IN THE
Supreme Court of the United States

LA'SHAUN CLARK

Petitioner,

v.

NEW YORK CITY HOUSING AUTHORITY,
NEW YORK INSULATION & ENVIRONMENTAL SERVICES INC,
JLC ENVIRONMENTAL CONSULTANTS INC.

Respondents

APPENDIX

Pro Se -IFP Petitioner
/s/La'Shaun Clark
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Douglasville, Georgia 30135
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2nd. Cir. 12/22/25 Order/Judgment case 25-486

25-486-cv
Clark v. N.Y.C. Hous. Auth.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of December, two thousand twenty-five.

PRESENT: DENNIS JACOBS,
JOSÉ A. CABRANES,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

LA'SHAUN CLARK,

Plaintiff-Appellant,

v. No. 25-486-cv

NEW YORK CITY HOUSING AUTHORITY, NEW YORK INSULATION & ENVIRONMENTAL SERVICES INC., JLC ENVIRONMENTAL CONSULTANTS INC.,

Defendants-Appellees.

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FOR APPELLANT:	LA'SHAUN CLARK, *pro se*, Douglasville, GA
FOR APPELLEE NEW YORK CITY HOUSING AUTHORITY:	MIRIAM SKOLNIK, Herzfeld & Rubin, P.C., New York, NY
FOR APPELLEE NEW YORK INSULATION & ENVIRONMENTAL SERVICES INC.:	RICHARD E. LEFF, BBC Law, LLP, New York, NY
FOR APPELLEE JLC ENVIRONMENTAL CONSULTANTS INC.:	Michael Schneider, Kennedys CMK LLP, New York, NY

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

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

La'Shaun Clark, proceeding *pro se*, appeals from the February 28, 2025 judgment of the United States District Court for the Southern District of New York (Torres, *J.*). The judgment adopted the report and recommendation of the Magistrate Judge (Tarnofsky, *M.J.*) dismissing with prejudice Clark's state law claims of negligent and intentional infliction of emotional distress against Defendants-Appellees New York City Housing Authority ("NYCHA"), New York Insulation & Environmental Services Inc., and JLC Environmental

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Consultants Inc. Clark also appeals from a May 30, 2025 order denying her motions (1) to recuse Judge Torres and Judge Tarnofsky, (2) to alter and amend the judgment, and (3) for relief from final judgment. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

The District Court concluded that Clark's tort claims were barred by collateral estoppel, or issue preclusion. We review *de novo* a district court's application of collateral estoppel. *See Carroll v. Trump*, 151 F.4th 50, 68 (2d Cir. 2025). Under New York law, collateral estoppel applies if "(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits." *Conason v. Megan Holding, LLC*, 25 N.Y.3d 1, 17 (2015) (quotation marks omitted).

We agree with the District Court that collateral estoppel bars relitigation of Clark's claims. This appeal follows a federal action brought by Clark in 2020 arising from the same exposure to crystalline silica quartz and asbestos in her NYCHA-operated apartment between 2004 and 2012. *See Clark v. N.Y.C. Hous.*

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Auth., No. 20-CV-251, 2022 WL 17974899 (S.D.N.Y. Dec. 28, 2022). Clark now alleges that this exposure resulted in a new diagnosis of silicosis, entitling her to recovery based on distinct injuries. But to prevail on her new claims for recovery, Clark must necessarily relitigate an issue that the District Court resolved in the earlier litigation: whether Clark had "adduce[d] sufficient evidence to establish the element of general causation" and in particular the "general capacity of the crystalline silica quartz that she claims remained in" her apartment to cause her injuries. *Clark*, 2022 WL 17974899, at *3. Specifically, in the earlier litigation the District Court concluded that Clark had not offered expert testimony establishing causation as is required under New York law. *See id.*; *Nemeth v. Brenntag N. Am.*, 38 N.Y.3d 336, 342–44 (2022). This Court affirmed. *Clark v. N.Y.C. Hous. Auth.*, No. 22-3233-CV, 2023 WL 8071800 (2d Cir. Nov. 21, 2023) (summary order). "[T]he determination of an essential issue is binding in a subsequent action, even if it recurs in the context of a different claim." *Paramount Pictures Corp. v. Allianz Risk Transfer AG*, 31 N.Y.3d 64, 72 (2018).

