UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PAULA WILLIAMS,

Plaintiff,

v.

SANDI SHANKLIN-OWENS, *et al.*,

Defendants.

CAUSE NO. 3:19-CV-1062-DRL-MGG

OPINION AND ORDER

Paula Williams, proceeding *pro se*, filed a complaint and a motion for leave to proceed in forma pauperis. "A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotations and citation omitted). Nevertheless, pursuant to 28 U.S.C. § 1915(e)(2), the court may dismiss the case if the action is frivolous or malicious, fails to state a claim, or seeks monetary relief against a defendant who is immune from such relief.

In the complaint, Ms. Williams asserts that, from 2015 to April 2019, three defendants continuously violated her rights in numerous ways under state and federal law. The sole fact allegation in the complaint is that, on April 23, 2019, the defendants confined Ms. Williams and took possession of her property.

A complaint must contain sufficient factual matter to "state a claim that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Further, "it is axiomatic that subject matter jurisdiction cannot be waived, and that courts must raise the issue *sua sponte* when it appears that subject matter jurisdiction is lacking." *Buethe v. Britt Airlines, Inc.*, 749 F.2d 1235, 1238 (7th

Cir. 1984). As a federal district court, this court has subject matter jurisdiction over claims arising under federal law or for claims where there is diversity of citizenship between the parties. 28 U.S.C. §§ 1331, 1332.

Ms. Williams asserts some claims arising under federal law, including unlawful employment discrimination, but the complaint contains no factual allegations to support them—for example, there are no factual allegations to suggest an employment relationship, an adverse employment action, or membership in a protected class. *See e.g., Hoffman v. Caterpillar, Inc.*, 256 F.3d 568, 572 (7th Cir. 2001) (elements for a claim under the Americans with Disabilities Act); *Pitasi v. Gartner Grp., Inc.*, 184 F.3d 709, 716 (7th Cir. 1999) (elements for a claim under the Age Discrimination in Employment Act). The sole factual allegation lends some support for claims arising under state law, such as false imprisonment, conversion, or intentional infliction of emotional distress. *See, e.g., Westminster Presbyterian Church of Muncie v. Yonghong Cheng*, 992 N.E.2d 859, 870 (Ind. Ct. App. 2013) (intentional infliction of emotional distress); *Dietz v. Finlay Fine Jewelry Corp.*, 754 N.E.2d 958, 967 (Ind. Ct. App. 2001) (false imprisonment); *Yoder Feed Serv. v. Allied Pullets, Inc.*, 171 Ind. App. 692, 695, 359 N.E.2d 602, 604 (1977) (conversion). However, according to the complaint, all parties appear to be citizens of the State of Indiana. The complaint thus asserts no valid claims arising under federal law, and there is no diversity of citizenship between the parties. Therefore, the court lacks subject matter jurisdiction over the complaint.

Though Ms. Williams cannot proceed on this complaint, she may file an amended complaint. *See Luevano v. Wal-Mart*, 722 F.3d 1014 (7th Cir. 2013). She may obtain copy of this court's approved form – Civil Complaint (INND Rev. 8/16) – on the court website.[1] However, Ms. Williams should only file an amended complaint if she believes she can address the deficiencies in this order. If she

[1] Available at https://www.innd.uscourts.gov/sites/innd/files/CvCmplt.pdf.

chooses to file an amended complaint, she must put the cause number of this case on it, which is on the first page of this order.

For these reasons, the court:

(1) GRANTS Paula Williams until January 6, 2020 to file an amended complaint and to resolve her filing fee status; and

(2) CAUTIONS Paula Williams that, if she does not respond by this deadline, the case will be dismissed without further notice.

SO ORDERED.

December 6, 2019

s/ Damon R. Leichty
Judge, United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PAULA WILLIAMS,

Plaintiff,

v.

SANDI SHANKLIN-OWENS, *et al.*,

Defendants.

CAUSE NO. 3:19-CV-1062-DRL-MGG

OPINION AND ORDER

Paula Williams filed an amended complaint. "A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nevertheless, pursuant to 28 U.S.C. § 1915(e)(2), the court may dismiss the case if the action is frivolous or malicious, fails to state a claim, or seeks monetary relief against a defendant who is immune from such relief.

In the amended complaint, Ms. Williams asserts that, from 2015 to April 2019, three defendants continuously violated her rights in numerous ways under state and federal law. Notably, the court dismissed the initial complaint for lack of subject matter jurisdiction because it lacked sufficient factual allegations to state plausible federal law claims, and there was no diversity of citizenship between the parties that permitted state law claims to be decided in this court:

> Ms. Williams asserts some claims arising under federal law, including unlawful employment discrimination, but the complaint contains no factual allegations to support them—for example, there are no factual allegations to suggest an employment relationship, an adverse employment action, or membership in a protected class. *See e.g., Hoffman v. Caterpillar, Inc.*, 256 F.3d 568, 572 (7th Cir. 2001) (elements for a claim under the Americans with Disabilities Act); *Pitasi v. Gartner Grp., Inc.*, 184 F.3d 709, 716 (7th Cir. 1999) (elements for a claim under the Age Discrimination in Employment Act). The sole factual allegation lends some support for claims arising under state law, such as false imprisonment, conversion, or intentional infliction of emotional distress. *See e.g., Westminster Presbyterian Church of Muncie v. Yonghong Cheng*, 992 N.E.2d 859, 870 (Ind. Ct. App. 2013) (intentional infliction of emotional distress); *Dietz v. Finlay Fine Jewelry Corp.*, 754 N.E.2d 958, 967 (Ind. Ct. App. 2001) (false imprisonment); *Yoder Feed*

> *Serv. v. Allied Pullets, Inc.*, 171 Ind. App. 692, 695, 359 N.E.2d 602, 604 (1977) (conversion). However, according to the complaint, all parties reside within the State of Indiana. The complaint thus asserts no valid claims arising under federal law, and there is no diversity of citizenship between the parties. Therefore, the court lacks subject matter jurisdiction over the complaint.

ECF 5 at 2-3.

