

CLOSED,APPEAL,ECF,PRO-SE

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:20-cv-08000-VSB

Clark v. Schroeder
 Assigned to: Judge Vernon S. Broderick
 Cause: 05:706(a) Writ of Mandamus

Date Filed: 09/28/2020
 Date Terminated: 11/05/2020
 Jury Demand: Plaintiff
 Nature of Suit: 896 Other Statutes:
 Arbitration
 Jurisdiction: Federal Question

Plaintiff**Sean A. Clark**

represented by **Sean A. Clark**
 93 4th Avenue 1172
 New York, NY 10003-5213
 917 242 2573
 Email: seantllc_22@yahoo.com
 PRO SE

V.

Defendant**Mark Schroeder***NYS Commissioner of DMV*

Date Filed	#	Docket Text
09/28/2020	<u>1</u>	COMPLAINT against NYS Commissioner of DMV, Mark Schroeder. (Filing Fee \$ 400.00, Receipt Number 465401267299) Document filed by Sean A. Clark.(rdz) (Main Document 1 replaced on 10/14/2020) (Entered: 09/28/2020)
09/28/2020		Case Designated ECF. (rdz) (Entered: 09/28/2020)
09/28/2020		Magistrate Judge Lisa M. Smith is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (rdz) (Entered: 09/28/2020)
09/28/2020		SUMMONS ISSUED as to Mark Schroeder..(rdz) (Entered: 09/28/2020)
09/28/2020		NOTICE OF CASE REASSIGNMENT to Judge Vernon S. Broderick. Judge Cathy Seibel is no longer assigned to the case..(bcu) (Entered: 09/28/2020)

3 APP 1

09/28/2020		Magistrate Judge Debra C. Freeman is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (bcu) (Entered: 09/28/2020)
09/28/2020	3	PRO SE CONSENT TO RECEIVE ELECTRONIC SERVICE. The following party: Sean A. Clark consents to receive electronic service via the ECF system. Document filed by Sean A. Clark..(rdz) (Entered: 09/28/2020)
10/14/2020	4	LETTER addressed to Judge Vernon S. Broderick from Sean Clark, dated 10/13/20 re: "MISSING INFORMATION FROM COMPLAINT DKT#20-CV-8000/ EXHIBIT K COVER PAGE" - Please make sure the correct email is displayed on the docket sheet like the electronic form filing indicates etc. Document filed by Sean A. Clark(sc) (Entered: 10/15/2020)
10/20/2020	5	ORDER: It is hereby: ORDERED that pro se Plaintiff is directed to show cause as to why this matter should not be dismissed as barred by Eleventh Amendment immunity on or before November 2, 2020. IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to mail a copy of this Order to pro se Plaintiff. SO ORDERED. (Signed by Judge Vernon S. Broderick on 10/20/2020) (rro) Transmission to Docket Assistant Clerk for processing. (Entered: 10/20/2020)
10/23/2020	6	ANSWER FROM ORDER, re: Order dated 10/20/20. Document filed by Sean A. Clark. (sc) (Entered: 10/26/2020)
11/05/2020	7	ORDER: For the foregoing reasons, Plaintiff's complaint is hereby DISMISSED with prejudice. The Clerk of the Court is directed to enter judgment dismissing the complaint, and close this case. IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to mail a copy of this Order to pro se Plaintiff. SO ORDERED. (Signed by Judge Vernon S. Broderick on 11/5/2020) (rro) Transmission to Docket Assistant Clerk for processing. Transmission to Orders and Judgments Clerk for processing. (Entered: 11/05/2020)
11/05/2020	8	CLERK'S JUDGMENT re: <u>7</u> Order of Dismissal. in favor of Mark Schroeder against Sean A. Clark. It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Order dated November 5, 2020, Plaintiff's complaint is hereby dismissed with prejudice; accordingly, this case is closed. (Signed by Clerk of Court Ruby Krajick on 11/5/2020) (Attachments: # <u>1</u> Notice of Right to Appeal) (dt) Transmission to Docket Assistant Clerk for processing. (Entered: 11/05/2020)
11/16/2020	9	NOTICE OF APPEAL from <u>8</u> Clerk's Judgment, <u>7</u> Order of Dismissal. Document filed by Sean A. Clark. Filing fee \$ 505.00, receipt number 465401269930. Form D-P is due within 14 days to the Court of Appeals, Second Circuit. (tp) (Entered: 11/17/2020)
11/17/2020		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>9</u> Notice of Appeal. (tp) (Entered: 11/17/2020)
11/17/2020		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>9</u> Notice of Appeal filed by Sean A. Clark were transmitted to

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the U.S. Court of Appeals. (tp) (Entered: 11/17/2020)

PACER Service Center			
Transaction Receipt			
12/21/2020 11:26:34			
PACER Login:	us5070	Client Code:	
Description:	Docket Report	Search Criteria:	1:20-cv-08000-VSB
Billable Pages:	2	Cost:	0.20
Exempt flag:	Exempt	Exempt reason:	Always

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MANDATE

20-3887-cv
Clark v. Schroeder

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 TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit,
2 held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of
3 New York, on the 14th day of May, two thousand twenty-one.

4 PRESENT:

5 BARRINGTON D. PARKER,
6 REENA RAGGI,
7 SUSAN L. CARNEY,
8 *Circuit Judges.*

10
11 Sean A. Clark,

12
13 Plaintiff-Appellant,

14 v.
15

20-3887

16
17 Mark J.F. Schroeder, NYS Commissioner
18 of DMV,

19
20 Defendant.*†

21
22

* Because the district court dismissed Clark's complaint before the DMV Commissioner was served properly, this court lacks jurisdiction over him. *See Encarnacion v. Goord*, 669 Fed. App'x 61, 61 n.1 (2d Cir. 2016) ("The defendants were never served and, therefore, are not parties to this appeal." (citing *Lewis v. State of New York*, 547 F.2d 4, 6 (2d Cir. 1976))). We may affirm the district court's *sua sponte* dismissal, however, because we have jurisdiction over Clark, who filed this appeal.

† The Clerk of Court is directed to amend the caption to conform to the above.

MANDATE ISSUED ON 06/07/2021

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1
2 **FOR PLAINTIFF-APPELLANT:** Sean A. Clark, *pro se*, New
3
4 York, NY.

5 **FOR DEFENDANT:** No Appearance.
6

7 Appeal from a November 5, 2020 judgment of the United States District Court for the
8 Southern District of New York (Broderick, J.).

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

11 Sean A. Clark, *pro se*, sued Mark J.F. Schroeder, the Commissioner of the New York State
12 Department of Motor Vehicles (“DMV”), asserting violations of the Administrative Procedure Act
13 (“APA”), 5 U.S.C. § 706(2)(A), the Fifth Amendment (through 42 U.S.C. § 1983), and
14 Section 1611 of the Social Security Act (“SSA”), 42 U.S.C. §§ 405(g), 1382(a)(6). He sought
15 damages in connection with the alleged disclosure of his driver’s license number by either the New
16 York County Clerk’s Office or the New York City Human Resources Administration
17 (“NYCHRA”) during his 2014 lawsuit against NYCHRA over its termination of certain disability
18 benefits. Acting *sua sponte* (that is, on its own motion), the district court dismissed the complaint
19 as frivolous, ruling that Schroeder is immune from suit under the Eleventh Amendment. It further
20 denied leave to amend as futile. Clark now appeals. We assume Clark’s familiarity with the
21 underlying facts, the procedural history of the case, and the issues on appeal, to which we refer
22 only as necessary to explain our decision affirming the district court’s judgment.

23 District courts have the inherent power to dismiss a complaint as frivolous, even when, as
24 here, the plaintiff has paid the filing fee. *Fitzgerald v. First E. Seventh St. Tenants Corp.*,

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1 221 F.3d 362, 363–64 (2d Cir. 2000) (*per curiam*).¹ Although we have not determined whether
2 to review *de novo* or for abuse of discretion a district court’s *sua sponte* dismissal of a complaint
3 as frivolous, the district court’s determination here “easily passes muster under the more rigorous
4 *de novo* review.” *Id.* at 364 n.2.

5 As an initial matter, in his brief on appeal, Clark does not mention his Fifth Amendment
6 claim or argue that the district court erred in denying him leave to amend his complaint.
7 Accordingly, he has abandoned any challenge to these rulings. *See LoSacco v. City of*
8 *Middletown*, 71 F.3d 88, 92–93 (2d Cir. 1995). Clark also argues for the first time on appeal that
9 NYCHRA, as Schroeder’s designee, violated his substantive due process rights. Because this
10 argument was not raised in the district court, we decline to address it on appeal. *See Greene v.*
11 *United States*, 13 F.3d 577, 586 (2d Cir. 1994) (“[I]t is a well-established general rule that an
12 appellate court will not consider an issue raised for the first time on appeal.”)

13 A complaint is frivolous when (1) “the factual contentions are clearly baseless”; or (2) “the
14 claim is based on an indisputably meritless legal theory.” *Livingston v. Adirondack Beverage Co.*,
15 141 F.3d 434, 437 (2d Cir. 1998) (internal quotation marks omitted). One example of a claim
16 “based on an indisputably meritless legal theory” is a claim brought against a defendant who is
17 “clear[ly] . . . immune from suit.” *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

18 The district court correctly held that the Eleventh Amendment immunizes Schroeder, a
19 state official, from this suit. Absent the State’s express waiver or a congressional abrogation of

¹ Under 28 U.S.C. § 1915(e)(2)(B), district courts must dismiss complaints that are frivolous, malicious, fail to state a claim, or seek monetary relief against a defendant immune from suit regardless of whether the plaintiff has paid the filing fee.

1 immunity, the Eleventh Amendment renders a state immune from federal lawsuits brought either
2 by its own citizens or by citizens of another state. *See CSX Transp., Inc. v. N.Y. State Off. of Real
3 Prop. Servs.*, 306 F.3d 87, 94–95 (2d Cir. 2002); *Hans v. Louisiana*, 134 U.S. 1, 15–16 (1890).
4 This immunity extends to “state agents and state instrumentalities.” *Regents of Univ. of Cal. v.
5 Doe*, 519 U.S. 425, 429–30 (1997). State instrumentalities include the DMV. *Feingold v. New
6 York*, 366 F.3d 138, 149 (2d Cir. 2004). Here, Clark seeks damages from Schroeder solely in
7 Schroeder’s official capacity as the Commissioner of the DMV. Consequently, the Eleventh
8 Amendment bars Clark’s claims against Schroeder. *See id.*

9 A “well-known exception” to Eleventh Amendment immunity was established by the
10 Supreme Court in *Ex parte Young*, 209 U.S. 123 (1908), and its progeny. *See Vega v. Semple*,
11 963 F.3d 259, 281 (2d Cir. 2020). *Ex parte Young* allows suits for prospective injunctive relief
12 against state officers sued in their official capacity. *See id.*; *Henrietta D. v. Bloomberg*, 331 F.3d
13 261, 287 (2d Cir. 2003) (“The Eleventh Amendment . . . does not preclude suits against state
14 officers in their official capacity for prospective injunctive relief to prevent a continuing violation
15 of federal law.”). Clark argues that the *Ex parte Young* exception applies here. He is mistaken.
16 As he sought damages against Schroeder for past violations of federal law, *Ex parte Young* is not
17 relevant to his claim.

