MANDATE

19-3425-cv
Dekom v. Fannie Mae

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 11th day of February, two thousand twenty-one.

PRESENT: JOHN M. WALKER, JR.,
REENA RAGGI,
WILLIAM J. NARDINI,
Circuit Judges.

MARTIN DEKOM, AND ON BEHALF OF THE LITTLE PEOPLE,

Plaintiff-Appellant,

v. 19-3425-cv

FANNIE MAE, BANK OF AMERICA N.A., (USA), NATIONSTAR MORTGAGE LLC, ELISABETTA COSCHIGNANO, WILLIAM RICCIO, BERKMAN HENOCH LAW FIRM, BRUCE R. COZZENS, THOMAS A. ADAMS, GEORGE PECH, ELLEN BRANDT, GROSS POLOWY LAW FIRM, SANDELANDS EYET LAW FIRM, ERIK VALLELY, MATTHEW BURROWS, BRIAN GOLDBERG, LAURA STRAUSS, GEOFFREY JACOBSON, KEIRAN DOWLING, LAURENCE CHIRCH, APRILANNE AGOSTINO, DARRELL JOSEPH, RANDALL ENG, ALAN SHEINKMAN, NASSAU COUNTY CLERK, HANS AUGUSTIN, OSCAR PRIETO, 8 MOTIONS CLERKS, 2ND DEPARTMENT APPELLATE JUDGES, PAWNS 1-100, GOLDMAN SACHS, AS OWNER OF "POOL 1",

Defendants-Appellees.

MANDATE ISSUED ON 03/04/2021

FOR PLAINTIFF-APPELLANT:	Martin Dekom, pro se, Navarre, FL.
FOR DEFENDANTS-APPELLEES:	Richard P. Haber, Brian P. Scibetta, McCalla Raymer Leibert Pierce, LLC, New York, NY (*for* Fannie Mae and Nationstar);
	Connie Flores Jones, Winston & Strawn LLP, Houston, TX (*for* Bank of America);
	Barbara D. Underwood, Solicitor General, Judith N. Vale, Senior Assistant Solicitor General, David Lawrence III, Assistant Solicitor General, *for* Letitia James, Attorney General of the State of New York, New York, NY (*for* Coschignano, Riccio, Cozzens, Adams, Pech, Brandt, Agostino, Joseph, Eng, Sheinkman, 8 Motion Clerks, and 2nd Department Appellate Judges);
	William C. Sandelands, Sandelands Law LLC, Chester, NJ (*for* Sandelands Eyet LLC, Jacobson, Dowling, and Chirch);
	Daniel James Evers, Donna A. Napolitano, Nicholas S. Tuffarelli, Berkman, Henoch, Peterson, Peddy & Fenchel, P.C., Garden City, NY (*for* Berkman Henoch P.C., Vallely, and Burrows);
	Stephen J. Vargas, Gross Polowy, LLC, Westbury, NY (*for* Gross Polowy LLC, Goldberg, Strauss, and Augustin);
	Robert F. Vanderwaag, Nassau County Attorney's Office, Mineola, NY (*for* Nassau County Clerk);
	Lisa C. Cohen, Jenny C. Gu, Schindler, Cohen & Hochman, LLP, New York, NY (*for* Goldman Sachs).

Appeal from a judgment of the United States District Court for the Eastern District of New York (Mauskopf, *J.*; Lindsay, *M.J.*).

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

Appellant Martin Dekom, proceeding pro se, sued numerous financial institutions, law firms, attorneys, and state court judges and staff for violations of the Truth-in-Lending Act ("TILA"), Real Estate Settlement Procedures Act ("RESPA"), Fair Debt Collection Practices Act ("FDCPA"), Racketeer Influenced and Corrupt Organizations Act ("RICO"), District of Columbia Consumer Protection Procedures Act ("CPPA"), and state law, alleging that the defendants fraudulently obtained a default judgment against him in a 2013 foreclosure action in state court and brought a second improper "foreclosure" action in 2016. The district court dismissed the complaint, reasoning that the *Rooker-Feldman* doctrine barred Dekom's claims and that the state court defendants were immune from suit. This Court "review[s] the grant of a motion to dismiss *de novo*, accepting as true all factual claims in the complaint and drawing all reasonable inferences in the plaintiff's favor." *Fink v. Time Warner Cable*, 714 F.3d 739, 740–41 (2d Cir. 2013). "We may affirm . . . on any basis for which there is a record sufficient to permit conclusions of law, including grounds upon which the district court did not rely." *Leon v. Murphy*, 988 F.2d 303, 308 (2d Cir. 1993). In applying these principles here, we assume the reader's familiarity with the record.

I. Judicial Immunity

"[J]udges generally have absolute immunity from suits for money damages for their judicial actions," which "even allegations of bad faith or malice cannot overcome." *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009). Judicial immunity will not apply in only two

circumstances: (1) where the challenged actions were not taken in the judge's "judicial capacity," and (2) where the judge acted "in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11–12 (1991) (internal citations omitted).

Defendants Pech, Cozzens, Adams, Eng, Sheinkman, and unnamed others are judges in the Nassau Supreme Court and the Appellate Division, Second Department, the courts in which Dekom's foreclosure and appeal were filed. Although Dekom asserts that some of these defendants acted without jurisdiction, those allegations are conclusory and lack a basis in pleaded fact or law. *See Kirch v. Liberty Media Corp.*, 449 F.3d 388, 398 (2d Cir. 2006) ("[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to [defeat] a motion to dismiss." (second alteration in original)).

