**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**

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| JESSE HAMMONS,<br><br>Plaintiff,<br>v.<br><br>UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION, et al.<br><br>Defendants. | ) | Case No. 1:20-cv-02088-DKC |

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION OR, IN THE ALTERNATIVE, CERTIFICATION OF INTERLOCUTORY APPEAL**

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Defendants University of Maryland Medical System Corporation, UMSJ Health System, LLC, and University of Maryland St. Joseph Medical Center, LLC (collectively, the "Medical System") hereby oppose Plaintiff Jesse Hammons' ("Plaintiff" or "Hammons") Motion for Partial Reconsideration or, in the Alternative, Certification of Interlocutory Appeal. Dkt. No. 56 (the "Motion" or "Mot."), as follows:

## PRELIMINARY STATEMENT

Hammons asks the Court to reconsider its holding that the Medical System is entitled to sovereign immunity – an issue that has already been fully briefed and addressed by the parties. However, motions for reconsideration may not be used to relitigate old matters, or present arguments or evidence available earlier. Instead, reconsideration of an interlocutory order requires a showing of clear error causing manifest injustice. That standard imposes a high bar: Courts have described it as requiring a showing that an order is not "just maybe or probably wrong" but instead "strike[s] the court as wrong with the force of a five-week-old, unrefrigerated fish." *Fontell v. Hassett*, 891 F. Supp. 2d 739, 741 (D. Md. 2012) (internal citations omitted).

First, the Court's holding is not wrong, and it certainly does not strike one as wrong "with the force of a five-week-old, unrefrigerated fish." Moreover, Hammons merely rehashes arguments he previously set forth that were rejected by the Court. He complains that the Court erred in assuming that the inquiry into whether a corporation is a state actor under *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374 (1995), is "synonymous" with the inquiry into whether that corporation has sovereign immunity. *See* Mot. at 1-2 (*quoting* Dkt. No. 52 ("Op.") at 12-13). But Hammons' grievance must really be with the Court's use of the word "synonymous" because, despite the use of that word, the Court nevertheless engaged in a separate and thorough inquiry under *Ram Ditta v. Maryland Nat'l Cap. Park & Planning Comm'n*, 822 F.2d 456, 457 (4th Cir.

1987), to determine the Medical System is entitled to sovereign immunity. He further insists that he can indeed have it "both ways" – *i.e.*, argue that the Medical System is a state actor for purposes of his constitutional rights, but not an arm of the state for purposes of sovereign immunity – in reliance on a stray line of dicta in *Lebron*. He has already made and lost that very argument.

Hammons also contends that the Court incorrectly resolved the *Ram Ditta* factors in favor of the Medical System because the parties allegedly did not adequately brief the factors. But the Court analyzed and applied all of the cases – *U.S. ex rel. Oberg v. Penn. Higher Ed. Assistance Agency*, 745 F.3d 131, 136 (4th Cir. 2014) ("*Oberg II*"), and *U.S. ex rel. Oberg v. Penn. Higher Ed. Assistance Agency,* 804 F.3d 646, 668 (4th Cir. 2015) ("*Oberg III*" and, together with *Oberg II*, the "*Oberg* Cases") – that he now invokes in further support of a contrary outcome. Hammons' disagreement is with the Court's application of them here – which is no ground for reconsideration.

Just as Hammons puts forward no basis for the Court to revisit its past rulings, he also does not offer any basis for the Court to certify the extraordinary relief of an interlocutory appeal. Bare disagreement with a ruling – which is all Hammons offers – is not a basis for interlocutory relief. Hammons fails to identify any substantial ground for disagreement among the courts and to show that an immediate appeal may materially advance the ultimate termination of the litigation, both of which must be satisfied to warrant interlocutory relief. His failure to make that showing requires that his request for interlocutory relief be denied as well.

