EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

v.

JUDA KATZ; CHAYA KATZ; JOEL 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; CHRISTINE BRUNET; ATTY. STEPHANIE BAZILEOR; JOHN DOES 1 THROUGH 95; JANE DOES 1 THROUGH 20,
Defendants.

Copies Mailed/Faxed 2-11-13
Chambers of Vincent L. Briccetti

MEMORANDUM DECISION

Briccetti, J.:

Pro se plaintiff Jacob Teitelbaum brings this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1985. Plaintiff also brings state law claims for intentional and negligent infliction of emotional distress.

Pending before the Court are five motions to dismiss filed by the following defendants: (1) Children's Rights Society of Orange County ("CRS") and Kim Pavlovic (Doc. #22); (2) Maria Petrizio (Doc. #28); (3) Stephanie Bazile,[1] Christine Brunet, Child Protective Services of Orange County ("CPS"), and the Department of Social Services of Orange County ("DSS") (Doc. #71); (4) Kiryas Joel Community Ambulance Corporation ("Kiryas Joel EMS") (Doc. #93); and (5) David Rubenstein (Doc. #111).

For the following reasons, all of the motions are GRANTED.

[1] Plaintiff apparently misspelled Bazile's last name in the caption of the amended complaint.

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

BACKGROUND

For purposes of ruling on these motions to dismiss, the Court accepts as true the allegations in the amended complaint. Set forth below is a summary of plaintiff's allegations.

Plaintiff resides in a "Hasidic, ultra-Orthodox" community in Monroe, New York. Plaintiff and his wife ("Mrs. Teitelbaum") have two children ("Child A" and "Child B").

In March 2010, plaintiff became involved in a "religious campaign against forced divorces." Plaintiff alleges such "forced divorces" were being effectuated through the use of "illegal kidnappings."

In April 2010, defendant Chaya Katz (Mrs. Teitelbaum's sister) came to plaintiff's home, ostensibly to "make an exchange of personal items." While plaintiff was outside with Child A, Katz abducted Child B. Upon realizing Child B was missing, plaintiff tried to contact Katz and her husband, defendant Juda Katz,[2] by telephone, but was unsuccessful. Plaintiff and his wife then went to the Katzes' home and knocked on their door "for about an hour." Kiryas Joel EMS then arrived at the Katzes' home. The Katzes subsequently returned Child B to plaintiff.

On April 27, 2010, Mrs. Teitelbaum found Child A "playing with [an] open baby Tylenol bottle." Mrs. Teitelbaum called Kiryas Joel EMS, and defendant Rubenstein (a Kiryas Joel EMS volunteer) went to plaintiff's home. Rubenstein told Mrs. Teitelbaum he would take Child A to the hospital, and Mrs. Teitelbaum signed a consent form allowing Rubenstein to keep Child B at his apartment until Mrs. Teitelbaum and Child A returned from the hospital.

[2] According to the docket, Chaya and Judah Katz have not been served with the amended complaint, and they are not parties to any of the pending motions to dismiss.

Rubenstein then "abducted" Mrs. Teitelbaum and took her to a mental institution, and left Child A with the Katzes. Neither Rubenstein nor the Katzes informed plaintiff of the whereabouts of Mrs. Teitelbaum or Child A.

The next day, a CPS representative went to plaintiff's home and informed him that CPS "had removed his children." The CPS representative also served plaintiff with a charge of "child neglect." Mrs. Teitelbaum was charged with the same offense.

On May 5, 2010, the family court assigned defendant attorney John Burke to represent plaintiff.[3] Although plaintiff asked Burke to deny the charges against him and prove to the court they were without merit, Burke insisted plaintiff plead guilty to the charges and accept a "deal" offered by DSS.

On September 7, 2010, plaintiff's children were returned to plaintiff and his wife.

On September 15, 2010, plaintiff "performed a peaceful demonstration . . . as part of his religious campaign."

