APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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 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 1st day of November, two thousand seventeen.

PRESENT: JON O. NEWMAN,
JOSÉ A. CABRANES,
Circuit Judges.
ROBERT N. CHATIGNY,
*District Judge.**

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* Judge Robert N. Chatigny, of the United States District Court for the District of Connecticut, sitting by designation.

LUCIO CELLI,

Plaintiff-Appellant,

v.

RICHARD COLE, in his official and individual capacity; ANNE BERNARD, in her official and individual capacity; NEW YORK CITY DEPARTMENT OF EDUCATION; GRISMALDY LABOY-WILSON, in her official and individual capacity; COURTENAYE JACKSON-CHASE, in her official and individual capacity; SUSAN MANDEL, in her official and individual capacity,

Defendants-Appellees.

17-234-cv

FOR PLAINTIFF-APPELLANT:	Lucio Celli, *pro se*, Bronx, NY.
FOR DEFENDANT-APPELLEES:	Pamela Seider Dolgow and MacKenzie Fillow, Assistant Corporation Counsel, *for* Zachary W. Carter, Corporation Counsel, New York City Law Department, New York, NY.

Appeal from orders of December 24, 2016 and January 6, 2017 of the United States District Court for the Eastern District of New York (Brian M. Cogan, *Judge*).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of the District Court be and hereby is **AFFIRMED**.

Appellant Lucio Celli ("Celli"), proceeding *pro se*, appeals from the District Court's judgment dismissing his action against the New York City Department of Education ("DOE") and several individuals, based on Celli's failure to comply with Federal Rule of Civil Procedure 8. Celli also challenges the denial of his motion to recuse the District Court judge. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal.

We review a district court's denial of a recusal motion and its dismissal of a complaint on the basis of Rule 8 for abuse of discretion. *United States v. Morrison*, 153 F.3d 34, 48 (2d Cir. 1998) (denial of recusal); *Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995) (Rule 8 dismissal).

The District Court did not abuse its discretion in denying the recusal motion. Celli presented no evidence that would lead an "objective, disinterested observer" to question whether Judge Cogan was biased against Celli or *pro se* litigants generally. *United States v. Yousef*, 327 F.3d 56, 169 (2d Cir. 2003) (internal quotation marks omitted) (interpreting 28 U.S.C. § 455(a) (2000)).

The District Court also did not abuse its discretion in dismissing Celli's complaint for failure to comply with Rule 8. Rule 8 requires pleadings to "contain . . .

a short and plain statement of the claim showing that the pleader is entitled to relief." Fed R. Civ. P. 8(a)(2). "When a complaint fails to comply with [the Rule 8] requirements, the district court has the power, on motion or *sua sponte*, to dismiss the complaint or to strike such parts as are redundant or immaterial," *Simmons*, 49 F.3d at 86; however, dismissal for violation of Rule 8 "is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Although a Rule 8 dismissal generally should be without prejudice to the filing of a new complaint satisfying the requirements of that rule, *id.*, we have also stated the following:

> We do not mean to imply that the [district] court has no power to dismiss a prolix complaint without leave to amend in extraordinary circumstances, such as where leave to amend has previously been given and the successive pleadings remain prolix and unintelligible.

Id.

Celli submitted a ninety-five-page proposed third amended complaint that was ill structured and largely indecipherable. The District Court warned Celli that his complaint did not comply with Rule 8, provided guidance on how his complaint could become compliant with the rule, and advised him that failure to follow the court's instructions would result in the dismissal of his complaint. In response, Celli filed a

one-hundred-ninety-seven-page amended complaint that was more prolix and confusing than the previous one. In so doing, Celli refused to comply with Rule 8; ignored the District Court's detailed instructions as to the matters that could, and could not, be addressed in the complaint; insisted that none of his claims or factual assertions could, or would, be omitted; and attacked the District Court judge with profane insults. Celli's "unnecessary prolixity . . . place[d] an unjustified burden on the court and the part[ies] who must respond to it because they are forced to select the relevant material from a mass of verbiage." *Id.* (internal quotation marks and alteration omitted).

