IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHARON BRIDGEWATER,	:	
	:	
Plaintiff,	:	
	:	**CIVIL ACTION FILE NO.**
v.	:	**1:11-CV-04088-ODE**
	:	
LAWRENCEVILLE POLICE DEPARTMENT; GWINNETT COUNTY POLICE DEPARTMENT; RANDY RICH, ***individually and in his official capacity as Justice of the Superior Court of Gwinnett County*****; LUCAH O. HARSH; and DOES 1 THRU 50,** ***Inclusive,***	:	**(Magistrate Judge Baverman)**
	:	
Defendants.	:	

ORDER FOR SERVICE OF
REPORT AND RECOMMENDATION

Attached is the Report and Recommendation of the United States Magistrate Judge made in accordance with 28 U.S.C. § 636(b)(1), FED. R. CIV. P. 72(b), N.D. Ga. R. 72.1(B), (D), and Standing Order 08-01 (N.D. Ga. June 12, 2008). Let the same be filed and a copy, together with a copy of this Order, be served upon counsel for the parties or, if a party is not represented, upon that party directly.

Pursuant to 28 U.S.C. § 636(b)(1), each party may file written objections, if any, to the Report and Recommendation within **fourteen (14)** days of service of this Order. Should objections be filed, they shall specify with particularity the alleged error(s) made (including reference by page number to any transcripts if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the District Court. If no objections are filed, the Report and Recommendation may be adopted as the opinion and order of the District Court and any appellate review of factual findings will be limited to a plain error review. *United States v. Slay*, 714 F.2d 1093 (11th Cir. 1983).

The Clerk is directed to submit the Report and Recommendation with objections, if any, to the District Court after expiration of the above time period.

IT IS SO ORDERED and DIRECTED, this 19th day of January, 2012.

ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE

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	:	
Defendants.	:	

UNITED STATES MAGISTRATE JUDGE'S
ORDER AND FINAL REPORT AND RECOMMENDATION

Currently before the Court is Plaintiff Sharon Bridgewater's application to proceed *in forma pauperis* ("IFP"). [Doc. 1]. For the reasons set forth herein, the Court **GRANTS** Plaintiff's application. The Court has conducted the frivolity review required under 28 U.S.C. § 1915(e)(2)(B) and finds that (1) 18 U.S.C. § 242 does not provide for a private right of action; (2) Does 1 thru 50 are insufficiently identified; (3) Defendant Randy Rich is immune from the damages claims Plaintiff raises against

him; (4) Plaintiff's conspiracy and malicious-prosecution claims are insufficiently pled; and (5) Plaintiff's remaining claims were filed outside the limitations period. The undersigned therefore **RECOMMENDS** to the District Court that it **DISMISS WITH PREJUDICE** any claim Plaintiff may have intended to raise pursuant to 18 U.S.C. § 242 or for damages against Rich, **DISMISS WITHOUT PREJUDICE** Does 1-50 and Plaintiff's remaining claims, and **GRANT** Plaintiff **LEAVE TO AMEND** her remaining claims and any claims against Does 1-50 according to the terms and conditions set forth below.

I. Introduction

Plaintiff is a frequent filer in this Court.[1] On November 28, 2011, she filed the instant application to proceed IFP to bring claims for "Conspiracy to Deprive Rights" in violation of 42 U.S.C. § 1985(3) (Count I); "Failure to Prevent Violation of Civil Rights" in violation of 42 U.S.C. § 1986 (Count II); malicious prosecution or

[1] A search of the Court's docketing system reveals the following cases: *Bridgewater v. Georgia*, 1:08-cv-2971-ODE (petition for writ of habeas corpus, dismissed on Dec. 16, 2008); *Bridgewater v. Gwinnett Cnty.*, 1:09-cv-2131-ODE (petition for writ of habeas corpus, dismissed on Sept. 30, 2009); *Bridgewater v. DeKalb Cnty.*, 1:10-cv-1082-ODE (42 U.S.C. § 1983 claims for violations of Plaintiff's Fourth and Fourteenth Amendment rights, dismissed on October 13, 2010; decision affirmed by the Eleventh Circuit Court of Appeals on June 16, 2011); *Bridgewater v. Rich*, 1:11-cv-3828-ODE (petition for writ of habeas corpus; Report and Recommendation recommending dismissal entered on Nov. 22, 2011).

"Conspiracy to Prosecute Maliciously (False Imprisionment [sic], Unlawful Detainment, Cruel and Unusual Punishment, Slavery/Involuntary Servitude, False Arrest, Violation of the Plaintiff [sic] 1st, 4th, 5th, 6th, 8th, 13th, and 14th US Constitutional Right [sic])" (Count III). [*See* Doc. 1-1 at 1-2]. Although Plaintiff does not specify a count claiming relief under 18 U.S.C. § 242 or 42 U.S.C. § 1983, she states that she brings the case pursuant to those statutes as well. [*See id.* at 2]. She names a number of defendants, including the Lawrenceville Police Department; the Gwinnett County Police Department; Randy Rich, individually and in his official capacity as Justice of the Superior Court of Gwinnett County; Lucas O. Harsh, an attorney in Lawrenceville, Georgia; and Does "1 thru [sic] 50." [*Id*. at 1-2, 4]. The Court first addresses Plaintiff's IFP application and then conducts the required frivolity review.

II. Application to Proceed In Forma Pauperis

Plaintiff avers that she is currently homeless in San Francisco, California. Plaintiff states that her only source of income is $830 per month in disability payments. She does not work, and she has no spouse, no bank accounts, and no cash on hand. She does not own any major assets such as a home or a car. Plaintiff lists $800 in monthly expenses as follows: (1) $400 for food; (2) $50 for clothing; (3) $50 for laundry; (4) $100-200 for transportation; and (5) $100 for entertainment.

The Court "may authorize the commencement . . . of any suit, action, or proceeding . . . without payment of fees and costs or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner[2] possesses that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a). This section is intended to provide indigent litigants with meaningful access to courts. *Adkins v. E.I. duPont de Nemours & Co.*, 335 U.S. 331, 342-43 (1948); *Neitzke v. Williams*, 490 U.S. 319, 324 (1988); *see also Attwood v. Singletary*, 105 F.3d 610, 612 (11th Cir. 1997) (Section 1915 is designed to ensure "that indigent persons will have equal access to the judicial system.").

