

# APPENDIX "A"

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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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 1<sup>st</sup> day of February, two thousand twenty-three.

Present:

Raymond J. Lohier, Jr.,  
Steven J. Menashi,  
Beth Robinson,  
*Circuit Judges.*

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Derry Sykes,

*Plaintiff-Appellant,*

v.

22-1699

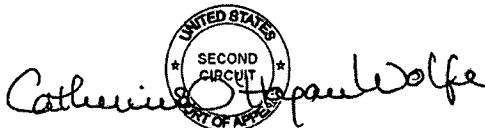
New York City Housing Authority,

*Defendant-Appellee.*

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Appellant, pro se, moves for leave to proceed in forma pauperis and for other relief. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:  
Catherine O’Hagan Wolfe, Clerk of Court

  
The signature is written in cursive over a circular court seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

# APPENDIX "B"



USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 7/22/2022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DERRY SYKES,

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

1:22-CV-2127 (MKV)

ORDER OF DISMISSAL

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff Derry Sykes, proceeding *pro se* and *in forma pauperis* (“IFP”), brings this action against the New York City Housing Authority (“NYCHA”), under the Fair Housing Act (“FHA”), 42 U.S.C. § 3601 *et seq.*, Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, and 42 U.S.C. § 1983, alleging that NYCHA has failed to make necessary repairs to his apartment, creating an “unsafe, unsanitary and dangerous environment for [P]laintiff and his household.” (Amended Complaint (“Am. Compl.”), ECF 13, at 5). Plaintiff seeks relief in the form of “[i]mmediate competent repairs to the conditions complained of and outlined in this action.” (Am. Compl. at 5). For the reasons set forth below, the Court dismisses this action for failure to state a claim on which relief may be granted.

## **BACKGROUND**

### **I. The Complaint**

Plaintiff, a serial filer in this district, initiated this action on March 15, 2022 by filing the Complaint. [ECF No. 2]. In the Complaint in this action, Plaintiff asserted claims under the FHA, ADA, and section 1983, alleging that NYCHA had failed to make necessary requested repairs to his apartment. [ECF No. 2, at 1]. Specifically, Plaintiff alleged that there was mold in

the apartment, that his bathroom ceiling had partially collapsed, that water leaks caused significant damage to his apartment, and that there was a threat of electrical fire due to water leaking around electric sockets in the kitchen. [ECF No. 2, at 7–8]. At the same time Plaintiff filed his Complaint, Plaintiff also appeared to file a request for emergency relief, seeking an order from the Court directing Defendant NYCHA to make immediate emergency repairs to Plaintiff's residence. [ECF No. 3].

Considering the gravity of the allegations, the Court directed the parties to appear for a hearing before the Court on April 4, 2022, concerning the condition of Plaintiff's apartment. [ECF No. 7]. The Court directed NYCHA to send a representative to Plaintiff's apartment prior to the April 4<sup>th</sup> hearing to investigate Plaintiff's allegations. [ECF No. 7].

## **II. Order To Amend**

In the interim, pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court reviewed the Complaint and determined that it did not state a claim for relief on which relief may be granted. [ECF No. 9]. The Court explained the deficiencies in Plaintiff's Complaint with respect to his claims under the FHA, ADA, and section 1983, and granted Plaintiff leave to amend his complaint. [ECF No. 9]. Specifically, the Court granted Plaintiff leave to amend as to: (1) his claims of disability discrimination under the FHA because Plaintiff did not allege any facts in his original complaint showing that his disability had been a motivating factor with respect to any adverse action taken against him by NYCHA; (2) his claims under the FHA that were based on NYCHA's alleged failure to provide reasonable accommodations because of his disability, as Plaintiff did not provide facts in his original complaint showing that, but for a requested reasonable accommodation, he had been denied an equal opportunity to enjoy his apartment; (3) his claims under Title II of the ADA and the Rehabilitation Act because Plaintiff did not allege any facts in his original complaint showing that he had been denied the opportunity to participate in or

benefit from NYCHA's services, programs, or activities, or was otherwise discriminated against by NYCHA, by reason of his disability; and (4) his claims under Section 1983 because Plaintiff did not allege any facts in his original complaint showing that a policy, custom, or practice of NYCHA had caused a violation of his federal constitutional rights. [ECF 9, at 4–10].

