UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IFEOMA EZEKWO,

Plaintiff,

-against-

ST. PHILLIP NERI, CATHOLIC CHURCH, BRONX, NEW YORK; ARCHDIOCESE OF NEW YORK; AMERICAN COUNCIL OF CATHOLIC BISHOPS; POPE FRANCIS AND VATICAN; RICHARD A. COPPOLA; REV. MSGR. JOSEPH P. LAMORTE; JOHN DIBATTISTA; MONSIGNOR KEVIN SULLIVAN; ARI ZERVOUDIS; CATHOLIC HOMES; LOUIS L. STANTON, Individually and in his official capacity as Justice of the Federal Southern District of New York Court New York; NORMA RUIZ, Individually and in her official capacity as Justice of the Superior Court of New York, Bronx, et al; AND JOHN (or JANE) DOES 1-10,

Defendants.

20-CV-9505 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff Ifeoma Ezekwo brings this *pro se* action, for which the filing fees have been paid, alleging that Defendants violated her constitutional rights. By order dated February 12, 2021, Hon. Louis L. Stanton dismissed the complaint for failure to state a claim but granted Plaintiff 30 days' leave to replead. (ECF No. 3.) Plaintiff filed an amended complaint on March 12, 2021, and the Court has reviewed it. This action is dismissed for the reasons set forth below.

STANDARD OF REVIEW

The Court has the authority to dismiss a complaint, even when the plaintiff has paid the filing fees, if it determines that the action is frivolous, *Fitzgerald v. First E. Seventh Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000) (per curiam) (citing *Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995) (per curiam) (holding that Court of Appeals has inherent authority to dismiss frivolous appeal)), or that the Court lacks subject matter jurisdiction, *Ruhrgas AG v. Marathon*

Oil Co., 526 U.S. 574, 583 (1999). Moreover, the court "has the power to dismiss a complaint sua sponte for failure to state a claim," *Leonhard v. United States,* 633 F.2d 599, 609 n. 11 (2d Cir. 1980), so long as the plaintiff is given notice and "an opportunity to be heard." *Thomas v. Scully,* 943 F.2d 259, 260 (2d Cir.1991) (per curiam); *see also Perez v. Ortiz,* 849 F.2d 793, 797 (2d Cir. 1988); Wright & Miller, *Federal Practice and Procedure* § 1357, at 301 & n. 3. The Court is obliged, however, to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

Although *pro se* litigants enjoy the Court's "special solicitude," *Ruotolo v. I.R.S.*, 28 F.3d 6, 8 (2d Cir. 1994) (per curiam), their pleadings must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief. A complaint states a claim for relief if the claim is plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To review a complaint for plausibility, the Court accepts all well-pleaded factual allegations as true and draws all reasonable inferences in the pleader's favor. *Id.* (citing *Twombly*, 550 U.S. at 555). But the Court need not accept "[t]hreadbare recitals of the elements of a cause of action," which are essentially legal conclusions. *Id*. at 678 (citing *Twombly*, 550 U.S. at 555). As set forth in *Iqbal*:

> [T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

Id. (internal citations, quotation marks, and alteration omitted). After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

BACKGROUND

Plaintiff filed the amended complaint in this case on March 12, 2021. The day prior, on March 11, 2021, Plaintiff filed a new action without tendering the $402.00 in fees – a $350.00 filing fee plus a $52.00 administrative fee – or submitting a request for authorization to proceed *in forma pauperis* (IFP), that is, without prepayment of fees. *See Ezekwo v. Neri*, No. 21-CV-2175 (CM) (S.D.N.Y. Mar. 19, 2021). Because the complaint in the new action was identical to the amended complaint filed in this case, Judge Colleen McMahon, in her capacity as Chief Judge, dismissed the new action without prejudice to this pending action.

In Plaintiff's amended complaint, she names the same Defendants as in the original pleading,[1] and she adds two additional Defendants – Judge Louis L. Stanton of this court, who dismissed this case, but granted her leave to replead, and Norma Ruiz, "Justice of the Superior Court of New York, Bronx."

