

NOT PRECEDENTIAL

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

No. 23-1062

COURTNEY GREEN,
Appellant

v.

LG ELECTRONICS USA; LG ELECTRONICS INC

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-22-cv-06057)
District Judge: Honorable Susan D. Wigenton

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 8, 2023

Before: HARDIMAN, PORTER, and FREEMAN, Circuit Judges

(Opinion filed June 9, 2023)

OPINION*

PER CURIAM

Courtney Green, proceeding pro se, appeals an order of the United States District Court for the District of New Jersey dismissing his amended complaint and denying his

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

motion for reconsideration. We will affirm; however, our rationale differs from that of the District Court. See TD Bank N.A. v. Hill, 928 F.3d 259, 270 (3d Cir. 2019) (noting that we may affirm on any basis supported by the record).

Green filed a complaint against LG Electronics USA and LG Electronics Inc. He alleged that the companies enabled employees of the entertainment and media industry to monitor him and converse with him through components in his television. He also averred that the companies were able to “collect viewing data and manipulate and control [his] viewing capabilities.” ECF No. 1 at 4. Green sought money damages and other relief. Before service of process, the District Court dismissed the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. The District Court allowed Green to amend his complaint.

Green filed an amended complaint. In a separate statement of facts, he set forth instances when television personalities were allegedly targeting and monitoring him. Green alleged that commentators on several shows said that “there was nowhere that I could hide.” ECF No. 10 at 1. In another example, he stated that a host on Fox Sports said, “Hey guys, he thinks we’re his friends.” Id. Green also averred that a television cast acknowledged that they could see him and made comments about him. In addition, Green alleged that he was unable to access certain programs on a streaming service, which instead offered him customized program choices. Green claimed that the companies engaged in racketeering, violated privacy laws, and defamed him.

The District Court dismissed Green’s amended complaint with prejudice pursuant to Rule 12(b)(6) for failure to state a claim. Green filed a motion for reconsideration

stating again that television personalities were monitoring him. The District Court denied relief because Green had not identified an intervening change in law, new evidence, or a legal or factual error in its decision. This timely appeal followed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our standard of review of the District Court's dismissal of the amended complaint is plenary. Byers v. Intuit, Inc., 600 F.3d 286, 291 (3d Cir. 2010). We review the denial of a motion for reconsideration for abuse of discretion. Gibson v. State Farm Mut. Auto. Ins. Co., 994 F.3d 182, 186 (3d Cir. 2021).

Green reiterates on appeal that he has been surveilled and that viewing data was tracked when he watched a LG Electronics brand television. He sets forth additional instances when television personalities allegedly spoke or referred to him on their shows. We agree with the District Court's dismissal of Green's amended complaint. However, we affirm on the ground that dismissal was warranted under 28 U.S.C. § 1915(e)(2)(B).

The District Court granted Green's motion to proceed in forma pauperis in an order entered on December 15, 2015. Green's amended complaint was thus subject to the screening provisions of § 1915(e)(2)(B). Under § 1915(e)(2)(B)(i), the court shall dismiss an action that is "frivolous." A claim is factually frivolous when the facts alleged "rise to the level of the irrational or the wholly incredible." See Denton v. Hernandez, 504 U.S. 25, 33 (1992) (addressing former § 1915(d)). That is the case here. Green's allegations that television personalities are monitoring him or talking about him on their shows are fanciful. Dismissal of these claims was proper under § 1915(e)(2)(B)(i).

To the extent Green's allegations regarding the tracking of viewing data are not

frivolous, we agree with the District Court insofar as it held that he failed to allege sufficient factual matter to state a plausible claim for relief. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The District Court, however, should have dismissed these claims pursuant to § 1915(e)(2)(B)(ii), which permits the dismissal of an in forma pauperis complaint at any time for failure to state a claim. District courts generally should not dismiss a complaint *sua sponte* pursuant to Rule 12(b)(6) before service of process. See Oatess v. Sobolevitch, 914 F.2d 428, 430-31 (3d Cir. 1990).¹ To the extent Green appeals the District Court's denial of his motion for reconsideration, which reiterated allegations in his amended complaint, the District Court did not abuse its discretion in denying relief.

