No. 25-

IN THE

Supreme Court of the United States

JANE DOE,

Petitioner,

v.

GLENN M. SELIGER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. DOES THE "SAFE HARBOR" OF THE FEDERAL RULES OF CIVIL PROCEDURE, RULE 11 TERMINATE UPON PROPER FILING OF A MOTION; OR, IN THE ALTERNATIVE: IS A CHALLENGE UNDER RULE 11 A THRESHOLD MATTER THAT A COURT SHOULD RESOLVE BEFORE RESOLVING THE LEGAL ISSUE?

2. DOES A FEDERAL COURT OF APPEALS' CAREFUL CONSIDERATION OF A DISTRICT COURT'S REASONS, WITHOUT MORE, NOT CONSTITUTE SUFFICIENT INDEPENDENT REVIEW?

3. DO THE DECISIONS BELOW IN THIS CASE REFLECT A CLEAR MISAPPREHENSION OF SUMMARY JUDGMENT STANDARDS IN LIGHT OF THIS COURT'S PRECEDENTS?

PARTIES TO THE PROCEEDINGS

Petitioner JANE DOE was the Plaintiff-Appellant below.

Respondents GLENN M. SELIGER, LINDA EGENES, KATHLEEN MARTUCCI, JACQUELINE VELEZ, and JOHN MATHEW were the Defendants-Appellees below.

No party is a corporation.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- The United States Court of Appeals, Second Circuit: Doe v. Helen Hayes Hospital, Docket No. 22-242 (May 3, 2022).

- The United States Court of Appeals, Second Circuit: Doe v. Helen Hayes Hospital, Docket No. 25-159 (December 16, 2025).

- The United States District Court for the Southern District of New York, Case No. 7:20-cv-2331.

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Page

Statutes and Other Authorities

Page

OPINIONS BELOW

The United States District Court for the Southern District of New York entered an Opinion and Order on February 28, 2024 which denied Petitioner's motion for summary judgment; granted Respondents' motion for summary judgment; dismissed Petitioner's First through Sixth claims with prejudice; dismissed Petitioner's Seventh through Sixth claims without prejudice; and denied Petitioner's motion for relief from the Court's April 19, 2023 Order (Doc. 176). App. D, 39a.

The United States District Court for the Southern District of New York entered an Opinion and Order on December 16, 2024 which denied Petitioner's motion for sanctions (Doc. 204, Doc. 207); denied Respondent's motion for attorneys' fees for opposition to Petitioner's sanctions motions; and granted in part and denied in part Petitioner's motion for consideration (Doc. 230). App. C, 6a.

The United States District Court for the Southern District of New York entered an Amended Judgment on December 17, 2024 which modified the judgment entered on February 28, 2024 (App. D, 40a) to dismiss Petitioner's First through Sixth claims without prejudice. App. B, 4a.

The United States Court of Appeals for the Second Circuit entered a Summary Order on December 16, 2025 which affirmed the judgment. App. A, 1a.

BASIS FOR JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The petition is timely under Supreme Court Rule 13

because it is filed within 90 days of the judgment of the United States Court of Appeals for the Second Circuit entered on December 16, 2025. On March 10, 2026, the United States Supreme Court granted an extension of time to file the petition for a writ of certiorari from March 16, 2026 to May 15, 2026.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES

A. The Fourteenth Amendment to the United States Constitution

> Section 1.
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> …
>
> Section 5.
>
> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

B. Rule 11

> (a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.
>
> (b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

…

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

C. New York Public Health Law §§ 2803(1)(g) and 2803i(1)

…A patient who requires continuing health care services in accordance with such patient's discharge plan may not be discharged until

> such services are secured or determined by the hospital to be reasonably available to the patient…
>
> New York Public Health Law § 2803(1)(g)
>
> …Notwithstanding that the patient discharge review process provided in accordance with federal law and regulation shall apply to beneficiaries of title XVIII of the federal social security act (medicare), a written copy of the discharge plan, and discharge notice shall be provided to the beneficiary or the appointed personal representative of the beneficiary. The beneficiary or the appointed personal representative of the beneficiary shall have the opportunity to sign the documents and receive a copy of the signed documents.
>
> New York Public Health Law § 2803i(1)

STATEMENT OF THE CASE

A. Background

To put this appeal in proper context, Petitioner respectfully points to a question posed by a Member of this Court, as it related at the time to this Court's emergency docket:

> What is your response to what some people think is the practical problem? And the practical problem is that there are 680 district court judges, and they are dedicated and they

> are scholarly, and I'm not impugning their motives in any way. But, you know, sometimes they're wrong, and all Article III judges are vulnerable to an occupational disease, which is the disease of thinking that I am right and I can do whatever I want.
>
> …[T]he trial judge sitting in the trial judge's courtroom is the monarch of that – of that realm… And then an application is made to the court of appeals… The court of appeals gives it the back of the hand, and then the case comes immediately to us[.]

Trump v. CASA Inc. et al., No. 24A884 (U.S. May 15, 2025), Tr. of Oral Arg. At 14 (Alito, J.).[1]

With respect to the district court in this particular case, the district court's reasoning was objectively and indisputably wrong. This Court expressly stated *Dobbs* should be relied upon for issues concerning only abortion. *Dobbs*, 142 S.Ct. 2228. However, for Petitioner's First through Fifth Claims for Relief, the district judge relied upon *Dobbs* to opine that it is "deeply rooted in our history and tradition" that the Due Process Clause only protects immigration detainees, prisoners, and others in involuntarily detention setting, from the deliberate indifference to the law by officials in state hospitals. App. 22a-24a. The district court's reasoning permits the accused and convicted to be heard in federal courts, while relegating the infirm and elderly to rely upon only the

1. https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/24a884_7lhn.pdf (last accessed March 27, 2026).

Medicare administrative appeals process, even though the district judge did not identify any Medicare policy, regulation, or statute that is at issue. App. 13a-18a; 50a-54a. The district court's reasoning is contrary to decades of precedent. *J.M. v. Sessions*, 162 F. 4th 364, 376 (2d Cir. 2025).

Also, where a state's court of last resort may declare a particular use of medical information as "a very substantial invasion of privacy," *In the Matter of Miguel M.*, 17 N.Y.3d 37, 43 (N.Y. 2011), a federal district judge sitting in the same state is free to declare, without explanation or concern, that the same conduct concerns "a weak privacy interest." App. 29a.

Unfortunately, the court of appeals gave a "back of the hand" to the district court's error. The court of appeals never suggested that the district court was correct, and does not suggest that there may be alternative grounds to affirm. Instead, the court of appeals only stated that it provided "careful consideration of the reasons stated by the district court," which leaves open the possibility that the court of appeals considered the reasons the district court gave for reaching its incorrect decision; and, out of sympathy, the court of appeals affirmed. That is, there is a hint of what Justice Breyer characterized as the naturally protective instinct toward "guild favoritism," *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* (a.k.a. the "Breyer Report") (2006) at 1.

However, this naturally protective instinct creates three problems that Petitioner respectfully presents to this Court to resolve. First, attorneys are improperly shielded from sanctions under Rule 11. Here, Respondents'

counsel presented frivolous arguments to the district court, that the district court inadvertently adopted. App. 50a. Rather than Respondents' counsel honorably act to "[y]ield indefensible terrain,"[2] Respondents' counsel goaded the district court into not reconsidering its error. The district court, in justifying the denial of reconsideration, produced clearly defective reasoning. Second, the district court's reconsideration decision is completely incorrect and will bear the misleading, quasi-controlling imprimatur of "*aff'd*… (2d Cir. 2025)." Among other things, the district court decision (App. 12a) may be used to support future applications of *Dobbs* outside of cases concerning abortion. Third, Petitioner continues to suffer the manifest injustice of receiving an improper resolution of this case which is entirely untethered from the accepted standards for the summary judgment stage of litigation.

Petitioner respectfully presents that this case substantially undermines the deterrence purpose of Rule 11; can only serve to undermine federal jurisprudence, including introducing a quasi-precedential support for application of *Dobbs* outside of the issue of abortion; and represents a manifestly unjust departure from the accepted and usual standards for summary judgment litigation.

B. Relevant Facts and Procedural History

Jane Doe ("Petitioner") brought this action before the United States District Court for the Southern

2. Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges*, Ch. 11 (2008).

District of New York ("District Court") for claims under 42 U.S.C. § 1983 and state law against certain officials and employees (collectively, "Respondents") from the New York State Department of Health ("DOH") and/or Helen Hayes Hospital ("HHH"), a facility owned by the DOH. Petitioner commenced this action on March 16, 2020 (Doc. 1); the operative complaint is the Second Amended Complaint filed on August 20, 2020 (Doc. 39). The constitutional claims pressed against Respondents are: (1) "Deprivation of Liberty Interest in Discharge Planning"; (2) "Deprivation of Liberty Interest in Medical Information Necessary for Making an Informed Decision"; (3) "Deprivation of Property Interest in a Discharge Memorialization"; (4) "Deprivation of Liberty Interest in Medical Care"; (5) "Deprivation of Property Interest in an Intensive Rehabilitative Therapy Level of Care"; (6) "Deprivation of Liberty Interest Caused by Unreasonable Search of Private Records."

The District Court, on September 13, 2021, denied Respondents' motion to dismiss the Second Amended Complaint. (Doc. 65). Respondents filed an Answer to the Second Amended Complaint on November 5, 2021 (Doc. 70), and the parties thereafter engaged in discovery.

On August 5, 2022, Petitioner served Respondents' counsel, but did not file at that time with the District Court, a memorandum of law for a motion for sanctions under Rule 11(c) ("8/5/2022 Sanctions Brief," Doc. 208). Doc. 209 ¶ 7. On August 10, 2022, in a discovery conference literally five days within the 21day safe harbor time frame under Rule 11, Respondents' counsel informed the District Court of Petitioner's 8/5/2022 Sanctions Brief served on Respondents. *Id.* ¶ 10; Doc. 122 at 7:22-24. The 8/5/2022

Sanctions Brief does not concern discovery, and challenges Respondents' counsel's defenses for the Sixth Claim for Relief. The 8/5/2022 Sanctions Brief was not before the District Court, and the District Court did not issue any ruling pertaining to it. *Id.* 9:1618.

On February 28, 2023, Respondents' counsel filed a pre-motion letter requesting a pre-motion conference in anticipation of filing a motion for summary judgment ("PreMotion Letter", Doc. 155).

On April 5, 2023, the parties filed a joint statement of the parties' respective factual stipulations, assertions, and disputations in support of the anticipated motion and crossmotion for summary judgment (Doc. 172). Pursuant to District Court's order (Doc. 136), the District Judge ordered Respondents' counsel's assertions to be presented first (Doc. 172 ¶¶ 170), and then Petitioner's contentions second (*id.* ¶¶ 71129). On April 13, 2023, Petitioner served a notice of motion upon Respondents' counsel, but did not file at that time with the District Court, which sought a declaration of the aforementioned PreMotion Letter (Doc. 155) was "in whole or in part as violative of" Rule 11(b). Doc. 204 at 1, ¶ 1. Petitioner set forth arguments in support of sanctions in an attached memorandum of law ("4/13/2023 Sanctions Brief", Doc. 206).

During the April 19, 2023 premotion conference to discuss the PreMotion Letter, only six days within the 21day safe harbor time frame under Rule 11 for the 4/13/2023 Sanctions Brief, Respondents' counsel stated to the District Court:

> I was served with a 25-page sanctions letter from [Petitioner]. It essentially reads to me as their opposition to our summary judgment motion. I would ask that we not respond to that and it not be filed and that we wait until your Honor rules on the summary judgment motion before addressing anything like this… if the Court determines that it's necessary, but this is the second or third time that I've gotten a letter from them accusing my firm, me and my firm, of violating Rule 11 and I would like it to stop and I would like not to have to respond to this, because we're trying to get this motion done.

4/19/2023 Tr. 18:919. (Doc.181).

In response to the District Court's inquiry at the conference, Petitioner explained: "By rule, [Respondents' counsel] has 21 days to respond, and if he wants to waive the 21 days, I'd be happy to serve the motion on your Honor today and also e-file it subsequently this evening. Or, rather, this afternoon." *Id.* 18:2124. Respondents' counsel did not waive any right to the safe harbor period. The District Court initially appeared focused on repeating its reasoning on August 10, 2022, by noting that: "I don't know anything about Rule 11 because I'm not supposed to know about Rule 11 until I get a motion… [Respondents' counsel], I'm not in a position to direct lawyers to do anything in terms of Rule 11 until I have something in front of me[.]" *Id.* 19:117. The District Court then again observed: "You know, off the top of my head, I don't see anything that...brings me in to the Rule 11 process until such time as the motion is filed." *Id.* 19:2022.

The District Court ultimately decided to intervene, thereby disrupting the procedures set forth Rule 11. The District Court's post-conference order (4/19/2023 Order), as it relates to the Rule 11 is as follows:

> With respect to the Rule 11 motion served upon defense counsel, the Court directed [Respondents] to comply with the time limitations for any response to the motion under Rule 11, but directed that to the extent [Petitioner] intends to pursue the motion, she shall proceed by filing a pre-motion letter requesting a conference (not the motion itself), and that she shall do so only after the motion summary judgment and any potential sur-reply is fully filed and *sub judice*.

4/19/2023 Order at 2. (Doc.175).

On April 26, 2023, Respondents' counsel Rule 11 response was as follows:

> Initially, [Petitioner]'s motion is untimely. [Respondents]' letter was filed on 2/28/23, and the Court already ruled on it on 3/8/23 [ECF Doc. Nos. 155 and 161]. [Petitioner]'s motion for sanctions was not served until over one month later on 4/13/23. Where, as here, a Rule 11 sanction motion is directed at a paper that has already been judicially disposed, it is untimely.
>
> In any event, [Petitioner's] motion lacks merit. [Petitioner's] attack on [Respondents]' purported lack of legal authority is not only baseless but

> also premature, as [Respondents] have not yet submitted their 25-page memorandum of law and have not fully briefed their arguments. [Petitioner]'s assertion that [Respondents] rely on purportedly disputed facts is unfounded. Additionally, whether [Petitioner] has raised an issue of fact that is genuine and supported by admissible evidence is for the Judge to decide upon a fully briefed summary judgment motion, rather than a sanctions motion. Finally, [Petitioner]'s motion appears to be merely a vehicle for emphasizing the purported merits of [Petitioner]'s claims and fails to demonstrate why [Respondents]' intended arguments are so patently unreasonable as to merit sanctions, rather than simply losing propositions.
>
> As you know, Judge Halpern instructed [Petitioner] not to file her sanctions motions until on or after August 9 [2023]. Should [Petitioner] still choose to file the motion at that time, [Respondents] will submit opposition.

Doc. 1772.

On May 4, 2023, the 21day safe harbor time period expired without any further communication from Respondents' counsel. On May 5, 2023, Petitioner filed a "Motion for Relief from an Order Preventing [Petitioner] from Filing a Rule 11 Motion for Sanctions[.]" Doc. 176. Petitioner argued that she should no longer be prevented from immediately filing 4/13/2023 Sanctions Brief, "[a]s [Respondents] did not comply with the 21-day safe harbor time limitation for withdrawing or correcting the Pre-

Motion Letter that is a requirement of Rule 11(c)(2), and [Respondents] did not cite any legal authority to justify their inaction" Doc. 178 at 3 (pdf:7).

Respondents' counsel opposed on May 19, 2023, arguing that "the order and the transcript of the conference reveals, however, that the Court directed [Respondents] only to 'respond' to the Sanction Motions, not to withdraw or correct their pre-motion letter." Doc. 179 at 4 (pdf:8). Petitioner replied on May 26, 2023, among other things, by pointing to Rule 11(c)(2). Doc. 182 at 4 (pdf:8).

On August 25, 2023, all of the parties' summary judgment papers were fully filed and *sub judice*, and the District Court did not yet rule on Petitioner's motion for relief from the 4/19/2023 Order. In accordance with the 4/19/2023 Order, Petitioner filed a premotion letter requesting a conference in anticipation of seeking leave to file *both* sanctions motions. Doc. 195. The District Court allowed Respondents' counsel to oppose, and Respondents' counsel did oppose. Doc. 196; Doc. 198. The District Court "waive[d] any premotion conference requirement. [Petitioner] may, if she be so advised, file her two motions for sanctions. The time for [Respondents] to file opposition thereto shall be held in abeyance pending review and consideration of the pending motions for summary judgment." Doc. 202.

On February 28, 2024, the District Court issued an Opinion and Order ("2/28/2024 Opinion and Order", App. 40a), which, in part: granted Respondents' motion for summary judgment and denied Petitioner's cross-motion, by (1) finding that it lacked jurisdiction over Petitioner's First through Fifth Claims because they arose under

the Medicare Act, (2) dismissing Petitioner's Sixth Claim on the merits, and (3) declining to exercise pendent jurisdiction over Petitioner's remaining state law claims. The 2/28/2024 Opinion and Order also denied Petitioner's motion for relief for relief from the 4/19/2023 Order.

On February 28, 2024, the District Court also issued an order that "[Petitioner], by March 6, 2024, shall file a letter via ECF advising the Court whether, in light of its decision on the cross-motions for summary judgment, she still intends to press her motions for sanctions." Doc. 226.

On March 6, 2024, after careful review of the District Court's reasoning, Petitioner filed a letter indicating that she intended to press her motion for sanctions, because [the "2/28/2024 Opinion and Order] is *prima facie* insufficient to establish that [Respondents]' positions have any chance of success under Second Circuit law, for the reasons set forth below." Doc. 228 at 1. The thrust of Petitioner's reasoning is: (1) any nonfrivolous argument that the First through Fifth Claims for Relief arise under the Medicare Act must concern a disputed issue that is cognizable under 42 U.S.C. § 405(g), as incorporated into the Medicare Act by *id.* **§ 1395ff(b)(1)(A); and (2) any nonfrivolous argument under the Sixth Claim for Relief must be rooted in the** *Hancock v. County of Rensselaer*, 882 F. 3d 58, 67 (2d Cir. 2018), not decisions from 2011 and earlier. *See* Doc. 228 (generally).