18 Of course, the Eleventh Amendment does not shield defendants sued for money damages
19 in their individual capacities. *State Emp. Bargaining Agent Coal. v. Rowland*, 718 F.3d 126, 137
20 (2d Cir. 2013). But Clark’s complaint did not allege claims against Schroeder in his individual
21 capacity. Indeed, Clark confirmed that he was suing Schroeder in his official capacity when he

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1 argued in the district court that "the Commissioner or [his] representative for DMV should not
2 have any problem with answering the summons & complaint." App'x 29. In light of
3 Schroeder's immunity from suit, the district court did not err in *sua sponte* dismissing Clark's
4 complaint as frivolous. *See CSX Transp., Inc.*, 306 F.3d at 94-95.

5 We have considered Clark's remaining arguments and find in them no basis for reversal.

6 Accordingly, we **AFFIRM** the judgment of the district court.

7 FOR THE COURT:

8 Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe



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A True Copy

Catherine O'Hagan Wolfe, Clerk

5

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe



STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORDS

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

Exhibit 1000

104-72-218471

7097-068474

CERTIFICATE OF LIVE BIRTH
STATE OF CALIFORNIA - DEPARTMENT OF PUBLIC HEALTH

STATE BIRTH CERTIFICATE NUMBER		14. NAME OF CHILD - FIRST NAME	16. MIDDLE NAME	18. LAST NAME
THIS CHILD	2. SEX	3a. PLACE OF BIRTH - NAME OF HOSPITAL	3b. DATE OF BIRTH - MONTH DAY YEAR	20. HOUR
	Male	Single	4a. DATE OF BIRTH - MONTH DAY YEAR	12:59 A.M.
PLACE OF BIRTH	5a. PLACE OF BIRTH - NAME OF HOSPITAL	5b. CITY OR TOWN	5c. STREET ADDRESS (STREET AND NUMBER OR LOCATION)	5d. BIRTH CITY (CORPORATE CITY, TOWN OR CITY)
	Los Angeles County - USC Medical Center	Los Angeles	1200 North State Street	Yes
MOTHER OF CHILD	6a. MAIDEN NAME OF MOTHER - FIRST NAME	6b. MIDDLE NAME	6c. LAST NAME (MARRIED SURNAME)	7. BIRTHPLACE (STATE OR FOREIGN TERRITORY)
	Esther	Baba	Hunter	California
FATHER OF CHILD	8. AGE OF MOTHER AT TIME OF THIS BIRTH	9a. SOCIAL SECURITY NUMBER OF MOTHER	9b. COLOR OR PLACE OF BIRTH	10a. RESIDENCE OF MOTHER - STREET ADDRESS AND NUMBER (NAME OF CITY OR TERRITORY)
	15	Unknown	Negro	519 South Olive Street
INFORMANT'S CERTIFICATION	10c. RESIDENCE OF MOTHER - CITY OR TOWN			
	Los Angeles			
ATTENDANT'S CERTIFICATION	11a. NAME OF FATHER - FIRST NAME	11b. MIDDLE NAME	11c. LAST NAME	12. BIRTHPLACE - STATE OR FOREIGN TERRITORY
	Johnny		Clark	California
	13. AGE OF FATHER AT TIME OF THIS BIRTH	14. SOCIAL SECURITY NUMBER OF FATHER	15a. PRESENT OR LAST OCCUPATION	15b. KIND OF INDUSTRY OR BUSINESS
	18	Unknown	Negro	Unknown
	16a. PARENT OR OTHER INFORMANT - SIGNATURE (IF OTHER THAN PARENT SPECIFIED)			
	17a. PHYSICIAN (OR OTHER PERSON) WHO ASSISTED IN BIRTH - SIGNATURE - TITLE OR TITLE			
LOCAL REGISTRAR	18. REQUEST: OMISSION FROM SOLICITATION LISTS	19. LOCAL REGISTRAR - SIGNATURE	20. DATE OF EXPIRATION OF LOCAL REGISTRAR'S PHYSICIAN'S CALIFORNIA LICENSE NUMBER	21. DATE OF EXPIRATION OF LOCAL REGISTRAR'S PHYSICIAN'S CALIFORNIA LICENSE NUMBER
		Barbara Hunter	Intern	SEP 18 1972

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This is to certify that this document is a true copy of the official record filed with the Office of Vital Records.

04 DEC - 6 AM 8:08

001944737*

Michael L. Rodrian
MICHAEL L. RODRIAN
STATE REGISTRAR OF VITAL RECORDS

DATE ISSUED

This copy not valid unless prepared on engraved border displaying seal and signature of Registrar



Exhibit 44

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

In the Matter of the Application of
SEAN CLARK,

X
Index No.: 400256/2014

Petitioner,

Decision and Order

-against-

STATE COMMISSIONER SOCIAL SERVICE
DEPARTMENT,

Respondent.

FILED

JUL 11 2014

NEW YORK
COUNTY CLERK'S OFFICE

HON. ALEXANDER W. HUNTER, JR.

The application of pro se petitioner for an order pursuant to CPLR Article 78, annulling and vacating the determination of respondent discontinuing Public Assistance ("PA") benefits of petitioner for failure to attend a mandatory interview, is hereby transferred to the Appellate Division, First Department.

Petitioner was a recipient of PA benefits and was also temporarily exempt from statutorily required work participation. New York City Human Resources Administration ("HRA") sent petitioner a Notice of Reevaluation of Employability Status Appointment ("NOR") dated April 8, 2013, advising petitioner that he was required to attend a mandatory face-to-face interview on April 15, 2014, to reevaluate his work participation status. The NOR also advised petitioner that failure to attend the appointment could result in the termination of his benefits and included a phone number to call in the event petitioner could not attend the appointment. Petitioner did not attend the April 15, 2014 reevaluation appointment and was subsequently advised by notice dated April 18, 2013, that his PA benefits were being discontinued as of April 29, 2013, due to his missed reevaluation appointment. The notice also indicated that he could request an administrative fair hearing from New York State Office of Temporary Disability Assistance ("OTDA") to challenge the discontinuance of his PA benefits. On April 22, 2013, petitioner requested an administrative fair hearing.

An administrative fair hearing took place on January 14, 2014. After hearing from petitioner and evaluating the evidence, which consisted entirely of testimony from petitioner as to why he missed his reevaluation appointment, respondent affirmed the determination of HRA to discontinue the PA benefits of petitioner. In the Decision After Fair Hearing ("DAFH") dated January 17, 2014, respondent found that, due to the vague and inconsistent explanations offered by petitioner for missing the face-to-face appointment, the determination by HRA that petitioner missed the April 15, 2013, appointment without good cause, was correct. Petitioner then commenced the instant Article 78 proceeding.

APP

Exhibit

Petitioner avers that: (1) he has "an entitled physical disability" (Verified Petition) which prevents him from complying with any PA benefits- related work requirement; and (2) his physical disability prevented him from attending the reevaluation appointment.

Respondent opposes the instant proceeding. In its answer, respondent asserts that substantial evidence supports the DAFI determination that petitioner missed the reevaluation appointment without good cause.

There are no procedural issues for this court to decide. The instant Article 78 proceeding involves an issue of substantial evidence and should be transferred to the Appellate Division. First Department pursuant to CPLR 7804(g). "CPLR 7804(g) authorizes the court in which the article 78 proceeding is commenced to decide any issues which would terminate the case if no issue of substantial evidence is raised. Otherwise, the section requires the court to transfer the case to the Appellate Division for disposition." Al Turi Landfill, Inc. v New York State Dept. of Envtl. Conservation, 98 NY2d 758, 760 (2002).

Accordingly, it is hereby

ORDERED, that this matter is transferred to the Appellate Division, First Department; and it is further

ORDERED, that petitioner is directed to serve a copy of this order with notice of entry upon all parties and file proof thereof with the Office of the County Clerk, who is directed to transfer this action to the Appellate Division, First Department.

Dated: July 1, 2014

ENTER:

FILED

JUL 11 2014

NEW YORK
COUNTY CLERK'S OFFICE

J.S.C.

ALEXANDER W. HUNTER III

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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

400256/14

Exhibit 13

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 Comissioner 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

AUG 20 2014

COUNTY CLERK'S OFFICE
NEW YORK

Cordially,


Sean Clark

Petitioner

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MANDATE

Exhibit 100

S.D.N.Y. - N.Y.C.
08-cv-8443
Hellerstein, J.

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 Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19th day of May, two thousand ten,

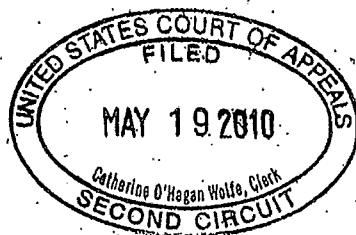
Present:

José A. Cabranes,
Robert A. Katzmann,
Circuit Judges,
J. Garvan Murtha,
District Judge.

Sean A. Clark,

Plaintiff-Appellant,

v.



09-2974-cv

Commissioner of Social Security Administration,

Defendant-Appellee.

Defendant-Appellee moves to remand the case to the District Court for the Southern District of New York so that it may vacate its decision and judgment and remand the case to the Commissioner for further administrative proceedings to correct deficiencies in the administrative record, pursuant to the fourth sentence of 42 U.S.C. § 405(g). Upon due consideration, it is hereby ORDERED that the motion is GRANTED and the case is REMANDED to the district court with instructions to vacate its judgment and remand the case to the Commissioner. The Government has represented that, upon remand, the Commissioner will request from Plaintiff-Appellant's treating sources any additional medical records in their possession for the period in question, including treatment notes, clinical

J. Garvan Murtha, Senior Judge of the United States District Court for the District of Vermont, sitting by designation.

SAO-EJC

MANDATE ISSUED ON 07/22/2010

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Exhibit 

records, or medical opinions, so that the administrative record is sufficiently developed before consideration of Plaintiff-Appellant's application for disability insurance benefits and supplemental security income.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk.


Catherine O'Hagan Wolfe

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ma

A True Copy:

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals for the Second Circuit

Catherine O'Hagan Wolfe

MANDATE

Exhibit 1

S.D.N.Y.-N.Y.C.
12-cv-9274
Preska, C.J.

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 9th day of May, two thousand thirteen.

Present:

Pierre N. Leval,
José A. Cabranes,
Barrington D. Parker,
Circuit Judges:

Sean A. Clark,

Plaintiff-Appellant,

v.

13-866

Social Security Administration,

Defendant-Appellee.

