UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ASTRID SUNDWALL,	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	3:00-CV-1309 (JCH)
v.	:	
	:	
JOSEPH C. LEUBA, FRANCIS M. McDONALD, JR., and ROBERT C. HOLZBERG,	:	JANUARY 23, 2001
Defendants.	:	

RULING ON MOTION TO DISMISS [DKT. NO. 20] AND REQUEST FOR PERMISSION TO AMEND COMPLAINT [DKT. NO. 28]

This is an action for damages and declaratory and injunctive relief brought against the defendants Justice Francis M. McDonald, retiring Chief Justice of the Connecticut Supreme Court; Connecticut Superior Court Judge Robert C. Holzberg; and Judge Joseph C. Leuba, retired Chief Court Administrator.[1] The pro se plaintiff brings this action against the defendants in their individual and official capacities pursuant to 42 U.S.C. § 1983, alleging the violation of her constitutional rights and challenging the actions of the defendants in connection with litigation in which the plaintiff is involved in state court.

[1] The Chief Court Administrator is appointed by and "serve[s] at the pleasure of the chief justice." Conn. Gen. Stat. § 51-1b(b). The Chief Court Administrator may be "a judge of the Supreme Court, Appellate Court or Superior Court." Id. § 51-47(a).

The defendants have filed a motion to dismiss the plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(5), & 12(b)(6). See Dkt. No. 20. For the reasons stated herein, the defendants' Motion to Dismiss [Dkt. No. 20] is granted and the plaintiff's Request for Permission to Amend Complaint [Dkt. No. 28] is denied.

I. ALLEGATIONS

The court begins by noting that, "[s]ince most pro se plaintiffs lack familiarity with the formalities of pleading requirements, we must construe pro se complaints liberally, applying a more flexible standard to evaluate their sufficiency than we would when reviewing a complaint submitted by counsel. . . . In order to justify the dismissal of the plaintiff['s] pro se complaint, it must be beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Lerman v. Bd. of Elections, 232 F.3d 135, 139-140 (2d Cir. 2000) (citations, footnote, and internal quotation marks omitted). In evaluating the plaintiff's complaint, the court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in [the plaintiff's] favor." Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000) (citation omitted). The "court[] must

construe pro se pleadings broadly, and interpret them 'to raise the strongest arguments that they suggest.'" Id. at 597 (citation omitted).

The plaintiff's amended complaint ("First Amended Complaint"), filed September 22, 2000, alleges that the plaintiff "owns land and dwellings thereon in Burlington, Connecticut," which a debt collection attorney named Charles Basil has attempted to obtain through a state court foreclosure action.[2] First Amended Complaint (Dkt. No. 19) at ¶¶ 6-7. According to the plaintiff, the foreclosure action alleges that she owes money to Basil's client "for materials allegedly supplied in the construction of said property to one Steven Clark which Basil further alleged had not been paid for." Id. at ¶ 7. According to the First Amended Complaint, "[b]ecause of the negligence of the state and its officials, an ex parte lien has remained on Plaintiff's property for more than eight years." Id. at ¶ 9.

[2] The court notes that the plaintiff filed the First Amended Complaint following a pre-motion conference held with the plaintiff and defense counsel in chambers on September 14, 2000. At the conference, counsel for the defendants raised the concerns that form the basis for the defendants' instant motion: eleventh amendment immunity, Rooker-Feldman doctrine, judicial immunity, insufficient specificity in pleading a civil rights conspiracy, and insufficient service of process on the defendants in their individual capacities.

The First Amended Complaint raises three claims for relief. In the "First Claim for Relief," the plaintiff alleges that Judge Holzberg, while presiding over the aforementioned state court foreclosure case involving a mechanic's lien on the plaintiff's property, "refused to allow the clerk to sign . . . subpoenas" the plaintiff requested in order to "obtain records needed to defend her property against Basil's claims." Id. at ¶ 17. The plaintiff alleges that Judge Holzberg, during a court proceeding, "turned on Plaintiff and threatened her with arrest by alleging that she was violating criminal laws for illegally practicing law for having spoken out." Id. at ¶ 16. The plaintiff also alleges that Judge Holzberg ignored motions filed by the plaintiff and refused to recuse himself from the plaintiff's case. Id. at ¶¶ 15, 19. The plaintiff concludes that, "[a]s a result of Holzberg's unlawful activities, Plaintiff claims economic damages, severe emotional trauma, and the loss of a substantial property right." Id. at ¶ 22.

