

MANDATE

S.D.N.Y. – N.Y.C.
22-cv-376
Swain, C.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of October, two thousand twenty-two.

Present:

Debra Ann Livingston,
Chief Judge,
William J. Nardini,
Steven J. Menashi,
Circuit Judges.

Courtney Green,

Plaintiff-Appellant,

v.

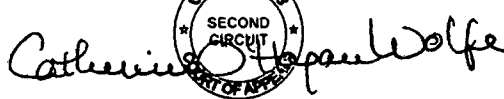
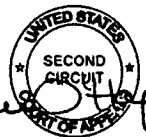
22-899

ABC Entertainment Inc.,

Defendant-Appellee.

Appellant, pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit




MANDATE ISSUED ON 11/30/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COURTNEY GREEN,

Plaintiff,

-against-

ABC ENTERTAINMENT INC.,

Defendant.

22-CV-0376 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, filed this action invoking the Court's diversity jurisdiction and asserting that Defendant ABC Entertainment Inc. ("ABC") has used multiple television shows to surveil and harass her in her home, and collect her personal information. On April 4, 2022, the Court dismissed this action under 28 U.S.C. § 1915(e)(2)(B)(i), as frivolous. (ECF No. 18.) That same day, Plaintiff filed an unsigned motion seeking reconsideration of the Court's order of dismissal. (ECF No. 20.) The following day, Plaintiff filed a substantially similar unsigned motion seeking reconsideration of the Court's order of dismissal which contains the additional assertion that "[i]n order for the court to decree a claim frivolous, the Court is Obligated to first review, investigate and exhaust all methods of research regarding the matter." (ECF No. 21.)¹

The Court liberally construes Plaintiff's submissions as motions under Rule 59(e) of the Federal Rules of Civil Procedure to alter or amend judgment and a motion under Local Civil Rule 6.3 for reconsideration, and, in the alternative, as a motion under Rule 60(b) of the Federal Rules of Civil Procedure for relief from a judgment or order. *See Triestman v. Fed. Bureau of*

¹ The Court quotes the motion verbatim. All capitalization, punctuation, and errors are in the original.

Prisons, 470 F.3d 471, 474 (2d Cir. 2006); *see also Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010) (stating the solicitude afforded to *pro se* litigants takes a variety of forms, including liberal construction of papers, “relaxation of the limitations on the amendment of pleadings,” leniency in the enforcement of other procedural rules, and “deliberate, continuing efforts to ensure that a *pro se* litigant understands what is required of him”) (citations omitted). After reviewing the arguments in Plaintiff’s submissions, the Court denies the motions.

DISCUSSION

The standards governing Rule 59(e) and Local Civil Rule 6.3 are the same. *R.F.M.A.S., Inc. v. Mimi So*, 640 F. Supp. 2d 506, 509 (S.D.N.Y. 2009). The movant must demonstrate that the Court overlooked “controlling law or factual matters” that had been previously put before it. *Id.* at 509 (discussion in the context of both Local Civil Rule 6.3 and Rule 59(e)); *see Padilla v. Maersk Line, Ltd.*, 636 F. Supp. 2d 256, 258-59 (S.D.N.Y. 2009). “Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court.” *Range Road Music, Inc. v. Music Sales Corp.*, 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000); *see also SimplexGrinnell LP v. Integrated Sys. & Power, Inc.*, 642 F. Supp. 2d 206 (S.D.N.Y. 2009) (“A motion for reconsideration is not an invitation to parties to ‘treat the court’s initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court’s ruling.’”) (internal quotation and citations omitted).

Plaintiff asserts that the Court’s finding that her assertions are frivolous “undermin[es] [her] intelligence and state[es] that the time put into pursuing this filing and suffering that [she has] endured null in void.” (ECF Nos. 20, 21.) She contends that she has provided “clear and accurate facts showing how information was obtained, how it was used and outlined the blatant humiliation, harassment, bullying, mental and verbal abuse [she has] endured.” (*Id.*)

Plaintiff has failed to demonstrate in her motions that the Court overlooked any controlling decisions or factual matters with respect to dismissal of this action. As the Court stated in the April 4, 2022, dismissal order, Plaintiff's assertions in the complaint are largely irrational or wholly incredible, provide no facts suggesting that the television surveillance actions of which she complains are even possible, and thus are not plausible. *See Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (holding that "finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible"); *Gallop v. Cheney*, 642 F.3d 364, 368 (2d Cir. 2011) (holding that dismissal is appropriate when factual allegations are "fanciful, fantastic, or delusional" (citation and internal quotation marks omitted)). Plaintiff's motions under Rule 59(e) and Local Civil Rule 6.3 are therefore denied.

