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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of July, two thousand twenty-three.

PRESENT:

DEBRA ANN LIVINGSTON,
Chief Judge,

**BETH ROBINSON,
MARIA ARAUJO KAHN,**
Circuit Judges.

Samuel O. Jacobs,
Plaintiff-Appellant,

v.

22-2846

**Kent Jacobs, Dutchess County
Family Court,**
Defendants-Appellees,

**Joseph A. Egitto, Poughkeepsie, NY,
Attn: City Attorney, Charles F. Sanders,
NYS Office of the Attorney General,
Defendants.***

FOR PLAINTIFF-APPELLANT:
Samuel O. Jacobs, pro se,
South Ozone Park, NY.

FOR DEFENDANT-APPELLEE KENT JACOBS:
Kent Jacobs, pro se,
Hopewell Jct., NY.

**FOR DEFENDANT-APPELLEE
DUTCHESS COUNTY FAMILY COURT:**
Barbara D. Underwood,
Solicitor General;

* The Clerk of the Court is directed to amend the caption
as set forth above.

Judith N. Vale,
Deputy Solicitor General;
Stephen J. Yanni,
Assistant Solicitor General,
Of Counsel, *for* Letitia James,
Attorney General of the State of New York,
New York, NY.

Appeal from a judgment of the United States
District Court for the Southern District of New York
(Cathy Seibel, *Judge*).

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

Samuel Jacobs ("Samuel"), pro se, appeals from the district court's dismissal of his 42 U.S.C. § 1983 claims against his son Kent Jacobs ("Kent") and the Dutchess County Family Court ("DCFC"). After Kent obtained a seven-year order of protection against Samuel in DCFC, Samuel filed this suit, alleging that DCFC and Kent had deprived him of his constitutional rights and caused him physical and psychological suffering, and that Kent had damaged his reputation. He also alleged that the DCFC judge had improperly denied his request to proceed pro se (while allowing Kent to do so) and issued an arrest warrant against him without probable cause.

DCFC and Kent both moved to dismiss, the latter pro se, and the district court granted the

motions and dismissed Samuel's claims without leave to further amend. The district court reasoned that Samuel's claims against DCFC were barred by Eleventh Amendment immunity and his claims against both DCFC and Kent were brought beyond the statute of limitations. *See Jacobs v. Jacobs*, No. 21-CV-10577 (CS), 2022 WL 10648864, at *4-6 (S.D.N.Y. Oct. 18, 2022). Samuel appealed. We assume the parties' familiarity with the remaining underlying facts, the procedural history, and the issues on appeal.

We review a district court's dismissal for failure to state a claim for relief under Federal Rule of Civil Procedure 12(b)(6) de novo (without deference to the district court), accepting all well-pleaded facts as true and drawing all reasonable inferences in favor of the non-moving party—here, Samuel. *74 Pinehurst LLC v. New York*, 59 F.4th 557, 562 (2d Cir. 2023). Our review of a denial of leave to amend is for abuse of discretion, "unless the denial was based on an interpretation of law, such as futility," which would also require de novo review. *Empire Merchs., LLC v. Reliable Churchill LLP*, 902 F.3d 132, 139 (2d Cir. 2018). Pro se submissions receive special solicitude, meaning we interpret them to raise "the strongest arguments that they suggest." *Triestman v. Federal Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam).

We agree with the district court that the claims against DCFC are barred by Eleventh Amendment immunity. The Eleventh Amendment precludes suits against states unless the state expressly waives its immunity or Congress abrogates (repeals) that

immunity. *CSX Transp., Inc. v. N.Y. State Office of Real Prop. Servs.*, 306 F.3d 87, 94-95 (2d Cir. 2002). Eleventh Amendment immunity "extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state." *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009) (internal quotation marks omitted). The Unified Court System, of which DCFC is a part, is "unquestionably an arm of the state" that shares in New York's immunity to suit. *Id.* at 368 (internal quotation marks omitted). New York has not waived its immunity. *See Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 38-40 (2d Cir. 1977). Nor has Congress abrogated immunity via § 1983. *See Dube v. State Univ. of N. Y.*, 900 F.2d 587, 594 (2d Cir. 1990).

Samuel argues that *Ex parte Young* allows constitutional claims against state officials in their official capacity. 209 U.S. 123 (1908). While that is true, *Ex parte Young* applies only to claims seeking "prospective relief against state officials." *74 Pinehurst LLC*, 59 F.4th at 570. This means for the *Ex parte Young* exception to apply, a plaintiff must name a state official—that is, an individual person—not a state agency, such as the family court. *See Silva v. Farrish*, 47 F.4th 78, 84 (2d Cir. 2022). Although Samuel sought prospective—that is, forward-looking—relief,¹

¹ Samuel sought injunctive relief that would require the family court to "set up guidelines and a review process" to protect due process rights of defendants, provide supervision and training for judges, and "[a]utomatic review of disputed and controversial decisions." Defendant's App'x at 41.

because Samuel named the family court as a defendant, not an individual state official,² the *Ex parte Young* exception to immunity does not apply here.

