CASE  
CASE NO. 5:19-cv-34-D

**Decision by Court.** This action came before this Court for ruling as follows.

**IT IS ORDERED, ADJUDGED, AND DECREED** that the court GRANTS the defendants' motions to dismiss [D.E. 37, 42, 46, 49] and DISMISSES Dingle's complaint without prejudice [D.E. 7].

**This Judgment Filed and Entered on July 15, 2019, and Copies To:**

Randy Dingle

(Sent to P.O. Box 9485 Fayetteville, NC 28311 via  
US Mail)

Anna M. Davis

(via CM/ECF electronic notification)

RonnieM. Mitchell

(via CM/ECF electronic notification)

Antoine Marshall

(via CM/ECF electronic notification)

Christopher J. Derrenbacher

(via CM/ECF electronic notification)

DATE:

July 15, 2019

PETER A. MOORE, JR., CLERK

(By) /s/ Nicole Sellers

Deputy Clerk

## 47A



State of North Carolina

County of Cumberland

*DITECH FINANCIAL LLC,*

v.

*PATRICIA WATSON DINGLE and RANDY DINGLE,*

Respondents.

FILED

In the General Court of Justice  
District Court Division

2018 AUG 20 A 11:58

16 CvD 3115

CUMBERLAND CO., C.S.C.

BY \_\_\_\_\_

Petitioners,

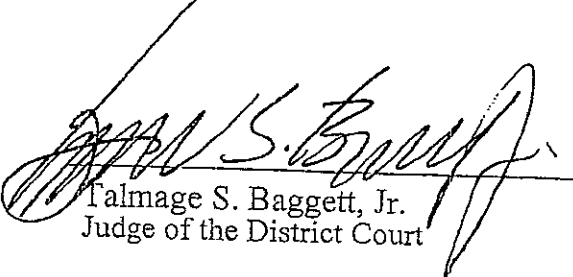
Order

THIS CAUSE coming on to be heard and being heard, before the undersigned Judge of the District Court upon the Defendants' motion for Emergency Stay by Writ of Error/Possession; and the Court received documents from the defendants, reviewed the record in this action, and heard arguments from the defendants and counsel for the plaintiff, and

IT APPEARING TO THE COURT that the motion should not be allowed and that the Court should not sustain the motion, and that the motion should be denied. Further, the Sheriff of Cumberland County should be permitted to proceed with the eviction of the Defendants, forthwith.

It is So Ordered.

Dated: August 20, 2018

  
Talmage S. Baggett, Jr.  
Judge of the District Court

## STATE OF NORTH CAROLINA

16 CVD 3115

Scan No. (s) (official use only)

Cumberland

County

FILED

In The General Court Of Justice  
District Court Division

Name And Address Of Plaintiff

DITECH FINANCIAL LLC

1400 Turbine Drive

Rapid City, SD 57703

Samantha Heldt 651-293-5590

2018 AUG 10 P 2:05

CUMBERLAND CO., GA.

WRIT OF POSSESSION  
PERSONAL PROPERTY

VERSUS

Name And Address Of Defendant 1

PATRICIA WATSON DINGLE

4625 Trumilla Drive

Fayetteville, NC 28312

85517

Name And Address Of Defendant 2

RANDY DINGLE

4625 Trumilla Drive

Fayetteville, NC 28312

855178

NOTE: This form is not for use in summary ejectment actions. For summary ejectment actions, see form AOC-CV-401.

To The Sheriff Of CUMBERLAND

County:

A judgment in favor of the plaintiff was rendered in this case for the possession of the personal property described below; and you are commanded to take possession of that property from the defendant and deliver it to the plaintiff.

Description Of The Property

1999 Commodore Cambridge 28' x 68' manufactured home, Serial Number AX31367AB, together with stove, refrigerator, washer, dryer, heat pump, skirting, and steps

Date Of Judgment

July 24, 2017

Signature

Megan Chavis

Date Writ Issued

8-10-18

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

## RETURN OF SERVICE

- ☒ 1. This Writ was served by my taking possession of the property described above and delivering it to the plaintiff.  
2. I have failed to take possession of the property described above for the following reason:

Fee Paid

\$

Signature Of Deputy Sheriff Making Return

Fee Paid By (type or print)

Name Of Deputy Sheriff Making Return (type or print)

Date Received

Date Executed

Date Returned

County Of Deputy Sheriff Making Return

8-13-18

8-30-18

8-30-18

AOC-CV-402, Rev. 10/14

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11-2017

49A



HIGH PERFORMANCE LAW

Michael B. Stein  
Attorney at Law  
Phone: 704-362-9255  
Fax: 704-362-9269  
Email: michael.stein@hutchenslawfirm.com  
HutchensLawFirm.com