Accordingly, we will affirm the judgment of the District Court.

¹ The standard for dismissal under Rule 12(b)(6) and § 1915(e)(2)(B)(ii) though is the same. See Tourscher v. McCullough, 184 F.3d 236, 240 (3d Cir. 1999) (applying Rule 12(b)(6) standard in appeal of dismissal under § 1915(e)(2)(B)(ii)).

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COURTNEY GREEN,

Plaintiff,

v.

LG ELECTRONICS USA,
LG ELECTRONICS INC.,

Defendants.

Civil Action No. 22-6057 (SDW) (JSA)

ORDER

January 4, 2023

WIGENTON, District Judge.

THIS MATTER having come before this Court upon *pro se* Plaintiff Courtney Green's ("Plaintiff") Motion for Reconsideration (D.E. 14) of this Court's December 14, 2022 Opinion and Order *sua sponte* dismissing Plaintiff's Amended Complaint with prejudice (D.E. 11, 12); and this Court having considered the Plaintiff's submissions, for the reasons stated in this Court's Whereas Opinion dated January 4, 2023,

IT IS on this 4th day of January 2023,

~~ORDERED that Plaintiff's Motion is DENIED.~~

SO ORDERED.

/s/ Susan D. Wigenton

SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: Jessica S. Allen, U.S.M.J.
Parties

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COURTNEY GREEN,

Plaintiff,

v.

LG ELECTRONICS USA,
LG ELECTRONICS INC.,

Defendants.

Civil Action No. 22-6057 (SDW) (JSA)

WHEREAS OPINION

January 4, 2023

THIS MATTER having come before this Court upon *pro se* Plaintiff Courtney Green's ("Plaintiff") "Motion to vacate order of dismissal and reinstate" (D.E. 14) filed in connection with this Court's December 14, 2022 Whereas Opinion and Order ("Order") *sua sponte* dismissing Plaintiff's Amended Complaint with prejudice and granting Plaintiff's application to proceed *in forma pauperis* (D.E. 11, 12); and

WHEREAS this Court deems Plaintiff's "Motion to vacate order of dismiss[al] and reinstate," which requests that this Court "reconsider [its] decision," as a Motion for Reconsideration of this Court's December 14, 2022 Order; and

WHEREAS a party moving for reconsideration of an order of this Court must file its motion within fourteen (14) days after the entry of that order and set "forth concisely the matter or controlling decisions which the party believes the . . . Judge has overlooked." L. Civ. R. 7.1(i). CMotions for reconsideration are "extremely limited procedural vehicle(s)" which are to be granted "very sparingly." *Clark v. Prudential Ins. Co. of Am.*, 940 F. Supp. 2d 186, 189 (D.N.J. 2013) (quotation marks omitted). They may only be granted if the moving party shows "(1) an

intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [reached its original decision]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011) (quotation marks and italics omitted). They are “not a vehicle for a litigant to raise new arguments.” *CPS MedManagement LLC v. Bergen Reg'l Med. Ctr., L.P.*, 940 F. Supp. 2d 141, 168 (D.N.J. 2013); and

WHEREAS Plaintiff's Motion for Reconsideration was filed on December 29, 2022, one day after the 14-day filing deadline. Given the holiday, this Court will treat the motion as if it were timely. However, Plaintiff's motion fails to identify any intervening change in the relevant law, new evidence that was unavailable at the time this Court entered its Order, or an error of fact or law that, if left uncorrected, would result in manifest injustice; therefore,

Plaintiff's Motion for Reconsideration will be DENIED. An appropriate order follows.

/s/ Susan D. Wigenton

SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk

cc: Jessica S. Allen, U.S.M.J.

Parties

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COURTNEY GREEN,

Plaintiff,

v.

LG ELECTRONICS USA,
LG ELECTRONICS INC.,

Defendants.