The plaintiff's "Second Claim for Relief" in the First Amended Complaint makes several allegations regarding actions taken in the underlying state court foreclosure action by Basil, who is not a party to the instant suit. See id. at ¶¶ 20-25. The plaintiff alleges that, "[a]lthough Basil's activities were designed to obstruct

and to disparage Plaintiff's free speech, the defendants refused to take any action to stop the abuse." Id. at ¶ 21. The plaintiff alleges that she informed Chief Justice McDonald and Judge Leuba of Basil's actions and "requested that the cases be transferred so as to protect her right to a fair hearing," but "her complaints and requests were ignored" and "the Defendants refused to act." Id. at ¶¶ 26-27. The plaintiff alleges that the defendants "have thereby broken their own rules by allowing judges who should have been disqualified from hearing and making decisions in the case to continue to make rulings so as to improperly affect the outcome," which the plaintiff alleges "deprived Plaintiff of the ability to get competent lawyers and defend her property." Id. at ¶¶ 28-29. The plaintiff concludes that this alleged inaction "constitutes willful malpractice and/or maladministration as well as an implied endorsement of illegal and unethical abuse of the judicial process." Id. at ¶ 30.

The plaintiff's "Third Claim for Relief" in her First Amended Complaint alleges that she "learned that the foreclosure courts in Connecticut had been used by lawyers and judges to obtain property for themselves by means of highly suspect foreclosure actions and sales" and that the defendants have involved themselves "in a pattern of activity using the notice process to fraudulently obtain defaults so that

they would not have to do their job." Id. at ¶¶ 30, 34. The plaintiff alleges that she "and other property owners in Connecticut had filed complaints with the authorities that the fraudulent foreclosure schemes which permeated Connecticut courts had affected their ability to obtain lawyers who fear retaliation if they get involved." Id. at ¶ 32. She claims that "[t]he unlawful foreclosure activities have so severely compromised the defendants' ability to do their jobs that the collection activities of Basil have been virtually out of control." Id. at ¶ 33. The plaintiff alleges that the defendants' "refusal to perform their lawful duties was also in retaliation for Plaintiff exercising her right to free speech . . . thereby undermining Plaintiff's due process rights." Id. at ¶ 35. According to the plaintiff, the defendants' "aforesaid activities had a dual purpose which was to improperly interfere with investigations and thwart federal court jurisdiction." Id. at ¶ 36.

The plaintiff generally alleges that the defendants "have an administrative responsibility to insure that procedures for enforcement of Connecticut's laws are consistent with the laws and Constitution of the United States and the State of Connecticut." Id. at ¶ 4. Further, the plaintiff claims that the defendants "have no authority to sanction violations of state laws, rules and procedures which have been

implemented by the state legislature to insure a timely and fair adjudication of legal disputes consistent with Connecticut and the United States Constitution." Id. at ¶ 5. By way of relief, the plaintiff seeks (1) a declaratory judgment "that the defendants' activities violate the laws and Constitution of the United States and Connecticut," (2) "a preliminary and permanent injunction enjoining the Defendants from enforcing Judge Holzberg's orders," (3) an award of damages, including double and triple damages, and monetary legal fees and court costs, and (4) an award of punitive damages. Id. at 10.

II. MOTION TO DISMISS

The defendants move to dismiss under Rule 12(b)(1) on the grounds of eleventh amendment immunity, the Rooker-Feldman doctrine, and judicial immunity, under Rule 12(b)(6) for failure to state a claim under 42 U.S.C. § 1983 and for a civil rights conspiracy, and under Rule 12(b)(5) for failure to properly serve the defendants in their individual capacities. See Memo. of Law in Support of Defendants' Motion to Dismiss (Dkt. No. 21).