Samuel also argues that the Eleventh Amendment bar cannot be applied when a plaintiff alleges other violations of constitutional rights, including Fourteenth Amendment rights. But Eleventh Amendment immunity applies "regardless of the nature of the relief sought." *74 Pinehurst LLC*, 59 F.4th at 570. Put another way, even where a plaintiff alleges a violation of a Fourteenth Amendment right, the Eleventh Amendment immunity analysis still has to consider whether the plaintiff is seeking forward-looking relief against an individual state official.³ Because Samuel's complaint does not seek forward-looking relief against an individual state official, the *Ex parte Young* exception does not apply.

Kent, as a private party, is not protected by

² Charles F. Sanders, an Assistant Attorney General named in the Amended Complaint, was stricken by the district court after it was determined Samuel named him in error. See Defendant's App'x at 5-6.

³ To the extent that Samuel intended to sue the DCFC judge for actions taken during the family court proceedings, his claims would be barred by absolute judicial immunity, which applies unless a judge acts in "complete absence of all jurisdiction." *Deem v. DiMella-Deem*, 941 F.3d 618, 621 (2d Cir. 2019) (citation omitted). Samuel does not assert that the DCFC judge lacked jurisdiction over the family court case.

Eleventh Amendment immunity, but we further agree with the district court that the claims against him (as well as any claims against DCFC that would somehow survive Eleventh Amendment immunity) are time-barred. "The statute of limitations for § 1983 actions arising in New York is three years." *Lucente v. Cnty. of Suffolk*, 980 F.3d 284,308 (2d Cir. 2020). The last act relevant to Samuel's suit—the order allegedly denying Samuel's request to proceed pro se—was on August 6, 2018. Therefore, assuming for the sake of argument only that his claims accrued and the statute of limitations "clock" started ticking at the latest possible date, Samuel had at least until August 6, 2021, to file a timely complaint. Instead, he filed his complaint on December 8, 2021. He does not persuasively argue that the limitations period should be tolled (that is, paused or delayed) or explain why his claims could have accrued later. As the district court explained, the statute of limitations clock for a claim brought under § 1983 for violation of Constitutional rights begins to run at the moment the plaintiff learns of the injury—it does not restart each time the same injury recurs. *See* Defendant's App'x at 10.

Even if Samuel's claims were timely, they are without merit. Samuel failed to plead facts suggesting that Kent, a private citizen, was acting "under color of state law" for the purposes of § 1983 liability for the alleged constitutional violations. *Giordano v. City of New York*, 274 F.3d 740,750 (2d Cir. 2001) (citation omitted). Under our precedents, the fact that Kent sought the protection of family court does not mean he was acting under color of state law. *See Dahlberg v.*

Becker, 748 F.2d 85, 93 (2d Cir. 1984) ("[T]he mere invocation ... of New York's legal procedures does not constitute joint participation so as to satisfy the statutory requirement under § 1983 that there be a state actor."); *see also Taylor v. Nichols*, 558 F.2d 561, 564 (10th Cir. 1977) ("The acts of filing a claim and testifying at trial do not constitute state action. These are private acts."). Kent therefore cannot be liable for constitutional torts.

Finally, the district court did not abuse its discretion in denying Samuel leave to further amend the complaint. He had already amended once, after a conference at which DCFC gave notice of the proposed grounds for dismissal. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (observing that pro se plaintiffs should be granted leave to amend "at least once"). Samuel otherwise identified no additional facts or legal theories that might enable his claims to survive dismissal. *See Empire Merchs.*, 902 F.3d at 146. Leave to amend would also have been futile, as Samuel's claims are barred by Eleventh Amendment immunity, absolute judicial immunity, the statute of limitations, and (as to the claims against Kent) the lack of state action. *See Cuoco*, 222 F.3d at 112 (2d Cir. 2000) ("The problem with [appellant's] causes of action is substantive; better pleading will not cure it.").

We have considered Samuel's remaining arguments and do not find them persuasive. Because Samuel's claims fail for the legal reasons discussed above (Eleventh Amendment immunity and the statute of limitations) we have not considered and take

no position on his allegations about the events he has described and the harms he has suffered.

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

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

/s/

APPENDIX B

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SAMUEL O. JACOBS,
Plaintiff,

- against -

KENT JACOBS, DUTCHESS COUNTY FAMILY
COURT and POUGHKEEPSIE, NY,
Defendants.

Appearances:

Samuel O. Jacobs
Jamaica, New York
Pro Se Plaintiff

Kent Jacobs
Hopewell Junction, NY
Pro Se Defendant

Charles F. Sanders
Assistant Attorney General
Office of the Attorney General
of the State of New York
New York, New York
Counsel for Defendant Dutchess County Family Court

OPINION & ORDER
No. 21-CV-10577 (CS)

Seibel, J.

Before the Court are the motions to dismiss of Defendants Kent Jacobs ("Kent") and Dutchess County Family Court ("DCFC"). (ECF Nos. 16, 25-26, 28.) For the following reasons, the motions are GRANTED.