### **III. April 4<sup>th</sup> Hearing**

On April 4<sup>th</sup>, 2022, the Court held a hearing concerning the condition of Plaintiff's apartment. At the hearing, NYCHA represented that it had investigated Plaintiff's complaints and had begun repairs to his apartment. Specifically, NYCHA represented that it was in the process of re-plastering and re-painting the walls and ceiling in the bathroom, kitchen, hallway, and bedroom, replacing the toilet in the bathroom, fixing the water pressure, and fixing the electrical outlet in the kitchen. NYCHA also stated that it had found no evidence of mold in the apartment. At the conclusion of the hearing, and in a subsequent order, the Court directed NYCHA to file and serve a status letter, advising the Court of the status of the repairs on Plaintiff's apartment. [ECF No. 14].

### **IV. Plaintiff's Amended Complaint And Letter**

Immediately after the April 4 hearing, Plaintiff filed the Amended Complaint. [ECF No. 13]. In his Amended Complaint, Plaintiff asserts claims against NYCHA under the FHA, the ADA, the Rehabilitation Act, and claims of constitutional violations. He alleges that all the members of his household are disabled and that NYCHA's "neglect an[d] failure to make repairs and lack of services from water leaks and general repairs has created an unsafe, unsanitary and dangerous environment for [P]laintiff and his household." (Am. Compl. at 5). He asserts that the conditions in his apartment have been "caused by NYCHA[']s system[ic] failure to make repairs . . . [and that that failure] presents a plausible claim . . . ." (Am. Compl. at 5). Plaintiff also asserts that "because the status of his apartment is classified as a [retrofitted]/Section 504

unit[,] it should be[] given . . . the highest priority.” (Am. Compl. at 6). Plaintiff asks for “[i]mmediate competent repairs to the conditions complained of and outlined in this action.” (Am. Compl. at 6).

Moreover, in an April 4, 2022 letter filed contemporaneously with his Amended Complaint, Plaintiff states that he has video evidence that he wishes to submit to the Court regarding the condition of his apartment. [ECF 12, at 1] In addition, he states that he disagrees with the Court’s determination that he has failed to show that a policy, custom, or practice of NYCHA caused a violation of his federal constitutional rights; he asserts that NYCHA’s failure to repair his apartment – an apartment that, he alleges, had been retrofitted for tenants with disabilities – constitutes violations of his federal constitutional rights and his rights under the FHA. [See ECF 12, at 2–3].

#### **V. NYCHA Makes Repairs To Plaintiff’s Apartment**

In accordance with the Court’s order at the April 4<sup>th</sup> conference, NYCHA filed a status letter on April 29, 2022 advising the Court that it had completed most of the repairs to the apartment, including plastering and painting the walls and ceiling and fixing the electrical outlets. NYCHA represented that the only outstanding repairs to the apartment were the replacement of the kitchen cabinets and the replacement of the bathtub enclosure. [ECF No. 15]. Several weeks later, on June 10, 2022, NYCHA filed a letter advising the Court that it had confirmed with Plaintiff that all outstanding repairs to the apartment had been completed. [ECF No. 17]. Plaintiff did not file any response to the June 10 NYCHA letter.

Accordingly, in light of NYCHA’s representation in the June 10 letter that Plaintiff had confirmed that all outstanding repairs to the apartment had been completed, the Court ordered Plaintiff to show cause in writing, on or before July 5, 2022, why this action should not be dismissed as moot. [ECF No. 18]. In response, Plaintiff confirmed that NYCHA had completed

most of the major repairs that Plaintiff reported in his Complaint but contends that this case is not moot as there is still an alleged presence of “mold/fungi/mildew” in the apartment. [ECF No. 21].<sup>1</sup>

### **STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction over the claims raised. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted, emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits; to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the plaintiff is entitled to relief.

