Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1559

SAMUEL T. WHATLEY, II; REV. SAMUEL WHATLEY; PACITA D. WHATLEY,

Plaintiffs - Appellants,

v.

CITY OF NORTH CHARLESTON; NORTH CHARLESTON POLICE DEPARTMENT; NORTH CHARLESTON CODE ENFORCEMENT; MAYOR KEITH SUMMEY, Mayor at CND,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Richard Mark Gergel, District Judge. (2:22-cv-04419-RMG)

Submitted: September 19, 2024 Decided: September 23, 2024

Before NIEMEYER, RICHARDSON, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Samuel T. Whatley, II; Samuel T. Whatley; and Pacita D. Whatley, Appellants Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Samuel T. Whatley II, Reverend Samuel T. Whatley, and Pacita D. Whatley appeal the district court's order accepting the recommendation of the magistrate judge and dismissing for failure to state a claim their amended complaint. On appeal, we confine our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b). Because the Whatleys's informal brief does not challenge the basis for the district court's disposition, they have forfeited appellate review of the court's order. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we affirm the district court's judgment. 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

FILED: September 23, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1559
(2:22-cv-04419-RMG)

SAMUEL T. WHATLEY, II; REV. SAMUEL WHATLEY; PACITA D. WHATLEY

Plaintiffs - Appellants

v.

CITY OF NORTH CHARLESTON; NORTH CHARLESTON POLICE DEPARTMENT; NORTH CHARLESTON CODE ENFORCEMENT; MAYOR KEITH SUMMEY, Mayor at CND

Defendants - Appellees

JUDGMENT

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

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

/s/ NWAMAKA ANOWI, CLERK

Appendix B

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

Samuel T. Whatley, II, *et al.*, Plaintiffs, v. City of North Charleston, *et al.*, Defendants.	C/A: 2:22-cv-4419-RMG ORDER AND OPINION

Before the Court is the Report and Recommendation ("R&R") (Dkt. No. 36) of the Magistrate Judge recommending that the Court dismiss Plaintiffs' complaint. For the reasons set forth below, the Court adopts the R&R as the order of the Court and dismisses Plaintiffs' complaint.

I. Background and Relevant Facts

Plaintiffs bring this action alleging the following:

> The Amended Complaint is premised on a series of convoluted allegations and eighty-plus pages of miscellaneous exhibits—the crux of which appears to be a long-standing dispute between members of Plaintiffs' family and the City of North Charleston. More specifically, the pleadings seem to suggest that city officials have essentially carried out a campaign of harassment against Plaintiffs by "trespassing" on their properties, issuing "unlawful summons/citations" pursuant to the North Charleston Code of Ordinances, and taking private records from Plaintiff Pacita Whatley's residence during an "illegal raid." (Dkt. No. 16 at 4–5; *see also* Dkt. No. 1 at 6; Dkt. No. 13-1 at 4.
>
> . . .
>
> Based on the above, the Amended Complaint alleges causes of action for "invasion of privacy" under the Freedom of Information Act (5 U.S.C. § 552(b)(6), 49 C.F.R. § 801.56) and the Privacy Act of 1974 (5 U.S.C. § 552a(b)(6)); unreasonable search and seizure under the Fourth Amendment; violations of the Federal Tort Claims Act (28 U.S.C. § 2680); malicious prosecution; and intentional infliction of emotional distress. (Dkt. No. 1 at 4; Dkt. No. 13-1 at 4.) In terms of relief, Plaintiffs seeks "[c]ompensation for the damages inflicted over the years" and "an apology for the blatant privacy violations, . . . attempts to steal confidential health information, and . . . [u]sing intergovernmental organizations such as collective bargaining police unions and political connections to maliciously prosecute

> political dissidence after an election." (Dkt. No. 1 at 6; *see also* Dkt. No. 16 at 6, seeking compensation for "unlawful search and seizures/years of trespassing and harassment" and the "removal of the unauthorized access to health/financial records given to third parties."

(Dkt. No. 36 at 2-4) (further relating Plaintiffs' allegations).

On May 1, 2024, the Magistrate Judge filed an R&R recommending that this action be dismissed in its entirety. (Dkt. No. 36).

Plaintiffs filed objections to the R&R. (Dkt. No. 40).

II. Legal Standards

This Court liberally construes complaints filed by *pro se* litigants to allow the development of a potentially meritorious case. *See Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleadings to allege facts which set forth a viable federal claim, nor can the Court assume the existence of a genuine issue of material fact where none exists. *See Weller v. Dep't of Social Services*, 901 F.2d 387 (4th Cir. 1990).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, "a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d

310, 315 (4th Cir. 2005) (internal quotation omitted). Because Plaintiffs filed objections to the R&R, the R&R is reviewed de novo.

III. Discussion

After a de novo review of the record, the R&R, and Plaintiffs' objections, the Court finds that the Magistrate Judge ably addressed the issues and correctly determined that Plaintiffs' complaint fails to state a claim upon which relief may be granted. (Dkt. No. 36 at 7-19) (describing in detail over 12 pages why Plaintiffs' various claims fail); *e.g.*, (*id.* at 6-8) (explaining why Plaintiffs' FOIA claims fail under 49 CFR § 801.56 and 5 U.S.C. § 552a(b)(6)—noting, with regard to this last section, that "Plaintiffs' reference to this subsection is perplexing, as their claims plainly do not involve the National Archives and Records Administration"); (*Id.* at 9-14) (explaining why Plaintiffs' Fourth Amendment claims fail, noting Plaintiffs "do not allege that Code Enforcement officers entered their homes or conducted any sort of warrantless searches" but instead issued ordinances "based on visible objects in Plaintiffs' yards"); (*Id.* at 14-15) (explaining why Plaintiffs' Federal Tort Claims Act claims fail as a matter of law and noting that, to the extent "Plaintiffs are attempting to allege some sort of tort claim under FTCA, it is well-established that 'State actors cannot be sued under . . . the same'").