DISCUSSION

A. Rule 8

Like her original pleading, Plaintiff's 25-page amended complaint fails to comply with Rule 8. The Court has closely scrutinized Plaintiff's amended complaint but is unable to understand the nature of Plaintiff's claims. Plaintiff does not make any comprehensible allegations against the named Defendants. It is not clear what these Defendants allegedly did or

[1] In the February 12, 2021 order, Judge Stanton advised Plaintiff that, because Defendants are private parties who do not work for any state or other government body, Plaintiff cannot state a claim against these Defendants under § 1983.

failed to do that harmed Plaintiff. The Court therefore dismisses the amended complaint for failure to state a claim.

B. Claims Under 42 U.S.C. § 1983

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege both that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law, or a "state actor." *West v. Atkins*, 487 U.S. 42, 48-49 (1988).

A claim for relief under § 1983 must allege facts showing that each defendant acted under the color of a state "statute, ordinance, regulation, custom or usage." 42 U.S.C. § 1983. As Defendants St. Phillip Neri, Catholic Church; Archdiocese of New York; American Council of Catholic Bishops; Pope Francis and Vatican; Richard A. Coppola; Rev. Msgr. Joseph P. LaMorte; John DiBattista; Monsignor Kevin Sullivan; Ari Zervoudis; and Catholic Homes are private parties who do not work for any state of the United States or subdivision or governmental body thereof, Plaintiff has not stated a claim against these defendants under § 1983. The claims against these Defendants must therefore be dismissed. *See* 28 U.S.C. §1915(e)(2)(B)(ii).

C. Judicial Immunity

Plaintiff's claims against Judge Stanton and Justice Ruiz must also be dismissed. Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, "acts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Sliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). "Even allegations of bad faith or malice cannot overcome judicial immunity." *Id.* (citations omitted). This is because "[w]ithout insulation from liability, judges would be subject to harassment and intimidation . . . ." *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994). In addition, as amended in 1996, § 1983 provides that "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." 42 U.S.C. § 1983.

Judicial immunity does not apply when the judge acts "outside" his judicial capacity, or when the judge takes action that, although judicial in nature, is taken "in absence of jurisdiction." *Mireles,* 502 U.S. at 9-10; *see also Bliven,* 579 F.3d at 209-10 (describing actions that are judicial in nature). But "the scope of [a] judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump v. Sparkman,* 435 U.S. 349, 356 (1978).

Plaintiff's claims against Judge Stanton and Justice Ruiz apparently arise of out of their rulings and actions while presiding over Plaintiff's cases; such rulings and actions were within the scope of their judicial capacities and jurisdiction. The Court therefore dismisses Plaintiff's claims against Judge Stanton and Justice Ruiz under the doctrine of judicial immunity.

D. Libel, Slander, and Defamation Claims

There is no federal cause of action for defamation, slander, or libel, because one's reputation is not a right, privilege or immunity protected by the Constitution or laws of the United States. *Paul v. Davis*, 424 U.S. 693, 711-13 (1976) ("stigma" to reputation, by itself, is not a liberty interest sufficient to invoke the Due Process Clause); *Valmonte v. Bane*, 18 F.3d 992, 1001 (2d Cir. 1994) ("[D]efamation is simply not enough to support a cognizable liberty interest.").

A district court may decline to exercise supplemental jurisdiction over state-law claims when it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). Because Plaintiff fails to state a federal claim, the Court declines to exercise supplemental jurisdiction over the state-law libel, slander, and defamation claims that Plaintiff is attempting to

raise in her amended complaint. *See Martinez v. Simonetti*, 202 F.3d 625, 636 (2d Cir. 2000) (directing dismissal of supplemental state-law claims where no federal claims remained).

District courts generally grant a *pro se* plaintiff leave to amend a complaint to cure its defects but leave to amend may be denied if the plaintiff has already been given an opportunity to amend but has failed to cure the complaint's deficiencies. *See Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's amended complaint cannot be cured with a further amendment, the Court declines to grant Plaintiff another opportunity to amend.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. Plaintiff's amended complaint is dismissed for failure to state a claim and because the amended complaint asserts claims against Defendants who are immune from suit.

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

SO ORDERED.

Dated: April 26, 2021
New York, New York

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