

A1

17-1217 Docket

Case 17-1217, Document 12, 05/05/2017, 2029566,
Page2 of 5

**General Docket
Court of Appeals, 2nd Circuit**

Court of Appeals Docket #: 17-1217 **Docketed:**
Nature of Suit: 3890 STATUTES-Other 04/25/2017
Sun v. Pollak **Termed:**
Appeal From: EDNY (BROOKLYN) 11/29/2017
Fee Status: Paid

Case Type Information:

1) Civil 2) Private 3) -

Originating Court Information:

District: 0207-1: 17-cv-1570

Trial Judge: Eric N. Vitaliano, U.S. District Judge

Trial Judge: Lois Bloom, U.S. Magistrate Judge

Date Filed: 03/20/2017

Date Order/Judgment: 04/11/2017

Date Order/Judgment EOD: 04/11/2017

Date NOA Filed: 04/21/2017

Date Rec'd COA: 04/25/2017

Prior Cases:

None

Current Cases:

None

Panel Assignment: Not available

A2

Xiu Jian Sun
Plaintiff - Appellant

Xiu Jian Sun, -
[NTC Pro Se]
2nd Floor
54-25 153rd Street
Flushing, NY 11355

Cheryl L. Pollak
Defendant-Appellee

Varuni Nelson, Assistant
United States Attorney [COR
NTC US Attorney] United
States Attorney's Office for
the Eastern District of New
York 271 Cadman Plaza East
Brooklyn, NY 11201

Xiu Jian Sun,
Plaintiff - Appellant,
v.
Cheryl L. Pollak,
Defendant - Appellee.

04/25/2017 1
6 pg, 331.34 KB

NOTICE OF CIVIL APPEAL,
with district court docket, on
behalf of Appellant Xiu Jian
Sun, FILED. [2019906]
[17-1217] [Entered: 04/26/2017
10:52 AM]

04/25/2017 2
3 pg, 44.14 KB

PAYMENT OF DOCKETING
FEE, on behalf of Appellant Xiu

A3

Jian Sun, district court
Receipt # 4653114077, FILED.
[2019910] [17-1217] [Entered:
04/26/2017 10:54 AM]

04/25/2017 3
5 pg, 270.08 KB

DISTRICT COURT ORDER,
dated 04/10/2017, RECEIVED.
[2019913] [17-1217] [Entered:
04/26/2017 10:55 AM]

04/25/2017 4
1 pg, 44.68 KB

DISTRICT COURT
JUDGMENT, dated 04/11/
2017, RECEIVED. [2019916]
[17-1217] [Entered: 04/26/2017
10:55 AM]

04/25/2017 5
4 pg, 59.03 KB

ELECTRONIC INDEX, in lieu
of record, FILED. [2019923]
[17-1217] [Entered: 04/26/2017
10:57 AM]

04/26/2017 6
1 pg, 9.3 KB

INSTRUCTIONAL FORMS, to
Pro Se litigant, SENT. [201992
[17-1217] [Entered: 04/26/201
10:58 AM]

05/05/2017 12
5 pg, 205.04 KB

ACKNOWLEDGMENT AND
NOTICE OF APPEARANCE
FORM, on behalf of Party Xiu
Jian Sun, FILED. Service date

A4

05/02/2017 by US mail.
[2029566] [17-1217] [Entered:
05/08/2017 03:57 PM]

05/05/2017 13
2 pg, 158.71 KB
FORM D-P, on behalf of
Appellant Xiu Jian Sun,
FILED. Service date 05/02/
2017 by US mail. [2029567]
[17-1217] [Entered: 05/08/2017
03:57 PM]

05/05/2017 14
2 pg, 107.79 KB
LR 31.2 SCHEDULING
NOTIFICATION, on behalf of
Appellant Xiu Jian Sun,
informing Court of proposed
due date 07/27/2017,
RECEIVED. Service date
05/02/2017 by US mail.
[2029571] [17-1217] [Entered:
05/08/2017 03:58 PM]

05/11/2017 15
1 pg, 9.73 KB
NOTICE, to Appellee Cheryl L.
Pollak, for failure to file an
appearance, SENT. [2033102]
[17-1217] (Copy to Pro Se)
[Entered: 05/11/2017 03:17 PM]

05/24/2017 17
3 pg, 257.77 KB
ACKNOWLEDGMENT AND
NOTICE OF APPEARANCE,
on behalf of Appellee Cheryl L.

A5

Pollak, FILED. Service date
05/24/2017 by US mail.
[2042229] [17-1217] [Entered:
05/24/2017 10:57 AM]

05/26/2017 20
1 pg, 9.11 KB

NEW CASE MANAGER,
Ahronda Crossman, copy to
pro se appellant, ASSIGNED.
[2044391] [17-1217] [Entered:
05/26/2017 11:44 AM]

05/30/2017 24
1 pg, 36.36 KB

SO-ORDERED SCHEDULING
NOTIFICATION, setting
Appellant Xiu Jian Sun Brief
due date as 07/27/2017. Joint
Appendix due date as 07/27/
2017, copy to pro se petitioner,
FILED. [2045384] [17- 1217]
[Entered: 05/30/2017 11:55 AM]

07/12/2017 25
13 pg, 197.5 KB

BRIEF, on behalf of Appellant
Xiu Jian Sun, FILED. Service
date 07/12/2017 by US mail.
[2078752] [17-1217] [Entered:
07/14/2017 09:15 AM]

07/12/2017 26
46 pg, 1.29 MB

APPENDIX, volume 1 of 1, (pp.
1-46), on behalf of Appellant
Xiu Jian Sun, FILED. Service
date 07/12/2017 by US mail.

A6

2078758] [17-1217] [Entered:
07/14/2017 09:16 AM]

07/18/2017 32
2 pg, 49.24 KB

LR 31.2 SCHEDULING
NOTIFICATION, on behalf of
Appellee Cheryl L. Pollak,
informing Court of proposed
due date 10/11/2017,
RECEIVED. Service date
07/18/2017 by US mail.
[2080693] [17-1217] [Entered:
07/18/2017 10:31 AM]

07/18/2017 36
1 pg, 37.12 KB

SO-ORDERED
SCHEDULING
NOTIFICATION, setting
Appellee Cheryl L. Pollak
Brief due date as 10/11/2017,
FILED. [2080941] [17-1217]
[Entered: 07/18/2017 12:27 PM]

09/25/2017 39
1 pg, 9.25 KB

NEW CASE MANAGER,
Elizabeth Munoz, copy to pro
se, ASSIGNED. [2132548] [17-
1217] [Entered: 09/25/2017
01:13 PM]

10/04/2017 40
36 pg, 10.95 MB

MOTION, for summary
affirmance, on behalf of
Appellee USA Cheryl L. Pollak,

A7

FILED. Service date 10/04/
2017 by US mail. [2140356]
[17-1217] [Entered: 10/04/2017
02:45 PM]

11/29/2017 50 NEW CASE MANAGER,
1 pg, 9.11 KB Atasha Joseph, ASSIGNED.
[2182205] [17-1217] [Entered:
11/29/2017 01:12 PM]

11/29/2017 51 MOTION ORDER, granting
1 pg, 18.09 KB motion for summary
affirmance [40] filed by
Appellee Cheryl L. Pollak, by
DJ, RR, CFD, copy sent to pro
se, FILED. [2182215] [51] [17-
1217] [Entered: 11/29/2017
01:16 PM]

12/12/2017 53 LETTER, on behalf of Appellee
3 pg, 56.59 KB Cheryl L. Pollak, re: imposition
of leave-to-file sanction,
RECEIVED. Service date 12/
12/2017 by US mail. [2192422]
[17-1217]--[Edited 12/12/2017
by AJ] [Entered: 12/12/2017
12:37 PM]

01/22/2018 59 ORDER, dated 01/22/2018,
1 pg, 18.37 KB denying as moot the imposition

A8

of leave-to-file sanction, copy
sent to pro se, FILED.[2218583
[17-1217] [Entered: 01/22/2018
02:47 PM]

01/22/2018 60
1 pg, 520.76 KB

CERTIFIED COPY OF
ORDER, dated 11/29/2017,
determining the appeal to
EDNY, copy sent to pro se,
ISSUED.[Mandate][2218591]
[17-1217] [Entered: 01/22/2018
02:53 PM]

Clear All

☒ Documents and Docket Summary
☐ Documents Only

☒ Include Page Numbers

Selected Pages: 0 Selected Size: 0 KB
View Selected

**PACER Service Center
Transaction Receipt**

02/14/2018 10:21:00

PACER Login: xiujiansun Client Code:

Description: Docket Report (full)

Search Criteria: 17-1217

Billable Pages: 2

Cost: 0.20

[https://ecf.ca2.uscourts.gov/n/beam/servlet/
TransportRoom](https://ecf.ca2.uscourts.gov/n/beam/servlet/TransportRoom)

B1

Case 17-1217, Document 1-1, 04/25/2017, 2019906,
Page1 of 2

United States Court of Appeals for the Second
Circuit Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007

ROBERT A. KATZMANN CHIEF JUDGE

Date: April 26, 2017

Docket #: 17-1217cv

Short Title: Sun v. Pollak

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 17-cv-1570

DC Court: EDNY (BROOKLYN)

DC Judge: Bloom

DC Judge: Vitaliano

DOCKETING NOTICE

A notice of appeal filed by **Xiu Jian Sun** in the above referenced case was docketed today as **17-1217**. This number must appear on all documents related to this case that are filed in this Court. For pro se parties the docket sheet with the caption page, and an Acknowledgment and Notice of Appearance Form are enclosed. In counseled cases the docket sheet is available on PACER. Counsel must access the Acknowledgment and Notice of Appearance Form from this Court's website <http://www.ca2.uscourts.gov>.

The form must be completed and returned within 14 days of the date of this notice. The form requires the

following information:

YOUR CORRECT CONTACT INFORMATION:

Review the party information on the docket sheet and note any incorrect information in writing on the Acknowledgment and Notice of Appearance Form.

The Court will contact one counsel per party or group of collectively represented parties when serving notice or issuing our order. Counsel must designate on the Acknowledgment and Notice of Appearance a lead attorney to accept all notices from this Court who, in turn will, be responsible for notifying any associated counsel.

CHANGE IN CONTACT INFORMATION: An attorney or pro se party who does not immediately notify the Court when contact information changes will not receive notices, documents and orders filed in the case.

An attorney and any pro se party who is permitted to file documents electronically in CM/ECF must notify the Court of a change to the user's mailing address, business address, telephone number, or e-mail. To update contact information, a Filing User must access PACER's Manage My Appellate Filer Account, <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-login.pl>. The Court's records will be updated within 1 business day of a user entering the change in PACER.

B3

A pro se party who is not permitted to file documents electronically must notify the Court of a change in mailing address or telephone number by filing a letter with the Clerk of Court.

CAPTION: In an appeal, the Court uses the district court caption pursuant to FRAP 12(a), 32(a). For a petition for review or original proceeding the Court uses a caption pursuant to FRAP 15(a) or 21(a), respectively. Please review the caption carefully and promptly advise this Court of any improper or inaccurate designations in writing on the Acknowledgment and Notice of Appearance form. If a party has been terminated from the case the caption may reflect that change only if the district court judge ordered that the caption be amended.

APPELLATE DESIGNATIONS: Please review whether appellant is listed correctly on the party listing page of the docket sheet and in the caption. If there is an error, please note on the Acknowledgment and Notice of Appearance Form. Timely submission of the Acknowledgment and Notice of Appearance Form will constitute compliance with the requirement to file a Representation Statement required by FRAP 12(b).

For additional information consult the Court's instructions posted on the website.

Inquiries regarding this case may be directed to 212-857-8638.

B4

Case 17-1217, Document 5-1, 04/25/2017, 2019923,
Page1 of 1

**United States Court of Appeals for the Second
Circuit Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007**

ROBERT A. KATZMANN CHIEF JUDGE

Date: April 26, 2017

Docket #: 17-1217cv

Short Title: Sun v. Pollak

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 17-cv-1570

DC Court: EDNY (BROOKLYN)

DC Judge: Bloom

DC Judge: Vitaliano

NOTICE OF RECORD ON APPEAL FILED

In the above referenced case the document indicated
below has been filed in the Court.

___ Record on Appeal - Certified List

___ Record on Appeal - CD ROM

___ Record on Appeal - Paper Documents

XXX Record on Appeal - Electronic Index

___ Record on Appeal - Paper Index

Inquiries regarding this case may be directed to 212-
857-8561.

B5

Case 17-1217, Document 5-2, 04/25/2017, 2019923,

Page1 of 3

Activity in Case 1:17-cv-01570-ENV-LB Sun v. Pollak
Electronic Index to Record on Appeal

ecf_bounces to: nobody 04/25/2017 02:48 PM

This is an automatic e-mail message generated by the
CM/ECF system. Please DO NOT RESPOND to this
e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial
Conference of the United States policy permits
attorneys of record and parties in a case (including pro
se litigants) to receive one free electronic copy of all
documents filed electronically, if receipt is required by
law or directed by the filer. PACER access fees apply
to all other users. To avoid later charges, download a
copy of each document during this first viewing.
However, if the referenced document is a transcript,
the free copy and 30 page limit do not apply.

