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)

AMENDED MOTION TO RECONSIDER PURSUANT TO LOCAL RULE 6.3

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PLAINTIFF JACOB TEITELBAUM, appearing Pro Se, does, herewith ask that this Honorable Court, pursuant to Local Rule 6.3 of the Southern District of New York, to reconsider its Decision of February 11, 2013, allowing the Complaint to be Dismissed against various Defendants, for the following reasons, to wit;

1) The Plaintiff, in his initial Complaint and subsequent filings, has not only asserted a factual basis for his claims but has shown a clear pattern of behavior on the part of the various Defendants and their minions that shows a clear factual basis for the claims asserted by the Plaintiff. The defenses raised against the various Motions to Dismiss, by the Plaintiff, have seemingly been overlooked by the Court and the Plaintiff now asks that the Court give them full consideration.
2) The Plaintiff should be allowed to Amend the Complaint to name Orange County and, possibly, various other state and municipal entities, so that the Complaint can comport with cases cited by the Court.
3) The Plaintiff asserts that, as it regards the Rooker-Feldman Doctrine, this Court, with all due respect, has misapprehended the Plaintiff's claims. When this Court considers the four elements of the Doctrine the Court's Holding is based on the incorrect position that the Plaintiff is asking this Court to review, reverse, or revisit any of the Decisions of any court or adjudicative body in the New York State Court system; this could not be further from the truth. Additionally, courts have held that "because the 'plaintiffs lost in state court, complain of numerous injuries caused by the state court judgment, and invite review and rejection of that judgment,'" (*Caldwell v Gutman, Mintz, Baker Sonnfeldt, P.C.*, 2010 U.S. Dist. LEXIS 31194, 6 (E.D N.Y. 2011) the *Rooker-Feldman* Doctrine would be applicable, but that is not the case here. Here the Plaintiff does not seek the Court to reverse, or in any way to revisit any of the matters adjudicated in the state courts, nor does the Plaintiff ask this Court for relief of anything that resulted from the adjudications in the state courts. The Conspiracy alleged, as a matter of law, operates as a completely separate legal issue.

"The crime of conspiracy is an offense separate from the crime that is the object of the conspiracy. Once an illicit agreement is shown, the overt act of any conspirator may be attributed to other conspirators to establish the offense of conspiracy (cf. *People v Salko*, 47 NY2d 230; *People v Sher*, 68 Misc 2d 917) and that act may be the object crime." *People v. McGee*, 49 N.Y.2d 48, 57-58 (N.Y. 1979). Ergo, the Conspiracy asserted by the Plaintiff stands on its own and is in no way dependent on the judicial results in the various state courts. The Conspiracy stands on its own and should be allowed to move forward into Discovery.

The Plaintiff's claims are based on the Conspiratorial actions of the various Defendants, who, acting in concert, and by their various actions, have sought to deprive the Plaintiff of the various constitutional rights that he now asserts have been violated. The Defendant's behavior, irrespective of the result in the state courts, is actionable. Nowhere in the Complaint or any of the subsequent Amendments does the Plaintiff ask this Court to revisit any of the Decisions from the various state courts.

When looked at through this lens, Element 1 is not satisfied. There has been no adjudication of any kind and in any other court of the issue of the violation of the Plaintiff's constitutional rights and conspiracy claims. Neither is Element 2 satisfied. The Plaintiff complains of injuries cause by the Conspiracy and Rights violations that occurred and continue to occur against the Plaintiff and by the Defendants, the actions. The Court should note that if *Rooker-Feldman* were applicable there would be no Federal remedy for the Plaintiff particularly as it regards the ongoing conspiratorial harassment and violations of the Plaintiff's Rights. As it regards Element 3 the Plaintiff does not and never did ask this Court to review the decisions rendered in New York State Court. As stated above the Conspiracy that was committed against the Plaintiff, as a matter of law,

is a separate issue from any other act by the Defendants. And, the 4th element is of no moment here because the Plaintiff's action is not based on any state court adjudication or any result from any state court, irrespective of their outcomes. The relief sought by the Plaintiff is based wholly in the past, present, and ongoing unconstitutional behavior by the Defendants and enjoining the Defendants from further harassing and violating the Plaintiff's Rights. At no time has this Court been asked to review or reverse any other court's action, nor has this Court been asked to prevent the various Defendants from acting within the law in executing their various functions, even as it regards this Plaintiff.

Also See; *McKnight V. Middleton* citing; *Hoblock,* 422 F.3d at 85 (alterations in original) (quoting *Exxon Mobil,* 544 U.S. at 284). "The first and fourth requirements are procedural, while the second and third are substantive. Id. Here, the Rooker-Feldman doctrine does not bar Plaintiff's claims because Plaintiff does not "invite district court review and rejection" of a state court judgment. Id. The doctrine only applies when "the requested federal court remedy of an alleged injury caused by a state court judgment would require overturning or modifying that state court judgment."

