

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 4/29/13

PRO SE OFFICE

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

PLAINTIFF

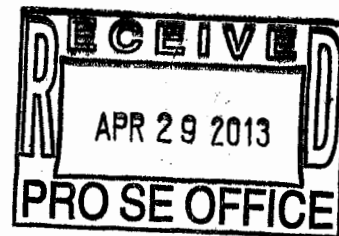
CIVIL ACTION NO.  
12 CV 02858 (VB)

-against-

MOTION FOR  
PROTECTIVE ORDER  
& APPOINTMENT OF  
NEXT FRIEND

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



MOTION FOR THE ISSUANCE OF A PROTECTIVE ORDER &

APPOINTMENT OF BENZION P. FRIEDMAN AS REPRESENTATIVE OF

PLAINTIFF JACOB TEITELBAUM

**PLAINTIFF JACOB TEITELBAUM**, appearing Pro Se, respectfully prays that this Honorable Court appoint Benzion P. Friedman as Next Friend or representative of the former enabling him to act in the former's stead before this Court since the Plaintiff, Jacob Teitelbaum is presently unable to competently act in his own best interests regarding this matter, or to move for an appropriate protective order to ensure that the plaintiff's rights, liberty and his access to the courts are protected.

The Plaintiff herein brings forth the following arguments in support of this motion as follows:

### ARGUMENT 1

Proper party to bring Next Friend motion and waiver of rights.

- 1) Plaintiff relies on the previous filing made by Ben Friedman in the Motion for Next Friend Intervention and accompanying affidavit, in addition Plaintiff asserts the facts and arguments herein below written.
- 2) Rule 17(c) of the Federal Rules of Procedures provides, in relevant part, that:

"[t]he court shall appoint a **guardian ad litem** for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person."

- 3) The case of *Whitmore v. Arkansas*<sup>1</sup> is an applicable case law in this instant motion. In said case, the Supreme Court have elucidated on matters regarding the appointment of guardians ad litem or “next friend” and the appointee’s obligations. Specifically, the Supreme Court held that:

“The Supreme Court has established . . . one necessary condition is a showing by the proposed "next friend" that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability. That prerequisite is not satisfied where, as here, an evidentiary hearing shows that the defendant has given a knowing, intelligent, and voluntary waiver of his right to proceed, and his access to court is otherwise unimpeded.”

- 4) In the same case of *Whitmore*<sup>2</sup>, the Supreme Court further stated that:

“The burden is on the ‘next friend’ clearly to establish the propriety of his status and thereby justify the jurisdiction of the court”.

- 5) It has also been made clear by the Supreme Court that such a motion for Next Friend status can be brought by either the Plaintiff (Party) or by a non party acting on his behalf. As raised in the case of *Whitmore*<sup>3</sup>, the Supreme Court clarified that: “When Congress added the words "or by someone acting in his behalf" to 754 in 1948, the revisers noted

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<sup>1</sup> *Whitmore v. Arkansas*, 495 U.S. 149 (1990)

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid*, Footnote 3 in *Whitmore v. Arkansas*.

that the change "follow[ed] the actual practice of the courts." Revisers' Notes to 28 U.S.C. 2242 (1982 ed.)." Similarly, it was also raised under footnote 4 of the same case, which states that the same principle applies not only for Habeas Corpus but for all civil rights or injury claims.

- 6) The Court in further stated in the case of *Ferrelli v. River manor Health Center* 323 F.3d 196, 2<sup>nd</sup> Cir 2003, that "We do not suggest that a pro se litigant is required to file a formal motion to trigger an inquiry into his or her mental competence".
- 7) The Plaintiff's friend Ben Friedman has recently filed a motion with this court for Next Friend Intervention thereby satisfying this necessary condition showing why he shall be appointed as next friend. The Plaintiff directly requested Next Friend intervention twice before the filing of this instant motion.
- 8) Regarding the waiver required by the Supreme Court as a necessary condition, the Plaintiff asserts that he has never given any waiver of sorts, much less a knowing, intelligent, and voluntary waiver of his rights or willingness to continue this action whether through this court or on direct appeal. The Plaintiff's silence cannot be construed as a waiver absent an evidentiary hearing proving the same.
- 9) To construe Plaintiff's silence as a waiver is a violation of his constitutional rights. It would greatly cause unprecedented injury to the basic societal values and to the integrity of our justice system. More so, the plaintiff's lack of power to defend himself or the intimidation employed against him will not aid to upgrade such an injury.