Offices In:  
FAYETTEVILLE, CHARLOTTE, WILMINGTON, NC | COLUMBIA, SC  
6230 Fairview Road, Suite 315  
Charlotte, NC 28210-3253  
P.O. Box 12497  
Charlotte, NC 28220-2497

August 8, 2018

Clerk of Superior Court  
Cumberland County Courthouse  
P.O. Box 363  
Fayetteville, NC 28302-0363

Re: Ditech Financial LLC v Dingle  
Cumberland County File No. 16 CVD 3115  
Hutchens Law Firm File No.: 1177000 *mc*

FILED  
2018 AUG 10 P. 2:05  
CUMBERLAND CO., S.C.

Dear Sir or Madam Clerk:

I have enclosed herewith an original and copies of a Writ of Possession for Personal Property in connection with the above matter. I have also enclosed checks for the issuance and service of the Writ. Please issue the Writ, send the original and sufficient copies of it along with the \$60 check to the Sheriff; and then return the filed copies to me in the enclosed self-addressed, stamped envelope.

Finally, you may note that on August 24, 2017, the defendants filed a notice of appeal of the court's July 24 order and judgment for possession. According to N.C. Gen. Stat. §1-290, the execution of a judgment for possession of personal property is not stayed by appeal unless the defendants enter into and submit an undertaking, or bond, by at least two sureties in an amount directed by the court. To our knowledge, the defendants have taken no steps to submit this undertaking in order to stay the execution of the judgment; so the plaintiff intends to enforce the court's July 24 order and judgment until or unless such action is properly stayed. If you have any questions or concerns about this, please feel free to contact me.

Very truly yours,  
HUTCHENS LAW FIRM

*Michael B. Stein*

Michael B. Stein

enclosures

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

DITECH FINANCIAL LLC,

Plaintiff,

v.

PATRICIA WATSON DINGLE and  
RANDY DINGLE,

Defendants.

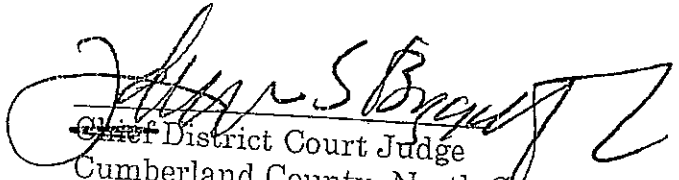
IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
16 CVD 3115

FILED  
2018 AUG - 20 A 8:47  
CUMBERLAND CO., N.C.  
ORDER REACTIVATING CASE

THIS CAUSE came on to be heard before the undersigned Chief District Court Judge upon the Plaintiff's Motion to Reactivate Case; and it appearing to the Court that the Defendants filed a Chapter 13 bankruptcy petition on September 18, 2017 in the case bearing United States Bankruptcy Court for the Middle District of North Carolina Case No. 17-80763 (the "Bankruptcy Case") which said Bankruptcy Case was dismissed by the Bankruptcy Court on July 25, 2018.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion to Reactivate Case should be granted; that the automatic stay provisions of the Bankruptcy Code are no longer in effect as a result of the dismissal of the Bankruptcy Case; and that this civil action shall be and the same herewith is reactivated.

This 2<sup>d</sup> day of August, 2018

  
Chief District Court Judge  
Cumberland County, North Carolina

*Tolana S. Baggett*

# STATE OF NORTH CAROLINA

File No.

16 CVD 3115

Scan No.(s) (official use only)

CUMBERLAND

County

In The General Court Of Justice

Name And Address Of Plaintiff

Ditech Financial LLC  
c/o Hutchens Law Firm  
6230 Fairview Road, Suite 315  
Charlotte

704-362-9200

NC

2017 SEP 11 A 8:32  
28210

## WRIT OF POSSESSION PERSONAL PROPERTY

VERSUS

CUMBERLAND CO., C.S.C.

G.S. 1-308, -313

Name And Address Of Defendant 1

Patricia Watson Dingle  
4625 Trumilla Drive

813130

NC

28312

Name And Address Of Defendant 2

Randy Dingle  
4625 Trumilla Drive

813131

Fayetteville

910 484-5653 NC

28312

NOTE: This form is not for use in summary ejectment actions. For summary ejectment actions, see form AOC-CV-401.

To The Sheriff Of Cumberland County:

A judgment in favor of the plaintiff was rendered in this case for the possession of the personal property described below; and you are commanded to take possession of that property from the defendant and deliver it to the plaintiff.

