

Case #:

THE SUPREME COURT OF THE UNITED STATES

Tamara Rouhi

Original Case Number: 19CV701

Plaintiff/Appellant

Original Case/Complaint/Exhibits Filed: 3/6/19

V

CVS Pharmacy (CVS Health Inc)
Giant Pharmacy (Ahold Delhaize)
Wegmans Pharmacy (Wegmans Food Markets Inc)
Walgreens Pharmacy (Walgreen Co.)
Nature Care/Health Mart Pharmacy (McKesson Inc)

Appellate Court Case Number:
20-1462

A review from the US Court of Appeals for the Fourth Circuit.

Civil Case.

Jury not requested.

Defendants/Appellee

APPENDIX VOLUME I: COURT FINDINGS

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMARA ROUHI,

*

Plaintiff,

*

Civil Action No. RDB-19-0701

v.

*

CVS PHARMACY, *et al.*,

*

Defendants.

*

* * * * *

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is this 24th day of February, 2020, hereby ORDERED that:

1. Defendant Wegmans Pharmacy's Motion to Dismiss for Failure to State a Claim (ECF No. 5) is GRANTED;
2. Defendant CVS Pharmacy's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 13) is GRANTED;
3. Defendant McKesson Corporation's Motion to Dismiss, or in the Alternative, for Summary Judgment (ECF No. 14), construed as a Motion to Dismiss, is GRANTED;
4. Defendant Giant Pharmacy's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 24) is GRANTED;
5. Defendant Walgreens Pharmacy's Motion to Dismiss Plaintiff's Complaint (ECF No. 27) is GRANTED;
6. Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE as to all Defendants;
7. The Clerk of Court transmit copies of this Order and accompanying Memorandum Opinion to the parties; and

8. The Clerk of Court shall CLOSE THIS CASE.

R.D. Bennett
R.D. Bennett

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMARA ROUHI,

Plaintiff,

Civil Action No. RDB-19-0701

v.

CVS PHARMACY, *et al.*,

Defendants.

* * * * * * * * * * * * * * * * * * *
MEMORANDUM OPINION

Pro se Plaintiff Tamara Rouhi (“Plaintiff” or “Rouhi”) of Owings Mills, Maryland has filed suit in this Court against five pharmacies located in the greater Baltimore area, which she identifies as CVS Pharmacy (“CVS”),¹ Giant Pharmacy (“Giant”),² Wegmans Pharmacy (“Wegmans”),³ Walgreens Pharmacy (“Walgreens”),⁴ and “Nature Care/Health Mart Pharmacy” (“Nature Care” and “Health Mart”) (collectively, “Defendants”).⁵ Rouhi alleges violations of several Maryland criminal statutes, Md. Code Ann., Crim. Law § 3-802 (stalking), 3-803 (harassment), § 3-804 (misuse of telephone facilities), and § 3-805 (misuse of an interactive computer service), and brings a claim of “general invasions of privacy.” (Compl. 2, ECF No. 1.) Rouhi also alleges “invidious discrimination, refusal of equal access to goods and services (Civil Right), and general invasions of privacy.” (*Id.*) Rouhi purports to bring

¹ Defendant CVS moves to dismiss under the name “CVS Pharmacy, Inc.” (ECF No. 13.)

² Defendant Giant moves to dismiss under the name “Giant of Maryland, LLC.” (ECF No. 24.)

³ Defendant Wegmans moves to dismiss under the name “Wegmans Food Market Inc.” (ECF No. 5.)

⁴ Defendant Walgreens moves to dismiss under the name “Walgreens Co.” (ECF No. 27.)

⁵ “Nature Care/Health Mart Pharmacy” does not describe a single entity. Health Mart Systems, Inc. (“Health Mart”) is a franchisor which provides support services to franchisee pharmacies, such as Nature Care Pharmacy (“Nature Care”). (ECF No. 14-1 at 3.)

this action under this Court's federal question and diversity jurisdiction. *See* 28 U.S.C. §§ 1331, 1332.