Plaintiffs filed objections to the R&R. (Dkt. No. 40). After a careful review of said objections, the Court overrules them as baseless.

First, Plaintiffs appear to request that the Magistrate Judge or the undersigned be disqualified from this matter because "Mr. Carlton 'Charlie' Bourne Jr. . . . lists on his personal resuming having a personal relationship and reference of the assigned judge(s) to this case." (Dkt. No. 40 at 1). Beyond the fact that Bourne is not a named party and that Plaintiffs provide no cogent explanation in their objections of how Bourne relates to this matter, it is unclear what

"relationship" or judge Plaintiffs are even referring to. *See* (*id.* at 2) ("Is Mr. Carlton 'Charlie' Bourne Jr. related to John Bourne, who was closely associated with Mayor Keith Summey?"). Such vague assertions are not proper objections to the R&R and are overruled.

Second and last, Plaintiffs objected to the R&R's findings related to their claims under the Fourth Amendment. But beyond stating in a passing and conclusory fashion that the search warrants at issue here were falsified, Plaintiffs argue only that "none of the code enforcement officers under the police department carry any Class 1 certification from the Criminal Justice Academy as required by South Carolina Code of Laws Title 23." (*Id.* at 2). As this critique does not substantively contest the reasons articulated in the R&R as to why Plaintiffs' claims under the Fourth Amendment fail, the Court overrules said objection. *See also* (*id.* at 3) (arguing in vague terms of continuing "malicious prosecution and invasions of privacy" but nowhere challenging the Magistrate Judge's specific findings as to why such claims fail); (*id.* at 4) (objecting that "Defendant(s) are still lacking in transparency as it pertains to the misappropriation of federal funding and has not adequately addressed their involvement in election interreference"—claims not at issue in this litigation).

IV. Conclusion

For the forgoing reasons, the Court ADOPTS the R&R (Dkt. No. 36) as the Order of the Court and DISMISSES the instant action without further leave to amend.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
United States District Judge

May 29, 2024
Charleston, South Carolina

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

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Samuel T. Wahtley, II; Rev. Samuel Whatley, Pacity Whatley *Plaintiff*	)	
City of North Charleston, North Charleston Police Department, North Charleston Code Enforcement, Mayor Keith Summey *Defendant*	)	Civil Action No. 2:22-cv-04419-RMG

JUDGMENT IN A CIVIL ACTION

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

☐ the plaintiff *(name)*_____ recover from the defendant *(name)*_____ the amount of_____ dollars ($_), which includes prejudgment interest at the rate of____%, plus postjudgment interest at the rate of____%, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)*_____.

☒ other: Plaintiffs, Samuel T.Whatley, II; Rev. Samuel Whatley, Pacita Whatley shall take nothing of Defendants, City of North Charleston, North Charleston Police Department, North Charleston Code Enforcement, Mayor Keith Summey, as to the complaint filed pursuant to 42 U.S.C. § 1983 and this action is dismissed.

This action was *(check one)*:

☐ tried by a jury, the Honorable_____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable_____ presiding, without a jury and the above decision was reached.

☒ decided by the Honorable Richard M Gergel, United States District Judge, presiding. The Court having adopted the Report and Recommendation set forth by the Honorable Mary Gordon Baker, United States Magistrate Judge.

Date: 5/29/2024

ROBIN L. BLUME, CLERK OF COURT

_____

Signature of Clerk or Deputy Clerk

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Samuel T. Whatley, II; Reverend Dr. Samuel T. Whatley; and Pacita Whatley, Plaintiffs, v. City of North Charleston; Mayor Keith Summey; North Charleston Police Department; and North Charleston Code Enforcement, Defendants.	Case No. 2:22-cv-04419-RMG-MGB **REPORT AND RECOMMENDATION**

Samuel T. Whatley, II, proceeding *pro se* and *in forma pauperis*, initially filed this action as the sole plaintiff against the City of North Charleston ("North Charleston"); former North Charleston Mayor Keith Summey ("Mayor Summey"); the North Charleston Police Department ("Police Department"); and the North Charleston Code Enforcement Department ("Code Enforcement") (collectively, "Defendants"). (Dkt. No. 1.) He later amended the Complaint to include his father, Reverend Dr. Samuel T. Whatley ("Reverend Whatley") (Dkt. No. 13-1), and his grandmother, Pacita Whatley ("Ms. Whatley") (Dkt. No. 16), as additional plaintiffs in this action.[1] Under 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2) (D.S.C.), the undersigned is authorized to review all pretrial matters in this case and submit findings and recommendations to the assigned United States District Judge. For the reasons discussed below, the undersigned

[1] Upon receiving Samuel T. Whatley, II's motions to amend the pleadings, the Court warned him that the amended complaints would completely replace the original. (Dkt. No. 21 at 1–2.) He then filed a memorandum asking the Court to consider the pleadings collectively (Dkt. No. 27), which the undersigned has agreed to do for purposes of this Report and Recommendation only. Any further references to the "Amended Complaint" herein shall encompass the original Complaint (Dkt. No. 1); the amended pleadings (Dkt. Nos. 13-1, 16); and all exhibits thereto (Dkt. Nos. 1-1, 5, 12, 13, 14, 16-2) in an effort to provide the most comprehensive initial review.

finds that the Amended Complaint fails to state a claim upon which relief may be granted and therefore recommends that this action be summarily dismissed.

