IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SETI JOHNSON, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WAYNE GOODWIN, in his official capacity as Commissioner of the North Carolina Division of Motor Vehicles,	)	1:18CV467
	)	
Defendant.	)	

ORDER

This case is before the court on the motion of Karen Klyman to set aside the judgment pursuant to Federal Rule of Civil Procedure 60(b). (Doc. 120.) Plaintiffs and Defendant Commissioner have filed a response in opposition. (Docs. 121, 122), and Klyman has filed a reply (Doc. 125). Klyman has also filed a "motion for defendant to produce, stipulate, or for judge to take judicial notice" (Doc. 124) as well as a "motion to include with motion to take judicial notice" (Doc. 126) that seeks to supplement her motion with a copy of her notice from the North Carolina Department of Motor Vehicles notifying her of her suspension of her North Carolina driving privileges.[1]

This lawsuit was filed on May 30, 2018, and challenges the

[1] Capitalization within Klyman's motion titles is modified by the court for ease of reading.

due process protections for North Carolina's procedures for revoking or suspending driving privileges where drivers claim they are unable to pay fines and costs. (Doc. 1.) On March 31, 2019, the court certified two classes – the "revoked class" (those whose driving privileges were revoked within the limitations period) and the "future revoked class" (those who privileges may be revoked). (Doc. 65.) After several years of litigation and hearings, and an appeal to the Fourth Circuit Court of Appeals, the parties negotiated and reached a settlement, which they presented to the court on July 1, 2021. (Doc. 88.) The court preliminarily approved the settlement on October 15, 2021 (Doc. 93), and held a fairness hearing on February 22, 2022. The court entered a final order and judgment approving the settlement on March 3, 2022 (Doc. 113) and an amended final order and judgment on March 7, 2022 (Doc. 114).

Some fourteen months later, Klyman filed the first of her motions on May 15, 2023. Klyman's motions seek to set aside this court's March 7, 3022 amended final order and judgment resolving this class action.

Klyman contends that she is a member of the revoked class because she received a June 28, 2019 letter from the North Carolina Department of Motor Vehicles notifying her that her North Carolina driving privileges would be suspended effective 12:01 a.m. on August 27, 2019, for failure to pay a fine she was assessed on

December 14, 2018. (Doc. 126 at 2.) As the Commissioner reports, Klyman's suspension was due to an order of a Florida court for her failure to pay a fine in Florida, which the Commissioner honored. (Docs. 121 at 1-2, 121-1 and 121-2.)

As a procedural matter, Klyman's motions fail because she violated this court's local rule requiring a brief to be filed in support of any motion, setting out the legal authorities in support of her position. L.R. 7.3(a). This alone dooms her motions.

On their merits, moreover, the motions lack merit. Klyman does not cite a portion of Rule 60(b) she contends applies. This is why a brief is required, so a party can provide the legal basis for any argument. It is not the court's duty to guess at, or construct, a party's claim, even for a litigant who proceeds pro se. While pleadings "should not be scrutinized with such technical nicety that a meritorious claim should be defeated," Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), the liberal construction of a pro se plaintiff's filing does not require the court to ignore clear pleading defects in it, Bustos v. Chamberlain, No. 3:09-1760-HMH-JRM, 2009 WL 2782238, at *2 (D.S.C. Aug. 27, 2009), become an advocate for the pro se party, Weller v. Dep't of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990), or "construct full blown claims from sentence fragments," Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985) (noting that "[d]istrict judges are not mind readers").

Disposition of a Rule 60(b) motion lies in the sound discretion of the district court. McLawhorn v. John W. Daniel & Co., 924 F.2d 535, 538 (4th Cir. 1991) (citing Werner v. Carbo, 731 F.2d 204, 206 (4th Cir. 1984)). Rule 60(b) permits "a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances." Gonzalez v. Crosby, 545 U.S. 524, 528 (2005). In order to obtain relief from a judgment under Rule 60(b), a moving party must show that the motion is timely, that she has a meritorious position, and that the opposing party would not be unfairly prejudiced by having the judgment set aside. Park Corp. v. Lexington Ins. Co., 812 F.2d 894, 896 (4th Cir. 1987). As to timeliness, a Rule 60(b) motion must be brought "within a reasonable time," and "the movant must make a showing of timeliness." McLawhorn, 924 F.2d at 538 (quoting Werner, 731 F.2d at 206). Any delay must be justified by a "satisfactory explanation." Central Operating Co. v. Util. Workers of Am., 491 F.2d 245, 253 (4th Cir. 1974). As to Rule 60(b)(1) through (3), the rule itself provides the limits of a reasonable time, requiring the motion to be filed within a year of judgment. Fed. R. Civ. P. 60(c)(1).

