UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

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 25th day of September, two thousand and eighteen,

Before:

JOSÉ A. CABRANES,
GERARD E. LYNCH,
Circuit Judges,
EDWARD R. KORMAN,
*District Judge.**

John Hassan,

Plaintiff - Appellant,

v.

Chief Administrative Judge Lawrence K. Marks, Supervising Judge Karen Kerr, Holiday Beach Property Owners Association, Inc.,

Defendants - Appellees.

ORDER
Docket No. 17-3167

Appellant having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

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* Judge Edward R. Korman, of the United States District Court for the Eastern District of New York, sitting by designation.

MANDATE

17-3167
Hassan v. Marks

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 22nd day of August, two thousand eighteen.

PRESENT: JOSÉ A. CABRANES,
GERARD E. LYNCH,
Circuit Judges,
EDWARD R. KORMAN,
District Judge.[*]

JOHN HASSAN,
Plaintiff-Appellant,
v.
CHIEF ADMINISTRATIVE JUDGE LAWRENCE K. MARKS, SUPERVISING JUDGE KAREN KERR, HOLIDAY BEACH PROPERTY OWNERS ASSOCIATION, INC.,
Defendants-Appellees.[†]

17-3167

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[*] Judge Edward R. Korman, of the United States District Court for the Eastern District of New York, sitting by designation.

[†] The Clerk of Court is directed to amend the caption as shown above.

FOR PLAINTIFF-APPELLANT:	John Hassan, *pro se*, Center Moriches, NY.
FOR DEFENDANTS-APPELLEES Chief Administrative Judge Lawrence K. Marks and Supervising Judge Karen Kerr:	Barbara D. Underwood, Solicitor General, Andrew W. Amend, Senior Assistant Solicitor General, and Mark H. Shawhan, Assistant Solicitor General, *for* Eric T. Schneiderman, Attorney General, State of New York, New York, NY.
FOR DEFENDANT-APPELLEE Holiday Beach Property Owners Association, Inc.:	Robert L. Folks, Robert L. Folks & Assocs., LLP, Melville, NY.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Joan M. Azrack, *Judge*).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the September 26, 2017 judgment of the District Court be and hereby is **AFFIRMED**.

Plaintiff-Appellant John Hassan ("Hassan"), proceeding *pro se*, appeals from a judgment of the District Court adopting the August 15, 2017 Report and Recommendation of United States Magistrate Judge Steven I. Locke and dismissing Hassan's complaint in its entirety. Hassan sued Defendants-Appellees Chief Administrative Judge Lawrence K. Marks and Supervising Judge Karen Kerr (together, the "State Defendants"), and Holiday Beach Property Owners Association, Inc. ("Holiday Beach"), alleging that the State Defendants and Holiday Beach conspired to deprive him of easement rights purportedly permitting him to use certain beach-front property. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review *de novo* the dismissal of a complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), accepting as true all factual allegations in the complaint and drawing all reasonable inferences in Hassan's favor. *See Liranzo v. United States*, 690 F.3d 78, 84 (2d Cir. 2012) (Rule 12(b)(1)); *Biro v. Condé Nast*, 807 F.3d 541, 544 (2d Cir. 2015) (Rule 12(b)(6)). To survive a motion to dismiss for failure to state a claim, the complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also*

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Though we must accept as true Hassan's factual allegations, we disregard any unadorned "legal conclusions." *Iqbal*, 556 U.S. at 678.

As a threshold matter, both Holiday Beach and the State Defendants argue that the District Court lacked subject matter jurisdiction over this action. Holiday Beach contends that the *Rooker-Feldman* doctrine precludes consideration of Hassan's claims. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482, 486-87 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16 (1923). We conclude that the doctrine does not apply. To the extent Hassan raises issues related to the 1980s litigation in which he intervened, he is not a "state-court loser[]" for the purposes of the doctrine. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Although the state court denied Hassan's motion for summary judgment in that action, there was no final judgment, and the litigation was dismissed for failure to prosecute. *See Green v. Mattingly*, 585 F.3d 97, 102-03 (2d Cir. 2009) (holding that party was not a "state-court loser" for purposes of the *Rooker-Feldman* doctrine where state court "proceedings were dismissed without a final order of disposition"). Hassan's challenge to the 2016 small claims suit is not barred by *Rooker-Feldman* because the small claims ruling post-dated the filing of the federal action. *See Exxon Mobil Corp.*, 544 U.S. at 284 (requiring that state court judgment be "rendered before the district court proceedings commenced").

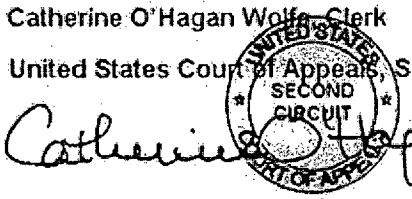
With respect to the State Defendants, the District Court correctly concluded that Hassan's claims are barred by the Eleventh Amendment and by the doctrine of judicial immunity. Insofar as Hassan asserts claims against the State Defendants in their official capacity, the State Defendants are shielded by sovereign immunity. *Gollomp v. Spitzer*, 568 F.3d 355, 365-68 (2d Cir. 2009) (holding that the New York Unified Court System is an "arm of the State" and affirming dismissal of § 1983 claim on sovereign-immunity grounds); *In re Deposit Ins. Agency*, 482 F.3d 612, 617 (2d Cir. 2007) (sovereign immunity protects "a state official acting in his or her official capacity"). And to the extent the complaint could be construed as asserting individual-capacity claims against the State Defendants, they are protected by the doctrine of judicial immunity. As the District Court observed, Hassan's claims arise out of the State Defendants' conduct in their judicial capacity, and Hassan has not alleged that the State Defendants acted in the clear absence of jurisdiction. *See Tucker v. Outwater*, 118 F.3d 930, 933 (2d Cir. 1997) (judicial immunity bars claims against judge acting in "judicial capacity" unless he or she "acted in the clear absence of all jurisdiction").

We also see no error in the District Court's conclusion that the complaint fails to state a claim. Even construed liberally, the complaint contains no factual allegations supporting Hassan's assertion that the State Defendants and Holiday Beach conspired to deprive Hassan of his easement rights—the predicate for Hassan's various claims. Because the "conspiracy allegations are strictly conclusory," the District Court correctly concluded that Hassan's claims should be dismissed. *Ciambriello v. Cty. of Nassau*, 292 F.3d 307, 325 (2d Cir. 2002) (affirming dismissal of § 1983 conspiracy claim).

We have considered Hassan's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN HASSAN,

Plaintiff,

- against -

CHIEF ADMINISTRATIVE JUDGE LAWRENCE K. MARKS, SUPERVISING JUDGE KAREN KERR, and HOLIDAY BEACH PROPERTY OWNERS ASSN, INC.,

Defendants

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JUDGMENT
CV 16-1653 (JMA)(SIL)

An Order of Honorable Joan M. Azrack, United States District Judge, having been filed on September 25, 2017, adopting the August 15, 2017 Report and Recommendations of United States Magistrate Judge Arlene R. Lindsay with respect to all arguments except that premised on the Rooker-Feldman doctrine, dismissing the complaint in its entirety, and directing the Clerk of Court to close this case, it is

ORDERED AND ADJUDGED that plaintiff John Hassan take nothing of defendants Chief Administrative Judge Lawrence K. Marks, Supervising Judge Karen Kerr, and Holiday Beach Property Owners Ass., Inc.; that the complaint is dismissed in its entirety; and that this case is hereby closed.