On March 7, 2024, almost one year after the District Court issued the 4/19/2023 Order that first prevented Petitioner from filing 4/13/2023 Sanctions Brief as per Rule 11, the District Court scheduled the opposition and the reply briefings. Doc. 229. On March 27, 2024,

Petitioner motioned for reconsideration of the District Court's summary judgment order. (Doc. 230 and Doc. 231).

On April 12, 2024 Respondents' counsel filed their oppositions. ("4/13/2023 Opposition", Doc. 234; and "9/5/2022 Opposition", Doc. 235). On April 26, 2024, Petitioner replied. ("4/13/2023 Reply", Doc. 236; and "9/5/2022 Reply", Doc. 237). On April 30, 2024, Respondents opposed reconsideration (Doc. 238). On May 15, 2024 Petitioner relied (Doc. 242)

On December 16, 2024, the District Court issued an Opinion and Order ("12/16/2024 Opinion and Order", App. 6a), which, except for dismissing the First through Fifth Claims for Relief without prejudice, denied reconsideration. The 12/16/2024 Opinion and Order also denied sanctions on the grounds that the reasoning in the summary judgment and reconsideration motions sufficed.

On January 14, 2025, Petitioner appealed to the Second Circuit (Doc. 263). On December 16, 2025, the Second Circuit issued a Summary Order which stated in part:

The Appeals Court's reasoning is:

> Appeal from a judgment of the United States District Court for the Southern District of New York (Philip M. Halpern, District Judge).
>
> **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is AFFIRMED.

> [Petitioner] appeals from a judgment of the United States District Court for the Southern District of New York, entered on December 17, 2024. On March 16, 2020, Petitioner brought suit against several employees of Helen Hayes Hospital, a rehabilitation center owned and operated by New York State's Department of Health. Petitioner's operative complaint asserts twelve claims for various violations of the U.S. Constitution and New York law. On February 28, 2024, the district court granted [Respondents]' motion for summary judgment, (1) finding that it lacked jurisdiction over Petitioner's first through fifth claims because they arose under the Medicare Act, (2) dismissing [Petitioner]'s sixth claim on the merits, and (3) declining to exercise pendent jurisdiction over [Petitioner]'s remaining state law claims. On March 27, 2024, [Petitioner] filed a motion for reconsideration. On December 17, 2024, the district court denied this motion in part, modifying its decision only to dismiss [Petitioner]'s first five claims without prejudice. [Petitioner] now appeals.
>
> Upon careful consideration of the reasons stated by the district court, we **AFFIRM** the judgment.

App. 1a-2a.

On March 9, 2026, Petitioner served the extension for the instant Petition of Writ of Certiorari to Respondents' Counsel to be due on May 15, 2026.

REASONS FOR GRANTING THE PETITION

A. Rule 11: The District Court Greatly Departed from Accepted and Usual Judicial Proceedings by Nullifying the SafeHarbor Time Frames in Rule 11(c)(2)

1. The Safe-Harbor Protection for Respondents' Counsel to Withdraw or Appropriately Correct Summary Judgment Contentions Ended with the Filing of the Respective Sanctions Briefs

Procedurally: "A motion for sanctions… *must be served… but it must not be filed* or be presented to the court if the challenged… contention… is withdrawn or appropriately corrected within 21 days after service *or within another time the court sets*." Rule 11(c)(2) (emphasis added).

Here, the District Court issued the following scheduling order under Rule 11:

> With respect to the Rule 11 motion served upon defense counsel, the Court directed [Respondents] to comply with the time limitations for any response to the motion under Rule 11, but directed that to the extent [Petitioner] intends to pursue the motion, [Petitioner] shall proceed by filing a pre- motion letter requesting a conference (not the motion itself), and that [Petitioner] shall do so only after the motion summary judgment and any potential sur-reply is fully filed and *sub judice*.

Doc. 175 at 2 ("4/19/2023 Order").

The District Court explained this scheduling order later: "The [District] Court… directed [Respondents] to respond to [Petitioner's] letter in accordance with the Rule 11 safe harbor time-frames—that direction did not require [Respondents] to withdraw their pre-motion letter, nor did it prevent [Respondents] from making their motion for summary judgment." App. 65a. The clear error here is that Rule 11(c)(2) only authorizes a district court to set the date when the movant may file a motion. Safe harbor is strictly a byproduct of limiting when a motion is filed; this Court expressly rejected any other form of safe harbor. *See Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 550 (1991).

A litigant served with a motion under Rule 11(c)(2) ostensibly has two forms of safe harbor: (1) guaranteed safe harbor, whereby a Rule 11(c)(2) movant may serve opposing counsel, but must not file with district court, the motion; this is either a 21-day safe-harbor period, or a date certain set by a district court; and (2) indeterminate safe harbor, whereby after serving opposing counsel, the movant may file, but has not yet actually filed, the motion with district court. Once a movant has duly filed a motion in accordance with either Rule 11(c)(2) or the district court's instructions, the party served has no additional safe harbor to withdraw or appropriately correct the challenged contention without sanction.

In the instant case, on September 12, 2023, the District Court granted Petitioner leave to file her sanctions briefs. Doc. 202. On September 20, 2023, Petitioner filed the 4/13/2023 Sanctions Brief. Doc. 206. Respondents' counsel

had 160 days of safe harbor (4/13/2023 to 9/20/2023), which is almost eight times the safe-harbor time frame allotted by Rule 11(c)(2). On October 27, 2023, Petitioner filed the 8/5/2022 Sanctions Brief. Doc. 208 (collectively with Doc. 206, the "Sanctions Briefs"). Respondents' counsel had 428 days of safe harbor (8/5/2022 to 10/27/2023), which is more than 20 times the safe-harbor time frame allotted by Rule 11(c)(2).

Therefore, the issue for this Court, as it relates to the issues the District Court actually decided, is whether Respondents were required to withdraw or correct their lack of subject matter jurisdiction arguments for the First through Fifth Claims for Relief, and arguments on the merits for the Sixth Claim for Relief; specifically, on or before the filing of the respective Sanctions Briefs with District Court.

2. Regardless of When Respondents' Counsel Lost Safe Harbor, the District Court Defied this Court's Ruling in *Cooter & Gell* by Disregarding the Need to Deter Baseless Litigation

"Lower court judges may sometimes disagree with this Court's decisions, but they are never free to defy them." *National Institutes of Health, et al. v. American Public Health Association, et al.*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J., concurring in part and dissenting in part). It is "clear that the central purpose of Rule 11 is to *deter baseless filings* in district court... imposing a duty on attorneys to certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are *inter alia... legally tenable...*". Doc. 178 (quoting

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990); emphasis added; alterations removed). "Although the Rule must be read in light of concerns that it will spawn satellite litigation and chill vigorous advocacy, any interpretation *must* give effect to the Rule's central goal of *deterrence*." *Cooter & Gell*, 496 U.S. at 395 (emphasis added). Similarly, any interpretation of Rule 11 must preserve the "incentive to 'stop, think and investigate more carefully before serving and filing papers.'" *Id.* at 398.

Here, although Petitioner notified the District Court of this Court's precedent in *Cooter & Gell*, the District Court outright defied the precedent. The District Court never considered the need to deter baseless filings in any manner. App. 63a-65a; App. 30a-37a. Instead, the District Court focused strictly on satellite litigation. The District Court reasoned: "[I]f the bases for [Petitioner's] sanctions motions are identical to the arguments made in the summary judgment motions, why ask the Court to adjudicate those issues twice?" App. 65a. It was not proper for the District Court to allow Respondents' counsel to press their motion once.

Before the District Court considered the Medicare exhaustion issue, it had a duty to ensure that Respondents' counsel, at a minimum, conducted an investigation into what, if any, Medicare "policy, regulation, or statute" believed was at issue in this case. *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 10 (2000). It is ultimately the complete lack of nexus, between the claims in this case and Medicare rules, that renders the lack of subject matter jurisdiction frivolous. Similarly, with regard to medical privacy, the "Privacy Rule… [of] the Health Insurance Portability and Accountability Act

(HIPAA) prohibits the disclosure of a patient's medical records to a state agency… for use in a proceeding to compel the patient to accept… treatment, where the patient has neither authorized the disclosure nor received notice of the agency's request[.]" *In the Matter of Miguel M.*, 17 N.Y.3d 37, 40 (N.Y. 2011). As Respondents' counsel never suggested a HIPAAcompliant notice or waiver was in the medical record, the minimum research that Respondents' counsel needed to conduct was, under what legal theory would allow for a legitimate government interest in State officials defying the same State's court of last resort.

Therefore, the gross prejudice Petitioner suffered, which defied this Court's decision in *Cooter and Gell*, was in allowing the Respondents' counsel to press their baseless arguments in the first instance.

3. On September 20, 2023, Respondents' Counsel Became Subject to Sanctions for Failure to Withdraw their Lack of Subject Matter Jurisdiction Argument

The issue is whether Respondents' counsel failed to withdraw the lack of subject matter jurisdiction argument, prior to the expiration of the court-appointed safe-harbor time frame. There is no dispute that the controlling statutory provision for this issue is: "No action *against the United States, the [Secretary of Health and Human Services ("Secretary")], or any officer or employee thereof* shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under [the Medicare Act]." § 405(h) (emphasis added) (as incorporated into the Medicare Act by *id.* § 1395ii).

"On its face § 405(h)'s ban on actions 'against the United States, the Secretary, or any officer or employee thereof' does not apply to a suit against *state* officials." *Ellis v. Blum*, 643 F.2d 68, 76 (2d Cir. 1981) (Friendly, J.) (emphasis in original). On that basis, Judge Friendly wrote on behalf of the panel: "Although we hold below that the state defendants were acting under color of *federal* law, this, without more, does *not* suffice to render them officers or employees of the United States within the meaning of § 405(h)." *Id.* (emphasis added). It is important to note that, "the *Ellis* court did *not* hold that the state defendants before that court fell within § 405(h)." *Goodnight v. Shalala*, 837 F. Supp. 1564, 1579 (D. Utah 1993) (discussing *Ellis* at length) (emphasis added).

Here, consistent with *Goodnight*, Petitioner alerted Respondents' counsel on August 25, 2023: "[Respondents] never presented any argument distinguishing this case from *Ellis*, even though the Second Circuit decided *not* to extend exhaustion under § 405(h) to the state defendants in *Ellis*." Doc. 195 at 2 (Petitioner's letter seeking leave to file, *inter alia*, the 4/13/2023 Sanctions Brief).

Respondents' counsel pointed to the *dicta* in *Ellis*: "While we have little doubt that § 405(h) extends to suits in which claims against state officials are merely disguised disputes with the Secretary that is not this case." Doc. 198 at 2.(quoting *Ellis*, 643 F.2d at 76; alterations removed) Respondents' counsel also pointed to *dicta* that "a '***forceful argument*** can be made that the state officials administering' Medicare benefits 'are acting under color of federal law as mere agents of the Secretary of HHS, and as such are within the ambit of § 405(h).'" *Id.* (quoting *Ellis*, 643 F.2d at 76; alterations removed; Respondents' counsel's bolded italics).

Respondents' counsel's argument is frivolous. The parties stipulated that quality improvement organization ("QIO"), Livanta, was acting under color of federal law to administer the Medicare program. Doc. 172 ¶ 35; *see also* 42 U.S.C. § 1320c–1 (defining QIOs). Indeed, the discharge notice specifically states that "**This is not an official Medicare decision.** The decision on your appeal will come from your Quality Improvement Organization (QIO)." Doc. 18821. The ALJ stated quite clearly that the Secretary does not exercise jurisdiction over individual discharges: "The [Medicare] discharge planning provision… does not govern the eligibility of a specific individual to receive Medicare coverage[.]" Doc. 18433 at 1213 (pdf:1314). Despite 160 days of safe harbor, Respondents' counsel neither pointed to any part of the record nor cited a single policy, regulation, or statute that suggested Respondents ever (1) administered any part of the Medicare program, (2) engaged in any official action under color of federal law, or (3) were under the supervision or control of Livanta. Therefore, Respondents' counsel was in violation of Rule 11(b), without protection of the safe-harbor period, and subject to sanctions for not withdrawing their lack of subject matter jurisdiction contention.

4. By October 27, 2023, Respondents' Counsel Was Obligated to Withdraw their Defense of the Sixth Claim for Relief

The issue is whether Respondents' counsel's failed to withdraw their contention regarding Petitioner's Sixth Claim for Relief.

The 8/5/2022 Sanctions Brief put Respondents' counsel on notice that "Substantive due process categorically protects privacy in certain types of personal information—medical information, as relevant here. An individual's interest in maintaining such information confidential is not just presumptively reasonable, it is fundamental." Doc. 208 (quoting *Hancock*, 882 F. 3d at 67 (alterations omitted).

On August 25, 2023, Petitioner reiterated to Respondents' counsel:

> It is well settled, "A shocks-the-conscience test *focuses on the government's interests* in the information contained in the records and the manner in which those interests might be achieved... When the strength of a privacy interest is sufficiently weak it can be overwhelmed by even a *moderately strong* government interest in disclosure." "A court applying a shocks-the-conscience test must *always* examine the executive branch's interest in breaching that privacy."

Doc. 195 at 3 (emphasis in original) (quoting *Hancock*, 882 F. 3d at 68 (alterations omitted).

Here, Respondents' counsel was obligated to withdraw their defenses for the Sixth Claim for Relief, unless they overcame a categorical and fundamental presumption of liability, by presenting a cognizable, legitimate government interest in a particular objective; and describe how those objectives could be achieved. They simply failed to do so.

To wit: the most glaring and terminal defect of Respondents' counsel's September 5, 2023 letter opposing Petitioner's filing the sanctions motions, is the failure to mention *Hancock*, which is the controlling decision governing the Sixth Claim for Relief. Respondents' counsel frivolously contend that "[Petitioner] cites no authority to support her claim that [Respondents] had no cognizable interest in their patient's safe discharge to avoid risk to her health and safety." Doc. 198 at 4. To the contrary, Petitioner cited the *controlling* decision. Notwithstanding, Respondents' counsel contended that the "government interest in disclosing [Petitioner's] medical information in the guardianship petition… [was] 'to effectuate a safe discharge[.]'" *Id.* However, Respondents' counsel failed to discuss how that goal might be achieved. The controlling decision, *Hancock*, 882 F. 3d at 68, requires such a discussion.

The New York State Department of Health publishes a booklet entitled 'Your Rights as a Hospital Patient in New York State'" (Doc. 172 ¶ 70), which states: "All patients (*including Medicare patients*)… *must* receive **a written discharge plan** before they leave the hospital… **The necessary services described in this plan *must* be secured or reasonably available before you leave the hospital**… **A plan *must* be provided to you in writing before you leave the hospital**." Doc. 1944 at 1011 (bolded in original, italics added); *see also* New York Public Health Law §§ 2803(1)(g) & 2803i(1).

In the instant case, there is no written discharge plan in the record. Doc. 172 ¶ 122. In addition, the parties stipulated that, at minimum, Respondent needed the post-discharge services of a "comprehensive program"

staffed by "CNA" certified individuals "who are skilled in working with patients who've had brain injury", and by "skilled subacute therapist[s]." *Id.* ¶ 109. However, there is no evidence, and certainly no *undisputed* evidence, of even an informal plan for transferring Petitioner to any facility operating such a comprehensive program. *Id.* ¶¶ 86, 114. Instead, HHH's internal discharge plan states, "Services Needed at Discharge [remained] To Be Determined." *Id.* ¶ **111**.

Objectively, Respondents' goal was to effectuate an illegal discharge. Even if Respondents publicly asserted that a "safe" discharge existed, a New York State court still would be barred from ordering such a discharge, pursuant to New York Public Health Law §§ 2803(1)(g) & 2803i(1). Assuming *arguendo* that a state court had replaced Petitioner's Agents with a state-appointed guardian, to the extent that guardian complied with the law, the guardian would still be required to refuse discharge. Notably here, Respondents' petition for the appointment of a guardian failed when the independent court evaluator recommended against it. *Id.* ¶¶ 58, 102.

In sum, assuming *arguendo* that Respondents were acting in furtherance of an allegedly "safe" discharge, the only lawful manner that Respondents' objective could be achieved would be through meeting the following legal requirements: (1) "A patient who requires continuing health care services in accordance with such patient's discharge plan may not be discharged until such services are secured or determined by the hospital to be reasonably available to the patient," New York Public Health Law § 2803(1)(g); and (2) "Notwithstanding… the patient discharge review process provided… with [Medicare], a written copy of the

discharge plan… *shall* be provided to the beneficiary or the appointed personal representative… The beneficiary or the appointed personal representative… *shall* have the opportunity to sign the documents and receive a copy of the signed document[],” *id.* § **2803**i(1).

When Petitioner filed the 8/5/2022 Sanctions Brief on October 27, 2023, Respondents’ counsel had been on notice for almost 15 months that, under *Hancock*, 882 F. 3d at 68, Respondents were *presumptively* liable. Yet, Respondents’ counsel never provided any “support for its theories even in minority opinions, in law review articles” that demonstrated an allegedly “safe” but actually illegal discharge constituted a legitimate government interest. 1993 Advisory Committee Notes Civil Rules; Rule 11. Therefore, with the October 27, 2023 filing of the 8/5/2022 Sanctions Brief, Respondents’ counsel was in violation of Rule 11(b), without protection of the safe-harbor period.