In sum, this case presents "extraordinary circumstances" within the meaning of *Salahuddin*, warranting dismissal without leave to file yet another amended complaint. Celli not only refused to follow Rule 8 and the District Court's instructions; he did so after filing several previous amended complaints and after being warned expressly that failure to comply with the court's directives would result in dismissal. Celli has shown brazen and profane resistance to the District Court's instructions, demonstrating that further efforts to convince Celli to file a reasonable complaint would be futile and making dismissal of his complaint without further leave to amend appropriate.

Since this appeal is frivolous, Celli is hereby ORDERED to show cause within thirty days why he should not be required to seek leave of this Court before filing any appeals or other documents. Failure to

file a timely response will result in the imposition of a leave-to-file sanction.

CONCLUSION

We have reviewed all of the arguments raised by Celli on appeal and find them to be without merit. For the foregoing reasons, we **AFFIRM** the District Court's orders of December 24, 2016 and January 6, 2017.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT **C/M**
EASTERN DISTRICT OF NEW YORK

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LUCIO CELLI,

Plaintiff,

– against –

NEW YORK CITY DEPARTMENT OF EDUCATION, *et al.*,

Defendants.

---------- X

ORDER

15-cv-3679 (BMC)(LB)

(Filed Dec. 24, 2016)

COGAN, District Judge.

Before the Court are several motions by the parties in this matter.

I. Plaintiff's Motion for My Recusal

Plaintiff Lucio Celli, proceeding *pro se*, moves to have me recuse myself from adjudicating the above-captioned matter. For the following reasons, his motion is denied.

A judge must recuse himself from any case in which he has "a personal bias or prejudice" against or in favor of one or more of the parties. 28 U.S.C. § 144; *see also* 28 U.S.C. § 455(b)(1) (requiring recusal where a judge has "a personal bias or prejudice concerning a party"). A determination regarding such personal bias

or prejudice should generally be made "on the basis of conduct extrajudicial in nature as distinguished from conduct within a judicial context." *In re IBM Corp.*, 618 F.2d 923, 928 (2d Cir. 1980). However, where the basis for an allegation of bias is a ruling of the Court premised on facts arising in the normal judicial process, then that ruling is insufficient to warrant recusal. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). The Supreme Court has held that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Id.*; *see also Gallop v. Cheney*, 645 F.3d 519, 520 (2d Cir. 2011) *per curiam*) ("Prior rulings are, ordinarily, not a basis for disqualification.").

A judge must also disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Under this statute, a judge should recuse himself if "a reasonable person, knowing all the facts, [would] conclude that the trial judge's impartiality could reasonably be questioned." *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 2007). This determination is committed to the sound discretion of the judge whose recusal is sought. *See United States v. Diaz*, 176 F.3d 52, 112 (2d Cir. 1999). And under § 455(a), a judicial ruling is also "almost never" sufficient to merit recusal. *Liteky*, 510 U.S. at 555; *see United States v. Colon*, 961 F.2d 41, 44 (2d Cir. 1992) ("[E]arlier adverse rulings, without more, do not provide a reasonable basis for questioning a judge's impartiality.").

Here, plaintiff's motion for my recusal is based predominantly on a previous Order where I pointed

out the deficiencies in his complaint and told him what he had to do to fix it.[1] The Order granted plaintiff a third opportunity to amend his complaint, gave him guidance to help him draft a complaint that would comply with Federal Rule of Civil Procedure 8, and advised him that certain of his statutory bases for relief were inapplicable to him (for example, the Fair Labor Standards Act).

No extrajudicial factors led to that Order. It was based purely on reviewing his complaint and finding that plaintiff had done nothing more than allege a litany of personal slights and workplace fights. Plaintiff characterized all of these slights as "white collar crimes" and repeated that allegation dozens of times. Under Supreme Court and Second Circuit precedent, the Order, which was based on my review of the complaint and the status of Magistrate Judge Bloom's attempts to manage the discovery in this matter, is not sufficient to warrant my recusal. *See Liteky*, 510 U.S.