U.S. District Court Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 4/25/2017 at
2:48 PM EDT and filed on 4/25/2017

Case Name: Sun v. Pollak

Case Number: 1:17-cv-01570-ENV-LB

B6

Filer:

WARNING: CASE CLOSED on 04/11/2017

Document Number: No document attached

Docket Text:

Electronic Index to Record on Appeal sent to US Court of Appeals. [8] Notice of Appeal [9] Receipt for payment of Notice of Appeal. Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (McGee, Mary Ann)

1:17-cv-01570-ENV-LB Notice has been electronically mailed to:

1:17-cv-01570-ENV-LB Notice will not be electronically mailed to:

Xiu Jian Sun
54-25 153rd Street
2nd Flr.
Flushing, NY 11355

B7

Case 17-1217, Document 6, 04/26/2017, 2019928,
Page1 of 1

**United States Court of Appeals for the Second
Circuit Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

**Distribution of Instructions & Forms for Pro Se
Parties in U.S & Private Civil Cases**

- ☒ Acknowledgment and Notice of Appearance
- ☒ Docketing Notice
- ☒ Docket Report
- ☒ How to Appeal Your Civil Case
- ☒ How to Appeal as a Pro Se Party
- ☒ Form D-P
- ☒ T-1080 Form
- ☐ N/A Financial Affidavit (Fee paid)
- ☒ Local Rule 24.1 Statement
- ☒ Certificate of Service
- ☒ Format Motion
- ☒ Format Brief
- ☒ Format Appendix
- ☒ Pro Se Scheduling Notification
- ☒ Oral Argument Statement (Local Rule 34.1(a))
- ☒ Form 6 Certificate of compliance
- ☐ N/A Form 7 Declaration of Inmate Filing (only if
detained/incarcerated)

B8

Case 17-1217, Document 12, 05/05/ REOEIVED
2017, 2029566, Page 1 of 5 2017 MAY 5 PM 3:24
CLERK'S OFFICE
ACKNOWLEDGMENT AND U.S. COURT OF
NOTICE OF APPEARANCE APPEALS

Short Title: XIU JIAN SUN, the spiritual Adam V.
CHERY L. POLLAK

Docket No.: 17-1217 CV

Lead Counsel of Record (name/firm) or Pro se Party
(name): Xiu Jian Sun, the spiritual Adam

Appearance for (party/designation): Xiu Jian Sun, the
spiritual Adam

DOCKET SHEET
ACKNOWLEDGMENT/AMENDMENTS

Caption as indicated is:

☒ Correct

☐ Incorrect. See attached caption page with
corrections.

Appellate Designation is:

☒ Correct

☐ Incorrect. The following parties do not wish to
participate in this appeal: Parties: _____

☐ Incorrect. Please change the following parties'
designations: Party Correct Designation

Contact Information for Lead Counsel/Pro Se Party is

☒ Correct

B9

___ Incorrect or Incomplete, and should be amended as follows:

Name: _____ Finn: _____
Address: _____ Telephone: _____
Fax: _____ Email: _____

RELATED CASES

X_ This case has not been before this Court previously.

___ This case has been before this Court previously. The short title, docket number, and citation are: _____

___ Matters related to this appeal or involving the same issue have been or presently are before this Court. The short titles, docket numbers, and citations are: _____

CERTIFICATION

I certify that (x) I am admitted to practice in this Court and, if required by LR 46. 1(a)(Z), have renewed my admission on _____ OR that () I applied for admission on _____ or renewal on _____.

If the Court has not yet admitted me or approved my renewal, I have completed Addendum A.

Signature of Lead Counsel of Record: _____

Type or Print Name: _____

OR

Signature of pro se litigant: Xiu Jlan Sun, the spiritual Adam

Type or Print Name: Xiu Jlan Sun, the spiritual Adam(The Church of Jesus Christ of Latter-day saints

X_ I am a pro se litigant who is not an attorney.

___ I am an incarcerated pro se litigant.

B10

Case 17-1217, Document 13, 05/05/2017, 2029567,
Page 1 of 2

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

**CIVIL APPEAL TRANSCRIPT INFORMATION
(FORM D-P) FOR PRO SE APPELLANTS**

A PRO SE APPELLANT MUST FILE THE
ORIGINAL OF THIS FORM WITH THE CLERK OF
THE SECOND CIRCUIT IN ALL CML APPEALS
WITHIN 14 CALENDAR DAYS AFTER FILING A
NOTICE OF APPEAL.

**THIS SECTION MUST BE COMPLETED BY
APPELLANT**

CASE TITLE:	Docket Number:
Xiu Jian Sun, the spiritual Adam	17-1217cv
Plaintiff-Appellant	
v.	RECEIVED
CHERY L. POLLAK	2017 MAY 5 PM 3:24
Defendants-Appellees	CLERK'S OFFICE
_____	U.S. COURT OF APPEALS

DISTRICT: SECOND COURT

JUDGE: ROBERT T. KATZMANN

COURT REPORTER _____

APPELLANT: Xiu Jian Sun, the spiritual Adam

PRO SE APPELLANT: 5425 153rd St., 2FL, Flushing.

B11

NY 11355. 646-675-0308.

Check the applicable provision:

☒ I am ordering a transcript.

☐ I am not ordering a transcript

Reason for not ordering a transcript:

☐ Copy is already available

☐ No transcribed proceedings

☐ Other (Specify in the space below):

PROVIDE A DESCRIPTION, INCLUDING DATES,
OF THE PROCEEDINGS FOR WHICH A
TRANSCRIPT IS REQUIRED (i.e., oral argument,
order from the bench, etc.)

METHOD OF PAYMENT

☐ Funds

☐ CJA Voucher (CJA 21)

INSTRUCTIONS TO COURT REPORTER:

☐ PREPARE TRANSCRIPT OF PRE-TRIAL
PROCEEDINGS

☐ PREPARE TRANSCRIPT OF TRIAL

☐ PREPARE TRANSCRIPT OF OTHER POST-
TRIAL PROCEEDINGS

☐ OTHER (Specify In the space below):

DELIVER TRANSCRIPT TO: (APPELLANT'S
NAME, ADDRESS, TELEPHONE)

The Church of Jesus Christ of Latter-day saints

Servant: Xiu Jian Sun, the spiritual Adam

B12

54-25 153rd St., 2FL, Flushing, NY 11355
(646) 675-0308

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript. See FRAP 10(b). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by FRAP and the Local Rules.

APPELLANT' S SIGNATURE

DATE

Xiu Jian Sun, the spiritual Adam

05/02/2017

COURT REPORTER ACKNOWLEDGMENT: This section is to completed by the court reporter. Return one copy to the Clerk of the Second Circuit. _____

DATE ORDER RECEIVER_____

ESTIMATED COMPLETION DATE_____

ESTIMATED NUMBER OF PAGES_____

SIGNATURE OF COURT REPORTED_____

DATE_____

B13

Case 17-1217, Document 14, 05/05/2017, 2029571,

Page 1 of 2

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

**PRO SE SCHEDULING NOTIFICATION (NON -
AGENCY CASE)**

**THIS SECTION MUST BE COMPLETED BY
APPELLANT**

CASE TITLE:

The Church of Jesus Christ of Latter-day saints
Servant: Xiu Jian Sun, the spiritual Adam
Plaintiff-Appellant

v.

CHERY L. POLLAK
Defendants-Appellees

USCA DOCKET NUMBER:

DISTRICT: 0207-1:17-cv-1570

DISTRICT/AGENCY NUMBER: _____

APPELLANT: Xiu Jian Sun, The spiritual Adam,
The Church of Jesus Christ of Latter-day saints

APPELLANT'S ADDRESS: 5425 153rd St., 2FL,
Flushing, NY 11355.

APPELLANT'S PHONE NUMBER: 646-675-0308

Pursuant to Local Rule 31.2(a)(1)(A), I request that
my brief and appendix be accepted for filing no later

B14

than 07/27/2017. This date is within 91 days of the later of (1) the receipt of the last transcript in my case or (2) when no transcript is ordered, the required filing date of my Form D-P with the Court.

I understand that if I fail to return this signed scheduling proposal as stated above, the Court will issue an order setting a 40-day deadline to file my brief. If I fail to file my brief, the case may be dismissed.

I also understand that in the absence of extraordinary circumstances, such as a personal illness or family death, the Court will not grant a motion to extend the time to file a brief.

Local Rule 27.1.(f)(1).

May 2, 2017

Date

Xiu Jian Sun, the spiritual Adam

Signature of Appellant/Petitioner

Servant: Xiu Jian Sun, the spiritual Adam

RECEIVED

2017 MAY 5 PM 3:24

CLERK'S OFFICE

U.S. COURT OF APPEALS

Rev. May, 2011

B15

Case 17-1217, Document 14, 05/05/2017, 2029571,
Page2 of 2

Case 17-1217, Document 12, 05/05/2017, 2029566,
Page5 of 5

Case 17-1217, Document 13, 05/05/2017, 2029567,
Page2 of 2

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

CAPTION: CERTIFICATE OF SERVICE

Servant: Xiu Jian Sun, the spiritual Adam

Plaintiff-Appellant

v.

Docket Number: 17-1217 cv

CHERY L. POLLAK

Defendant-Appellee

I, Xiu Jian Sun, the spiritual Adam, hereby certify under penalty of perjury that on 05/02/2017. I served a copy of 1) Scheduling Notification; 2) Form D-P; 3) Acknowledgment and Notice Appearance.

by (select all applicable) • •

☐ Personal Delivery ☒ United States Mail
☐ Federal Express or other Overnight Courier
☐ Commercial Carrier ☐ E-Mail (on consent)

on the following parties:

B16

Name Address City State Zip Code

Varuni Nelson, Assistant United States Attorney
United States Attorney's Office for the
Eastern District of New York
127 Cadman Plaza East, Brooklyn, NY 11201

• A party must serve a copy of each paper on the other parties, or their counsel, to the appeal or proceeding. The Court will reject papers for filing if a certificate of service is not simultaneously filed

• • If different methods of service have been used on different parties, please complete a separate certificate of service for each party.

05/02/2017

Today's Date

Xiu Jian Sun, the spiritual Adam

Signature

Certificate of Service Form (Last Reviewed 12/2015)

B17

Case 17-1217, Document 15, 05/11/2017, 2033102,
Page1 of 1

**United States Court of Appeals for the Second
Circuit Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE
Date: May 11, 2017
Docket #: 17-1217cv
Short Title: Sun v. Pollak
CATHERINE O'HAGAN WOLFE
CLERK OF COURT
DC Docket #: 17-cv-1570
DC Court: EDNY (BROOKLYN)
DC Judge: Bloom
DC Judge: Vitaliano

**ACKNOWLEDGMENT AND NOTICE OF
APPEARANCE DEFAULT NOTICE**

Pursuant to Second Circuit Local Rule 12.3, the appellee / respondent's counsel Acknowledgment and Notice of Appearance was due on May 10, 2017. The Court has not received the Acknowledgment and Notice of Appearance on behalf of appellee / respondent's counsel.

If appellee / respondent's counsel does not file an

B18

Acknowledgment and Notice of Appearance within 14 days of the date of this notice, when the appeal is placed on the calendar, appellee / respondent's counsel will not be heard at oral argument except by permission of the Court.

Inquiries regarding this case may be directed to 212-857-8561.

B19

Case 17-1217, Document 20, 05/26/2017, 2044391,
Page1 of 1

**United States Court of Appeals for the Second
Circuit Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007**

ROBERT A. KATZMANN

CHIEF JUDGE

Date: May 26, 2017

Docket #: 17-1217cv

Short Title: Sun v. Pollak

**CATHERINE O'HAGAN WOLFE
CLERK OF COURT**

DC Docket #: 17-cv-1570

DC Court: EDNY (BROOKLYN)

DC Judge: Bloom

DC Judge: Vitaliano

NOTICE OF CASE MANAGER CHANGE

The case manager assigned to this matter has been changed.

Inquiries regarding this case may be directed to 212-857-8529.

B20

Case 17-1217, Document 24, 05/30/2017, 2045384,
Page 1 of 1

**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 30th day of May, two thousand and seventeen,

Xiu Jian Sun, Plaintiff - Appellant,	ORDER Docket No: 17-1217
v.	
Cheryl L. Pollak, Defendant - Appellee.	

PLAINTIFF - APPELLANT has filed a scheduling notification, pro se, pursuant to the Court's Local Rule 31.2, setting July 27, 2017 as the brief and joint appendix filing date.

The scheduling notification hereby is so ordered.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

Catherine O'Hagan Wolfe

C1

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page 1 of 13

17-1217

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

The Church of Jesus Christ of Latter-Day Saints
Servant:

XIU JIAN SUN, the spiritual Adam	RECEIVED
Plaintiff - Appellant,	2017 JUL 12 PM 2:51
v.	CLERK'S OFFICE
CHERY L. POLLAK;	U.S. COURT OF APPEALS
Defendant - Appellee.	COUNTER 1

**On Appeal from the United States District Court
for the Southern District of New York**

Brief of Appellant Xiu Jian Sun, the spiritual Adam
The Church of Jesus Christ of Latter-day saints
Servant: Xiu Jian Sun, the spiritual Adam Pro Se
54-25 153rd St 2FL
Flushing, NY 11355
646-675-0308

TABLE OF CONTENTS

	Page(s)
Table of Contents	2, C2
Statutes & Rules	3, C3
Statement of Subject Matter and Appellate Jurisdiction	4, C4
Statement of the Issues Presented for Review ..	5, C5
Statement of the Case	6, C6
Statement of the Facts	7, C6
Conclusion	8, C7
Certificate of Compliance	9, C8
Certificate of Service	13, C14

Statutes & Rules

The Doctrine and Covenants Section 42

83. And thus ye shall do in all cases which shall come before you.
84. And if a man or woman shall rob, he or she shall be delivered up unto the law of the land.
85. And if he or she shall steal, he or she shall be delivered up unto the law of the land.
86. And if he or she shall lie, he or she shall be delivered up unto the law of the land.
87. And if he or she do any manner of iniquity, he or she shall be delivered up unto the law, even that of God.
88. And if thy brother or sister offend thee, thou shalt take him or her between him or her and thee alone; and if he or she confess thou shalt be reconciled.
89. And if he or she confess not thou shalt deliver him or her up unto the church, not to the members, but to the elders. And it shall be done in a meeting, and that not before the world.
90. And if thy brother or sister offend many, he or she shall be chastened before many.
91. And if any one offend openly, he or she shall be rebuked openly, that he or she may be ashamed. And if he or she confess not, he or she shall be delivered up unto the law of God.