B. The District Court Greatly Departed from Accepted and Usual Judicial Proceedings by Disregarding the State Court of Last Resort When Determining a Liberty Interest of an Incompetent Person

It was clearly established that “invasions of [medical] privacy… should be evaluated according to a shocks-the-conscience standard.” *Hancock*, 882 F. 3d at 66. “[S]ubstantive due process protects[,] *categorically* protects[,] privacy in certain types of personal information—medical information, as relevant here. An individual’s interest in maintaining such information confidential is not just *presumptively reasonable, it is fundamental*.” *Id.* at 6667 (emphasis added). Although federal law has set the parameters of the liberty interest in medical privacy,

there can be little dispute that "the more challenging task of crafting appropriate procedures for safeguarding incompetents' liberty interests is entrusted to the 'laboratory' of the States, in the first instance." *Cruzan ex rel. Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 292 (1990) (O'Connor, J., concurring) (quotation marks and citation omitted).

"New York State became the first jurisdiction to depart from the common-law rule when it adopted the physician-patient privilege by statute in 1828." *Dillenbeck v. Hess*, 73 N.Y.2d 278, 284 (N.Y. 1989). Consistent with almost two centuries of legal doctrine within the jurisdiction, "[t]o disclose private information about particular people, for the purpose of preventing those people from harming themselves or others, effects *a very substantial invasion of privacy* without the sort of generalized public benefit that would come from, for example, tracing the course of an infectious disease." *Miguel M.*, 17 N.Y.3d at 43 (emphasis added). Using "[medical] records themselves, or their contents, in a proceeding to subject to unwanted medical treatment *a patient who is not accused of any wrongdoing*… directly impairs, without adequate justification, the interest protected by HIPAA and the Privacy Rule: the interest in keeping one's own medical condition private." *Id.* at 45 (emphasis added).

Here, the District Court's reconsideration explains that in its summary judgment decision, it "considered [Respondents]' interest in 'effecting a safe discharge because the Proxies refused discharge despite two Livanta findings in favor of discharge and [Respondents]' concern that [Petitioner] could acquire antibiotic resistant bacteria by unnecessarily prolonging her stay at HHH,'

balanced against [Petitioner] *weak privacy interest*." App. 29a (emphasis added) (quoting App. 61a-62a; alterations removed).

Most importantly, there was no need for the District Court to weigh in on Petitioner's privacy interest. "A court applying a shocks-the-conscience test must *always* examine the executive branch's interest in breaching that privacy." *Hancock*, 882 F. 3d at 68 (emphasis added). Petitioner's privacy interest is presumptive. *Id.* at 67. The District Court must first scrutinize the government interest.

In addition, Petitioner briefed the District Court on both *Dillenbeck* and *Miguel M.* Doc. 189 at 2224 (pdf:2931). Yet District Court ruled Petitioner had a "weak privacy interest," *id.*, without any discussion of the apparent conflict with New York State's court of last resort's "very substantial invasion of privacy" reasoning in *Miguel M.*, 17 N.Y.3d at 43.

"All patients (*including Medicare patients*) in New York State hospitals *must* receive **a written discharge plan** before they leave the hospital… **A plan *must* be provided to you in writing before you leave the hospital**." Doc. 1944 at 1011 (bolded in original, italics added); *see also* New York Public Health Law § 2803i(1).

"**The necessary services described in this plan *must* be secured or reasonably available before you leave the hospital.**" Doc. 1944 at 10 (bolded in original, italics added); *see also* New York Public Health Law § 2803(1)(g). As discussed *supra*, Petitioner needed the services of a "comprehensive program". Doc. 172 ¶ 109. There is not any

legitimate government interest in discharging Petitioner to a *lower* level of care until the services of such a program were secured or determined to be reasonably available. *Blum v. Yaretsky, et al.*, 457 U.S. 991, 10001001 (1982) ("[T]he threat of facility-initiated discharges or transfers to lower levels of care is sufficiently substantial that respondents have standing to challenge their procedural adequacy.").

The District Court appears to have departed from "adherence to a simple yet fundamental principle of judicial restraint: If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more." *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228, 2311 (2022) (emphasis in original) (Roberts, C.J., concurring in judgment). In the instant case, the District Court does not need to determine the strength of Petitioner's privacy interest, and thus does not need to consider issuing a ruling that potentially conflicts with two centuries of legal tradition in New York State, without first demonstrating that an actual government interest, existed. Therefore, the District Court greatly departed from accepted and usual judicial proceedings by creating an unexplained, and apparently unnecessary conflict with New York State's court of last resort.

C. The Second Circuit Greatly Departed from Accepted and Usual Judicial Proceedings by Conducting a Review of the District Court's Interpretation of a Medicare ALJ Decision, Rather Reviewing the ALJ Decision Itself

It is well settled law by this Court that Medicare exhaustion is not required "when exhaustion would prove

futile." *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (quotation marks and citation omitted). Here, a review of the District Court's opinion of the ALJ Decision does not constitute an independent review. Rather, an independent review is axiomatically a review of the ALJ Decision itself. In this instance, the ALJ twice made clear that "[Petitioner's] representatives are *obviously* free to pursue whatever avenues of redress they feel are appropriate for the issues they raise that are *beyond the scope of this appeal and outside the jurisdiction of this ALJ*." Doc. 18433 at 11, n.4 (pdf:12) (emphasis added). "*Again*, [Petitioner's] representatives are of course free to pursue whatever avenues of redress they feel are appropriate regarding these matters with local, state, or federal authorities, as they are not within the jurisdiction of this ALJ." *Id.* at 12, n.6 (pdf:13) (emphasis added).

The ALJ only had jurisdiction to resolve two questions. The first is "if all of the… requirements [set forth in 42 C.F.R. §§ 412.622(a)(3) & (5)] are met.] Doc. 18433 at 6 (pdf:7). That is, Petitioner would need, *inter alia*: (1) 15 hours (i.e. 900 minutes) of therapy weekly, *id.* § 412.622(a)(3)(ii); (2) thrice weekly face-to-face-visits with a rehabilitation physician, *id.* § 412.622(a)(3)(iv); and (3) those needs must be "evidenced by documentation in the patients' medical record of weekly interdisciplinary team meetings," *id.* § 412.622(a)(5). In contrast, Petitioner is claiming harm from receiving only 90450 minutes of therapy weekly, Doc. 172 ¶¶ 93, 103, is not claiming any need for thrice weekly face-to-face visits with a rehabilitation physician, and is claiming that the medical records are inaccurate or incomplete. The ALJ does not have jurisdiction to resolve any of these issues.

The second issue is whether Petitioner "did not know and could not have known that the items or services would be excluded from Medicare coverage." Doc. 18433 at 8 (pdf:9). New York State regulations required HHH to accord Petitioner the right to "[r]eceive treatment without discrimination as to… source of payment[.]" 10 N.Y.C.R.R. § 405.7(c)(2). Accordingly, Petitioner's knowledge or lack knowledge regarding Medicare coverage, is not material to Petitioner's claims.

However, the District Court insisted in the 12/16/2024 Opinion and Order that "[w]hether the ALJ actually decided those issues or not misses the point—the allegations before the ALJ are included in [Petitioner's] First through Fifth Claims for Relief." App. 17a. The District Court error is that the Medicare exhaustion requirement has "two elements… The waivable element is the requirement that the administrative remedies prescribed by the Secretary be exhausted. The nonwaivable element is the requirement that a claim for benefits shall have been presented to the Secretary." *Bowen v. City of New York*, 476 U.S. 467, 483 (1986) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 328 (1976)). Here, the fact that Petitioner presented her allegation to the ALJ satisfies the non-waivable element. Since it would be futile for Petitioner to press allegations that the ALJ lacks jurisdiction to resolve, exhaustion is waived for those allegations.

The Second Circuit greatly departed from accepted and usual judicial proceedings by relying on the District Court's interpretation of the ALJ Decision, instead of reviewing the ALJ Decision itself. Had the Second Circuit conducted an independent review of the ALJ Decision, it would find that there is not any disputed issue of fact

or law in this action that is within the jurisdiction of the Medicare Appeals process to resolve; and that action must remain within the federal court system and be remanded to be heard on the merits.

D. The Second Circuit Greatly Departed from Accepted and Usual Judicial Proceedings by Overlooking or Ignoring the District Court's Misapplication of *Dobbs* to Claims Derived from *Youngberg* and *DeShaney*

The reversal of the precedents establishing a woman's right to choose whether to have an abortion creates the concern that "all rights that have no history stretching back to the mid-19th century are insecure." *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228, 2319 (2022) (Breyer, J., dissenting). The majority's counterpoint is an assurance that "[n]othing in [the *Dobbs*] opinion should be understood to cast doubt on precedents that do not concern abortion." *Id.* at 2239.

Here, however, the District Court relied upon *Dobbs* to undermine decades-old precedents that in no manner whatsoever concern abortion. To wit: there are two controlling theories that Petitioner presented to the District Court with regard to the First through Fifth Claims for Relief. The first is that "'informed consent [is] required for voluntary'" hospital custody. Doc. 189 at 16 (pdf:23) (quoting *Zinermon v. Burch*, 494 U.S. 113, 133 (1990)). In that theory, the Petitioner's Agents' refusal to discharge Petitioner cannot constitute informed consent to remain at HHH, "if, in view of all of the circumstances surrounding the incident, a reasonable [surrogate] would have believed that [the patient] was not free to leave."

Michigan v. Chesternut, 486 U.S. 567, 573 (1988). Under such circumstances, Petitioner's constitutional protections attach as per this Court's decision in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).

The second theory is that "there is no need to 'decide whether [residents are at the state facility] voluntarily or involuntarily… [O]nce [the state] chose to house those voluntary residents, thus making them dependent on the state, it was required to do so in a manner that would not deprive them of constitutional rights.'" Doc. 192 at 8 (pdf:14) (quoting *Society for Good Will to Retarded Children v. Cuomo*, 737 F.2d 1239, 124546 (2d Cir. 1984) (extending to *Youngberg v. Romeo*, 457 U.S. 307 (1982) to apply to initially "voluntary" residencies)). In "*Society for Good Will…* the level of care required for those in the state's custody [is] distinct from the state's obligation to provide such services in the first instance." *J.M. v. Sessions*, 162 F. 4th 364, 371 n.3 (2d Cir. 2025). The state's obligation typically derives from state law, such as contract law, in which there is an "obligation to provide some quantum of care and funding[.]" *Suffolk Parents of Handicapped Adults v. Wingate*, 101 F.3d 818, 823 (2d Cir. 1996).

Notably, the two theories are essentially the same: one is an assertion of fact, and the other is an assertion of law. To wit: as previously discussed, there is official guidance that "**The necessary services described in this** [discharge] **plan *must* be secured or reasonably available before you leave the hospital… A plan *must* be provided to you in writing before you leave the hospital**." Doc. 1944 at 1011 (bolded in original, italics added). This bolded text summarizes the statutes New York Public Health

Law §§ 2803(1)(g) & 2803i(1). A reasonable surrogate, presented with this bolded text, would not feel free to authorize the discharge of a patient until those conditions are met. Hence, refusal of discharge would not constitute informed consent to remain, which implicates *DeShaney*. Similarly, there exists is a quantum of obligation to the patient until the statutory requirements are satisfied, which implicates the *Society for Good Will* extension to *Youngberg*.

Interestingly, one week after the District Court's 12/16/2025 summary order denying Petitioner's appeal (App. 1a), a December 23, 2025 decision by a separate Second Circuit panel, ruling in an unrelated case, strongly suggested that Petitioner's two theories are consistent with "[d]ecades of authority from the Supreme Court and [the Second Circuit.]" *Sessions*, 162 F. 4th at 376. However, in large part due to the District Court's reliance upon *Dobbs*, and the Second Circuit's unfortunate oversight of that reliance, Petitioner has not yet received a decision examining informed consent or the importance of *Society for Good Will*.

Instead, the District Court found that Petitioner's claims arose under the Medicare Act (42 U.S.C. § 1395 *et seq.*), and not the Fourteenth Amendment Due Process Clause. The District Court found that "[Petitioner] fails offer any *historical evidence* to meet her burden that these 'interests' are constitutionally protected by operation of substantive due process. App. 25a (citing *Dobbs*, 597 U.S. at 23738) (emphasis added). The error in the District Court's reasoning is clear. Petitioner had no burden to provide "historical evidence" other than binding precedent. The District Court was obligated to examine

binding precedents and determine their application to the instant action. Instead, however, the District Court relied upon *Dobbs* to do exactly what has been feared: the District Court created a new "historical evidence" burden that removed a substantive due process protection unrelated to abortion. In turn, the Second Circuit's overlooking or ignoring the District Court's misstatement and misapplication of *Dobbs* greatly departed from accepted and usual judicial proceedings. The Second Circuit produced an outcome where Petitioner still has not been heard, even though one week later *Sessions* prevailed on a theory similar to Petitioner's. Petitioner has the constitutional and procedural right to be heard on the merits instead of being ignored by the courts.

E. The Second Circuit Greatly Departed from Accepted and Usual Judicial Proceedings by Overlooking or Ignoring the Parties Factual Stipulations and Assertions

It is well settled that the summary judgment "inquiry performed is the threshold inquiry of determining whether there is the need for a trial[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[.]" *Id.* at 255.

Here, Respondents stipulated that under state hospital's policy, the deadline for issuing Petitioner a written discharge plan was January 28, 2020, i.e. one business day before the scheduled January 29, 2020 discharge date; however, Respondents never issued Petitioner a valid discharge plan. Doc. 172 ¶ 122.

Respondents first report Petitioner's Agents resisting discharge on January 30, 2020, two days after Respondents provided nothing in writing. Respondents purported that Petitioner's Agents were not willing to accept a discharge; however, medical records did not document a compliant discharge plan was in place: instead, "Services Needed at Discharge [remained] To Be Determined." *Id.* ¶ **111**.

From these initial events, Respondents' defenses clearly rest upon credibility. Respondents contend that they intended to effectuate a "safe" discharge when there is no evidence that a lawful, written discharge plan existed. Moreover, the independent court evaluator recommended against a guardian to replace Petitioner's Agents, which casts doubts on any contention that Petitioner's Agents were irrational or unreasonable. Doc. 172 ¶ 102. Moreover, Petitioner's Agents were best situated to know Petitioner's wishes and instructions and best positioned to know whether or not following the recommendations of HHH's rehabilitation team, the attending physician, and the independent medical reviewers were in Petitioner's best interest. 56.1 ¶ 8889 (For 56.1 ¶ 89, Respondents' counsel "Denied" Petitioner's allegation without elaboration; pursuant to Rule 56(e)(2), Petitioner presents this assertion as an undisputed fact).

The Second Circuit did not review the parties' stipulated facts in Doc. 172. Instead, the Second Circuit relied upon the District Court's reasoning. However, the District Court did not consider any of the *undisputed* facts that Petitioner presented. That is, the District Court did not cite any undisputed fact in Doc. 172 ¶ 71129. An independent review by the Second Circuit requires a review of what the parties themselves agreed to be

undisputed facts, without regard for the District Court's reasoning.

F. The District Court's Reasoning Must be Prevented from Bearing the Misleading, Quasi-Controlling Imprimatur of "*aff'd*… (2d Cir. 2025)"

It is a practical reality "a busy appellate court sometimes may not… devot[e] its limited resources to explaining [a lower court's] error and the alternative basis for affirming … so it issues a summary affirmance instead." *Wilson v. Sellers*, 138 S.Ct. 1188, 11991200 (2018) (Gorsuch, J., dissenting). Accordingly, in theory, there generally should be no presumption that "summary affirmance orders rest on reasons articulated in lower court opinions." *Id.* at 1200. Nonetheless, in practice, where a district court decision is cited as *ABC v. XYZ*…. (*aff'd*…), the error will be treated as so persuasive as to be near binding. The question then arises, as to what degree an error should be explained, either through a full decision, or a more detailed summary affirmance.

Here, Petitioner points to multiple applicable situations where a summary affirmance without identification of an error appears to be insufficient. These are were an appellate court: (1) was silent in affirming a district court decision that relies upon *Dobbs* "to cast doubt on precedents that do not concern abortion.", 142 S.Ct. at 2239; (2) overlooked the deterrence purpose Rule 11; and (3) may have overlooked the parts of the record that are dispositive in an Petitioners favor. Therefore, the risk to jurisprudence is too great to allow the District Court's decision to bear the misleading, quasi-controlling imprimatur of "*aff'd*… (2d Cir. 2025)."

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED DECEMBER 16, 2025

25-159-cv
Jane Doe v. Glenn M. Seliger

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

25-159-cv

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 16th day of December, two thousand twenty-five.

Appendix A

Present:

ROBERT D. SACK,
WILLIAM J. NARDINI,
EUNICE C. LEE,
Circuit Judges.

JANE DOE,

Plaintiff-Appellant,

v.

GLENN M. SELIGER, LINDA EGENES,
1-100 JOHN DOES, KATHLEEN MARTUCCI,
JACQUELINE VELEZ, JOHN MATHEW,

*Defendants-Appellees.**

Filed December 16, 2025

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

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

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* The Clerk of the Court is respectfully directed to amend the caption on this Court's docket to be consistent with the caption on this order.

Appendix A

Plaintiff-Appellant Jane Doe appeals from a judgment of the United States District Court for the Southern District of New York, entered on December 17, 2024. On March 16, 2020, Doe brought suit against several employees of Helen Hayes Hospital, a rehabilitation center owned and operated by New York State's Department of Health. Doe's operative complaint asserts twelve claims for various violations of the U.S. Constitution and New York law. On February 28, 2024, the district court granted Defendants' motion for summary judgment, (1) finding that it lacked jurisdiction over Doe's first through fifth claims because they arose under the Medicare Act, (2) dismissing Doe's sixth claim on the merits, and (3) declining to exercise pendent jurisdiction over Doe's remaining state law claims. On March 27, 2024, Doe filed a motion for reconsideration. On December 17, 2024, the district court denied this motion in part, modifying its decision only to dismiss Doe's first five claims without prejudice. Doe now appeals.

Upon careful consideration of the reasons stated by the district court, we **AFFIRM** the judgment.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe

APPENDIX B — AMENDED JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED DECEMBER 17, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20 **CIVIL** 2331 (PMH)

JANE DOE,

Plaintiff,

-against-

KATHLEEN MARTUCCI, *et al.*,

Defendants.