Now pending are Wegmans's Motion to Dismiss for Failure to State a Claim (ECF No. 5); CVS's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 13); McKesson Corporation's⁶ Motion to Dismiss, or in the Alternative, for Summary Judgment (ECF No. 14); Giant's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 24); and Walgreens' Motion to Dismiss Plaintiff's Complaint (ECF No. 27). The parties' submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2018). For the reasons stated herein, the Motions to Dismiss (ECF Nos. 5, 13, 14, 24, 27) are GRANTED. Plaintiff's Complaint is DISMISSED. In light of Plaintiff's *pro se* status, dismissal shall be WITHOUT PREJUDICE.

BACKGROUND

In ruling on a motion to dismiss, the factual allegations in the plaintiff's complaint must be accepted as true and those facts must be construed in the light most favorable to the plaintiff. *Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193, 208 (4th Cir. 2017) (citing *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 422 (4th Cir. 2015)). Plaintiff Tamara Rouhi's Complaint describes several episodes of purported mistreatment at five pharmacies in the greater Baltimore area. Her Complaint is supplemented with sixty-six exhibits, consisting of what appear to be photographs taken within various pharmacies and screen captures of emails and other communications on her cell phone. Rouhi generally complains that the Defendant

⁶ Plaintiff served McKesson Corporation as the parent company of Health Mart. (ECF No. 31 at 4-5.) Plaintiff did not serve Defendants Nature Care and Health Mart.

pharmacies required her to present identification to pick up prescription refills, treated her disrespectfully, and did not fill her prescriptions in a timely fashion or at all. She alleges that these incidents amount to criminal activity and civil rights abuses. Her claims against each Defendant are summarized below. An overview of this case's procedural posture follows.

I. Allegations Against CVS.

Rouhi alleges that, beginning in early 2018, employees at a CVS Pharmacy in Reisterstown, Maryland began asking for her driver's license when she attempted to pick up prescriptions. (Compl. ¶ 1, ECF No. 1.) After she protested that Maryland law did not require her to present identification at the pharmacy and contacted CVS's Customer Relations Department to complain, Rouhi claims that the employees became "increasingly rude" and continued to ask for her identification. (*Id.* ¶¶ 2-4.) Rouhi alleges that the CVS employees began to cancel her prescription refill requests and refused to fill her prescriptions without providing a compelling rationale for their actions. (*Id.* ¶¶ 5-10, 16.) At some point, Rouhi claims, "[e]very CVS Pharmacy employee yelled at me from behind the counter for around 30 minutes." (*Id.* ¶ 18.) Rouhi also complains of frequent automated phone calls from CVS inquiring about her prescriptions. (*Id.* ¶ 11.)

II. Allegations Against Giant.

Beginning in 2017, staff at a Giant Pharmacy in Reisterstown, Maryland allegedly "constantly harassed" Rouhi. (*Id.* ¶ 20.) The alleged harassment took the form of failing to call Rouhi by her name, being "rude" to her, frequently calling her, and cancelling her prescription requests. (*Id.* ¶¶ 21, 24, 37.) Rouhi alleges that she "argued with Giant Pharmacy

staff for weeks and never got [her] medication, just delayed health care.” (*Id.* ¶ 26.) After this prolonged dispute, Giant employees allegedly began cancelling her online prescription orders and prevented her from submitting new ones. (*Id.* ¶¶ 32-33.) Rouhi reported Giant’s “harassment and theft” to the police, but the police allegedly “did nothing” in response to her call. (*Id.* ¶ 35.)

III. Allegations Against Wegmans.

Rouhi claims that she was a customer of a Wegmans Pharmacy in Owings Mills, Maryland “on and off” in 2017 and 2018. (*Id.* ¶ 38.) In 2017, employees at the pharmacy were allegedly “rude” to her and refused to give her a flu shot. (*Id.* ¶ 39.) In 2018, employees began requiring her to produce identification when picking up and dropping off her prescriptions. (*Id.* ¶ 40.) Rouhi generally complains that her prescription refills were not available on time and that her complaints were not adequately addressed. (*Id.* ¶¶ 42-46.)