Description Of The Property

1999 Commodore Cambridge 28' x 68' manufactured home, Serial Number AX31367AB, with stove, refrigerator, washer, dryer, heat pump, skirting and steps

Date Of Judgment

07/24/2017

Signature

*Janella McLean*

Date Writ Issued

9-11-17

☐ Deputy CSC

☒ Assistant CSC

☐ Clerk Of Superior Court

### RETURN OF SERVICE

- ☐ 1. This Writ was served by my taking possession of the property described above and delivering it to the plaintiff.
- ☒ 2. I have failed to take possession of the property described above for the following reason:

filed bankruptcy

Petition # 17-80763

Fee Paid

\$

Signature Of Deputy Sheriff Making Return

Fee Paid By (type or print)

Name Of Deputy Sheriff Making Return (type or print)

Date Received

Date Executed

Date Returned

County Of Deputy Sheriff Making Return

9-12-17

9-19-17

Cumberland

AOC-CV-402, Rev. 10/14

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52A

11-207



FILED  
HIGH PERFORMANCE LAW

2017 SEP 11 A 8:32

Michael B. Stein  
Attorney at Law  
Phone: 704-362-9255  
Fax: 704-362-9269  
Email: michael.stein@hutchenslawfirm.com  
HutchensLawFirm.com

CUMBERLAND CO., C.S.C.

Offices In:  
FAYETTEVILLE, CHARLOTTE, WILMINGTON, NC | COLUMBIA, SC  
6230 Fairview Road, Suite 315  
Charlotte, NC 28210-3253

P.O. Box 12497  
Charlotte, NC 28220-2497

September 7, 2017

Clerk of Superior Court  
Cumberland County Courthouse  
P.O. Box 363  
Fayetteville, NC 28302-0363

Re: Ditech Financial LLC v Dingle  
Cumberland County File No. 16 CVD 3115  
Hutchens Law Firm File No.: 1177000

Dear Sir or Madam Clerk:

I have enclosed herewith an original and copies of a Writ of Possession for Personal Property in connection with the above matter. I have also enclosed checks for the issuance and service of the Writ. Please issue the Writ, send the original and sufficient copies of it along with the \$60 check to the Sheriff, and then return the filed copies to me in the enclosed self-addressed, stamped envelope.

Finally, you may note that on August 24, 2017, the defendants filed a notice of appeal of the court's July 24 order and judgment for possession. According to N.C. Gen. Stat. §1-290, the execution of a judgment for possession of personal property is not stayed by appeal unless the defendants enter into and submit an undertaking, or bond, by at least two sureties in an amount directed by the court. To our knowledge, the defendants have taken no steps to submit this undertaking in order to stay the execution of the judgment; so the plaintiff intends to enforce the court's July 24 order and judgment until or unless such action is properly stayed. If you have any questions or concerns about this, please feel free to contact me.

Very truly yours,  
HUTCHENS LAW FIRM

Michael B. Stein

enclosures

53A

# HUTCHENS — LAW FIRM —

HIGH PERFORMANCE LAW™

Jennifer Payton  
Phone: 704-357-6262, ext. 2327  
Fax: 704-362-9282  
Email: jennifer.payton@hutchenslawfirm.com  
HutchensLawFirm.com

Offices In:  
FAYETTEVILLE, CHARLOTTE, WILMINGTON, NC | COLUMBIA, SC  
6230 Fairview Road, Suite 315  
Charlotte, NC 28210-3253

P.O. Box 12497  
Charlotte, NC 28220-2497

September 8, 2017

Via U.S. Mail

Clerk of Superior Court  
Cumberland County Courthouse  
P.O. Box 363  
Fayetteville, NC 28302-0363

Re: Ditech Financial LLC v Dingle  
Cumberland County File No. 16 CVD 3115 JP  
Hutchens Law Firm File No.: 1177000

FILED  
2017 AUG -1 A 8:17  
CLERK OF SUPERIOR COURT  
CUMBERLAND COUNTY, N.C.

Dear Sir/Madam,

Enclosed please find an original and one (1) copy of a Motion to Reactivate Case and Certificate of Service, along with duplicate originals of a proposed Order Reactivating Case in the above referenced matter. Please present the Order to the Chief District Court Judge for signature; and then return filed copies of all of the documents to us in the enclosed postage paid envelope.

With best regards, I am

Very truly yours,  
HUTCHENS LAW FIRM  
**Jennifer Payton**  
Jennifer Payton  
Legal Assistant to Michael B. Stein, Esq.

/jpm  
Enclosure(s)

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the debt against the property.

54A

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
16 CVD 3115

FILED

2017 JUL 24 A 10:24

DITECH FINANCIAL LLC,

CUMBERLAND COUNTY, C.S.C.