Clark also argues that she was denied a "full and fair opportunity" to litigate her tort claims, *Conason*, 25 N.Y.3d at 17 (quotation marks omitted), because the District Court's conclusion rested on her inability to provide expert

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testimony. We agree with the District Court that Clark received enough notice that expert testimony was necessary and that she was given the opportunity to retain an expert in the earlier litigation. We therefore affirm the District Court's dismissal of the claims on collateral estoppel grounds.

Finally, the District Court did not abuse its discretion in denying Clark's post-judgment motions. *See Gomez v. City of New York*, 805 F.3d 419, 423 (2d Cir. 2015). Her assertions of bias by the District Judge and the Magistrate Judge rest on "remote, contingent, indirect[, and] speculative interests." *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992). And we are not persuaded that the alleged conflicts of interest "entertain significant doubt that justice would be done absent recusal." *Sacerdote v. N.Y. Univ.*, 9 F.4th 95, 121 (2d Cir. 2021) (quotation marks omitted). We thus conclude that the District Court correctly denied Clark's motions to alter and vacate judgment pursuant to Federal Rules of Civil Procedure 59(e) and 60, and her motion for recusal pursuant to 28 U.S.C. § 455.

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We have considered Clark's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

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

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2/28/2025 District Court order & Judgement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LA'SHAUN CLARK,

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY; NEW YORK INSULATION & ENVIRONMENTAL SERVICES, INC.; JLC ENVIRONMENTAL CONSULTANTS, INC.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 2/28/2025

24 Civ. 1625 (AT) (RFT)

ORDER ADOPTING REPORT & RECOMMENDATION

ANALISA TORRES, District Judge:

Plaintiff *pro se*, La'Shaun Clark, brings this action against Defendants, the New York City Housing Authority ("NYCHA"), New York Insulation & Environmental Services, Inc. ("NYIES"), and JLC Environmental Consultants, Inc. ("JLC"), alleging negligent and intentional infliction of emotional distress and requesting compensation for medical monitoring costs arising from Clark's fear of developing cancer in connection with her alleged exposure to the toxic substance crystalline silica in her former NYCHA apartment. Compl. ¶¶ 1, 3, ECF No. 1 at 8–9. Defendants move to dismiss, and Clark moves for partial summary judgment against all Defendants. ECF Nos. 31, 33, 37, 42. On January 31, 2025, the Honorable Robyn F. Tarnofsky issued a report (the "R&R") recommending that the Court dismiss Clark's claims without leave to replead. *See generally* R&R, ECF No. 69. For the reasons stated below, the Court adopts the R&R and dismisses Clark's claims with prejudice.

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BACKGROUND[1]

From 2004 to 2012, Clark lived in a Bronx apartment owned and managed by NYCHA. Compl. ¶ 1. Shortly before she moved in, NYCHA contracted with NYIES to cover the apartment's floor tiles with Ardex K15, a substance used for asbestos abatement. *Id.* ¶¶ 6, 9. Ardex K15 is known to contain crystalline silica, a carcinogen. *Id.* ¶¶ 6, 8; *see also* ECF No. 1-1. NYCHA hired JLC to monitor the project and to conduct air-quality analysis. Compl. ¶¶ 14–15. In 2009, the floor tiles in Clark's apartment started to break, exposing her to crystalline silica. *Id.* ¶ 7. In 2011, Clark sued NYCHA in housing court over the broken tiles. *Id.* ¶ 11. In response, NYCHA ground up and removed some—but not all—of the broken tiles, exposing Clark to a cloud of dust in the process. *Id.* ¶ 13.