Thus, § 1915 authorizes suits without the prepayment of fees and costs for indigent litigants. *Denton v. Hernandez*, 504 U.S. 25, 27 (1992). It bears emphasizing that § 1915 creates no absolute right to proceed in civil actions without payment of costs. Instead, the statute conveys only a privilege to proceed to those litigants unable to pay costs without undue hardship. *Startti v. United States*, 415 F.2d 1115, 1116

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[2] Although Congress used the word "prisoner" here, § 1915 applies to non-prisoner indigent litigants as well as prisoners. *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 n.1 (11th Cir. 2004).

(5th Cir. 1969).[3] Moreover, while the privilege of proceeding *in forma pauperis* does not require a litigant to demonstrate absolute destitution, it is also clear that "something more than mere statement and an affidavit that a man is 'poor' should be required before a claimant is allowed to proceed *in forma pauperis*." *Levy v. Federated Dep't Stores*, 607 F. Supp. 32, 35 (S.D. Fla. 1984); *Evensky v. Wright*, 45 F.R.D. 506, 507-08 (N.D. Miss. 1968). The affidavit required by the statute must show an inability to prepay fees and costs without foregoing the basic necessities of life. *Adkins*, 335 U.S. at 339; *Zuan v. Dobbin*, 628 F.2d 990, 992 (7th Cir. 1980).

Upon review of Plaintiff's application to proceed *in forma pauperis*, the Court concludes that Plaintiff cannot pay the costs associated with commencing her civil action. Plaintiff has limited income and no home or substantial assets. Accordingly, the Court **GRANTS** Plaintiff's request to proceed *in forma pauperis*. [Doc. 1]. The undersigned next examines whether Plaintiff's case may proceed following the statutorily mandated review under 28 U.S.C. § 1915(e)(2)(B).

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[3] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit rendered prior to the close of business on September 30, 1981.

III. Review Pursuant to 28 U.S.C. § 1915(e)(2)(B)

A. Legal Standard

Under § 1915(e)(2)(B), a court must "*sua sponte* dismiss [an indigent non-prisoner's] complaint or any portion thereof which is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are immune." *Robert v. Garrett*, No. 3:07-cv-625, 2007 WL 2320064, at *1 (M.D. Ala. Aug. 10, 2007); *see also* 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). A claim is frivolous under § 1915(e)(2)(B)(i) "if it is 'without arguable merit either in law or fact.' " *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quoting *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001)).

"Dismissal of a claim under 28 U.S.C. § 1915(e)(2)(B)(ii) is governed by the same standard as a dismissal under Federal Rule of Civil Procedure 12(b)(6)." *Shaarbay v. Palm Beach Cnty. Jail*, No. 09-11294, 2009 WL 3401423, at *1 (11th Cir. Oct. 23, 2009) (citing *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997)). A plaintiff does not state a claim under § 1915(e)(2)(B)(ii) "if the facts as pleaded fail to state a claim for relief that is 'plausible on its face.' " *Leonard v. F.B.I.*, 405 Fed. Appx. 386, 387 (11th Cir. Dec. 14, 2010) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)). This means that "[t]he plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions,

and a formulaic recitation of the elements of a cause of action will not do.' " *Leonard*, 405 Fed. Appx. at 387 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint is also subject to dismissal for failure to state a claim "[i]f the allegations [in the complaint] show that relief is barred by the applicable statute of limitations." *Jones v. Bock* , 549 U.S. 199, 215 (2007). As the following discussion demonstrates, the Court concludes that Plaintiff's claims cannot proceed following the § 1915(e)(2)(B) review.

B. Plaintiff's Complaint

It appears that, based on a series of events that took place from 1993 through 2007, Plaintiff, an African-American woman, believes that her race or ethnicity motivated Defendants to illegally stop her car, illegally search her, illegally arrest and detain her, bring false charges against her, and conspire to wrongfully convict her. [*See* Doc. 1-1, *passim*]. These claims of constitutional impropriety stem from the following allegations.

In 1993, Plaintiff was the victim of a "malicious" and "horrific" crime, which was perpetrated by Does 1 through 50. [*Id*. ¶¶ 3-5]. She "was rendered permanently

disabled due to the intentional violations of her civil rights by the 'Police Officers.' "[4] [*Id.* ¶ 3]. Plaintiff does not know the "true names and capacities" of Does 1 through 50 and needs to obtain the information through discovery. [*Id.* ¶ 5].

On or about November 20, 2005, Plaintiff was driving her Chevrolet Camaro "normally" and "with the regular flow of traffic." [*Id.* at 6]. Although Plaintiff believes she violated no traffic laws, Caucasian male Lawrenceville police officers stopped her for an "alleged" improper lane change and held her at gunpoint. [*Id.*]. They then ordered Plaintiff out of her car and searched both her car and her body, touching her "in a terrible way." [*Id.*]. The officers then charged Plaintiff with six crimes in connection with the traffic stop, arrested her, and towed her Camaro. [*Id.* at 7]. She remained in the Gwinnett County Detention Center for one to five days. [*Id.*]. She does not state whether the charges against her resulted in prosecution or conviction. [*Id.*, *passim*].

On an unspecified date in 2006, Plaintiff was driving her Pontiac vehicle "with the normal flow of traffic," when Gwinnett County police officers "adopted the acts of the Lawrenceville Police Department" and stopped her for another "alleged" traffic

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[4] She does not provide any further information about the alleged crime, the perpetrators, or any resulting prosecution. [*See* Doc. 1-1 at 3].

violation. [*Id*. at 8]. She was again arrested and was held at the Gwinnett County Detention Center for nine days. [*Id*.]. Her car was also towed. [*Id*.]. With the aid of a court-appointed attorney, Plaintiff pled guilty to at least one charge and was released, but she later repudiated her plea and requested a court-appointed attorney and a jury trial.[5] [*Id*. at 9].