Under Rule 60(b), a party may seek relief from a district court's order or judgment for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief.

The Court also finds that, even under a liberal interpretation of the motions, Plaintiff has failed to allege facts demonstrating that any of the grounds listed in the first five clauses of Rule 60(b) applies or that extraordinary circumstances exist to warrant relief under Rule 60(b)(6). Because Plaintiff does not present any legal or factual matters that would call into question the Court's dismissal of the complaint, the motions for reconsideration are denied.

CONCLUSION

The Court denies Plaintiff's motions for reconsideration (ECF Nos. 20, 21). All other pending matters in this case are terminated. All other requests are denied as moot.

The Clerk of Court is directed not to accept any further submissions under this closed case number except for papers directed to the United States Court of Appeals for the Second Circuit.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: April 7, 2022
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COURTNEY GREEN,

Plaintiff,

-against-

ABC ENTERTAINMENT INC.,

Defendant.

22-CV-0376 (LTS)

CIVIL JUDGMENT

Pursuant to the order issued April 4, 2022, dismissing the complaint,

IT IS ORDERED, ADJUDGED AND DECREED that the complaint is dismissed under
28 U.S.C. § 1915(e)(2)(B)(i).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the Court's
judgment would not be taken in good faith.

SO ORDERED.

Dated: April 4, 2022
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COURTNEY GREEN,

Plaintiff,

-against-

ABC ENTERTAINMENT INC.,

Defendant.

22-CV-0376 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action invoking the Court's diversity jurisdiction. She asserts that Defendant ABC Entertainment Inc. (ABC) directed employees from its television shows to engage in "[b]ullying and abusive conduct" toward her. (ECF 2, at 5.) By order dated March 24, 2022, the Court granted Plaintiff's request to proceed *in forma pauperis* (IFP), that is, to waive the filing fees. For the reasons set forth below, the Court dismisses the complaint.

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

The Supreme Court has held that, under Rule 8, a complaint must include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (principle that allegations are assumed to be true is “inapplicable to legal conclusions,” and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice”). A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *see also Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (holding that “finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible”); *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (“[A]n action is ‘frivolous’ when either: (1) the factual contentions are clearly baseless . . . ; or (2) the claim is based on an indisputably meritless legal theory.”) (internal quotation marks and citation omitted).

BACKGROUND

Plaintiff, who resides in Missouri, brings this action against ABC. She invokes this Court’s diversity jurisdiction and asserts claims of “defamation of [c]haracter, invasion of privacy, mental abuse exploitation, misuse of social status and media platform.” (ECF 2, at 6.) Plaintiff alleges that most of the events giving rise to her claims occurred from October 3 to December 6, 2021, on (1) Good Morning America (GMA), (2) KSPR 33, a Springfield, Missouri, radio station, and (3) Live with Kelly and Ryan. She seeks money damages.

The following is Plaintiff’s description of the events giving rise to her claims:

Employees of The defendant (ABC Entertainment LLC) acknowledged they could physically view me while live on air. During The shows (GMA, GMA3, KSPR 33, Live w Kelly and Ryan, Drew Barrymore, Kelly Clarkson etc) Employees of the Defendant (ABC Entertainment llc) Exhibited Bullying and abusive conduct directed towards and about my person. These remarks included comments about financial status, well being, living arrangements in a jokingly manner as well as other indications that there were tabs kept on or about me or the research or

outsource of information. In some instances the employees of said defendant (ABC Entertainment LLC) on the show GMA observed me viewing the show and proceeded to disconnect/jam my viewing capabilities. In other instances on the Live w Kelly and Ryan show Employees of the Defendant (ABC Entertainment LLC) made blatant comments in attempts to discourage me from viewing the show. On local news channels I found that hints of information was also mixed in with news coverage to add insult to injury and to be of the stalking manner. Employees of the defendant (ABC Entertainment LLC) Were fully aware of there actions and still proceeded on a consistent basis. These actions not only occurred on the said dates but have been going on with GMA since back in 2020. I feel The defendant was fully aware of these said occurrences and neglected to address/resolve these discrepancies.

(*Id.* at 5-6.)¹

DISCUSSION

A. Plaintiff's complaint is frivolous

Plaintiff's complaint, when read with the "special solicitude" due *pro se* pleadings, *Triestman*, 470 F.3d at 474-75, fails to allege any facts suggesting that she has a plausible legal claim. Plaintiff conclusorily asserts that ABC directed its television shows to surveil and harass her in her home and discourage her from watching television. These allegations do not support a defamation, invasion of privacy, or unfair competition claim under New York law because they are largely irrational or wholly incredible, provide no facts suggesting that the television surveillance actions of which she complains are even possible and thus are not plausible. *See Denton*, 504 U.S. at 33. The Court therefore dismisses Plaintiff's complaint as frivolous because it lacks a basis in law or fact. *See Gallop v. Cheney*, 642 F.3d 364, 368 (2d Cir. 2011) (holding that dismissal is appropriate when factual allegations are "fanciful, fantastic, or delusional" (citation and internal quotation marks omitted)).

