UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN ALAN SAKON *Plaintiff*	:	NO. 3:22-cv-00897 (AWT)
v.	:	
STATE OF CONNECTICUT, TAMMY NGUYEN-O'DOWD *Defendants*	:	JANUARY 9, 2023

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

At its core, Plaintiff John Alan Sakon's Amended Complaint against Defendants, State of Connecticut and Judge Tammy Nguyen-O'Dowd, seeks for this Court to review, and reject, the judgment of the Connecticut Superior Court in a child custody determination pursuant to the Americans with Disabilities Act ("ADA") and 42 U.S.C. § 1983. Defendants hereby request that this Court enter an order, pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing this suit in its entirety, with prejudice because: (1) the *Rooker-Feldman* doctrine bars all the relief Plaintiff seeks; (2) Plaintiff's claims against the State of Connecticut and Judge Nguyen-O'Dowd in her official capacity are barred by the Eleventh Amendment; (3) the family relations abstention doctrine bars the injunctive relief sought; (4) any individual capacity claims against Judge Nguyen-O'Dowd are barred by judicial immunity and statute; and (5) Plaintiff has failed to state claims for which relief may be granted under either the ADA or § 1983.

ORAL ARGUMENT NOT REQUESTED

WHEREFORE, Defendants respectfully request that this Court enter an order dismissing Plaintiff's Amended Complaint in its entirety with prejudice.

DEFENDANTS,

STATE OF CONNECTICUT

TAMMY NGUYEN-O'DOWD

WILLIAM TONG
ATTORNEY GENERAL

BY: */s/ Alma Rose Nunley*

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CERTIFICATION

I hereby certify that on January 9, 2023, a copy of the foregoing was electronically filed. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ *Alma Rose Nunley*
Alma Rose Nunley
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN ALAN SAKON *Plaintiff*	:	NO. 3:22-cv-00897 (AWT)
v.	:	
STATE OF CONNECTICUT, TAMMY NGUYEN-O'DOWD *Defendants*	:	JANUARY 9, 2023

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

At its core, Plaintiff John Alan Sakon's Amended Complaint against Defendants, State of Connecticut and Judge Tammy Nguyen-O'Dowd, seeks for this Court to review, and reject, the judgment of the Connecticut Superior Court in a child custody determination pursuant to the Americans with Disabilities Act ("ADA") and 42 U.S.C. § 1983. The *Rooker-Feldman* doctrine bars this Court from doing so. That should be dispositive of this case. Should the Court disagree, however, Plaintiff's claims are further barred by the Eleventh Amendment, the family relations abstention doctrine, and judicial immunity. Finally, even if Plaintiff's claims survive these jurisdictional hurdles, which they should not, he has failed to state claims for which relief may be granted under either the ADA or § 1983. Therefore, this Court should dismiss his Amended Complaint in its entirety.

PROCEDURAL AND FACTUAL HISTORY

I. Procedural History

This Amended Complaint arises from the same underlying Connecticut

Superior Court case and alleges many of the same facts as a prior action brought by Plaintiff against Judge Nguyen-O'Dowd in April 2022. *See Sakon v. Nguyen-Odowd*, No. 3:22-cv-528(AWT) ("*Sakon I*"). In *Sakon I*, Plaintiff asserted claims pursuant to 42 U.S.C. § 1983 and the ADA against Judge Nguyen-O'Dowd related to an order she entered on March 15, 2022 ("March 15, 2022 Order") in a Superior Court case regarding child custody. *Id.*, Compl. (ECF 1). Upon referral to a magistrate judge for screening pursuant to 28 U.S.C. § 1915, on July 5, 2022, the magistrate judge issued a recommended ruling that the case be dismissed without prejudice based on judicial immunity, sovereign immunity, and failure to state a claim for which relief may be granted. *Id.*, Recommended Ruling (ECF 9). Prior to the District Court acting upon the recommended ruling, on July 15, 2022, Plaintiff withdrew his complaint.

On the same day he withdrew *Sakon I*, July 15, 2022, Plaintiff filed the present case against the State of Connecticut alleging violations of Title II and Title V of the ADA for the March 15, 2022 Order. Compl. (ECF 1). In the July 15, 2022 Complaint, Plaintiff did not name Judge Nguyen-O'Dowd as a defendant and did not assert a § 1983 claim. The Court referred the complaint to a magistrate judge for review pursuant to § 1915. On October 27, 2022, prior to the issuance of a recommended ruling, Plaintiff paid the filing fee, a summons was issued, and Plaintiff served process on the State of Connecticut. *See* Summons (ECF No. 10), Order (ECF No. 11).

On November 7, 2022, the magistrate judge issued a recommended ruling that the complaint be dismissed with prejudice pursuant to the *Rooker-Feldman* doctrine and failure to state a claim. Recommended Ruling (ECF No. 13). Plaintiff moved to

strike the recommended ruling because he had paid the filing fee. Motion to Strike (ECF No. 19). The Court conducted an on-the-record status conference on December 2, 2022. The Court accepted, in part, the recommended ruling, permitting Plaintiff to file an amended complaint, and denied the motion to strike. Order (ECF No. 28). On December 9, 2022, Plaintiff filed his Amended Complaint against the State of Connecticut, adding Judge Nguyen-O'Dowd as a second defendant and adding a § 1983 claim.[1] Am. Compl. (ECF No. 30).

II. Factual Background

On September 14, 2016, Plaintiff's then-wife initiated a dissolution action against Plaintiff. *Sakon v. Sakon*, HHD-FA-16-6071228-S (Conn. Super. Ct.).[2] The docket in that case reflects that from its beginning the parties were engaged in a dispute over the custody of their child. *Id.* On April 3, 2018, the parties entered into an agreement to dissolve their marriage, but bifurcated determination of the custody of their child. *Sakon v. Sakon*, Agreement (Dkt. No. 214).

After numerous delays, the custody hearing began on May 24, 2021. *Sakon v. Sakon*, Memorandum of Decision On Motion[3] ("Custody Judgment") (Dkt. No.

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[1] Plaintiff has not sought an amended summons and has not attempted to serve Judge Nguyen-O'Dowd with a summons or the Amended Complaint.

[2] Judicial docket available at: https://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=HHDFA166071228S. This Court may take judicial notice of the Connecticut Appellate and Superior Court cases referenced and their dockets. *See Mangiafico v. Blumenthal*, 471 F.3d 391, 398 (2d Cir. 2006).