Insofar as Dekom asserts that he sues some of these judges and their staffs for non-judicial, administrative tasks, his argument fails because the actions all pertained to the management of his foreclosure case and appeal, thus making them judicial in nature. *See Bliven*, 579 F.3d at 210 (observing that "acts arising out of, or related to, individual cases before the judge are considered judicial in nature"); *Rodriguez v. Weprin*, 116 F.3d 62, 66–67 (2d Cir. 1997) (recognizing court's inherent power to control its docket as part of its judicial function, for which actions, even when administrative, judges and their supporting staff are afforded absolute immunity).

Dekom also could not seek injunctive relief against the state court defendants for alleged First Amendment and equal protection violations, which we construe as a 42 U.S.C. § 1983 claim. Section 1983 states 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." 42 U.S.C. § 1983. The state court

defendants—judges or subordinates acting at judges' direction—were "judicial officers," *see Montero v. Travis*, 171 F.3d 757, 760–61 (2d Cir. 1999), and Dekom did not allege that any of these defendants violated a declaratory decree or that declaratory relief was unavailable. Accordingly, the district court correctly dismissed the claims against the state court defendants on grounds of judicial immunity.

II. Res Judicata

Under the Full Faith and Credit Act, 28 U.S.C. § 1738, we must apply New York res judicata law to New York state court judgments. *See Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 93 (2d Cir. 2005). That law precludes a party from litigating a claim "where a judgment on the merits exists from a prior action between the same parties [or their privies] involving the same subject matter," *In re Estate of Hunter*, 4 N.Y.3d 260, 269 (2005), even when the claim "is based upon different legal theories or seeks different or additional relief," *Davidson v. Capuano*, 792 F.2d 275, 278 (2d Cir. 1986).

Res judicata here applies to all Dekom's claims against Fannie Mae, Bank of America ("BOA"), and Nationstar Mortgage LLC (except his RESPA claim against Nationstar). The foreclosure default judgment is a final judgment on the merits. *See EDP Med. Computer Sys., Inc. v. United States*, 480 F.3d 621, 626 (2d Cir. 2007) ("*Res judicata* does not require the precluded claim to actually have been litigated . . . . That is why . . . default judgments can support *res judicata* as surely as judgments on the merits."); *Henry Modell & Co. v. Minister, Elders & Deacons of Reformed Protestant Dutch Church of City of New York*, 68 N.Y.2d 456, 461 (1986) (noting that "default judgment awarding possession to the landlord has been held to preclude litigation of subsidiary issues necessary to establish the tenant's subsequent claim for separate

equitable relief"). Dekom there had a full and fair opportunity to properly litigate his claims. Dekom was properly served by BOA and had an opportunity to respond to the summons, but he did not do so. In the ensuing inquest on damages, Dekom nevertheless was able to cross-examine Nationstar's witnesses and present evidence. *See* N.Y. C.P.L.R. § 3215(a)–(b), (f). Moreover, in his filed motions for orders to show cause, Dekom had additional opportunities to challenge the default judgment.

Further, both the foreclosure action and the instant suit involve causes of action based on the same set of facts, *see Davidson*, 792 F.2d at 278 (holding Article 78 proceeding had same cause of action as federal civil rights action because both involved allegations relating to plaintiff's prison misconduct proceeding). Even if presenting a "different shading" of those facts, *Smith v. Russell Sage Coll.*, 54 N.Y.2d 185, 192–93 (1985) (observing that same factual grouping can include "variations" or "different shadings of the facts"), Dekom's federal complaint alleges that the 2013 foreclosure action was fraudulently brought and prosecuted. This claim rests on the same facts that Fannie Mae, BOA, and Nationstar were obliged to show to secure foreclosure, i.e., that Fannie Mae owned and Nationstar and BOA serviced the mortgage on which Dekom defaulted, that they properly served Dekom, and that Dekom had been given proper notice of the inquest. *See* N.Y. C.P.L.R. § 3215(f) (requiring that plaintiff offer proof of entitlement to judgment before a default judgment will be granted); *Smith*, 54 N.Y.2d at 192–93 (whether a factual grouping "constitutes a 'transaction' or 'series of transactions' depends on how the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether . . . their treatment as a unit conforms to the parties' expectations or business understanding or usage" (internal quotation marks omitted)).

Finally, Dekom, Fannie Mae, Nationstar and BOA are the same parties as in the foreclosure action (or their privies). *See Chase Manhattan Bank, N.A. v. Celotex Corp.*, 56 F.3d 343, 346 (2d Cir. 1995) (a party in privity "includes those who are successors to a property interest, those who control an action although not formal parties to it, those whose interests are represented by a party to the action, and possibly coparties to a prior action" (internal quotation marks omitted)). Fannie Mae owned Dekom's mortgage, first hired BOA and then Nationstar as mortgage loan servicers, and then had them pursue the foreclosure action on its behalf.

Therefore, Dekom's claims against Fannie Mae, Nationstar, and BOA (with the exception of the RESPA claim) are barred by res judicata.

III. FDCPA, TILA, and RESPA Claims

Dekom's claims against the remaining defendants under the FDCPA and RESPA were correctly dismissed as barred by the one-year statutes of limitations. *See* 15 U.S.C. § 1692k(d) (FDPCA); 15 U.S.C. § 1640(e) (TILA). Dekom filed his lawsuit on April 27, 2017, but his FDCPA allegations relate to the 2013 foreclosure action, while his TILA claim alleges disclosure failures in 2011 and 2014, all over three years prior to his filing this federal suit.

