Appendix P

BUTLER COUNTY COURT, AREA III
9577 Beckett Rd - Suite 300
West Chester, Ohio 45069

Lakefront At West Chester, Llc	:	Case CVG 2100651
-VS-	:	
Holmes, Rosalind	:	FORCIBLE ENTRY
	:	DETAINER ACTION

* * * * * * * * * * * *

This matter came on for hearing on the Plaintiff/Landlord's (hereinafter referred to as landlord) first cause of action on 08/18/2021 .

The court finds that all Defendants/Tenants (hereinafter referred to as tenant) have been properly served within the time, and in the manner, prescribed by law and that all parties were properly notified of the date and time of this hearing.

_____ The landlord having failed to appear this cause is hereby dismissed without prejudice. _____

_____ The landlord having failed to prove the allegations of the complaint by the required degree of proof, this case is hereby dismissed. _____

__X__ The tenant has failed to file a responsive pleading and having failed to appear at this hearing they are in default and the allegations contained in landlord's complaint are therefore admitted by the tenant to be true. _____ IBT

_____ The landlord and tenant having both appeared and after considering the pleadings and testimony of the parties and witnesses, if any, and exhibits, if any, the court finds:

_____ That the tenant was served with the notice required by ORC section 1923.04 at least three days prior to the filing of the complaint herein and that the landlord is entitled to restitution of the premised due to:

_____ The tenant's failure to timely pay rent that was due.

__X__ Court was set for 8:30am, but not heard till 9:00am. Defendant did not appear for the hearing. Deny request for stay. Lease ended in May 2021 and Defendant is still on property. Last rent paid through May 20, 2021. Has not paid any rent or posted a bond with this court or Federal court. Plaintiff provided all proper notices to Defendant.

_____ In favor of the tenant and orders the case dismissed with costs to the landlord.

_____ The case is hereby dismissed at the request of the plaintiff.

It is therefore ordered that the tenant vacate the premises by the __27__ day of August, 2021 by Noon PM

It is further ordered that a hearing on the plaintiff's second cause of action is set for ____ day of _____, _____ at _____ AM/PM

IBT

Magistrate

THIS IS A FINAL APPEALABLE ORDER OF THE COURT.

IBT

Judge, C. Caparella-Kraemer

Appendix Q

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

LAKEFRONT OF WEST CHESTER, LLC.	:	**Case No. CVG2100651**
Plaintiff,	:	
vs.	:	**DECISION AND ENTRY DENYING MOTION TO SET ASIDE**
ROSALIND HOLMES	:	
Defendant.	:	**(FINAL APPEALABLE ORDER)**

This matter has come before the court pursuant to Rosalind Holmes's Motion To Set Aside Eviction Judgment. The court has thoroughly reviewed the record in this case, and, for the following reasons, the court denies her motion.

This eviction action was filed on June 16, 2021. The allegations were that Holmes's lease term was up and that Lakefront was not going to renew it with her. The matter was scheduled for a hearing on June 30, but the day before, on June 29, Holmes filed a Notice of Filing of Removal, claiming that she was attempting to have the eviction matter removed to federal court. The court continued the case until July 7 in order for the parties to provide authority regarding Holmes's ability to remove a state eviction action to federal court.

At the July 7 hearing, the magistrate did grant Holmes's request for a stay and ordered plaintiff to notify this court once the federal court had decided the issue.

On July 19, the federal magistrate judge issued a Report and Recommendation that the motion to remove be denied and that the eviction case be remanded to this court. On July 20, this court, having been informed of the magistrate judge's Recommendation, scheduled the eviction hearing for August 18, 2021. Notice of this hearing was sent to both parties. On August

3, 2021, the federal court adopted in full the Report and Recommendation of the magistrate judge, and formally remanded the eviction case to this court.

On August 10, Holmes filed in this court a Notice of Filing Of A Motion For A Stay And Temporary Restraining Order In The U.S. District Court. In effect, Holmes was requesting a second stay of the eviction proceedings. Crucially, as it pertains to the current motion to set aside the eviction, Holmes, in her Conclusion at page 3, states: "Defendant respectfully provides notice to this Court that she will not be attending the August 18, 2021 eviction proceedings in the Area III Court." And on August 16, two days before the eviction hearing, Holmes filed a Notice Of The Filing Of An Emergency Motion For A Stay And Temporary Restraining Order And For A Temporary Stay Pending Consideration Of The Motion In The U.S. Court Of Appeal For The Sixth Circuit. Also on page 3 of that document, Holmes again announced that she would not be attending the August 18 eviction hearing.

On August 18, the court called the case to be heard. Plaintiff was present and so was counsel for plaintiff. Holmes was not present, nor did she call in to the court explaining that she was sick and unable to appear. The case was called for a hearing shortly after 9:00 a.m., even though it had been scheduled for 8:30 a.m. The court heard evidence in Holmes's absence that her lease was up in May, that she had paid rent through May 21, which was the end of her lease term, that she had not paid any rent since that date, that Lakefront provided Holmes with a 30 day notice to vacate, followed by a 3 day notice, and that Holmes was still occupying the property. In light of this testimony, the magistrate ordered Holmes to vacate the property by August 27, 2021 at noon.

On August 24, Holmes filed the current motion to set aside the eviction judgment. She claims in her motion that she was sick on August 18 with upper respiratory symptoms, vomiting,

etc. and that she was incapable of attending the hearing. She attached a note from Urgent Care, which says nothing about what symptoms Holmes may have had, what diagnosis the doctor provided, or any other information about her illness. The note is dated on August 19, the day **after** the eviction hearing, and states that Holmes can return to work on August 21.

The above facts indicate that there has been substantial delay in what is supposed to be an expeditious and summary proceeding. See *Showe Management Corp. v. Mountjoy*, 12th Dist., 2020-Ohio-2772. This court granted Holmes a stay until the federal court determined that it would not hear the case. And then Holmes notified the court—twice—that she had no intention of appearing at the August 18 eviction hearing. At the time of the hearing, Holmes did not call in to the court to explain that she was ill, could not attend, and request a further delay for that reason. Instead, she waited until the day after the hearing to go to Urgent Care. Given Holmes's earlier statements in her filings that she did not intend to attend the hearing, the court is skeptical about the true nature of her illness.

The court has considered all the above facts and determines that this case has been delayed long enough. Holmes has had ample opportunity to oppose the eviction and has succeeded in delaying it for three months. The court is not convinced that she was ill and could not attend the August 18 hearing. Accordingly, Holmes's request to set aside the eviction is hereby DENIED.

Courtney Caparella-Kraemer /BT

Judge Courtney Caparella-Kraemer

cc: Amy Higgins, Esq.
Rosalind Holmes

X A copy of the Decision and Entry Denying Motion to Set Aside in the above-captioned matter was mailed to Plaintiff and Defendant this 26th day of August, 2021.

B. Thornsburg
Deputy Clerk

Appendix R

BUTLER COUNTY AREA III COURT
West Chester, Ohio 45069
(513) 867-5070

LAKEFRONT OF WEST CHESTER, LLC.	:	**Case No. CVG2100651**
Plaintiff,	:	
vs.	:	
ROSALIND HOLMES	:	**ENTRY DENYING MOTION TO RECONSIDER**
Defendant.	:	

On August 26, 2021, this court issued a Decision and Entry in which the court denied Rosalind Holmes's Motion to Set Aside her Eviction. The court denoted the Entry as a Final Appealable Order. On August 30, 2021, Holmes filed a Motion to Reconsider this court's August 26 Entry. In support of her motion, Holmes attached additional documentation of her illness that she claimed prevented her from appearing at the court's August 18 hearing. She also attached an email that she had sent to Lakefront to corroborate her complaint that Lakefront was harassing her by allowing foul odors to circulate through her air conditioning vents. Finally, she attached some documents purporting to verify that she had contacted the court on two occasions on August 18.

Despite Holmes's claims that she was unable to attend the August 18 hearing, this court denied her Motion to Set Aside the eviction on August 26. This was a final, appealable order. Holmes has now asked the court to reconsider that final order. But the law is quite clear that a court has no authority to reconsider its decision once it has been incorporated into a final, appealable order. Any decision purporting to reconsider it is a nullity and is ineffective. *Pitts v. Ohio Department of Transportation*, 67 Ohio St.2d 378, 423 N.E.2d 1105 (1981)(syllabus); *State*

v. Taggart, 12th Dist., 2021-Ohio-1350, ¶12. This court therefore has no authority to reconsider its August 26 Decision, and, for that reason, the Motion to Reconsider is hereby DENIED.

Judge Courtney Caparella-Kraemer

cc: Amy Higgins, Esq.
Rosalind Holmes

X A copy of the Entry Denying Motion to Reconsider in the above-captioned matter was mailed to Plaintiff and Defendant this 1 day of September, 2021.

Deputy Clerk

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

LAKEFRONT AT WEST CHESTER, LLC,	:	CASE NO. CA2021-09-108
	:	ACCELERATED CALENDAR
Appellee,	:	
vs.	:	ENTRY DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL
ROSALIND HOLMES,	:	
Appellant.	:	

The above cause is before the court pursuant to an emergency motion for stay pending appeal filed by appellant, Rosalind Holmes, on September 3, 2021.

Upon consideration of the foregoing, the motion is DENIED.

IT IS SO ORDERED.

Robin N. Piper, Judge

Mike Powell, Judge

Appendix S

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,

Plaintiff,

vs.

LAKEFRONT AT WEST CHESTER, LLC,

Defendant.

Case No. 1:21-cv-505

Black, J.
Bowman, M.J.

REPORT AND RECOMMENDATION

Plaintiff, a resident of Cincinnati, brings this action against Lakefront at West Chester, LLC. By separate Order issued this date, plaintiff has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. This matter is before the Court for a *sua sponte* review of plaintiff's complaint to determine whether the complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915(e)(2)(B).

In enacting the original *in forma pauperis* statute, Congress recognized that a "litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 324 (1989)). To prevent such abusive litigation, Congress has authorized federal courts to dismiss an *in forma pauperis* complaint if they are satisfied that the action is frivolous or malicious. *Id.*; *see also* 28 U.S.C. § 1915(e)(2)(B)(i). A complaint may be dismissed as frivolous when the plaintiff cannot make any claim with a rational or arguable

basis in fact or law. *Neitzke v. Williams*, 490 U.S. 319, 328-29 (1989); *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). An action has no arguable legal basis when the defendant is immune from suit or when plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or "wholly incredible." *Denton*, 504 U.S. at 32; *Lawler*, 898 F.2d at 1199. The Court need not accept as true factual allegations that are "fantastic or delusional" in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Neitzke*, 490 U.S. at 328).

Congress also has authorized the *sua sponte* dismissal of complaints that fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915 (e)(2)(B)(ii). A complaint filed by a *pro se* plaintiff must be "liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). By the same token, however, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Hill*, 630 F.3d at 470-71 ("dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim" under §§ 1915A(b)(1) and 1915(e)(2)(B)(ii)).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). The Court must accept all well-pleaded factual allegations as true, but need not "accept as true a legal conclusion

couched as a factual allegation." *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Although a complaint need not contain "detailed factual allegations," it must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557. The complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson*, 551 U.S. at 93 (citations omitted).

Here, Plaintiff's complaint arises out of Plaintiff's eviction from Defendant's property. Plaintiff asserts the eviction violates her civil rights and also asks the court to issue a temporary restraining order preventing the eviction. Upon careful review, the undersigned finds that Plaintiff's complaint fails to state a claim upon which relief may be granted in this federal court.

Notably, the Court will not interfere with any pending state eviction proceedings. A federal court must decline to interfere with pending state proceedings involving important state interests unless extraordinary circumstances are present. See *Younger v. Harris*, 401 U.S. 37, 43-45 (1971). Abstention is appropriate if: (1) state proceedings are on-going; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal questions. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

To the extent eviction or other state proceedings are pending against the plaintiff in connection with her ownership or occupancy of property, all three factors supporting

abstention exist. The matters presented in the plaintiff's Complaint implicate important state interests, see *Doscher v. Menifee Circuit Court*, No. 03-5229, 2003 WL 22220534 (6th Cir. Sept. 24, 2003); and there is no indication the plaintiff could not raise valid federal concerns in the context of an ongoing state proceeding.

Accordingly, the complaint fails to state a claim upon which relief may be granted and should be dismissed under 28 U.S.C. §1915(e)(2)(B).

Accordingly, for these reasons, it is therefore **RECOMMENDED** this action be **DISMISSED** with **PREJUDICE** for failure to state a claim for relief. It is further **RECOMMENDED** that the Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of any Order adopting this Report and Recommendation would not be taken in good faith and therefore deny Plaintiff leave to appeal *in forma pauperis*.

s/ Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,

Plaintiff,

vs.

LAKEFRONT AT WEST CHESTER, LLC,

Defendant.

Case No. 1:21-cv-505

Black, J.
Bowman, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Appendix T

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Rosalind Holmes,	:	Case No. 1:21-cv-505
Plaintiff,	:	Judge Timothy S. Black
vs.	:	Magistrate Judge Stephanie K. Bowman
Lakefront at West Chester, LLC	:	
Defendant.	:	

DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 8)

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on August 23, 2021 submitted a Report and Recommendations (the "Report"). (Docs. 8). Plaintiff Rosalind Holmes submitted her objection to the Report on August 25, 2021. With her objections, Plaintiff has also submitted a second motion for temporary restraining order and preliminary injunction (Doc. 9), and an emergency motion to appoint counsel. (Doc. 11).

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court finds that the Report is adopted and Plaintiff's objections are overruled. Plaintiff's motions filed after the Magistrate Judge issued the Report are also denied.

Plaintiff Rosalind Holmes, proceeding *pro se*, brings this action against Defendant Lakefront at West Chester, LLC. According to Plaintiff's filings, she currently resides at one of Defendant's properties and is asking this Court to stay her eviction and/or eviction proceedings. Plaintiff's recent filings indicate that she has now been evicted and ordered to vacate her premises by August 27, 2021. (Doc. 9 at PageID# 1419).

In the Report, the Magistrate Judge first found that Plaintiff's complaint failed to state a claim upon which relief may be granted. (Doc. 8 at 3). This Court agrees. Plaintiff's 378-page complaint with exhibits is a recitation of her litigation history with Defendant.[1] Even liberally construing Plaintiff's complaint, she fails to state a claim. Moreover, Plaintiff's objection does nothing to cure this deficiency or otherwise convince this Court that Plaintiff has stated a plausible claim for relief. (Doc. 51).

