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APPENDIX A **UNPUBLISHED** A-1

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1241

THEODORE JUSTICE,

Plaintiff - Appellant,

v.

MCANGUS GOUDELOCK & COURIE LLC; LUKE DALTON; SKYLAR J. GALLAGHER; NORTH CAROLINA BAR ASSOCIATION; AMANDA E. STEVENSON,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:24-cv-00392-D-BM)

Submitted: June 17, 2025 Decided: June 20, 2025

Before GREGORY, QUATTLEBAUM, and BERNER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Theodore Justice, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Theodore Justice appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Justice's civil complaint under 28 U.S.C. § 1915(e)(2)(B). Preliminarily, we grant Justice's motion to file a supplemental informal brief, but we deny his petition for initial hearing en banc.

Limiting our review of the record to the issues raised in the informal briefs, we have reviewed the record and find no reversible error. *See* 4th Cir. R. 34(b); *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."). Justice failed to plausibly allege the defendants who were not state actors acted under the color of state law, as required to state a claim under 42 U.S.C. § 1983. He did not plausibly allege those defendants "conspire[d] for the purpose of impeding, hindering, obstructing, or defeating . . . the due course of justice in [state court] with intent to deny to [him] the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce," his right to equal protection. 42 U.S.C. § 1985(2). Nor did he allege those defendants were "motivated by a specific class-based, invidiously discriminatory animus," as necessary to state a claim under 42 U.S.C. § 1985(3). *Strickland v. United States*, 32 F.4th 311, 360 (4th Cir. 2022) (citation omitted).

Accordingly, we affirm the district court's order. *Justice v. McAngus Goudelock & Courie LLC*, No. 5:24-cv-00392-D-BM (E.D.N.C. Mar. 10, 2025). 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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:24-CV-392-D

THEODORE JUSTICE, Plaintiff, v. MCANGUS GOUDELOCK & COURIE, LLC, et al., Defendants.	)	**ORDER and MEMORANDUM AND RECOMMENDATION**

This *pro se* case is before the court on the motion by plaintiff Theodore Justice ("plaintiff")[1] to proceed *in forma pauperis* [DE-2] pursuant to 28 U.S.C. § 1915(a)(1) and for a frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B). Additionally, before the court is plaintiff's (i) motion to amend caption [DE-5]; (ii) motion to permit *pro se* electronic filing [DE-10]; (iii) motion requesting court to issue summons and complaint [DE-11]; and (iv) motion to prohibit disclosure of complaint information [DE-12]. The motions were referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1). [DE-4]; *see* public entries dated July 12, 2024, September 26, 2024, and October 2, 2024.

For the reasons stated below, plaintiff's (i) application to proceed *in forma pauperis* [DE-

[1] Plaintiff has filed numerous *pro se* lawsuits in this district, *see Justice v. Crabtree*, et al., 5:00-CV-513-BO; *Justice v. Pope et al.*, 5:07-CV—251-FL; *Justice v. Granville County Board of Education*, 5:10-CV-350-BR; *Justice v. Granville County Board of Education*, 5:10-CV-525-BR; *Justice v. Granville County Board of Education*, 5:10-CV-539-BR; *Justice v. Farley*, 5:11-99-BR; *Justice v. Farley et al.*, 5:11-CV-400-BR; *Justice v. Farley et al.*, 5:11-CV-706-BR; *Justice v. Farley et al.*, 5:13-CV-343-D; *Justice v. White, et al.*, 5:13-CV-548-FL; *Justice v. Hobgood*, 5:13-CV-677-BR; *Justice v. The State of North Carolina et al.*, 5:15-CV-46-F; *Justice v. Director Exceptional Children's Division et al.*, 5:15-CV-546-BO; *Justice v. The State of North Carolina et al.*, 5:15-CV-558-FL; *Justice v. North Carolina Department of Health and Human Services et al.*, 5:18-CV-187-FL; *Justice v. United States of America*, 5:21-CV-350-M; *Justice v. North Carolina Department of Health and Human Services Secretary et al.*, 5:22-CV-25-M; *Justice v. Nelson, et al.*, 5:22-CV-350-M-RN. Plaintiff has been deemed a "serial filer in this court". *See Just. v. N. Carolina Dep't of Health & Hum. Servs.*, No. 5:22-CV-00350-M, 2022 WL 22837065, at *3 (E.D.N.C. Nov. 21, 2022), *report and recommendation adopted in part, rejected in part on other grounds sub nom. Just. v. United States*, No. 5:22-CV-00350-M, 2023 WL 4751260 (E.D.N.C. July 25, 2023).

2] is GRANTED; (ii) motion to amend caption [DE-5] is GRANTED; (iii) motion to permit *pro se* electronic filing [DE-10] is DENIED; and (iv) motion to prohibit disclosure of complaint information [DE-12] is DENIED.

Based on the court's frivolity review and for the reasons stated below, the undersigned RECOMMENDS that (i) plaintiff's complaint be DISMISSED, and (ii) his motion requesting the court to issue summons and complaint [DE-11] be DENIED AS MOOT.

ORDERS ON NON-DISPOSITIVE MOTIONS [DE-2; -5; -10; -12]

I. *IN FORMA PAUPERIS* MOTION [DE-2]

To qualify for *in forma pauperis* status, a person must show that he "cannot because of his poverty pay or give security for the costs . . . and still be able to provide himself and dependents with the necessities of life." *See Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948) (internal quotation marks omitted). Based on the information in the motion to proceed *in forma pauperis*, the court finds that plaintiff has adequately demonstrated his inability to prepay the required court costs. Accordingly, plaintiff's motion to proceed *in forma pauperis* [DE-2] is therefore ALLOWED.

II. MOTION TO PERMIT *PRO SE* ELECTRONIC FILING [DE-10]

In his motion [DE-10], plaintiff seeks permission to electronically file documents in this case as a *pro se* litigant. Plaintiff states that "the ability to utilize electronic filing would significantly improve his capacity to manage and engage in the proceedings, while also ensuring that he is afforded the same filing privileges as other parties involved in the case." *See id.* at 1.

In this district, "[a]n unrepresented party who is not incarcerated . . . may not file electronically." Local Civil Rule 5.1(b)(2); *see also* Local Civil Rule 5.1(b)(1) ("Only an attorney who is registered in CM/ECF may file documents electronically."). Plaintiff acknowledges this

rule. *See* [DE-10] at 2 (noting this court's policy "prohibiting [*pro se* plaintiffs] from submitting filings electronically"). However, plaintiff lists a variety of policy reasons, including, *inter alia*, equal access, accessibility, efficiency, cost-reduction, improved record keeping, and environmental impact as to why this court should allow him to file electronically. *See* [DE-10] at 4-6. The undersigned has considered these reasons and finds nothing novel in plaintiff's motion which would prompt this court to abrogate Rule 5.1(b)(2) in this case.