[3] A copy of the Custody Judgment was submitted in this case under seal by the magistrate judge and is available to the court at ECF No. 14. In the interest of the privacy concerns identified by the magistrate judge, and the fact that the Court already has access to the document on the docket, Defendants have not included a copy of the Custody Judgment with this memorandum.

884.50), p.10. The hearing proceeded on May 25, 26, and 27, 2021. *Id.* The hearing further proceeded on June 2 and 3, November 29 and 30, and December 1 and 2, 2021. *Id.* The hearing was scheduled to proceed, but did not do so, on December 3, 2021. *Id.* The hearing proceeded on December 6, 7, and 8, 2021.

On December 8, 2021, the court (*Diana, J.*) initially denied Plaintiff's oral motion for a continuance without prejudice unless he could provide medical documentation as to his health status. *Sakon v. Sakon*, Order (Dkt. No. 760). The same day, after receiving documentation, the court (*Diana, J.*) granted Plaintiff's oral motion for continuance and further ordered that the court "shall make accommodations as follows: the remaining days of trial shall continue in half day morning sessions." Order (Dkt. No. 764), Ex. A to Plaintiff's Am. Compl.

The hearing proceeded in half-day morning sessions on December 9, 10, 20, 21 and 22, 2021 and January 3, 4, 5, and 6, 2022 and February 9, 2022. Custody Judgment p.11. Thereafter, the court scheduled the hearing to proceed on "alternating full days" on February 14, 16, and 18, 2022 and March 9 and 15, 2022.

On February 18, 2022, the court denied Plaintiff's oral request for continuance without prejudice to provide medical documentation. *Id.* Plaintiff left the court and did not return. *Id.*

On March 9, 2022, the hearing proceeded in the morning, but Plaintiff informed the court that he would not return in the afternoon unless Judge Diana modified the December 8, 2021 Order. *Id.* The court notified Plaintiff that the hearing would resume unless he filed a motion for continuance and the motion was

granted; Plaintiff neither returned for the afternoon session nor filed a motion. *Id.*

On March 15, 2022, Plaintiff again failed to return for the afternoon session or file a motion for continuance. *Id.* On that same date, the court (*Nguyen-O'Dowd, J.*) entered the March 15, 2022 Order stating that Plaintiff "did not return for trial after the lunch recess at 2pm." *Sakon v. Sakon*, Order (Dkt. No. 854), Ex. B. to Am. Compl. As a result, the court ordered that Plaintiff's "case is concluded. He has failed to present his testimony and evidence as set forth in the court's scheduling order." *Id.* In addition, the court ordered that all of Plaintiff's pending motions for contempt and his pending motions to disqualify were denied with prejudice "for failure to prosecute." *Id.* The parties were ordered to file proposed findings of fact to the court by April 14, 2022. *Id.*

On July 15, 2022, the court (*Nguyen-O'Dowd, J.*), issued the Custody Judgment. Custody Judgment. In the Custody Judgement, the court made lengthy factual findings regarding Plaintiff, his child, and the child's mother as it related to the best interest of the child. *Id.*, pp.18-44. Based upon those findings, the court awarded the mother with sole legal and physical custody of the child. *Id.* p.47. The court awarded Plaintiff with parenting access consisting of supervised visitation provided he engage with a clinician for treatment for a diagnosed condition. *Id.* p.48.

On August 4, 2022, Plaintiff appealed the custody judgment. *F.S. v. J.S.*, AC 45698 (Conn. App.).[4] That appeal remains pending.

[4] Available at http://appellateinquiry.jud.ct.gov/CaseDetail.aspx?CRN=77472&Type=PartyName.

III. Plaintiff's Allegations

In his Amended Complaint, Plaintiff asserts that the State of Connecticut and Judge Nguyen-O'Dowd violated Title II and V of the ADA and 42 U.S.C. § 1983. Am. Compl. p.1.[5] In support of his claims, Plaintiff alleges the following facts.

"Plaintiff John Alan Sakon is a qualified individual, under the ADA, engaged in state provided public service litigation of dissolution of marriage in the Connecticut Superior Court." Am. Compl. p.2. On December 8, 2021, "the Superior Court . . . issued an accommodation order *limiting the remaining days of trial to half-day morning sessions*." *Id.* (emphasis in original). "After plaintiff exercised his accommodation, on March 15, 2022, defendant Nguyen-O'Dowd retaliated against plaintiff for exercising his accommodation, by dismissing his pending motions with prejudice, terminating trial, and proceeding to judgment." *Id.* Judge Nguyen-O'Dowd "further retaliated against plaintiff wherein her decree cites plaintiff's alleged mental defect as a cause to sever the father's custody of the child and to deny father-son visitations, pending treatment to remedy the disability and supervised visitation while acknowledging the plaintiff lacked the financial means to effect this end." *Id.* p.3.

According to Plaintiff, the March 15, 2022 Order violated 28 CFR § 35.134, a regulation promulgated pursuant to Title II of the ADA. *Id.* p.3. He further alleges that by "cit[ing] a mental defect/personality disorder to deny father-son contact" in

[5] Plaintiff does not divide his Amended Complaint into separate counts or utilize separate numbered paragraphs for all allegations. *See* Am. Compl. Therefore, reference to the Amended Complaint will be to page number.

the Custody Judgment Judge Nguyen-O'Dowd violated 28 CFR § 35.130, another regulation promulgated pursuant to Title II of the ADA. *Id.* p.5. Plaintiff alleges that both the March 15, 2022 Order and Custody Judgment constituted "[r]etaliation proscribed under the ADA implementing regulation 28 CFR §34.134(b)."[6] *Id.* p.4. Plaintiff also alleges that Defendants further violated 28 CFR § 35.107, a regulation pursuant to Title II of the ADA, by "failing remedy thru administrative means . . . complaint rejected by Melanie Buckley, agent of Chief Court Administrator, Patrick Carroll." *Id.*

Although it is not entirely clear whether Plaintiff is alleging a § 1983 claim separately from his ADA claims, read broadly he appears to allege that Defendants violated his due process rights by (1) "refusing to hear and denying more than 70 contempt motions which were pending for more than three years for plaintiff's loss of court ordered visitation of his child," *id.* p.3, and (2) "severing parent-child relationship being a constitutionally protected right under the due process clause of the Fourteenth Amendment and its Fifth Amendment counterpart," *id.*, and "antithetical to the values set forth in the First Amendment," *id.* p.4.