## LEGAL STANDARD

The bounds of a district court's discretionary review under Federal Rule of Civil Procedure 54(b), which governs motions for reconsideration of orders that do not constitute final judgments

in a case, "[are] not limitless."[1] *Carlson v. Bos. Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017). The Fourth Circuit has explained that review under Rule 54(b) is "cabined . . . by treating interlocutory rulings as law of the case." *Id.* at 325 (citations omitted). Accordingly, a court may revise an interlocutory order under the same circumstances in which it may depart from the law of the case – *i.e.*, (1) different evidence is discovered during the litigation; (2) a change in applicable law; or (3) clear error causing manifest injustice. *Id.*

This discretion is also "subject to the caveat that where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." *In re Sinclair Broad. Grp. Ec. Litig.*, 473 F. Supp. 3d 529, 535 (D. Md. 2020) (citing *U.S. Tobacco Coop. Inc. v. Big. S. Wholesale of Va.,* LLC, 899 F.3d 236, 256-57 (4th Cir. 2018)). In other words, a reconsideration motion is "not the proper place to relitigate a case after the court has ruled against a party, as mere disagreement with a court's rulings will not support granting such a request." *Id.* (quoting *Lynn v. Monarch Recovery Mgmt.*, 953 F. Supp. 2d 612, 620 (D. Md. 2013)). Were it otherwise, "there would be no conclusion to motions practice, each motion becoming nothing more than the latest installment in a potentially endless serial that would exhaust the resources of the parties and the court." *Potter v. Potter*, 199 F.R.D. 550, 553 (D. Md. 2001).

In evaluating a Rule 54(b) motion for a "clear error of law causing manifest injustice," "'mere disagreement' with a court's ruling is not enough to justify granting a motion for reconsideration." *Wade*, 2019 WL 2410969, at *4 (quoting *Lynn*, 953 F. Supp. 2d at 620). Rather, in order to justify granting reconsideration on the basis of clear error, "the prior judgment cannot

[1] The Fourth Circuit has not yet articulated a precise standard governing a motion for reconsideration of an interlocutory order. While the standards articulated in Rules 59(e) and 60(b) are not binding in an analysis of Rule 54(b) motions, courts in this circuit frequently look to these standards for guidance in considering such motions. *See Wade v. Cavins*, 2019 WL 2410969 (D. Md. June 7, 2019).

be 'just maybe or probably wrong; it must . . . strike the court as wrong with the force of a five-week-old, unrefrigerated dead fish.'" *Id.* (quoting *Fontell*, 891 F. Supp. 2d at 741). Indeed, as the Fourth Circuit has explained it, the prior judgment must be "dead wrong." *Id.* (quoting *TFWS, Inc. v. Franchot*, 572 F.3d 186, 194 (4th Cir. 2009)). Importantly, a "'factually supported and legally justified' decision does not constitute clear error." *Id.* (quoting *Lawley v. Northam*, 2013 WL 4524288, at *1 (D. Md. Aug. 23, 2013)).

In the alternative, Hammons seeks a certification for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). But the Fourth Circuit has made clear that Section 1292(b) "should be used sparingly and . . . its requirements must be strictly construed." *Myles v. Laffitte*, 881 F.2d 125, 127 (4th Cir. 1989). Certification is only appropriate where an appeal involves a controlling issue of law as to which there is substantial ground for disagreement among the courts *and* immediate appeal may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). Hammons fails to meet this strict test.

## ARGUMENT

Hammons presents two arguments for reconsideration – that the Court erred first by assuming the *Lebron* test for state action is "synonymous" with the test for sovereign immunity and second by concluding the Medical System is entitled to sovereign immunity under the *Ram Ditta* factors. Neither of these arguments warrants reconsideration because they simply rehash arguments the Court has already carefully considered and rejected.

