

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
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; DISTRICT  
FAMILY COURT OF ORANGE COUNTY 9<sup>TH</sup> JUDICIAL  
DISTRICT; HON. ANDREW P. BIVONA; 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,

12 CV 02858 (VB)

Defendants.

-----X  
  
\_\_\_\_\_  
**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION  
TO DISMISS ON BEHALF OF DEFENDANTS CHILDREN'S RIGHTS  
SOCIETY OF ORANGE COUNTY AND ATTY KIM PAVLOVIC**  
\_\_\_\_\_

**TARSHIS, CATANIA, LIBERTH  
MAHON & MILLIGRAM, PLLC**

*Attorneys for Defendants*

One Corwin Court, P.O. Box 1479

Newburgh, New York 12550

Tel. No. 845-565-1100

Of Counsel:

Rebecca Baldwin Mantello, Esq.

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
ARGUMENT	
POINT I LEGAL STANDARD ON MOTION TO DISMISS.....	1
POINT II THE COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S § 1983 AND § 1985 CLAIMS UNDER THE <i>ROOKER-FELDMAN</i> DOCTRINE.....	2
POINT III PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED BECAUSE DEFENDANTS CHILDREN'S RIGHTS SOCIETY AND PAVLOVIC ARE ENTITLED TO QUASI-JUDICIAL IMMUNITY.....	3
POINT IV PLAINTIFF HAS FAILED TO ALLEGE A CONSPIRACY UNDER 42 U.S.C. §1983 OR §1985.....	3
POINT V PLAINTIFF'S THIRD CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM.....	4
CONCLUSION.....	5

**TABLE OF AUTHORITIES**

<u>Cases</u>	<u>Page</u>
<u>Allen v Mattingly</u> , 10 CV 0667, 2011 WL 1261103 [E.D.N.Y. Mar. 29, 2011].....	2
<u>Bey v State of New York</u> , No. 11 CV 3296, 2012 WL 4370272 [E.D.N.Y. Sept. 21, 2012].....	4
<u>Brown v Legal Aid Society</u> , 367 Fed.Appx. 215, 216 [2d Cir. 2010].....	4
<u>Chadee v Kaufman</u> , 12 CV 3098, 2012 WL 2564408 [E.D.N.Y. June 26, 2012].....	2
<u>Gonzalez v. Caballero</u> , 572 F.Supp.2d 463 [S.D.N.Y.2008].....	1
<u>Leonard F. v. Isr. Disc. Bank of N.Y.</u> , 199 F.3d 99 [2d Cir.1999].....	1
<u>Matter of Dayton</u> , 786 F.Supp.2d 809 [S.D.N.Y. 2011].....	2
<u>Matthews v Malkus</u> , 377 F.Supp.2d 350 [S.D.N.Y. 2005].....	4
<u>McKnight v Middleton</u> , 699 F.Supp.2d 507, 530 [E.D.N.Y. 2010], <u>aff'd</u> 434 Fed.Appx 32 [2d Cir. 2011].....	4
<u>Phifer v City of New York</u> , 289 F.3d 49 [2d Cir. 2002].....	2
<u>Puletti v Patel</u> , No. 05-CV-2293, 2006 WL 2010809 [E.D.N.Y. July 14, 2006].....	2
<u>Respass v New York City Police Dept.</u> , 852 F.Supp. 173 [E.D.N.Y. 1994].....	4
<u>Yapi v Kondratyeva</u> , 340 Fed. Appx. 683 [2d Cir. 2009].....	2

**POINT I**

**LEGAL STANDARD FOR MOTION TO DISMISS**

“On a Rule 12(b)(6) motion to dismiss a complaint, the court must accept a plaintiff’s factual allegations as true and draw all reasonable inferences in [the plaintiff’s] favor” (Gonzalez v. Caballero, 572 F.Supp.2d 463, 466 [S.D.N.Y.2008]). Generally, “[i]n adjudicating a Rule 12(b)(6) motion, a district court must confine its consideration to facts stated on the face of the complaint, in documents appended to the complaint or incorporated in the complaint by reference, and to matters of which judicial notice may be taken” (Leonard F. v. Isr. Disc. Bank of N.Y., 199 F.3d 99, 107 [2d Cir.1999] [internal quotation marks omitted]).