The amended complaint is substantially similar to the initial complaint except that Ms. Williams has attached an unemployment decision from the Indiana Department of Workforce Development. In the decision, the administrative law judge found that her discharge was not for just cause because the employer terminated her for violating a rule that had not been conveyed to Ms. Williams and that had not been uniformly applied to all employees. While the amended complaint contains more information, there remain insufficient factual allegations to support any of the asserted federal employment discrimination claims. For example, though Ms. Williams asserts unlawful retaliation, wage discrimination, age discrimination, and disability discrimination, there are no factual allegations describing her wages in comparison to other employees or how the employer treated her in comparison to younger or more able-bodied employees, or any allegations suggesting that she has a disability or that the employer had an unlawful retaliatory motive. *See e.g., Hoffman*, 256 F.3d at 572 (elements for a claim under the Americans with Disabilities Act); *Pitasi*, 184 F.3d at 716 (elements for a claim under the Age Discrimination in Employment Act); *Kersting v. Wal-Mart Stores, Inc.*, 250 F.3d 1109, 1117 (7th Cir. 2001) (elements for an unlawful retaliation claim under the Americans with Disabilities Act); *Fallon v. State of Ill.*, 882 F.2d 1206, 1208 (7th Cir. 1989) (elements for a claim under the Equal Pay Act). The amended complaint thus asserts no valid claims arising under federal law, and there remains no diversity of citizenship between the parties.

For these reasons, the court DISMISSES this case for lack of subject matter jurisdiction.

SO ORDERED.

February 19, 2020

s/ Damon R. Leichty
Judge, United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PAULA WILLIAMS, Plaintiff, v. CONDUENT HUMAN SERVICES LLC, Defendant.	CAUSE NO. 3:19-CV-1061 DRL-MGG

OPINION & ORDER

Paula Williams filed a *pro se* complaint alleging a host of federal claims arising from her years of employment at Conduent Human Services. Conduent now seeks to enforce an arbitration agreement and dismiss this action. Ms. Williams asks to stay arbitration and enter default judgment against Conduent. Because a valid agreement to arbitrate questions of arbitrability exists, the court grants Conduent's motion, denies Ms. Williams' motions, and dismisses the case.

BACKGROUND

Ms. Williams worked with Conduent from September 2013 until her April 2019 termination. ECF 1 at 2. In December 2018, she was transferred to another position. ECF 8-2 at 1; ECF 12-2 ¶¶ 23-24. Upon her transfer, Conduent required Ms. Williams to complete certain paperwork. ECF 12-2 ¶¶ 23-24; ECF 12-6. Part of that paperwork was an agreement to be bound by the company's dispute resolution plan (DRP). ECF 12-2 ¶ 24; ECF 12-6 at 6. Conduent describes the DRP as "a mandatory system for settling workplace disputes and provides for mandatory, binding arbitration of most legal claims, including employment-related claims." ECF 12-2 ¶ 7. The agreement states:

> Having been accepted for employment and as part of my acceptance, I CONSENT TO THE EXCLUSIVE **FINAL AND BINDING RESOLUTION BY ARBITRATION** UNDER THE DRP **OF ALL DISPUTES (as defined in the DRP) INCLUDING LEGAL CLAIMS**, past, present or future, arising out of, relating to, or concerning my employment with Conduent, terms and conditions of Conduent employment, and/or separation or termination of Conduent employment[.]

ECF 12-6 at 6 (emphases original). The agreement goes on to say: **DISPUTES WILL BE ARBITRATED RATHER THAN DECIDED BY A COURT OR JURY. I AM WAIVING MY RIGHT TO A JUDGE OR JURY TRIAL.** *Id.* at 7. On the final page of the agreement, Ms. Williams' electronic signature and IP address appear, dated December 18, 2018. *Id.* at 9.

In April 2019, Ms. Williams was terminated from her position. ECF 1 at 2; ECF 12-2 ¶ 23. She alleges she was wrongfully terminated after filing multiple complaints of harassment and discrimination both internally and with the Equal Employment Opportunity Commission. ECF 1 at 2. Her EEOC charge alleged ongoing discrimination on the basis of her sex, race, and disabilities. ECF 1-1 at 8. Her complaint realleges those claims and several others arising from her employment. ECF 1 at 1. After Conduent approached Ms. Williams about arbitration pursuant to the DRP, she preemptively filed a motion to stay arbitration. ECF 7; ECF 8 at 1. Conduent responded with its own motion to compel arbitration and dismiss this case pursuant to the Federal Arbitration Act, 9 U.S.C. § 4, and Federal Rules of Civil Procedure 12(b)(1) and 12(b)(3).

STANDARD

The Federal Arbitration Act (FAA) requires courts to treat written arbitration agreements as "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of a contract." *Arthur Andersen LLP v. Carlisle,* 556 U.S. 624, 629 (2009) (quoting 9 U.S.C. § 2). The question of arbitrability—whether the parties must submit a particular dispute to arbitration—is "an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise[.]" *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986).

Under the FAA, three things are needed to compel arbitration: (1) a written arbitration agreement, (2) a dispute within the agreement's scope, and (3) a refusal to arbitrate that dispute. *Zurich Am. Ins. Co. v. Watts Indus., Inc.*, 417 F.3d 682, 687 (7th Cir. 2005). "[I]f a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to

piecemeal litigation." *KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011). A court may not refuse to compel arbitration on claims merely because some of the claims are not arbitrable. *Id.*

"The FAA does not expressly identify the evidentiary standard a party seeking to avoid compelled arbitration must meet." *Tinder v. Pinkerton Sec.*, 305 F.3d 728, 735 (7th Cir. 2002). This circuit has analogized the standard to that required of a party opposing summary judgment under Federal Rule of Civil Procedure 56(e). *Id.* The opposing party must demonstrate that a genuine issue of material fact warranting a trial exists. "Just as in summary judgment proceedings, a party cannot avoid compelled arbitration by generally denying the facts upon which the right to arbitration rests; the party must identify specific evidence in the record demonstrating a material factual dispute for trial." *Id.*; *see also Oppenheimer & Co., Inc. v. Neidhardt*, 56 F.3d 352, 358 (2d Cir. 1995) (same). In short, the party opposing arbitration must identify a triable issue concerning the agreement's existence or scope to preserve a trial. *Saturday Evening Post Co. v. Rumbleseat Press, Inc.*, 816 F.2d 1191, 1196 (7th Cir. 1987).