Dated: Central Islip, New York
September 26, 2017

DOUGLAS C. PALMER
CLERK OF THE COURT

BY: /s/ JAMES J. TORITTO
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

For Online Publication Only

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JOHN HASSAN

Plaintiff,

-against-

ORDER

16-cv-1653 (JMA) (SIL)

CHIEF ADMINISTRATIVE JUDGE LAWRENCE K. MARKS, SUPERVISING JUDGE KAREN KERR, and HOLIDAY BEACH PROPERTY OWNERS ASSN, INC.,

Defendants.

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AZRACK, United States District Judge:

Before the Court are pro se plaintiff John Hassan's objections to Magistrate Judge Steven I. Locke's Report and Recommendation dated August 15, 2017 (the "R&R").

Plaintiff has advanced a number of claims against the defendants, all of which arise from his allegations that the "New York State Courts" have been "colluding" with defendant Holiday Beach Property Owners Assn., Inc. "to create a private governmental authority to seize residents' real estate easements." (See Compl. § III(B).) Defendants Chief Administrative Judge Lawrence K. Marks and Supervising Judge Karen Kerr (the "State Defendants") and Holiday Beach Property (the "Private Defendant") each moved to dismiss plaintiff's complaint in its entirety pursuant to Rules 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure. All defendants advanced arguments premised on the Rooker-Feldman doctrine and the doctrine of Younger abstention. All defendants also argued that plaintiff has failed to state any claims upon which relief may be granted. Separately, the State Defendants advanced a number of arguments premised on their immunity from suit and on the absence of personal jurisdiction due to plaintiff's improper service,

and the Private Defendant advanced arguments premised on the doctrine of collateral estoppel and on timeliness.

In the R&R, Judge Locke recommends granting the pending motions to dismiss on all proffered grounds. Plaintiff has submitted, ostensibly as an objection, a one-and-a-half page handwritten letter. The letter does not clearly indicate the portions of R&R to which plaintiff objects, but the Court discusses the putative objections below.

The Court assumes familiarity with the facts underlying this case, which are referenced only as necessary to explain the Court's decision.

I. STANDARD OF REVIEW

Those portions of a report and recommendation to which there is no specific reasoned objection are reviewed for clear error. See Pall Corp. v. Entegris, Inc., 249 F.R.D. 48, 51 (E.D.N.Y. 2008).

In reviewing a magistrate judge's report and recommendation, a court must "make a de novo determination of those portions of the report or . . . recommendations to which objection[s] [are] made." 28 U.S.C. § 636(b)(1); see also Brown v. Ebert, No. 05–CV–5579, 2006 WL 3851152, at *2 (S.D.N.Y. Dec. 29, 2006). The court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

II. DISCUSSION

Plaintiff appears to object to two aspects of Judge Locke's R&R. First, plaintiff states that his suit "is directed at the New York State Court System and Lawrence K. Marks and Karen Kerr as Supervisory Administrative Officers – NOT IN ANY JUDICIAL CAPACITY." (Pl's Obj.) The Court interprets this as an objection to Judge Locke's recommendation that the State Defendants are immune from suit either due to their judicial immunity or under the Eleventh

Amendment. Second, plaintiff claims that the state court "did not conclude or even hold a hearing before I initiated my action in U.S. District Court," which the Court interprets as an objection to the application of the Rooker-Feldman doctrine. (Pl's Obj.) The Court cannot discern any additional objections in plaintiff's filings.[1]

Plaintiff has not objected to Judge Locke's recommendations that the complaint be dismissed in its entirety (a) under the doctrine of Younger absention and (b) because the plaintiff has failed to state any claims upon which relief may be granted. Further, plaintiff has not objected to Judge Locke's recommendation that the complaint be dismissed as against the State Defendants due to plaintiff's failure to properly serve the complaint on those defendants. Plaintiff has also failed to object to Judge Locke's recommendations that the complaint be dismissed as against the Private Defendant based on the doctrine of collateral estoppel and on timeliness. All of those recommendations are therefore reviewed for clear error. Having reviewed Judge Locke's thorough and well-reasoned R&R, the Court finds no clear error and therefore adopts the recommendation that the complaint should be dismissed for all of the above reasons.

After conducting a de novo review of Judge Locke's recommendation concerning the applicability of judicial immunity, the Court finds plaintiff's objection to be meritless. Despite plaintiff's contention that he did not name the State Defendants "in any judicial capacity," his complaint makes clear that his entire dispute with the State Defendants arises out of their roles in the earlier state court action. Further, plaintiff has alleged no facts whatsoever suggesting that the State Defendants acted in the clear absence of jurisdiction. Thus, the Court adopts Judge Locke's R&R and finds that plaintiff's claims against the State Defendants are also barred by both the

[1] The remainder of plaintiff's objections appear to consist of allegations concerning "felony crimes being committed" and a request that "the U.S. Dept. of Justice . . . investigate these federal crimes" because to do otherwise "would allow these defendants and other similar court systems and persons to burst into a national Holocaust of corruption as is the organized criminal ways of 100 years ago." (Pl's Obj.)

Eleventh Amendment and by the doctrine of judicial immunity. See, e.g., Tucker v. Outwater, 118 F.3d 930, 936 (2d Cir. 1997) (finding that judicial immunity protects a state judge even where she "may well have acted in excess of her jurisdiction"); McKnight v. Middleton, 699 F. Supp. 2d 507, 521–23 (E.D.N.Y. 2010) (finding that "the New York State Unified Court System is entitled to sovereign immunity as an 'arm of the State'" under the Eleventh Amendment) (quoting Gollomp v. Spitzer, 568 F.3d 355, 368 (2d Cir. 2009)).

Finally, it is unnecessary for the Court to address plaintiff's objections concerning Rooker-Feldman because Judge Locke's other recommendations, which the Court has already adopted, are sufficient to dismiss the case in its entirety.

For the reasons laid out above, the Court adopts the R&R with respect to all arguments except that premised on the Rooker-Feldman doctrine and, accordingly, dismisses the complaint in its entirety. The Court does not reach the question of whether dismissal is also warranted under Rooker-Feldman. The Clerk of Court is therefore directed to close the case.

SO ORDERED.

Date: September 25, 2017
Central Islip, New York

/s/ (JMA)
Joan M. Azrack
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN HASSAN,

Plaintiff,

-against-

CHIEF ADMINISTRATIVE JUDGE LAWRENCE K. MARKS, SUPERVISING JUDGE KAREN KERR, and HOLIDAY BEACH PROPERTY OWNERS ASSN, INC.,

Defendants.

