UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Case No. 0:25-cv-02056-DWF-DJF

Kellye Strickland,

Plaintiff,

v.

Barna, Guzy & Steffen, Ltd., et al.,

Defendants.

PLAINTIFF'S SURREPLY REGARDING DEFENDANT BGS'S MOTION TO DISMISS

Plaintiff Kellye Strickland respectfully submits this surreply to address arguments and authorities first raised in Defendant Barna, Guzy & Steffen, Ltd.'s ("BGS") late-filed Memorandum of Law (ECF No. 39). BGS failed to serve its memorandum contemporaneously with its motion as required by Local Rule 7.1(c)(2). As a result, Plaintiff—an out-of-state, pro se litigant limited to paper filing—was deprived of any opportunity to respond in her timely opposition. This surreply, limited to ten pages, and is confined solely to the new matters introduced by BGS's belated filing.

I. INTRODUCTION & PROCEDURAL CONTEXT

BGS filed its memorandum on September 5, 2025—two days after its motion (ECF No. 34) and after the September 2 response deadline. By that time, Plaintiff had already mailed her opposition, leaving her unable to address the new arguments BGS later introduced. Courts have recognized that when a party raises new arguments belatedly, the appropriate remedy is either to strike the filing or to permit a surreply to cure prejudice.

The prejudice here is compounded. Rather than filing a single consolidated motion, BGS's counsel filed separate motions on behalf of both BGS and Manderfeld, effectively doubling the number of filings a paper-filing, out-of-state pro se litigant had to answer. Plaintiff nonetheless responded to both motions on time. Allowing BGS's late memorandum to stand unaddressed would reward noncompliance with local rules and penalize a disabled litigant who has complied with every deadline.

II. SUBSTANTIVE RESPONSES TO NEW/IMPROPER ARGUMENTS

A. Subject Matter Jurisdiction (Rooker–Feldman, Younger)

BGS asserts that Plaintiff's claims are barred because they seek review of state HRO proceedings. That framing mischaracterizes the federal claims.

1. **Independent federal questions**. Plaintiff challenges systemic misconduct—fabrication of judicial orders, denial of ADA accommodations, and retaliatory practices—not the merits of the HRO itself. These are independent federal claims and are not barred by Rooker–Feldman. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 284 (2005) (doctrine limited to "cases brought by state-court losers complaining of injuries caused by state-court judgments"); *Skinner v. Switzer*, 562 U.S. 521, 532 (2011) (federal jurisdiction exists even when state and federal proceedings share factual background).

See also *Kougasian v. TMSL, Inc.,* 359 F.3d 1136, 1140 (9th Cir. 2004) (Rooker–Feldman does not bar claims alleging fraud upon the court).

2. **State appeal does not compel abstention.** Plaintiff's HRO appeal is pending, but *Younger* abstention applies only where three conditions are met: (1) an ongoing state proceeding, (2) important state interests, and (3) an adequate forum to raise federal claims. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, 432 (1982); *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 81 (2013). The third requirement is absent here. At the May 23, 2025 hearing, Referee Larmouth barred Plaintiff from presenting service evidence, stating: "This is not an evidentiary hearing. It is a motion hearing only." A forum that refuses to hear jurisdictional objections cannot be "adequate" under *Younger. See Gibson v. Berryhill,* 411 U.S. 564, 577 (1973).

3. **Extraordinary circumstances**. Even if *Younger* applied, abstention is inappropriate where proceedings are pursued in bad faith, for harassment, or under flagrantly unconstitutional conditions. *Younger v. Harris,* 401 U.S. 37, 54 (1971). Plaintiff alleges: (a) unsigned orders later altered with retroactive signatures; (b) fabricated service dates contradicted by sworn affidavits; (c) altered July 14/24 hearing notices with falsified metadata; and (d) escalated retaliation after Plaintiff filed this federal case. These circumstances fall squarely within *Younger*'s bad-faith exception.

Accordingly, neither Rooker–Feldman nor *Younger* strips this Court of jurisdiction. Plaintiff's federal claims exist independent of, and in many respects collateral to, the state HRO proceedings.

B. Service of Process

BGS argues that service was defective because the summons and complaint were left with a legal assistant rather than an officer or registered agent. That argument fails for four reasons.

1. **Actual notice and participation.** BGS indisputably received the summons and complaint, appeared through counsel, and promptly filed dispositive motions. Courts consistently hold that technical defects in service do not warrant dismissal where the defendant has actual notice and suffers no prejudice. See *Carmona v. Ross,* 376 F.3d 829, 832 (8th Cir. 2004).

2. **Good-faith compliance with Rule 4**. Plaintiff, a disabled pro se litigant filing by paper from out of state, made repeated, documented service attempts before the extended Rule 4(m) deadline set by Magistrate Judge Foster (ECF No. 8). Proof of service was filed on August 19, 2025, well before the deadline. Any minor deviation from Rule 4.03(c) of the Minnesota Rules of Civil Procedure was the result of logistical barriers, not neglect.

3. **Untimeliness and default**. BGS's response deadline was September 2, 2025. Plaintiff filed a Request for Clerk's Entry of Default at 12:02 a.m. on September 3 (ECF No. 32). BGS's motions were filed only later that day. Under Rule 55(a), default had already been triggered before BGS raised any objection. Service challenges asserted after default and after substantive filings are untimely as a matter of law.

4. **Waiver and ratification**. By filing Rule 12(b)(6) motions on the merits and actively litigating, BGS waived any objection to personal jurisdiction or service. See Fed. R. Civ. P. 12(h)(1). Courts in this District hold that once a party appears and contests the merits, service objections are forfeited. See also *Printed Media Servs., Inc. v. Solna Web, Inc*., 11 F.3d 838, 843 (8th Cir. 1993).

At minimum, any technical defect is curable under Rule 4(h) and cannot justify dismissal. The record demonstrates actual notice, timely opposition, and active participation by BGS. Under these

circumstances, dismissal for insufficient service would elevate form over substance and reward BGS for noncompliance.

C. Failure to State a Claim (Section 1983, ADA, Conspiracy, Abuse of Process)

BGS contends that Plaintiff has not plausibly alleged state action or joint conduct, arguing that as a private law firm it cannot be liable under § 1983. That misstates the allegations.

1. **Joint action with state officials.** BGS's assertion that it cannot be liable under § 1983 ignores the specific allegations in the Amended Complaint. Attorney Kyle Manderfeld, who served as a Ramsey County law clerk until mid-2024, entered the state HRO proceedings for BGS in May 2025 and worked in concert with county officials to ratify and launder void state orders into the federal record. He advanced estoppel arguments on behalf of BGS that relied on altered documents already identified in the record, thereby carrying forward the unlawful practices of county officials into private litigation.

This is not "mere private conduct." It is willful participation in joint activity with state actors to obstruct Plaintiff's rights. The Supreme Court has long held that private parties who conspire with or obtain significant aid from state officials act under color of law. *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 152 (1970). The Eighth Circuit has likewise recognized liability where private actors jointly participate with state officials in unconstitutional conduct. *Dossett v. First State Bank,* 399 F.3d 940, 947 (8th Cir. 2005).

At the pleading stage, these allegations are more than sufficient to plausibly state joint action under § 1983.

2. **Specific factual allegations.** Plaintiff's Amended Complaint spans 77 pages and is supported by more than 200 pages of exhibits. It alleges in detail how BGS, through Manderfeld, perpetuated ADA retaliation, denial of access to courts, and reprisals following Plaintiff's federal filing. The allegations include:

1. Reliance on fabricated service dates contradicted by sworn affidavits;
2. Laundering of unsigned and subsequently altered orders into the record; and
3. Coordination with referees and court staff to obstruct Plaintiff's motions and invoke collateral estoppel on the basis of void documents.

These allegations are not conclusory. They are tied to specific documents, timelines, and exhibits already before the Court. At the pleading stage, Rule 12(b)(6) requires only plausibility—not evidentiary proof. Taken as true, the Complaint's factual content easily allows the Court to draw the reasonable inference that BGS acted jointly with state officials in violating Plaintiff's rights.

3. **ADA retaliation (§ 12203).** BGS claims Plaintiff pled no facts tying it to retaliation. That is incorrect. The Amended Complaint specifically alleges that after Plaintiff requested ADA accommodations, filed this federal action, and served spoliation notices, BGS pressed forward with motions that relied on falsified and altered orders. This conduct created duplicative burdens, obstructed access to the courts, and amplified the very ADA retaliation already at issue.

Such allegations fit squarely within the elements of an ADA retaliation claim: (1) engagement in protected activity, (2) adverse action by the defendant, and (3) a causal connection between the two. See *Amir v. St. Louis Univ.,* 184 F.3d 1017, 1025 (8th Cir. 1999). At the pleading stage, Plaintiff need only allege facts that plausibly suggest a retaliatory link. The Complaint easily satisfies that standard.

4. **Conspiracy (§ 1985).** BGS contends there are no facts supporting conspiracy. That is not so. To state a § 1985 conspiracy claim, Plaintiff must allege (1) a conspiracy involving two or more persons, (2) aimed at depriving her of equal protection of the laws, and (3) an act in furtherance of the conspiracy causing injury. See *Larson v. Miller*, 76 F.3d 1446, 1454 (8th Cir. 1996).

