UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1175

C. HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes, M.D.,

Plaintiff - Appellant,

v.

ANNE MILGRAM, Administrator of DEA,

Defendant - Appellee.

No. 24-1231

C. HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes, M.D.,

Plaintiff - Appellant,

v.

ANNE MILGRAM, Administrator of DEA,

Defendant - Appellee.

Appeals from the United States District Court for the District of South Carolina, at Charleston. Bruce H. Hendricks, District Judge. (2:22-cv-03758-BHH-MHC)

Submitted: March 11, 2025 Decided: March 13, 2025

Before NIEMEYER, RICHARDSON, and BENJAMIN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

C. Holmes, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

C. Holmes appeals the district court's orders dismissing her civil complaint and denying her motions for the recusal of the district court judge, for a hearing, for a stay pending appeal, and to amend her amended complaint. We have reviewed the record and find no reversible error. Accordingly, we deny Holmes' motion for abeyance and affirm the district court's orders. *Holmes v. Milgram*, No. 2:22-cv-03758-BHH-MHC (D.S.C. Feb. 9, 2024; Feb. 27, 2024). 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: May 19, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1175 (L)
(2:22-cv-03758-BHH-MHC)

C. HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes, M.D.

Plaintiff - Appellant

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No. 24-1231
(2:22-cv-03758-BHH-MHC)

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Defendant – Appellee

APP A

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge Richardson, and Judge Benjamin.

For the Court

/s/ Nwamaka Anowi, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

C. Holmes, M.D., *a/k/a* C. Holmes *a/k/a* Cynthia Holmes *a/k/a* Cynthia Collie Holmes, Plaintiff, v. Anne Milgram, *in official capacity as Administrator of D.E.A. and individually*, Defendant.	C/A No. 2:22-cv-3758-BHH-MHC **ORDER**

Plaintiff, proceeding pro se, filed her original complaint in this action on October 31, 2022, alleging that the United States Drug Enforcement Administration ("DEA") refused her DEA license renewal application and license renewal fee without just cause. (ECF No. 1.) The same day, Plaintiff filed a motion for temporary restraining order and preliminary injunction, which was denied. (*See* ECF Nos. 5, 43.)

Plaintiff filed an amended complaint on March 3, 2023. (ECF No. 33.) On June 9, 2023, Defendant filed a motion to dismiss or in the alternative for summary judgment. (ECF No. 51.) Because Plaintiff is proceeding pro se, the Court entered a *Roseboro* order, which was mailed to Plaintiff, advising her of the importance of a dispositive motion and of the need to file an adequate response. (ECF Nos. 54, 55.) The Magistrate Judge specifically advised Plaintiff that if she failed to file a properly supported response, Defendant's motion may be granted, thereby ending her case. (ECF No. 52.) The initial deadline for Plaintiff to respond to Defendant's motion was July 13, 2023. (*Id.*)

However, on July 12, 2023, Plaintiff filed a notice of appeal of the *Roseboro* order. (ECF No. 56.) Because Plaintiff had previously appealed other orders in this case, the Fourth Circuit Court of Appeals consolidated her various appeals on August 9, 2023. (*See* ECF Nos. 28, 45, 56, 62.) On November 6, 2023, the Fourth Circuit issued an opinion dismissing in part and affirming in part Plaintiff's various appeals. (ECF No. 63.) After the Fourth Circuit issued the mandate, the Court ordered Plaintiff to file her response to Defendant's motion to dismiss on or before February 16, 2024. (*See* ECF Nos. 65, 66, 68, 71, 75.) Plaintiff filed a response on February 16, 2024, and the motion is ripe for review. (*See* ECF No. 80.)

BACKGROUND FACTS[1]

In her amended complaint, Plaintiff alleges that she "timely submitted renewal application with no interim changes and personal check for DEA license in the usual and customary manner which was wrongly refused." (ECF No. 33 at 4.) She further alleges that she "proffered payment of the renewal fee by legal tender of U.S. currency[,] which was wrongfully refused without just cause." (*Id.*) According to Plaintiff, her DEA license was effective through October 31, 2022. (*Id.*) Plaintiff further alleges that "Defendant's wrongdoing interferes with established and prospective doctor-patient relationships and continuity of care; it violates the ACA; and it deprives the plaintiff of substantial rights, individual and property rights, and the right to be free of unreasonable interference with the