IV. Allegations Against Walgreens.

Rouhi’s allegations against Walgreens are somewhat difficult to decipher. Rouhi claims that she visited a Walgreens Pharmacy in Reisterstown, Maryland on January 8, 2019. (*Id.* ¶ 48.) During the visit, Rouhi provided an insurance card, identification, and a phone number. (*Id.* ¶ 49-50.) Although she was told that her prescriptions would be ready in twenty minutes, “[a] man”—presumably a Walgreens employee—inform Rouhi that the pharmacy could not fill her prescriptions because “it had been over 30 days.” (*Id.* ¶¶ 50-51.) Rouhi claims that she “argued with the man” and asked him to “write the situation down with a pen.” (*Id.* ¶ 52.) After the man wrote something on a print-out, she left the store. (*Id.* ¶ 52, 54.)

V. Allegations Against Nature Care.

On January 10, 2019, shortly after her prescriptions were rejected at Walgreens, Rouhi presented them at a Nature Care pharmacy in Reisterstown, Maryland. (*Id.* ¶ 55.) Rouhi claims that she was asked to step aside and speak with a cashier—a request she claims was not made of other customers. (*Id.* ¶ 56.) To the cashier she presented her insurance card and the prescriptions rejected by Walgreens. (*Id.* ¶ 57.) After some time passed, the cashier informed Rouhi that the pharmacy could not fill her prescriptions because they were written over thirty days ago. (*Id.* ¶ 58.) The pharmacy employees refused to fill her prescription and did not tell her the price of the medications. (*Id.* ¶ 61.) Rouhi called her doctor and handed her phone to a cashier, who passed the phone to a pharmacist. (*Id.* ¶ 63.) The pharmacy employees ultimately refused to fill these prescriptions. (*Id.* ¶ 68.) While she was waiting for a separate prescription to be filled, a white male⁷ customer approached the pharmacy. (*Id.* ¶ 66.) When he approached, a pharmacy employee allegedly yelled at Rouhi and told her to wait in the back of the store to protect the man's privacy. (*Id.*) Ultimately, Rouhi left the store with one prescription filled and two others rejected. (*Id.* ¶ 68.)

VI. Procedural Posture.

Rouhi filed her Complaint on March 6, 2019. (ECF No. 1.) Rouhi alleges violations of several Maryland criminal statutes, Md. Code Ann., Crim. Law § 3-802 (stalking), 3-803 (harassment), § 3-804 (misuse of telephone facilities), and § 3-805 (misuse of an interactive computer service), and brings a claim of “general invasions of privacy.” (Compl. 2, ECF No.

⁷ This is the only reference to race in Rouhi's Complaint. The Complaint does not specify whether Rouhi belongs to a protected class.

1.) Rouhi also alleges “invidious discrimination,” and “refusal of equal access to goods and services (Civil Right) [sic].” (*Id.*) Rouhi purports to bring this action under this Court’s federal question and diversity jurisdiction.

Rouhi served some, but not all, of the Defendants. CVS, Giant, Wegmans, and Walgreens received service of process, and each of these Defendants have moved separately to dismiss the Complaint. (ECF Nos. 5, 13, 24, and 27). Considered together, their Motions seek dismissal pursuant to Fed. R. Civ. P. 12(b)(1) (lack of jurisdiction) and 12(b)(6) (failure to state a claim). Rouhi did not serve Nature Care or Health Mart. Instead, she served Health Mart’s parent company, McKesson Corporation. (ECF No. 3 at 5; ECF No. 4; ECF No. 31 at 4-5.) McKesson Corporation has filed a Motion to Dismiss based on Fed. R. Civ. P. 12(b)(4) (insufficient process) and 12(b)(6) (failure to state a claim). Nature Care and Health Mart have not responded to the Complaint.