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[1] Plaintiff has searched the internet to find some other basis for recusal. He has come up with: (1) criticism from a lawyer to whom I denied *pro hac vice* admission in a case where a jury ruled in favor of the City (the Second Circuit affirmed both the *pro hac vice* ruling and the jury verdict, and the lawyer has since been suspended by the Appellate Division, First Department for reasons, in part, arising out of the misconduct before me); (2) criticism by another *pro se* litigant who engaged in vexatious filings (the Second Circuit subsequently dismissed his appeals from my Orders and also warned that litigant to cease engaging in vexatious filings); and (3) the fact that approximately 30 years ago, I worked at the same large law firm as one of plaintiff's nemeses (although I never worked with her and haven't spoken to her for decades). The instant case has no relation to any of these allegations and there is no substance to any of them.

at 554-56; *Diaz*, 176 F.3d at 111-13. I therefore decline to recuse myself from this case.

II. Defendants' Motion to Dismiss the Third Amended Complaint

This Court previously afforded plaintiff *pro se* a third opportunity to amend his complaint, providing him guidance that not every slight yields a cause of action under the law and that his 95-page complaint violated Federal Rule of Procedure 8(a)'s requirement for a "short and plain statement of the claim." Rather than distill his allegations into a comprehensible complaint, plaintiff doubled down and filed a 198-page third amended complaint, filled with extensive rants, rambling allegations, and many vulgar *ad hominem* attacks against several individuals based on perceived wrongs. The "amended complaint, far from curing the deficiencies of [the plaintiff's] previously filed complaint[], only perpetuates and compounds them." *Sumay v. Salvation Army*, No. 95 CV 5109, 1996 WL 200620, at *3 (E.D.N.Y. April 23, 1996) (internal quotation marks omitted).

Plaintiff also filed several letters, attacking the undersigned with profanity-laced allegations. Moreover, he has now resorted to attacking counsel for defendants with additional *ad hominem* profanity, including spamming the email boxes of defendants' counsel, individuals within the Department of Education, and other third parties, including the U.S. Attorney for the Southern District of New York.

Given the foregoing, it is clear that, even with the special solicitude that courts afford *pro se* litigants, plaintiff's complaint should be dismissed. Rule 8 requires that a complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Moreover, "[e]ach averment of a pleading shall be simple, concise, and direct." Fed. R. Civ. P. 8(e)(1). These requirements are designed to compel a plaintiff to identify the relevant circumstances which he claims entitle him to relief in such a manner that the defendant is provided with fair notice of the claim and the ability to investigate. *See Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). "The statement should be short because unnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage." *Id.* (internal quotation marks and citation omitted).

Dismissal under Rule 8 "'is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.'" *Shomo v. New York*, 374 F. App'x 180, 182 (2d Cir. 2010) (quoting *Salahuddin*, 861 F.2d at 42). "[C]omplaints which ramble, which needlessly speculate, accuse and condemn, and which contain circuitous diatribes far removed from the heart of the claim do not comport with [Rule 8] and must be dismissed." *Coon v. Benson*, No. 09 Civ. 230, 2010 WL 769226, at *3 (S.D.N.Y. March 8, 2010) (internal quotation marks omitted); *accord Prezzi v. Schelter*,

469 F.2d 691 (2d Cir. 1972) ("the complaint contained a labyrinthian prolixity of unrelated and vituperative charges that defied comprehension"). A complaint, even where the plaintiff is *pro se*, will be dismissed in such circumstances. *See, e.g.*, *Paul v. Bailey*, No. 09 Civ. 5784, 2010 WL 3292673, at *4 (S.D.N.Y. July 21, 2010).