[1] The facts, and all inferences therefrom, are construed in the light most favorable to Plaintiff for purposes of ruling on Defendant's motion. *See E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011).

ability to practice one's profession." (*Id.*) Her claims include "denial of due process, ultra vires, and violation of the APA." (*Id.*)

Plaintiff asserts that the following federal statutes and provisions of the United States Constitution are at issue in this case: "21 C.F.R. § 1301.13(e); 31 U.S.C. § 5103; ACA; APA; 28 U.S.C. § 1346; 5 U.S.C. §§ 701–06; CONST. generally including Article III, substantial rights, protection of individual and property rights, privacy rights, and the right to be free from unreasonable interference with the ability to practice one's profession as we as Amendments I, V, VII; and other[s]." (*Id.* at 3.) Plaintiff requests a jury trial and seeks damages and other relief. (*Id.* at 4.)

LEGAL STANDARDS

I. Federal Rule of Civil Procedure 12(b)(1)

A motion to dismiss under Rule 12(b)(1) represents a challenge to the Court's subject matter jurisdiction. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 507 (2006). "When a Rule 12(b)(1) motion challenge is raised to the factual basis for subject matter jurisdiction, the burden of proving subject matter jurisdiction is on the plaintiff." *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). "The moving party should prevail only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." *Id.*

"[W]hen a defendant asserts that the complaint fails to allege sufficient facts to support subject matter jurisdiction, the trial court must apply a standard patterned on Rule 12(b)(6) and assume the truthfulness of the facts alleged." *Kerns v. United States*, 585

F.3d 187, 193 (4th Cir. 2009). "On the other hand, when the defendant challenges the veracity of the facts underpinning subject matter jurisdiction, the trial court may go beyond the complaint, conduct evidentiary proceedings, and resolve the disputed jurisdictional facts." *Id.*; *see In re KBR, Inc., Burn Pit Litig.*, 744 F.3d 326, 333 (4th Cir. 2014) ("When a defendant challenges subject matter jurisdiction via a Rule 12(b)(1) motion to dismiss, the district court may regard the pleadings as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.") (citation omitted). However, "when the jurisdictional facts are inextricably intertwined with those central to the merits, the court should resolve the relevant factual disputes only after appropriate discovery, unless the jurisdictional allegations are clearly immaterial or wholly unsubstantial and frivolous." *Kerns*, 585 F.3d at 193.

II. Federal Rule of Civil Procedure 12(b)(6)

"The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint." *Williams v. Preiss-Wal Pat III, LLC*, 17 F. Supp. 3d 528, 531 (D.S.C. 2014); *see Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) ("A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses."). Pursuant to Rule 8 of the Federal Rules of Civil Procedure, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), such that the defendant will have "fair notice of what the claim is and the grounds upon

which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks omitted). "[T]he facts alleged 'must be enough to raise a right to relief above the speculative level' and must provide 'enough facts to state a claim to relief that is plausible on its face.'" *Robinson v. Am. Honda Motor Co.*, 551 F.3d 218, 222 (4th Cir. 2009) (quoting *Twombly*, 550 U.S. at 555, 570). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

When considering a Rule 12(b)(6) motion, this Court must evaluate the complaint in its entirety, accept the factual allegations in the pleading as true, and draw all reasonable factual inferences in favor of the party opposing the motion. *Kolon Indus., Inc.*, 637 F.3d at 440, 448. Moreover, the Court must evaluate "the complaint in its entirety, as well as documents attached or incorporated into the complaint." *Id.* at 448. The Court may consider a document not attached to the complaint, so long as the document "was integral to and explicitly relied on in the complaint," and there is no authenticity challenge. *Id.* (quoting *Phillips v. LCI Int'l, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999)). "A complaint should not be dismissed as long as it provides sufficient detail about the claim to show that the plaintiff has a more-than-conceivable chance of success on the merits." *Goldfarb v. Mayor & City Council of Balt.*, 791 F.3d 500, 511 (4th Cir. 2015) (internal quotation marks omitted).

III. Federal Rule of Civil Procedure 56

Summary judgment should be granted when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.

