IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

NICKOLA CUNHA,	:	3:23-cv-00037-VAB
Plaintiff,	:	
v.	:	
THOMAS MOUKAWSHER,	:	
Defendant.	:	APRIL 24, 2023

Defendant's Memorandum in Support of His Motion to Dismiss

Defendant Connecticut Superior Court Judge Thomas Moukawsher ("Defendant" or "Judge Moukawsher") disbarred Plaintiff Nickola Cunha after finding *inter alia* that Plaintiff repeatedly lied in open court to support claims that another sitting Judge was biased in favor of Jews and against women. Connecticut law allows Plaintiff to seek review of her disbarment through a writ of error, and Plaintiff's writ of error is pending before the Connecticut Appellate Court.

This action seeks *inter alia* compensatory and punitive damages from Judge Moukawsher in both his official and personal capacities based on his ruling disbarring Plaintiff. The Eleventh Amendment and the *Rooker-Feldman* doctrine establish that this Court lacks subject matter jurisdiction over Plaintiff's claims. In addition, absolute judicial immunity bars Plaintiff's claims and Plaintiff's claims otherwise fail to state a claim on which relief may be granted. Therefore, this Court should dismiss Plaintiff's Complaint in its entirety.

State and Federal Court Factual and Procedural Background

I. Plaintiff's Disbarment Based on Her Misconduct in a State Court Proceeding and Plaintiff's Writ of Error Challenging Her Disbarment Pending in the Connecticut Appellate Court

Plaintiff represented the defendant wife and mother in a marital dissolution action in Connecticut Superior Court. After Plaintiff "berated" the Judge presiding

over the proceeding (Judge Gerard Adelman) "repeatedly," the Judge referred the matter of whether he should be disqualified to Judge Moukawsher. *Ambrose v. Ambrose*, 2022 Conn. Super. LEXIS 131, at *2 (Jan. 25, 2022). In her motion and the subsequent hearing, Plaintiff argued that Judge Adelman should be disqualified because he "favored Jews, protected pedophiles, and discriminated against the disabled." *Id.* at *1.

Judge Moukawsher presided over the disqualification hearing, during which he heard argument by Plaintiff and questioned her in detail as to her claims of bias. *See id.* at *3-14. During that hearing, Plaintiff "repeatedly claimed" that Judge Adelman "has a bias against anyone that is not of the Jewish faith," accused Judge Adelman of racketeering in violation of federal law, and indicated that he was part of a Jewish conspiracy. *Id.* at *3-4 (quotation marks omitted). Plaintiff represented that her claims were based on "an enormous amount of information and evidence" that had come to her over the past several weeks that she characterized as "really disturbing." *Id.* (quotation marks omitted).

Judge Moukawsher questioned Plaintiff in detail regarding the basis for her claim of pro-Jewish bias. After that questioning, Plaintiff's representation that she had based her claim on an "'enormous amount of information and evidence' proved entirely false." *Id.* at *7 (quoting the hearing transcript). Rather, what Plaintiff initially billed as an enormous amount of evidence "boiled down solely to" a "list of cases" Plaintiff had repeatedly represented she had "showing a pattern" of pro-Jewish bias. *Id.* Ultimately, after going so far as to pretend to be having difficulty pulling the

list up in open court and telling the court that she would print it during a recess, Plaintiff "admitted the list she said existed in fact never existed." *Id.* Based on that and the other aspects of the hearing, Judge Moukawsher found that Plaintiff's claims of pro-Jewish bias were "baseless." *Id.* at *8.

Plaintiff's claims of gender bias were based in large part on Plaintiff's representation that Judge Adelman "consistently shields sexual abusers." *Id.* at *9. In support of that representation, Plaintiff "claimed emphatically and repeatedly that DCF records would reveal that" allegations of sexual abuse by the father in the dissolution action "had been *found to be true* and Judge Adelman ha[d] been ignoring this." *Id.* (emphasis in the original). After careful analysis of the record, Judge Moukawsher found that Plaintiff's representations were "blatant falsehoods." *Id.* at *14. Judge Moukawsher likewise found Plaintiff's allegations that Judge Adelman is biased against disabled people to be "empty." *Id.* at *2.

Based on Plaintiff's misconduct during the disqualification hearing, Judge Moukawsher scheduled a separate hearing on whether he should take disciplinary action against Plaintiff and, if so, what action he should take. Judge Moukawsher gave Plaintiff approximately a month to prepare for the disciplinary hearing, "told her" in advance of the disciplinary hearing that "she faced serious potential consequences," urged her to hire a lawyer," and "warned her that it was giving leave for the chief disciplinary counsel's office to appear as *amicus curiae*—as a friend and advisor to the court." *Id.* at *14-15.

