UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM, individually and as father to CHILD A and CHILD B,

PLAINTIFF

-against-

JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM; BLUMA TENNENBAUM; DAVID RUBENSTEIN; KIRYAS JOEL COMM AMBULANCE CRP; ATTY. MARIA PETRIZIO; CHILDREN'S RIGHTS SOCIETY OF ORANGE COUNTY; ATTY. KIM PAVLOVIC; ATTY JOHN FRANCIS X. BURKE; CHILD PROTECTIVE SERVICES OF ORANGE COUNTY; DEPARTMENT OF SOCIAL SERVICES OF ORANGE COUNTY; CHRISTINE BRUNET; ATTY. STEPHANIE BAZILEOR; JOHN DOES 1 THROUGH 95; JANE DOES 1 THROUGH 20,

DEFENDANTS

CIVIL ACTION NO. 12 CV 02858 (VB)

SECOND ANSWER IN OPPOSITION TO MOTION TO DISMISS

PLAINTIFF JACOB TEITELBAUM, appearing Pro Se, by way of opposition to Defendant David Rubenstein's Motion to Dismiss asserts as follows:

STATEMENT OF FACTS

Plaintiff Pro Se Jacob Teitelbaum is a resident of the Village of Kiryas Joel, Town of Monroe, County of Orange, in the State of New York and he brings this action on behalf of himself and his two minor children. The Plaintiff was previously involved in several State Court actions, including, but not limited to, a Neglect Proceeding as well as various actions involving Child Protective Services and other actions which are tangentially related to this Federal Court action. The totality of the various State Court actions have been discussed in great detail in both the filings of the Plaintiff and the various Defendants, as are the various claims asserted by the Plaintiff.

DEFENDANT IS CONFUSING THE FACTS IN THE SERVICE PROCEEDINGS AND MISAPPREHEND ITS LAWS

The law requires personal service on a Defendant or in the alternative to receive an Acknowledgement of Service, once per defended, either on the service of the original Complaint, or the Amended Complaint. The fact that Defendant acknowledged of receiving the original Complaint (Doc 36), the Amended Complaint is to be served as any other Court correspondence, where there is no need for Personal Service or Acknowledgement reply. Defendant's claim that Plaintiff failed to timely effect serve on him the Amended Complaint is baseless, in fact Plaintiff filed proof of such a service with this Court, (page one of Doc 36). The Defendant is not challenging the credibility of this filling, in fact he is even not mentioning the existence of such a document, Defendant relies on his Affidavit where he stated he never received the Amended Complaint, but stops short to explain how this is automatically discrediting the service made by Plaintiff. Plaintiff served Defendant with Amended Complaint by U. S. Mail; exactly the same

way Defendant served Plaintiff with his Motion to Dismiss. Plaintiff is also relying on the facts raised in the previous letters to this Court addressing this subject, (Doc 40, 43, 121, and 123).

CONSPIRACY

For the Court to dismiss the Plaintiff's case at this time would be premature at best as there has been no discovery of any kind. The Plaintiff has proffered sufficient claims that support the indicia that the Defendants' acted in concert to effect a certain end that would, ultimately, deprive the Plaintiff of his Constitutional Rights, both enumerated and unenumerated. In order to be sustainable a Conspiracy charge must contain at least some discernible facts that point to the existence of a Conspiracy, and this may "be inferred from the circumstances."[1] "The Court is mindful that direct evidence of a conspiracy is rarely available and that the existence of a conspiracy must usually be inferred from the circumstances. The Court is equally mindful that caution is advised in any pre-trial disposition of conspiracy allegations in civil rights actions."[2]

The Plaintiff asserts that, based on the cumulative actions of the various Defendants, there is a facial appearance of a Conspiracy, organized by one or more of the Defendants in which the various parties, with or without knowledge of the other actors, acted in concert to achieve the end of depriving the Plaintiff of the Rights asserted in his complaint. The Plaintiff must be allowed a measure of discovery in order to ascertain the facts necessary to move ahead to trial. And, while pretrial dismissal of a Conspiracy allegation may at times be merited, at this point in the litigation dismissal would not be in the interests of fairness and justice and would be unduly prejudicial to the Plaintiff.

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[1] *Capogrosso v. Supreme Court of N.J.*, 588 F.3d 180, 184 (3rd Cir. 2009).

[2] *Id.* at 184-185.

IMMUNITY PURSUANT TO NEW YORK STATE PUBLIC LAW §3013

New York State Law §3013 gives immunity for ambulance company and its members acting in a medical situation, giving them immunity if there is no evidence of gross negligence. But no immunity is given for an ambulance company or its members to use their power for non medical issues. The actions of the Defendant which are the subject matter of this suit are clearly not related to medical practice and therefore the Defendants are not afforded Immunity of any sort.