A. Section 1983 Damages Claims Against Defendants In Their Official Capacities

The plaintiff sues the three defendants in their official capacities as "Connecticut state employees" and "state officials" under for violations of the United States Constitution under 42 U.S.C. § 1983. First Amended Complaint (Dkt. No. 19) at 1 & ¶¶ 1, 4-5. 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

"To the extent that the suit [seeks] damages from defendants in their official capacities, dismissal under the eleventh amendment [is] proper because a suit against a state official in his official capacity is, in effect, a suit against the state itself, which is barred." Berman Enters., Inc. v. Jorling, 3 F.3d 602, 606 (1993) (citation omitted). "States—and state officers, if sued in their official capacities for retrospective relief—are immunized by the Eleventh Amendment from suits brought

by private citizens in federal court and, in any event, are not 'persons' subject to suit under § 1983." K&A Radiological Tech. Servs., Inc. v. Comm'r of the Dep't of Health, 189 F.3d 273, 278 (2d Cir. 1999) (citing Will v. Michigan Dep't of State Police, 491 U.S. 58, 70-71 & n. 10 (1989); Edelman v. Jordan, 415 U.S. 651, 664-68 (1974)). Thus, Chief Justice McDonald and Judges Holzberg and Leuba cannot be sued in their official capacities under section 1983 for retrospective relief in the form of money damages, whether compensatory or punitive, on the basis of eleventh amendment immunity and the statutory limitations of section 1983. As such, these claims are dismissed.

B. Section 1983 Damages Claims Against the Defendants in Their Individual Capacities

"However, the eleventh amendment does not extend to a suit against a state official in his individual capacity, even when the conduct complained of was carried out in accordance with state law." Berman Enters., 3 F.3d at 606 (citation omitted). Additionally, "officials sued in their personal [or individual] capacity are 'persons' for the purposes of section 1983, and, thus, are unaffected by Will[], 491 U.S. at 70-71 . . .." Yorktown Med. Lab., Inc. v. Perales, 948 F.2d 84, 89 n.4 (2d Cir. 1991) (citations omitted).

The defendants, however, are not just state officials, but also judicial officers. "It is . . . well established that officials acting in a judicial capacity are entitled to absolute immunity against § 1983 actions, and this immunity acts as a complete shield to claims for money damages." Montero v. Travis, 171 F.3d 757, 760 (2d Cir. 1999) (citations omitted). "This immunity also extends to administrative officials performing functions closely associated with the judicial process because the role of the hearing examiner or administrative law judge . . . is functionally comparable to that of a judge." Id. (citations and internal quotation marks omitted).

"Moreover, [a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." Fields v. Soloff, 920 F.2d 1114, 1119 (2d Cir. 1990) (citation and internal quotation marks omitted). "Liability will not attach where a judge violated state law by an incorrect decision." Id. Furthermore, "[a] judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." Stump v. Sparkman, 435 U.S. 349, 359 (1978). "Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence

of which ordinarily cannot be resolved without engaging in discovery and eventual trial." Mireles v. Waco, 502 U.S. 9, 11 (1991) (citations omitted).

Two conditions are, however, required for a judicial officer to successfully invoke judicial immunity. First, "a judge is immune only for actions performed in his judicial capacity." Tucker v. Outwater, 118 F.3d 930, 933 (2d Cir. 1997) (citations omitted). To determine if an act is taken in an official's judicial capacity, "the relevant inquiry is the 'nature' and 'function' of the act, not the 'act itself.'" Mireles, 502 U.S. at 13 (citation omitted). "'[W]hether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.'" Id. at 12 (citation omitted). "In other words, we look to the particular act's relation to a general function normally performed by a judge." Id. at 13. "[T]he informal and ex parte nature of a proceeding has not been thought to imply that an act otherwise within a judge's lawful jurisdiction was deprived of its judicial character." Forrester v. White, 484 U.S. 219, 227 (1988) (citation omitted).

"It is 'the nature of the function performed, not the identity of the actor who

performed it,' that determines whether an individual is entitled to immunity." Rodriguez v. Weprin, 116 F.3d 62, 67 (1997) (citation omitted). "Even 'when functions that are more administrative in character have been undertaken pursuant to the explicit direction of a judicial officer, . . . that officer's immunity is also available to the subordinate.'" Id. (citation omitted). Accordingly, the Second Circuit has held that, "even if viewed as performing an administrative task, . . . court clerks are entitled to immunity for harms allegedly related to the delay in scheduling appellant's appeal." Id.