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REPORT AND RECOMMENDATION
16-CV-1653 (JMA)(SIL)

LOCKE, Magistrate Judge:

Presently before the Court, on referral from Honorable Joan M. Azrack for Report and Recommendation, are Defendants' Chief Administrative Judge Lawrence K. Marks ("Judge Marks") and Supervising Judge Karen Kerr ("Judge Kerr") (collectively "State Defendants"), and Holiday Beach Property Owner's Association, Inc. ("Holiday Beach" or "Private Defendant") respective motions to dismiss *pro se* Plaintiff John Hassan's ("Hassan" or "Plaintiff") Complaint ("Compl."). *See* motion to dismiss ("State Motion"), Docket Entry ("DE") [23]; motion to dismiss ("Holiday Beach Motion"), DE [17]; *see also* Compl., DE [1]. On April 6, 2016, Plaintiff commenced the instant action seeking money damages and equitable relief arising from Defendants' alleged conspiracy to divert property maintenance fees and interfere with his property easement rights.[1] *See id.* On April 12, 2017, Judge Azrack

[1] The Court construes the action against the State Defendants as being brought pursuant to 42 U.S.C. § 1983.

referred these motions to this Court for a Report and Recommendation as to whether they should be granted. *See* DE [26]. For the reasons set forth herein, the Court respectfully recommends that the both motions be granted in their entirety and that the Complaint be dismissed with prejudice.

I. STATEMENT OF RELEVANT FACTS

The following facts, set forth in the Complaint and the attached exhibits, are presumed true for purposes of Defendants' motions.

The gravamen of Plaintiff's claims appears to be that, starting in 1958, the "New York State Courts" have been "colluding" with Defendant Holiday Beach "to create a private governmental authority to seize residents' real estate easements." Compl. at § III(B). Hassan owns property in Center Moriches, New York, which abuts certain beach and boating easements that are subject to the control of Holiday Beach. *See id.* at § III(C). In exchange for the payment of membership dues, Holiday Beach allows homeowners the right to use the easements. *See id.* According to Plaintiff, the Private Defendant has illegally diverted these maintenance fees and interfered with his easement rights. *See id.*

In October 1987, Hassan intervened in a pending lawsuit filed in Suffolk County Supreme Court against Holiday Beach and asserted that: (a) Holiday Beach had no authority to collect membership dues; and (b) that Holiday Beach should account for all membership dues paid. *See Schrabal v. Holiday Beach Prop. Owners Ass'n, Inc.*, 195 A.D.2d 453, 601 N.Y.S.2d 818 (2d Dep't 1993). During the course of litigation, Plaintiff moved

for summary judgment, which was denied by the Suffolk County Supreme Court, and that denial was affirmed by the Appellate Division, Second Department. *See id.* Eventually, Plaintiff abandoned this action, which was administratively purged in August 1998. *See* Docket Report of *Schrabal v. Holiday Beach Property*, No. 11573/1987 (Suffolk County Sup. Ct.), DE [18-1]. Holiday Beach subsequently initiated a lawsuit in Suffolk County District Court against Hassan for unpaid membership dues. *See* Compl. at § III(C). On June 6, 2016, after a hearing, Mr. Hassan was found liable to the Private Defendant for $1,212.50 in damages. *See id.* Plaintiff commenced the instant action seeking, among other things, to "quash [the] lawsuits filed by [Holiday Beach]," account for payments, and punitive damages. *See id.* at § V.

II. PROCEDURAL HISTORY

As set forth above, Hassan filed his Complaint on April 6, 2016. *See* DE [1]. The Complaint seeks money damages and equitable relief for: 1) Racketeering; 2) Extortion; 3) Slander of Title; and 4) Unspecified violations of Article IV, Section 4, and the Fifth and Fourteenth Amendments of the U.S. Constitution.[2] *See generally* Compl. In response, on August 19, 2016 and October 21, 2016, the Private and State Defendants, respectively, moved pursuant to the Federal Rules of Civil Procedure to dismiss on a variety of grounds, including for a lack of subject matter and personal

[2] Plaintiff repeatedly cites "Section 4, Clause 1" without identifying the relevant Article within the United States Constitution. While Article I, Section 4 of the Constitution discusses the election of Senators and Representatives, Article IV, Section 1 ensures that states respect and honor the state laws and court orders of other states. Accordingly, the Court construes Plaintiff's allegation as invoking Article IV, Section 1 of the Constitution.

jurisdiction and for failure to state a claim, and on April 6, 2017, Judge Azrack referred the motions to this Court for Report and Recommendation. *See* DE [26].

III. LEGAL STANDARD

A. Fed. R. Civ. P. 12(b)(1)

Pursuant to Article III, Section 2 of the United States Constitution, "the jurisdiction of the federal courts is limited to 'Cases' and 'Controversies,' which 'restricts the authority of the federal courts to resolving 'the legal rights of litigants in actual controversies.'" *Amityville Mobile Home Civic Ass'n v. Town of Babylon*, No. 14-CV-2369, 2015 WL 1412655, at *2 (E.D.N.Y. Mar. 26, 2015) (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 133 S. Ct. 1523, 1528 (2013)). In the absence of a case or controversy, Fed. R. Civ. P. 12(b)(1) "provides that a party may move to dismiss a case for lack of subject matter jurisdiction." *Amityville Mobile Home*, 2015 WL 1412655, at *3. The Second Circuit has held that, "[t]he hallmark of a case or controversy is the presence of adverse interests between parties who have a substantial personal stake in the outcome of the litigation." *Evans v. Lynn*, 537 F.2d 571, 591 (2d Cir. 1975); *see also Ayazi v. N. Y. C. Bd. of Educ.*, No. 98-CV-7461, 2006 WL 1995134, at *2 (E.D.N.Y. July 14, 2006), *vacated on other grounds*, 315 Fed.App'x. 313 (2d Cir. 2009) ("Without standing, this court does not have jurisdiction to hear the claim."). Therefore, to survive a defendant's motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), "a plaintiff must allege facts 'that affirmatively and plausibly suggest that it has standing to sue.'" *Brady v. Basic*

Research, L.L.C., 101 F. Supp. 3d 217, 227 (E.D.N.Y. 2015) (quoting *Amidax Trading Grp. v. S.W.I.F.T. SCRL*, 671 F.3d 140, 145 (2d Cir. 2011)).

In deciding a motion to dismiss for lack of subject matter jurisdiction, "a court must accept as true all material factual allegations in the complaint and refrain from drawing inferences in favor of the party contesting jurisdiction." *U.S. ex rel. Phipps v. Comprehensive Cmty. Dev. Corp.*, 152 F. Supp. 2d 443, 449 (S.D.N.Y. 2001). However, "[w]here subject matter jurisdiction is challenged, . . . a court may consider materials outside the pleadings, such as affidavits, documents and testimony." *Id.*; *see also All. For Envtl. Renewal, Inc. v. Pyramid Crossgates Co.*, 436 F.3d 82, 89, n. 8 (2d Cir. 2006) ("The presentation of affidavits on a motion under Rule 12(b)(1) . . . does not convert the motion into a motion for summary judgment under Rule 56.").