I. BACKGROUND

I accept as true the facts, but not the conclusions, set forth in Plaintiff's Amended Complaint, (ECF No. 24 ("AC")). Initial Complaint, (ECF No. 1 ("IC")), and opposition submissions, (ECF No. 27 ("P's Opp. 1 ")); ECF No. 29 ("P's Opp. 2")).¹ See *Washington v. Westchester Cnty. Dep't of Corr.*, No. 13-CV-5322, 2015 WL 408941, at* 1 n.1 (S.D.N.Y. Jan. 30, 2015) (court may give *pro se* plaintiff the benefit of considering facts in original complaint even if they have not been repeated in amended complaint); *Braxton v. Nichols*, No. 08-CV-8568, 2010 WL 1010001, at *1 (S.D.N.Y. Mar. 18, 2010) ("[A]llegations made in a *pro se* plaintiff's memorandum of law, where they are consistent with those in the complaint, may also be considered on a motion to dismiss.").²

¹ Citations to the IC, AC, P's Opp. 1, and P's Opp. 2 refer to the pagination generated by the Court's electronic filing system.

² The Court will send Plaintiff and Kent copies of all unpublished decisions cited in this Opinion and Order.

A. Factual Background

Plaintiff Samuel Jacobs ("Samuel") is an 80-year-old U.S. army veteran. (IC at 7, 17.) In the past, he went to schools, where he "entertain[ed] [the] students and staff with his original storytelling and music." (AC at 12.)

Plaintiff states that in September of 2014, he began to suspect that his son Kent was having problems and potentially using prescription medications with dangerous side effects. (AC at 9; P's Opp. 2 at 2.) "[A]cting upon [his] paternal instincts," Samuel called Kent, and when Kent did not return his call, Samuel wrote Kent a letter "clearly stat[ing] that [his] intent was to try and help him." (P's Opp. 2 at 2.) On September 29, 2014, Kent filed a complaint against Samuel in DCFC.³ (IC at 14.) On April 23, 2015, Judge Joseph Egitto of DCFC found that Samuel had committed the family offense of harassment in the second degree and issued an order of protection with a

³ I take judicial notice of the state court action involving Samuel, (Docket No. 0-05137-14), as well as corresponding orders, see *Jacobs v. Jacobs*, 27 N.Y.S.3d 884 (App. Div.) (mem.), *leave to appeal denied*, 28 N.Y.3d 901 (2016); *Jacobs v. Jacobs*, 90 N.Y.S.3d 131 (App. Div. 2018). Courts can "look to public records, including complaints filed in state court, in deciding a motion to dismiss." *Blue Tree Hotels Inv. (Can.), Ltd. v. Starwood Hotels & Resorts Worldwide, Inc.*, 369 F.3d 212, 217 (2d Cir. 2004). I consider state court records for the fact that they exist and for the fact of what was said in them, but not for the truth of the matters asserted therein. See *Kramer v. Time Warner Inc.* .. 937 F.2d 767, 774 (2d Cir. 1991).

duration of two years. *See Jacobs*. 27 N.Y.S.3d at 884. The Second Department affirmed, *id.*, and the Court of Appeals denied Samuel's motion for leave to appeal, *see Jacobs*, 28 N.Y.3d at 901. On December 8, 2017, Judge Egitto extended the order of protection for an additional five years, and on December 19, 2018, the Second Department again affirmed. *See Jacobs*. 90 N.Y.S.3d at 133.

Samuel had been represented by court-appointed attorney Lawrence Moore before the DCFC but believed Mr. Moore "refused/ignored two (2) letters," dated September 22, 2017 and September 27, 2017, "directing him to appeal a ruling by Judge Egit[t]o." (IC at 7; *see* AC at 10.) After the time to appeal had elapsed, Samuel notified Judge Egitto that he had fired Moore and intended to continue *pro se*. (IC at 7, 14.) But Judge Egitto allegedly denied Samuel's request. (*Id.* at 7.) Samuel alleges that Judge Egitto violated his Fifth and Fourteenth Amendment rights because he allowed Kent to proceed *pro se* but denied Samuel "that same right," which left him "on trial with no legal defense." (*Id.* at 15.)

Samuel claims that Kent committed a criminal act by filing false charges against Samuel. (*Id.* at 14.) Samuel alleges that Kent accused him of child abuse with the intention that Samuel would be convicted of a felony and not able to teach again. (*Id.*) Samuel also claims that Judge Egitto "sentenced" him to seven years, (AC at 10), an apparent reference to the two-year order of protection combined with the five-year extension thereof.

