Freire v. Zamot et al

2016 | Cited 0 times | E.D. New York | October 27, 2016

STATES COURT

OF YORK HOWARD

Plaintiff,

P.O. JOHN ZAMOT, P.O. ANTHONY JONES,

JOHN GUITIERREZ, P.O. GOMEZ, SUI MOLDOVAN, WENDY TAPIA, LUIGI DINOFRIO, GEORGE

CITY OF YORK; INDIVIDUALLY

CAPACITY,

TOWNES, United

FILED " JN CLERK'S OFFICE DISTRICT E.D.N.V. OCT272016 BROOKLYN OFFICE

MEMORANDUM ORDER

(SLT)

Plaintiff

U.S.C. York ("the York Police Officers Zamot,

York York Police Sui

("Defendant" "Dr. Plaintiffs

Procedure

BACKGROUND

Freire v. Zamot et al

2016 | Cited 0 times | E.D. New York | October 27, 2016

("Second On UNITED DISTRICT EASTERN DISTRICT NEW
----------x:

FREIRE, DIN #14-A-1410,

-against-

DETECTIVE EDGAR

SERGEANT LAM, EMT FELIX

EMT

AGRIANTONIS, AND THE NEW AND IN THEIR OFFICIAL

Defendants. ----------x:

States District Judge:

u.a. COURT * *

& 14-CV-304 (LB)

Howard Freire brings this pro se action alleging civil rights violations for deliberate indifference to serious medical needs, pursuant to 42 § 1983, against Defendants the City of New City"), New City John Edgar Gomez, Anthony Jones, and Luigi Dinofrio, New City Police Detective John Guitierrez, New City Sergeant Lam, EMTs Felix: Moldovan and Wendy Tapia, and George Agriantonis. Currently before the Court is Defendant George Agriantonis' s

or Agriantonis") motion to dismiss claims under Federal Rule of Civil 12(b)(6) for failure to state a claim. (ECF No. 71-2, 71-5.) For the reasons set forth below, Defendant's motion is granted.

A. Facts

The following facts, assumed to be true for the purpose of deciding this motion, are drawn from the Second Amended Complaint. Am. Compl.," ECF No. 47.)

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Plaintiff (Id.)

Plaintiff 2012, 2012. (Id. if (Id. ifif "allowed

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Plaintiffs "inclement weather," Plaintiff socks"

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medications." if Plaintiff January 19, at approximately 1 p.m., was walking on 46th Avenue near Junction Boulevard when he was approached by three men dressed in "urban civilian clothing (hooded sweatshirts, jeans and caps)." (Id. at§ IV., 1, 3.) These men, who did not identify themselves as police officers, approached in a "threatening manner, chased after him, and shot him in the back." at§ IV., 2, 3.) An ambulance arrived shortly thereafter, but police officers directed the paramedics to wait before loading to allow police carry out a

at the scene. at 5.) The waiting period lasted twenty to thirty minutes, during which time was lying naked on the sidewalk with a gunshot wound to his back.

was at Elmhurst Hospital from January 19, to January 25, at 6.) After receiving surgery at the hospital, he was released into police custody. at§ IV., 7 and A.) Dr. Agriantonis the premature release of plaintiff' and "should have also known that plaintiff would not receive prescribed medications while in the custody of the

(Id. at 7.) does not allege why his release was or how or why Dr. Agriantonis "should have known" that Plaintiff would not receive his medications in custody.

family was not permitted to bring him clothing so that over the next two days, and in wore "only thin hospital pajamas and as he was shuttled between the courthouse, the hospital, and the Precinct. (Id. at 6, 7.) this time in police custody, plaintiff was denied medications that had been dispensed at the hospital pharmacy for him. January 26, the precinct area supervisor, Luigi Dinofrio held the medications in his hand while taunting plaintiff, yet he did not allow officers to give plaintiff said (Id. at 8.) After twelve hours without medication,

2 (Id. if On 2012, Plaintiff

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Plaintiffs

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Plaintiff

(Id. if

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(Id.) had to be returned to Elmhurst Hospital "with severe abdominal and back pain," and was subsequently released back to police custody. at 9.) January 27, at approximately 11 :23 a.m., was admitted to Jamaica Hospital for complications resulting from "the deliberate outrageous conditions under which he was held in custody of the New City Department since his release from the hospital." (Id. at

The rest of "Statement of Facts" are directed at the City. He alleges that the City "allow[s] use of excessive force by its police force, and disregard[s] the obvious risk of its failure to develop an adequate training regarding "arrest and apprehension of a fleeing

at 11.) He also alleges that at the time, the City had a custom or pattern of persistent or wide spread discriminatory targeting of minorities in certain precincts and neighborhoods. These customs, as well as the inadequate grossly deficient and negligent training programs, constitute the moving force behind the outrageous and reckless conduct of these police officers, as well as deliberate indifference.