Filed December 17, 2024

AMENDED JUDGMENT

It is hereby **ORDERED, ADJUDGED AND DECREED**: That for the reasons stated in the Court's Opinion and Order dated December 16, 2024, Plaintiff's motion for reconsideration is GRANTED in part and DENIED in part, and her motions for sanctions DENIED. Defendants' request for attorneys' fees for opposition to the sanctions motions is DENIED. Judgment entered on February 28, 2024 (Doc. 227) MODIFIED so as to reflect the Court's determination herein that the First through

Appendix B

Fifth Claims for Relief alleged in Plaintiff's Second Amended Complaint are dismissed without prejudice.

Dated: New York, New York

December 17, 2024

TAMMI H. HELLWIG
Clerk of Court

BY: /s/ [Illegible]
Deputy Clerk

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED DECEMBER 16, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-CV-02331 (PMH)

JANE DOE,

Plaintiff,

-against-

KATHLEEN MARTUCCI, *et al.*,

Defendants.

Filed December 16, 2024

OPINION AND ORDER

PHILIP M. HALPERN, United States District Judge:

On August 25, 2023, after the parties' summary judgment motions were fully submitted and *sub judice* in this matter, Plaintiff filed a pre-motion letter in connection with her anticipated sanctions motions.[1] (Doc. 195). On

1. The Court assumes the parties' familiarity with the underlying procedural history of this action. Unless otherwise indicated, defined terms and citations herein matter submitted

September 12, 2023, the Court permitted Plaintiff to file the requested motions for sanctions but held the time for Defendants to oppose those motions in abeyance pending the Court's review and consideration of the cross-motions for summary judgment. (Doc. 202). On September 13, 2023, Plaintiff filed her first motion for sanctions. (Doc. 204; Doc. 206, "Pl. First Sanctions Br."). On October 27, 2023, Plaintiff filed her second motion for sanctions. (Doc. 207; Doc. 208, "Pl. Second Sanctions Br.").

On February 28, 2024, the Court entered an Opinion and Order that granted Defendants' motion for summary judgment, denied Plaintiff's motion for summary judgment, and dismissed this action ("Opinion and Order"). (Doc. 225).[2] The Court directed Plaintiff to advise whether, in light of its decision on the cross-motions for summary judgment, she still intended to press her sanctions motions. (Doc. 226). Plaintiff advised that she did seek to press her motions and, accordingly, on March 7, 2024, the Court set the balance of the briefing schedule for the pending sanctions motions. (Doc. 229).

On March 27, 2024, Plaintiff filed a motion pursuant to Federal Rules of Civil Procedure 59(e) and 60 for

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in prior motion practice have the same meanings and utilize the same format ascribed to them in the February 28, 2024 Opinion and Order.

2. This decision is also available on commercial databases. *See Doe v. Martucci*, No. 20-CV-02331, 2024 U.S. Dist. LEXIS 34423, 2024 WL 839258 (S.D.N.Y. Feb. 28, 2024).

reconsideration of the Opinion and Order.[3] (Doc. 230; Doc. 231, "Pl. Br."). Defendants thereafter opposed the sanctions and reconsideration motions (Doc. 234; Doc. 235;[4] Doc. 238), and Plaintiff filed reply (Doc. 236; Doc. 237; Doc. 242). Plaintiff then moved for this Court's recusal, which motion was denied on June 17, 2024. (Doc. 250). On July 15, 2024, Defendants filed sur-reply on Plaintiff's motion for reconsideration (Doc. 254), and Plaintiff filed her response thereto on July 22, 2024. (Doc. 258).

For the reasons set forth below, Plaintiff's motion for reconsideration is GRANTED in part and DENIED in part, and her motions for sanctions are DENIED.

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3. The Court, in its Opinion and Order, also considered and ruled upon Plaintiff's fully briefed "Motion for Relief from an Order Preventing Plaintiff from Filing a Rule 11 Motion for Sanctions." (Doc. 176; Doc. 225). Although Plaintiff's instant motion seeks to alter, amend, and/or vacate the Opinion and Order, she notes her "understanding that the part of the Opinion and Order concerning the 'Plaintiff's Motion for Relief From April 19, 2023 Order' is moot, and hence requires no challenge in this motion." (Doc. 231 at 1). Accordingly, to the extent Plaintiff moves "to alter or amend" the Opinion and Order and/or for vacatur of same, she has made clear that she challenges only so much the Opinion and Order that granted summary judgment to Defendants and denied summary judgment to Plaintiff. (*See id.*; *see also* Doc. 230).

4. Defendants filed a letter correcting a typographical error in their brief in opposition to Plaintiff's second motion for sanctions. (Doc. 239).

Appendix C

STANDARD OF REVIEW

I. Federal Rules of Civil Procedure 59(e) and 60

"Reconsideration of a previous order by the court is an 'extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.'" *RST (2005) Inc. v. Research in Motion Ltd.*, 597 F. Supp. 2d 362, 365 (S.D.N.Y. 2009) (citing *In re Health Mgmt. Sys., Sec. Litig.*, 113 F. Supp. 2d 613, 614 (S.D.N.Y. 2000)); *see also Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) ("The standard for granting [a reconsideration] motion is strict.").[5] "A motion for reconsideration may not be used to advance new facts, issues or arguments not previously presented to the Court, nor may it be used as a vehicle for relitigating issues already decided by the Court." *RST*, 597 F. Supp. 2d at 365 (quoting *Davidson v. Scully*, 172 F. Supp. 2d 458, 461 (S.D.N.Y. 2001)). "It is settled law in this District that a motion for reconsideration is neither an occasion for repeating old arguments previously rejected nor an opportunity for making new arguments that could have been previously advanced." *Associated Press v. U.S. Dep't of Def.*, 395 F. Supp. 2d 17, 19 (S.D.N.Y. 2005); *see also Murray v. Dutcavich*, No. 17-CV-09121, 2020 U.S. Dist. LEXIS 107040, 2020 WL 3318212, at *1 (S.D.N.Y. June 18, 2020) ("Reconsideration is not a procedural mechanism used to re-examine a court's decision. Nor should a reconsideration motion be used to refresh failed

5. Unless otherwise indicated, case quotations omit all internal citations, quotation marks, footnotes, and alterations.

arguments, advance new arguments to supplant failed arguments, or relitigate issues already decided.").

"Reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Id.* (citing *Schonberger v. Serchuk*, 742 F. Supp. 108, 119 (S.D.N.Y. 1990)). Motions for reconsideration "must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court." *Range Road Music, Inc. v. Music Sales Corp.*, 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000). Limitations on motions for reconsideration ensure finality and "prevent the practice of a losing party examining a decision and then plugging the gaps of the lost motion with additional matters." *Carolco Pictures, Inc. v. Sirota*, 700 F. Supp. 169, 170 (S.D.N.Y. 1988) (quoting *Lewis v. New York Tel.*, No. 83-CV-07129, 1986 U.S. Dist. LEXIS 29934, 1986 WL 1441 (S.D.N.Y. Jan. 29, 1986)).

II. Federal Rule of Civil Procedure 11

"A pleading, motion or other paper violates Rule 11 either when it has been interposed for any improper purpose, or where, after reasonable inquiry, a competent attorney could not form a reasonable belief that the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." *Parnoff v. Fireman's Fund Ins. Co.*, 796 F. App'x 6, 8 (2d Cir. 2019)

(quoting *Kropelnicki v. Siegel*, 290 F.3d 118, 131 (2d Cir. 2002)); *see also* Fed. R. Civ. P. 11(b).

"When deciding whether to grant Rule 11 sanctions, the Court applies an objective standard of reasonableness, and looks to, among other factors, whether the party acted in bad faith; whether they relied on a direct falsehood; and whether the claim was utterly lacking in support." *Grayson v. Ressler & Ressler*, 271 F. Supp. 3d 501, 526 (S.D.N.Y. 2017); *see also StreetEasy, Inc. v. Chertok*, 752 F.3d 298, 307 (2d Cir. 2014) ("[T]he standard for triggering the award of fees under Rule 11 is objective unreasonableness and is not based on the subjective beliefs of the person making the statement."); *Ferrand v. Mystique Brands LLC*, No. 20-CV-05933, 2021 U.S. Dist. LEXIS 6582, 2021 WL 119572, at *13 (S.D.N.Y. Jan. 13, 2021) (noting that Rule 11's objective analysis is "intended to eliminate any 'empty-head pure-heart' justification for patently frivolous arguments" (quoting *Simon DeBartolo Grp., L.P. v. Richard E. Jacobs Grp., Inc.*, 186 F.3d 157, 166 (2d Cir. 1999))).

Granting a motion for "Rule 11 sanctions . . . should be reserved for extreme cases, and all doubts should be resolved in favor of the signing attorney." *Sorenson v. Wolfson*, 170 F. Supp. 3d 622, 626 (S.D.N.Y. 2016), *aff'd*, 683 F. App'x 33 (2d Cir. 2017). Furthermore, "[e]ven upon determining that Rule 11 has been violated, a court retains the discretion to decide whether to impose sanctions." *New Falls Corp. v. Soni Holdings, LLC*, No. 19-CV-00449, 2021 U.S. Dist. LEXIS 44838, 2021 WL 919110, at *4 (E.D.N.Y. Mar. 8, 2021) (citing *Ipcon Collections LLC v. Costco Wholesale Corp.*, 698 F.3d 58, 63 (2d Cir. 2012)).

Appendix C

ANALYSIS

I. Plaintiff's Motion for Reconsideration

Plaintiff makes the following six arguments on her motion for reconsideration: (1) Rule 1 of the Federal Rules of Civil Procedure requires that the Court issue an order addressing Plaintiff's summary judgment briefing on the issues of qualified immunity, substantive due process, and procedural due process; (2) the Court erred in finding that 42 U.S.C. § 405(h) deprived it of subject matter jurisdiction because Defendants are not officers or employees of the United States; (3) the Court erred in finding that § 405(h) deprived it of subject matter jurisdiction because this action is brought under 42 U.S.C. § 1983 and not 28 U.S.C. §§ 1331 or 1346; (4) the Court erred in finding that the ALJ actually decided issues pertinent to this action; (5) the Court erred by relying on disputed testimony in concluding that the commencement of the guardianship proceeding was not malicious government action; and (6) the Court erred by overlooking applicable law that warrants a finding that the breach of Plaintiff's privacy interest objectively shocks the conscience.

The first four arguments presented by Plaintiff amount to a challenge to the Court's determination that it lacked subject matter jurisdiction over her First through Fifth Claims for Relief and therefore did not analyze the merits of those claims. The balance of her arguments concern the Court's dismissal of the Sixth Claim for Relief on the merits.

Appendix C

A. First Through Fifth Claims for Relief: Lack of Subject-Matter Jurisdiction

Plaintiff first argues that the Court erred in dismissing the First through Fifth Claims for Relief because it did not address her merits arguments as to those claims—including her arguments concerning Defendants' defense of qualified immunity. Plaintiff's argument continues that Federal Rule of Civil Procedure 1 ("Rule 1") mandates that the Court address all of Plaintiff's summary judgment arguments in order to achieve "a just and efficacious resolution of this action." (Pl. Br. at 10). Defendants counter that nothing in the plain language of Rule 1 requires the Court to address all of Plaintiff's summary judgment arguments and Plaintiff has not cited any authority requiring the Court grant reconsideration based upon Rule 1. The Court agrees with Defendants.

As explained in detail in the Opinion and Order, the First through Fifth Claims for relief were dismissed for lack of subject matter jurisdiction and therefore, the Court had no jurisdiction to review or decide the merits of those claims. *Sinochem International Co. v. Malaysia International Shipping Corp.*, 549 U.S. 422, 430-31, 127 S. Ct. 1184, 167 L. Ed. 2d 15 (2007) ("[A] federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction)[.]"); *Vera v. Republic of Cuba*, 867 F.3d 310, 315-16 (2d Cir. 2017) ("[S]ubject matter jurisdiction functions as a restriction on federal power. . . . Federal courts may not proceed at all in any cause without it."); *Atanasio v. O'Neill*, 235

F. Supp. 3d 422, 424 (E.D.N.Y. 2017) ("A federal court's entertaining a case that is not within its subject matter jurisdiction is no mere technical violation; it is nothing less than an unconstitutional usurpation of state judicial power."). Rule 1 does not alter or modify the constitutional imperative. The rule provides: "[The Federal Rules of Civil Procedure] govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

Plaintiff, in reply, argues that it is manifestly unjust to require her to appeal this Court's Opinion and Order to the Second Circuit because of her age and the expense involved, but that argument too overlooks the law forbidding this Court from reaching the merits of her claims when it has determined it lacks jurisdiction over them. In any event, Plaintiff cites no case law that supports the notion that reconsideration is warranted simply because she is of advanced age and the appellate process is expensive. Likewise, there was no purpose in considering Plaintiff's arguments concerning qualified immunity.

With respect to Plaintiff's argument that the Court erred in finding that § 405(h) deprived it of subject matter jurisdiction because Defendants are not officers or employees of the United States, she acknowledges in her brief the exception upon which the Court discussed at length in the Opinion and Order. (Pl. Br. at 10). As Plaintiff

stated in her moving brief, "[t]he sole exception to the Second Circuit's ruling [that § 405(h) does not apply to a suit against state officials] is that 'the scope of § 405(h) extends to suits in which claims against state officials are merely disguised disputes with the Secretary of the sort described in §§ 405(g) and (h).'" (*Id.* (citing *Ellis v. Blum*, 643 F.2d 68, 76 (2d Cir. 1981))). The Court, in the Opinion and Order, reviewed the applicable law and the facts in the record and concluded, as relevant to this issue, that Plaintiff's claims were challenges to the termination of her Medicare benefits and therefore subject to § 405(h). (Doc. 225 at 9-11).

Plaintiff has not presented any controlling decisions or data that the Court overlooked in reaching this conclusion. Rather, Plaintiff quibbles with the Court's characterization of the First through Fifth Claims for Relief alleged in the Second Amended Complaint, contending that "it was not a reasonable inference" to conclude that "the thrust of the claims are claims for benefit payments to cover the cost of her stay at HHH when her coverage ceased and for further Medicare benefits in the form of further intensive therapy." (Pl. Br. at 11 (citing Doc. 225 at 10)). She bases this conclusion on her assertion that because she received further intensive therapy at another facility, "[c]learly, Plaintiff has no intention of seeking to compel HHH to bill Medicare for care provided by another facility." (*Id.*). This purportedly "clear" assertion misses the mark: that Plaintiff received elsewhere the therapy she sought from Defendants does not bear on whether these claims against Defendants arise under the Medicare Act; and is not a fact that the Court overlooked in the Opinion and

Order that would change the result reached therein. The Court also determined that none of the First through Fifth Claims for Relief are violations of the Fourteenth Amendment because Plaintiff then and now cites to no controlling authority authorizing such claims. Plaintiff disagrees with the result the Court reached but has not met the strict burden required to warrant reconsideration on this ground.

Plaintiff also argues that the Court erred in finding that § 405(h) deprived it of subject matter jurisdiction because this action is brought under 42 U.S.C. § 1983 and not 28 U.S.C. §§ 1331 or 1346. (Pl. Br. at 12-14). Here too, Plaintiff incorrectly assumes that her claims are constitutional in nature. As explained in the Opinion and Order, "[t]he Medicare Act eliminates federal question jurisdiction over lawsuits brought 'to recover on any claim arising under' Medicare." (Doc. 225 at 8-9 (citing 42 U.S.C. § 405(h) ("No action against the United States . . . or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter."))). The Court concluded that the First through Fifth Claims for Relief arise under the Medicare Act. Plaintiff contends that because the prohibition in § 405(h) covers cases brought under § 1331 but does not specify that it includes claims brought under § 1983, claims brought under § 1983 must not be subject to § 405's exhaustion requirement. (Pl. Br. at 13). The Court notes that Plaintiff pled in the Second Amended Complaint that "[t]his Court has jurisdiction over the subject matter, pursuant to 28 U.S.C. § 1331. . . ." (Doc. 39 ¶ 8). Pressing any argument now on reconsideration that this action was

not brought under § 1331 defies credulity. In any event, the argument is simply wrong. Again, Plaintiff conflates the Court's determination that these claims arise under the Medicare Act with her theory that these claims arise under the Fourteenth Amendment and may be pressed pursuant to § 1983. The fallacy is that these five claims are not constitutional law claims despite Plaintiff's improper reclassification of these claims as § 1983 claims. Simply put, § 405(h) applies to Plaintiff's § 1331 case and she was required to exhaust her remedies under the Medicare Act.

Plaintiff's final challenge to the application of § 405's exhaustion requirement to her First through Fifth Claims for Relief concerns the Court's findings with respect to the ALJ's decision. The Court explained, in the Opinion and Order, that Plaintiff had raised at the ALJ Hearing her claims of entitlement to IRF therapy, phenobarbital and critical illness myopathy, and discharge planning which are the same claims raised in the First through Fifth Claims for Relief. (Doc. 225 at 9-11). Plaintiff argues that "the ALJ did not actually decide those issues." (Pl. Br. at 18). Whether the ALJ actually decided those issues or not misses the point—the allegations before the ALJ are included in Plaintiff's First through Fifth Claims for Relief.

Plaintiff does not point to data that the Court overlooked, instead taking issue with the Court's findings and rehashing the arguments she made at summary judgment. A motion for reconsideration is not "an occasion for repeating old arguments previously rejected." *Associated Press v. U.S. Dep't of Def.*, 395 F. Supp. 2d 17,

19 (S.D.N.Y. 2005). Plaintiff attempts to distinguish the issues raised before the ALJ by describing them in terms of liberty and property rights, but as the Court noted in the Opinion and Order, "Plaintiff's attempts to couch these claims as § 1983 claims based upon liberty and property interests protected by the Fourteenth Amendment falls flat." (Doc. 225 at 15, n.8). Plaintiff's disagreement with the Court's decision is insufficient to warrant reconsideration. *Vista Food Exch., Inc. v. Lawson Foods, LLC*, No. 17-CV-07454, 2020 U.S. Dist. LEXIS 236037, 2020 WL 7364489, at *2 (S.D.N.Y. 2020) ("[G]eneral dissatisfaction with the Court's conclusion or the length of the Court's discussion does not constitute . . . a clear error or prevent manifest injustice meriting reconsideration.").