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<sup>1</sup> At the April 4<sup>th</sup> conference, NYCHA represented that it had investigated the allegations in the Complaint and determined that there was no presence of mold in the apartment. Moreover, in its June 20, 2022 status letter, NYCHA advised the Court that it had confirmed with Plaintiff that all outstanding repairs to the apartment had been completed. [ECF No. 17]. Since Plaintiff only seeks relief in the form of “[i]mmediate competent repairs to the conditions complained of and outlined in this action,” (Am. Compl. at 5), the Court is unable to provide Plaintiff any further relief requested in his Complaint and this matter is moot. Regardless, for the reasons stated below, Plaintiff also fails to state a claim on which relief can be granted and the action is therefore dismissed.



The Supreme Court of the United States has held that, under Rule 8, a complaint must include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Id.* But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Id.* (citing *Twombly*, 550 U.S. at 555). After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the plaintiff is entitled to relief. *Id.* at 679.

### **DISCUSSION**

The Court understands Plaintiff’s Amended Complaint and April 4 letter<sup>2</sup> as asserting claims that NYCHA: (1) has discriminated against Plaintiff because of his disability by failing to repair his apartment, in violation of the FHA, Title II of the ADA, and the Rehabilitation Act; (2) has failed to provide Plaintiff with reasonable accommodations for his disability by failing to repair his apartment, in violation of the FHA; and (3) has violated Plaintiff’s federal constitutional rights by failing to repair his apartment.

#### **I. Fair Housing Act**

Plaintiff has not alleged facts to support a claim for discrimination under the FHA. Generally, to state a claim of intentional discrimination under the FHA, a plaintiff must allege facts sufficient to show that he “was ‘a member of a protected class,’ suffered relevant ‘adverse’

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<sup>2</sup> In light of Plaintiff’s *pro se* status, the Court construes Plaintiff’s letter filed April 4, 2022 as a supplement to his Amended Complaint.

treatment, and ‘can sustain a minimal burden of showing facts suggesting an inference of discriminatory motivation.’” *Palmer v. Fannie Mae*, 755 F. App’x 43, 45 (2d Cir. 2018) (summary order) (emphasis in original) (quoting *Littlejohn v. City of New York*, 795 F.3d 297, 311 (2d Cir. 2015)). “[A] plaintiff need only give plausible support to a minimal inference of discriminatory motivation’ at the pleading stage.” *Id.* at 45-46 (quoting *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 84 (2d Cir. 2015)). Thus, “a plaintiff may not need to prove that [his] protected status was a but-for cause of the adverse action she suffered, but only a motivating factor.” *Id.* at 46; *Fair Hous. Justice Ctr., Inc. v. Edgewater Park Owners Coop., Inc.*, No. 10-CV-09121, 2012 WL 762323, at \*7 (S.D.N.Y. Mar. 9, 2012) (“To establish a claim under the FHA . . . , Plaintiff must demonstrate that [a protected class] is a motivating factor in” the defendant’s actions).

Plaintiff has alleged no facts showing that his disability was a motivating factor with respect to any adverse action that NYCHA purportedly has taken against him. He merely alleges that he and the other members of his household are disabled, and that NYCHA has failed to repair his apartment, (Am. Compl. at 5), but alleges no facts that suggest that NYCHA failed to repair his apartment *because* of his disability. *See Smith v. NYCHA*, 410 F. App’x 404, 406 (2d Cir. 2011) (summary order) (“Smith has failed to identify any prohibited motive attributable to [NYCHA] . . . , or contended that the conditions in her apartment were a result of disability discrimination . . . Smith did not allege that NYCHA failed to provide needed repairs in her apartment because she was disabled, or that NYCHA responded differently to the maintenance requests of non-disabled tenants.”).

Plaintiff has also not alleged facts to support a claim for a failure to provide reasonable accommodations under the FHA. To state such a claim, a plaintiff must allege facts showing (1)

that the plaintiff or a person living with the plaintiff had a disability as defined by the FHA, (2) that the defendant knew or reasonably should have known of the disability, (3) that the accommodation was likely necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling, (4) that the accommodation requested was reasonable, and (5) that the defendant refused to make the requested accommodation. *Olsen v. Stark Homes, Inc.*, 759 F.3d 140, 156 (2d Cir. 2014).

