

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 24-2192**

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DONNA MARIE CONNER,

Plaintiff - Appellant,

v.

XFINITY, United States General; ASSURANCE WIRELESS USA-LP; JASON S. MIYARES, Commonwealth of Virginia, Attorney General; JENNIFER L. MCCLELLAN, Senator for the Commonwealth of Virginia; MARK R. WARNER, Senator; TIM KAINES, Virginia Beach; PETERSBURG, VIRGINIA POLICE DEPARTMENT; COLONIAL HEIGHTS POLICE DEPARTMENT; YORK COUNTY VIRGINIA POLICE DEPARTMENT; RON MONTGOMERY, Sheriff; COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS; MARK HERRING,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Patricia Tolliver Giles, District Judge. (1:23-cv-01222-PTG-LRV)

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Submitted: April 1, 2025

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Decided: June 17, 2025

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Before WILKINSON and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

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Affirmed as modified by unpublished per curiam opinion.

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Donna Marie Conner, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donna Marie Conner appeals the district court's orders dismissing her civil action under 28 U.S.C. § 1915(e)(2)(B)(i), (ii). The district court dismissed with prejudice all of Conner's claims except for her claim under the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and granted her leave to file an amended complaint on only that claim. Conner filed an amended complaint, and the district court again dismissed the TCPA claim. Conner appealed, and we dismissed the appeal because the district court had not resolved one of Conner's claims. *Conner v. Xfinity*, No. 24-1145, 2024 WL 2768349, at \*1 (4th Cir. May 30, 2024). We remanded for the district court to resolve that claim. *Id.* On remand, the district court dismissed without prejudice the unresolved claim. Conner then noted this timely appeal, and we possess jurisdiction under 28 U.S.C. § 1291.<sup>1</sup> See *Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022) (en banc) ("[W]hen a district court dismisses a complaint or all claims without providing leave to amend, . . . the order dismissing the complaint is final and appealable.").

Having reviewed the record and Conner's many submissions on appeal, we discern no reversible error in the dismissal of Conner's complaint as frivolous and for failure to state a claim upon which relief may be granted.<sup>2</sup> See 28 U.S.C. § 1915(e)(2)(B)(i), (ii);

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<sup>1</sup> Conner's notice of appeal designates the district court's order dismissing her complaint and the district court's order on remand dismissing her unresolved claim. Insofar as Conner might also seek review of the district court's order dismissing her amended complaint, she has demonstrated no reversible error in that order.

<sup>2</sup> Conner seeks to raise many new claims on appeal, but we decline to consider them in the first instance. See *Milla v. Brown*, 109 F.4th 222, 234 (4th Cir. 2024) ("Issues raised (Continued)

Commissioner alleged a dismissal under § 1812(e)(5)(B)(i) . . . to oblige as a dismissal with  
any amendment may be made; Vago, 376 F.3d at 258 (“We do not think . . . that  
be without prejudice if district court did not give plaintiff opportunity to amend nor discuss  
2006, 252 (4th Cir. 2010) (rejecting that district court did not give plaintiff opportunity to amend nor discuss  
plaintiff’s pre-judgment interest claim for TCPA claim). See King v. Repentance, 825 F.3d  
alleged, i.e., all of her claims save for her TCPA claim. See King v. Repentance, 825 F.3d  
without prejudice. County’s claims for which she was not provided an opportunity to  
pass on liability). We observe, however, that the district court should have dismissed  
Bunner, 376 F.3d 252, 254-52 (4th Cir. 2004) (rejecting stay of review for dismissal  
dismissal for failure to state a claim upon which relief may be granted); Vago v. EMC  
Walter v. Duff, 828 F.3d 233, 248 (4th Cir. 2013) (rejecting stay of review for

We also reject Counter's argument that the district court should have appointed counsel for her, that she was entitled to a jury trial, and that the district court should have recused itself. See *Wedges v. McCollum*, 66 F.3d 121, 163 (4th Cir. 2003) (reviewing denial of recusal motion for spouse of defendant); *Yours v. Pollard*, 488 F.3d 363, 403 (4th Cir. 2003) (rejecting similar jury trial argument); *Miller v. Simmons*, 814 F.2d 625, 626 (4th Cir. 2003) (stating same argument of counsel in civil case and recusing attorney for spouse of defendant).

for the first time on behalf the faculty not considering absent exception circumstances. (

Accordingly, we deny all of Conner's pending motions save for her motion to submit this case on the briefs (ECF No. 15), which we grant.<sup>3</sup> We also affirm the district court's orders but modify the orders to reflect a dismissal without prejudice except as to Conner's TCPA claim. 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 AS MODIFIED*

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<sup>3</sup> To the extent that Conner's motion to submit this case on the briefs requests other relief, we grant only the relief of deciding this case on the briefs.