Although the Court denies reconsideration on the grounds urged by Plaintiff in her moving brief, it did, however, err in dismissing the First through Fifth Claims for Relief with prejudice. Because those claims were dismissed based upon the failure to exhaust administrative remedies, the dismissal should have been without prejudice. *See Katz v. Donna Karan Co., L.L.C.*, 872 F.3d 114, 121 (2d Cir. 2017) ("[W]hen a case is dismissed for lack of federal subject matter jurisdiction, 'Article III deprives federal courts of the power to dismiss [the] case with prejudice.'" (quoting *Hernandez v. Conriv Realty Assocs.*, 182 F.3d 121, 123 (2d Cir. 1999))). Accordingly, the Judgment must be amended to provide that the dismissal of those claims is without prejudice.

B. First Through Fifth Claims for Relief: The MAC Decision

On June 27, 2024, the MAC issued a decision on Plaintiff's final level of administrative review (the "MAC Decision."). (Doc. 255). As the Court explained in the Opinion and Order, it is not until after final decision is rendered that a claimant may seek judicial review in federal district court of that final decision. *Heckler v. Ringer*, 466 U.S. 602, 607, 104 S. Ct. 2013, 80 L. Ed. 2d 622 (1984). It is well-settled "that a final decision is a *prerequisite* for subject matter jurisdiction in the District Court." *Travis*, 2024 U.S. Dist. LEXIS 11220, 2024 WL 496776, at *7 (emphasis added). Thus, even though the MAC Decision was rendered while Plaintiff's motion for reconsideration of the Opinion and Order was *sub judice*, the MAC had made no final decision in Plaintiff's case at the time this action was commenced or at the time Plaintiff filed the operative Second Amended Complaint.

While the filing of an amended or supplemental complaint may cure a failure to exhaust under § 405(h), that doctrine is not applicable here, where the defect was not remedied until after judgment was entered dismissing this case. *Cf. Mathews v. Diaz*, 426 U.S. 67, 75, 96 S. Ct. 1883, 48 L. Ed. 2d 478 (1976) (supplemental complaint cured a failure to exhaust under 42 U.S.C. § 405(g)); *Black v. Sec'y of Health & Hum. Servs.*, 93 F.3d 781, 790 (Fed. Cir. 1996) ("[D]efects in a plaintiff's case—even jurisdictional defects—can be cured while the case is pending if the plaintiff *obtains leave to file a supplemental pleading under Rule 15(d) reciting post-filing events*

that have remedied the defect." (emphasis added)). Here, however, because the First through Fifth Claims for Relief arose under the Medicare Act and were not exhausted prior to obtaining a final appealable decision, the Court lacked subject matter jurisdiction over the claims and such jurisdictional defect was not cured until after Judgment was entered. *See Iwachiw v. Massanari*, 125 F. App'x 330, 331-32 (2d Cir. 2005); *Loftus v. Fin. Indus. Regul. Auth., Inc.*, No. 20-CV-07290, 2022 U.S. Dist. LEXIS 128964, 2022 WL 2829476, at *2 (S.D.N.Y. July 20, 2022) (holding on motion for reconsideration that final agency decision issued after judgment had been entered was insufficient to alter judgment for defendants based on plaintiff's failure to exhaust FINRA administrative remedies). The MAC Decision is therefore not a basis to grant reconsideration or alter the Judgment.

Even if the Court were to assume, however, that the MAC Decision sufficiently cured the jurisdictional defect on the First through Fifth Claims for Relief, the same result would be reached, based upon the other grounds that were briefed by the parties in their underlying cross-motions for summary judgment. These claims do not implicate any recognized constitutionally protected substantive or procedural due process rights. As noted in the Opinion and Order, "[e]ven if Plaintiff had exhausted her administrative remedies, Plaintiff's attempt to couch these claims as § 1983 claims based upon liberty and property interests protected by the Fourteenth Amendment falls flat, as Plaintiff has cited no authority to actually support her theories other than cases involving unrelated fact patterns." (Doc. 225 at 15, n.8).

Appendix C

Plaintiff's First through Fifth Claims for Relief purport to allege violations of her Fourteenth Amendment substantive and procedural due process rights. The Fourteenth Amendment provides, in pertinent part, that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." U.S. Const. amend. XIV § 1. "Substantive due process protects those rights that are so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Irwin v. City of New York*, 902 F. Supp. 442, 449 (S.D.N.Y. 1995). "In order to establish a violation of a right to substantive due process, a plaintiff must demonstrate not only government action but also that the government action was so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019). "[T]o present a [procedural] due process claim, a plaintiff must establish (1) that [s]he possessed a liberty interest and (2) that the defendant(s) deprived [her] of that interest as a result of insufficient process." *Arriaga v. Otaiza*, No. 20-CV-06992, 2021 U.S. Dist. LEXIS 223908, 2021 WL 5449849, at *6 (S.D.N.Y. Nov. 19, 2021) (quoting *Joseph v. Cuomo*, No. 20-CV-03957, 2021 U.S. Dist. LEXIS 10900, 2021 WL 200984, at *6 (E.D.N.Y. Jan. 20, 2021) (alterations in original)); *see also Velazquez v. Gerbing*, No. 18-CV-08800, 2020 U.S. Dist. LEXIS 27242, 2020 WL 777907, at *9 (S.D.N.Y. Feb. 18, 2020).

Plaintiff, in her First through Fifth Claims for Relief, alleges various liberty-and property-interest claims—arguing that that each claim states substantive and procedural due process violations. Plaintiff did not meet

her burden to establish that she was entitled to judgment as a matter of law granting those claims for relief because she did not establish that any of those claims actually implicate recognized and constitutionally protected Fourteenth Amendment rights as far as substantive due process violations; or that she was deprived of notice or an opportunity to be heard with respect to procedural due process violations. Defendants, on the other hand, demonstrated that Plaintiff's claimed rights to medical care and variations thereon do not rise to the level of a substantive due process right; that her claims of entitlement to discharge planning, medical information, and further IRF level rehabilitation therapy were created by the Medicare Act or its attendant regulations; and that Plaintiff received both notice and the opportunity to be heard by availing herself of the Medicare appeals process.

1. Liberty-Interest Claims

As an initial matter, Plaintiff failed to meet her burden to establish that any of her alleged liberty interests (i.e., the First, Second, and Fourth Claims for Relief) are "deeply rooted in our history and tradition" to create a constitutionally protected right by operation of substantive due process. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237-38, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022) (describing a plaintiff's burden for substantive due process claims). Indeed, Plaintiff fails to provide the Court with any historical evidence for these purported fundamental unenumerated constitutional rights, instead mostly relying on various recent case law. *Cf. Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8,

118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998) (explaining that a plaintiff must proffer at least some historical support for an asserted fundamental right).

With respect to the First Claim for Relief, Plaintiff relied on *Charles* to support her contention that the interest in "a serious medical need for discharge planning" as alleged is a constitutionally protected right. 925 F.3d at 86. (Doc. 189 at 12-14). The Second Circuit in *Charles* was concerned with the adequacy of medical care those plaintiffs received while in civil detention, analyzing immigration detainees' right to be free from deliberate indifference to serious medical needs. The Second Circuit explained that a "special relationship" existed when a person is involuntarily held in state custody, imposing a duty on the state "to provide for his or her 'safety and general well-being.'" *Charles*, 925 F.3d at 82. Additionally, although Plaintiff attempted to press her point by distinguishing the Eighth and Fourteenth Amendments, she provided no basis in case law that extends this "special relationship" deliberate indifference application to patients at a hospital who are not provided with what Plaintiff has unilaterally deemed an "appropriate discharge plan." (Doc. 189 at 13). Not only was Plaintiff not detained, but her claim was that HHH wanted to discharge her too soon, not that HHH would not let her leave. (Doc. 185 at 4).

Plaintiff described the Second Claim for Relief as stating a claim for "liberty interest in medical information," relying on *Pabon v. Wright* which stands for the proposition that prisoners have a "right to such information as a reasonable patient would deem necessary

to make an informed decision regarding medical treatment." 459 F.3d 241, 246 (2d Cir. 2006). (Doc. 189 at 14-17). Again, Plaintiff's support for her claim rests on cases arising from the prison setting. Specifically, the Circuit held in *Pabon* that, "in order to permit *prisoners* to exercise their right to refuse unwanted treatment, there exists a liberty interest in receiving such information as a reasonable patient would require in order to make an informed decision as to whether to accept or reject proposed medical treatment." 459 F.3d at 249-50 (emphasis added). Plaintiff has not cited any case extending this principle to persons not otherwise confined by the State.

Plaintiff argued that the Fourth Claim for Relief concerns her liberty interest in medical care, specifically stating and referencing law concerning conditions of confinement in involuntary custody. (Doc. 189 at 19-20). She continues to argue, on reconsideration, that "in custodial circumstances, the interest in 'medical care [are among] the essentials of the care that the State must provide.'" (Doc. 258 at 1 (quoting Y*oungberg v. Romeo*, 457 U.S. 307, 324, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982))). As the Court previously held, jurisprudence concerning liberty interests with respect to a right to medical care in the involuntarily detention setting does not provide any solid foundation for Plaintiff's proposition. Her assertion that Defendants' non-compliance with discharge planning rules transformed her stay into an involuntary one lacks support and analysis. Plaintiff has not satisfied her burden that she has a constitutionally protected liberty interest.

2. Property-Interest Claims

Plaintiff described the Third Claim for Relief as a violation of her property interest in discharge memorialization, relying on statutes, implementing regulations, and Department of Health guidelines. (Doc. 189 at 17-19). She described the Fifth Claim for Relief as a violation of her property interest in intensive rehabilitation therapy. (*Id.* at 20-21).

Again, Plaintiff fails offer any historical evidence to meet her burden that these "interests" are constitutionally protected by operation of substantive due process. *See Dobbs*, 597 U.S. at 237-38. Moreover, even if Plaintiff is entitled to discharge planning, medical information, and further IRF level rehabilitation therapy, such "rights" were created under state law and not by the Constitution, and without more cannot give rise to a substantive due process claim. "While property interests are protected by procedural due process even though the interest is derived from state law rather than the Constitution . . . substantive due process rights are created only by the Constitution." *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 229, 106 S. Ct. 507, 88 L. Ed. 2d 523 (1985) (Powell, J., concurring); *Local 342 v. Town Bd.*, 31 F.3d 1191, 1196 (2d Cir. 1994); *see also Ryan v. Cleland*, 531 F. Supp. 724, 731 (E.D.N.Y. 1982) ("[T]o the extent that the government has conferred any 'rights' upon veterans to government medical care [via statute], congress has also insulated the administrative decision-making process for adjudicating those rights from judicial review.").

With respect to procedural due process, were the Court to find that Plaintiff sufficiently established the existence of a property interest in discharge planning, medical information, and further IRF level therapy, Plaintiff still would have had to have established to overcome summary judgment that she was deprived of notice or an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333-335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). It was undisputed that Plaintiff had availed herself of the first two levels of Medicare administrative appeals before any reduction in therapy and had an opportunity to be heard. (Doc. 225 at 12 (citing 56.1 ¶¶ 35, 38-42)).

Ultimately, Plaintiff's First through Fifth Claims for Relief fail on the merits because, among other things, Plaintiff's theory seeks to extend substantive and procedural due process rights to circumstances in which historically they do not so exist. Plaintiff's novel theory is unsupported by case law, cherry-picks from decisions, and conflates substantive and procedural due process. Plaintiff's analysis does not permit the Court to conclude that Defendants' conduct sinks to the level of a constitutional violation. Thus, even if Plaintiff had exhausted administrative remedies, the Court concludes that Plaintiff has failed to establish valid constitutional claims.

C. Sixth Claim for Relief

With respect to the Sixth Claim for Relief, Plaintiff contends that the Court erred by relying on disputed testimony in concluding that the commencement of the

guardianship proceeding was not malicious government action; and by overlooking applicable law that warrants a finding that the breach of Plaintiff's privacy interest objectively shocks the conscience. To the extent Plaintiff rehashes the same arguments that she made at summary judgment, again, that approach is insufficient to warrant reconsideration.

Plaintiff's argument that the Court relied on disputed facts concerning the commencement of the guardianship proceeding is predicated in part on her assertion that the Son's testimony, construed in her favor, establishes that Defendants' pursuit of a guardianship was "totally arbitrary or outright malicious." (Pl. Br. at 21). As an initial matter, reconsideration is not "an opportunity for making new arguments that could have been previously advanced." *Associated Press*, 395 F. Supp. 2d at 19. As this argument was not raised at summary judgment, it is not appropriate on this motion. Even were the Court to consider this argument, it fails to generate a triable issue of fact as to the propriety of the commencement of the guardianship proceeding. The Son's testimony that Plaintiff now cites is his speculation that Defendants initiated the guardianship proceeding to protect themselves from legal liability. (Pl. Br. at 19-20). She attempts to corroborate that testimony with citation to a Medicare survey from 2018 concerning another resident in one of HHH's inpatient units (*id.*), but without any tie to Plaintiff or the unit in which she stayed. Further, that survey does not establish any arbitrary or malicious motive on Defendants' part with respect to the other residents or Plaintiff. The cited material, in the face of Defendants' testimony, the guardianship petition itself,

and Defendants' expert opinions, is insufficient to defeat a summary judgment motion or to warrant reconsideration on the basis of purportedly overlooked facts—some of which are presented for the first time on this motion. While Plaintiff is correct that the Court must "resolve all ambiguities and draw all reasonable inferences in the non-movant's favor," *Vermont Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004), this rule does not include circumstances, such as those presented here, where the non-movant relies on "mere speculation or conjecture as to the true nature of the facts," *Liverpool v. Davis*, No. 17-CV-03875, 442 F. Supp. 3d 714, 2020 WL 917294, at *4 (S.D.N.Y. Feb. 26, 2020).

Plaintiff further argues that the Court overlooked applicable law that warrants a finding that the breach of Plaintiff's privacy interest objectively shocks the conscience. (Pl. Br. at 21-25). She argues that the Court has ignored Second Circuit precedent, by relying on the Second Circuit case *Matson v. Bd. of Educ. of City Sch. Dist. of New York*, 631 F.3d 57, 64 (2d Cir. 2011), and not citing to *Hancock v. Cnty. of Rensselaer*, 882 F.3d 58, 65 (2d Cir. 2018). Plaintiff's position is that had the Court relied on *Hancock*, it would have found that the disclosure of medical records to initiate a guardianship proceeding constitutes a *prima facie* violation of one's privacy rights as a matter of law, without any regard for the government's interest in disclosing the medical records. For the record, *Hancock* did not overrule *Matson*: it explained the significance of *Matson* and clarified the still applicable "shocks-the-conscience" analysis that it had articulated in *Matson* when the Circuit was first confronted with a weak

privacy interest. *Hancock*, 882 F.3d at 68 ("*Matson* gave us the chance to clarify that when the strength of a privacy interest is sufficiently weak it can be overwhelmed by even a moderately strong government interest in disclosure."). Importantly, Plaintiff's argument misconstrues *Hancock*, as well as the Court's holding in the Opinion and Order. The Court considered Defendants' interest in "effect[ing] a safe discharge because the Proxies refused discharge despite two Livanta findings in favor of discharge and Defendants' concern that Plaintiff could acquire antibiotic resistant bacteria by unnecessarily prolonging her stay at HHH," balanced against Plaintiff's weak privacy interest. (Doc. 225 at 16-17). Contrary to Plaintiff's reading of the case, *Hancock* does not require a finding that Defendants' initiation of the guardianship proceeding objectively shocks the conscience or that the disclosure of medical records to initiate a guardianship proceeding constitutes a *prima facie* violation of one's privacy rights as a matter of law. Rather, and consistent with the Court's analysis in the Opinion and Order, the Circuit in *Hancock* explained, "[a]lthough it is fundamental, the constitutional right to privacy is not absolute. . . . A constitutional violation only occurs when the individual's interest in privacy outweighs the government's interest in breaching it." 882 F.3d at 65.

Separately, and in addition, Plaintiff argues that the Court purportedly did not reach the merits of the Sixth Claim for Relief because it did not pass on Defendants' defense of qualified immunity. (Pl. Br. at 6-7). Before addressing the qualified immunity question, the Court must first address the question of whether a constitutional violation has been alleged at all. *See id.* at 69 ("Because

the district court found that Appellants did not have claims under the Fourteenth Amendment, it did not have to pass on whether the individual Appellees were entitled to qualified immunity from those claims."); *see also Soundview Assocs. v. Town of Riverhead*, 893 F. Supp. 2d 416, 437 (E.D.N.Y. 2012) ("Because the Court grants summary judgment on plaintiff's substantive and procedural due process claims, the Court need not reach the issue of qualified immunity with respect to those claims."). The Court thoroughly evaluated the merits of the Sixth Claim for Relief, granted summary judgment to Defendants on Plaintiff's Fourteenth Amendment claims, and therefore did not need to reach the issue of qualified immunity.

D. State Law Claims

Plaintiff's sole argument on reconsideration concerning the State Law claims is that because the "Court's dismissal of Counts I-VI were clear errors of manifest injustice, the independent basis for federal jurisdiction in this action for the state law claims in Counts VII-XII remains intact, pursuant to 28 U.S.C. § 1367(a). Therefore, this Court's dismissal of Plaintiff's State law claims must be reversed." (Pl. Br. at 25). Because the Court denies Plaintiff's motion for reconsideration as to the First through Sixth Claims for Relief, its holding with respect to the State Law claims remains intact and reconsideration is likewise denied as to those claims.