In addition to 9 U.S.C. § 4, Conduent also brings a motion to compel arbitration under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(3). Courts have debated which is the more appropriate rule to enforce an arbitration provision. *See, e.g., DeMidio v. REV Rec. Grp., Inc.*, 2018 U.S. Dist. LEXIS 61070, 16 n.1 (N.D. Ind. Apr. 10, 2018) (Lee, J.) (collecting cases and applying a Rule 12(b)(3) standard). This circuit has previously sanctioned the use of Rule 12(b)(3) to enforce an arbitration provision, *see, e.g., Faulkenberg v. CB Tax Franchise Sys., LP*, 637 F.3d 801, 807 (7th Cir. 2011), and has underscored that an agreement to arbitrate does not undermine the court's subject matter jurisdiction, *see Grasty v. Colo. Tech. Univ.*, 599 F. Appx. 596, 597 (7th Cir. 2015). Because an arbitration agreement is a type of forum selection clause, motions to compel arbitration are "brought properly under Federal Rule of Civil Procedure 12(b)(3), not 12(b)(1)." *Id.* (citing *Jackson v. Payday Fin., LLC*, 764 F.3d 765, 773 (7th Cir. 2014)); *see also Sherwood v. Marquette Transp. Co., LLC*, 587 F.3d 841, 844 (7th Cir. 2009) ("An arbitration agreement is a specialized forum-selection clause.").

DISCUSSION

The Federal Arbitration Act was enacted to "reverse the longstanding judicial hostility to arbitration agreements" that carried over into American courts from English common law. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). The FAA created a strong policy favoring arbitration, *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983), but it remains a matter of contract, so courts must view arbitration agreements on equal terms as other contracts, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). When deciding whether the parties agreed to arbitrate a certain matter, courts generally apply state law principles that govern the formation of contracts. *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).

The court must first decide whether a valid contract to arbitrate exists before it decides whether to stay an action and order arbitration based on the contract's scope. *Janiga v. Questar Capital Corp.*, 615 F.3d 735, 742 (7th Cir. 2010). A "court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that dispute*." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 297 (2010). "Where there is no provision validly committing them to an arbitrator, these issues typically concern the scope of the arbitration clause and its enforceability." *Id.* (citations omitted).

The FAA allows arbitration agreements to be declared unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "This saving clause permits agreements to arbitrate to be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability." *AT&T Mobility*, 563 U.S. at 339 (quotations omitted). "[W]here the dispute at issue concerns contract formation, the dispute is generally for courts to decide." *Granite Rock*, 561 U.S. at 296; *see, e.g., Deputy v. Lehman Bros., Inc.*, 345 F.3d 494, 514 (7th Cir. 2003) (remanding case to assess whether there was a meeting of the minds); *Sphere Drake Ins. Ltd. v. All Am. Ins. Co.*, 256 F.3d 587, 591 (7th Cir. 2001) (holding that "as arbitration depends on a valid contract an argument

that the contract does not exist can't logically be resolved by the arbitrator"); *Gibson v. Neighborhood Health Clinics*, 121 F.3d 1126, 1130-31 (7th Cir. 1997) (argument that a promise lacked consideration was a judicial issue).

The arbitration agreement here contains a delegation provision, however.[1] A delegation provision is an agreement to arbitrate threshold or "gateway" issues concerning arbitration. *See Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68-70 (2010). They often cover questions of arbitrability, "such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Id.* at 68-69. A delegation provision is "simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other." *Id.* at 70. It is severable from the remainder of the agreement and must be specifically challenged to avoid its effect. *Id.* at 71-72.

This delegation provision extends to "any claim that all or part of this Agreement is void or voidable." ECF 12-6 at 6. The delegation provision is nearly identical to the one in *Rent-A-Center*, 561 U.S. at 66. This circuit also faced a similar delegation provision in *Johnson v. Western & Southern Life Ins. Co.*, 598 F. Appx. 454, 455 (7th Cir. 2015) (granting the arbitrator "exclusive authority to resolve any dispute . . . including, but not limited to, *any claim that all or any part of the agreement is void and voidable*") (emphasis added). In both cases, the plaintiff did not specifically challenge the delegation provision and the court presumed it valid. *See Rent-A-Center*, 561 U.S. at 72 ("unless [the plaintiff] challenged the delegation provision specifically," the court must treat it as valid and enforce it, "leaving any challenge

[1] The delegation provision reads: "Further, **the Arbitrator, and not any federal, state, or local court or agency shall have the exclusive authority to resolve any Dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement including but not limited to any claim that all or part of this Agreement is void or voidable.**" ECF 12-6 at 6 (emphasis original). The full DRP has a parallel delegation provision. *See* ECF 12-4 at 12 ("The Arbitrator, and not any federal, state, or local court or agency shall have the exclusive authority to resolve any Dispute relating to the interpretation, applicability, enforceability, or formation of this DRP or any associated agreement to arbitrate under its terms, including but not limited to any claim that all or part of this DRP or associated arbitration agreement is void or voidable.").

to the validity of the Agreement as a whole for the arbitrator"); *see also Johnson*, 598 F. Appx. at 455-56 (district court correctly treated the delegation provision as valid when plaintiff did not specifically challenge it). If the court finds the provision here is valid, it must refrain from determining the validity of the arbitration agreement or its scope.

Ms. Williams says she challenges the enforceability of this delegation provision. ECF 8 at 1; ECF 18 at 2; ECF 18-1 at 1. Because Indiana was "the situs of all relevant events in this dispute," the court looks to Indiana contract law to determine whether there exists a valid contract. *See Gibson*, 121 F.3d at 1130. Indiana, in turn, has held that "[w]hether the parties agreed to arbitrate any disputes is a matter of contract interpretation, and most importantly, a matter of the parties' intent." *Druco Rests., Inc. v. Steak N Shake Enters.*, 765 F.3d 776, 782 (7th Cir. 2014) (quoting *MPACT Const. Group., LLC*, 802 N.E.2d 901, 906 (Ind. 2004)). Under Indiana law, a valid contract requires offer, acceptance, consideration, and mutual assent. *Ellison v. Town of Yorktown*, 47 N.E.3d 610, 617 (Ind. Ct. App. 2015).

It is unclear exactly on what grounds Ms. Williams challenges the delegation provision. ECF 8 at 1; ECF 18 at 2; ECF 18-1 at 1. Her submissions simply say: "I challenge the enforceability of the arbitration agreement and the corresponding delegation provision in question. I did not accept the policy as a contractual commitment to binding arbitration." *See, e.g.*, ECF 18 at 2. She at times cites case law where a delegation provision was found invalid because it lacked acceptance. *See Shockley v. PrimeLending*, 929 F.3d 1012, 1019 (8th Cir. 2019) (finding the plaintiff had not accepted a delegation provision by merely reviewing it in an employee handbook). Liberally construing her submissions, the court understands Ms. Williams to be contesting her acceptance of the provision.