Plaintiff seeks compensatory and punitive damages, costs, and fees. *Id.* p.6. He further seeks that this Court "enjoin defendants from unlawful discrimination complained herein," *id.*, "[p]rovide injunctive relief against decree that violated ADA, fails due process, discriminates against plaintiff and his son," *id.*, and "to invoke

[6] Defendants believe that Plaintiff intended to cite 28 CFR § 35.134(b), which is a regulation promulgated pursuant to Title V of the ADA.

enforcement authority for the Fourteenth Amendment upon the State, appoint overseer to audit defendant's compliance to the ADA," *id*.

ARGUMENT

I. The Standard for a Motion to Dismiss

"[S]ubject matter jurisdiction functions as a restriction on federal power. . . . Federal courts may not proceed at all in any cause without it." *Vera v. Republic of Cuba*, 867 F.3d 310, 315-16 (2d Cir. 2017) (citation and quotation marks omitted). "Dismissal for lack of subject matter jurisdiction is proper when the district court lacks the statutory or constitutional power to adjudicate a case." *Sokolowski v. Metro. Transit Auth.*, 723 F.3d 187, 190 (2d Cir. 2013) (quotation marks omitted). The "plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." *Luckett v. Bure*, 290 F.3d 493, 497 (2d Cir. 2002). "In deciding a Rule 12(b)(1) motion, the court may . . . rely on evidence outside the complaint." *Cortland St. Recovery Corp. v. Hellas Telecomm., S.A.R.L.*, 790 F.3d 411, 417 (2d Cir. 2015). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006) (quotation marks omitted).

In determining whether the allegations are sufficient to state a claim, or warrant dismissal pursuant to Rule 12(b)(6), the court may generally consider only "the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the

complaint by reference." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007). Although allegations must be construed in the light most favorable to the plaintiff, *Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67, 71 (2d Cir. 1998), mere speculation is not sufficient to state a claim. *Bell Atl. Corp. v. Twombley*, 550 U.S. 544, 555 (2007). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. Importantly, "the tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* A "legal conclusion couched as a factual allegation" is likewise insufficient. *Id.*

II. The *Rooker-Feldman* Doctrine Bars Plaintiff's Claims Because They Rest on State Court Judgments.

Plaintiff asks this Court to award relief based on an order entered during an ongoing custody hearing in Plaintiff's state court dissolution of marriage action and the subsequent custody judgment in that case. Plaintiff's claims are barred by the *Rooker-Feldman* doctrine.

"The *Rooker-Feldman* doctrine['s] jurisdictional[] bar[] . . . generally prevents plaintiffs who have lost in state court from sidestepping the prescribed process for seeking appellate review by state and appellate courts . . . and instead effectively seeking 'review' of a state court decision by a federal district court." *Skipp v. Conn.*

Judicial Branch, No. 3:14-cv-00141(JAM), 2015 U.S. Dist. LEXIS 38102, *13-*14 (D. Conn. Mar. 26, 2015) (*Meyer, J.*), appeal dismissed, No. 15-1124 (2d Cir. 2015). The doctrine applies both to claims for injunctive relief invalidating a state court judgment and also to damages claims against the State where "in order to adjudicate a claim that the state court violated [plaintiff's] rights, [the court] would need to 'review[] the propriety of the state court judgment.'" *Guy v. Moynihan*, No. 3:17-cv-00014 (SRU), 2017 U.S. Dist. LEXIS 94290, *8-*9 (D. Conn. June 20, 2017) (*Underhill, J.*) (quoting *Worthy-Pugh v. Deutsche Bank Nat'l Tr. Co.*, 664 F. App'x 20, 21 (2d Cir. 2016) (Summary Order)); *see also Voltaire v. Westchester Cty. Dep't of Soc. Servs.*, No. 11-CV-8876(CS), 2016 U.S. Dist. LEXIS 116409, *32 (S.D.N.Y. Aug. 29, 2016) ("Nor can Plaintiff circumvent *Rooker-Feldman* by now arguing she seeks only monetary damages . . . rather than review of the state court's determination.").

"The *Rooker-Feldman* doctrine provides that the lower federal courts lack subject matter jurisdiction over a case if the exercise of jurisdiction . . . would result in reversal or modification of a state court judgment." *Hachamovitch v. DeBueno*, 159 F.3d 687, 693 (2d Cir. 1998). "*Rooker-Feldman* applies not only to decisions of the highest state courts, but also to decisions of lower state courts." *Daigneualt v. State of Conn. Judicial Branch*, No. 3-07-cv-122 (JCH), 2007 U.S. Dist. LEXIS 19474, *7 (D. Conn. Mar. 19, 2007) (*Hall, J.*) (quoting *Ashton v. Cafero*, 920 F. Supp. 35, 37 (D. Conn. 1996)) (quotation marks omitted).

"Under the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction over cases that essentially amount to appeals of state court judgments." *Vossbrinck*

v. Accredited Home Lenders, Inc., 773 F.3d 423, 426 (2d Cir. 2014) (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84 (2005)). The doctrine is grounded in the principle that only the Supreme Court has appellate jurisdiction to reverse or modify a state court judgment. *Id.* "[E]ven if the state court judgment was wrongfully procured, it is effective and conclusive until it is modified or reversed in the appropriate State appellate or collateral proceeding." *Wysocki v. First Niagra Fin. Grp., Inc.*, No. 3:15-CV-515(AWT), 2016 WL 2946163, at *4 (D. Conn. Mar. 21, 2016) (*Thompson, J.*) (quoting *Gonzalez v. Ocwen Home Loan Serv.*, 74 F. Supp. 3d 504, 517 (D. Conn. 2016) (*Haight, J.*)).

The *Rooker-Feldman* doctrine bars claims that "challenge the state court's alleged failure to grant plaintiff a reasonable accommodation for h[is] disability in connection with [his] participation in state court proceedings." *Skipp*, 2015 U.S. Dist. LEXIS 38102, at *18. That is because resolution of such claims would "require [this Court] to sit in judgment of determinations made by state courts respecting accommodations that were made for plaintiff's disability." *Id.* (holding that *Rooker-Feldman* barred such claims); *see also Richter v. Conn. Judicial Branch*, 600 F. App'x 894, 805 (2d Cir. 2015) (Summary Order) (*Rooker-Feldman* barred adjudication of claim that the Connecticut Judicial Branch "failed to provide [plaintiff] with reasonable accommodations for her stress and anxiety" in violation of the ADA), *Grimes v. Florida*, No. 6:14-cv-244-Orl-28KRS, 2014 U.S. Dist. LEXIS 44469 (M.D. Fla. Mar. 12, 2014) (*Rooker-Feldman* barred plaintiff's claim that she was denied disability accommodations to participate in state court proceedings), *Dale v. Moore*,