On February 27, 2018, Samuel wrote a letter to Judge Egitto regarding an upcoming court appearance that he could not attend. (*Id.* at 20.) He also alleges he called the court and offered to do a telephone conference but was told that that was not necessary. (*Id.* at 9.) On or about April 6, 2018, Judge Egitto issued a warrant for Samuel's arrest. (IC at 15-16; AC at 23.)⁴ Samuel alleges he received a phone call from the police telling him about the warrant, but Samuel thought it was mistake and the police then suggested he "contact the court to correct the error." (AC at 9.) Samuel alleges this "warrant was issued \Vith no valid [p]robable [c]ause," in violation of his rights under the Fourth, Fifth, and Fourteenth Amendments. (IC at 15.) Samuel wrote a letter to Judge Egitto on May 4, 2018— "[o]n advi[c]e from the police" – asking for an explanation, (*id.* at 15, 17), but claims his letter was ignored. He also allegedly submitted a "Motion to Explain Arrest Warrant to DCFC, which was delivered on July 30, 2018.⁵ (*Id.* at 10.) On August 6, 2018, Judge Egitto issued an order stating that he would not consider any motions filed on Samuel's behalf unless they were submitted by counsel. (AC at 16-17.) And on August 8, 2018, the principal court attorney for DCFC

⁴ On the "Warrant of Arrest" attached to the AC, there is a diagonal line across the page and the handwritten notation, "Vacated By Court 8/21/18." (AC at 22.)

⁵ In his opposition to DCFC's motion to dismiss, Samuel stated he filed the Motion to Explain Arrest Warrant on August 23, 2018, (P's Opp. 1 at 2), but that is the hearing date Samuel put on the motion, (IC at 10).

wrote to Samuel informing him that his previous "motion to explain arrest warrant" was "being returned to you as it is not a proper motion. There is no authority to make such a motion." (*Id* at 14: IC at 11.) Plaintiff claims, however, that this "motion is still waiting for a decision." (AC at 9.)

As a result of Defendants' actions, Samuel claims that his ability to walk was severely damaged, as he had to walk two blocks to and from the subway and go up and down forty flights of stairs to travel to DCFC. (*Id* at 11.) He claims he is no longer able to walk without a walker or a cane. (*Id*.) He also claims he suffers from stress and anxiety after being on trial for child abuse and being a convicted felon, even though he has not committed any crime. (*Id*.) Additionally, given (what he believes to be) his felony conviction, he can no longer teach or work with children, and so his "right to work to work was taken away by defendant Kent Jacobs, and the Family Court." (*Id*.)

B. Procedural History

On December 8, 2021, Samuel filed a complaint in this Court against Kent, Judge Egitto, DCFC, and the City of Poughkeepsie, New York, alleging violations of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. (IC at 2, 5-6.) On February 8, 2021, Kent filed his Answer. (ECF No. 13.) On February 11, 2022, Defendants DCFC and Judge Egitto filed a pre-motion letter in anticipation of their motion to dismiss. (ECF No. 15 ("DCFC Mem.") at 1.)

The Court held a pre-motion conference on March 18, 2022, at which the Court granted Samuel leave to amend his complaint and dismissed the City of Poughkeepsie as a defendant. (Minute Entry dated Mar. 18, 2022.) On April 8, 2022, Samuel filed an Amended Complaint, alleging that Kent, DCFC, and the City of Poughkeepsie violated his Fourth, Fifth, Eighth, and Fourteenth Amendments. (AC at 2, 5-6.)⁶ Because Samuel did not list Judge Egitto as a Defendant in his Amended Complaint, (*see id.* at 5-6), the Clerk terminated him as a defendant. On the "Defendant Information" page, however, Samuel added the name and contact information of the Assistant Attorney General ("AAG") representing DCFC. (*Id.* at 6.)

On April 13, 2022, Defendant DCFC filed a letter, supplementing its February 11, 2022 letter. (ECF No. 25 ("DCFC Mem. 2").) The Court ordered the Clerk of Court to strike the AAG as a Defendant, finding that Samuel included the AAG's contact information because the AAG represents DCFC, not because he intended to name the AAG as a defendant, and deemed the April 13th letter, and Defendants' previous February 11th letter, to be DCFC's motion to dismiss. (ECF No. 26.) Kent subsequently also filed a motion to dismiss, (ECF No. 28 ("D Jacobs Mem.")),

⁶ Despite my having dismissed the City of Poughkeepsie as a defendant, Plaintiff renamed the City in the AC, apparently under the erroneous impression the Judge Egitto was an employee of the City or that the DCFC was an arm of the City. (*See* AC at 7.)

and Samuel filed separate oppositions to each motion, (P's Opp. 1; P's Opp. 2).

II. LEGAL STANDARDS

A. Federal Rule of Civil Procedure 12(b)(6)

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (cleaned up). While Federal Rule of Civil Procedure 8 "marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, ... it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 678-79.

In considering whether a complaint states a claim upon which relief can be granted, the court "begin[s] by identifying pleadings that, because they

are no more than conclusions, are not entitled to the assumption of truth," and then determines whether the remaining well-pleaded factual allegations, accepted as true, "plausibly give rise to an entitlement to relief." *Id.* at 679. Deciding whether a complaint states a plausible claim for relief is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'shown' – 'that the pleader is entitled to relief.'" *Id.* (cleaned up) (quoting Fed. R. Civ. P. 8(a)(2)).

When deciding a motion to dismiss under Rule 12(b)(6):

a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint. Where a document is not incorporated by reference, the court may nevertheless consider it where the complaint relies heavily upon its terms and effect, thereby rendering the document integral to the complaint. For a document to be considered integral to the complaint, the plaintiff must rely on the terms and effect of a document in drafting the complaint; mere notice or possession is not enough. And even if a document is integral to the complaint, it

must be clear on the record that no dispute exists regarding the authenticity or accuracy of the document, and it must be clear that there exist no material disputed issues of fact regarding the relevance of the document.