### I. THE COURT CAREFULLY CONSIDERED AND APPLIED THE TEST FOR SOVEREIGN IMMUNITY.

Hammons first argues the Court clearly erred by "equating the test for whether a corporation is a state actor under *Lebron* with the test for whether a corporation is vested with sovereign immunity." Mot. at 5. The result of that error, according to Hammons, was to deprive

him of the ability to pursue his contradictory position – *i.e.*, that the Medical System is a state actor but *not* an arm of the state for purposes of sovereign immunity – which he believes *Lebron* expressly permitted him to do. Mot. at 6-9. But the Court has already determined that Hammons' interpretation of *Lebron* is incorrect, and, in any event, the Court did not "equate" the two tests. To the contrary, as Hammons concedes, the Court engaged in a separate *Ram Ditta* analysis to conclude that the Medical System was entitled to sovereign immunity. Mot. at 3-4; Op. at 34 ("[T]he court will look to caselaw specific to the sovereign immunity inquiry . . . to determine if [the Medical System] is an arm of the state pursuant to the multifactor inquiry articulated in *Ram Ditta* []."). Hammons' "clear error" argument is, in reality, a disagreement with the Court's application of the *Ram Ditta* factors.

**A. The Court Already Considered And Rejected Hammons' *Lebron* Argument.**

As he did in his earlier pleadings, Hammons stretches *Lebron* too far with the argument that it "squarely establishes" that he can have it "both ways" – *i.e.*, the Medical System is a state actor but cannot assert sovereign immunity. Mot. at 6. *Lebron* does not say that. *See* Op. at 34; Dkt. No. 47 at 27; *see also* Dkt. No. 48 at 7. *Lebron* only held that Amtrak was part of the federal government for First Amendment purposes in light of Amtrak's unique and deep ties to the federal government and because of the government's control over Amtrak's affairs. *Lebron*, 513 U.S. at 399. The *Lebron* Court did not decide whether Amtrak was entitled to sovereign immunity and so could not have "squarely established" anything in that regard. The parties briefed and the Court already addressed this issue.

Hammons nevertheless focuses on the same stray line of *dicta* in *Lebron*, *i.e.*, that Congress's statutory disavowal of Amtrak's agency status likely "deprives Amtrak of sovereign immunity from suit," to argue that the Court should have similarly found the Medical System was

a state actor not entitled to sovereign immunity.[2] *Compare* Mot. at 6 (*quoting Lebron*, 513 U.S. at 399), *with* Dkt. No. 47 at 27, 28 (making the same argument in opposition to the Medical System's motion to dismiss).

In support of this argument, Hammons cites to several decisions that he claims illustrate that "[c]ourts applying *Lebron* have consistently recognized that a corporation may be a part of the government under *Lebron* but still not be clothed with sovereign immunity from suit." Mot. at 6-7. But the cited cases say nothing of the sort. *See Miller v. Ill. Cent. R. R. Co.*, 474 F.3d 951, 957 (7th Cir. 2007) (describing *Lebron* and noting the language relating to sovereign immunity, but stating that "this [the court] needn't decide in the present case"); *Parrett v. Se. Boll Weevil Eradication Found., Inc.*, 155 Fed. App'x 188, 192 (6th Cir. 2005) (analyzing whether the defendant was entitled to sovereign immunity (not whether it was a state actor) and noting that "[a]lthough holding that Amtrak was subject to First Amendment claims, the [*Lebron*] Court noted in *dicta* that Amtrak would not be entitled to sovereign immunity because the statute creating the organization specifically states that Amtrak is not an agency of the federal government"); *In re Kapla*, 485 B.R. 136, 148 (Bankr. E.D. Mich. 2012) (analyzing whether the defendant was a state actor and noting the "dicta" regarding Amtrak's sovereign immunity). Thus, none of the case law presented would support a change to the Court's Opinion, in which it concluded:

> Neither side cites any decisions in which a court determined that, under *Lebron*, or any other test, a corporate defendant was part of state government and then

[2] Hammons suggests the statutory agency disclaimer in *Lebron* was "assuredly dispositive" of the finding of sovereign immunity. *See* Mot. at 6. Not so. First, the "assuredly dispositive" language in *Lebron* relates to the disclaimer of agency status and has nothing to do with sovereign immunity – an issue that was not before the Court. *See Lebron*, 513 U.S. at 375, 392. Second, if Hammons is correct that the statutory disclaimer was "assuredly dispositive" of the sovereign immunity issue, then there would never be a need to for the Court to engage in a separate inquiry under *Ram Ditta*, which is what Hammons also contradictorily claims the Court must separately do. *See* Mot. at 8 & 13.