121 F.3d 624, 628 (11th Cir. 1997) (Per Curium) (noting that "the ADA does not provide an independent source of federal court jurisdiction that overrides the application of the *Rooker-Feldman* doctrine" and that "the ADA does not authorize federal appellate review of final state court decisions."). Even outside the context of the ADA, "because the Second Circuit prohibits district courts from entertaining actions if they are 'inextricably intertwined' with a challenge to the merits of an unreviewable state court determination, a plaintiff cannot evade *Rooker-Feldman* by casting his claim in the guise of a federal civil rights violation." *Skipp*, 2015 U.S. Dist. LEXIS 38102, at *15-*16 (quoting *Kashelkar v. MacCartney*, 79 F. Supp. 2d 370, 372-73 (S.D.N.Y. 1999), aff'd, 234 F.3d 1262 (2d Cir. 2000)) (collecting cases) (quotation marks omitted).

The *Rooker-Feldman* doctrine bars a claim when four criteria are satisfied: "(1) the federal-court plaintiff lost in state court; (2) the plaintiff complain[s] of injuries caused by a state court judgment; (3) the plaintiff invite[s] . . . review and rejection of that judgment; and (4) the state judgment was rendered before the district court proceedings commenced." *Vossbrinck*, 773 F.3d at 426 (citing *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005)) (quotation marks omitted). All four criteria are clearly met in this case.

First, Plaintiff lost in Connecticut Superior Court. The Superior Court entered a custody judgment, after a lengthy custody hearing in Plaintiff's dissolution case, thereby resolving the remaining issues in the case. In the custody judgment the Superior Court granted sole legal and physical custody to the mother, which was

contrary to the custody arrangement sought by Plaintiff. Indeed, Plaintiff has sought Connecticut Appellate Court review of the custody judgment. *F.S. v. J.S.*, AC 45698 (Conn. App.).

Second, Plaintiff complains that the Superior Court's March 15, 2022 Order and the subsequent Custody Judgment on July 15, 2022 injured him. According to Plaintiff, the March 15, 2022 Order "violat[ed] plaintiff's due process rights by terminating trial and denying the plaintiff's ability to submit contrary evidence as to the alleged mental defect." Am. Compl. p.3. It further injured him by denying his "protections under the law by refusing to hear and denying the more than 70 contempt motions which were pending for more than three years for plaintiff's loss of court ordered visitations of his child." *Id.* The Custody Judgment injured Plaintiff by "failing to provide the required 'active and consistent' involvement of divorced parents in their children's lives" and "severing parent-child relationship being a constitutionally protected right under the due process clause." *Id.*

Third, in order for this Court to conclude that Defendants failed to accommodate Plaintiff's alleged disability it would need to find void the Superior Court's March 15, 2022 Order. Further, to find that Defendants discriminated against Plaintiff due to his disability or retaliated against him for his requested accommodation, this Court would need to find void the Custody Judgement in which the Superior Court made factual findings related to Plaintiff, his child, and the child's mother, and, as a result, granted sole legal and physical custody to the mother with supervised visitation for Plaintiff if certain conditions were satisfied.

Fourth, judgment in Plaintiff's custody case entered on July 15, 2022. Although Plaintiff filed this case on the same day, he has alleged no facts that would establish that he filed this case prior to the Superior Court's issuance of the Custody Judgment. Indeed, the time stamp on Plaintiff's complaint from the District Court indicates that it was received at 4:11 p.m., less than an hour before the end of the day for the Superior Court. *See* Compl. p.1 (ECF 1). Plaintiff was made aware of the significance of the timing of the Custody Judgement and the filing of his Complaint as they relate to *Rooker-Feldman* in the Recommended Ruling and was given an opportunity to amend his Complaint. Recommended Ruling. Plaintiff failed to plead facts that would resolve this issue in his favor in the Amended Complaint. He should not be given another opportunity to do so. Therefore, Plaintiff's challenges to the March 15, 2022 Order and the Custody Judgment are barred by the *Rooker-Feldman* doctrine and should be dismissed with prejudice.

III. The Eleventh Amendment Bars any Claims Against the State of Connecticut and any Official Capacity Claims Against Judge Nguyen-O'Dowd.

Even if Plaintiff's claims are not barred in their entirety by the *Rooker-Feldman* doctrine, any claims against the State of Connecticut and any official capacity claims against Judge Nguyen-O'Dowd are nonetheless barred by the Eleventh Amendment. The Eleventh Amendment bars any claim against the state "regardless of whether it seeks damages or injunctive relief." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984).[7] In order for a state to be subject to

[7] Defendants believes that a Rule 12(b)(1) motion is the correct vehicle to raise the Eleventh Amendment. *See, e.g.*, *Perez v. Conn. Dep't of Corr. Parole Div.*, 2013 U.S.

suit in federal court, the state must expressly and unambiguously waive its sovereign immunity, or Congress must clearly and unmistakably express its intention to abrogate the state's sovereign immunity pursuant to the Fourteenth Amendment. *Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 304-305 (1990).

To the extent that Plaintiff relies on 42 U.S.C. § 1983 as the jurisdictional basis for seeking money damages or injunctive relief against the State of Connecticut or Judge Nguyen-O'Dowd in her official capacity, his claims are barred by sovereign immunity. It is clear that in enacting § 1983, which permits a claim against a "person" acting under color of state law, Congress did not exercise its authority under the Fourteenth Amendment to abrogate states' sovereign immunity. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 64-66 (1989). Plaintiff seeks compensatory and punitive damages. Am. Compl. p.6. Such money damages are clearly barred by the Eleventh Amendment.

Although an exception exists for § 1983 claims seeking prospective injunctive relief to prevent an ongoing constitutional violation, *Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144, 166 (2d Cir. 2013) (quotation marks omitted), Plaintiff has failed to allege facts that support a conclusion that Defendant is committing an ongoing violation of Plaintiff's constitutional rights. Plaintiff alleges that his due

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Dist. LEXIS 125885, at *2 (D. Conn. Sept. 4, 2013) (*Hall, J.*). However, some courts have concluded that "[t]here remains some uncertainty in the Second Circuit as to whether an Eleventh Amendment defense should be raised under Rule 12(b)(1) or Rule 12(b)(6)." *Ighile v. Kingsboro ATC*, 2018 U.S. Dist. LEXIS 69946, *4 n.7 (E.D.N.Y. Apr. 25, 2018) (quotation marks omitted). The distinction should not impact the outcome of this motion. *See Bonilla v. Semple*, 2016 WL 4582038, *2 (D. Conn. Sept. 1, 2016) (*Bolden, J.*).

process rights were violated when the Superior Court entered the March 15, 2022 Order that prevented him from presenting further evidence and denied his pending contempt motions and when it entered the Custody Judgment granting sole legal and physical custody to the child's mother and only limited visitation to Plaintiff if certain conditions were met.

