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**ORDER OF THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT
(OCTOBER 23, 2019)**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SEAN A. CLARK,

Plaintiff-Appellant,

v.

COMMISSIONER OF SOCIAL SERVICES,

Defendant-Appellee.

No. 19-1823

Before: Robert A. KATZMANN, Chief Judge,
Denny CHIN, Christopher F. DRONEY,
Circuit Judges.

Appellant, pro se, moves for “expedited relief.” However, this Court has determined *sua sponte* that the notice of appeal was untimely filed. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED for lack of jurisdiction. *See* 28 U.S.C. § 2107; *Bowles v. Russell*, 551 U.S. 205,214 (2007). It is further ORDERED that Appellant’s motion is DENIED as moot.

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FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Clerk of Court

**JUDGMENT OF THE UNITED STATES
DISTRICT COURT SOUTHERN
DISTRICT OF NEW YORK
(APRIL 24, 2019)**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SEAN A. CLARK,

Plaintiff,

v.

**STATE COMMISSIONER OF
SOCIAL SERVICE DEPARTMENT,**

Defendant.

No. 18 Civil 10038 (LAP)

It is hereby ORDERED, ADJUDGED AND
DECREED: That for the reasons stated in the Court's
Order dated April 23, 2019, Plaintiffs motion for a
default judgment is denied; Defendant's motion to
dismiss is granted, accordingly, this case is closed.

Ruby J. Krajick

Clerk of Court

[Signature not legible]

Deputy Clerk

Dated: New York, New York

April 24, 2019

**ORDER OF THE UNITED STATES
DISTRICT COURT SOUTHERN
DISTRICT OF NEW YORK
(APRIL 23, 2019)**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SEAN A. CLARK,

Plaintiff,

v.

**STATE COMMISSIONER OF
SOCIAL SERVICE DEPARTMENT,**

Defendant.

No. 18 Civ. 10038 (LAP)

**Before: Loretta A. PRESKA,
Senior United States District Judge.**

LORETTA A. PRESKA, Senior United States District Judge:

Plaintiff Sean Clark (“Plaintiff”) brings this action against Defendant Office of Temporary and Disability Assistance¹ (“Defendant”) for cutting off his benefits without proper process. Additionally, Plaintiff moves

¹ The defendant listed in the case caption is an entity that does not exist.

for an entry of default judgment, which Defendant opposes. Defendant moves to dismiss.

For the reasons stated below, Plaintiff's motion for an entry of default is denied, and Defendant's motion to dismiss the complaint is granted.

Plaintiff alleges that Defendant discontinued his public assistance benefits in 2014. (Complaint ("Compl."), dated Oct. 31, 2018 [dkt. no. 1], at 5, 9). Plaintiff pursued his claims through state avenues, first through an administrative hearing and then judicially. (Compl. at 5). Plaintiff petitioned New York State Supreme Court pursuant to C.P.L.R. Article 78, and the case was transferred to the Appellate Division, First Department. (Declaration of Cara Chomski ("Chomski Decl."), dated Jan. 11, 2019 [dkt. no. 19], Ex. F). On October 30, 2018, the Appellate Division, First Department dismissed the proceeding. (Chomski Decl. Ex. H).

Plaintiff asserts that this denial violates the Americans with Disabilities Act, the Fourteenth Amendment, 18 U.S.C. § 1028, 18 U.S.C. § 1030, 18 U.S.C. Chapter 47, N.Y. Penal Law Article 158, and Articles 2-16 of the International Covenant on Civil and Political Rights.

With respect to his motion for a default judgment, Plaintiff claims that he served Defendant on November 5, 2018. (Motion For Default Judgement Entry ("Jud. Mot."), dated Dec. 18, 2018 [dkt. no. 8], at 1). He argues that Defendant's failure to respond within thirty days entitles him to a default judgment. (*Id.*)

To survive a motion to dismiss under Rule 12(b)(6), the plaintiff must plead enough facts "to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the plaintiff. *Twombly*, 550 U.S. at 570. But the court is not bound to accept as true legal conclusions that are couched as factual allegations. *Iqbal*, 556 U.S. at 678.

A pro se plaintiff's claims must be construed liberally and interpreted to raise the strongest arguments they suggest. *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006).