BACKGROUND

The Amended Complaint is premised on a series of convoluted allegations and eighty-plus pages of miscellaneous exhibits—the crux of which appears to be a long-standing dispute between members of Plaintiffs' family and the City of North Charleston. More specifically, the pleadings seem to suggest that city officials have essentially carried out a campaign of harassment against Plaintiffs by "trespassing" on their properties, issuing "unlawful summons/citations" pursuant to the North Charleston Code of Ordinances, and taking private records from Plaintiff Pacita Whatley's residence during an "illegal raid." (Dkt. No. 16 at 4–5; *see also* Dkt. No. 1 at 6; Dkt. No. 13-1 at 4.)

With respect to the purported ordinance violations, the Amended Complaint alleges that since 2018, the Police Department and Code Enforcement officials have "continued to trespass, harass, and issue unlawful summons, citations, and threats of arrests" in response to municipal ordinance violations found on Plaintiffs' properties.[2] (Dkt. No. 1 at 6; *see also* Dkt. No. 1-1 at 2–9, citing various nuisances under Section 9-67 of the North Charleston Code of Ordinances.) In doing so, Plaintiffs contend that Defendants have been operating in violation of South Carolina law, which allegedly requires "either architect licensing, engineering registration, building codes council authorization, and or Class 1 certification" to conduct a property inspection and effectuate an arrest. (Dkt. No. 16 at 4; *see also* Dkt. No. 1 at 6.)

[2] The Official Inspection Notices attached to the Amended Complaint are directed to Pacita Whatley and "Samuel T. Whatley." (Dkt. No. 1-1 at 2–9.) While it is not entirely clear whether the documents refer to Samuel T. Whatley, II or Reverend Dr. Samuel T. Whatley, both plaintiffs were apparently living together at the same property—across the street from Ms. Whatley's residence—as of December 2, 2022. (Dkt. No. 5, "NCPD part 1.m4a" at min. 9:36–9:43.)

With respect to the "illegal raid," the Amended Complaint states that on December 2, 2022, Reverend Whatley, as his mother's caretaker, "contacted the hospital" to transport Ms. Whatley to Trident Medical Center based on some sort of medical concern. (Dkt. No. 16 at 5.) When Reverend Whatley and his mother arrived at the hospital, the Police Department allegedly "tried to entrap [Reverend Whatley] with allegations of elder abuse . . . and attempted to take confidential financial and health records from the medical staff." (*Id.*; *see also* Dkt. No. 1 at 6.) That same day, the Police Department executed a search warrant at Ms. Whatley's home seeking evidence of elder abuse; Plaintiffs suggest that the search resulted in "illegally obtained records."[3] (Dkt. No. 16 at 5; *see also* Dkt. No. 1-1 at 26–29.)

Plaintiffs seem to contend that the aforementioned events were somehow influenced by Leah Whatley—Reverend Whatley's sister/Samuel T. Whatley, II's aunt/Ms. Whatley's daughter—who "has been actively trying to come up with ways to arrest [Reverend Whatley]." (Dkt. No. 16 at 6.) Indeed, the Amended Complaint states that Leah Whatley, "working with [Mayor Summey], used her connections with the collective bargaining unions that influence the local authorities' decisions" to "push for the raid and the rest going back several years." (*Id.* at 5.) In an audio clip submitted with the original Complaint (Dkt. No. 5, "NCPD part 1.m4a"), Samuel T. Whatley, II further surmises that his aunt, "who is kind of involved in local politics" and "close with the police unions," is responsible for the accusations of "neglect" against Reverend Whatley, and that "there might be some intergovernmental politics involved . . . especially shortly after an election just ended."[4] (*Id.* at min. 6:42–9:34.) Samuel T. Whatley, II also alleges that as part of the "plots against his father," Code Enforcement has sent

[3] Although Plaintiffs vaguely suggest that the records obtained during the search were later shared with "unauthorized third parties" (Dkt. No. 16 at 5), the Amended Complaint does not clearly articulate the identities of the alleged recipients.

[4] The audio clip seems to be a recording of Samuel T. Whatley, II talking to law enforcement officers at Ms. Whatley's home on December 2, 2022. (Dkt. No. 5, "NCPD part 1.m4a.") The law enforcement officers were apparently standing outside of the residence waiting on the issuance of the search warrant.

"threatening letters to [Reverend Whatley] to basically arrest him if he [doesn't] remove his nuisance garden." (*Id.* at min. 10:40–11:10.) The Amended Complaint states that "[w]hether the motive is due to greed of property, politics, or other nefarious acts, the acts were clear violations of unreasonable search and seizure and invasion of privacy." (*See* Dkt. No. 16 at 6, noting that Leah Whatley may also be motived by Reverend Whatley's "relationship" with his ex-wife.)

Based on the above, the Amended Complaint alleges causes of action for "invasion of privacy" under the Freedom of Information Act (5 U.S.C. § 552(b)(6), 49 C.F.R. § 801.56) and the Privacy Act of 1974 (5 U.S.C. § 552a(b)(6)); unreasonable search and seizure under the Fourth Amendment; violations of the Federal Tort Claims Act (28 U.S.C. § 2680); malicious prosecution; and intentional infliction of emotional distress. (Dkt. No. 1 at 4; Dkt. No. 13-1 at 4.) In terms of relief, Plaintiffs seeks "[c]ompensation for the damages inflicted over the years" and "an apology for the blatant privacy violations, . . . attempts to steal confidential health information, and . . . [u]sing intergovernmental organizations such as collective bargaining police unions and political connections to maliciously prosecute political dissidence after an election." (Dkt. No. 1 at 6; *see also* Dkt. No. 16 at 6, seeking compensation for "unlawful search and seizures/years of trespassing and harassment" and the "removal of the unauthorized access to health/financial records given to third parties.")