Even worse than his prior pleading, plaintiff's third amended complaint is a rambling, confused document, and it is impossible to discern the basis for plaintiff's claims or the facts on which the alleged claims exist. Although federal courts indulge *pro se* pleaders, the instant complaint does not conform even to this more patient standard and must be dismissed. *See, e.g.*, *Middleton v. United States*, No. 10-CV-6057, 2012 WL 394559, at *3 (E.D.N.Y. Feb. 7, 2012) (dismissing a complaint under Rule 8 because the plaintiff's "rambling, conclusory, possibly delusional allegations [were] so vague as to make it impossible for defendants to frame a response" (internal quotation marks omitted)); *Ramkissoon v. Blackstone Grp. L.P.*, No. 11-CV-5862, 2011 WL 6817935, at *3 (E.D.N.Y. Dec. 28, 2011) (dismissing a complaint where the allegations were "the product of delusion or fantasy").

This dismissal is with prejudice. "Where, as here, the Court has put Plaintiff on notice of the deficiencies in his original complaint and given him an opportunity to correct those deficiencies in an Amended Complaint, but Plaintiff has failed to do so, dismissal with prejudice is appropriate." *Coon*, 2010 WL 769226, at *4; *see also Sumay*, 1996 WL 200620, at *4 (dismissing with prejudice second amended complaint that failed to

correct deficiencies of prior pleadings). Because plaintiff has failed to comply with the Court's instructions and has instead decided to attack the Court, it is clear that plaintiff is unable to present facts adequate to state a claim and that further opportunities to amend would not only be futile, but would result in a further waste of the Court's and the parties' time and resources.

For the foregoing reasons, defendants' motion to dismiss is granted.

III. Plaintiff's Rule 60 Motion

Plaintiff, apparently aware that his third amended complaint failed to meet the requirements of Rule 8, filed a preemptive motion pursuant to Federal Rule of Civil Procedure 60 for relief from a judgment of this Court. Not only is the motion premature, it is predominantly an *ad hominem* attack on the Court and raises no new facts for my consideration; therefore, plaintiff's Rule 60 motion is also denied.

IV. Defendants' Motion for Sanctions Against Plaintiff

As mentioned above, plaintiff has resorted to spamming defense counsel, as well as several individuals, both within the Department of Education and unrelated third parties. He has also made threats against them to continue harassing them. Such behavior may warrant sanctions. For example, in *Cameron v.*

Lambert, 07 Civ. 9258, 2008 WL 4823596 (S.D.N.Y. Nov. 7, 2008), the court found that "it may be that, because he is *pro se*, plaintiff is entitled to some latitude generally, but he is not entitled to any latitude when it comes to threatening and inappropriate conduct." 2008 WL 4823596 at *4. Therefore, it is ordered that plaintiff has until January 9, 2017, to respond to defendants' motion for sanctions.

CONCLUSION

Plaintiff's motion for my recusal [40] is denied, plaintiff's Rule 60 motion [51] is denied, defendants' motion to dismiss [42] is granted, and plaintiff's complaint is dismissed with prejudice. The Clerk of Court is directed to enter judgment accordingly. Plaintiff has until January 9, 2017 to file any opposition to defendants' motion for sanctions. The Court certifies pursuant to 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 purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Digitally signed by
Brian M. Cogan
U.S.D.J.

Dated: Brooklyn, New York
December 24, 2016

APPENDIX C

UNITED STATES DISTRICT COURT **C/M**
EASTERN DISTRICT OF NEW YORK

---------- X

LUCIO CELLI,

Plaintiff,

– against –

NEW YORK CITY DEPARTMENT OF EDUCATION, *et al.*,

Defendants.

---------- X

ORDER

15-cv-3679 (BMC)(LB)

(Filed Jan. 9, 2017)

COGAN, District Judge.

Before the Court is "part 2" to plaintiff's opposition to defendants' motion to dismiss the complaint, which I will construe as a motion for reconsideration, given that I already dismissed the complaint after reviewing plaintiff's "part 1." For the following reasons, I deny reconsideration.