C4

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page4 of 13

**STATEMENT OF SUBJECT MATTER AND
APPELLATE JURISDICTION**

1. On the date of March 09, 2017, when the notification from United States District Court Eastern District of New York is received, Jehovah, -the Lord god of host sent the messenger speaks to spiritual Adam, -plaintiff through angel, says: **"Pharisees don't even open the door"**. (法利赛人连门都不开)
2. Jehovah, -the lord god of host sends the messenger through the angel says, **'contempt of Israel judge'**. (藐视以色列法官)

Statement of the Issues Presented for Review

1. In the morning of date of December 10, 2016, when he book of Brief of the Appellant made near completion. The lord god of hosts sent the messenger to the spiritual Adam through angel, saying. **'The Pharisees have appropriated widow's possessions.'** (法利赛人侵吞寡妇的财产)
2. Jehovah, the Lord god of host, sent the son of god, (the revived Messiah) from God's temple gave words to servant, said: **'Pharisees not even move his one finger.'** (法利赛的人一个手指头都不动)
3. In the nights from February 29th to March 1st, 2016, the Lord god of host, - Jehovah sent the messenger said to servant, **"seeking for profit, gang organization."** (谋利, 秘密帮派组织)
4. Jehovah the Lord god of host sent the messenger through angel spoke in servant's heart : **'snake, belly home's walking.'** (蛇, 肚子家的走路)

C6

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page6 of 13

Statement of the Case

1. Prior to Pharisees sent letter to ask servant to modify brief: The Lord god of hosts sent messenger speaks to spiritual Adam - plaintiff, through the angel, says: '**Pharisees even swallowed dead people's bones.**' (法利赛人连死人的骨头都吐下去)
2. Jehovah, - the Lord of the host, sent the messenger said to servant: "**Woe unto the Pharisees and the lawyers.**" (法利赛人和律法师有祸了)

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page7 of 13

STATEMENT OF THE FACTS

The Lord god Jehovah sent the messenger, said to spiritual Adam through the angel, '**unjust judge.**' (不公正的法官)

C7

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page 8 of 13

CONCLUSION

The Doctrine and Covenants Section 42

92. If any shall offend in secret, he or she shall be rebuked in secret, that he or she may have opportunity to confess in secret to him or her whom he or she has offended, and to God, that the church may not speak reproachfully of him or her.

93. And thus shall ye conduct in all things.

Dated: Queens, New York
July 7, 2017

The Church of Jesus Christ of Latter-day saints
Servant: Xiu Jian Sun, the spiritual Adam
54-25 153rd St., 2FL, Flushing, NY 11355
(646) 675-0308
Plaintiff-Appellant

C8

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page9 of 13

Case 17-1217, Document 17-1, 05/24/2017, 2042229,
Page1 of 2

Certificate of Compliance

**ACKNOWLEDGMENT AND NOTICE OF
APPEARANCE**

Short Title: Sun v Pollak Docket No.: 17-1217

Lead Counsel of Record (name/firm) or Pro se Party
(name): VARUNI NELSON, Assistant United States
Attorney United States Attorney's Office - Eastern
District of New York – 271 -A Cadman Plaza East - 7th
Floor - Brooklyn New York 11201.

Appearance for (party/designation): Cheryl L. Pollak-
Defendant-Appellee

**DOCKET SHEET
ACKNOWLEDGMENT/AMENDMENTS**

Caption as indicated is:

 X Correct

_____ Incorrect. See attached caption page with
corrections.

Appellate Designation is:

 X Correct

C9

☐ Incorrect. The following parties do not wish to participate in this appeal:

Parties: _____

☐ Incorrect. Please change the following parties' designations:

Party

Correct Designation

Contact Information for Lead Counsel/Pro Se Party is:

☒ Correct

☐ Incorrect or Incomplete, and should be amended as follows:

Name: _____

Firm: _____

Address: _____

Telephone: _____

Fax: Email: _____

RELATED CASES

☐ This case has not been before this Court previously.

☐ This case has been before this Court previously.

The short title, docket number, and citation are: _____

☒ Matters related to this appeal or involving the same issue have been or presently are before this Court. The short titles, docket numbers, and citations are: Sun v. Cavallo, 16-950; Sun v. Dillon, 16-3557; Sun v. Cheung, 17-1215; Sun v. Katzmann, 16-3103--PLEASE SEE ATTACHED ORDER IN 16-3103, WARNING APPELLANT OF POTENTIAL LEAVE-TO-FILE SANCTION

CERTIFICATION

C10

I certify that X I am admitted to practice in this Court and, if required by LR 46.1(a)(2), have renewed my admission on March 5, 2015 OR that ___ I applied for admission on _____ or renewal on _____. If the Court has not yet admitted me or approved my renewal, I have completed Addendum A.

Signature of Lead Counsel of Record:

Type or Print Name: _____

OR

Signature of pro se litigant: Varuni Nelson

Type or Print Name: VARUNI NELSON Assistant
United States Attorney

___ I am a pro se litigant who is not an attorney.

___ I am an incarcerated pro se litigant.

C11

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page10 of 13

Case 16-3103, Document 96, 05/04/2017, 2026761,
Page1 of 1

Case 17-1217, Document 17-1, 05/24/2017, 2042229,
Page2 of 2

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page22 of 26

United States Court of Appeals	E.D.N.Y.-Bklyn
FOR THE	16-cv-3937
SECOND CIRCUIT	DeArcy Hall, J.

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 4th day of May, two thousand seventeen.

Present:

John M. Walker, Jr.,
Debra Ann Livingston,
Gerard E. Lynch,
Circuit Judges.

Xiu Jian Sun, the spiritual Adam,
Plaintiff-Appellant,

v.

16-3103

Ernest J. Cavallo, et al.,

Defendants-Appellees.

The federal Defendants-Appellees move for summary affirmance. Upon due consideration, it is hereby ORDERED that the motion is GRANTED and the appeal is DISMISSED in its entirety because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); see also 28 U.S.C. §1 915(e); *Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (holding that Court has inherent authority to dismiss appeal that lacks an arguable basis).

Appellant is hereby warned that the continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers, will result in the imposition of a sanction, which may require Appellant to obtain permission from this Court prior to filing any further submissions in this Court (a "leave-to-file" sanction). See *In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993); *Sassower v. Sansverie*, 885 F.2d 9, 11 (2d Cir. 1989).

FOR THE COURT:

Lucille M. Carr, Chief Deputy Clerk

Lucille M. Carr

C13

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page 11 of 13
Case 17-1217, Document 17-2, 05/24/2017, 2042229,
Page 1 of 1

UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

SUN v. POLLAK

Docket No. 17-1217

DECLARATION OF SERVICE

I, DAHLIA E. JOSHUA, hereby declare that, on
May 24, 2017, the Defendant-Appellee's
Acknowledgment and Notice of Appearance was
served by first-class mail on:

Xiu Jian Sun
Pro Se Plaintiff-Appellant
54-25 153rd Street -2nd Floor
Flushing, New York 11355

In accordance with 28 U.S.C. §1746, I declare
under penalty of perjury that the foregoing is true and
correct to the best of my knowledge and belief.

Dated: Brooklyn, New York
May 24, 2017

/s/ Dahlia E. Joshua
DAHLIA E. JOSHUA

C14

Case 17-1217, Document 25, 07/12/2017, 2078752,
Page13 of 13

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page46 of 46

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

CAPTION: CERTIFICATE OF SERVICE •

The Church of Jesus Christ of Latter-day saints
Servant: Xiu Jian Sun, the spiritual Adam

Plaintiff-Appellant,

v.

Docket Number: 17-1217

CHERYL. POLLAK;

Defendant-Appellee

I, Simon Chen, hereby certify under penalty of
perjury that on July 10, 2017. I served a copy of 1.
Brief of Appellant, 2. Appendix of Appellant.

by (select all applicable) • •

☐ Personal Delivery ☒ United States Mail
☐ Federal Express or other Overnight Courier
☐ Commercial Carrier ☐ E-Mail (on consent)

on the following parties:

Name	Address	City	State	Zip Code
Varuni Nelson, Assistant United States Attorney				
United States Attorney's Office - Eastern District of				

C15

New York

271-A Cadman Plaza East, 7th Floor, Brooklyn NY
11201

• A party must serve a copy of each paper on the other parties, or their counsel, to the appeal or proceeding. The Court will reject papers for filing if a certificate of service is not simultaneously filed

• • If different methods of service have been used on different parties, please complete a separate certificate of service for each party.

07-10-2017
Today' s Date

Simon Chen
Signature

Certificate of Service Form (Last Reviewed 12/2015)

C16

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page 1 of 46

17-1217

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

The Church of Jesus Christ of Latter-Day Saints

Servant:

XIU JIAN SUN, the spiritual Adam RECEIVED

Plaintiff - Appellant, 2017 JUL 12 PM 2:50

v. CLERK'S OFFICE

CHERYL POLLAK; U.S. COURT OF APPEALS

Defendant - Appellee. COUNTER 1

**On Appeal from the United States District Court
for the Southern District of New York**

**Appendix of Appellant Xiu Jian Sun, the spiritual
Adam**

The Church of Jesus Christ of Latter-day saints

Servant: Xiu Jian Sun, the spiritual Adam Pro Se

54-25 153rd St 2FL

Flushing, NY 11355

646-675-0308

TABLE OF CONTENTS

1. U.S. District Court Eastern District of New York Docket Sheet	3, C18
2. Complaint	6, C24
3. Report and Recommendation	8, C27
4. Summons Issued	13, C35
5. In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1	17, C47
6. Summons in a Civil Action	19, C45
7. Proof of Service	32, C52
8. Memorandum & Order	37, C54
9. Judgment	42, C61
10. Notice of Appeal	43, C63

C18

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page3 of 46

Case 17-1217, Document 1-2, 04/25/2017, 2019906,
Page3 of 4

Case 1:17-cv-01570-ENV-LB As of 04/25/2017
04:17 PM EDT1 of 2

Case 17-1217, Document 2, 04/25/2017, 2019910,
Page2 of 3

Case 17-1217, Document 5-2, 04/25/2017, 2019923,
Page2 of 3

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page6 of 26

APPEAL,NPROSE

**U.S. District Court Eastern District of New
York (Brooklyn)**

CIVIL DOCKET FOR CASE #:

1:17-cv-01570-ENV-LB

Internal Use Only

Sun v. Pollak

Assigned to: Judge Eric N. Vitaliano

Referred to: Magistrate Judge Lois Bloom

related Case: 1:16-cv-03937-LDH-LB

Cause: 28:1331 Fed. Question

Date Filed: 03/20/2017

C19

Date Terminated: 04/11/2017

Jury Demand: None

Nature of Suit: 890 Other Statutory Actions

Jurisdiction: U.S. Government Defendant

Plaintiff

Xiu Jian Sun represented by **Xiu Jian Sun**
54-25 153rd Street, 2nd Flr
Flushing, NY 11355
646-675-0308
PRO SE

v.

Defendant

Cheryl L. Pollak

Date Filed # Docket Text

03/20/2017 1 COMPLAINT against Cheryl L. Pollak,
filed by Xian Jian Sun. (Attachments:
1 Civil Cover Sheet) (Bowens,
Priscilla) (Entered: 03/22/2017)

03/20/2017 2 Summons Issued as to Cheryl L.
Pollak, U.S. Attorney and U.S.
Attorney General (Bowens, Priscilla)
(Entered: 03/22/2017)

03/20/2017 (Court only) ** Non Prisoner ProSe
Flag Set (Bowens, Priscilla) (Entered:
03/22/2017)

C20

03/20/2017 FILING FEE: \$ 400, receipt number
4653112777 (Bowens, Priscilla)
(Entered: 03/22/2017)

03/22/2017 3 In accordance with Rule 73 of the
Federal Rules of Civil Procedure and
Local Rule 73.1, the parties are
notified that if all parties consent a
United States magistrate judge of this
court is available to conduct all
proceedings in this civil action
including a (jury or nonjury) trial and
to order the entry of a final judgment.
Attached to the Notice is a blank copy
of the consent form that should be
filled out, signed and filed
electronically only if all parties wish
to consent. The form may also be
accessed at the following link:
<http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf>. You
may withhold your consent without
adverse substantive consequences. Do
NOT return or file the consent unless
all parties have signed the consent.
(Bowens, Priscilla) (Entered:
03/22/2017)

03/22/2017 Court only) ***Copy of Documents
Mailed (Rule 73 and Pro Se

Registration and Consent to
Electronic Notification). (Bowens,
Priscilla) (Entered: 03/22/2017)

03/27/2017 5 SUMMONS Returned Executed by
Xiu Jian Sun. Cheryl L. Pollak served
on 3/24/2017, filed by Xiu Jian Sun.
(Galeano, Sonia) (Entered: 03/30/2017)

03/28/2017 4 NOTICE of a (Copy) of Summons in a
Civil Action, Complaint and (Blank)
Pro Se Registration and Consent
Form, filed by Xiu Jian Sun sent to
USMJ Pollak. (Galeano, Sonia)
(Entered: 03/29/2017)

04/10/2017 6 MEMORANDUM AND ORDER, In
line with the foregoing, pltff's
complaint is dismissed with prejudice,
and without leave to amend. Although
pltff paid the filing fee to commence
this action, the Court certifies,
pursuant to 28 USC sec. 1915(a)(3),
that any appeal would not be taken in
good faith, and, therefore, in forma
pauperis status is denied for the
purpose of an appeal. The Clerk of
Court is directed to enter judgment
accordingly, and to close this case.

C22

(Ordered by Judge Eric N. Vitaliano on 4/06/2017) c/m Fwd. for Judgment. (Galeano, Sonia) (Entered: 04/10/2017)

04/10/2017 (Court only) ***Copy of Documents Mailed: Memorandum and Order dated 4/6/17 sent to Xiu Jian Sun via regular mail on 4/10/17. (Galeano, Sonia) (Entered: 04/10/2017)

04/11/2017 7 JUDGMENT in favor of Cheryl L. Pollak against Xiu Jian Sun. That Pltff's complaint is dismissed with prejudice, and without leave to amend; that pursuant to 28 USC sec. 1915(a)(3), any appeal would not be taken in good faith; and that in forma pauperis status is denied for purpose of an appeal. (Ordered by Janet Hamilton, Deputy Clerk on 4/11/2017) c/m with Appeals Package sent to Pltff. (Galeano, Sonia) (Entered: 04/11/2017)

04/21/2017 8 NOTICE OF APPEAL as to 6 Memorandum & Opinion,, 7 Judgment, by Xiu Jian Sun. IFP denied for purposes of appeal. (McGee, Mary Ann) (Entered: 04/25/2017)

C23

04/24/2017 9 USCA Appeal Fees received \$ 505.00
receipt number 4653114077 re 8
Notice of Appeal filed by Xiu Jian
Sun. (McGee, Mary Ann) (Entered:
04/25/2017)

04/25/2017 Electronic Index to Record on Appeal
sent to US Court of Appeals. 8 Notice
of Appeal 9 Receipt for payment of
Notice of Appeal. Documents are
available via Pacer. For docket
entries without a hyperlink or for
documents under seal, contact the
court and we'll arrange for the
document(s) to be made available to
you. (McGee, Mary Ann) (Entered:
04/25/2017)

PACER Service Center

Transaction Receipt

05/16/2017 21:07:20

PACER xiujiansun: Client Code:
Login: 4869479:0

Description: Docket Report Search 1:17-cv-01570
Billable Criteria: ENY-LB

Pages: 2 Cost 0.20

[https://ecf.nyed.uscourts.gov/cgi-bin/DktRpt.pl?](https://ecf.nyed.uscourts.gov/cgi-bin/DktRpt.pl?983169819284653-L_1_0-1)
983169819284653-L_1_0-1

C24

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page6 of 46

Case 1:17-cv-01570-ENV-LB Document 1
Filed 03/20/17 Page 1 of 7 PageID #: 1

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page23 of 46

Case 1:17-cv-01570-ENV-LB Document 4
Filed 03/28/17 Page 5 of 13 PageID #: 18

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page9 of 26

ORIGINAL

CV 17-1570

RECEIV

MAR 20 2017

PRO SE OFF

**UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF NEW YORK**

_____x

The Church of Jesus Christ of Latter-day saints

Servant:

Xiu Jian Sun, the spiritual Adam

Plaintiff

COMPLAINT

VITALIANO, J.