Specifically, while plaintiff asserts electronic filing would "improve his capacity to manage and engage in the proceedings," plaintiff has demonstrated extensive capacity to manually file a plethora of documents in this matter and numerous other actions to this district. Plaintiff has also not articulated any substantial impediment, resulting from physical limitations or otherwise, in filing documents in accordance with Local Rule 5.1. Additionally, plaintiff's ability to utilize a "receiving user" status in CM/ECF provides him with timely updates regarding district court filings.

In sum, the undersigned does not find any basis under which plaintiff has been denied due process by the requirement that he file his documents manually as opposed to electronically. This court has recently considered a request by plaintiff to electronically file documents in another matter and rejected such request for reasons similar to those noted above. *See* Docket Entry 59, *Justice v. Nelson, et al.*, 5:22-cv-00350-M-RN (filed Oct. 31, 2024). Accordingly, plaintiff's motion to file electronically [DE-10] is DENIED.

III. MOTION TO AMEND CAPTION [DE-5]

Plaintiff's motion to amend caption [DE-5] seeks to correct the spelling of defendant Amanda E. Steven's name to "Amanda E. Stevenson" in all the documents filed in this case. *See* [DE-5] at 1.

Pursuant to Fed. R. Civ. P. 15(a), leave to amend "should [be] freely [given] when justice so requires." The court does not find any prejudice resulting from the requested amendment, and therefore, the motion to amend caption [DE-5] is GRANTED. *See Harrison v. Infinity Ward, Inc.*, No. 1:20CV728, 2021 WL 4255151, at *2 (M.D.N.C. Sept. 17, 2021) ("This court finds that Defendant will not be prejudiced by correcting the name of Defendant.") (citing cases).

IV. MOTION TO PROHIBIT DISCLOSURE [DE-12]

While not entirely clear, plaintiff's motion to prohibit disclosure of complaint information [DE-12] appears to functionally represent a motion to seal the entirety of the complaint in the instant matter [DE-1]. *See generally* [DE-12]. Specifically, plaintiff requests that this court:

> issue an order prohibiting Defendant Luke Dalton, or any other person interested in the outcome of this complaint, from providing any information related to unserved or processed for service complaint no. 5:24-cv-00392 as it questions associated with high ranking judicial officials and powerful state agencies would alternately influence an unfavorable decision.

[DE-12] at 1.

Plaintiff appears to reason that because he criticizes a state court judicial official and others in his instant complaint, disclosure of this information would prejudice plaintiff in concurrent state court matters before state court judges. *See id.* at 3 ("The improper use of the complaint to influence the North Carolina State Court of Appeals could lead to decisions not based solely on the merits of the case.").

The Fourth Circuit has directed that before sealing publicly filed documents the court must determine if the source of the public's right to access the documents is derived from the common law or the First Amendment. *Doe v. Public Citizen*, 749 F.3d 246, 265-66 (4th Cir. 2014); *Stone v. Univ. of Maryland Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). The common law presumption in favor of access attaches to all judicial records and documents, whereas First

Amendment protection is extended to only certain judicial records and documents. *Doe*, 749 F.3d at 267.

> The common law presumes a right to inspect and copy judicial records and documents. The common law presumption of access may be overcome if competing interests outweigh the interest in access, and a court's denial of access is reviewable only for abuse of discretion. Where the First Amendment guarantees access, on the other hand, access may be denied only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest.

Stone v. Univ. of Maryland Med. Sys. Corp., 855 F.2d 178, 180 (4th Cir. 1988) (internal citations omitted).

The Fourth Circuit has held that newly filed civil complaints benefit from a First Amendment right of access. *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 328 (4th Cir. 2021); *see also Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 141 (2d Cir. 2016). Plaintiff has not demonstrated a compelling government interest in sealing his complaint. Specifically, the state court appeals process inherently provides for the ability of any perceived deficiencies in a lower court order or determination to be heard by an appellate judge. N.C.G.S. § 1-277. This appellate oversight mitigates the risk of and provides a means to redress any prejudice against plaintiff resulting from his filing of the instant action in federal court. Accordingly, plaintiff's motion to prohibit disclosure of complaint information [DE-12] is DENIED.

MEMORANDUM AND RECOMMENDATION ON FRIVOLITY REVIEW

I. BACKGROUND AND CLAIMS

A. Plaintiff's complaint and allegations

Plaintiff's complaint is a twelve-page typed document, in which he seeks a "jury demand," [DE-1] at 1, and provides the following preliminary statement:

> Theodore Justice, representing himself in court, has filed a lawsuit for civil rights

> violations Under 42 U.S.C. § 1983 and 42 U.S.C. § 1985. This legal action seeks a Declaratory Judgment, which would allow the court to determine if the defendants violated the plaintiffs rights under the Fourteenth Amendment to the United States Constitution while acting under state law. Additionally, the plaintiff is bringing forth state law claims under the court's supplemental jurisdiction. The plaintiff is requesting the court to declare the rights and legal relations of all parties involved, regardless of whether further relief is sought.

[DE-1] at 3.[2]

Plaintiff identifies the following defendants in this matter: the law firm of McAngus Goudelock & Courtie, LLC ("McAngus"); attorney Luke Dalton ("Mr. Dalton"); attorney Skylar J. Gallagher ("Ms. Gallagher"); the North Carolina Bar Association ("NCBA")[3]; and North Carolina District Court Judge Amanda E. Stevenson[4] ("Judge Stevenson") (collectively "defendants"). *See* [DE-1] at 1-2; [DE-5].

Plaintiff's complaint appears arise from an incident that took place on July 10, 2023, involving a tow truck from Fred's Towing & Transport Incorporated ("Fred's Towing") that was dispatched to plaintiff's residence for repairs and the resulting litigation surrounding this event.

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[2] On August 5, 2024, plaintiff filed an "affidavit," [DE-9] which the court generously construes as an attempt to amend his complaint. In light of plaintiff's *pro se* status, the undersigned liberally construes plaintiff's complaint [DE-1], together with his affidavit [DE-9], as the "complaint" in this matter. *See Royster v. Brennan*, 771 F. App'x 292, 292-93 (4th Cir. 2019) (explaining that "it is fundamental that *pro se* complaints must be construed liberally" and where an amended complaint "clearly was not meant to stand alone," the district court "should have construed it to incorporate by reference the factual allegations in the initial complaint." (citing *Williamson v. Stirling*, 912 F.3d 154, 170 (4th Cir. 2018))).

[3] Plaintiff refers to the "North Carolina Bar Association" and the "State Bar" interchangeably. *See* [DE-1] at 2. The undersigned construes plaintiff's references to the "North Carolina Bar Association" as attempting to refer to the "North Carolina State Bar" in light of his characterization of this entity as "the government agency responsible for the regulation of the legal profession in North Carolina" (*see id*); as the originator of attorneys' "strict code of ethics" (*see id.* at 6, ¶17); and as the entity to whom complaints regarding attorney misconduct should be submitted (*see id.* at 7, ¶25). *See* N.C.G.S. §§ 84-15, *et seq.* (creating the North Carolina State Bar as an agency of the State of North Carolina and vesting it with the authority "to regulate the professional conduct of licensed lawyers[;] . . . formulate and adopt rules of professional ethics and conduct; [and] investigate and prosecute matters of professional misconduct). However, plaintiff's claims would likewise fail against the North Carolina Bar Association for the reasons discussed herein.