At the outset, I reject plaintiff's attempt to respond to defendants' motion in pieces. When I set December 26 as the deadline for his opposition, that did not mean that he could submit to the Court serial filings until that date. Therefore, when plaintiff filed his 21-page opposition[1] to dismissal on December 20,

[1] My Individual Practices cap oppositions at 25 pages, making his 21-page submission an appropriate length.

irrespective of it being styled as "part 1," that permitted me to evaluate the arguments raised and rule on the motion, which I did on December 24. On December 26, plaintiff filed a 76-page "part 2" in opposition to the motion to dismiss.[2] Although I could have simply disregarded part 2, I have reviewed the entirety of plaintiff's cumulatively 97-page opposition to dismissal and find it without merit.

Plaintiff's opposition, much like many of his filings, is a rambling, repetitive collection of conclusory allegations and attacks against people he believes have committed "white collar crimes" against him. The term "white collar crimes" is a label that plaintiff attaches to substantially all of his interactions with workplace colleagues when he perceives that they have wronged him or lied to him in some way. However plaintiff characterizes them, workplace slights and arguments are neither viable claims for fraud nor are they meritorious under Title VII, the Americans with Disabilities Act, the Fair Labor Standards Act, and any other statute or common law claim to which plaintiff has referred.

Plaintiff's opposition includes discussions of what is very likely over one hundred cases from across the country, all of which fall into one of two categories: they are either (i) inapplicable to plaintiff based on his own

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[2] As a result, I could have fairly disregarded all content appearing after page four of plaintiff's "part 2," for failure to comply with my Individual Practices, which require all litigants seeking to file a brief in excess of 25 pages to move the Court for permission.

summary of the cases, or (ii) sound bites that plaintiff wrongly believes are applicable to his case. The only effect that his opposition has is to add further prolixity.

The law governing Title VII and ADA claims is straight-forward. Federal Rule of Civil Procedure 8(a)'s requirement for a "short and plain statement" is a low bar. Yet, in the most fundamental ways, plaintiff has continued to fail to articulate the basis for his claims. Instead, he spends 97 pages defending his 198-page complaint. Nearly 300 pages of additional attacks and case law discussion do not give defendants any fair notice about the claims against them, nor do they apprise the Court of the issues. The special solicitude given to *pro se* plaintiffs does not mean that the Court must forage for glimmers of factually relevant allegations to construe plaintiff's complaint. *See, e.g.*, *Prezzi v. Schelter*, 469 F.2d 691 (2d Cir. 1972) ("the complaint contained a labyrinthian prolixity of unrelated and vituperative charges that defied comprehension"); *Middleton v. United States*, No. 10-CV-6057, 2012 WL 394559, at *3 (E.D.N.Y. Feb. 7, 2012); *Paul v. Bailey*, No. 09 Civ. 5784, 2010 WL 3292673, at *4 (S.D.N.Y. July 21, 2010).

Plaintiff additionally argues that even if the Court dismisses his complaint, that he should be granted leave to amend again, and that failure to grant such leave is reversible error. Whether it is error or not will be up to the Circuit. This Court believes that under the applicable precedent, it is not. The Court has given plaintiff three separate opportunities to amend his complaint, each time providing him guidance or

resources. The last opportunity resulted in plaintiff disregarding the Court's guidance that his 95-page complaint violated Federal Rule of Procedure 8(a)'s requirement for a "short and plain statement of the claim," and his filing of a third amended complaint that was over twice as long. As I noted in my December 24 Order, his third amended complaint, "far from curing the deficiencies of [the plaintiff's] previously filed complaint[], only perpetuate[d] and compound[ed] them." *Sumay v. Salvation Army*, No. 95 CV 5109, 1996 WL 200620, at *3 (E.D.N.Y. April 23, 1996) (internal quotation marks omitted). Given the course of plaintiff's conduct so far, there was no reason and there continues to be no reason to provide him further leave to amend his complaint.

