

APPENDIX

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**APPENDIX A — ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT, FILED MARCH 1, 2024**

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

23-727

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 1st day of March, two thousand twenty-four.

IBRAHIM DONMEZ,

Plaintiff-Appellant,

v.

NYC DEPARTMENT OF CONSUMER AFFAIRS, *et al.*,

Defendants-Appellees.

Present:

Amalya L. Kearse,
Barrington D. Parker,
Myrna Pérez,
Circuit Judges.

Appellant, pro se, moves to expand the record on appeal, to compel district court judges to address his arguments,

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to reassign the case to a different district court judge, and for this Court to withdraw its prior orders dismissing his appeals. 2d Cir. 23-727, docs. 21, 70, 71, 73, 74, 79. Upon due consideration, it is hereby ORDERED that Appellant's motions are 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 Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (per curiam).

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe, Clerk of Court

**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK, FILED APRIL 12, 2023**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-CV-5586 (LTS)

IBRAHIM DOMNEZ,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
CONSUMER AFFAIRS, *et al.*,

Defendants.

ORDER

LAURA TAYLOR SWAIN, Chief United States District
Judge:

On October 18, 2022, the Court granted Plaintiff leave to move to reopen this action and to attach a proposed amended complaint. On November 17, 2022, Plaintiff filed a “Superseding Motion Requesting Modification of Order to Amend” under Rule 60(b) of the Federal Rules of Civil Procedure. (ECF 40.) The Court denies the motion and declines to grant Plaintiff leave to file an amended pleading.

*Appendix B***DISCUSSION**

Plaintiff seeks relief from the Court's order granting him leave to file an amended complaint. Specifically, he challenges: (1) orders issued in one of his closed cases, *Domnez v. City of New York*, No. 16-CV-6458 (CM) (S.D.N.Y. Dec. 19, 2016); (2) orders issued in this action by the Honorable Louis L. Stanton, when the case was assigned to his docket;¹ and (3) orders issued by the undersigned.

1. On October 5, 2020, Judge Stanton granted Plaintiff leave to amend his complaint (ECF 13), and Plaintiff filed his first motion requesting modification of the order to amend on October 23, 2020 (ECF 14). Judge Stanton denied the motion on November 6, 2020, and granted Plaintiff additional time to file an amended complaint. (ECF 15.) On November 9, 2020, Plaintiff filed his first notice of appeal in this action (ECF 16), and several motions (ECF 17-20), which Judge Stanton denied on January 7, 2021; Judge Stanton also granted Plaintiff more time to file an amended complaint (ECF 21). One week later, on January 14, 2021, Plaintiff filed another notice of appeal. (ECF 22.) Judge Stanton then dismissed the action for failure to state a claim, without prejudice to Plaintiff's moving to reopen the action. (ECF 23.) Judgment was entered on February 3, 2021. (ECF 24.) The Court of Appeals denied Plaintiff's appeals on July 14, 2021, and issued its mandate on October 21, 2021. (ECF 25.) On September 19, 2022, Plaintiff filed an amended complaint, and on October 18, 2022, the action was reassigned to this Court's docket and the Court issued an order, construing Plaintiff's amended compliant as including a motion to reopen the action, and denying the motion because the amended complaint did not comply with Rule 8 of the Federal Rules of Civil Procedure. (ECF 37.) The Court granted Plaintiff additional time to file an amended pleading that complied with Rule 8. (*Id.*) Plaintiff responded by filing the motions that are addressed in this order.

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Under Fed. R. Civ. P. 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.

Fed. R. Civ. P. 60(b). A motion based on reasons (1), (2), or (3) must be filed "no more than one year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).

The Court has considered Plaintiff's arguments, and even under a liberal interpretation of his motion, Plaintiff has failed to demonstrate that any of the grounds listed in the first five clauses of Fed. R. Civ. P. 60(b) apply. Therefore, the motion under any of these clauses is denied.

To the extent that Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), the motion is also denied. "[A] Rule 60(b)(6) motion must be based upon some reason other

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than those stated in clauses (1)-(5)." *United Airlines, Inc. v. Brien*, 588 F.3d 158, 175 (2d Cir. 2009) (quoting *Smith v. Sec'y of HHS*, 776 F.2d 1330, 1333 (6th Cir. 1985)). A party moving under Rule 60(b)(6) cannot circumvent the one-year limitation applicable to claims under clauses (1)-(3) by invoking the residual clause (6) of Rule 60(b). *Id.* A Rule 60(b)(6) motion must show both that the motion was filed within a "reasonable time" and that "extraordinary circumstances" [exist] to warrant relief." *Old Republic Ins. Co. v. Pac. Fin. Servs. of America, Inc.*, 301 F.3d 54, 59 (2d Cir. 2002) (per curiam) (citation omitted).

Plaintiff has failed to demonstrate that extraordinary circumstances exist to warrant relief under Fed. R. Civ. P. 60(b)(6). *See Ackermann v. United States*, 340 U.S. 193, 199-202 (1950).

LEAVE TO AMEND DENIED

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). In this action, both Judge Stanton and the undersigned have provided Plaintiff four opportunities to file an amended complaint that complies with Fed. R. Civ. P. 8. (See ECF 13, 15, 23, 37.) Plaintiff has been unable to do so. Accordingly, the Court concludes that it would be futile to provide Plaintiff another opportunity to file an amended complaint and declines to grant him such leave.

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CONCLUSION

The Court denies the motion for reconsideration and directs the Clerk of Court to terminate the motions at document numbers 38 and 40.

This action remains closed and no further leave to move to reopen this action is granted. The Clerk of Court will only accept for filing documents that are directed to the United States Court of Appeals for the Second Circuit. If Plaintiff files other documents that are frivolous or meritless, the Court will direct Plaintiff to show cause why Plaintiff should not be barred from filing further documents in this action.