As for Dekom's claim that defendants violated RESPA's requirement that *loan servicers* respond to written inquiries about mortgages and foreclosures, *see* 12 U.S.C. § 2605(e)(1)(A); 12 C.F.R. 1024.35, it fails because he does not allege that any of the defendant law firms or their attorneys were loan servicers of his mortgage. Nor does Dekom allege any facts plausibly showing actual damages because he sought documentation already filed in the foreclosure action, and correction of "errors" that were the subject of litigation. *See* 12 U.S.C. § 2605(f)(1) (limiting recovery for failure to respond to "actual damages").

IV. RICO Claim

To state a civil RICO claim, a plaintiff must allege that "he was injured by defendants' (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Cofacredit, S.A. v. Windsor Plumbing Supply Co.*, 187 F.3d 229, 242 (2d Cir. 1999) (internal quotation marks omitted). Even if Dekom could plead enterprise—which we need not decide—he fails to allege a pattern of racketeering. *See Schlaifer Nance & Co. v. Est. of Warhol*, 119 F.3d 91, 97 (2d Cir. 1997) (requiring "at least two predicate acts" to show pattern); *see also* 18 U.S.C. § 1961(5). Dekom alleges that defendants attempted to obtain an "illicit double recovery" by filing a second "foreclosure" action (an action to extinguish a prior lien on Dekom's property dating from 1985, decades before Dekom purchased the property). But "allegations of frivolous, fraudulent, or baseless litigation activities—without more—cannot constitute a RICO predicate act." *Kim v. Kimm*, 884 F.3d 98, 104 (2d Cir. 2018). Accordingly, Dekom fails to state a RICO claim.

V. Common-Law Fraud, Wrongful Foreclosure, and Malicious Prosecution

To plead fraud in New York, a plaintiff must allege "a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages." *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 559 (2009). Dekom alleges that defendants misled him into believing that the foreclosure inquest process was legitimate. This does not plausibly plead fraud because, as already discussed, the inquest procedure was appropriate under New York civil practice rules when a defendant defaults. For the same reason, Dekom fails to state a claim for wrongful foreclosure.

Dekom also fails to state a malicious prosecution claim based on the 2016 extinguishment action. A plaintiff claiming malicious prosecution must plausibly plead malice (i.e., "a purpose

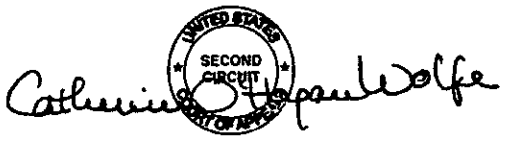
other than the adjudication of a claim"), lack of probable cause to bring the prior proceeding, and special injury. *Engle v. CBS, Inc.*, 93 N.Y.2d 195, 201, 204 (1999). Dekom fails to allege any facts showing either the lack of probable cause or ensuing special injury.

VI. CPPA

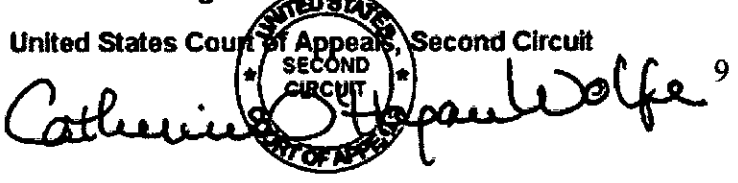
Because Dekom did not allege that he purchased, leased, or received goods or services in the District of Columbia, he fails to state a claim under D.C. Code § 28-3901(c).

We have considered all of Dekom'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 of Court



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



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 21st day of April, two thousand twenty-one.

Before: John M. Walker, Jr.,
Reena Raggi,
William J. Nardini,
Circuit Judges.

Martin Dekom, and on behalf of the Little People,

Plaintiff - Appellant,

v.

Fannie Mae, Bank of America N.A., (USA), Nationstar Mortgage LLC, Elisabetta Coschignano, William Riccio, Berkman Henoch Law Firm, Bruce R. Cozzens, Thomas A. Adams, George Pech, Ellen Brandt, Gross Polowy Law Firm, Sandelands Eyet Law Firm, Erik Vallely, Matthew Burrows, Brian Goldberg, Laura Strauss, Geoffrey Jacobson, Keiran Dowling, Laurence Chirch, Aprilanne Agostino, Darrell Joseph, Randall Eng, Alan Sheinkman, Nassau County Clerk, Hans Augustin, Oscar Prieto, 8 Motions Clerks, 2nd Department Appellate Judges, Pawns 1-100, Goldman Sachs, as owner of "Pool 1",

Defendants - Appellees.

STATEMENT OF COSTS

Docket No. 19-3425

IT IS HEREBY ORDERED that costs are taxed in the amount of $1,209.00 in favor of Appellees Berkman Henoch Law Firm, Matthew Burrows, and Erik Vallely.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

MARTIN DEKOM, et al.

Plaintiffs,

- against -

FANIE MAE et al.,

Defendants.

----------X

MEMORANDUM AND ORDER
17-CV-2712 (RRM) (ARL)

ROSLYNN R. MAUSKOPF, United States District Judge.

Plaintiff Martin Dekom seeks reconsideration of the March 28, 2019 Order Honorable Joseph F. Bianco, adopting in its entirety the Report and Recommendation of Magistrate Judge Arlene R. Lindsay, and dismissing this action. See Doc. No. 234. Plaintiff's request is denied.

