

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 3rd day of February, two thousand twenty.

PRESENT: PIERRE N. LEVAL,
JOSÉ A. CABRANES,
RAYMOND J. LOHIER, JR.,
Circuit Judges,

GERARD V. SUNNEN, MD,

Plaintiff-Appellant,

18-3382-cv

v.

NEW YORK STATE DEPARTMENT OF HEALTH,
(NYSDOH), DR. HOWARD A. ZUCKER, MD,
COMMISSIONER, NYSDOH,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT:

Gerard Sunnen, *pro se*, New York, NY.

FOR DEFENDANTS-APPELLEES:

Philip V. Tisne, Assistant Solicitor
General, Andrew V. Amend, Senior
Assistant Solicitor General, and Barbara
D. Underwood, Solicitor General, *for*
Letitia James, Attorney General of the
State of New York, New York, NY.

Appeal from an October 10, 2018 judgment of the United States District Court for the Southern District of New York (Vernon S. Broderick, *Judge*).

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

Plaintiff-Appellant Gerard Sunnen (“Sunnen”), proceeding pro se, appeals from a judgment of the District Court dismissing his action against the New York State Department of Health and its Commissioner stemming from the 1996 revocation of his medical license for egregious professional misconduct. Sunnen’s claims for violations of 42 U.S.C. § 1983, the New York State Human Rights Law, the New York City Human Rights Law, and for libel were dismissed for lack of subject-matter jurisdiction. The District Court held that, in the alternative, these claims were barred by the applicable statutes of limitations, as was Sunnen’s Title VII claim, and that all of Sunnen’s claims were barred by the doctrine of *res judicata*. In addition, recognizing that, at a minimum, this is Sunnen’s fifth action relating to the revocation of his medical license, the District Court imposed a filing injunction restraining Sunnen’s ability to file new actions related to the 1996 revocation. We assume the parties’ familiarity with the underlying facts, procedural history of the case, and issues on appeal.

We review a grant of a motion to dismiss *de novo*, accepting as true all of the complaint’s well-pleaded facts. *See O’Donnell v. AXA Equitable Life Ins. Co.*, 887 F.3d 124, 128 (2d Cir. 2018).

Although we “liberally construe pleadings and briefs submitted by pro se litigants, reading such submissions to raise the strongest arguments they suggest,” *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017), and afford these litigants “some latitude in meeting the rules governing litigation,” we “normally will not[] decide issues that a party fails to raise in his or her appellate brief.” *Moates v. Barkley*, 147 F.3d 207, 209 (2d Cir. 1998) (citations omitted). Similarly, we usually do not decide issues that an appellant raises only in passing. *See Gerstenbluth v. Credit Suisse Secs. (USA) LLC*, 728 F.3d 139, 142 n.4 (2d Cir. 2013) (explaining that pro se litigant “waived any challenge” to the district court’s adverse ruling because brief mentioned ruling only “obliquely and in passing”). Nor do we discuss issues raised for the first time on appeal. *See Harrison v. Republic of Sudan*, 838 F.3d 86, 96 (2d Cir. 2016).

On appeal, Sunnen reiterates the facts alleged in his complaint, but fails to address the various grounds for the District Court’s dismissal of the complaint, as well as the denial of his motions to compel discovery and for reconsideration, and the imposition of the filing injunction. Instead, Sunnen presents new claims that purportedly arise under the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (“VEVRRA”), the Uniformed Services Employment and

Reemployment Rights Act of 1994 (“USERRA”), and the Veterans Employment Opportunity Act of 1998 (“VEOA”).

Because Sunnen does not address the District Court’s bases for dismissal and only mentions the ultimate ruling “obliquely and in passing,” we conclude that Sunnen has waived any challenge to the District Court’s decisions, particularly the dismissal of his action and the imposition of the filing injunction. *Gerstenbluth*, 728 F.3d at 142 n.4.¹ Moreover, we refuse to consider Sunnen’s new claims under the VEVRAA, USERRA, and VEOA, as they are raised for the first time on appeal. *See Harrison*, 838 F.3d at 96.

CONCLUSION

We have reviewed all of the remaining arguments raised by Sunnen on appeal and find them to be without merit. For the foregoing reasons, we **AFFIRM** the October 10, 2018 judgment of the District Court.

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

¹ Upon *de novo* review of the record on appeal, we note that, had Sunnen preserved any issues for appellate review, we would still affirm the District Court’s judgment for substantially the same reasons given by the District Court in its thorough July 27, 2018 Opinion and Order. *See* Opinion, Order & Order to Show Cause, *Sunnen v. New York State Dep’t of Health*, 17-cv-1014-VSB (S.D.N.Y. July 27, 2018), ECF No. 28.