Plaintiff seeks injunctive relief "against decree that violated ADA, fails due process, discriminates against plaintiff and his son." Am. Compl. p.6. Such relief is retrospective in nature and does not satisfy the exception to the Eleventh Amendment for prospective injunctive relief. Arguably, Plaintiff's additional request to "[e]njoin defendants from unlawful discrimination complained herein," *id.*, seeks prospective relief. Nonetheless, he has not alleged an ongoing constitutional violation because his claimed injuries all arise from an order entered during the custody hearing and the Custody Judgment. Although the Custody Judgment impacts Plaintiff's custody and visitation of his son in the future, any possible constitutional violation occurred as part of the judgment itself and, therefore, was in the past. Therefore, the Eleventh Amendment bars Plaintiff's § 1983 claims against the State of Connecticut or Judge Nguyen-O'Dowd in her official capacity.

Although, the Supreme Court has held that the ADA abrogates states' Eleventh Amendment immunity for the limited purpose of ensuring that Fourteenth Amendment due process rights of access to the courts are protected, *Tennessee v. Lane*, 541 U.S. 509 (2004), Plaintiff fails to allege a plausible violation of the Fourteenth Amendment. In *United States v. Georgia*, 546 U.S. 151 (2006), the Court

explained that the inquiry should be factual and that not all ADA cases against the state should be permitted to proceed in federal court simply because the plaintiff alleges a violation of Fourteenth Amendment rights. Instead, courts must determine,

> On a claim-by-claim basis, (1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid.

United States v. Georgia, 541 U.S. at 159. Under this formulation, Plaintiff's ADA claims cannot survive this motion to dismiss because, as discussed in detail in Section VI of this memorandum, he has not alleged facts that would state a claim for violation of the ADA. Even if he had, he has not alleged facts that state a claim for violation of the Fourteenth Amendment due process clause or come close to the "class of conduct" that Congress could have sought to prohibit as a prophylactic under its clause 5 enforcement powers, assuming *arguendo* that the more generous standard applies and Congress's abrogation powers under Title II were not limited to remedying due process violations.

The state court record in this case demonstrates that Plaintiff was accorded ample due process and ably represented himself. As noted by the magistrate judge in his recommended ruling, and reflected on the state court docket, Plaintiff has made prolific use of his opportunity to litigate his custody case, resulting in more than 1,057 entries on the docket between the April 3, 2018 dissolution judgment and the July 15, 2022 Custody Judgment. Recommended Ruling p. 11, n.9 (ECF 13). Plaintiff alleges in his Amended Complaint that "[o]n December 8, 2021, the Superior Court

of the State of Connecticut issued an accommodation order limiting days of trial to half-day morning sessions." Am. Compl. p.2 (emphasis omitted), *see* Ex. A to Am. Compl. He further alleges that "[a]fter plaintiff exercised his accommodation, on March 15, 2022, defendant Nguyen-O'Dowd retaliated against plaintiff for exercising his accommodation, by dismissing pending motions with prejudice, terminating trial, and proceeding to judgment." *Id.* p.2, *see* Ex. B to Am. Compl. Plaintiff's Amended Complaint is silent as to how he "exercised his accommodation" or whether he was incapable of participating on that date beyond the half day morning session of court. However, the March 15, 2022 Order, which Plaintiff included as Exhibit B to his Amended Complaint, reflects that Plaintiff "did not return for trial after the lunch recess at 2 pm" and that he "failed to present his testimony and evidence as set forth in the court's scheduling order."

The Court may take judicial notice that in the Custody Judgment, and in Plaintiff's initial Complaint in this case, it is stated that Plaintiff sought an oral continuance on February 18, 2022, the thirty-third day of the custody hearing, which was denied without prejudice, and then left court and did not file a written motion for continuance. Compl. pp.7-8, Custody Judgment p. 11. Then on March 9, 2022, Plaintiff attended the morning session, but did not attend the afternoon session and did file a motion for a continuance. Compl. p.7, Custody Judgment p.11. Further, according to Plaintiff on both March 9 and March 15 he did not attend the afternoon session "fearing for his health and relying upon the granted ADA medical accommodation." Compl. p.8.

Even taking into consideration Plaintiff's earlier pleading, Plaintiff has not alleged that he was unable to participate in court when he failed to return on March 9 and March 15 or that he was unable to comply with the requirement of filing a written motion for continuance on those dates. Absent such a claim, Plaintiff has not alleged facts that would support a conclusion that the March 15, 2022 Order was entered without Plaintiff having had an opportunity to be heard on the issue of scheduling or that it was due to his disability or having sought an ADA accommodation and not his refusal to comply with the court's scheduling order or requirement of written motions for continuance. Further, although Plaintiff was prohibited from presenting additional evidence, he was still permitted to submit proposed findings of fact. Ex. B to Am. Compl. Plaintiff has not alleged that there was any specific evidence that he would have presented absent the March 15, 2022 Order or any argument that he was unable to make in his proposed findings of fact. Therefore, Plaintiff has failed to allege a plausible claim that he was denied access to the court as a result of his disability or request for accommodation[8] and the Eleventh Amendment compels dismissal of all claims for relief against the State of Connecticut and against Judge Nguyen-O'Dowd in her official capacity.

[8] To the extent that Plaintiff alleges that the Custody Judgment violated the ADA by taking into consideration his "alleged mental defect," Am. Compl. p.3, his claim challenges the court's judgment and not his access to the courts and is clearly barred by the *Rooker-Feldman* doctrine.

IV. The Domestic Relations Abstention Doctrine Bars Plaintiff's Claims for Injunctive Relief.

Even if the *Rooker-Feldman* doctrine and the Eleventh Amendment did not preclude Plaintiff's claims, which they do, the domestic relations abstention doctrine mandates dismissal to the extent that Plaintiff requests that this Court interfere in his state court child custody proceedings.