Sometime in 2007, Gwinnett County Judge Randy Rich "adopted the acts of the Lawrenceville Police Department" and appointed Lucas Harsh to serve as Plaintiff's court-appointed defense attorney.[6] [*Id*. at 9-10]. On or about September 19, 2007, after apparently pleading guilty under Harsh's counsel, Plaintiff was convicted of reckless driving and driving without proof of insurance.[7] [*Id*. at 10-11]. Her sentence included twelve months' probation, five days of community service, a fine of $1,080.00, and attendance at a state-mandated risk-reduction class at the Gwinnett/Rockdale/Newton mental-health unit. [*Id*. at 11-12].

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[5] The complaint does not specify the charges Plaintiff faced.

[6] Plaintiff refers to Harsh as her "former prosecutor." [Doc. 1-1 at 9-10]. The meaning of this description is unclear.

[7] Plaintiff states that she was tried in the Superior Court of Gwinnett County, in case number SC No 06-D03943. [*Id*. at 11].

On October 19, 2007, after Plaintiff had completed her community service, Gwinnett County Police Officers "adopted the acts of Randy Rich and Lucah [sic] Harsh and/or the Lawrenceville Police Department" and stopped Plaintiff again, this time while she was driving her van. [*Id*. at 13]. They wrote her a "bogus" traffic ticket, arrested her, and brought two additional charges against her in connection with the traffic stop. [*Id*. at 13-14].

Plaintiff avers that she left the state of Georgia in November 2007.[8] [*Id*. at 5]. She complains that she "has been damaged and continues to be damage[d]" when searching for jobs because background checks show that she has a reckless-driving conviction and an outstanding warrant. [*Id.* at 15]. She also alleges that Defendants have destroyed, tampered with, and altered documents and records "with the purpose of misleading the Public and/or the Plaintiff." [*Id*.].

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[8] Plaintiff also alleges in the complaint the Defendants have held her in custody for four years and "continue[] to falsely imprison the Plaintiff after continual requests for release." [Doc. 1-1 at 15]. This is fundamentally incompatible with the California return address Plaintiff supplied to the Court. [*See* Doc. 1-2 at 1]. Consequently, the Court will presume that it was inadvertently included in the complaint and will ignore it. *See Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (a court may disregard "clearly baseless" factual allegations contained in an *in forma pauperis* complaint); *see also Iqbal*, 129 S. Ct. at 1950 ("Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.").

She seeks injunctive relief in the form of an investigation of the named police departments, the Gwinnett County Detention Center, Gwinnett County legislators and judges, and Professional Probation Services; an order vacating her Lawrenceville and Gwinnett County warrants, conviction, probation, and any outstanding tickets, and expunging them from her record; declaratory judgment; prohibition of any retaliation by Defendants against Plaintiff or her family members; "rescue" of all of Defendants' " 'victims,' as there are many in the Gwinnett County Detention Center illegal [sic] and unlawfully detained against their will"; and a written apology. [*Id.* at 21-22]. She also alleges that Defendants are "liable to the Plaintiff for the damages he [sic] suffered." [*Id.* at 16, 19].

C. Discussion

Plaintiff states that she brings her claims pursuant to 18 U.S.C. § 242, 42 U.S.C. § 1985(3), 42 U.S.C. § 1986, and 42 U.S.C. § 1983 "for violations of certain protections guaranteed to the Plaintiff by the first, fourth, Fifth, Sixth, Eighth, thirteenth and/or Fourteenth Amendments of the United States Constitution," and specifically for malicious prosecution. [Doc. 1-1 at 2]. It appears that she brings each claim against all of the defendants.

As an initial matter, the undersigned **RECOMMENDS** that the John Doe defendants be dismissed from the matter. The Federal Rules of Civil Procedure require the caption of the complaint to "name *all* the parties." Fed. R. Civ. P. 10(a) (emphasis added). As a result, fictitious-party pleading, *i.e.*, suing "John Does," generally is not permitted in federal court, but there is a limited exception to this rule when the plaintiff's description of the defendant is so specific as to be "at the very worst, surplusage." *See Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010) (quoting *Dean v. Barber*, 951 F.2d 1210, 1215-16 (11th Cir. 1992)).

Here, Plaintiff has not provided any specific description of the John Does that she seeks to sue; she refers to them only as "Police Officers." [Doc. 1-1 ¶ 3]. She therefore should not be permitted to sue John Doe defendants. Accordingly, the undersigned **RECOMMENDS** that the John Doe defendants be **DISMISSED**. The undersigned now considers the sufficiency of the pleadings with regard to each of Plaintiff's claims.

1. 18 U.S.C. § 242

18 U.S.C. § 242 is a statute prohibiting deprivation of rights under color of law. It is a criminal statute, however, and does not provide a private right of action. *Shahin v. Darling*, 606 F. Supp. 2d 525, 538 (D. Del. 2009) (citing *United States v.*

Philadelphia, 644 F.2d 187 (3d Cir. 1980), in which the Third Circuit Court of Appeals concluded that a civil cause of action would not be inferred from § 242); *Wagner v. United States*, 377 F. Supp. 2d 505, 510-11 (D.S.C. 2005) (citing *United States v. Oguaju*, 76 Fed. Appx. 579, 580-81 (6th Cir. July 9, 2003), and *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 511 (2d Cir. 1994), for the same principle); *Rockefeller v. U.S. Court of Appeals Office, for Tenth Circuit Judges*, 248 F. Supp. 2d 17, 23 (D.D.C. 2003). Thus, even if Plaintiff presented facts showing that Defendants violated her civil rights or conspired to do so, § 242 does not provide her with a privately enforceable right that would entitle her to relief. Consequently, to the extent that Plaintiff raises her claims pursuant to § 242, the undersigned **RECOMMENDS** to the District Court that it **DISMISS** those claims **WITH PREJUDICE**. *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962) (providing that a district court need not allow an amended pleading when the amendment would be futile)).