Appellant, *pro se*, moves for leave to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion is GRANTED and the case is REMANDED to the district court with instructions to vacate its judgment and order the Commissioner to file a response addressing: (1) whether the district court, following receipt of this Court's prior remand order in 2d Cir. Dkt. No. 09-2974, issued an order in S.D.N.Y. Dkt. No. 08-cv-8443, remanding the case to the Commissioner for further development of the record, (2) what agency activity, if any, has taken place since the issuance of this Court's prior remand order, and (3) whether the October 24, 2012 or December 13, 2012 letters submitted by Clark constitute a final decision of the Commissioner.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe
SAO-JAM
* * * * *
SECOND CIRCUIT

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

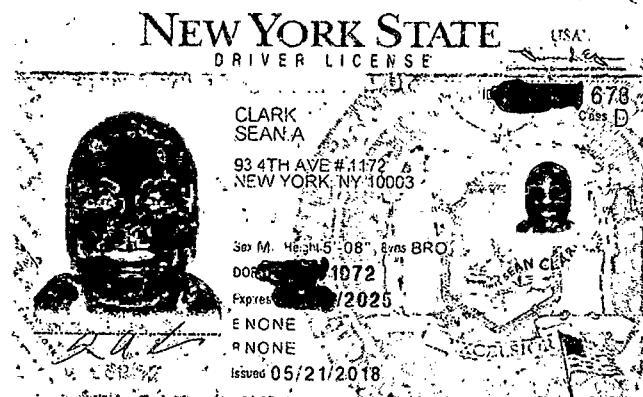


Catherine O'Hagan Wolfe

MANDATE ISSUED ON 11/01/2013

16 App 16

Exhibit 1



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LAC/DHS - HUBERT H. HUMPHREY COMPREHENSIVE HEALTH CENTER EXHIBIT NO. 3F
DEPARTMENT OF RADIOLOGY
5850 S. MAIN STREET - LOS ANGELES, CA 90003
(323) 846-4258

REQUESTING PHYSICIAN: DACOSTA, BRENDA-ANN

DATE OF READING: 07/15/2002 DATE OF EXAM: 07/10/2002

HH-RAD-LUMBOSACRAL COMPLETE

07-10-02

LUMBOSACRAL SPINE:

CLINICAL HISTORY: TENDERNESS OVER THE LOWER BACK

FINDINGS:

AP, lateral and cone down lateral lower lumbar spine views demonstrate the bony structures to be of a normal density and trabecular pattern. There are no fractures, subluxations or dislocations. The vertebral body heights and disc spaces are within the limits of normal. There is straightening of the lumbar lordosis. The paraspinous soft tissues are without abnormalities. Old films were obtained however, no prior spine films are available for comparison.

IMPRESSION:

Straightening of the lumbar lordosis is consistent with muscle spasm.

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Electronically Signed BY: OWENS, JANIS
Dictated By: OWENS, JANIS

patient Name: CLARK, SEANTIAL A
MRUN: 00004-14-34

Transcribed by: RG
Date: 08/03/2002
Time: 0923

Patient Name: CLARK, SEANTIAL A
MRUN: 00004-14-34

Ward/Clinic
XU

FINAL RADIOLOGY REPORT

CLAIMANT: ██████████ 552-23-7004 SEAN ALEXANDER CLARK

SEAN ALEXANDER CLARK
1020 WALTON AVE
APT B6
BRONX, NY 10452

AFFILIATION SUMMARY FOR SUPPLEMENTAL SECURITY INCOME

On November 24, 2006, you applied for Supplemental Security Income and any federally administered State supplementation under title XVI of the Social Security Act, for benefits under the other programs administered by the Social Security Administration, and where applicable, for medical assistance under title XIX of the Social Security Act. We have stored your application electronically in our records.

What You Need To Do

- o Review this summary to ensure we recorded your statements correctly.
- o If you agree with all your statements, you should keep this summary for your records.
- o If you disagree with any of your statements, you should contact us within 10 days after the date of this summary to let us know.

o IDENTIFICATION

My name is SEAN ALEXANDER CLARK. My social security number is 552-23-7004.

My date of birth is September 3, 1972.

I have not used any other social security number(s).

I have used the following name(s): SEANTAIL ALEXANDEZ CLARK, SEANTELL ALEXANDER CLARK and SEANTELL A DARK.

I am not blind.

I am disabled. My disability began on August 8, 2002.

I was not disabled prior to age 22.

I am a United States citizen by birth.

I never lived outside the United States.

I never was married.

App 19

CLAIMANT: ██████████ 7004 SEAN ALEXANDER CLARK

o FUGITIVE FELON AND PAROLE OR PROBATION VIOLATION INFORMATION

The following statements describe my fugitive felon/parole or probation violator status as of October 27, 2006.

I have not been accused or convicted of a felony or an attempt to commit a felony.

I am not on parole or probation under Federal or State law.

o LIVING ARRANGEMENTS

The following statements describe my living arrangements as of October 1, 2006.

I began living at 1020 WALTON AVE, APT B6, BRONX, NY 10452 on March 4, 2005.

I live in a house/apartment/mobile home/houseboat.

I live alone.

I do not expect these arrangements to change.

o RESOURCES

I own the following from October 1, 2006 to continuing:

Savings account:

Financial institution name: CITIBANK

Value: \$12.00 From: October 2006 To: continuing

I do not own any other type of resource.

o INCOME

This report of income is valid for any and all SSI claims in which I am involved.

I receive or expect to receive the following income from October 1, 2006 to continuing:

State or local assistance based on need:

Amount \$137.00 monthly

From: December 2006 To: continuing

Source name: HRA

App20

CLAIMANT: ██████████-7004 SEAN ALEXANDER CLARK

Contact: unknown

Phone: unknown

Social Security

I do not receive any other type of income.

o ELIGIBILITY FOR OTHER BENEFITS

I currently get food stamps.

o MEDICAID

You may be eligible for Medicaid. However, you must help your State identify other sources that may pay for medical care. Also, you must give information to help the State get medical support for any child(ren) who are your legal responsibility. This includes information to help the State determine who a child's father is.

If you want Medicaid, you must agree to allow your State to seek payments from sources, such as insurance companies, that are available to pay for your medical care. This includes payments for medical care for you or any person who receives Medicaid and is your legal responsibility. The State cannot provide you Medicaid if you do not agree to this Medicaid requirement. If you need further information, you may contact your Medicaid agency.

o MEDICAL ASSISTANCE

I agree that any payments from sources responsible for paying for medical care will go to the State if Medicaid already has paid for this care.

I do not have any private, group or government health insurance that pays the cost of my medical care.

IMPORTANT REMINDER

Penalty of Perjury

You declared under penalty of perjury that all the information on this summary is true and correct to the best of your knowledge. Anyone who knowingly gives a false or misleading statement about a material fact in an application, or causes someone else to do so, commits a crime and may be sent to prison or may face other penalties, or both.

IMPORTANT INFORMATION--PLEASE READ CAREFULLY

We will check your statements and compare our records with records from other State and Federal agencies, including the Internal Revenue Service to make sure you are paid the correct amount.

We will process this application for Supplemental Security Income as quickly as possible. You should hear from us within _____ days. If you do not hear from us by then, please get in touch with us.

App 21

CLAIMANT: ██████████-7004 SEAN ALEXANDER CLARK

We will let you know if we need more information to decide if you are eligible for SSI payments. In the meantime, if you move or change your mailing address, you--or someone for you-- should report the change to the office shown.

Always give the Social Security number when writing or telephoning about this claim. If you have any questions about this claim, we will be glad to help you.

If you have a question or something to report, call (____) _____ and ask for _____ with you. For general information about Social Security, visit our web site at www.socialsecurity.gov on the Internet.

You may visit or write to the Social Security Office at:

SOCIAL SECURITY
2ND FLOOR
226 EAST 161ST ST
BRONX NY 10451

App 22

NH [REDACTED] 7004

EXHIBIT NO. 2D
PAGE: 1 OF 5
November 24, 2006, 15:58
PAGE 1
SG-SSA-16

: UNIT: DIBA-C :
: :
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: :
: :
: :
: :
: :
: :

SEAN ALEXANDER CLARK
1020 WALTON AVE
APT B6
BRONX NY 10452

APPLICATION SUMMARY FOR DISABILITY INSURANCE BENEFITS

On November 24, 2006, we talked with you and completed your application for SOCIAL SECURITY BENEFITS. We stored the application information electronically in our records and are enclosing a summary of your statements.

I APPLY FOR A PERIOD OF DISABILITY AND/OR ALL INSURANCE BENEFITS FOR WHICH I AM ELIGIBLE UNDER TITLE II AND PART A OF TITLE XVIII OF THE SOCIAL SECURITY ACT, AS PRESENTLY AMENDED.

MY NAME IS SEAN ALEXANDER CLARK.

I HAVE USED THE FOLLOWING NAME(S):

SEANTAIL ALEXANDEZ CLARK
SEANTELL ALEXANDER CLARK
SEANTELL A CLARK

MY SOCIAL SECURITY NUMBER IS 552-23-7004.

MY DATE OF BIRTH IS September 3, 1972.

I AM A CITIZEN OF THE UNITED STATES.

I DO NOT HAVE AN UNSATISFIED FELONY WARRANT(S).

I DO NOT HAVE AN UNSATISFIED FEDERAL OR STATE WARRANT(S) FOR VIOLATION OF PROBATION OR PAROLE.

I BECAME UNABLE TO WORK BECAUSE OF MY DISABLING CONDITION ON April 15, 2006.

App 23

NH [REDACTED]-7004

SG-SSA-16

I AM STILL DISABLED.

A PREVIOUS APPLICATION HAS BEEN FILED WITH THE SOCIAL SECURITY ADMINISTRATION BY OR FOR ME.

I HAVE FILED OR INTEND TO FILE FOR SSI.

I HAVE NOT FILED NOR DO I INTEND TO FILE FOR ANY WORKERS' COMPENSATION, PUBLIC DISABILITY OR BLACK LUNG BENEFITS.

I AM NOT ENTITLED TO NOR DO I EXPECT TO BECOME ENTITLED TO A PENSION OR ANNUITY BASED IN WHOLE OR IN PART ON WORK AFTER 1956 NOT COVERED BY SOCIAL SECURITY.

THE SOCIAL SECURITY ADMINISTRATION AND THE STATE AGENCY REVIEWING MY CLAIM DO HAVE MY PERMISSION TO CONTACT MY EMPLOYER(S).

I HAVE NEVER MARRIED.

I DO NOT HAVE ANY CHILDREN UNDER AGE 18; AGE 18-19 ATTENDING ELEMENTARY OR SECONDARY SCHOOL FULL TIME; OR AGE 18 OR OVER AND DISABLED BEFORE AGE 22 WHO MAY BE ELIGIBLE FOR SOCIAL SECURITY BENEFITS ON THIS RECORD. THIS INCLUDES CHILDREN WHO MAY OR MAY NOT BE LIVING WITH ME.