United States of America ex rel. Foreman v. AECOM, 19 F.4th 85, 106 (2d Cir. 2021) (cleaned up), *cert. denied*, 212 L. Ed. 2d 764 (U.S. May 2, 2022) (No. 21-1314). A court may also consider matters "of which judicial notice may be taken under Fed. R. Evid. 201." *Kramer*, 937 F.2d at 773.

Plaintiff attaches a variety of exhibits to his IC and AC, including his letters to DCFC and Judge Egitto, decisions of the court, and communications from DCFC. (IC at 10-17; AC at 12- 27.) I will consider these exhibits not only because they are attached to the complaints, but because they are integral to them. in that they form the factual basis for many of the allegations in the IC and AC, and because Plaintiff relied on them in framing his allegations. Neither party disputes their authenticity, accuracy or relevance.

B. *Pro Se* Plaintiffs

Submissions by *pro se* plaintiffs are to be examined with "special solicitude," *Tracy v. Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010), interpreted "to raise the strongest arguments that they suggest," *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d

Cir. 1994), and "held to less stringent standards than formal pleadings drafted by lawyers," *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (*per curiam*) (cleaned up). Nevertheless, "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," and district courts "cannot invent factual allegations" that the plaintiff has not pleaded. *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (cleaned up).

III. DISCUSSION

A. Eleventh Amendment Immunity

Plaintiff's claims against Defendant DCFC are barred under the Eleventh Amendment. "As a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states' Eleventh Amendment immunity." *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009) (cleaned up). "The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state." *Id.* (cleaned up). New York has not waived its Eleventh Amendment immunity to suit in federal court, and Congress did not abrogate the states' immunity in enacting 42 U.S.C. § 1983. *See Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 40 (2d Cir. 1977).

As DCFC is part of the New York State Unified Court System, which is an agency of the State of New

York, this state-court defendant is immune from suit under the Eleventh Amendment. *See Gollomp*, 568 F.3d at 368 ("[T]he New York State Unified Court System is unquestionably an arm of the State and is entitled to Eleventh Amendment sovereign immunity.") (cleaned up); *Roger of the Fam. Forrest v. 45 C.F.R. § 75.2 IV-D Contractor Steve Banks*, No. 18-CV-10866, 2019 WL 4194332, at *3 (S.D.N.Y. Aug. 30, 2019) (New York Family Court immune from § 1983 suit under Eleventh Amendment). Samuel's § 1983 claims against DCFC are dismissed as barred by the Eleventh Amendment.⁷

B. Statute of Limitations

Kent argues that Samuel's claims are time-barred. (D Jacobs Mem. at 2.) "The statute of limitations for actions under § 1983 is the statute of

⁷ Any such claim would also be barred by the statute of limitations, as discussed below. To the extent Samuel intended to bring claims against Judge Egitto, they would also be dismissed, not only based on the statute of limitations, but also because judges are entitled to absolute immunity from suit. *See Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009) ("[J]udges generally have absolute immunity from suits for money damages for their judicial actions"). Likewise, if Samuel intended to bring a claim against the AAG, it would also be dismissed on grounds of immunity, *see Wang v Logue*, 351 F. App'x 510, 510 (2d Cir. 2009) ("[AAG] is absolutely immune from suit for actions taken during [his] representation of State defendants."), and because the AC contains no facts regarding the AAG. Any claims against the City of Poughkeepsie are meritless and therefore dismissed, given that the AC contains no allegations (let alone timely ones) regarding actions of the City or any employee thereof.

limitations applicable to personal injury actions occurring in the state in which the federal court sits." *Harris v. Bd. of Educ.*, 230 F. Supp. 3d 88, 97 (E.D.N.Y. 2017) (cleaned up); *see Milan v. Wertheimer*, 808 F.3d 961, 963 (2d Cir. 2015). The statute of limitations for a § 1983 action in New York is three years. *Hogan v. Fischer*, 738 F.3d 509, 517 (2d Cir. 2013); *Lynch v. Suffolk Cnty. Police Dep't, Inc.*, 348 F. App'x 672, 674 (2d Cir. 2009) (summary order). Samuel filed his complaint on December 8, 2021, and thus any claims arising prior to December 8, 2018 are time-barred.