STANDARD OF REVIEW

I. Motion to Dismiss Pursuant to Rule 12(b)(1)

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction challenges a court’s authority to hear the matter brought by a complaint. *See Davis v. Thompson*, 367 F. Supp. 2d 792, 799 (D. Md. 2005). This challenge under Rule 12(b)(1) may proceed either as a facial challenge, asserting that the allegations in the complaint are insufficient to establish subject matter jurisdiction, or a factual challenge, asserting “that the jurisdictional allegations of the complaint [are] not true.” *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009) (citation omitted). Defendants CVS and Giant have

sought dismissal based on the face of Rouhi's Complaint. With respect to a facial challenge, a court will grant a motion to dismiss for lack of subject matter jurisdiction "where a claim fails to allege facts upon which the court may base jurisdiction." *Davis*, 367 F. Supp. 2d at 799.

II. Motion to Dismiss Pursuant to Rule 12(b)(6)

Under Federal Rule of Civil Procedure 8(a)(2), a plaintiff is required to plead "a short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of this requirement is to "to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation and internal quotations omitted). Consequently, "a formulaic recitation of the elements of a cause of action will not do." *Id.* (citation omitted). Similarly, "an unadorned, the-defendant-unlawfully-harmed-me accusation" is insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009). Rather, to withstand a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," meaning the court could draw "the reasonable inference that the defendant is liable for the conduct alleged." *Id.* (internal quotations and citation omitted).

This Court has "liberally construed" Plaintiff's pleadings and held them to "less stringent standards than formal pleadings drafted by lawyers" because she is proceeding *pro se*. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Alley v. Yadkin County Sheriff Dept.*, No. 17-1249, 698 F. App'x 141, 2017 WL 4415771 (4th Cir. Oct. 5, 2017). However, a plaintiff's *pro se* status does not absolve her of the duty to satisfy federal pleading standards. *See Stone v. Warfield*, 184

F.R.D. 553, 555 (D. Md. 1999) (citing *Anderson v. Univ. of Md. Sch. Of Law*, 130 F.R.D. 616, 617 (D. Md. 1989), *aff'd*, 900 F.2d 249, 1990 WL 41120 (4th Cir. 1990)).

ANALYSIS

Defendants seek dismissal on overlapping grounds, invoking Fed. R. Civ. P. 12(b)(1) (lack of jurisdiction), 12(b)(4) (insufficient service), and 12(b)(6) (failure to state a claim). This Court need not reach all of the arguments presented in the Defendants' motions. On its face, Plaintiff's Complaint fails to establish a basis for this Court to exercise jurisdiction over this matter. This defect is symptomatic of the Complaint's broader failure to state a claim of any kind. Accordingly, Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE.

I. Lack of Subject Matter Jurisdiction.

Federal courts are courts of limited jurisdiction and "may not exercise jurisdiction absent a statutory basis." *Exxon Mobile Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552, 125 S. Ct. 2611 (2005). In her Complaint, Plaintiff claims that this Court may exercise diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332. Section 1332 requires, with the exception of certain class actions, complete diversity among parties. 28 U.S.C. § 1332; *Central West Virginia Energy Co., Inc. v. Mountain State Carbon, LLC*, 636 F.3d 101, 103 (4th Cir. 2011). This means that "the citizenship of every plaintiff must be different from the citizenship of every defendant." *Central West Virginia Energy*, 636 F.3d at 103 (citing *Caterpillar, Inc v. Lewis*, 519 U.S. 61, 68, 117 S. Ct. 467, 135 (1996)). For purposes of diversity jurisdiction, a limited liability company's citizenship is determined by the citizenship of all of its members. *Id.* at 103. For purposes of diversity jurisdiction, a corporation is "deemed to be a citizen of the

State by which it has been incorporated and of the State where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