Plaintiff represented herself at the disciplinary hearing. Early in the hearing, she accused Judge Moukawsher of harassment, intimidation, malfeasance, and gross malfeasance based on his ruling on Plaintiff's motion. *Id.* at *15. Plaintiff called the court's decision "*a joke*" and "*pathetic*" and said both that Judge Moukawsher should be "*ashamed of*" himself and that she was "*ashamed to even be sitting before*" Judge Moukawsher. *Id.* (emphasis in the original). Judge Moukawsher ultimately found that Plaintiff had "violated at least seven rules in the Rules of Professional Conduct that govern attorney conduct" and Ordered her disbarred. *Id.* at *16-27.

Plaintiff, initially represented by counsel, filed a writ of error with the Connecticut Appellate Court seeking review of her disbarment. *See Ambrose v. Ambrose*, AC 54524 (Conn. App.) (A-1). Plaintiff's then-counsel filed an opening Brief on her behalf. Defendants in Error filed a responsive Brief on April 13, 2023. Plaintiff is now proceeding *pro se* in the writ of error, which remains pending before the Appellate Court as of the date of this Motion.

II. Plaintiff's Allegations in this Action

Plaintiff alleges that she was admitted to the Connecticut bar in 1999. *Compl.*, ¶ 1. On January 25, 2022, the Connecticut Superior Court (Moukawsher, J.) ordered Plaintiff disbarred. *Id.* ¶ 2. Plaintiff has filed a writ of error challenging her disbarment, which is presently pending before the Connecticut Appellate Court. *See id.* ¶ 16.

In this action, Plaintiff alleges that Judge Moukawsher's disbarment of her constituted "criminal mischief under 18 U.S.C.§242," *id.* ¶4, and violated her rights under the First, Fifth, and Fourteenth Amendments to the United States

Constitution. *Id.* ¶¶ 2. Plaintiff has named Judge Moukawsher in both his official capacity and his personal capacity. *See id.* p. 1. Plaintiff demands compensatory damages, punitive damages, and attorney's fees pursuant to 42 U.S.C. § 1988. *See id.* p. 6.

III. The Procedural Background for this Action

Plaintiff filed her Complaint in this action on January 9, 2023 (ECF No. 1). Plaintiff served Defendant on April 3, 2023. That set a response deadline of April 24, 2023 for Defendant.

Argument

I. The Standard Applicable to this Motion to Dismiss

This Motion is pursuant to Rule 12(b)(1) and Rule 12(b)(6). A Rule 12(b)(1) motion is the proper vehicle to seek dismissal based on the Eleventh Amendment and the *Rooker-Feldman* doctrine. *See, e.g.*, *Morabito v. New York*, 803 F. App'x 463, 465 n.2 (2d Cir. 2020) (Summary Order) (the Eleventh Amendment); *Lewis v. Legal Servicing, LLC*, 2022 U.S. Dist. LEXIS 125278, at *13 n.8 (S.D.N.Y. Mar. 15, 2022) (the *Rooker-Feldman* doctrine). A 12(b)(6) motion is the proper vehicle to seek dismissal based on absolute judicial immunity and a failure to state a claim upon which relief may be granted. *See, e.g.*, *Butcher v. Wendt*, 975 F.3d 236, 241 (2d Cir. 2020) (absolute judicial immunity).

As this Court recently recognized, "[t]he standard that governs a motion to dismiss under Rules 12(b)(1) and 12(b)(6) is well established." *Campbell v. City of Waterbury*, 2022 U.S. Dist. LEXIS 22999, at *7 (D. Conn. Feb. 9, 2022) (Meyer, J.).

"A complaint may not survive unless it alleges facts that, taken as true, give rise to plausible grounds to sustain subject-matter jurisdiction and a plaintiff's claims for relief." *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), *Kim v. Kimm*, 884 F.3d 98, 103 (2d Cir. 2018), and *Lapaglia v. Transamerica Cas. Ins. Co.*, 155 F. Supp. 3d 153, 155-56 (D. Conn. 2016)).