The Magistrate Judge also noted that *Younger* abstention applies in this case. (Doc. 8 at 3). As explained by the Sixth Circuit:

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[1] *See, e.g., Holmes v. Lakefront at West Chester*, 1:21-cv-444 (S.D. Ohio Aug. 3, 2021) (Dlott, J.; Litkovitz, M.J.), *appeal dismissed at* No. 21-3731 (6th Cir. Aug. 17, 2021); *Holmes v. U.S.A., et al.*, No. 1:20-cv-825 (S.D. Ohio) (McFarland, J.; Litkovitz, M.J.), *appeals at* No. 21-3715, 21-03521, 21-03491, 21-03206 (6th Cir.); *Holmes v. Lakefront at West Chester*, No. CV 2021-05-0638 (Butler Cty. Ct. Com. Pl. filed May 7, 2021) (located at https://pa.butlercountyclerk.org/eservices/searchresults.page) (last accessed 8/26/2021); *see also Lakefront at West Chester v. Holmes*, CVG 2100528 (Butler Cty. Area III Ct. filed June 16, 2021); *Lakefront at West Chester v. Holmes*, CVG 2100528 (Butler Cty. Area III Ct. filed May 14, 2021); *Holmes v. Lakefront at West Chester*, No. CVF2001041, RE000007 (Butler Cty. Area III Ct. filed Nov. 2, 2020), *appeal at* CA-2021-05-0046 (Ohio 12th Dist. Ct. App.) (all Butler County Area III cases located at: http://docket.bcareacourts.org/) (last accessed 8/26/2021).

This Court may take judicial notice of court records that are available online to members of the public. *See Lynch v. Leis*, 382 F.3d 642, 648 n.5 (6th Cir. 2004) (citing *Lyons v. Stovall*, 188 F.3d 327, 332 n.3 (6th Cir. 1999)).

> We generally are obliged to decide cases within the scope of federal jurisdiction. However, in certain circumstances, allowing a federal suit to proceed threatens undue interference with state proceedings, and the proper course is for the federal court to abstain from entertaining the action. The *Younger* breed of abstention requires abstention in three different circumstances.... The Supreme Court has noted that these three categories are the exception rather than the rule. First, we may abstain under *Younger* when there is an ongoing state criminal prosecution. Second, we may abstain when there is a civil enforcement proceeding that is akin to a criminal prosecution. Third, we may abstain when there is a civil proceeding involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions.

Aaron v. O'Connor, 914 F.3d 1010, 1016 (6th Cir. 2019) (internal quotations and citations omitted).

Once a court determines that a case falls into one of the three exceptional categories and *Younger* abstention may apply, the Court should "next analyze[s] the case 'using a three-factor test laid out in *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423 (1982)." *Id.* (quotation omitted). "If (1) state proceedings are currently pending; (2) the proceedings involve an important state interest; and (3) the state proceedings will provide the federal plaintiff with an adequate opportunity to raise his constitutional claims, we may abstain from hearing the federal claim." *Id.* (quotation omitted). The Magistrate Judge found all three factors present when noting *Younger* abstention applies.

Since the Magistrate Judge issued the Report, Plaintiff now states that her eviction proceedings have concluded, and she was evicted. (Doc. 9 at 1). Thus, *Younger* no

longer applies to her eviction proceedings because those proceedings are no longer currently pending.[2]

To the extent her eviction proceedings have not concluded, her primary request for relief – an injunction and stay of her eviction proceedings – is prohibited by the Anti-Injunction Act. *See* 28 U.S.C. § 2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."); *see also Wells v. DLJ Mortg. Capitol Inc.*, No. 1:14-CV-767, 2014 WL 5587561, at *2 (S.D. Ohio Nov. 3, 2014) (request to stay state court eviction proceeding prohibited pursuant to Anti-Injunction Act); *E3A v. Bank of Am., N.A.*, No. 13-10277, 2013 WL 784339 (E.D. Mich. Mar.1, 2013) (request to stay writ of eviction prohibited pursuant to the Anti-Injunction Act) (citing *Cragin v. Comerica Mortgage Co.*, No. 94-2246, 1995 WL 626292 (6th Cir. Oct. 24, 1995) (finding that the Anti-Injunction Act "generally precludes federal injunctions that would stay pending foreclosure proceedings in the state courts.")).

Finally, a facial reading of Plaintiff's complaint indicates that Plaintiff is asking this Court to grant her relief from injuries caused in her state court proceedings, including

[2] To the extent her proceedings are still pending, there is a strong argument *Younger* applies. Although Plaintiff fails to state a claim, she lists two causes of action for housing discrimination based on race. Discrimination claims may be asserted as part of an eviction proceeding in Ohio courts. *See, e.g., Lable & Co. v. Flowers*, 661 N.E.2d 782, 786 (Ohio Ct. App. 1995) ("A legitimate argument can be made that defendant was required to raise her discrimination claim in response to the eviction proceeding as a compulsory counterclaim."). Thus, she has an adequate opportunity to assert her discrimination claims in her state court proceedings to the extent those proceedings are still pending.

her now-concluded eviction proceeding. The *Rooker-Feldman* doctrine prohibits federal courts, other than the United States Supreme Court, from performing appellate review of state court rulings. *Lawrence v. Welch*, 531 F.3d 364, 368 (6th Cir. 2008); *see also Givens v. Homecomings Fin.*, 278 F. App'x 607, 609 (6th Cir.2008) (affirming dismissal under *Rooker-Fedlman* where the primary relief that plaintiff requested was a temporary injunction that would "enjoin Defendants from physically entering onto plaintiff['s] property" and that would "dispos[e] ... of any other civil or procedural action regarding the subject property").

However, notwithstanding *Younger*, *Rooker-Feldman*, and the Anti-Injunction act, the Court has *sua sponte* reviewed Plaintiff's complaint pursuant to 28 U.S.C. § 1915. Plaintiff's claims are dismissed for failure to state a claim. 28 U.S.C. § 1915(e)(2)(B)(ii).

Accordingly, for the reasons stated above:

1. The Report and Recommendations (Doc. 8) is **ADOPTED**, as expanded upon here;

2. Plaintiff's objection (Doc. 51) is **OVERRULED**;

3. Plaintiff's motion for an emergency stay and temporary restraining order; amended motion for a stay, emergency temporary restraining order and/or preliminary injunctive relief; and emergency motion for the appointment of counsel (Docs. 3, 9, 11) are **DENIED**;

4. Plaintiff's complaint is **DISMISSED with prejudice**;

5. The Court **CERTIFIES** that, pursuant to 28 U.S.C. § 1915(a), any appeal of this Order would not be taken in good faith and therefore **DENIES** Plaintiff leave to appeal *in forma pauperis*; and

6. The Clerk shall enter judgment accordingly, whereupon this case is **TERMINATED** from the docket of this Court.

Furthermore, while the Court gives some deference to *pro se* litigants, it will not permit any litigant to use the Court's resources to address filings clearly designed to harass the Court, opposing counsel, or the opposing party. Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions. *See, e.g., Hiles v. NovaStar Mortg.*, No. 1:12-cv-392, 2016 WL 454895 (S.D. Ohio Feb. 5, 2016).

There is "nothing unusual about imposing prefiling restrictions in matters with a history of repetitive or vexatious litigation." *Feathers v. Chevon U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). To achieve these ends, the Sixth Circuit has approved enjoining vexatious and harassing litigants by requiring them to obtain leave of court before submitting additional filings. *Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987).

Plaintiff has already filed two motion for emergency relief in this case alone, requesting the undersigned to stay her eviction proceedings. She has also filed notices of appeal in her other two federal court cases, requesting that the Sixth Circuit stay her eviction. *See Holmes v. Lakefront at West Chester*, 1:21-cv-444 (S.D. Ohio Aug. 3, 2021), *appeal dismissed at* No. 21-3731 (6th Cir. Aug. 17, 2021); *Holmes v. U.S.A., et al.*, No. 1:20-cv-825 (S.D. Ohio), *appeal dismissed at* No. 21-3715 (6th Cir. Aug. 17, 2021). Based on these repetitive tactics, Plaintiffs must seek leave of Court before submitting any additional filings in this case.

IT IS SO ORDERED.

Date: 8/26/2021

s/Timothy S. Black
Timothy S. Black
United States District Judge

Appendix U

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: September 07, 2021

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3791, *Rosalind Holmes v. Lakefront At West Chester, LLC*
Originating Case No. : 1:21-cv-00505

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Richard W. Nagel

Enclosure

No. 21-3791

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,

Plaintiff-Appellant,

v.

LAKEFRONT AT WEST CHESTER, LLC,

Defendant-Appellee.

ORDER

Before: GIBBONS and DONALD, Circuit Judges.

Plaintiff Rosalind Holmes appeals a district court order dismissing with prejudice her claims against Lakefront at West Chester, LLC ("Lakefront") relating to her state court eviction proceedings. She now moves for an emergency stay of her eviction by the Butler County Sheriff's Office, which is scheduled for today, September 7, 2021, and for related injunctive relief.

We consider four factors in determining whether a stay pending appeal should issue: 1) "whether the stay applicant has made a strong showing that [s]he is likely to succeed on the merits"; 2) the likelihood the "applicant will be irreparably injured absent a stay"; 3) "whether issuance of the stay will substantially injure" other interested parties; and 4) "where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The first two factors "are the most critical." *Nken v. Holder*, 556 U.S. 418, 434 (2009). "These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together." *Mich. Coal. of*

Radioactive Material Users v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991). While the party seeking a stay "need not always establish a high probability of success on the merits," the party "is still required to show, at a minimum, 'serious questions going to the merits.'" *Id.* at 153–54 (quoting *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

The district court found that it was precluded from granting the relief Holmes sought—from injuries she suffered in her state court proceedings—by the *Rooker-Feldman* doctrine, which prohibits federal courts, other than the United States Supreme Court, from performing appellate review of state court rulings. *Lawrence v. Welch*, 531 F.3d 364, 368 (6th Cir. 2008). Notwithstanding *Rooker-Feldman*, the district court dismissed Holmes's claims for failure to state a claim upon which relief could be granted. Holmes alleges that her claims in the district court were not barred by *Rooker-Feldman* because they alleged wrongdoing and fraud in the state court proceedings, which are independent from the injury caused by the state court's ruling. *See id.* at 369 (distinguishing that claims that defendants committed fraud in the state court proceedings establish an independent injury not caused by the state court judgment and are not barred by *Rooker-Feldman*). However, the relief Holmes sought in the district court was the same she is requesting here: a stay of her eviction from Lakefront pursuant to the state court's judgment against her. When "the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction." *Id.* at 368. Holmes sought relief in the district court from the state court's order of her eviction. Thus, the district court was precluded from reviewing the state court's decision. Further, the district court found no merit to Holmes's claims. While Plaintiff alleges significant harm, she has not shown the requisite likelihood of success on the merits of her appeal. *See Tiger Lily, LLC v.*

United States Dept. of Hous. and Urban Dev., 992 F.3d 518, 524 (6th Cir. 2021) ("Given that the [movant] is unlikely to succeed on the merits, we need not consider the remaining stay factors.").

Accordingly, the motion for an emergency stay is **DENIED.**

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix V

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
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Filed: June 21, 2022

Ms. Rosalind Holmes
630 Bell Road
Apartment 160
Antioch, TN 37013

Re: Case No. 21-3791, *Rosalind Holmes v. Lakefront At West Chester, LLC*
Originating Case No. : 1:21-cv-00505

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Richard W. Nagel

Enclosure

No. 21-3791

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,

Plaintiff-Appellant,

v.

LAKEFRONT AT WESTCHESTER, LLC,

Defendant-Appellee.

ORDER

Before: LARSEN, Circuit Judge.

Rosalind Holmes, proceeding pro se, appeals a district court judgment dismissing her housing discrimination complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. The district court denied Holmes leave to proceed in forma pauperis on appeal by certifying that an appeal would not be taken in good faith. *Id.* § 1915(a)(3). Holmes now requests permission from this court to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5). She also requests appointment of counsel.

Holmes filed a complaint against Lakefront at Westchester, LLC (Lakefront). Holmes rented an apartment from Lakefront in May 2020. She alleged that, almost immediately after moving into her apartment, she began to experience various unacceptable issues with her apartment, which she reported to Lakefront. Holmes filed numerous civil actions against Lakefront in federal and state court arising out of her housing issues, claiming discrimination, retaliation, and various other claims. Lakefront filed an eviction action against Holmes in state court.

Holmes asserted claims for discrimination, retaliation, intentional infliction of emotional distress, and breach of contract. She sought monetary and injunctive relief, including a stay of the state-court eviction action filed against her by Lakefront. In an amended motion for injunctive

relief, Holmes stated that she was evicted in August 2021 and that she moved to set aside the state-court judgment, and she asked the district court to stay the state-court eviction proceedings.

On initial screening, a magistrate judge recommended dismissing Holmes's complaint under § 1915(e)(2)(B) for failure to state a claim for relief. Over Holmes's objections, the district court adopted the magistrate judge's report and recommendation, dismissed Holmes's complaint, and barred Holmes from filing additional pleadings in the case without leave of court. The district court reasoned that Holmes's complaint recited "her litigation history" and did not state a claim for relief; that to the extent the state-court eviction action was still pending, her request for a stay of that action and injunctive relief was barred by the Anti-Injunction Act; and to the extent that she sought review of state-court proceedings, including the eviction action, her complaint was barred by the *Rooker-Feldman*[1] doctrine.

This court may grant a motion to proceed in forma pauperis if it determines that an appeal would be taken in good faith and the movant is indigent. *See Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). A frivolous appeal, one that "lacks an arguable basis either in law or in fact," would not be taken in good faith. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Coppedge v. United States*, 369 U.S. 438, 445 (1962).

A complaint 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). It must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although "detailed factual allegations" are not required, a complaint must contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Twombly*, 550 U.S. at 555).