56(a). "Facts are 'material' when they might affect the outcome of the case, and a 'genuine issue' exists when the evidence would allow a reasonable jury to return a verdict for the nonmoving party." *The News & Observer Publ'g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 576 (4th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

In ruling on a motion for summary judgment, "the nonmoving party's evidence is to be believed, and all justifiable inferences are to be drawn in that party's favor." *See id.* (quoting *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999)). However, "the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." *Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013). When a party fails to establish the existence of an element essential to that party's case, there is no genuine issue of material fact and the movant is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *see also Teamsters Joint Council No. 83 v. Centra, Inc.*, 947 F.2d 115, 119 (4th Cir. 1991) ("[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate.").

IV. Pro Se Pleadings

Pro se pleadings are given liberal construction and are held to a less stringent standard than formal pleadings drafted by attorneys. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). However, principles requiring generous construction of pro se complaints do "not

require courts to conjure up questions never squarely presented to them." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). Giving liberal construction does not mean that the court can ignore a pro se plaintiff's clear failure to allege facts that set forth a cognizable claim. *See Weller v. Dept. of Soc. Servs., City of Baltimore*, 901 F.2d 387, 391 (4th Cir. 1990) ("Only those questions which are squarely presented to a court may properly be addressed."). Thus, even under this less stringent standard, a pro se complaint is still subject to summary dismissal. *Estelle*, 429 U.S. at 106-07.

DISCUSSION

In her motion, Defendant seeks dismissal of the amended complaint pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure,[2] or in the alternative, Defendant seeks summary judgment pursuant to Rule 56. (ECF No. 52.)

I. Subject Matter Jurisdiction

Defendant first argues that, to the extent the amended complaint can be read as challenging a DEA final rule, this Court lacks subject matter jurisdiction because any petition for review of the final rule lies with the United States Court of Appeals for the District of Columbia or with the United States Court of Appeals for the Fourth Circuit. (ECF No. 52-1 at 7-8 (citing 21 U.S.C. § 877).) Defendant also contends that any challenge by Plaintiff to the final rule is untimely, as any petition for review of the final rule had to have been made within thirty days of the final agency action. (*Id.* at 8 (citing 21 U.S.C. § 877).)

[2] Defendant also purports to move for dismissal for insufficient service of process under Rule 12(b)(5) of the Federal Rules of Civil Procedure. (*See* ECF No. 52 at 1.) However, Defendant does not make any substantive legal arguments in that regard. (See ECF No. 52-1 at 7-14.) Ultimately, for the reasons set forth in more detail above, Court finds dismissal warranted under Rules 12(b)(1) and (6), and the Court need not address dismissal under Rule 12(b)(5).

Defendant notes that the DEA issued a notice of a proposed rulemaking change to amend DEA regulations, including 21 C.F.R. § 1301.13, to require all initial and renewal applications for DEA registration to be submitted and processed online, and that the final rule went into effect on May 11, 2022. (ECF No. 52-1 at 4-5 (citing 86 Fed. Reg. 1030-01).) However, Defendant notes that Plaintiff did not file her initial complaint in this case until October of 2022, well past the thirty-day deadline. (*Id.* at 8.)

Upon review, the Court agrees with Defendant that, to the extent Plaintiff seeks to challenge the final rule requiring all renewal applications for DEA registration to be submitted and processed online, this Court lacks subject matter jurisdiction to hear such a challenge.[3] *See* 21 U.S.C. § 877. Nevertheless, because it is not entirely clear from the amended complaint whether Plaintiff is challenging a final DEA rule or determination in this case, the Court will also consider the other arguments raised by Defendant.

[3] Although Defendant confines her jurisdictional argument to challenges to the final rule, it also appears to the undersigned that 21 U.S.C. § 877 may preclude the Court from exercising jurisdiction over any claims related to a final decision by the DEA to deny Plaintiff's license renewal application. Section 877 provides that all final determinations, findings, and conclusions of the DEA under the Control and Enforcement subchapter of the Controlled Substances Act (CSA) "shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the [DEA] may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the [DEA] within thirty days after notice of the decision." 21 U.S.C. § 877. Thus, "Section 877 vests jurisdiction for review of final decisions under the CSA solely in the *federal courts of appeals*." *Soul Quest Church of Mother Earth, Inc. v. Att'y Gen., United States*, -- F.4th --, No. 22-11072, 2023 WL 8714320, at *10 (11th Cir. Dec. 18, 2023) (emphasis added); *see id.* at 16 (finding that district court lacked jurisdiction to hear Soul Quest's challenge to final registration decision because Soul Quest "was required to obtain judicial review of the DEA's denial, as well as its related constitutional, statutory, and procedural challenges, in [the Eleventh Circuit] (or the D.C. Circuit), pursuant to 21 U.S.C. § 877"). Thus, to the extent that Plaintiff's claims arise from or are collateral to a final decision by the DEA to deny her renewal registration, this Court lacks jurisdiction to hear those claims. (*See id.*)

II. Failure to State a Claim

In addition to asserting that the Court lacks subject matter jurisdiction, Defendant asserts that Plaintiff's amended complaint fails to state a viable claim for relief. For the following reasons, the Court agrees with Defendant.