¹ The Court quotes the complaint verbatim. All capitalization, punctuation, and errors are in the original.

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because Plaintiff's irrational allegations that ABC is victimizing her through its television shows cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend and dismisses the action as frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i).

B. Plaintiff is warned about the filing of vexatious or frivolous litigation

Plaintiff is not a stranger to the federal courts. In a matter of days, she filed five lawsuits in this court, including this action, in which she makes the same or similar assertions – that television networks and shows are monitoring her activities, harassing her, and collecting her personal information through the television. *See Green v. Fox Corp.*, ECF 1:22-CV-0243, 2 (S.D.N.Y. filed Jan. 11, 2022) (pending); *Green v. NBC Universal Media LLC.*, ECF 1:22-CV-0239, 2 (S.D.N.Y. filed Jan. 11, 2022) (pending); *Green v. Viacom CBS*, ECF 1:22-CV-0238, 2 (S.D.N.Y. Mar. 14, 2022) (dismissed for Plaintiff's failure to resubmit the signature page of the complaint with an original signature; motion for reconsideration pending); *Green v. Kelly and Ryan Show*, ECF 1:22-CV-0237, 2 (S.D.N.Y. Mar. 14, 2022) (same). In the last few months, Plaintiff has also filed multiple lawsuits in other federal courts around the country. *See Green v. PayPal Inc.*, No. 22-CV-0088 (RGK) (D. Neb. Mar. 15, 2022) (billing dispute dismissed for lack of subject matter jurisdiction); *Green v. Scripps Corp. Headquarter/Scripps Ctr.*, No. 22-CV-0010 (SJD) (SKB) (S.D. Ohio Mar. 2, 2022) (complaint dismissed for failure to state a claim plausible on its face); *Green v. Scripps Corp. Headquarter/Scripps Ctr.*, No. 22-CV-0009 (TSB) (SKB) (S.D. Ohio filed Jan. 6, 2022) (report & recommendation issued recommending dismissal of complaint for failure to state a claim plausible on its face); *See Green v. Kansas City Pub.*

Library, No. 22-CV-0086 (FJG) (W.D. Mo. Feb. 28, 2022) (denied leave to proceed IFP); *Green v. Mid Continent Pub. Library*, No. 22-CV-0085 (FJG) (W.D. Mo. Feb. 28, 2022) (same); *Green v. Kansas City Pub. Library*, No. 22-CV-0084 (FJG) (W.D. Mo. Feb. 28, 2022) (same); *Green v. Midwest Genealogy Ctr.*, No. 22-CV-0083 (FJG) (W.D. Mo. Feb. 28, 2022) (same); *Green v. Schweitzer Brentwood Branch Library*, No. 22-CV-3008 (FJG) (W.D. Mo. Feb. 4, 2022) (same); *Green v. Kansas City Pub. Library*, No. 21-CV-00943 (FJG) (W.D. Mo. Jan. 10, 2022) (same); *Green v. Mid Continent Pub. Library*, No. 21-CV-00942 (FJG) (W.D. Mo. Jan. 10, 2022) (same); *Green v. Kansas City Pub. Library*, No. 21-CV-00933 (FJG) (W.D. Mo. Jan. 10, 2022) (same); *Green v. Midwest Genealogy Ctr.*, No. 21-CV-00932 (FJG) (W.D. Mo. Jan. 10, 2022) (same).

While Plaintiff appears to be new to the Southern District of New York, she is warned that the further filing of vexatious or frivolous litigation in which she fails to allege facts showing that she is entitled to relief may result in an order under 28 U.S.C. § 1651(a), barring her from filing new actions without prior permission in this court. This warning is necessary, in light of Plaintiff's numerous filings, to conserve this Court's judicial resources. *See generally, In Re McDonald*, 489 U.S. 180, 184 (1988).

CONCLUSION

Plaintiff's complaint is dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i). Plaintiff's requests for summonses and subpoenas (ECF Nos. 7-8, 10-11) are denied as moot.

Plaintiff is also warned that further vexatious or frivolous litigation in this court may result in an order barring her from filing any new actions without prior permission. All other pending matters in this case are terminated.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: April 4, 2022
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge