UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM,

Plaintiff,

- against -

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; CHRISTINE BRUNET; ATTY. STEPHANIE BAZILEOR; JOHN DOES 1 THROUGH 95; JANE DOES 1-20;

Defendants.

Docket No. 12-CV-2858 (VB)

MEMORANDUM OF LAW

ON BEHALF OF MARIA A. PATRIZIO, ESQ. S/H/A ATTY. MARIA PETRIZIO IN SUPPORT OF HER MOTION TO DISMISS THE COMPLAINT AND AMENDED COMPLAINT

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PRELIMINARY STATEMENT

Plaintiff *pro se*, JACOB TEITELBAUM, has brought this action pursuant to 42 U.S.C. §§ 1983 and 1985 alleging violations of civil rights, as well as state claims for negligent and intentional infliction of emotional distress in connection with child neglect proceedings in New York State Family Court. Plaintiff, a member of a Hasidic, ultra-Orthodox Jewish community in Orange County, New York, alleges that commencing in April 2010 to the present, the various named defendants have conspired to remove his two children from his home and terminate the parental rights of himself and his wife as retaliation for plaintiff's participation in a "religious campaign."

This Memorandum of Law is submitted on behalf of MARIA PATRIZIO, ESQ. s/h/a ATTY. MARIA PETRIZIO (hereinafter "Ms. Patrizio") in support of her motion pursuant to F.R.C.P. 12(b)(6) dismissing the Complaint and Amended Complaint based upon plaintiff's failure to state a cause of action against Ms. Patrizio. Ms. Patrizio, a staff attorney with The Legal Aid Society of Orange County, represented plaintiff's wife, Miriam Teitelbaum, in the Family Court proceeding. As demonstrated herein, there are several grounds for dismissal: (1) Legal Aid attorneys are private counsel who are not state actors, do not act under "color of state law," and therefore cannot be liable under 42 U.S.C. § 1983; (2) the Complaint and Amended Complaint fail to state a claim for conspiracy under 42 U.S.C. §§ 1983 and 1985; (3) the Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine; (4) the *Younger* abstention rule bars plaintiff's claims; and (5) the Complaint and Amended Complaint fail to state a cause of action under state law for negligent or intentional infliction of emotional distress.

THE COMPLAINT AND AMENDED COMPLAINT

Plaintiff filed a Complaint on or about April 11, 2012 (*see* Exhibit 1) and Amended Complaint on or about June 28, 2012 (*see* Exhibit 2). The allegations and claims in the Complaint and Amended Complaint are essentially the same.[1]

The Amended Complaint alleges essentially that plaintiff resides in a Hasidic, ultra-Orthodox community in the Town of Monroe, County of Orange, State of New York (Amended Complaint ¶¶ 1, 4; Exhibit 2).

On or about March 2010, plaintiff and his friend Ben Friedman became involved in a religious campaign against "forced divorces" (¶ 28). In April 2010, members of plaintiff's community (some of whom are plaintiff's relatives), who are co-defendants in this action, abducted plaintiff's two children, "Child A" and "Child B" (*see, generally*, ¶¶ 30-52).

On or about April 28, 2010, defendant CHILD PROTECTIVE SERVICES OF ORANGE COUNTY (hereinafter "CPS") officially informed plaintiff that they had removed the two children and charged plaintiff with child neglect (¶¶ 54-59). A Family Court proceeding was commenced, and on or about May 5, 2010 the Family Court assigned co-defendant John F.X. Burke, Esq. s/h/a ATTY JOHN FRANCIS X. BURKE (hereinafter "Burke") to defend plaintiff (¶ 60). The children were returned to plaintiff and his wife on or about September 7, 2010, but were removed again on or about September 16, 2010 (¶¶ 67, 73).

The Complaint devotes several pages and paragraphs to discussing allegations that members

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[1] The only substantive difference between the two pleadings is that the Amended Complaint omits as party defendants Family Court Judge Andrew P. Bivona and Orange County Family Court, who were dismissed on immunity grounds pursuant to the Order of West District Court Judge Vincent L. Briccetti dated May 11, 2012.

of the community harassed plaintiff and his wife to deter plaintiff from his "religious campaign" (pp. 10-18).