DEFENDANT IS A STATE ACTORS FOR §1983 PURPOSES

> Every person who, under color of ... [state law] subjects, or causes to be subjected, any ... person within the jurisdiction [of the United States] to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law [or a] suit [in] equity ....[3]

When the Defendants agreed, knowingly or otherwise, to enter into a conspiracy to deprive the Plaintiff of their constitutional and statutory rights they ceased to represent the interests of the clients that the Court had appointed them to represent and thereby should be held to have lost whatever immunity or statutory protection they would have otherwise enjoyed. "To act 'under color of' state law for § 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting . . . 'under color' of law for purposes of § 1983 actions."[4] Ergo, even if we agree that Defendant Pavlovic

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[3] *Arena v. Dep't of Soc. Servs.*, 216 F. Supp. 2d 146, 155 (E.D.N.Y. 2002)

[4] *Lewittes v. Lobis*, 2004 U.S. Dist. LEXIS 16320, 41 (S.D.N.Y. 2004) citing, *Dennis v. Sparks*, 449 U.S. at 27-28, 101 S. Ct. at 186

and others were not state actors, in effect private individuals, by virtue of their court appointment they gained the status of state actors by acting in concert with others who definitively are state actors to conspire to violate the Plaintiff's constitutional and statutory rights.

PLAINTIFF HAS STATED THE ELEMENTS REQUIRED BY §1985

The Plaintiff has clearly asserted that the basis of the actions of the Defendant's against the Plaintiff is his religion. Disputes within an insular religious community and limited to adherents of that same religious belief are by definition based in religion and the Plaintiff's religious beliefs. Additionally, the Civil Right Act of 1964 specifically prohibits discrimination on the basis of religion. What the Plaintiff is alleging to be occurring here is the Defendant state actors, and others, have allowed themselves to become involved in a religious dispute, preferring one side over the other to the detriment of the Plaintiff. 1) The Plaintiff is suffering religious discrimination and religion is a Protected Class; 2) the core of the Plaintiff's Complaint is that the various Defendants conspired to deprive him of his rights; 3) as stated above, the various Defendants acted with class based invidiously discriminatory animus; and, 4) it is abundantly clear that the Plaintiff asserts that he was harmed in the loss of his family, custodial interference, loss of esteem in the community, and various other damages. The elements of a §1985 have been met.

THE DEFENDANT'S NEGLIGENTLY INFLICTED EMOTIONAL DISTRESS ON THE PLAINTIFF AND DAMAGES WERE SUFFERED

The Defendant incredulously asserts that the Plaintiff does not meet the elements required to sustain a claim of Negligent Inflictive of Emotional Distress. The Plaintiff is and was in constant fear for his physical safety because of the repeated institutionalization of both him and his wife and the seemingly boundless attempts to place his children with others. This is factual and could not have been more clearly stated. To this day the Plaintiff remains in constant fear for his safety.

DEFENDANT'S MOVING DOCUMENTS SEEKING DISMISSAL CONTAIN NUMEROUS AND SERIOUS FACTUAL ERRORS AND MISSTATEMENTS

The Defendant, in his Motion, Memoranda, and Affirmation misstate the facts of the events that led to this action being commenced. His record is so replete with errors that to enumerate all of them in this Answer would be onerous. However, some of the more egregious errors include a misstatement of the facts involving the Plaintiff Child's ingestion of both the Tylenol and the purported ingestion of the Plaintiff's psychotropic medications and the circumstances surrounding the Plaintiff children being placed with others. Because the Defendant have recklessly represented the truth before this Court the Plaintiff should be allowed to continue to Discovery in order to make the record before the Court clear so that Your Honor may make a more correctly informed decision.

CONCLUSION

Based on the above arguments the Plaintiff respectfully prays that this Court deny the Motions to Dismiss submitted by Defendant David Rubenstein in toto and to allow this matter to

go forward to Discovery, thereby allowing the Plaintiff to move forward. The Plaintiff asserts that dismissal at this time is premature and should be denied as it regards each and every claim and as it regards each and every Defendant.

Respectfully Submitted,

Dated; Monroe, New York
January 23, 2013

Jacob Teitelbaum, Plaintiff Pro Se
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845-782-8995

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM, individually and as father to CHILD A and CHILD B, **PLAINTIFF** **-against-** JUDA KATZ; CHAYA KATZ; et al. **DEFENDANTS**	**CIVIL ACTION NO. 12 CV 02858 (VB)** **AFFIRMATION OF SERVICE**

I, JACOB TEITELBAUM, declare under penalty of perjury that I have served a copy of the attached **SECOND ANSWER IN OPPOSITION TO MOTION TO DISMISS,**

upon

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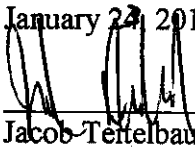
Dated; Monroe, New York
January 23, 2013



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