12-13.)

claims the following resulting injuries: Gunshot wound to left lower back, six distal Jejunum perforations, sigmoid colon injury, paracolic gutter bleeding, sigmoid displacement, associated mesenteric injury, traversed guadratus lumborum muscle and lower lumbar, bleeding from injured retroperitoned muscules [sic], continued irreparable pain and muscle spasms, as well as deficient lower back function. at§ IV., A.) He further alleges that "Defendant's [sic] deliberate indifference to plaintiffs medical needs caused serious physical and emotional (Id.)

seeks compensatory damages in the amount of million and punitive damages in the amount of

million. at § V.) He also seeks legal costs and any other relief that this Court deems "just, proper, and equitable."

3 2014, Plaintiff,

U.S.C. Police Officers Precinct

2014 Order, Plaintiffs Police Plaintiff

On 2014,

Plaintiff

United Plaintiff (Order, Plaintiff

(Id.) Plaintiff

On 2014, Plaintiff

30.) On 2014, On 2014, B. Procedural History

In January while incarcerated, commenced this prose action on a form "Civil Rights Complaint" pursuant to "42 § 1983," with handwritten allegations against New York City Zamot and John Does 1 and 2, Detective John Doe, John Doe

Supervisor, R. Kelly Commissioner, individually and in their official capacity. (ECF No. 1.) This Court's February 5, Memorandum and inter alia, dismissed claims against New York City Commissioner Raymond Kelly. and the City subsequently identified the specific New York City law enforcement officials involved. (ECF Nos. 6 and 8.)

June 2, this Court granted the City's motion to stay the action sua sponte pending an investigation by the New York City Civilian Complaint Review Board ("CCRB"). (ECF No. 19.) did not oppose the stay and requested leave to file motions seeking to amend his complaint and seeking appointment of counsel. (ECF No. 26.) States Magistrate Judge Lois Bloom ("Judge Bloom") granted leave to amend his complaint.

ECF No. 27.) Judge Bloom also notified that: there is no right to counsel in a civil case; in determining whether to request a volunteer attorney for a civil case the Court must first consider whether the plaintiff can make a "threshold showing of some likelihood of merit[;]" and "any request for counsel should address this threshold issue." did not subsequently move to seek appointment of counsel.

July 25, amended his complaint by naming the specific New York City law enforcement officers involved except for the "precinct supervisor." (ECF No. August 19, the City informed the Court that the CCRB investigation had concluded. (ECF No. 33.) December 3, the Court deemed the amended complaint as having identified

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Plaintiffs Plaintiffs the supervisor" at issue. (ECF No. 42.) December 26, amended his complaint again by adding EMTs Felix Moldovan and Wendy Tapia, and Dr. Agriantonis as defendants, as well as adding allegations against Dr. Agriantonis. (ECF No. 47.) All Defendants except for the EMTs and Dr. Agriantonis answered the Second Amended Complaint. (ECF No.

Dr. Agriantonis has moved to dismiss the Second Amended Complaint pursuant to Federal Rule of Civil 12(b)(6), arguing that has failed to state a claim against him. (Memo. of Law in Support of Defendant George Agriantonis, M.D.'s Motion to Dismiss the Complaint to Rule 12(b)(6) ("Def. Memo. of I; ECF No. 71-2, 71-5.) Although has not alleged any state law claims in this litigation against any Defendant, Dr. Agriantonis argues that this Court should not exercise jurisdiction over any pendant state claims and that a claim for negligence would be time-barred. (Id. II, III.) Magistrate Judge Lois Bloom stayed discovery as to Dr. Agriantonis pending a decision on this motion. (ECF No. Discovery as to the remaining Defendants proceeded (id.), and was completed by November 5, (ECF No. 74.)

opposes the motion to dismiss with an Affidavit Opposition Affidavit") and four Exhibits. (ECF No. 71-3.) Exhibit is the January 25, "Discharge/Transfer Summary" from Elmhurst Hospital; Exhibits

Two and Three are the "Medical Chart" from Elmhurst Hospital Center Emergency Services for 1/26/2012

and 1/26/2012 15:07," respectively; and Exhibit Four is chart from Jamaica Hospital Medical Center for "Adm: 1/27/2012, D/C: 1/26/2012." (ECF No. 71-3.) These documents were not attached to any of Complaints. Moreover, Opposition Affidavit contains facts not alleged in the Second Amended Complaint. Defendant

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violations." 200 2004) 404 U.S. 520 "however has filed a reply affidavit. (Reply in Support of Defendant's Motion to Dismiss ("Def. ECF No. 71-5.)