Ms. Williams transferred to a new position in 2018. At that time, she completed paperwork, which included an agreement to be bound by the DRP. ECF 12-2 ¶¶ 23-24; ECF 12-6 at 6. The delegation provision appears in both the agreement and the DRP. On the final page of the agreement, Ms. Williams' electronic signature and IP address appear. ECF 12-6 at 9. Ms. Williams maintains the

DRP was never available for her review,[2] but she does acknowledge that she was required to sign paperwork in December 2018. ECF 18-1 at 2. She used her computer to check boxes and type her name where required, but she says she did not review most of the information contained in the paperwork. *Id.* at 3.

An employee's signature reflects that she accepted the agreement, *see Flynn v. AerChem, Inc.*, 102 F. Supp.2d 1055, 1060 (S.D. Ind. 2000) (Barker, J.) ("If [the plaintiff] signed the Agreement, even without full knowledge of its terms, her signature acts an acceptance of the Agreement's terms."), and parties are generally bound to an arbitration provision even if they did not read it, *Degroff v. Mascotech Forming Technologies-Fort Wayne*, 179 F. Supp.2d 896, 903 (N.D. Ind. 2001) (Cosbey, J.) (holding an arbitration agreement valid when plaintiff claimed she did not review it because she effectively conceded review when she signed the employment application); *see, e.g., James v. McDonald's Corp.*, 417 F.3d 672, 678 (7th Cir. 2005) (applying Kentucky law). Ms. Williams hasn't said that she didn't sign the agreement. She asserts the DRP was never made available for review, though the agreement she signed stated she received and read or had the opportunity to read both the agreement and the DRP. *See* ECF 12-6 at 9. Based on her signature and the acknowledgement in the agreement that she received and read the terms, Indiana law presumes she read the relevant documents. *See Flynn*, 102 F. Supp.2d at 1060 ("It is a basic tenet of contract law that a person is assumed to have read and understood documents that they sign; a lack of understanding or failure to read the contract's provisions does not relieve a party from the terms of that agreement.") (citing *Clanton v. United States of America*, 686 N.E.2d 896, 900-01 (Ind. Ct. App. 1997)).

It is also not enough to claim Conduent never provided the documents. *See Tinder*, 305 F.3d 735-36 (plaintiff asserting she never saw or reviewed the arbitration agreement did not raise a genuine

[2] Ms. Williams claims the first time she ever received the full DRP was when Conduent sent it to her during this litigation. ECF 18-1 at 2.

issue of material fact). Ms. Williams "cannot avoid compelled arbitration by generally denying the facts upon which the right to arbitration rests;" instead, she must "identify specific evidence in the record demonstrating a material factual dispute for trial." *Id.* (citing *Oppenheimer*, 56 F.3d at 358). Ms. Williams has not provided evidence to support her claim that the DRP was never available for review. Instead, she signed an agreement saying just the opposite. Further, on this record, the availability of the DRP doesn't bear on her acceptance of the delegation provision as it appears in the agreement itself, without the need to reference the DRP. Her choosing not to review the delegation provision does not prevent her from accepting its terms. *See Degroff*, 179 F. Supp.2d at 903.

The facts here are quite different from *Shockley*, 929 F.3d 1012, on which Ms. Williams relies. In that case, the delegation provision was contained in an employee handbook. *Id.* at 1018-19. The employer could not show acceptance of the provision by mere continuation of employment, *id.* at 1019, and there was nothing in the agreement stating continued employment constituted acceptance of the terms. *Id.* In this case, Ms. Williams not only signed an agreement containing the delegation provision, that agreement stated that her continued employment constituted acceptance and consent to its terms. ECF 12-6 at 8.

The evidence before the court shows that Ms. Williams did indeed accept the terms of the delegation provision. To the extent her arguments can be construed liberally to say the delegation provision lacked consideration, not just the agreement generally, that position is similarly unconvincing. *See Flynn*, 102 F. Supp.2d at 1061 (agreement saying that acceptance was "in consideration and as a condition of [employment]," and employer's promise to arbitrate all claims was sufficient consideration); *see also Gibson*, 121 F.3d at 1131 (agreement is enforceable when both parties are bound by its terms) (citing *Kokomo Veterans, Inc. v. Schick*, 439 N.E.2d 639, 645 (Ind. Ct. App. 1982)); *see, e.g.*, *Tinder*, 305 F.3d at 736 (applying Wisconsin law, the agreement was not rendered

illusory by the defendant's ability to modify or terminate its policies at any time because both parties were bound to arbitrate).

To be clear, the court's decision is strictly limited to Ms. Williams' claims pertaining to the validity of the delegation provision as raised in her motion to stay arbitration (ECF 8 at 1) and her response to the motion to compel (ECF 18 at 2). Having established a valid delegation provision exists, the court cannot wade into arguments concerning the validity of the arbitration agreement. Any other challenges to the arbitration agreement and the terms of the DRP, including acceptance and consideration, are left to the arbitrator to decide. This court is not the proper venue for those arguments. *See Rent-A-Center*, 561 U.S. at 72; *Grasty*, 599 F. Appx. at 597.

Ms. Williams has not created a genuine issue of material fact that prevents her claims from proceeding to arbitration. There is a valid delegation clause that requires this court to defer all questions of arbitrability to the arbitrator; therefore, this court is the improper venue for any claims at this time. While the FAA only requires this court to stay this proceeding until such arbitration occurs, 9 U.S.C. § 3, the court may go further and dismiss the case. There is a trend among federal courts favoring dismissal of a case that is subject to arbitration. *See Johnson v. Orkin*, 928 F. Supp.2d 989, 1008 (N.D. Ill. 2013); *see also Hornbuckle v. Xerox Bus. Serv., LLC*, 2015 U.S. Dist. LEXIS 18374, 11-12 (S.D. Ind. Feb. 13, 2015) (collecting cases). This circuit has previously affirmed dismissals of suits when all claims are arbitrable. *See, e.g.*, *Grasty*, 599 F. Appx. at 597; *Baumann v. Finish Line, Inc.*, 421 F. Appx 632, 636 (7th Cir. 2011). All current claims are subject to arbitration *via* the delegation provision; therefore, the court is not the proper venue for those claims and dismissal is an appropriate solution in this case. This dismissal is without prejudice—a dismissal for improper venue "is not an adjudication on the merits." *Johnson*, 598 F. Appx. at 456.