- 10) In the Whitmore<sup>4</sup> case, Simmons was found to have properly waived his right to appeal. In this case, however, the Plaintiff's friend properly presented the facts and it is clear that former had not previously waived his rights to appeal nor his right to continue the proceedings in this court.
- 11) The Plaintiff hereby wants to inform the Court, that, in light of all the present and past terror and intimidation made upon the Plaintiff to stop or cease this action, that no waiver of any kind by Plaintiff written or oral shall deemed to be a waiver of his rights or willingness to proceed in this court or any other Court including appeals, without the consent of Plaintiff's friend Ben Friedman to ascertain that such waiver was done knowingly, intelligently, and voluntarily without duress.
- 12) Furthermore, this Court is well aware that 1) Plaintiff is handicapped to bring or pursue this action by himself for the various reasons set forth in Ben Friedman's motion and affidavit (Docket # 162, 163), 2) that Plaintiff fully relied on his friend Mr. Friedman to ascertain that his rights and wishes are communicated to this Court, 3) Plaintiff repeatedly complained to this court of his inability to pursue this action himself as more detailed in (Docket # 162, 163), Plaintiff has no other means to communicate to this Court except through his friend, therefore Plaintiff's silence cannot be construed as a waiver to forego his rights to further pursue this action directly or an appeal.
- 13) Plaintiff indeed continually kept alerting the court of his continually being subjected to harm and injury done with bad faith and malice to stop this action. It was not until

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<sup>4</sup> Supra, Whitmore page 3.

Plaintiffs was cut off from his Friend and evicted from Kiryas Joel that his access to the court was cut off.

## ARGUMENT II

### Plaintiff's inaccessibility and lack of access to the court.

- 14) Plaintiff is not able to pursue this action through being emotionally and mentally drained from the destruction of his family, intimidation and terror within and without the community leading to emotional distress. These factors caused the Plaintiff to be in a desperate and incompetent frame of mind which rendered him unable to continue this action on his own.
- 15) Plaintiff, being continually harmed, terrorized and injured, by the defendants and conspirators, further became physically, mentally and emotionally drained and torn, becoming incompetent and without frame of mind to pursue this action on his own.
- 16) Plaintiffs has also been subjected to abnormal living conditions through the direct actions of the defendants-conspirators, being in homeless condition and without his basic minimal needs and proper shelter, further disabling him to pursue this action on his own.
- 17) Plaintiff ordinarily had easy and flexible access to his friend Ben Friedman while residing in Kiryas Joel, however since Plaintiff was forced out of Kiryas Joel into exile and was forced to live in a homeless condition, Plaintiff lost access to his friend. It is only with undue hardship and extreme difficulty and expense that Plaintiff is unable to bear to gain access to his friend to continue and pursue this action. All of these are results of



defendants-conspirators plans to terrorize and intimidate the plaintiff and to disable him from communicating and accessing his friend, to stop this action.

- 18) Plaintiff is also under duress employed by the defendants to stop communications with Ben Friedman.
- 19) Plaintiff is being unable to access his friend and having no other person to help him pursue this action and, is effectively being blocked access to this court.
- 20) Plaintiff relies on all other facts and argument's set forth in Mr. Friedman's motion for Next Friend.
- 21) Plaintiff has previously alerted this court, that due to the defendants-conspirators seeking to stop this action plaintiff remains exposed to grave harm if he pursues this action by himself. But, this evil will be avoided by the appointment of a Next Friend.
- 22) Plaintiff is currently being controlled and manipulated by the defendant conspirators and Plaintiff cannot pursue his rights in this action while this injustice is happening. The defendants are manipulating Plaintiff's frame of mind constantly to stop this action and limit his ability to pursue this action himself.
- 23) Plaintiff has difficulty to manage and briefly discuss with his friend and sign the documents and other processes in connection with this instant case. Thus, there is a necessity to appoint a Next Friend for the protection of the rights of herein plaintiff to fully litigate and participate in the proceedings of this instant case.

### ARGUMENT III

Plaintiff's Mental Incompetence, and Court's prior identification of issues creates a duty on the Court to investigate.

24) The Court in Ferrelli<sup>5</sup> held:

"If there has been a legal adjudication of incompetence and that is brought to the court's attention, the Rule's provision is brought in play".

25) Furthermore, Court held in the case of Whitmore that:

"And there was no meaningful evidence that he was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision".

26) In both cases, Ferrelli<sup>6</sup> and Whitmore<sup>7</sup>, there were no prior identifiable issues in that Court or from another Court, here the court is aware of all the issues plaintiff has raised and identified prior to the dismissal of some defendants; that plaintiff had to be on the run many times throughout this action due to terror by the defendants including to stop this action, a showing by Plaintiff's friend of inaccessibility or disability is enough to warrant this court's investigation.

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<sup>5</sup> Ferrelli v. v. RIVER MANOR HEALTH CARE CENTER, 323 F.3d 196.