Between 2012 and 2019, Clark was diagnosed with lupus, chronic obstructive pulmonary disease ("COPD"), asbestos-related lung scarring, and gastroesophageal reflux disease ("GERD"). *See id.* ¶ 3; *see also* 2020 Compl. at 5–6, ECF No. 34-7; 2021 Compl. at 2, ECF No. 34-8. In January 2020, Clark brought suit in this District against NYCHA, NYIES, and JLC for negligently exposing her to asbestos, *see generally* 2020 Compl., and in February 2021, she amended her complaint to add a claim against NYCHA for fraudulent concealment of crystalline silica, 2021 Compl. at 1. This new claim was based on Defendants' use of Ardex K15 in Clark's NYCHA apartment, which she was only made aware of through discovery. 2021 Compl. at 1. In September 2022, the Honorable Gabriel W. Gorenstein issued a report recommending that Clark's claims be dismissed because, *inter alia*, she had failed to retain an expert witness to

[1] The Court assumes familiarity with the underlying history of this action and sets forth only those facts relevant to this order. On a motion to dismiss for failure to state a claim, the Court considers "the complaint, the answer, any written documents attached to them, and any matter of which the court can take judicial notice for the factual background of the case." *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011) (quoting *Roberts v. Babkiewicz*, 582 F.3d 418, 419 (2d Cir. 2009)).

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opine on whether she was exposed to hazardous levels of asbestos and crystalline silica, as is required for personal injury claims brought under New York law. *Clark v. NYCHA* (*Clark I*), No. 20 Civ. 251, 2022 WL 4229386, at *3–5 (S.D.N.Y. Sept. 14, 2022). The Honorable Paul A. Engelmayer adopted the report in its entirety, *Clark v. NYCHA* (*Clark II*), No. 20 Civ. 251, 2022 WL 17974899 (S.D.N.Y. Dec. 28, 2022), and the Second Circuit affirmed, *Clark v. NYCHA* (*Clark III*), No. 22-3233, 2023 WL 8071800 (2d Cir. Nov. 21, 2023) (summary order).

In May 2023, Clark was diagnosed with silicosis, a lung disease caused by the inhalation of crystalline silica. Compl. ¶ 1. She filed this action the following March, bringing claims of negligent infliction of emotional distress and medical monitoring against all Defendants and intentional inflection of emotional distress against NYCHA only, all resulting from Defendants' use of Ardex K15 and Clark's exposure to crystalline silica. *Id.* Defendants moved to dismiss, and Clark moved for partial summary judgment. ECF Nos. 31, 33, 37, 42. The Court referred the motions to Judge Tarnofsky, ECF Nos. 41, 64, who recommended that the Court dismiss Clark's claims, *see generally* R&R. Before the Court are the R&R, Clark's objections, and NYCHA's and JLC's opposition briefs. R&R; Obj., ECF No. 70; ECF Nos. 71–72.

DISCUSSION

I. The R&R

Judge Tarnofsky began her well-reasoned R&R by clarifying the causes of action underlying Clark's complaint. Claims for negligent and intentional infliction of emotional distress ("NIED" and "IIED," respectively), are well established under New York law.[2] With

[2] As the R&R explains, the Court must analyze Clark's claims under New York law because New York has "the most significant interest in, or relationship to, the dispute." *Holborn Corp. v. Sawgrass Mut. Ins. Co.*, 304 F. Supp. 3d 392, 398 (S.D.N.Y. 2018) (quoting *White Plains Coat & Apron Co. v. Cintas Corp.*, 460 F.3d 281, 284 (2d Cir. 2006)); *see id.* (explaining that in New York, "the law of the jurisdiction where the tort occurred will generally apply" (quotation omitted)); R&R at 13 n.6.

respect to Clark's claim for medical monitoring, the R&R explains that, although "[t]here is no independent claim for medical monitoring under New York law[,] . . . a plaintiff who has sustained a physical injury may obtain the remedy of medical monitoring as consequential damages . . . '[for] an already existing tort cause of action.'" R&R at 13 (quoting *Caronia v. Philip Morris USA, Inc.*, 5 N.E.3d 11, 18–19 (N.Y. 2013)); *see Benoit v. Saint-Gobain Performance Plastics Corp.*, 959 F.3d 491, 501 (2d Cir. 2020) (explaining that, to obtain such consequential damages, a plaintiff must demonstrate some physical injury, either by showing a "clinically demonstrable presence of toxins" in the plaintiff's body "or some physical manifestation of toxin contamination" that was caused by the defendants in violation of a duty they owed the plaintiff (cleaned up) (quoting *Abusio v. Consol. Edison Co. of N.Y.*, 656 N.Y.S.2d 371, 372 (App. Div. 1997))). And to state an emotional distress claim based on a fear of developing cancer following exposure to a toxic substance, "a plaintiff must allege both exposure 'to the disease-causing agent and that there is a rational basis for [her] fear of contracting the disease,' meaning that there is a 'clinically demonstrable presence' of the carcinogen in the plaintiff's body, or some indication of a disease caused by the carcinogen." R&R at 13 (quoting *Prato v. Vigliotta*, 253 A.D.2d 746, 748 (N.Y. App. Div. 1998)).