In this case, Plaintiff has failed to allege complete diversity among the parties. Rouhi is a citizen of Maryland. She alleges that Giant is also a citizen of Maryland. Giant confirms this in its Motion to Dismiss. The Giant Pharmacy Rouhi seeks to sue is operated by Giant of Maryland LLC. (Aff. of Bruce Astrachan ¶ 2, ECF No. 24-2.) The sole member of Giant of Maryland LLC is Giant Food LLC. (*Id.* ¶ 3.) Giant Food LLC also has only one member: Ahold U.S.A. Inc., a corporation formed under the law of Maryland with principal offices located in Quincy, Massachusetts. (*Id.* ¶ 4.) Under § 1332(c)(1), Ahold U.S.A. Inc. is considered a citizen of both Maryland and Massachusetts for purposes of diversity jurisdiction. As its only member, Ahold U.S.A. Inc.’s Maryland citizenship is imputed to Giant Food LLC and, in turn, to Giant of Maryland LLC. Accordingly, complete diversity does not exist, and this Court cannot exercise diversity jurisdiction over this matter.

In a contemporaneously filed “Amendment to Complaint,” Rouhi acknowledges that “one of [the Defendants] is located in Maryland” but seeks leave to amend her Complaint to insert federal question as a basis for this Court’s jurisdiction. (ECF No. 1-2.) Federal question jurisdiction exists over all civil actions that “arise under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. In determining whether a case “arises under the Constitution, laws, or treaties of the United States,” this Court applies the well-pleaded complaint rule, “which holds that courts ‘ordinarily . . . look no further than the plaintiff’s [properly pleaded] complaint in determining whether a lawsuit raises issues of federal law capable of creating federal-question jurisdiction under 28 U.S.C. § 1331.’” *Pinney v. Nokia, Inc.*,

402 F.3d 430, 442 (4th Cir. 2005) (quoting *Custer v. Sweeney*, 89 F.3d 1156, 1165 (4th Cir. 1996)).

A plaintiff must precisely identify the federal cause of action she is bringing to establish jurisdiction under § 1331. *See, e.g., Lee v. Dep't of Pub. Safety & Corr'l Servs.*, RWT-13-1341, 2014 WL 1120238, at *3 (D. Md. Mar. 19, 2014) (dismissing action pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6) because Plaintiff failed to invoke a federal cause of action by merely identifying “Excessive Punishment, Excessive Restriction of Liberty etc.” on cover sheet to Complaint).

In this case, Plaintiff has failed to identify the federal cause of action which would permit this Court to exercise federal question jurisdiction. Plaintiff's Complaint does not reference a federal statute or constitutional provision. Aside from the Maryland criminal statutes she invokes, Plaintiff complains only of “invidious discrimination, refusal of equal access to goods and services (Civil Right) [sic], and general invasions of privacy.” (ECF No. 1 at 2.) These statements impart only a vague sense of what Plaintiff intends to claim, and are insufficient to establish a firm basis for federal question jurisdiction. As the Complaint fails to establish a statutory basis for this Court's exercise of jurisdiction, it must be dismissed.

II. Failure to State a Claim.

The Complaint's failure to establish a basis for jurisdiction is symptomatic of a larger problem with Plaintiff's pleadings. That is, the Complaint fails to state a claim of any kind. Each purported cause of action is marred by several defects. Plaintiff lacks a private cause of action to bring civil claims under the Maryland criminal laws she cites. *See, e.g., Demo v. Kirksey*, PX-18-0716, 2018 WL 5994995, at *6-7 (D. Md. Nov. 15, 2018) (dismissing claim under Md.