The following day, Child B did not wake from his usual daytime nap, and Mrs. Teitelbaum called Kiryas Joel EMS. Child B was taken to the Westchester Medical Center. According to a court document[4] filed by defendant Bazile, an assistant county attorney, Child B had ingested medication prescribed to plaintiff to treat his bi-polar disorder, causing Child B to be hospitalized for a week. Thereafter, plaintiff's children were again removed from plaintiff's home and placed in foster care.

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[3] Burke has not answered or otherwise responded to the amended complaint and is not a party to any of the pending motions to dismiss.

[4] The Court takes judicial notice of this and other documents relating to family court proceedings related to this case. See Global Network Commc'ns, Inc. v. City of N.Y., 458 F.3d 150, 157 (2d Cir. 2006) ("A court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.") (quotation marks omitted).

Although plaintiff denies Child B ingested plaintiff's medication, he nevertheless admitted to the family court that he violated a prior court order by failing "to secure his medication out of [his] children's reach." Plaintiff contends he admitted this violation only because his attorney had advised him the admission was necessary if plaintiff wanted to regain custody of his children.

In October 2010, DSS agreed to allow a religious ceremony pertaining to Child A to occur in plaintiff's home. The next day, DSS told plaintiff the ceremony must instead take place at a relative's home. DSS did not explain why the location change was necessary.

In July 2011, plaintiff's psychiatrist told plaintiff and Mrs. Teitelbaum that plaintiff no longer needed to take psychotropic medication. The psychiatrist also told plaintiff he would never regain custody of his children if he continued his "religious campaign." Mrs. Teitelbaum disagreed with the psychiatrist and "insisted" he tell plaintiff to continue taking the medication. Plaintiff contends his wife's request was "an effort to stop [p]laintiff from his religious campaign through the use of medication," which, according to plaintiff, is a tactic commonly used "in the Hasidic ultra-orthodox community in order to gain control over someone."

On July 18, 2011, Rubenstein and other Kiryas Joel EMS members "organized the abduction of plaintiff, forcing him into a mental institution (Bellevue Hospital Center)." Plaintiff was released from Bellevue the next day on the condition he not return to his home.

When plaintiff subsequently returned to the village of Kiryas Joel, Rubenstein and other Kiryas Joel EMS members chased him and attempted to abduct him again, causing plaintiff to flee to a friend's house. Rubenstein attempted to enter the house through a window, and plaintiff's friend then called the police. The police subsequently arrived and prevented

Rubenstein and other Kiryas Joel EMS members from "abduct[ing] or institutionaliz[ing]" plaintiff.

Plaintiff then voluntarily submitted to a mental health evaluation at the Arden Hill Hospital to prove he did not need to be institutionalized. Arden Hill confirmed plaintiff did not need to be institutionalized, and released plaintiff on the condition he not return to his home.

Despite the conditions of his release from Arden Hill, plaintiff returned to his home. Mrs. Teitelbaum then called Kiryas Joel EMS to pick up plaintiff and "return him to a mental institution." After Kiryas Joel EMS failed to respond, Mrs. Teitelbaum called the police. The police arrived and told Mrs. Teitelbaum they would not remove plaintiff from the home and instructed her to utilize the family court system if she wished to have plaintiff removed from the home.

Plaintiff contends that in August 2011, "individuals in the community threatened to abduct" Mrs. Teitelbaum and "force her into a mental institutional because she had resumed living in peace with [p]laintiff" rather than deterring him from engaging in his "religious campaign."

On September 8, 2011, according to plaintiff, Kiryas Joel EMS "abduct[ed]" Mrs. Teitelbaum from the street outside her home and "forced her into a mental hospital." Mrs. Teitelbaum was institutionalized for more than two weeks.

In October 2011, Kiryas Joel EMS again took Mrs. Teitelbaum to a hospital against her will. She was released the same day after plaintiff informed the hospital that "his wife was fine."

On October 21, 2011, DSS prohibited plaintiff's children from visiting plaintiff in the men's section of the synagogue. DSS then "fought with" Mrs. Teitelbaum after she allowed the children to spend a "few minutes" with plaintiff in the men's section. After that incident,

visitations between plaintiff and his children were required to be held at the DSS office rather than plaintiff's home.