[4] Plaintiff's complaint [DE-1] names "Amanda E. Steven" as a defendant, however the court has herein granted plaintiff's motion to amend caption [DE-5] to correct the spelling of defendant's name to "Amanda E. Stevenson." The undersigned therefore refers to this defendant with the corrected spelling of "Stevenson" throughout this filing.

[DE-1] at 5, ¶1. Plaintiff alleges that while located in plaintiff's backyard, the rear tires of a Fred's Towing recovery truck "began to spin violently and the recovery truck was not able to precede forward or backwards causing a trench where the tires of the recovery truck were spinning." *Id* at ¶3. A "second recovery truck owned by [Fred's Towing][5] was dispatched and was positioned to the front of the disabled truck and winched both the disabled truck and Fred [Towing's] recovery truck first recovery truck out of the trench [Fred's Towing's] first truck caused." *Id* at ¶4. Plaintiff allegedly "asked the driver of the first recovery truck what he was going to do about the damages to the yard," to which Fred's Towing responded that "as soon as the ground is dry it will come back with the bobcat and smooth it over." *Id* at ¶5. Plaintiff alleges that he "called on multiple days to request when someone would come out and repair the damages, but each time [he] was told when the ground is dry [and that t]wo months later Fred [Towing had not] returned to repair damages." *Id.*

Plaintiff then filed a claim in state court against Fred's Towing, and on August 25, 2023, plaintiff, Fred's Towing's attorney, Ms. Gallagher, and the owner of Fred's Towing & Transport Incorporated, appeared "at trial." *Id* at ¶¶ 7-8. During the state court proceeding, Fred's Towing "failed to disclose crucial information to [plaintiff], including suborning perjury as to the actual date of hire and concealing evidence up and until the day of trial." *Id.* at 6, ¶12. Plaintiff alleges the actions of defendant Ms. Gallagher resulted in dismissal of the state claim in defendants' favor "because the plaintiff was caught off guard or unprepared to counter the overwhelming evidence presented." *Id* at ¶16. Plaintiff claims that the North Carolina Bar Association overlooked its

[5] Plaintiff references "Fred's Towing" as "defendant" throughout his complaint, despite not naming "Fred's Towing" as a defendant in the current action. The undersigned notes that Fred's Towing is a defendant in plaintiff's prior civil action. Therefore, to avoid confusion on parties in the current action, the undersigned will refer to "Fred's Towing" by name.

ethical guidelines and let Ms. Gallaher escape responsibility with respect to the alleged misconduct. *Id* at ¶17.

Due to the "complex and confusing" rules plaintiff perceived with respect to the state court appeals process, plaintiff represents that he decided not to pursue appeal of his action in the state court system. *Id.* at 8, ¶31.[6]

Plaintiff provides that subsequent to the dismissal of the above-described state court action, the following events occurred:

> 18. A small claim was filed on November 26, 2023, resulting in the rehiring of attorney Skylar Gallagher as the defendant's legal representative. However, Gallagher later opted to withdraw from the case, and was subsequently replaced by attorney Luke Dalton. The trial has been scheduled for December 6, 2023.
>
> 19. During the proceedings on December 6, 2023 , attorney Luke Dalton, acting on behalf of the defendant Fred's Towing, presented his case and supporting documents. However, the plaintiff raised an objection, stating that they had not been given the chance to review the evidence prior to the trial.
>
> 20. Fred Towing, the defendant, proposed a resolution to repair the property and requested the dismissal of the complaint.
>
> 21. Defendant Fred Towing and Luke Dalton appeared at the residence within the hour with an agreement requiring two signatures one for plaintiffs' [sic] son and for plaintiff.
>
> 22. Plaintiff signed the agreement for himself and his son and Fred Towing began and completed repairs. Despite defendants Luke Dalton and Skylar Gallagher consistently arguing during each hearing that plaintiff Theodore Justice did not have standing, only to now claim that he is sanctionable standing? This sudden change in stance raises concerns about a potential double standard being applied in the court proceedings.
>
> 23. May 10, 2024, a few months subsequent to the signing of the agreement, the defendant Luke Dalton has taken the initiative to file a motion to dismiss, as well

[6] Despite this assertion, plaintiff's other filings in the instant case suggest that plaintiff did eventually appeal his state court judgment. *See* [DE-11] at 1 (plaintiff noting that "the [North Carolina] Court of Appeals ultimately denied [plaintiff's] motion to suspend the rule and dismissed the appeal."); [DE-11-2] (Order dated September 26, 2024, by North Carolina Court of Appeals dismissing appeal in state court action *Theodore Justice v. Fred's Towing & Transport*, 23CVD001004-900).

> as a motion for gatekeeper and sanction. This is a direct response to the plaintiff Theodore Justice's complaints about the defendant's unethical legal practices. The motion included 130 page gatekeeper sanction regarding a prior matter Case 5:11-cv-00706-BR Document 60 Filed 05/17/12.[7]
>
> 24. The motion filed by the defendants contained an email that the plaintiff had forwarded to defendant Luke Dalton, addressing his firm's unethical practices. Additionally, the plaintiff tried to submit two small claims against defendants McAngus Goudelock & Courie LLC, Luke Dalton, and Skylar J. Gallagher, but they were not served.
>
> 25. Defendant Dalton has also requested in his motion for sanctions that the court restrict the plaintiff from submitting complaints to the North Carolina Bar Association, a right that is protected by law. This request is not only unjust but also goes against the plaintiffs fundamental rights as a citizen. It is crucial for individuals to have the ability to address any grievances they may have through proper channels, including professional organizations like the Bar Association.

[DE-1] at 6-7, ¶¶ 18-25.

On May 17, 2024, plaintiff "promptly replied to the motion and inquired with the Clerk of the Vance County Court about the scheduled hearing date." *Id* at 8, ¶28. "[T]he Clerk assured [plaintiff] that they would be notified of the date; however, no such notification was received[, and] a judgment was rendered in favor of the defendants due to the lack of appearance by the plaintiff during the hearing."[8] *Id.*

Plaintiff contends that the state court lacked jurisdiction over that matter because the matter had already been closed. *Id.* at ¶30. Plaintiff also indicates that Mr. Dalton improperly "submitted to the state court a gatekeeper sanction from twelve years ago, suggesting that the sanction was

[7] Plaintiff attaches this court's 2012 order from an unrelated matter dismissing multiple of plaintiff's other cases in light of material omissions in his *in forma pauperis* applications. *See* [DE-2-1] at 12; Docket Entry 60, *Theodore Justice v. Dr. Timothy Farley, et al.*, 5:11-cv-00706-BR ("[T]he court ORDERS plaintiff to submit a copy of this order with any IFP application that he may file in this district in the future.").