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. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that appellant demonstrates good faith when seeking review of a nonfrivolous issue).

SO ORDERED.

Dated: April 12, 2023
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

**APPENDIX C — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK, FILED OCTOBER 18, 2022**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-CV-5586 (LTS)

IBRAHIM DOMNEZ,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
CONSUMER AFFAIRS, *et al.*,

Defendants.

ORDER

LAURA TAYLOR SWAIN, Chief United States District
Judge:

On July 20, 2020, Plaintiff, who is proceeding *pro se*, filed a 2,135-page submission that included a notice of removal, removing to this court a state-court proceeding, and a new civil action raising claims arising out of the state court proceeding he removed, other state court proceedings, and conduct on the part of the City of New York regarding its rules and regulations affecting pedicab drivers.

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Plaintiff did not pay the filing fees or submit an application to proceed *in forma pauperis* (“IFP”).

On August 13, 2020, the Honorable Louis L. Stanton, the assigned judge, directed Plaintiff to pay the filing fees or submit an IFP application. Plaintiff submitted an IFP application, which the Honorable Colleen McMahon, acting in her capacity as Chief Judge, granted on September 29, 2020.

On October 5, 2020, Judge Stanton granted Plaintiff leave to file an amended notice of removal, limited to 10 pages, and an amended complaint that complied with Rule 8 of the Federal Rules of Civil Procedure, limited to 20 pages. Judge Stanton instructed Plaintiff to limit his claims to events regarding his pedicab license that occurred after August 15, 2016, because Plaintiff had filed a prior action regarding the same claims, *see Domnez v. City of New York*, ECF 1:16-CV-6458, 2 (S.D.N.Y. Dec. 16, 2016), and as such, Judge Stanton had determined that in this proceeding, Plaintiff was precluded from raising claims that he had raised, or could have raised, in the action under case number 16-CV-6458, (*see* ECF 13).

On October 23, 2020, Plaintiff requested modification of the October 5, 2020, order; Judge Stanton denied the request on November 6, 2020. Plaintiff filed a notice of appeal on November 9, 2020, followed by four additional motions. On January 7, 2021, Judge Stanton denied those motions, noted that the notice of appeal was premature, and

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granted Plaintiff an additional 14 days to file an amended complaint. On January 14, 2021, Plaintiff appealed Judge Stanton's January 7, 2021 order. On January 28, 2021, Judge Stanton dismissed the action, with 30 days' leave to reopen the action.

On July 14, 2021, the United States Court of Appeals for the Second Circuit dismissed Plaintiff's appeals because they lacked an arguable basis in law or fact. (ECF 25) (mandate issued on Oct. 21, 2021). Nearly 20 months after this action was dismissed by Judge Stanton, on September 19, 2022, Plaintiff filed a 140-page amended complaint. Plaintiff also submitted payment for the filing fees in the amount of \$402.00 twice, first by submitting a personal check and then by submitting a money order. On October 18, 2022, the action was reassigned to the undersigned's docket.

DISCUSSION

The Court construes the amended complaint as including a request to reopen this action, and denies that request because the amended submission does not comply with Rule 8 of the Federal Rules of Civil Procedure and asserts claims that are barred under the doctrine of claim preclusion. The amended complaint primarily concerns events that occurred before August 16, 2016. As noted above, Judge Stanton had placed a 20-page limit on any amended pleading to ensure that Plaintiff stated facts only in support of claims not precluded by Plaintiff's prior litigation. Plaintiff has now filed a 140-page amended

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complaint, in which he discusses in detail his state-court proceedings, state legislative action regarding pedicab licensing, and several interactions he had with New York City officials prior to August 16, 2016. While Plaintiff does refer to one incident that occurred on June 26, 2017, the pleading otherwise asserts claims that are precluded. Thus, the Court denies Plaintiff's request to reopen this action.

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment 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). Indeed, the Second Circuit has cautioned that district courts "should not dismiss [a *pro se* complaint] 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) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). Because Plaintiff may be able to allege additional facts to state a valid claim regarding the June 26, 2017, incident, the Court grants Plaintiff 30 days' leave to file a request to reopen the action and to attach a proposed amended complaint, not to exceed 20 pages, alleging facts in support of his claim that his rights were violated on June 26, 2017.

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CONCLUSION

The Court grants Plaintiff 30 days' leave to file a request to reopen this action and to attach a proposed amended pleading that complies with the standards set forth above, including limiting the pleading to no more than 20 pages. No summons shall issue at this time. If Plaintiff complies with this order, the action will be reopened and processed in accordance with the procedures of the Clerk's Office.

The Court directs the Finance Unit to return Plaintiff's two payments – the personal check and the money order.

The action remains closed.

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. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that appellant demonstrates good faith when seeking review of a nonfrivolous issue).

Dated: October 18, 2022
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

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**APPENDIX D — DENIAL OF LEAVE
TO PROCEED IN FORMA PAUPERIS OF
THE UNITED STATES SUPREME COURT,
FILED JULY 14, 2022**

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK**

Scott S. Harris
Clerk of the Court

July 14, 2022

Mr. Ibrahim Donmez

Re: Ibrahim Donmez v.
New York City Department of Consumer Affairs, et al.
No. 21-6829

Dear Mr. Donmez:

In the above-entitled case, the Court denied leave to proceed *in forma pauperis* and allowed 21 days within which to pay the docket fee and submit a petition in compliance with Rule 33.1 of the Rules of the Court. As you have not complied with the Court's order within the time allowed, please be advised that the case is considered closed.

Sincerely,

Scott S. Harris, Clerk

By /s/
Jeffrey Atkins, Deputy Clerk