The Amended Complaint alleges that BGS, acting through Manderfeld, entered into an agreement with Ramsey County referees and staff to launder altered documents into the record, apply collateral estoppel defensively, and retaliate against Plaintiff's federal filing. Overt acts in furtherance include the filing of motions that explicitly relied on falsified orders and fabricated service records.

At the pleading stage, conspiracy may be established through circumstantial allegations and reasonable inferences drawn from coordinated conduct. See *Dossett v. First State Bank*, 399 F.3d 940, 947 (8th Cir. 2005). Taken as true, these allegations plausibly show joint action by BGS and state officials in furtherance of a retaliatory scheme.

5. **Abuse of process**. BGS argues Plaintiff has not alleged misuse of legal process. Minnesota law recognizes abuse of process where (1) the defendant used process for an ulterior or improper purpose, and (2) the act resulted in damage. *Pow-Bel Constr. Corp. v. Gondek*, 192 N.W.2d 812, 814 (Minn. 1971).

The Amended Complaint alleges precisely that. BGS, through Manderfeld, misused HRO proceedings not to obtain lawful relief under Minn. Stat. § 609.748, but to perpetuate retaliation and to obstruct Plaintiff's federal rights. Specific acts include:

1. Manipulating fee requirements to block filings;
2. Relying on falsified service records to foreclose defenses; and
3. Using altered orders as the basis for collateral estoppel arguments.

Such allegations describe the use of process to achieve ends outside its intended scope—retaliation and obstruction rather than adjudication of harassment claims. At the pleading stage, these facts state a valid claim for abuse of process under Minnesota law.

6. **Minnesota Constitution claims**. BGS argues broadly that there is "no private cause of action" under the Minnesota Constitution. That overstates the law. While Minnesota courts have not recognized an implied damages remedy for every constitutional violation, they have consistently permitted state constitutional claims to proceed in tandem with federal § 1983 claims where equitable or declaratory relief is sought. See, e.g., *State v. Holiday,* 585 N.W.2d 68, 71 (Minn. Ct. App. 1998) (recognizing enforceability of Minnesota constitutional rights though damages remedies may be limited).

Here, Plaintiff's state constitutional claims are pled in parallel with her federal claims. To the extent independent damages may not be available, the claims remain viable as predicates for declaratory and injunctive relief. See *Pulliam v. Allen*, 466 U.S. 522, 541–42 (1984) (prospective relief is not barred by immunity doctrines).

Accordingly, BGS's argument does not warrant dismissal at this stage. The Minnesota Constitution claims may properly proceed at least insofar as they support prospective and equitable relief.

7. **Intentional Infliction of Emotional Distress.** BGS contends that Plaintiff failed to allege conduct sufficiently outrageous or any physical manifestation of injury. That argument misstates both the law and the Complaint.

Under Minnesota law, IIED requires (1) extreme and outrageous conduct, (2) intentional or reckless disregard of the probability of causing emotional distress, (3) a causal connection between the conduct and the distress, and (4) severe emotional distress. *Hubbard v. United Press Int'l, Inc*., 330 N.W.2d 428, 438–39 (Minn. 1983).

The Complaint alleges conduct that is extreme, outrageous, and far outside the bounds of ordinary litigation: deliberate falsification of judicial orders, concealment of metadata, issuance of altered hearing notices, and coordinated retaliation against a disabled litigant who had invoked ADA rights. Such deliberate and targeted misconduct, particularly in the judicial process, exceeds what a civilized community should be expected to tolerate.

Moreover, whether conduct is "sufficiently outrageous" is generally a question of fact not suitable for resolution on a Rule 12 motion. See *Langeslag v. KYMN Inc.,* 664 N.W.2d 860, 865 (Minn. 2003). At minimum, Plaintiff has alleged facts that, if proven, could support an IIED claim. Dismissal at the pleading stage would be premature before discovery into the full scope of BGS's conduct.

III. REQUEST FOR EQUITABLE CONSIDERATION

Plaintiff is permanently and totally disabled, filing pro se and exclusively by paper. The late memorandum, coupled with duplicative motions, materially prejudiced her ability to respond. Courts recognize that strict enforcement of procedural rules is especially important to ensure fairness for disabled and pro se litigants.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court:

1**. Consider this surreply** to correct the record and cure the prejudice caused by BGS's late-filed memorandum;

2. **Decline to reward BGS's violation** of Local Rule 7.1(c)(2) by either disregarding the untimely memorandum or, in the alternative, treating this surreply as Plaintiff's opportunity to respond; and

3. **In ruling on BGS's Motion to Dismiss, deny dismissal** and permit Plaintiff's claims to proceed to discovery, where the factual disputes surrounding service, state action, and retaliation can be fully developed.

Respectfully submitted,

/s/ Kellye Strickland

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