Reconsideration is "an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *Butto v. Collecto Inc.*, 845 F.Supp.2d 491, 494 (E.D.N.Y. 2012) (quoting *Trans-Pro Logistic Inc. v. Coby Electronics Corp.*, No. 05-CV-1759 (CLP), 2010 WL 4065603, at *1 (E.D.N.Y. Oct. 15, 2010)) (internal quotation marks omitted). A party requesting reconsideration must adduce controlling law or facts that were overlooked by the Court that might materially have influenced its conclusion. *See Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995); *Perez v. New York City Dep't of Corr.*, No. 10-CV-2697 (RRM) (RML), 2013 WL 500448, at *1 (E.D.N.Y. Jan. 17, 2013). Moreover, "[a] motion for reconsideration may not . . . be used as a vehicle for relitigating issues already decided by the Court." *Webb v. City of New York*, No. 08-CV-5145 (CBA), 2011 WL 5825690, at *1 (E.D.N.Y. Nov. 17, 2011) (quoting *Davidson v. Scully*, 172 F.Supp.2d 458, 461 (S.D.N.Y. 2001)). Plaintiff's request does not demonstrate any clear error, highlight a change in controlling law, or present new evidence. *See Montblanc-Simplo GmbH v. Colibri Corp.*, 739 F.Supp.2d

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

MARTIN DEKOM,

Plaintiff,

-against-

FANNIE MAE, *et al.*,

Defendants.

----------X

ORDER
17-CV-2712 (JFB) (ARL)

JOSEPH F. BIANCO, District Judge:

On February 26, 2019, Magistrate Judge Lindsay issued a Report and Recommendation (the "R&R," ECF No. 230) recommending that the Court grant defendants' motions to dismiss (ECF Nos. 175, 180, 181, 182, 184, 198) and deny plaintiff's motions seeking a change of venue (ECF No. 72), to expedite discovery (ECF No. 139), judgment on the pleadings (ECF No. 208), and objecting to evidence submitted by defendants. (ECF No. 209.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (R&R 22.) On March 1, 2019, plaintiff requested an extension of time to respond from March 13, 2019 to April 29, 2019. (ECF No. 231.) The Court granted this request in part, granting an extension to respond to the motions addressed by the R&R to March 26, 2019 and to April 29, 2019 for objections to the recommendation regarding the litigation injunction. (ECF No. 232.) On March 26, 2019, plaintiff filed his objections to the R&R. For the reasons set forth below, having conducted a *de novo* review, the Court adopts the thorough and well-reasoned R&R in its entirety, granting defendant's motion to dismiss and denying plaintiff's motions. Plaintiff has

portions of the report or specified proposed findings or recommendations to which objection is made."); Fed. R. Civ. P. 72(b)(3) ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.").

Plaintiff's Objections

Plaintiff objected to the R&R on the basis that it is "replete with fatalities" and "creates a fiction in which the servicing of a mortgage loan is unrelated to the assignment." (Obj. at 2.) Specifically, plaintiff argues that Bank of America "had no authority to pursue the foreclosure action against [plaintiff] in 2014, nor did Nationstar have the right to continue it." (*Id.*) Additionally, plaintiff argues that the R&R inappropriately held that the foreclosure process was not unlawful.[1] because the record is lacking as to the actions of the referee appointed in plaintiff's foreclosure. (*Id.*) Finally, plaintiff argues that the R&R improperly found that the Eleventh Amendment, the *Rooker-Feldman* doctrine, *res judicata*, and collateral estoppel mandate dismissal of all plaintiff's claims. (*Id.* at 5, 7.)

Analysis

Having conducted a review of the full record and applicable law, and having conducted a *de novo* review of the entire R&R, the Court adopts the analysis and recommendations contained in the R&R in their entirety.[2]

---

[1] Specifically, plaintiff argues that the record did not demonstrate that: (1) the actions of the referee, appointed in plaintiff's foreclosure, were lawful (Obj. at 2); and (2) that defendant Bank of America delivered plaintiff a required pre-foreclosure notice. (*Id.* at 3.)

[2] The Court notes that, although the R&R referred to the doctrines of *res judicata* and collateral estoppel as jurisdictional, such issues are not jurisdictional, but rather are decided under a Rule 12(b)(6) standard. *See Thompson v. Cty. of Franklin*, 15 F.3d 245, 253 (2d Cir. 1994). However, other than incorrectly labelling the grounds as jurisdictional, the R&R correctly analyzed all the requirements of the doctrines of *res judicata* and collateral estoppel as applied to this case.

(E.D.N.Y. 2010) (quoting *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 85 (2d Cir.2005) (internal citations and quotations omitted). The Second Circuit has classified the first and fourth requirements as "procedural" and the second and third requirements as "substantive." The Court finds that both procedural and substantive requirements of this doctrine have been met. Foremost, the Court agrees with the R&R that plaintiff is seeking review of the state court judgment of foreclosure and sale. Although plaintiff argues that preclusion under *Rooker-Feldman* is inappropriate because the "matter is *still* on appeal", the Court finds that abstention is appropriate because "[r]egardless of the status of any state court appeals, [plaintiff] is still seeking federal review of a state-court judgment." *Caldwell*, 701 F. Supp. 2d at 348 (citing *Field Auto City, Inc. v. Gen. Motors Corp.*, 476 F.Supp.2d 545, 553 (E.D. Va.), *aff'd*, 254 F. App'x 167 (4th Cir. 2007) (explaining that "[a] contrary rule would allow a state court litigant to avoid *Rooker–Feldman* simply by filing the federal action while the state appeal is underway"). This is what *Rooker-Feldman* prohibits. Finally, although plaintiff argues that his alternative claims (*e.g.*, FDCPA, fraud, RICO, and Section 1983) are independent and should survive, the Court agrees with the R&R that such claims are "inextricably intertwined" and are barred. *See Andrews v. Citimortgage, Inc.*, No. 14-CV-1534 JS AKT, 2015 WL 1509511, at *5 (E.D.N.Y. Mar. 31, 2015) ("'a federal plaintiff cannot escape the *Rooker–Feldman* bar simply by relying on a legal theory not raised in state court.'") (quoting *Lajaunie v. Samuels & Son Seafood Co.*, 2014 WL 7190922, at *4 (S.D.N.Y. Dec. 12, 2014)).