If the moving party makes such a showing, she must then satisfy one or more of the six grounds for relief set forth in Rule 60(b) in order to obtain relief from the judgment. Park, 812 F.2d at 896. Under Rule 60(b)(1), a party may seek relief based

on "mistake, inadvertence, surprise, or excusable neglect." Rules 60(b)(2) through (b)(5) supply other grounds for reopening a judgment, including newly discovered evidence (that with reasonable diligence could not have been discovered previously), fraud, voidness, satisfaction, release, and discharge. Finally, Rule 60(b)(6) provides a catchall for "any other reason that justifies relief." This last option "is available only when Rules 60(b)(1) through (b)(5) are inapplicable." Kemp v. United States, 142 S. Ct. 1856, 1861 (2022) (citation omitted). Even then, "the remedy provided by the Rule, however, is extraordinary and is only to be invoked upon a showing of exceptional circumstances." Compton v. Alton S.S. Co., 608 F.2d 96, 102 (4th Cir. 1979) (quoting Ackermann v. United States, 340 U.S. 193, 202 (1950)).

Here, Klyman's motions are plainly untimely. They come more than 14 months after the court entered its amended final order and judgment. See McLawhorn, 924 F.2d at 538 ("We have held on several occasions that a Rule 60(b) motion is not timely brought when it is made three to four months after the original judgment and no valid reason is given for the delay."); Clayton v. Ameriquest Mortg. Co., 388 F. Supp. 2d 601, 606 (M.D.N.C. 2005) (explaining that the "the Fourth Circuit has upheld denials of 60(b) motions that were filed as little as two and one-half months after entry of the judgment" and collecting cases). On the face of her

materials, Klyman was aware of her complaints about her suspension and North Carolina's treatment of it as early as June 2019.

Klyman's only explanation for her delay is her claim that she was not provided personal notice of the proposed settlement so she could have objected timely. (Doc. 120 at 1.) It is not clear that she is a member of either class certified in this case because her fine was imposed by a court in Florida.[2] Nevertheless, the deadline for objecting to the proposed settlement was publicized at www.ncdmvsettlement.org, which noted that objections were due to be filed by January 13, 2022, some 16 months before Klyman filed her motion. (Doc. 93 ¶ 12.) Her failure to follow the litigation and settlement is of her own doing.

For these reasons, Klyman fails to demonstrate that she is entitled to the relief she seeks.

IT IS THEREFORE ORDERED that Klyman's "motion to include with motion to take judicial notice" (Doc. 126) is GRANTED, but her

[2] This case challenged North Carolina's due process protections (or alleged lack thereof) for imposition of fines and costs by North Carolina courts for violations of North Carolina motor vehicle laws. (See Doc. 1.) North Carolina has no authority to control or modify Florida's procedural steps for imposing or waiving fines for motor vehicle violations. Here, North Carolina merely honored Florida's decision as to Klyman as part of North Carolina's participation in the Driver License Compact. See N.C. Gen. Stat. § 20-4.4. Even were she to be included within the classes here, Klyman has not shown any basis to set aside the judgment under Rule 60(b)(1) through (5), nor do her reasons constitute exceptional circumstances to justify setting it aside under Rule 60(b)(6). Even if she could make that showing, moreover, Klyman has not shown how setting aside the settlement at this late stage would not unfairly prejudice the parties, all of whom object.

motion to set aside the court's amended final order and judgment (Doc. 120) and her "motion for defendant to produce, stipulate, or for judge to take judicial notice" (Doc. 124) are DENIED.

/s/ Thomas D. Schroeder
United States District Judge

September 11, 2023