A. Claim Pursuant to 21 C.F.R. § 1301.13

First, Defendant contends that Plaintiff has failed to state a claim that her renewal application and payment were wrongfully refused by the DEA. (ECF No. 52-1 at 8-9.) The Court agrees.

As previously set forth, in her amended complaint, Plaintiff alleges that "pursuant to 21 C.F.R. § 1301.13(e), [P]laintiff timely submitted renewal application with no interim changes and personal check for DEA license in the usual and customary manner which was wrongly refused." (ECF No. 33 at 4.) She further alleges that pursuant to 31 U.S.C. § 5103, she "proffered payment of the renewal fee by legal tender of U.S. currency[,] which was wrongfully refused without just cause." (*Id.*) Importantly, however, Plaintiff does not provide any further factual allegations to support these claims. For instance, she does not allege any facts showing when she submitted her renewal application or when it was due, nor does she allege any facts demonstrating how she submitted her renewal application or what the "usual and customary manner" of submission was.[4]

[4] In her response in opposition to the motion to dismiss, Plaintiff states that her paper renewal was submitted prior to May 11, 2022. (ECF No. 80 at 2.) However, it is "well-established that parties cannot amend their complaints through briefing." *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013).

A claim is "plausible" when a plaintiff pleads facts sufficient to allow the court to draw the reasonable inference that the defendant is liable for the alleged misconduct. *Twombly*, 550 U.S. at 556. The court should grant a motion to dismiss, however, where the allegations are nothing more than legal conclusions or recitations of the elements, or where they permit a court to infer no more than a possibility of misconduct. *Iqbal*, 556 U.S. at 678-79.

Here, Plaintiff only offers a conclusion that her application was "timely" and that Defendant "wrongfully" refused her application "without just cause." (*See* ECF No. 33 at 4.) However, these are merely conclusory assertions or labels. Without any factual allegations to support these assertions, they do not permit the Court to infer that Defendant is liable for the alleged misconduct. Accordingly, the Court finds that Plaintiff has failed to state a plausible claim based on the alleged wrongful refusal to accept her renewal application and payment.

B. Claim for Constitutional Violations

Defendant next argues that Plaintiff has failed to allege a viable claim against Administrator Milgram in her individual capacity for violation of the First, Fifth, and Seventh Amendments of the U.S. Constitution. (ECF No. 52-1 at 9-12.) The Court agrees.

In *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), the United States Supreme Court recognized an implied cause of action for damages against federal officials for Fourth Amendment violations. *See Correctional Servs. Corp. v. Malesko*, 543 U.S. 61, 66 (2001). Following *Bivens*, the Supreme Court has recognized only two

additional situations in which a federal employee can be sued for Constitutional violations: first, for gender discrimination in violation of the equal protection component of the Fifth Amendment's due process clause, *Davis v. Passman*, 442 U.S. 228, 230 (1979), and second, for deliberate indifference to an inmate's serious medical needs in violation of the Eighth Amendment, *Carlson v. Green*, 446 U.S. 14, 18 (1980). "In the more than four decades since, however, the Supreme Court has consistently rebuffed every request–12 of them now–to find implied causes of action against federal officials for money damages under the Constitution." *Mays v. Smith*, 70 F.4th 198, 202 (4th Cir. 2023) (internal quotation marks and citations omitted).

To state a *Bivens* claim against an individual defendant, a plaintiff must make a factual showing that the named defendant was directly or personally involved in the alleged constitutional deprivation if she is to be answerable to the plaintiff in damages. *See Iqbal*, 556 U.S. at 676 ("[A] plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution."); *Langford v. Joyner*, 62 F.4th 122, 125 (4th Cir. 2023). To survive a motion to dismiss, a plaintiff must set forth specific and detailed factual allegations of personal involvement in a Constitutional violation, as opposed to bald assertions and conclusory terms. *See Iqbal*, 556 U.S. at 678; *Langford*, 62 F.4th at 125.