According to Judge Tarnofsky, however, the Court need not reach the merits of Clark's claims against NYCHA because, before bringing a tort suit against NYCHA, a "public corporation," a plaintiff must serve a notice of claim against NYCHA within 90 days of when the claim arises, and Clark never served such a notice. *Id.* at 15–18 (citing N.Y. Pub. Hous. Law § 157(2); N.Y. Gen. Mun. Law § 50-E(1)(a)). Moreover, as explained in the R&R, all of Clark's claims are barred by collateral estoppel, or issue preclusion, resulting from Clark's 2020 lawsuit.

Id. at 25–36. Judge Tarnofsky, accordingly, recommended that the Court dismiss Clark's complaint without leave to amend.

II. Clark's Objections

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by [a] magistrate judge." 28 U.S.C. § 636(b)(1)(C). When a party makes specific objections, the Court reviews *de novo* the portions of the R&R to which objection is made. *Id.*; Fed. R. Civ. P. 72(b)(3). But when a party does not object or when it "makes only conclusory or general objections, or simply reiterates [its] original arguments," the Court reviews the R&R strictly for clear error. *Wallace v. Superintendent of Clinton Corr. Facility*, No. 13 Civ. 3989, 2014 WL 2854631, at *1 (S.D.N.Y. June 20, 2014) (citation omitted); *see also Oquendo v. Colvin*, No. 12 Civ. 4527, 2014 WL 4160222, at *2 (S.D.N.Y. Aug. 19, 2014). A finding is clearly erroneous if the Court is "left with the definite and firm conviction that a mistake has been committed." *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (citation omitted).

Clark objects to several aspects of the R&R, but the Court will address only her collateral estoppel–related objections, as that issue is determinative of the entire action. Clark essentially argues that collateral estoppel does not apply because the relevant issues in dispute here were neither necessary nor material to her earlier lawsuit. *See* Obj. at 10–16. Specifically, Clark contends that because she did not previously "claim an injury of silicosis," and because her "fear of developing cancer and the need for medical monitoring [were] not actually litigated" in the prior lawsuit, collateral estoppel does not apply. *Id.* at 11.

Collateral estoppel "precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same." *Cullen v.*

Moschetta, 207 A.D.3d 699, 700 (N.Y. App. Div. 2022) (quoting *Ryan v. N.Y. Tel. Co.*, 62 N.Y.2d 494, 500 (1984)). "The two requirements for its application are: first, the identical issue necessarily must have been decided in the prior action and be decisive in the present action, and second, the party to be precluded must have had a full and fair opportunity to contest the prior determination." *Id.* (quoting *In re Abady*, 22 A.D.3d 71, 81 (N.Y. App. Div. 2005)).

In Clark's prior lawsuit, her amended complaint was liberally construed as "bringing two claims: (1) a personal injury claim of common-law negligence, . . . based on Clark's exposure to the asbestos and crystalline silica in [her NYCHA apartment], and (2) a claim of fraudulent concealment brought against NYCHA, for withholding knowledge of the presence of Ardex and crystalline silica." *Clark II*, 2022 WL 17974899, at *2. Both causes of action required Clark to adduce competent expert evidence showing that "any crystalline silica quartz present in [her NYCHA apartment] was in fact hazardous to health or safety." *Clark I*, 2022 WL 4229386, at *7; *see id.* at *4–5; *Clark II*, 2022 WL 17974899, at *4–5. Despite being given multiple opportunities to retain an expert, *see Clark I*, 2022 WL 4229386, at *5; *Clark II*, 2022 WL 17974899, at *4–5, Clark declined to do so, so Judge Gorenstein ruled against her on the issue, a decision that was adopted by Judge Engelmayer and affirmed by the Second Circuit, *see Clark I*, 2022 WL 4229386, at *5; *Clark II*, 2022 WL 17974899, at *5; *Clark III*, 2023 WL 8071800, at *1–2.