<sup>6</sup> Ibid.

<sup>7</sup> Supra, Whitmore, page. 3.



27) Plaintiff was adjudicated by both Defendant Orange County as well as the Family Court, to be incompetent, this has been raised on the record numerous times as more detailed in Mr. Friedman's motion and affidavit. This situation creates a duty on the court and for the plaintiff and his Next Friend to invoke Rule 17(c).

28) Furthermore, the Pennsylvania District Court in Ferrelli<sup>8</sup> held:

“Although we do not find that Rule 17(c) requires courts to inquire into the necessity of appointing a guardian ad litem absent verifiable evidence of mental incapacity, we also note that nothing in that rule prevents a district court from exercising its discretion to consider sua sponte the appropriateness of appointing a guardian ad litem for a litigant whose behavior raises a significant question regarding his or her mental competency.

29) Similarly, the third circuit held in the case of Powell v. Symons<sup>9</sup> that the court had a duty where it was aware of prior findings of incompetence in other areas, similarly here there were prior findings by the county and the family Court.

30) If herein Plaintiff is denied Next Friend intervention, it will have the effect of invalidating the assertion made by the county and the family court and the doctors who examined said plaintiff who concluded that the latter is mentally ill and incompetent. This

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<sup>8</sup> Ibid.

<sup>9</sup> Powell v. Symons, 680 F.3d 266 (3d Cir. 2012)

court in ignoring those prior adjudications and findings would be saying that plaintiff is mentally competent. This would also have the effect of overruling the state court and a violation of the Rooker-Feldman doctrine.

## ARGUMENT IV

### Right to counsel.

- 31) In the case of **Berrios v. New York City Housing Authority 564 F.3d 130 (2009)** the **Second Circuit court** gave sixty days for proposed next friend to retain a cause for an attorney or gain court appointment of an attorney. They cited Cheung for this, for example, noting that the "statutory right to proceed pro se reflects a respect for the choice of an individual citizen to plead his or her own cause". The Court also held that a father was not allowed to bring suit on behalf of his minor daughter without representation by counsel. 906 F.2d at 61 (emphasis added). We noted that where an individual lacks the capacity to sue due to minority, "[t]here is ... no individual choice to proceed pro se for courts to respect." Id. We ruled that "no issues concerning th[e] litigation should be decided until the counsel issue is resolved," and we remanded to give the father "an opportunity to retain counsel or to request the appointment of counsel," and stated that if he did not proceed to "retain counsel and if the district court decline[d] to appoint counsel, the complaint should be dismissed without prejudice."

- 32) Clearly, there is a necessity to appoint counsel for the Next Friend Appointee. The right to counsel by the party litigant to be represented by his Next Friend must be upheld to better protect the latter's constitutional rights.

## ARGUMENT V

### The Court's duty to protect Plaintiff

- 33) Rule 17c of the FRCP allows for the Court to issue an appropriate protective order other than appointing a Next Friend, to protect a party's rights.

- 34) The Court also ruled in the case of *Boyd v. United* 116 U.S. 616 that:

“It is the duty of the courts to be watchful for the Constitutional Rights of the Citizens, and against any stealthy encroachments thereon.”

- 35) Similarly the Supreme Court in *Gomillion v. Lightfoot* 364 U.S. 155 (1966), cited also in *Smith v. Allwright*, 321 U.S. 649.644, said that “Constitutional Rights would be of little value if they could be indirectly denied.”

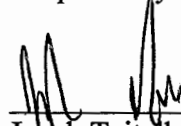
- 36) More so, in the case of *Downes v. Bidwell*, 182 US 244 (1901), the Supreme Court held:

“It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution.”

WHEREFORE, premises considered, in view of the foregoing, as well as those stated in the Motion and affidavit of Mr. Ben Friedman, Plaintiff requests that this Court appoint Mr. Ben Friedman as Next-Friend in this action or in the alternative another appropriate protective order to protect Plaintiff's Rights and Interests through the pendency of this action and until such time as the Plaintiff if able to effectively defend his own interests before this Court.

Respectfully Submitted,

Dated; Monroe, New York  
April 25, 2013



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Jacob Teitelbaum, Plaintiff Pro Se  
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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, BENZION P. FRIEDMAN, declare under penalty of perjury that I have served a copy of the attached **NOTICE OF MOTION FOR PROTECTIVE ORDER AND APPOINTMENT OF NEXT FRIEND**, and **MOTION FOR PROTECTIVE ORDER AND APPOINTMENT OF NEXT FRIEND**, upon

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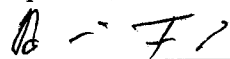
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Dated; Monroe, New York  
April 29, 2013



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