Heendeniya v. St. Joseph's Hospital Health Center et al

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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK
_____ UMESH HEENDENIYA,

Plaintiff,

5:15-CV-01238 v.

(GTS/TWD) ST. JOSEPH'S HOSPITAL HEALTH CENTER, et al.,

Defendants. _____ APPEARANCES: OF COUNSEL: UMESH HEENDENIYA Plaintiff, pro se P.O. Box 5104 Spring Hill, FL 34611 COSTELLO, COONEY LAW FIRM ROBERT J. SMITH, ESQ. Attorneys for Defendants St. Joseph's Hospital Health Center, French, Briscoe, Cate, Spinella, Rybak, Ruscitto, Seifter, Price, Welch, and Gilbert 500 Plum Street - Suite 300 Syracuse, NY 13204 MARTIN, GANOTIS LAW FIRM BRIAN M. GARGANO. ESQ. Attorneys for Defendants Tremiti, Roman, Constantine, and Feldman 5790 Widewaters Parkway Syracuse, NY 13214 SMITH, SOVIK, KENDRICK & SUGNET, P.C. KEVIN E. HULSLANDER, ESQ. Attorneys for Defendant Levine JOHN P. COGHLAN, ESQ. 250 South Clinton Street, Suite 600 Syracuse, NY 13202 1252 THÉRÈSE WILEY DANCKS, United States Magistrate Judge

DECISION AND ORDER Plaintiff has filed what has been described by him as an "emerg ency motion" requesting that I recuse myself from this action pursuant to 28 U.S.C. § 455(a) on the grounds of bias against the Second Amendment rights of mentally disabled people such as Plaintiff. (Dkt. No. 111 at 2. 1

Counsel for Defendant Roger Gary Levine, M.D. has filed a letter memorandum opposing the motion. (Dkt. No. 114.) For reasons explained below, Plaintiff's motion is denied. I. BACKGROUND

A. Initial Review of Plaintiff's Com plaint Plaintiff originally commenced this action against thirty-three named defendants and ten John Does. (Dkt. No. 1.) The lawsuit arose out of the alleged prohibition under 18 U.S.C. § 922(g)(4) 2

on Plaintiff's ability to receive any firearm shipped in interstate or foreign commerce as a result of his April 2013 involuntary commitment to the Psychiatric Ward at St. Joseph's Hospital Health Center in Syracuse, New York, pursuant to New York Mental Hygiene Law ("MHL ") § 9.27. Id.

1 Page references to documents identified by docket number are to the numbers assigned by the CM/ECF docketing system maintained by the Clerk's Office.

2 18 U.S.C. § 922(g)(4), a provision of the Gun Control Act of 1968, provides in relevant part that "(g) It shall be unlawful for any person . . . (4) who has been adjudicated as a mental defective or who has been committed to a mental institution . . . to ship or transport in interstate or foreign commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. 924(a)(2) provides that "[w]hoever knowingly violates subsection . . . (g) . . . of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

2 Plaintiff named three distinct groups of defendants: (1) St. Joseph's Hospital Health Center and St. Joseph's administrators, an attorney , physicians, nurses, a therapist, and five John Does ("SJ HHC Defendants"); (2) two State ag encies and number of New York State officials; and (3) the United States, the United States Department of Justice ("DOJ "), the F ederal Bureau of Investigation ("F BI"), the B ureau of Alcohol, Tobacco, Firearms and Explosives ("ATF "), and various federal officials and employees, a program of the FBI, and five John Does. (See Dkt. No. 1 at ¶¶ 1-3, 5-38.) The Court construed Plaintiff's complaint as alleg ing § 1983 and state law claims against the SJHHC Defendants; § 1983 claims against the State Defendants; and claims under Bivens v. Six Unknown Federal Narcotic Agents, 403 U.S. 388 (1971) (" Bivens") for violation of Plaintiff's Second, F ifth, and Fourteenth Amendments, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and 18 U.S.C. § 925A, and state law claims against the Federal Defendants.