Additionally, in the alternative, the Court finds that the R&R utilized the proper legal standard for *res judicata* and collateral estoppel, and correctly applied that standard, in finding that the Court should dismiss the claims on those grounds. The underlying foreclosure and extinguishment actions were previous adjudications on the merits and plaintiff had the

on the pleadings or partial summary judgment as against Nassau County Clerk Maureen O'Connell (ECF No. 208); and objecting to evidence submitted by defendants. (ECF No. 209).

IT IS FURTHER ORDERED that plaintiff shall file any objections to the recommendation regarding the litigation injunction by April 26, 2019.

SO ORDERED.

/s/ Joseph F. Bianco

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: March 28, 2019
Central Islip, NY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
MARTIN DEKOM *and on behalf of the Little People,*

Plaintiff,

-against-

REPORT AND RECOMMENDATION
CV 17-2712 (JFB)(ARL)

FANNIE MAE, BANK OF AMERICA NA (USA), NATIONSTAR MORTGAGE LLC, NASSAU COUNTY CLERK, ELISABETTA COSCHIGNANO, WILLIAM RICCIO, BERKMAN HENOCH LAW FIRM, BRUCE R. COZZENS, THOMAS A. ADAMS, GEORGE PECH, ELLEN BRANDT, GROSS POLOWY LAW FIRM, SANDELANDS EYET LAW FIRM, ERIK VALLELY, MATTHEW BURROWS, BRIAN GOLDBERG, HANS AUGUSTIN, LAURA STRAUSS, OSCAR PRIETO, GEOFFREY JACOBSON, KEIRAN DOWLING, LAURENCE CHIRCH, APRILANNE AGOSTINO, DARRELL JOSEPH, RANDALL ENG, ALAN SHEINKMAN, 8 MOTIONS CLERKS, 2ND DEPARTMENT APPELLATE JUDGES, PAWNS 1-100, and GOLDMAN SACHS AS OWNER OF "POOL 1,"

Defendants.
----------X

LINDSAY, Magistrate Judge:

Before the Court, on referral from District Judge Bianco, are the following motions:

1. The second motion of the *pro se* plaintiff, Martin Dekom ("Dekom"), seeking a change of venue [ECF No. 72];

2. Dekom's motion to expedite discovery and for equal protection [ECF No. 139];

3. The motion of the defendants, Berkman, Henoch, Peterson, Peddy & Fenchel, P.C. s/h/a Berkman Henoch Law Firm ("BHPPF"), Erick Vallely s/h/a Erik Vallely ("Vallely"), and Matthew Burrows ("Burrows") (collectively the "BHPPF defendants"), to dismiss the plaintiff's Third Amended Complaint [ECF No. 175];

4. The motion of the defendants, Gross Polowy, LLC s/h/a Gross Polowy Law Firm ("Gross Polowy"), Brian D. Goldberg, Esq. ("Goldberg"), Laura M. Strauss, Esq. ("Strauss") and Hans H. Augustin, Esq. ("Augustin") (collectively the "Polowy defendants"), to dismiss the plaintiff's Third Amended Complaint [ECF No. 180];

A. The BANA Mortgage

This case stems from a foreclosure action commenced by BANA in 2013. In August 2007, Dekom, a formerly licensed mortgage loan originator, secured a mortgage loan from Countrywide Bank, FSB ("CBFSB") in the amount of $358,842.00. *See* Lipkin Decl. Ex. A. The loan was secured by a mortgage on his property located at 34 High Street, Manhasset, New York in favor of Mortgage Electronic Registration System ("MERS"), as nominee and successor of CBFSB. *Id.* Ex. B. Countrywide endorsed the "interest only adjustable rate note" executed by Dekom to Countrywide Home Loans Inc. *Id.* Ex. A. The Mortgage was recorded with the Nassau County Clerk's Office on August 10, 2007 at Liber M32202, Pages 22-41. *Id.* Ex. B. On or about December 28, 2011, MERS assigned the Mortgage to BANA (the "2011 Assignment"). *Id.* Ex. C. The 2011 Assignment was recorded with the Nassau County Clerk's Office on March 10, 2012 at Liber M 36981, Pages 937-939. *Id.*

In September 2013, BANA transferred servicing responsibilities to Nationstar. BANA's Mem. at 2. On June 17, 2014, BANA then assigned the Mortgage to Nationstar (the "2014 Assignment"). *Id.* Ex. D. The 2014 Assignment was recorded with the Nassau County Clerk's Office on July 10, 2014 at Liber M 39791, Pages 796-797. *Id.*

B. The State Court Actions

According to Dekom, by 2011, "[h]e was mortgaged to the hilt, and as the financial crisis

---

motions because discovery has been stayed and, according to him, the documents referred to in the defendants' motion papers have not been authenticated. ECF No. 209. The undersigned respectfully recommends that Dekom's motion dated November 8, 2018, which addresses this issue, be denied. "[I]t is well-settled that, in considering a motion to dismiss, the Court is entitled to take judicial notice of documents integral to or referred to in the complaint, as well as documents filed in other courts and other public records." *Craig v. Saxon Mortg. Servs., Inc.*, No. 13-CV-4526 SJF GRB, 2015 WL 171234, at *1 (E.D.N.Y. Jan. 13, 2015) (quoting *Reyes v. Fairfield Props.*, 661 F. Supp. 2d 249, 255 n. 1 (E.D.N.Y. 2009). In addition, "'[i]n resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), a district court . . . may refer to evidence outside the pleadings.'" *Id.* (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)).