On the default judgment motion, Defendant was not properly served until November 30, 2018, contrary to Plaintiff's assertion. (Declaration of Stephanie Snyder In Support Of Defendant's Letter Motion For Extension Of Time, dated Dec. 18, 2018 [dkt. no. 11-1], at ¶ 4). Plaintiff says that he served an individual paralegal at the "Albany County Department of Law," which is not one of the two locations Defendant has designated for service of process. Plaintiff counters, "[i]f it wasn't the correct address the document would have never been Notarized for service." (Memorandum Of Law In Opposition of Defendant Motion To Dismiss Default Judgement, dated Jan. 9, 2019 [dkt. no. 16], at 9). This is wrong because notarizing a process document does not speak to any legal conclusions about designated locations for service of process. Further, Plaintiff refers to the "State Commissioner [of] Social Services" as being relevant for the correct location for the service of process; such an entity does not exist. (*Id.*)

With respect to the motion to dismiss, the Eleventh Amendment says, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one

of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Amendment bars suits that seek either "money damages . . . or injunctive relief." *McGinty v. New York*, 251 F.3d 84, 91 (2d Cir. 2001).

Plaintiff's claim is for \$600 trillion in damages for pain and suffering. (Compl. at 6). "[S]uits against states and their officials seeking damages for past injuries are firmly foreclosed by the Eleventh Amendment." *Ward v. Thomas*, 207 F.3d 114, 119 (2d Cir. 2000). This is a suit against a state seeking damages for past injuries and is therefore firmly foreclosed by the Eleventh Amendment as no relevant exception exists, such as waiver.

Plaintiff counters, "[n]o civilian is barred by the eleventh amendment in any state under the fourteenth amendment Section 5" and invokes congressional abrogation of state sovereign immunity in the Individuals with Disabilities Education Act ("IDEA" Act) (Memorandum Of Law In Opposition Of Defendant Motion To Dismiss For False Declaration ("Opp. Mem."), dated Feb. 30, 2019 [dkt. no. 30], at 1, 4). Plaintiff does not bring his claim under the IDEA, so this argument is unavailing. Plaintiff also cites to New York's long-arm statute, C.P.L.R. § 302. (Opp. Mem. at 9). This is equally unavailing because the statute does not contain any language expressly waiving sovereign immunity. *Coll. Say. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 680 (1999).

As Defendant is entitled to Eleventh Amendment immunity, this Court lacks jurisdiction. *Nat'l R.R. Passenger Corp. v. McDonald*, 779 F.3d 97, 100 (2d Cir. 2015).

Additionally, the *Rooker-Feldman* doctrine prevents this Court from hearing appeals from state court decisions. *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014). “There are four requirements for the application of Rooker-Feldman: (1) the federal-court plaintiff lost in state court; (2) the plaintiff complains of injuries caused by a state court judgment; (3) the plaintiff invites . . . review and rejection of that judgment; and (4) the state judgment was rendered before the district court proceedings commenced.” *Id.* (alterations omitted). Each of these requirements is present here. (Compl. at 5-6).

Plaintiff counters that the case is “still officially open and unsettled.” (Opp. Mem. at 9). This is incorrect. The state court order says, “the proceeding is dismissed.” (Chomski Decl. Ex. H). Accordingly, the *Rooker-Feldman* doctrine bars this Court from hearing this case.

CONCLUSION

Plaintiff’s motion for a default judgment [dkt. no. 8] is denied. Defendant’s motion to dismiss is granted [dkt. no. 17]. The Clerk of Court shall terminate the case and deny all outstanding motions as moot.

The Clerk of the Court shall mail a copy of this order to Plaintiff.

SO ORDERED.

/s/ Loretta A. Preska

Senior United States District Judge

Dated: New York, New York
April 23, 2019

**MOTION FOR EXTENSION OF
TIME TO FILE NOTICE OF APPEAL
(JUNE 19, 2019)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEAN A. CLARK,

Plaintiff,

v.

STATE COMMISSIONER OF
SOCIAL SERVICE DEPARTMENT,

Defendant.

No. 18-cv-10038 (LAP)

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on 4/23/2019 but did not file a notice of appeal within the required time period because: 4/23/2019 I was not feeling well due to my disability. This case pertains to fraud from index # 400256/2014 and deficiencies in the administrative record never were corrected per court order # 09-2974 and # 13-866cv.

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Name: Clark Sean A
Address: 93 4th Avenue 1172 NY, NY 10003-5213
Telephone: 917-242-2573
E-mail: seantellc_22@yahoo.con

/s/ Sean A. Clark

Dated: 6/19/2019

**AFFIDAVIT OF AUSTIN TAYLOR
(NOVEMBER 5, 2018)**

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

SEAN A. CLARK,

Plaintiff/Petitioner,

v.

STATE COMMISSIONER OF
SOCIAL SERVICE DEPARTMENT,

Defendant/Respondent.

Index No: 18CV10038

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at PO Box 582, Guilderland, NY 12084. That on Mon, Nov 05 2018 AT 12:45 PM AT 112,State Street Room 600, Albany, NY deponent served the within Summons in a Civil Action & Complaint-Jury Trial Demanded on STATE COMMISSIONER OF SOCIAL SERVICES DEPARTMENT

✓ Corporation: STATE COMMISSIONER OF SOCIAL SERVICE DEPARTMENT a defendant, therein named, by delivering a true copy of each to Mary Heffner personally, deponent knew said corporation so served to be the corporation described, and

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knew said individual to be Paralegal, Albany County Department of Law therfore.