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

DONNA MARIE CONNER, )  
v. )  
Plaintiff, )  
v. ) Civil Action No. 1:23-cv-1222 (PTG/LRV)  
XFINITY, et al., )  
Defendants. )

ORDER

This matter is before the Court on remand from the Fourth Circuit to consider *pro se* Plaintiff's unaddressed claim against Defendant Greyhound. Dkt. 24. After opening this civil case, Plaintiff filed a Complaint on April 12, 2023, and on April 13, 2023, Plaintiff filed an Application to Proceed in District Court Without Prepaying Fees or Costs. Dkt. 2. The Court then dismissed several of Plaintiff's claims pursuant to 28 U.S.C. § 1915(e)(2)(B), which requires the Court to dismiss any claim brought *in forma pauperis* if the Court determines that such claim is frivolous, malicious, or fails to state a claim, among other things. Dkt. 8. Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs remained pending while the Court permitted Plaintiff to amend her complaint, only as to her claim under 47 U.S.C. § 227. *Id.* at 5–6. Plaintiff amended her Complaint, and the Court then dismissed the Amended Complaint in its entirety pursuant to 28 U.S.C. § 1915(e)(2)(B) and denied Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs. Dkts. 10, 18. The Fourth Circuit remanded the case because this Court did not address Plaintiff's claim against Defendant Greyhound. Dkt. 24.

Under 28 U.S.C. § 1915(e)(2)(B), the Court shall dismiss an action filed *in forma pauperis* at any time if the court determines that the action is frivolous. A frivolous complaint

where does  
it specify about  
Xfinity

"[A] *pro se* complainant, however, *intuitively* *belatedly*, must be held to less stringent standards than [jailor] *plaintiffs* *dismissing* *plaintiffs* *for* *lawlessness*". *Herrick v. Parsons*, 221 U.S. 83, 94 (2003) (*dismissing* *plaintiffs* *plaintiffs* *dismissing* *plaintiffs* *for* *lawlessness*).

The Court can consider the *actual* *class* *in determining* *whether* *a* *claim* *is* *timelated* *under* 28 U.S.C. § 1332. *Smith v. McCormick*, No. 5:08-ca-425, 2010 WL 2474838, at \*3-4 (*E.D. Va.*, June 16, 2010) (*citing* *Woda v. EMC* *Brinker*, 376 F.3d 252, 253 (*4th Cir.* 2004)) (*holding* *that* *the* *plaintiff* *is* *sufficient* *to* *establish* *a* *non-timelated* *claim*, *given* *that* *the* *claim* *is* *not* *timelated* *because* *the* *plaintiff* *exceeds* *the* *value* *of* *such* *claim*, *which* *the* *plaintiff* *values* *at* *less* *than* *the* *sum* *of* *such* *claim*, *and* *the* *plaintiff* *values* *at* *more* *than* *the* *sum* *of* *such* *claim*, *the* *plaintiff* *values* *at* *more* *than* *the* *sum* *of* *such* *claim*, *but* *is* *a* *permissible* *factor* *to* *consider* *when* *making* *a* *timelated* *determination* *under* § 1332(e)(3)(B)(i)).