The following month, DSS shortened the length of Mrs. Teitelbaum's visitations with her children without providing an explanation. When Mrs. Teitelbaum asked for an explanation, she was involuntarily committed at the Orange Regional Medical Center. She spent a weekend at the facility before being released.

In December 2011, plaintiff filed a motion in family court requesting that the court conduct a "fact finding hearing" so plaintiff could show that DSS's involvement in plaintiff's case "was based on political reasons," noting Kiryas Joel EMS and others in the community were trying to stop plaintiff from engaging in his "religious campaign."

After plaintiff filed his motion, Mrs. Teitelbaum's attorney, defendant Petrizio, told Mrs. Teitelbaum that plaintiff would never get custody of the couple's children because (1) he had filed the above-mentioned motion; (2) he was friends with another individual associated with the "religious campaign"; and (3) he had failed to cooperate with his attorney. Petrizio then told Mrs. Teitelbaum she must choose between "either separating from [p]laintiff or giving up the right to her children forever."

On January 9, 2012, defendant Pavlovic, an attorney with CRS who was the children's law guardian in the family court proceedings, recommended the children be returned to the custody of Mrs. Teitelbaum, as long as plaintiff no longer lived in the family's home. Pavlovic noted that Mrs. Teitelbaum "had been complying all along," and plaintiff was the "major issue." Neither DSS nor plaintiff's attorney objected to Pavlovic's recommendation, which the court adopted.

Patrizio then called Mrs. Teitelbaum and "insisted" she file a motion to "evict" plaintiff from the family's home for several months. Patrizio told Mrs. Teitelbaum she would never regain custody of her children unless she filed such a motion. Despite Patrizio's insistence, Mrs. Teitelbaum informed Patrizio that "she needed [p]laintiff, especially if the kids were at home, and that it would be detrimental to her and to the well being of the children if . . . [p]laintiff was not at home."

On February 8, 2012, the family court denied plaintiff's motion for a hearing to consider the political motivations of DSS. The court stated:

> [plaintiff] has already consented to a finding of neglect regarding his children and then admitted to violating the Court's order of disposition. There is clearly no merit to any allegations of political motivations on the part of [DSS or CPS]. [Plaintiff]'s allegations have no basis in fact but are based solely on suspicion and conjecture. It appears that [plaintiff] is so enmeshed in his religious battle that he cannot see reality. It is reality that when medication is left where a one year old child can have access to it that the child will ingest it. It is reality that a child can die as a result of that ingestion. To suggest that proceedings brought on behalf of a one year old child who has ingested his father's bi-polar medication and been seriously ill as a result of same are politically motivated because of a religious dispute indicates a serious lack of understanding of the legal process. Such a motion, in the realm of law, is frivolous and is therefore denied.

In the same order, the family court also dismissed as frivolous a second motion filed by plaintiff, in which he sought an order "[d]irecting [DSS] to [inform plaintiff] in writing whether or not they determine that [his] involvement in the religious campaign is a problem, and if they determine that it's not, to then [inform plaintiff] in writing what the current charges are and what they require of [plaintiff] to comply with in relation to these charges."

Plaintiff initiated this action on April 11, 2012. He asserts four causes of action: (1) deprivation of his constitutional rights under Section 1983; (2) conspiracy to deprive him of his constitutional rights under Section 1985; (3) negligent infliction of emotional distress; and (4) intentional infliction of emotional distress. With respect to plaintiff's Section 1983 and 1985

claims, the constitutional rights defendants allegedly violated are (1) plaintiff's right not to be deprived of his freedom without due process when defendants "facilitate[d] and in fact confine[d] [plaintiff] to Bellevue Hospital Center"; and (2) plaintiff's right to "raise his children in a manner" he deems proper and not to be deprived of custody and "reasonable and unfettered access to his children."