STANDARD OF REVIEW

The Amended Complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses, the court must dismiss any prisoner complaints, or portions of complaints, that are frivolous or malicious, fail to state a

claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

A complaint is frivolous if it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). Accordingly, a claim based on a "meritless legal theory" or "baseless" factual contentions may be dismissed *sua sponte* at any time under § 1915(e)(2)(B). *Neitzke v. Williams*, 490 U.S. 319, 324–25, 327–28 (1989). The United States Supreme Court has explained that the statute "is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits." *Id.* at 326.

As to failure to state a claim, a complaint filed in federal court must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" under Rule 8(a)(2) of the Federal Rules of Civil Procedure. In order to satisfy this standard, a plaintiff must do more than make conclusory statements. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that the court need not accept as true a complaint's legal conclusions). Rather, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *See id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This plausibility determination is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. When "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), the complaint fails to state a claim.

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is therefore charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nonetheless, the

requirement of liberal construction does not mean that the court can ignore a clear failure to allege facts that set forth a cognizable claim under Rule 8(a)(2). *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990); *see also Iqbal*, 556 U.S. at 684 (outlining pleading requirements under Rule 8, Fed. R. Civ. P., for "all civil actions"). The Fourth Circuit has explained that "though *pro se* litigants cannot, of course, be expected to frame legal issues with the clarity and precision ideally evident in the work of those trained in law, neither can district courts be required to conjure up and decide issues never fairly presented to them." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1276 (4th Cir. 1985).

DISCUSSION

At the outset, the undersigned reiterates that despite amending the pleading several times, Plaintiffs' claims remain quite convoluted and are largely reliant on a collection of disorganized, miscellaneous exhibits. *See Campbell v. StoneMor Partners, LP*, No. 3:17-cv-407, 2018 WL 3451390, at *2, 4 (E.D. Va. July 17, 2018) (explaining that courts need not "scour through [a *pro se* plaintiff's] attachments in an attempt to cobble together the facts that could support" the proposed claims or "discern the unexpressed intent of the plaintiff"), *aff'd*, 752 F. App'x 166 (4th Cir. 2019); *see also Beaudett*, 775 F.2d at 1278 (noting that federal courts are not required to serve as "mind readers" or advocates for litigants when construing *pro se* pleadings). Nevertheless, the undersigned has carefully combed through Plaintiffs' numerous filings to consider any potential claims and is constrained to recommend summary dismissal for the reasons discussed below.

I. Invasion of Privacy

Turning first to Plaintiffs' claims of invasion of privacy, the Amended Complaint cites 5 U.S.C. § 552(b)(6); 49 CFR § 801.56; and 5 U.S.C. § 552a(b)(6). (Dkt. No. 1 at 4; Dkt. No. 13-1

at 4; Dkt. No. 16 at 4.) Although it is difficult to discern what facts even relate to these causes of action, the undersigned addresses each in an abundance of caution. With respect to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 governs what information should be made available to the public by an agency of the Government of the United States. *See* 5 U.S.C. § 552(a). In turn, Section § 552(b) prescribes what information should not be made available:

> (b) This section does not apply to matters that are—
>
> [. . .]
>
> (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

5 U.S.C. § 552(b)(6). To that end, 49 CFR § 801.56 states,

> Pursuant to 5 U.S.C. 552(b)(6), any personal, medical, or similar file is exempt from public disclosure if its disclosure would harm the individual concerned or would be a clearly unwarranted invasion of the person's personal privacy.

49 CFR § 801.56. Notably, neither of these authorities apply to the instant case.

It is well-established that FOIA "is applicable to agencies or departments of the Government of the United States, and is not applicable to agencies or departments of a state." *See Miller v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, No. 2:08-cv-3836-JFA-RSA, 2008 WL 5427754, at *3 (D.S.C. Dec. 31, 2008) (referencing 5 U.S.C. § 551(1)), *aff'd*, 327 F. App'x 407 (4th Cir. 2009); *see also Black v. Murphy*, No. 1:21-cv-618, 2022 WL 2532492, at *2 (M.D.N.C. Apr. 20, 2022) (explaining that "local governmental entities and their departments [are] not agencies for the purposes of FOIA"). With respect to 49 CFR § 801.56, this regulation specifically applies to FOIA requests that are processed by the National Transportation Safety Board. *See Reaves v. Washington*, No. 4:23-cv-3847-TLW-TER, 2023 WL 9523787, at *2 (D.S.C. Aug. 23, 2023), *adopted*, 2024 WL 277781 (D.S.C. Jan. 25, 2024). Because none of the Defendants named in the Amended Complaint are part of the National Transportation Safety

Board or constitute federal agencies, neither 5 U.S.C. § 552(b)(6) nor 49 CFR § 801.56 provides a basis for relief in this case and such claims are therefore subject to summary dismissal.

With respect to 5 U.S.C. § 552a, the Privacy Act of 1974 "regulate[s] the collection, maintenance, use and dissemination of information by [federal] agencies . . . and provides for various sorts of civil relief to individuals aggrieved by failures on the Government's part to comply with the requirements." *Doe v. Chao*, 540 U.S. 614, 618 (2004) (internal citations omitted). More specifically, Plaintiffs cite § 552a(b)(6) (Dkt. No. 16 at 4), which states,

> (b) No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—
>
> [. . .]
>
> (6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value.