The Court recommended dismissal of Plaintiff's complaint on initial review under 28 U.S.C. § 1915(e). (Dkt. No. 6 at 13.) The Court recommended dismissal with prejudice of Plaintiff's civil rig hts claims under 42 U.S.C. § 1983 as against all of the SJHHC Defendants on the grounds that they were not acting under color of state law. (Dkt. No. 6 at 16.) The Court recommended dismissal of Plaintiff's state law claims ag ainst the SJHHC Defendants without prejudice and with leave to amend on the grounds that the complaint failed to show that the amount in controversy exceeded $75,000 for purposes of diversity jurisdiction under 28 U.S.C. § 1332. Id. at 17-18.

The Court recommended dismissal with prejudice of Plaintiff's § 1983 claims ag ainst

3 State Defendants New York Office of Mental Hygiene ("OMH"); Ann Marie Sullivan, MD ("Sullivan"), OMH Commissioner; NYS Division of Criminal J ustice Services ("NYDCJ S"); Joshua Benjamin Pepper, Esq. ("Pepper"), Deputy Commissioner and Counsel to NYDCJS; Michael C. Green ("Green"), Ex ecutive Deputy Commissioner of NYDCJS; and Eric T. Schneiderman ("Schneiderman"), New York State Attorney General (collectively referred to herein as "State Defendants"), broug ht against them solely in their official capacities. (Dkt. No. 6 at 18-20.) The grounds for the recommendation were the complaint's complete absence of specific facts alleging the official or personal involvement of any of the State Defendants in the involuntary commitment of

Plaintiff under MHL § 9.27, or any unconstitutional application of the provision on their part. Id. at 20. The Court further recommended dismissal of the state law claims asserted against the State Defendants with prejudice on the grounds that they were barred under the Eleventh Amendment. Id. at 21-22.

The Court also recommended dismissal with prejudice of the Bivens claims asserted against all of the Federal Defendants in their official capacities on sovereign immunity grounds. (Dkt. No. 6 at 22-23.) The Court, noting that there were no allegations showing personal involvement by either in the alleged violation of Plaintiff's constitutional rig hts, recommended dismissal without prejudice of the Bivens claims asserted against Federal Defendants Lombardo and Wysopal in their individual capacities. Id. at 23-24. The Court also recommended dismissal with prejudice of Plaintiff's claim that 18 U.S.C. § 922(g)(4) violates his constitutional rights under the Second and Fifth Amendments, and claim that MHL § 9.27 does not fall within § 922(g)(4).

4 The Court recommended that Plaintiff's state law claims be dismissed with prejudice against all of the federal agency Defendants and the individual federal defendants. However, dismissal without prejudice and with leave to amend Plaintiff's state law claims ag ainst the United States was recommended for failure to exhaust under the Federal Tort Claims Act, and as against Defendants Lombardo and Wysopal in their individual capacities. Id. at 23-24.

The Hon. Glenn T. Suddaby, Chief United States District Judge, adopted this Court's Report-Recommendation on initial review in its entirety and granted Plaintiff leave to amend the following claims: (1) Plaintiff's state law claims ag ainst the SJHHC Defendants; (2) Plaintiff's Bivens claims against Defendants Lombardo and Wysopal in their individual capacities; (3) Plaintiff's state law claims ag ainst the United States; and (4) Plaintiff's state law claims ag ainst Defendants Lombardo and Wysopal. See Heendeniya v. St. Joseph's Hosp. Health Ctr. (SJHHC), No. 5:15-CV-1238 (GTS/TWD), 2016 WL 756537, at * 4-5 (N.D.N.Y. Feb. 25, 2016). 3

B. Plaintiff's Am ended Complaint Plaintiff elected to file an amended complaint solely against the SJHHC Defendants. (Dkt. No. 21.) Plaintiff asserted various state law claims, including a claim for medical malpractice, against the SJHHC Defendants. Id. Finding that the pleading deficiencies in the original complaint had been corrected sufficiently to survive initial review under 28 U.S.C. § 1915(e), the Court ordered the Defendants to respond to Plaintiff's amended complaint. (Dkt.

3 Copies of all unpublished decisions cited herein will be provided to Plaintiff in accordance with LeBron v. Sanders, 557 F.3d 76 (2d Cir. 2009) (per curiam).