Second, a judicial officer "will be subject to liability [for a judicial act] only when he has acted in the 'clear absence of all jurisdiction.'" Fields, 920 F.2d at 1119 (citation and internal quotation marks omitted). The Second Circuit has articulated the following test for determining whether a judicial act is taken in the clear absence of all jurisdiction:

> Because scrutiny of a judge's state of mind would hinder the adjudicatory process in the very manner that the judicial immunity doctrine is designed to prevent, a judge will be denied immunity only where it appears, first, that the judge acted in the clear absence of jurisdiction, and second, that the judge must have known that he or she was acting in the clear absence of jurisdiction. This test, composed both of an objective element—that jurisdiction is clearly absent, i.e., that no reasonable judge would have thought jurisdiction proper—and of a subjective element—that the judge

> whose actions are questioned actually knew or must have known of the jurisdictional defect—protects judicial acts from hindsight examination while permitting redress in more egregious cases, such as where a judge knowingly acts outside his territorial jurisdiction.

Maestri v. Jutkofsky, 860 F.2d 50, 53 (2d Cir. 1988).

The court concludes that the actions that the plaintiff alleges Chief Justice McDonald and Judges Holzberg and Leuba took in this case all amounted to judicial acts which were not taken in the clear absence of jurisdiction. "A court's inherent power to control its docket is part of its function of resolving disputes between parties. This is a function for which judges and their supporting staff are afforded absolute immunity." Rodriguez, 116 F.3d at 66 (citations omitted). Each of the actions attributed to the defendants in the First Amended Complaint took place within the proceedings of the foreclosure action brought against the plaintiff in state court and involved decisions either on the merits of matters raised therein or efforts to control the state court's docket in connection with the state court foreclosure action.

Specifically, the court concludes that Chief Justice McDonald and Judges Holzberg and Leuba, in their individual capacities, are immune from liability for failing to take Judge Holzberg off the plaintiff's state court case or to assign the case

to another judge initially. See John v. Barron, 897 F.2d 1387, 1392 (7th Cir. 1990) ("a judge who assigns a case . . . acts well within his or her judicial capacity"); see also Barrett v. Harrington, 130 F.3d 246, 258 (6th Cir. 1997). Judge Holzberg is also immune from liability for allegedly threatening to arrest the plaintiff, for allegedly ignoring motions before him, and for allegedly refusing to allow the court clerk to sign subpoenas for documents that the plaintiff seeks. Even taking all factual allegations in the plaintiff's complaint as true and drawing all reasonable inferences in the plaintiff's favor, these actions were clearly taken in each defendant's capacity as a judicial official. Cf., e.g., Forrester v. White, 484 U.S. 219, 229 (1988) ("In the case before us, we think it clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester."). These actions are general functions normally performed by judges or court administrators at the behest of judges. Moreover, there is no clear absence of jurisdiction even arguably alleged within the plaintiff's First Amended Complaint: The defendants are acting on matters within their jurisdiction under the confines of the court proceedings and of the state court's geographical jurisdiction.

Furthermore, Chief Justice McDonald and Judges Holzberg and Leuba are immune from liability for any alleged misapplication of Connecticut state law or the Connecticut foreclosure process or even the state court's "own rules." The court notes that, "[w]hen passing on section 1983 claims, a federal court does not resolve disputes regarding the proper application of state law." Fields, 920 F.2d at 1118. The plaintiff's allegations of violations of state law by incorrect decisions and procedural errors also will not overcome the judicial immunity conferred on Chief Justice McDonald and Judges Holzberg and Leuba. Accordingly, Chief Justice McDonald and Judges Holzberg and Leuba are immune from liability in their individual capacities from the plaintiff's claims for damages. Accordingly, these claims are dismissed.

C. Section 1983 Claims for Injunctive and Declaratory Relief Against the Defendants in their Individual and Official Capacities