Generally, courts liberally construe pro se pleadings and hold them "to a less stringent standard than pleadings prepared by attorneys." *Frengler v. Gen. Motors*, 482 F. App'x 975, 976 (6th Cir. 2012). But this liberal construction is not without limit. *Id.* at 977. "Even a pro se

---

[1] *See D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415-16 (1923).

pleading must provide the opposing party with notice of the relief sought, and it is not within the purview of the district court to conjure up claims never presented." *Id.*

Holmes's complaint failed to state a plausible claim for relief. Holmes's complaint asserts three claims under federal law, each premised on Lakefront's alleged racially discriminatory actions with respect to her lease. But the complaint includes no factual allegations creating a "reasonable inference" that Lakefront acted in a discriminatory manner. *Iqbal*, 556 U.S. at 678. Holmes alleges that Lakefront failed to perform certain maintenance in her apartment, entered her apartment without permission, retaliated against her for making complaints, and harassed her in the eviction proceedings, but she never alleges that Lakefront took any of those actions based on racial animus. *See id.* at 681; *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 613-14 (6th Cir. 2012) ("[B]road and conclusory allegations of discrimination cannot be the basis of a complaint . . . ."). With the federal claims dismissed, the district court need not exercise supplemental jurisdiction over Holmes's two remaining state-law claims. 28 U.S.C § 1367(c)(3). An appeal in this case would be frivolous. *See Neitzke*, 490 U.S. at 325.

Accordingly, the motions to proceed in forma pauperis and to appoint counsel are **DENIED**. Unless Holmes pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix W

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

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Filed: August 10, 2022

Ms. Rosalind Holmes
6673 Boxwood Lane
Apartment C
Liberty Township, OH 45069

Re: Case No. 21-3791, *Rosalind Holmes v. Lakefront At West Chester, LLC*
Originating Case No. : 1:21-cv-00505

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Richard W. Nagel

Enclosure

No. 21-3791

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES,

Plaintiff-Appellant,

v.

LAKEFRONT AT WESTCHESTER, LLC,

Defendant-Appellee.

ORDER

Before: SUTTON, Chief Judge; GUY and COLE, Circuit Judges.

Rosalind Holmes, proceeding pro se, moves the court to reconsider its June 21, 2022, order denying her motion to proceed in forma pauperis on appeal from the dismissal of her housing discrimination complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. Holmes's motion to reconsider also moves this court to take judicial notice of a state-court case, grant relief from judgment, and stay this case.

Holmes's motion does not show that the court "overlooked or misapprehended" any "point of law or fact" when it issued its order. *See* Fed. R. App. P. 40(a)(2). The motion for reconsideration, judicial notice, relief from judgment, and a stay is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix X

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

LAKEFRONT AT WEST CHESTER, LLC,	:	CASE NO. CA2021-09-108 ACCELERATED CALENDAR
Appellee,	:	
vs.	:	ENTRY DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL
ROSALIND HOLMES,	:	
Appellant.	:	

The above cause is before the court pursuant to an emergency motion for stay pending appeal filed by appellant, Rosalind Holmes, on September 3, 2021.

Upon consideration of the foregoing, the motion is DENIED.

IT IS SO ORDERED.

Robin N. Piper, Judge

Mike Powell, Judge

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

LAKEFRONT AT WEST CHESTER, LLC, : CASE NO. CA2021-09-108

: ACCELERATED CALENDAR

Appellee,

vs. :

ROSALIND HOLMES, :

Appellant. :

ENTRY DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL

The above cause is before the court pursuant to an emergency motion for stay pending appeal filed by appellant, Rosalind Holmes, on September 3, 2021.

Upon consideration of the foregoing, the motion is DENIED.

IT IS SO ORDERED.

Robin N. Piper, Judge

Mike Powell, Judge

Appendix Y

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

LAKEFRONT AT WEST CHESTER, LLC,	:	CASE NO. CA2021-09-108
	:	REGULAR CALENDAR
Appellee,	:	
vs.	:	ENTRY DENYING SECOND EMERGENCY MOTION FOR STAY AND/OR TEMPORARY RESTRAINING ORDER
ROSALIND HOLMES,	:	
Appellant.	:	

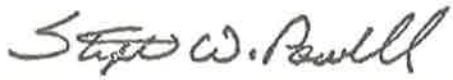
The above cause is before the court pursuant to a second emergency motion for a stay and/or temporary restraining order pending appeal filed by appellant, Rosalind Holmes, on October 29, 2021. Appellant's first emergency motion for a stay pending appeal was denied by this court on September 3, 2021.

In her second emergency motion for stay, appellant essentially seeks reconsideration of the denial of her first emergency motion for stay, contending that the Butler County Area III Court did not have jurisdiction over her case. Appellant states that she "refiled" a Title VIII housing discrimination complaint in Federal District Court on August 6, 2021. However, it appears that the complaint has been dismissed and filing restrictions imposed upon appellant due to her history of repetitive, vexatious litigation.

Appellant has presented no basis for granting an emergency motion to stay her eviction, or any resulting consequences thereof. Her second emergency motion for a stay and/or temporary restraining order is DENIED.

IT IS SO ORDERED.

Robin N. Piper, Judge



Stephen W. Powell, Judge

Appendix Z

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

LAKEFRONT OF WEST CHESTER, LLC,

Appellee,

vs.

ROSALIND HOLMES,

Appellant.

CASE NO. CA2021-09-108
REGULAR CALENDAR

ENTRY DENYING EMERGENCY MOTION TO VOID JUDGMENT, ISSUE A WRIT OF PROHIBITION AND SEAL RECORDS AND DENYING MOTION TO RECONSIDER DENIAL OF APPELLANT'S SECOND MOTION FOR STAY AND/OR TEMPORARY RESTRAINING ORDER

The above cause is before the court pursuant to a pleading styled "emergency motion to void the judgment of the Butler County Area III Court, issue a writ of prohibition, seal the records of the case, and in the alternative reconsideration of appellant's second motion for a stay and/or temporary restraining order." The motion was filed by appellant, Rosalind Holmes, on December 6, 2021.

The underlying eviction action was filed against appellant on June 16, 2021. The complaint alleged that appellant's lease was up and that appellee, Lakefront of West Chester, LLC, did not intend to renew it. Appellee had provided appellant with written notice on March 22, 2021 that she was to vacate the premises by May 20, 2021.

On June 29, 2021, appellant filed a notice of removal, indicating that she intended to remove the eviction action to federal court. On July 29, 2021, a federal magistrate judge issued a report and recommendation that appellant's motion to

remove be denied. The report and recommendation was adopted by the United States District Court on August 3, 2021.

The Butler County Area III Court scheduled an eviction hearing on August 18, 2021. On August 16, 2021, appellant filed a notice in Area III Court indicating that she was filing of an emergency motion for stay and temporary restraining order and for temporary stay pending consideration of the motion in the U.S. Court of Appeals for the Sixth Circuit. Appellant informed the Area III Court that she would not be attending the August 18, 2021 eviction hearing.

Appellant did not appear for the August 18, 2021 eviction hearing; Lakefront and its attorney were present. Following presentation of evidence by Lakefront, the Area III Court magistrate granted the eviction and ordered appellant to vacate the property by August 27, 2021.

On August 24, 2021, appellant filed a motion to set aside the eviction judgment stating that she was sick on August 18 and unable to attend the eviction hearing. She attached a note from Urgent Care dated August 19, 2021, the day after the eviction hearing. The Area III Court subsequently denied appellant's motion to set aside the eviction, and motion to reconsider the denial of the motion to set aside the eviction hearing.

On September 1, 2021, appellant filed a motion to set aside the judgment pursuant to Civ.R. 60(B) and requested a stay pending appeal. The motion and request for stay were denied on September 2, 2021, after which appellant filed this appeal. In the entry appealed from, the Area III Court noted that appellant had been living at the property without a lease since May, 2021 and apparently had not been paying rent

since that time. The Area III Court also agreed with the federal district court judge that appellant should be labeled a vexatious litigator.

Since filing her notice of appeal on September 10, 2021, appellant has filed two emergency motions for stay pending appeal in this court which have both been denied.

In her current emergency motion, appellant asks this court to reconsider denial of her second motion for stay and/or temporary restraining order. The basis for appellant's request is apparently that the eviction action should have been transferred to the common pleas court because, after the eviction complaint was filed against her, appellant filed a complaint against appellee alleging landlord discrimination and retaliation under Title VIII and R.C. 4112 in the Butler County Court of Common Pleas. See *Holmes v. Lakefront at West Chester*, Butler CP No. CV 2021-05-0639.

It appears from the docket that this issue was addressed by the Area III Court and appellant's motion to transfer the eviction action was denied. The Area III Court concluded that it had jurisdiction.

Although jurisdiction may be raised at any time, including on appeal, such is not a basis to reconsider denial of appellant's second emergency motion for stay and/or temporary restraining order. Further, the additional relief requested by appellant in her December 6 emergency motion, i.e., void the judgment of the Butler County Area III Court, issue a writ of prohibition, and seal the records of the case, is not properly before the court at this time. Appellant has been evicted. Her eviction has not been overturned. She has not successfully shown that the Area III Court lacked jurisdiction to issue the order of eviction.

Based upon the foregoing, appellant's emergency motion is DENIED in its entirety.

IT IS SO ORDERED.

Stephen W. Powell, Judge

Robin N. Piper, Judge

Appendix AA

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

LAKEFRONT OF WEST CHESTER, LLC,

Appellee,

- vs -

ROSALIND HOLMES,

Appellant.

CASE NO. CA2021-09-108

JUDGMENT ENTRY

It is the order of this court that this appeal is dismissed as moot for the reasons discussed in the Opinion filed the same date as this Judgment Entry.

It is further ordered that a mandate be sent to the Butler County Area III Court for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed to the appellant.

Stephen W. Powell, Presiding Judge

Robert A. Hendrickson, Judge

Matthew R. Byrne, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

LAKEFRONT OF WEST CHESTER, LLC,	:	
Appellee,	:	CASE NO. CA2021-09-108
	:	OPINION
- vs -		5/9/2022
	:	
ROSALIND HOLMES,	:	
Appellant.	:	

APPEAL FROM BUTLER COUNTY AREA III COURT
Case No. CVG2100651

Rosalind Holmes, pro se.

BYRNE, J.

{¶1} Rosalind Holmes appeals from a decision of the Butler County Area III Court. In that decision, the area court denied Holmes' motion to stay the execution of a writ of restitution that the court previously granted to Holmes' landlord, Lakefront at West Chester, LLC ("Lakefront"). For the reasons described below, we dismiss this appeal as moot.

{¶2} In June 2021, Lakefront filed a complaint against Holmes in the area court. Lakefront brought a claim for forcible entry and detainer.[1] Lakefront alleged that it was the owner of 4557 Wyndtree Drive, #145 ("the premises") and that Holmes was a tenant of the

1. In a second claim not relevant to this appeal, Lakefront asked for unpaid rent and late fees for the month of June 2021 and for ongoing rent and late fees until Holmes vacated the premises.

premises. Lakefront stated that on March 22, 2021, it served Holmes with written notice that it did not intend to renew her lease of the premises as of May 20, 2021. Lakefront further alleged that Holmes had failed to vacate the premises by May 20, 2021, and that Lakefront had served her with a hold-over notice and asked her to leave the premises or face eviction proceedings.

{¶3} Holmes failed to answer the complaint. Instead, proceeding pro se, she removed the eviction proceeding to federal district court. The federal district court subsequently found removal to have been improper and remanded the case to the area court.

{¶4} The area court scheduled an eviction hearing for August 18, 2021. Holmes failed to appear at the hearing on that date. In an entry resulting from the eviction hearing, the court found that Holmes had failed to file a responsive pleading; had failed to appear for the eviction hearing, was in default, and that the court considered the allegations of the complaint admitted. The court further found that Lakefront had provided Holmes with all proper notices for the eviction. The court ordered Holmes to vacate the premises by August 27, 2021. The court also separately issued Lakefront a writ of restitution.

{¶5} Holmes then moved the area court to set aside the eviction judgment. The court denied the motion to set aside. Holmes then moved the court to reconsider its decision denying the motion to set aside. The court denied this motion as well. Holmes then moved the court to set aside the judgment under Civ.R. 60(B) and to stay execution of the writ of restitution. The court denied this motion in a decision and entry. Holmes appealed from this final decision and entry, presenting the following assignments of error.

{¶6} Assignment of Error No. 1:

{¶7} THE TRIAL COURT ABUSED [ITS] DISCRETION IN VIOLATION OF OHIO REVISED CODE 1907.03, JURISDICTIONAL PRIORITY RULE AND OHIO RULES OF

CIVIL PROCEDURE 12(H)(3).

{¶8} Assignment of Error No. 2:

{¶9} THE TRIAL COURT IMPROPERLY DENIED APPELLANT'S MOTION TO SET ASIDE JUDGMENT UNDER RULE 60(B)(1) & (3).

{¶10} Assignment of Error No. 3:

{¶11} THE JUDGMENT OF THE TRIAL COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶12} Holmes' three assignments of error present various arguments challenging the area court's decision granting the forcible entry and detainer portion of Lakefront's complaint, granting a writ of restitution of the premises to Lakefront, and denying her motion to stay execution of the writ. As a preliminary matter, we must determine whether the appeal is properly before this court or whether the appeal is moot. A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. *Villas at Pointe of Settlers Walk Condominium Assn. v. Coffman Dev. Co., Inc.*, 12th Dist. Warren No. CA2009-12-165, 2010-Ohio-2822, ¶ 9. We may consider the trial record as well as matters outside the trial record to determine whether an appeal is moot. *In re C.L.W.*, 12th Dist. Clermont No. CA2021-05-013, 2022-Ohio-1273, ¶ 29, fn. 1.

{¶13} In an appeal from a different eviction case (also involving Holmes), we summarized the relevant legal concepts:

> "A forcible entry and detainer action is intended to serve as an expedited mechanism by which an aggrieved landlord may recover possession of real property." *Miele v. Ribovich*, 90 Ohio St.3d 439, 441, 2000-Ohio-193. A forcible entry and detainer action decides only the right to immediate possession of property and nothing else. *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.*, 67 Ohio St.2d 19, 25 (1981), fn. 11.
>
> Once a landlord has been restored to the property, the forcible entry and detainer becomes moot because, having been restored to the premises, there is no further relief that may be

> granted to the landlord. *Showe Mgt. Corp. v. Hazelbaker*, 12th Dist. Fayette No. CA2006-01-004, 2006-Ohio-6356, ¶ 7. Because Holmes has vacated the apartment and Landings retook possession of the apartment, the forcible entry and detainer action is now moot.