As the R&R explains, to succeed on any of her claims in the present action, Clark must put forward expert evidence demonstrating that she was exposed in her NYCHA apartment to a hazardous level of crystalline silica. *See* R&R at 36; *Parker v. Mobil Oil Corp.*, 857 N.E.2d 1114, 1120–21 (N.Y. 2006); *Ornstein v. N.Y.C. Health & Hosps. Corp.*, 881 N.E.2d 1187, 1189–90 (N.Y. 2008) (requiring a plaintiff alleging NEID arising from exposure to HIV to come

forward with expert evidence of "actual exposure" to the virus); *Abbatiello v. Monsanto Co.*, 522 F. Supp. 2d 524, 539 (S.D.N.Y. 2007) (explaining that to obtain medical monitoring, a plaintiff must prove "exposure greater than normal background levels . . . to a proven hazardous substance"); *Wolff v. A-One Oil, Inc.*, 216 A.D.2d 291, 291–92 (N.Y. App. Div. 1995) (explaining that in order to maintain a cause of action for "fear of developing cancer," a plaintiff must establish that she "was in fact exposed to the disease-causing agent"). It does not matter that Clark's fear-of-cancer claim and claims relating to her silicosis diagnosis were "not actually litigated" in the prior action. Obj. at 10. Because the claims in both lawsuits require Clark to prove, using expert evidence, that she was exposed to a hazardous level of crystalline silica, her failure to solicit expert evidence in the prior action satisfies the first prong of the collateral estoppel test.[3] *See Cullen*, 207 A.D.3d at 700. Furthermore, because it is undisputed that Clark had a "full and fair opportunity" to litigate the issue of actual exposure in the prior action, her present claims, which turn on the same issue, necessarily fail.[4] *Id.* (citation omitted); *see Clark II*, 2022 WL 17974899, at *4–5.

[3] Clark insists that she has provided adequate evidence that she was exposed to hazardous levels of crystalline silica by, for example, attaching to her complaint (1) an invoice demonstrating that NYIES used a certain amount of Ardex K-15 in her NYCHA apartment, (2) the Occupational Safety and Health Administration's datasheet for Ardex K15, which states that exposure to the product may cause silicosis, and (3) a declaration from her treating physician opining that NYCHA's use of Ardex K-15 caused her silicosis. *See* Obj. at 11, 17–18, 32–33; ECF Nos. 1-1 to -2, -4. This type of evidence does not constitute "expert evidence," which is necessary to establish causation under New York law. *See Rivera ex rel. Hewitt v. Crotona Park E. Bristow Elsmere*, 968 N.Y.S.2d 48, 49 (App. Div. 2013); *Ramos v. Port Auth. Trans-Hudson Corp.*, No. 22 Civ. 1719, 2024 WL 580144, at *13 (S.D.N.Y. Feb. 13, 2024); *Romanelli v. Long Island R.R. Co.*, 898 F. Supp. 2d 626, 632 (S.D.N.Y. July 13, 2012).

[4] Because amendment would be futile, the Court denies Clark's motion for leave to amend her complaint. *See Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001).

CONCLUSION

For the foregoing reasons, the Court OVERRULES Clark's objections and ADOPTS the R&R in full. Defendants' motions to dismiss are GRANTED and Clark's motion for partial summary judgment is DENIED as moot.

The Clerk of Court is respectfully directed to terminate the motions at ECF Nos. 37, 42, and 74 and close the case.

SO ORDERED.