As stated in the December 24 Order, plaintiff's complaint is filled with extensive rants, rambling allegations, and many vulgar *ad hominem* attacks against several individuals based on perceived wrongs. It "ramble[d]," "needlessly speculate[d], accuse[d] and condemn[ed]," it "contain[ed] circuitous diatribes far removed from the heart of the claim," and it was properly dismissed. *Coon v. Benson*, No. 09 Civ. 230, 2010 WL 769226, at *3 (S.D.N.Y. March 8, 2010) (internal quotation marks omitted). Plaintiff's "part 1" was similarly replete with profanity, *ad hominem* attacks, and meandering diatribes, and although his "part 2" is less profane, it rambles, accuses, and repeats at length.

As stated previously, plaintiff's complaint is dismissed with prejudice. "Where, as here, the Court has put Plaintiff on notice of the deficiencies in his original

complaint and given him an opportunity to correct those deficiencies in an Amended Complaint, but Plaintiff has failed to do so, dismissal with prejudice is appropriate." *Coon*, 2010 WL 769226, at *4.

CONCLUSION

Plaintiff's motion for reconsideration is denied. The Court certifies pursuant to 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 purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Digitally signed by
Brian M. Cogan
U.S.D.J.

Dated: Brooklyn, New York
January 6, 2017

APPENDIX D

UNITED STATES DISTRICT COURT **C/M**
EASTERN DISTRICT OF NEW YORK

LUCIO CELLI,	:	
Plaintiff,	:	**ORDER**
– against –	:	15-cv-3679 (BMC)(LB)
NEW YORK CITY DEPARTMENT OF EDUCATION, *et al.*,	:	(Filed Oct. 23, 2016)
Defendants.	:	

COGAN, District Judge.

Plaintiff *pro se* has filed a proposed third amended complaint. It still fails to state a claim in the most fundamental ways even given the indulgence afforded *pro se* litigants. He will be given one more chance to file a complaint that meets basic pleading requirements or the case will be dismissed. He must observe the following admonitions.

1. This complaint is 95 pages long. It thereby violates the most basic rule of federal pleading, Rule 8(a) of the Federal Rules of Civil Procedure, which states that a claim for relief must contain a "short and plain statement of the claim." The claim that plaintiff has submitted is not short, and it is not plain. The reason for Rule 8(a)'s requirement of a short and plain

statement is so that the Court can understand what a plaintiff is saying. I cannot understand plaintiff's claim because the pleading is so long and filled with so many details that it is not comprehensible. Plaintiff may be under the misimpression that he sounds more like a lawyer if he makes a longer complaint. It is just the opposite. A good lawyer will have a very short complaint. The purpose of the complaint is not to argue or prove the case, but to say just the bare minimum necessary to state a claim.

2. This should be a simple case to plead. The essence of plaintiff's claim is that each defendant undertook one or more acts that was unfair and in each instance, that act was motivated, at least in part, by the fact that plaintiff was disabled or Caucasian or both. All plaintiff has to do is go defendant by defendant, state what each defendant did to him that was unfair, and explain why plaintiff thinks each unfair act was motivated by his disability or his race.

3. I want to be very clear by what I mean by "unfair." The law does not prohibit an employer from acting unfairly. If an employer wants to fire all people who have red hair, it can do that, even though that would be unfair. If it wants to fire all people who drink tea instead of coffee, it can do that too, even though that would be unfair. If it wants to fire people because it accepts the first complaint it hears about an employee without giving the employee a chance to defend himself, it can do that too, even though that would be unfair. (There may be prohibitions in the collective bargaining agreement that prohibit these kinds of

actions, but those can only be enforced by the union, and so have nothing to do with plaintiff's case.) What "unfair" means in the law is something that the law expressly prohibits. In this case, that means only one of two things – an action taken against plaintiff because he has a disability; or an action taken against plaintiff because he is white. Nothing else that happened to him is considered "unfair" in the eyes of the law.