5 U.S.C. § 552a(b)(6).

Plaintiffs' reference to this subsection is perplexing, as their claims plainly do not involve the National Archives and Records Administration. However, even if Plaintiffs simply intended to cite the Privacy Act generally, any such claims still lack an arguable basis in law or in fact. "The Privacy Act contains only two substantive sections, Section 3, which applies only to federal agencies, and Section 7, which applies to federal, state, and local agencies." *Haywood v. Owens*, No. 8:19-cv-1025-JFA-JDA, 2019 WL 2292548, at *2 (D.S.C. Apr. 23, 2019) (internal citations omitted), *adopted*, 2019 WL 2284931 (D.S.C. May 29, 2019). First, Section 3 is inapplicable to the instant case because it "provides a comprehensive remedial scheme for violations of the Privacy Act by federal agencies" only. *See id.* (referencing *Tankersley v. Almand*, 837 F.3d 390,

407 (4th Cir. 2016)). Section 7 is likewise inapplicable because—while it applies to state and local agencies—it "makes it illegal for a governmental agency to deny an individual any right, benefit, or privilege based on the individual's refusal to disclose his or her [social security number]," which is not at issue here. *See Reaves*, 2023 WL 9523787, at *2 (referencing *Reaves v. Maxton Police Dep't*, No. 7:22-cv-204-FL, 2023 WL 2925159, at *3 (E.D.N.C. Feb. 24, 2023), *adopted*, 2023 WL 2923128 (E.D.N.C. Apr. 12, 2023)); *see also Haywood*, 2019 WL 2292548, at *2. Accordingly, Plaintiffs cannot demonstrate an actionable claim for invasion of privacy under the Privacy Act of 1974.

II. Unreasonable Search and Seizure

The Fourth Amendment provides that, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Once again, it is not entirely clear which facts Plaintiffs present in support of this cause of action. Construing the Amended Complaint liberally, however, the undersigned finds that Plaintiffs may be attempting to allege Fourth Amendment violations based on the ordinance violations issued against their properties and the search of Ms. Whatley's home on December 2, 2022.[5]

[5] Before addressing the potential merits of these claims, it is important to recognize that the Constitution limits the jurisdiction of federal courts to "cases" and "controversies," U.S. Const. art. III, § 2, cl. 1., and "standing is an essential and unchanging part of that case-or-controversy requirement," *Doe v. Obama*, 631 F.3d 157, 160 (4th Cir. 2011). To demonstrate Article III standing, a plaintiff must "show that he or she suffered an invasion of a legally protected interest that is concrete and particularized." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Thus, in alleging a constitutional claim, a plaintiff must show "that he, himself, sustained a deprivation of a right, privilege or immunity secured to him by the Constitution and laws of the United States." *Inmates v. Owens*, 561 F.2d 560, 562–63 (4th Cir. 1977); *see also Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 796 (1984) (noting that, as a general rule, "a litigant only has standing to vindicate his own constitutional rights"). Accordingly, the undersigned clarifies here that Reverend Whatley and his son likely do not have standing to bring a constitutional claim based on the Police Department's search of Ms. Whatley's home or the purported seizure of Ms. Whatley's personal records; such

With respect to the ordinance violations, Plaintiffs contend that Code Enforcement officials were not authorized to inspect their properties, to issue citations or summonses, or to threaten arrest because they were operating without the various certifications and/or registrations required under South Carolina law. (Dkt. No. 1 at 6; Dkt. No. 16 at 4–5.) However, "a violation of state law cannot, by itself, support a claim that [the plaintiff] has suffered a violation of his constitutional rights. [He] needs to show that a government actor violated his rights under the Fourth Amendment itself." *Neal v. State Emps. Credit Union*, No. 2:19-cv-44-FL, 2020 WL 5524781, at *2 (E.D.N.C. Apr. 17, 2020), *adopted*, 2020 WL 2301468 (E.D.N.C. May 8, 2020); *see also Ralph v. Pepersack*, 335 F.2d 128, 136 (4th Cir. 1964) ("There is significant distinction between police action which is unlawful because [it is] violative of constitutional provisions and police action which merely fails to accord with statute, rule or some other nonconstitutional mandate."). To that end, the contention that Code Enforcement officials violated the South Carolina Code in exercising their job duties is a matter of state law and does not, without more, implicate a Fourth Amendment violation.

Nevertheless, even viewing the allegations in the Amended Complaint more generally, Plaintiffs still fail to demonstrate an unreasonable search or seizure based on Code Enforcement's purported conduct. "[W]hile routine municipal fire, health, and housing inspection programs are 'less hostile intrusion[s],' they are still 'significant intrusions upon the interests protected by the Fourth Amendment.'" *See Gold v. Joyce*, No. 2:21-cv-150, 2021 WL 2593804, at *4 (S.D.W. Va. June 24, 2021) (citing *Camara v. Mun. Ct. of City & Cnty. of San Francisco*, 387 U.S. 523, 530, 533 (1967)). However, "what one knowingly exposes to the public in one's own yard" is not entitled to Fourth Amendment protection. *Wimberley v. City of*

claims appear to invoke Ms. Whatley's Fourth Amendment rights only. Nonetheless, the Court need not resolve this issue now, as Plaintiffs' Fourth Amendment claims are subject to summary dismissal regardless of standing.

Wilson, No. 5:01-cv-451-BO, 2001 WL 34643066, at *2 (E.D.N.C. Aug. 17, 2001); *see also Katz v. United States*, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.").

Here, Plaintiffs do not allege that Code Enforcement officers entered their homes or conducted any sort of warrantless searches. To the contrary, the Official Inspection Notices indicate "overgrowth" on Plaintiffs' properties and a vehicle that "looks to be inoperable."[6] (*See, e.g.*, Dkt. No. 1-1 at 5–6, directing the owner/tenant to "[p]lease move and regularly maintain the grass/weeds" and "properly maintain the weeds and overgrowth" on the property.) In other words, the ordinance violations were based on visible objects in Plaintiffs' yards.[7] *See Wimberley*, 2001 WL 34643066, at *2 (summarily dismissing Fourth Amendment claim where city inspectors allegedly "trespassed on [the plaintiff's] yard in order to inspect certain vehicles" because violations were "visible to passers-by, neighbors, and other people" despite fence); *see also California v. Ciraolo*, 476 U.S. 207, 214 (1986) (finding that respondent's "expectation that his garden was protected from such observation [was] unreasonable"). Thus, the ordinance violations issued against Plaintiffs' properties do not give rise to an actionable claim under the Fourth Amendment.