Vs.

BLOOM, M.J.

CHERY L. POLLAK:

Defendant

Pharisees don't even

open the door

_____x

**TO UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF NEW YORK**

The complaint of the plaintiff, -god's servant, Xiu Jian Sun, the spiritual Adam respectfully shows and alleges as follows

1. At all times hereinafter mentioned, plaintiff, Xiu Jian Sun, the spiritual Adam, is a resident of the State of New York, living at 54-25 153rd S't., 2FL Flushing NY 11355.
2. At all times hereinafter mentioned, defendant, Pharisees: Cheryl L. Pollak, is a Clerk, United States District Court Eastern District of New York, located at 225 Cadman Plaza East, Brooklyn, NY 11201.
3. On the date of March 09, 2017, when the notification from United States District Court Eastern District of New York is received, Jehovah, -the Lord god of host sent the messenger speaks to spiritual Adam, -plaintiff through angel, says: "Pharisees don't even open the door". (法利赛人连门都不开)
4. Jehovah, - the Lord god of host gives the words to servant (Plaintiff) in the temple he made, "Trial with god's law. Apply for jury to prevent insult and unfair behavior."
5. I (servant) would like to request a Mandarin

C26

Chinese court interpreter for my court day.

Dated: Queens New York
March 14, 2017

The Church of Jesus Christ of Latter-day saints

Servant: Xiu Jian Sun, the spiritual Adam
Xiu Jian Sun, the spiritual Adam
54-25 153rd St 2FL
Flushing, NY 11355
646-675-0308
Plaintiff

C27

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page8 of 46

Case 1:17-cv-01570-ENV-LB Document 1
Filed 03/20/17 Page 3 of 7 PageID #: 3

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page25 of 46

Case 1:17-cv-01570-ENV-LB Document 4
Filed 03/28/17 Page 7 of 13 PageID #: 20

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page12 of 26

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

X

XIU JIAN SUN,		
Plaintiff,		REPORT AND
- against -		<u>RECOMMENDATION</u>
KIN CHEUNG,		
Defendant.	16 CV 5734 (ENV) (CLP)	
_____		X

POLLAK, United States Magistrate Judge:

On October 14, 2016, Ziu Jiang Sun ("plaintiff") filed this action against Kin Cheung ("defendant"). Also on that date, plaintiff filed an executed summons stating that he had personally served defendant at 45 Monroe Place, Brooklyn, NY, 11201, on October 14,

2016.

On November 14, 2016, defendant not having answered or otherwise responded to the Complaint within twenty-one (21) days of service, the Court directed plaintiff to provide the undersigned with a status report by December 14, 2016.

On January 6, 2017, having not received a status report from plaintiff, the Court Ordered plaintiff to seek an entry of default or otherwise notify the Court by letter that he wished to continue pursuing his claims by February 6, 2017. Plaintiff was informed that if he did "not comply with this Order, the Court will recommend that the case be dismissed for failure to prosecute." (Order¹ at 1).

To date, plaintiff has neither sought an entry of default or notified the Court that he wishes to continue pursuing his claims. Additionally, defendant has not answered or otherwise responded to the Complaint. Accordingly, for the reasons stated herein, the Court respectfully recommends that the case be dismissed for failure to prosecute.

DISCUSSION

¹Citations to "Order" refer to the Court's Order, filed on January 6, 2017.

Courts have the power, under Rule 41 of the Federal Rules of Civil Procedure, to dismiss a case for failure to comply with court orders, treating such noncompliance as a failure to prosecute. Simmons v. Abuzzo, 49 F.3d 83, 87 (2d Cir. 1995). A dismissal for failure to prosecute may be ordered sua sponte. See LeSane v. Hall's Sec. Analyst, Inc., 239 F.3d 206, 209(2d Cir. 2001) (noting that "[a]lthough the text of Fed.R.Civ.P. 41(b) expressly addresses only the case in which a defendant moves for dismissal of an action, it is unquestioned that Rule 41(b) also gives the district court authority to dismiss a plaintiff's case sua sponte for failure to prosecute"); see also Minnette v. Time Warner 997 F.2d 1023, 1027 (2d Cir. 1993). "Courts have repeatedly found that dismissal of an action is warranted when a litigant ... fails to comply with legitimate court directives." Robinson v. Sposato, No. 13 CV 3334, 2014 WL 1699001, at*1 (E.D.N.Y. Apr. 24, 2014). In considering whether to dismiss an action, courts in this district consider five factors:

- 1) the duration of plaintiff's failures or non-compliance; 2) whether plaintiff had notice that such conduct would result in dismissal; 3) whether prejudice to the defendant is likely to result; 4) whether the court balanced its interest in managing its docket against plaintiff's interest in receiving an opportunity to be heard; and 5) whether the court adequately considered the efficacy of a sanction less draconian than

dismissal.

Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp., 222 F.3d 52, 63 (2d Cir. 2000). No one factor is dispositive in making this determination. Lewis v. Rawson, 564 f.3d 569, 576 (2d Cir. 2009).

Here, the Baffa factors weigh in favor of dismissal. The case has been pending for several months and, aside from filing and allegedly serving the Complaint, nothing more has been done by plaintiff to advance the case or to move for a default judgment based on defendant's failure to answer. Plaintiff has also failed to comply with this Court's Orders. Despite being Ordered on November 14, 2016 to file a status report and on January 6, 2017 to either seek an entry of default judgment or notify the Court that he wished to continue pursuing his claims plaintiff failed to respond to either Order and did not ask for an extension of time to do so. Plaintiff was explicitly warned that if he failed to comply with the January 6, 2017 Order, "the Court will recommend that the case be dismissed for failure to prosecute." (Order at 1).

In light of the foregoing, the Court respectfully recommends that plaintiff's case be dismissed for failure to prosecute.

Any objections to this Report and Recommendation must be filed with the Clerk of the

Court, with a copy to the undersigned, within fourteen (14) days of receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court's Order. See 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; Caidor v. Onondaga Cty., 517 F.3d 601, 604 (2d Cir. 2008).

The Clerk is directed to send copies of this Report and Recommendation to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York

March 2, 2017

/s/ Cheryl Pollak

Cheryl L. Pollak

United States Magistrate Judge

EASTERN DISTRICT OF NEW YORK

C32

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page 11 of 46

Case 1:17-cv-01570-ENV-LB Document 1
Filed 03/20/17 Page 6 of 7 PageID #: 6

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page 28 of 46

Case 1:17-cv-01570-ENV-LB Document 4
Filed 03/28/17 Page 10 of 13 PageID #: 23

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Pro Se Registration and Consent for Electronic
Service of Orders and Notices
Issued by the Court in Civil Cases

Please register me to receive service of documents and
notices of electronic filings to my e-mail address via
the Court's electronic filing system (ECF). By
registering for electronic service I affirm that:

- I understand that I waive my right to receive
service of court issued documents by first class mail
and that I will no longer receive paper copies of
court issued documents such as notices, decisions,
opinions, memoranda & orders, orders, judgments
and appeal instructions.

Initial here _____

- . I understand that I Will be sent notices of electronic filing via e-mail and upon receipt of a notice, I will be permitted one "free look" at the document by clicking on the hyperlinked document number, at which time I should print or save the document to avoid future charges. The one 'free look' will expire in 15 days from the date the notice was sent. After the "free look" is used or expired, the document can be accessed by me through PACER (Public Access to Court Electronic Records) and I may be charged to View the document.

Initial here_____

- . I understand that it is strongly recommended that I establish a PACER account by visiting the PACER website at www.pacer.gov, which account will allow me to view, print, and download. documents at any time for a nominal fee.

Initial here_____

- . The email address I provided below is valid and I understand I am responsible for checking it on a regular basis. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address.

Initial here_____

- . I understand that electronic service does not allow me to file documents electronically and does not mean that I can serve documents by e-mail to the

C34

opposing party. I must continue to file all communications regarding my case in paper copy with the Court and serve the opposing party.

Initial here _____

- I understand that I must file a consent in each case in which I wish to receive electronic service and that electronic service is not available in Social Security or Immigration cases or for incarcerated litigants.

Initial here _____

Date: _____ Signature: _____

Case No: _____ Print Full Name: _____

Telephone No. _____ Email Address: _____

Home Address: _____

Return form to: U.S.D.C., E.D.N.Y. • Pro Se Dept.
225 Cadman Plaza East or 100 Federal Plaza
Brooklyn, NY 11201 Central Islip, NY 11722

C35

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page13 of 46

Case 1:17-cv-01570-ENV-LB Document 1-1
Filed 03/20/17 Page 1 of 2 PageID #: 8

ORIGINAL

CIVIL COVER SHEET

JS 44 (Rev. 1/2013)

CV 17-1570

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEAT PAGE OF THIS FORM)

1. (a) PLAINTIFFS

Xiu Jian Sun, 54-25 153rd Street 2nd Fl.
Flushing, NY 11355. 646-675-0308

(b) County of Residence of First Listed Plaintiff ____

(c) Attorneys (Firm Name Address, and
Telephone Number)

Pro Se: See Above

VITALIANO, J. BLOOM, M.J.

SUMMONS ISSUED

DEFFNDANTS: Cheryl L. Pollak

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE
THE LOCATION OF THE TRACT OF LAND
INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One
Box Only)

☐ 1 U.S. Government Plaintiff☒ 2 U.S. Government Defendant☐ 3 Federal Question (U.S. Government Not a Party)☐ 4 Diversity (Indicate Citizenship of Parts in Item
III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(Place an "X" in One Box for Plaintiff and One Box
for Defendant)

	PTF	DEF
Citizen of This State	☐ 1	☐ 1
Citizen of Another State	☐ 2	☐ 2
Citizen of Subject of a Foreign Country	☐ 3	☐ 3
Incorporated or Principal Place of Business In Another State	☐ 4	☐ 4
Incorporated and Principal Place	☐ 5	☐ 5

of Business In Another State

Foreign Nation _____6 _____6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT

- __ 110 Insurance
- __ 120 Marine
- __ 130 Miller Act
- __ 140 Negotiable Instrument
- __ 150 Recovery of
Overpayment &
Enforcement Judgment
- __ 151 Medicate Act
- __ 152 Recovery of Defaulted
Student Loans (Excludes
Veterans)
- __ 153 Recovery of
Overpayment of
Veteran's Benefits
- __ 160 Stockholders Suits
- __ 190 Other Contract
- __ 195 Contract Product
Liability
- __ 196 Franchise

TORTS

RSOSAL INJURY

- 310 Airplane
- 315 Airplane
Product Liability
- 320 Assault Libel
& Slander
- 330 Federal
Employees Liability
- 340 Marine
- 345 Marine Product
Liability
- 350 Motor Vehicle
- 355 Motor Vehicle
Product Liability
- 360 Other
Personal Injury
- 362 Personal Injury
Medical Malpractice

RSOSAL INJURY

— 365 Personal Injury
Product Liability
— 367 Health Card

REAL PROPERTY

210 Land Condemnation

C38

___ 220 Foreclosure	Pharmaceutical
___ 230 Rent Lease	Personal Injury
___ 240 Torts to Land	Product Liability
___ 245 Tort Product Liability	___ 368 Asbestos
___ 290 All Other Real Property	___ Personal Injury
	Product Liability

CIVIL RIGHTS

RSOSAL

PROPERTY

___ 440 Other Civil Rights	___ 370 Other Fraud
___ 441 Voting	___ 371 Truth in
___ 442 Employment	Lending
___ 443 Housing /	___ 380 Other Personal
Accommodations	Property Damage
___ 445 Amer w /	___ 385 Property
Disabilities-Employment	Damage Product
___ 446 Amer w /	Liability
Disabilities-Other	
___ 448 Education	

FORFEITURE/PENALTY

BANKRUPTCY

___ 625 Drug Related	___ 422 Appeal 28 USC
Seizure of Property	158
21 USC 881	___ 423 Withdrawal 28
___ 690 Other	USC 157

OTHER STATUTES

___ 375 False Claims Act
___ 376 Qui Tarn (31 USC 3729(a))
___ 400 State Reappointment

C39

- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities Commodities Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Mailers
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act / Review of Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

PROPERTY RIGHTS

- ☐ 820 Copyrights
- ☐ 830 Patient
- ☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395(F))
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

LABOR

PRISONER

PETITIONS

- | | |
|--|---|
| ☐ 710 Fair Labor Standards Act | ☐ 463 Alien Detainee |
| ☐ 720 Labor/Management Relations | ☐ 510 Motions to Vacate Sentence |
| ☐ 740 Railway Labor Act | ☐ 530 General |
| ☐ 751 Family and Medical Leave Act | ☐ 535 Death Penalty Other |
| ☐ 790 Other Labor Litigation | ☐ 540 Mandamus & Other |
| ☐ 791 Employee Retirement Income Security Act | ☐ 550 Civil Rights |
| | ☐ 555 Prison Condition |
| | ☐ 560 Civil Detainee |
| | Conditions of Confinement |

FEDERAL TAX SUITS

IMMIGRATION

- | | |
|--|---|
| ☐ 870 Taxes (U.S. Plaintiff or Defendant) | ☐ 462 Naturalization Application |
| ☐ 871 IRS-Third Immigration Party 26 USC 7609 | ☐ 465 Other Actions |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District

C41

 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing
(Do not cite Jurisdictional statutes unless diversity):

Brief description of cause:

Civil Action "to prevent insult and unfair behavior"

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23. F.R. Cv P

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: Yes X No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE: ENV/RANDOM

DOCKET NUMBER: 16cv5734, 16cv5276

SIGNATURE OF ATTORNEY OF RECORD

DATE: 03/20/2017 16cv3937, 16cv1083

FOR OFFICE USE ONLY

RECEIPT#

AMOUNT

JUDGE

APPLYING IFF

MAG. JUDGE

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page 14 of 46

Case 1:17-cv-01570-ENV-LB Document 1-1
Filed 03/20/17 Page 2 of 2 PageID #: 9

CERTIFICATION OF ARBITRATION
ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☐ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☐ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT- FEDERAL RULES
CIVIL PROCEDURE 7.1

C43

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT Section VIII on
the Front of this Form**

Please list all cases that are arguably related pursuant to Division or Business Rule 50.3,1 in Section VIII on the front of this form. Rule 50.3.1(a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3. 1 (b) provides that " A civil case shall not be deemed " related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- I.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: NO

2.) If you answered "no" above:

a) Did the events or omissions giving rise to the claim, or claims, or a substantial part thereof, occur in Nassau or Suffolk County? NO

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note; A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court. ___ Yes ___ No

Are you currently the subject of any disciplinary action {s} in this or any other state or federal court?