4. Thus, when plaintiff files his next (and final) proposed complaint, plaintiff has to distinguish in his own mind between bad things that happened to him that he thinks were unfair, and bad things that happened to him that he thinks were unfair because they were motivated by the fact that he is disabled and/or white. The former category should not be mentioned in this complaint because the law does not protect him against those things. It only protects him against unfair acts that were motivated by his disability or race. Plaintiff has to remember that this is not a grievance proceeding. As far as this Court is concerned, his employer did not have to treat him fairly. It only has to refrain from treating him unfairly based on his race and disability. If plaintiff keeps that distinction in mind, it should cut out a substantial part of this overlong complaint.

5. For this reason, Mr. Morelli and Mr. Tand and their law firms should not be mentioned in plaintiff's complaint. If plaintiff has a legal malpractice claim against his former attorneys because they did a bad job in representing him, he should bring it in state court

where it belongs. He is not alleging that they did a bad job because he is white or disabled, and so they have no place in this lawsuit. It seems to me that Angela Bassman and the NYSPERB and New York State (the latter of which is immune anyway) fall into the same category. He is not alleging that Ms. Bassman ruled against him because he is white or disabled. He is just contending that her ruling was unfair because it didn't accept his view of the facts. That is not enough for a claim in this Court and it just muddies the waters.

6. I am well familiar with the constitutional and statutory provisions under which plaintiff is suing. He must not do what he attempts at the beginning of the current proposed complaint and plead every form of relief he is seeking tied to particular constitutional and statutory provisions over and over again. He should cite the statutes once at the beginning, just once, and he should not mention the relief he wants until the Wherefore clause at the end, without reference to the particular statute that he thinks entitles him to that relief. I will decide what statutes or constitutional provisions entitle him to what relief.

7. In addition, he must drop the references to the Fair Labor Standards Act and the Labor Management Relations Act. He is not suing for unpaid minimum wage and overtime, and he is not suing his union for inadequate representation. Those statutes have nothing to do with this case. The Taylor Law also has nothing to do with this case. Plaintiff was either discriminated against because he is white and/or disabled, or not. That is all there is to this case, and if

plaintiff does not stick to the facts showing those claims and those facts only, the case is going to be dismissed.

8. The proposed third amended complaint is dismissed. Magistrate Judge Bloom is meeting with the parties this week and will set a schedule for submission of a new and final proposed third amended complaint at that time. Because the time until the conference is short and plaintiff is *pro se*, defendants' counsel is directed to find a way to get this Order to plaintiff on Monday, October 24, 2016, whether by email or otherwise, so he has a chance to think about it before the conference with Judge Bloom.

SO ORDERED.

Digitally signed by
Brian M. Cogan
U.S.D.J.

Dated: Brooklyn, New York
October 23, 2016

APPENDIX E

1) **§ 35 of the Judiciary Act of 1789 states**:

That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein.

2) **US Constitution Article I, Clause 10**:

No State shall enter any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

3) **US Constitution Article IV, Clause 2, clause states**:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

4) Fourteenth Amendment, §1

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law

5) New York State's Constitution

§17. Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed.

No laborer, worker or mechanic, in the employ of a contractor or sub-contractor engaged in the performance of any public work, shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency; nor shall he or she be paid less than the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected or used.

6) Taylor Law and Triborough Amendment

The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government. These policies are best effectuated by (a) granting to public

employees the right of organization and representation, (b) requiring the state, local governments and other political subdivisions to negotiate with, and enter into written agreements with employee organizations representing public employees which have been certified or recognized, (c) encouraging such public employers and such employee organizations to agree upon procedures for resolving disputes, (d) creating a public employment relations board to assist in resolving disputes between public employees and public employers, and (e) continuing the prohibition against strikes by public employees and providing remedies for violations of such prohibition.

7) New York State Constitution Article 1, §17

Employees shall have the right to organize and to bargain collectively through representatives of their own choosing. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

8) §1981

a)Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and

property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b)"Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.