Code Ann., Crim. Law § 3-803 because the law did not create a private right of action). It is unclear whether Plaintiff's brief reference to "general invasions of privacy" is intended to invoke a federal or state constitutional protection or whether Plaintiff is pursuing a Maryland tort law claim, such as "unreasonable intrusion upon the seclusion of another." *See Woodbury v. Victory Van Lines*, 286 F. Supp. 3d 685, 696 (D. Md. 2017) (discussing "the four different forms" of the tort of invasion of privacy recognized under Maryland law). Finally, Plaintiff's allegation of "invidious discrimination" and "refusal of equal access to goods and services" are not anchored to any federal or state statute, rendering them impossible to evaluate or for the Defendants to properly address. To the extent that Plaintiff intends to bring a discrimination claim, such a claim would fail because her Complaint does not allege that she belongs to a protected class or plausibly suggest that her unpleasant interactions with pharmacy staff were the results of discrimination.⁸

CONCLUSION

For the foregoing reasons, Wegmans's Motion to Dismiss for Failure to State a Claim (ECF No. 5) is GRANTED; CVS's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 13) is GRANTED; McKesson Corporation's Motion to Dismiss, or in the Alternative, for Summary Judgment (ECF No. 14), construed as a Motion to Dismiss, is GRANTED; Giant's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 24) is GRANTED; and Walgreens' Motion to Dismiss

⁸ Plaintiff's Responses (ECF Nos. 31, 37, 38) do not add clarity to her Complaint. For example, Plaintiff indicates that "the reasons for discrimination could range anywhere from being a woman, to being a person of color, to being a participant of America's assistance programs, the reasons for discrimination at this Defendant's business call for speculation." (ECF No. 31 at 3.) It is not possible to discern the nature of Plaintiff's claims from these vague assertions.

Plaintiff's Complaint (ECF No. 27) is GRANTED. Plaintiff's Complaint is DISMISSED as to all Defendants. In light of the Plaintiff's *pro se* status, dismissal shall be WITHOUT PREJUDICE.

A separate Order follows.

Dated: February 24, 2020

Richard D. Bennett

Richard D. Bennett
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMARA ROUHI,

*

Plaintiff,

*

Civil Action No. RDB-19-0701

v.

*

CVS PHARMACY, *et al.*,

*

Defendants.

*

* * * * *

MEMORANDUM ORDER

On February 24, 2020, this Court issued a Memorandum Opinion and Order (ECF Nos. 42, 43) dismissing *pro se* Plaintiff Tamara Rouhi's ("Plaintiff" or "Rouhi") claims against several pharmacies within the greater Baltimore area because her Complaint had failed to establish an adequate basis for jurisdiction and otherwise did not state a claim of any kind. Dismissal was without prejudice. On March 9, 2020, Rouhi filed a Motion for Reconsideration (ECF No. 44). The submission has been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2018). For the reasons stated herein, Plaintiff's Motion for Reconsideration (ECF No. 44) is DENIED.

BACKGROUND

The alleged facts of this case have been related in a previous Memorandum Opinion of this Court. (ECF No. 42.) In brief, Rouhi alleges that Defendants CVS Pharmacy Giant Pharmacy, Wegmans Pharmacy, Walgreens Pharmacy, and Nature Care/Health Mart Pharmacy subjected her to unfair treatment when she attempted to obtain prescription medication at these stores between 2017 and 2019. Rouhi filed her Complaint on March 6,

2019. (ECF No. 1.) She alleges violations of several Maryland criminal statutes, Md. Code Ann., Crim. Law § 3-802 (stalking), 3-803 (harassment), § 3-804 (misuse of telephone facilities), and § 3-805 (misuse of an interactive computer service), and brings a claim of “general invasions of privacy.” (Compl. 2, ECF No. 1.) Rouhi also alleges “invidious discrimination,” and “refusal of equal access to goods and services (Civil Right) [sic].” (*Id.*) Rouhi purports to bring this action under this Court’s federal question and diversity jurisdiction. On February 24, 2020, this Court issued a Memorandum Opinion and Order (ECF Nos. 42, 43) dismissing her claims without prejudice.