While the court dismisses this case, it refrains from compelling arbitration. The FAA requires the "hearing and proceedings," pursuant to an agreement compelled to arbitration, "shall be within

the district in which the petition for an order directing such arbitration is filed." 9 U.S.C. § 4. That is the case unless an agreement contains a forum selection clause. *Haber v. Biomet, Inc.*, 578 F.3d 553, 558 (7th Cir. 2009). Then "only the district court in that forum can issue a § 4 order compelling arbitration. Otherwise, the clause of § 4 mandating that the arbitration and the order to compel issue from the same district would be meaningless." *Id.* (quoting *Merrill Lynch, Pierce, Fenner & Smith v. Lauer*, 49 F.3d 323, 327 (7th Cir. 1995)).

Here, the location of the hearing is to be decided by the arbitrator. ECF 12-4 at 15. The arbitrator must reside in the "geographic region of the United States bearing the most significant relationship to the Parties' Dispute." *Id.* at 14. Once selected, the arbitrator will choose the location of the hearing using the "same factors determining personal jurisdiction and venue which would be applied by a United States District Court sitting at the location of the arbitrator." *Id.* at 15. An order to compel under 9 U.S.C. § 4 from this court would require the hearing to take place within this district; however, that would strip the arbitrator of any decisionmaking power over the location of the hearing. It may well be that the arbitrator would choose this district as the hearing location, but the parties have not argued this issue and the court is left only with uncertain possibilities as to this outcome and its authority to compel arbitration in this district.

If Ms. Williams wishes to pursue her claims, she must do so *via* arbitration and there address any questions of arbitrability. According to the DRP, either Ms. Williams or Conduent can initiate arbitration by submitting a written request on either the American Arbitration Association (AAA) or Judicial Arbitration and Mediation Services (JAMS) and tendering the filing fee.

There is yet another motion left to consider. In the midst of briefing Conduent's motion to compel, Ms. Williams filed a motion for default judgment. At first, Ms. Williams argues a default judgment in her favor is warranted because Conduent has yet to answer her complaint. Then, she requests a declaratory judgment on all motions concerning arbitration. Given the title of her motion

and its content otherwise, the court assumes Ms. Williams meant default judgment instead of a declaratory judgment.

Ms. Williams has not presented facts that support this request. An entry of default is not warranted under Fed. R. Civ. P. 55(a) because Conduent has appeared and defended this action. *See Philos Techs., Inc. v. Philos & D, Inc.*, 645 F.3d 851, 858 (7th Cir. 2011) (an appearance requires, at minimum, that the defendant engage in "some sort of conduct clearly indicating an intent to defend the suit"); *Zuelzke Tool & Eng'g Co. v. Anderson Die Castings, Inc.*, 925 F.2d 226, 230 (7th Cir. 1991) (a party has "appeared" in the action where the "party has actually made some presentation or submission to the district court in the pending action") (emphasis removed). Though Conduent has not yet answered the complaint, it was not yet required to do so. Fed. R. Civ. P. 12(a)(4)(A) (party has fourteen days after the court denies a Rule 12 motion to submit its responsive pleading). Her reply lists many federal and state rules, but she does not use them to mold an argument. Because Ms. Williams has not presented facts that warrant a default judgment, the court denies her motion.

Conduent requests the court sanction Ms. Williams for filing a frivolous motion. Specifically, it seeks attorney fees and costs incurred responding to Ms. Williams' motion and asks the court to prohibit her from making additional filings for a specified period of time. Conduent is correct that Ms. Williams, despite her *pro se* status, isn't shielded from sanctions, though the court still has discretion to take that status into account. *See Vukadinovich v. McCarthy*, 901 F.2d 1439, 1445 (7th Cir. 1990). But the court need not address Conduent's request. While advocating for Rule 11 compliance, it overlooked the provision within that very rule requiring a motion for sanctions be brought separately from any other motion. *See* Fed. R. Civ. P. 11(c)(2). That same provision requires prior service of a motion for sanctions under Rule 5 and then requires a 21-day window before the motion can be filed with the court. *See id.* Conduent has made no representation that it served Ms. Williams before filing this request. To ask the court to enforce the rules, one must first abide by them.

CONCLUSION

Because there is a valid delegation provision covering questions of arbitrability, the court GRANTS Conduent's motion (ECF 12) only insofar as it requests this case be dismissed under Rule 12(b)(3) and DISMISSES this case WITHOUT PREJUDICE. The court DENIES Ms. Williams' motion to stay arbitration (ECF 7) and her motion for default judgment (ECF 19). The clerk of the court is DIRECTED to enter judgment accordingly and terminate the case.

SO ORDERED.

June 17, 2020

s/ Damon R. Leichty
Judge, United States District Court

AO 450 (Rev. 01/09) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the
Northern District of Indiana

PAULA WILLIAMS

Plaintiff

v.

Civil Action No. 3:19-cv-1061

CONDUENT HUMAN SERVICES LLC
on behalf of
TALX UCM Services Inc

Defendant

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one):*

___ the plaintiff_____
recover from the defendant _____ the amount of_____
dollars $_____, which includes prejudgment interest at the rate of _____% plus post-Judgment interest at the rate of _____ % along with costs.

___ the plaintiff recover nothing, the action is dismissed on the merits, and the defendant_____
recover costs from the plaintiff _____.

_X_ Other: This case is DISMISSED WITHOUT PREJUDICE under Rule 12(b)(3).

This action was *(check one):*

___ tried to a jury with Judge _____ presiding, and the jury has rendered a verdict.

___ tried by Judge _____ without a jury and the above decision was reached.

_X_ decided by Judge Damon R. Leichty.

DATE: 6/17/2020

ROBERT N. TRGOVICH, CLERK OF COURT

by s/ B. Scheumann
Signature of Clerk or Deputy Clerk

APPENDIX DOCUMENTS 18

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 10, 2022

By the Court:

PAULA WILLIAMS,	] Appeal from the United
Plaintiff-Appellant,	] States District Court for
	] the Northern District
No. 22-1027 v.	] of Indiana, South Bend
	] Division.
CONDUENT HUMAN SERVICES LLC,	]
Defendant-Appellee.	] No. 3-19-cv-01061-DRL-MGG
	]
	] Damon R. Leichty,
	] Judge.