Plaintiff,

v.

ORDER AND JUDGMENT

PATRICIA WATSON DINGLE and  
RANDY DINGLE,

Defendants.

THIS CAUSE came on for hearing on July 24, 2017 before the undersigned District Court Judge of Cumberland County, North Carolina upon the Plaintiff's Motion for Judgment on the Pleadings, pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure.

It appearing to the Court that the allegations of the Plaintiff's Complaint and the admissions of the Defendant's Answer or Reply show that Plaintiff is entitled to the relief sought in its Complaint.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

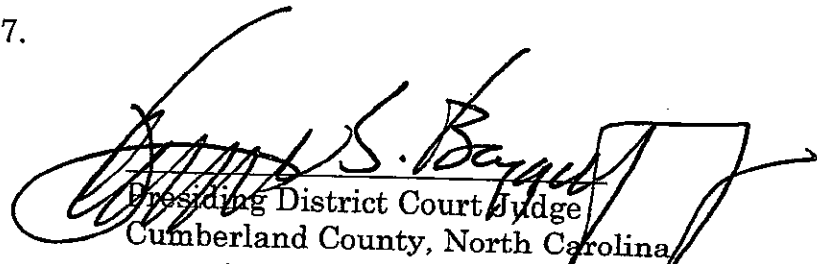
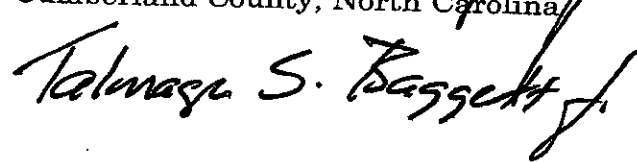
1. Plaintiff's Motion for Judgment on the Pleadings be and the same herewith is GRANTED;
2. Plaintiff has the right to take immediate possession of the 1999 Commodore Cambridge 28' x 68' manufactured home, Serial Number AX31367AB, together with stove, refrigerator, washer, dryer, heat pump, skirting, and steps (hereinafter the "Property") in which it has a valid and perfected security interest;
3. Plaintiff has the right to sell the Property at a disposition in accordance with the Uniform Commercial Code and apply the net proceeds from said sale to the balance, if any, which the Defendants owe on the Manufactured Home Retail Installment Contract and Security Agreement;
4. Defendants shall permanently surrender and deliver the Property to the Plaintiff;

55A



5. Plaintiff is entitled to a writ of possession from this Court directing the Sheriff to immediately take possession of the Property and to deliver it to the Plaintiff.

This 20<sup>th</sup> day of July, 2017.

  
Presiding District Court Judge  
Cumberland County, North Carolina  


STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

File No.

16-CVD-003115

IN THE GENERAL COURT OF JUSTICE

ME 113 P 2 35 District Court Division

Plaintiff

DITECH FINANCIAL LLC

vs.

Defendant

DINGLE, PATRICIA, WATSON  
DINGLE, RANDY

**ADMINISTRATIVE  
ORDER**  
Bankruptcy

Cumberland County District General Civil Court Local Rules

**FINDINGS OF FACT**

It having been made to appear to the undersigned that the relief sought by the Plaintiff and the Defendant in this action will probably be litigated in the Bankruptcy Court proceedings, Case No. 16-03674-5-JNC, pending in the United States District Court for the EASTERN District of North Carolina, and that no just cause presently exists for the maintenance of this action;

**ORDER**

IT IS THEREFORE ORDERED THAT THIS ACTION BE DISCONTINUED, AND THE CLERK OF SUPERIOR COURT IS ORDERED TO CLOSE SAID FILE WITH LEAVE TO ANY PARTY TO REINSTITUTE THE SAME BY MOTION IN THE CAUSE IF THE SAID CLAIMS ARE NOT FULLY ADJUDICATED AS AFORESAID.

Date Issued:

District Court Judge Presiding

Signature

7-18-2016

ROBERT J. STIEHL, III

*[Handwritten Signature]*

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

DITECH FINANCIAL LLC,

Plaintiff,

v.

PATRICIA WATSON DINGLE and  
RANDY DINGLE,

Defendants.

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
16 CVD 3115

FILED  
MAY 22 2:53 PM  
CUMBERLAND CO. C.S.C.