STANDARD OF REVIEW

The Federal Rules of Civil Procedure do not expressly recognize motions for “reconsideration.” Instead, Rule 59(e) authorizes a district court to alter, amend, or vacate a prior judgment, and Rule 60 provides for relief from judgment. As explained by this Court in *Cross v. Fleet Reserve Ass’n Pension Plan*, Civ. No. WDQ-05-0001, 2010 WL 3609530, at *2 (D. Md. Sept. 14, 2010):

A party may move to alter or amend a judgment under Rule 59(e), or for relief from a judgment under Rule 60(b). *See Fed. R. Civ. P. 59(e) & 60(b).* A motion to alter or amend filed within 28 days of the judgment is analyzed under Rule 59(e); if the motion is filed later, Rule 60(b) controls. *See Fed. R. Civ. P. 59(e); MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 280 (4th Cir. 2008); *In re Burnley*, 988 F.2d 1, 2-3 (4th Cir. 1992).

(footnote omitted). Plaintiff’s Motion is governed by Rule 59(e) because it was filed within 28 days of this Court’s February 24, 2020 Memorandum Opinion and Order.

The United States Court of Appeals for the Fourth Circuit has repeatedly recognized that a judgment may be amended under Rule 59(e) in only three circumstances: (1) to

accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *See, e.g., Gagliano v. Reliance Standard Life Ins. Co.*, 547 F.3d 230, 241 n.8 (4th Cir. 2008). “In general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

ANALYSIS

In her Motion, Rouhi argues that she is entitled to relief in order to correct a manifest injustice. She faults this Court’s Memorandum Opinion as “badgering, and full of reiteration, perjury and irrelevance” and requests that a different judge review her case. (ECF No. 44.) This Court’s 12-page Memorandum Opinion gave due consideration to Plaintiff’s claims and explained precisely why they could not proceed. Dismissal was made *without prejudice*, thereby permitting Plaintiff an opportunity to refile her claims and correct the defects discussed by this Court.¹ Aside from her general complaints, Rouhi does not provide any reasoning for obtaining relief from the judgment or present any legal authorities for this Court’s consideration.

Accordingly, it is HEREBY ORDERED this 10th day of March 2020, that Plaintiff’s Motion for Reconsideration (ECF No. 44) is DENIED.



Richard D. Bennett
United States District Judge

¹ If Plaintiff chooses to reassert her claims, they may nonetheless be subject to applicable defenses.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1462
(1:19-cv-00701-RDB)

TAMARA ROUHI

Plaintiff - Appellant

v.

CVS PHARMACY; GIANT PHARMACY; WEGMANS PHARMACY;
WALGREENS PHARMACY; NATURE CARE/ HEALTH MART PHARMACY;
MCKESSON CORPORATION

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, this appeal is dismissed. This case is remanded to the district court for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1462

TAMARA ROUHI,

Plaintiff - Appellant,

v.

CVS PHARMACY; GIANT PHARMACY; WEGMANS PHARMACY;
WALGREENS PHARMACY; NATURE CARE/HEALTH MART PHARMACY;
MCKESSON CORPORATION,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Richard D. Bennett, District Judge. (1:19-cv-00701-RDB)

Submitted: August 20, 2020

Decided: August 24, 2020

Before GREGORY, Chief Judge, WYNN, and QUATTLEBAUM, Circuit Judges.

Dismissed and remanded by unpublished per curiam opinion.

Tamara Rouhi, Appellant Pro Se. Brian Donald Frey, Hilla Shimshoni, ALSTON & BIRD, LLP, Washington, D.C.; Joseph Gregory Donlin, Richard William Scheiner, SEMMES, BOWEN & SEMMES, Baltimore, Maryland; Aaron Andrew Nichols, WHITEFORD, TAYLOR & PRESTON, LLP, Baltimore, Maryland; Alicia L. Shelton, ZUCKERMAN SPAEDER, LLP, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tamara Rouhi seeks to appeal the district court's orders dismissing her complaint without prejudice and denying her Fed. R. Civ. P. 59 motion. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). “[D]ismissals without prejudice generally are not appealable ‘unless the grounds for dismissal clearly indicate that no amendment in the complaint could cure the defects in the plaintiff’s case.’” *Bing v. Brivo Sys., LLC*, 959 F.3d 605, 610 (4th Cir. 2020) (quoting *Domino Sugar Corp. v. Sugar Workers Local Union 392*, 10 F.3d 1064, 1067 (4th Cir. 1993)). Because the district court recognized the possibility that amendment could cure the defects in the complaint, *id.*, we conclude that the court’s order is neither a final order nor an appealable interlocutory or collateral order.