> proceeded to analyze whether the defendant was entitled to state sovereign immunity. Nor is such caselaw readily identifiable.

Op. at 34. Hammons is mistaken that the Court somehow clearly erred in its rejection of his unsupportable interpretation of *Lebron*.

Hammons' quarrel with Court's description of the *Lebron* inquiry as "synonymous" with that of *Ram Ditta* also misses the mark. The Court indeed noted that the inquiries under the *Lebron* and sovereign immunity tests were "synonymous" – a conclusion that is supported by the very cases to which Hammons cites[3] – but it is unfair and incorrect to suggest the Court's analysis ended there. On the contrary, the Court engaged in a deeper analytical exercise:

> Nevertheless, the court will look to caselaw specific to the sovereign immunity inquiry – albeit case law specifically focused on whether a unit of government was state or local – to determine if [the Medical System] is an arm of the state pursuant to the multifactor inquiry articulated in *Ram Ditta*, 822 F.2d at 457-58.

Op. at 34. The Court then engaged in a reasoned analysis of the *Ram Ditta* factors – precisely what Hammons argues the Court should have done. Op. at 34-38. Ultimately, Hammons does not seek a different analysis of the relevant law, but rather a different outcome. But motions for reconsideration are "not the proper place to relitigate a case after the court has ruled against a party, as mere disagreement with the court's rulings will not support granting such a request." *Sanders v. Prince George's Pub. Sch. Sys.*, 2011 WL 4443441, at *1 (D.Md. Sept. 21, 2011) (internal citations omitted).

[3] The word "synonymous" means "having the character of a synonym" or being "alike in meaning in significance;" it does not mean identical. *See* Merriam-Webster citation. There is nothing incorrect about noting that the two tests at issue are "synonymous." The cases to which Hammons cites are in agreement *See e.g.*, *In re Kapla*, 485 B.R. at 148 (noting that while the tests were different, "those tests may overlap").

**B. Hammons Misunderstands the Court's Reasoned Decision on Waiver, Which Does Not Warrant Reconsideration.**

Hammons next argues that reconsideration is warranted because the Court misunderstood his prior argument asserting that sovereign immunity had been waived as to the Medical System. *See* Mot. at 9.

Hammons' argument is unsupported and flawed for two reasons. First, Hammons' focus on the Supreme Court's use of the word "deprive" as opposed to "waive" is a distinction without a difference. One simply needs to start with the plain meaning of the two words. Merriam-Webster defines "deprive" as "to take something away from."[4] "Waiver" is defined as "the act of intentionally relinquishing or abandoning a known right, claim, or privilege."[5] Thus, in this context, both words effectively mean the same thing – *i.e.*, that the Medical System's "sovereign immunity" was removed. Neither word signals that sovereign immunity never "attached" in the first place, nor is there any reason to believe that such a distinction would matter here, since the Court determined that, under its *Ram Ditta* analysis, the Medical System is entitled to sovereign immunity.

Hammons also faults the Court for conflating the state actor analysis in *Lebron* and the test for sovereign immunity under *Ram Ditta* (despite the fact that the Court engaged in both analyses), but simultaneously asks that the Court rely solely on *Lebron's* "analysis of federal sovereign immunity"[6] to conclude that the Medical System is not entitled to sovereign immunity. Mot. at 10. Hammons argues this result is mandated by *Lebron* because, he claims, the authorizing statutes

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[4] "Deprive." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/deprive (last visited Aug. 20, 2021).