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[6] Section 9-67 of the North Charleston Code of Ordinance prohibits "unhealthy and unsightly conditions constituting public nuisances and endangering the life, health, safety, welfare and property of the entire community," including, but not limited to:

> (2) Grass, noxious weeds, vegetable growth, briars, brush and plants more than one foot in height except when cultivated or maintained;
>
> [. . .]
>
> (4)(a) Trucks, cars, trailers, boats, and similar items that (i) fail to comply with state or federal safety regulations or are incapable of self-propulsion (if the item in question is normally self-propelled), or are dismantled; and (ii) which are left in such state or condition for more than seventy-two (72) hours.

Sec. 9-67(2), (4).

[7] To be sure, in the audio clip filed by Plaintiffs, Samuel T. Whatley, II points out the purported "nuisance garden" to law enforcement officers while standing across the street at his grandmother's house on December 2, 2022. (*See* Dkt. No. 5, "NCPD part 1.m4a" at min. 10:45–11:09, stating "You can see the garden from here.")

It is also worth noting that while Code Enforcement issued at least one municipal court summons in November 2022 to "Samuel T. Whatley" (Dkt. No. 1-1 at 3), "a summons alone is insufficient to support a Fourth Amendment seizure claim." *See Glass v. Anne Arundel Cty.*, 716 F. App'x 179, 180 n.1 (4th Cir. 2018) (collecting cases); *see also Ryu v. Whitten*, 684 F. App'x 308, 311 (4th Cir. 2017) ("A summons requiring no more than a court appearance, without additional restrictions, does not constitute a Fourth Amendment seizure."). Accordingly, the undersigned finds that the Amended Complaint does not state an actionable Fourth Amendment claim based on Code Enforcement's inspections and/or issuance of ordinance citations and summonses in relation to Plaintiffs' properties.

Turning to the search of Pacita Whatley's residence and the records obtained as a result thereof, the undersigned first emphasizes that the Fourth Amendment "does not prohibit all unwelcome intrusions 'on private property,'—only 'unreasonable' ones." *See Caniglia v. Strom*, 593 U.S. 194, 198 (2021) (citing *Florida. v. Jardines*, 569 U.S. 1, 6 (2013)). The United States Supreme Court "has thus recognized a few permissible invasions of the home and its curtilage," the "most familiar" being "searches and seizures pursuant to a valid warrant." *Id.* Indeed, "when the State's reason to believe incriminating evidence will be found becomes sufficiently great, the invasion of privacy becomes justified and a warrant to search and seize will issue." *Zurcher v. Stanford Daily*, 436 U.S. 547, 554–55 (1978). That is exactly what happened in the instant case.

According to the North Charleston Police Department's Incident Report, Special Victims Unit Supervisor Sergeant Jennifer Pardue was notified of a "possible elder abuse/neglect case" on December 2, 2022, at approximately 11:36 a.m. (Dkt. No. 13 at 3.) She apparently met "Ms. Ford who works for the Office of the Aging for the City of North Charleston" at Trident Medical Center where they were able to "observ[e] the extent of [Ms. Whatley's] injuries" and make the

determination to open an investigation into Ms. Whatley's care. (*Id.*) The Police Department then obtained a search warrant for Ms. Whatley's home based on the following sworn statement:

> On December 2, 2022, CCEMS was dispatched . . . in reference to transporting a female for treatment at an area hospital. Based on the victim's medical assessment, Officers from the North Charleston Police Department were dispatched based on potential neglect/physical abuse of the elderly adult. Officers made contact with the victim's son who was uncooperative and SVU Detectives were notified and responded. Given the victim's condition, it is believed that a search of the victim's residence is necessary to discover evidence of neglect or abuse as well as to establish if the vulnerable adult has the proper care items (food, water, medical care items, medicine, etc.) present for that purpose.
>
> Based on the above events, it is believed that a search of the . . . residence, yard, and property would lead to the discovery of further evidence related to [the] crime of Elder Abuse.

(Dkt. No. 1-1 at 28.) The warrant sought, among other things, "medication, medical equipment, care documents, items relating to the care of a vulnerable adult, . . . and any other items pertaining to the crime of Elder Abuse." (*Id.*)

While Plaintiffs may disagree with the local authorities' concerns of elder abuse and neglect, there is nothing to indicate that the warrant permitting the search of Ms. Whatley's residence was not supported by probable cause or was otherwise facially invalid. *See Brooks v. Berkeley Cnty. Sheriff's Off.*, No. 2:21-cv-4054-BHH-KDW, 2022 WL 18635126, at *4 (D.S.C. Sept. 1, 2022) (referencing *Franks v. Delaware*, 438 U.S. 154, 171 (1978) (noting that "warrants have a presumption of validity and any attack thereupon 'must be more than conclusory'"), *adopted*, 2023 WL 142394 (D.S.C. Jan. 10, 2023); *see also United States v. Young*, 260 F. Supp. 3d 530, 542 (E.D. Va. 2017) (referencing *United States v. Blackwood*, 913 F.2d 139, 142 (4th Cir. 1990) ("A court reviewing a magistrate judge's decision to authorize a warrant is to 'accord great deference to the magistrate's assessment of the facts presented to him'")), *aff'd*, 916 F.3d 368 (4th Cir. 2019). Consequently, the search of Ms. Whatley's residence—and the documents

procured during that search—do not reflect a Fourth Amendment violation as alleged by Plaintiffs.[8]

III. Federal Tort Claims Act

The Amended Complaint also references the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680, 1346(b) ("FTCA"), which "provides for a limited waiver of the United States's sovereign immunity from suit by allowing a plaintiff to recover damages in a civil action for loss of property or personal injuries caused by the 'negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.'" *See DeWitt v. United States*, No. 3:16-cv-484-TLW-PJG, 2018 WL 3543922, at *2 (D.S.C. Feb. 28, 2018) (citing 28 U.S.C. § 1346(b)), *adopted*, 2018 WL 3537097 (D.S.C. July 20, 2018). Oddly, the Amended Complaint specifically references 28 U.S.C. § 2680, which prescribes specific exemptions under the FTCA, such that it is difficult to discern what violations or claims, if any, Plaintiffs are attempting to allege with respect to this Act. (Dkt. No. 1 at 4; Dkt. No. 13-1 at 4.)