B. Fed. R. Civ. P. 12(b)(2)

"A plaintiff bears the burden of demonstrating personal jurisdiction over the person or entity against whom it seeks to bring suit." *Penguin Grp. (USA) Inc. v. Am. Buddha*, 609 F.3d 30, 34 (2d Cir. 2010) (citation omitted). Federal Rule of Civil Procedure 12(b)(2) "permits a defendant to challenge a court's personal jurisdiction over it prior to the filing of an answer or the commencement of discovery." *A.W.L.I. Group, Inc. v. Amber Freight Shipping Lines*, 828 F.Supp.2d 557, 562 (E.D.N.Y .2011). In considering a motion to dismiss for lack of personal jurisdiction, a court may rely on materials beyond the pleadings. *Phillips v. Reed Group, Ltd.*, 955 F.Supp.2d 201, 225 (S.D.N.Y .2013) (when considering a 12(b)(2) motion, "the Court may also rely on submitted affidavits and other supporting materials submitted in

relation to the motion"). "When responding to a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that the court has jurisdiction over the defendant." *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 171 F.3d 779, 784 (2d Cir. 1999). Where a court opts to determine the jurisdictional issue without an evidentiary hearing or discovery, a plaintiff need "make only a prima facie showing of jurisdiction through its own affidavits and supporting materials." *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981). When, however, a court permits the parties to engage in jurisdictional discovery, the party seeking to establish jurisdiction bears "the burden of proving by a preponderance of the evidence that personal jurisdiction exists." *Landoil Resources Corp. v. Alexander & Alexander Servs.*, Inc., 918 F.2d 1039, 1043 (2d Cir. 1991). Under either scenario, the "pleadings and affidavits are construed in the light most favorable to the plaintiff, and all doubts are resolved in its favor." *Mazloum v. International Commerce Corp.*, 829 F.Supp.2d 223, 227 (S.D.N.Y. 2011).

C. Fed. R. Civ. P. 12(b)(6)

To survive a motion to dismiss pursuant to Rule 12(b)(6), a complaint must set forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009). But, a pleading "that offers only 'labels and conclusions' or 'a formulaic recitation of the elements of

a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1965). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557, 127 S. Ct. at 1966).

In reviewing a motion to dismiss, the Court must accept the factual allegations set forth in the complaint as true and draw all reasonable inferences in favor of the non-moving party. *See LaFaro v. New York Cardiothoracic Grp., PLLC*, 570 F.3d 471, 475 (2d Cir. 2009). Where the complaint is filed by a *pro se* litigant, the Court must also be careful to "interpret the complaint liberally to raise the strongest claims that the allegations suggest." *Rosen v. N. Shore Tower Apartments, Inc.*, 11-CV-00752, 2011 WL 2550733, at *2 (E.D.N.Y. June 27, 2011) (citing *Cruz v. Gomez*, 202 F.3d 593, 597 (2d Cir. 2000)). Notwithstanding, "threadbare recitals of the elements of a cause of action" that are supported by "conclusory" statements and mere speculation are inadequate and subject to dismissal. *See Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (internal quotation and citation omitted).

In deciding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court may consider:

> (1) the factual allegations in the complaint, which are accepted as true; (2) documents attached to the complaint as an exhibit or incorporated . . . by reference; (3) matters of which judicial notice may be taken; and (4) documents upon whose terms and effect the complaint relies heavily, *i.e.*, documents that are "integral" to the complaint.

Calcutti v. SBU, Inc., 273 F. Supp. 2d 488, 498 (S.D.N.Y. 2003) (internal citation omitted); *see also Miotto v. Yonkers Pub. Sch.*, 534 F. Supp. 2d 422, 425 (S.D.N.Y.

2008) ("[I]n assessing the legal sufficiency of a claim, the court may consider only the facts alleged in the complaint, and any document attached as an exhibit to the complaint or incorporated in it by reference."). The Court is also permitted to "take judicial notice of documents in the public record, which includes records and reports of administrative bodies." *Vale v. Great Neck Water Pollution Control Dist.*, 80 F.Supp.3d 426, 433 (E.D.N.Y. 2015) (quoting *Volpe v. Nassau County*, 915 F.Supp.2d 284, 291 (E.D.N.Y. 2013)).

IV. DISCUSSION

Applying the standards outlined above, and for the reasons set forth herein, the Court respectfully recommends that Defendants' motions to dismiss the Complaint be granted in their entirety. Initially, the Court considers the State and Private Defendants' argument that the Court lacks jurisdiction to hear this case under the *Rooker-Feldman* doctrine and abstain from issuing injunctive relief under the *Younger* Doctrine. The Court then examines the remaining arguments contained in the State and Private Defendants' motions in turn.

A. *Rooker-Feldman* Doctrine

The Defendants' initial argument is that the Court lacks jurisdiction to hear this case under the *Rooker-Feldman* doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149 (1923) (holding that only the Supreme Court can entertain a direct appeal from a state court judgment); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483, n.3, 103 S.Ct. 1303, 1308 (1983) (finding that federal courts do not have jurisdiction over claims which are "inextricably intertwined" with

prior state court determinations). The *Rooker-Feldman* doctrine "recognizes that 'federal district courts lack jurisdiction over suits that are, in substance, appeals from state-court judgments.'" *Alston v. Sebelius*, CV 13-4537, 2014 U.S. Dist. LEXIS 123613, at *23-*24 (E.D.N.Y. July 31, 2014) (Report and Recommendation), *adopted by* 2014 U.S. Dist. LEXIS 122970 (E.D.N.Y. Sept. 2, 2014) (quoting *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 84 (2d Cir. 2005)). " Underlying the *Rooker-Feldman* doctrine is the principle, expressed by Congress in 28 U.S.C. § 1257, that within the federal judicial system, only the Supreme Court may review state-court decisions." *Green v. Mattingly*, 585 F.3d 97, 101 (2d Cir. 2009) (quoting *Hoblock*, 422 F.3d at 85) (internal citations omitted).

The Second Circuit has identified four requirements that must be met before the *Rooker-Feldman* doctrine applies:

> First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must 'complain [] of injuries caused by [a] state-court judgment[.]' Third, the plaintiff must 'invite district court review and rejection of [that] judgment [].' Fourth, the state-court judgment must have been 'rendered before the district court proceedings commenced'—i.e., *Rooker-Feldman* has no application to federal-court suits proceeding in parallel with ongoing state-court litigation.

Hoblock, 422 F.3d at 85 (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 282, 125 S. Ct. 1517, 1521-22 (2005)). This doctrine also prohibits a district court review of state court judgments to claims that are "inextricably intertwined" with a state court's determinations. *Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002). A claim is inextricably intertwined with the state court judgment

if "the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14, 25, 107 S. Ct. 1519, 1533 (1987). In addition, a plaintiff cannot circumvent *Rooker–Feldman* by recasting his claim as a federal civil rights violation. *See Davidson v. Garry*, 956 F. Supp. 265, 268–69 (E.D.N.Y. 1996).