Accordingly, we dismiss the appeal for lack of jurisdiction and remand to the district court with instructions to allow Rouhi to amend the complaint. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED AND REMANDED

Case #:

THE SUPREME COURT OF THE UNITED STATES

Tamara Rouhi

Original Case Number: 19CV701

Plaintiff/Appellant

Original Case/Complaint/Exhibits Filed:
3/6/19

v

CVS Pharmacy (CVS Health Inc)
Giant Pharmacy (Ahold Delhaize)
Wegmans Pharmacy (Wegmans Food
Markets Inc)
Walgreens Pharmacy (Walgreen Co.)
Nature Care/Health Mart Pharmacy
(McKesson Inc)

Appellate Court Case Number:
20-1462

A review from the US Court of Appeals
for the Fourth Circuit.

Civil Case.

Jury not requested.

Defendants/Appellee

APPENDIX VOLUME II: AUTHORITIES

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Article III, Section 2, US Constitution

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

- Article III, Section 2, US Constitution, Cornell Law

Certiorari

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1)

By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;..."

- 28 U.S. Code § 1254, Cornell Law

The Civil Rights Act of 1964, Title II

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of race, color, religion, or national origin."

-42 U.S.C. §2000a (a), Justice.gov

Deprivation of rights under color of law

“Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.”

-18 U.S. Code § 242

Diversity Jurisdiction

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

- (1)** citizens of different States;
- (2)** citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
- (3)** citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4)** a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the

Federal courts is finally adjudged to be entitled to recover less than the sum or value of \$75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business ...”

- 28 U.S. Code § 1332, Cornell Law

Federal Question

“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

-28 U.S. Code § 1331, Cornell Law

Final decisions of district courts

“The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.”

-28 U.S. Code § 1291, Cornell Law

First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

- First Amendment, congress.gov

Harassment

“(a) A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:

- (1) with the intent to harass, alarm, or annoy the other;
- (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and
- (3) without a legal purpose.

(b) This section does not apply to a peaceable activity intended to express a political view or provide information to others...”

-MD § 3-803, Justia

Misuse of an interactive computer service

“... (b) (1) A person may not maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another:

- (i) with the intent to harass, alarm, or annoy the other;
- (ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and
- (iii) without a legal purpose...”

-MD § 3-805, Justia

Misuse of telephone facilities

“(a) A person may not use telephone facilities or equipment to make:

- (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another;
- (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another; or
- (3) a comment, request, suggestion, or proposal that is obscene, lewd, lascivious, filthy, or indecent...”

-MD § 3-804, Justia

Obstruction of Justice

“...Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.”

-18 U.S. § 1505, Cornell Law

Stalking

“(a) “Stalking” defined.- In this section, “stalking” means a malicious course of conduct that includes approaching or pursuing another where the

person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear:

- (1) (i) of serious bodily injury;
- (ii) of an assault in any degree;
- (iii) of rape or sexual offense as defined by §§ 3-303 through 3-308 of this article or attempted rape or sexual offense in any degree;
- (iv) of false imprisonment; or
- (v) of death; or

(2) that a third person likely will suffer any of the acts listed in item (1) of this subsection..."

-MD § 3-802, Justia

Supplemental Jurisdiction

"(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

- (1) the claim raises a novel or complex issue of State law,

- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction..."

-28 U.S. Code § 1367, Cornell Law

Thirteenth Amendment

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

- Thirteenth Amendment, Congress.gov