As an initial matter, as Plaintiff acknowledges, NYCHA has completed the major repairs that Plaintiff reported in his Complaint. [ECF No. 21]. Plaintiff merely contends that NYCHA has failed to remedy the alleged presence of “mold/fungi/mildew” in the apartment [ECF No. 21], but NYCHA *did* investigate this claim and determined that no such mold was present in the apartment. Moreover, Plaintiff has alleged no facts showing that he was denied the opportunity to participate in or benefit from NYCHA’s services, programs, or activities, or was otherwise discriminated against by NYCHA, *by reason of* his disability. He merely asserts that because he and the other members of his household are disabled, the repairs that NYCHA must make to his apartment should be of a higher priority than those of other repairs that NYCHA must make. (Am. Compl. at 5–6). However, “[a] plaintiff is not entitled to *preferential* enjoyment of her housing solely by virtue of her disability.” *Higgins v. 120 Riverside Boulevard at Trump Place Condo*. No. 21-CV-4203, 2021 WL 5450205, at \*4 (S.D.N.Y. Nov. 19, 2021) (emphasis in original). Rather, he “must show that, but for the accommodation, [he has been denied or] likely will be denied an equal opportunity to enjoy the housing of [his] choice.” *Olsen*, 759 F.3d at 156 (internal quotation marks and citations omitted, alterations and emphasis in original).

The Court therefore dismisses Plaintiff’s claims under the FHA for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

## **II. Title II Of The ADA And The Rehabilitation Act**

Plaintiff also has not alleged facts to support a claim under Title II of the ADA or the Rehabilitation Act. To state a claim under Title II of the ADA or under the Rehabilitation Act, a plaintiff must allege that (1) the plaintiff is a qualified individual with a disability; (2) the defendant is subject to the ADA or the Rehabilitation Act; and (3) the plaintiff was denied the opportunity to participate in or benefit from the defendant's services, programs, or activities, or was otherwise discriminated against by the defendant, *by reason of* the plaintiff's disability. *Shomo v. City of New York*, 579 F.3d 176, 185 (2d Cir. 2009). Plaintiff has alleged no facts in his Amended Complaint or April 4 letter showing that he was denied the opportunity to participate in or benefit from NYCHA's services, programs, or activities, or was otherwise discriminated against by NYCHA, by reason of his disability. Plaintiff does not allege any facts showing that NYCHA has failed to repair his apartment *because* of his disability.

The Court therefore dismisses Plaintiff's claims under Title II of the ADA and the Rehabilitation Act for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

## **III. 42 U.S.C. § 1983**

As the Court noted in its March 24, 2022 Order, to state a claim under Section 1983 against NYCHA, a plaintiff must allege facts showing: (1) the existence of a NYCHA policy, custom, or practice; and (2) that the NYCHA policy, custom, or practice caused the violation of the plaintiff's federal constitutional rights. *See Jones v. Town of East Haven*, 691 F.3d 72, 80 (2d Cir. 2012).

### *A. Safe And Sanitary Housing.*

To the extent that Plaintiff asserts claims under Section 1983 against NYCHA arising from its failure to provide him with safe and sanitary housing, there is no federal constitutional

right to safe and sanitary housing. *Lindsey v. Normet*, 405 U.S. 56, 74 (1972) (“We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality . . .”). Thus, it follows that there can be no claim under Section 1983 against NYCHA for its failure to provide Plaintiff with safe and sanitary housing. *See Segal v. City of New York*, 459 F.3d 207, 219 (2d Cir. 2006) (“Because the district court properly found no underlying constitutional violation, its decision not to address the municipal defendants’ liability under *Monell* was entirely correct.”). The Court therefore dismisses these claims under Section 1983 for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

#### *B. Equal Protection*

The Court understands Plaintiff’s Amended Complaint and April 4 letter as asserting claims under Section 1983 that NYCHA has discriminated against Plaintiff because of his disability in violation of the Fourteenth Amendment’s Equal Protection Clause. The Equal Protection Clause prohibits the disparate treatment of similarly situated individuals. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985); *Brown v. City of Syracuse*, 673 F.3d 141, 151 (2d Cir. 2012) (citations omitted). To state an equal protection claim, a plaintiff must allege “purposeful discrimination directed at an identifiable or suspect class.” *Giano v. Senkowski*, 54 F.3d 1050, 1057 (2d Cir. 1995) (citation omitted).