The first subsequent allegation as against defendant Ms. Patrizio is at Paragraph 136 of the Amended Complaint.[2] This paragraph alleges:

> On or about January 3rd, 2012, Defendant attorney Maria Petrizio called Plaintiff's wife and stated that Plaintiff would never get custody of the children because:
>
> > a. Plaintiff had filed a motion [on or about December 22, 2011, plaintiff filed a motion in Family Court to stop defendant DSS's politically motivated actions – ¶ 133];
> >
> > b. Plaintiff had a friendly relationship with Mr. Ben Friedman; and
> >
> > c. Plaintiff had not cooperated with Defendant Attorney Burke.

The Amended Complaint further alleges that Ms. Patrizio also stated that plaintiff's wife must choose from either separating from plaintiff or giving up her parental rights (¶ 138).

The Amended Complaint alleges that defendant Ms. Patrizio sent plaintiff's wife a letter dated February 9, 2012 reiterating her previous warning that the wife should separate from plaintiff to facilitate having the children returned to her custody, and that if the wife decided to remain with plaintiff , her parental rights could be terminated (¶ 157; Exhibit B to Amended Complaint).[3]

The remainder of the Amended Complaint discusses allegations regarding the Family Court

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[2] Paragraph 16 of the Amended Complaint merely identifies defendant Ms. Patrizio as "act[ing] as attorney for Plaintiff's wife in the Family Court Proceedings."

[3] We note that although the Amended Complaint does not name or make mention of The Legal Aid Society, the letter sent by Ms. Patrizio to plaintiff's wife is on the letterhead of "The Legal Aid Society of Orange County, Inc." and identifies Ms. Patrizio as a "staff attorney."

proceedings and decisions that plaintiff criticizes (including a Family Court Order that plaintiff and his wife have a mental evaluation; ¶ 190), as well as further harassment by other named defendants who are members of the community.

The Amended Complaint asserts four causes of action. Count One alleges that defendants violated plaintiff's civil rights pursuant to 42 U.S.C. § 1983 by causing him to be confined to Bellevue Hospital Center and also depriving him of his constitutional rights to raise his children in the manner he deems proper (¶¶ 118-122). Count Two alleges that defendants acted in concert to violate plaintiff's rights (as alleged in Count One) pursuant to 42 U.S.C. ¶ 1985 (¶¶ 223-227). Count Three alleges that defendants caused negligent infliction of emotional distress through their actions as alleged in the Amended Complaint. Count Four alleges a claim of intentional infliction of emotional distress as against certain family member defendants, but not as to defendant Ms. Patrizio.

LEGAL ARGUMENT

POINT I

LEGAL AID ATTORNEYS ARE NOT STATE ACTORS, DO NOT ACT UNDER "COLOR OF STATE LAW" AND, THEREFORE, CANNOT BE HELD LIABLE UNDER 42 U.S.C. § 1983

Section 1983 provides in pertinent part that "every person who, under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunity secured by the *Constitution* and laws, shall be liable to the party injured in an action at law . . . ."

To state a claim under § 1983, a plaintiff must allege that the challenged conduct was

attributable, at least in part, to a person acting under color of state law. *Lugar v. Edmondson Oil Company*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); *Elmasri v. England*, 111 F.Supp.2d 212 (E.D.N.Y. 2000); *Arena v. Department of Social Services of Nassau County*, 216 F.Supp.2d 146 (E.D.N.Y. 2002); *Dwares v. City of New York*, 985 F.2d 94, 98 (2nd Cir. 1993); *McDarby v. Dinkins*, 907 F.2d 1334 (2nd Cir. 1990).

A litigant who claims that his or her constitutional rights have been violated must first establish that the challenged conduct amounts to "state action." *Blum v. Yaretsky*, 457 U.S. 991, 1002, 102 S.Ct. 2777, 2784-85; 73 L.Ed.2d 534 (1982); *United States v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America*, 941 F.2d 1292 (2nd Cir. 1991); *Daniel v. Safir*, 135 F.Supp.2d 367 (EDNY 2001); *Erbacci, Serone & Moriarty, Ltd. v. United States*, 939 F.Supp 1045 (S.D.N.Y. 1996). "To qualify as state action, the conduct in question 'must be caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible,' and 'the party charged with the [conduct] must be a person who may fairly be said to be a state actor.'" *Erbacci, Serone & Moriarty, Ltd.*, 939 F.Supp. 1045, 1054 (quoting *Lugar v. Edmondson Oil Company*, 457 U.S. 922, 937, 102 S.Ct. 2744, 2753-54 (1982)).