"In the child custody context, in order to satisfy this substantive requirement, a plaintiff must be 'plainly' seeking to 'repair to federal court to undo the [Family Court] judgment.' *Green v. Mattingly,* 585 F.3d 97, 102 (2d Cir. 2009) (quoting *Exxon Mobil,* 544 U.S. at 293). In *Green,* the Second Circuit held that Rooker-Feldman did not apply to a plaintiff's challenge of a temporary custody award that was later reversed by the Family Court itself. Id. The Second Circuit reasoned that, since the child had already been returned to the plaintiff by the Family Court, no state-court 'judgment' remained to be undone by federal courts. Id. In *McNamara,* the Second Circuit further added, in dicta, that a plaintiff's claims, insomuch as they challenge only 'the procedures applied in all

attorney disciplinary proceedings and seek damages and prospective relief rather than a modification of [the plaintiff's] suspension or reinstatement orders," would not be barred by Rooker-Feldman. 2009 U.S. App. LEXIS 22907, 2009 WL 3377914, at 1. Thus, the Court reads *McNamara* and *Green* to suggest that a plaintiff's claims seeking only monetary damages or prospective-only relief against court procedures rather than modification of a family court's temporary custody or other orders would not run afoul of the Rooker-Feldman doctrine. *McNamara v. Kaye*, No. 08-4561-cv, 360 Fed. Appx. 177, 2009 U.S. App. LEXIS 22907, 2009 WL 3377914, at 1 (2d Cir. Oct. 20, 2009) (citing *Hoblock*, 422 F.3d at 85).

4) Defendant's Kiryas Joel and Rubenstein acted engaged in a Conspiracy, in this matter, at the behest of agents of Orange County and the government of the Village of Kiryas Joel. As such, they were acting as governmental actors and are subject to claims under §1983. "Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of § 1983." *Harvey v. Plains Twp. Police Dep't*, 421 F.3d 185, 195 (3rd Cir. 2005). The parties acted at the direction of state actors and as such became de facto agents of the state.

This Court has broad discretion in reviewing and reconsidering its previous order. (see generally, *In re Refco Capital Mkts., Ltd.*, 2008 U.S. Dist. LEXIS 97016, 5 (S.D.N.Y. 2008) (citing *In re Salomon Analyst Winstar Litig.*, 2006 U.S. Dist. LEXIS 8388, 2-3 (S.D.N.Y. 2006) and Fed. R. Civ. P. 59 and 60.3) The decision to grant or deny a Motion for Reconsideration is discretionary. (see *In re PCH Assocs.*, 949 F.2d 585, 592 (2d Cir. 1991). The Plaintiff asserts that this Court should reserve it decision to Dismiss until, at a minimum, such time as the Plaintiff has been able to engage in at least some amount of Discovery. In a matter analogous to this issue

before the Court, another court held that "[a]fter discovery, the dispositive question to be answered by the District Court regarding this aspect of its Bogan inquiry should be whether plaintiffs' positions were eliminated (a substantively legislative act), see Almonte, 478 F.3d at 108, or whether plaintiffs were administratively fired (a substantively non-legislative act)." *State Emples. Bargaining Agent Coalition v. Rowland*, 494 F.3d 71, 92 (2nd Cir. 2007). While the cases are very much factual divergent, the issue remains that this Court should allow the Plaintiff some amount of Discovery prior to the Court making any decision, particularly as it regards the ultimate sanction of dismissing the Plaintiff's action.

Additionally, this Circuit, pursuant to Under Fed. R. Civ. P. 15(a), "leave [to amend] shall be freely given when justice so requires," even after entry of judgment. *Ruotolo v. City of N.Y.*, 514 F.3d 184, 191 (2d Cir. 2008). "Where there is neither a showing of the movant's undue delay, bad faith or dilatory motive, nor a showing of undue prejudice to the opposing party by virtue of allowance of the amendment, leave to amend should be granted." *In re Winstar Commc'ns*, 2006 U.S. Dist. LEXIS 7618, at 4 (S.D.N.Y. 2006) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *Acito v. IMCERA Grp., Inc.* 47 F.3d 47, 55 (2d Cir. 1995).

The Petitioner, as Next Friend, pending the motion now before this Court, and Plaintiff being unable to file this motion, now asks this Court to reconsider its Decision dismissing the claims against certain Defendants and allow the Plaintiff time, as needed and if necessary, to amend his Complaint to comport with this Court's and the law's requirements

Respectfully Submitted,

Ben Friedman
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Dated; Monroe, New York
March 11, 2013

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-

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DEFENDANTS

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AFFIRMATION
OF SERVICE

I, BEN FRIEDMAN, declare under penalty of perjury that I have served a copy of the attached **AMENDED MOTION TO RECONSIDER,**

upon

The Honorable Loretta A. Preska
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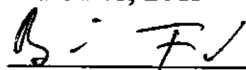

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