

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:21-CV-00106-GCM**

**ROBERT RICCIANI
DULCY RICCIANI,**

Plaintiffs,

v.

**FAIRFIELD INN BY MARRIOTT
LIMITED PARTNERSHIP,
MARRIOTT INTERNATIONAL, INC.,
NCSC CHARLOTTE OWNER LLC,**

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiff Dulcy Ricciani’s Motion to Vacate (ECF No. 30). Plaintiffs seek vacatur of the Court’s order striking the Plaintiffs’ response to Defendants’ motions to dismiss. *See* ECF No. 27.

The Court entered its order on December 17, 2021, striking the response for Plaintiffs’ failure to comply with the local rules governing attorney admission. ECF No. 27 at 4–6. The Court stayed the order for 10 days to permit Plaintiffs to comply. *Id.* at 6. Accordingly, Plaintiffs had until December 27, 2021 to come into compliance with the local rules. On January 4, 2022, the Court adjudicated the pending motion to dismiss, and dismissed the case without prejudice. *See* ECF No. 28. The Clerk entered judgment on the same day. ECF No. 29.

Plaintiffs sent the present motion by First Class Mail and USPS Overnight Delivery. Both items—dated December 27, 2021—were docketed on January 10, 2022. ECF No. 31 & 32. Notably, Plaintiffs’ overnight mailing was not marked “accepted” until January 4, 2022, with a scheduled delivery date of January 5, 2022. *See* ECF No. 31 at 2.

Plaintiffs' motion seeking vacatur is both untimely and moot. Plaintiffs missed the 10-day period to come into compliance. The case has been dismissed and judgment has been entered against Plaintiffs. Additionally, insofar as the present motion seeks to revive a pleading related to matters that have already been adjudicated, it is moot.

IT IS THEREFORE ORDERED that the Motion to Vacate (ECF No. 30) is **DENIED AS UNTIMELY AND MOOT.**

SO ORDERED.

Signed: January 10, 2022

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