5 No. 24.) Plaintiff subsequently filed a second amended complaint. (Dkt. No. 55.) Motions by some Defendants to dismiss the second amended complaint are pending before Judge Suddaby. (Dkt. Nos. 59 and 62.) II. ANALYSIS

A judge must recuse "[herself or] himself in any proceeding in which [her or] his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Specifically , the Court must consider "whether an objective and disinterested observer, knowing and understanding all of the facts and circumstances, could reasonably question the court's impartiality ." S.E.C. v. Razmilovic, 738 F.3d 14, 29 (2d Cir. 2013), as amended (Nov. 26, 2013); see also U.S. v. Amico, 486 F.3d 764, 775 (2d Cir. 2007) (the "central focus is on whether [the] allegations [of bias and partiality], when coupled with the judge's ruling s on and conduct regarding them, would lead the public reasonably to believe that [the judge's bias or partiality] affected the manner in which [she or] he presided.").

"A recusal decision rests within the sound discretion of the judg e whose recusal is sought." Neroni v. Coccoma, No. 3:13-cv-1340 (GLS/DEP), 2014 WL 2532482, at * 4 (N.D.N.Y. June 5, 2014). The Second Circuit has, however, instructed that when "the standards governing disqualification have not been met, disqualification is not optional; rather it is prohibited." In re Aguinda, 241 F.3d 194, 201 (2d Cir. 2001). In other words, "[a] judge is as much obliged not to recuse [herself or] himself when it is not called for as [she or] he is obliged to when it is." Id. (citation and internal quotations marks omitted).

Plaintiff claims that I showed bias by placing his original complaint under "very harsh

6 scrutiny" in my Order and Report-Recommendation (Dkt. No. 6) recommending dismissal of Plaintiff's orig inal complaint (in part with prejudice and in part without prejudice and with leave to amend) under 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), despite: (1) a notation on the civil cover sheet that "due to plaintiff's documented mental and phy sical disabilities, he respectfully requests disability accommodation from the court and defendants pursuant to the ADA (42 USC 12101 et seq.)"; (2) numerous alleg ations in his original complaint that due to his two mental disabilities, it takes him longer to complete complex tasks; and (3) his having alleged in ¶ 116 of the complaint that he would be "amending his complaint, pursuant to Fed.R.Civ. P. 15(a)(1), and serving process on the defendants, per Fed.R.Civ. 4(m) and L.R. 4.1(b)." (Dkt. Nos. 1 at ¶ 116; 111 at 2; 111-1 at ¶¶ 3-6.)

The Supreme Court has found that "judicial ruling s alone almost never constitute a valid basis for a bias or partiality motion . . . and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved." Liteky v. U.S., 510 U.S. 540, 554 (1994) (citing United States v. Grinnell Corp., 384 U.S. 563, 583 (1966)); see also Chen v. Chen Qualified Settlement Fund, 552 F.3d 218, 227 (2d Cir. 2009) ("Generally , claims of judicial bias must be based on extrajudicial matters, and adverse rulings, without more, will rarely suffice to provide a reasonable basis for questioning a judge's impartiality.").

My initial review of Plaintiff's orig inal complaint shows no bias on my part. I was required to undertake the initial review of Plaintiff's orig inal complaint before Plaintiff could proceed with the action, and to make a report-recommendation for the District Judge, who would

7 then determine whether claims alleged in the complaint should be dismissed or the action should

be allowed to go forward in whole or in part based upon criteria set forth in 28 U.S.C. § 1915(e)(2)(B)(i)-(iii) ("the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious; [ ] fails to state a claim . . .; or [ ] seeks monetary relief against a defendant who is immune from such relief").

District courts have been instructed by the Second Circuit that a pro se complaint should not be dismissed "without g ranting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000). Where, however, "the problem with [the plaintiff's] causes of action is substantive" such that "better pleading will not cure it, [r]epleading would be futile . . . and a request to replead should be denied." Id. On initial review, I made a determination from the allegations in the complaint and applicable law that a number of Plaintiff's alleg ed claims were deficient in ways that could not be cured by an amended complaint and recommended dismissal of those claims with prejudice. (Dkt. No. 6.) However, with respect to the remaining claims alleged in Plaintiff's complaint, while he had failed to state a claim in his orig inal complaint, I did recommend that he be granted leave to amend. Id. As noted above, the District Court adopted my Report-Recommendation, including the recommendation that Plaintiff be allowed to amend his complaint, which he has now done. Heendeniya, 2016 WL 756537, at * 4-5.