Turning to the plaintiff's claims for injunctive and declaratory relief, the court notes that "a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'" Will, 491 U.S. at 71 n.10 (citations omitted). The court, however, concludes that the injunctive relief the

plaintiff seeks for this court to order against all three defendants—a preliminary and permanent injunction enjoining the defendants from enforcing Judge Holzberg's orders—is barred by the Rooker-Feldman doctrine. "The Rooker-Feldman doctrine provides that the lower federal courts lack subject matter jurisdiction over a case if the exercise of jurisdiction over that case would result in the reversal or modification of a state court judgment." Hachamovitch v. DeBuono, 159 F.3d 687, 693 (2d Cir. 1998). "Rooker-Feldman applies not only to decisions of the highest state courts, but also to decisions of lower state courts." Ashton v. Cafero, 920 F. Supp. 35, 37 (D. Conn. 1996). The doctrine "holds that, among federal courts, only the Supreme Court has subject matter jurisdiction to review state court judgments." Johnson v. Smithsonian Inst., 189 F.3d 180, 185 (2d Cir. 1999) (citations omitted). Thus, "[i]f the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding, Rooker-Feldman plainly will bar the action." Moccio v. N.Y. State Office of Court Admin., 95 F.3d 195, 198-99 (2d Cir. 1996).

"The Rooker-Feldman doctrine also bars federal courts from considering claims that are 'inextricably intertwined' with a prior state court determination." Johnson, 189 F.3d at 185 (citations omitted). In the Rooker-Feldman doctrine,

"the Supreme Court's use of 'inextricably intertwined' means, at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), subsequent litigation of the claim will be barred under the Rooker-Feldman doctrine if it would be barred under the principles of preclusion." Moccio, 95 F.3d at 199-200 (citations omitted).[3]

Here, the plaintiff seeks for this court to prevent these three state defendants from enforcing state court orders. To do so would embroil it in the evaluation the correctness of the actions taken by Judge Holzberg in the plaintiff's individual state case and to, in effect, decide whether to reverse or vacate Judge Holzberg's orders as if sitting as a state court of appeal. This is precisely what the Rooker-Feldman doctrine forbids federal courts from doing. See Hachamovitch, 159 F.3d at 694; Gentner v. Shulman, 55 F.3d 87, 88-89 (2d Cir. 1995). Furthermore, the plaintiff's requested declaratory relief, to the extent that she seeks for this court to review and declare invalid the lower state court's orders, also seeks for the court to take precisely the sort of action that Rooker-Feldman is designed to prohibit. See Johnson, 189

[3] "However, a district court may lack subject matter jurisdiction under the Rooker-Feldman doctrine even when that court would not be precluded, under res judicata or collateral estoppel principles, by a prior state judgment." Doctor's Assocs., Inc. v. Distajo, 107 F.3d 126, 138 (2d Cir. 1997).

F.3d at 185.

The text of section 1983, moreover, as amended in 1996, limits the availability of prospective injunctive relief against the defendants Chief Justice McDonald and Judges Holzberg and Leuba as state judicial officers. "The 1996 amendments to § 1983 provide that 'in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.'" Montero, 171 F.3d at 761 (citation omitted). The plaintiff, "however, alleges neither the violation of a declaratory decree, nor the unavailability of declaratory relief," and, as such, her "claim for injunctive relief is therefore barred under § 1983." Id. Indeed, the court cannot reasonably interpret the plaintiff's First Amended Complaint to allege that declaratory relief is unavailable because the plaintiff explicitly seeks declaratory relief against the defendants in the instant suit. Thus, the court also concludes that Chief Justice McDonald and Judges Holzberg and Leuba may not be subjected to prospective injunctive relief because the plaintiff's claims rely upon actions allegedly taken in these defendants' judicial capacities, and the plaintiff alleges neither the violation of a declaratory decree nor

the unavailability of declaratory relief. See 42 U.S.C. § 1983.

The court therefore has no subject matter jurisdiction over the plaintiff's claims for injunctive and declaratory relief. Alternatively, the plaintiff fails to state a claim for injunctive and declaratory relief for which relief can be granted under section 1983. As such, these claims are dismissed.

D. Section 1985, 1986 and 1983 Claims for Civil Rights Conspiracy

The plaintiff also appears to raise a claim that the defendants engaged in a conspiracy to violate her civil rights. The law is well-settled that, even when brought by a pro se plaintiff, "a 'complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss.'" Gyadu v. Hartford Ins. Co., 197 F.3d 590, 591 (2d Cir. 1999) (citation omitted). Moreover, "[s]uch a conspiracy is actionable under [42 U.S.C.] § 1985 only if it involves a discriminatory animus based on race or some other invidious classification." Posr v. Court Officer Shield # 207, 180 F.3d 409, 419 (2d Cir. 1999) (citation omitted).