"The Second Circuit is among many federal circuits to recognize a 'domestic relations abstention doctrine.' . . . Under that doctrine, federal courts must abstain from deciding cases that involve matrimonial issues like child custody and visitation rights that are 'on the verge of being matrimonial in nature.'" *Roundtree v. Rockville Juv. Court*, No. 3:21-cv-1289(JAM), 2022 U.S. Dist. LEXIS 65401, *5 (D. Conn. Apr. 8, 2022) (*Meyer, J.*) (quoting *Deem v. DiMella-Deem*, 941 F.3d 618, 624-25 (2d Cir. 2019)); *see also Khalid v. Sessions*, 904 F.3d 129, 133 (2d Cir. 2018) ("family law, after all, is an area of law that federal courts and congress leave almost exclusively to state law and state courts.").

Plaintiff attempts to use this Court to review and vacate the Connecticut Superior Court's July 15, 2022 Custody Judgment that was, at a minimum, "on the verge of being matrimonial in nature." *See Cleary v. Macvicar*, 813 Fed. App'x 12, 14 (2d Cir. 2020) (Summary Order) (dismissal appropriate on basis of domestic relations abstention doctrine because plaintiff's claim, rooted in his disagreement with the Connecticut Superior Court's order regarding child custody and visitation, was "at a minimum, on the verge of being matrimonial in nature."). As relief, he seeks for this Court to "[p]rovide injunctive relief against [the custody] decree that violated ADA,

fails due process, discriminates against plaintiff and his son." Am. Compl. p.6. This Court should decline to review Plaintiff's claims, which seek federal review of child custody orders resolved in state court.

V. Any Claims Against Judge Nguyen-O'Dowd in Her Individual Capacity Are Barred by Absolute Judicial Immunity and Statute.

To the extent, if any, that Plaintiff has brought individual capacity claims against Judge Nguyen-O'Dowd, those claims are barred by absolute judicial immunity and by statute. As an initial matter, Judge Nguyen-O'Dowd cannot be held personally liable under either Title II or Title V of the ADA, which do not provide for individual liability. *Garcia v. State Univ. of N.Y. Health Sciences Ctr. Of Brooklyn*, 280 F.3d 98, 107 (2d Cir. 2001) (Title II) (Title II of the ADA does not "provide[] for individual capacity suits against state officials") (collecting cases), *Spiegel v. Schulmann*, 604 F.3d 72, 79 (2d Cir. 2010) (Title V) ("the retaliation provisions of the ADA . . . cannot provide for individual liability"). To the extent that Plaintiff brings § 1983 claims against Judge Nguyen-O'Dowd in her individual capacity, Plaintiff's claims against her arise from her conduct presiding over a multi-day custody hearing in which Plaintiff was a party and entering a custody judgment at the conclusion of the hearing. Such conduct clearly falls within the scope of judicial immunity.

"Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction." *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967). This immunity is "from suit, not just from ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (Per Curium). Judicial immunity is not overcome by allegations of bad faith

or malice." *Huminski v. Corsones*, 396 F.3d 53, 75 (2d Cir. 2005) (quoting *Mireles*, 502 U.S. at 11). "Thus, if the relevant action is judicial in nature, the judge is immune so long as it was not taken in the complete absence of jurisdiction." *Id.* (citing *Mireles*, 502 U.S. at 11-12). An act is judicial in nature when it is a function normally performed by a judge and the plaintiff dealt with the judge in her judicial capacity. *Id.*

"The Supreme Court has generally concluded that acts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). Judge Nguyen-O'Dowd was clearly acting in her judicial capacity both when she issued the March 15, 2022 Order and the Custody Judgment. The March 15, 2022 Order reflects Judge Nguyen-O'Dowd managing her docket and scheduling trial dates. "A court's control of its docket is . . . a judicial act because it is part of a court's function of resolving disputes between parties." *Szymonik v. Connecticut*, No. 3:18-cv-263(MPS), 2019 U.S. Dist. LEXIS 6721, *20 (D. Conn. Jan. 15, 2019) (*Shea, J.*), aff'd, No. 19-230, 2020 U.S. App. LEXIS 10504 (2d Cir. Apr. 3, 2020) (quoting *Mireles*, 502 U.S. at 12) (quotation marks omitted).

The March 15, 2022 Order also reflects the judge deciding motions in the underlying case and the Custody Judgment reflects the final custody determination of the court in the underlying dissolution matter. Issuing rulings on motions and entering judgments on the merits of a case are at the core of a judge's judicial function. *See Carley v. Lawrence*, 24 F. App'x 66, 67 (2d Cir. 2001) (orders issued by a state court judge "from the bench while presiding over a matter in Family Court" qualified

as judicial acts subject to judicial immunity). Therefore, Plaintiff cannot seek money damages from Judge Nguyen-O'Dowd for alleged due process violations.

To the extent that Plaintiff relies on 42 U.S.C. § 1983 for his claims of injunctive relief against Judge Nguyen-O'Dowd in her individual capacity, those claims are barred by the plain text of § 1983. The statutory text provides, in relevant part: "[I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Here, declaratory relief is not unavailable because Plaintiff can, and did, appeal to the Connecticut Appellate Court for review of the Superior Court custody case. It is well-established that "[d]eclaratory relief against a judge for actions taken within . . . her judicial capacity is ordinarily available by appealing the judge's order." *LeDuc v. Tilley*, No. 3:05cv157 (MRK), 2005 U.S. Dist. LEXIS 12416, *17 (D. Conn. June 21, 2005).

Further, Plaintiff cannot plausibly allege that Judge Nguyen-O'Dowd violated a declaratory decree. At most, Judge Nguyen-O'Dowd entered scheduling orders that contradicted a prior order entered by another judge in the case regarding full versus partial day hearings. There is no basis to conclude that the initial scheduling order was the final and permanent determination on the matter of scheduling for the custody hearing. Therefore, Plaintiff's claims do not satisfy the exception to judicial immunity from injunctive relief found in § 1983 and any individual capacity § 1983 claims brough against Judge Nguyen-O'Dowd should be dismissed.

VI. Plaintiff has Failed to State a Claim for Which Relief May be Granted.

This Court should also dismiss this Amended Complaint because Plaintiff has failed to state any claim for which relief may be granted under either Title II or Title V of the ADA or § 1983.