[8] To the extent Plaintiffs are also alleging a constitutional violation based on the Police Department's purported attempt "to unlawfully obtain health records regarding allegations of elder abuse" from the hospital's medical staff on December 2, 2022 (Dkt. No. 1 at 6), "asking to review documents" generally does not constitute a Fourth Amendment violation. *See United States v. $433,980 in U.S. Currency*, 473 F. Supp. 2d 672, 678–79 (E.D.N.C. 2006) (referencing *Florida v. Bostick*, 501 U.S. 429, 434–35 (1991)). Indeed, there is no indication that law enforcement physically searched the hospital's files or seized any records maintained by the hospital. Thus, the Police Department's mere request for documents regarding Ms. Whatley's medical condition upon observing signs of possible elder abuse does not amount to a true search or seizure as contemplated by the Fourth Amendment.

Similarly, insofar as Plaintiffs are suggesting that the records procured during the search of Ms. Whatley's home were improperly shared with a "third party" at a later date (Dkt. No. 16 at 5), such vague allegations are insufficient to state a claim against Defendants upon which relief may be granted. Nevertheless, the mere act of this theoretical disclosure—while potentially problematic under certain state privacy laws—does not establish an unconstitutional search or seizure cognizable under the Fourth Amendment. *See Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994) ("Legally frivolous claims are based on an 'indisputably meritless legal theory' and include 'claims of infringement of a legal interest which clearly does not exist.'") (citing *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)).

Notwithstanding the above, assuming Plaintiffs are attempting to allege some sort of tort claim under the FTCA, it is well-established that "State actors cannot be sued under ... the [same]." *See Parry v. Hayes*, No. 7:23-cv-241, 2023 WL 4162284, at *1 (W.D. Va. June 23, 2023) (citing *Abuhouran v. Soc. Sec. Admin.*, 291 F. App'x 469, 473 (3d Cir. 2008)); *see also Robinson*, No. 3:22-cv-49, 2022 WL 2080870, at *5 (N.D.W. Va. May 9, 2022) (explaining that FTCA claims are brought against the United States, not "state actors or civilians"), *adopted sub nom. Robinson v. Unknown Named Special Agent*, 2022 WL 2079309 (N.D.W. Va. June 9, 2022). Because this case does not involve any federal defendants, Plaintiffs cannot bring a cause of action under the FTCA, and any such claims are therefore subject to summary dismissal.

IV. Malicious Prosecution

Although the Amended Complaint lists a cause of action for malicious prosecution (Dkt. No. 1 at 4; Dkt. No. 13-1 at 4), the pleadings once again do not specify the events to which this claim applies. A malicious prosecution claim is construed as an unreasonable seizure under the Fourth Amendment, but "incorporates certain elements of the common law tort." *Lambert v. Williams*, 223 F.3d 257, 261 (4th Cir. 2000). To state such a claim, a plaintiff must allege that the defendant caused a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and that the criminal proceedings terminated in the plaintiff's favor. *See Evans v. Chalmers*, 703 F.3d 636, 647 (4th Cir. 2012). Thus, as a threshold matter, "[f]or a plaintiff to bring a valid malicious prosecution action, judicial proceedings must be initiated against a plaintiff, meaning the plaintiff must be charged with a crime." *See Doe v. Porter-Gaud Sch.*, 649 F. Supp. 3d 164, 176 (D.S.C. 2023) (referencing *Elletson v. Dixie Home Stores*, 231 S.C. 565 (1957)); *see also Gillaspie v. United States*, No. 2:21-cv-1935-DCN-MHC, 2022 WL 6200831, at *5 (D.S.C. Oct. 7, 2022) ("[A]n action for malicious prosecution requires that there be an

arrest, or at least a constructive arrest, underlying the claim."), *aff'd*, No. 22-2166, 2023 WL 4181289 (4th Cir. June 26, 2023).

While the initial filings allude to a "plot" to have Reverend Whatley arrested (Dkt. No. 5, "NCPD part 1.m4a" at min. 7:40–8:04, 10:40–11:10; Dkt. No. 16 at 6), there is no indication that he—or any of the Plaintiffs for that matter—was ever charged with the commission of a crime. For that reason, Plaintiffs simply cannot maintain an actionable claim for malicious prosecution at this time. *See, e.g.*, *Doe*, 649 F. Supp. 3d at 177 (dismissing plaintiff's malicious prosecution claim because "no arrest warrant or anything rising to the level of a prosecution occurred"); *Burnette v. Wooton*, No. 5:18-cv-956, 2019 WL 1118554, at *4 (S.D.W. Va. Mar. 11, 2019) (dismissing claim for malicious prosecution because "a prosecution must have actually existed or commenced and then concluded before one can complain of a malicious prosecution"); *see also Gillaspie*, 2022 WL 6200831, at *5 (noting that "a search warrant does not satisfy the requirement that a plaintiff show by a preponderance of the evidence that she was charged with the commission of a crime").