2. Claims Under 42 U.S.C. § 1985(3), 42 U.S.C. § 1986, and 42 U.S.C. § 1983 for Malicious Prosecution

Although the grounds for Plaintiff's conspiracy claims are not entirely clear, she appears to allege that all of the defendants named in the complaint conspired to

wrongfully prosecute her and ensure her September 19, 2007, conviction. [*See* Doc. 1-1 at 5 (lawyers were "state actors" because the "final and decisive act was carried out in conspiracy with a state actor or state official"); *id*. at 8 (Gwinnett County police officers "adopted the acts" of the Lawrenceville police officers and initiated the 2006 charges that led to the 2007 conviction); *id*. at 8-11 (Judge Rich appointed Harsh to represent Plaintiff, presided over the court proceedings related to her prosecution, and sentenced Plaintiff); *id*. at 14-15 (Defendants conspired to tamper with or destroy evidence)]. Given the broad immunity afforded judges with regard to actions taken in the execution of their official duties, the undersigned will first determine whether the claims for damages against Judge Rich are barred and then will consider the sufficiency of the claims with regard to the remaining defendants.

a. Claims against Judge Rich

i. Individual-Capacity Claims

"Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the 'clear absence of all jurisdiction.' " *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978)); *accord Simmons v. Conger*, 86 F.3d 1080, 1084-85 (11th Cir. 1996). This judicial immunity applies "even

when the judge's acts are in error, malicious, or were in excess of his or her jurisdiction." *Bolin*, 225 F.3d at 1239. Courts examine the following four factors in determining whether a judge's actions were taken in his judicial capacity:

> (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity.

Rogozinski v. Spaulding, 330 Fed. Appx. 170, 171 (11th Cir. May 8, 2009) (alteration omitted) (quoting *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005)).

Here, Plaintiff complains about judicial actions taken by Judge Rich while Plaintiff's Gwinnett County Superior Court criminal case was pending before him. Specifically, Plaintiff complains that during the time Rich presided over Plaintiff's case, he "adopted the acts of the Lawrenceville Police Department," assigned an attorney to represent Plaintiff, ordered that only the attorney was allowed to speak on Plaintiff's behalf, apparently took Plaintiff's plea, and sentenced her. [Doc. 1-1 at 9-11]. A portion of the complaint could also be construed to allege that Rich mishandled evidence in the matter. [*See id.* at 14-15]. These complaints clearly relate to Rich's judicial actions in a case properly before him. As a result, the

undersigned concludes that Rich has absolute judicial immunity from the claims for damages arising from these actions.

Accordingly, the undersigned **RECOMMENDS** that the District Court **DISMISS WITH PREJUDICE** the damages claims Plaintiff brings against Rich in his individual capacity because they are barred by judicial immunity. *See Bryant*, 252 F.3d at 1163 (no need to allow futile re-pleading).

ii. Official-Capacity Claims

"[T]he judicial acts of a judge sitting within a particular county are the exercise of the judicial power of the state and are taken by authority of an office created by the state." *Bendiburg v. Dempsey*, 692 F. Supp. 1354, 1363 (N.D. Ga. 1988) (Forrester, J.). Thus, "the several courts of the State of Georgia . . . are organs of the state and their judicial officers are state officials." *Id*. "A suit against a state official in his or her official capacity . . . is no different from a suit against the State itself." *Simmons*, 86 F.3d at 1085 (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) (alterations omitted)). Consequently, a suit for damages against Judge Rich in his official capacity is a suit against the State of Georgia. *See Simmons*, 86 F.3d at 1085.

Because the Eleventh Amendment[9] bars suit in federal court when an unconsenting state or "arm of the State" is sued, the claims for damages Plaintiff brings against Rich in his official capacity are barred by the state's sovereign immunity. *See Manders*, 338 F.3d at 1308; *see also Simmons*, 86 F.3d at 1084-85 (barring suit against a state circuit court judge in his official capacity on grounds of Eleventh Amendment sovereign immunity).

The undersigned therefore **RECOMMENDS** to the District Court that it **DISMISS WITH PREJUDICE** the damages claims Plaintiff brings against Rich in his official capacity because they are barred by sovereign immunity. *See Bryant*, 252 F.3d at 1163 (no need to allow futile re-pleading).

b. Remaining Conspiracy and Malicious Prosecution Claims

The undersigned next considers the claims for conspiracy and malicious prosecution against the remaining defendants and against Judge Rich to the extent that

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[9] The Eleventh Amendment states that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. "Although the express language of the Eleventh Amendment does not bar suits against a state by its own citizens, the Supreme Court has held that an unconsenting state is immune from lawsuits brought in federal court by the state's own citizens." *Manders v. Lee*, 338 F.3d 1304, 1308 n.8 (11th Cir. 2003) (en banc) (internal punctuation and quotation marks omitted) (citing *Hans v. Louisiana*, 134 U.S. 1 (1890)).

Plaintiff seeks injunctive relief against him. Section 1985(3) provides a cause of action to certain victims who have fallen prey to conspiracies to violate their civil rights. *See* 42 U.S.C. § 1985(3). When a plaintiff presents a viable § 1985 claim, § 1986 provides an additional cause of action against anyone who knows "that any of the wrongs conspired to be done, and mentioned in section 1985 . . . are about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses to do so." *Park v. City of Atlanta*, 120 F. 3d 1157, 1159 (11th Cir. 1997) (quoting 42 U.S.C. § 1986). Section 1983 also provides a cause of action for conspiracy to deprive a person of his or her civil rights. *See Tower v. Glover*, 467 U.S. 914, 916 (1984).

A challenge to a conviction such as this, where the plaintiff alleges that prosecutors and police engaged in wrongful conduct that led to the plaintiff's wrongful conviction, is most closely analogous to the common-law tort of malicious prosecution. *See Heck v. Humphrey*, 512 U.S. 477, 479, 484 (1994). "One element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Id.* at 484. Thus, a civil-rights action that implicates the validity of a criminal conviction or sentence is barred unless the

conviction or sentence has been reversed on direct appeal, expunged, or otherwise declared invalid. *Id.* at 486-87.

Plaintiff does not show that her conviction was reversed on direct appeal, expunged, or otherwise declared invalid. [*See* Doc. 1-1, *passim*.] In fact, she does not identify any steps she took to challenge her conviction in Georgia's state courts. [*Id*.]. Accordingly, the undersigned finds that Plaintiff's claims for conspiracy and malicious prosecution are subject to dismissal without prejudice. Given Plaintiff's *pro se* status, however, the undersigned **RECOMMENDS** to the District Court that it **PERMIT** Plaintiff **LEAVE TO AMEND** her complaint to properly plead her conspiracy and malicious-prosecution claims, should she have a good-faith basis for doing so.[10] *See*

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[10] The undersigned notes that although the lack of an allegation that the conviction was reversed on direct appeal, expunged, or otherwise declared invalid is a threshold bar to challenging that conviction, an amended claim must plausibly allege that the conviction was resolved in her favor *and* plead facts sufficient to plausibly support *each* element of each of Plaintiff's claims.