In this case, Plaintiff fails to make *any sort* of factual showing in the amended complaint that Defendant was involved in the alleged Constitutional deprivations related to Plaintiff's renewal application. In fact, the amended complaint's factual allegations do not

even mention Defendant Milgram. Because Plaintiff has failed to make a factual showing about Defendant's personal involvement in the alleged violation, the Court finds that she fails to state a viable *Bivens* claim.

Moreover, Plaintiff's allegations appear to seek relief under *Bivens* in a context not yet recognized by the Supreme Court. The Supreme Court "has made clear that expanding the *Bivens* remedy to a new context is an 'extraordinary act' that will be unavailable 'in most every case.'" *Mays*, 70 F.4th at 202 (quoting *Egbert v. Boule*, 142 S. Ct. 1793, 1803 & 1806 n.3 (2002)). If, as here, a claim arises in a new context, "the court must ask whether there are any special factors that counsel hesitation about granting the extension of the *Bivens* remedy." *Id.* (internal quotation marks and citation omitted). This "special factors" inquiry must focus on "separation-of-powers principles" and "requires courts to ask whether judicial intrusion into a given field is appropriate." *Id.* (quoting *Bulger v. Hurwitz*, 62 F.4th 127, 137 (4th Cir. 2023)). "If there is *any* reason to think that Congress might be better equipped to create a damages remedy, then the court must decline to extend *Bivens* to a new context." *Id.* at 202-03 (emphasis in original) (citing *Egbert*, 142 S. Ct. at 1803).

Here, special factors counsel against creating a new *Bivens* remedy. First, Plaintiff's claim would "require scrutiny of new categories of conduct and a new category of defendants." *Id.* at 205. Plaintiff's claims appear to involve licensing decisions related to the Controlled Substances Act ("CSA"), which is not a context in which the Supreme Court has previously recognized a *Bivens* remedy. Moreover, Plaintiff's claims concern the exercise of authority delegated to an executive agency by Congress, and "allowing a

Bivens action for such claims could lead to an intolerable level of judicial intrusion into an issue best left to" Congress and experts on controlled substances, not the courts. *See id.*; *see also Gonzales v. Oregon*, 546 U.S. 243, 250 (2006) ("Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules. . . . To prevent diversion of controlled substances with medical uses, the CSA regulates the activity of physicians.").

Accordingly, because Plaintiff's claims would expand *Bivens* to a "new context" and because there are "special factors" counseling against doing so, the Court finds that her First, Fifth, and Seventh Amendment-based claims against Defendant Milgram are not cognizable. *See Mays*, 70 F.4th at 206.

C. Claim for Violation of the Affordable Care Act

Defendant next argues that Plaintiff has failed to state a viable claim for violation of the Affordable Care Act or for interference with doctor-patient relationships and continuity of care. (ECF No. 52-1 at 10-11.) Defendant specifically contends that "Plaintiff fails to identify how Administrator Milgram, or any other defendant, violated the Affordable Care Act (ACA), how they interfered with any doctor-patient relationships, and how they interfered with continuity of care." *Id.* at 11.

Upon review, the Court again agrees with Defendant that Plaintiff has set forth mere legal conclusions devoid of any factual support, and she has not pleaded facts sufficient

to allow the Court to draw the reasonable inference that Defendant is liable for the alleged misconduct. *See Iqbal*, 556 U.S. at 678-79; *Twombly*, 550 U.S. at 556. Thus, the Court finds that Plaintiff has failed to state a claim for violation of the ACA or for interference with doctor-patient relationships and continuity of care, and that any such claim should be dismissed.

D. Claim for Violation of the Administrative Procedures Act

Finally, Defendant argues that Plaintiff has failed to state a claim for violation of the Administrative Procedures Act ("APA"). (ECF No. 52-1 at 12-14.) Upon review, the Court agrees.

The APA provides a mechanism for challenging the actions of a federal agency. 5 U.S.C. §§ 551 *et seq.* "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704. However, the APA itself does not provide a court with subject matter jurisdiction. *Califano v. Sanders*, 430 U.S. 99, 107 (1977).