Description

Age: 55

Ethnicity: Caucasian

Gender: Female

Weight: 150

Height: 5'8"

Hair: Bold

/s/ Austin Taylor

Sworn to before me on 11/15/18

**REPLY AFFIDAVIT OF SEAN A. CLARK
(APRIL 23, 2014)**

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF NEW YORK

SEAN CALRK,

Plaintiff/Petitioner,

v.

STATE COMMISSIONER
SOCIAL SERVICES DEPARTMENT,

Defendant/Respondent.

Index Number. 400256/2014

STATE OF NEW YORK
COUNTY OF NEW YORK

I Sean Clark (Petitioner), being duly sworn possess
and says:

1. I am the Movant on this matter. I make this
affidavit in reply to the Affidavit Opposition of [name
of the party who opposed your motion Attorney/State
Commissioner and in further support of my application
for an order [briefly described what you requested in
our motion] I was unlawfully discontinued from P.A.
benefit. The local agency [013] from the HRA depart-
ment is aware of my physical disability my physical
disability impairment prevents me from doing any
kind of substantial, sedentary or mental work.

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2. [Give your answer to what said in the Affidavit in Opposition, Add More pages if needed.] Attached with this affidavit is a 10 page document titled Opposition Response Stating the Factual reason why I am unable to work. Also, attached is a affidavit dated 4/7/2014 that states why my case number is not officially closed on 1/17/2014. I received two fair hearing notices dated 3/18/2014 and 3/22/2014 from the state Department of OTDA. The verified Answer document submitted by the Attorney/respondent states that I did not show good cause for missing my work requirement appointment However, the Attorney/Respondent also stated that I am exempt from employment activities. As I stated in my opposition response that disability law defines a disability as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Also a record of such an impairment or being regarded as having such an impairment an individual who has a record of a physical impairment that substantially limits a major life activity is within the state even if that person was previously misclassified as having such an impairment. Also Attached is a Social Security disability benefit document for the current year that was attached to my petition as Exhibit B.

WHEREFORE. I respectfully request that this motion be granted, and that I have such other and further relief as may be just and proper.

/s/ Sean A. Clark
Sean A. Clark

Sworn to before me on
April 23, 2014

/s/ Notary Public Signature

**Supreme Court of the State of New York
County of New York
60 Centre Street
New York, New York 10007
Date: July 17, 2014
Index No. 400256/2014**

CAPTION:

Sean Clark (petitioner)

vs.

State Commissioner of Social Service (Respondent)

Proof of Service

To: Office of County clerk,

I Sean Clark (Petitioner) duly swear or declare that as requested by the judge's dated order July 11, 2014 that I have serve a copy of the four page notice of entry by regular mail to the State Commissioner at; New York State Office of Temporary and Disability Assistance, 14 Boerum Place 16th floor, Brooklyn, New York 11201 and Attorney for State Commissioner of Social Services at; 120 Broadway 24th floor, New York, New York 10271.

FILED

Cordially

AUG 20 2014

/s/ Sean Clark

COUNTY CLERK'S OFFICE
NEW YORK

Petitioner

**LETTER FROM PETE R. JUEZAN
(SEPTEMBER 29, 1998)**

**COUNTY OF LOS ANGELES
TREASURER AND TAX COLLECTOR**

Mark J. Saladino
Treasurer and Tax Collector

Reply To:

Public Administrator Operations
Hall of Records
320 W Temple Street, Ninth Floor
Los Angeles, CA 90012
Telephone (213) 974-0482
Telecopier (213) 613-0159

Mr. Sean Clark
5910 S. Olive Street
Los Angeles, Ca. 90003

Re: Estate of OSBORNE, WILLIAM, Deceased

We have learned that you may be one of the heirs of this estate, or that you may have knowledge leading to the discovery of heirs. For purposes which may verify and establish heirship, please complete the attached form to the best of your ability. Please return two copies to us. The third copy is for your records.

GENERAL INSTRUCTIONS

1. Be sure to put your name on the proper lines.
2. Please give complete names and addresses, if possible.

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3. If answer is "none" or "unknown", so indicate in the space provided.
4. If additional space is needed, please attach a separate sheet.
5. If a person was adopted, please state by whom and where.
6. BE SURE TO SIGN THIS AFFIDAVIT IN THE PRESENCE OF A NOTARY PUBLIC;

When completed, return two copies to: Public Administrator, 320 W. Temple Street, 9th Floor, Los Angeles, CA 90012. Your prompt reply will be appreciated.

Very truly yours,

/s/ Pete R. Juezan
Deputy Public Administrator