Id. Upon receipt of the Notice of Issue, the action was scheduled for an inquest hearing. *Id.*

On October 15, 2014, an inquest was held before the late Honorable George Peck. *See* Lipkin Decl. Ex. F. On October 30, 2014, Justice Peck issued a decision finding that BANA was entitled to a Judgment of Foreclosure in the amount of $432,939.06 as of October 7, 2014, with a contractual interest rate of 2.75% resulting in a per diem rate of $27.01 until entry of the order. *Id.* He also appointed a referee. However, before the final judgment was entered, Dekom filed a "Motion to Reargue, Renew, and Stay" seeking, in part, the dismissal of the foreclosure action. *See* Chirch Decl. Ex. I. While that motion was pending, the Honorable Thomas A. Adams, entered the Judgment of Foreclosure and Sale. *See* Lipkin Decl. Ex. F. The Judgment of Foreclosure and Sale, which is dated December 2, 2014, provided for the amendment of the caption to substitute Nationstar as the plaintiff in favor of BANA in accordance with the 2014 Assignment. *Id.* On December 11, 2014, the Judgment of Foreclosure was entered in the Nassau County Clerk's Office and was recorded on December 30, 2014 at Liber J 3837, Pages 233-245. *Id.*

After the Judgment of Foreclosure and Sale was entered, Dekom filed a second motion, by order to show cause, seeking to vacate his default. *See* Chirch Decl. Ex. K. Justice Adams issued two orders dated April 16, 2015 and May 14, 2015 in which he denied both Dekom's motion to reargue and motion to vacate the default. *See* Lipkin Decl. Ex. G. Following the receipt of Justice Adam's decisions, Dekom appealed the Judgment and both state court orders to the Appellate Division, Second Department. *Id.* On May 16, 2018, the Appellate Division affirmed the Judgment of Foreclosure and Sale as well as the two orders denying his motions. *Id.* In its decision, the Appellate Division noted that Nationstar had established personal

extinguishment action denied Dekom's motion for default judgment and cross-motion for default judgment and dismissed his cross-claims and counterclaims. *Id.*

E. Procedural History

Two years after the Judgment of Foreclosure and Sale was entered by the state court, Dekom commenced the instant action against Fannie Mae, BANA, Nationstar and O'Connell. ECF No. 1. Dekom initially filed this action in the United States District Court for the District of Columbia. However, by order dated April 26, 2017, the D.C. District Court transferred the matter to this Court finding that venue was improper. ECF No. 6. Four days later, Dekom filed a motion with the Court that was construed as a motion to dismiss the case without prejudice. ECF No. 12. As such, on May 16, 2017, the Clerk of the Court was directed to close the case.

On May 23, 2017, Dekom asked the Court to reopen the case and to reassign the matter to Judge Spatt. ECF No. 14. Dekom advised that he had never intended to voluntarily dismiss the case. *Id.* He also accused someone in the Court of "jimmying the 'related case' system." *Id.* Specifically, Dekom argued:

> The other error was in the "related case" designation. The rule itself is an exercise in legitimizing corruption and should be discarded. In fact, I proposed exactly this last week to the Board of Judges of the United States District Court for the Eastern District of New York.
>
> Notwithstanding the rule's fundamental flaws, its application here shows that my cases are being steered to Judge Seybert. In 2005, I brought a housing finance action which was assigned to Hon. Spatt. In 2012, I brought two actions, one on ballot access, the other against the Nassau Board of Elections. The "related case" rule should have assigned these to Hon. Spatt, but they ended up before Judge Seybert.
>
> By rule, related cases are assigned to the lowest docket number. Of my three prior cases, Judge Spatt was on the lowest number, from 2005. The newly transferred *Dekom v. Fannie Mae* was not assigned to Judge Spatt, but to Seybert.

Id. Upon receipt of his application, the case was reopened and, shortly thereafter, Judge Seybert

seeking leave to amend his complaint until the Court had an opportunity to address the motions now pending before the Court.

In his third amended complaint, Dekom alleges that the defendants, including court personnel from the Nassau County Supreme Court and the New York Appellate Division, Second Department, engaged in an "illegal process," a "racket," harassment and coercion, a "fraudulent court," a "fake hearing," "public corruption," "legal weirdness," "fraud," and "collusion," which he says included the removal and alteration of public records, and "influencing the selection of judges." Third Am. Compl. ¶¶ 29-35. Dekom brings this matter on behalf of himself and "the poor of America in or facing judicial foreclosure, who are ill-equipped to fight the professional liars employed by Fannie Mae's agents, who stand to be victimized by them, and who have a God given right to have their day in court without being shorn of all human dignity." Third Am. Comp. ¶ 7. Although Dekom does not dispute that he defaulted on his loan, Dekom describes the foreclosure process as a "perversion of the law" and suggests that his Judgment of Foreclosure and Sale was "illegally obtained." *Id.* ¶¶ 26, 28. Specifically, Dekom describes the foreclosure inquest as "a mix of public corruption and a cabal of mortgage industry insiders to serve as their private court [that does] not exist in any law and is illegal." *Id.* ¶ 31. Dekom also claims that he uncovered collusion in the appellate division, which, he says, led to his discovery of a 'robosigning scam,'" as well as a scam allegedly perpetrated by the Nassau County Clerk. *Id.* ¶¶ 35, 40.