"For purposes of a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, a court may consider reliable evidence outside the pleadings." *Id.* (citing *Carter v. HealthPort Techs., LLC*, 822 F.3d 47, 57 (2d Cir. 2016)). "For purposes of a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court [generally] must limit itself to the allegations of the complaint but may also consider documents that are referenced in or integral to the allegations of the complaint." *Id.* at *7-8 (citing *United States ex rel. Foreman v. AECOM*, 19 F.4th 85, 106 (2d Cir. 2021)). In addition, the court may consider judicial notice materials in deciding both 12(b)(1) and 12(b)(6) motions. *See, e.g.*, *TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 498 (2d Cir. 2014) (12(b)(6) motion); *Wilkes v. Lamont*, 511 F. Sup. 3d 156, 165 n.2 (D. Conn. 2020) (12(b)(1) motion).

Although Plaintiff is proceeding *pro se*, she is a disbarred attorney and should "receive[ ] no . . . solicitude at all." *Tracy v. Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010); *see also Feng Li v. Dillon*, 2022 U.S. App. LEXIS 18965, at *2 (2d Cir. July 11, 2022) (Summary Order) (applying *Tracy* to a suspended attorney, and noting that the absence of solicitude also applies to disbarred attorneys).

II. The Eleventh Amendment Bars Plaintiff's Official Capacity Claims in their Entirety

Plaintiff has named Judge Moukawsher in his official capacity and demands damages. *Compl.*, pp. 1 and 6. "It is well settled that the Eleventh Amendment bars suits for money damages against state officials acting in their official capacities." *Amato v. Elicker*, 534 F. Sup. 3d 196, 206 (D. Conn. 2021) (Shea, J.) (quotation marks omitted) (citing cases, including *Ford v. Reynolds*, 316 F.3d 351, 354 (2d Cir. 2003)); *see also Kentucky v. Graham*, 473 U.S. 159, 169 (1985) (similar).[1] That requires dismissal of Plaintiff's official capacity claims in their entirety.

III. Absolute Judicial Immunity Bars Plaintiff's Individual Capacity Claims in their Entirety

Plaintiff alleges that Judge Moukawsher "acting as judge, in exercise of absolute discretion" violated Plaintiff's rights when he issued a decision disbarring Plaintiff for her professional misconduct. *Compl.*, ¶ 2. Plaintiff seeks compensatory

[1] There are exceptions to the Eleventh Amendment's bar on official capacity damages claims, but neither applies here. *See, e.g.*, *Graham*, 473 U.S. at 169 (noting the waiver and abrogation exceptions). Plaintiff's Complaint cannot properly be construed to demand non-monetary relief. *Moore v. Mississippi Gaming Commission*, 2016 U.S. Dist. LEXIS 134571, at *27 (N.D. Miss. Sep. 29, 2016) (noting that a "generic prayer for relief fails to trigger *Ex Parte Young*"). Even if it could, both the Eleventh Amendment and the *Younger* abstention doctrine would bar any such relief. *See, e.g.*, *Juidice v. Vail*, 430 U.S. 327, 329, 338-39 (1977) (holding that a proceeding is ongoing through the state appellate process for purposes of *Younger* abstention); *Kelsey v. Clark*, 2021 U.S. Dist. LEXIS 231530, at *4 (N.D.N.Y. Dec. 3, 2021), *aff'd*, 2023 U.S. App. LEXIS 3454, at *3-4 (2d Cir. Feb. 14, 2023) (Summary Order) (holding that relief challenging rulings in proceedings that have already occurred is retrospective and the Eleventh Amendment bars it).

and punitive damages against Judge Moukawsher in his personal (more frequently referred to as individual[2]) capacity. *Id.* p. 6.

Absolute judicial immunity bars Plaintiff's individual capacity damages claims in their entirety. "'It is well settled that judges generally have absolute immunity from suits for money damages for their judicial actions.'" *Butcher v. Wendt*, 975 F.3d 236, 241 (2d Cir. 2020) (quoting *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009)). "Without insulation from liability, judges would be subject to harassment and intimidation and would thus 'lose that independence without which no judiciary can either be respectable or useful.'" *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994) (quoting *Butz v. Economou*, 438 U.S. 478, 506 (1978)). Reflecting the need to protect Judges from harassment based on their decisions, the Supreme Court and the Second Circuit have expressly recognized that Judges are immune from liability for a decision "disbarring an attorney as a sanction for the attorney's contumacious conduct in connection with a particular case." *Bliven*, 579 F.3d at 210 (citing *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 354-57 (1871)). Such liability is precisely what Plaintiff seeks to impose here. *See, e.g.*, *Compl.*, ¶ 2.