Based upon the foregoing, I find that "an objective and disinterested observer, knowing and understanding all of the facts and circumstances, could [not] reasonably question [my] impartiality" in this case. Razmilovic, 738 F.3d at 29.

8 WHEREFORE, it is hereby ORDERED that Plaintiff's motion for recusal pursuant to 28 U.S.C. § 455(a) (Dkt. No. 111) is DENIED; and it is further

ORDERED that the Clerk provide Plaintiff with a copy of this Decision and Order, along with copies of the unpublished decisions cited herein in accordance with the Second Circuit decision in Lebron v. Sanders, 557 F.3d 76 (2d Cir. 2009) (per curiam).

IT IS SO ORDERED. Dated: January 19, 2017

Syracuse, NY

9 Footnotes 1

The Court construes the Report-Recommendation's recommendation of a dismissal of certain claims without prejudice to refiling in this Court to mean a conditional dismissal of those claims with prejudice, i.e., a dismissal of those claims with prejudice if the defects identified in them are not corrected in an Amended Claims filed in this Court during the pendency of this action. The Court so construes the Report-Recommendation because the dismissal of the Complaint in its entirety before

the filing of an Amended Complaint would deprive the Court of jurisdiction to consider the Amended Complaint; similarly, the dismissal of any portion of the Complaint without prejudice to refiling in another action in this Court would unnecessarily duplicate this action. 2

The Court has combined Plaintiff's third and eighth challenges, which it finds are largely redundant of each other. 3

See also Mario v. P&C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002) ("Although Mario filed objections to the magistrate's report and recommendation, the statement with respect to his Title VII claim was not specific enough to preserve this claim for review. The only reference made to the Title VII claim was one sentence on the last page of his objections, where he stated that it was error to deny his motion on the Title VII claim '[f]or the reasons set forth in Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgment.' This bare statement, devoid of any reference to specific findings or recommendations to which he objected and why, and unsupported by legal authority, was not sufficient to preserve the Title VII claim."). 4

See Paddington Partners v. Bouchard, 34 F.3d 1132, 1137-38 (2d Cir. 1994) ("In objecting to a magistrate's report before the district court, a party has no right to present further testimony when it offers no justification for not offering the testimony at the hearing before the magistrate.") [internal quotation marks and citations omitted]; Pan Am. World Airways, Inc. v. Int'l Bhd. of Teamsters, 894 F.2d 36, 40, n.3 (2d Cir. 1990) (finding that district court did not abuse its discretion in denying plaintiff's request to present additional testimony where plaintiff "offered no justification for not offering the testimony at the hearing before the magistrate"); cf. U. S. v. Raddatz, 447 U.S. 667, 676, n.3 (1980) ("We conclude that to construe § 636(b)(1) to require the district court to conduct a second hearing whenever either party objected to the magistrate's

credibility findings would largely frustrate the plain objective of Congress to alleviate the increasing congestion of litigation

in the district courts."); Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition ("The term 'de novo' does not indicate that a secondary evidentiary hearing is required."). 5

See Mario, 313 F.3d at 766 ("Merely referring the court to previously filed papers or arguments does not constitute an adequate objection under either Fed. R. Civ. P. 72(b) or Local Civil Rule 72.3(a)(3)."); Camardo v. Gen. Motors Hourly- Rate Emp. Pension Plan, 806 F. Supp. 380, 382 (W.D.N.Y. 1992) (explaining that court need not consider objections that merely constitute a "rehashing" of the same arguments and positions taken in original papers submitted to the magistrate judge); accord, Praileau v. Cnty. of Schenectady, 09-CV-0924, 2010 WL 3761902, at *1, n.1 (N.D.N.Y. Sept. 20, 2010) (McAvoy, J.); Hickman ex rel. M.A.H. v. Astrue, 07-CV-1077, 2010 WL 2985968, at *3 & n.3 (N.D.N.Y. July 27, 2010) (Mordue, C.J.); Almonte v. N.Y.S. Div. of Parole, 04-CV-0484, 2006 WL 149049, at *4 (N.D.N.Y. Jan. 18, 2006) (Sharpe, J.). 6