The courts have held that The Legal Aid Society is a private entity which does "act under color of state law" for purposes of § 1983 liability. *Lefcourt v. Legal Aid Society*, 445 F.2d 1150, 1157 (2d Cir. 1971); *see also, Polk County v. Dodson*, 454 U.S. 312, 102 S.Ct. 445)1981); *Brown v. Paterson*, 2012 U.S. Dist. LEXIS 25687 (S.D.N.Y. 2012); *Hom v. Brennan*, 304 F.Supp.2d 374 (E.D.N.Y. 2004); *Fariello v. Rodriguez*, 148 FRD 670, 686 (E.D.N.Y. 1993); *Neustein v. Orbach*, 732 F.Supp. 333, 345 (S.D.N.Y. 1990).

District courts in the Second Circuit have uniformly held that law guardians appointed by the Court are not state actors and cannot be held liable under § 1983. *Elmasri v. England*, 111 F.Supp.2d at 221 ("Additionally, as this Court has held, guardians *ad litem*, although appointed by the Court, exercise independent professional judgment in the interests of their clients they represent and are therefore not state actors for purposes of 1983"); *Arena v. Department of Social Services of Nassau County*, 216 F.Supp.2d at 154; *Storck v. Suffolk County Department of Social Services*, 62 F.Supp.2d at 941; *Levine v. County of Westchester*, 828 F.Supp. 238 (S.D.N.Y. 1993).

While Ms. Patrizio did not act as a law guardian in the underlying Family Court proceeding, she did represent plaintiff's wife in that proceeding, and therefore, the same rules should apply.

Based upon the foregoing, plaintiff has failed to assert a cause of action that defendant Ms. Patrizio is a state actor who, under color of law, violated plaintiff's constitutional rights, and therefore, the Amended Complaint against her must be dismissed.

POINT II

THE AMENDED COMPLAINT FAILS TO STATE A VALID CONSPIRACY CLAIM

Plaintiff summarily alleges that Ms. Patrizio violated his constitutional rights under 42 U.S.C. §§ 1983 and 1985 by means of conspiring with co-defendants, many of whom are not even state actors themselves. Plaintiff's claims are insufficient to make a valid conspiracy claim. "A complaint alleging a conspiracy to violate civil rights is held to a heightened pleading standard." *Julian v. New York City Transit Authority*, 857 F.Supp. 242, 252 (E.D.N.Y. 1994), *aff'd* 52 F.3d 312 (2d Cir. 1995); *Storck v. Suffolk County Department of Social Services*, 62 F.Supp.2d at 942 - 943; *Elmasri v. England*, 111 F.Supp.2d at 221 - 222; *Arena v. Department of Social Services of Nassau County*,

216 F.Supp.2d 155 - 156. "[I]t is incumbent upon a plaintiff to state more the conclusory allegations to avoid dismissal of a claim predicated on a conspiracy to deprive him of his constitutional rights." *Dwares v. City of New York*, 985 F.2d 94, 99 - 100 (2d Cir. 1993); *Polur v. Raffe*, 912 F.Supp.2d 52, 56 (2d Cir. 1990). Plaintiff must allege "specific facts suggesting that there was a mutual understanding among the conspirators to take action directed towards an unconstitutional end." *Julian*, 857 F.Supp. at 252, *quoting Duvall v. Sharp*, 905 F.2d 1188, 1189 (8th Cir. 1990). The Complaint is devoid of any such allegations.

Accordingly, plaintiff fails to state a claim for conspiracy pursuant to 42 U.S.C. § 1983 or § 1985.

POINT III

THE COURT LACKS SUBJECT MATTER JURISDICTION UNDER THE *ROOKER-FELDMAN* DOCTRINE

Plaintiff is essentially seeking to have this Court collaterally review the proceedings, orders, and decisions in the underlying child neglect proceedings in Family Court; however, this Court lacks subject matter jurisdiction to provide such relief.