Dated: February 28, 2025
New York, New York

ANALISA TORRES
United States District Judge

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District Court 5/30/2025 Order/Judgment denying rule 59(e)/rule 60 b motion for disqualification of Judges -magistrate judge shopping

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LA'SHAUN CLARK,

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY; NEW YORK INSULATION & ENVIRONMENTAL SERVICES, INC.; JLC ENVIRONMENTAL CONSULTANTS, INC.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/30/2025

24 Civ. 1625 (AT) (RFT)

ORDER

ANALISA TORRES, District Judge:

Plaintiff *pro se*, La'Shaun Clark, brought this action against Defendants, the New York City Housing Authority ("NYCHA"), New York Insulation & Environmental Services, Inc. ("NYIES"), and JLC Environmental Consultants, Inc. ("JLC"), alleging negligent and intentional infliction of emotional distress and seeking compensation for medical monitoring costs arising in connection with her alleged exposure to the toxic substance crystalline silica in her former apartment. Compl. ¶¶ 1, 3, ECF No. 1 at 8–9. By order dated February 28, 2025, the Court adopted the report and recommendation of the Honorable Robyn F. Tarnofsky (the "First R&R") and dismissed Clark's claims with prejudice. ECF No. 75; *see* ECF No. 69. Clark immediately appealed from the order and judgment. ECF No. 78.

Several weeks later, Clark moved to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e), and for the undersigned and Judge Tarnofsky to recuse themselves from this matter.[1] ECF Nos. 80–81. After NYCHA and NYIES filed opposition papers and Clark replied, ECF Nos. 82–84, Judge Tarnofsky issued a report (the "Second R&R") recommending that Clark's motions be denied, ECF No. 85. Clark objected, ECF Nos. 86–87; *see also* ECF Nos. 88–89, and moved to vacate the First and Second R&Rs and the Court's February 28 order and judgment pursuant to Federal Rule of Civil Procedure 60(b)(3) and (b)(6). ECF Nos. 90–91; *see also* ECF Nos. 92, 96.

LEGAL STANDARD

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by [a] magistrate judge." 28 U.S.C. § 636(b)(1)(C). When a party makes specific objections, the Court reviews *de novo* the portions of the report and recommendation to which objection is made. *Id.*; Fed. R. Civ. P. 72(b)(3). But when a party does not object, or "makes only conclusory or general objections, or simply reiterates [its] original arguments," the Court reviews the report and recommendation strictly for clear error. *Wallace v. Superintendent of*

[1] The Court has jurisdiction to dispose of these post-appeal motions. *See SEC v. Gottlieb*, No. 98 Civ. 2636, 2021 WL 5450360, at *1 (S.D.N.Y. Nov. 22, 2021).

Clinton Corr. Facility, No. 13 Civ. 3989, 2014 WL 2854631, at *1 (S.D.N.Y. June 20, 2014) (citation omitted); *see also Oquendo v. Colvin*, No. 12 Civ. 4527, 2014 WL 4160222, at *2 (S.D.N.Y. Aug. 19, 2014). A finding is clearly erroneous if the Court is "left with the definite and firm conviction that a mistake has been committed." *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (citation omitted).

ANALYSIS

I. Rule 59(e) Motion

A Rule 59(e) motion to alter or amend a judgment "is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple." *Analytical Survs., Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (quoting *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir. 1998)). "Rather, the standard for granting a . . . motion for reconsideration is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the Court overlooked." *Id.* (cleaned up) (quoting *Shrader v. CSX Transp., Inc.*, 70 F.2d 255, 257 (2d Cir. 1995)).

The Court agrees with Judge Tarnofsky that reconsideration is not appropriate here. *See* Second R&R at 1. In her Rule 59(e) motion and objections to the Second R&R, Clark fails to identify any caselaw or data that the Court overlooked in its February 28 order. *See* ECF No. 81; *Analytical Survs.*, 684 F.3d at 52. Rather, Clark appears to argue that the undersigned did not conduct a *de novo* review of the issues raised in her objections to the First R&R. *See* ECF No. 86 at 1–4. Clark is incorrect. In ruling on her objections, the undersigned conducted an independent analysis and determined that Clark's claims are barred by collateral estoppel. *See* ECF No. 75 at 5–7. If the undersigned did not address each of Clark's objections, *see id.* at 5, it is because the issue of collateral estoppel was determinative of the entire action, *see United States v. Bramer*, 956 F.3d 91, 96 (2d Cir. 2020) (declining to address alternative arguments when an issue is determinative). Accordingly, Clark's objections to the Second R&R are overruled and her Rule 59(e) motion is denied.