The Court finds that all four factors compelling the application of the *Rooker-Feldman* doctrine, and therefore dismissal of Plaintiff's claims, are present here. Initially, Hassan's allegations, construed liberally in his favor, essentially challenge the validity of his unpaid membership dues at issue in Hassan's state court real property action. In broad terms, Plaintiff claims that "New York State Courts [are] colluding with Holiday Beach Property Owners Ass'n Inc., to create a governmental authority to seize residents real estate easements to create [a] commercial marina and charge residents exorbitant dues[,] penalties and interest[,] and prevent access to easement [to] real estate beach and boating easements." Compl. § II, B. Plaintiff's instant claims, therefore, presuppose and hinge entirely upon the allegation that Holiday Beach was not legally entitled to collect the unpaid membership dues in the first place. Hassan's claims as to his unpaid membership dues, however, were fully and fairly litigated in state court and he lost. Moreover, Plaintiff is complaining of injuries caused by the Suffolk County District Court judgment, namely, money damages in the amount of $1,212.50 awarded to Holiday Beach. In essence, Hassan is inviting this Court to review the merits of that judgment insofar as it was improperly based upon alleged collusion between the New York State Courts and

Holiday Beach. And, upon such review, Plaintiff seeks to have this Court "quash" the Private Defendant's State Court lawsuit. Finally, it is undisputed that the Suffolk County District Court action concluded and the judgment was rendered prior to the commencement of this federal action. As a result, Plaintiff's claims are precluded by the *Rooker-Feldman* doctrine and, consequently, this Court lacks subject matter jurisdiction over them. Accordingly, the Court recommends that Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(1) be granted and Hassan's claims be dismissed.

B. Younger Abstention

Alternatively, to the extent Plaintiff seeks to enjoin the state court proceeding, the Court rejects the claim under *Younger v. Harris*, 401 U.S. 37, 43–44, 91 S. Ct. 746, 750 (1971). In *Younger*, the Supreme Court held that federal courts should abstain from granting injunctive relief against a state criminal prosecution instituted in good faith unless certain exceptions are met. "*Younger* is not a jurisdictional bar based on Article III requirements, but instead a prudential limitation on the court's exercise of jurisdiction grounded in equitable considerations of comity." *Spargo v. New York State Comm'n on Judicial Conduct*, 351 F.3d 65, 74 (2d Cir. 2003) (internal citations omitted). In *Sprint Commc'ns, Inc. v. Jacobs*, ___ U.S. ____, 134 S. Ct. 584, 591-92 (2013), the Supreme Court held that the *Younger* abstention doctrine applies only to three classes of state court proceedings: (1) state criminal prosecutions; (2) civil enforcement proceedings; and (3) civil proceedings that "implicate a State's interest in enforcing the orders and judgments of its courts." *Id.* at 588. Notably, in the "interests of comity and federalism," the *Younger*

abstention doctrine requires federal courts to abstain from jurisdiction "whenever federal claims have been or could be presented in ongoing state judicial proceedings that concern important state interests." *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 237–38, 104 S. Ct. 2321, 2327–28 (1984). The Second Circuit has held that "*Younger* abstention is appropriate when: 1) there is an ongoing state proceeding; 2) an important state interest is implicated; and 3) the plaintiff has an avenue open for review of constitutional claims in the state court." *Hansel v. Town Court for the Town of Springfield*, N.Y., 56 F.3d 391, 393 (2d Cir. 1995). Exceptions to *Younger* abstention should be made only on a "showing of bad faith, harassment, or . . . other unusual circumstance." *Younger*, 401 U.S. at 54, 91 S. Ct. at 755.

All three *Younger* requirements are met here. As to the first and second requirements, Hassan cannot contest that enforcement of his Suffolk County District court action is an ongoing state proceeding, and that the New York State judiciary has an interest in enforcing its own orders. Finally, the Court presumes that the state appellate courts provide Plaintiff with an adequate opportunity to raise federal constitutional claims. *See Spargo v. New York State Comm'n on Judicial Conduct*, 351 F.3d 65, 77 (2d Cir. 2003) ("[I]n conducting the *Younger* inquiry, considerations of comity 'preclude[ ] any presumption that the state courts will not safeguard federal constitutional rights.'"). Again, construed liberally, Plaintiff argues that the alleged collusion between the Suffolk County District Court and Holiday Beach constitute bad faith, harassment, or other unusual circumstance that bars the application of the *Younger* doctrine. However, "[m]ere conclusory allegations of bias are insufficient to

overcome *Younger*." *Kirschner*, 225 F.3d at 234. Moreover, "the genesis of the so-called bad faith exception was in the context of criminal prosecutions," and thus, to invoke this exception, "a federal plaintiff must show that the state proceeding was initiated with and is animated by a retaliatory, harassing, or other illegitimate motive." *Diamond "D" Const. Corp. v. McGowan*, 282 F.3d 191, 198–199 (2d Cir. 2002). Therefore, Hassan cannot prevail on this exception, as here it was Holiday Beach, not the State, who initiated the relevant state court proceedings. Plaintiff's claims of alleged collusion also do not excuse his failure to exhaust his state appellate remedies. As the Second Circuit has explained:

> Fundamental to *Younger* is the principle that "a party . . . must exhaust his state appellate remedies before seeking relief in the District Court[;] . . . the considerations of comity and federalism which underlie *Younger* permit no truncation of the exhaustion requirement merely because the losing party in the state court . . . believes that his chances of success on appeal are not auspicious.

Glatzer v. Barone, 394 F. Appx. 763, 765 (2d Cir. 2010) (alterations in original) (quoting *Huffman v. Persue*, 420 U.S. 592, 608, 95 S. Ct. 1200, 1210 (1975)). Accordingly, the Court recommends dismissing Plaintiff's claims for injunctive relief under the *Younger* doctrine.

C. Claims Against the State Defendants

In addition to the preceding arguments, the State Defendants make, *inter alia*, three arguments in favor of dismissing the Complaint. Initially, the State Defendants argue that Hassan's claims against Judges Marks and Kerr are immune from suit based on the Eleventh Amendment and the doctrine of absolute immunity.

Additionally, the State Defendants move to dismiss pursuant to Federal Rule of Procedure 12(b)(2) due to a lack of personal jurisdiction.

i. Eleventh Amendment Immunity and the State Defendants

Initially, the Court turns to the State Defendants' argument that Plaintiff's claims, to the extent they are brought against them in their official capacity as judges representing New York State, are barred by the Eleventh Amendment. As a result, the Court lacks subject matter jurisdiction over these claims and they should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1). The Eleventh Amendment bars suits in federal court by private parties against a state absent consent to suit or an express statutory waiver of the state's otherwise presumed sovereign immunity. *Board of Trustees of University of Alabama v. Garrett,* 531 U.S. 356, 362, 121 S. Ct. 955, 962 (2001) ("The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court."). This same immunity from suit is extended to a state's agencies and departments, including judges, understanding them to be arms of the state. *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,* 506 U.S. 139, 146, 113 S. Ct. 684, 688 (1993); *see also McKnight v. Middleton*, 699 F. Supp, 2d 507, 521-23 (E.D.N.Y. 2010) (dismissing claims asserted against Kings County family court and family court judge in her official capacity on sovereign immunity grounds). Thus, a claim that is barred by a state's sovereign immunity is properly dismissed pursuant to the Eleventh Amendment for a lack of subject matter jurisdiction. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54, 116 S. Ct. 1114, 1121 (1996) ("For over a century [the Supreme Court has] reaffirmed that federal jurisdiction over suits against unconsenting States 'was not

contemplated by the Constitution when establishing the judicial power of the United States.'"); *see also Bryant v. Steele*, 25 F. Supp. 3d 233, 241 (E.D.N.Y. 2014) (citing *Va. Office for Prot. & Advocacy v. Stewart,* 563 U.S. 247, 252, 131 S. Ct. 1632, 1637 (2011) (noting that "the Eleventh Amendment ... confirm[s] the structural understanding that States entered the Union with their sovereign immunity intact, unlimited by Article Ill's jurisdictional grant")).[3] As explained in other decisions of this Court, the Eleventh Amendment serves to prevent state governments from being sued in federal court under § 1983. *See Willner v. Town of North Hempstead*, 977 F. Supp. 182, 193 (E.D.N.Y. Sept. 11, 1997).