"The jurisdiction possessed by the District Court is strictly original." *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 416 (1923). Therefore, lower federal courts have no power to review state court proceedings or to set aside state court decisions, and the only permissible review is by the state's superior courts and/or the Supreme Court. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 - 84 and n. 16 (1983), citing *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296 (1970) ("Lower federal courts possess no power

whatever to sit in direct review of state court decisions"); *see also Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S.Ct. 1517, 1521 - 22 (2005) ("The *Rooker-Feldman* doctrine is confined to the 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 inciting district court review and rejection of those judgments"); *Moccio v. NYS Office of Court Admin.*, 95 F.3d 195, 198 - 99 (2nd Cir. 1996) (Lower federal courts have no subject matter jurisdiction over case that effectively seeks review of state court judgment).

Plaintiff brings this action alleging that the Family Court violated his constitutional rights in connection with the child neglect proceeding in the Family Court. Although plaintiff does not specifically state that he seeks review of the Family Court proceeding, his Complaint challenges the proceeding in the Family Court. *Id.* Because his alleged claims are "inextricably intertwined" with the proceeding before the Family Court, the District Court is in essence being called upon to review those proceedings. This the District Court may not do. *Feldman*, 460 U.S. at 483 - 484, n. 16. To permit plaintiff's attempted collateral attack on child custody proceeding in the Family Court would violate the principles enunciated in the *Rooker-Feldman* doctrine and discredit the judicial authority of the state court. "A plaintiff may not seek a reversal of a state court judgment simply by recasting his complaint in the form of a civil rights action pursuant to 42 U.S.C. § 1983." *Fariello v. Campbell*, 860 F.Supp. 54, 65 (E.D.N.Y. 1994).

In several instances, federal courts in the Second Circuit have applied the *Rooker-Feldman* Doctrine to dismiss claims attacking Family Court decisions regarding custody and visitation. *See Hom v. Brennan, supra; Pfifer v. City of New York*, 289 F.3d 49 (2d Cir. 2002); *Edem v. Spitzer*, 204 Fed. Appx. 95, 2006 U.S. App. LEXIS 27919 (2d Cir. 2006); *Shapiro v. Kronfeld* 2004 U.S. Dist.

LEXIS 23807 (S.D.N.Y. 2004); *Arena v. Department of Social Services of Nassau County*, 216 F.Supp.2d 146 (E.D.N.Y. 2002); *Elmasri v. England*, 111 F.Supp.2d 212 (E.D.N.Y. 2000); *Storck v. Suffolk County Department of Social Services*, 62 F.Supp.2d 927 (E.D.N.Y. 1999); *Ingallinera v. State of New York* 1997 U.S. Dist. LEXIS 15369 (N.D.N.Y. 1997).

Accordingly, this Court should enter judgment dismissing the Complaint and Amended Complaint for lack of subject matter jurisdiction.

POINT IV

***YOUNGER* ABSTENTION BARS PLAINTIFF'S CLAIMS**

Pursuant to *Younger v. Harris*, 401 U.S. 37 (1971), this Court should abstain from considering plaintiff's claims in the present action, which challenges the child abuse and neglect proceeding before the Family Court.

Grounded upon principles of federalism and comity, *Younger* abstention "rests foursquare on the notion" that a state proceeding constitutes a sufficient forum for the vindication of federal constitutional rights. *Diamond "D" Constr. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002); *see also Spargo v. New York State Comm'n on Jud. Conduct*, 351 F.3d 65, 75 (2d Cir. 2003) ("*Younger* generally prohibits courts from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings so as to avoid unnecessary friction") (internal quotation omitted), *cert. denied*, 541 U.S. 1085 (2004). Thus, under *Younger*, a federal court must refrain from exercising jurisdiction where: (1) there is an ongoing state court proceeding; (2) an important state interest is implicated in that proceeding; (3) the state proceeding affords the federal plaintiff an adequate opportunity for judicial review of federal constitutional claims. *Spargo*, 351

F.3d at 75. "[W]hen *Younger* applies, abstention is mandatory and its application deprives the federal court of jurisdiction in the matter." *Diamond "D,"* 282 F.3d at 197.