ORDER

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or order appealed. In this case judgment was entered on June 17, 2020, and the court's order denying plaintiff-appellant's various post-judgment motions was entered on December 2, 2021. The notice of appeal, however, was filed January 6, 2022, well over one year as to the judgment and three days late as to the order denying plaintiff-appellant's post-judgment motions. The district court has not granted an extension of the appeal period, *see* Rule 4(a), and this court is not empowered to do so, *see* Fed. R. App. P. 26(b). Accordingly,

IT IS ORDERED that appellant, on or before January 24, 2022, file a brief memorandum stating why this appeal should not be dismissed for lack of jurisdiction. A motion for voluntary dismissal pursuant to Fed. R. App. P. 42(b) will satisfy this requirement. Briefing shall be suspended pending further court order.

-over-

If appellant wishes to request an extension of time in which to file the notice of appeal, she should file an appropriate motion in the district court, not this court, as soon as possible. Appellant's jurisdictional memorandum should include a discussion of the status of any such motion.

NOTE: Caption document "JURISDICTIONAL MEMORANDUM." The filing of a Circuit Rule 3(c) Docketing Statement does not satisfy your obligation under this order.

PaulaWilliams
2022 Roger Street
South Bend, IN 46628

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF CASE OPENING

January 7, 2022

No. 22-1027	PAULA WILLIAMS, Plaintiff - Appellant v. CONDUENT HUMAN SERVICES LLC, Defendant - Appellee

Originating Case Information:

District Court No. 3-19-cv-01061-DRL-MGG
Northern District of Indiana, South Bend Division
District Judge Damon R. Leichty
Clerk/Agency Rep Gary T. Bell

Case filed: 01/07/2022
Case type: cv/pri
Fee status: IFP pending in D.C.
Date of Judgment: 12/02/2021
Date NOA filed: 01/06/2022

The above-captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit.

Deadlines:

Appeal No.	Filer	Document	Due Date
22-1027	Paula Williams	Docketing statement due	01/13/2022
22-1027	Paula Williams	Transcript information sheet	01/21/2022

THIS NOTICE SHALL NOT ACT AS A SUBSTITUTE FOR MOTIONS FOR NON-INVOLVEMENT/ SUBSTITUTION OF COUNSEL. COUNSEL ARE STILL REQUIRED TO FILE THE APPROPRIATE MOTIONS.

Important Scheduling Notice!

Hearing notices are mailed shortly before the date of oral argument. Please note that counsel's unavailability for oral argument must be submitted by letter, filed electronically with the Clerk's Office, no later than the filing of the appellant's brief in a criminal case and the filing of an appellee's brief in a civil case. See Cir. R. 34(b)(3). The court's calendar is located at http://www.ca7.uscourts.gov/cal/argcalendar.pdf. Once scheduled, oral argument is rescheduled only in extraordinary circumstances. See Cir. R. 34(b)(4), (e).

form name: c7_Docket_Notice (form ID: 108)

NOTICE TO PRO SE PARTIES

- Be aware that it is **YOUR RESPONSIBILITY** to notify this court if your address changes or you are moved to another institution.

- If you do not notify the court, this office cannot be assure that you receive the proper notification of action taking place in this appeal.

PLEASE LET US KNOW AS SOON AS POSSIBLE OF ANY ADDRESS CHANGES.

- Also, the appellant is reminded that counsel for the appellee must be served with a copy of all documents filed by him/her in the U.S. Court of Appeals.

- All filings with this court must contain a **Proof of Service** as required by Federal Rule of Appellate Procedure 25.

- Documents lacking a proof of service will not be considered by the court.

Rev. 3/10 jr

United States Court of Appeals
For The Seventh Circuit

NOTICE FOR CIVIL CASES

The docketing of an appeal in this court requires litigants and their counsel to comply with several requirements and rules. This notice will call your attention to certain initial steps that you must take at the outset of the appeal process, but the ***Practitioner's Handbook For Appeals to the United States Court of Appeals for the Seventh Circuit*** should always be consulted to make sure you comply with all rules and court procedures. The full text of the most current versions of the Handbook, the Circuit Rules, the Federal Rules of Appellate Procedure, court forms and checklists are available at www.ca7.uscourts.gov or can be obtained from the clerk's office on request. Rules are periodically revised. Counsel and parties are reminded to always check the most current rules (most recently amended 12/1/14), in particular **Cir. Rule 3(c), Cir. R. 25, Cir. Rule 26.1 and Fed. R. App. P. 26.1, 28, and 32.**

Cir. Rule 26.1 requires that all attorneys for non-governmental parties file a **Disclosure Statement** providing the names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court) or are expected to appear in this court, as well as the corporate party information required by Fed. R. App. P. 26.1. This statement must be filed within 21 days of docketing the appeal or at the same time that any filing is made in this court, whichever is earlier. The court will not act on any motion or other filing by a party until a disclosure statement is filed. A form for the disclosure statement is available at www.ca7.uscourts.gov and its use is encouraged. *Pro se* parties are not obligated to file a disclosure statement.

The appellant must file a separate **Docketing Statement** (which must comply with the provisions of Circuit Rule 28(a)) with the clerk of this court immediately, unless it has already been filed with the notice of appeal in the district court. Cir. Rule 3(c).

Pursuant to Fed. R. App. P. 10(b), the appellant or counsel must order the necessary portions of the transcript (using the form prescribed by Circuit Rule 10(c)) within 10 days after the notice of appeal has been filed, and make satisfactory arrangements with the court reporter for payment of the cost involved.

This Court does not routinely issue scheduling orders in civil appeals. The appellant's brief and required short appendix are due 40 days from the docketing date in this Court regardless of the completeness of the record, unless the Court orders otherwise. Fed. R. App. P. 31(a), Cir. Rule 31(a). Motions for extension of time are not favored and must, if filed, strictly comply with the requirements of Cir. Rule 26. Before filing a brief or appendix, please check carefully to make sure that it is timely and complies with all requirements of the following rules:

1.	Fed. R. App. P. 28 & Circuit Rule 28	(contents of briefs)
2.	Circuit Rule 28(a) or (b)	(jurisdictional statements)
3.	Fed. R. App. P. 32(a) & Circuit Rule 32	(form, length & size of type in briefs)
4.	Circuit Rule 26.1; Fed. R .App. P. 26.1	(disclosure statement)
5.	Circuit Rule 31(b) & Circuit Rule 25	(number of briefs required)(electronic filing)
6.	Fed. R. App. P. 30 & Circuit Rule 30	(appendices)
7.	Fed. R. App. P. 25(d)	(proof of service)

Counsel/parties are encouraged to check with the clerk's office at **(312)435-5850** if they have any questions. The staff is happy to provide guidance regarding the court's procedures and requirements.