While “[u]nder certain circumstances, a [local governmental entity’s] failure to act can constitute a policy and thus give rise to liability under Section 1983, . . . the failure to act must rise to the level of deliberate indifference.” *R.B. ex rel. L.B. v. Bd. of Educ. of City New York*, 99 F. Supp. 2d 411, 418 (S.D.N.Y. 2000) (citing *City of Canton v. Harris*, 489 U.S. 378, 388–89

(1989)). Plaintiff has not alleged any facts suggesting that NYCHA's failure to act to remediate the deteriorating conditions of his apartment constitute deliberate indifference, that is, a deliberate NYCHA policy, custom, or practice to discriminate against individuals with disabilities. Rather, he alleges that he and the other members of his household are disabled, and that NYCHA has failed to repair the conditions in his apartment, (Am. Compl. at 5–6), but he does not suggest a connection between these allegations.

Moreover, individuals with disabilities are not considered members of a suspect or quasi-suspect class for the purpose of an equal protection claim. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 368 (2001) (“If special accommodations for the disabled are to be required, they have to come from positive law and not through the Equal Protection Clause.”) (footnote omitted); *City of Cleburne*, 473 U.S. at 442–46 (individuals who have a mental disability are not members of a quasi-suspect class for the purpose of equal-protection analysis); *Chick v. Cnty. of Suffolk*, 546 F. App'x 58, 60 (2d Cir. 2013) (summary order) (“[D]isability is not a suspect classification under the Equal Protection Clause. . . .”). Accordingly, Plaintiff cannot make out an Equal Protection violation premised on his alleged disability.

The Court therefore dismisses Plaintiff's section 1983 claims for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

### **CONCLUSION**

The Court dismisses this action for failure to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

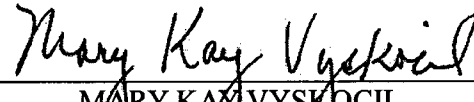
The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

Plaintiff has consented to electronic service of court documents. [ECF 11].

The Clerk of Court is respectfully requested to close this case.

SO ORDERED.

Dated: July 22, 2022  
New York, New York

  
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MARY KAY VYSKOČIL  
United States District Judge

**U.S. District Court**  
**Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:22-cv-02127-MKV**

Sykes v. New York City Housing Authority  
Assigned to: Judge Mary Kay Vyskocil  
Cause: 28:1331 Fed. Question

Date Filed: 03/15/2022  
Date Terminated: 07/22/2022  
Jury Demand: None  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Federal Question

**Plaintiff**

**Derry Sykes**

represented by **Derry Sykes**  
70 East 115th Street  
Apt.# 6H  
New York, NY 10029  
Email: sykesderry@yahoo.com  
PRO SE

V.

**Defendant**

**New York City Housing Authority**

| Date Filed | #        | Docket Text                                                                                                                                                                                                                                                                                                                                                                               |
|------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/15/2022 | <u>1</u> | REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Derry Sykes.. (rdz) (Entered: 03/16/2022)                                                                                                                                                                                                                                                                                         |
| 03/15/2022 | <u>2</u> | COMPLAINT against New York City Housing Authority. Document filed by Derry Sykes..(rdz) (Entered: 03/16/2022)                                                                                                                                                                                                                                                                             |
| 03/15/2022 |          | Case Designated ECF. (rdz) (Entered: 03/16/2022)                                                                                                                                                                                                                                                                                                                                          |
| 03/15/2022 | <u>3</u> | MEMORANDUM OF LAW in Support re: <u>2</u> Complaint. Document filed by Derry Sykes.. (rdz) (Entered: 03/16/2022)                                                                                                                                                                                                                                                                          |
| 03/15/2022 | <u>4</u> | NOTICE OF MOTION to 42 USC Section 3602 [h] <u>1</u> <u>1</u> , SECTION 3613 <u>1</u> [i]. Document filed by Derry Sykes..(rdz) (Entered: 03/16/2022)                                                                                                                                                                                                                                     |
| 03/15/2022 | <u>5</u> | AFFIDAVIT OF MAIL SERVICE PURSUANT TO 42 USC SECTION 3602 [h] <u>1</u> [i], SECTION 3613 <u>1</u> [A], THE NEW YORK CITY LAW DEPARTMENT. Document filed by Derry Sykes..(rdz) (Additional attachment(s) added on 3/16/2022: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit) (rdz). Modified on 3/16/2022 (rdz). (Entered: 03/16/2022) |
| 03/18/2022 | <u>6</u> | ORDER GRANTING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is authorized. 28 U.S.C. § 1915. (Signed by Judge Laura Taylor Swain on 3/18/2022) (vn) Transmission to Docket Assistant Clerk for processing. (Entered: 03/18/2022)                                                                                                                            |