DISCUSSION

I. Legal Standard

The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distrib. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984) (internal quotation marks omitted). In deciding a motion to dismiss pursuant to Rule 12(b)(6), the Court evaluates the sufficiency of the complaint under the "two-pronged approach" suggested by the Supreme Court in Ashcroft v. Iqbal. See 556 U.S. 662, 679 (2009). First, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not entitled to the assumption of truth and are thus not sufficient to withstand a motion to dismiss. Id. at 678; Hayden v. Paterson, 594 F.3d 150, 161 (2d Cir. 2010). Second, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. at 679.

To survive a Rule 12(b)(6) motion, the allegations in the complaint must meet a standard of "plausibility." Ashcroft v. Iqbal, 556 U.S. at 678; Bell Atl. Corp. v. Twombly, 550 U.S. 544, 564 (2007). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged." Ashcroft v. Iqbal, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id.

The Court liberally construes submissions of a pro se litigant and interprets them "to raise the strongest arguments that they suggest." Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam) (internal quotation marks omitted). Additionally, the Court applies the pleading rules permissively when a plaintiff pro se alleges civil rights violations. See Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 191 (2d Cir. 2008).

II. Claims against DSS and CPS

Plaintiff's claims against DSS and CPS are dismissed because DSS and CPS are not suable entities. Under New York law, a municipal department that does not have a legal identity apart from the municipality that created it cannot be sued. See Dayton v. City of Middletown, 786 F. Supp. 2d 809, 818-19 (S.D.N.Y. 2011) (dismissing claim against DSS because it is not a suable entity); Hoisington v. Cnty. of Sullivan, 55 F. Supp. 2d 212, 214 (S.D.N.Y. 1999) ("[M]unicipal departments like the Department of Social Services are not amenable to suit, and no claims lie directly against the Department.").

If the Court were to construe plaintiff's amended complaint liberally to assert a claim against Orange County, see, e.g., George v. Grace Church Cmty. Ctr., 2012 WL 859703, at *2 (S.D.N.Y. Feb. 17, 2012)[5]; Jones v. Westchester Cnty. Dep't of Corr. Med. Dep't, 557 F. Supp. 2d 408, 416 n.4 (S.D.N.Y. 2008), that claim would be dismissed under the Rooker-Feldman doctrine, as discussed below.

[5] Copies of unreported cases cited herein will be mailed to plaintiff. See Lebron v. Sanders, 557 F.3d 76, 79 (2d Cir. 2009).

III. Rooker-Feldman Doctrine

Plaintiff's claims against Brunet, Bazile, CRS, Pavlovic, and Patrizio relate only to the alleged violation of plaintiff's constitutional right "to raise his children in a manner that he deems proper" and to have "custody and reasonable and unfettered access to his children." The Court lacks subject matter jurisdiction with respect to those claims under the Rooker-Feldman doctrine.

The Rooker-Feldman doctrine bars federal courts from hearing claims "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." Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)). Four requirements must be met for the doctrine to apply: (1) the federal court plaintiff must have lost in state court, (2) the plaintiff must complain of injuries caused by a state court judgment, (3) the plaintiff must invite district court review and rejection of that judgment, and (4) the state court judgment must have been rendered before the district court proceedings commenced. Id. at 85. The first and fourth requirements are procedural, and the second and third requirements are substantive. Id.

All four requirements are met here: (1) plaintiff lost in family court by admitting to neglecting his children and consequently losing custody of them; (2) plaintiff's injuries (i.e., violation of his alleged constitutional right to have custody of his children and to raise them as he sees fit) were caused by the family court's judgment; (3) plaintiff now asks this Court to reconsider the merits of the family court's determinations; and (4) the family court decision was rendered before this action was commenced. Therefore, plaintiff's claims against Brunet, Bazile, CRS, Pavlovic, and Patrizio are dismissed for lack of subject matter jurisdiction. See Yapi v.

Kondratyeva, 340 F. App'x 683, 684 (2d Cir. 2009); Phifer v. City of N.Y., 289 F.3d 49, 57 (2d Cir. 2002) ("This court may not review the family court's determinations regarding custody, neglect and visitation, as those issues were decided by the family court after providing [plaintiff] a full and fair opportunity to litigate those issues.").