Finally, a settlement conference pursuant to Fed. R. App. P. 33 may be requested. Most fully counseled civil appeals are eligible. Please direct your request, confidentially if you wish, to the Court's Settlement Conference Office at (312)435-6883.

rev. 12/14 AK

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 10, 2022

Before

Michael S. Kanne, *Circuit Judge*
David F. Hamilton, *Circuit Judge*
Amy J. St. Eve, *Circuit Judge*

PAULA WILLIAMS, Plaintiff-Appellant,	] Appeal from the United] States District Court for] the Northern District
No. 22-1027 v.	] of Indiana, South Bend] Division.
CONDUENT HUMAN SERVICES LLC, Defendant-Appellee.	]] No. 3:19-cv-01061-DRL-MGG]
	] Damon R. Leichty,] Judge.

ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or order appealed. In this case judgment was entered on June 17, 2020, and the court's order denying plaintiff-appellant's various post-judgment motions was entered on December 2, 2021. The notice of appeal, however, was filed on January 6, 2022, well over one year as to the judgment and three days late as to the order denying plaintiff-appellant's post-judgment motions.

Plaintiff-appellant Paula Williams filed a timely request to extend the time to appeal (as to the January 6, 2022 order). But the district court denied an extension under Fed. R. App. P. 4(a)(5), finding that plaintiff-appellant Williams's reasons for the tardy appeal—"the delay was relatively short and thus imparts no prejudice, and she inadvertently got the days wrong"—did not amount to excusable neglect. The district court added that plaintiff-appellant Williams's attempt "to recast the defendant as a government entity" was simply wrong, commenting that "the provision of services to governmental clients is not among the types of governmental entities listed by rule."

This court reviews a district court's determination whether an appellant has established excusable neglect under an abuse of discretion standard. *See Sherman v. Quinn*, 668 F.3d 421, 425 (7th Cir. 2012). And, we conclude that the district court did not abuse its discretion in denying plaintiff-appellant Williams's motion for an extension of the time to appeal.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

June 22, 2022

By the Court:

No. 22-1376	PAULA WILLIAMS, Plaintiff - Appellant v. CONDUENT HUMAN SERVICES LLC, on behalf of TALX UCM Services Inc, Defendant - Appellee
Originating Case Information:	
District Court No: 3:19-cv-01061-DRL-MGG Northern District of Indiana, South Bend Division District Judge Damon R. Leichty	

This cause, docketed on March 10, 2022, is **DISMISSED** for failure to timely pay the required docketing fee, pursuant to Circuit Rule 3(b).

form name: **c7_FinalOrderWMandate** (form ID: **137**)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF ISSUANCE OF MANDATE

June 22, 2022

To: Gary T. Bell
UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend, IN 46601-0000

No. 22-1376	PAULA WILLIAMS, Plaintiff - Appellant v. CONDUENT HUMAN SERVICES LLC, on behalf of TALX UCM Services Inc, Defendant - Appellee
Originating Case Information:	
District Court No: 3:19-cv-01061-DRL-MGG Northern District of Indiana, South Bend Division District Judge Damon R. Leichty	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

TYPE OF DISMISSAL: Circuit Rule 3(b)

STATUS OF THE RECORD: no record to be returned

form name: c7_Mandate (form ID: 135)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PAULA WILLIAMS

Plaintiff,

v.

CONDUENT HUMAN SERVICES LLC,

Defendant.

CAUSE NO. 3:19-CV-1061 DRL-MGG

ORDER

On November 19, 2019, Paula Williams, a plaintiff without an attorney, filed a complaint against her former employer, Conduent Human Services LLC, alleging various discriminatory actions related to her employment [ECF 1]. Because Ms. Williams entered into a binding arbitration agreement with Conduent, the court dismissed the matter without prejudice on June 17, 2020 under Fed. R. Civ. P. 12(b)(3) [ECF 26].

Over a year after the court entered its final judgment and dismissed this case, Ms. Williams now moves for emergency relief from general order 2020-39, to proceed *in forma pauperis*, for judicial intervention in the arbitration process, for immediate injunctive relief to receive state-administered benefits, and a temporary restraining order under state law against her former coworkers. These requests do not belong under this cause number.

First, an arbitration award is final and appealable "if the arbitrator himself thinks he's through with the case." *Smart v. Int'l Bhd. of Elec. Workers, Loc. 702*, 315 F.3d 721, 725 (7th Cir. 2002). Ms. Williams seeks judicial review of certain factual findings the arbitrator made in a motion to dismiss—a motion which disposed of some, but not all, of Ms. Williams' claims [ECF 34-2 at 4]. Because the arbitrator allowed Ms. Williams to continue with her claim of discriminatory termination, and Ms. Williams has not indicated that proceedings related to this remaining claim are "through," *Smart*, 315

F.3d at 725, there is not yet a final and appealable award that the court can review. The relief sought by Ms. Williams is thus premature in part.

Further, as the court previously informed Ms. Williams, because this case was dismissed over a year ago, this is no longer the appropriate forum for her instant requests. If Ms. Williams wishes to bring any other claim, such as her request for a temporary restraining order under state law [ECF 36] or her motion to require the state to resume her food-assistance benefits [ECF 35], she must begin a new proceeding by filing a new complaint in the appropriate forum [ECF 29].

Accordingly, the court DENIES Ms. Williams' motions [ECF 30, 31, 32, 35 & 36].

SO ORDERED.

December 2, 2021

s/ Damon R. Leichty
Judge, United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PAULA WILLIAMS,

Plaintiff,

v.

CONDUENT HUMAN SERVICES LLC,

Defendant.

CAUSE NO. 3:19-CV-1061 DRL

ORDER

On January 24, 2022, Paula Williams filed a motion seeking to extend the time she had to file a notice of appeal under Fed. R. App. P. 26(b) and (c). On February 2, 2022, Ms. Williams filed what the court construes as a memorandum in support of her motion, which details the relief she requests from the court otherwise absent in the opening motion.

Ms. Williams seeks an extension to file her notice of appeal from the court's December 2, 2021 order [ECF 37] denying as premature her request for relief from an arbitration award [ECF 52 at 3]. Ms. Williams already appealed this order [ECF 40] and separately asked this court to allow her to proceed *in forma pauperis* in her appeal [ECF 41]. The court found that Ms. Williams' appeal was not taken in good faith on the merits and noted it was untimely, but ultimately reserved the issue of timeliness for the court of appeals [ECF 48]. Ms. Williams now asks the court to extend retroactively the time she had for appeal [ECF 53 at 3], while simultaneously stating that she applied for an extension—a statement unsupported by the record [ECF 53 at 5].