To prevail on a conspiracy claim under 42 U.S.C. § 1985(3), the plaintiff must prove: (1) a conspiracy; (2) for the purpose of depriving any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; (4) whereby a person is injured in his person or property or deprived of a right or privilege of a citizen. *United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983); *Denney v. City of Albany*, 247 F.3d 1172, 1190 (11th Cir. 2001). The first element, conspiracy, "is a combination of two or more persons to accomplish an unlawful end or to accomplish a lawful end by unlawful means." *U.S. Anchor Mfg. v. Rule Indus.*, 264 Ga. 295, 297,

443 S.E.2d 833, 835 (1994) (internal quotation marks omitted). The essential aspect of an alleged conspiracy is proof of a common design establishing that "two or more persons in any manner, either positively or tacitly, arrive at a mutual understanding as to how they will accomplish an unlawful design.' " *Tyler v. Thompson*, 308 Ga. App. 221, 225, 707 S.E.2d 137, 141 (2011) (quoting *Parrish v. Jackson W. Jones, P.C.*, 278 Ga. App. 645, 649, 629 S.E.2d 468, 472 (2006)). The second element, discriminatory purpose, requires a showing that the conspiracy was motivated by some racial or otherwise class-based invidiously discriminatory animus. *United Bhd.*, 463 U.S. at 829, 850 (stating further that "the intended victims must be victims not because of any personal malice the conspirators have toward them, but because of their membership in or affiliation with a particular class"); *Lucero v. Operation Rescue*, 954 F.2d 624, 627-28 (11th Cir. 1992).

Plaintiff has not stated a plausible conspiracy claim. First, Plaintiff has not alleged any facts showing that Defendants mutually agreed that they would unlawfully detain Plaintiff, bring bogus charges against her, wrongfully convict her, and otherwise deprive her of her civil rights. [*See* Doc. 1-1, *passim*]. Instead, she conclusorily states that Defendants "adopted" one another's acts and acted "in conspiracy" with one another to deprive Plaintiff of her rights. [*See id.* at 5, 8, 12-20]. Second, Plaintiff has not alleged any facts showing that if a conspiracy had existed, that it was motivated by racial or otherwise class-based invidiously discriminatory animus. Again, she instead makes conclusory statements: that she "is an African American Female, and a member of a class based and/or race discriminatory animus," [*see id.* at 2], and that Defendants' allegedly wrongful interactions with her–the traffic stops, searches, seizures, arrests, detention, and prosecution–were all "clearly" motivated by her race or ethnicity, [*see id.* at 5-7, 9, 14, 17]. In essence, the complaint alleges simply that because Plaintiff is African-American, Defendants' actions must have been motivated by her race or ethnicity.

The legal conclusions regarding the existence of a conspiracy and racial animus are not entitled to the presumption of truth. *See Iqbal*, 129 S. Ct. at 1949 ("Where a complaint pleads facts that are merely *consistent* with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.") (emphasis added) (internal quotation marks omitted); *see also Rowe v. City of*

Schmitt v. U.S. Office of Pers. Mgmt., 403 Fed.Appx. 460, 462 (11th Cir. Nov. 23, 2010) ("Where it appears that a more carefully drafted complaint might state a claim, the district court should give a *pro se* plaintiff an opportunity to amend his complaint instead of dismissing it.") (citing *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991) (per curiam), *overruled on other grounds by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (en banc)).

3. Section 1983 Claims for Wrongful Search and Seizure, False Arrest, and False Imprisonment

Plaintiff's remaining claims appear to be premised on allegedly (1) illegal traffic stops; (2) unlawful searches of Plaintiff's car and person; (3) illegal seizure of Plaintiff's Camaro and Pontiac; and (4) unlawful arrests and imprisonment. [Doc. 1-1, *passim*]. The undersigned finds that these claims are due to be dismissed

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Ft. Lauderdale, 279 F.3d 1271, 1283 (11th Cir. 2002) (factual allegations must plausibly suggest a conspiracy); *Hamilton v. Lajoie*, 660 F. Supp. 2d 261, 266 (D. Conn. 2009) (conclusory statement regarding defendants' "reputation for racially motivated activity" insufficient to state a claim); *cf. Thomas v. Franklin Cnty. Sch. Bd.*, No. 4:07-CV-347-SPM, 2008 WL 1945553, at *5 (N.D. Fla., July 28, 2008) (accusations of racial animus require factual allegations showing that race was a factor underlying the defendant's challenged decision). Thus, Plaintiff has failed to state a plausible conspiracy claim under 42 U.S.C. § 1985(3). Absent a colorable claim under § 1985, no cause of action exists under 42 U.S.C. § 1986 for failing to prevent the alleged wrongs. *Farese v. Scherer*, 342 F.3d 1223, 1232 n.12 (11th Cir. 2003); *Park*, 120 F. 3d at 1159. Consequently, should an amended complaint fail to remedy these deficiencies as well, it will also be subject to dismissal on frivolity grounds.

because the limitations period has expired and because Plaintiff has failed to allege facts that would support equitable tolling.[11]

a. Accrual

Generally, the limitation period for these claims "begins to run from the date 'the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights.' " *Sneed v. Pan Am. Hosp.*, 370 Fed. Appx. 47, 49 (11th Cir. Mar. 18, 2010) (quoting *Brown v. Ga. Bd. of Pardons & Paroles*, 335 F.3d 1259, 1261 (11th Cir. 2003)); *see also Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003); *Trawinski v. United Techs.*, 313 F.3d 1295, 1299 (11th Cir. 2002); *Pollard v. United States*, 384 F. Supp. 304, 307 (M.D. Ala. 1974) (citing *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946)).

Federal courts have determined that " '[c]laims arising out of police actions toward a criminal suspect, such as arrest, interrogation, or search and seizure, are presumed to have accrued when the actions actually occur.' " *Beck v. City of Muskogee*

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[11] The undersigned does not address the limitations period for Plaintiff's malicious-prosecution and associated conspiracy claims because a malicious-prosecution claim does not accrue until the underlying conviction has been reversed or otherwise invalidated. *See Wallace v. Kato*, 549 U.S. 384, 392, 394 (2007) (in dicta) (citing *Heck*, 512 U.S. at 486-87). Depending on the date Plaintiff's conviction was set aside (if, indeed, it was), it is possible that the malicious-prosecution and associated conspiracy claims were timely filed.