All three prerequisites for abstention are present in this case. First, it is undisputed that at the time this federal suit was filed, the underlying child neglect proceeding was still pending in the Family Court. Indeed, the Family Court has continuing jurisdiction over child custody proceedings for so long as the child is a minor. N.Y. Family Court Act §§ 1011, *et seq.* Additionally, for *Younger* purposes, a state court proceeding is deemed pending in the state court until all state court appeals are exhausted. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608, *reh'g denied*, 421 U.S. 971 (1975); *see also Neustein v. Orbach*, 732 F.Supp. 333, 341 (E.D.N.Y. 1990). Accordingly, the first prerequisite for abstention – an ongoing state court proceeding – has been satisfied in this case.

Second, the substantial state interest necessary to implicate the abstention doctrine is also present. As set forth in *Moore v. Sims*, 442 U.S. 415, 435 (1979), "[f]amily relations are a traditional area of State concern."[4] *See also Reinhardt v. Commonwealth of Massachusetts Department of Social Services*, 715 F.Supp. 1253, 1256 (S.D.N.Y. 1989). Moreover, "the States have an important interest in administering certain aspects of their judicial systems." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 12 - 13 (1987). Indeed, the court there recognized the significant state interest "in protecting 'the authority of the [state's] judicial system, so that its orders and judgments are not rendered nugatory.'" *Pennzoil*, 481 U.S. at 13, n. 12 (quoting *Judice v. Vail*, 430 U.S. 327 at 336, n. 12 (1997)). Accordingly, this case meets the second prerequisite for abstention, a substantial state interest.

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[4] In *Moore v. Sims*, the Supreme Court applied the abstention doctrine to an ongoing state court civil proceeding in which "the temporary removal of a child in a child-abuse context" was being determined. *Id.* At 423.

The third prerequisite to abstention – a state court opportunity to vindicate federal rights – is also present in this action. *See Judice v. Vail*, 430 U.S. at 335. The obligation and competence of state courts to decide federal questions is well settled in this Circuit. *See Texaco, Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1142 (2d Cir. 1986), *rev'd on other grounds*, 481 U.S. 1 (1987); *Donkor v. City of New York Human Resources Admin.*, 673 F.Supp. 1221, 1226 (S.D.N.Y. 1987). Indeed, notions of comity and federalism compel the conclusion that the state courts are competent to hear and fully resolve plaintiff's constitutional challenge:

> [T]here is no reason to assume that . . . [plaintiff's] constitutional rights will not be protected by the Appellate Division . . . or, if further review becomes necessary, by the New York Court of Appeals. *Erdmann v. Stevens*, 457 F.2d [at] 1211 . . . .

Turco v. Monroe County Bar Association, 554 F.2d 515, 520 (2d Cir. 1977), *cert. denied*, 434 U.S. 834 (1977). Here, any purported constitutional challenges plaintiff may have concerning the outcome of the Family Court proceeding can be reviewed on direct appeal.

In sum, the abstention doctrine enunciated in "*Younger v. Harris* contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts." *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973). Accordingly, since this case involves inquiry into an important state interest in a pending state court proceeding where plaintiff has an adequate opportunity to raise his constitutional claims, the Complaint should be dismissed. Fed.R.Civ.P. 12(b)(6).

Alternatively, the Complaint can also be dismissed as a matter of comity under the well-recognized "domestic relations exception" to federal court jurisdiction. The domestic relations exception to federal jurisdiction "divests the federal courts of power to issue divorce, alimony and

child custody decrees." *Ankenbrandt v. Richards*, 504 U.S. 689, 703, 112 S.Ct. 206 (1992); *see Elmasri v. England*, *supra*; *Mitchell-Angel v. Cronin*, 101 F.3d 108 (2d Cir. 1996); *American Airlines v. Block*, 905 F.2d 12 (2d Cir. 1990).

"Applying this exception to jurisdiction, courts will dismiss civil rights actions aimed at changing the results of domestic proceedings, including orders of child custody." *Elmasri v. England*, 11 F.Supp.2d at 220; *McArthur v. Bell*, 788 F.Supp. 706 (E.D.N.Y. 1992); *Neustein v. Orbach*, 732 F.Supp. 333 (E.D.N.Y. 1990).