§ 1332(e)(3)(B)(i) *of* *the* *rule* *prohibits* *plaintiffs* *attempt* *to* *obtain* *a* *dismissal* *under* *timeliness*. *Woda*, 376 F.3d at 253 ("[T]he *plaintiff* *sought* *in* *an* *unjust* *attempt* *to* *obtain* *a* *dismissal* *under* *§ 1332(e)(3)(B)(i)* *of* *the* *rule* *prohibits* *plaintiffs* *attempt* *to* *obtain* *a* *dismissal* *under* *timeliness*."). Here, *the* *Court* *will* *dismiss* *plaintiffs* *claim* *against* *Gleyzow* *as* *timelated*. *Plaintiff* *applies* *to* *assert* *a* *claim* *based* *on* *a* *timeliness* *inference* *in* *Gleyzow* *that* *ticket* *for* *a* *trip* *she* *took* *from* *Petropawl*, *Ukraine* *to* *New Hampshire* *and* *back* *to* *Ricchmond*, *Virginia* *between* "July 3<sup>rd</sup> – July 12<sup>th</sup>", *Def.* 10 ("Amended Complaint"), at 18. *Plaintiff* *concludes* *that* *she* *purchased* *ticket* *from* *Gleyzow* *for* *a* *trip* *and* *exhausted* *details* *in* *her* *trip*. *Id.* *She* *concludes* *that* "Gleyzow's website offers [such] *money* *back* *if* *she* *departs* *at* *a* *trip* *[at]* *over* *two* *hours*". *Id.* *at* 16: *She* *assumes* *that* *Gleyzow* "should be held liable *for* *even* *more* *than* *the* *reimbursement* *of* *[her]* *ticket*, *because* *"[w]hen* *redemptions* *[her]* *money* *back* *for* *[her]* *July* *3<sup>rd</sup>–July* *12<sup>th</sup>* *trip*

through the website, the only way reimbursements are handled, Greyhound never responded."

*Id.* She further contends that she "tried reaching out again and received the same, no response."

*Id.*

The Court finds that these allegations are not sufficient to establish a non-frivolous claim against Greyhound, given that the monetary value of the Greyhound ticket would be de minimis. *Smith*, 2010 WL 9474636, at \*3. Further, although Plaintiff alleges that "Greyhound singled [her] out, endangered [her], [and] discriminated against [her,] and this is why Greyhound ignored resoving the matters," she does not allege any facts that show that any action Greyhound took against her was motivated by discrimination. Amended Compl. at 19.

Additionally, the Court notes that when Plaintiff initially filed this case, she alleged violations of federal law against other defendants. Given that those claims (1) have been dismissed and are unrelated to the claims against defendant Greyhound and (2) the amount of controversy at issue here against defendant Greyhound, it is unlikely that the Court would have subject matter jurisdiction over Plaintiff's claims against defendant Greyhound. *See* 28 U.S.C. §§ 1331, 1332.

Accordingly, it is hereby

**ORDERED** that Plaintiff's claim against Greyhound is **DISMISSED without prejudice**; it is further

**ORDERED** that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Dkt. 2) continues to be **DENIED**; and it is further

**ORDERED** that the pending motions in this action (Dkts. 26, 27, 28, 29, 32, 34, 37) are **DENIED** as moot.

To appeal this decision, Plaintiff must file a written notice of appeal with the Clerk of the

Court within thirty (30) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order Plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives Plaintiff's right to appeal this decision.

The Clerk is **DIRECTED** to send a copy of this Order to Plaintiff, who is proceeding *pro se*, and to close this civil action.

Entered this 4<sup>th</sup> day of November, 2024  
Alexandria, Virginia

  
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Patricia Toliver Giles  
United States District Judge

FILED: July 9, 2025

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 24-2192  
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DONNA MARIE CONNER

Plaintiff - Appellant

v.

XFINITY, United States General; ASSURANCE WIRELESS USA-LP; JASON S. MIYARES, Commonwealth of Virginia, Attorney General; JENNIFER L. MCCLELLAN, Senator for the Commonwealth of Virginia; MARK R. WARNER, Senator; TIM Kaine, Virginia Beach; PETERSBURG, VIRGINIA POLICE DEPARTMENT; COLONIAL HEIGHTS POLICE DEPARTMENT; YORK COUNTY VIRGINIA POLICE DEPARTMENT; RON MONTGOMERY, Sheriff; COMMONWEALTH OF VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS; MARK HERRING

Defendants - Appellees

M A N D A T E

The judgment of this court, entered June 17, 2025, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

FILED: June 17, 2025

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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Defendants - Appellees

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JUDGMENT

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

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

/s/ NWAMAKA ANOWI, CLERK

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