Plaintiff's Complaint alleges that Defendant's actions were "beyond judicial function, where no immunity lies" but that is a legal conclusion that this Court should

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[2] Plaintiff's Complaint uses the phrase "personal capacity." *Compl.*, p. 1. "[I]ndividual-capacity claims and personal capacity claims" are "synonymous." *Turner v. Houma Municipal Fire & Police Civil Service Board*, 229 F.3d 478, 483 n.9 (5th Cir. 2000) (citing *Kentucky v. Graham*, 473 U.S. 159, 165 n.10 (1985)). This Court and other Courts in this Circuit more commonly use the phrase "individual capacity." Therefore, Defendant will use that term.

disregard in deciding this Motion. *Compl.* ¶ 3; *see, e.g.*, *American Society for the Prevention of Cruelty To Animals v. Animal & Plant Health Inspection Service*, 60 F.4th 16, 21 (2d Cir. 2023) (noting that in deciding a motion to dismiss, the court "should assume th[e] veracity of well-pleaded factual allegations," but is "not bound to accept as true a pleading's legal conclusion" (quotation marks omitted)). Plaintiff's allegation that Defendant's actions were outside the scope of judicial immunity is incorrect. In reality, binding precedent establishes that absolute judicial immunity bars Plaintiff's claims. *See, e.g.*, *Bliven*, 579 F.3d at 206-07 (affirming the dismissal of a *pro se* attorney's due process claims against state judges on absolute judicial immunity grounds); *Coar v. Reeves*, 2018 U.S. Dist. LEXIS 21119, at *4-5 (S.D.N.Y. Feb. 2, 2018) (noting that *Bradley*, "one of the earliest cases discussing the doctrine of judicial immunity . . . held that a judge was protected by . . . judicial immunity when the judge held an attorney in contempt, and summarily disbarred him").

IV. The *Rooker-Feldman* Doctrine Independently Bars Plaintiff's Claims in their Entirety

"Under the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction over cases that essentially amount to appeals of state court judgments." *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014). When *Rooker-Feldman* applies, "it is basic hornbook law that this Court has no power and no jurisdiction to act as a super appellate court over state court judgments." *Burnham v. Chabot*, 2022 U.S. Dist. LEXIS 128859, at *9 (W.D.N.Y. July 20, 2022). Rather,

"the Supreme Court is the only federal court with jurisdiction over such cases." *Dorce v. City of New York*, 2 F.4th 82, 101 (2d Cir. 2021) (citing 28 U.S.C. § 1257).

Rooker-Feldman applies here. The Second Circuit "has articulated four requirements that must be met": "(1) the federal-court plaintiff must have lost in state court[;] (2) the plaintiff must complain of injuries caused by a state-court judgment[;] (3) the plaintiff must invite district court review and rejection of that judgment[;] and (4) the state-court judgment must have been rendered before the district court proceedings commenced." *Id.* (quotation marks omitted). "The first and fourth of these requirements may be loosely termed procedural; the second and third may be termed substantive." *Id.* (quotation marks omitted).

This case satisfies all four requirements. As to the procedural requirements, Plaintiff lost in state court and the state court entered Judgment against Plaintiff on February 8, 2022 (A-5), before Plaintiff commenced this action. Plaintiff's post-Judgment writ of error that is pending before the Connecticut Appellate Court (*see Compl.* ¶ 16) should not impact the analysis; "[i]t does not matter whether Plaintiff's appeal of the state court's final judgment is pending because [c]ourts in this Circuit have routinely applied *Rooker-Feldman* despite pending state-court appeals." *Osuagwu v. Home Point Financial Corp.*, 2022 U.S. Dist. LEXIS 93322, at *20 n.9 (S.D.N.Y. May 24, 2022) (quotation marks omitted) (citing cases).[3]

[3] "Although the Second Circuit has not definitively resolved whether *Rooker-Feldman* applies when an appeal is pending, it 'has strongly suggested—without deciding—that it does'" even though some other Circuits (and some Second Circuit Judges in individual concurring or dissenting opinions) have concluded to the contrary. *Jones v. Grisanti*, 2022 U.S. Dist. LEXIS 32863, at *3 n.1 (W.D.N.Y. Feb. 24, 2022) (quoting