Here, Hassan seeks money damages and injunctive relief against the State Defendants, both of whom are alleged to be state actors sued in their official capacities. *See, e.g., Caldwell v. Pesce*, 83 F. Supp. 3d 472, 482 (E.D.N.Y. 2015), *aff'd*, 639 F. App'x 38 (2d Cir. 2016), *cert. denied*, 137 S. Ct. 307 (2016), *reh'g denied*, 137 S. Ct. 587 (2016) (dismissing claims against current state court judges based on Eleventh Amendment grounds); *see also Casaburro v. Giuliani*, 986 F.Supp. 176, 182

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[3] The Court is mindful that the question of "whether the claim of sovereign immunity [under the Eleventh Amendment] constitutes a true issue of subject matter jurisdiction or is more appropriately viewed as an affirmative defense" has not been definitively answered by the Supreme Court or the Second Circuit. *Carver v. Nassau Cty. Interim Fin. Auth.*, 730 F.3d 150, 156 (2d Cir. 2013) (citing *Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 391, 118 S. Ct. 2047, 2053 (1998) (leaving open the question of whether "Eleventh Amendment immunity is a matter of subject-matter jurisdiction"); *Woods v. Rondout Valley Cent. Sch. Dist. Bd. of Educ.*, 466 F.3d 232, 237-39 (2d Cir. 2006) (holding that the burden of proof regarding sovereign immunity rests on the party asserting it as is true of affirmative defenses generally)). However, the Supreme Court repeatedly and recently has discussed the Eleventh Amendment as a jurisdictional bar and has confirmed that a state's sovereign immunity conferred by it can be raised for the first time on appeal. *See Woods*, 466 F.3d at 237-38 (collecting cases). Both holdings are consistent with the issue being essentially jurisdictional. *See id.* As the exact characterization of Eleventh Amendment immunity does not substantively impact this Court's Report and Recommendation that the Complaint be dismissed, the Court assumes it to be jurisdictional and does not analyze the issue further.

(S.D.N.Y. 1997) (granting state court clerk's motion to dismiss official capacity suit on Eleventh Amendment grounds). Accordingly, Plaintiff's claims are barred by the Eleventh Amendment and the State Defendants' motion to dismiss on this basis should also be granted.

ii. Judicial Immunity and the State Defendants

The State Defendants argue in the alternative that, to the extent that Hassan's claims against them are based on their conduct allegedly committed in their individual capacities, those claims are barred by the doctrine of absolute judicial immunity. It is well-established that judges are immune from liability for damages for acts committed within the scope of their jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11–12, 112 S. Ct. 286, 288 (1991) (per curiam) (finding that judges have absolute immunity from suits for damages arising out of judicial acts performed in their judicial capacities); *see also Stump v. Sparkman*, 435 U.S. 349, 359, 98 S. Ct. 1099, 1106 (1978); *Fields v. Soloff*, 920 F.2d 1114, 1119 (2d Cir. 1990). A judge will not be deprived of this immunity even when the action was taken in error, done maliciously or was in excess of his authority. *See Stump*, 435 U.S. at 356-58, 98 S. Ct. at 1104. This absolute immunity is necessary to permit judges to act independently and without fear of consequences to themselves. *Stump*, 435 U.S. at 355, 98 S. Ct. at 1104.

A judge will be denied immunity for money damages where he or she (i) acts in the clear absence of all jurisdiction and (ii) knew or must have known that he or she was acting in such a manner. *Tucker v. Outwater*, 118 F.3d 930, 936 (2d Cir. 1997). The first element is an "objective" inquiry, *i.e.*, "that no reasonable

judge would have thought jurisdiction proper." *Maestri v. Jutkofsky*, 860 F.2d 50, 53 (2d Cir. 1988). The second element is a subjective inquiry as to whether "the judge whose actions are questioned actually knew or must have known" of the jurisdictional defect. *Id.*

The Federal Courts Improvement Act of 1996 also extends judicial immunity to most actions seeking prospective injunctive relief. Specifically, that law 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." Federal Courts Improvement Act of 1996, § 309(c), Pub. L. No. 104-317, 110 Stat. 3847,3853 (1996) (amending 42 U.S.C. § 1983); *see, e.g.*, *Huminski v. Corsones*, 396 F.3d 53, 74 (2d Cir. 2005).

Applying the standards above, to the extent Hassan's claims are brought against the State Defendants in their individual capacities, they are barred by judicial immunity. Here, the Suffolk County State Court is clearly vested with subject matter jurisdiction over Plaintiff's real property case. The underlying State Court rulings regarding the real property dispute were also well within their jurisdiction. Therefore, it cannot be said that the Suffolk County District Court acted in clear absence of its jurisdiction. Moreover, because Hassan does not allege, and the record does not suggest, that a declaratory decree was violated, absolute judicial immunity bars injunctive relief. Accordingly, the Court recommends that the State

Defendants' motion to dismiss be granted and that Hassan's claims against them be dismissed in their entirety.

iii. Personal Jurisdiction over State Defendants

The State Defendants also argue that the Court lacks personal jurisdiction under Fed. R. Civ. P. 12(b)(2) due to inadequate service. "Valid service of process is an essential element of personal jurisdiction." *Daval Steel Prod. v. M.V. Juraj Dalmatinac*, 718 F.Supp. 159, 161 (S.D.N.Y. 1989). Turning to the applicable rules for service of process, Federal Rule of Civil Procedure 4(e) governs the manner in which individuals within a judicial district of the United States may be served. *See* Fed. R. Civ. P. 4(e). According to this rule, service may be completed by:

> (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
>
> (2) doing any of the following:
>
> (A) delivering a copy of the summons and of the complaint to the individual personally;
>
> (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
>
> (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e).

As the first subsection of Rule 4(e) incorporates state law, the Court may, in this case, looks to applicable statute, section 308 of the New York Civil Practice Law and Rules ("C.P.L.R."). *See* N.Y. C.P.L.R. § 308. Pursuant to section 308, service upon an individual may be effectuated by:

> 1. [] delivering the summons within the state to the person to be served; or
>
> 2. [] delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or . . . at his or her actual place of business . . .; [or]
>
> 3. [] delivering the summons within the state to the agent for service of the person to be served . . . ; [or]
>
> 4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or . . . at his or her actual place of business . . .; [or]
>
> 5. in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.