I UNDERSTAND THAT I MUST PROVIDE MEDICAL EVIDENCE ABOUT MY DISABILITY, OR ASSIST THE SOCIAL SECURITY ADMINISTRATION IN OBTAINING THE EVIDENCE.

I UNDERSTAND THAT I MAY BE REQUESTED BY THE STATE DISABILITY DETERMINATION SERVICES TO HAVE A CONSULTATIVE EXAMINATION AT THE EXPENSE OF THE SOCIAL SECURITY ADMINISTRATION AND THAT IF I DO NOT GO, MY CLAIM MAY BE DENIED.

I AUTHORIZE ANY PHYSICIAN, HOSPITAL, AGENCY, OR OTHER ORGANIZATION TO DISCLOSE ANY MEDICAL RECORD OR INFORMATION ABOUT MY DISABILITY TO THE SOCIAL SECURITY ADMINISTRATION OR TO THE STATE DISABILITY DETERMINATION SERVICES THAT MAY REVIEW MY CLAIM OR CONTINUING DISABILITY.

I AUTHORIZE THE SOCIAL SECURITY ADMINISTRATION TO RELEASE ANY INFORMATION ABOUT ME TO A PHYSICIAN OR MEDICAL FACILITY PREPARATORY TO AN EXAMINATION OR TEST. RESULTS OF SUCH EXAMINATION OR TEST MAY BE RELEASED TO MY PHYSICIAN OR OTHER TREATING SOURCE.

I AUTHORIZE THAT INFORMATION ABOUT MY DISABILITY MAY BE FURNISHED TO ANY CONTRACTOR FOR CLERICAL SERVICES BY THE STATE DISABILITY DETERMINATION SERVICES.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION OF ALL EVENTS AS EXPLAINED TO ME.

REMARKS:

I HAVE REVIEWED MY EARNINGS RECORD AND THEY APPEAR TO BE TRUE TO THE BEST OF MY KNOWLEDGE. I BEGAN WORKING IN 1994 AND STOPPED IN 2003 BECAUSE OF MY INJURY. I DID NOT WORK IN 2004 BECAUSE I WAS IN SO MUCH PAIN DUE TO MY INJURY. I RESUMED EMPLOYMENT IN 2005. MY EARNINGS IN 1999 WERE LOW BECAUSE I WAS WORKING PART-TIME AND WAS GOING TO SCHOOL. I STOPPED WORKING IN 04/2006 BECAUSE MY DISABILITY WORSENED. I HAVE NEVER BEEN MARRIED AND I DO NOT HAVE ANY CHILDREN.

I KNOW THAT ANYONE WHO MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR

App 24

NH [REDACTED]-7004

EXHIBIT NO. 2D
PAGE: 3 OF 5
November 24, 2006, 15:58
PAGE 3
SG-SSA-16

REPRESENTATION OF MATERIAL FACT IN AN APPLICATION OR FOR USE IN DETERMINING A
RIGHT TO PAYMENT UNDER THE SOCIAL SECURITY ACT COMMITS A CRIME PUNISHABLE UNDER
FEDERAL LAW BY FINE, IMPRISONMENT OR BOTH. I AFFIRM THAT ALL INFORMATION I HAVE
GIVEN IN CONNECTION WITH THIS CLAIM IS TRUE.

MY TELEPHONE NUMBER IS (917) 574-1219.

App 25

NH 7004

SG-SSA-16

SOCIAL SECURITY ADMINISTRATION
IMPORTANT INFORMATION

RECEIPT FOR YOUR CLAIM FOR SOCIAL SECURITY DISABILITY INSURANCE BENEFITS

SEAN ALEXANDER CLARK
1020 WALTON AVE
APT B6
BRONX NY 10452

UNIT: DIBA-C

NAME OF PERSON TO CONTACT
ABOUT YOUR CLAIM: _____

YOUR APPLICATION FOR SOCIAL SECURITY BENEFITS HAS BEEN RECEIVED AND WILL BE
PROCESSED AS QUICKLY AS POSSIBLE.

YOU SHOULD HEAR FROM US WITHIN ____ DAYS AFTER YOU HAVE GIVEN US ALL THE INFORMATION WE REQUESTED. SOME CLAIMS MAY TAKE LONGER IF ADDITIONAL INFORMATION IS NEEDED.

IN THE MEANTIME, IF YOU CHANGE YOUR ADDRESS, OR IF THERE IS SOME OTHER CHANGE THAT MAY AFFECT YOUR CLAIM, YOU - OR SOMEONE FOR YOU - SHOULD REPORT THE CHANGE.

We are providing the attached application for your records.

We stored your application information electronically so there is no reason for us to retain a paper copy of your application.

IMPORTANT REMINDER

Penalty of Perjury

You declared under penalty of perjury that you examined all the information on this form and it is true and correct to the best of your knowledge. You were told that you could be liable under law for providing false information.

THE TELEPHONE NUMBERS TO CALL IF YOU HAVE A QUESTION OR SOMETHING TO REPORT
ARE:

BEFORE YOU RECEIVE A NOTICE ABOUT YOUR CLAIM:

DO YOU RECEIVE A NOTICE ABOUT YOUR CLAIM?

YOU RECEIVE A NOTICE ABOUT YOU
App 26

NH [REDACTED] 7004

SG-SSA-16

SOCIAL SECURITY INFORMATION IS ALSO AVAILABLE TO INTERNET USERS AT
WWW.SOCIALSECURITY.GOV.

What You Need To Do

- o Review the summary to ensure we recorded your statements correctly.
- o If you agree with all your statements, you may retain the information for your records.
- o If you disagree with any of your statements, you should contact us within 10 days after the date of this notice to let us know.

ALWAYS GIVE US YOUR CLAIM NUMBER WHEN WRITING OR TELEPHONING ABOUT YOUR CLAIM. IF YOU HAVE ANY QUESTIONS ABOUT YOUR CLAIM, WE WILL BE GLAD TO HELP YOU.

WE ARE RETURNING ANY DOCUMENT(S) YOU MAY HAVE SUBMITTED WITH YOUR APPLICATION.

CLAIMANT
SEAN A CLARK

SOCIAL SECURITY CLAIM NO.
552-23-7004

App 27

Exhibit 6

REC 2015212 090443 HAD43B81 5905 CIPQYAA PQAA (F-590) ***

DTE: 07/31/15 SSN: [REDACTED] 7004

DOC: E12 UNIT: 048

PG: 001

+++++ FORM SSA-1099 - SOCIAL SECURITY BENEFIT STATEMENT - 2013+++++
 PART OF YOUR SOCIAL SECURITY BENEFITS MAY BE TAXABLE INCOME FOR 2013.
 USE \$ 59378.60 FROM BOX 5 BELOW WITH IRS NOTICE 703 TO SEE IF ANY PART
 OF YOUR BENEFITS MAY BE TAXABLE ON YOUR FEDERAL INCOME TAX RETURN.
 ALSO SEE ATTACHED GENERAL INFORMATION.

NAME-SEAN ALEXANDER CLARK
 BENEFICIARY SOCIAL SECURITY NUMBER-[REDACTED]-7004 (SEE BOX 8 BELOW)
 BENEFITS FOR 2013-\$ 59378.60 (SEE DESCRIPTION OF AMOUNT IN BOX 3 BELOW).
 BENEFITS REPAYED TO SSA IN 2013-NONE
 (SEE DESCRIPTION OF AMOUNT IN BOX 4 BELOW)
 NET BENEFITS (BOX 3 MINUS BOX 4) FOR 2013-\$ 59378.60
 VOLUNTARY FEDERAL INCOME TAX WITHHELD-NONE
 ADDRESS-SEAN A CLARK
 NEW YORK NY 10276-1172 PO BOX 1172
 CLAIM NUMBER-[REDACTED]-7004A (USE THIS NUMBER IF YOU NEED TO CONTACT SSA)

DESCRIPTION OF AMOUNT IN BOX 3+++

BY CHECK OR DIRECT DEPOSIT-----	\$ 59063.90
ARE PART B-----	\$ 419.60
ARE PART C-----	\$ 0.00
ARE PART D-----	\$ 0.00
IRS COMPENSATION OFFSET-----	\$ 0.00
TIONS FOR WORK OR OTHER ADJUSTMENTS-----	\$ 0.00
TO ANOTHER FAMILY MEMBER-----	\$ 0.00
NEY FEES-----	\$ 0.00
TARY FEDERAL INCOME TAX WITHHELD-----	\$ 0.00
URY BENEFIT PAYMENT OFFSET, GARNISHMENT AND/OR TAX LEVY-----	\$ 0.00
TOTAL ADDITIONS-\$ 59483.50	

ACT:

XABLE PAYMENTS-----	\$ 104.90
TS FOR OTHER FAMILY MEMBERS PAID TO YOU-----	\$ 0.00
TOTAL SUBTRACTIONS-\$ 104.90	

3 INCLUDES \$ 7391.90 PAID IN 2013 FOR 2012	\$ 59378.60
\$ 8568.00 PAID IN 2013 FOR 2011	
\$ 8568.00 PAID IN 2013 FOR 2010	
\$ 8568.00 PAID IN 2013 FOR 2009	
\$ 17259.00 PAID IN 2013 FOR OTHER TAX YEARS	

DESCRIPTION OF AMOUNT IN BOX 4+++

S RETURNED TO SSA-----	\$ 0.00
TIONS FOR WORK OR OTHER ADJUSTMENTS-----	\$ 0.00
REPAYMENTS-----	\$ 0.00
BENEFITS REPAYED TO SSA IN 2013 (AMOUNT SHOWN IN BOX 4)-\$	\$ 0.00

[REDACTED] APP 28

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal"
on the reverse of this form.

PLAINTIFF

DEFENDANT

SERVE

COURT CASE NUMBER

15-cv-5863 (RM)

TYPE OF PROCESS

Summons/Complaint

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

ADDRESS (Street or RFD, Apartment No.; City, State and ZIP Code)

AT

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

Sean A. Clark

P.O. Box 1172

New York, New York 10036

Number of process to be served with this Form - 285

Number of parties to be served in this case

Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold

Signature of Attorney or other Originator requesting service on behalf of:

PLAINTIFF

TELEPHONE NUMBER

DATE

DEFENDANT

111-223-5133

11/27/04

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated.
(Sign only first USM 285 if more than one USM 285 is submitted)

Total Process

District of Origin

District to Serve

Signature of Authorized USMS Deputy or Clerk

Date

No. _____

No. _____

I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

Address (complete only if different than shown above)

 A person of suitable age and discretion then residing in the defendant's usual place of abode.

Date of Service

Time

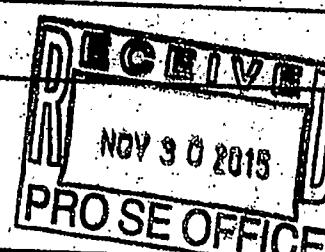
am

pm

Signature of U.S. Marshal or Deputy

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund

REMARKS:



APP 29

THEON

UNION 8
1000

1. **What is the primary purpose of the study?** (check all that apply)

Приложение к Указу Президента Российской Федерации от 15 марта 1995 года № 135

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

100% of the energy consumed in the United States comes from fossil fuels.