Samuel's allegations against Kent are that he "used Judge Egit[t]o and the Family Court of Poughkeepsie, NY to damage my reputation and right to work which violated my rights under Article 41, and the 14th Amendment." (IC at 7.) He asserts that Kent knowingly filed a false report and "provided proof of his crime in ... his Sworn Affidavit dated 11/5/2014" in which "[h]e confessed that 'he never introduced his son to [Samuel].'" (AC at 10.) All of Samuel's allegations are based on actions that occurred prior to December 8, 2018: Kent filed his charges against Samuel on September 29, 2014, (IC at 14); his sworn affidavit is from November 5, 2014, (AC at 26); an initial order of protection was entered on April 23, 2015, *see Jacobs*, 27 N.Y.S.3d at 884; and an extension of the order of protection was entered on December 8, 2017, *Jacobs*, 90 N.Y.S.3d at 133.⁸

⁸ The extension of the order of protection was affirmed on December 19, 2018, but the matter is listed as fully submitted as

Samuel argues that Kent "cannot claim Statute of Limitations because his violation of my rights under the Constitution is presently being litigated. There is no Statute of Limitations on the crime of violating the Constitution." (P's Opp. 2 at 3.) Samuel is incorrect. There are indeed statutes of limitations for constitutional claims arising under § 1983, and as set forth above, in New York it is three years. That his case is currently being litigated – a fact not apparent from the record – would not defeat the statute of limitations. Under federal law, a claim arising under § 1983 "accrues," meaning the statute of limitations starts to run, when the plaintiff "knows or has reason to know of the injury which is the basis of his action." *Pearl v. City of Long Beach*, 296 F.3d 76, 80 (2d Cir. 2002) (cleaned up); *see Pinaud v. Cnty. of Suffolk*, 52 F.3d 1139, 1157 (2d Cir. 1995) ("[W]hen a plaintiff knows or ought to know of a wrong, the statute of limitations on that claim starts to run"). All of the above claims arise from alleged injuries of which Samuel knew, and that therefore accrued, prior to December 8, 2018, and therefore his claims against Kent are time-barred.

C. Leave to Amend

of November 5, 2018, *see Jacobs*, 90 N.Y.S.3d at 131, so even if Samuel had alleged that Kent's participation in the appellate litigation was a violation of Samuel's rights (which he has not), Samuel has not pleaded, and there is no reason to believe, that any such action by Kent was within the limitations period. Likewise, the latest action on Judge Egitto's part was on August 8, 2018, more than three years before this case was filed.

Leave to amend a complaint should be freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2). "[I]t is within the sound discretion of the district court to grant or deny leave to amend." *Kim v. Kimm*, 884 F.3d 98, 105 (2d Cir. 2018) (cleaned up). "Leave to amend, though liberally granted, may properly be denied" for "'repeated failure to cure deficiencies by amendments previously allowed'" or "'futility of amendment,'" among other reasons. *Ruotolo v. City of N.Y.*, 514 F.3d 184, 191 (2d Cir. 2008) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

Plaintiff has already amended his complaint, after having the benefit of a pre-motion letter from Defendant DCFC outlining the proposed grounds for dismissal, (ECF No. 15), and the discussion at the March 18, 2022 pre-motion conference, (see Minute Entry dated Mar. 18, 2022). In general, a plaintiff's failure to fix deficiencies in the previous pleading, after being provided notice of them, is alone sufficient ground to deny leave to amend. *See Nat'l Credit Union Admin. Bd. v. U.S. Bank Nat'l Ass'n*, 898 F.3d 243, 257-58 (2d Cir. 2018) ("When a plaintiff was aware of the deficiencies in his complaint when he first amended, he clearly has no right to a second amendment even if the proposed second amended complaint in fact cures the defects of the first. Simply put, a busy district court need not allow itself to be imposed upon by the presentation of theories *seriatim*.") (cleaned up) (emphasis added); *In re Eaton Vance Mut. Funds Fee Litig.*, 380 F. Supp. 2d 222, 242 (S.D.N.Y. 2005) (denying leave to amend because "the plaintiffs have had two opportunities to cure the

defects in their complaints, including a procedure through which the plaintiffs were provided notice of defects in the Consolidated Amended Complaint by the defendants and given a chance to amend their Consolidated Amended Complaint," and "plaintiffs have not submitted a proposed amended complaint that would cure these pleading defects"), *aff'd sub nom. Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110, 118 (2d Cir. 2007) (*per curiam*) ("[P]laintiffs were not entitled to an advisory opinion from the Court informing them of the deficiencies in the complaint and then an opportunity to cure those deficiencies.") (cleaned up)

Moreover, Plaintiff has not asked to amend again or otherwise suggested that he is in possession of facts that would cure the deficiencies identified in this opinion. *See TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014) (plaintiff need not be given leave to amend if plaintiff fails to specify how amendment would cure the pleading deficiencies in the complaint); *Gallop v. Cheney*, 642 F.3d 364, 369 (2d Cir. 2011) (district court did not err in dismissing claim with prejudice in absence of any indication plaintiff could or would provide additional allegations leading to different result); *Horoshko v. Citibank, NA.*, 373 F.3d 248, 249-50 (2d Cir. 2004) (*per curiam*) (district court did not abuse its discretion by not granting leave to amend where there was no indication as to what might have been added to make complaint viable and plaintiffs did not request leave to amend).

Accordingly, the Court declines to grant leave to

amend *sua sponte*.

IV. CONCLUSION

For the foregoing reasons, Defendants' motions are GRANTED.

The Clerk of Court is respectfully directed to terminate ECF No. 28 and close the case.

SO ORDERED.

Dated: October 18, 2022
White Plains, New York

/s/
CATHY SEIBEL, U.S.D.J.