In sum, Dekom claims that the foreclosure process is fraught with illegality. Accordingly, he has asserted the following claims:

1. violation of the Real Estate Settlement Procedures Act ("RESPA") and the Truth in Lending Act ("TILA") as against Fannie Mae, Nationstar, and BANA (claim one);

that is claiming ownership of the mortgage at 34 High Street, Manhasset, NY.[3]

3. Dekom alleges that Sandelands Eyet was the law firm retained to prosecute him. Geoffrey Jacobson, Kieran Dowling, and Laurence Chirch are attorneys employed by Sandelands Eyet. Dekom contends that all the Sandelands Eyet defendants are agents of Fannie Mae. The defendants have clarified that they were retained by Nationstar to represent the company with respect to the two appeals filed by Dekom in the state court.

4. Dekom alleges that Ellen Brandt is an employee of Nationstar, who "fraudulently posed as a witness" at the October 30, 2014 inquest hearing in the foreclosure action.

5. BHPPF is the law firm that was retained by BANA to commence the foreclosure action. Erick Vallely and Matthew Burrows are attorneys employed by BHPPF.

6. Gross Polowy is a law firm that was retained to represent Nationstar in the foreclosure and extinguishment action. After the foreclosure proceeding was commenced by BHPFF, the Gross Polowy, LLC was substituted as counsel. Brian Goldberg and Laura Strauss are attorneys employed by Gross Polowy. Hans Augustin is a former attorney. Oscar Prieto, who has not appeared in this action, is referred to a subcontracted attorney with Gross Polowy.

7. Maureen O'Connell (O'Connell) was the Nassau County Clerk during the relevant period. O'Connell has not appeared in this action.[4]

8. Justices Randall Eng and Alan Sheinkman are Appellate Division Justice. Justices R. Bruce Cozzens, Thomas A. Adams and George Peck are Justices of the Nassau County Supreme Court. Aprilanne Agostino is the Chief Clerk of the Appellate Division. Darrell Joseph is the Deputy Clerk of the Appellate Division. William Riccio and Elisabetta Coschignano are law secretaries at the Nassau County Supreme Court. All the State Court defendants are alleged to have been involved in the foreclosure action.

---

[3] According to MTGLO, Dekom is operating under the misassumption that his loan was purchased by Goldman Sachs in 2017, three years after the foreclosure action. Edward B. Chavez, who was the transaction manager for MTGLQ during the relevant period, explained that Dekom's loan was included initially in an offering made to MTGLO in 2016, but the loan was kicked out of that offering before the sale. *See* Chavez Aff. ¶¶ 2, 5-8.

[4] Dekom has filed a motion for a default judgment as against O'Connell. ECF No. 208. Notwithstanding the fact that Dekom claims that O'Connell was served with the Third Amended Complaint on September 10, 2018, given the Court's findings with respect to subject matter jurisdiction, the undersigned recommends that the plaintiff's motion be denied.

in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), in which the court set forth a two-pronged approach to be utilized in analyzing a motion to dismiss. District courts are to first "identify [ ] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 679. Though "legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* Second, if a complaint contains "well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* "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. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a [d]efendant has acted unlawfully." *Id.* at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007) (internal citations omitted)).

Where, as here, the complaint was filed by a *pro se* litigant, the court must construe the complaint liberally and interpret the complaint "to raise the strongest arguments they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006). However, a *pro se* complaint must state a plausible claim for relief, *Walker v. Schult*, 717 F.3d 119, 125 (2d Cir. 2013), and mere conclusions of law unsupported by factual averments need not be accepted, *Klos v. Bligh*, No. 13-CV-5449, 2014 WL 3778993, at *5 (E.D.N.Y. July 31, 2014). Lastly, "'[i]t is well-settled that, in considering a motion to dismiss, the Court is entitled to take judicial notice of documents integral to or referred to in the complaint, as well as documents filed in other courts and other public records'" *Craig*, 2015 WL 171234, at *1 n.3 (quoting *Reyes v. Fairfield Props.*, 661 F. Supp. 2d 249, 255 n.1 (E.D.N.Y. 2009)).

II. Eleventh Amendment

As an initial matter, the State Court defendants contend that the Eleventh Amendment

declaratory decree or the unavailability of declaratory relief. Accordingly, for all these reasons, the undersigned finds that the claims against the State defendants in their official capacities are barred by the Eleventh Amendment and recommends that those claims be dismissed for lack of subject matter jurisdiction.

II. Preclusion Principles

Each of the defendants argues that the plaintiff's claims are barred by the *Rooker-Feldman* doctrine, collateral estoppel and *res judicata,* and therefore, the Court lacks subject matter jurisdiction to hear this action. The undersigned agrees.

A. Rooker-Feldman Doctrine

The *Rooker-Feldman* doctrine precludes a federal court from entertaining "cases brought by state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indis. Corp.*, 544 U.S. 280, 284 (2005). *Rooker-Feldman* also precludes federal district courts from exercising jurisdiction over claims that are "inextricably intertwined" with state court determinations. *Kropelnick v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002) (quoting *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482-83 n.16, 103 S. Ct. 1303, 75 L. Ed 2d 206 (1983)). This doctrine recognizes that "federal district courts lack jurisdiction over suits that are, in substance, appeals from state-court judgments." *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 84 (2d Cir. 2005). Indeed, "[u]nderlying 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).