Accordingly, Plaintiff's motion for reconsideration is granted only to the extent that the Judgment shall be

modified so as to reflect the Court's determination herein that the First through Fifth Claims for Relief alleged in Plaintiff's Second Amended Complaint are dismissed without prejudice, and is otherwise denied.

II. Plaintiff's Motions for Sanctions

Plaintiff's first sanctions motion is addressed to Defendants' pre-motion letter that was submitted in advance of their motion for summary judgment. Her second sanctions motion appears to be addressed to Defendants' answer and summary judgment briefing, although that is not exactly clear. "Rule 11 governs the minimum standards applicable to a 'pleading, written motion, or other paper' submitted to a court, but is distinct from the other rules which provide for the presentation of a party's legal positions." *On Time Aviation, Inc. v. Bombardier Cap. Inc.*, 570 F. Supp. 2d 328, 331 (D. Conn. 2008), *aff'd*, 354 F. App'x 448 (2d Cir. 2009). To grant a motion for sanctions, the Court must conclude that it is "patently clear that [Defendants'] claim has absolutely no chance of success." *K.M.B. Warehouse Distribs., Inc. v. Walker Mfg. Co.*, 61 F.3d 123, 131 (2d Cir. 1995). It is not, however, a vehicle to be used to test "the legal sufficiency of a claim or defense that more appropriately can be disposed of by . . . a motion for summary judgment. . . ." 5A Fed. Prac. & Proc. Civ. § 1335 (4th ed.).

A. Plaintiff's First Sanctions Motion

Plaintiff takes issue with each fact and argument set forth in Defendants' pre-motion letter filed in anticipation

of their motion for summary judgment, contending that they presented "a frivolous basis for leave to move for summary judgment in violation of Fed. R. Civ. P. Rule 11(b)." (Pl. First Sanctions Br. at 1). She argues that the facts set forth in the pre-motion letter impermissibly drew inferences in favor of Defendants. And she argues that none of the case law cited by Defendants is applicable to the facts and circumstances of this case—specifically, contending that Defendants took frivolous positions with respect to their arguments of lack of subject matter jurisdiction, collateral estoppel, substantive due process, procedural due process, and qualified immunity.

Plaintiff raises nearly identical contentions in support of her summary judgment motion and opposition to Defendants' motion as she presses on this motion for sanctions. "To submit full briefing in opposition to a summary judgment motion and then submit the same grounds as supporting a separate Rule 11 motion is patently unreasonable . . . . [and] a firmly held conviction of the correctness of one's position does not authorize collateral attack on an opponent's legal arguments by resort to Rule 11." *On Time Aviation, Inc.*, 570 F. Supp. 2d at 332.

Plaintiff takes issue with the following factual contentions in the pre-motion letter: (1) "Plaintiff was ready for discharge to a SNF [skilled nursing facility] for subacute therapy"; (2) "through three levels of the Medicare appeal process, [Plaintiff's Proxies] argu[ed] that Plaintiff needed more acute rehabilitation due to the effects of phenobarbital and critical illness myopathy";

(3) that a "fourth-level appeal was available, but Plaintiff has not pursued it"; and (4) "Plaintiff was not injured as a result of the treatment she received from HHH after February 2020." (Pl. First Sanctions Br. at 3-5 (citing Doc. 155 at 1-2)). These statements do not violate Rule 11; are not "utterly lacking in support," *Storey v. Cello Holdings, L.L.C.*, 347 F.3d 370, 388 (2d Cir. 2003); and each find a basis in evidence as demonstrated by the Rule 56.1 Statement and evidence submitted on the motions for summary judgment.

As to the first statement, the ALJ Decision states that as of February 15, 2020, Plaintiff "was medically stable and that transfer to a [SNF] was appropriate for her continued care at a subacute care facility." (56.1 ¶ 42). With respect to the second statement, the ALJ Hearing Transcript shows that Plaintiff's Son addressed these issues at length before the ALJ (Doc. 184-29), whereas Plaintiff's argument on this motion baselessly alleges there is no evidence that the "Medicare appeals process permitted a factual determination related to critical illness myopathy or the adverse effects of drugs" (Pl. First Sanctions Br. at 5). With respect to the third statement, Defendants relied on their personal knowledge and were not independently aware at the time of the pre-motion letter that an appeal to the MAC had actually been filed—understandably so, given the representation in the appeal document that Plaintiff sent copies of the appeal to Livanta and Plaintiff's counsel only (Doc. 222-1 at 3); and Plaintiff does not claim she otherwise notified Defendants of the appeal. The fourth statement, that Plaintiff was not injured as a result of the treatment she

received from HHH after February 2020, was supported by Dr. Greenwald's expert report and the testimony of Dr. Seliger. (56.1 ¶¶ 66, 68). Plaintiff's assertion that these statements in the pre-motion letter are frivolous is belied by the facts supporting them.

Moreover, sanctions motions that fail to show that the purportedly frivolous arguments are foreclosed by binding precedent, and instead "merely recast the[ir] opposition arguments into a Rule 11-esque form," are manifestly improper. *On Time Aviation, Inc.*, 570 F. Supp. 2d at 332. The Court need not and will not repeat why Defendants' legal arguments were not frivolous. The Opinion and Order thoroughly addressed and approved Defendants' position with respect to their arguments of Medicare exhaustion and lack of subject matter jurisdiction, and again, in the instant decision, the Court reaffirmed its prior holding with respect thereto. Plaintiff's persistence on these issues is itself sanctionable, as "courts within the Second Circuit have imposed sanctions where a party persists in raising previously rejected claims or defenses." *Eisenberg v. Permanent Mission of Eq. Guinea to the United Nations*, No. 18-CV-02092, 2022 U.S. Dist. LEXIS 63419, 2022 WL 1546673, at *2 (S.D.N.Y. Apr. 5, 2022) (collecting cases).

The Court's more in-depth analysis herein concerning the issues of substantive and procedural due process likewise demonstrate that Defendants' position in their pre-motion letter and at summary judgment was not frivolous. Simply put, it would be a waste of judicial resources for the Court to now entertain exactly that

which it sought to avoid by holding Plaintiff's multiple sanctions motions in abeyance pending its consideration of the cross-motions for summary judgment: Plaintiff's insistence on adjudicating the issues raised in the summary judgment motions *ad nauseum*. Plaintiff's first motion for sanctions is denied.

B. Plaintiff's Second Motion for Sanctions

Plaintiff's second sanctions motion is directed specifically at the propriety of Defendants' qualified immunity defense. The "pleading, written motion, or other paper" that Plaintiff challenges on this motion appears to be Defendants' answer and/or their motion for summary judgment. This second sanctions motion, like the first, merely recasts Plaintiff's summary judgment arguments as sanctions arguments which, as previously stated, "is patently unreasonable" and improper. *On Time Aviation, Inc.*, 570 F. Supp. 2d at 332.

The Court has twice rejected Plaintiff's argument that the Second Circuit in *Hancock* clearly established as a matter of law her right to privacy in the limited medical information disclosed in the guardianship petition (Pl. Second Sanctions Br. at 6-10), which forms the basis for her argument that the qualified immunity defense is frivolous. (*See, e.g.*, Doc. 225 at 17 (concluding that "Plaintiff's medical condition does not enjoy a constitutionally-protected right to privacy," and that "the disclosure of limited medical information in the guardianship petition here was not conscious-shocking")). Likewise, the Court twice accepted Defendants' argument that Defendants'

disclosure in the sealed court filing of Plaintiff's limited medical information was not conscious-shocking. (*See id.*; *see also supra* ("Contrary to Plaintiff's reading of the case, *Hancock* does not require a finding that Defendants' initiation of the guardianship proceeding objectively shocks the conscience or that the disclosure of medical records to initiate a guardianship proceeding constitutes a *prima facie* violation of one's privacy rights as a matter of law.")). The Court's prior analyses and conclusions in this regard make clear that Defendants' arguments were and are not frivolous.

Plaintiff also appears to move for sanctions on the basis that Defendants' summary judgment argument that her claims under New York State law were untimely pursuant to Court of Claims Act §§ 10(3), (3-b), was frivolous; and that Defendant Martucci's Eleventh Affirmative Defense concerning bad faith, malice, or gross misjudgment, was frivolous. (Doc. 207). Plaintiff did not, however, brief these two issues in the memorandum of law in support of her second sanctions motion. (*See generally* Pl. Second Sanctions Br.). The Court, therefore, deems these arguments waived, as "it is not this Court's responsibility to raise and make counsel's arguments for them." *Keesh v. Quick*, No. 19-CV-08942, 2021 U.S. Dist. LEXIS 29445, 2021 WL 639530, at *11 n.7 (S.D.N.Y. Feb. 17, 2021); *United States v. Washington*, No. 13-CR-00107, 2014 U.S. Dist. LEXIS 24722, 2014 WL 793320, at *5 n.11 (W.D.N.Y. Feb. 26, 2014) (considering argument not briefed in supporting memorandum of law to be waived).

Essentially, Plaintiff attempts to persuade the Court that sanctions are appropriate because Defendants advanced a view of the case that was inconsistent with

Plaintiff's theories. This is simply not sanctionable conduct. Accordingly, Plaintiff's second sanctions motions is denied.

III. Defendants' Request for Attorney's Fees

Defendants, in their opposition to each of Plaintiff's sanctions motions, request that the Court award them their reasonable attorney's fees and costs for opposing the motions pursuant to Rule 11(c)(2). Plaintiff opposes in her reply briefs, arguing that even if her arguments were "extremely weak," Defendants did not establish they were "destined to fail"; that she brought these sanctions motions because she believes that "Defendants sought to misuse summary judgment motion practice to present positions rooted in *disputed* interpretations of the facts as well as in defective or outright false legal representations"; that Plaintiff's actions could not increase the cost of litigation because "New York State taxpayers are paying for Defendants' legal firm"; and Defendants could have avoided these motions by withdrawing their position (which, although unclear, appears to be an assertion that Defendants should have withdrawn their pre-motion letter seeking leave to move for summary judgment). (Doc. 236 at 8-10). Plaintiff also argues that Defendants are not entitled to fees for all of the same reasons she contends she is entitled to sanctions against them. (*See* Doc. 237 at 7-10). The thrust of Plaintiffs' opposition is that her sanctions motions were not made for an improper purpose and therefore fees should not be awarded to Defendants as the prevailing party.

Plaintiff quite clearly has multiplied the proceedings and increased the cost of litigation by filing two sanctions

motions, which, as discussed above, are both duplicative of her summary judgment motion and her motion for reconsideration. The briefing on these motions demonstrates, as the Court expected and cautioned Plaintiff against, that the parties simply had differing views of the underlying facts at the core of this litigation as well as the significance and interpretation of the applicable law, neither of which is a basis for sanctions.

Rule 11 permits an award of sanctions where a party persists in raising previously rejected arguments. *Eisenberg*, 2022 U.S. Dist. LEXIS 63419, 2022 WL 1546673, at *2. However, "Rule 11 does not, after all, authorize sanctions for merely frustrating conduct." *Bishop v. Cty. of Suffolk*, No. 13-CV-00446, 2019 U.S. Dist. LEXIS 149800, 2019 WL 13422759, at *8 (E.D.N.Y. Aug. 31, 2019) (quoting *Lawrence v. Richman Group of CT LLC*, 620 F. 3d 153, 158 (2d Cir. 2010)). This case is closed. The Court has granted summary judgment to Defendants, denied Plaintiff's motion for reconsideration, and resolved the pending motions for sanctions. There is simply nothing further on this docket that Plaintiff can file[6] and for that reason, the Court exercises its discretion to decline to award fees incurred for the motions.[7]

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6. Plaintiff requested in her notice of motion for reconsideration that the Court "[a]cknowledge that, pursuant to Federal Rules of Appellate Procedure, Rule 4(a)(4), the time for all parties to file a notice of appeal must run from the entry of the order disposing of this motion brought under Rule 59(e) and Rule 60." (Doc. 230). The Court does not give procedural advice.

7. Plaintiff is cautioned, however, that the presentation of these arguments again in this or any other case may be

Appendix C

CONCLUSION

For the foregoing reasons, Plaintiff's motion for reconsideration (Doc. 230) is GRANTED in part and DENIED in part, and her motions for sanctions (Doc. 204, Doc. 207) are DENIED. Defendants' request for attorneys' fees for opposition to the sanctions motions is DENIED.

The Clerk of Court is respectfully requested to: (1) modify the Judgment entered on February 28, 2024 (Doc. 227) so as to reflect the Court's determination herein that the First through Fifth Claims for Relief alleged in Plaintiff's Second Amended Complaint are dismissed without prejudice; and (2) terminate the pending motion (Doc. 230).

SO ORDERED.

Dated: White Plains, New York
December 16, 2024

/s/ Philip M. Halpern
Philip M. Halpern
United States District Judge

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sanctionable. *Parnoff v. Fireman's Fund Ins. Co.*, 796 F. App'x 6, 9 (2d Cir. 2019) ("[G]iven that the district court had already rejected a nearly identical argument in [an earlier suit], it was not reasonable for [plaintiff] to believe that his position would be warranted in this case.").

APPENDIX D — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED FEBRUARY 28, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

20-CV-02331 (PMH)

JANE DOE,

Plaintiff,

-against-

KATHLEEN MARTUCCI, *et al.*,

Defendants.

Filed February 25, 2024

OPINION AND ORDER

PHILIP M. HALPERN, United States District Judge:

Jane Doe ("Plaintiff") commenced this action alleging claims against a number of employees from the New York State Department of Health ("DOH") and/or Helen Hayes Hospital ("HHH"), a facility owned by the DOH, in connection with, *inter alia*, her discharge from HHH and transfer to an acute-care hospital. (Doc. 1). The operative pleading—the Second Amended Complaint—

presses twelve claims for relief against Kathleen Martucci ("Martucci"), Glenn M. Seliger, M.D. ("Seliger"), Jacqueline Velez ("Velez"), Linda Egenes ("Egenes"), and John Mathew ("Mathew" and collectively, "Defendants"), under 42 U.S.C. § 1983, sounding in procedural and substantive due process violations, as well as state law claims. (Doc. 39, "SAC").[1]

The Court, on September 13, 2021, denied Defendants' motion to dismiss the Second Amended Complaint. (Doc.

1. The Second Amended Complaint named additional defendants, however, on September 13, 2021, the Court dismissed the Estate of Kwang (Ed) Ng pursuant to Federal Rule of Civil Procedure 4(m) (Doc. 65); on December 16, 2022, the Court granted a motion to substitute defendant Marjorie King, M.D., pursuant to Federal Rule of Procedure 25(d), with Glenn M. Seliger, M.D., in his official capacity (Doc. 146); and on December 30, 2022, the Court granted a request by Plaintiff to drop as defendants Rosemary Galvin and Christine Kehoe. (Doc. 150). Plaintiff continues to press her claims against "1-100 John Roes," (*see generally* SAC), however, there is no indication that these individuals have been identified or served. Any claims against these unknown actors must, at this juncture, be—and are hereby—dismissed without prejudice for failure to prosecute. "Where discovery has closed and the Plaintiff has had ample time and opportunity to identify and serve John Doe Defendants, it is appropriate to dismiss those Defendants without prejudice." *Delrosario v. City of New York*, No. 07-CV-02027, 2010 U.S. Dist. LEXIS 20923, 2010 WL 882990, at *5 (S.D.N.Y. Mar. 4, 2010); *see also Vanderwoude v. City of New York*, No. 12-CV-09046, 2014 U.S. Dist. LEXIS 79064, 2014 WL 2592457, at *8 (S.D.N.Y. June 10, 2014).

65).[2] Defendants filed an Answer to the Second Amended Complaint on November 5, 2021 (Doc. 70), and the parties thereafter engaged in discovery.

Now pending before the Court are the parties' dueling motions for summary judgment. Defendants filed their motion for summary judgment in accordance with the briefing schedule set by the Court. (Doc. 183; Doc. 184; Doc. 185, "Def. Br."). Plaintiff, in a single brief as directed by the Court, opposed Defendants' motion and cross-moved for summary judgment in her favor. (Doc. 187; Doc. 188; Doc. 189, "Pl. Br."). Defendants filed, in a single brief as directed by the Court, their opposition to Plaintiff's motion and reply in further support of their motion. (Doc. 186, "Def. Reply"). Plaintiff, with the Court's permission, filed reply papers in further support of her motion for summary judgment. (Doc. 192, "Pl. Reply"; Doc. 193; Doc. 194). On January 31, 2024, Plaintiff supplemented the extant briefing with a letter sent to her from the Medicare Appeals Council. (Doc. 220). Defendants, at the Court's direction, filed a response thereto on February 8, 2024. (Doc. 222).

Also pending before the Court is Plaintiff's fully-submitted "Motion for Relief from an Order Preventing Plaintiff from Filing a Rule 11 Motion for Sanctions." (Doc. 176; Doc. 204; Doc. 207).

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2. This decision is also available on commercial databases. *See Doe v. King*, No. 20-CV-02331, 2021 U.S. Dist. LEXIS 173729, 2021 WL 4198275 (S.D.N.Y. Sept. 13, 2021).

Appendix D

For the reasons set forth below, Defendants' motion for summary judgment is GRANTED and Plaintiff's motion for summary judgment is DENIED. Plaintiff's motion for relief from the Court's prior order is likewise DENIED.

BACKGROUND

The Court recites the facts herein only to the extent necessary to adjudicate the extant motion for summary judgment and draws them from the pleadings, Defendants' Rule 56.1 Statement and Plaintiff's responses thereto (Doc. 172, "56.1"),[3] and the admissible evidence proffered by the parties. Unless otherwise indicated, the facts cited herein are undisputed.