The plaintiff primarily complains that the defendants allegedly "ignored" and "refused to act" on the plaintiff's request that her case be transferred from Judge Holzberg's court and "broke their own rules by allowing judges who should have been disqualified from hearing and making decisions in the case to continue to make rulings so as to improperly affect the outcome." First Amended Complaint (Dkt. No. 19) at ¶¶ 26-28. The plaintiff also alleges that "the foreclosure courts in Connecticut had been used by lawyers and judges to obtain property for themselves by means of highly suspect foreclosure actions and sales" and that the defendants have involved themselves "in a pattern of activity using the notice process to fraudulently obtain defaults so that they would not have to do their job." Id. at ¶¶ 30, 34.

The court "reject[s] the[se] allegations as vague and conclusory, showing no more than a history of State court litigation that resulted in [] decision[s] adverse to plaintiffs' interests." Ellentuck v. Klein, 570 F.2d 414, 426 (2d Cir. 1978). Moreover, to the extent that the plaintiff may be seeking to raise "a claim under [42 U.S.C.] § 1986 for failure to prevent the violation of his rights," the court concludes that "[t]his claim cannot be sustained, because no § 1986 claim will lie where there

is no valid § 1985 claim." Posr, 180 F.3d at 419 (citation omitted); see also Graham v. Henderson, 89 F.3d 75, 82 (2d Cir. 1996).

Furthermore, the plaintiff may be claiming a section 1983 conspiracy. "To prove a § 1983 conspiracy, a plaintiff must show: (1) an agreement between two or more state actors or between a state actor and a private entity; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages." Pangburn v. Culbertson, 200 F.3d 65, 72 (2d Cir. 1999) (citations omitted). As with claims of section 1985 conspiracies, "'conclusory allegations' of a § 1983 conspiracy are insufficient." Id. (citations omitted). "[W]hile a plaintiff should not plead mere evidence, [s]he should make an effort to provide some 'details of time and place and the alleged effect of the conspiracy.'" Dwares v. City of N.Y., 985 F.2d 94, 100 (2d Cir. 1993) (citation omitted). The allegations brought forward by the plaintiff are again simply too conclusory to survive a motion to dismiss. Accordingly, the plaintiff's civil rights conspiracy claims are dismissed.

E. Dismissal of the First Amended Complaint

The court has thus dismissed all of the plaintiff's claims for damages and injunctive and declaratory relief against the defendants in their official and individual capacities. This leaves no remaining claims for relief in the plaintiff's First Amended Complaint, and, as such, the plaintiff's First Amended Complaint is dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(1) & 12(b)(6).

F. Service of Process in the Defendants' Individual Capacity

The defendants have also moved for dismissal of the claims against them in their individual capacities pursuant to Fed. R. Civ. P. 12(b)(5). The plaintiff has subsequently filed proof of proper service on each defendant in both his individual and official capacity. See Plaintiff's Notice of Regarding Service of Process (Dkt. No. 27). However, the plaintiff admits that the defendants were served on November 6, 2000, with the proposed second amended complaint (attached to plaintiff's Request for Permission to Amend Complaint [Dkt. No. 28]) ("Second Amended Complaint"), for which the court has not yet granted leave to file. See Plaintiff's Response to Defendant's November 24th Reply to Plaintiff's Objection (Dkt. No. 33) at 5. This does not constitute proper service of the "complaint" in

this action. For the reasons stated above, the plaintiff has failed in her First Amended Complaint, even if it were properly served, to present a cause of action against the defendants in their individual capacities over which this court has subject matter jurisdiction or for which relief can be granted. Accordingly, the court does not reach this alternative ground for dismissal of the First Amended Complaint.

III. MOTION FOR LEAVE TO AMEND

The plaintiff moves for leave to file a Second Amended Complaint. See Dkt. No. 28. The court is "mindful that leave to amend is to be granted 'freely . . . when justice so requires,'" but also notes that, "in determining whether leave to amend should be granted, the district court has discretion to consider, inter alia, the apparent 'futility of amendment' . . .." Grace v. Rosenstock, 228 F.3d 40, 53 (2d Cir. 2000) (citations omitted). The court has reviewed the plaintiff's proposed Second Amended Complaint and concludes that granting the plaintiff leave to file this complaint would be futile.[4]