Under the APA, a reviewing court can "compel agency action unlawfully withheld or unreasonable delayed" and can hold unlawful and set aside agency action, findings, and conclusions found to be—

> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (D) without observance of procedure required by law;

> (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
>
> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

5 U.S.C. § 706.

Plaintiff's conclusory allegations fail to state a plausible claim for violation of the APA. Stated plainly, in her amended complaint, Plaintiff does not plead facts sufficient to allow the Court to draw the reasonable inference that Defendant's actions were arbitrary and capricious; contrary to constitutional right, power, privilege, or immunity; outside of statutory authority; without observance of procedure required by law; subject to 5 U.S.C. §§ 556 and 557; or unwarranted by the facts presented. *See Iqbal*, 556 U.S. at 678–79; *Twombly*, 550 U.S. at 556; *see also* 5 U.S.C. § 706. Thus, the Court finds that Plaintiff has failed to state a claim for violation of the APA and that any such claim should be dismissed.[5]

III. Plaintiff's Recent Motions

On February 9, 2024, this Court denied Plaintiff's motion to recuse and her request for a hearing and a stay of this matter pending appeal. (*See* ECF No. 71.) Following entry of this order, Plaintiff filed two additional motions for hearing, which the Court also denied on February 12, 2024. (*See* ECF Nos. 73, 74, 75.)

[5] Because the Court concludes that the amended complaint is subject to dismissal pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure, the Court does not reach Defendant's alternative request for summary judgment pursuant to Rule 56, made in Defendant's concluding paragraph. (See ECF No. 52-1 at 14.)

Subsequently, Plaintiff filed a document titled "notice of appeal and expedited motion for stay," which the Court docketed separately as a motion to stay and a notice of appeal. (ECF Nos. 77 and 78.) After review, the Court finds no basis to stay this matter, as Plaintiff's most recent appeal is interlocutory in nature and has no impact on the Court's ruling on Defendant's motion to dismiss. Accordingly, the Court denies Plaintiff's motion to stay. (ECF No. 77.)

The same day she filed her notice of appeal and motion to stay, Plaintiff also filed a catch-all document titled: "Motion for Hearing, Rule 59(e) Motion, and Motion for De Novo Determination By Article III Judicial Officer Without R&R on Dispositive/Substantive Matters, Motion to Amend the Complaint, and Response." In light of Plaintiff's pro se status, the Court docketed this document separately as both a response in opposition to Defendant's motion and a motion to amend/correct the amended complaint. (ECF Nos. 79 and 80.) Although Plaintiff also references a "Rule 59(e) Motion" in the title of this pleading, nowhere does she actually set forth any basis for relief pursuant to Rule 59(e), and the Court therefore denies her "Rule 59(e) Motion" to the extent one is made.

Lastly, with respect to Plaintiff's "Motion to Amend the Complaint," the Court notes that the filing only references amendment in a single sentence in the penultimate paragraph, stating "[I]n the alternative, the plaintiff submits motion to amend the complaint." (ECF No. 79 at 6.) Importantly, Plaintiff does not provide the Court with a proposed amended pleading or outline any additional facts or claims she wishes to assert. Nor does she otherwise indicate which amendments she wishes to make or in any way demonstrate

how an amended complaint would resolve the deficiencies outlined above. Additionally, the Court notes that Plaintiff has already had the opportunity to file an amended complaint in this action, which is the subject of Defendant's instant motion to dismiss. For these reasons, the Court denies Plaintiff's motion to amend. (ECF No. 79.) *See, e.g., Estrella v. Wells Fargo Bank, N.A.*, 497 F. App'x 361, 362 (4th Cir. 2012) (per curiam) (second alteration in original) (quotation marks omitted) (finding that "where, as here, the plaintiff fails to formally move to amend and fails to provide the district court with any proposed amended complaint or other indication of the amendments he wishes to make, the district court [does] not abuse its discretion" in denying leave to amend).

CONCLUSION

Based on the foregoing, the Court **grants** Defendant's motion to dismiss (ECF No. 52); the Court **denies** Plaintiff's motion to stay (ECF No. 77); the Court **denies** Plaintiff's motion to amend (ECF No. 79)[6]; and Plaintiff's amended complaint is hereby dismissed pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

s/Bruce H. Hendricks
United States District Judge

February 27, 2024
Charleston, South Carolina

[6] As set forth above, the Court also denies Plaintiff's Rule 59(e) motion to the extent she so moves in ECF Numbers 79 and 80.