___ Yes (If yes, please explain) ___ No

I certify the accuracy of all information provided above.

Signature: _____

C45

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page15 of 46

Case 1:17-cv-01570-ENV-LB Document 2
Filed 03/20/17 Page 1 of 2 PageID #: 10

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page19 of 46

COPY

**RECEIVED
MAR 28 2017
PRO SE OFFICE**

Case 1:17-cv-01570-ENV-LB Document 4
Filed 03/28/17 Page 1 of 13 PageID #: 14

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page33 of 46

Case 1:17-cv-01570-ENV-LB Document 5
Filed 03/27/17 Page 2 of 5 PageID #: 28

AO 440 (Rev. 06/12) Summons in a Civil Action

**UNITED STATES DISTRICT COURT
for the Eastern District of New York**

Xiu Jian Sun

Plaimiff

CV17-1570

v.

Cheryl L. Pollak

Defendant

**VITALIANO, J.
BLOOM, M.J.**

SUMMONS IN A CIVIL ACTION

C46

To: (Defendant's name and address)

Office of the U.S. Attorney

271 Cadman Plaza East, Brooklyn, NY 11201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it)— or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3)—you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Pro Se:

Xiu Jian Sun

54-25 153rd Street, 2nd Fl., Flushing, NY 11355

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: MAR 21, 2017

DOUGLAS C. PALMER
CLERK OF COURT

Signature of Clerk or Deputy Clerk

C47

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page 17 of 46

Case 1:17-cv-01570-ENV-LB Document 3
Filed 03/22/17 Page 1 of 2 PageID #: 12

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Douglas C Palmer Clerk of Court
Brenna B. Mahoney Chief Deputy
Corey Nguyen Chief Deputy
Carol McMahon Chief Deputy

Theodore Roosevelt Federal Courthouse Emanuel Cellar Federal
Courthouse
225 Cadman Plaza East, Brooklyn, NY 11201
(718) 613-2270

Alfonse D'Amato Federal Courthouse
100 Federal Plaza, Central Islip, NY 11722
(718) 613-2270

NOTICE

In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that if all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final

judgment. You may consent to the magistrate judge who has been assigned to this case or to a new magistrate judge selected at random. Attached is a blank copy of the consent form that should be signed and filed electronically only if all parties wish to consent and it is signed by all parties. A consent form may also be accessed at the following link: <http://www.uscourts.gov/uscourts/FormsAndFees/Forms/A0085.pdf>

You may withhold your consent without adverse substantive consequences.

Do NOT return or file the consent unless all parties have signed the consent.

C49

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page18 of 46

Case 1:17-cv-01570-ENV-LB Document 3
Filed 03/22/17 Page 2 of 2 PageID #: 13

AO 85 (Rev. EDNY 8/3/2012) Notice, Consent, and
Reference of a Civil Action to a Magistrate Judge

UNITED STATES DISTRICT COURT for the
EASTERN DISTRICT OF NEW YORK

Plaintiff

Civil Action No.

v.

Defendant

NOTICE, CONSENT, AND REFERENCE OF A CIVIL
ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent. You may consent to the

C50

magistrate judge assigned to this case or to a new magistrate judge selected at random.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Select one: The parties consent to

___ the magistrate judge who is assigned to this case

___ a new magistrate judge selected at random.

Parties' printed names _____

Signatures of parties or attorneys _____

Dates _____

In order for the Consent to be valid, all parties must sign this form and agree to the selection of the magistrate judge.

Reference Order

IT IS ORDERED: This case is referred to a

C51

United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. §636(c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Do not return the form to the Clerk of Court or file it on ECF unless all parties have consented to the exercise of jurisdiction by a United States Magistrate Judge. Do not return this form to a Judge

C52

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page32 of 46

Case 1:17-cv-01570-ENV-LB Document 5
Filed 03/27/17 Page 1 of 5 PageID #: 27
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
* MAR 27 2017 *
BROOKLYN OFFICE

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page16 of 46

Case 1:17-cv-01570-ENV-LB Document 2
Filed 03/20/17 Page 2 of 2 PageID #: 11

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page21 of 46

Case 1:17-cv-01570-ENV-LB Document 4
Filed 03/28/17 Page 3 of 13 PageID #: 16

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page35 of 46

Case 1:17-cv-01570-ENV-LB Document 5
Filed 03/27/17 Page 4 of 5 PageID #: 30

AO 440 (Rev. 12/9) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless
required by Fed. R. Civ. P. 4 (I))

This summons for (name of individual and title, if

C53

any) Chery L. Pollak was received by me on (date) ____

__ I personally served the summons on the individual
at (place) 225 Cadman Plaza East, Brooklyn, NY
11201, on (date) 03/24/2017; or

__ I left the summons at the individual's residence or
usual place of abode with (name) _____, a person of
suitable age and discretion who resides there, on
(date)_____, and mailed a copy to the individual's
last known address; or

__ I served the summons on (name of individual) _____,
who is designated by law to accept service of process on
behalf of (name of organization)____ on (date) ____; or

__ I returned the summons unexecuted because ____; or
__ Other (specify):

My fees are \$ _____ for travel and \$ _____
for services, for a total of \$ 0.00

I declare under penalty of perjury that this information
is true.

Date: 03/24/2017

Xiu Jian Sun, the spiritual Adam

Xiu Jian Sun, the spiritual Adam

54-25 153rd St., 2FL, Flushing, NY 11355

Additional information regarding attempted service,
etc:

C54

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page37 of 46

Case 17-1217, Document 3, 04/25/2017, 2019913,
Page1 of 5

Case 1:17-cv-01570-ENV-LB Document 6
Filed 04/10/17 Page 1 of 5 PageID #:32

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page16 of 26

UNITED STATES	FILED
DISTRICT COURT	IN CLERK'S OFFICE
EASTERN DISTRICT	US DISTRICT
OF NEW YORK	COURT E.O.N.Y.
-----X	*APR 10 2017 *
XIU JIAN SUN,	BROOKLYN OFFICE
Plaintiff,	
-against-	MEMORANDUM
CHERYL L. POLLAK,	AND ORDER
Defendant.	17-cv-1570 (ENV) (LB)
-----X	
VITALIANO, D.J.	

On March 20, 2017, pro se plaintiff Xiu Jian Sun commenced this action against United States Magistrate Judge Cheryl L. Pollak, who sits in the Eastern District of New York. ECF Dkt. No. 1. Plaintiff paid the statutory filing fee, but appears prose. See Mar. 20, 2017 Filing Fee Receipt. For the

reasons set forth below, the action is dismissed with prejudice.

Background

Sun identifies himself as "god's servant" and "the spiritual Adam," and asserts that "Jehovah" instructed him to sue Magistrate Judge Pollak, whom he dubs "Pharisees." ECF Dkt. No. 1 at 1. The complaint does not plead any facts concerning Judge Pollak, nor does it articulate any cognizable cause of action, nor does it request any relief aside from the appointment of a Mandarin Chinese interpreter for any court proceedings. See *id.* at 1-2. However, since plaintiff attached to the complaint a copy of a report and recommendation that Judge Pollak issued, on March 2, 2017, in a separate action brought by him, it would appear that Sun seeks to sue Judge Pollak over the issuance of that report and recommendation. *Id.* at 3-5.¹

As a prefatory note, this is the fifth action that plaintiff has filed in this district against judges, judicial employees, and lawyers. All of the previous four actions have been dismissed, either as frivolous

¹ The action in which Magistrate Judge Pollak entered that report and recommendation, captioned *Sun v. Cheung*, No. 16-cv-5734 (E.D.N.Y.), was, on this date, also dismissed.

or for failure to prosecute. See *Sun v. Cheung*, No. 16-cv-5734, slip op. (E.D.N.Y. Apr. 6, 2017) (dismissed for failure to prosecute); *Sun v. Dillon*, No. 16-cv-527p, slip op. (E.D.N.Y. Oct. 5, 2016) (dismissed as frivolous); *Sun v. Katzmann*, No. 16-cv-3937, slip op. (E.D.N.Y. Aug. 2, 2016) (same); *Sun v. Cavallo*, No. 16-cv-1083, slip op. (E.D.N.Y. Mar. 19, 2016) (same), appeal dismissed, No. 16-950 (2d Cir. Aug. 12, 2016).

Standard of Review

A pro se complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007) (citation omitted). Such a complaint should "be liberally construed," *id.* (citation omitted), and "interpreted 'to raise the strongest arguments that [it] suggest[s],'" *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996) (citation omitted). Nonetheless, a pro se complaint must still plead sufficient facts to state a claim "that is plausible on its face." See *Teichmann v. New York*, 769 F.3d 821, 825 (2d Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citation omitted).

At the pleadings stage, the court must assume the truth of "all well-pleaded, nonconclusory factual allegations" in the complaint. *kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 124 (2d Cir. 2010) (citing *Iqbal*, 556 U.S. at 678 and *Selevan v. N Y. Thruway Auth.*, 584 F.3d 82, 88 (2d Cir. 2009)). Although all factual allegations contained in the complaint are assumed to be true, that tenet is "inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. As a corollary, a court generally should not dismiss a pro se complaint without granting leave to amend, so long as "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)).

These principles notwithstanding, a district court may dismiss a pro se action sua sponte-even if the plaintiff has paid the requisite filing fee-if it determines that the action is frivolous. See *Fitzgerald v. First East Seventh Street Tenants Corp.*, 221 F.3d 363, 363-6 (2d Cir. 2000). Put simply, "[a]n action is frivolous if it lacks an arguable basis in law and fact — i.e., where it is 'based on an indisputably meritless legal theory' or presents 'factual contentions [that] are clearly baseless.'" *Scanlon v. Vermont*, 423 F. App'x 78, 79 (2d Cir. 2011) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S. Ct. 1827, 1833, 104 L. Ed. 2d 338 (1989)); see *Denton v. Hernandez*, 504 U.S. 25, 32-33, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992);

Livingston v. Adirondack Beverage Co., 141 F.3d 434,437 (2d Cir. 1998). For example, "[a] complaint will be dismissed as 'frivolous' when 'it is clear that the defendants are immune from suit.'" Montero v. Travis, 171 F.3d 757, 760 (2d Cir. 1999) (quoting Neitzke, 490 U.S. at 327).

Discussion

With these standards in mind, under even the most liberal review, the Court cannot discern what legally cognizable harm Sun supposedly suffered, what acts of Judge Pollak are blamed as the cause of any harm, or what rights of his were allegedly infringed. To the extent that plaintiff seeks to sue Magistrate Judge Pollak for issuing a report and recommendation in a case that was before her as a magistrate judge, any such suit is barred by judicial immunity, "It is well settled," of course, "that judges generally have absolute immunity from suits for money damages for their judicial actions." Shtrauch v. Dowd, 651 F. App'x 72, 73 (2d Cir. 20 (quoting Bliven v. Hunt, 579 F.3d 204,209 (2d Cir. 2009))).

As Sun should have been able to divine from the dismissal of prior actions, this "judicial immunity is an immunity from suit, not just from the ultimate assessment of damages," and it "is not overcome by allegations of bad faith or malice," nor can a judge "be deprived of immunity because the action [she] took

was in error ... or was in excess of [her] authority." *Mireles v. Waco*, 502 U.S. 9, 11-13, 112 S. Ct. 286, 288, 116 L. Ed. 2d 9 (1991) (citations omitted). Furthermore the Federal Courts Improvement Act of 1996 extended judicial immunity to most actions seeking prospective injunctive relief — unless, that is, a declaratory decree was violated or declaratory relief was unavailable, neither of which is alleged here. See Federal Courts Improvement Act of 1996, §309(c), Pub. L. No. 104-317 110 Stat. 3847, 3853 (1996) (amending 42 U.S.C. §1983) ("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"); *Huminski v. Corsones*, 396 F.3d 53, 74 & n.23 (2d Cir. 2005); see also *Shtrauch*, 651 F. App'x at 73.

Applying this standard, the consequences are clear. Plaintiffs complaint must be dismissed as frivolous because it is obvious that Magistrate Judge Pollak is immune from his lawsuit. See *Montero*, 171 F.3d at 760; see also *Tapp v. Champagne*, 164 F. App'x 106, 107 (2d Cir. 2006) (affirming sua sponte dismissal of claims against judges shielded by absolute immunity). Moreover, since even the most liberal reading of the complaint gives no indication that it could be amended to state a plausible claim against Judge Pollak, leave to amend must also be denied as futile. See *Cuoco*, 222 F.3d at 112.

C60

Conclusion

In line with the foregoing, plaintiff's complaint is dismissed with prejudice, and without leave to amend.

Although plaintiff paid the filing fee to commence this action, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal 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, 82 S. Ct. 917, 920-21, 8 L. Ed. 2d 21 (1962).

The Clerk of Court is directed to enter Judgment accordingly, and to close this case

So Ordered.