[5] "Waiver." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/waiver (last visited Aug. 20, 2021).

[6] Hammons is mistaken in his contention that *Lebron* engaged in any sovereign immunity analysis. As Hammons admits, *Lebron* only addressed the state actor issue. *See* Mot. at 6.

here and in *Lebron* are "virtually identical" in that they both disclaim agency status. *Id.* But the statutes in fact significantly differ in a very relevant way: the originating statute here – in contrast to the Amtrak statute addressed in *Lebron* – contains an *express reservation* of Maryland's sovereign immunity. *See* Md. Code. Educ. § 13-308(f); Md. Code State Gov't § 12-103(2). Indeed, this Court has already considered this issue and rejected Hammons' precise argument: "[e]ven assuming that the provision [ ] does not pertain to [the Medical System] specifically, Plaintiff's argument still fails because the statutory language [Hammons] cites to does not contain an express waiver of sovereign immunity." Op. at 40-41. As the Court properly noted, "whether a state has waived its immunity from suit in federal court is a 'stringent' one" and purported waivers are narrowly construed. *Id.* at 39 & 40 n.4 (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 239-40 (1985)).

Finally, Hammons argues the Court improperly placed the burden on him to establish a waiver, instead of requiring the Medical System to show it has sovereign immunity. Mot. at 12. The Court, however, did no such thing. The Court *first* determined that the Medical System was entitled to sovereign immunity after concluding the *Ram Ditta* analysis. Op. at 38. The Medical System need not, as Hammons suggests, show that the statutory provision demonstrates sovereign immunity as long as the Medical System satisfies the *Ram Ditta* factors. Only after the Court first made its determination under *Ram Ditta* did it consider the three exceptions to the Eleventh Amendment's prohibition of suit against a state or arm of state. *Id.* at 39. The Court's comment that Hammons' "argument still fails because the statutory language he cites does not contain an express waiver of sovereign immunity" did not constitute any "burden-shifting," but was rather an observation that the relevant statutes contain no express waiver as the law requires. *Id.* at 41.

Again, Hammons' bare disagreements with the outcome of the Court's analysis do not provide a proper basis for reconsideration. *Sanders*, 2011 WL 4443441, at *1.

## II. HAMMONS' DISAGREEMENT WITH THE COURT'S CAREFUL CONSIDERATION OF THE *RAM DITTA* FACTORS DOES NOT WARRANT RECONSIDERATION.

Hammons asks the Court to "reconsider its conclusion that [the Medical System] is entitled to sovereign immunity under the *Ram Ditta* factors."[7] Mot. at 13, at II. But Hammons does not (and cannot) argue that the Court failed to consider controlling law. Rather, he simply disagrees with the outcome of the Court's application of the *Ram Ditta* factors. Once again, a disagreement with the Court's analysis does not trigger reconsideration. *See Kelly v. Johns Hopkins Univ.*, 2018 WL 4211296, at *2 (D. Md. Aug. 13, 2018) ("[A] factually supported and legally justified decision does not constitute clear error.") (quoting *Lawley v. Northam*, 2013 WL 4524288, at *1 (D. Md. Aug. 23, 2013)).

### A. The Second *Ram Ditta* Factor.

Hammons argues that the Court should have found in his favor on the second factor of the *Ram Ditta* inquiry because it did not analyze "the specific criteria discussed in *Oberg II* and *Oberg III*," and gave too much weight to *Napata's* holding that that the Medical System is an "instrumentality of the State." *See* Mot. at 15. But Hammons' arguments provide no support for the Court to reconsider its careful analysis because the Court was clearly aware of, analyzed, and cited the *Oberg* Cases. *See* Op. at 35 & 36.