See also Batista v. Walker, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks and citations omitted). 7

The Court notes that such an offense would also appear to implicate his "ghostwriting" attorney, given the existence of Fla. Bar Op. 79-7 (2000) ("[P]leadings or other papers prepared by an attorney and filed with the court on behalf of a pro se litigant must indicate 'Prepared with Assistance of Counsel.' +"). End of Document © 2017 Thomson Reuters. No claim to original U.S. Government Works.

Footnotes 1

Defendants include Ellen L. Coccoma, Michael V. Coccoma, Robert Mulvey, A. Gail Prudenti, Kevin Dowd, Eugene Peckham, Karen Peters, Thomas Mercure, and Kelly Sanfilippo (collectively, "Judicial Defendants"); Hinman, Howard & Kattell, LLP; and Levene, Gouldin and Thompson, LLP and Margaret Fowler (collectively, "LGT Defendants"). 2

See U.S. Const. art. I, § 9, cl. 8. 3

The facts are drawn from Neroni's complaint, and presented in the light most favorable to him. 4

See Neroni v. Zayas, No. 3:13–CV–0127, 2014 WL 1311560 (N.D . N.Y. Mar. 31, 2014) ; Neroni v. Grannis, No. 3:11– CV–1485, 2013 WL 1183075 (N.D.N.Y. Mar. 21, 2013) ; Bracci v. Becker, No. 1:11–cv–1473, 2013 WL 123810 (N.D.N.Y. Jan. 9, 2013); Neroni v. Becker, No. 3:12–cv1226, 2012 WL 6681204 (N.D.N.Y. Dec. 21, 2012) , aff'd in part, vacated in part by 2014 WL 657927 (2d Cir. Feb. 21, 2014). 5

See In re Neroni, 86 A.D.3d 710 (3d Dep't 2011). 6

Neroni contends that Ellen and Judge Coccoma "have [a] common budget," thus rendering sanctions imposed against Ellen Coccoma adverse to both Ellen and Judge Coccoma's interests. (Compl. ¶ 19 .) 7

Although far from clear, it appears that Neroni allges that his Fourth Amendment rights were violated because Justice Dowd lacked jurisdiction to issue the order compelling Neroni's deposition testimony because, after the death of a party, William Kilmer, Justice Dowd failed to "properly restor[e] jurisdiction." (Compl.¶¶ 18, 67, 68, 86, 92, 98, 100–105.) 8

Other favors Justice Dowd allegedly provided to Ellen Coccoma include denying requests for sanctions against her and allowing her to have depositions in public buildings for private clients "at taxpayers, and [Neroni's], expense." (Compl.¶¶ 40, 93, 110, 113, 136.) 9

While Neroni captions Justice Peters' official position as “Chief Judge,” (Compl.), she is, in fact, Presiding Justice. The court will use her correct title. 10

Again, Neroni captions Justice Mercure's official position as “former acting Chief Judge,” (Compl.), when, in fact, he was the former acting Presiding Justice. The court will use his correct title. 11

Neroni is a graduate of Albany Law School and was admitted to the New York State Bar in 1974. See Zayas, 2014 WL 1311560, at *1. He was disbarred on July 7, 2011. See id.; In re Neroni, 86 A.D.3d at 711. 12

Reasserting previously-made arguments, Neroni also claims that recusal is mandated “as a matter of due process of law.” (Dkt. No. 40, Attach. 1 at 7–9.) “Consistent with a defendant's due process right to a fair trial, a district judge must recuse himself ‘in any proceeding in which his impartiality might reasonably be questioned.’ “ United States v. Basciano, 384 F. App'x 28, 32 (2d Cir.2010) (quoting 28 U.S.C. § 455(a)). Because this inquiry is identical to that considered under § 455(a), (id.), the court need not separately address Neroni's due process argument. 13