Dated: Brooklyn, New York
April 6, 2017

/s/ USDJ ERIC N. VITALIANO
ERIC N. VITALIANO
United States District Judge

C61

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page 42 of 46

Case 17-1217, Document 4, 04/25/2017, 2019916,
Page 1 of 1

Case 1:17-cv-01570-ENV-LB Document 7
Filed 04/11/17 Page 1 of 1 PageID #:37

UNITED STATES	FILED
DISTRICT COURT	IN CLERK'S OFFICE
EASTERN DISTRICT	US DISTRICT
OF NEW YORK	COURT E.O.N.Y.
-----X	*APR 11 2017 *
XIU JIAN SUN,	BROOKLYN OFFICE
Plaintiff,	
-against-	JUDGMENT
CHERYL L. POLLAK,	17-cv-1570 (ENV)
Defendant.	
-----X	

A Memorandum and Order of Honorable Eric N. Vitaliano, United States District Judge, having been filed on April 10, 2017, dismissing Plaintiff's complaint with prejudice, and without leave to amend; ordering that the Court certifies, pursuant to 28 U.S.C. §1915 (a) (3), that any appeal would not be taken in good faith; and denying in forma pauperis status for the purpose of an appeal; it is

ORDERED and ADJUDGED that Plaintiff's

C62

complaint is dismissed with prejudice, and without leave to amend; that pursuant to 28 U.S.C. §1915(a)(3), any appeal would not be taken in good faith; and that in forma pauperis status is denied for purpose of an appeal.

Dated: Brooklyn, New York

April 11, 2017

Douglas C. Palmer

Clerk of Court

by: /s/ Janet Hamilton

Deputy Clerk

C63

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page43 of 46

Case 1:17-cv-01570-ENV-LB Document 8
Filed 04/21/17 Page 1 of 2 PageID #: 38

Case 17-1217, Document 1-2, 04/25/2017, 2019906,
Page1 of 4

**UNITED STATES DISTRICT COURT FOR THE
SECOND CIRCUIT DISTRICT OF NEW YORK**
X

The Church of Jesus Christ of
Latter-Day Saints Servant: Docket No: 17
XIU JIAN SUN, the spiritual Adam -cv-1570
Plaintiff (ENV) (LB)
v. **Notice of Appeal**

Pharises:
CHERY L. POLLAK; **FILED**
Defendant IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
APR 21 2017
BROOKLYN OFFICE
X

Notice is hereby given that Xiu Jian Sun, the
spiritual Adam (plaintiff) in the above named case, *
hereby appeal to the United States Court of Appeals
for the 2ND CIR, (from the final judgment) (from
the order (describing it)) entered in this action on
the 10 day of April, 2017.

C64

April 17, 2017

The Church of Jesus Christ of Latter-Day Saints

Servant: Xiu Jian Sun, the spiritual Adam

Xiu Jian Sun, the spiritual Adam

54-25 153rd St., 2FL

Flushing, NY 11355

(646)-675-0308

Plaintiff

C65

Case 17-1217, Document 26, 07/12/2017, 2078758,
Page 45 of 46

Case 1:17-cv-01570-ENV-LB Document 9
Filed 04/24/17 Page 1 of 1 PageID #: 40

Case 17-1217, Document 2, 04/25/2017, 2019910,
Page 1 of 3

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.O.N.Y.
*** APR 24 2017 ***
BROOKLYN OFFICE

&%RPCourt Name: Eastern District of New York
Division: 1
Receipt Number: 4653114077
Cashier ID: dafrani
Transaction Date: 04/24/2017
Payer Name: XIU JIAN SUN

NOTICE OF APPEAL/DOCKETING FEE
For: XIU JIAN SUN
Case/Party: D-NYE-1-17-CV- 001570-001
Amount: \$505 .00

PAPER CHECK CONVERSION
Amt Tendered: \$505.00

Total Due: \$505. 00
Total Tendered: \$505.00
Change Amt: \$0.00

D1

Case 17-1217, Document 32-1, 07/18/2017, 2080693,
Page 1 of 1

U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201
July 18, 2017

Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
40 Foley Square
New York, New York 10007

Re: Sun v. Pollak,
Docket No. 17-1217

Dear Ms. Wolfe:

On July 14, 2017, the Appellant's brief was docketed as having been filed on July 12, 2017. Accordingly, Appellee respectfully requests, pursuant to Local Rule 31.2(a)(1)(B), that the deadline for filing her brief be October 11, 2017.

Respectfully submitted,
BRIDGET M. ROHDE

D2

Acting United States Attorney

By: /s/ Varuni Nelson

Varuni Nelson

Assistant U.S. Attorney

(718) 254-6015

cc: (by First Class Mail)

Xiu Jian Sun

Plaintiff-Appellant Pro Se

54-25 153rd St., 2nd Floor

Flushing, New York 11355

D3

Case 17-1217, Document 32-2, 07/18/2017, 2080693,
Page1 of 1

UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

SUN v. POLLAK

Docket No. 17-1217

DECLARATION OF SERVICE

I, DAHLIA E. JOSHUA, hereby declare that, on
July 18, 2017, the Appellee's Scheduling Notification
letter was served by first-class mail on:

Xiu Jian Sun
Pro Se Plaintiff-Appellant
54-25 153rd Street--2nd Floor
Flushing, New York 11355

In accordance with 28 U.S.C. § 1746, I declare
under penalty of perjury that the foregoing is true and
correct to the best of my knowledge and belief.

Dated: Brooklyn, New York
July 18, 2017

/s/ Dahlia E. Joshua
DAHLIA E. JOSHUA

D4

Case 17-1217, Document 36, 07/18/2017, 2080941,
Page1 of 1

**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 18th day of July, two thousand and seventeen,

Xiu Jian Sun,

Plaintiff - Appellant,

v.

ORDER

Cheryl L. Pollak,

Docket No: 17-1217

Defendant - Appellee.

Counsel for DEFENDANT - APPELLEE Cheryl L. Pollak has filed a scheduling notification pursuant to the Court's Local Rule 31.2, setting October 11, 2017 as the brief filing date.

It is HEREBY ORDERED that Defendant - Appellee's brief must be filed on or before October 11, 2017. If the brief is not filed by that date, the appeal will proceed to a merits panel for determination forthwith, and Defendant - Appellee will be required to file a motion for permission to file a brief and appear

D5

at oral argument. A motion to extend the time to file the brief or to seek other relief will not toll the filing date. See Local Rule 27.1(f)(1); cf. RLI Insurance Co. v. JDJ Marine, Inc., 716 F.3d 41, 43-45 (2d Cir. 2013).

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

Catherine O'Hagan Wolfe

D6

Case 17-1217, Document 39, 09/25/2017, 2132548,
Page1 of 1

**United States Court of Appeals for the Second
Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007**

ROBERT A. KATZMANN

CHIEF JUDGE

Date: September 25, 2017

Docket #: 17-1217cv

Short Title: Sun v. Pollak

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 17-cv-1570

DC Court: EDNY (BROOKLYN)

DC Judge: Vitaliano

DC Judge: Bloom

NOTICE OF CASE MANAGER CHANGE

The case manager assigned to this matter has been changed.

Inquiries regarding this case may be directed to 212-857-8651.

D7

Case 17-1217, Document 40-1, 10/04/2017, 2140356,
Page1 of 1

UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007
Telephone: 212-857-8500

Docket Number(s): 17-1217 Caption [use short title]
Motion for: summary affirmance of the decision and
judgment underlying this appeal.

Sun v. Pollak

Set forth below precise, complete statement of relief
sought: Defendant-Appellee moves for summary
affirmance of the district court's dismissal of
Plaintiff-Appellant's action as frivolous and barred by
judicial immunity.

MOVING PARTY: Cheryl L. Pollak
__ Plaintiff __ Appellant/Petitioner
x Defendant x Appellee/Respondent

OPPOSING PARTY: Xiu Jian Sun, Plaintiff-Appellant
MOVING ATTORNEY: Varuni Nelson, Assistant U.S.
Attorney

OPPOSING ATTORNEY: N/A - Plaintiff is pro se
[name of attorney, with firm, address, phone number]

D8

and e-mail]

U.S. Attorney's Office, Eastern District of New York
271-A Cadman Plaza East, Brooklyn, New York 11201
(718) 254-6015; varuni.nelson@usdoj.gov

54-25 153rd Street, 2d Floor, Flushing, New York
11355, (646) 675-0308

Court-Judge/Agency appealed from: U.S. District
Court, Eastern District of New York, District Judge
Eric N. Vitaliano

Please check appropriate boxes:

Has movant notified opposing counsel (required by
Local Rule 27.1): ☐ Yes ☒ No (explain): no opposing
counsel; opposing party is pro se

Opposing counsel's position on motion:

☐ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR
STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

D9

Is oral argument on motion requested? __ Yes X No
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? __ Yes X No
If yes, enter date: _____

Signature of Moving Attorney: /s/ Varuni Nelson

Date: October 4, 2017 Service by: __CM/ECF

x Other [Attach proof of service]

Form T-1080 (rev. 12-13)

D10

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page1 of 26

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

-----X

SUN v. POLLAK

Docket No. 17-1217

-----X

**DECLARATION IN SUPPORT OF DEFENDANT-
APPELLEE'S MOTION FOR SUMMARY
AFFIRMANCE**

Varuni Nelson hereby declares, pursuant to 28
U.S.C. § 1746, as follows:

1. I am an Assistant United States Attorney in the Eastern District of New York ("EDNY"), of counsel to Acting United States Attorney Bridget M. Rohde. I represent Defendant-Appellee Cheryl L. Pollak ("Appellee"), an EDNY United States Magistrate Judge, in this appeal filed by pro se Plaintiff-Appellant Xiu Jian Sun ("Sun").

2. This declaration and the accompanying memorandum of law are submitted in support of Appellee's motion for summary affirmance of the memorandum and order ("Decision") of the United

States District Court for the Eastern District of New York (Vitaliano, J.), entered April 10, 2017, in Sun v. Pollak, No. 17-CV-1570 (E.D.N.Y.). See Civil Docket for No. 17-CV-1570, attached hereto as Exhibit (“Exh.”) A, Docket Entry 7. The district court sua sponte dismissed the action underlying this appeal on the grounds that it is frivolous and barred by Appellee’s immunity from suit for any actions taken in her judicial capacity. See Exh. A, Docket Entry 7; Exh. D (Decision) at 3.

3. Sun filed his five-paragraph Complaint in the underlying action on March 20, 2017. See Exh. A, Docket Entry 1; Exh. B (Complaint). The Complaint described Appellee as a “Pharisee[]” and a “Clerk,” see Exh. B ¶ 2, but did not otherwise contain any allegations against Appellee. However, attached to the Complaint was a March 2, 2017 report and recommendation (“R&R”) issued by Appellee in another action filed by Sun, Sun v. Cheung, No. 16-CV-5734 (E.D.N.Y.). See Exh. C (R&R) at 3. The R&R recommended that the Sun v. Cheung action be dismissed for failure to prosecute. See Exh. C at 3.

4. After the district court adopted the R&R and dismissed Sun v. Cheung, Sun appealed the dismissal to this Court. That appeal has been docketed as Sun v. Cheung, No. 17-1215 (2d Cir.).

5. Appellee also was one of the defendants in yet another action filed by Sun, Sun v. Katzmman, No. 16-

CV-3937 (E.D.N.Y.). On Sun's appeal from the dismissal of that action, this Court granted the federal defendants-appellees' motion for summary affirmance and "warned [Sun] that the continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers will result in the imposition of a sanction, which may require [Sun] to obtain permission from this Court prior to filing any further submissions in this Court" See Exh. E (May 4, 2017 order issued in *Sun v. Katzmann*, No. 16-3103 (2d Cir.), "May 4, 2017 Order").

6. Despite the May 4, 2017 Order's warning, Sun has pursued this appeal and the *Sun v. Cheung* appeal by, inter alia, filing briefs and appendices on July 12, 2017. See General Docket for this appeal, ECF 25, 26; General Docket for *Sun v. Cheung*, No. 17-1215, ECF 27, 28. In addition, on July 27, 2017, Sun filed a new appeal, *Sun v. Asiello*, No. 17-2314 (2d Cir.), which is the sixth appeal filed by Sun in this Court since March 29, 2016. See Exh. G (Case Selection Table). Furthermore, Sun has sought Supreme Court review of the May 4, 2017 Order by filing a petition for a writ of certiorari on August 1, 2017. See Exh. F; General Docket for *Sun v. Katzmann*, No. 16-3103, ECF 98.

7. In the Decision underlying this appeal, the district court explained that, "under even the most liberal review, [it] cannot discern what legally cognizable harm Sun supposedly suffered, what acts of

Judge Pollak are blamed as the cause of any harm, or what rights of his were allegedly infringed.” Exh. D at 3. The district court also properly reasoned that, “[t]o the extent that plaintiff seeks to sue Magistrate Judge Pollak for issuing a report and recommendation in a case that was before her as a magistrate judge, any such suit is barred by judicial immunity.” Exh. D at 3. Accordingly, the district court concluded that the action should be dismissed as frivolous. Exh. D at 4. It also pointed out that, as of the date of the Decision, Sun had filed five actions in the EDNY against judges, judicial employees and lawyers. Exh. D at 2.

8. After the district court’s entry of the judgment dismissing this action on April 11, 2017, Sun filed his notice of appeal to this Court on April 21, 2017. See Exh. A, Docket Entries 7-8.

9. As discussed in the accompanying memorandum of law, summary affirmance of the district court’s Decision is warranted because Sun stated no discernible claim for relief against Appellee in his Complaint and, even if he had done so, Appellee is absolutely immune from suit for actions taken in her judicial capacity.

10. Accordingly, Appellee respectfully submits that this Court should summarily affirm the district court’s dismissal of the action underlying this appeal. Appellee also requests that the Court consider imposition of the

D14

leave-to-file sanction it warned Sun of in the May 4, 2017 Order. Finally, Appellee submits, pursuant to Second Circuit Local Rule 31.2(a)(3), that Appellee's time to file her brief is tolled pending the determination of this motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
October 4, 2017

/s/ Varuni Nelson
Varuni Nelson
Assistant United States Attorney
(718) 254-6015

D15

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page5 of 26

EXHIBIT A

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page8 of 26

EXHIBIT B

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page11 of 26

EXHIBIT C

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page15 of 26

EXHIBIT D

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page21 of 26

EXHIBIT E

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page23 of 26

EXHIBIT F

D16

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page24 of 26

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

September 11, 2017

Clerk

United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, New York, NY 10007

Re: Xiu Jian Sun
v. Ernest J. Cavallo, et al.
No. 17-366
(Your No. 16-3103)

Dear Clerk:

The petition for a writ of certiorari in the above
entitled case was filed on August 1, 2017 and placed on
the docket September 11, 2017 as No. 17-366.