A. Plaintiff has Failed to State a Title II Claim.

"Title II of the ADA requires that 'no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.'" *Wright v. N.Y. State Dep't of Corr. & Cmty. Supervision*, 831 F.3d 64, 72 (2d Cir. 2016) (quoting 42 U.S.C. § 12132). "A qualified individual can base a discrimination claim on any of 'three available theories: (1) intentional discrimination (disparate treatment); (2) disparate impact; and (3) failure to make a reasonable accommodation.'" *Fulton v. Goord*, 591 F.3d 37, 43 (2d Cir. 2009) (quoting *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 573 (2d Cir. 2003)). Although Plaintiff does not specify in his Amended Complaint which of the three theories he relies upon, read broadly he alleges that the court failed to make a reasonable accommodation when it required him to proceed with full-day sessions and that it intentionally discriminated against him in the Custody Judgment by "decreeing his alleged narcissist beliefs to of mental defect" and basing the custody determination on that "mental defect/personality disorder." Am. Compl. pp. 4, 5. He has failed to allege facts that would establish either a failure to accommodate or discrimination under Title II of the ADA.

"In order to establish a violation of the ADA, [] plaintiffs must demonstrate that (1) they are 'qualified individuals' with a disability; (2) that the defendants are subject to the ADA; and (3) that plaintiffs were denied the opportunity to participate or benefit from defendants' services, programs, or activities, or were otherwise discriminated against by defendants, by reason of plaintiffs' disabilities." *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003).

The ADA defines "disability" to include: (A) "a physical or mental impairment that substantially limits one or more major life activities," (B) a "record of such impairment," or (C) "being regarded as having such an impairment" if there is discrimination based on that perception. 42 U.S.C. § 12102(1). This definition applies to all Titles of the ADA. *Widomski v. State Univ. of N.Y.*, 748 F.3d 471, 475 (2d Cir. 2014). In turn, "major life activities include, but are not limited to, care for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2)(A). The determination of whether an impairment "substantially limits" a major life activity is an individualized assessment of the "ability of an individual to perform a major life activity as compared to most people in the general population" and is "construed broadly in favor of expansive coverage." 28 C.F.R. § 35.108(d).

Plaintiff does not specify which of the three definitions of "disability" he believes he satisfies. To the extent that his claims are premised on the court's failure to provide the half-day hearing accommodation found in the December 8, 2022 order,

his claim must be based upon the first definition, namely, "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1). *Lynch v. Conn. Judicial Branch*, No. 3:15-cv-01379(MPS), 2020 U.S. Dist. LEXIS 183656, *14 (D. Conn. Sept. 30, 2020) (*Shea. J.*). This is because an individual who is only perceived as disabled does not require an accommodation to participate in a program or activity where no actual limitation exists. *Id.*

Plaintiff must allege more than the legal conclusion that he "is a qualified individual, under the ADA." Am. Compl. p.2. Plaintiff must allege facts that would establish he has a physical or mental impairment that substantially limits a major life activity. He fails to do so. Plaintiff does not identify in his Amended Complaint the physical or mental impairment that led to his request for half-day hearings as an accommodation.[9] He does not allege how that unidentified physical or mental impairment substantially limits any major life activities. Indeed, even if one were to assume that attending court is a major life activity, he does not allege that he was impaired in his participation in court by his impairment. Rather, he alleges that on March 15, 2022, he sought to "exercise his accommodation," Am. Compl. p.2, without any reference to his ability to participate without the accommodation on that or any other date. Thus, Plaintiff cannot establish that he is actually disabled, as defined by the ADA, and any failure to accommodate claim must fail.

To the extent that Plaintiff relies on a theory that he was intentionally

[9] Plaintiff's reference to findings in the Custody Judgement of his "narcissist beliefs" and a decree of a "mental defect" do not allege that those beliefs or "defect" were the impairment that led to his accommodation request. Am. Compl. pp.3, 4, 5.

discriminated against, Plaintiff's claim still fails because he does not allege facts that would establish that he had a record of an impairment that substantially limited a major life activity or was regarded as having such an impairment. First, for the same reason that Plaintiff cannot establish an actual disability, he cannot establish a record of such impairment. The Amended Complaint fails to identify any physical or mental impairment, much less a record of such impairment. *See Lynch v. Conn. Judicial Branch*, 2020 U.S. Dist. LEXIS 183656, at *17 ("a record of disability may be satisfied by showing that the plaintiff had a disability in the past" (quoting *Mancini v. City of Providence*, 909 F.3d 32, 40 (1st Cir. 2018) (quotation marks omitted)).

Insofar as Plaintiff relies on being "regard as" having a disability, Plaintiff does not allege what knowledge Judge Nguyen-O'Dowd, or anyone else at the Superior Court, had regarding his alleged disability. At most, the Amended Complaint and exhibits reflect that at the time of the March 15, 2022 Order Judge Nguyen-O'Dowd would have been aware that another judge had issued an order granting an accommodation of half-day hearing sessions. The accommodation order is silent as to the nature of the disability leading to the accommodation. Ex. A to Am. Compl. Plaintiff alleges that in the Custody Judgment Judge Nguyen-O'Dowd decreed "his alleged narcissist beliefs to be of mental defect," Am. Compl. p.4, and "a mental defect/personality disorder," *id.* p.5. He does not allege facts, however, that would support a conclusion that Judge Nguyen-O'Dowd believed that the "mental defect" substantially limited Plaintiff's ability to engage in major life activities, including

"care for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2)(A). Therefore, Plaintiff fails to plausibly allege that Defendants regarded him as having a disability.

Even assuming Plaintiff has alleged facts supporting a claim that Defendants regarded him as disabled, which he has not, he still has not plausibly alleged that Defendants discriminated against him *because* they regarded him as disabled. "To prove intentional discrimination, a plaintiff must establish: '(1) that he is a 'qualified individual' with a disability; (2) that he was excluded from participation in a public entity's services, programs, or activities or was otherwise discriminated against by a public entity; and (3) that such exclusion or discrimination was due to his disability.'" *Forziano v. Indep. Group Home Living Program*, 613 Fed. App'x 15, 18 (2d Cir. 2015) (Summary Order) (quoting *Hargrave v. Vermont*, 340 F.3d 27, 34-35 (2d Cir. 2003)). An essential element of a Title II discrimination claim is that a plaintiff "was treated differently than any non-disabled litigants." *Lynch v. Conn. Judicial Branch*, 2020 U.S. Dist. LEXIS 183656, at *50.

Plaintiff has not alleged that he was treated differently than any other litigants when the court entered the March 15, 2022 Order. On the contrary, the core of Plaintiff's position appears to be that he should not have been required to abide by the scheduling orders of the court, as any other litigant would, because of his disability. In other words, the court should have provided preferable treatment to Plaintiff; a proposition not supported by Title II of the ADA. Plaintiff's additional

claim regarding the March 15, 2022 Order is that it was retaliation "for exercising his accommodation," Am. Compl. p.2, not that it was discrimination due to an actual or perceived disability.