[4] The court notes that the plaintiff drafted her Second Amended Complaint, which she originally attempted on November 1, 2000, to file without first seeking leave, after the defendants filed their motion to dismiss on September 28, 2000. The plaintiff's attempts in her Second Amended Complaint to avoid dismissal on the grounds raised in the defendants' motion are evident in minor changes made between the two amended complaints. The court concludes that granting the plaintiff leave to amend would be futile

In her proposed Second Amended Complaint, the plaintiff makes all of the same allegations as in the First Amended Complaint discussed earlier. The "Fourth Claim for Relief" in the Second Amended Complaint is the same as the "First Claim for Relief" in the First Amended Complaint.[5] With the exception of an allegation of a state cause of action of intentional infliction of emotional distress, the "Third Claim for Relief" in the Second Amended Complaint is the same as the "Second Claim for Relief" in the First Amended Complaint.[6] The "Seventh Claim for Relief"

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despite these few attempts by the plaintiff in her Second Amended Complaint, which are discussed in turn below, to avoid the grounds for dismissal raised by the defendants and decided above.

[5] In the "Fourth Claim for Relief" of the Second Amended Complaint, the plaintiff adds the allegation that "Holzberg, while acting under color of administrative responsibilities, interjected himself into the request and refused to allow the clerk to sign the subpoenas thereby maliciously depriving Plaintiff of the ability to protect her property." Second Amended Complaint (Dkt. No. 28) at ¶ 36. As noted above, however, allegations of malice will not avoid dismissal on the ground of judicial immunity, and a conclusory description of a judge's action as "under color of administrative responsibilities" does not by itself alter the analysis of whether an action is taken in a defendant's judicial capacity. See supra at 11-14.

[6] To the extent this claim raises a state law count for intentional infliction of emotional distress, the court would decline supplemental jurisdictional pursuant to 28 U.S.C. § 1367(a) over this claim having dismissed the plaintiff's federal claims. The plaintiff also newly alleges that Chief Justice "McDonald and Leuba have also violated state law and court procedures by allowing judges who had no jurisdiction to hear the case and make decisions." Second Amended Complaint (Dkt. No. 28) at ¶ 26. However, this claim fails on the basis of judicial immunity for the reasons outlined, i.e., judges and administrative officials acting at judges' behest are absolutely immune from liability for

in the Second Amended Complaint is the same as the "Third Claim for Relief" in the First Amended Complaint.[7] These three claims in the proposed Second Amended Complaint fail for the reasons that the court dismissed the same claims in the First Amended Complaint above.

However, the plaintiff also adds several new claims for relief in her Second Amended Complaint. The "First Claim for Relief" in the Second Amended Complaint alleges that the Connecticut mechanics liens and lis pendens laws fail "to provide an adequate post deprivation remedy for the taking of [the plaintiff's] property" in violation of her due process rights. See Second Amended Complaint (Dkt. No. 28) at ¶ 14. For this claim, the plaintiff seeks "monetary damages for the unconstitutional deprivation of timely justice." Along the same lines, the plaintiff's "Second Claim for Relief" in the Second Amended Complaint claims that the Connecticut procedures for mechanic's liens violate federal law and the United States

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allegedly incorrect applications of state law and procedures. See supra at 10.

[7] The plaintiff adds one new allegation to this claim for relief: "defendants became involved in a pattern of activity that included assigning judges who could be improperly influenced." Second Amended Complaint (Dkt. No. 28) at ¶ 55. This claim, which appears, at least by reasonable inference, in the plaintiff's First Amended Complaint, does not alter the court's conclusion that the plaintiff's allegations of a civil rights conspiracy are simply too conclusory to survive a motion to dismiss. See supra at 19-21.

Constitution and are therefore "constitutionally inadequate and have thereby caused Plaintiff monetary damages." Id. at ¶¶ 17-18. Similarly, in the "Sixth Claim for Relief" of the Second Amended Complaint, the plaintiff alleges that the Connecticut procedures and law surrounding debt collection procedures violate the federal Constitution and statutory law. See id. at 13 ¶¶ 8-9. The plaintiff requests that the court enjoin the defendants from enforcing "policies and procedures that violate the Constitution and federal laws." Id. at 13 ¶ 9.