Plaintiff’s claim that defendants have misstated the facts is without merit. The factual allegations contained in defendants’ statement of facts come from plaintiff’s own complaint, and/or from documents which have been incorporated by reference in the complaint or from which this court may take judicial notice. Defendant Child Protective Services of Orange County, Department of Social Services of Orange County, Christine Brunet and Stephanie Bazileor (hereinafter referred to as “the County Defendants”) have submitted in support of their motion certain Orange County Family Court documents referenced or relied upon by plaintiff in his Amended Complaint. Plaintiff’s Amended Complaint, taken together with these documents show that one of plaintiff’s children consumed an unidentified amount of children’s Tylenol (see County Defendants’ Ex. “A”) and one of plaintiff’s children consumed an unidentified amount of Zyprexa, plaintiff’s psychotropic medication (see County Defendants’ Ex. “G”).

**POINT II**

**THE COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S § 1983 AND § 1985 CLAIMS UNDER THE *ROOKER-FELDMAN* DOCTRINE**

The Children's Rights Society and Kim Pavlovic contend that *Rooker-Feldman* doctrine bars plaintiff's claims under 42 U.S.C. §1983 and §1985 to the extent those claims relate to the custody of his children. Plaintiff's claim that there has been no adjudication in state court which regards the issues in his amended complaint is belied by his own pleadings. Plaintiff specifically alleges that defendants acted individually or in concert with the other defendants to deprive him of custody and reasonable and unfettered access to his children [AC at pgs 29-30]. This Court's determination of this issue necessarily implicates the decisions and orders rendered by the Orange County Family Court removing plaintiff's children from his custody. It is well-established in this Circuit that the district court lacks jurisdiction under *Rooker-Feldman* where plaintiff's claims invite the district court to review or reject a state Family Court's determination regarding child custody and findings of neglect (see Yapi v Kondratyeva, 340 Fed. Appx. 683, 684 [2d Cir. 2009]; Phifer v City of New York, 289 F.3d 49, 57 [2d Cir. 2002]; Matter of Dayton, 786 F.Supp.2d 809, 815-816 [S.D.N.Y. 2011]; see also Chadee v Kaufman, 12 CV 3098, 2012 WL 2564408, \*2 [E.D.N.Y. June 26, 2012]; Allen v Mattingly, 10 CV 0667, 2011 WL 1261103, \*8 [E.D.N.Y. Mar. 29, 2011]; Puletti v Patel, No. 05-CV-2293, 2006 WL 2010809, \*5 [E.D.N.Y. July 14, 2006]). Based on the foregoing, this Court lacks subject matter jurisdiction over those portions of plaintiff's first and second causes of action which seek redress from the Orange County Family Court's orders removing plaintiff's children from his custody, and as such they should be dismissed.

**POINT III**

**PLAINTIFF'S CLAIMS SHOULD BE DISMISSED  
BECAUSE DEFENDANTS CHILDREN'S RIGHTS SOCIETY  
AND PAVLOVIC ARE ENTITLED TO QUASI-JUDICIAL IMMUNITY**

Plaintiff argument that Ms. Pavlovic and the Children's Rights Society are not entitled to qualified-immunity centers around his claim that they conspired with the state actors to deprive him of his constitutional rights. However, as more fully argued in their Memorandum of Law-in-chief and below, plaintiff has failed to allege a conspiracy under §1983 or §1985.

**POINT IV**

**PLAINTIFF HAS FAILED TO ALLEGE A  
CONSPIRACY UNDER 42 U.S.C. §1983 OR §1985**

Plaintiff's opposition does not dispute that Ms. Pavlovic was appointed law guardian representing the children in the subject Family Court proceedings and; as such, is not a state actor and, therefore, as law guardian, was not acting "under color of state law" for purposes of liability under 42 U.S.C. §1983. Furthermore, plaintiff does not dispute that the Children's Rights Society cannot be held liable on a theory of vicarious liability under 42 U.S.C. §1983 for Ms. Pavlovic's alleged misconduct. Instead, plaintiff contends defendants entered into a conspiracy with the "state actor" defendants to violate his constitutional rights and, therefore, acted "under color of state law" for §1983 purposes.

As demonstrated in defendants' Memorandum of Law-in-chief and as set forth below, plaintiff has failed to allege any facts suggesting an agreement between Children's Rights Society and Ms. Pavlovic and any of the other named defendants to deprive plaintiff of his constitutional rights. In the entirety of his Amended Complaint, as against Ms. Pavlovic, plaintiff alleges that she

1. proposed in Court on or about January 9, 2012, that the children be returned to plaintiff's wife on the condition that plaintiff would be evicted from the come; and
2. stated that the major issue that would prevent the return of the children was the plaintiff and that the plaintiff's wife had been complying all along; and that only by evicting the plaintiff could the situation be helped [AC ¶¶ 144, 145].