N.Y. C.P.L.R. § 308; *see Allen v. Nassau Cty. Exec. Office*, No. CV 09-1520, 2011 WL 1061019, at *5 (E.D.N.Y. Feb. 15, 2011), (Report and Recommendation), *adopted sub nom. Allen v. Suozzi*, 2011 WL 1059147 (E.D.N.Y. Mar. 21, 2011) (reciting same standard). The method of service attempted by plaintiff most resembles that permitted under § 308(2).

The court finds that Hassan has not complied with the requirements of § 308(2). The State Defendants argue that they have not been properly served with a copy or an original of Plaintiff's Summons and Complaint. As indicated in Plaintiff's Opposition papers, while he mailed a certified copy of the Summons and Complaint to the State Defendants' actual place of business, he failed to deliver the

Summons and Complaint to a person of suitable age and discretion at the actual place of business. *See* Response in Opposition, DE [24] at 4. Accordingly, as Hassan has failed to properly serve the State Defendants, this Court lacks personal jurisdiction over them.

However, Federal Rule of Civil Procedure 4(m) provides, in relevant part, that "provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m). Good cause, in the context of Rule 4(m), is measured against (a) the plaintiff's reasonable efforts to effect service, and (b) the prejudice to defendant from the delay. *See Husowitz v. Am. Postal Workers Union*, 190 F.R.D. 53, 57 (E.D.N.Y. 1999) (internal citations omitted). Here, Plaintiff did in fact attempt to properly serve Judges Marks and Kerr in a diligent manner. *See* Response in Opposition, DE [24] at 4. Initially, Plaintiff mailed the Summons and Complaint to their place of business, but as described in his Opposition Papers, was denied entry to deliver the Summons and Complaint at the State Defendants' actual place of business. *See id.* Considering Plaintiff's *pro se* status, the Court therefore recommends granting the State Defendants' to dismiss the Complaint pursuant to Rule 12(b)(2), but without prejudice. Accordingly, the Court recommends granting the State Defendants' motion to dismiss for lack of personal jurisdiction, and also allow Hassan to serve his Complaint within 90 days of the Court's order on the motion to dismiss as may be appropriate if the Court decides not to dismiss Plaintiff's claims with prejudice.

D. Claims against the Private Defendant

Holiday Beach also moves to dismiss under Fed. R. Civ. P. 12(b)(6). Initially, the Private Defendant argues for dismissal pursuant to the doctrine of collateral estoppel. In addition, Holiday Beach argues that Hassan has failed to state a claim for which relief can be granted. Holiday Beach makes two arguments to this end. Specifically, Holiday Beach argues that Plaintiff's unspecified constitutional claims: (a) are untimely; and (b) do not allege facts sufficient to plausibly put forth a valid cause of action.

i. Collateral Estoppel

The Private Defendant argues that Plaintiff's claims are barred by the doctrine of collateral estoppel. The doctrine of collateral estoppel prevents a party from re-litigating an issue of fact or law that has been decided in an earlier suit. *See Wilder v. Thomas*, 854 F.2d 605, 616 (2d Cir. 1988), *cert. denied*, 489 U.S. 1053, 109 S.Ct. 1314 (1989). Federal courts are required by 28 U.S.C. § 1738 to give effect to collateral estoppel rules of the state that rendered a prior judgment where the same issues are later raised in a federal proceeding. *Id.* (citing *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104 S.Ct. 892, 896 (1984)). Under New York law, there are two requirements for collateral estoppel: (1) an identity of issues that were necessarily decided in the previous action and are decisive in the present action; and (2) a full and fair opportunity to contest the decision now said to be controlling. *See Schwartz v. Pub. Adm'r of Bronx*, 24 N.Y.2d 65, 73, 298 N.Y.S.2d 955, 961 (1969). New York courts adhere to a broad transactional analysis "barring a later claim arising out of the same factual grouping as an earlier litigated claim even if the later

claim is based on different legal theories or seeks dissimilar or additional relief." *Niles v. Wilshire Inv. Grp.*, LLC, 859 F. Supp. 2d 308, 338 (E.D.N.Y. 2012) (internal citations omitted). "Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Montana v. U.S.*, 440 U.S. 147, 153, 99 S. Ct. 970, 973, (1979). "What matters for collateral estoppel purposes is that the issues are identical, not the claims themselves." *Cerny v. Rayburn*, 972 F.Supp.2d 308, 317 (E.D.N.Y. 2013) (internal citations omitted). In determining whether a party had a full and fair opportunity to litigate the issue, New York courts direct that "the various elements which make up the realities of litigation should be explored, including the size of the claim, the forum of the prior litigation, the use of initiative, the extent of the litigation, the competence and experience of counsel, the availability of new evidence, indications of a compromise verdict, differences in the applicable law and foreseeability of future litigation." *Kosakow v. New Rochelle Radiology Assocs., P.C.*, 274 F.3d 706, 734 (2d Cir. 2001) (quoting *Schwartz*, 24 N.Y.2d at 72, 298 N.Y.S.2d at 961) (internal punctuation omitted).

Here, Hassan raises issues regarding his property maintenance fees and easements right that were that were previously decided in the prior state court actions and are decisive in the present litigation. As described above, Holiday Beach's previous action asserts claims premised upon the issue of whether the Private Defendant may collect property maintenance fees based on asserted easement rights.

This is precisely the underlying issue Plaintiff seeks to litigate here. Thus, the Court would be unable to grant Plaintiff relief on any of his asserted causes of action, which emanate from his property dispute, without making findings directly contrary to those made in the previous state court proceedings. *See LaFleur v. Whitman*, 300 F.3d 256, 273 (2d Cir.2002) (concluding that issues raised by petitioner in federal action were identical to issues raised in the state court action because the court could not grant the requested relief "without directly contradicting the state court on issues it has previously decided.") Accordingly, the Court concludes that Holiday Beach has established an identity of issues for purposes of collateral estoppel.

Plaintiff also had a full and fair opportunity to contest the previous decisions. In looking at Hassan's Suffolk County District Court proceedings, they demonstrate that he fully participated in the hearing and ultimately lost. *See* Response in Opposition, DE [24] at 4. Additionally, Plaintiff also had a full and fair opportunity to contest these issues in Suffolk County Supreme Court and abandoned his claims after several unfavorable decisions. Accordingly, Hassan has received a full and fair opportunity to contest the prior decision. As a result, Plaintiff is collaterally estopped from re-litigating issues stemming from his underlying property dispute in the instant action and the Private Defendant's motion to dismiss should be granted under the doctrine of collateral estoppel.

ii. Hassan's Constitutional Claims

This Court further finds that all of Hassan's constitutional claims fail as they are untimely, and in the alternative, fail to state a claim upon which relief can be

granted.[4] Plaintiff advances several claims arising under the United States Constitution, including unspecified violations of Article IV, Section 4, and the Fifth and Fourteenth Amendments that date back to 1958. Initially, Holiday Beach moves to dismiss Plaintiff's claims on timeliness grounds. Where Congress has not provided a specific statute of limitations period for a federal cause of action, "the applicable limitations period . . . is that specified in the most nearly analogous limitations statute of the forum state." *Muto v. CBS Corp.*, 668 F.3d 53, 57 (2d Cir. 2012) (internal quotations omitted). New York State has a three-year statute of limitations governing such claims. *See* CPLR § 214(5). A federal claim accrues when the plaintiff "knows or has reason to know of the injury that is the basis of the action." *M.D. v. Southington Bd. of Educ.*, 334 F.3d 217, 221 (2d Cir. 2003). Here, Hassan complains of alleged collusion to interfere with his real estate easements that date back to 1958. Moreover, Hassan's prior involvement with state court proceedings demonstrate that he knew or had reason to know of his injury in 1987. *See Schrabal*, 195 A.D.2d at 453, 601 N.Y.S.2d at 818. Therefore, to the extent that Plaintiff knew or had reason to know of his injury, his three-year limitations period began no later than October 1987, and ended in October 1990. Accordingly, because the Complaint was filed on April 6, 2016, over sixteen years later, Plaintiff's federal claims are untimely and should be dismissed.