Police Dep't, 195 F.3d 553, 558 (10th Cir. 1999) (quoting *Johnson v. Johnson Cnty. Comm'n Bd.*, 925 F.2d 1299, 1301 (10th Cir. 1991)); *see also Singleton v. Martin*, No. CV405-141, 2008 WL 80263, at *4 (S.D. Ga. Jan. 7, 2008) (finding unlawful stop and seizure accrued on the day it occurred); *Hilton v. Kronenfeld*, Civil Action No. 04-6420(SDW), 2008 WL 305276, at *8 (D.N.J. Jan. 29, 2008) (concluding that "§ 1983 claims for false arrest, illegal search and seizure, [and] false imprisonment" accrued on date of traffic stop because plaintiff knew that he was stopped and detained for no good reason on this date); *Mitchell-Bey v. City of Detroit*, Civil Action No. 06-11746, 2007 WL 674595, at *2 (E.D. Mich. Feb. 28, 2007) (finding § 1983 claims based on traffic stop accrued at the time of his arrest or within the days that followed because he knew of the injuries at the time); *Pendarvis v. Helms*, No. 8:04CV2261 T27TGW, 2006 WL 2724901, at *2 n.3 (M.D. Fla. Sept. 22, 2006) (finding that § 1983 claims accrued when searches were conducted). As such, Plaintiff's claims relating to the traffic stops, searches, and seizure of her car accrued in November 2005, sometime in 2006, and in October 2007–the time periods when the events allegedly occurred. [*See* Doc. 1-1 at 6, 8, 13].

When evaluating a § 1983 claim, federal courts examine the common-law tort claims that provide the closest analogy to the § 1983 claims. *Wallace*, 549 U.S. at 388.

For a § 1983 claim premised on false arrest, "the torts of false arrest and false imprisonment" are the closest analogous tort claims. *Id.* A plaintiff may file suit for false arrest under § 1983 immediately upon the arrest. *See id.* at 388 ("There can be no dispute that [plaintiff] could have filed suit as soon as the allegedly wrongful arrest occurred[.]"), 390 n.3. However, the statute of limitations begins to run for § 1983 false-arrest claims "when the [parties'] false imprisonment [comes] to an end," *id.* at 389, which includes: (1) in cases where an arrest is followed by criminal proceedings, the time when a party becomes detained pursuant to legal process such as when the plaintiff is arraigned or seen by a magistrate, *id.* at 389-90, 397; or (2) in cases where there is no period of continuous custody, the time when the plaintiff is released from police custody, *see Singleton*, 2008 WL 80263 at *4 & n.3.

With regard to her 2005 arrest, Plaintiff alleges that she was arrested on November 20, 2005, and "falsely imprisoned . . . for 1-5 days." [Doc. 1-1 at 6-7]. Plaintiff has not pleaded allegations as to whether legal process was initiated against her, and it is not clear that her arrest was followed by criminal proceedings. [*Id.*]. Granting Plaintiff all benefit of the doubt, the Court finds that the false-arrest and false-imprisonment claims accrued on November 25, 2005, five days after the day she was arrested, and the maximum length of time Plaintiff could have been in continuous

custody, according to the pleadings. *See Wallace*, 549 U.S. at 389; *Singleton*, 2008 WL 80263 at *4 & n.3.

With regard to her 2006 arrest, Plaintiff alleges that she was arrested "[o]n or about IN [sic] 2006" and was "falsely . . . imprisoned . . . for **nine days**." [Doc. 1-1 at 8]. It appears that legal process was brought against her, but it is unclear when it may have commenced. [*Id*. at 8-9]. Again granting Plaintiff all benefit of the doubt, assuming that Plaintiff was arrested on the last day of 2006 and was released from custody after nine days of continuous custody, her associated false-arrest and false-imprisonment claims would have accrued no later than January 9, 2007. *See Wallace*, 549 U.S. at 389; *Singleton*, 2008 WL 80263 at *4 & n.3.

Finally, with regard to her 2007 arrest, Plaintiff alleges that she was "unlawfully arrested" and "falsely imprisoned" on October 19, 2007. [Doc. 1-1 at 13-14]. Although it appears from the pleadings that legal process was brought against her, Plaintiff does not allege when that occurred or when she was released from police custody. [*See id.*]. Lacking such information, the Court presumes that the arresting officer, in compliance with the Official Code of Georgia, brought Plaintiff before a judicial officer within seventy-two hours of her arrest. *See* O.C.G.A. § 17-4-26. Consequently, Plaintiff's 2007 claims for false arrest and false imprisonment would

have accrued no later than October 22, 2007, three days after Plaintiff's October 19 arrest. *See Wallace*, 549 U.S. at 389; *Singleton*, 2008 WL 80263 at *4 & n.3.

b. Limitations Period

The statute of limitations for 42 U.S.C. § 1983 claims arising in Georgia is two years. *See Bryant v. Jones*, 696 F. Supp.2d 1313, 1319 (N.D. Ga. 2010) (Duffey, J.) (citing *Williams v. City of Atlanta*, 794 F.2d 624, 626 (11th Cir. 1986)); *see also Lovett v. Ray*, 327 F.3d 1181, 1182 (11th Cir. 2003) (per curiam). As discussed above, this lawsuit asserts violations of Plaintiff's constitutional rights based on claims that accrued, at the latest, in October 2007. Plaintiff sought permission to file her lawsuit on November 28, 2011. [*See* Doc. 1]. This was more than four years after the claims accrued and more than two years out-of-time.

c. Tolling

Plaintiff obviously anticipated this conclusion because her complaint seeks to toll the limitations period. Specifically, Plaintiff states, "The Statue [sic] of limitation is tolled when one in [sic] absent from the State." [Doc. 1-1 at 5]. She then avers that "Plaintiff has been absent from the State of Georgia since the incident in Nov. 2007, and it has been impossible to perfect service on the Defendants therefore the Statue [sic] of limitations is tolled." [*Id*.]. Plaintiff further states that the limitations period

should be tolled because she is a victim of crime. [*Id.*]. As a result, the undersigned now considers whether the limitations period for Plaintiff's § 1983 claims should be tolled.