[7] Hammons also argues that the Medical System waived its right to rely on the *Ram Ditta* factors because they did not invoke them in their opening brief. But the Medical System's opening brief squarely addressed the sovereign immunity issue, as did Hammons' opposition. Dkt. No. 39; Dkt. No. 47; *see also* Dkt. No. 48 (citing to *Ram Ditta* in its reply). The Medical System did not need to specifically cite to *Ram Ditta* to preserve their argument. *See* Dkt. No. 39 at Section B, "If the Medical System Were a State Actor, Hammons' Claims Would Be Barred By Sovereign Immunity In Any Event."

In his comparison of the Medical System and PHEAA (as outlined in the *Oberg* Cases), Hammons cherry-picks those factors that he believes overlap between PHEAA and the Medical System, but lemon-drops the factors that distinguish the two entities. *See* Mot. at 16. The existence of some similarities between PHEAA and the Medical System does not require a different conclusion by this Court.

Indeed, Hammons' Motion utterly fails to mention the differences between PHEAA and the Medical System that led the Court to its conclusion. For example, Hammons fails to note that PHEAA is engaged in "nationwide, commercial financial-aid activities that bring in hundreds of millions of dollars in net revenues every year and have allowed it to accumulate more than one billion dollars in net assets, and PHEAA has substantive control over those independent funds." *Oberg III*, 804 F.3d at 668. Also ignored by Hammons, the *Oberg* Court identified numerous examples where the PHEAA "routinely asserts its financial strength and independence from the Commonwealth," including that it created a spin-off organization for the purpose of soliciting private corporate donations, and that it also considered an unsolicited $1 billion buy-out offer made by SLM Corporation without any direction from the Governor or General Assembly (which the Court described as a "telling example of its autonomy"). *Id.* at 670-71. The state's only involvement in PHEAA was largely ministerial in nature. *Id.* at 676.

The Medical System, on the other hand, is differently positioned. As the Court recognized, "unlike an independent hospital, [the Medical System] is not free to compete with the University for private gifts or private or federal grants." Op. at 37-38 (citing *Napata*, 417 Md. at 737). This is critical as *Oberg III*'s analysis was heavily driven by PHEAA's financial independence and the lack of real controls over raising funds. *Oberg III*, 804 F.3d at 670. The Medical System does not enjoy the same financial independence and autonomy as PHEAA. Therefore, the Court reasonably

found that the second *Ram Ditta* factor favored the Medical System. That reasoned finding certainly does not constitute "clear error."

Finally, although Hammons takes the position that he did not have a full opportunity to address the *Ram Ditta* factors, the Court already gave Hammons the benefit of the doubt on that front. The Court noted:

> [H]ad Plaintiff contended that [the Medical System] is sufficiently autonomous from the State to tilt the second factor in his favor, he would have undermined the allegation in his Complaint that the State 'continues to exercise ultimate authority and control over the governance of [the Medical System].

Op. at 38 (citing ECF 1, ¶ 20). As the Court rightly observed, to advance his argument under the second *Ram Ditta* factor, Hammons would have had to take a diametrically opposite position that would have undermined his core "state actor" argument. In other words, the Court correctly perceived and understood that Hammons could not "have it both ways." Hammons may not like the obvious consequence that follows, but he offers no valid reason for the Court to reconsider its holding.

**B. The Fourth *Ram Ditta* Factor.**

Hammons also disagrees with the Court's determination that the fourth *Ram Ditta* factor – *i.e.*, how the Medical System is treated under Maryland law – weighs in favor of sovereign immunity. *See* Mot. at 18. He argues that the Court "looked exclusively to *Napata*, giving little weight to the statutory disclaimer of [the Medical System's] state agency status." *Id.* While Hammons purports to disagree with the Court's reliance on *Napata*, he simultaneously invokes cases that confirm the sensible approach taken by this Court: "in considering [the fourth] factor federal courts should give appropriate deference to state court decisions concerning the entity's status." *Bushek v. Wash. Suburban Sanitary Comm'n*, 155 F. Supp. 2d 478, 481 (D. Md. 2001) (citing *Ram Ditta*, 822 F.2d at 459-460); *see also* Mot. at 15. Although the *Napata* Court did not

address issues of sovereign immunity (which the Court acknowledged, Op. at 41), the state court's findings regarding the Medical System's status were nonetheless relevant to the Court's inquiry.