The same claims have been raised by this plaintiff in a suit filed in this district against, inter alia, the State of Connecticut, and rejected on their merits by the Second Circuit. See Sundwall v. Connecticut, Dkt. No. 96-7762, 104 F.3d 356 (Table), 1996 WL 730287, at *1 (2d Cir. Dec. 19, 1996) (summary order), cert. denied, 520 U.S. 1198 (1997). In that suit, the plaintiff brought "a general constitutional challenge to Connecticut's lis pendens and mechanic's liens statutes." Id. The plaintiff is therefore collaterally estopped from raising this issue here.

Under federal law, "a federal court must apply the rules of collateral estoppel of the state in which the prior judgment was rendered." Sullivan v. Gagnier, 225 F.3d 161, 166 (2d Cir. 2000) (citations omitted). "Under Connecticut law, [f]or an

issue to be subject to collateral estoppel, [1] it must have been fully and fairly litigated in the first action, [2] [i]t also must have been actually decided and [3] the decision must have been necessary to the judgment." Golino v. City of New Haven, 950 F.2d 864, 869 (2d Cir. 1991) (citations and internal quotation marks omitted). Thus, "[c]ollateral estoppel, or issue preclusion, bars the relitigation of issues actually litigated and decided in the prior proceeding, as long as that determination was essential to that judgment." Johnston v. Arbitrium (Cayman Islands) Handels AG, 198 F.3d 342, 346 (2d Cir. 1999) (citation and internal quotation marks omitted). This claim was decided against the plaintiff in her earlier 1996 federal court action and so cannot be raised anew here. See Sundwall v. Connecticut, 1996 WL 730287, at *1; see also Sundwall v. Ment, No. 99-9358, 229 F.3d 1136 (Table), 2000 WL 1425158, at *1 (2d Cir. Sept. 27, 2000) (summary order) ("Even if Sundwall had alleged sufficient facts to establish standing, her claims would be foreclosed by res judicata and the Rooker-Feldman doctrine. . . . Sundwall has already litigated a case in the Connecticut courts in which she unsuccessfully challenged the constitutionality of Connecticut's lis pendens and mechanic's lien statutes in a foreclosure action instituted against her. Her attempt to relitigate those claims in

federal court is thus barred.").

The "Fifth Claim for Relief" of the Second Amended Complaint alleges that the defendants obstructed justice by refusing "to allow court reporters to provide Plaintiff with complete and accurate transcripts" and allowing Basil to "'slow things down' to avoid an adverse ruling which might have affected the cases pending against him in federal court." Second Amended Complaint (Dkt. No. 28) at ¶¶ 41-42. The plaintiff alleges that the defendants' action "violated the principles of impartiality and fairness explicitly stated in the Code of Judicial Conduct." Id. at ¶ 50. As such, the plaintiff "seeks monetary damages for the damage caused by the spoilation of evidence and obstruction of justice of Plaintiff's ability to obtain due process" under section 1983. Id. at ¶ 51.

This claim fails for the same reasons as the plaintiff's claims in the First Amended Complaint which sought money damages against the defendants for their alleged actions taken in their judicial capacities. To the extent this claim seeks money damages against the defendants in their official capacities, it is barred by the eleventh amendment, and the defendants in their official capacities are not "persons" subject to suit under section 1983. To the extent this claim seeks money damages

against the defendants in their individual capacities for actions taken in their judicial capacities, judicial immunity bars this claim against the defendants.

Again, the court is mindful that "'[a] pro se complaint is to be read liberally. Certainly the court should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.'" Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000) (citation omitted). However, as in Cuoco, even reading the new claims for relief of the plaintiff's proposed Second Amended Complaint liberally, the court concludes that the plaintiff does not have "a claim that she has inadequately or inartfully pleaded and that she should therefore be given a chance to reframe." Id. Rather, "[t]he problem with [the plaintiff's] causes of action is substantive; better pleading will not cure it." Id. Accordingly, "[r]epleading would thus be futile. Such a futile request to replead should be denied." Id. (citation omitted).

IV. CONCLUSION

For the reasons stated above, the Defendants' Motion to Dismiss [Dkt. No. 20] is granted, and the plaintiff's Request for Permission to Amend Complaint [Dkt. No. 28] is denied. The clerk is directed to enter judgment and close the case.

SO ORDERED.

Dated this 23rd of January, 2001 at Bridgeport, Connecticut.

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Janet C. Hall
United States District Judge