Generally, a party must file notice of appeal within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(1)(A). Rule 4(a)(5) allows a district court to extend this time to file if the party so moves within 30 days of the deadline and demonstrates excusable neglect or good cause. Fed. R. App. P. 4(a)(5). The court denied Ms. Williams' post-judgment motion for judicial intervention on December

2, 2021 [ECF 37], leaving Ms. Williams until January 3, 2022 to appeal. Fed. R. App. P. 4(a)(1)(A). She filed a notice of appeal on January 6, 2022 [ECF 40].

Her motion today falls within the 30-day window she had to request an extension. Fed. R. App. P. 4(a)(5). Although Ms. Williams already filed notice of appeal, she is not precluded from moving under Rule 4(a)(5). *See Redfield v. Cont'l Cas. Corp.*, 818 F.2d 596, 601 (7th Cir. 1987). Thus the court considers whether Ms. Williams has demonstrated good cause or excusable neglect. *Sherman v. Quinn*, 668 F.3d 421, 425 (7th Cir. 2012). The court focuses on excusable neglect because this standard applies "in situations in which there is fault" because the delay was caused by the movant, as opposed to the good cause standard that only "applies in situations in which there is no fault—excusable or otherwise." *Id.* Deciding whether neglect is excusable is an assessment based in equity, "taking into consideration relevant circumstances, including (1) the danger of prejudice to the non-moving party; (2) the length of the delay and its impact on judicial proceedings; (3) the reason for the delay (*i.e.*, whether it was within the reasonable control of the movant); and (4) whether the movant acted in good faith." *Id.* "A simple case of miscalculating a deadline is not a sufficient reason to extend time, and judges do not have carte blanche authority to allow untimely appeals." *McCarty v. Astrue*, 528 F.3d 541, 544 (7th Cir. 2008) (quotation omitted).

Citing to non-binding precedent across the country, Ms. Williams argues that her neglect is excusable because the delay was relatively short and thus imparts no prejudice, and she inadvertently got the days wrong [ECF 52 at 3]. Generally, miscalculating time is not excusable neglect. *Sherman*, 668 F.3d at 426; *McCarty*, 528 F.3d at 544. The date she filed a notice of appeal was within Ms. Williams' control, thus her untimeliness alone does not counsel an extension. Further, and significantly, the court already concluded that Ms. Williams' appeal was not taken in good faith, which likewise weighs against an extension [ECF 48]. As for prejudice, courts have "repeatedly noted that there is unlikely to ever be harm in the Rule 4(a)(5) setting, because the neglectful applicant has a

limited time period to request relief . . . hence there will never be a terribly long delay." *Sherman*, 668 F.3d at 426. Though the prejudice is minimal and the delay relatively short, the absence of harm does not make a mistake excusable. *McCarty*, 528 F.3d at 545. The balance of these inquires, particularly the lack of merit of the appeal and the unexcused delay in filing her appeal, leads the court to conclude that no extension is warranted.

Ms. Williams attempts to recast the defendant as a government entity and thus enlarge her period to appeal from 30 days to 60 days [ECF 52 at 4-5]. A party has 60 days to file a notice of appeal if the United States is a party to the action. Fed. R. App. P. 4(a)(1)(B). The rule specifically applies to four types of government entities: the United States, a United States agency, a United States officer or employee sued in an official capacity, or a current or former United States officer or employee sued in an individual capacity for an act in connections duties performed on the United States' behalf. Fed. R. App. P. 4(a)(1)(B)(i)-(iv). Conduent is not a government entity. Instead, it is a limited liability corporation and a wholly owned subsidiary of Conduent Business Services, LLC [ECF 34-1 at 87]. Conduent provides "diversified business process services including transaction processing, automation, analytics, and constituent experience to both government and commercial clients" [ECF 34-1 at 88]. Although Ms. Williams argues Conduent admitted to being a government entity during the EEOC investigation, the provision of services to governmental clients is not among the types of governmental entities listed by rule. *See* Fed. R. App. P. 4(a)(1)(B).

Finally, Ms. Williams cites to Fed. R. Civ. P. 60(b)(6), a catchall provision that allows a district court to grant relief from a final judgment, order, or proceeding. "Parties may file motions under Rule 60(b) in the district court while an appeal is pending. In such circumstances we have directed district courts to review such motions promptly, and either deny them or, if the court is inclined to grant relief, to [] indicate so that we may order a speedy remand." *Brown v. United States*, 976 F.2d 1104, 1110-11 (7th Cir. 1992). A Rule 60(b)(6) motion must be made within a reasonable time and must

demonstrate truly extraordinary circumstances justifying relief. Fed. R. Civ. P. 60(c)(1); *Indus. Assocs., Inc. v. Goff Corp.*, 787 F.2d 268, 269 (7th Cir. 1986); *see also Wright & Miller*, 11 Fed. Prac. & Proc. Civ. § 2857 (3d ed.) (principles of application include showing good reason for failing to take action sooner, a good and meritorious claim or defense, diligence about the hardships of reopening an action, and substantial rights have been affected).

Ms. Williams does not identify a particular proceeding, order, or judgment from which she seeks relief. Instead, she lists generally the types of motions she has filed [ECF 52 at 7]. To support this request, she rehashes her relief sought and describes health concerns that make it difficult to hand-file papers, difficulties as a *pro se* plaintiff, and requests for longer briefing schedules [*id.* at 7-8]. Ms. Williams' arguments do not demonstrate extraordinary circumstances justifying this relief. Instead, she merely reiterates unsuccessful arguments made generally throughout her prior motions and post-judgment motions, including motions made more than a year after the court entered final judgment. The court is not inclined thus to amend or alter any of its prior rulings in light of the already addressed reasons given by Ms. Williams. A Rule 60(b)(6) motion is not a vehicle to rehash arguments that have been soundly addressed already.

Accordingly, the court DENIES the motions for an extension of time to file a notice of appeal and for relief under Rule 60(b)(6) [ECF 51, 52].

SO ORDERED.

February 9, 2022

s/ Damon R. Leichty
Judge, United States District Court

Additional material from this filing is available in the Clerk's Office.