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[4] The Court notes that, if the claims against the County Defendants are not dismissed on *Rooker-Feldman*, *Younger*, Eleventh Amendment or judicial immunity grounds, they should also be deemed untimely and failing to state a claim upon which relief can be granted, and therefore, dismissed on these additional alternate bases.

Alternatively, Plaintiff's Complaint also fails to plausibly state a cause of action. While a *pro se* complaint must be construed liberally, *see Hill v. Curcione*, 657 F.3d 116, 122 (2d Cir. 2001), it must still plausibly state a claim for relief. *See Harris v. Mills*, 572 F.3d 66, 73 (2d Cir. 2009). Initially, the Court is unable to discern any relation between Plaintiff's invocation of Article IV, Section 1 of the Constitution and any of his factual allegations. Moreover, to the extent that Hassan's Fifth Amendment claims are based on alleged Takings and Due Process Clause violations, they fail because he does not allege a specific state action. *See Story v. Green*, 978 F.2d 60, 62 (2d Cir. 1992) ("To state a claim either the Due Process Clause or the Takings Clause, plaintiffs [are] required to allege facts showing that state action deprived them of a protected liberty interest."). To the extent that Hassan's Fourteenth Amendment claims are based on alleged Equal Protection Clause violations, they similarly fail as he alleges that all property owners subject to the authority of Holiday Beach were treated similarly. Finally, Hassan's Complaint alleges no underlying facts to support his allegations of a conspiratorial or collusive scheme. Accordingly, Holiday Beach's motion to dismiss should also be granted on both timeliness grounds and for failure to state a cause of action.

E. Supplemental Jurisdiction Over State-Law Claims

Having recommended that each of Plaintiff's federal claims be dismissed, the Court further recommends that the Court decline to exercise supplemental jurisdiction over any remaining state law causes of action. *See Quiroz v. U.S. Bank Nat'l Ass'n*, No. 10-CV-2485, 2011 WL 2471733, at *8 (E.D.N.Y. May 16, 2011)

(recommending that the district court decline to exercise supplemental jurisdiction) (Report and Recommendation), *adopted by*, 2011 WL 3471497 (E.D.N.Y. Aug. 5, 2011). Supplemental jurisdiction over Plaintiff's state-law claims is governed by 28 U.S.C. § 1367, which provides that, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy . . . " 28 U.S.C. § 1367(a). However, a district court may decline to exercise supplemental jurisdiction where, as here, all claims over which it had original jurisdiction have been dismissed. 28 U.S.C. § 1367(c). When such circumstances arise prior to the commencement of trial, Second Circuit precedent consistently recognizes that, "the balance of factors to be considered," which includes "judicial economy, convenience, fairness and comity," "will point toward declining to exercise jurisdiction over the remaining state-law claims." *Valencia v. Lee,* 316 F.3d 299, 305 (2d Cir. 2003).

Defendants' filed their Rule 12 motions to dismiss the Complaint in lieu of an Answer. *See* DE [17], [23]. Thus, this litigation is still in its initial stages and no discovery has taken place. Accordingly, the Court respectfully recommends that the Defendants' motion to dismiss be granted as to Plaintiff's federal claims and the District Court decline to exercise supplemental jurisdiction over Hassan's state-law causes of action. *See Quiroz*, 2011 WL 2471733, at *8 (recommending that the district court decline to exercise supplemental jurisdiction over state law claim once federal claims were dismissed).

F. Leave to File an Amended Complaint

While leave to amend a complaint should be freely given "when justice so requires," Fed. R. Civ. P. 15(a)(2), it is "within the sound discretion of the district court to grant or deny leave to amend." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007). However, the court must be mindful of the unique context of a *pro se* complaint and "should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Aquino v. Prudential Life & Cas. Ins. Co.*, 419 F. Supp. 2d 259, 278 (E.D.N.Y. 2005); *see also Thompson v. Carter*, 284 F.3d 411, 419 (2d Cir. 2002) ("The liberal pleading standards applicable to *pro se* civil rights complaints in this circuit require that the district court give [plaintiff] an opportunity to flesh out his somewhat skeletal complaints before dismissing them"). Nevertheless, "a district court may deny leave to amend when, as here, amendment would be futile because the problem with the claim 'is substantive ... [and] better pleading will not cure it.'" *Reynolds v. City of Mount Vernon*, 14-CV-1481, 2015 WL 1514894, at *5 (S.D.N.Y. Apr. 1, 2015) (quoting *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000)).

Despite the leniency afforded Plaintiff considering his *pro se* status, the Court finds that the deficiencies in his pleadings are substantive and, due to the untenable and untimely nature of his claims, any subsequent amendments would be futile. Additionally, in his opposition Hassan has not requested permission to file an amended complaint, nor has he "given any indication that he is in possession of facts that would cure the problems identified in this opinion." *Clark v. Kitt*, 12-CV-8061,

2014 WL 4054284, at *15 (S.D.N.Y. Aug. 15, 2014). Accordingly, as the facts present in the pleadings "give[] no indication that a valid claim may be stated," the Court respectfully recommends that Plaintiff not be granted leave to amend. *See Flaherty v. All Hampton Limousine, Inc.*, 02-CV-4801, 2008 WL 2788171, at *8 (E.D.N.Y. July 16, 2008).

V. CONCLUSION

Accordingly, based on the foregoing, the Court respectfully recommends that the District Court grant the State and Private Defendants' motions to dismiss the Complaint for lack of subject matter jurisdiction and for failure to state a claim in their entirety and with prejudice.

VI. OBJECTIONS

A copy of this Report and Recommendation is being served on Defendants by electronic filing on the date below. Defendants are directed to serve a copy of this Report and Recommendation on Plaintiff and promptly file proof of service by ECF. Any objections to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days of receipt of this report. Failure to file objections within the specified time waives the right to appeal the District Court's order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a); *Ferrer v. Woliver*, 05-3696, 2008 WL 4951035, at *2 (2d Cir. Nov. 20, 2008); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
August 15, 2017

/s/ Steven I. Locke
STEVEN I. LOCKE
United States Magistrate Judge

Additional material from this filing is available in the Clerk's Office.