

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMENDED SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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 15th day of December, two thousand twenty-three.

PRESENT:

BARRINGTON D. PARKER,
EUNICE C. LEE,
SARAH A. L. MERRIAM,
Circuit Judges.

Hattie Worley,

Plaintiff-Appellant,

v.

Simon Meyrowitz & Meyrowitz, P.C.,

Defendant-Appellee.

23-187-cv

FOR PLAINTIFF-APPELLANT:

HASHIM RAHMAN, Rahman Legal, New York, NY.

FOR DEFENDANT-APPELLEE:

MATTHEW K. FLANAGAN (Jenna L. Fierstein, *on the brief*), Catalano Gallardo & Petropoulos, LLP, Jericho, NY.

1 This is an appeal from a judgment of the United States District Court for the Southern
2 District of New York (Furman, *J.*).

3 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
4 **DECREED** that the judgment of the district court is **AFFIRMED**.

5 Plaintiff-Appellant Hattie Worley appeals the district court’s October 26, 2022 judgment
6 dismissing her amended complaint for failure to state a claim and the district court’s January 11,
7 2023 denial of her motion for reconsideration. *Worley v. Simon Meyrowitz & Meyrowitz, P.C.*,
8 No. 21CV08385(JMF), 2022 WL 14760633 (S.D.N.Y. Oct. 25, 2022), *reconsideration denied*,
9 2023 WL 158293 (S.D.N.Y. Jan. 11, 2023). Worley alleged violations of the Fair Debt Collection
10 Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, against Defendant-Appellee Simon
11 Meyrowitz & Meyrowitz, P.C. (“Meyrowitz”) in connection with its attempts to collect on a state-
12 court default judgment entered against her, on behalf of its client, the New York City Housing
13 Authority (“NYCHA”). Because Meyrowitz filed its motion prior to filing its answer, the district
14 court construed Meyrowitz’s Rule 12(c) motion for judgment on the pleadings as a motion under
15 Rule 12(b). The district court granted the motion on the grounds that (1) it lacked subject-matter
16 jurisdiction over several of Worley’s claims under the *Rooker-Feldman* doctrine and (2) Worley
17 failed to plead a plausible claim under the FDCPA as to her remaining claims. The district court
18 also denied Worley’s motion for reconsideration and leave to amend. Worley timely appealed the
19 judgment dismissing her amended complaint, as well as the order denying her motion for
20 reconsideration. We assume the parties’ familiarity with the underlying facts, the procedural
21 history, and the issues on appeal, which we reference only as necessary to explain our decision.

1 **BACKGROUND¹**

2 On June 4, 2019, a New York County Civil Court entered a default judgment against
3 Worley for \$9,816.08 after she was sued by her former landlord, NYCHA, for failure to pay rent.
4 Worley alleges that she first learned of the judgment two years later. On March 30, 2021, Worley
5 emailed NYCHA to explain that she had been having technical difficulties attempting to pay her
6 balance through the NYCHA “portal.” That same day, NYCHA responded to Worley via email,
7 informing her that her case was with the collection attorneys and giving Worley a phone number
8 to call to inquire about her debt. NYCHA’s email copied several other NYCHA email addresses
9 and a Meyrowitz email address. On March 31, 2021, Worley sent an email to a Meyrowitz email
10 address stating: “Please add to case file thank you.” Joint App’x at 57. A few days later, on April
11 2, 2021, Meyrowitz responded to Worley via email (the “April 2 Email”) on behalf of NYCHA to
12 inform her of the outstanding balance. *Id.* Worley then moved to vacate the default judgment,
13 which the state court denied.

14 Several months later, on October 11, 2021, Worley sued in federal court under the FDCPA,
15 alleging that Meyrowitz, by sending the April 2 Email, improperly attempted to collect what it
16 knew to be an unlawful debt stemming from the state-court judgment. The district court dismissed
17 Worley’s amended complaint with prejudice based on its finding that the April 2 Email from
18 Meyrowitz did not constitute an “initial communication,” as required for certain claims under the
19 FDCPA, because it was reactively sent in response to an email from Worley. The district court

¹ In evaluating the motion, we may consider the March 31, 2021 email and the April 2, 2021 email because they are attached to the amended complaint, and the March 30, 2021 emails among Worley, NYCHA, and Meyrowitz because they are integral to the amended complaint. *See L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011).

1 further concluded that it lacked jurisdiction over Worley’s remaining FDCPA claims based on the
2 *Rooker-Feldman* doctrine.

3 “We review a district court’s dismissal pursuant to Fed. R. Civ. P. 12(c) *de novo*, employing
4 the same standard applicable to dismissals pursuant to Fed. R. Civ. P. 12(b)(6).” *Johnson v.*
5 *Rowley*, 569 F.3d 40, 43 (2d Cir. 2009) (internal quotation marks and alteration omitted). When
6 reviewing a district court’s dismissal for lack of subject-matter jurisdiction, “we review factual
7 findings for clear error and legal conclusions *de novo*.” *Morrison v. Nat’l Australia Bank Ltd.*,
8 547 F.3d 167, 170 (2d Cir. 2008) (internal citation and quotation marks omitted), *aff’d*, 561 U.S.
9 247 (2010). We review a district court’s denial of reconsideration for abuse of discretion. *Devlin*
10 *v. Transp. Commc’ns Int’l Union*, 175 F.3d 121, 131–32 (2d Cir. 1999).