Landings at Beckett Ridge v. Holmes, 12th Dist. Butler No. CA2020-04-050, 2020-Ohio-6900, ¶ 14-15.

{¶14} The record in this case reflects that Holmes vacated the premises after the court issued the writ of restitution and after the court issued its entry denying Holmes' motions to set aside and stay execution. Specifically, the sheriff's return on the writ indicates that Holmes moved out of the premises on or before September 9, 2021. This would be consistent with Holmes' filings with the area court after that date, which indicate a mailing address for Holmes at an apartment located in Tennessee.

{¶15} Because Holmes vacated the premises and Lakefront retook possession, the forcible entry and detainer portion of Lakefront's complaint is now moot. *Landings*, 2020-Ohio-6900 at ¶ 15. *Accord Landings at Beckett Ridge v. Holmes*, 12th Dist. Butler No. CA2021-09-118, 2022-Ohio-1272, ¶ 21; *Tenancy, L.L.C. v. Roth*, 5th Dist. Stark No. 2019 CA 00034, 2019-Ohio-4042, ¶ 29-30 (holding that when tenant filed Civ.R. 60[B] motion for relief from judgment challenging trial court's grant of writ of restitution to landlord, the case was moot because the tenant had moved out of the rented premises).[2] We therefore decline to address Holmes' three assignments of error and dismiss this appeal as moot.

{¶16} Appeal dismissed.

S. POWELL, P.J. and HENDRICKSON, J., concur.

---

2. In *Landings*, 2020-Ohio-6900, we examined whether the "capable of repetition, yet evading review" exception might apply to permit appellate review notwithstanding the underlying mootness of the issue. *Id.* at ¶ 15-17. We found that there was no reasonable expectation of repetition due to Holmes being unlikely to rent from the same landlord and that this was not one of the rare, exceptional cases of public or great general interest demanding resolution despite mootness. *Id.* at ¶ 17. On appeal, Holmes has not argued the issue of mootness or exceptions to mootness. For the same reasons set forth in *Landings*, 2020-Ohio-6900, we do not extend the "capable of repetition, yet evading review" exception to this case.

Appendix BB

Supreme Court of Ohio Clerk of Court - Filed August 17, 2022 - Case No. 2022-0683

The Supreme Court of Ohio

Rosalind Holmes

v.

The Honorable, Judge C. Caparella- Kraemer

Case No. 2022-0683

IN PROHIBITION

ENTRY

This cause originated in this court on the filing of a complaint for a writ of prohibition.

Upon consideration of respondent's motion to dismiss, it is ordered by the court that the motion to dismiss is granted. Accordingly, this cause is dismissed.

It is further ordered that relator's motion for leave to amend the complaint for writ of prohibition is denied.

Maureen O'Connor
Chief Justice

Appendix CC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:20-cv-825

McFarland, J.
Litkovitz, M.J.

REPORT AND RECOMMENDATION

On October 20, 2020, plaintiff Rosalind Holmes, a resident of West Chester, Ohio, filed a complaint against 35 defendants, including the United States of America, former Federal Bureau of Investigation (FBI) director James Comey, former director of the National Security Agency Admiral Michael Rodgers, and former Attorney General Eric Holder; former FBI agents; the City of Cincinnati, City officials, and City council members; plaintiff's former attorney and law firm; former Ohio Disciplinary Counsel officials; "Lakefront" and Lakefront Property and Regional Managers; the Director of the University of Cincinnati Health Dental Center; PLK Communities; and the State of Ohio. (Docs. 1-1, 5). On initial screening of plaintiff's complaint under 28 U.S.C. § 1915(e)(2)(B), the undersigned issued a Report and Recommendation recommending that plaintiff's complaint be dismissed for lack of federal jurisdiction and for failure to state a claim upon which relief may be granted. (Doc. 7).

Plaintiff filed objections to the Report and Recommendation (Doc. 8) and an amended complaint (Doc. 9) on November 12, 2020. In view of the filing of plaintiff's amended complaint, which is permitted "once as a matter of course" pursuant to Fed. R. Civ. P. 15(a)(1), the District Judge determined that the Report and Recommendation should be denied as moot. (Doc. 10).

This matter is now before the Court for a *sua sponte* review of plaintiff's amended

complaint (Doc. 9) to determine whether the amended complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

This matter is also before the Court on plaintiff's motion for equitable tolling, breach of contract, injunctive relief. (Doc. 6).

I. Standard of Review

In enacting the original *in forma pauperis* statute, Congress recognized that a "litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." *Denton v. Hernandez,* 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams,* 490 U.S. 319, 324 (1989)). To prevent such abusive litigation, Congress has authorized federal courts to dismiss an *in forma pauperis* complaint if they are satisfied that the action is frivolous or malicious. *Id.*; *see also* 28 U.S.C. § 1915(e)(2)(B)(i). A complaint may be dismissed as frivolous when the plaintiff cannot make any claim with a rational or arguable basis in fact or law. *Neitzke v. Williams,* 490 U.S. 319, 328-29 (1989); *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). An action has no arguable legal basis when the defendant is immune from suit or when plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke,* 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or "wholly incredible." *Denton,* 504 U.S. at 32; *Lawler,* 898 F.2d at 1199. The Court need not accept as true factual allegations that are "fantastic or delusional" in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Neitzke*, 490 U.S. at 328).

Congress also has authorized the *sua sponte* dismissal of complaints that fail to state a

claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). A complaint filed by a pro se plaintiff must be "liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble,* 429 U.S. 97, 106 (1976)). By the same token, however, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Hill*, 630 F.3d at 470-71 ("dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim" under §§ 1915A(b)(1) and 1915(e)(2)(B)(ii)).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). The Court must accept all well-pleaded factual allegations as true, but need not "accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Although a complaint need not contain "detailed factual allegations," it must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557. The complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson*, 551 U.S. at 93 (citations omitted).

II. Plaintiff's Amended Complaint

Plaintiff, an African American, was employed by the City of Cincinnati from November

2008 to December 2016. In her 109 page, 414 paragraph amended complaint, plaintiff has named several new defendants in addition to the 35 previously named defendants: Jessica Banks, Lakefront at West Chester Property Manager; Jacque Keller, Lakefront at West Chester Regional Manager; Lakefront at West Chester; Georgia Pacific; Georgia Pacific Does; Enterprise Rent A Car; and Enterprise Rent A Car Does. The amended complaint, which is brought against federal, state, and City of Cincinnati officials and private individuals, alleges numerous federal and state law violations. Plaintiff alleges, inter alia, that governmental officials failed to properly investigate her complaints of unwarranted and illegal surveillance and discrimination. She alleges that starting in 2009 through the present, defendants have engaged in a conspiracy to violate her rights. She further alleges claims of employment discrimination under state and federal law against the City of Cincinnati and Georgia Pacific. (Doc. 9, ¶ 7).

The amended complaint alleges, "Under Section 702 of the Foreign Intelligence Surveillance Act, the government conducts warrantless surveillance on U.S. soil of vast quantities of communications entering and leaving the United States—including communications sent and received by Americans, like plaintiff." (Doc. 9, ¶ 59). Plaintiff alleges that she "reported this unauthorized surveillance to the appropriate authorities, who failed to investigate her repeated complaints of constitutional violations." (*Id.*, at ¶ 67).

In 2014, she contacted the Cincinnati mayor, other City officials, and City council members to complain about the "unauthorized surveillance taking place on her devices." (*Id.*, at 68-69). Plaintiff alleges that City officials failed to investigate her complaints about the unauthorized surveillance and "conspiracy." She also alleges she was wrongfully accused of workplace violence in October 2014. Plaintiff states that officials failed to properly investigate the accusation and conducted a "sham" hearing. The amended complaint also recounts

numerous instances of "gross negligent misconduct and fraud" by City officials, which allegedly began in 2009.

Paragraphs 78 through 92 of the amended complaint contain allegations concerning a "history of gross negligent misconduct and fraud by City officials" spanning from December 2009 through October 2013 relating to plaintiff's employment with the City.

Plaintiff further alleges that in 2014 and 2015, she reported the unauthorized surveillance and discrimination to the Fairfield, Ohio police, to a special agent with the Cincinnati FBI, to congressional representatives, and to the Department of Justice. (*Id.*, ¶¶ 94-103). The amended complaint states that "[f]rom February 2015 to December 2019, plaintiff continued to provide the DOJ [Department of Justice], OIG [Office of Inspector General], and elected officials such as President Trump, and Senator Sherrod Brown with documentation and information describing the ongoing harassment, discrimination, conspiracy and constitutional violations." (*Id.*, ¶ 104). She alleges that the FBI failed to investigate her complaints and engaged in a conspiracy to deprive her of her constitutional rights. (*Id.*, ¶¶ 105-107).

Plaintiff states that in April 2020, she made a request under the Freedom of Information Act to the FBI and OIG for "any and everything pertaining to her." (*Id.*, ¶ 109). In response, plaintiff was advised that the FBI and OIG were unable to identify records responsive to her request. Plaintiff alleges this was not truthful as she had previously contacted the Cincinnati division of the FBI and made a report to an unknown investigator, which included supporting documentation. Plaintiff states the Inspector General for the Department of Commerce (DOC) acknowledged receiving her letter, but she did not know what the department did with her letter. Plaintiff concluded that based on the FBI, OIG, and DOC's responses, no investigations into plaintiff's complaints were conducted. (*Id.*, ¶¶ 109-110).

Plaintiff further alleges that Elizabeth Tuck (Loring), her former attorney, failed to adequately represent her before the Equal Employment Opportunity Commission (EEOC) in connection with plaintiff's allegations of employment discrimination against the City of Cincinnati. She alleges that defendant Tuck filed duplicate EEOC charges without plaintiff's authorization. The amended complaint alleges that defendant Tuck represented plaintiff from November 2012 through June 2014, and that defendants Randy Freking, Kelly Mulloy Myers and George Reul, partners of the Freking, Myers & Reul law firm, failed to properly train, supervise and correct the negligent actions of defendant Tuck. (*Id.*, ¶¶ 111-121).

The amended complaint also alleges that in September 2014, the Ohio Disciplinary Counsel wrongfully accused plaintiff of submitting fraudulent emails to the Disciplinary Counsel in connection with her complaint against defendant Tuck. Plaintiff alleges that Catherine Russo, Scott Drexel, and Joseph Caligiuri knew that the fraud accusations against plaintiff were false; knowingly memorialized and publicized the false fraud accusations; and did so to benefit the City of Cincinnati, Tuck, and Freking, Myers, & Reul. (*Id.*, ¶¶ 122-137)

Plaintiff alleges that in July 2018, she was routinely followed and monitored by an unknown FBI agent. She also alleges that from October 2018 to March 2019, she was continuously denied employment and terminated from numerous jobs due to defendants' continuous campaign against her. (*Id.*, ¶¶ 138-157). She further alleges that she contacted an attorney on June 13, 2019 to request legal assistance, but "[t]he government did not want plaintiff to obtain legal representation , so they retaliated against plaintiff." (*Id.*, ¶ 160).

Plaintiff also alleges that in June 2019 defendants conspired with the University of Cincinnati Medical Center to have plaintiff dismissed from its low-cost Dental Center in the middle of having a dental implant developed for her front tooth. (*Id.*, ¶¶ 161). She alleges that

she has been incapable of obtaining a dental implant. (*Id.*).

Plaintiff alleges that in July 2019, the "defendants continued to harass plaintiff by conspiring with the Psychiatric Unit of a local hospital." (Id., ¶ 162). The amended complaint states, "Specifically, defendants had plaintiff involuntarily committed to the Psychiatric Unit where drugs were forced onto plaintiff for no reason." (*Id.*). Plaintiff alleges that while she was involuntarily committed to the Psychiatric Unit, representative from Enterprise Rent A Car contacted her several times about returning her rental vehicle. Plaintiff alleges she did not have access to her cell phone and could not contact Enterprise Rent A Car or return the car in a timely manner. (*Id.*, ¶ 164).

Plaintiff alleges that in March 2020, she contacted organizations "to request legal assistance with the ongoing conspiratorial campaign of unlawful actions taken against plaintiff by the FBI and others. The government immediately conspired with Enterprise Rent A Car and retaliated against plaintiff for attempting to obtain legal assistance from the organizations." (*Id.*, ¶ 166). She alleges that defendants have conspired with Enterprise Rent-A-Car and had plaintiff placed on the "Do Not Rent List." (*Id.*, ¶ 167). The amended complaint alleges that Enterprise advised plaintiff she owed an amount of $671.00, which she denies, and failed to provide her with a legitimate reason for placing her on the "Do Not Rent List." (*Id.*, ¶ 168).

The amended complaint further alleges that plaintiff was hired as a Plant Accountant for Georgia Pacific on October 29, 2019 and fired on November 15, 2019. (*Id.*, ¶ 172). On November 15, 2019, plaintiff was advised she was being terminated because she did not "fit within [the] culture." (*Id.*, ¶ 173). The divisional controller and senior human resources manager refused to provide plaintiff with any explanation or reasons for the termination. (*Id.*). On November 19, 2019, plaintiff "filed a complaint with the Ohio Civil Rights Commission

[OCRC] and the EEOC for race, sex, and retaliation based on her prior federal discrimination lawsuit filed against the City of Cincinnati case number 1:14 CV 00582." (*Id.*, ¶ 174). During the OCRC investigation, Georgia Pacific filed a position statement with an explanation for plaintiff's termination: "Given the amount of unsolicited feedback received about Charging Party's behavior within the first two weeks of employment, . . . Regional Controller concluded that Charging Party's interactions with colleagues were extraordinarily discourteous and unprofessional, and that Plaintiff's lack of interest and attentiveness during training sessions with Ms. Cobb indicated that she was not receptive to coaching and training." (*Id.*, ¶ 175, Ex. K). Plaintiff provided a rebuttal to this statement, alleging Georgia Pacific's reason for termination was false. (Id., ¶ 176, Ex. L). Plaintiff states she informed the OCRC that she was questioned by the Plant Accountant about her previous federal discrimination lawsuit against the City of Cincinnati. Plaintiff alleges this disclosure was a motivating factor for her termination. She alleges she never received warnings or counseling from Georgia Pacific prior to her termination. (*Id.*, ¶¶ 177-183). Plaintiff also alleges that during her employment with Georgia Pacific, she was treated less favorably than similarly situated non-African American employees with respect to her termination. (*Id.*, ¶ 403).