ORDER REACTIVATING CASE

THIS CAUSE came on to be heard before the undersigned Clerk of Superior Court upon the Plaintiff's Motion to Reactivate Case; and it appearing to the Court that the Defendants filed a Chapter 13 bankruptcy petition on July 14, 2016 in the case bearing United States Bankruptcy Court for the Eastern District of North Carolina Case No. 16-03674-5-JNC (the "Bankruptcy Case") which said Bankruptcy Case was dismissed by the Bankruptcy Court on May 18, 2017.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion to Reactivate Case should be granted; that the automatic stay provisions of the Bankruptcy Code are no longer in effect as a result of the dismissal of the Bankruptcy Case; and that this civil action shall be and the same herewith is reactivated.

This 21<sup>st</sup> day of May, 2017

  
Clerk of Superior Court

Cumberland County, North Carolina

*Chief District Court Judge*

SO ORDERED.

SIGNED this 25th day of July, 2018.



*Benjamin A. Kahn*

BENJAMIN A. KAHN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN THE MATTER OF:

Randy Dingle

Patricia Dingle

Debtors

)  
)  
)  
)  
)

No. B-17-80763 C-13D

ORDER DENYING AS MOOT MOTION TO WITHDRAW  
AS COUNSEL OF RECORD

On July 19, 2018, a hearing was held on Motion by Timothy Jay Peterkin, Esq. to withdraw as counsel of record in this case. At the hearing, Timothy Jay Peterkin, Esq. appeared; Benjamin E. Lovell, Esq., appeared on behalf of the Trustee; and the Debtors appeared. No other party appeared or objected to the Motion. The Court immediately prior to the hearing dismissed the Debtors' case on Motion of the Trustee thereby rendering this Motion moot; therefore, it is

ORDERED that the Motion to withdraw as counsel of record in this case by Timothy Jay Peterkin, Esq. is denied as moot by reason of the dismissal of the case prior to the hearing.

END OF DOCUMENT


Page 1 of 4  
No. 2

60A

SO ORDERED.

SIGNED this 23rd day of July, 2018.



  
BENJAMIN A. KAHN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN THE MATTER OF:

Randy Dingle

Patricia Dingle

Debtor(s)

)  
)  
)  
)  
)

No. B-17-80763 C-13D

**ORDER**

After notice and hearing in open Court on July 19, 2018, upon Motion to Dismiss by the Standing Trustee, and for sufficient reasons appearing, the presiding Judge in open Court directed that the Clerk enter the following Order of Dismissal; therefore, it is

ORDERED that this case is dismissed upon the grounds of failure of the Debtors to comply with the requirements of the plan, and it is further

ORDERED that this case shall remain open for 30 days from the entry of this Order for any party in interest to file a further motion for consideration by the court, and it is further

ORDERED that the Standing Trustee is authorized to retain from any funds on hand in the case noticing costs in the amount of \$1.00 per notice with the balance of the funds to be disbursed pursuant to the confirmed plan.

END OF DOCUMENT

59A

**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF NORTH CAROLINA**  
Fayetteville Division

IN RE:

Randy Dingle  
4625 Trumilla DR  
Fayetteville, NC 28312

CASE NO.: 16-03674-5-JNC

DATE FILED: July 14, 2016

CHAPTER: 13

Patricia W. Dingle  
4625 Trumilla DR  
Fayetteville, NC 28312

**ORDER OF DISMISSAL**

The court finds that Randy Dingle and Patricia W. Dingle has/have failed to comply with the provisions of the confirmed chapter 13 plan or to obtain confirmation of a plan. Cause exists to dismiss this case as to this debtor(s). Should Randy Dingle and Patricia W. Dingle file another petition within one year, the automatic stay may be limited to 30 days or may not go into effect absent a motion and order imposing or extending the automatic stay. Now therefore,

IT IS ORDERED that this case is dismissed as to Randy Dingle and Patricia W. Dingle and all funds held by the trustee shall be disbursed to the appropriate parties as required by the Bankruptcy Code, Federal Rules of Bankruptcy Procedure and the local rules of this court.

DATED: May 18, 2017

Joseph N. Callaway  
United States Bankruptcy Judge

61A

**United States Bankruptcy Court**

Eastern District of North Carolina

Case No. 11-06102-8-SWH

Chapter 7

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Randy Dingle  
4625 Trumilla DR  
Fayetteville, NC 28312

Patricia W. Dingle  
4625 Trumilla DR  
Fayetteville, NC 28312

Social Security / Individual Taxpayer ID No.:  
xxx-xx-9341

xxx-xx-4694

Employer Tax ID / Other nos.:

**DISCHARGE OF DEBTOR**

It appearing that the debtor is entitled to a discharge,

**IT IS ORDERED:**

The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

BY THE COURT

Dated: 12/2/11

Stephani W. Humrickhouse  
United States Bankruptcy Judge

**SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.**

Exhibit 3

62A