Plaintiff was taken by ambulance to Jamaica Hospital for a left-sided subdural hematoma on September 30, 2019. (56.1 ¶ 9). Plaintiff underwent surgery and was diagnosed with severe status epilepticus, a condition exhibited by recurrent seizures, which caused significant neurological deficits. (*Id.* ¶ 10). She was transferred to New York Presbyterian Hospital ("NYP") on October 3, 2019, where she underwent additional surgery and was administered anti-seizure medications, including

3. At the April 19, 2023 pre-motion conference, the Court granted the parties leave to identify and correct typographical errors in the Rule 56.1 Statement through footnotes in their memoranda of law. Defendants provided such revisions in their moving brief and the Court hereby deems those revisions incorporated into the Rule 56.1 Statement by reference. (Def. Br. at 9 n.1).

phenobarbital. (*Id.* ¶ 11). NYP discontinued phenobarbital on October 14, 2019. (*Id.* ¶ 12). When NYP was ready to discharge Plaintiff, Plaintiff's son and Plaintiff's sister (together, the "Proxies") felt it was "premature." (*Id.* ¶¶ 8, 14). The Proxies were advised not to "delay initiating the discharge process longer than is necessary." (*Id.* ¶ 14). The Proxies continued to refuse "to apply for rehab of any type," were advised about non-coverage for Medicare, then, following an "ethics review," were instructed that they did not "have the right to dictate inappropriate care or unsafe/unreasonable discharge options." (*Id.*). After discharge from NYP, Plaintiff was admitted to HHH on December 6, 2019. (*Id.* ¶ 16).

Upon admission to HHH, Plaintiff could not move her limbs or talk, had a feeding tube and a tracheostomy for breathing, and was dependent for all daily activities. (*Id.* ¶¶ 17, 18). Plaintiff's son, as her proxy, signed and agreed to comply with the terms and conditions of the HHH Admission Consents and Written Disclosure Statement, including "transfer to another facility if considered necessary for proper medical care"; and consent to "use and disclose [Plaintiff's] health information for treatment, payment and health care operations." (*Id.* ¶ 21).

In December 2019, during at least two meetings with Mathew, Plaintiff's case manager, the Proxies discussed and expressed being agreeable to Plaintiff's transfer to a skilled nursing facility ("SNF") when Plaintiff was ready for discharge, and Mathew provided a list of SNFs from which to choose. (*Id.* ¶ 26). While at HHH, Plaintiff made progress in various domains of function. (*Id.* ¶ 28). On or

about January 23, 2020, Seliger and other members of Plaintiff's treatment team determined that Plaintiff was medically stable for discharge to a subacute facility in a week. (*Id.* ¶ 30). On January 27, 2020, Mathew informed the Proxies that Plaintiff was "ready for discharge [on] 01/29." (*Id.* ¶ 31). Plaintiff's son, however, "declined to choose *more* SNFs" for Plaintiff's discharge. (*Id.* ¶ 32 (emphasis in original response)). On January 28, 2020, Plaintiff's son was again given "An Important Message from Medicare" explaining Plaintiff's rights to appeal the decision to discharge. (*Id.* ¶ 34).

On or about February 6, 2020, Plaintiff appealed her discharge to Livanta, which is an independent quality improvement organization ("QIO") contracted by Medicare to review discharge appeals. (*Id.* ¶ 35). During the appeal, Plaintiff remained a patient at HHH. (*Id.* ¶ 36). On February 12, 2020, Mathew advised Plaintiff's son that the Isabella SNF had "medically accepted pt and offered a bed," but Plaintiff's son "declined the offer." (*Id.* ¶ 37). On February 14, 2020, Livanta denied Plaintiff's appeal, concluding that HHH's decision to discharge was appropriate and Medicare would not pay for any inpatient services at HHH beginning on February 15, 2020 at noon. (*Id.* ¶ 38). On February 15, 2020, Plaintiff filed a second discharge appeal to Livanta. (*Id.* ¶ 39). On February 20, 2020, Livanta denied Plaintiff's second appeal, finding that a continued stay at HHH was not medically necessary and that "transfer to a facility of lower acuity is appropriate at this time for further intensive therapy." (*Id.* ¶ 41). Livanta's denial of Plaintiff's second appeal was later upheld by an Administrative Law Judge ("ALJ") at the

office of Medicare Hearings on Appeals, who concluded that "transfer to a [SNF] was appropriate for [Plaintiff's] continued care at a subacute care facility." (*Id.* ¶ 42). Plaintiff, at some point thereafter, filed an appeal of the ALJ's decision to the Medicare Appeals Council ("MAC"). (*Id.* ¶ 43; Doc. 184-11 at 35:16-36:19; Doc. 220-1).

On March 6, 2020, Martucci, the HHH Chief Operating Officer, after consultation with Seliger and the State Attorney General, filed a petition for the appointment of a guardian for Plaintiff to effectuate a safe discharge because Plaintiff's Proxies continued to refuse discharge. (Doc. 184-42; Doc. 184-28 at 46:13-25). The petition explained that Plaintiff's continued stay at HHH placed her at risk for adverse health issues, which included unnecessary exposure to hospital acquired antibiotic resistant organisms. (Doc. 184-42 ¶ 15). The guardianship petition was filed under temporary seal pursuant to Mental Hygiene Law § 81.14(b). (*See id.* ¶ 27; *id.* at 15). With respect to Plaintiff's medical status, the petition stated that Plaintiff had been diagnosed with traumatic brain injury, subdural hematoma, status epilepticus, and cognitive impairment; "required total care with all activities of daily living and skilled nursing care for wound care and medication administration"; and listed her medications. (*Id.* ¶¶ 5, 16). HHH withdrew the sealed Guardianship Petition on April 21, 2020, and no guardian was appointed for Plaintiff. (56.1 ¶ 58).

Plaintiff commenced this litigation on March 16, 2020. (Doc. 1). As of September 2022, Plaintiff lives on the second floor of her home, and is able to climb stairs with

assistance, communicate verbally, ambulate around the house, talk on the phone with friends, read the newspaper, watch television, do light cooking, and is "doing fairly well." (56.1 ¶ 70).

STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56, a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed R. Civ. P. 56(a). "A fact is 'material' if it 'might affect the outcome of the suit under the governing law,' and is genuinely in dispute 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Liverpool v. Davis*, 442 F. Supp. 3d 714, 2020 WL 917294, at *4 (S.D.N.Y. 2020) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).[4] "'Factual disputes that are irrelevant or unnecessary' are not material and thus cannot preclude summary judgment." *Sood v. Rampersaud*, No. 12-CV-5486, 2013 U.S. Dist. LEXIS 56462, 2013 WL 1681261, at *1 (S.D.N.Y. Apr. 17, 2013) (quoting *Anderson*, 477 U.S. at 248). "The question at summary judgment is whether a genuine dispute as to a *material* fact exists—not whether the parties have a dispute as to any fact." *Hernandez v. Comm'r of Baseball*, No. 22-343, 2023 U.S. App. LEXIS 21203, 2023 WL 5217876, at *5 (2d Cir. Aug. 15, 2023); *McKinney v. City of Middletown*, 49 F.4th 730, 737 (2d Cir. 2022)).

4. Unless otherwise indicated, case quotations omit all internal citations, quotation marks, footnotes, and alterations.

The Court's duty, when determining whether summary judgment is appropriate, is "not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried." *Id.* (quoting *Wilson v. Nw. Mut. Ins. Co.*, 625 F.3d 54, 60 (2d Cir. 2010)). Indeed, the Court's function is not to determine the truth or weigh the evidence. *Porter v. Dartmouth-Hitchcock Medical Center,* No. 92 F.4th 129, 2024 U.S. App. LEXIS 2657, 2024 WL 439465, at *14 (2024) ("[T]he court may not make credibility determinations or weigh the evidence." (quoting *Kaytor v. Electric Boat Corp.*, 609 F.3d 537, 545 (2d Cir. 2010))). The task is material issue spotting, not material issue determining. Therefore, "where there is an absence of sufficient proof as to one essential element of a claim, any factual disputes with respect to other elements of the claim are immaterial." *Bellotto v. Cnty. of Orange*, 248 F. App'x 232, 234 (2d Cir. 2007) (quoting *Salahuddin v. Goord*, 467 F.3d 263, 281 (2d Cir. 2006)).

"It is the movant's burden to show that no genuine factual dispute exists." *Vermont Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)). The Court must "resolve all ambiguities and draw all reasonable inferences in the non-movant's favor." *Id.* (citing *Giannullo v. City of N.Y.*, 322 F.3d 139, 140 (2d Cir. 2003)). Further, "while the court is required to review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe." *Porter*, 92 F.4th 129, 2024 WL 439465, at *14 (quoting *Kaytor*, 609 F.3d at 545). Once the movant has met its burden, the non-movant "must

come forward with specific facts showing that there is a genuine issue for trial." *Liverpool*, 442 F. Supp. 3d 714, 2020 WL 917294, at * 4 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)). The non-movant cannot defeat a summary judgment motion by relying on "mere speculation or conjecture as to the true nature of the facts." *Id.* (quoting *Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9, 12 (2d Cir. 1986)). However, if "there is any evidence from which a reasonable inference could be drawn in favor of the opposing party on the issue on which summary judgment is sought, summary judgment is improper." *Sood*, 2013 U.S. Dist. LEXIS 56462, 2013 WL 1681261, at *2 (citing *Sec. Ins. Co. of Hartford v. Old Dominion Freight Line Inc.*, 391 F.3d 77, 83 (2d Cir. 2004)).

Should there be no genuine issue of material fact, the movant must also establish its entitlement to judgment as a matter of law. *See Glover v. Austin*, 289 F. App'x 430, 431 (2d Cir. 2008) ("Summary judgment is appropriate if, but only if, there are no genuine issues of material fact supporting an essential element of the plaintiffs' claim for relief."); *Pimentel v. City of New York*, 74 F. App'x 146, 148 (2d Cir. 2003) (holding that because plaintiff "failed to raise an issue of material fact with respect to an essential element of her[ ] claim, the District Court properly granted summary judgment dismissing that claim"). Simply put, the movant must separately establish that the law favors the judgment sought.

Appendix D

ANALYSIS

I. Motions for Summary Judgment

A. First through Fifth Claims for Relief

Plaintiff characterizes her case as "a straightforward civil rights action." (Pl. Br. at 9). The First through Fifth Claims for Relief are styled as follows: (1) "Deprivation of Liberty Interest in Discharge Planning"; (2) "Deprivation of Liberty Interest in Medical Information Necessary for Making an Informed Decision"; (3) "Deprivation of Property Interest in a Discharge Memorialization"; (4) "Deprivation of Liberty Interest in Medical Care"; and (5) "Deprivation of Property Interest in an Intensive Rehabilitative Therapy Level of Care." (*See generally* SAC). Defendants argue that this is not in fact a civil rights action; rather, these claims are mere disputes with the Secretary of Health and Human Services disguised as constitutional claims. Defendants therefore move to dismiss because, *inter alia*, Plaintiff failed to exhaust administrative remedies under the Medicare Act, 42 U.S.C. § 1395, *et seq.* (Def. Br. at 10-16). Plaintiff counters that her claims do not arise under the Medicare Act and, because Defendants are state, not federal, employees, the Medicare Act does not apply. (Pl. Br. at 11-12).

The Medicare Act eliminates federal question jurisdiction over lawsuits brought "to recover on any claim arising under" Medicare. *See* 42 U.S.C. § 405(h) ("No action against the United States . . . or any officer or employee thereof shall be brought under section 1331

or 1346 of title 28 to recover on any claim arising under this subchapter."); *id.* § 1395ii (incorporating § 405(h) into the Medicare statute); *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 10, 120 S. Ct. 1084, 146 L. Ed. 2d 1 (2000). "Judicial review of claims arising under the Medicare Act is available only after the Secretary [of Health and Human Services] renders a 'final decision' on the claim . . . ." *Heckler v. Ringer*, 466 U.S. 602, 605, 104 S. Ct. 2013, 80 L. Ed. 2d 622 (1984).

The Court's first inquiry with respect to Plaintiff's first five claims for relief is whether they "'arise[] under' the Medicare Act such that Section 405(h)'s administrative channeling requirement applies." *Retina Grp. of New England, P.C. v. Dynasty Healthcare, LLC*, 72 F.4th 488, 495 (2d Cir. 2023). If the first inquiry is answered in the affirmative, the Court must determine whether Plaintiff has satisfied the channeling requirements by properly presenting the claim and exhausting the appropriate administrative channels. *Id.* at n.2 (setting forth the test to determine whether a court has subject matter jurisdiction to hear a claim related to Medicare (quoting *Sensory Neurostimulation, Inc. v. Azar*, 977 F.3d 969, 976 (9th Cir. 2020))).

i. "Arising Under" the Medicare Act

The "arising under" language of Section 405(h) is exceptionally broad, channeling "most, if not all, Medicare claims" through the system of administrative review. *Id.* at 497 (quoting *Illinois Council*, 529 U.S. at 8). Courts therefore must include in the "arising under" analysis

"claims that are 'inextricably intertwined with what . . . is in essence a claim for benefits.'" *Id.* (quoting *Heckler*, 466 U.S. at 615, 624). And, "[b]ecause the channeling provision is broader than the kinds of claims that can be brought under the Act . . . this principle holds even if the agency cannot 'fully resolve' the set of claims." *Id.* at 495 (internal citation omitted) (quoting *Kaiser v. Blue Cross of Cal.*, 347 F.3d 1107, 1115 n.4 (9th Cir. 2003)).

"The Courts of Appeals advise that courts should be wary of claims that are 'cleverly concealed claims for benefits.'" *Potts v. Rawlings Co., LLC*, 897 F. Supp. 2d 185, 192 (S.D.N.Y. 2012) (quoting *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1141 (9th Cir. 2010)). As relevant here, claims alleging that Medicare regulations were "misapplied or ignored" arise under the Medicare Act and are subject to the exhaustion requirement. *Caremark Therapeutic Servs. v. Thompson*, 244 F. Supp. 2d 224, 227 (S.D.N.Y.), *aff'd*, 79 F. App'x 494 (2d Cir. 2003); *see also Abbey v. Sullivan*, 788 F. Supp. 165, 170 (S.D.N.Y.), *aff'd*, 978 F.2d 37 (2d Cir. 1992).

The First through Fifth Claims for Relief alleged in the Second Amended Complaint arise under the Medicare Act, despite being pled as due process claims. Plaintiff alleges that she, as a Medicare beneficiary, has a "statutorily mandated right to expedited determinations and expedited reconsiderations to appeal a hospital discharge" (SAC ¶¶ 39-40), quoting the Medicare Act and Medicare Claims Processing Manual in her pleading. (*See, e.g., id.* ¶¶ 39-44). Each of the First through Fifth Claims for Relief allege that Defendants' acts or omissions

were done for the purpose of "harming or prejudicing Plaintiff['s] financial interests." (*Id.* ¶¶ 231, 239, 245, 252, 262). She alleges that Defendants "improperly and prematurely suspended Plaintiff's intensive rehabilitative therapy" and "withheld necessary therapy services" in order to protect an affiliated hospital that administered the phenobarbital. (*Id.* ¶¶ 138, 140). Plaintiff alleges that HHH sought $143,974.89 in payment while denying Plaintiff the "further intensive therapy" she sought. (*Id.* ¶ 217). Quite clearly, the thrust of these claims are claims for benefit payments to cover the cost of her stay at HHH when her coverage ceased and for further Medicare benefits in the form of further intensive therapy.

More specifically, Plaintiff's First Claim for Relief alleges that Defendants failed to follow Medicare regulations concerning discharge planning. (SAC ¶¶ 228-231). The Second Claim for Relief alleges that Defendants provided inadequate information concerning diagnostic or treatment rehabilitative services in relation to Plaintiff's phenobarbital and critical illness myopathy. (SAC ¶¶ 234-239). Plaintiff's Third Claim for Relief alleges that Defendants failed to follow Medicare regulations regarding the discharge notice (CMS-10066). (*Id.* ¶¶ 242-244). The Fourth Claim for Relief alleges that Defendants failed to properly arrange for further intensive therapy for Plaintiff upon her discharge. (*Id.* ¶¶ 248-252). Plaintiff's Fifth Claim for Relief alleges that Defendants should not have sought to discharge her to a lower level of care because she required further "acute-level" or inpatient rehabilitation facility ("IRF") level of care due to the effects of phenobarbital and critical illness myopathy.

(*Id.* ¶¶ 258-262). Thus, although her First through Fifth Claims for Relief are labeled as constitutional due process claims, they are, in fact, claims for further Medicare benefits.

ii. Exhaustion of Administrative Review

Because the Court concludes that Plaintiff's First through Fifth Claims for Relief arise under the Medicare Act, the Court must next determine whether Plaintiff has satisfied the channeling requirements, *Retina Grp. of New England, P.C.*, 72 F.4th at 495 n.2, by pressing her claims through all four levels of the relevant Medicare administrative appeals process[5] and obtaining a final decision from the Secretary before bringing her claims in federal court. *Heckler*, 466 U.S. at 606.

The "final decision from the Secretary" requirement is said to be comprised of "two elements, one jurisdictional (non-waivable) and one prudential (waivable)." *Abbey*, 978 F.2d at 43 (citing *Bowen v. City of New York*, 476 U.S. 467, 483, 106 S. Ct. 2022, 90 L. Ed. 2d 462 (1986) and *Mathews v. Eldridge*, 424 U.S. 319, 328, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). "The non-waivable, jurisdictional element is the requirement that a claim for benefits first be presented to the Secretary. The waivable, prudential element is the requirement that the administrative remedies prescribed by the Secretary be exhausted before judicial review

5. There are four levels of administrative review before a plaintiff can access judicial review in a case such as this one. *See* 42 C.F.R. § 405.904(a)(1).

is available." *Id.* The exhaustion requirement may be judicially waived where: (1) the claim is collateral to a demand for benefits; (2) exhaustion would be futile; or (3) Plaintiff would suffer irreparable harm if required to exhaust administrative remedies before obtaining relief. *See id.* at 45.