APPENDIX C

FAMILY COURT OF THE STATE OF NEW YORK COUNTY OF DUTCHESS

**In the Matter of a Proceeding under Article 8 of the
Family Court Act**

**KENT JACOBS,
Petitioner,**

-against-

**SAMUEL JACOBS, SR.,
Respondent.**

EGITTO, JOSEPH A., FAMILY COURT JUDGE

**DECISION AND ORDER
Docket No. O-005137-14**

**Family Unit No. 5646
Motion #3**

**THE FOLLOWING PAPERS WERE READ AND
CONSIDERED ON THIS MOTION BY
RESPONDENT TO RECEIVE COURT DECISIONS**

	PAPERS NUMBERED
NOTICE OF MOTION	1pp

AFFIRMATION IN SUPPORT 2pp
Exhibits 1pp

UPON THE FOREGOING PAPER IT IS
ORDERED THAT THE MOTION IS GRANTED.

In addition to consideration of the above papers, the Court takes judicial notice of its own file and all prior proceedings in this matter. *See Matter of D65 obo Sulin v. Cronin*, 37 AD3d 463 [2007]; *Matter of Khajibi v. Weill*, 8AD3d 485 [2004]; *Matter of Terrance L.*, 276 AD2d 699 [2000].

Having reviewed the United Court Management System, the Court is attaching to this decision copies of all decisions and orders issued by the Court since the conclusion of the trial on September 22, 2017. These include the decision and order, bearing docket number O-005137-14[illegible] and dated December 8, 2017 the order of protection bearing docket number O-05137-14 and dated December 11, 2017; the warrant of arrest bearing docket number O-05137-14 and dated April 6, 2018; the decision and order (motion #2), bearing docket number O-05137-14 and dated June 5, 2018; and the order of dismissal, bearing docket number O-02505-18 and dated June 12, 2018.

The Court notes that the respondent, Samuel Jacobs, Sr continues to be represented by the Office of the Public Defender, by Lawrence Moore, whose address is 22 Market Street, Poughkeepsie, NY 12601 and telephone number is (845) 486-2271. No application has ever been received by this Court

seeking to relieve the Office of the Public Defender of its assignment to represent Samuel Jacobs, Sr. Absent emergency, no further application by the respondent Samuel Jacobs, Sr will be considered by the Court unless submitted by counsel. *See Mueller v. Mueller*, 96 AD3d 948 (2d Dept. 2012); *Taub v. Taub*, 94 AD3d 901 2d Dept. 2012).

Accordingly, this motion seeking to receive court decisions is granted.

The foregoing shall constitute the decision and order of this court.

SO ORDERED.

DATED: Poughkeepsie, NY
8/6/2018

/s/

HON. JOSEPH A. EGITTO
JUDGE OF THE FAMILY COURT
COUNTY OF DUTCHESS

TO: Samuel Jacobs, Sr.
Kent Jacobs
Lawrence Moore, Esq.
Kelley Enderley, Esq.

[DATE STAMP MOSTLY ILLEGIBLE]

8/13/18

/s/

PETER A. PALLADINO

APPENDIX D

**FAMILY COURT OF THE
STATE OF NEW YORK
COUNTY OF DUTCHESS**

**In the Matter of an Article 8
Family Offense Proceeding**

Kent S. Jacobs (Petitioner)

Samuel Jacobs Sr. (Respondent)

File # 5466
Docket # O-05137-14/22B

ORDER TO SHOW CAUSE IN PERSON

Samuel Jacobs Sr.
114-75 145 St
Jamaica, NY 11436

Upon the attached petition of Kent S. Jacobs

It is hereby:

ORDERED that Samuel Jacobs Sr. show cause
before this court **IN PERSON** on:

Date Time Part: December 5, 2022 at 12:00 PM in
Part 4
Purpose: First Appearance and In-Person

Presiding: Hon. Joseph A. Egitto
Location: Courthouse, 50 Market St.,
Poughkeepsie, NY 12601-3204
Room: 378

Or as soon thereafter as the parties can be heard, why an order for the relief of Modification of Order Protection should not be made and why such other and further relief should not be granted as the Court may determine.

Please bring this notice with you and check in with the Court Officer in the Part.

ORDERED that by Personal Service, of a copy of this order together with the papers upon which it is granted, upon Samuel Jacobs Sr. on or before November 30, 2022, be deemed sufficient service.

Dated November 22, 2022

/s/
Hon. Joseph A. Egitto

APPENDIX E

**FAMILY COURT OF THE
STATE OF NEW YORK
COUNTY OF DUTCHESS**

Kent S. Jacobs
Petitioner,

vs.

Samuel Jacobs Sr.
Respondent

[DATE STAMP]
FILED
NOV 21 2022
DUTCHESS COUNTY
FAMILY COURT

MULTI-PURPOSE PETITION

Docket No. O-05137-14/22B
Family Unit No. 56466 12/11/17

- 1. Petitioner is* Kent Jacobs
Date of Birth 01-16-67
- 2. Petitioner's address:* 118 Van Vlack Rd.
Hopewell Jct., N.Y. 12533
Social Security # XXX-XX-3608
Phone # area code (917) 434-4456
- 3. Respondent is:* Samuel Jacobs Sr.
Date of Birth 09-27-1937

4. *Respondent's address:* 114-75 145th Street
Jamaica, NY 11436

Social Security # _____

Phone # area code () _____

5. *Date of original order* 9-29-2104

Date of most recent Modification 12-11-2017

6. *Current orders:* 12-11-2022

7. *Facts upon which relief requested is based:* The Respondent is continuing to bring forth litigation which is meritless. I'm not sure what his intent is. All this originates from 2014. He has no new evidence to substantiate his accusations.

