UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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JACOB TEITELBAUM, individually and as father
To CHILD A and CHILD B,

Plaintiff,

-against-

12 CIV 2858 (VB)

JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM; BLUMA TENNENBAUM; DAVID RUBENSTEIN; KIRYAS JOEL COMM. AMBULANCE CRP; DISTRICT FAMILY COURT OF ORANGE COUNTY 9th 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,

Defendants.
----------X

COUNTY DEFENDANTS' REPLY MEMORANDUM OF LAW

DAVID L. DARWIN
ORANGE COUNTY ATTORNEY

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POINT I

TO THE EXTENT THAT PLAINTIFF FAILEDTO OPPOSE THE COUNTY DEFENDANTS' MOTION, HIS CLAIMS SHOULD BE DEEMED ABANDONED.

Plaintiff does not oppose, challenge or address the County defendants' argument that the § 1983 claims against Bazile and Brunet must be dismissed because the AC does not allege that either had any personal involvement in the alleged constitutional violations (County defendants' memorandum of law, pp. 9-10). Nor does plaintiff oppose, challenge or address the County defendants' arguments that the claims against CPS and DSS must be dismissed on the grounds that neither is a legal entity capable of being sued, and that the AC is subject to dismissal even if the County were substituted as a defendant, because there is no allegation in the AC of an official municipal policy (County defendants' memorandum of law, pp. 12-13). Plaintiff does not oppose or address the County's argument that the state law claims must be dismissed as time-barred because of plaintiff's failure to serve a notice of claim pursuant to New York County Law § 52 and New York General Municipal Law § 50-e (County defendants' memorandum of law, p. 16).

Because the plaintiff failed to oppose the County defendant's motion as to these claims, they should be deemed abandoned by the plaintiff and dismissed. *See, e.g., Martinez v. Sanders*, 2004 WL 1234041 (S.D.N.Y.):

> Because Plaintiff did not address Defendant's motion to dismiss with regard to these claims, they are deemed abandoned. *See Dineen v. Stramka,* 228 F.Supp.2d 447, 454 (S.D.N.Y.2002) (finding that plaintiff's failure to address claims in opposition papers "enabl[es] the Court to conclude that [plaintiff] has abandoned them"); *Anti–Monopoly, Inc. v. Hasbro, Inc.,* 958 F.Supp. 895, 907 n. 11 (S.D.N.Y.1997) (holding that plaintiff's

failure to provide any argument opposing defendant's motion "provides an independent basis for dismissal" and "constitutes abandonment of the issue"); *see also Taylor v. City of New York,* 269 F.Supp.2d 68, 75 (E.D.N.Y.2003) ("Federal courts may deem a claim abandoned when a party moves for summary judgment on one ground and the party opposing summary judgment fails to address the argument in any way.").

POINT II

APPLICATION OF THE ROOKER-FELDMAN DOCTRINE REQUIRES DISMISSAL OF THE COMPLAINT

Plaintiff argues that the Rooker-Feldman doctrine does not apply here because his claims, particularly the conspiracy claims, are unique to this federal action, and the doctrine only applies "to issues specifically raised in a State Court proceeding." (Plaintiff's MOL at p. 3). He erroneously asserts that "[t]here has been no adjudication in State court as it regards the issues presented by the Plaintiff [in the federal action]."

The Rooker-Feldman doctrine "bars collateral attack on a state court judgment which attempts to cloak the attack as a §1983 action in federal court." *In re Dayton v. City of Middletown,* 786 F. Supp. 2d 809, 815 (S.D.N.Y. 2011). The County defendants' moving papers conclusively establish that the claims raised herein are identical to the claims already adjudicated in Family Court proceedings. The Family Court has already adjudicated plaintiff's claims pertaining to the findings of neglect; the removal of his children; the alleged fabrication of charges as a pretext to remove his children from his home; and that the actions of the County defendants were politically motivated. Each of the four elements necessary to the application of the Rooker-Feldman doctrine are present here: 1) plaintiff lost in Family Court; 2) plaintiff's injuries were caused by the State court judgments; 3) plaintiff is inviting this Court to review and reject the Family Court's findings relating to neglect, custody and the political motivation; and 4) these adjudications were rendered before the institution of this lawsuit.

The plaintiff cannot avoid the application of the Rooker-Feldman doctrine merely by asserting new legal theories in federal court. *In re Dayton v. City of Middletown,* 786 F. Supp. 2d at 816:

> ....the Second Circuit has explained that "a federal plaintiff cannot escape the *Rooker–Feldman* bar simply by relying on a legal theory not raised in state court." *Hoblock,* 422 F.3d at 87. In other words, the simple assertion of a constitutional claim does not create an independent injury if the plaintiff's injury is caused by the state court judgment. *See id.* (noting that if a state court terminated a parent's rights, the parent could not avoid *Rooker–Feldman* by asserting in federal court that the decision violated his due process rights).

POINT III

PLAINTIFF'S CONSPIRACY and STATE TORT CLAIMS SHOULD BE DISMISSED.

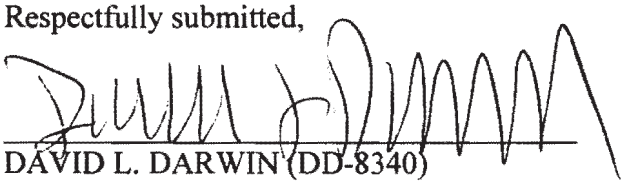
The County defendants will rest on the points raised in their memorandum of law in-chief in support of dismissal of these claims.

CONCLUSION

For the foregoing reasons, the complaint against the County defendants should be dismissed in its entirety.

Dated: Goshen, NY
November 30, 2012

Respectfully submitted,



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