II. Motion to Recuse

28 U.S.C. § 455 provides that a federal judge must disqualify herself "in any proceeding in which [her] impartiality might reasonably be questioned" and, as relevant, where she has a "personal bias or prejudice concerning a party" or "any other interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(a), (b)(1), (b)(4). "There is a strong presumption that a judge is impartial, and the movant bears the substantial burden of overcoming that presumption." *Joachin v. Morningside Rehab. Nursing Home*, No. 23 Civ. 7652, 2024 WL 2924176, at *1 (S.D.N.Y. May 15, 2024) (citation omitted). The relevant standard is objective reasonableness: "whether 'an objective, disinterested observer fully informed of the underlying facts, would entertain significant doubt that justice would be done absent recusal.'" *United States v. Carlton*, 534 F.3d 97, 100 (2d Cir. 2008) (quoting *Diamondstone v. Macaluso*, 148 F.3d 113, 121 (2d Cir. 1998)).

In her objections to the Second R&R, Clark argues that (1) Judge Tarnofsky should recuse herself because her law clerk is somehow affiliated with one of the attorneys who represents

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Defendant JLC, and (2) the undersigned should recuse herself because of familial connections to Defendant NYCHA. *See* ECF No. 86 at 5–15. As Judge Tarnofsky explains in the Second R&R, Clark is incorrect that Judge Tarnofsky's law clerk has any connection to the attorney representing JLC, and any past connections between the undersigned's family and NYCHA do not come close to meeting the threshold for recusal. *See* Second R&R at 6–11; *see also* ECF No. 97. Clark also argues, for the first time, that the undersigned should recuse herself because a decade-old financial disclosure form indicates that the undersigned once held a financial interest in AIG, an insurance company that assigned counsel for Defendant NYIES. *See* ECF No. 87 at 2–3. Like Clark's other proposed grounds for recusal, this alleged connection between the undersigned and NYIES is too tenuous to merit recusal.[2]

III. Rule 60 Motion

Federal Rule of Civil Procedure 60(b) provides that a court may relieve a party from a final judgment or order on the grounds of "fraud[,] . . . misrepresentation, or misconduct by an opposing party," or "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(3), (b)(6). In her Rule 60 motion, Clark argues that the Court should vacate the First and Second R&Rs and the Court's February 28 order because of the same alleged conflicts of interest discussed above, in addition to several new asserted conflicts of interest that include Judge Tarnofsky's former employment at the law firm Paul Weiss, which sometimes represents NYCHA, and Judge Tarnofsky and her husband's prior representation of AIG. *See* ECF No. 91 at 2–15. Again, these connections are too tenuous to warrant recusal under 28 U.S.C. § 455. *See Universal City Studios, Inc. v. Reimerdes*, 104 F. Supp. 2d 334, 353–54 (S.D.N.Y. 2000). Clark's motion is, therefore, denied.[3]

CONCLUSION

For the foregoing reasons, the Court ADOPTS the Second R&R in its entirety and DENIES Clark's motions at ECF Nos. 81 and 91. Clark is advised that the continued filing of duplicative motions and responses may lead the Court to impose a permanent filing injunction against her. *See Lau v. Meddaugh*, 229 F.3d 121, 122 (2d Cir. 2000).

The Clerk of Court is respectfully directed to terminate the motions at ECF Nos. 81 and 91.

SO ORDERED.

Dated: May 30, 2025
New York, New York

ANALISA TORRES
United States District Judge

[2] Clark's motion is also untimely: She made it after the Court rendered judgment, and the motion does not involve any facts that were not previously in the public record. *See Da Silva Moore v. Publicis Groupe*, 868 F. Supp. 2d 137, 151–52 (S.D.N.Y. 2012).

[3] Citing the redesignation of this case from the Honorable Jennifer E. Willis to Judge Tarnofsky, Clark also accuses Defendants of "magistrate judge shopping." ECF No. 91 at 12–17. Defendants have nothing to do with the assignment of magistrate judges, who are designated to cases through a randomized process.

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