8. *Relief requested:* I am requesting the FOP be extended for at least two addition years. So far it has been effective. This may give me some peace of mind.

/s/

Petitioner (signature)

STATE OF NEW YORK
COUNTY OF DUTCHESS ss:
FAMILY COURT

Kent Jacobs, being duly sworn, deposes and says that (s)he is the petitioner in the above matter; that (s)he has read the petition and/or has had it read to (her) him and had known it to be true with exception to those facts alleged on information and belief, and as to those facts (s)he believes them to be true.

/s/

Petitioner (signature)

Subscribed and sworn to before this 21 day of Nov 2022

APPENDIX F

FAMILY COURT OF THE STATE OF NEW YORK COUNTY OF DUTCHESS

**KENT JACOBS,
Plaintiff**

-against-

**SAMUEL JACOBS SR.,
Defendant**

**Docket #: 0-05137-14
MOTION TO EXPLAIN ARREST WARRENT**

**Motion by:
Defendant Sam Jacobs**

**Date, Time, and Place of Hearing:
August 23, 2018, 2 PM
Room 369, Family Court,
State of New York
County of Dutchess,
Court House, 50 Market Street,
Poughkeepsie, New York 12601**

**Supporting Papers:
Affirmation of Samuel Jacobs Sr**

Relief Sought:

- 1) Justify arrest Warrent
- 2) Appoint attorney to represent me at hearing

APPENDIX G

Sam Jacobs
114-75 145th Street
Jamaica, NY 11436
(718)659-4903

8/13/2018

To: Kelly S Myers
re: Jacobs v Jacobs
Family Unit No 56466

I am a pro se litigant.

I do not have a Public Defender. I fired attorney Lawrence Moore on 3/26/20018 (see attached) and exercised my legal right to proceed as a pro se litigant. I also notified Judge Egito of my dismissal of attorney Moore. Attorney Moore has nothing to do with these proceedings.

A litigant in civil proceedings is entitled to a fair hearing, imbued with the protections of due process. The due process guarantee expressed in the Fourteenth Amendment to the United States Constitution requires assurance of fundamental fairness during legal proceedings. U.S. Const. amend. XIV § 1.

Petitioner Kent Jacobs has committed criminal

acts in the court proceedings against me that have been blatantly ignored. Under penal law 240.50(4)(b), and Penal Law 210.10 petition Kent Jacobs could/should receive a fine of up to \$1,000 and up to 7 years in prison.

When also considering that I was put on trial and convicted of "wanting to contact the petitioner some day in the future", a warrent for my arrest with no justifiable reason, and your rejection of my right to file a motion, any reasonable person could easily come to the *conclusion* that my right to **Due Process** is being violated.

In sum, I am my attorney and I respectfully request a decision on this motion, and the four (4) motions that I previously filed as soon as possible.

/s/
Sam Jacobs
Attorney pro se

[DATE STAMP]
STATE OF NEW YORK
COUNTY OF QUEENS
SIGNED BEFORE ME THIS
13th DAY OF August 2018

/s/
Althea Benton
Notary Public – State of New York
No. 01BE6262031

APPENDIX H

[LETTERHEAD OF STATE OF NEW YORK
UNIFIED COURT SYSTEM NINTH JUDICIAL
DISTRICT DUTCHESS COUNTY FAMILY COURT

August 8, 2018

Mr. Samuel Jacobs, Sr.
114-75 145th Street
Jamaica, NY 11436

Re: Jacobs v. Jacobs
Family Unit No. 56466

Dear Mr. Jacobs:

Your "motion to explain arrest warrent (sic)" is being returned to you as it is not a proper motion. There is no authority to make such a motion.

You continue to be represented by the Office of the Public Defender, whose telephone number is (845) 486-2271. If you are not satisfied with the assistance that you have received by the particular assistant public defender assigned to your case, then you should contact the Public Defender, Thomas Angell. Any questions that you may have about court procedures, or decisions or warrants issued by the court, must be directed to your attorney.

Very truly yours,

/s/
KELLY S. MYERS
Principal Court Attorney

Encl.

Cc: Lawrence Moore, Esq. (W/o encl)
Kent Jacobs (w/o encl)

APPENDIX I

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

**SAMUEL O JACOBS
US ARMY VETERAN**
Write the full name of each plaintiff.

-against-

**KENT JACOBS
DUTCHESS FAMILY COURT
POUGHKEEPSIE, NY**

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

21cv10577

(Include case number if one has been assigned)

AMENDED COMPLAINT

Do you want a jury trial?
 Yes No

NOTICE

The public can access electronic court files. For privacy

and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.