[8] Plaintiff filed, as an attachment to his affidavit [12-1], what appears to be a copy of a state court motion by Mr. Dalton indicating that his firm "is unable to locate corroborating evidence to confirm that the Notice of Hearing for the Motion [to Dismiss and Enforce Settlement, and to Enter a Gate Keeper Order] was served on [p]laintiff" and requesting a status conference with the court and a re-hearing on defendant's state court Motion to Dismiss and Enforce Settlement, and to Enter a Gate Keeper Order. [DE-9-1].

based on the frivolity of the complaint rather than the false claim of poverty." [DE-9] at 2. This court had previously dismissed several of plaintiff's cases for material omissions in his *in forma pauperis* applications (*see Just. v. Granville Cnty. Bd. of Educ.*, No. 5:10-CV-539-BR, 2012 WL 1801949, at *1 (E.D.N.C. May 17, 2012), *aff'd sub nom. Just. ex rel. AJ v. Granville Cnty. Bd. of Educ.*, 479 F. App'x 451 (4th Cir. 2012)), and plaintiff contends that Mr. Dalton untruthfully represented to the state courts that these cases were dismissed as frivolous rather that due to plaintiff's untrue representations regarding his poverty. [DE-9] at 2.

B. Claims

In his complaint, plaintiff ultimately alleges two claims: First Claim – "42.S.C § 1983 and 42 U.S.C. § 1985 – against all defendants" and Second Claim "Federal Declaratory Judgment Act --Against All Defendants." *See* [DE-1] at 9-10.

First, plaintiff alleges that the actions of all defendants "deprived [plaintiff] of a fair hearing," and that "the court consistently disregarded the objections raised by the Pro Se plaintiff during hearings and consistently ruled in favor of the lawyers involved." *Id.* at 9, ¶35. Plaintiff contends that defendants "unlawfully conspired to deprive [p]laintiff of his right of access to the courts for redress of grievances due process of law in violation of the Fourteenth Amendment." *Id.* at ¶37. Finally, plaintiff alleges that defendants "conspired [to] deprive[] [p]laintiff of his right . . . to file a complaint to address a grievance guaranteed by the Constitution of the United States First Amendment." *Id.* at ¶38.

Second, after providing a lengthy description of the declaratory judgment processes under state and federal law, plaintiff appears to request that the court determine whether "[d]efendants were the proximate cause of the damages alleged by [p]laintiff in the preceding paragraphs." [DE-1] at 11, ¶1.

C. Jurisdiction

Plaintiff asserts that this court has jurisdiction over "federal claims pursuant to constitutional provisions enumerated and 28 U.S.C. §§ 1331 and 1343(3) and (4) and also under 28 U.S.C. § 1367." [DE-1] at 3. He provides that jurisdiction is proper "pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2022." *Id.* Plaintiff contends that the court additionally "has supplemental jurisdiction over [his] first and second claims, which are based on state law, under 28 U.S.C. § 1367." *Id.*

D. Relief requested

Plaintiff seeks "injunctive relief" and states that it "is authorized by Rule 65 of the Federal Rules of Civil Procedure." *Id.* Plaintiff also asks that the court:

> a) [d]eclare that [d]efendants' acts, taken in their official capacities, as alleged above, violate Federal Statues and Fourteenth Amendment to the United States Constitution;
> b) [d]eclare that [d]efendants' acts, taken in their individual capacities, as alleged above, violate Federal Statues and the Fourteenth Amendment to the United States Constitution and are not immune to prosecution;
> c) [o]rder all the documents unsearchable, redacted, sealed and or expunged or otherwise permanently remove that [d]efendant Luke Dalton submitted to the North Carolina Vance County Court[; and]
> d) [provide s]uch other further specific and general relief as may become apparent from discovery as this matter matures for trial.

[DE-1] at 11.

II. APPLICABLE LEGAL STANDARDS

After allowing a party to proceed *in forma pauperis*, as here, the court must conduct a frivolity review of the case pursuant to 28 U.S.C. § 1915(e)(2)(B). In such a review, the court must determine whether the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from an immune defendant, and is thereby subject to dismissal. 28 U.S.C. § 1915(e)(2)(B); *see also Denton v. Hernandez*, 504 U.S. 25, 27 (1992)

(providing standard for frivolity review). A case is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

In evaluating frivolity specifically, the court holds a *pro se* plaintiff's pleadings to "less stringent standards" than those drafted by attorneys. *White v. White*, 886 F.2d 721, 722-23 (4th Cir. 1989). Nonetheless, the court is not required to accept a *pro se* plaintiff's contentions as true. *Denton*, 504 U.S. at 32. The court may "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Neitzke*, 490 U.S. at 327. Such baseless claims include those that describe "fantastic or delusional scenarios." *Id.* at 328. Provided that a plaintiff's claims are not clearly baseless, the court must weigh the factual allegations in plaintiff's favor in its frivolity analysis. *Denton*, 504 U.S. at 32. The court must read the complaint carefully to determine if a plaintiff has alleged specific facts sufficient to support the claims asserted. *White*, 886 F.2d at 724.

Under Rule 8 of the Federal Rules of Civil Procedure, a pleading that states a claim for relief must contain "a short and plain statement of the grounds for the court's jurisdiction . . . [and] a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1)-(2). The factual allegations in the complaint must create more than a mere possibility of misconduct. *Coleman v. Md. Ct. of Appeals*, 626 F.3d 187, 190-91 (4th Cir. 2010), *aff'd sub nom. Coleman v. Ct. of Appeals of Maryland*, 566 U.S. 30 (2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Likewise, a complaint is insufficient if it offers merely "labels and conclusions," "a formulaic recitation of the elements of a cause of action," or "naked assertion[s] devoid of further factual enhancement." *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007)) (alterations in original) (internal quotation marks omitted).

A court may also consider subject matter jurisdiction as part of the frivolity review. *See*

Lovern v. Edwards, 190 F.3d 648, 654 (4th Cir. 1999) ("Determining the question of subject matter jurisdiction at the outset of the litigation is often the most efficient procedure."); *Hill v. Se. Reg'l Med. Ctr.*, No. 7:19-CV-60-BO, 2019 WL 7041893, at *2 (E.D.N.C. Oct. 21, 2019), *mem. & recomm. adopted*, No. 7:19-CV-60-BO, 2019 WL 7163434 (E.D.N.C. Dec. 20, 2019), *aff'd*, 818 F. App'x 261 (4th Cir. 2020) (discussing the lack of federal question jurisdiction and diversity jurisdiction during frivolity review as a basis for dismissal). "Federal courts are courts of limited jurisdiction and are empowered to act only in those specific instances authorized by Congress." *Bowman v. White*, 388 F.2d 756, 760 (4th Cir. 1968). The presumption is that a federal court lacks jurisdiction in a particular case unless jurisdiction is affirmatively demonstrated. *Lehigh Min. & Mfg. Co. v. Kelly*, 160 U.S. 327, 337 (1895). The burden of establishing subject matter jurisdiction rests on the party invoking jurisdiction, here the plaintiff. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982) ("The burden of proving subject matter jurisdiction . . . is on the plaintiff, the party asserting jurisdiction."). The complaint must affirmatively allege the grounds for jurisdiction. *Bowman*, 388 F.2d at 760. If the court determines that it lacks subject-matter jurisdiction, it must dismiss the action. Fed. R. Civ. P. 12(h)(3).