As to the substantive requirements, Plaintiff claims to have been injured by the state court Judgment disbarring her. *See Dorce*, 2 F.4th at 101 (discussing the second *Rooker-Feldman* factor); *see, e.g.*, *Compl.*, ¶ 2. The third *Rooker-Feldman* requirement is likewise met because Plaintiff invites this Court to review the state court's Judgment, hold that it was unconstitutional, and award Plaintiff damages based on that holding. *See Compl.* at pp. 5-6; *see also Alroy v. City of New York Law Dept.*, 69 F. Supp. 3d 393, 398-401 (S.D.N.Y. 2014) (holding that *Rooker-Feldman* barred the plaintiff's due process claims for damages based on the alleged constitutional inadequacy of state court proceedings and noting that a plaintiff "cannot avoid the *Rooker-Feldman* doctrine based on the choice of remedy . . . *Rooker-Feldman* bars actions for compensatory damages for injuries caused by state court judgments as well as actions seeking explicit reversal of those judgments" (quotation marks omitted)). All four *Rooker-Feldman* requirements are satisfied here and this Court therefore lacks subject matter jurisdiction.

The Second Circuit and District Courts within this Circuit have consistently held that the *Rooker-Feldman* doctrine barred comparable federal challenges brought by attorneys challenging their disbarments or other professional discipline.[4] For

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Butcher v. Wendt, 975 F.3d 236, 244 n.5 (2d Cir. 2020)). Defendants believe that the Second Circuit's strong suggestion is both binding on this Court and legally correct; *Rooker-Feldman*'s "purpose would be undermined if the doctrine is inapplicable simply because a litigant happens to be seeking state . . . review of a state-court judgment, while also seeking federal district court review of that judgment." *Caldwell v. Gutman, Mintz, Baker & Sonnenfeldt, P.C.*, 701 F. Supp. 2d 340, 348 (E.D.N.Y. 2010).

[4] *See, e.g.*, *Neroni v. Zayas*, 663 F. App'x 51, 53 (2d Cir. 2016) (Summary Order); *Abrahams v. Appellate Division of the Supreme Court*, 311 F. App'x 474, 475-76 (2d

example, in *Zappin*, an attorney was a party in "fractious divorce and custody proceedings" in state court, where the court found that his abusive litigation tactics were intended to—and did—inflate the opposing party's legal fees. *Zappin*, 2022 U.S. Dist. LEXIS 156614, at *3. The attorney engaged in professional misconduct that included "fabricating allegations against" a trial court Judge; "using the Internet to disparage counsel and the State Trial Court; [and] disseminating federal lawsuits to 'harass and injure'" that ultimately resulted "in his disbarment by the Appellate Department, First Division." *Id*. at *4, 13-14. The attorney then brought a federal action, claiming that *inter alia* the state court disciplinary proceedings were unlawful. *Id*. at *28.

The district court held that *Rooker-Feldman* barred the attorney's claims, which were "littered with grievances against the state courts" and invited the district court "to review the merits of" the state court Judgments. *Id*. (quotation marks omitted). That was true even though the attorney only sought "money damages." *Zappin*, 2022 U.S. Dist. LEXIS 179447, at *5 (district court's decision adopting the Magistrate Judge's recommended ruling, and citing *Thomas v. Martin-Gibbons*, 857 Fed. App'x 36, 39 (2d Cir. May 24, 2021) (Summary Order)). The same reasoning and logic applies here. This Court should dismiss Plaintiff's Complaint in its entirety on

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Cir. 2009) (Summary Order); *Zappin v. Comfort*, 2022 U.S. Dist. LEXIS 156614, at *14 (S.D.N.Y. Aug. 29, 2022), *adopted by*, 2022 U.S. Dist. LEXIS 179447 (S.D.N.Y, Sept. 30, 2022); *Sowell v. Southbury-Middlebury Youth & Family Services*, 2019 U.S. Dist. LEXIS 130267, at *10-17 (D. Conn. Aug. 5, 2019), *aff'd*, 807 Fed. Appx. 115 (2d Cir. 2020) (Summary Order) (Meyer, J.); *Johnson v. Carrasquilla*, 2018 U.S. Dist. LEXIS 176578, at *17-27 (D. Conn. Oct. 15, 2018) (Shea, J.).

Rooker-Feldman grounds, consistent with the myriad other decisions dismissing claims similar to Plaintiff's.