IV. Claims against Kiryas Joel EMS and Rubenstein

Plaintiff's Section 1983 claims against Kiryas Joel EMS and Rubenstein are dismissed for failure to state a claim.

To sustain a claim under Section 1983, a plaintiff must first establish that defendants acted under color of state law. Sybalski v. Indep. Grp. Home Living Program, Inc., 546 F.3d 255, 257 (2d Cir. 2008). If the conduct at issue did not constitute state action, the Court's inquiry ends there.

State action occurs when the constitutional deprivation is caused (1) either "by the exercise of some right or privilege created by the [s]tate[,] by a rule of conduct imposed by the [s]tate[,] or by a person for whom the [s]tate is responsible"; and (2) the party charged with the deprivation is "a person who may fairly be said to be a state actor." Den Hollander v. Copacabana Nightclub, 624 F.3d 30, 33 (2d Cir. 2010) (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)).

A private entity's actions are attributable to the state if (1) the state's coercive power has compelled an entity to act; (2) the state has delegated a public function to the entity; or (3) the state has provided "significant encouragement" to the entity, the entity is a "willful participant in joint activity with the [s]tate," or the entity's functions are "entwined" with state policies. Sybalski v. Indep. Grp. Home Living Program, Inc., 546 F.3d at 257-58 (citing Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass'n, 531 U.S. 288, 296 (2001)). Under any test, plaintiff must

establish that the state was involved in the specific activity giving rise to his cause of action; it is not enough to show merely that the state was involved in some aspect of the private entity's affairs. Id.; see Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 51 (1999) (noting inquiry focuses on entity's conduct, not its general characteristics).

Courts often find voluntary ambulance companies are not state actors because ambulance services are not "traditionally the exclusive prerogative of the [s]tate." Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982); See, e.g., Hollman v. Cnty. of Suffolk, 2011 WL 2446428, at *6-10 (E.D.N.Y. June 15, 2011) (collecting cases finding ambulance services not state actors); Osler v. Huron Valley Ambulance Inc., 671 F. Supp. 2d 938, 943 (E.D. Mich. 2009); McKinney v. W. End Vol. Ambulance Ass'n, 821 F. Supp. 1013, 1018-19 (E.D. Pa. 1992).

Plaintiff has failed to plead any facts relating to the relationship between Kiryas Joel EMS and the state, much less facts giving rise to a plausible claim that Kiryas Joel EMS is a state actor. Therefore, the Court dismisses plaintiff's Section 1983 claim against Kiryas Joel EMS and Rubenstein. Although it appears unlikely that plaintiff can sufficiently plead a Section 1983 claim against Kiryas Joel EMS or Rubenstein by further amending his complaint, those claims are dismissed without prejudice.

Further, plaintiff has failed to allege any facts giving rise to a plausible claim that Kiryas Joel EMS or Rubenstein conspired with others to deprive plaintiff of his constitutional rights. Therefore, plaintiff has failed to state a conspiracy claim under Section 1983 or a Section 1985 claim against those defendants. See Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1087 (2d Cir. 1993) (to establish Section 1985 claim, plaintiff must establish defendants conspired against plaintiff for the purpose of depriving plaintiff of his constitutional rights, and

defendants motivated by "invidious discriminatory animus"). These claims are also dismissed without prejudice.

V. State Law Claims

Having dismissed plaintiff's federal claims, the Court declines to exercise supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367(c)(3).

CONCLUSION

Defendants' motions to dismiss are GRANTED.

Plaintiff is granted leave to file a second amended complaint by no later than March 11, 2013, for the sole purpose of alleging sufficient facts to support a Section 1983 or 1985 claim against Kiryas Joel EMS and/or Rubenstein.

The Clerk is instructed to terminate the motions. (Docs. ##22, 28, 71, 93, 111).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v United States, 369 U.S. 438, 444-45 (1962).

Dated: February 11, 2013
White Plains, NY

SO ORDERED:

Vincent L. Briccetti
United States District Judge