Judicial immunity shields judges from suit to the extent that they are sued in their individual capacities. See Martinez v. Queens Cnty. Dist. Attorney, No. 12–CV–06262, 2014 WL 1011054, at *8 n.8 (E.D.N.Y. Mar. 17, 2014) ; McKnight v. Middleton, 699 F.Supp.2d 507, 521–25 (E.D.N.Y.2010) , aff'd, 434 F. App'x 32 (2d Cir.2011). As further discussed below, the Eleventh Amendment, on the other hand, shields judges from suit to the extent that they are sued in their official capacities. Martinez, 2014 WL 1011054, at *8 n.8. 14

Neroni also attacks Justice Dowd's mental capacity and claims that he has “mental health problems that appear to make him unfit to make decisions from the bench which are changing lives and affecting constitutional rights of individuals.” (Compl.¶¶ 121–30.) 15

In his opposition, Neroni contends that judicial immunity should not apply to Justice Dowd because Neroni has “alleged enough to be entitled to prospective injunctive relief under Ex Parte Young.” (Dkt. No. 47, Attach. 2 at 4.) Neroni confuses judicial immunity with Eleventh Amendment immunity, which is addressed below. As discussed above, while judicial immunity does not bar injunctive relief if a declaratory decree was violated or declaratory relief was unavailable, Neroni has not alleged that Justice Dowd violated a declaratory decree or that declaratory relief was unavailable. See Montero, 171 F.3d at 761.

16

Neroni contends that the Eleventh Amendment does not bar claims of citizens against their own states. (Dkt. No. 47, Attach. 2 at 8, 15.) This same, baseless argument, offered by Neroni himself, was recently considered and rejected by a court in this District. Bracci, 2013 WL 123810, at *9 n.5.

Accordingly, the court declines to entertain this obviously meritless argument again here. 17

For the first time, in his opposition to Judicial Defendants' motion to dismiss, Neroni claims that he seeks prospective injunctive relief against Sanfilippo. (Dkt. No. 47, Attach. 2 at 7–8.) Even if he properly stated so in his complaint, Neroni would be unable to circumvent Eleventh Amendment immunity because, as discussed infra Part IV.D.2, he has failed to allege an ongoing violation of federal law. 18

The court notes, however, that even if Neroni did state a claim, Neroni's requested relief does not fit within the Ex Parte Young exception. "Whether a litigant's claim falls under the Ex parte Young exception to the Eleventh Amendment's bar against suing a state is a straightforward inquiry that asks whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." In re Dairy Mart Convenience Stores, Inc., 411 F.3d 367, 372 (2d Cir.2005) (internal quotation marks and citations omitted). Here, while the relief Neroni requests is prospective in nature, he has failed to allege that this relief will remedy an ongoing violation of federal law. Clark, 510 F. App'x at 51; McKeown, 377 F. App'x at 123. The sole bases for Neroni's requested relief are that Justice Dowd violated Neroni's Fourth Amendment rights by ordering him to provide deposition testimony in Kilmer, and that Justice Peters and Judge Prudenti violated his Fourth Amendment rights by failing to publicly disclose the list of judicial hearing officers, thus allowing LGT to continue to represent private parties in Kilmer while Justice Peckham was a judicial hearing officer. (Compl.¶¶ 56–61, 98.) Because Neroni has alleged only discrete, past acts or omissions, not an ongoing violation of federal law, Justice Peters, Justice Dowd, and Judge Prudenti are also entitled to Eleventh Amendment sovereign immunity and dismissal of any claims asserted against them in their official capacities. 19

Notably, while Neroni argues against the imposition of sanctions, (Dkt. No. 40, Attach. 2 at 15–16; Dkt. No. 40, Attach. 3 at 9–10), no Rule 11 motion is presently before the court. 20

As an initial matter, it is unclear that Neroni has standing to object to the representation of Ellen Coccoma and Justice Peckham by the Attorney General, as he "has failed to demonstrate that he has been aggrieved in any way different in kind and degree from the community generally by the Attorney General's representation" of these defendants. Zaccaro v. Parker, 169 Misc.2d 266, 269 (N.Y.Sup.Ct.1996). End of Document © 2017 Thomson Reuters. No claim to original U.S. Government Works.