The amended complaint further alleges that from July 2019 to the present, plaintiff has moved on three occasion due to defendants' conspiratorial actions. Plaintiff alleges that defendants have engaged in a conspiracy with the property management company of each apartment community where plaintiff has lived to have her wrongfully evicted. In July and August 2020, plaintiff advised the managers of Lakefront about the "ongoing conspiracy and warrantless surveillance being conducted by the government." (*Id.*, ¶ 190). The managers dismissed plaintiff's claims as unfounded. Plaintiff alleges that in September 2020, the

Lakefront Property Manager ordered plaintiff to move out immediately in retaliation for plaintiff's communications with a local TV news outlet's investigation team. Later, plaintiff was told she could stay, but only after plaintiff had given all of her furniture away. Plaintiff further alleges that after she included Jessica Banks and Jacque Keller as defendants in her complaint, she notice that someone had entered her apartment and tampered with her belongings. (*Id.*, ¶¶ 191-196).

The amended complaint alleges:

> Defendants have ruined plaintiff's life and career by preventing her from gaining employment, having her fired off several jobs, spreading false accusations, rumors, thereby isolating plaintiff from meaning relationships with others and ruining every relationship in her life including her marriage and divorce. Plaintiff has already suffered from the irreparable harm to her financial stability, good reputation due to Defendants' conspiratorial false fraud accusations, continual discrimination, retaliation, and warrantless surveillance. In addition, defendants have planted camera's and other devices in plaintiff's home to continuous (sic), monitor, harass, manage, conspire, dictate and control plaintiff['s] entire life. The only way to repair the damage to plaintiff is to grant immediate injunctive and declaratory relief and to provide plaintiff with a new identity. For clarification, this is not an all-inclusive description of defendants' conspiratorial actions. However, it is just a summary of defendants, unlawful behavior directed at plaintiff.

(*Id.*, ¶ 197). Plaintiff alleges that from July 2009 through the present, all of the defendants subjected her to discriminatory, conspiratorial, and malicious actions and have violated her rights. (*Id.*, ¶¶198-244).

Based on the foregoing, plaintiff brings the following causes of action: Count I: Federal Constitutional Claim – Equal Protection and Due Process – Abuse of Power; Count II: Federal Constitutional Claim – Equal Protection and Due Process – Gross Negligence; Count III: Federal Constitutional Claim – Equal Protection and Due Process Violation – Discrimination; Count IV: Federal Constitutional Claim – Unlawful Search and Seizure; Count V: Federal Constitutional Claim – Equal Protection and Due Process Federal Conspiracy; Count VI: Federal Tort Claims

Act - Invasion of Privacy – intrusion upon Seclusion; Count VII: Federal Tort Claims Act – Invasion of Privacy – False Light; Count VIII: Federal Tort Claims Act – Tortious Interference; Count IX: Federal Tort Claims Act – Intentional Infliction of Emotional Distress; Count X: Federal Tort Claims Act – Gross Negligence; COUNT XI: Plaintiff Rosalind Holmes v. Defendants Comey, Holder, and Rogers Federal Constitutional Claim – Return and Expungement of Information Unlawfully Searched and Seized; COUNT XII: Discrimination, 42 U.S.C. § 1981 – Discrimination & Retaliation; COUNT XIII: Discrimination – 42 U.S.C. § 1983 Deprivation of Rights; COUNT XIV: Discrimination – 42 U.S.C. § 1985 Conspiracy to Interfere with Civil Rights; and COUNT XV: Conspiracy – 42 U.S.C. § 1986 Action for Neglect to Prevent. Counts XVI through XXIII allege claims under Ohio law. Count XXIV alleges race discrimination against Georgia Pacific and the City of Cincinnati under Title VII and Ohio law.

III. Resolution

At this stage in the proceedings, without the benefit of briefing by the parties to this action, the undersigned concludes that plaintiff's employment discrimination claim against defendant Georgia Pacific is deserving of further development and may proceed at this juncture. *See* 28 U.S.C. § 1915(e)(2)(B). However, the remainder of plaintiff's amended complaint fails to state a claim with an arguable basis in law over which this federal Court has subject matter jurisdiction.

First, to the extent plaintiff may be invoking the diversity jurisdiction of the Court under 28 U.S.C. § 1332(a) with respect to her state law claims, the amended complaint reveals such jurisdiction is lacking. In order for diversity jurisdiction pursuant to § 1332(a) to lie, the citizenship of the plaintiff must be "diverse from the citizenship of each defendant" thereby ensuring "complete diversity." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (citing *State*

Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 531 (1967)); *see also Napletana v. Hillsdale College*, 385 F.2d 871, 872 (6th Cir. 1967); *Winningham v. North American Res. Corp.*, 809 F. Supp. 546, 551 (S.D. Ohio 1992). In this case, there is no complete diversity because plaintiff and numerous defendants are residents of the State of Ohio. Therefore, this Court lacks subject matter jurisdiction on the basis of diversity of citizenship over any state law claims plaintiff may be alleging.

Second, the Court is without federal question jurisdiction over the amended complaint with the exception of plaintiff's race discrimination claim against Georgia Pacific. District courts have original federal question jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In order to invoke the Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331, plaintiff must allege facts showing the cause of action involves an issue of federal law. *See Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987).

The majority of plaintiff's causes of action do not state claims for relief because they are time-barred. Plaintiff's civil rights claims under § 1983 are governed by Ohio's two-year statute of limitations applicable to personal injury claims. *See, e.g., Browning v. Pendleton*, 869 F.2d 989, 992 (6th Cir. 1989) (holding that the "appropriate statute of limitations for 42 U.S.C. § 1983 civil rights actions arising in Ohio is contained in Ohio Rev. Code § 2305.10, which requires that actions for bodily injury be filed within two years after their accrual"); *see also Wallace v. Kato*, 549 U.S. 384, 387 (2007) (and Supreme Court cases cited therein) (holding that the statute of limitations governing § 1983 actions "is that which the State provides for personal-injury torts"); *Zundel v. Holder*, 687 F.3d 271, 281 (6th Cir. 2012) ("the settled practice . . . to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so" is

applicable "to § 1983 actions and to *Bivens* actions because neither the Federal Constitution nor the § 1983 statute provides timeliness rules governing implied damages") (internal citation and quotation marks omitted). Plaintiff's § 1985 and *Bivens*[1] claims likewise have a two-year statute of limitations. *See Dotson v. Lane*, 360 F. App'x 617, 620 n.2 (6th Cir. 2010) (§ 1985); *Zappone v. United States*, 870 F.3d 551, 559 (6th Cir. 2017) (*Bivens*). Plaintiff's § 1986 claim has a one-year statute of limitations. *See* 42 U.S.C. § 1986 ("[N]o action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."). Although the statute of limitations is an affirmative defense, when it appears clear on initial screening of the complaint that the action is time-barred, the complaint may be dismissed for failure to state a claim upon which relief may be granted. *See Jones v. Bock,* 549 U.S. 199, 215 (2007). *Cf. Fraley v. Ohio Gallia Cnty.*, No. 97-3564, 1998 WL 789385, at *1-2 (6th Cir. Oct. 30, 1998) (holding that the district court "properly dismissed" the *pro se* plaintiff's § 1983 civil rights claims under 28 U.S.C. § 1915(e)(2)(B) because the complaint was filed years after Ohio's two-year statute of limitations had expired); *Anson v. Corr. Corp. Of America,* No. 4:12cv357, 2012 WL 2862882, at *2-3 (N.D. Ohio July 11, 2012) (in *sua sponte* dismissing complaint under 28 U.S.C. § 1915(e), the court reasoned in part that the plaintiff's *Bivens* claims asserted "six years after the events upon which they are based occurred" were time-barred under Ohio's two-year statute of limitations for bodily injury), *aff'd*, 529 F. App'x 558 (6th Cir. 2013).

Here, it is clear from the face of the amended complaint that plaintiff's federal claims regarding incidents from 2009 through October 2018 are time-barred. Plaintiff filed the instant case on October 20, 2020, long after the two-year limitations period expired for most of her claims in this case. Therefore, plaintiff's claims which occurred prior to October 2018 are

[1] *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

subject to dismissal at the screening stage on statute of limitations grounds.

Plaintiff contends that these claims should not be time barred under the doctrine of equitable tolling. (Doc. 6). The Court disagrees.

Equitable tolling generally "applies when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Graham–Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000) (citing *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984)). Plaintiff bears the burden of establishing equitable tolling applies to her claims. *Jackson v. United States*, 751 F.3d 712, 718-19 (6th Cir. 2014). To carry her burden, plaintiff must demonstrate more than just "a garden variety claim of excusable neglect." *Zappone v. United States*, 870 F.3d 551, 556 (6th Cir. 2017) (quoting *Chomic v. United States, 311* F.3d 607, 615 (6th Cir. 2004)).

Equitable tolling is applied sparingly. *Zappone*, 870 F.3d at 556 (citing *Jackson*, 751 F.3d at 718). Whether to apply equitable tolling in a given case "lies solely within the discretion of the trial court." *Betts v. C. Ohio Gaming Ventures, LLC*, 351 F. Supp. 3d 1072, 1075 (S.D. Ohio 2019) (citing *Truitt v. Cty. of Wayne*, 148 F.3d 644, 648 (6th Cir. 1998)). Courts in the Sixth Circuit consider five factors to determine whether the equitable tolling doctrine should be applied. *Zappone,* 870 F.3d at 556 (citing *Jackson*, 751 F.3d at 718) (citing *Truitt*, 148 F.3d at 648). The factors are: (1) lack of notice of the filing requirement; (2) lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights; (4) absence of prejudice to the defendant; and (5) the plaintiff's reasonableness in remaining ignorant of the particular legal requirement. *Truitt*, 148 F.3d at 648. These factors are considered on a case-by-case basis. *Id.* They are not necessarily comprehensive, and the court may consider additional factors. *Betts*, 351 F. Supp. 3d at 1075 (citing *Allen v. Yukins*, 366 F.3d 396, 401 (6th Cir.

2004)). *See also Graham-Humphreys*, 209 F.3d at 560-61 (citing *Truitt*, 148 F.3d at 648). Often "the most significant consideration in courts' analyses" will be the plaintiff's "'failure to meet a legally-mandated deadline' due to 'unavoidab[le] . . . circumstances beyond'" the plaintiff's control, not any one of the five *Truitt* factors. *Zappone,* 870 F.3d at 556 (quoting *Graham-Humphreys*, 209 F.3d at 560-61) (citations omitted).

Plaintiff alleges that equitable tolling of the statute of limitations should be applied in this case for the following reasons:

> Defendants actively misled plaintiff and prevented her from exercising her rights. Throughout plaintiff's federal discrimination lawsuit defendants actively engaged in a secret conspiracy designed to violate plaintiff's constitutional rights and cover-up their unlawful actions. Specifically, from the period of July 2014 to the present, defendants engaged in a conspiracy of false fraud allegations and warrantless surveillance with the Ohio Office of Disciplinary Counsel, Elizabeth Tuck, Freking, Myers, Reul and the FBI. Defendants, willfully, deliberately with reckless disregard failed to disclose this information to plaintiff, prior to settlement of her federal discrimination lawsuit. Plaintiff was completely unaware of defendant's conspiracy with the FBI, Elizabeth Tuck, Freking, Myers, Reul and the Disciplinary Counsel, when she agreed to settle her federal discrimination lawsuit. Plaintiff would not have agreed to settle her federal discrimination lawsuit had she known of defendant's conspiratorial behavior. Moreover, Plaintiff pursued her claims with diligence, from the period of July 2009 to the present. Plaintiff filed several complaints alleging among others, unauthorized surveillance, conspiracy, retaliation, discrimination and attorney misconduct to the City of Cincinnati, FBI, and the Ohio Disciplinary Counsel. Plaintiff has written letters to Congressman John Boehner, President Barack Obama, Senator Sherrod Brown, the U.S. Department of Justice and Office of the Inspector General for the DOJ as described above asking for an investigation. Despite plaintiff's diligent efforts to discover her claims by contacting government regulators and officials she was incapable of discovering her claims, because of defendants' deceitfulness. Thus, plaintiff has provided satisfactory evidence to prove the elements of a fraudulent concealment by defendants.

(Doc. 6 at PAGEID 1145-1146).

Plaintiff has failed to allege facts justifying equitable tolling in this case. Her conclusory allegations of a secret conspiracy, warrantless surveillance, and retaliation are insufficient to meet her burden to show her failure to meet the statutory deadlines for filing her causes of action

were due to circumstances beyond her control. *Zappone,* 870 F.3d at 556. Nor has plaintiff shown that she satisfied the five *Truitt* factors. Plaintiff fails to present an argument or explanation why the facts of this case warrant the benefit of equitable tolling. Because plaintiff's federal claims are time-barred and the doctrine of equitable tolling does not apply, her claims pre-dating October 2018 should be dismissed.

Moreover, to the extent plaintiff seeks to resurrect her discrimination claims against the City of Cincinnati that she settled in a previous case (*Holmes v. Cincinnati*, No. 1:14-cv-582), the doctrine of equitable tolling is not applicable. Plaintiff essentially seeks to vacate the settlement of a previous lawsuit against the City of Cincinnati based on an alleged "secret conspiracy to violate" her rights. Filing a second complaint is not the proper vehicle for seeking relief from a previously settled lawsuit against the same defendant.

With respect to the claims that may not be time-barred, the undersigned is unable to discern from the facts alleged in the amended complaint any federal statutory or constitutional provision that applies to give rise to an actionable claim for relief. Plaintiff alleges that from October 2018 to March 2019, she was continuously denied employment and terminated from numerous jobs due to defendants' continuous campaign against her; that in June 2019 defendants conspired with the University of Cincinnati Medical Center to have plaintiff dismissed from its low-cost Dental Center; that defendants conspired with Enterprise Rent-A-Car to have plaintiff placed on the "Do Not Rent List"; and that defendants engaged in a conspiracy with the property management company of each apartment community where plaintiff has lived to have her wrongfully evicted.