Civil Action No. 22-6057 (SDW) (JSA)

ORDER

December 14, 2022

THIS MATTER having come before this Court upon *pro se* Plaintiff Courtney Green's ("Plaintiff") Amended Complaint and accompanying application to proceed *in forma pauperis* (D.E. 9), and Statement of Facts (D.E. 10), and this Court having *sua sponte* reviewed the Amended Complaint and Statement of Facts for sufficiency pursuant to Fed. R. Civ. P. 8(a)(2) and (3) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), for the reasons stated in this Court's Whereas Opinion dated December 14, 2022,

IT IS, on this 14th day of December, 2022,

ORDERED that Plaintiff's application to proceed *in forma pauperis* is GRANTED, and

ORDERED that Plaintiff's Amended Complaint is DISMISSED WITH PREJUDICE.

SO ORDERED.

/s/ Susan D. Wigenton

SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk

cc: Jessica S. Allen, U.S.M.J.

Parties

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COURTNEY GREEN,

Plaintiff,

v.

LG ELECTRONICS USA,
LG ELECTRONICS INC.,

Defendants.

Civil Action No. 22-6057 (SDW) (JSA)

WHEREAS OPINION

December 14, 2022

THIS MATTER having come before this Court upon *pro se* Plaintiff Courtney Green's ("Plaintiff") Amended Complaint and accompanying application to proceed *in forma pauperis* (D.E. 9), and Statement of Facts (D.E. 10),¹ and the Court having reviewed the Amended Complaint and related Statement of Facts for sufficiency pursuant to Federal Rule of Civil Procedure 8(a)(2) and (3) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); and

WHEREAS a district court may allow a plaintiff to commence a civil action without paying the filing fee—that is, *in forma pauperis*—so long as the plaintiff submits an affidavit demonstrating he is “unable to pay such fees,” but must dismiss a case that “fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(a)(1), (e)(2); and

WHEREAS Plaintiffs' application to proceed *in forma pauperis* sufficiently demonstrates that Plaintiff cannot pay the filing fee because he: (1) has made an average of \$2,000 per month in

¹ Although they were filed separately, this Court has incorporated the allegations in the Statement of Facts into its consideration of whether the Amended Complaint states a claim for relief. (D.E. 9, 10.)

income during the past year and is currently unemployed; (2) has \$1800 per month in expenses; and (3) has \$354 in an account, (D.E. 9-1 at 1-5); and

WHEREAS “[p]leadings must be construed so as to do justice,” Fed. R. Civ. P. 8(e), and *pro se* complaints “must be held to less stringent standards than formal pleadings drafted by lawyers,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quotation marks omitted) (reversing the dismissal of a *pro se* complaint on the grounds that the allegations were too conclusory). Nonetheless, a pro se complaint must still include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see Erickson*, 551 U.S. at 93–94; *Fantone v. Latini*, 780 F.3d 184, 193 (3d Cir. 2015); and

WHEREAS Plaintiff’s Amended Complaint and Statement of Facts appear to allege that Defendants have committed criminal and civil wrongs by producing televisions that serve as portals for people in the sports and entertainment industries to see and speak directly to Plaintiff, to speak about him in a humiliating manner on television, to monitor and surveil him, and to exploit him. (D.E. 9 at 4–6; D.E. 10 at 1–3.) He asserts that this conduct amounted to criminal racketeering, as well as civil wrongs such as defamation and invasion of privacy. (*Id.*); and

WHEREAS the facts alleged in Plaintiff’s *pro se* Amended Complaint are insufficient to state a claim upon which relief may be granted because they “do not permit [this Court] to infer more than the mere possibility of misconduct” by Defendants. *Ashcroft*, 556 U.S. at 679; *see Fed. R. Civ. P. 8(a)(2); see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (explaining that to survive a Rule 12(b)(6) motion, a plaintiff’s “[f]actual allegations must be enough to raise a right to relief above the speculative level”); therefore

Plaintiff's application to proceed *in forma pauperis* is **GRANTED** and Plaintiff's Amended Complaint is *sua sponte* **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). An appropriate order follows.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: Jessica S. Allen, U.S.M.J.
Parties