III. ANALYSIS

Having granted plaintiff's application to proceed *in forma pauperis* [DE-2], the court must now undertake the frivolity review of this case, pursuant to 28 U.S.C. § 1915(e)(2)(B). Under § 1915(e)(2)(B), a court shall dismiss a case if the action is: "(i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

For the reasons discussed below, the undersigned finds that each of plaintiff's claims is subject to dismissal on one or more of the following grounds: (1) lack of subject matter jurisdiction

pursuant to the *Rooker-Feldman* doctrine; (2) lack of subject matter jurisdiction pursuant to *Younger* abstention doctrine; (3) Eleventh Amendment immunity; (4) judicial immunity; (5) failure to state a claim under 42 U.S.C. §1983; or (6) failure to state a claim under 42 U.S.C. §1985. In its analysis below, the court will additionally consider plaintiff's request for a declaratory judgment and his reference to "state law claims."

A. *Rooker-Feldman* doctrine

The *Rooker-Feldman* doctrine bars federal courts from sitting "in direct review of state court decisions." *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983) (*quoting Atlantic Coast Line R. Co. v. Brotherhood. of Locomotive Engineers*, 398 U.S. 281, 296 (1970)). "[T]he *Rooker-Feldman* doctrine applies only when the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision itself." *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 713 (4th Cir. 2006) (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005)). This doctrine also prohibits a district court from reviewing constitutional claims that are "inextricably intertwined" with a state court decision. *Shooting Point, LLC v. Cumming*, 368 F.3d 379, 383 (4th Cir. 2004) (citations omitted). "A federal claim is 'inextricably intertwined' with a state court decision if 'success on the federal claim depends upon a determination that the state court wrongly decided the issues before it.'" *Id.* (quoting *Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997)); *see also Curley v. Adams Creek Assocs.*, 409 F. App'x 678, 680 (4th Cir. 2011) (holding that *Rooker-Feldman* precluded subject matter jurisdiction over plaintiff's claim that the state court violated her due process rights by failing to give her notice before disposing of real property owned by her); *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 202 (4th Cir. 1997)) (holding that a federal claim is "inextricably intertwined" where "in order to grant the federal . . . relief sought, the federal court must determine that the

[state] court judgment was erroneously entered or must take action that would render the judgment ineffectual") (internal quotation marks omitted) (quoting *Ernst v. Child and Youth Servs.*, 108 F.3d 486, 491 (3d Cir. 1997)).

In other words, *Rooker-Feldman* applies "when the federal action 'essentially amounts to nothing more than an attempt to seek review of [the state court's] decision by a lower federal court.'" *Davis v. Durham Mental Health Devel. Disabilities Substance Abuse Area Auth.*, 320 F. Supp. 2d 378, 388 (M.D.N.C. 2004) (quoting *Plyler*, 129 F.3d at 733). "[T]he key inquiry is not whether the state court ruled on the precise issue raised in federal court, but whether the 'state-court loser who files suit in federal court seeks redress for an injury caused by the state-court decision itself.'" *Willner v. Frey*, 243 F. App'x 744, 747 (4th Cir. 2007) (quoting *Davani*, 434 F.3d at 718). "[A] party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 198 (4th Cir. 2000) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)). Plaintiff, of course, retains the ability to exercise his appellate rights in the state court system. *See Jordahl*, 122 F.3d at 202 ("[T]he [*Rooker-Feldman*] doctrine reinforces the important principle that review of state court decisions must be made to the state appellate courts, and eventually to the Supreme Court, not by federal district courts or courts of appeals.").

Here, both of plaintiff's claims appear to focus on one or more allegedly improper judicial proceedings in state court. *See* [DE-1] at 9, ¶¶35-37 (alleging that defendants' actions "deprived [plaintiff] of a fair hearing," and improperly "disregarded the objections raised by the Pro Se plaintiff during hearings"); *id.* at 11 (seeking a declaration that "[d]efendants were the proximate cause of the damages alleged by Plaintiff in the preceding paragraphs"). Determination of

plaintiff's claims in the instant case in his favor would necessarily require this court to find that the state court proceedings, which are the subject of plaintiff's instant federal complaint, were conducted in an improper manner, produced an improper result, or both. The *Rooker-Feldman* doctrine prohibits this court from making such a determination.

Accordingly, the undersigned concludes that the *Rooker-Feldman* doctrine applies to the claims asserted by plaintiff that involve any past state court decisions or matters inextricably intertwined with those decisions. This court, consequently, lacks subject matter jurisdiction over them. It is RECOMMENDED that all such claims be DISMISSED as frivolous. Plaintiff, of course, retains access to the state court for pursuit of his claims.

B. *Younger* abstention doctrine

To the extent that any of plaintiff's state court matters remain pending, and thus, and the *Rooker-Feldman* doctrine does not apply, such claims would be prohibited by the *Younger* abstention doctrine.

Younger v. Harris, 401 U.S. 37 (1971), established the principle that federal courts should not intervene in state court criminal, civil, and administrative proceedings. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975). "*Younger* and 'its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances.'" *Beam v. Tatum*, 299 F. App'x 243, 245 (4th Cir. 2008) (quoting *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982)). Abstention is required where "(1) there is an ongoing state judicial proceeding brought prior to substantial progress in the federal proceeding; that (2) implicates important, substantial, or vital state interests; and (3) provides adequate opportunity to raise constitutional challenges." *Nivens v. Gilchrist*, 444 F.3d 237, 241 (4th Cir. 2006).

Here, it appears that at least some of the state court proceedings plaintiff discusses may be ongoing, and were pending at the time plaintiff filed his complaint. *See* [DE-1] (plaintiff filing his complaint in this court on July 8, 2024); [DE-12-1] (motion filed by Mr. Dalton on August 1, 2024, on behalf of Fred's Towing and McAngus requesting a rehearing in state court of their motion to dismiss based upon plaintiff's possible lack of notice of the prior hearing). Thus, the first prong of *Younger* is met. Next, the second prong is met as "the States' interest in administering their [] justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief." *Thomas v. Equitable Life Mortg. and Realty Investors,* No. 3:13–130–CMC–PJG, 2013 WL 2352589, at *8 (D.S.C. 29 May 2013) (quoting *Kelly v. Robinson*, 479 U.S. 36, 49 (1986)). The third, and last, prong is met because plaintiff has an adequate state forum to pursue his claims relating to due process concerns. *Norfolk S. Ry. Co. v. McGraw*, 71 F. App'x 967, 972 (4th Cir. 2003) (noting the ability to raise constitutional arguments, including due process claims, before trial in the ongoing state proceeding).