Plaintiff's conspiracy claims must be dismissed. Plaintiff's amended complaint provides no factual content or context from which the Court may reasonably infer that the defendants

conspired against plaintiff to violate her constitutional rights. *Iqbal*, 556 U.S. at 678. Plaintiff's allegations of conspiracy are unsupported by specific facts, amount to legal conclusions couched as factual allegations, and are insufficient to give the defendants or the Court notice of the factual basis for plaintiff's conspiracy claims. *Twombly*, 550 U.S. at 555. "It is 'well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under § 1983.'" *Fieger v. Cox*, 524 F.3d 770, 776 (6th Cir. 2008) (quoting *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987)). Plaintiff has not alleged factual allegations to support the inference that a single conspiratorial plan existed, that the alleged co-conspirators shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy. *See Anderson v. Cnty. of Hamilton*, 780 F. Supp.2d 635, 643-44, 652 (S.D. Ohio 2011) (and cases cited therein). Plaintiff's allegations are simply too conclusory to state a claim of a conspiracy to violate a right protected by § 1983. Accordingly, plaintiff's claims of conspiracy under Section 1983 should be dismissed against all of the defendants.

Section 1985 of Title 42 provides a cause of action for conspiracy to deprive an individual equal protection of the law. *See* 42 U.S.C. § 1985(3). To state a § 1985(3) claim, plaintiff must show that (1) two or more persons conspired (2) for the purpose of depriving the plaintiff of the equal protection of the laws due to racial or class-based discriminatory animus, (3) an act "in furtherance of the object of such conspiracy" and (4) an injury to the plaintiff resulting from such act. *See United Bhd. of Carpenters, Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983). *See also Ashbiegu v. Purviance*, 76 F. Supp. 2d 824, 830 (S.D. Ohio 1998). As with her Section 1983 conspiracy claim, plaintiff has failed to plead specific facts in support of her § 1985 conspiracy claims as related to the incidents that are not time-barred. Plaintiff has alleged

no facts showing that defendants' actions were in any way motivated by racial or class-based animus. In addition, the amended complaint fails to state a claim under 42 U.S.C. § 1985(2), which pertains to conspiracies aimed at deterring witnesses or jurors in federal court. Plaintiff's amended complaint contains no allegations whatsoever that could plausibly be construed as stating a claim under this subsection for claims that are not time-barred. Therefore, plaintiff's conspiracy claims under Section 1985 should be dismissed.

As plaintiff has no viable claim under 42 U.S.C. § 1985, she also has no claim under 42 U.S.C. § 1986. "Section 1986 establishes a cause of action against anyone, who has knowledge of a conspiracy under § 1985, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do." *Radvansky v. City of Olmstead Falls,* 395 F.3d 291, 314 (6th Cir. 2005) (internal quotation marks omitted). Because the amended complaint does not state a claim under § 1985, it necessarily follows that there can be no liability under § 1986. *Id.* at 315. Therefore, plaintiff's claim under 42 U.S.C. § 1986 should also be dismissed for failure to state a claim for relief.

The Court notes that plaintiff's 24 causes of action do not include a claim for a violation of the Freedom of Information Act. In any event, it appears that plaintiff fails to state a claim for relief under the FOIA because she has failed to allege that she made a proper FOIA request; the records requested fall within the purview of the statute; and she has exhausted the available administrative remedies prior to bringing an action in federal court. *See Sykes v. United States*, 507 F. App'x. 455, 463 (6th Cir. 2012).

In sum, with the exception of plaintiff's employment discrimination claim against Georgia Pacific, the amended complaint provides no factual content or context from which the Court may reasonably infer that the named defendants violated plaintiff's rights. *Iqbal*, 556 U.S.

at 678. Accordingly, plaintiff's amended complaint should be dismissed for lack of federal jurisdiction and for failure to state a claim upon which relief may be granted.

IV. Plaintiff's motion for equitable tolling, breach of contract, injunctive relief (Doc. 6)

As discussed above, plaintiff's motion for equitable tolling should be denied. The remainder of plaintiff's motion should also be denied as the sole cause of action remaining after screening, her employment discrimination claim against Georgia Pacific, is unrelated to the relief requested in this motion. In addition, the reasons for the Court's recommendation for dismissal of the remainder of plaintiff's claims are unrelated and distinct to the "defenses" and relief plaintiff seeks through her motion. For example, plaintiff asserts "equitable estoppel as a defense in deciding whether to grant certain defendants dismissal based upon them having vacated or loss of their positions through the elections process or otherwise." (Doc. 6 at 29). This "defense" has no bearing on whether any of the claims against the named defendants should be dismissed. Therefore, the motion (Doc. 6) should be denied.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's amended complaint be **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B), **with the exception of** plaintiff's employment discrimination claim against Georgia Pacific.

2. Plaintiff's motion for equitable tolling, breach of contract, injunctive relief (Doc. 6) be **DENIED.**

3. The Court certify pursuant to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of any Order adopting this Report and Recommendation would not be taken in good faith and therefore deny plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals. *See Callihan v. Schneider*, 178 F.3d 800,

803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, 105 F.3d 274, 277 (6th Cir. 1997).

IT IS THEREFORE ORDERED THAT:

1. As plaintiff has previously been granted leave to proceed *in forma pauperis*, within **thirty (30) days** of receipt of this Order, plaintiff is **ORDERED** to submit a copy of her amended complaint, a completed summons form, and a United States Marshal form for defendant Georgia Pacific for purposes of service of process by the United States Marshal.

2. The **Clerk of Court** is **DIRECTED** to send to plaintiff a summons form and a United States Marshal form for this purpose. Upon receipt of the completed summons and United States Marshal forms, the Court shall order service of process by the United States Marshal in this case.

3. Plaintiff shall inform the Court promptly of any changes in her address which may occur during the pendency of this lawsuit.

Karen L. Litkovitz
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:20-cv-825

McFarland, J.
Litkovitz, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).

Appendix DD

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI

ROSALIND HOLMES,	:	Case No. 1:20-cv-825
Plaintiff,	:	Judge Matthew W. McFarland
v.	:	
UNITED STATES OF AMERICA, *et al.*,	:	
Defendants.	:	

ENTRY AND ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 13)

This case is before the Court on Plaintiff's Objections (Doc. 14) to Magistrate Judge Karen L. Litkovitz's Report and Recommendation (Doc. 13). Magistrate Judge Litkovitz found that the majority of Plaintiff's amended complaint "fails to state a claim with an arguable basis in law over which this federal Court has subject matter jurisdiction." (Doc. 13.) As such, Magistrate Judge Litkovitz recommends that Plaintiff's amended complaint, with the exception of Plaintiff's employment discrimination claim against Georgia Pacific (Count XXIV), be dismissed with prejudice. Plaintiff filed Objections (Doc. 14), making this matter ripe for the Court's review.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that Plaintiff's Objections (Doc. 14) are not well-taken and are thus **OVERRULED**. The Court therefore **ADOPTS** the Report and Recommendation (Doc. 13) in its entirety. As

such, the Court hereby **ORDERS** that:

(1) Plaintiff's amended complaint (Doc. 9), with the exception of Plaintiff's employment discrimination claim against Georgia Pacific (Count XXIV), is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915(e)(2)(B); and

(2) Plaintiff's motion for equitable tolling, breach of contract, injunctive relief (Doc. 6) is **DENIED**.

Furthermore, the Court **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a), that any appeal of this Order would not be taken in good faith and therefore **DENIES** Plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: _____
JUDGE MATTHEW W. McFARLAND

Appendix EE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: April 02, 2021

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3206, *Rosalind Holmes v. USA, et al*
Originating Case No. 1:20-cv-00825

Dear Ms. Holmes:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Monica M. Page
Case Manager
Direct Dial No. 513-564-7021

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 21-3206

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

ORDER

Before: NORRIS, WHITE, and BUSH, Circuit Judges.

This matter is before the court upon initial consideration to determine whether this appeal was taken from an appealable order.

On February 26, 2021, the district court partially dismissed Rosalind Holmes's civil-rights action. On March 1, 2021, Holmes filed a notice of appeal from the partial dismissal order.

This court lacks jurisdiction over this appeal. The February 26 order disposed of fewer than all of the claims and parties involved in this action and did not direct entry of a final, appealable judgment under Federal Rule of Civil Procedure 54(b). *See* Fed. R. Civ. P. 54(b); *Solomon v. Aetna Life Ins. Co.*, 782 F.2d 58, 59-60 (6th Cir. 1986). Nor was the partial dismissal an immediately appealable "collateral order" under the doctrine announced in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546-47 (1949). The district court has not entered its final

decision during the pendency of this appeal; therefore, we lack appellate jurisdiction over this interlocutory appeal. *See Gillis v. U.S. Dep't of Health & Human Servs.*, 759 F.2d 565, 568-69 (6th Cir. 1985).

Accordingly, it is ordered that the appeal is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
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Filed: July 12, 2021

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3491, *Rosalind Holmes v. USA, et al*
Originating Case No.: 1:20-cv-00825

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Sharday S. Swain
Case Manager
Direct Dial No. 513-564-7027

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 21-3491

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROSALIND HOLMES, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

O R D E R

Before: NORRIS, DONALD, and THAPAR, Circuit Judges.

This matter is before the Court upon initial consideration to determine whether this appeal was taken from an appealable order.

On February 26, 2021, the district court partially dismissed Rosalind Holmes's civil rights action. We previously dismissed an appeal from the partial dismissal order for lack of appellate jurisdiction. *See Holmes v. United States*, No. 21-3206 (6th Cir. Apr. 2, 2021) (order). On May 25, 2021, Holmes filed another notice of appeal from the partial dismissal order (No. 21-3491, the current appeal).

This Court lacks jurisdiction over appeal No. 21-3491. The February 26 order disposed of fewer than all of the claims and parties involved in this action and did not direct entry of a final, appealable judgment under Federal Rule of Civil Procedure 54(b). *See* Fed. R. Civ. P. 54(b);

Solomon v. Aetna Life Ins. Co., 782 F.2d 58, 59-60 (6th Cir. 1986). Nor was the partial dismissal an immediately appealable "collateral order" under the doctrine announced in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546-47 (1949). The district court has not entered its final decision during the pendency of this appeal; therefore, we lack appellate jurisdiction over this interlocutory appeal. *See Gillis v. U.S. Dep't of Health & Human Servs.*, 759 F.2d 565, 568-69 (6th Cir. 1985).

Accordingly, it is ordered that appeal No. 21-3491 is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
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Tel. (513) 564-7000
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Filed: July 12, 2021

Ms. Rosalind Holmes
4557 Wyndtree Drive
Apartment 145
West Chester, OH 45069

Re: Case No. 21-3521, *Rosalind Holmes v. USA, et al*
Originating Case No. : 1:20-cv-00825

Dear Ms. Holmes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Sharday S. Swain
Case Manager
Direct Dial No. 513-564-7027

cc: Mr. Richard W. Nagel

Enclosure

No mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 21-3521

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 12, 2021
DEBORAH S. HUNT, Clerk

ROSALIND HOLMES, Plaintiff-Appellant, v. UNITED STATES OF AMERICA, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

ORDER

Before: NORRIS, DONALD, and THAPAR, Circuit Judges.

This matter is before the Court upon initial consideration to determine whether this appeal was taken from an appealable order.

On February 26, 2021, the district court partially dismissed Rosalind Holmes' civil rights action. We previously dismissed an appeal from the partial dismissal order for lack of appellate jurisdiction. *See Holmes v. United States*, No. 21-3206 (6th Cir. Apr. 2, 2021) (order). On April 15, 2021, a magistrate judge denied, *inter alia*, Holmes' motions to appoint counsel and to file medical documents and exhibits under seal. On May 31, 2021, Holmes filed a notice of appeal from the magistrate judge's order (No. 21-3521, the current appeal).

We lack jurisdiction over appeal No. 21-3521. Any review of the magistrate judge's order must first be sought in the district court. *Ambrose v. Welch*, 729 F.2d 1084, 1085 (6th Cir. 1984) (per curiam).

Accordingly, it is ordered that appeal No. 21-3521 is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix FF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

ORDER

This matter is before the Court on several motions. Most recently, plaintiff has moved for an oral hearing on all outstanding motions. (Doc. 26) (referencing Doc. 1 at PAGEID 10-14; Docs. 11, 19-20, 23-24). Because the Court will dispose of each outstanding motion in this Order, oral argument is not "essential to the[ir] fair resolution" and plaintiff's motion for an oral hearing will be denied as moot. *See* S.D. Ohio Civ. R. 7.1.

Plaintiff has requested that "the Court . . . wait until after a decision has been rendered [on her appeal (*see* Doc. 21) of the District Court's order (Doc. 18) adopting this Court's Report and Recommendation (Doc. 13)] to send the amended complaint [(Doc. 9)]." (Doc. 19).[1] Plaintiff has relatedly moved for certification under Rule 54(b) of the Federal Rules of Civil Procedure that the District Court's order was a final appealable order entered with no just reason for delay, notwithstanding the fact that it disposed of fewer than all of plaintiff's claims. (Doc. 23). The United States Court of Appeals for the Sixth Circuit dismissed plaintiff's appeal (Doc. 25), mooting both motions.

Plaintiff also filed an amended motion to appoint counsel and request for oral hearing (Doc. 24), referencing a prior such motion made October 20, 2020 as part of her *in forma pauperis* motion and upon which the District Court has not ruled. (*Id.* at PAGEID 1496; *see also*

[1] The Court denied a prior, similar request. (*See* Doc. 17).

Doc. 1 at PAGEID 10-14). The law does not require the appointment of counsel for indigent plaintiffs in cases such as this, *see Lavado v. Keohane*, 992 F.2d 601, 604-05 (6th Cir. 1993), nor has Congress provided funds with which to compensate lawyers who might agree to represent those plaintiffs. The appointment of counsel in a civil proceeding is not a constitutional right and is justified only by exceptional circumstances. *Id.* at 605-06. *See also Lanier v. Bryant*, 332 F.3d 999, 1006 (6th Cir. 2003). Moreover, there are not enough lawyers who can absorb the costs of representing persons on a voluntary basis to permit the Court to appoint counsel for all who file cases on their own behalf. The Court makes every effort to appoint counsel in those cases which proceed to trial and in exceptional circumstances will attempt to appoint counsel at an earlier stage of the litigation. No such circumstances appear in this case. Pursuant to S.D. Ohio Civ. R. 7.1, the Court finds that oral argument is not "essential to the fair resolution" of this case and plaintiff's motions to appoint counsel (Doc. 1 at PAGEID 10-14; Doc. 24) will be denied.