SEARCHED *[initials]* INDEXED *[initials]*
SERIALIZED *[initials]* FILED *[initials]*

DE SERVICIO COPY TO REQUESTER AT NAME AND ADDRESS BELOW

1957-1960

19. *Leucosia* *leucostoma* (Fabricius) (Fig. 19)

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal"
on the reverse of this form:

PLAINTIFF	Sean A Clark			COURT CASE NUMBER
DEFENDANT	Alfred Inter State			TYPE OF PROCESS
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN			
AT	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)			
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:				
<input checked="" type="checkbox"/> Sean A Clark P.O. BOX 7772 NEW YORK, NEW YORK 10078				
Number of process to be served with this Form - 285 Number of parties to be served in this case Check for service on U.S.A.				

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE. (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold

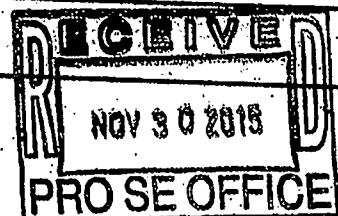
Signature of Attorney or other Originator requesting service on behalf of:		<input checked="" type="checkbox"/> PLAINTIFF	TELEPHONE NUMBER	DATE
		<input type="checkbox"/> DEFENDANT	012345678	11/11/11
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE				
I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin No. _____	District to Serve No. _____	Signature of Authorized USMS Deputy or Clerk Date _____

I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

Address (complete only if different than shown above)



<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.	Date of Service	Time	am
			pm
Signature of U.S. Marshal or Deputy			

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS:

APP 31

PRIOR EDITIONS
MAY BE USED

5. ACKNOWLEDGMENT OF RECEIPT

FORM USM-285 (Rev. 12/15/80)
(Instructions Rev. 12/08)

PLAINTIFF	SCOTT A. CLARK	COURT CASE NUMBER	15-cv-5740 (cm)
DEFENDANT	Student Loan Finance Corporation	TYPE OF PROCESS	Summons & Complaint
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN	→ Student Loan Finance Corporation	
AT	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)	1000 45th Street, Suite 5740, Denver, CO 80204	
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:			

SCOTT A. CLARK
1000 45th Street
Denver, CO 80204

Number of process to be served with this Form - 285
Number of parties to be served in this case
Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold

Student Loan Finance Corporation
1000 45th Street
Denver, CO 80204

Signature of Attorney or other Originator requesting service on behalf of:	PLAINTIFF	TELEPHONE NUMBER	DATE
	<input type="checkbox"/> PLAINTIFF		
	<input type="checkbox"/> DEFENDANT		

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin No.	District to Serve No.	Signature of Authorized USMS Deputy or Clerk.	Date
---	---------------	------------------------	-----------------------	---	------

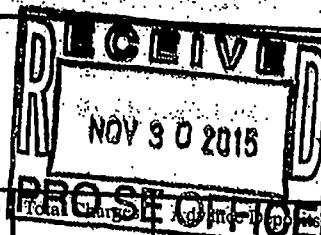
I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.		
Date of Service	Time	am
		pm
Signature of U.S. Marshal or Deputy		

Address (complete only if different than shown above)



Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charge	Amount owed to U.S. Marshal or	Amount of Refund
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REMARKS:

APP 33



DECISION NOTICE

January 15, 2019

SEAN A. CLARK
P.O. BOX 1172
NEW YORK, NY 10276

**RE: FALSE CERTIFICATION APPEAL (ID THEFT) RE-REVIEW/APPEAL
ACCOUNT #: 1003192789**

Dear Mr. Clark:

This letter is a review of a decision to deny your request for False Certification (Identity Theft) discharge dated 7-29-2015 and 10-1-2015 (duplicate letter mailed 10-6-2015).

LOAN HISTORY

According to the National Student Loan Database System (NSLDS), you have taken out a total of five loans pursuant to the Direct Loan Program and Federal Family Education Loan (FFEL) Program.

You signed a FFEL promissory note to attend West Los Angeles College on or about 11-9-1999. Pursuant to this promissory note, a loan was disbursed in the amount of \$3,500.00 on 12-2-1999 through 04-10-2000. This loan was made and held by Bank of America until your default. You defaulted on this loan on 7-11-2002. In light of your default, this loan was assigned to U.S. Department of Education (Education) on 7-29-2009. As of 1-11-2019, this FFEL loan has an outstanding balance of \$5,863.08 (\$3,707.96, principle; \$2,155.12, interest).

You signed a FFEL master promissory note to attend Anthem College (previously called High Tech Institute) on or about 9-29-2000. Pursuant to this promissory note, two loans in the amount of \$2,625.00 and \$4,000.00 were disbursed on 10-19-2000 through 2-12-2001. These two loans were held by the lender, U.S. Bank, until your default 9-26-2002, when the loans were transferred to Educational Assistance Corporation, the loan guarantor. On or about 3-6-2003, these loans were paid in full through consolidation. The current balance on these two loans is zero. The Department never held these two FFEL loans.

You completed an online Direct Consolidation loan application on or about 1-07-2013 and signed a paper promissory note for this loan on or about 2-03-2003. Pursuant to this promissory note, a total of \$5,100.30 was disbursed and the proceeds were used to repay two Federal Family Education Loan (FFEL) Program loans taken to attend Anthem College. As a result of the consolidation, these two FFEL loans were paid in full. As of 1-11-2019, this Direct Consolidation loan has an outstanding balance of \$8,633.17 (\$5,631.97, principal; \$3,001.20, interest).

APP 34

50 United Nations Plaza, San Francisco, CA 94102

www.FederalStudentAid.ed.gov

1-800-4-FED-AID

FEDERAL STUDENT AID START HERE. GO FURTHER.

PROCEDURAL HISTORY

You submitted an Identity Theft claim to the Department in July of 2015 (imaged on 7-16-2015). In your claim letter dated 7-14-2015, you appeared to object to collection on your student loans and asserted that you did not owe the loans in question. You requested a thorough investigation to clear what you believed to be "payments for someone else's deficiency." To support your claim you stated that (1) you graduated from a community college in May 2000 and never attended college thereafter; (2) you were making "payments for someone else's deficiency"; (3) there were deficiencies on your Experian credit report that was never properly investigated; (4) you did not receive court ordered documents for payments; and (5) you have never been married. You submitted the below supporting documents to be reviewed as part of your claim:

- Certification/Agreement of Cooperation of Identity Theft Claims (COOP) form, dated 7-14-2015
- A letter dated 7-14-2015 titled "Certification Identity theft claims"
- Copy of a New York commercial driver's license issued 8-31-09
- Copy of your social security card
- Transunion Credit Report 310692311, dated 6-30-2015 for Sean A. Clark (2 pages)
- Copy of Your New Benefit Amount letter regarding your social security benefits for 2015

On 7-29-2015, the Department denied your claim for discharge on the basis of Identity Theft because (1) based on the information provided, you did not qualify for a discharge and (2) you did not provide a court determination of Identity Theft. The review was conducted pursuant to the standard contained in 34 CFR 682.402(e). This was not the correct standard for this type of claim, as your submission did not contain an assertion of Identity Theft, but rather of common law fraud.

You submitted another Identity Theft claim to the Department, objecting to collection on your student loans, in September of 2015 (imaged on 9-21-2015). In your letter dated 9-18-2015, you claimed that you were a victim of "student loan identity theft." You stated that "...there are no deficiencies on my Transunion credit file or defaults because all payments were made by the Social Security Administration (REC 2015212 090443HAD43B815905 CIPOYAA F-590) (DOC: E12,UNIT:048) for the 2013 tax year and all previous years a total of \$50,354.90" and that "...there are deficiencies in my Experian credit file that needs to be corrected." You also claimed that you were "being defaulted each month to pay \$26.00 for someone else's negligence." You requested that the Department "...contact [the] Social Security Administration for the correct update and to reimburse my disability payments." You submitted the below supporting documents to be reviewed as part of your claim:

- Certification/Agreement of Cooperation of Identity Theft Claims (COOP) form dated 9-18-2015
- A letter dated 9-18-2015 titled "Certification identity theft supportive claim letter"
- Copy of your July 2015 claim submission (see above)
- Form SSA-1099 – Social Security Benefit Statement for 2013
- Copy of a letter dated 9-11-2015 from you to Experian
- Experian report number 1879-0871-15 dated 8-28-2015 for Sean Alexander Clark, Sr. (2 pages)
- Experian report number 2952-8715-08 dated 8-29-2015 for Sean A Clark (page 1 of 2)
- Transunion Credit Report 310692311 dated 6-30-2015 for Sean A. Clark (2 pages)

APP 35

- Experian report number 3888-1752-85 dated 6-19-2015 for Sean A. Clark Jr. (pages 1 and 4 of 6)

On 10-1-2015, the Department denied your claim for discharge because the consolidation of your debts served as official ratification of those debts. A duplicate denial letter regarding your September 2015 identity theft claim was sent to you on 10-6-2015; this letter contained the same information as the 10-1-2015 denial letter.

Since the claim you alleged in your 7-14-2015 submission was that of common law fraud rather than Identity Theft, on 2-29-2016, the Department sent you a letter informing you of an opportunity to receive another review of your claim. The letter listed the documents previously provided by you, and gave you an opportunity to submit any additional documentation to support of your contention that you were not responsible for the loans in question. In addition, the Department requested two sample signatures within one year of February 2003.

You re-submitted your Identity Theft claim to the Department in May 2016 (imaged 5-16-2016). Nevertheless, you failed to include any signature samples within the timeframe requested in the 2-29-2016 letter. Instead, you submitted the below supporting documents:

- Certification/Agreement of Cooperation of Identity Theft Claims (COOP) form, dated 9-18-2015
- A copy of six pages of documents associated with your United States District Court, Southern District of New York, Complaint (Case 1:15-cv-05863-LAP)
- A letter dated 9-18-2015 titled "Certification identity theft supportive claim letter"
- Certification/Agreement of Cooperation of Identity Theft Claims (COOP) form, dated 7-14-2015
- A letter dated 7-14-2015 titled "Certification Identity theft claims"
- Copy of Your New Benefit Amount letter regarding your social security benefits for 2015
- Transunion Credit Report 310692311, dated 6-30-2015 for Sean A. Clark (2 pages)
- Citibank Transaction Journal, 01-14-2015 through 6-10-2015
- A copy of your Experian – Dispute Status, printed 10-2-2015, report # 0404-0623-81
- A copy of your Experian – Dispute Status, printed 10-27-2015, report # 0404-0623-81
- Experian Report Number 0404-0623-81, dated 9-22-2015 for Sean Alexander Clark Sr. (6 pages)
- Form SSA-1099 – Social Security Benefit Statement for 2013
- Allied Interstate Correspondence, dated 7-23-2015
- Student Loan Finance Corporation Statement, dated 8-07-2015

STANDARDS OF REVIEW

The Department has considered, under the common law fraud standard, whether you have shown, by clear and convincing evidence, that you did not obtain or benefit from the loans in question.

DETERMINATION

The claims contained in your letters dated 7-14-2015 and 9-18-2015 were unclear. Nevertheless, you appeared to dispute any collections on your student loan account due to alleged fraud perpetrated upon you by an unknown individual. To thoroughly address any potential basis for relief the

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Department reviewed all available evidence in order to determine whether you had benefited from, had knowledge of, and/or authorized the loans in question. Department records and the following documentation were considered in making our decision:

- FFEL Promissory Note, signed 11-9-1999
- FFEL Promissory Note, signed 9-29-2000
- Direct Consolidation Promissory Note, signed 2-3-2003
- National Student Loan Database System¹ (NSLDS) data
- Debt Management and Collection System² (DMCS) data
- School records from West Los Angeles College received from Glen Schenk at West Los Angeles College
- Letters from the Department dated 7-29-2015, 10-1-2015, and 10-6-2015
- Consolidation loan data from the online consolidation loan application
- Copy of a New York commercial driver's license, issued 8-31-09
- Copy of Social Security Card
- Form SSA 1099 – Social Security Benefit Statement – 2013
- Copy of Your New Benefit Amount letter regarding your social security benefits for 2015
- Citibank Transaction Journal, 01-14-2015 through 06-10-2015
- Experian report number 3888-1752-85, dated 6-19-2015 for Sean A. Clark Jr. (pages 1 and 4 of 6)
- Transunion Credit Report 310692311, dated 6-30-2015 for Sean A. Clark (2 pages)
- Certification/Agreement of Cooperation of Identity Theft Claims (COOP) form, dated 7-14-2015
- A letter dated 7-14-2015 titled "Certification Identity theft claims"
- Allied Interstate Correspondence, dated 07-23-2015
- Student Loan Finance Corporation Statement, dated 08-07-2015
- Experian Report Number 3892-3535-31, dated 8-29-2015 for Sean Alexander Clark Sr. (page 1 of 2)
- Experian report number 1879-0871-15, dated 8-28-2015 for Sean Alexander Clark, Sr. (2 pages)
- Experian report number 2952-8715-08, dated 8-29-2015 for Sean A Clark (page 1 of 2)
- Copy of Letter dated 09-11-2015 from you to Experian
- Certification/Agreement of Cooperation of Identity Theft Claims (COOP) form, dated 9-18-2015
- A letter dated 9-18-2015 titled "Certification identity theft supportive claim letter"
- Experian Report Number 0404-0623-81, dated 9-22-2015 for Sean Alexander Clark Sr. (6 pages)
- Experian Dispute Status for Sean Alexander Report Number 0404-0623-81, dated 10-02-2015 for Sean Alexander Clark
- Experian Dispute Status for Sean Alexander Clark, Report Number 0404-0623-81, dated 10-27-2015

DECISION

After a thorough review of your claims and all the information available, the U. S. Department of Education denies your discharge request for discharge for the following reasons:

¹ Computer database that includes information on loans pursuant to Title IV of HEA.

² The Department's computer database that contains pertinent information regarding defaulted student loan accounts.

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- In your letter to the Department titled "Certification-Identity-theft-claims"-that accompanied your 7-14-2015 Certification/Agreement of Cooperation of Identity Theft Claims, you indicated that you are not responsible for the loans in question because you graduated from community college in May of 2000 and never attended college since. Nevertheless, the FFEL promissory note, for which you are currently responsible, was taken for the period prior to May of 2000. Specifically, it was taken for the period of August 1999 through May 2000 and was used to attend West Los Angeles College. The school confirmed that you graduated in May of 2000 from West Los Angeles College with an associate's degree in liberal arts and sciences. Thus, evidence provided indicates that you benefited from the loans included as part of your discharge claim. Furthermore, Education holds a valid promissory note with respect to this loan. The signature on the promissory note taken to obtain this loan matches the authenticated signature on your commercial NY Driver's License, which you have previously provided. You have not provided signature samples created within two years of this promissory note, which was signed in 1999, despite being asked to do so in Education's letter dated 2-29-2016. Thus, the evidence we have reviewed does not support your claim of common law fraud.
- The Direct Consolidation loan for which you are also currently responsible was taken to repay the two FFEL loans taken to attend Anthem College in the Fall of 2000 and Spring of 2001. The NSLDS enrollment detail screen shows that you have attended between 9-25-2000 and 3-8-2001. Education holds a valid promissory note, as well as repayment plan selection form completed and signed by you, with respect to this loan. The authenticated signature on your commercial NY Driver's License, made in 2017, matches the signature on the promissory note for the Direct Loan in question. You have not provided signature samples created within two years of this promissory note, which was signed in 2003, despite being asked to do so in Education's letter dated 2-29-2016. Thus, the evidence we have reviewed does not support your claim of common law fraud. This consolidation of debts serves as official ratification of those FFEL loans.
- Furthermore, Education holds a valid promissory note dated 9-29-2000 with respect to the FFEL loans taken to attend Anthem College. The authenticated signature on your commercial NY Driver's License, made in 2017, matches the signature on the promissory note for the FFEL Loan in question. You have not provided signature samples created within two years of this promissory note, which was signed in 2000, despite being asked to do so in Education's letter dated 2-29-2016. Thus, the evidence we have reviewed does not support your claim of common law fraud.
- Your 7-14-2015 and 9-18-2015 identity theft claim and supporting statements/documentation submitted did not allege, with specificity, facts to support your claim of fraud. For example, you did not indicate that you (1) did not sign the promissory notes held by the Department; (2) did not receive or benefit from the proceeds of the loans; (3) did not have knowledge of the loans; and (4) did not authorize the loans. Provided information/documentation did not support an administrative discharge due to common law fraud.
- You provided a Form SSA-1099 Social Security Benefit Statement showing your benefits for 2013. It is unclear what you are asserting with respect to this document. This document does not show that payments were made by the Social Security Administration to the Department to satisfy your student loan debt. Payments made on behalf of a borrower to pay a borrower's

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student loan debts are not an indication of fraud. If you are asserting that payments were deducted from your SSA benefits to pay your student loan debt, please provide more detailed information to support this assertion.

- You provided copies of your Experian and Transunion reports. It is unclear what you were asserting with respect to these documents; however, the information on these reports reflects some of your federal student loan account information. Your Experian Report Number 0404-0623-81 dated 9-22-2015 for Sean Alexander Clark Sr. (6 pages) represents some of your loan details for your defaulted FFEL loan; this account is currently in collections with *involuntary* payments being made which is reflected with the "C" payment history indicator. Your Transunion Credit Report 310692311 dated 6-30-2015 for Sean A. Clark (2 pages) which you submitted shows the collection agency (Allied Interstate) under the Account Review Activities. Allied Interstate is the collection agency assigned by the Department to collect on your defaulted federal student loans. If you are requesting something other than verification of the information on these reports, please provide specific details on your request and include supportive documentation to corroborate your claim.

WHAT HAPPENS NEXT?

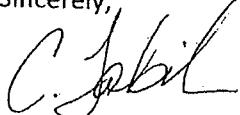
Because of this determination, you continue to be responsible for repayment of the loans in question. If you are not currently repaying your loans, you should arrange for repayment immediately by contacting the holder of your loans. If your loans are not already in default, failure to begin or resume repayment could result in your loans being declared in default. Individuals defaulting on federal student loans can be subjected to wage garnishment, tax refund offset, and litigation. Default can also result in a negative credit rating, future adverse credit decisions, and a loss of Title IV eligibility until the default is resolved.

If you disagree with this final decision, you may have your claim reconsidered by satisfying one of the following requirements:

- Resubmit your application to your servicer, US Department of Education, Default Resolution Group, P.O. Box 5609, Greenville, TX 75403-5609, and provide any new compelling evidence that you would like considered to:
- Pursuant to the Administrative Act, you have a legal right to ask that a U.S. Federal District Court review this administrative decision.

For additional information regarding this matter, you should contact Allied Interstate, Inc. at 800-715-0395.

Sincerely,



Loan Analyst,
U.S. Department of Education
Office of Federal Student Aid



APPEALS COUNCIL
OFFICE OF DISABILITY ADJUDICATION AND REVIEW, SSA
5107 Leesburg Pike
FALLS CHURCH, VA 22041-3255

7/26/2012

To: Managerial Supervisor

Exhibit *000*

Correct Deficiencies in Record File

I (claimant) request that the appropriate adjustments are made from the decision dated July 10, 2012 by Administrative Law Judge Curtis Axelsen. The favorable decision is correct but there are deficiencies on file that need to be corrected, such as, the correct date filed for Social Security Disability and Supplemental Security Income benefits under title XVI of the Social Security Act, the correct onset date of disability, and the correct required insured date of disability.

The date I (claimant) filed for Social Security Disability and Supplemental Security Income was November 24, 2006 not October 27, 2006 (Refer to court transcript administrative record dated November 18, 2008 pages 83-91). The alleged onset date of disability is 7-10-2002 not 4-15-2006 (See court transcript Administrative record dated November 18, 2008 page 294). The insurance requirement status for disability is December 31, 2010 not December 31, 2009 (Refer to Court Transcript dated November 18, 2008 page 8). Enclosed with this letter are the Applications for disability and supplemental security income, and documents for the correct onset date of disability and insurance requirement document.

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Submitted By,

Claimant

Sean A Clark

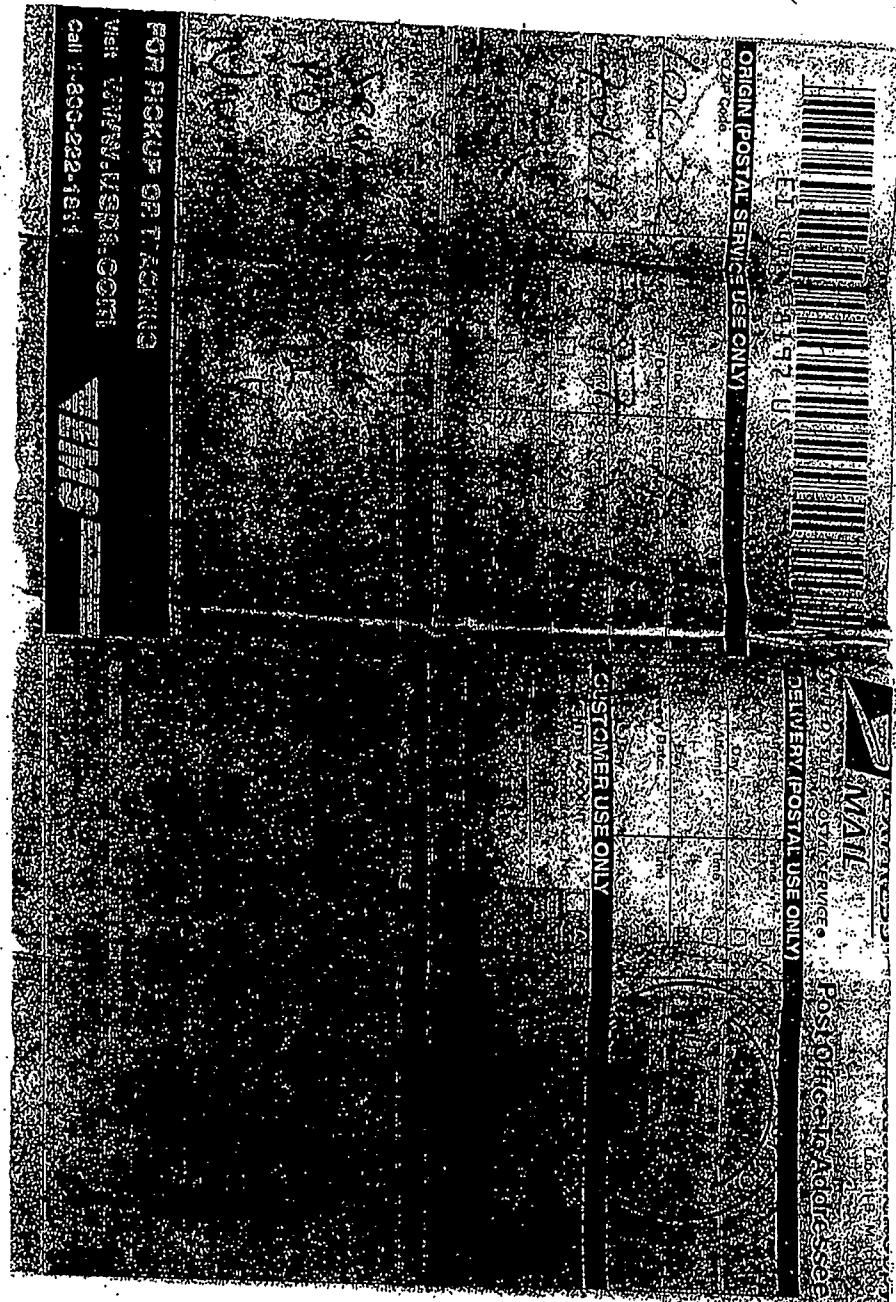
300

Exhibit ~~100~~

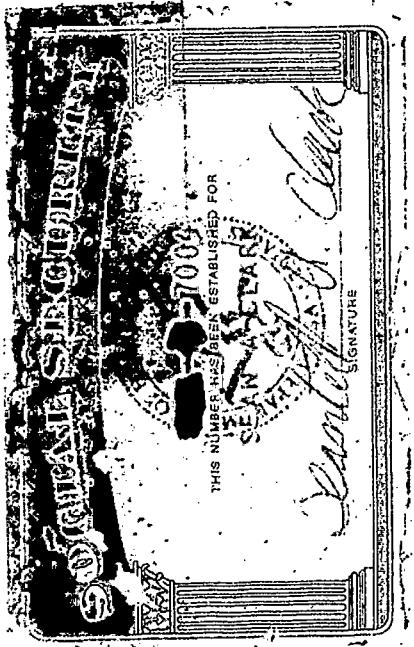
Re
41

200

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Exhibit



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200



COUNTY OF LOS ANGELES
TREASURER AND TAX COLLECTOR



MARK J. SALADINO
TREASURER AND TAX COLLECTOR

Exhibit

REPLY TO:
PUBLIC ADMINISTRATOR OPERATIONS
HALL OF RECORDS
320 W TEMPLE STREET, NINTH FLOOR
LOS ANGELES, CA 90012
TELEPHONE (213) 974-0482
TELECOPIER (213) 613-0169

September 29, 1998

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

Re: Estate of OSBORNE, WILLIAM, Deceased
Estate Account No. ██████████

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.
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
PETE R. JUEZAN
Deputy Public Administrator

PRJ:ldm
Enclosures
EA0004/98008293

200 A pp 43

LAW OFFICES OF
FERENA NOVIN

4929 WILSHIRE BOULEVARD
SUITE 601
LOS ANGELES, CALIFORNIA 90010
TELEPHONE: (323) 954-8152
TELEFAX: (323) 934-3433

August 10, 2006

Wilie Pleasant
Supervising Deputy
Hall of Records
320 West Temple Street
Ninth Floor
Los Angeles, CA 90012

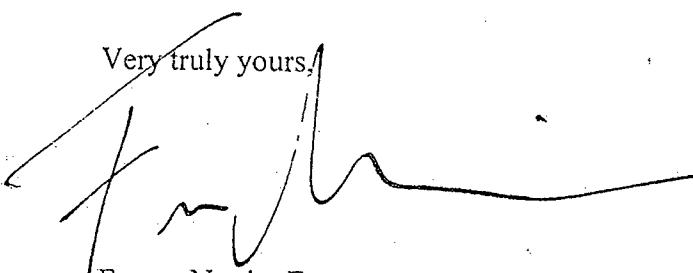
Re: William Osborne, Deceased
Date of Death: 08/02/1997
Probate # B2445956
Discharge Date: 06/15/2000

Dear Ms. Pleasant:

Please be advised that our office has been retained by Mr. Sean Clark to assist him in connection with his step-father's estate. Per our earlier conversation, we are hereby requesting that a copy of deceased William Osborne's file to be forwarded to our office. If you have any questions, please do not hesitate to contact our office.

In advance, your courtesy and cooperation is appreciated.

Very truly yours,


Ferena Novin, Esq.


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CC: Client



UNITED STATES
POSTAL SERVICE

CUSTOMER'S RECEIPT

KEEP THIS RECEIPT FOR YOUR RECORDS	PAY TO	LAW Offices of Ferengi, M.D., Inc.			SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION	
	ADDRESS	4929 Wilshire Blvd. Suite 601 Los Angeles, California 90010-3808			NOT NEGOTIABLE	
	C.O.D. OR USED FOR					
	SERIAL NUMBER	YEAR, MONTH, DAY	POST OFFICE	AMOUNT	CLERK	
10207442338	2006-08-02	10551	\$550.00	0086		

KEEP THIS RECEIPT FOR YOUR RECORDS		LAW Offices of Ferengi, M.D., Inc.			SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION	
ADDRESS		4929 Wilshire Boulevard, Suite 601 L.A., California 90010-3808			NOT NEGOTIABLE	
C.O.D. OR USED FOR						
SERIAL NUMBER		YEAR, MONTH, DAY	POST OFFICE	AMOUNT	CLERK	
10207218357		2006-08-03	10527	\$100.00	0001	

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Thank you for completing the 2020 Census questionnaire for:

Exhibit 4b

93 4TH AVE Apt 1172 NEW YORK, NY 10003

Saturday, July 18, 2020 12:15 PM

If you receive other mail from the Census Bureau about the 2020 Census in the next few days, please disregard it. That mail may have been sent out before today.

If you have any questions, please call the phone number printed in your materials or listed below.

1-844-330-2020

Confirmation #: 


Visit [2020Census.gov](https://www.2020census.gov) (<https://www.2020census.gov>)

[Save or Print This Screen](#)

You may close the browser.

Build: 03b2cb3 | OMB No.: 0607-1006 | Approval Expires: 11/30/2021

App 4b

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Exhibit 
Thank you for completing the 2020 Census
questionnaire for:

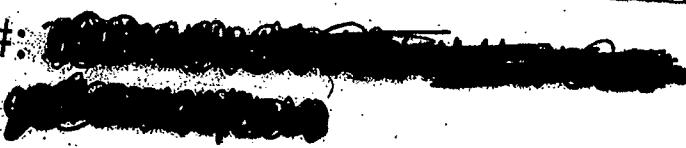
93 4TH AVE Apt 1172 NEW YORK, NY 10003

Friday, March 13, 2020 1:17 PM

If you receive other mail from the Census Bureau about the 2020 Census in the next few days, please disregard it. That mail may have been sent out before today.

If you have any questions, please call the phone number printed in your materials or listed below.

1-844-330-2020

Confirmation #: 

Visit 2020Census.gov (<https://www.2020census.gov>)

Save or Print This Screen

You may close the browser.



APP 47

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEAN A. CLARK,

Plaintiff,

- against -

MARK SCHROEDER, NYS
COMMISSIONER OF DMV,

20-CV-8000 (VSB)

ORDER

Defendant.

X

VERNON S. BRODERICK, United States District Judge:

On September 28, 2020, pro se Plaintiff filed suit against the Commissioner of the New York State Department of Motor Vehicles alleging that Plaintiff's driver's license number was improperly disclosed. Plaintiff's complaint seeks damages against Commissioner Schroeder in his official capacity, but does not indicate that Commissioner Schroeder was personally involved in any violation of Plaintiff's rights. As such, Plaintiff has not shown that his suit is not barred by the Eleventh Amendment. *See, e.g., Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009) ("The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents."). It is hereby:

ORDERED that pro se Plaintiff is directed to show cause as to why this matter should not be dismissed as barred by Eleventh Amendment immunity on or before November 2, 2020.

IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to mail a copy of this Order to pro se Plaintiff.

SO ORDERED.

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Dated: October 20, 2020

New York, New York

Vernon S. Broderick

Vernon S. Broderick

United States District Judge

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0000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
THURGOOD MARSHALL
40 FOLEY SQUARE
NEW YORK, NEW YORK 10007
COURTROOM: 518

RECEIVED
SUNY PROSECUTION
2020 OCT 23 PM 10:18

SEAN A.CLARK,)	
PLAINTIFF)	ANSWER FROM ORDER
)	
v.)	Dkt.#20-cv-8000
)	
Mark Schroeder,)	
NYS COMMISSIONER OF DMV)	
DEFENDANT)	

To: Judge Vernon S. Broderick,

First, I just want to say that on the civil cover sheet I requested that this litigation preside in White Plains not Manhattan. Now to the order dated 10/20/2020, The Commissioner of DMV is the person who designates certain kinds of personnel to handle the affairs of DMV customers. If my driver license was processed correctly on 5/21/2018 and does not expire until 2025 then the Commissioner or the Commissioner representative for DMV should not have any problem with answering the summons & complaint. If a mistake was made concerning the omission of

BB * *App 50*

my drivers license then this issue needs addressing in it's entirety. As I've shown in my twenty-nine page attachment to the complaint and exhibits A-L that there is good cause for the merit of the complaint from the exhibits.

