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)

ANSWER IN OPPOSITION TO MOTION TO DISMISS

Plaintiff JACOB TEITELBAUM, appearing Pro Se, by way of OPPOSITION TO ALL DEFENDANT'S MOTIONS TO DISMIIS 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, 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.

DEFENDANTS MISAPPREHEND THE APPLICABILITY OF THE *ROOKER-FELDMAN* DOCTRINE.

The Rooker-Feldman Doctrine arose from the case of *Rooker v. Fidelity Trust Company*[1] and in its basic form held that actions by lower state courts were not subject to review by Federal Courts unless that relief was specifically authorized by Congress. However, in the 89 years since this holding the Court has revisited on several occasions narrowing the scope of its applicability. In *Exxon v. Saudi Basic*[2] the Court held that the effect of the Doctrine ""is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the

[1] *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)

[2] *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005)

circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions."[3] The Court, with this decision, narrowed the scope of the Doctrine to issues specifically raised in a State Court proceeding. The issues addressed in the New York State cases , while giving rise to the issues the Plaintiff asserts here, are fundamentally divergent and do not depend on this Court overruling or in anyway superseding the authority of the New York State Court.

Further, the issues raised by the Plaintiff are unique, particularly the Conspiracy issue, are not issues decided by any Court prior to this action being brought, and this is fundamental to the *Rooker* decision. "[I]n determining whether that question was raised and decided we must be guided by the record. It has been examined and we find it does not show that the question was raised in any way prior to the judgment of affirmance in the Supreme Court."[4] A review of the record from the State Court will show that the issues being raised before this Court are not the issues adjudicated below and therefore any application of the *Rooker-Feldman* Doctrine would be inappropriate here.

CONSPIRACY

For the Court to dismiss the Plaintiff's case at this time because the proof of 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 Defendant's 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

[3] *Id.* at 284.

[4] *Rooker v. Fidelity Trust Co.*, 261 U.S. 114, 117 (1923).

discernible facts that point to the existence of a Conspiracy, and this may "be inferred from the circumstances."[5] "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."[6]

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.

SUBJECT MATTER JURISDICTION

Again, the Plaintiff asserts that the Defendants misapprehend the application of the *Rooker-Feldman* Doctrine. There has been no adjudication in a State Court as it regards the issues presented by the Plaintiff. In fact, the very fact that we were in State Court was the result of the actions of the Defendants, both jointly and individually, that are the issues presented before this Court. But, this action is definitively not based on the adjudications which occurred in State Court.

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

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

Additionally, there can be no straight faced or remotely plausible assertion that this Court does not have Jurisdiction over §1983 and §1985 actions.

> The federal causes of action against the individual defendants were based on allegations of conspiracy and intent to deprive petitioners of their constitutional rights of free speech and assembly, and to be secure from the deprivation of life and liberty without due process of law. These federal causes of action against the individual defendants were alleged to arise under, inter alia, 42 U. S. C. §§ 1983 and 1985, and jurisdiction was asserted to exist under 28 U. S. C. § 1343.[7]

Citing to the Defendant's own assertions that there are four elements for the application of *Rooker-Feldman* the Motion fails on all four points. 1) There was no State Court adjudication of the issues the Plaintiff presents; 2) The Plaintiff complains of injuries caused by the tortuous and conspiratorial acts of the Defendants; 3) The Plaintiff's action is against the Defendants and does not seek direct redress of the State Court adjudications; and, 4) As there was no State Court adjudication of the issues presented before this Court there cannot have been a State Court judgment "rendered before the District Court proceedings commences." For these reasons the Defendant's assertions that this Court lacks jurisdiction, irrespective of the reason, must fail.

QUASI-JUDICIAL IMMUNITY

> The doctrine of quasi-judicial immunity is important in maintaining the integrity of the judicial process by shielding persons who execute court orders. "The rationale for immunizing persons who execute court orders is apparent. Such persons are themselves 'integral parts of the judicial process.'" Wilkinson v. Russell, 973 F. Supp. 437, 441 (D. Vt. 1997) (quoting Briscoe v. LaHue, 460 U.S. 325, 335, 103 S. Ct. 1108, 1116, 75 L. Ed. 2d 96 (1983)), aff'd, 182 F.3d 89 (2d Cir. 1999), cert. denied, 528 U.S. 1155, 145 L. Ed. 2d 1072, 120 S. Ct. 1160 (2000). "Whether an official is entitled to absolute or qualified immunity depends on the nature of the official's functions at issue. 'Immunity is justified and defined by the functions it protects and serves, not by the persons to whom it attaches.'"

[7] *Moor v. County of Alameda*, 411 U.S. 693, 695 (1973).

DeRosa v. Bell, 24 F. Supp. 2d 252, 256 (D. Conn.1998) (citing Forrester v. White, 484 U.S. 219, 227, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988)).[8]

And, that same Court went on to explain that "[a]s the Supreme Court has made clear judicial 'immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Mireles v. Waco, 502 U.S. at 11-12, 112 S. Ct. at 288 (citations omitted)."[9] In other words, when the court officer is acting outside of the scope of their appointment, i.e. conspiring with others to achieve and extra-judicial result, immunity is not applicable. The standard relates to the act alleged, whether or not it is clearly outside of the scope of authority.[10]

Additionally, the Defendants cite to one quote from the previously cited case; "New York case-law holds that guardians appointed by the court to assist with matters of child custody are entitled to quasi-judicial immunity." They do not, however, quote what that same Court went on to say when the Court held that; "[i]n Bradt IV v. White, the court likewise held a guardian for a child in a custody proceeding 'has quasi-judicial immunity from civil liability for conduct directly relating to the performance of the law guardian's duty to further the best interests of the children.'"[11] (internal citations omitted) The entire basis of the Plaintiff's action centers around the assertion that the Defendants were acting outside of their duty by attempting to further the purposes of a closed community rather than the best interests of the children and

[8] *Lewittes v. Lobis*, 2004 U.S. Dist. LEXIS 16320, 36 (SDNY 2004).

[9] *Id.* at 17.

[10] *Id.* at 19.

[11] *Id.* at 38-39.

that would clearly expose the Defendants to liability without the cover of quasi-judicial immunity. The actions by the various Defendants that are the subject matter of this suit are clearly to further interests other than that of the children and therefore the Defendants are not afforded Immunity of any sort; and that is well established case law.

DEFENDANTS PAVLOVIC AND OTHERS ARE 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 ….[12]

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."[13] Ergo, even if we agree that Defendant Pavlovic 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.

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

[13] *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

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 DEFENDANTS NEGLIGENTLY INFLICTED EMOTIONAL DISTRESS ON THE PLAINTIFF AND DAMAGES WERE SUFFERED

The Defendants incredulously assert 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.

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

The Defendants, in their Motions, Memoranda, and Affirmations misstate the facts of the events that led to this action being commenced. Their 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's 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 all of various Motions to Dismiss submitted by the various Defendants 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
November 4, 2012

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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 **ANSWER IN OPPOSITION TO MOTION TO DISMISS,**

upon

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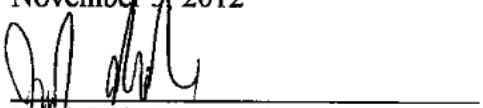
Dated; Monroe, New York
November 5, 2012



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