On or about February 6, 2020, Plaintiff appealed her discharge to a QIO contracted by Medicare to review discharge appeals. (56.1 ¶ 35). On February 14, 2020, the QIO denied Plaintiff's appeal, concluding that HHH's decision to discharge was appropriate. (*Id.* ¶ 38). On February 15, 2020, Plaintiff filed a second discharge appeal to the QIO. (*Id.* ¶ 39). On February 20, 2020, Plaintiff's second appeal was denied. (*Id.* ¶ 41). The denial was later upheld by the ALJ at the office of Medicare Hearings on Appeals. (*Id.* ¶ 42). Plaintiff completed only the first three levels of the administrative appeals process. (*Id.* ¶¶ 35, 38-42). Plaintiff, at some point thereafter, appealed the decision of the ALJ, which may or may not have been timely filed,[6] and which purported appeal remains ongoing. (*Id.* ¶ 43; Doc. 184-11 at 35:16-36:19).

Indeed, on January 31, 2024, Plaintiff filed a letter representing to the Court that the MAC granted her "30

6. Although Plaintiff disputes the timeliness of her purported fourth-level appeal, she did not on these motions proffer any proof of having initiated a timely fourth-level appeal to the MAC, beyond the deposition transcript of Plaintiff's son who simply testified an appeal to the MAC was made and ongoing. (Doc. 184-11 at 35:16-36:19). Martucci has declared, as Chief Operating Officer at HHH, that to her knowledge Plaintiff did not appeal the July 1, 2020 ALJ decision. (*See* Doc. 184-34 ¶ 2).

days' leave to file a timely Medicare appeal brief." (Doc. 220). The letter from the MAC annexed to Plaintiff's correspondence, however, states only that the MAC "grants [Plaintiff] an extension of time to review the record and submit a supplemental brief . . . [and] will defer action for a period of 30 days from [January 5, 2024]." (Doc. 220-1). The letter does not state that Plaintiff's appeal was accepted or deemed timely, or that she was granted "leave to file a timely Medicare appeal brief" as stated by Plaintiff. (*Compare* Doc. 220 *with* Doc. 220-1). Importantly, even if the MAC were to deem the appeal timely filed, Plaintiff was required to obtain a final agency decision in order to satisfy the exhaustion requirement applicable to her claims. *See Heckler*, 466 U.S. at 605, 606 ("Judicial review of claims arising under the Medicare Act is available only after the Secretary [of Health and Human Services] renders a 'final decision' on the claim . . . ." A claimant obtains a "final decision" from the Secretary "only after [he] has pressed his claim through all designated levels of administrative review.").

Although Plaintiff has repeatedly conceded that she has not yet obtained a final decision, she argues that because her claims are alleged against state employees, they are not subject to the exhaustion requirement. (Pl. Br. at 11-12). As Plaintiff points out, the Second Circuit, in *Ellis v. Blum*, recognized that on its face, the statute's "ban on actions 'against the United States, the Secretary, or any officer or employee thereof' does not apply to a suit against state officials." 643 F.2d 68, 76 (2d Cir. 1981) (quoting 42 U.S.C. § 405(h)). But the Court went on to explain that state officials acting as agents of

the Secretary would in fact fall within the scope of the ban, because "[t]o hold otherwise arguably would invite applicants for Title II benefits to circumvent §§ 405(g) and (h) by bringing suit under § 1331 against the state officials instead of the Secretary . . ." *Id.* ("[W]e have little doubt that, for the reasons indicated, the scope of § 405(h) extends to suits in which claims against state officials are merely disguised disputes with the Secretary of the sort described in §§ 405(g) and (h) . . .").

The Ninth Circuit, in *Morales v. Providence Health*, confronted with a similar argument, held that "a suit by a Medicare beneficiary against a private entity" where the plaintiff was "not seeking review of any decision of the Secretary and [was] not suing the United States, the Secretary, or any officer or employee thereof," was still subject to the exhaustion requirement because the plaintiff's claims arose under the Medicare Act. 702 F. App'x 550, 552 (9th Cir. 2017). Plaintiff's reliance on 42 U.S.C. § 1395 is unpersuasive: her argument that this federal law prohibits Defendants from being "mere agents" of the Secretary is absent from the statutory text and lacks any case law support. Rather, the Second Circuit in *Ellis* expressly acknowledged that the exhaustion requirement could apply to claims against state actors, and the Ninth Circuit in *Morales* held the exhaustion requirement applicable to claims against a physical therapy provider.

Plaintiff devotes one sentence in her opposition brief to the proposition that the exhaustion requirement may be judicially waived, contending that "this action is entirely

collateral to Plaintiff's appeal to the MAC." (Pl. Br. at 12). "A claim is collateral where it challenges administrative processes or regulations, rather than reimbursement decisions, and where it does not seek the same relief sought in the underlying administrative hearing." *Integrity Soc. Work Servs. LCSW, LLC. v. Azar*, No. 20-CV-02770, 2021 U.S. Dist. LEXIS 189334, 2021 WL 4502620, at *10 (E.D.N.Y. Oct. 1, 2021), *aff'd sub nom. Integrity Soc. Work Servs., LCSW, LLC v. Becerra*, No. 21-2757, 2022 U.S. App. LEXIS 15481, 2022 WL 1930866 (2d Cir. June 6, 2022). "Exhaustion is the rule, waiver the exception." *Abbey*, 978 F.2d at 44. As discussed above, the thrust of Plaintiff's First through Fifth Claims for Relief are claims for benefit payments to cover the cost of her stay at HHH when her coverage ceased and for further Medicare benefits in the form of further intensive therapy, and that Defendants erred by not providing that level of care and not specifying it in a written discharge plan. Whether Plaintiff needed and would benefit from further IRF care, and whether any deficiency in the CMS-10066 notice impacted discharge to a SNF were questions raised and decided against her in her Medicare appeals and as such, these claims are not collateral. (*See* Doc. 184-29; Doc. 184-33).[7]

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7. Plaintiff, arguing that this action "is entirely collateral to the Medicare process" points to the footnotes in the ALJ's decision that indicate certain arguments raised by Plaintiff in her Medicare appeals were outside the ALJ's jurisdiction and that Plaintiff was free to pursue whatever avenues of redress they felt appropriate. (Pl. Reply at 6-7 (citing Doc. 184-33)). As discussed herein, the issues raised in Plaintiff's First through Fifth Claims for Relief were raised, considered, and decided in her Medicare appeals, were not the subject of those footnotes, and are therefore not collateral.

To the extent Plaintiff attempts to argue that the availability of a jury trial on these claims in federal court is what renders the exhaustion requirement waived—and it is not at all clear to the Court that she does so argue this point (*see* Pl. Br. at 12-13)—the Second Circuit has explained that there exists no "right *not* to pursue the administrative process." *Abbey*, 978 F.2d at 46 (emphasis added). Accordingly, further administrative review of Plaintiff's claims would not be futile and thus waiver of the exhaustion requirement is inappropriate in this case.

Simply put, Plaintiff was required to, but has not, exhausted administrative remedies and has not established that judicial waiver of the requirement would be appropriate in this case. Accordingly, the Court concludes that it lacks subject matter jurisdiction over Plaintiff's First through Fifth Claims for Relief on the grounds that the claims arise under the Medicare Act and Plaintiff failed to exhaust administrative remedies.[8]

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8. As discussed herein, an action may be commenced in federal court to review a Medicare determination such as this only after a claimant has obtained a final agency decision, such as denial of relief by the MAC, "which may be appealed to the district court (if the aggregate amount in controversy is $1000 or more)." *Pavano v. Shalala*, 95 F.3d 147, 150 (2d Cir. 1996). Such judicial review is further circumscribed by the relevant statutory scheme which limits the district court "to base its judgment 'upon the pleadings and transcript of the record.'" *Est. of Landers v. Leavitt*, 545 F.3d 98, 113 (2d Cir. 2008), *as revised* (Jan. 15, 2009) (citing 42 U.S.C. § 405(g) and *Mathews v. Weber*, 423 U.S. 261, 263, 96 S. Ct. 549, 46 L. Ed. 2d 483 (1976) (noting that, under § 405(g), "[t]he court may consider only the pleadings and administrative record, and must accept the Secretary's findings of fact so long

Summary judgment in favor of Defendants dismissing these claims is therefore warranted.

B. The Sixth Claim for Relief

The Sixth Claim for Relief alleges that Martucci violated Plaintiff's right to privacy by disclosing her medical information in a guardianship petition, thereby violating Plaintiff's substantive due process rights. "The Supreme Court has long recognized a right to privacy protected by the Due Process Clause of the Fourteenth Amendment." *Rutherford v. Katonah-Lewisboro Sch. Dist.*, 670 F. Supp. 2d 230, 239 (S.D.N.Y. 2009) (citing *Whalen v. Roe*, 429 U.S. 589, 598-600, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977)). "To establish a violation of the constitutional right to privacy, a plaintiff must first show that she had a privacy interest—that is, a 'reasonable expectation of privacy'—in the information that was disclosed." *Id.* at 239-40 (quoting *Sean R. v. Bd. of Educ.*, 794 F. Supp. 467, 469 (D. Conn. 1992)). "[T]he interest in the privacy of medical information will vary with the condition." *Matson v. Bd. of Educ. of City Sch. Dist. of New York*, 631 F.3d 57, 64 (2d Cir. 2011). "A general medical determination or acknowledgment that a disease is serious does not give rise ipso facto to a constitutionally-protected privacy right." *Id.* at 65.

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as they are supported by substantial evidence")). Even if Plaintiff had exhausted her administrative remedies, Plaintiff's attempt to couch these claims as § 1983 claims based upon liberty and property interests protected by the Fourteenth Amendment falls flat, as Plaintiff has cited no authority to actually support her theories other than cases involving unrelated fact patterns.

Appendix D

Upon a plaintiff's showing of a privacy interest in the information disclosed, and where it is alleged that "executive action infringed upon" that protected privacy right, the plaintiff must show that such action "shocks the conscience." *Id.* at 240; *O'Connor v. Pierson*, 426 F.3d 187, 203 (2d Cir. 2005) ("Mere irrationality is not enough: 'only the most egregious official conduct,' conduct that 'shocks the conscience,' will subject the government to liability for a substantive due process violation based on executive action." (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998))).

Plaintiff no doubt suffered serious medical conditions, but not of the type that "carry with it the sort of opprobrium that confers upon those who suffer from it a constitutional right of privacy as to that medical condition." *Matson*, 631 F.3d at 67. There is "no evidence in the record revealing societal discrimination and intolerance against those suffering" from the conditions disclosed in Plaintiff's medical records. *See e.g. Matson*, 631 F.3d at 67-68 (declining to extend right to privacy to fibromyalgia); *see also Golub v. Enquirer/Star Group, Inc.*, 89 N.Y.2d 1074, 681 N.E.2d 1282, 659 N.Y.S.2d 836 (N.Y. 1997) (cancer). Further, the disclosure of limited medical information in the guardianship petition here was not conscious-shocking. The petition revealed very little information—that Plaintiff had a brain injury, subdural hematoma, status epilepticus, and cognitive impairment, that she "required total care with all activities of daily living and skilled nursing care for wound care and medication administration" and listed her medications—

did not attach any records, and was filed under seal.[9] (Doc. 184-42). The petition was filed in an effort to effect a safe discharge because the Proxies refused discharge despite two Livanta findings in favor of discharge and Defendants' concern that Plaintiff could acquire antibiotic resistant bacteria by unnecessarily prolonging her stay at HHH. (*See id.*; *see also* Doc. 184-28 at 46:13-25).

Under these circumstances, because Plaintiff's "medical condition does not enjoy a constitutionally-protected right to privacy," *Matson*, 631 F.3d at 69, Defendants are entitled to summary judgment dismissing the Sixth Claim for Relief.

C. The Seventh through Twelfth Claims for Relief

Plaintiff's Seventh through Twelfth Claims for Relief are state law claims. Because there is no longer any federal claim remaining against Defendants, there is no longer any independent basis for federal jurisdiction over them in this action. Having determined that Plaintiff's First through Sixth Claims for Relief against Defendants should be dismissed, the Court declines to exercise supplemental jurisdiction over the remaining state law claims alleged against them. *Maco v. Baldwin Union Free Sch. Dist.*, 249 F. Supp. 3d 674, 680 (E.D.N.Y. 2017), *aff'd*, 726 F. App'x 37 (2d Cir. 2018). The traditional values of judicial economy, convenience, fairness, and comity weigh in favor of declining to exercise supplemental jurisdiction where

9. Plaintiff herself disclosed similar and more detailed information in a publicly-filed Complaint against another hospital and several physicians, which suit she brought under her real name. (56.1 ¶ 15; Doc. 184-19).

all federal law claims are eliminated before trial. *Kolari v. New York-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006). Accordingly, the Court dismisses Plaintiff's Seventh through Twelfth Claims for Relief against Defendants without prejudice. *Whitehead v. City of New York*, 897 F. Supp. 2d 136, 953 F. Supp. 2d 367, 377 (E.D.N.Y. 2012).

II. Plaintiff's Motion for Relief From April 19, 2023 Order

The Court held a pre-motion conference on April 19, 2023 to discuss Defendants' anticipated motion for summary judgment. (Doc. 161; Doc. 163; Doc. 181, "4/19/2023 Tr."). At that conference, Defendants' counsel advised that Plaintiff, six days earlier, had served him with a 25-page sanctions letter that read like a brief in opposition to a defense motion for summary judgment that had not yet been briefed or filed. (4/19/2023 Tr. at 18:9-19). After hearing from Plaintiff, "the Court directed Defendants to comply with the time limitations for any response to the motion under Rule 11, but directed that to the extent Plaintiff intends to pursue the motion, she shall proceed by filing a premotion letter requesting a conference (not the motion itself), and that she shall do so only after the motion summary judgment and any potential sur-reply is fully filed and *sub judice*." (Doc. 175; *see also* 4/19/2023 Tr. at 19:24-21:9, 22:22-25).

On May 5, 2023, before the motions for summary judgment were filed, Plaintiff filed a "Motion for Relief from an Order Preventing Plaintiff from Filing a Rule 11 Motion for Sanctions." (Doc. 176). Defendants opposed on May 19, 2023 (Doc. 179), and Plaintiff filed a reply memorandum of law on May 26, 2023 (Doc. 182). The

thrust of Plaintiff's motion is that the Court's April 19, 2023 Order impermissibly prevented her from filing a sanctions motion addressed to Defendants' pre-motion summary judgment letter. The Court, however, did not make any order preventing Plaintiff from making a sanctions motion; rather, it explicitly extended Plaintiff's time to so move, conditioned upon her first filing a pre-motion letter, until after the summary judgment briefing was *sub judice* in an effort to preserve judicial resources. (*See* Doc. 175; *see also* 4/19/2023 Tr. at 20:1-3).

This is not the first time a district court has directed a party to wait to file a Rule 11 sanctions motion, nor is it the first time a district court has been presented with the argument that it is improper to establish a schedule for presenting such a motion. Indeed, the Second Circuit in *Lawrence v. Richman Grp. of CT LLC*, when confronted on appeal with such an order of the district court, stated that "[i]n a case such as this, presenting almost relentless motion practice, a court may understandably wish to establish a sensible schedule for presenting issues" and "parties may reasonably be expected to follow a court's scheduling orders." 620 F.3d 153, 159 (2d Cir. 2010). The subject order in that case directed the moving party to wait to file a Rule 11 sanctions motion until it was "clear which claims actually will remain in this lawsuit." *Id.* at 159. The Circuit made clear that while that the safe harbor requirements of Rule 11(c)(2) must not be negated by the district court's scheduling order, a court has authority to set a schedule for formal filing of a sanctions motion. *Id.*

Plaintiff maintains that Defendants' "failure to withdraw or correct the pre-motion letter" required the

Court to withdraw or modify its order so as to permit her to immediately move for sanctions. The Court, however, directed Defendants to respond to Plaintiff's letter in accordance with the Rule 11 safe harbor time-frames—that direction did not require Defendants to withdraw their pre-motion letter, nor did it prevent Defendants from making their motion for summary judgment. The sanctions motion that Plaintiff sought to file was based on her position that Defendants' summary judgment arguments were frivolous. This is precisely the reason the Court instructed Plaintiff to wait to move for sanctions until the summary judgment motions were briefed and filed: if the bases for Plaintiff's sanctions motions are identical to the arguments made in the summary judgment motions, why ask the Court to adjudicate those issues twice? With the benefit of full summary judgment briefing from both sides, a full factual record, and ample case law, the Court is more adequately positioned to evaluate the merits of the arguments that Plaintiff claims, in her sanctions motions, were "frivolous."

Accordingly, Plaintiff's motion for relief from this Court's April 19, 2023 Order is denied.[10]

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10. On August 25, 2023, after the summary judgment motions were fully submitted, Plaintiff filed a premotion letter in connection with her anticipated sanctions motions. (Doc. 195). On September 12, 2023, the Court waived any pre-motion requirement and permitted plaintiff to file her motions for sanctions but held the time for Defendants to oppose those motions in abeyance pending the Court's review and consideration of the summary judgment motions. (Doc. 202). Thereafter, Plaintiff filed two motions for sanctions. (Doc. 204; Doc. 207). On February 12, 2024, Plaintiff filed a letter-motion seeking "a motion schedule on the Rule 11 Motions; or, in the alternative, schedule a conference to address

Appendix D

CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment (Doc. 183) is GRANTED and Plaintiff's motion for summary judgment (Doc. 187) is DENIED. The First through Sixth Claims for Relief alleged in Plaintiff's Second Amended Complaint are dismissed with prejudice. Because the Court declines to exercise supplemental jurisdiction over the Seventh through Twelfth Claims for Relief, those claims are dismissed without prejudice.

Plaintiff's motion for relief from the Court's April 19, 2023 Order (Doc. 176) is DENIED.

The Clerk of Court is respectfully requested to terminate the pending motion sequences (Docs. 176, 183, and 187), enter judgment, and close this case.

SO ORDERED.

Dated: White Plains, New York
December 16, 2024

/s/ Philip M. Halpern
Philip M. Halpern
United States District Judge

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the issue." (Doc. 223). The Court will address Plaintiff's February 12, 2024 application in a separate order.