|            |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/18/2022 |           | NOTICE OF CASE REASSIGNMENT to Judge Mary Kay Vyskocil. Judge Unassigned is no longer assigned to the case. (vba) (Entered: 03/18/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 03/18/2022 |           | Magistrate Judge Sarah Netburn 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: <a href="https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf">https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf</a> . (vba) (Entered: 03/18/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 03/21/2022 | <u>7</u>  | ORDER FOR HEARING ON PLAINTIFF'S REQUEST FOR EMERGENCY RELIEF: IT IS HEREBY ORDERED that the above-named defendant and Plaintiff appear before this Court, at Courtroom 18C of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York, on April 4, 2022 at 11:30 AM. IT IS FURTHER ORDERED that any counsel who appears for Defendant NYCHA at the April 5, 2022 conference, prior to the conference, visit the Plaintiffs residence and look into Plaintiff's complaint and allegations. The clerk of court is respectfully requested to mail a copy of this order to the pro se Plaintiff at the address of record. The clerk of court is respectfully requested to mail a copy of this order as well as (1) Plaintiff's Complaint at ECF No. 2; (2) Plaintiff's Memorandum of Law at ECF No. 3; (4) Plaintiff's Notice of Motion at ECF No. 4; (5) Plaintiff's Affidavit of Mail Service at ECF No. 5 to the New York City Housing Authority Law Department at 90 Church Street, 11th Floor, New York, NY 10007, ATTN: Law Department/Service. SO ORDERED. ( Status Conference set for 4/4/2022 at 11:30 AM in Courtroom 18C, 500 Pearl Street, New York, NY 10007 before Judge Mary Kay Vyskocil.) (Signed by Judge Mary Kay Vyskocil on 3/21/2022) (tg) Transmission to Docket Assistant Clerk for processing. (Entered: 03/21/2022) |
| 03/22/2022 |           | Mailed a copy of <u>7</u> Order, Set Hearings, to Derry Sykes at 70 East 115th Street, Apt.# 6H, New York, NY 10029. (dsh) (Entered: 03/22/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 03/22/2022 |           | Mailed a copy of <u>5</u> Affidavit, <u>2</u> Complaint, <u>3</u> Memorandum of Law in Support, <u>7</u> Order Set Hearings, <u>4</u> Notice (Other) to the New York City Housing Authority Law Department at 90 Church Street, 11th Floor, New York, NY 10007, ATTN: Law Department/Service. (dsh) (Entered: 03/22/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 03/24/2022 | <u>9</u>  | ORDER TO AMEND: The Court grants Plaintiff leave to file an amended complaint that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within 60 days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 1:22-CV-2127 (MKV). An amended complaint form is attached to this order. No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the Court will dismiss this action for failure to state a claim on which relief may be granted. See 28 U.S.C. Section 1915(e)(2)(B)(ii). The Court certifies under 28 U.S.C. Section 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue). The Court directs the Clerk of Court to mail a copy of this order to Plaintiff and note service on the docket. SO ORDERED. (Signed by Judge Mary Kay Vyskocil on 3/24/2022) (tg) Transmission to Docket Assistant Clerk for processing. (Entered: 03/24/2022)                       |
| 03/25/2022 |           | Mailed a copy of <u>9</u> Order, to Derry Sykes at 70 East 115th Street, Apt.# 6H, New York, NY 10029. (dsh) (Entered: 03/25/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 03/28/2022 | <u>10</u> | ORDER: On March 21, 2022, the Court scheduled a hearing on Plaintiff's request for emergency relief. That hearing will occur on April 4, 2022 at 11:30 AM in Courtroom 18C of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York. The                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