The doctrine of abstention under *Younger* deprives this court of subject matter jurisdiction over any claims arising out of ongoing state court proceedings. Accordingly, it is RECOMMENDED that all such claims be DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

C. Eleventh Amendment Immunity

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. "As the Supreme Court has stated, '[t]he ultimate guarantee of the Eleventh

Amendment is that nonconsenting states may not be sued by private individuals in federal court.'" *Dillon v. Mills*, No. 4:15-CV-00003-FL, 2016 WL 11430307, at *3 (E.D.N.C. Mar. 22, 2016) (alteration in original) (quoting *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001)). There are only three exceptions to governmental immunity under the Eleventh Amendment: "(1) where the state agency has waived its immunity, (2) where Congress has overridden that immunity," *Philips v. N. Carolina State*, No. 5:15-CV-95-F, 2015 WL 9462095, at *6 (E.D.N.C. Dec. 28, 2015), *aff'd*, 667 F. App'x 419 (4th Cir. 2016) (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989)), or (3) under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which permits "official capacity suits requesting prospective relief to achieve the officials' compliance with federal law." *D.T.M. v. Cansler*, 382 F. App'x 334, 337 (4th Cir. 2010); *Ihenachor v. Md.*, No. RDB-17-3134, 2018 WL 1863678, at *4 (D. Md. 18 Apr. 2018) ("Known as the *Ex parte Young* exception, private citizens may petition federal courts to enjoin State officials in their official capacities from engaging in future conduct that would violate a federal statute or the Constitution").

To the extent that plaintiff's references to the "State Bar" are intended to refer to the North Carolina State Bar, such claims would fail. The North Carolina State Bar is an agency of the State of North Carolina. *Wolfenden v. Long*, No. 5:09-CV-00536-BR, 2010 WL 2998804, at *6 (E.D.N.C. July 26, 2010) (citing N.C. Gen.Stat. § 84–15); *Arroyo v. Zamora*, No. 3:17-CV-721-FDW-DCK, 2018 WL 1413195, at *4 (W.D.N.C. Mar. 21, 2018) ("A State Bar is an 'arm of the [State] Supreme Court in connection with disciplinary proceedings [and] is an integral part of the judicial process and is therefore entitled to the same immunity which is afforded to prosecuting attorneys in that state.'") (quoting *Clark v. State of Wash.*, 366 F.2d 678, 681 (9th Cir. 1966)). Plaintiff has not shown that the North Carolina State Bar waived its immunity or that Congress has

abrogated such immunity. Accordingly, the North Carolina State Bar is immune against claims for damages.[9]

While the *Ex parte Young* exception allows plaintiff to seek prospective injunctive relief, it must be directed at an official rather than the state or an agency thereof. *See Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993) (noting that *Ex Parte Young* doctrine "has no application in suits against the States and their agencies, which are barred regardless of the relief sought"); *Wolfenden*, 2010 WL 2998804, at *6 (noting that to obtain prospective relief against the North Carolina State Bar, a "plaintiff must sue the appropriate state official in his or her official capacity").

Accordingly, the undersigned finds that any claims against the North Carolina State Bar are frivolous, and RECOMMENDS that the court DISMISS all such claims.

D. Judicial Immunity

Plaintiff argues that Judge Stevenson "did not have jurisdiction as the case was dismissed several months prior." [DE-1] at 9, ¶36. The court construes this allegation as a reference to Judge Stevenson's pre-filing injunction or "gatekeeping order" against plaintiff. *See* Defendant's Motion to Dismiss Appeal in State Court Action [DE-12-1] (noting that the state trial court issued a limited Gatekeeper Order).

Judges benefit from absolute judicial immunity for their judicial acts, "even when such acts are in excess of their jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978)). However, judicial immunity is not applicable in a "clear absence of all jurisdiction" or (2) where the judge

[9] While plaintiff appears to primarily seek injunctive relief in this case, the undersigned addresses immunity from money damages in the event that plaintiff contemplates such relief in his references to "damages alleged by [p]laintiff in the preceding paragraphs" ([DE-1] at 11, ¶1) and "[s]uch other further specific and general relief as may become apparent from discovery as this matter matures for trial" ([DE-1] at 11).

acted in a "nonjudicial capacity." *King v. Myers*, 973 F.2d 354, 356-57 (4th Cir. 1992). North Carolina courts have repeatedly upheld the issuance of pre-filling injunctions or gatekeeping orders, provided that such orders adequately balance due process and other concerns. *See Nichols v. Admin. Off. of the Cts.-7th Jud. Dist.*, 270 N.C. App. 821, 840 S.E.2d 536 (2020) (the North Carolina Court of Appeals has at times "determined that a gatekeeping order was appropriate where the *pro se* plaintiff forced the defendant to defend against meritless claims and the plaintiff's conduct was such that, if he had been an attorney, the court would have reported him to the State Bar."); *see also In re Vicks*, 240 N.C. App. 293, 772 S.E.2d 265 (2015); *Smith v. Noble*, 155 N.C. App. 649, 650 (2002). While prefiling injunctions can raise certain due process concerns, *see Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004),[10] plaintiff has not shown that the state courts deprived him of the forum in which to address such concerns, or that the issuance of a prefiling injunction was in the clear absence of all jurisdiction. Accordingly, even under the deferential standard afforded *pro se* litigants, plaintiff has failed to allege that Judge Stevenson committed any actions that would forfeit her judicial immunity. *King*, 973 F.2d at 356-57.

Similarly, to the extent that plaintiff seeks injunctive relief, the *Ex parte Young* exception, discussed above, does not permit parties to cloak an appeal of a state judicial decision as "prospective relief to achieve the officials' compliance with federal law." *D.T.M.*, 382 F. App'x at 337. As the Supreme Court held:

> [the *Ex parte Young*] exception does not normally permit federal courts to issue injunctions against state-court judges or clerks. Usually, those individuals do not enforce state laws as executive officials might; instead, they work to resolve disputes between parties. If a state court errs in its rulings, too, the traditional

[10] The undersigned additionally notes that the due process concerns considered in *Cromer, Inc.*, 390 F.3d at 817, were in the context of an appeal from a prefiling injunction issued by a federal court, not a state court.

> remedy has been some form of appeal, including to [the Supreme Court], not the entry of an *ex-ante* injunction preventing the state court from hearing cases.

Whole Woman's Health v. Jackson, 595 U.S. 30, 39, 142 S. Ct. 522, 532, 211 L. Ed. 2d 316 (2021).

Therefore, plaintiff's claims for any damages against Judge Stevenson are barred by judicial immunity and should be dismissed for seeking monetary relief against a defendant who is immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii). Plaintiff has not shown that the *Ex parte Young* exception would be applicable in this case, given the availability of appeal within the state court system, which plaintiff claims he chose not to exercise.

E. Failure to state a claim under 42 U.S.C § 1983

Even if the *Rooker-Feldman* and *Younger* abstention doctrines did not apply, plaintiff's § 1983 claims against non-state actors would also fail for failure to state a claim. Section 1983 imposes liability on anyone "who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia" deprives another person "of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. "[Section] 1983 is not 'a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes.'" *Lambert v. Williams*, 223 F.3d 257, 260 (4th Cir. 2000) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 (1979)). To state a claim under § 1983, a plaintiff must allege "[(1)] that some person has deprived him of a federal right" and "that the person who has deprived him of that right acted under color of state . . . law." *Gomez v. Toledo*, 446 U.S. 635, 640, 100 S. Ct. 1920, 1923, 64 L. Ed. 2d 572 (1980); *see also West v. Atkins*, 487 U.S. 42, 49-50 (1988).