Federal courts generally turn to state law to determine whether the statute of limitations should be tolled. *See Wallace*, 549 U.S. at 394 ("We have generally referred to state law for tolling rules[.]"). Under Georgia law, the limitations period may be tolled in the following circumstances: (1) the party is legally incompetent, O.C.G.A. § 9-3-90; (2) the person becomes legally incompetent after the right accrues, O.C.G.A. § 9-3-91; (3) an estate becomes unrepresented, O.C.G.A. §§ 9-3-92, 9-3-93; (4) the defendant is absent from the state, O.C.G.A. § 9-3-94; (5) one party in a joint action is legally incompetent, O.C.G.A. § 9-3-95; (6) there is fraud by the defendant that kept the plaintiff from filing the suit, O.C.G.A. 9-3-96; (7) there are counterclaims and cross claims, O.C.G.A. § 9-3-97; (8) the party is bringing a medical malpractice claim, O.C.G.A. § 9-3-97.1; (9) a tort arises from a crime, O.C.G.A. § 9-3-99; or (10) there is a non-statutory basis for equitable tolling, *State v. Private Truck Council of Am., Inc.*, 258 Ga. 531, 371 S.E.2d 378, 380-81 (1988). Additionally, it appears that a party bringing a § 1983 claim may seek to have the limitations period equitably tolled under

federal law. *See Wallace*, 549 U.S. at 396 (Scalia, J., writing for the majority), 403 (Breyer, J., dissenting).

The Court does not discuss each of these bases for tolling because Plaintiff asserts that tolling applies due to her absence from the state and her status as the victim of a crime. As a result, the Court determines whether Plaintiff is entitled to have the limitations period tolled under (1) Georgia's statutory provision for equitable tolling based on absence from the state, O.C.G.A. § 9-3-94; (2) Georgia's statutory provision for equitable tolling involving a tort that arises from a crime, O.C.G.A. § 9-3-99; and (3) non-statutory equitable tolling.

i. Absence from the State (O.C.G.A. § 9-3-94)

Plaintiff does not state the authority upon which she relies for her theory that her absence from the state has tolled the limitations period since November 2007. [*See* Doc. 1-1 at 5]. Neither has the undersigned's own research revealed any such support. The undersigned suspects that Plaintiff has misconstrued O.C.G.A. § 9-3-94, which provides not that the statute of limitations is tolled when "one" is absent from the state, but instead that, "[u]nless otherwise provided by law, if a *defendant* removes from this state, the time of his absence from the state until he returns to reside shall not be counted or estimated in his favor." O.C.G.A. § 9-3-94 (emphasis added). Because

it is the *plaintiff* who has been absent from the state, § 9-3-94 is inapplicable and therefore provides no ground for tolling the limitation period. The undersigned therefore **RECOMMENDS** to the District Court that it refrain from tolling the limitations period on this ground.

ii. A Tort Arising from a Crime (O.C.G.A. § 9-3-99)

Plaintiff quotes O.C.G.A. § 9-3-99 in support of her assertion that the statute of limitations should be tolled because she is the victim of a crime. [*See* Doc. 1-1 at 5]. Section 9-3-99 provides as follows:

> The running of the period of limitations with respect to any cause of action in tort that may be brought by the victim of an alleged crime which arises out of the facts and circumstances relating to the commission of such alleged crime committed in this state shall be tolled from the date of the commission of the alleged crime or the act giving rise to such action in tort until the prosecution of such crime or act has become final or otherwise terminated, provided that such time does not exceed six years.

Although Plaintiff correctly recites the statute in her complaint, she does not show that it applies in this case. [*See* Doc. 1-1 at 5]. Georgia courts have interpreted the statute to toll the limitations period "for any cause of action in tort brought 'by the victim of an alleged crime' while the prosecution of the defendant is pending, for a period not to exceed six years." *Columbia Cnty. v. Branton*, 304 Ga. App. 149, 152, 695 S.E.2d 674, 677-78 (2010) (quoting *Valades v. Uslu*, 301 Ga. App. 885, 689 S.E.2d

338 (2009)). Therefore, when the civil defendant has not been prosecuted for any crime arising from the incident underlying the tort claim, § 9-3-99 does not toll the period of limitations. *Columbia Cnty.*, 304 Ga. App. at 152-53, 695 S.E.2d at 678; *Valades*, 301 Ga. App. at 889, 689 S.E.2d at 342.

Plaintiff asserts that she was the victim of "flagert [sic], malicious, intentional violation of her civil rights by police officers" in 1993. [Doc. 1-1 at 3]. She states only that she "is the '**victim**' of a horrific crime by the above named Defendants" and that the alleged crime involved "intentional violation of her civil rights by police officers." [*See id.*]. She does not state which of the defendants she names in this action–if any–were prosecuted for the crime, nor does she provide any information regarding the charges or their resolution. [*See id.*]. Although she hints that the incidents in 2005, 2006, and 2007 also constituted crimes against her, she does not expressly state she was a victim of a crime on those dates or that any of the defendants were charged with crimes in relation to those incidents. [*See id.* at 5, 22, 23].

The undersigned finds that these allegations are so vague that they fail to state a facially plausible claim that Plaintiff was in fact the victim of a crime and therefore possibly entitled to tolling of the limitations period. Supplying "labels and conclusions" and hinting at one's factual support is not sufficient for stating a claim.