Adjudication of plaintiff's claims in this matter would force the Court to "re-examine and re-interpret all the evidence brought before the state court" in the prior custody proceeding. *Elmasri v. England*, 111 F.Supp.2d at 220, *citing McArthur*, 788 F.Supp. At 709.

Finally, as noted above, it is firmly established that child custody proceedings are matters of significant state concern, *Moore v. Sims*, 442 U.S. at 435, and that this litigation is, thus, more properly within the jurisdiction of the state rather than the federal courts. At the very least, this case presents a "sensitive area of social policy upon which the federal courts ought not enter unless no alternative to its adjudication is open." *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 498 (1941). As the court found in *Reinhardt*, 715 F.Supp. at 1259, such a remedy is available in the currently pending Family Court proceedings. Accordingly, even if abstention is not required under *Younger*, this Court should, nevertheless, abstain.

POINT V

UPON DISMISSAL OF PLAINTIFF'S FEDERAL CIVIL RIGHTS CLAIMS, THIS COURT, IN ITS DISCRETION, MAY EXERCISE ITS SUPPLEMENTAL JURISDICTION UNDER 28 U.S.C. § 1367 AND DISMISS ANY RELATED STATE CLAIMS IN THE COMPLAINT AND AMENDED COMPLAINT

A district court with original jurisdiction over federal causes of action may also, in its discretion, exercise supplemental jurisdiction "over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." 28 U.S.C. § 1367(a). Generally, the federal court is justified in exercising supplemental jurisdiction where it would serve judicial economy, the federal state claims derive from a "common nucleus of operative fact," and the state claims do not involve novel or complex issues of state law. *United States Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed. 2nd 218 (1966); *Daniel v. Safir*, 135 F.Supp.2d 367 (EDNY 2001); *Brodeau v. Village of Deposit*, 113 F.Supp.2d 292 (N.D.N.Y. 2000); *Czarecki v. Scherer*, 64 F.Supp.2d 92 (N.D.N.Y. 1999); *Cement and Concrete Workers District Council Welfare Fund, Pension Fund, Legal Services Fund, and Annuity Fund v. Frascone*, 68 F.Supp.2d 166 (EDNY 1999). Plaintiffs' state claims for negligent infliction of emotional distress[5] arise from the same set of facts as the federal civil rights claims. Moreover, the State claims do not involve novel or complex issues of state law. Clearly, judicial economy would be promoted by the Court's exercising its supplemental jurisdiction and disposing of plaintiffs' state law claims.

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[5] Moreover, the Complaint and Amended Complaint do not allege "extreme and outrageous conduct," a necessary element for a claim of negligent infliction of emotional distress. *Law v. S&M Enterprises*, 72 A.D.3d 497, 898 N.Y.S.2d 42 (2d Dep't 2010); *Goldstein v. Massachusetts Mutual Life Insurance Company*, 60 A.D.3d 506, 875 N.Y.S.2d 53 (1st Dep't 2009).

POINT VI

PLEADING STANDARDS

"Notwithstanding the general liberal approach to 12(b)6 motions, a litigant's pleading obligations in the federal courts are not 'toothless'; the pleader must allege facts, either directly or inferentially, that satisfy each element required for recovery under some actionable legal theory." *Houston v. Seward & Kissel*, 2008 US Dist. Lexis 23914 (S.D.N.Y. 2008); *Educadores Puertorriquenos En Accion v. Hernandez*, 367 F.3d 61, 67-68 (1st Cir. 2004); *Doyle v. Hasbro, Inc.*, 103 F.3d 186, 190 (1st Cir. 1996).

Moreover, *pro se* litigants are not relieved of their obligation to allege facts sufficient to support a cognizable legal claim. *Baicker-McKee, Federal Civil Rules Handbook* (2006), p. 355; *Taylor v. Books a Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002); *Riddle v. Mondragon*, 83 F.3d 1197, 12012 (10th Cir. 1996).

Under these standards, plaintiff has failed to plead any cognizable causes of action against Ms. Patrizio.

CONCLUSION

For the foregoing reasons, defendant MARIA A. PATRIZIO, ESQ. s/h/a ATTY. MARIA PETRIZIO's Motion to Dismiss the Complaint and Amended Complaint should be granted in all respects.

Dated: New York, New York
July 20, 2012

GREGG D. WEINSTOCK