11 Whether evaluating a defendant’s motion for judgment on the pleadings pursuant to Rule
12 12(c) or a motion to dismiss pursuant to Rule 12(b)(6), a court must accept all facts set forth in the
13 amended complaint as true and draw all reasonable inferences in favor of the plaintiff. *See Vega*
14 *v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 78 (2d Cir. 2015). To survive either motion, a
15 plaintiff’s complaint “must contain sufficient factual matter, accepted as true, to state a claim to
16 relief that is plausible on its face.” *WC Capital Mgmt., LLC v. UBS Secs., LLC*, 711 F.3d 322, 328
17 (2d Cir. 2013) (quoting *Johnson v. Rowley*, 569 F.3d 40, 44 (2d Cir. 2009)).

18 DISCUSSION

19 First, Worley challenges the district court’s conclusion that Meyrowitz’s April 2 Email to
20 Worley was not an “initial communication” within the meaning of either 15 U.S.C. § 1692e(11)
21 or 15 U.S.C. § 1692g(a), relying on *Carlin v. Davidson Fink LLP*, 852 F.3d 207, 211 (2d Cir.
22 2017), for the proposition that a communication from a debt collector sent in reply to a

1 communication from a consumer can still sometimes be deemed an “initial communication” under
2 the FDCPA. However, Worley’s reliance on *Carlin* is misplaced as she, unlike the plaintiff in
3 *Carlin*, was never “prompted” by Meyrowitz to contact it regarding the debt collection. 852 F.3d
4 at 215 (holding debt collector’s letter in response to plaintiff’s inquiry about the debt constituted
5 an “initial communication” since plaintiff’s inquiry was prompted by the debt collector’s prior
6 action). Here, Meyrowitz sent the April 2 Email to Worley in response to her unprompted
7 communications first to NYCHA, and then to Meyrowitz, regarding her efforts to resolve her debt.
8 Because the April 2 Email from Meyrowitz was a response to Worley’s contact, it does not
9 constitute an “initial communication” for purposes of the FDCPA. As such, Worley has failed to
10 state a claim under either § 1692e(11) or § 1692g(a).

11 Second, Worley argues that the district court erred in dismissing the rest of her FDCPA
12 claims for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine because, she
13 asserts, these claims stem from injuries related to representations in the April 2 Email and not from
14 the state-court judgment itself. Under the *Rooker-Feldman* doctrine, lower federal courts lack
15 subject matter jurisdiction over claims that effectively challenge state-court judgments. The
16 *Rooker-Feldman* doctrine turns on the “causal relationship between the state-court judgment and
17 the injury of which the party complains in federal court.” *McKithen v. Brown*, 481 F.3d 89, 97–
18 98 (2d Cir. 2007).

19 Most of Worley’s remaining FDCPA claims are not independent claims; instead, the
20 injuries they allege are the result of the state-court judgment—and thus barred under *Rooker-*
21 *Feldman*. For example, her § 1692e(2) claim alleges that Meyrowitz made “a false representation

1 of the amount of the debt [she owed],”² her § 1692f(1) claim alleges that Meyrowitz attempted “to
2 collect . . . an amount that was not authorized by an agreement or permitted by law”, her
3 § 1692e(10) claim alleges that Meyrowitz attempted to collect a debt despite failing to properly
4 serve plaintiff. Joint App’x at 53–54. These complaints are the direct result of Meyrowitz’s
5 attempt to collect on the judgment from the state-court proceeding against Worley. Essentially,
6 because Worley fundamentally believes the state-court debt to be invalid, she contends that
7 Meyrowitz’s attempts to collect on the debt are also invalid. But this Court cannot review or undo
8 the state-court judgment. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293
9 (explaining that a plaintiff asking a federal court to undo a state-court judgment is the “paradigm
10 situation in which *Rooker-Feldman* precludes a federal district court from proceeding”) (quoting
11 *E.B. v. Verniero*, 119 F.3d 1077, 1090–91 (3d Cir. 1997)).

12 Because Worley’s last claim, that Meyrowitz misrepresented Worley’s debt through
13 “confusing, misleading, [and] deceptive” language, does not require the undoing of the state-court
14 judgment, it is not barred by the *Rooker-Feldman* doctrine. Joint App’x at 54. Indeed, this claim
15 speaks to the collection-related *conduct* of Meyrowitz as a debt collector for NYCHA rather than
16 to the validity of the state-court judgment itself. However, as the district court noted, Worley did
17 not argue this point in her opposition to Meyrowitz’s motion for judgment on the pleadings.
18 *Worley*, 2023 WL 158293, at *2 n.2. As a result, Worley abandoned any claim based on the

² While it may be possible to bring a § 1692e(2) claim without challenging the underlying judgment (and thus without implicating *Rooker-Feldman*), Worley’s claim directly challenges the validity of the underlying judgment because she alleges that Meyrowitz violated § 1692e(2) “by claiming interest on a judgment for a lawsuit that was not properly served” Joint App’x at 53.

1 argument that the email was confusing. *See Jackson v. Fed. Exp.*, 766 F.3d 189, 197–98 (2d Cir.
2 2014) (“Where a partial response to a motion is made—*i.e.*, referencing some claims or defenses
3 but not others . . . in the case of a counseled party, a court may, when appropriate, infer from a
4 party’s partial opposition that relevant claims or defenses that are not defended have been
5 abandoned.”). Even if this claim is not deemed abandoned, it fails, because the allegations in the
6 amended complaint amount to nothing more than [t]hreadbare recitals of the elements of a cause
7 of action, supported by mere conclusory statements” and thus “do not suffice.” *Ashcroft v. Iqbal*,
8 556 U.S. 662, 678 (2009).

9 We have considered Worley’s remaining arguments and find them to be without merit.
10 Accordingly, we **AFFIRM** the judgment of the district court.

11 FOR THE COURT:
12 Catherine O’Hagan Wolfe, Clerk of Court
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