|            |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            |           | clerk of court is respectfully requested to mail a copy of this order to the pro se Plaintiff at the address of record. The clerk of court is respectfully requested to mail a copy of this order to the New York City Housing Authority Law Department at 90 Church Street, 11th Floor, New York, NY 10007, ATTN: Law Department/Service. SO ORDERED. (Signed by Judge Mary Kay Vyskocil on 3/28/2022) (tg) Transmission to Docket Assistant Clerk for processing. (Entered: 03/28/2022)                                                                                                                                                                           |
| 03/28/2022 |           | Mailed a copy of <u>10</u> Order, to Derry Sykes 70 East 115th Street Apt.# 6H New York, NY 10029 and to the New York City Housing Authority Law Department at 90 Church Street, 11th Floor, New York, NY 10007. (dsh) (Entered: 03/28/2022)                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 04/04/2022 |           | Minute Entry for proceedings held before Judge Mary Kay Vyskocil: Status Conference held on 4/4/2022. (Court Reporter George Malinowski) (rz) (Entered: 04/04/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 04/04/2022 | <u>11</u> | PRO SE CONSENT TO RECEIVE ELECTRONIC SERVICE. The following party: D. Sykes consents to receive electronic service via the ECF system. Document filed by Derry Sykes.(sc) (Entered: 04/04/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 04/04/2022 | <u>12</u> | LETTER addressed to Judge Mary Kay Vyskocil from D. Sykes, dated 3/29/22 re: VIDEO EVIDENCE OF DAMAGES CAUSED BY WATER LEAKS & NEGLECT FOR CONSIDERATION IN SCHEDULED CONFERENCE BEFORE THIS COURT ON 4/4/22, AT 11:30 AM BY COURT ORDER DATED 4/4/22, AND SUBMISSION OF PLAINTIFF'S AMENDED COMPLAINT AS ORDERED BY THIS COURT BY ORDER DATED 3/24/22. Document filed by Derry Sykes.(sc) (Entered: 04/04/2022)                                                                                                                                                                                                                                                    |
| 04/04/2022 | <u>13</u> | AMENDED COMPLAINT against New York City Housing Authority amending <u>2</u> Complaint.Document filed by Derry Sykes. Related document: <u>2</u> Complaint.(sc) (Entered: 04/04/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 04/06/2022 | <u>14</u> | ORDER: IT IS HEREBY ORDERED that on or before May 4, 2022, Defendant New York City Housing Authority ("NYCHA") file and serve a letter advising the Court as to the status of the repairs on Plaintiff's home. The clerk of court is respectfully requested to mail a copy of this order to the pro se Plaintiff at the address of record. The clerk of court is respectfully requested to mail a copy of this order to the New York City Housing Authority Law Department at 90 Church Street, 11th Floor, New York, NY 10007, ATTN: Law Department/Service. SO ORDERED. (Signed by Judge Mary Kay Vyskocil on 4/6/2022) (tg) (Entered: 04/06/2022)                |
| 04/06/2022 |           | Transmission to Docket Assistant Clerk. Transmitted re: <u>14</u> Order,,, to the Docket Assistant Clerk for case processing..(tg) (Entered: 04/06/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 04/07/2022 |           | Mailed a copy of <u>14</u> Order to the New York City Housing Authority Law Department at 90 Church Street, 11th Floor, New York, NY 10007, ATTN: Law Department/Service. (kh) (Entered: 04/07/2022)                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 04/29/2022 | <u>15</u> | LETTER addressed to Judge Mary Kay Vyskocil from Seth Kramer dated April 29, 2022 re: Status of Repairs. Document filed by New York City Housing Authority. (Attachments: # <u>1</u> Affidavit Affirmation of Service of Letter).(Kramer, Seth) (Entered: 04/29/2022)                                                                                                                                                                                                                                                                                                                                                                                               |
| 04/29/2022 | <u>16</u> | ORDER:Therefore, IT IS HEREBY ORDERED that on or before June 10, 2022, Defendant NYCHA file and serve a letter advising the Court as to the status of the repairs on Plaintiff's home and if any repairs remain outstanding. The clerk of court is respectfully requested to mail a copy of this order to the pro se Plaintiff at the address of record. The clerk of court is respectfully requested to mail a copy of this order to the New York City Housing Authority Law Department at 90 Church Street, 11th Floor, New York, NY 10007, ATTN: Law Department/Service. SO ORDERED. (Signed by Judge Mary Kay Vyskocil on 4/29/2022) (tg) (Entered: 04/29/2022) |