Plaintiff appears to assert § 1983 claims against all five defendants, including the non-state

actors, McAngus, Mr. Dalton, Ms. Gallagher and the North Carolina Bar Association[11] (the "non-state actors"). With respect to plaintiff's §1983 claims against the non-state actors, plaintiff alleges that Judge Stevenson "acted in concert with the other defendants under color of state law." *See* [DE-1] at 4, ¶9. Plaintiff also contends that the defendants "were actively engaged in executing the actions aligned with [Judge Stevenson's] policy or custom during the entire relevant period." *Id.* at 9, ¶35.

The "under-color-of-state-law element of § 1983" is similar to the Fourteenth Amendment's "state-action" requirement in that it "excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982)); *see also Rendell–Baker v. Kohn*, 457 U.S. 830, 838, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982) (noting the equivalence of the § 1983's "color of law" requirement and the Fourteenth Amendment's "state action" requirement). The Fourth Circuit has identified several contexts in which private action may be found to constitute state action:

> (1) when the state has coerced the private actor to commit an act that would be unconstitutional if done by the state; (2) when the state has sought to evade a clear constitutional duty through delegation to a private actor; (3) when the state has delegated a traditionally and exclusively public function to a private actor; or (4) when the state has committed an unconstitutional act in the course of enforcing a right of a private citizen. If the conduct does not fall into one of these four categories, then the private conduct is not an action of the state.

Andrews v. Fed. Home Loan Bank, 998 F.2d 214, 217 (4th Cir.1993).

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[11] As noted above, it is unclear whether plaintiff is attempting to sue the North Carolina State Bar or the North Carolina Bar Association. "The North Carolina Bar Association . . . is a non-governmental, voluntary professional association against which a § 1983 civil rights action cannot generally proceed." *Arroyo*, 2018 WL 1413195, at *4 (citing *DeBauche v. Trani*, 191 F.3d 499, 506 (4th Cir. 1999)). Plaintiff has not provided any facts to suggest that the North Carolina Bar Association was acting under color of state law any more than any of the other non-state actors were and accordingly to the extent that plaintiff was attempting to sue the North Carolina Bar Association, his § 1983 claims against this association fail for the reasons discussed herein.

The alleged conduct of the non-state actors, even in the light most favorable to plaintiff, does not fall within any of the categories listed above. *See also West v. Atkins*, 487 U.S. 42, 49-50 (1988) ("[A]cting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941))). Plaintiff's references to defendants' "acti[ons] in concert with the other defendants under color of state law" ([DE-1] at 4, ¶9) and "[active engagement] in executing the actions aligned with [Judge Stevenson's] policy or custom during the entire relevant period" *(id.* at 9, ¶35) represent the types of "labels and conclusions," "formulaic recitation of the elements of a cause of action," and "naked assertion[s] devoid of further factual enhancement," which are insufficient to support a cause of action. *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007)).

Accordingly, the undersigned RECOMMENDS that plaintiff's §1983 claims against the non-state actors be DISMISSED for failure to state a claim.

F. Failure to state a claim under 42 U.S.C § 1985

Plaintiff's reference to 42 U.S.C. § 1985 most likely refers to § 1985(2), which defines a conspiracy to obstruct justice as conduct where:

> two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

42 U.S.C. § 1985(2).

In order to establish a claim for conspiracy under section 1985, the Fourth Circuit requires a plaintiff to prove:

> (1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

Simmons v. Poe, 47 F.3d 1370, 1376 (4th Cir. 1995).

Plaintiff's allegations do not include any facts indicating a "specific class-based, invidiously discriminatory animus" motivating any of the parties. *Id.* Accordingly, plaintiff has failed to state a claim under 42 U.S.C. § 1985 and the undersigned RECOMMENDS that any such claim be DISMISSED.

G. Declaratory Judgment

Plaintiff requests a declaratory judgment on whether "[d]efendants were the proximate cause of the damages alleged by [p]laintiff in the preceding paragraphs." [DE-1] at 11.

"In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S. Code § 2201(a). However, "the [Declaratory Judgment] Act does not impose a mandatory obligation upon the federal courts to make such declarations of rights [but rather affirms that] a district court's decision to entertain a claim for declaratory relief is discretionary." *Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co.,* 139 F.3d 419, 421 (4th Cir. 1998). "[A] district court is obliged to rule on the merits of a declaratory judgment action when declaratory relief 'will serve a useful purpose in clarifying and settling the legal relations in issue,' and 'will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.'" *Volvo Const. Equip. N. Am., Inc. v. CLM Equip. Co., Inc.*, 386 F.3d 581, 594 (4th Cir. 2004) (quoting *Aetna Cas. & Sur. Co. v. Quarles*, 92 F.2d 321, 325 (4th Cir. 1937)).

Here, the undersigned does not find a declaratory judgment would satisfy these requirements. *See id.* The undersigned does not discern any question for declaratory judgment that is distinct from the matters considered with respect to plaintiff's other claim above. Accordingly, the undersigned RECOMMENDS that the court decline to issue any declaratory judgments in this matter.

H. Supplemental jurisdiction

Plaintiff requests that this court exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over his state law claims.[12] [DE-1] at 3. While plaintiff references "state law claims" in his complaint (*see id.* at 3), it is unclear what specific state law claims plaintiff seeks to bring. *See generally* [DE-1]. To the extent that plaintiff contemplates that this court would exercise the powers conveyed by the North Carolina Uniform Declaratory Judgment Act, N.C.G.S. § 1-253 *et seq.*, the undersigned notes that declaratory relief is a procedural mechanism, which requires the application of federal, not state, law. *See* 28 U.S. Code § 2201(a); *see also Capitol Broad. Co., Inc. v. City of Raleigh, N. Carolina*, 104 F.4th 536, 540 (4th Cir. 2024) ("The Supreme Court has recognized that 'the operation of the Declaratory Judgment Act is procedural only.'" (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937))).

Even if plaintiff had alleged viable state law claims, the undersigned would recommend that this court decline to exercise its supplemental jurisdiction in light of the recommended dismissal of all of plaintiff's federal question claims for the reasons provided above. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) (noting "pendent jurisdiction is a doctrine of jurisdictional discretion" and that, "if the federal claims are dismissed before trial, even though

[12] The undersigned additionally notes that plaintiff has failed to allege facts supporting diversity jurisdiction. *See* [DE-1] at 1-2 (alleging that plaintiff and all defendants are citizens of North Carolina).

not insubstantial in a jurisdictional sense, the state claims should be dismissed as well"); *Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611, 617 (4th Cir. 2001) (holding the district court possesses "inherent power to dismiss the case . . . provided the conditions set forth in § 1367(c) for declining to exercise supplemental jurisdiction have been met").