Plaintiff has merely alleged the independent actions of the several defendants, and in a conclusory fashion, argued that these independent actions constitute a conspiracy. Plaintiff's allegations are insufficient to avoid a 12(b)(6) dismissal and; as such, his complaint should be dismissed (see Brown v Legal Aid Society, 367 Fed.Appx. 215, 216 [2d Cir. 2010]; Bey v State of New York, No. 11 CV 3296, 2012 WL 4370272, \*8 [E.D.N.Y. Sept. 21, 2012]; McKnight v Middleton, 699 F.Supp.2d 507, 530 [E.D.N.Y. 2010], aff'd 434 Fed.Appx 32 [2d Cir. 2011]; Respass v New York City Police Dept., 852 F.Supp. 173, 178-179 [E.D.N.Y. 1994]).

#### **POINT V**

#### **PLAINTIFF'S THIRD CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM**

Plaintiff has failed to dispute that the Children's Rights Society and Ms. Pavlovic owed him no duty in order to sustain a cause of action for negligent infliction of emotional distress (see generally Matthews v Malkus, 377 F.Supp.2d 350, 361 [S.D.N.Y. 2005]). Furthermore, plaintiff as failed to allege that the Children's Rights Society or Ms. Pavlovic engaged in any conduct that rises to the level of outrageous conduct necessary to sustain a cause of action for negligent infliction of emotional distress. To the contrary, plaintiff merely makes a conclusory and vague allegation of conspiracy, which is insufficient to state a claim for negligent infliction of emotional distress. Based on the foregoing, it is respectfully submitted that plaintiff has failed to

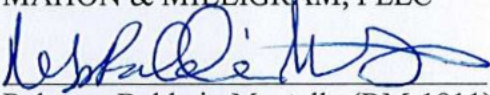
allege a claim for negligent infliction of emotional distress and, therefore, the cause of action should be dismissed.

**CONCLUSION**

Based on the foregoing arguments, it is respectfully submitted that plaintiff's Amended Complaint should be dismissed in its entirety as against the Children's Rights Society and Kim Pavlovic.

Dated: Newburgh, New York  
November 14, 2012

Respectfully submitted,

TARSHIS, CATANIA, LIBERTH,  
MAHON & MILLIGRAM, PLLC  
By:   
Rebecca Baldwin Mantello (RM-1911)  
Attorney for Defendants  
CHILDREN'S RIGHTS SOCIETY, INC.  
and KIM PAVLOVIC  
One Corwin Court, P. O. Box 1479  
Newburgh, New York 12550  
Tel. No.: (845) 565-1100  
Fax: (845) 565-1999  
E-Mail: [rmantello@tclmm.com](mailto:rmantello@tclmm.com)

TO: JACOB TEITELBAUM, pro se  
5 Leipnik Way #102  
Monroe, New York 10950  
Tel. No.: (845) 782-8995

Bluma and Joel Tennenbaum  
16 Lizensk, Unit 102  
Monroe, NY 10950

Chaya and Juda Katz  
22 Hayes Ct., Unit 201  
Monroe, NY 10950



David Darwin, Esq.  
Attorney for Defendants Department of Social Services,  
Orange County Child Protective Services,  
Stephanie Bazile and Christine Brunet  
15 Matthews Street, Suite 305  
Goshen, New York 10924  
Tel. No.: (845) 291-3150  
Fax No.: (845) 291-3167  
Email: ddarwin@orangecountygov.com

Garbarini & Scher, P.C.  
Attn: Gregg D. Weinstock, Esq.  
Attorneys for Defendant Maria A. Patrizio, Esq. s/h/a Maria Petrizio  
432 Park Avenue South, 9<sup>th</sup> Floor  
New York, New York 10016-8013  
Tel. No. 689-1113  
Email: gweinstock@garbarini-scher.com

Siler & Ingber, LLP  
Attn: Spencer Sheehan, Esq.  
Attorneys for Kiryas Joel Comm. Ambulance Corp.  
301 Mineola Blvd.  
Mineola, NY 11501  
Tel. No. (516) 294-2666  
Fax No. (516) 294-0870  
ssheehan@nylawnet.com