

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDERICK PINA,

Plaintiff,

-against-

NEW YORK STATE GAMING
COMMISSION, ET AL.,

Defendants.

24-CV-5383 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff initiated this *pro se* action on July 11, 2024, by filing a complaint; a request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees; and a consent to electronic service. (ECF 1-3.) On July 15, 2024, and July 17, 2024, Plaintiff filed motions for leave amend his complaint, and he also filed a supporting memorandum of law. (ECF 4, 5, 7.) On July 23, 2024, the Court granted Plaintiff leave to proceed IFP. (ECF 8.) On July 24, 2024, Plaintiff filed “supplemental exhibits.” (ECF 10.)

In addition, Plaintiff submitted a letter requesting exemption from fees for Public Access to Court Electronic Records (PACER) (ECF 8.) Plaintiff asserts that:

As a *pro se* litigant, I am required to access various court documents and dockets to effectively manage and prosecute my case. The costs associated with these necessary activities pose an unreasonable burden on me due to my current financial situation. I meet the criteria for a fee exemption based on indigence, as I am currently unable to pay the PACER fees without hardship. Granting this fee exemption is essential to promote public access to court information and to ensure that I am not disadvantaged in the legal process due to financial constraints. Your favorable consideration of this request will greatly aid in the fair administration of justice and ensure that I can continue to effectively pursue my legal rights

(*Id.* at 1.)

Attached to the letter is a bill for \$57.50 for PACER usage from April 1, 2024, through June 30, 2024. (*Id.* at 2.)

DISCUSSION

A. Motions to Amend the Complaint and the Filing of Exhibits

Plaintiff seeks leave to amend his complaint. Under Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff may amend his complaint once as of right within a certain timeline. *Id.* As Plaintiff's filing of an amended complaint is permitted under Rule 15(a), he does not need this Court's permission to file an amended complaint, and the motions are denied as unnecessary. Should Plaintiff choose to amend his complaint, he may submit an amended complaint within 45 days of the date of this order.

Any exhibits or attachments Plaintiff wishes the Court to consider should be attached to the amended complaint rather than submitted separately.

B. Request for Exemption from PACER Fees

The Judicial Conference of the United States has issued a fee schedule that sets the price for accessing PACER. See Electronic Public Access Fee Schedule, Effective January 1, 2020 (Fee Schedule), <http://www.uscourts.gov/services-forms/fees/electronic-public-access-fee-schedule>.¹ Paragraph 8 of the Fee Schedule lists the automatic fee exemptions:

- No fee is owed for electronic access to court data or audio files via PACER until an account holder accrues charges of more than \$30.00 in a quarterly billing cycle.
- Parties in a case (including *pro se* litigants) and attorneys of record receive one free electronic copy, via the notice of electronic filing or notice of docket activity, of all documents filed electronically, if receipt is required by law or directed by the filer.
- No fee is charged for access to judicial opinions.
- No fee is charged for viewing case information or documents at courthouse public access terminals.
- No fee is charged for Chapter 13 bankruptcy trustees to download quarterly (i.e., once every 90 days) a list of the trustee's cases from the PACER Case Locator.

¹ <https://perma.cc/SJ95-6MJG>.

Id.

The Fee Schedule also permits courts to grant additional, discretionary exemptions under limited circumstances. Fee Schedule ¶ 9. A party seeking a discretionary exemption cannot solely rely on his IFP status alone. *Id.*; *see also Oliva v. Brookwood Coram I, LLC*, No. 14-CV-2513, 2015 WL 1966357, at *1-2 (E.D.N.Y. Apr. 30, 2015) (“[A] party seeking a discretionary exemption [of PACER fees] cannot rely on his [IFP] status alone.” (quotations and citations omitted)). Instead, the party must demonstrate that an exemption beyond the automatic exemptions “is necessary . . . to avoid unreasonable burdens and to promote public access to information.” *Id.* (quoting *Mallgreen v. Parties in this Petition*, No. 13-CV-3660 (LAP) (S.D.N.Y. Aug. 1, 2013)).

Under the automatic exemptions, and as a *pro se* litigant, Plaintiff is entitled to one free electronic copy of all documents filed electronically in his case. In addition, Plaintiff has consented to electronic service, and thus will receive notices of court activity and documents by email. (ECF 3.) Plaintiff has not shown that he needs free access to PACER to obtain information about this case.

Aside from noting his IFP status and “indigence,” Plaintiff alleges no facts suggesting that he will suffer an unreasonable burden without free access to PACER. The PACER bill attached to the complaint was for usage from April 1, 2024, to June 30, 2024, occurring before the filing of Plaintiff’s complaint. Those charges do not appear to be related to this case.

The Court denies the motion without prejudice to renewal should there be a demonstrable need in the future for such access.

CONCLUSION

The Court denies as unnecessary Plaintiff’s motions for leave to amend the complaint, and the Clerk of Court is directed to terminate them (ECF 4, 7.). Should Plaintiff choose to

amend his complaint as provided by Rule 15(a)(1) of the Federal Rules of Civil Procedure, he may submit an amended complaint with any relevant attachments within 45 days of the date of this order. If Plaintiff does not file an amended complaint within 45 days of the date of this order, the Court will treat the original complaint as the operative pleading. The letter-motion for an exemption from PACER fees is denied without prejudice.

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

SO ORDERED.

Dated: July 29, 2024
New York, New York

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