Sincerely,

Scott S. Harris, Clerk

by

Michael Duggan
Case Analyst

D17

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page25 of 26

EXHIBIT G

Case 17-1217, Document 40-2, 10/04/2017, 2140356,
Page26 of 26
Cases Selection Table Page I of 1

Case Number Title	Opening Date	Party	Last Docket Entry	Originating Case Number Origin
<u>16-950</u> <u>Sun v.</u> <u>Cavallo</u>	03/29/ 2016	Xiu Jian Sun	08/12/2016 11 :23:24	0207-1: <u>16-cv-1083</u> EDNY (BROOKLYN)
<u>16-3103</u> <u>Sun v.</u> <u>Katzmann</u>	08/22/ 2016	Xiu Jian Sun	09/14/2017 08:36:16	0207-1: <u>16-cv-3937</u> EDNY (BROOKLYN)
<u>16-3557</u> <u>Sun v.</u> <u>Dillon</u>	10/21/ 2016	Xiu Jian Sun	09/11/2017 10:11:41	0207-1: <u>16-cv-5276</u> EDNY (BROOKLYN)
<u>17-1215</u> <u>Sun v.</u>	04/25/ 2017	Xiu Jian	10/03/2017 10:53:08	0207-1: <u>16-cv-5734</u>

D18

Cheung Sun EDNY
(BROOKLYN)

17-1217 04/25/ Xiu 09/25/2017 0207-1:
Sun v. 2017 Jian 13:13:37 17-cv-1670
Pollak Sun EDNY
(BROOKLYN)

17-2314 07/27/ Xiu 09/22/2017 0206-5:
Sun v. 2017 Jian 12:31:03 17 -cv-63
Asiello Sun NDNY
(SYRACUSE)

Note:

- Click on Case No. to get Case Summary
- Click on Short Title to get Case Query
- Click on Originating Case No. to get Case Summary for Originating Case

PACER Service Center

Transaction Receipt

10/03/2017 12:46:29

PACER Client
Login: Code:

Description: Case Selection Table Search Criteria: Name: sun, xiu (pty)

Billable Cost:
Pages:

D19

Case 17-1217, Document 40-3, 10/04/2017, 2140356,
Page1 of 8

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X

SUN v. POLLAK

Docket No. 17-1217

----- X

MEMORANDUM OF LAW IN SUPPORT OF
APPELLEE'S MOTION FOR SUMMARY
AFFIRMANCE

BRIDGET M. ROHDE
Acting United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
(718) 254-6015

VARUNI NELSON
Assistant U.S. Attorney
(Of Counsel)

PRELIMINARY STATEMENT

Pro se Plaintiff-Appellant Xiu Jian Sun appeals from the memorandum and order (“Decision”) of the United States District Court for the Eastern District of New York (Vitaliano, J.), entered April 10, 2017, sua sponte dismissing the action underlying this appeal as frivolous and barred by judicial immunity. See Exh. D.¹ Defendant-Appellee Cheryl L. Pollak, a United States Magistrate Judge in the Eastern District of New York (“EDNY”), submits this memorandum of law in support of her motion for summary affirmance of the Decision and ensuing judgment.²

¹ “Exh. _” refers to exhibits A through G attached to the Declaration of Varuni Nelson, dated October 4, 2017 (“Nelson Declaration”), filed herewith in support of Appellee’s motion.

² Appellee does not, by filing this motion and otherwise participating through counsel in this appeal, waive any defenses that otherwise would have been available to her in the district court, including lack of personal jurisdiction and insufficient service of process. See, e.g., *Valentin v. Dinkins*, 121 F.3d 72, 75 n.2 (2d Cir. 1997) (finding that Corporation Counsel’s participation in appeal on behalf of a defendant-appellee who had not been served with process did “not constitute a waiver of the service issue, or a general appearance” by that defendant-appellee).

BACKGROUND

Sun filed his five-paragraph Complaint in the underlying action on March 20, 2017. See Exh. A, Docket Entry 1; Exh. B (Complaint). The Complaint described Appellee as a “Pharisee []” and a “Clerk,” see Exh. B ¶ 2, but did not otherwise contain any allegations against Appellee. However, attached to the Complaint was a March 2, 2017 report and recommendation (“R&R”) issued by Appellee in another action filed by Sun, *Sun v. Cheung*, No. 16-CV-5734 (E.D.N.Y.). See Exh. C (R&R) at 3. The R&R recommended that the *Sun v. Cheung* action be dismissed for failure to prosecute. See Exh. C at 3. After the district court adopted the R&R and dismissed *Sun v. Cheung*, Sun appealed the dismissal to this Court. That appeal has been docketed as *Sun v. Cheung*, No. 17-1215 (2d Cir.).

Appellee also was one of the defendants in yet another action filed by Sun, *Sun v. Katzmman*, No. 16-CV-3937 (E.D.N.Y.). On Sun’s appeal from the dismissal of that action, this Court granted the federal defendants-appellees’ motion for summary affirmance and “warned [Sun] that the continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers will result in the imposition of a sanction, which may require [Sun] to obtain permission from this Court prior to filing any further submissions in this Court” See Exh. E (May 4,

2017 order issued in *Sun v. Katzmann*, No. 16-3103 (2d Cir.), “May 4, 2017 Order”).

In the Decision underlying this appeal, the district court explained that, “under even the most liberal review, [it] cannot discern what legally cognizable harm Sun supposedly suffered, what acts of Judge Pollak are blamed as the cause of any harm, or what rights of his were allegedly infringed.” Exh. D at 3. The district court also properly reasoned that, “[t]o the extent that plaintiff seeks to sue Magistrate Judge Pollak for issuing a report and recommendation in a case that was before her as a magistrate judge, any such suit is barred by judicial immunity.” Exh. D at 3. Accordingly, the district court concluded that the action should be dismissed as frivolous. Exh. D at 4. It also observed that, as of the date of the Decision, Sun had filed five actions in the EDNY against judges, judicial employees and lawyers. Exh. D at 2.

As shown below, summary affirmance of the district court’s Decision is warranted because Sun stated no discernible claim for relief against Appellee in his Complaint and, even if he had done so, Appellee is absolutely immune from suit for actions taken in her judicial capacity.

ARGUMENT

I.

**Appellee's Motion for
Summary Affirmance Should Be Granted**

This Court has held that summary affirmance is appropriate where an appeal lacks an arguable basis in law or fact or, to put it another way, is frivolous. See *United States v. Bonilla*, 618 F.3d 102, 110-12 (2d Cir. 2010) (granting government's motion for summary affirmance in a criminal appeal upon concluding that appellant's argument "is totally unsupported by relevant law and therefore must be classified as frivolous."); accord *Bletas v. DeLuca*, No. 11-5422, 2013 WL 2948103, at *1 (2d Cir. Jan. 17, 2013) (granting appellees' motion for summary affirmance in a civil case "because the appeal lacks an arguable basis in law or fact."); cf. *United States v. Davis*, 598 F.3d 10, 13-14 (2d Cir. 2010) (setting forth guidelines for deciding motions for summary affirmance in criminal cases).³

Courts routinely have granted summary affirmance where a plaintiff-appellant has failed to set forth a discernible claim, or to articulate the basis for the appeal. See, e.g., *Goforth v. U.S. Dep't of Educ.*, 532 F.

³ Independent of a motion by an appellee, this Court has "inherent authority . . . to dismiss an appeal . . . as frivolous when [it] presents no arguably meritorious issue for [the Court's] consideration." *Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995).

App'x 98, 99-100 (3d Cir. 2013) (granting the appellee's motion for summary affirmance where the pro se plaintiffs appellants failed to provide "some indication of which flaws in the appealed order or decision motivate[d] the appeal" and "no substantial question [was] presented in the appeal"); *Utterback v. Geithner*, No. 10-5426, 2011 WL 2148689, at *1 (D.C. Cir. May 20, 2011) (granting the appellees' motion for summary affirmance where the pro se appellant had "failed to state a facially plausible claim for relief").

Courts also have summarily affirmed district court decisions that, on the grounds of judicial immunity, dismissed cases brought against judges for acts taken in the course of judicial proceedings. See, e.g., *Cartner v. Fisher*, No. 13-7134, 2014 WL 260567, at *1 (D.C. Cir. Jan. 6, 2014) ("The merits of the parties' positions are so clear as to warrant summary action."); *Addlespurger v. Corbett*, 461 F. App'x 82, 85 (3d Cir. 2012) ("[W]e may summarily dispose of an appeal when it clearly appears that no substantial question is presented by the appeal.").

Here, summary affirmance is warranted because the appeal plainly lacks an arguable basis in law or fact: Sun's Complaint is devoid of factual support for a lawsuit, made no allegations against Appellee, and did not expressly request any relief other than "a Mandarin Chinese court interpreter for [Sun's] appeal court day." See Exh. B ¶ 5. Further, the "Brief of Appellant Xiu Jian

Sun, the spiritual Adam” filed by Sun on appeal, see ECF 25, similarly contains no discernible argument or claim for relief, let alone a challenge to the district court’s Decision.⁴ Rather, it largely consists of cryptic recitation of what appear to be religious sayings accompanied by Chinese lettering.

Additionally, even if, *arguendo*, Sun had asserted any discernible claim for relief against Appellee in his Complaint, the district court correctly held that she is absolutely immune from suit for any actions taken in her judicial capacity, including her issuance of the R&R in *Sun v. Cheung*.

It is well settled that “judges generally have absolute immunity from suits for money damages for their judicial actions.” *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009) (citing *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991)). The purpose of conferring such immunity is to ensure that the judicial officer “shall be free to act upon

⁴ As this Court recently stated, “Although . . . filing from pro se litigants [are accorded] a high degree of solicitude, even a litigant representing himself is obliged to set out ‘identifiable arguments’ in his principal brief.” *Terry v. Inc. Village of Patchogue*, 826 F.3d 631, 632-33 (2d Cir. 2016) (citation omitted).

his own convictions, without apprehension of personal consequences to himself.” Id.(quoting *Bradley v. Fisher*, 80 U.S. 335, 347 (1871)). This freedom is “a general principle of the highest importance to the proper administration of justice....” *Mireles*, 402 U.S. at 10 (quoting *Bradley*, 80 U.S. at 347). Judicial immunity also applies to actions seeking injunctive and declaratory relief against federal judges. See *Mullis v. U.S. Bankr. Court for Dist. of Nevada*, 828 F.2d 1385, 1394 (9th Cir. 1987) (“The judicial or quasi-judicial immunity available to federal officers is not limited to immunity from damages, but extends to actions for declaratory, injunctive and other equitable relief.”); see also Exh. D at 4 (citing cases and legislation).

II.

This Court Should Consider Imposition of a Leave-to-File Sanction

Even after the warning in this Court’s May 4, 2017 Order, Sun has pursued this appeal and the *Sun v. Cheung* appeal by, inter alia, filing briefs and appendices on July 12, 2017. See General Docket for this appeal, ECF 25, 26; General Docket for *Sun v. Cheung*, No. 17-1215, ECF 27, 28. In addition, on July 27, 2017, Sun filed a new appeal, *Sun v. Asiello*, No. 17-2314 (2d Cir.), which is the sixth appeal filed by Sun in this Court since March 29, 2016. See Exh. G (Case Selection Table). Furthermore, Sun has sought Supreme Court review of the May 4, 2017 Order by

D27.

filing a petition for a writ of certiorari on August 1, 2017. See Exh. F; General Docket for Sun v. Katzmman, No. 16-3103 (2d Cir.), ECF 98.

Appellee respectfully submits that, given Sun's disregard of the May 4, 2017 Order, the Court should consider imposition of the leave-to-file sanction of which Sun was warned in the May 4, 2017 Order.

CONCLUSION

For the foregoing reasons, this Court should grant Appellee's motion for summary affirmance.

Dated: Brooklyn, New York
October 4, 2017

Respectfully submitted,
BRIDGET M. ROHDE
Acting United States Attorney
Eastern District of New York

VARUNI NELSON
Assistant United States Attorney
(Of Counsel).

D28

Case 17-1217, Document 40-4, 10/04/2017, 2140356,
Page 1 of 1

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

SUN v. POLLAK

Docket No. 17-1217

DECLARATION OF SERVICE

I, DAHLIA E. JOSHUA, hereby declare that, on October 4, 2017, the Defendant-Appellee's Motion for Summary Affirmance and Declaration and Memorandum of Law In Support of Defendant-Appellee's Motion for Summary Affirmance were served by first-class mail on:

Xiu Jian Sun
Pro Se Plaintiff-Appellant
54-25 153rd Street —2nd Floor
Flushing, New York 11355

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: Brooklyn, New York
October 4, 2017

/s/ Dahlia E. Joshua
DAHLIA E. JOSHUA

D29

Case 17-1217, Document 50, 11/29/2017, 2182205,

Page1 of 1

**United States Court of Appeals for the Second
Circuit Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE

Date: November 29, 2017

Docket #: 17-1217cv

Short Title: Sun v. Pollak

CATHERINE O'HAGAN WOLFE
CLERK OF COURT
DC Docket #: 17-cv-1570
DC Court: EDNY (BROOKLYN)
DC Judge: Vitaliano
DC Judge: Bloom

NOTICE OF CASE MANAGER CHANGE

The case manager assigned to this matter has been changed.

Inquiries regarding this case may be directed to 212-857-8522.

Case 17-1217, Document 51, 11/29/2017, 2182215,

Page1 of 1

E.D.N.Y.-Bklyn

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

17-cv-1570

Vitaliano, J.

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 29th day of November, two thousand seventeen.

Present:

Dennis Jacobs,
Reena Raggi,
Christopher F. Droney,
Circuit Judges.

Xiu Jian Sun,
Plaintiff-Appellant,

v.

17-1217

Cheryl L. Pollak,
Defendant-Appellee.