Also included in plaintiff's *in forma pauperis* motion is a motion for permission to file electronically. (Doc. 1 at PAGEID 14). As plaintiff demonstrates a willingness and capability to file documents electronically, this motion will be granted. Documents filed electronically shall conform substantially to the requirements of the Local Rules and to the format for the ECF system set out in the most current editions of the ECF Policies and Procedures Manual issued by the Clerk. *See* S.D. Ohio Civ. R. 5.1(c). Plaintiff shall make herself familiar with the Court's ECF policies and procedures, which can be found on the Court's website under "Electronic Case Filing." *See* https://www.ohsd.uscourts.gov/cm-ecf-button2. By registering, plaintiff consents to receive notice of filings pursuant to the Federal Rules of Civil Procedure via the Court's electronic filing system. Permission to file electronically may be revoked at any time.

On December 16, 2020, plaintiff moved for leave to file medical documents and exhibits in support of her motion for temporary restraining order and declaratory relief under seal. (Doc. 11). (*See* Doc. 6 at PAGEID 1150-1195) ("Motion for Preliminary Injunctive and Declaratory Relief"). A plaintiff shoulders a strict and heavy burden on a motion to seal, which may be granted only upon a detailed presentation—tailored to the particular documents to be sealed—of the compelling reasons and legal basis for such relief. *See Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (citing *In re Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)). The District Court, however, denied plaintiff's motion for temporary restraining order (Doc. 6). (Doc. 18). Leaving aside whether plaintiff meets the onerous burden associated with a motion to seal, this motion is moot.

Finally, plaintiff has moved for leave to amend her complaint. (Doc. 20). The attached proposed amended complaint (Doc. 20-1) is limited to defendant Georgia Pacific and counts related to federal and state law discrimination under Title VII, 42 U.S.C. § 1981, and Ohio Rev. Code § 4112. Plaintiff also includes one count (Count VI) for the intentional infliction of emotional distress stemming from the alleged discrimination. The Court is to "freely give leave [to amend a pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2). Plaintiff's proposed amended complaint narrows her claims to those involving employment discrimination consistent with this Court's prior Report and Recommendation (Doc. 13). Therefore, the Court grants plaintiff's motion for leave to file an amended complaint.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's motion for leave to file amended complaint (Doc. 20) is **GRANTED**.
2. Plaintiff's motions to seal (Doc. 11), for extension of time (Doc. 19), for Rule 54(b) certification (Doc. 23), and for an oral hearing on all outstanding motions (Doc. 26)

are **DENIED AS MOOT**.

3. Plaintiff's motions to appoint counsel (Doc. 1 at PAGEID 10-14; Doc. 24) are **DENIED**.
4. Plaintiff's motion for permission to file electronically (Doc. 1 at PAGEID 14) is **GRANTED**. Upon entry of this Order, the Clerk of Court is **DIRECTED** to undertake the necessary steps to register plaintiff to allow her access to the CM/ECF system and to provide plaintiff with the necessary login information.
5. The United States Marshal shall serve a copy of the amended complaint, summons, the Order granting plaintiff *in forma pauperis* status, and this Order on defendant Georgia Pacific as directed by plaintiff, with costs of service to be advanced by the United States.
6. Plaintiff shall inform the Court promptly of any changes in her address which may occur during the pendency of this lawsuit.

IT IS SO ORDERED.

Date: 4/14/2021

Karen L. Litkovitz
United States Magistrate Judge

Appendix GG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

ORDER

This matter is before the Court on plaintiff Rosalind Holmes's motion for a final appealable order pursuant to Federal Rule of Civil Procedure 54(b). (Doc. 30). In particular, plaintiff seeks the entry of final judgment regarding the dismissal (Doc. 18) of Counts I-XXIII in her first amended complaint (Doc. 9) and the dismissal of her motion to appoint counsel (Doc. 27). (*See* Doc. 30 at PAGEID 1572-73). The Sixth Circuit dismissed plaintiff's prior appeal for lack of jurisdiction. (Doc. 25).

Rule 54(b) states:

> When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

Fed. R. Civ. P. 54(b). The Court's power under this Rule is "largely discretionary . . . to be exercised in light of 'judicial administrative interests as well as the equities involved' . . . and giving due weight to 'the historic federal policy against piecemeal appeals.'" *Reiter v. Cooper*, 507 U.S. 258, 265 (1993) (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980)) (internal quotation marks omitted). Rule 54(b) "does not tolerate immediate appeal of every

action taken by a district court." *Gen. Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1026 (6th Cir. 1994). In addition, certification under Rule 54(b) is not necessarily appropriate "even if [judgments on individual claims] are in some sense separable from the remaining unresolved claims." *Curtiss-Wright Corp.*, 446 U.S. at 8.

Here, neither judicial administrative interests nor the equities involved favor an immediate appeal from the order dismissing the majority of plaintiff's claims in her first amended complaint. As the undersigned concluded, these claims did not fall within the jurisdiction of the federal courts and were not premised on "factual content or context from which the Court [could] reasonably infer that the named defendants violated plaintiff's rights." (Doc. 13 at PAGEID 1425-26). Plaintiff's motion for a final appealable order regarding the dismissal of Counts I-XXIII in her first amended complaint (Doc. 18) will be denied.

"[A]n order denying appointment of counsel does not conclusively determine the disputed question prior to the district court's final disposition of the case unless the district court's order was expressly made final." *Henry v. City of Detroit Manpower Dep't*, 763 F.2d 757, 762 (6th Cir. 1985) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)). Here, the Court's disposition of plaintiff's request to appoint counsel is not final. The Court's order referenced the fact that it "makes every effort to appoint counsel in those cases which proceed to trial and in exceptional circumstances. . . ." (Doc. 27 at PAGEID 1552). Should the circumstances of this case change, the Court would be willing to revisit its determination. As such, an appeal at this juncture would be premature. Plaintiff's motion for a final appealable order regarding the denial of her motion for appointment of counsel (Doc. 27) will be denied.

For the reasons above, plaintiff's motion for a final appealable order (Doc. 60) is **DENIED**.

IT IS SO ORDERED.

Date: 5/7/2021

Karen L. Litkovitz
United States Magistrate Judge

Appendix HH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

vs.

GEORGIA PACIFIC,
Defendant.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

ORDER AND REPORT AND RECOMMENDATION

This matter is before the Court on plaintiff Rosalind Holmes's "Motion to Set Aside" (Doc. 61), "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63), "Amended Motion to Set Aside Under 59(E)" (Doc. 64), "Emergency Motion to File Under Seal (Doc. 43), and "Emergency Motion to Schedule an Oral Hearing on all Outstanding Motions" (Doc. 66). Defendant Georgia Pacific filed a response (Doc. 62) to plaintiff's first motion to set aside (Doc. 61).

Briefly summarized, plaintiff filed a twenty-four count amended complaint against dozens of defendants alleging numerous federal and state law violations. (Doc. 9). A series of prior recommendations and orders of the undersigned magistrate judge and the district judge authorized plaintiff to pursue, of those twenty-four claims, only her employment discrimination claim against defendant Georgia Pacific. (*See* Docs. 13, 18, 27-28). On July 21, 2021, plaintiff filed a notice of voluntary dismissal of the authorized, operative complaint asserting this claim (Doc. 28). (Doc. 52). On August 3, 2021, plaintiff filed a notice of appeal pertaining to (1) the dismissal of the twenty-three other claims that had been included in her first (and now superseded) amended complaint (Doc. 9) and (2) this Court's prior order (Doc. 27) denying her

motions to appoint counsel (Docs. 1, 24) and file temporary restraining order under seal (Doc. 11).

The Sixth Circuit dismissed the appeal for lack of jurisdiction. (Doc. 60). It explained that plaintiff had already filed two unsuccessful appeals of the district judge's partial dismissal order and order denying her motion for a final appealable order under Rule 54(b), and plaintiff's latest attempt to secure an appeal related to the twenty-three dismissed claims was likewise futile. (*Id.* at PAGEID 2292). The Sixth Circuit held that "because [plaintiff's] dismissal [of the remaining viable claim] is without prejudice, she is not precluded from re-filing her claim against Georgia Pacific. Any other approach would facilitate an end run around Rule 54. . . ." (*Id.*) (citing *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 427 (6th Cir. 2021), and *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC*, 733 F.3d 658, 661-62 (6th Cir. 2013)).[1] Plaintiff's pending motions are filed in response to the Sixth Circuit's order and seek, again, a final appealable order as to the twenty-three dismissed claims and, most logically understood as alternatively, a return to the status quo prior to her notice of voluntary dismissal.

In her "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63), plaintiff seeks reconsideration of this Court's denial of Rule 54(b) certification in order for the District Court to "direct the entry of final judgment on counts I – XXIII that this Court dismissed in its Order adopting the Report and Recommendation of Magistrate Judge Litkovitz. (Doc #18)." (*Id.* at PAGEID 2306). This Court denied plaintiff's first motion for Rule 54(b) certification on April 15, 2021 (*see* Docs. 23, 27) and a second such motion on May 10, 2021 (*see* Docs. 30, 31). Under Rule 59(e), "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." In addition to plaintiff's motion to reconsider

[1] The Sixth Circuit concluded that it lacked jurisdiction over the second part of the appeal (the undersigned magistrate's prior order (Doc. 27)) because that order had not been subjected to prior district judge review. (*Id.*).

falling well outside that time frame (having been filed August 31, 2021), the Court has already addressed the substantive reasons why Rule 54(b) certification is not appropriate in this case:

> [N]either judicial administrative interests nor the equities involved favor an immediate appeal from the order dismissing the majority of plaintiff's claims in her first amended complaint. As the undersigned concluded, these claims did not fall within the jurisdiction of the federal courts and were not premised on "factual content or context from which the Court [could] reasonably infer that the named defendants violated plaintiff's rights." (Doc. 13 at PAGEID 1425-26).

(Doc. 31 at PAGEID 1581). This motion (Doc. 63) should be denied.

Both of plaintiff's motions to set aside (Docs. 61, 64) seek, in effect, to undo her notice of voluntary dismissal (Doc. 52) in the wake of the Sixth Circuit's dismissal of her appeal (Doc. 60). Plaintiff argues that denial of the relief requested would leave her in "the wholly untenable and unfair position of being forever incapable of appealing this Court's dismissal of twenty-three of her twenty-four claims against Defendants." (Doc. 61 at PAGEID 2295). Georgia Pacific argues in response that plaintiff's action was wholly voluntary and that a tactical error does not warrant 60(b)(6) relief. It was apparently in response to these arguments that plaintiff filed her amended motion to set aside using Rule 59 as opposed to Rule 60(b).[2] Plaintiff's second motion also relies on the district courts' actions following the dismissed appeals in *Page Plus* and *Rowland*, each discussed in the order dismissing plaintiff's appeal (Doc. 60). *See supra* p. 2. In both cases, the Sixth Circuit dismissed appeals in which the parties had agreed to voluntarily dismiss certain claims in order to secure a final judgment on other claims. Upon remand from the Sixth Circuit, the district courts in *Page Plus* and *Rowland* ultimately set aside the voluntary dismissals that precipitated the appeals so that the cases could proceed. *See Page Plus*, N.D.

[2] Construing pro se plaintiff's filings liberally, the Court considers these motions as seeking relief in the alternative. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)) ("A document filed *pro se* is 'to be liberally construed'. . . .").

Ohio case no. 3:11-cv-2757, Doc. 146 (Dec. 6, 2013) (Zouhary, J.); *Rowland*, E.D. Ky. case no. 3:18-cv-33, Doc. 98 (Sept. 3, 2021) (Van Tatenhove, J.).[3]

The appropriate lens through which to view plaintiff's motions to set aside her notice of voluntary dismissal is Rule 60(b). *See Warfield v. AlliedSignal TBS Holdings, Inc.*, 267 F.3d 538, 542 (6th Cir. 2001) (holding that courts have discretion to set aside a voluntary dismissal with prejudice if the dismissal was done under duress or mistake of fact).[4] *See also Patrick Collins, Inc. v. Lowery*, No. 1:12-cv-00844, 2013 WL 6383860, at *2 (S.D. Ind. Dec. 4, 2013) (citing *Schmier v. McDonald's LLC*, 569 F.3d 1240, 1242 (10th Cir. 2009)) ("[T]he plaintiff may move to vacate the notice under Rule 60(b) of the Federal Rules of Civil Procedure."). *Cf.* 8 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 41.33 (3d ed. 2013) ("[T]he plaintiff may not *unilaterally* withdraw . . . the notice [of voluntary dismissal.") (emphasis added).

Under Rule 60(b), the "court may relieve a party or its legal representative from a final judgment, order, or proceeding for[,]" as relevant here, "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). This is a "catchall provision" to be employed only in exceptional or extraordinary circumstances where principles of equity mandate relief. . . ." *Kelmendi v. Detroit Bd. of Educ.*, 780 F. App'x 310, 312 (6th Cir. 2019) (quoting *Miller v. Mays*, 879 F.3d 691, 698 (6th Cir. 2018)). A movant under Rule 60(b) must demonstrate entitlement to relief by clear and

[3] On remand in *Page Plus*, Judge Zouhary cited *In re Saffady*, 524 F.3d 799, 803 (6th Cir. 2008), for the proposition that courts have "inherent power to vacate orders prior to entry of final judgment" under "Rule 59. . . ." N.D. Ohio case no. 3:11-cv-2757, Doc. 146 at PAGEID 2711. Judge Zouhary also wrote that any decision other than to allow the parties to vacate their stipulated order of dismissal "would leave [plaintiff] in the wholly untenable and unfair position of being forever incapable of appealing this Court's order granting summary judgment against it." *Id.* On remand in *Rowland*, Judge Van Tatenhove did not cite a particular rule under which he granted the plaintiff's motion to set aside the Rule 41(a)(2) stipulation of dismissal but did so, instead, pursuant to "the path suggested to her by the Sixth Circuit[,]" which was to first litigate the state-law claims (that had been dismissed by stipulation) and then appeal from the final disposition of all of her claims. E.D. Ky. case no. 3:18-cv-33, Doc. 98 at PAGEID 2404 (citing *Rowland*, 4 F. 4th at 430).

[4] While the Court was unable to locate a Sixth Circuit decision regarding a notice of voluntary dismissal *without* prejudice, it appears that the weight of circuit authority holds that a Rule 41(a)(1)(i) dismissal without prejudice qualifies as a final judgment, order, or proceeding for purposes of Rule 60(b). *See Yesh Music v. Lakewood Church*, 727 F.3d 356, 360-63 (5th Cir. 2013) (and cases cited therein).

convincing evidence. *See Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir. 2008) (citations omitted).