The Second Circuit has identified four elements that must be met for the *Rooker-Feldman*

Rooker–Feldman analysis.")). Generally, the courts in this district have followed the latter approach. *Id.* ("This purpose would be undermined if the doctrine is inapplicable simply because a litigant happens to be seeking state appellate review of a state-court judgment, while also seeking federal district court review of that judgment."). This is so because "regardless of the status of the appeal, the plaintiff is still seeking review of a state court judgment." Interestingly, in this matter, the initial complaint was filed before the appeal was finalized. However, the operative pleading, that being, the third amended complaint, was filed on June 27, 2018, forty-two days after the Appellate Division affirmed the state court decision. Nonetheless, even if the Court were to consider the date the initial complaint was filed, the precedent in this district supports a finding that the procedural requirements have been met.

The substantive requirements of *Rooker-Feldman* have also been met. Indeed, there is no doubt that Dekom is complaining of injuries caused by the state court judgment and is asking this Court to review and reject those findings. Claims One through Four and Eight allege that the Judgment of Foreclosure and Sale was "illegally obtained." Claim Five challenges the order that discontinued the extinguishment action.[5] Dekom seeks actual damages in a variety of amounts - $922,000 from Nationstar for the depravation of the value of his house; $359,703 from Fannie Mae resulting from his deprivation of monthly income connected to the house; $287,666 from MTGLQ based on a percentage of the principal balance of the loan; punitive damages in the amount of $9,000,000 resulting from the "shocking and heinous conduct of the defendants;" and $200 billion dollars from Fannie Mae to compensate parties whose mortgages were collected

[5] Dekom has made his true objective for bringing this action clear in his numerous motion papers filed with the Court. For example, in January 2018, Dekom filed a 407-page document with the court containing papers from his foreclosure appeal, along with a declaration in which he expressly challenges the foreclosure proceeding (e.g., "I attempted to raise my motion to dismiss but was denied. The judge prevented me from asking pertinent questions."). See ECF Nos. 40, 43.

*5 (S.D.N.Y. Dec. 17, 2001) ("Plaintiff cannot make an end run around the *Rooker-Feldman* doctrine and into federal court . . . through the mere assertion of new and baseless claims to supplement the old."). Accordingly, the undersigned finds that Dekom's claims are barred by the *Rooker-Feldman* doctrine, and thus, respectfully reports and recommends that the defendants' motions to dismiss be granted.

B. *Res Judicata* and Collateral Estoppel

The Court may also dismiss Dekom's claims on the grounds of *res judicata* and collateral estoppel. *See Salahuddin v. Jones*, 992 F.2d 447, 449 (2d Cir. 1993); *Wilson v. Ltd. Brands*, No. 08 CV 3431(LAP), 2009 WL 1069165, at *4 (S.D.N.Y. Apr. 17, 2009). *Res judicata* provides that "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Burgos v. Hopkins*, 14 F.3d 787, 789 (2d Cir. 1994); *see also Done v. Wells Fargo Bank, N.A.*, No. 08-CV-3040 JFB ETB, 2009 WL 2959619, at *3 (E.D.N.Y. Sept. 14, 2009) ("All litigants, including *pro se* plaintiffs, are bound by the principles of *res judicata*"). As the Second Circuit explained in *Marcel Fashions Group, Inc. v. Lucky Brand Dungarees, Inc.*, 779 F.3d 102 (2d Cir. 2015):

> The term *res judicata*, which means essentially that the matter in the controversy has already been adjudicated, encompasses two significantly different doctrines: claim preclusion and issue preclusion. Under claim preclusion, a final judgment forecloses successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit. The doctrine precludes not only litigation of claims raised and adjudicated in a prior litigation between the parties (and their privies), but also of claims that might have been raised in the prior litigation but were not. The doctrine of issue preclusion, in contrast, bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim.

Fequiere v. Tribeca Lending, No. 14-CV-812 (RRM)(LB), 2016 WL 1057000, at *5 (E.D.N.Y.

collateral estoppel. "[C]ollateral estoppel . . . means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Caldwell v. Gutman, Mintz, Baker & Sonnenfeldt, P.C.*, 701 F. Supp. 2d 340, 349-50 (E.D.N.Y. 2010) (citing *Leather v. Eyck*, 180 F.3d 420, 424 (2d Cir. 1999) (quoting *Schiro v. Farley*, 510 U.S. 222, 232, 114 S. Ct. 783, 127 L. Ed. 2d 47 (1994)). "Collateral estoppel, like the related doctrine of *res judicata*, has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *Id.* (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979)). Specifically, "[u]nder New York law, collateral estoppel bars relitigation of an issue when (1) the identical issue necessarily was decided in the prior action and is decisive of the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to litigate the issue in the prior action." *In re Hyman*, 502 F.3d 61, 65 (2d Cir. 2007) (citations omitted). "The party seeking the benefit of collateral estoppel bears the burden of proving the identity of the issues, while the party challenging its application bears the burden of showing that he or she did not have a full and fair opportunity to adjudicate the claims involving those issues. *Khandhar v. Elfenbein*, 943 F.2d 244, 247 (2d Cir. 1991) (citation omitted). Here, many, if not all, of the issues raised by Dekom were decided by the state court in the foreclosure and extinguishment actions, and Dekom had a full and fair opportunity to litigate those issues. Accordingly, the undersigned finds that the claims raised by Dekom are also bared by the doctrines of *res judicata* and collateral estoppel, and thus, recommends that the Third Amended Complaint be dismissed in its entirety.

Recommendation to file written objections. Such objections shall be filed with the Clerk of the Court via ECF, except in the case of a party proceeding *pro se*. Dekom must file his objections in writing with the Clerk of the Court within the prescribed time period noted above. Any requests for an extension of time for filing objections must be directed to Judge Bianco prior to the expiration of the 14-day period for filing objections. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); Fed R. Civ. P 72; *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchant's Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
February 26, 2019

/s/
ARLENE R. LINDSAY
United States Magistrate Judge