See Twombly, 550 U.S. at 555, 570 (holding that although a complaint need not provide detailed factual allegations, it must supply factual allegations sufficient "to raise a right to relief above the speculative level" and give "enough facts to state a claim to relief that is plausible on its face."). Moreover, even if the Court were to accept Plaintiff's conclusory allegation that she was the victim of a crime in 1993, the six-year maximum tolling period would have expired in 1999, and thus would not save Plaintiff's claims. Consequently, the undersigned **RECOMMENDS** to the District Court that it refrain from tolling the limitations period on this ground as well.

iii. Non-Statutory Equitable Tolling (Georgia Law)

Georgia's non-statutory doctrine of equitable tolling is extremely narrow. The undersigned's research revealed only three situations in which Georgia courts found that non-statutory equitable tolling could be permissible.[12] One such discussion "occurred in the context of a class action lawsuit, which required equitable tolling in order to 'permit class member[s] to rely on the class action to protect their rights without concern that the statute of limitations on their individual claims will have run

[12] In other cases, Georgia courts held that non-statutory equitable tolling was unavailable. *See, e.g., Lyon v. Schramm*, 291 Ga. App. 48, 50, 661 S.E.2d 178, 180 (2008) (holding that a statute of repose cannot be equitably tolled); *Lackey v. Crittenden*, 217 Ga. App. 432, 432,457 S.E.2d 701, 702 (1995) (declining to apply non-statutory equitable estoppel under a theory of "excusable neglect").

should class certification ultimately be denied.' " *Hicks v. City of Savannah*, No. CV408-006, 2008 WL 2677128, at *2 (S.D. Ga. July 8, 2008) (internal punctuation omitted) (quoting *Private Truck Council of Am., Inc.*, 258 Ga. at 371, S.E.2d at 380-81). Another discussion occurred in the context of a contract suit, wherein the court held that a "valid agreement not to sue upon a demand until the happening of a particular event (suspends) the running of the statute . . . until such event occurs.'" *McDonald v. Patton*, 172 Ga. App. 491, 492, 323 S.E.2d 690, 691 (1984) (quoting *Thomas v. Hudson*, 190 Ga. 622, 10 S.E.2d 396 (1940)). In the third case, the court held that the statute of limitations on an action for back taxes was tolled during the pendency of a settlement offer. *Mitchell v. United States*, 214 Ga. 473, 478, 105 S.E.2d 337, 341 (1958). The instant case is not a class action, a suit on contract, or a government action for back taxes; thus, there is no authority to support tolling of Plaintiff's § 1983 claims under Georgia's non-statutory equitable tolling law.

iv. Non-Statutory Equitable Tolling (Federal Law)

A District Judge in the Northern District of Georgia recently described the federal law on equitable tolling as follows:

> Federal courts "have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been

> induced or tricked by his adversary's misconduct into allowing the filing deadline to pass," but have not allowed "late filings where the claimant failed to exercise due diligence in preserving his legal rights."

Price v. Owens, 634 F. Supp. 2d 1349, 1355 (N.D. Ga. 2009) (Batten, J.) (quoting *Nat'l Cement Co. v. Fed. Mine Safety and Health Review Comm'n*, 27 F.3d 526, 530 (11th Cir. 1994)). In other words, equitable tolling is available only "when a [party] untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." *Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009) (internal quotation marks omitted). Plaintiff states only that she has been absent from the state since November 2007, which, she contends, made it impossible for her to perfect service on Defendants; she does not allege that her absence was beyond her control or unavoidable, nor does she allege any facts that would allow the Court to reach such a conclusion. [*See* Doc. 1-1, *passim*].

Accordingly, the Court concludes that the limitation period for Plaintiff's § 1983 claims should not be tolled under Georgia or federal law.[13] Because tolling does not

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[13] The Court also notes that the fact that criminal charges may still be pending against Plaintiff does not serve to toll the limitations period on Plaintiff's wrongful search-and-seizure, false-arrest, and false-imprisonment claims. "In *Wallace v. Kato*, 549 U.S. 384 . . . (2007), the Supreme Court held that a plaintiff must bring a § 1983 action within the relevant statute of limitations period, even if the § 1983 action may impugn an anticipated future conviction." *Watts v. Epps*, 475 F. Supp. 2d 1367, 1368 (N.D. Ga. 2007) (Story, J.). As a result, Plaintiff still had, at the latest, two years

apply, Plaintiff's 42 U.S.C. § 1983 claims are time-barred. As a result, the undersigned **RECOMMENDS** that the claims be **DISMISSED**. However, given Plaintiff's *pro se* status, the undersigned **RECOMMENDS** to the District Court that it **PERMIT** Plaintiff **LEAVE TO AMEND** her complaint should a factual basis in fact exist for her equitable tolling assertion–in other words, that the Court grant leave to Plaintiff to amend her § 1983 claims for wrongful search and seizure, false arrest, and false imprisonment only upon the condition that she proffer facts sufficient to plausibly show that Defendants were charged with crimes related to the occurrences that form the basis for Plaintiff's civil-rights claims.[14]

IV. Conclusion

For the reasons above, the undersigned **GRANTS** Plaintiff's petition to proceed IFP. [Doc. 1]. The undersigned **RECOMMENDS** to the District Court that it **DISMISS WITH PREJUDICE** any claims Plaintiff may seek to bring under 18 U.S.C. § 242 and the claims for damages Plaintiff raises against Judge Rich. The

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from October 2007 to bring her civil action on all claims except those related to malicious prosecution.

[14] Plaintiff, of course, would also be required to plead facts sufficient to plausibly establish each element of any claim she might choose to re-plead. *See Twombly*, 550 U.S. at 555, 570 (standard for sufficiency of factual allegations).

undersigned further **RECOMMENDS** that the District Court **DISMISS WITHOUT PREJUDICE** Plaintiff's remaining claims but **GRANT** Plaintiff leave to amend her complaint as described above.

Should the District Court choose to allow Plaintiff leave to re-plead her claims, the undersigned **RECOMMENDS** to the District Court that it **ORDER** her to do so within a certain number of days after the entry of the District Court's order. The undersigned further **RECOMMENDS** to the District Court that it **DIRECT** Plaintiff to (1) state each claim in a separate count, and clearly indicate the nature of each cause of action; (2) under each count, provide the relevant facts, including dates, the she believes entitle her to relief; (3) specify which claims are being brought against which defendants (and, in the event that she finds it necessary to name a John Doe defendant, provide a specific description of that defendant); (4) attach any documents she believes are relevant to her claims; and (5) set forth any facts she believes support the application of equitable tolling of the limitations period. Finally, the undersigned **RECOMMENDS** to the District Court that it **ADVISE** Plaintiff that if she does not comply with the order, her complaint will be subject to dismissal.

The Clerk is **DIRECTED** to terminate the referral to the undersigned.

IT IS SO ORDERED, RECOMMENDED and DIRECTED, this the 19th day of January, 2012.

ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE