No. 22-5064

IN THE

# Supreme Court of the United States

DERVANNA H.A. TROY-MCKOY,

*Petitioner,*

*v.*

MOUNT SINAI BETH ISRAEL,

*Respondent.*

*On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York*

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Do the issues involved, which pertain solely to New York State law, namely whether the documentary evidence (i.e., the affidavit of service) refuted plaintiff's claim of a forged document, warrant review by this Court, when there are no important federal questions presented and no decisions have been made by any United States court of appeals?

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## PRELIMINARY STATEMENT

For the reasons stated herein, the questions presented in this petition do not merit review by this Court. The issues do not present important federal questions and no decisions have been made by any United States court of appeals.

Mount Sinai Beth Israel ("Respondent" or "Mount Sinai") submits this brief in opposition to the petition of Petitioner Dervanna H. A. Troy-McKoy ("Petitioner" or "Appellant") for a writ of certiorari. The petition concerns the New York State Court of Appeals' March 22, 2022 decision denying Petitioner leave to appeal from the New York State Appellate Division, First Department's October 26, 2021 decision upholding the Order of the New York State Supreme Court, New York County (Hon. Paul A. Goetz), entered December 18, 2020, wherein the Court granted Mount Sinai's motion to dismiss the complaint. The Appellate Division noted that, while Appellant's claims are based on his allegation that a certain affidavit of service contains a forged version of his signature, a review of the affidavit reveals that it does not purport to contain Appellant's signature at all but only those of the affiant and the notary public. The Appellate Division thus found that the complaint was correctly dismissed as conclusively refuted by the documentary evidence, i.e., the affidavit of service.

As discussed more fully below, the instant petition should be denied.

## RELATED CASES

1. The action which is the subject of the petition currently before this Court: *Dervanna H.A. Troy-McKoy v. Mount Sinai Beth Israel* (Supreme Court of the State of New York, County of New York, Index No. 157291/2020). The judgment of

the Supreme Court of the State of New York, County of New York, dismissing the action was entered on December 18, 2020. The judgment of the Appellate Division, First Department, affirming the New York State Supreme Court's decision was entered on October 26, 2021. The judgment of the Court of Appeals denying Petitioner leave to appeal was entered on March 22, 2022.

2. Prior related action: *Dervanna H.A. Troy-McKoy v. Mount Sinai Beth Israel* (Supreme Court of the State of New York, County of New York, Index No. 100835/2018) (the "Prior Action"). The judgment of the Supreme Court of the State of New York, County of New York, dismissing the action was entered on March 13, 2019. The judgment of the Appellate Division, First Department, affirming the New York State Supreme Court's decision was entered on April 20, 2018. The judgment of the Court of Appeals denying Petitioner leave to appeal was entered on September 15, 2020. The judgment of the United State Supreme Court denying Petitioner's writ of certiorari was issued by this Court on April 19, 2021. The judgment of the United States Supreme Court denying Petitioner's application for reargument of his writ of certiorari was issued by this Court on June 7, 2021.

## JURISDICTION

This Court does not have jurisdiction under 28 U.S.C. 1257(a) as the issues involved concern purely state law.

## INTRODUCTION

It is axiomatic that the Supreme Court of the United States, while having broad jurisdiction over issues of Constitutional or federal law, does not have

jurisdiction over state court judgments on questions of purely state law. This principle is set forth in U.S.C § 1257(a) and in the Supreme Court's own Rule 10. Nonetheless, the pro se Petitioner erroneously attempts to bring issues of purely well-settled New York State law before this Court.

## COUNTER STATEMENT OF BACKGROUND AND FACTS

### Overview

This petition arises out of an action commenced by Petitioner against Mount Sinai on September 9, 2020 seeking monetary compensation in the original amount of $580,000,000.00[1] for damages claimed to have been sustained as a result of Mount Sinai's alleged construction of a fraudulent signature and blackmail "to destroy Plaintiff completely for the rest of his life." Petitioner alleges that Mount Sinai fraudulently forged his signature and blackmailed him in connection with the Prior Action, which Prior Action has already been dismissed by the New York State Supreme Court, with such dismissal being upheld by the New York State Appellate Division, First Department, denied for further appeal by the New York State Court of Appeals, and denied for certiorari by the United States Supreme Court. The instant action is nothing more than a frivolous and baseless attempt by Petitioner to continue to drag Mount Sinai to court after being unsuccessful in his previous attempts at litigation.

[1] In Petitioner's application to this Court, he changes the monetary compensation sought to $601,000,000.00.

## I. The Prior Action

The *pro se* Petitioner ("plaintiff" in the Prior Action) originally commenced the Prior Action in the Supreme Court of the State of New York, County of New York, entitled: *Dervanna H.A. Troy-McKoy v. Mount Sinai Beth Israel* (Index No. 100835/2018), in which he sought monetary compensation in the amount of $10,920,000.00 for damages allegedly sustained as a result of Mount Sinai's alleged intentional destruction of his medical file. Plaintiff alleged that the medical file was destroyed in a deliberate conspiracy with the FBI and the Supreme Court of the State of New York, County of New York, in an effort to cover up the FBI's alleged poisoning of himself, which, according to plaintiff, was a racially motivated hate crime.

In lieu of an answer and by way of a motion to dismiss dated August 15, 2018, Mount Sinai moved to dismiss the complaint in the Prior Action pursuant to CPLR 3211(a)(5), (a)(7), and (a)(10) on the grounds that (1) the statute of limitations had expired, (2) plaintiff had failed to state a cause of action, and (3) the complaint had failed to name necessary parties.

On August 27, 2018, plaintiff moved for a default judgment against Mount Sinai on the grounds that Mount Sinai did not respond to the complaint in the Prior Action within thirty days.

Both motions were orally argued on March 13, 2019 before Hon. David B. Cohen. By way of an Order dated March 13, 2019 and entered March 14, 2019, Hon. David B. Cohen granted Mount Sinai's motion to dismiss the Prior Action on the grounds that (1) the statute of limitations had expired; and (2) plaintiff had failed to

state a cause of action. By way of another Order dated March 13, 2019 and entered March 14, 2019, Hon. David B. Cohen denied plaintiff's motion for default judgment on the grounds that service of process was not proper.

Thereafter, on March 20, 2019, plaintiff made a motion to reargue both motions. Hon. David B. Cohen denied plaintiff's motion to reargue by way of an Order dated August 21, 2019.

Plaintiff then commenced an appeal to the New York State Appellate Division, First Department. The Appellate Division issued its Decision and Order on April 30, 2020, which affirmed Hon. David B. Cohen's holdings.

On May 29, 2020, plaintiff moved for leave to appeal from the Appellate Division, First Department's Decision to the New York State Court of Appeals. Mount Sinai served its affirmation in opposition to plaintiff's motion for leave to appeal on June 19, 2020. It is Mount Sinai's affidavit of service of its affirmation in opposition which is the subject of the instant action. Pet. App. D.

Thereafter, plaintiff alleged that he was not in receipt of Mount Sinai's opposition papers.

By way of a letter dated July 9, 2020, the Court of Appeals acknowledged receipt of plaintiff's letter alleging that he did not receive Mount Sinai's opposition.

By way of a letter dated July 13, 2020, Mount Sinai responded to plaintiff with a courtesy copy of the opposition papers, and attached the affidavit of service of the affirmation in opposition.

By way of a letter dated July 18, 2020, plaintiff urged the Court of Appeals to disregard Mount Sinai's letter with the courtesy copy of the affirmation in opposition and alleged that Mount Sinai conspired with the deponent of the affidavit of service to fraudulently commit criminal fraud and present a signature as plaintiff's on such affidavit.

By way of a letter dated July 28, 2020, the Court of Appeals acknowledged receipt of plaintiff's papers alleging the fraud, and that they "are before the Court for such consideration as the Court determines to be appropriate."

By way of a letter dated August 19, 2020, Mount Sinai responded to plaintiff and refuted plaintiff's allegation of conspiracy to commit criminal fraud, as neither of the signatures on the affidavit of services were presented as plaintiff's own signature; rather, they were the signatures of the deponent and the notary witnessing the deponent's signature.

By way of a letter dated August 21, 2020, the Court of Appeals acknowledged receipt of Mount Sinai's letter refuting the alleged conspiracy to commit fraud.

On August 22, 2020, plaintiff again wrote to the Court of Appeals and argued that Mount Sinai's response was untimely.

By way of a letter dated September 2, 2020, the Court of Appeals acknowledged receipt of plaintiff's August 22, 2020 letter.

On September 15, 2020, the Court of Appeals denied plaintiff's motion for leave to appeal to the Court of Appeals.

On January 26, 2021, plaintiff filed a petition for a writ of certiorari to the United States Supreme Court, seeking review of the Order of the Court of Appeals denying leave to appeal. The United States Supreme Court denied certiorari on April 19, 2021.

On May 7, 2021, plaintiff filed a petition for rehearing with the United States Supreme Court. The United States Supreme Court denied the petition for rehearing on June 7, 2021.

Despite the Court of Appeals being in receipt of plaintiff's allegations of fraud by forging his signature, and the Court's considering same in connection with its decision to deny plaintiff's motion for leave to appeal in the Prior Action, plaintiff thereafter commenced the instant action.

## II. The Instant Action

The *pro se* Petitioner ("plaintiff") commenced the instant action in the Supreme Court of the State of New York, County of New York, entitled: *Dervanna H.A. Troy-McKoy v. Mount Sinai Beth Israel* (Index No. 157291/2020), in which he sought monetary compensation in the amount of over $580,000,000.00 for damages allegedly sustained as a result of Mount Sinai's construction of a fraudulent signature and blackmail "to destroy Plaintiff completely for the rest of his life." Petitioner alleges that Mount Sinai fraudulently forged his signature and blackmailed him in connection with the Prior Action. Pet. App. D.

Petitioner's complaint contains seven causes of action. The first cause of action alleges fraud "by breaching Plaintiff's signature." The second cause of action alleges

that Mount Sinai "conspired and appoint deponent Dave Jackson to sworn that the fraudulent signature belongs to Plaintiff." [*sic*]. The third cause of action alleges that Mount Sinai "knowingly that the signature is not Plaintiff' signature, deliberately accepted the fraudulent signature that was presented to Defendant, above Plaintiff's NAME, as that of Plaintiff." [*sic*]. With respect to the fourth cause of action, Petitioner once again alleges that Mount Sinai "deliberately and maliciously" filed a "fraudulent signature" and that this was done to "blackmail Plaintiff and to oppress Plaintiff for the rest of his life." In the fifth and sixth causes of action, Petitioner once again alleges that Mount Sinai filed a fraudulent signature, and that Mount Sinai blackmailed him. In the seventh and final cause of action, Petitioner yet again alleges that Mount Sinai filed a fraudulent signature and attempted to blackmail him and that Mount Sinai "defamed Plaintiff that Plaintiff conduct his business with fraudulent signature to enforce a block on Plaintiff ever recovering from his business losses inflected on Plaintiff's immense intellectual business occludes." [*sic*].

In lieu of an answer and by way of a motion to dismiss dated October 5, 2020, Mount Sinai moved to dismiss the complaint in the instant action pursuant to CPLR 3211(a)(1), (a)(7), and (a)(5) on the following grounds: (1) based upon documentary evidence (2) that Petitioner had failed to state a cause of action, and (3) based upon res judicata and/or collateral estoppel.

By way of an Order dated December 18, 2020 and entered December 18, 2020, Hon. Paul A. Goetz granted Mount Sinai's motion to dismiss the instant action on the

grounds that the documentary evidence, namely the affidavit of service, refutes Petitioner's claims.

**Summary of Motion Practice in New York State Court**

In lieu of an answer and by way of a motion to dismiss dated October 5, 2020, Mount Sinai moved to dismiss the complaint in the instant action pursuant to CPLR §§3211(a)(1), (a)(7), and (a)(5) on the following grounds: (1) based upon documentary evidence (2) that Petitioner had failed to state a cause of action, and (3) based upon res judicata and/or collateral estoppel.

**New York State Supreme Court Order**

By way of an Order dated December 18, 2020 and entered December 18, 2020, Hon. Paul A. Goetz granted Mount Sinai's motion to dismiss the instant action on the grounds that the documentary evidence, namely the affidavit of service, refutes Petitioner's claims. Pet. App. B.

**New York State Appellate Division Order**

By way of an Order dated and entered October 26, 2021, the New York State Appellate Division, First Department, unanimously affirmed the New York State Supreme Court's Order, which granted Mount Sinai's motion to dismiss the instant action on the grounds that the documentary evidence, namely the affidavit of service, refutes Petitioner's claims. Pet. App. C.

**New York State Court of Appeals Order**

By way of an Order dated and entered March 22, 2022, the New York State Court of Appeals denied Petitioner leave to appeal. Pet. App. A.

## REASONS FOR DENYING THE WRIT

### I. The Questions Presented Do Not Warrant Review, as They Concern Issues of Purely New York State Law.

Pursuant to 28 U.S.C. § 1257(a), which governs this Court's jurisdiction over state court decisions, "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States." Here, the validity of a United States treaty or statute is not being questioned, nor is there a question of any State statute violating the Constitution, treaties or laws of the United States. There are no federal Constitutional or statutory questions at issue. Rather, the issues involve matters of purely New York State law.

Furthermore, pursuant to Supreme Court Rule 10, "[a] petition for a writ of certiorari will be granted only for compelling reasons." Rule 10 further outlines certain considerations governing review on certiorari. The first consideration concerns a decision made by a United States court of appeals that is "in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course

of the judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." The second consideration concerns when "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." The third and final consideration concerns when "a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

None of these considerations governing review are present here. The decision from which Petitioner is seeking review was not decided by a United States court of appeals or any other federal court. Furthermore, the New York State Courts' decisions have not decided any important questions of federal law; the issues presented here are solely issues of New York State law, as set forth below, and such issues are well-settled and were correctly decided under New York State law.

Petitioner also attempts to muddle the issues that were decided in the orders from which he seeks review with his claim now before this Court that the New York State Courts' actions in dismissing Petitioner's action and denying his appeals was prejudicial, malicious, negligent and violated his civil rights to bring an action before the courts seeking "humanitarian resolutions". The New York State Courts' decisions, however, were appropriate, well-reasoned, in full compliance with New

York State law, and do not in any way constitute a violation of Petitioner's civil rights such as would warrant review by this Court.

Accordingly, the instant petition should be denied.

## II. The Action Should Have Been Dismissed Pursuant to CPLR 3211(a)(1) Based on the Documentary Evidence of the Affidavit of Service.

The New York State Supreme Court, as affirmed by the New York State Appellate Division, First Department, correctly found that the documentary evidence, namely the affidavit of service, refutes Petitioner's claims.

Under CPLR 3211(a)(1), a party may move to dismiss an action if "a defense is founded upon documentary evidence." When making such a motion, the documentary evidence must resolve "all factual issues as a matter of law, and conclusively dispose of the plaintiff's claim." Fontanetta v. Doe, 73 A.D.3d 78, 83 (2d Dep't 2010) (quoting Fortis Fin. Servs., LLC v. Fimat Futures USA, Inc., 290 A.D.2d 383, 383 (1st Dep't 2002)). See also, Leon v Martinez, 84 N.Y.2d 83, 88 (1994) ("a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law"). The contents of the documents must also be "essentially undeniable" to qualify as proper documentary evidence. Fontanetta, 73 A.D.3d at 85. A motion to dismiss pursuant to CPLR 3211(a)(1) may be granted when the documentary evidence "utterly refutes the plaintiff's factual allegations, thereby conclusively establishing a defense as a matter of law." Mawere v. Landau, 130 A.D.3d 986, 987 (2d Dep't 2015) (internal citations omitted).

Here, the documentary evidence – the affidavit of service of Mount Sinai's affirmation in opposition – is "essentially undeniable" and conclusively establishes

that there was no conspiracy to commit fraud and no forgery of Petitioner's signature. Pet App. D. The signature of the deponent, Dave Jackson, is clearly legible, as is the signature of Antoine Victoria Robertson Coston, the notary who witnessed Mr. Jackson's signature. Nowhere on the affidavit of service is there any signature purporting to be that of Petitioner. This was explained to Petitioner in the undersigned's office's August 19, 2020 letter. Nonetheless, Petitioner instituted the instant action, claiming that Dave Jackson's signature on the affidavit of service was being presented as his own simply due to its proximity on the affidavit to Petitioner's name in the case name.

Because the signatures on the affidavit of service "utterly refute[]" Petitioner's allegations of conspiracy to commit criminal fraud, New York State Supreme Court's order, as affirmed by the New York State Appellate Division, First Department, correctly granted Mount Sinai's motion and dismissed Petitioner's action.

As this issue does not fall within this Court's considerations governing review, the instant petition does not merit review.

## III. The Action Should Have Been Dismissed Pursuant to CPLR 3211(a)(7) as Petitioner Failed to State a Cause of Action upon Which Relief Could Be Granted.

While New York State Supreme Court did not address the following argument submitted by Mount Sinai in support of its motion to dismiss, it is requested that this Court consider same and decline to review the petition based on these additional grounds.

"Under CPLR 3211 (a)(1) and (a)(7) the court is limited to examining the complaint (and, under (a)(1), the proffered documentary evidence) to determine whether the complaint states a cause of action (Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994)). The law is also settled that 'in assessing the adequacy of a complaint under CPLR 3211 (a)(7), the court must give the pleading a liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference.' (Landon v. Kroll Lab. Specialists, Inc., 22 N.Y.3d 1, 5 (2013) (internal quotation marks and brackets omitted))." Greystone Funding Corp. v. Kutner, 121 A.D.3d 581, 583 (1st Dep't 2014).

Here, even when affording Petitioner the benefit of every possible favorable inference, the action warrants dismissal as Petitioner provides no facts to support any of his causes of action, and fails to state any causes of action upon which relief could be granted.

Petitioner's first cause of action alleges fraud "by breaching Plaintiff's signature." "To state a cause of action for fraud, a plaintiff must allege a representation of material fact, the falsity of the representation, knowledge by the party making the representation that it was false when made, justifiable reliance by the plaintiff and resulting injury." Kaufman v. Cohen, 307 A.D.2d 113, 119 (1st Dep't 2003). Petitioner's complaint fails on each of these elements. He alleges that the affidavit of service contains a fraudulent signature being presented as his own. However, he provides no facts or evidence to support this claim and the very document he relies upon clearly refutes his allegations, as the signatures contained

therein are clearly not being presented as Petitioner's. Accordingly, New York State Supreme Court would have been correct in dismissing the first cause of action upon these additional grounds. The instant petition does not merit review.

Petitioner's second cause of action alleges that Mount Sinai "conspired and appoint deponent Dave Jackson to sworn that the fraudulent signature belongs to Plaintiff." [*sic*]. However, "New York does not recognize a cause of action for conspiracy to commit fraud." Maheras v. Awan, 151 A.D.3d 643, 646 (1st Dep't 2017). Accordingly, New York State Supreme Court would have been correct in dismissing the second cause of action upon these additional grounds. The instant petition does not merit review.

Petitioner's third cause of action alleges that Mount Sinai "knowingly that the signature is not Plaintiff' signature, deliberately accepted the fraudulent signature that was presented to Defendant, above Plaintiff's NAME, as that of Plaintiff." [*sic*]. Under New York law, "'forgery' is but one species of 'fraud.'" Piedra v. Vanover, 174 A.D.2d 191, 194 (2d Dep't 1992). "[F]orgery 'is defined by the common law to be the fraudulent making of a writing to the prejudice of another's rights or the making *malo animo* of any written instrument for the purpose of fraud and deceit [or] [t]he false making of an instrument which purports on its face to be good and valid for the purpose for which it was created, with the design to defraud.'" Id. (quoting Marden v. Dorthy, 160 N.Y. 39, 53 (1899)). Whether the third cause of action alleges fraud or forgery, a type of fraud, is immaterial, as Petitioner fails to provide any facts to support his allegations, and, as noted above, the affidavit of service, as the very

document he relies upon for his baseless complaint, clearly refutes his allegations. Accordingly, New York State Supreme Court would have been correct in dismissing the third cause of action upon these additional grounds. The instant petition does not merit review.

With respect to the fourth cause of action, Petitioner once again alleges that Mount Sinai "deliberately and maliciously" filed a "fraudulent signature" and that this was done to "blackmail Plaintiff and to oppress Plaintiff for the rest of his life." Blackmail is "the threat that the speaker will say or do something unpleasant unless you take, or refrain from taking, certain actions." Posner v. Lewis, 18 N.Y.3d 566, 572 (2012) (quoting Planned Parenthood of the Columbia/ Willamette Inc. v. American Coalition of Life Activists, 244 F.3.d 1007, 1015 n. 8 (9th Cir 2001)). Petitioner offers no facts to support such a claim of blackmail, nor, for the reasons set forth above, his claim of fraud. Accordingly, New York State Supreme Court would have been correct in dismissing the fourth cause of action upon these additional grounds. The instant petition does not merit review.

In Petitioner's fifth and sixth causes of action, he once again alleges that Mount Sinai filed a fraudulent signature, and that Mount Sinai blackmailed him. These causes of action are essentially duplicative of the previous causes of action. In the sixth cause of action, he alleges that Mount Sinai filed such signature to totally destroy his reputation and his intellectual business empire. Once again, Petitioner fails to provide any facts which would support such allegations. Accordingly, New York State Supreme Court would have been correct in dismissing the fifth and sixth

causes of action upon these additional grounds. The instant petition does not merit review.