There is an exception to the Eleventh Amendment immunity, In Ex parte Young, 209 U.S.123 (1908); "If government officials attempt to enforce an unconstitutional law, sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief. This is because they are not acting on behalf of the state in this situation". " The majority was forced to reconcile the eleventh amendment's ban on individuals suing states with the fourteenth amendment's requirement that states respect due process rights of individuals". In this litigation I'm representing myself as an individual not on behalf of the state. The 14th amendment section.1 and section.5 states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". Therefore the eleventh amendment immunity is waived pursuant to the fourteenth amendment section 1. and section 5. This action does show good cause based on the merit of the three litigation that is leaked to my drivers license for embezzlement. I'm requesting that this litigation is transferred back to white plains per civil cover sheet dated 9/28/2020 and that the defendant is given an opportunity to answer the summons & complaint and to make sure all court documents are sealed as indicated pursuant to the fifth amendment of the



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U.S Constitution. A copy of this letter was mailed to the defendant by regular mail
at: 6 Empire State Plz, Albany, New York 12228.

Submitted by
Sean A. Clark

Plaintiff

93 4th Avenue 1172
New York, New York 10003
Phone#917-242-2573
Email: seantellc_22@yahoo.com
Date: 10/22/2020

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEAN A. CLARK,

Plaintiff,

- against -

MARK SCHROEDER, NYS
COMMISSIONER OF DMV,

Defendant.

X

X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #
DATE FILED: 11/5/2020

20-CV-8000 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

Plaintiff, appearing *pro se*, brings the instant Complaint against the Commissioner of the New York State Department of Motor Vehicles, alleging that Defendant improperly disclosed Plaintiff's driver's license number. (Doc. 1, Compl.)¹ Plaintiff seeks "\$600 quadrillion dollars" in monetary damages from Commissioner Schroeder. As discussed further below, the Court hereby dismisses the Complaint *sua sponte* and with prejudice on grounds of Defendant's immunity from suit.

I. Background

Plaintiff's Complaint seeks damages against Commissioner Schroeder in his official capacity, but does not indicate that Commissioner Schroeder was personally involved in any violation of Plaintiff's rights. On October 20, 2020, the Court directed Plaintiff to show cause as to why his suit should not be dismissed as barred by Eleventh Amendment immunity. (Doc. 5.)

¹ "Compl." refers to Plaintiff's Complaint filed September 28, 2020. (Doc. 1.)

2020

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On October 23, 2020, Plaintiff filed a response to the Court's Order ("Response"). (Doc. 6, Pl.'s Resp.)² Plaintiff has not yet served a copy of the Complaint and Summons upon Defendant.

II. Discussion

A. Immunity from Suit

The Eleventh Amendment bars actions against state officials sued in their official capacities "where the relief granted would bind the state or where the state is the real party in interest." *Russell v. Dunston*, 896 F.2d 664, 667–68 (2d Cir. 1990), cert. denied, 498 U.S. 813 (1990); *McAllan v. Malatzky*, No. 97 CIV. 8291 (JGK), 1998 WL 24369, at *4 (S.D.N.Y. Jan. 22, 1998), *aff'd*, 173 F.3d 845 (2d Cir. 1999); *see, e.g.*, *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009) ("The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents."). An exception to sovereign immunity exists for claims against government officials seeking prospective injunctive relief. *See Ex parte Young*, 209 U.S. 123, 155–56 (1908); *see also Henrietta D. v. Bloomberg*, 331 F.3d 261, 287 (2d Cir. 2003). However, Plaintiff's suit does not fall under this exception, as Plaintiff does not request injunctive relief but instead seeks "\$600 quadrillion dollars" in damages. (Compl. 28.)

Plaintiff's Complaint does not indicate that Commissioner Schroeder was personally involved in any violation of Plaintiff's rights. Although Plaintiff claims that his driver's license number was leaked, he does not plead facts demonstrating that Commissioner Schroeder bore personal responsibility for this alleged disclosure. (Compl. 27.)

Nor does Plaintiff's Response address the defects in his Complaint. Plaintiff's Response merely describes the DMV Commissioner's official role, but does not allege that the

² "Pl.'s Resp." refers to Plaintiff's response to the Court's Order, filed October 23, 2020. (Doc. 6.)

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Commissioner personally acted or failed to act in such a way as to violate Plaintiff's rights.

(Pl.'s Resp. 1.)

Accordingly, Plaintiff's claim for monetary damages against Commissioner Schroeder in his official capacity is barred by the Eleventh Amendment.

B. *Sua Sponte Dismissal*

“Ordinarily, *sua sponte* dismissal of a *pro se* plaintiff's complaint prior to service being effectuated on the defendants is disfavored.” *Rolle v. Berkowitz*, No. 03 CIV.7120 DAB RLE, 2004 WL 287678, at *1 (S.D.N.Y. Feb. 11, 2004) (citing *Lewis v. New York*, 547 F.2d 4, 5 (2d Cir.1976)). However, “district courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee.” *Kraft v. City of New York*, 823 F. App'x 62, 64 (2d Cir. 2020) (citing *Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000)); *see also Rolle v. Berkowitz*, 2004 WL 287678, at *1 (collecting cases). A claim is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e). Courts must construe *pro se* pleadings broadly, and interpret them “to raise the strongest arguments that they suggest.” *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir.1996) (quoting *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir.1994)) (internal quotation marks omitted).

Although it is customary upon a motion to dismiss to grant the Plaintiff leave to replead, a court may dismiss without leave to amend “when amendment would be futile.” *Rolle v. Berkowitz*, 2004 WL 287678, at *3 (quoting *Oneida Indian Nation of New York v. City of Sherrill*, 337 F.3d 139, 168 (2d Cir.2003) (internal quotation marks omitted)).

Applying this rule to the present case, the Court finds that Plaintiff's claim lacks an arguable legal basis because it is barred by the Eleventh Amendment. Further, amendment of

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Plaintiff's complaint would be futile. The Court has given Plaintiff opportunity to show cause as to why his claim against Commissioner Schroeder is not barred by the Eleventh Amendment, and Plaintiff has not done so. Accordingly, the Court dismisses the Complaint *sua sponte* without leave to replead.

III. Conclusion

For the foregoing reasons, Plaintiff's complaint is hereby DISMISSED with prejudice. The Clerk of the Court is directed to enter judgment dismissing the complaint, and close this case.

IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to mail a copy of this Order to pro se Plaintiff.

SO ORDERED.

Dated: November 5, 2020
New York, New York


Vernon S. Broderick
United States District Judge

JMS
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United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

September 6, 2019

By ECF

Hon. Alvin K. Hellerstein
United States District Judge
United States Courthouse
500 Pearl Street, Room 1050
New York, New York 10007

Re: *Clark v. Comm'r of Social Sec.*, No. 08-cv-8443-AKH

Dear Judge Hellerstein:

This Office represents the Commissioner of Social Security, defendant in the above-captioned action. I write respectfully in response to the Court's inquiry regarding the status of this matter. In response to the Court's inquiry, I reviewed the district court's electronic dockets in this matter ("Clark I") and in the related matter of *Clark v. Comm'r of Soc. Sec.*, No. 12-cv-9274-AKH ("Clark II"), as well as our own case files. Briefly, based upon my review, it appears that a final judgment remanding the case to the Commissioner should have been entered but was not. However, because the matter has since been finally resolved in Plaintiff's favor, this case is now moot.

Plaintiff *pro se* commenced this action by filing a complaint on October 2, 2008. *See Clark I*, Docket Entry No. 2. Upon the parties' moving papers, on May 12, 2009, this Court entered judgment, granting the Commissioner's motion for judgment on the pleadings, and dismissing the complaint. *See id.* Docket Entry No. 9. Plaintiff appealed, and pursuant to mandate of the Second Circuit, the matter was remanded back to the Social Security Administration for further proceedings. *See id.*, Docket Entry No. 21 (referring the mandate of Case No. 09274-cv (2d Cir.)). In the order dismissing *Clark II*, the district court noted that it had been unaware of the Second Circuit mandate that had been issued in *Clark I*. *See Clark II*, Docket Entry No. 33, p. 2. It appears that as a result, the judgment affirming the Commissioner's decision was never vacated. However, the case proceeded as if the judgment had been vacated. And upon remand, the administrative law judge ("ALJ") issued a fully favorable decision. *See Clark II* Docket Entry No. 26 (Wilder Declaration, Exh. 14, p. 1). To be clear, upon remand, the ALJ issued a fully favorable decision on Plaintiff's October 27, 2006 applications that were the subject of this court case. *Id.* Thus, this matter is now moot.

Further, we do not believe there was any harm to the case by virtue of the failure to vacate judgment. As noted, the case proceeded on remand. Moreover, had the judgment affirming the Commissioner's decision been vacated pursuant the Second Circuit mandate, the proper course of action would then have been to enter a new judgment remanding the case for further proceedings.

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under the fourth sentence of 42 U.S.C. § 405(g). This would have also ended the court case. *See Shalala v. Schaefer*, 509 U.S. 292 (1993) (sentence-four remand requires entry of judgment, which ends the case if not timely appealed). Thus, we do not believe any further action is required to resolve this matter.

Respectfully,

GEOFFREY S. BERMAN
United States Attorney

/s/ Leslie A. Ramirez-Fisher

BY: LESLIE A. RAMIREZ-FISHER
Assistant U.S. Attorney
Telephone: (212) 637-0378
Fax: (212) 637-2750

cc: Sean Clark, Plaintiff *pro se* (By regular mail)

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Bankrate

Create Account



Student Loan Calculator

Using a student loan calculator can help you create a student loan repayment strategy that's right for you. With some basic information about your existing or prospective student loan, the Bankrate student loan calculator shows you the monthly loan payment you can expect, how long it'll take you to repay your entire loan and how much interest you'll pay overall.

Enter the details of your student loan into the calculator below to see your personal results.

Loan amount	Monthly Payments
<input type="text" value="\$ 1,708"/>	\$ 14.44
Loan term in years	Total Principal Paid
<input type="text" value="13"/>	\$1,708
Or	Total Interest Paid
Loan term in months	\$544.49
<input type="text" value="156"/>	
Interest rate per year	COMPARE LOAN RATES
<input type="text" value="4.45"/> %	Show amortization schedule
CALCULATE	
ADD EXTRA PAYMENTS	

What you need to know for this calculator
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Bankrate

Create Account



Student Loan Calculator

Using a student loan calculator can help you create a student loan repayment strategy that's right for you. With some basic information about your existing or prospective student loan, the Bankrate student loan calculator shows you the monthly loan payment you can expect, how long it'll take you to repay your entire loan and how much interest you'll pay overall.

Enter the details of your student loan into the calculator below to see your personal results.

Loan amount	Monthly Payments
<input type="text" value="\$ 3,500"/>	\$ 26.69
Loan term in years	Total Principal Paid
<input type="text" value="15"/>	\$3,500
Or	Total Interest Paid
Loan term in months	\$1,303.37
<input type="text" value="180"/>	
Interest rate per year	COMPARE LOAN RATES
<input type="text" value="4.45"/> %	Show amortization schedule
CALCULATE	
ADD EXTRA PAYMENTS	

What you need to know for this calculator
APP 60