Hammons further argues that the Court should have given greater weight to the statutory disclaimer of the state agency's status, *see* Mot. at 19, but cites to no case law for the proposition that a statutory disclaimer trumps the *Napata* Court's (or any other) analysis. Moreover, the Court *did* acknowledge the statutory language in the very first step of its analysis. *See* Op. at 37 ("To be sure, the State legislature designated [the Medical System] a 'private, nonprofit, nonstock corporation' that is 'independent from any State agency.'") (citing Md. Code Educ. § 13-302(7)). Hammons simply disagrees with the Court's conclusion that the statutory language did not carry the day, but that disagreement with the Court's conclusion provides no basis for reconsideration.

## III. HAMMONS' DISAGREEMENT WITH THE COURT'S RULING PROVIDES NO BASIS FOR CERTIFICATION OF AN EXTRAORDINARY INTERLOCUTORY APPEAL.

The Court should not certify its ruling for interlocutory appeal because Hammons also fails to meet his burden to justify a departure from the longstanding rule against this extraordinary relief. "Section 1292(b) [which provides] a narrow exception to the longstanding rule against piecemeal appeals, is limited to exceptional cases." *Beck v. Commc'ns Workers of Am.*, 468 F. Supp. 93, 95-96 (D. Md. 1979). That extraordinary relief is only appropriate where an order involves a "controlling question of law as to which there is substantial ground for difference of opinion" and an immediate appeal would "materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); *Keena v. Groupon, Inc.*, 886 F.3d 360, 362-63 (4th Cir. 2018). This test is not met here.

Hammons' disagreement with the Court's ruling is inadequate to establish that the Court's order involves a "controlling question of law as to which there is a substantial ground for difference

of opinion." *Id*. "The mere presence of a disputed issue that is a question of first impression, standing alone, is insufficient to demonstrate a substantial ground for difference of opinion." *Lynn*, 953 F. Supp. 2d at 624 (internal quotations omitted). For if mere disagreement were sufficient, "every contested decision would be appropriate for immediate interlocutory appeal," which would make this extraordinary relief the norm rather than the exception. *Id.* at 626. Instead, "[a]n issue presents a substantial ground for difference of opinion if courts, as opposed to parties, disagree on a controlling legal issue." *Id.* at 624 (quoting *Randolph v. ADT Sec. Servs., Inc.*, 2012 WL 273722, at *6 (D. Md. Jan. 30, 2012)). Hammons identifies no disagreement among any courts – let alone any *substantial* disagreement – warranting this unusual remedy.

Nor does Hammons credibly show that an interlocutory appeal would materially advance the litigation. *See* § 1292(b). As to this factor, Hammons simply claims that an interlocutory appeal "will allow this litigation to conclude more expeditiously." Mot. at 23. To the contrary, an interlocutory appeal premised on bare disagreement with the Court's rulings, where there is no pressing, substantial disagreement of the courts, would only needlessly drag out the resolution of this litigation. In determining whether certification would materially advance the ultimate termination of the litigation, courts consider whether an immediate appeal would: "(1) eliminate the need for trial, (2) eliminate complex issues so as to simplify the trial, or (3) eliminate issues to make discovery easier and less costly." *Lynn*, 953 F. Supp. 2d at 626. None of these factors are implicated here nor does Hammons argue that they are. Courts have denied similar requests for interlocutory appeal. *See, e.g., id.* (movant's claim that an interlocutory appeal would simply "speed up the litigation" was insufficient to establish that an immediate appeal would materially advance the litigation).

## CONCLUSION

For the foregoing reasons, the Medical System requests the Court deny Hammons' motion.

Dated: August 25, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2021, Plaintiff's counsel was served with the foregoing document through the Court's Electronic Case Filing System.

*/s/ Denise Giraudo*
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