V. Intentional Infliction of Emotional Distress

Finally, the Amended Complaint appears to allege intentional infliction of emotional distress ("IIED") (Dkt. No. 1 at 4; Dkt. No. 13-1 at 4), which is a state law tort claim. *See Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 401 (2004) (referencing *Ford v. Hutson*, 276 S.C. 157, 162 (1981)). Federal courts are courts of limited jurisdiction, meaning they possess only that power authorized by Article III of the United States Constitution and affirmatively granted by federal statute. *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Pursuant to this limited power, there are two primary bases for original federal jurisdiction:

(1) "federal question," under 28 U.S.C. § 1331, and (2) "diversity of citizenship," under 28 U.S.C. § 1332.

If a federal district court has original jurisdiction over a civil action, it may also exercise supplemental jurisdiction over any state law claims that are "so related" to the claims under the court's original jurisdiction "that they form part of the same case or controversy." 28 U.S.C. § 1367(a). Without original jurisdiction, however, a federal court generally cannot exercise supplemental jurisdiction over state law claims. *See id.* § 1367(c)(3) (stating that the district court may decline to exercise supplemental jurisdiction over state law claims if it has dismissed all claims over which it has original jurisdiction). Because the Amended Complaint does not allege a valid federal cause of action or diversity of citizenship, this Court cannot exercise jurisdiction over Plaintiffs' remaining state law claims. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) (stating that "if the federal claims are dismissed . . . , the state claims should be dismissed as well"); *see also Lovern v. Edwards*, 190 F.3d 648, 655 (4th Cir. 1999) ("[T]he Constitution does not contemplate the federal judiciary deciding issues of state law among non-diverse litigants.") Plaintiffs' IIED claim is therefore subject to summary dismissal.

CONCLUSION

For the reasons discussed above, the undersigned is of the opinion that Plaintiffs cannot cure the deficiencies in the Amended Complaint, and this action is therefore subject to summary dismissal for failure to state a claim upon which relief may be granted. Accordingly, the undersigned **RECOMMENDS** that this action be **DISMISSED** without further leave to amend. *See Britt v. DeJoy*, 45 F.4th 790, 798 (4th Cir. 2022); *see also Workman v. Morrison Healthcare*, 724 F. App'x. 280, 281 (4th Cir. June 4, 2018).

IT IS SO RECOMMENDED.

MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

May 1, 2024
Charleston, South Carolina

The parties' attention is directed to an important notice on the following page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Samuel T. Whatley, II; Reverend Dr. Samuel T. Whatley; and Pacita Whatley, Plaintiffs, v. City of North Charleston; Mayor Keith Summey; North Charleston Police Department; and North Charleston Code Enforcement, Defendants.	Case No. 2:22-cv-04419-RMG-MGB **ORDER**

Plaintiff Samuel T. Whatley, II, proceeding *pro se*, initially filed this action in relation to an ongoing dispute between his family and certain North Charleston authorities. (Dkt. No. 1.) Reverend Dr. Samuel T. Whatley ("Reverend Whatley") and Pacita Whatley ("Ms. Whatley") have since joined this action as additional plaintiffs. (Dkt. Nos. 13-1, 16.)

Under 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge. Based on an initial screening conducted pursuant to 28 U.S.C. § 1915(e)(2)(B), the undersigned recommends that this action be summarily dismissed.

PAYMENT OF THE FILING FEE:

Ms. Whatley and Reverand Whatley have both submitted Applications to Proceed Without Prepayment of Fees ("Form AO 240") (Dkt. Nos. 25, 26, respectively), which are construed as motions for leave to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(a)(1), (2). The applications indicate that neither individual has sufficient funds to prepay the filing fee at this time. Therefore, the motions for leave to proceed *in forma pauperis* (Dkt. Nos. 25, 26) are GRANTED for the limited purpose of allowing the Court to consider the undersigned's recommendation of dismissal.[1]

CONSTRUCTION OF THE PLEADING:

Upon filing the original Complaint (Dkt. No. 1), Plaintiff Samuel Whatley, II submitted a series of supplemental exhibits and motions to amend the pleadings (Dkt. Nos. 12, 13, 14, 16),

[1] The Court previously granted Samuel T. Whatley, II's motion to proceed *in forma pauperis*. (Dkt. Nos. 2, 21.)

which the Court ultimately granted (Dkt. No. 21). However, after learning that his amended pleadings (Dkt. Nos. 13-1, 16) would completely replace the original Complaint, he filed a memorandum asking that the Court consider the pleadings collectively. (Dkt. No. 27.)

Generally, "piecemeal pleading"—submitting multiple documents that are to be considered as a single pleading—is not allowed because of the confusion it causes parties and courts. *See Wells v. Spartanburg Cty. Det. Ctr. Facility Employees*, No. 8:10-cv-1490-CMC-BHH, 2010 WL 4853868, at *2 (D.S.C. Oct. 26, 2010), *adopted*, 2010 WL 4853836 (D.S.C. Nov. 23, 2010). Nevertheless, in light of Plaintiffs' *pro se* status and in an effort to provide the most comprehensive initial review, the undersigned considers the original Complaint (Dkt. No.1), amended pleadings (Dkt. Nos. 13-1, 16), and all exhibits (Dkt. Nos. 1-1, 5, 12, 13, 14, 16-2) together for purposes of this Order and the accompanying Report and Recommendation filed herewith. Any further references to the "Amended Complaint" shall encompass these collective documents in an abundance of caution.

TO THE CLERK OF COURT:

The Clerk shall mail a copy of this Order and the Report and Recommendation filed contemporaneously herewith to Plaintiffs. The Clerk shall not issue the summonses or forward this matter to the United States Marshal Service for service of process at this time.

IT IS SO ORDERED.

MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

May 1, 2024
Charleston, South Carolina

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