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|------------|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            |           | Appeals re: <u>23</u> Notice of Appeal. (tp) (Entered: 08/03/2022)                                                                                                                                                              |
| 08/03/2022 |           | Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>23</u> Notice of Appeal filed by Derry Sykes were transmitted to the U.S. Court of Appeals. (tp) (Entered: 08/03/2022) |
| 08/05/2022 | <u>24</u> | NOTICE OF APPEAL from <u>22</u> Order of Dismissal. Document filed by Derry Sykes. Form D-P is due within 14 days to the Court of Appeals, Second Circuit. (tp) (Entered: 08/15/2022)                                           |
| 08/15/2022 |           | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>24</u> Notice of Appeal. (tp) (Entered: 08/15/2022)                                                                           |
| 08/15/2022 |           | Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>24</u> Notice of Appeal filed by Derry Sykes were transmitted to the U.S. Court of Appeals. (tp) (Entered: 08/15/2022) |

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| <b>PACER Service Center</b> |               |                         |                   |
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| 02/02/2023 07:53:49         |               |                         |                   |
| <b>PACER Login:</b>         | de563900      | <b>Client Code:</b>     |                   |
| <b>Description:</b>         | Docket Report | <b>Search Criteria:</b> | 1:22-cv-02127-MKV |
| <b>Billable Pages:</b>      | 4             | <b>Cost:</b>            | 0.40              |

08/26/2022 30 PAPERS, Duplicate Motion for Civil appeal, RECEIVED.[3372663] [22-1699] [Entered: 08/26/2022 04:31 PM]

08/30/2022 32 PAPERS, Duplicate Form D-P, RECEIVED.[3375027] [22-1699] [Entered: 08/31/2022 07:34 PM]

08/30/2022 33 PAPERS, Duplicate Motion, for Review Dismissal of Southern District Court Dimissal of Plaintiff's Civil Complaint, to proceed in forma pauperis, RECEIVED.[3375028] [22-1699] [Entered: 08/31/2022 07:41 PM]

09/07/2022 39 ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Party Derry Sykes, FILED. Service date 09/07/2022 by email, US mail.[3378642] [22-1699] [Entered: 09/08/2022 12:08 PM]

09/09/2022 40 PAPERS, Duplicate Acknowledgement and Notice of Appearance on behalf of Appellant, Derry Sykes, RECEIVED.[3380454] [22-1699] [Entered: 09/12/2022 02:27 PM]

11/02/2022 42 BRIEF, on behalf of Appellant Derry Sykes, FILED. Service date 11/01/2022 by US mail. [3420449] [22-1699] [Entered: 11/15/2022 08:47 PM]

11/02/2022 43 APPENDIX, volume 1 of 1, (pp. 2-61), on behalf of Appellant Derry Sykes, FILED. Service date 11/01/2022 by US mail.[3420450] [22-1699] [Entered: 11/15/2022 08:49 PM]

02/01/2023 48 NEW CASE MANAGER, Yana Segal, ASSIGNED.[3462583] [22-1699] [Entered: 02/01/2023 04:07 PM]

02/01/2023 50 MOTION ORDER, denying motion for for Review Dismissal of Southern District Court Dimissal of Plaintiff's Civil Complaint [22] filed by Appellant Derry Sykes, denying motion for civil appeal [19] filed by Appellant Derry Sykes; denying motion to proceed in forma pauperis [22] filed by Appellant Derry Sykes, by RJL, SJM, BR, copy sent to pro se, FILED. [3462615][50] [22-1699] [Entered: 02/01/2023 04:15 PM]

02/01/2023 51 APPEAL, pursuant to court order, dated 02/01/2023, DISMISSED.[3462694] [22-1699] [Entered: 02/01/2023 04:57 PM]

| PACER Service Center |              |                  |         |
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| Transaction Receipt  |              |                  |         |
| 02/02/2023 07:44:25  |              |                  |         |
| PACER Login:         | de563900     | Client Code:     |         |
| Description:         | Case Summary | Search Criteria: | 22-1699 |
| Billable Pages:      | 1            | Cost:            | 0.10    |

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