

insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six-month period. *See* 28 U.S.C. § 1915(b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. *See* 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. *Id.* Plaintiff has submitted an affidavit and a certified copy of her prison account statement for the six-month period immediately preceding the submission of the complaint. *See* 28 U.S.C. § 1915(a)(1), (2). A review of plaintiff's account statement indicates an average monthly deposit of \$185.50, and an average monthly account balance of \$66.65. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$37.10, which is 20 percent of plaintiff's average monthly deposit.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989); *Denton v. Hernandez*, 112 S. Ct. 1728, 1733 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. *Spencer v. Rhodes*, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), *aff’d* 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

Discussion

Plaintiff brings this action pursuant to 42 U.S.C. § 1983. The precise nature of plaintiff’s claims is unclear to the Court, because plaintiff has failed to set forth her claims and allegations as to each named defendant in a clear, simple, and concise manner. Even pro se litigants are required to comply with the Federal Rules of Civil Procedure.

Because plaintiff is proceeding pro se and in forma pauperis, the Court will give her an opportunity to file a second amended complaint on a Court-provided form.¹ Plaintiff will be granted thirty days from the date of this Order to file a second amended complaint in accordance with the specific instructions set forth herein.

All claims in an action must be included in one, centralized complaint form, as neither the Court nor defendants wish to search through supplemental and prior pleadings in order to piece together plaintiff's claims. **As such, plaintiff is warned that the filing of a second amended complaint replaces the original complaint and all previously-filed pleadings, and therefore, she must include each and every one of the claims she wishes to pursue in the second amended complaint.** See, e.g., *In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). **Any claims from the original complaint, supplements, and/or pleadings that are not included in the second amended complaint will be deemed abandoned and will not be considered.** *Id.* **Plaintiff is advised that the second amended complaint will replace the**

¹The Court will instruct the Clerk to mail plaintiff a blank form complaint for the filing of a prisoner civil rights action. Plaintiff must complete her second amended complaint on the court-provided form in accordance with the instructions set forth herein.

original and amended complaints and will be the only pleading this Court reviews. *See id.* If plaintiff wishes to sue defendants in their individual capacities, plaintiff must specifically say so in the second amended complaint.

Plaintiff should not attach any exhibits to the second amended complaint; all claims should be clearly set forth in the "Statement of Claim." In addition, in the "Caption" of the second amended complaint, plaintiff shall set forth the name of each defendant she wishes to sue; and in the "Statement of Claim," plaintiff shall start by typing the first defendant's name, and under that name, she shall set forth in separate numbered paragraphs the allegations supporting her claim(s) as to that particular defendant, as well as the right(s) that she claims that particular defendant violated and the capacity in which the defendant is being sued. Plaintiff shall proceed in this manner with each of the named defendants, *separately* setting forth each individual name and under that name, in numbered paragraphs, the allegations specific to that particular defendant and the right(s) that she claims that particular defendant violated. The second amended complaint must contain short and plain statements showing that plaintiff is entitled to relief, the allegations must be simple, concise, and direct, and the numbered paragraphs must each be limited to a single set of circumstances. If plaintiff needs more space, she may attach additional sheets of paper to the amended complaint and identify them as part of

the "Caption" or "Statement of Claim"; however, as previously stated, plaintiff shall not attach any exhibits to the pleading. Plaintiff shall sign the second amended complaint.

Plaintiff is reminded that she is required to submit her second amended complaint on a Court-provided form, and it must comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. Plaintiff's failure to make specific and actionable allegations against any of defendant(s) will result in that individual's dismissal from this case.² Last, if plaintiff fails to file a second amended complaint on a Court form within thirty days in accordance with the Court's instructions, this action may be dismissed without prejudice and without further notice.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall pay an initial partial filing fee of \$37.10 within thirty (30) days from the date of this order. Plaintiff is instructed to make her remittance payable to "Clerk, United States District Court,"

²The Court will review plaintiff's second amended complaint pursuant to 28 U.S.C. § 1915. A claim and/or defendant must survive § 1915 review in order for plaintiff to proceed in this lawsuit.

and to include upon it: (1) her name; (2) her prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the Clerk shall mail to plaintiff a copy of the Court's form Prisoner Civil Rights Complaint.

IT IS FURTHER ORDERED that, consistent with this Order, plaintiff shall file a second amended complaint on the Court-provided form within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, the Court may dismiss this action without prejudice and without further notice.

IT IS FURTHER ORDERED that plaintiff's motion for leave to file Document #6-1 as her second amended complaint [Doc. #6] is **DENIED**, because the tendered pleading does not comply with the Federal Rules of Evidence and this Court's instructions, as set forth above.

Dated this 20th day of July, 2015.

/s/John M. Bodenhausen
UNITED STATES MAGISTRATE JUDGE