In the seventh and final cause of action, Petitioner yet again alleges that Mount Sinai filed a fraudulent signature and attempted to blackmail him. He also alleges that Mount Sinai "defamed Plaintiff that Plaintiff conduct his business with fraudulent signature to enforce a block on Plaintiff ever recovering from his business losses inflected on Plaintiff's immense intellectual business occludes." [*sic*]. This ludicrous allegation is not supported by a shred of evidence or fact and Petitioner cannot support his claim for defamation. "Defamation is 'the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society' (Foster v. Churchill, 87 N.Y.2d 744, 751 (1996) (internal quotation marks omitted))." To prove a claim for defamation, a plaintiff must show: (1) a false statement that is (2) published to a third party (3) without privilege or authorization, and that (4) causes harm, unless the statement is one of the types of publications actionable regardless of harm." Stepanov v. Dow Jones & Co., 120 A.D.3d 28, 34 (1st Dep't 2014). Appellant's complaint fails to plead any facts to establish a single one of the elements of defamation. Accordingly, New York Supreme Court would have been correct in dismissing the seventh cause of action upon these additional grounds. The instant petition does not merit review.

Petitioner's entire complaint rests upon the mistaken allegation that Mount Sinai filed an affidavit of service with the New York State Court of Appeals which

contained a forged signature of Petitioner's name. As shown above, this allegation is completely false and the affidavit of service in question, on its face, completely refutes Petitioner's claims. Petitioner's other allegations are entirely unsupported by any facts or evidence. Accordingly, New York State Supreme Court would have been correct in dismissing all causes of action pursuant to CPLR 3211(a)(7).

New York State Supreme Court correctly granted Mount Sinai's motion and dismissed Petitioner's complaint based upon the documentary evidence. The motion should also have been granted and the complaint dismissed upon the additional grounds of failure to state a cause of action. New York State Supreme Court's order was properly affirmed.

As this issue does not fall within this Court's considerations governing review, the instant petition does not merit review.

## IV. The Action Should Have Been Dismissed Pursuant to CPLR §3211(a)(5) Based on Res Judicata/Collateral Estoppel.

While New York State Supreme Court did not address the following argument submitted by Mount Sinai in support of its motion to dsmiss, it is requested that this Court consider same and deny the petition based on these additional grounds.

"Typically, principles of res judicata require that 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.'" Xiao Yang Chen v. Fischer, 6 N.Y.3d 94, 100 (2005) (quoting O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357 (1981)). Furthermore, "[t]he primary purposes of res judicata are grounded in public policy concerns and are intended to ensure

finality, prevent vexatious litigation and promote judicial economy." *Id.* Similarly, "[c]ollateral estoppel, or issue preclusion, 'precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party . . . whether or not the tribunals or causes of action are the same.'" Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 349 (1999) (quoting Ryan v. New York Tel. Co., 62 N.Y.2d 494, 500 (1984)).

It is clear that Petitioner, not satisfied with the outcome of the Prior Action, was merely seeking a second day in court, and concocted the allegations of fraud and forgery against Mount Sinai despite having been advised by Mount Sinai that the signatures on the affidavit of service were never being presented as his own. Petitioner's complaint includes many of the same allegations of racial hate crime attacks as were alleged in the Prior Action. Furthermore, his allegations concerning fraud and forgery clearly arise out of the Prior Action.

Indeed, the principles of res judicata and collateral estoppel should apply as the claims and issues alleged in the instant action were raised in the Prior Action to the New York State Court of Appeals and the United States Supreme Court. In deciding Petitioner's motion for leave to appeal, the New York State Court of Appeals was aware of the allegations contained in the instant action, considered them, and still denied Petitioner's motion.

In addition, in deciding Petitioner's petition for a writ of certiorari and petition for rehearing in the Prior Action, the United States Supreme Court was aware of the

allegations contained in the instant action, considered them, and denied both motions.

Accordingly, Petitioner should be precluded from raising the allegations and issues in the instant action.

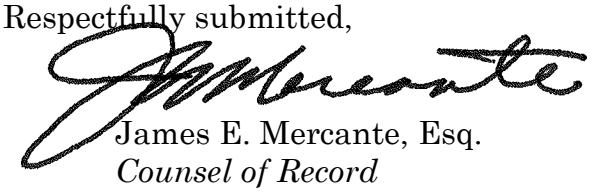
New York State Supreme Court correctly granted Mount Sinai's motion and dismissed Petitioner's complaint based upon the documentary evidence. The motion should also have been granted and the complaint dismissed upon the additional grounds of res judicata and collateral estoppel. New York State Supreme Court's order was properly affirmed.

As this issue does not fall within this Court's considerations governing review, the instant petition does not merit review.

## CONCLUSION

For the foregoing reasons, and any other reasons that seem just and proper to this Court, the petition for a writ of certiorari should be denied.

Respectfully submitted,



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