Appellee moves for summary affirmance. Upon due consideration, it is hereby ORDERED that the motion is GRANTED. See *United States v. Davis*, 598 F.3d 10, 13 (2d Cir. 2010).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
Catherine O'Hagan Wolfe

D31

Case 17-1217, Document 53-1, 12/12/2017, 2192422,
Page1 of 2

U.S. Department of Justice
United States Attorney Eastern District of New York

271 Cadman Plaza East Brooklyn, New York 11201
December 12, 2017

Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
40 Foley Square
New York, New York 10007

Re: Sun v. Pollak, Docket No. 17-1217

Dear Ms. Wolfe:

This office represents the defendant-appellee ("Appellee") in this appeal. On October 4, 2017, Appellee filed a motion seeking summary affirmance of the district court judgment underlying this appeal. See ECF 40 ("Motion"). The Motion also requested that the Court consider imposition of the leave-to-file sanction it had warned Plaintiff-Appellant Xiu Jian Sun ("Sun") of in another appeal filed by Sun, Sun v. Katzmann, No. 16-3103 (2d Cir.). See ECF 40-2 (¶ 10 & Exh. E); ECF 40-3 (pp. 7-8).

By an order issued on November 29, 2017, this Court granted Appellee's Motion. See ECF 51 ("Order"). The Order does not, however, expressly address Appellee's request in the Motion that the Court consider imposition of a leave-to-file sanction on Sun. This letter is respectfully submitted to note that fact, as well as to note recent developments in this Court and in the district court in other actions and appeals filed by Sun.

Specifically, on November 1, 2017, this Court issued a summary order in *Sun v. Dillon*, No. 16-3557, which recognized the warning issued to Sun in No. 16-3103 and ordered Sun "to show cause within 30 days why he should not be required to seek leave of this Court before filing any appeals or other documents." *Id.* at 3. The *Sun v. Dillon* summary order stated that Sun's "[f]ailure to file a timely response will result in the imposition of a leave-to-file sanction." *Id.* Sun has not filed a response although more than 30 days have passed since issuance of the order to show cause. See General Docket for No. 16-3557.

On November 29, 2017, this Court dismissed another appeal filed by Sun, *Sun v. Cheung*, No. 17-1215, as lacking an arguable basis in law or fact.

On December 6, 2017, the United States District Court for the Eastern District of New York (Donnelly,

D33

J.) issued a filing injunction order against Sun in Sun v. State of New York Office of the Attorney General, 17-CV-5916 (E.D.N.Y.), following Sun's failure to respond to the order to show cause issued by the district court on October 19, 2017. Although Sun did not respond to the district court's order to show cause, on November 8, 2017, he appealed to this Court from the district court's dismissal of that action. See Sun v. New York State Attorney General, No. 17-3697 (2d Cir.).

Based on the foregoing, Appellee respectfully requests that the Court expressly address Appellee's request in the Motion that the Court consider imposition of a leave-to-file sanction on Sun.

Respectfully submitted,

BRIDGET M. ROHDE

Acting United States Attorney

By: /s/ Varuni Nelson

Varuni Nelson

Assistant U.S. Attorney

(718) 254-6015

cc: (by first-class mail)

Xiu Jian Sun

Pro se Plaintiff-Appellant

54-25 153rd St., 2d Floor

Flushing, NY 11355

D34

Case 17-1217, Document 53-2, 12/12/2017, 2192422,
Page1 of 1

UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

SUN v. POLLAK

Docket No. 17-1217

DECLARATION OF SERVICE

I, DAHLIA E. JOSHUA, hereby declare that, on
December 12, 2017, the Appellee's December 12, 2017
Letter was served by first-class mail on:

Xiu Jian Sun
Pro Se Plaintiff-Appellant
54-25 153rd Street — 2nd Floor
Flushing, New York 11355

In accordance with 28 U.S.C. § 1746, I declare
under penalty of perjury that the foregoing is true and
correct to the best of my knowledge and belief.

Dated: Brooklyn, New York
December 12, 2017

/s/ Dahlia E. Joshua
DAHLIA E. JOSHUA

D35

Case 17-1217, Document 59, 01/22/2018, 2218583,
Page1 of 1

E.D.N.Y.-Bklyn
17-cv-1570
Vitaliano, 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 22nd day of January, two thousand eighteen.

Present:

Dennis Jacobs,
Reena Raggi,
Christopher F. Droney,
Circuit Judges.

Xiu Jian Sun,
Plaintiff-Appellant,

v.

17-1217

Cheryl L. Pollak,
Defendant-Appellee.

D36

Appellee moves for the Court to explicitly address her prior request to "consider imposition of a leave-to-file sanction" on Appellant. Upon due consideration, it is hereby ORDERED that the motion is DENIED as moot because this Court has imposed a leave-to-file sanction on Appellant in another case. 2d Cir. 16-3557, doc. 95 (imposing a leave-to-file sanction on Appellant).

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk of the Court

Catherine O'Hagan Wolfe,

E.D.N.Y.-Bklyn
17-cv-1570
Vitaliano, 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 29th day of November, two thousand seventeen.

Present:

Dennis Jacobs,
Reena Raggi,
Christopher F. Droney,
Circuit Judges.

Xiu Jian Sun,

Plaintiff-Appellant,

v.

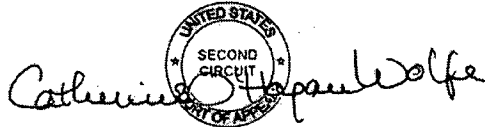
17-1217

Cheryl L. Pollak,

Defendant-Appellee.

Appellee moves for summary affirmance. Upon due consideration, it is hereby ORDERED that the motion is GRANTED. See *United States v. Davis*, 598 F.3d 10, 13 (2d Cir. 2010).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

The block contains a handwritten signature, "Catherine O'Hagan Wolfe", written in cursive. The signature is written over a circular official seal of the United States Court of Appeals for the Second Circuit. The seal features the words "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around its perimeter.

E.D.N.Y.-Bklyn
17-cv-1570
Vitaliano, 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 22nd day of January, two thousand eighteen.

Present:

Dennis Jacobs,
Reena Raggi,
Christopher F. Droney,
Circuit Judges.

Xiu Jian Sun,

Plaintiff-Appellant,

v.

17-1217

Cheryl L. Pollak,

Defendant-Appellee.

Appellee moves for the Court to explicitly address her prior request to “consider imposition of a leave-to-file sanction” on Appellant. Upon due consideration, it is hereby ORDERED that the motion is DENIED as moot because this Court has imposed a leave-to-file sanction on Appellant in another case. 2d Cir. 16-3557, doc. 95 (imposing a leave-to-file sanction on Appellant).

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of the Court




UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
XIU JIAN SUN,

Plaintiff.

-against-

CHERYL L. POLLAK,

Defendant.
----- x

FILED
IN CLERK'S OFFICE
US DISTRICT COURT
★ APR 10 2017

BROOKLYN OFFICE

MEMORANDUM & ORDER

17-cv-1570 (ENV) (LB)

VITALIANO, D.J.

On March 20, 2017, *pro se* plaintiff Xiu Jian Sun commenced this action against United States Magistrate Judge Cheryl L. Pollak, who sits in the Eastern District of New York. ECF Dkt. No. 1. Plaintiff paid the statutory filing fee, but appears *pro se*. See Mar. 20, 2017 Filing Fee Receipt. For the reasons set forth below, the action is dismissed with prejudice.

Background

Sun identifies himself as “god’s servant” and “the spiritual Adam,” and asserts that “Jehovah” instructed him to sue Magistrate Judge Pollak, whom he dubs “Pharisees.” ECF Dkt. No. 1 at 1. The complaint does not plead any facts concerning Judge Pollak, nor does it articulate any cognizable cause of action, nor does it request any relief aside from the appointment of a Mandarin Chinese interpreter for any court proceedings. See *id.* at 1-2. However, since plaintiff attached to the complaint a copy of a report and recommendation that Judge Pollak issued, on March 2, 2017, in a separate action brought by him, it would appear that Sun seeks to sue Judge Pollak over the issuance of that report and recommendation. *Id.* at 3-5.¹

¹ The action in which Magistrate Judge Pollak entered that report and recommendation, captioned *Sun v. Cheung*, No. 16-cv-5734 (E.D.N.Y.), was, on this date, also dismissed.

As a prefatory note, this is the fifth action that plaintiff has filed in this district against judges, judicial employees, and lawyers. All of the previous four actions have been dismissed, either as frivolous or for failure to prosecute. *See Sun v. Cheung*, No. 16-cv-5734, slip op. (E.D.N.Y. Apr. 6, 2017) (dismissed for failure to prosecute); *Sun v. Dillon*, No. 16-cv-5276, slip op. (E.D.N.Y. Oct. 5, 2016) (dismissed as frivolous); *Sun v. Katzmann*, No. 16-cv-3937, slip op. (E.D.N.Y. Aug. 2, 2016) (same); *Sun v. Cavallo*, No. 16-cv-1083, slip op. (E.D.N.Y. Mar. 19, 2016) (same), *appeal dismissed*, No. 16-950 (2d Cir. Aug. 12, 2016).

Standard of Review

A *pro se* complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007) (citation omitted). Such a complaint should “be liberally construed,” *id.* (citation omitted), and “interpreted ‘to raise the strongest arguments that [it] suggest[s],’” *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996) (citation omitted). Nonetheless, a *pro se* complaint must still plead sufficient facts to state a claim “that is plausible on its face.” *See Teichmann v. New York*, 769 F.3d 821, 825 (2d Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted).

At the pleadings stage, the court must assume the truth of “all well-pleaded, nonconclusory factual allegations” in the complaint. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 124 (2d Cir. 2010) (citing *Iqbal*, 556 U.S. at 678 and *Selevan v. N.Y. Thruway Auth.*, 584 F.3d 82, 88 (2d Cir. 2009)). Although all factual allegations contained in the complaint are

assumed to be true, that tenet is “inapplicable to legal conclusions.” *Iqbal*, 556 U.S. at 678. As a corollary, a court generally should not dismiss a *pro se* complaint without granting leave to amend, so long as “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)).

These principles notwithstanding, a district court may dismiss a *pro se* action *sua sponte*—even if the plaintiff has paid the requisite filing fee—if it determines that the action is frivolous. See *Fitzgerald v. First East Seventh Street Tenants Corp.*, 221 F.3d 363, 363-64 (2d Cir. 2000). Put simply, “[a]n action is frivolous if it lacks an arguable basis in law and fact—i.e., where it is ‘based on an indisputably meritless legal theory’ or presents ‘factual contentions [that] are clearly baseless.’” *Scanlon v. Vermont*, 423 F. App’x 78, 79 (2d Cir. 2011) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S. Ct. 1827, 1833, 104 L. Ed. 2d 338 (1989)); see *Denton v. Hernandez*, 504 U.S. 25, 32-33, 112 S. Ct. 1728, 1733-34, 118 L. Ed. 2d 340 (1992); *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). For example, “[a] complaint will be dismissed as ‘frivolous’ when ‘it is clear that the defendants are immune from suit.’” *Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) (quoting *Neitzke*, 490 U.S. at 327).

Discussion

With these standards in mind, under even the most liberal review, the Court cannot discern what legally cognizable harm Sun supposedly suffered, what acts of Judge Pollak are blamed as the cause of any harm, or what rights of his were allegedly infringed. To the extent that plaintiff seeks to sue Magistrate Judge Pollak for issuing a report and recommendation in a case that was before her as a magistrate judge, any such suit is barred by judicial immunity. “It is well settled,” of course, “that judges generally have absolute immunity from suits for money

damages for their judicial actions.” *Shtrauch v. Dowd*, 651 F. App’x 72, 73 (2d Cir. 2016) (quoting *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009)).

As Sun should have been able to divine from the dismissal of prior actions, this “judicial immunity is an immunity from suit, not just from the ultimate assessment of damages,” and it “is not overcome by allegations of bad faith or malice,” nor can a judge “be deprived of immunity because the action [she] took was in error . . . or was in excess of [her] authority.” *Mireles v. Waco*, 502 U.S. 9, 11-13, 112 S. Ct. 286, 288, 116 L. Ed. 2d 9 (1991) (citations omitted). Furthermore, the Federal Courts Improvement Act of 1996 extended judicial immunity to most actions seeking prospective injunctive relief—unless, that is, a declaratory decree was violated or declaratory relief was unavailable, neither of which is alleged here. *See* Federal Courts Improvement Act of 1996, § 309(c), Pub. L. No. 104-317, 110 Stat. 3847, 3853 (1996) (amending 42 U.S.C. § 1983) (“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”); *Huminski v. Corsones*, 396 F.3d 53, 74 & n.23 (2d Cir. 2005); *see also Shtrauch*, 651 F. App’x at 73.

Applying this standard, the consequences are clear. Plaintiff’s complaint must be dismissed as frivolous because it is obvious that Magistrate Judge Pollak is immune from his lawsuit. *See Montero*, 171 F.3d at 760; *see also Tapp v. Champagne*, 164 F. App’x 106, 107 (2d Cir. 2006) (affirming *sua sponte* dismissal of claims against judges shielded by absolute immunity). Moreover, since even the most liberal reading of the complaint gives no indication that it could be amended to state a plausible claim against Judge Pollak, leave to amend must also be denied as futile. *See Cuoco*, 222 F.3d at 112.

Conclusion

In line with the foregoing, plaintiff's complaint is dismissed with prejudice, and without leave to amend.

Although plaintiff paid the filing fee to commence this action, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal 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, 82 S. Ct. 917, 920-21, 8 L. Ed. 2d 21 (1962).

The Clerk of Court is directed to enter judgment accordingly, and to close this case.

So Ordered.

Dated: Brooklyn, New York
April 6, 2017

/s/ USDJ ERIC N. VITALIANO
ERIC N. VITALIANO
United States District Judge



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
XIU JIAN SUN,

Plaintiff,

-against-

CHERYL L. POLLAK,

Defendant.
-----X

JUDGMENT
17-CV- 1570 (ENV)

A Memorandum and Order of Honorable Eric N. Vitaliano, United States District Judge, having been filed on April 10, 2017, dismissing Plaintiff's complaint with prejudice, and without leave to amend; ordering that the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith; and denying *in forma pauperis* status for the purpose of an appeal; it is

ORDERED and ADJUDGED that Plaintiff's complaint is dismissed with prejudice, and without leave to amend; that pursuant to 28 U.S.C. § 1915(a)(3), any appeal would not be taken in good faith; and that *in forma pauperis* status is denied for purpose of an appeal.

Dated: Brooklyn, New York
April 11, 2017

Douglas C. Palmer
Clerk of Court

by: /s/ Janet Hamilton
Deputy Clerk

am