Accordingly, the undersigned RECOMMENDS that this court decline to exercise supplemental jurisdiction over any state law claims and DISMISS plaintiff's complaint [DE-1], in its entirety.

MEMORANDUM AND RECOMMENDATION ON MOTION REQUESTING COURT TO ISSUE SUMMONS AND COMPLAINT [DE-11]

Plaintiff's motion [DE-11] requests that the court issue summons and complaint in this matter, "compelling the defendants to formally respond to the allegations set forth herein." *See* [DE-11] at 1. Generally, this court will only order that the summons and complaint of a litigant seeking to proceed *in forma pauperis* be served on the defendant or defendants once the complaint survives a frivolity review. *See* United States District Court – Eastern District of North Carolina, Representing Yourself in a Civil Case: A Guide for the *Pro Se* Litigant 8, 11-12 (August 2024), https://www.nced.uscourts.gov/pdfs/proseGuide.pdf.

Here, the undersigned recommends dismissal of plaintiff's complaint for the reasons provided above. Therefore, it is additionally RECOMMENDED that plaintiff's motion requesting court to issue summons and complaint [DE-11] be DENIED AS MOOT.

CONCLUSION

For the reasons stated above, plaintiff's (i) application to proceed *in forma pauperis* [DE-2] is GRANTED; (ii) motion to amend caption [DE-5] is GRANTED; (iii) motion to permit *pro se* electronic filing [DE-10] is DENIED; and (iv) motion to prohibit disclosure of complaint

information [DE-12] is DENIED.

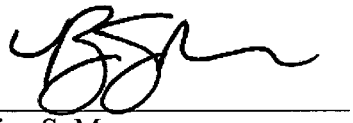
Based on the court's frivolity review and for the reasons stated above, the undersigned RECOMMENDS that (i) plaintiff's complaint [DE-1] be DISMISSED, and (ii) his motion requesting the court to issue summons and complaint [DE-11] be DENIED AS MOOT.

IT IS DIRECTED that a copy of this Order and Memorandum and Recommendation be served on plaintiff or, if represented, his counsel. Plaintiff shall have until **November 30, 2024**, to file written objections to this Memorandum and Recommendation. The presiding district judge must conduct his own review (that is, make a de novo determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. *See, e.g.*, 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C.

If a party does not file written objections to the Memorandum and Recommendation by the foregoing deadline, the party will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, the party's failure to file written objections by the foregoing deadline will bar the party from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the

Memorandum and Recommendation. ***See Wright v. Collins*****, 766 F.2d 841, 846-47 (4th Cir. 1985).**

Submitted, this 15th day of November, 2024.



Brian S. Meyers
United States Magistrate Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:24-CV-392-D

THEODORE JUSTICE, Plaintiff, v. MCAGNUS GOUDELOCK & COURIE, LLC, et al., Defendants.	)	**ORDER**

On July 8, 2024, Theodore Justice ("Justice" or "plaintiff"), proceeding pro se, filed a complaint against McAngus Goudelock & Courie LLC, Luke Dalton, Skylar J. Gallagher, the North Carolina Bar Association, and Amanda E. Stevenson (collectively, "defendants"). See [D.E. 1]. On July 10, 2024, pursuant to 28 U.S.C. § 636(b)(1), the court referred the case to Magistrate Judge Brian S. Meyers for a memorandum and recommendation ("M&R") on Justice's motion to proceed in forma pauperis [D.E. 2] and for a frivolity review. See [D.E. 4]. On October 1, 2024, Justice requested that the court "issue a summons and complaint" and accused the defendants of impermissibly influencing the North Carolina Court of Appeals in a parallel state court proceeding [D.E. 11]. On November 6, 2024, Justice petitioned the United States Court of Appeals for the Fourth Circuit to issue a writ of mandamus to compel this court to grant Justice's motion to issue a "summons and complaint." See Petition at 2, In re Justice, No. 24-2121 (4th Cir. Nov. 6, 2024).

On November 15, 2024, Magistrate Judge Meyers issued an M&R [D.E. 13] and recommended that the court grant Justice's motion to proceed in forma pauperis and dismiss the

complaint as frivolous.[1] On November 20, 2024, Justice objected to the M&R [D.E. 14, 15]. On November 22, 2024, Justice filed additional objections to the M&R [D.E. 16]. On November 25, 2024, Justice requested that the court define the term "serial filer" [D.E. 17]. On December 27, 2024, the Fourth Circuit denied Justice's petition for a writ of mandamus [D.E. 18]. On January 15, 2025, Justice purported to amend his complaint [D.E. 20]. On February 13, 2025, Justice filed an amended complaint [D.E. 21, 22]. The same day, Justice moved for a preliminary injunction [D.E. 23]. On March 7, 2025, Justice sought leave to file a second amended complaint [D.E. 24] and filed a notice of intent to file evidence [D.E. 25].

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

The court has reviewed the M&R and Justice's objections. As for those portions of the M&R to which Justice made no objection, the court is satisfied that there is no clear error on the face of the record. As for the objections, the court has reviewed the objections and the M&R de novo. Justice objects, inter alia, to M&R Sections III(A) and III(B) which recommend the court abstain under the Rooker-Feldman doctrine and Younger v. Harris, 401 U.S. 37 (1971). The court does not apply Rooker-Feldman or Younger. Instead, the court adopts the remaining conclusions in the M&R.

[1] The M&R notes Justice's numerous filings in state and federal courts. See [D.E. 13] 1 n.1.

The court construes Justice's self-styled addendum, amended complaint, and motion for leave to file a second amended complaint as motions to amend his complaint. See [D.E. 21, 22, 24]. The court denies these motions as futile. See, e.g., Equal Rts. Ctr. v. Niles Bolton Assocs., 602 F.3d 597, 603 (4th Cir. 2010).

In sum, the court GRANTS plaintiff's motion to proceed in forma pauperis [D.E. 2] and DISMISSES as frivolous plaintiff's complaint [D.E. 1], motion to request the issuance of a summons and complaint [D.E. 11], and motion to define the term "serial filer" [D.E. 17]. The court DENIES as futile plaintiff's motions to amend [D.E. 21, 22, 24] and DENIES AS MOOT plaintiff's motion for a preliminary injunction [D.E. 23]. The clerk SHALL close the case.

SO ORDERED. This 8 day of March, 2025.

JAMES C. DEVER III
United States District Judge

APPENDIX G

FILED: July 21, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

G-1

No. 25-1241
(5:24-cv-00392-D-BM)

THEODORE JUSTICE

Plaintiff - Appellant

v.

MCANGUS GOUDELOCK & COURIE LLC; LUKE DALTON; SKYLAR J. GALLAGHER; NORTH CAROLINA BAR ASSOCIATION; AMANDA E. STEVENSON

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Further, the court grants appellant's motion to withdraw the initial petition for rehearing and grants appellant's motion to file a corrected rehearing petition.

Entered at the direction of the panel: Judge Gregory, Judge Quattlebaum and Judge Berner.

For the Court

/s/ Nwamaka Anowi, Clerk