V. This Court Should Dismiss Plaintiff's Official Capacity Claims for Failure to State a Claim

"[T]he United States Supreme Court explicitly held 'that neither a State nor its officials acting in their official capacities are 'persons' under § 1983.'" *Mercer v. Schriro*, 337 F. Sup. 3d 109, 136 (D. Conn. 2018) (Haight, J.) (quoting *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989)). That requires dismissal of Plaintiff's official capacity claims against Judge Moukawsher; "'[t]o the extent [a plaintiff] seeks monetary relief against [a] state judge in his official capacity, [his] claims fail because [a judge] is not a 'person' within the meaning of § 1983.'" *Masters v. Mack*, 2022 U.S. Dist. LEXIS 231926, at *12-13 (E.D.N.Y. Dec. 27, 2022) (quoting *Cinotti v. Adelman*, 709 F. App'x 39, 41 (2d Cir. 2017) (Summary Order)).

Given that, as discussed above, *Rooker-Feldman* deprives this Court of subject matter jurisdiction over all of Plaintiff's claims, the Eleventh Amendment independently bars Plaintiff's official capacity claims, and Plaintiff's "'individual capacity . . . claims [independently] fail because'" Judge Moukawsher "'is protected by judicial immunity,'" Defendant will not further address the putative merits of Plaintiff's claims at this point (while expressly reserving all rights to do so should any part of this action survive this Motion to Dismiss[5]). *Id.* (quoting *Cinotti*, 709 F. App'x at 41).

[5] To be clear, Plaintiff's due process and First Amendment claims lack any merit for *inter alia* the reasons set forth in Defendants in Errors' Brief in the writ of error

However, to clarify the record, this Court should be aware that Plaintiff's repeated allegations that her disbarment was summary are inaccurate. *Compare Compl.*, ¶¶ 2, 3, 9, 10, and 12 (repeatedly alleging that Plaintiff's disbarment was summary), *with Ambrose v. Ambrose*, 2022 Conn. Super. LEXIS 131, at *21 (Jan. 25, 2022) (discussing Plaintiff's disciplinary hearing that followed the initial hearing on Plaintiff's motion to disqualify); *and Plaintiff's Brief in the Writ of Error Pending Before the Connecticut Appellate Court*, p. 12 (representing that "the trial court did not exercise summary discipline but scheduled a hearing"); *id.* at 20 (representing that "[t]he trial court did not summarily discipline" Plaintiff "after the hearing on the motion to recuse Judge Adelman") (A-9). This Court should not take those allegations as true for purposes of deciding this Motion to Dismiss; they "are contradicted both by . . . facts of which" this Court "may take judicial notice" and Plaintiff's own representations in another pending action. *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1095 (2d Cir. 1995); *see also Munno v. Town of Orangetown*, 391 F. Supp. 2d 263, 269 (S.D.N.Y. 2005) (judicial notice taken of submissions from a related state court action where the documents "allegedly contain statements by plaintiff which contradict the factual allegations contained in the complaint"); *cf. Gentile v. Credidio*, 2023 U.S. Dist. LEXIS 57057, at *18 (S.D.N.Y. Mar. 31, 2023) (noting that in deciding a motion to dismiss, the court need not accept as true allegations that *inter alia* are contradicted by the plaintiff's other allegations in the complaint).

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pending before the Connecticut Appellate Court. However, the putative merits of Plaintiff's constitutional claims are not properly before this Court given the jurisdictional defects discussed above.

VI. Plaintiff Cannot Recover Attorney's Fees in this *Pro Se* Action

Plaintiff's Prayer for Relief demands that "[t]his Court, pursuant to 42 U.S.C. §1988 award plaintiff reasonable attorney fees, with costs of this action." *Compl.*, p. 6. Supreme Court precedent requires dismissal of Plaintiff's demand for attorney's fees. *See Kay v. Ehrler*, 499 U.S. 432, 437 (1991) (holding that *pro se* attorneys cannot obtain an award of attorney's fees under 42 U.S.C. § 1988); *see also Richard v. Martin*, 2022 U.S. Dist. LEXIS 183109, at *42 (D. Conn. Oct. 6, 2022) (Haight, J.) (dismissing a *pro se* plaintiff's claims under 42 U.S.C. § 1988); *Turner v. Boyle*, 116 F. Sup. 3d 58, 74 & n.5 (D. Conn. 2015) (Underhill, J.) (similar); *Sosa v. Lantz*, 660 F. Supp. 2d 283, 289 (D. Conn. 2009) (Arterton, J.) (similar).

VII. Conclusion

For the foregoing reasons, Defendant respectfully requests that this Court dismiss Plaintiff's Complaint in its entirety.

Respectfully submitted,

DEFENDANT

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Certificate of Service

I hereby certify that on April 24, 2023 a copy of the foregoing was electronically filed. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Robert J. Deichert
Robert J. Deichert
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