To the extent that Plaintiff alleges that Judge Nguyen-O'Dowd cited his "mental defect as a cause to sever the father's custody of the child and to deny father-son visitation, pending treatment to remedy the disability" *id.* at p.3, he does not specific facts to support the degree to which any perception of Plaintiff *as disabled* led to the custody determination. Indeed, Connecticut statutes governing child custody determinations include in the seventeen factors courts are to consider in determining the best interest of the child "the mental health and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child." Conn. Gen. Stat. § 46b-56(c)(13). Thus, consideration of Plaintiff's mental health was a necessary and proper consideration in the custody determination. Plaintiff has not, and cannot, allege facts that would establish that Judge Nguyen-O'Dowd entered the custody orders in the Custody Judgment *because Plaintiff was perceived to be disabled*. Thus, Plaintiff has failed to allege a plausible Title II claim.

B. Plaintiff has Failed to State a Title V Claim.

Plaintiff also fails to state a plausible claim for relief under Title V of the ADA. The elements of a retaliation claim under the ADA are: "(i) a plaintiff was engaged in protected activity; (ii) the alleged retaliator knew that plaintiff was involved in

protected activity; (iii) an adverse decision or course of action was taken against plaintiff; and (iv) a causal connection exists between the protected activity and the adverse action." *Weixel v. Bd. of Educ. of City of N.Y.*, 287 F.3d 138, 148 (2d Cir. 2002) (quotation marks omitted). The crux of a retaliation claim is that "a retaliatory motive played a part in the adverse . . . action." *Lynch v. Conn. Judicial Branch*, 2020 U.S. Dist. LEXIS 183656 at *10 (quoting *Richter v. Conn. Judicial Branch*, No. 3:12CV1638 JBA, 2014 U.S. Dist. LEXIS 40571, *9 (D. Conn. Mar. 27, 2014), aff'd, 600 F. App'x 804 (2d Cir. 2015)).

First, it is unclear from the Amended Complaint that Plaintiff was engaged in protected activity at the time that the alleged retaliation occurred. Even assuming initially requesting and receiving the half-day session accommodation was a protected activity, that does not compel the conclusion that Plaintiff engaged in a protected activity on March 15. Plaintiff simply alleges that he "exercised his accommodation" without any explanation. The Court should decline to accept such a bare legal conclusion as sufficient to establish a protected activity.

If the Court disagrees and concludes that Plaintiff has pleaded sufficient facts to establish that he was engaged in a protected activity on March 15, 2022, Plaintiff does not allege facts in the Amended Complaint that support the conclusion that Judge Nguyen-O'Dowd, or any other employee of the State of Connecticut, was aware that he was engaging in that protected activity on March 15, 2022. The March 15, 2022 Order reflects that Plaintiff "did not return for trial after the lunch recess at 2 pm" and that he "failed to present his testimony and evidence as set forth in the

court's scheduling order." Ex. B. to Am. Compl. There is no basis to conclude from these statements that the court was aware that Plaintiff was engaged in a protected activity.

Regarding the last two elements, assuming *arguendo* that the March 15, 2022 Order was an adverse action against Plaintiff, Plaintiff has failed to allege that it was taken *because of* his participation in a protected activity and not, as is stated in the Order, his failure to return to court or to comply with the court's scheduling order, Ex. B to Am. Compl., as all litigants are required to do in courts across the nation.

The relationship between the protected activity and the Custody Judgment is even more attenuated. Plaintiff has alleged no facts that plausibly would establish a causal connection between his having "exercised his accommodation" on March 15, 2022 and the court's custody and visitation orders in the Custody Judgment issued on June 15, 2022. At most, Plaintiff alleges that the March 15, 2022 Order prevented him from presenting evidence that might have led the court to a different conclusion in the Custody Judgment. This does not establish that the Custody Judgment itself included any orders that were *motivated by* retaliation for Plaintiff's protected activity. Plaintiff's bare claims of being "retaliated against" are nothing more than unsupported conclusory statements. Thus, he fails to state a plausible Title V claim.

C. Plaintiff has Failed to State a § 1983 Claim.

Plaintiff does not plead separate counts or specify which allegations related to his different legal claims. Thus, Plaintiff's § 1983 claims appear to intertwine with his claims that he was discriminated against because of his disability or retaliated

against because of his exercise of his accommodation under the ADA. Indeed, Plaintiff's references to due process are in the context of any rights he feels were violated when Defendants "retaliated against" him. *See* Am. Compl. p.3. For example, Plaintiff alleges that Judge Nguyen-O'Dowd "further retaliated against plaintiff by violating plaintiff's due process rights by terminating trial and denying plaintiff's ability to submit contrary evidence as to the alleged mental defect" and that she "further retaliated against plaintiff by severing parent-child relationship being a constitutionally protected right under the due process clause of the Fourteenth Amendment and its Fifth Amendment counterpart." *Id.*

Section 1983 "allows parties to seek damages against state actors for alleged violation of federal rights." *Torraco v. Port Authority of New York & New Jersey*, 615 F.3d 129, 136 (2d Cir. 2010). Section 1983, however, is not a vehicle for a claim of disability discrimination or retaliation by a public entity in violation of the ADA because protection from disability discrimination is secured by statutes, such as the ADA, and not the Constitution. *See Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 368 (2001). Where, as here, a right "is conferred only by a statute that contains its own structure for private enforcement," a party may not bring a claim vindicating that right under § 1983. *Patterson v. Cnty. of Oneida, N.Y.*, 375 F.3d 206, 225 (2d Cir. 2004); *see Taylor v. Norwalk Cmty. Coll.*, No. 3:13-CV-1889(CSH), 2015 U.S. Dist. LEXIS 130461, *54 (D. Conn. Sept. 28, 2015) (*Haight, J.*) (disability-based discrimination claims are generally not cognizable under § 1983) (collecting cases).

Plaintiff's claims of due process violations are dependent upon his claims of

disability discrimination and retaliation and have no independent basis. Therefore, he must rely on the statutory enforcement scheme set forth in the ADA and may not bring a separate claim under § 1983.

VII. Conclusion

For the foregoing reasons, Defendants request that this Court dismiss Plaintiff's Amended Complaint in its entirety with prejudice.

DEFENDANTS,

STATE OF CONNECTICUT

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CERTIFICATION

I hereby certify that on January 9, 2023, a copy of the foregoing was electronically filed. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ *Alma Rose Nunley*
Alma Rose Nunley
Assistant Attorney General