The Court finds that the interest of justice and equities weigh in favor of allowing plaintiff to withdraw her notice of voluntary dismissal. To rule otherwise would deprive plaintiff of any opportunity to appeal the dismissal of the twenty-three other claims from her amended complaint (Doc. 9). Georgia Pacific, subject to plaintiff's refiling of her viable claim in any event, would not be prejudiced by this result. In *Fuller v. Quire*, 916 F.2d 358, 359-60 (6th Cir. 1990), the Sixth Circuit considered the district court's reopening of a case under Rule 60(b)(6) where the plaintiff's case had been dismissed for lack of prosecution due to apparent attorney malpractice by his prior attorney. The Sixth Circuit concluded:

> The district judge found as a reason "the interest of justice," after considering the broad equities of the case. The facts show that the suit was some distance from where the plaintiff lives, that the plaintiff *repeatedly attempted to find out about his case*, and that there is *no showing of undue prejudice to the defendant*. Clearly, the trial court did not err in exercising its power under the provisions of Rule 60(b)(6).

Id. at 361 (emphasis added). Unlike in *Kelmendi*, where the Sixth Circuit found that Rule 60(b)(6) could not be used to remedy the plaintiff's failure to file a timely appeal, plaintiff here has repeatedly attempted (albeit procedurally incorrectly) to preserve her right to appeal the dismissed twenty-three claims. 780 F. App'x at 312. Plaintiff's notice of voluntary dismissal "did not serve the purpose intended" and "fairness and [] the interest of justice" suggest that her motions to withdraw the notice (Docs. 61, 64) should be granted pursuant to Rule 60(b)(6). *Page Plus*, N.D. Ohio case no. 3:11-cv-2757, Doc. 146 at PAGEID 2711.

Finally, plaintiff moves for an oral hearing on the motions discussed above, as well as plaintiff's earlier emergency motion to file under seal an emergency motion for an indicative order under Rule 62.1 (Doc. 43). This latter emergency motion was filed on June 30, 2021, prior

to plaintiff's notice of voluntary dismissal. Once plaintiff filed the Rule 41(a)(1) dismissal, "the lawsuit [was] no more"—a result that was "self-effectuating. . . ." *Aamot v. Kassel*, 1 F.3d 441, 444, 445 (6th Cir. 1993). But to the extent that withdrawal of plaintiff's notice of voluntary dismissal would revive this motion, plaintiff shoulders a strict and heavy burden on a motion to seal, which may be granted only upon a detailed presentation—tailored to the particular documents to be sealed—of the compelling reasons and legal basis for such relief. *See Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (citing *In re Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)).

Plaintiff's "Emergency Motion to File Under Seal" is 176 pages long, including a proposed amended 522-count complaint against dozens of defendants and several hundred pages of exhibits. (*See* Doc. 43). As best the Court can tell, she seeks to seal:

- emails, phone records, and medical records related to proposed additional defendants Dr. Jonathan Lazzaro, Atrium Medical Center, Premier Health, Carissa Piper, Butler Behavioral Health, Dr. Quinton Moss, Modern Psychiatry and Wellness and the West Chester Ohio Police (*id.* at PAGEID 1626-27);
- certain information related to her proposed motion to amend complaint to add UC Health, UC Health Psychiatric Emergency Services, and Does UC Health PES as defendants, and medical records from those defendants (*id.* at PAGEID 1629-31).

Other than referring to the medical records as confidential and reflecting upon her competency, she does not explain how such medical records are relevant to her proposed amended complaint—except to the extent that they would explain why she should be appointed counsel.[5]

[5] Plaintiff's motion contains a request for the appointment of counsel. (*Id.* at PAGEID 1619). As this Court has previously held, plaintiff's circumstances do not warrant the appointment of counsel. (*See* Doc. 27 at PAGEID 1552). *See also Stewart v. United States*, No. 2:13-cv-02896, 2017 WL 939197, at *1 n.1 (W.D. Tenn. Mar. 7, 2017) (being "mentally ill" does not warrant the appointment of counsel).

(*Id.* at PAGEID 1618-19). Plaintiff's motion to seal does not meet the Sixth Circuit's standard articulated in *Shane Group* and will be denied. Pursuant to S.D. Ohio Civ. R. 7.1, the Court finds that oral argument is not "essential to the fair resolution" of this motion (Doc. 43) and her request for the same (Doc. 66) will be denied.

IT IS THEREFORE ORDERED THAT:

(1) plaintiff's "Emergency Motion to File Under Seal" (Doc. 43) is **DENIED**; and

(2) plaintiff's "Emergency Motion to Schedule an Oral Hearing on all Outstanding Motions" (Doc. 66) is **DENIED**.

IT IS THEREFORE RECOMMENDED THAT:

(1) plaintiff's "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63) be **DENIED**; and

(2) plaintiff's "Motion to Set Aside" (Doc. 61) and "Amended Motion to Set Aside Under 59(E)" (Doc. 64) be **GRANTED**.

Date: 12/14/2021

Karen L. Litkovitz
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,
Plaintiff,

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

vs.

GEORGIA PACIFIC,
Defendant.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation within FOURTEEN (14) DAYS after being served with a copy thereof. This period may be extended further by the Court on timely motion by either side for an extension of time. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections WITHIN 14 DAYS after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Appendix II

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

ROSALIND HOLMES,	:	Case No. 1:20-cv-825
Plaintiff,	:	Judge Matthew W. McFarland
v.	:	
GEORGIA PACIFIC,	:	
Defendant.	:	

ORDER OVERRULING OBJECTIONS (Docs. 72) AND ADOPTING REPORT AND RECOMMENDATION (Doc. 68)

This action is before the Court on Plaintiff Rosalind Holmes's Motion to File Under Seal and Motion for Reconsideration, filed February 28, 2022 and March 16, 2022 (Docs. 72, 74). First, Plaintiff, in her Motion for Reconsideration (Doc. 74), requests this Court to construe the Motion to File Under Seal (Doc. 72) as her objections to Magistrate Judge Karen L. Litkovitz's Order and Report and Recommendation, filed December 14, 2021 (Doc. 68). For good cause shown, Plaintiff's Motion for Reconsideration is **GRANTED**. This Court shall construe Plaintiff's Motion to File Under Seal (Doc. 74) as her objections to Magistrate Judge Litkovitz's Order and Report and Recommendation (Doc. 68).

Second, Magistrate Judge Litkovitz recommended that Plaintiff's Motion to Reconsider Rule 54(B) Certification Under Rule 59 be denied and Plantiff's Motion to Set Aside and Motion to Set Aside Under Rule 59 be granted. Plaintiff objected, by way of her Motion to File Under Seal, to Magistrate Judge Litkovitz's Order and Report and

Recommendation, which is ripe for the Court's review.

Plaintiff's objections re-argue that certain filings should be filed under seal. Plaintiff acknowledges in her Motion for Reconsideration (Doc. 74) that her Motion to File Under Seal, being construed as her objections, "is very similar to the initial Emergency Motion to file under Seal (Doc. 43) which Magistrate Litkovitz had already issued a report and recommendation (Doc 68)." (Plaintiff's Motion for Reconsideration, Doc. 74, Pg. ID # 2535.) Magistrate Judge Litkovitz denied Plaintiff's Emergency Motion to File Under Seal (Doc. 43) in her Order Report and Recommendation (Doc. 68) because such motion did not satisfy the Sixth Circuit's standard articulated in *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016).

Thus, because Plaintiff's Motion to File Under Seal (Doc. 72) is nearly identical to her Emergency Motion to File Under Seal (Doc. 43), which was recently denied by Magistrate Judge Litkovitz, none of Plaintiff's objections confront the reasoning or conclusions of Magistrate Judge Litkovitz's Report and Recommendation. Plaintiff fails to identify anything specific she believes may be incorrect in Magistrate Judge Litkovitz's findings. *See Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Such nonspecific objections are, in effect, restatements of prior arguments and amount to a failure to object. *Bradley v. United States*, No. 18-1444, 2018 WL 5084806, at *3 (6th Cir. Sept. 17, 2018); *Cole v. Yukins*, 7 F. App'x 354, 356 (6th Cir. 2001).

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon such review, the Court finds that Plaintiff's Objections (Docs. 72) are not well-taken and are accordingly

OVERRULED. In summary, the Court **ADOPTS** the Report and Recommendations (Doc. 68) in its entirety and **ORDERS** the following:

(1) Plaintiff's Motion for Reconsideration (Doc. 74) is **GRANTED**;

(2) Plaintiff's Motion to Reconsider Rule 54(B) Certification Under Rule 59 (Doc. 63) is **DENIED**;

(3) Plaintiff's Motion to Set Aside (Doc. 61) is **GRANTED**; and

(4) Plaintiff's Motion to Set Aside Under 59(E) (Doc. 64) is **GRANTED**.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: _____
JUDGE MATTHEW W. McFARLAND

Appendix JJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,

Plaintiff,

vs.

GEORGIA PACIFIC,

Defendant.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

REPORT AND RECOMMENDATION TO DENY MOTION TO PROCEED ON APPEAL *IN FORMA PAUPERIS*

This matter is before the Court on plaintiff's motion for leave to proceed *in forma pauperis* on appeal pursuant to 28 U.S.C. § 1915. (Doc. 87).

Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." *See also* Fed. R. App. P. 24(a). Good faith in this context is demonstrated when the party seeks appellate review of an issue that is not frivolous. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is frivolous where the appeal lacks an arguable basis either in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

On May 31, 2022, the District Judge adopted the Report and Recommendation of the Magistrate Judge recommending that Ms. Holmes' "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63) be denied. *See* Doc. 75. For the reasons set forth in the undersigned's December 14, 2021 Order denying plaintiff leave to file documents under seal and the Report and Recommendation of the same date recommending that plaintiff's "Motion to Reconsider Rule 54(B) Certification Under Rule 59" be denied (Doc. 68), the undersigned recommends that the district court certify that Ms. Holmes' *in forma pauperis* appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3). Accordingly, Ms. Holmes' motion for leave to proceed *in forma pauperis* on appeal (Doc. 87) should be **DENIED**.

IT IS THEREFORE RECOMMENDED THAT:

1. The Court certify that Ms. Holmes' *in forma pauperis* appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3).

2. Ms. Holmes' motion for leave to proceed *in forma pauperis* on appeal (Doc. 87) be **DENIED**.

3. Ms. Holmes be advised of the following:

Pursuant to Fed. R. App. P. 24(a)(4), Ms. Holmes may file, within thirty (30) days after service of any Order adopting the Report and Recommendation to deny Ms. Holmes leave to appeal *in forma pauperis*, a motion with the Sixth Circuit Court of Appeals for leave to proceed as a pauper on appeal. *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), *overruling in part Floyd v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997). Ms. Holmes' motion must include a copy of the affidavit filed in the District Court and the District Court's statement of the reasons for denying pauper status on appeal. *Id.*; *see* Fed. R. App. P. 24(a)(5).

Ms. Holmes is notified that if she does not file a motion within thirty (30) days of receiving notice of the District Court's decision as required by Fed. R. App. P. 24(a)(5), or fails to pay the required filing fee of $505.00 within this same time period, the appeal will be dismissed for want of prosecution. *Callihan*, 178 F.3d at 804. Once dismissed for want of prosecution, the appeal will not be reinstated, even if the filing fee or motion for pauper status is subsequently tendered, unless Ms. Holmes can demonstrate that she did not receive notice of the District Court's decision within the time period prescribed for by Fed. R. App. P. 24(a)(5). *Id.*

Date: 7/13/2022

Karen L. Litkovitz, Magistrate Judge
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROSALIND HOLMES,

Plaintiff,

vs.

GEORGIA PACIFIC,

Defendant.

Case No. 1:20-cv-825
McFarland, J.
Litkovitz, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party=s objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI**

ROSALIND HOLMES,	:	Case No. 1:20-cv-825
Plaintiff,	:	Judge Matthew W. McFarland
vs.	:	
GEORGIA PACIFIC,	:	
Defendant.	:	

ORDER ADOPTING REPORT AND RECOMMENDATION (Docs. 88)

This action is before the Court upon the Report and Recommendation (the "Report") (Doc. 88) of United States Magistrate Judge Karen L. Litkovitz, to whom this case is referred pursuant to 28 U.S.C. § 636(b). In the Report, Magistrate Judge Litkovitz recommended that the Court certify that Plaintiff's *in forma pauperis* appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3) and deny Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* on Appeal (Doc. 87). Plaintiff filed an Objection to the Report (Doc. 91). Thus, this matter is ripe for the Court's review.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that Plaintiff's Objection is not well-taken and are accordingly **OVERRULED**. Thus, the Court **ADOPTS** Magistrate Judge Litkovitz's Report and Recommendation (Doc. 88) in its entirety and **ORDERS** the following:

(1) The Court **CERTIFIES** that Plaintiff's *in forma pauperis* appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3); and

(2) The Court **DENIES** Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* on Appeal (Doc. 87).

Additionally, the Court **ADVISES** Plaintiff that, pursuant to Fed. R. App. P. 24(a)(4), Plaintiff may file, within thirty (30) days after service of this Order, a motion with the Sixth Circuit Court of Appeals for leave to proceed as a pauper on appeal. *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), *overruling in part Floyd v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997). Plaintiff's motion must include a copy of the affidavit filed in this Court and this Court's statement of the reasons for denying pauper status on appeal. *Id.*; *see* Fed. R. App. P. 24(a)(5).

Lastly, the Court **ADVISES** Plaintiff that, if she does not file a motion within thirty (30) days of receiving notice of the District Court's decision as required by Fed. R. App. P. 24(a)(5), or fails to pay the required filing fee of $505.00 within this same time period, the appeal will be dismissed for want of prosecution. *Callihan*, 178 F.3d at 804. Once dismissed for want of prosecution, the appeal will not be reinstated, even if the filing fee or motion for pauper status is subsequently tendered, unless Plaintiff can demonstrate that she did not receive notice of this Court's decision within the time period prescribed for by Fed. R. App. P. 24(a)(5). *Id.*

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: Matthew W. McFarland
MATTHEW W. McFARLAND
UNITED STATES DISTRICT JUDGE