STANDARD REVIEW Federal Rule of Civil 12(b)(6) provides for dismissal of a complaint where the plaintiff has failed to state a claim upon which relief can be granted. In considering a Rule 12(b)(6) motion, a court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiffs favor. Bell At!. Corp. v. Twombly, 544, 555-56

Indeed, a plaintiff "need only satisfy Rule 8(a)' s standard of a and plain statement of the claim showing that [he] is entitled to relief."' Boykin v. Keycorp, 521F.3d202, 213 (2d Cir. (citing Fed. R. Civ. 8(a)(2)). While Federal Rule of Civil 8 a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, ... it does not unlock the doors of discovery for a plaintiff armed with nothing more than

Ashcroft v. Iqbal, 556 662, 678-79 A plaintiff must allege enough facts to state a claim to relief that is

plausible on its face." Twombly at A claim will have "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 at 678. A complaint is properly dismissed where allegations in a complaint, however true, could not raise a claim of entitlement to relief .... Twombly, at 558.

Against this backdrop, "when the plaintiff proceeds prose, ... a court is obliged to construe his pleadings liberally, particularly when they allege civil rights McEachin v. McGuinnis, 357 F.3d 197, (2d Cir. (citation omitted); Haines v. Kerner, 519, (1972) (A prose complaint inartfully pleaded, must be held to less stringent

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Plaintiff standards than formal pleadings drafted by lawyers .... ") Moreover, the Court is generally limited to the stated in the complaint or documents attached to the complaint as exhibits or incorporated by reference." Nechis v. Oxford Health Plans, Inc., 421F.3d96, (2d Cir.

Court may, however, consider affidavits and other materials outside of a prose plaintiffs complaint when deciding a motion to dismiss, to the extent these materials are consistent with the allegations in the complaint." Cornado v. City of New York, et al., No. l 1CV5188, 2014 Dist. 134722, at *5 (S.D.N.Y. 24, 2014); see also Gill v. Mooney, 824 F.2d 192, 195 (2d Cir. 1987). Therefore, the Court will consider

Affidavit and the attached medical records to the extent that they are consistent with his allegations in the Amended Complaint.

42 § 1983 "provides 'a method for vindicating federal rights elsewhere conferred,' including under the Constitution." Cornejo v. Bell, 592 F.3d 121, 127 (2d Cir. (quoting Baker v. McCollan, 443 137, 144 n.3 (1979)). To establish§ 1983 liability, "[t]he conduct at issue must have been committed by a person acting under color of state law and must have deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the

States." Cornejo, 592 F.3d at 127 (internal quotation marks and citation omitted). Alleging deliberate indifference to serious medical needs "states a cause of action under § 1983 ." Estelle v. Gamble, 429 97, (1976).

Defendant moves to dismiss Plaintiff's deliberate indifference claim by relying principally on cases concerning an inmate's rights under the Eighth Amendment. But since

was a pretrial detainee, not a prison inmate, when the events at issue occurred, his

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279-80 2006). "Thus, § 1983 claim is properly construed under the Due Process Clause of the Fourteenth Amendment. As the Circuit explained in Caiozza v. Koreman:

In the case of a person being held prior to trial, however, "the cruel and unusual punishment proscription of the Eighth Amendment to the Constitution does not apply," because "as a pre-trial detainee [the plaintiff is] not being punished," Cuoco v. Moritsugu, 222 F.3d 99, (2d Cir. see also Weyant, F.3d at 856. [A] person detained prior to conviction receives protection against mistreatment at the hands of prison officials under ... the Due Process Clause of the Fourteenth Amendment if held in state custody. 581 F.3d 63, 69 (2d Cir. (emphasis in original). However, the legal standard for deliberate indifference to serious medical needs is the same whether it arises under the Eighth or the Fourteenth Amendment. Id. at 72. Consequently, Eighth Amendment cases can be used to analyze such claims under the Fourteenth Amendment. Id.

deliberate indifference standard embodies both an objective and a subjective prong." Hathaway v. Coughlin, 37 F.3d 63, 66 (2d Cir. 1994). "First, as to the objective prong, the medical condition for which the plaintiff alleges he was denied treatment must be 'sufficiently such that involves some urgency, risk of degeneration or death, or extreme pain." Veloz v. New York, 35 F.Supp.2d 311 (S.D.N.Y. 1999) (citing and quoting Hathaway, 37 F.3d at 66 (2d Cir. 1994)). "Determining whether a deprivation is an objectively serious deprivation entails" looking at: (1) "whether the prisoner was actually deprived of adequate medical care;" and (2) "whether the inadequacy in medical care is sufficiently serious," meaning the offending conduct is inadequate and what harm, if any, the inadequacy has caused or will likely cause the prisoner." Salahuddin v. Goard, 467 F.3d 263, (2d Cir.

although we sometimes speak of a 'serious medical condition' as the basis for an Eighth Amendment claim, such a condition is only one factor in determining whether a

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U.S. 106 deprivation of adequate medical care is sufficiently grave to establish constitutional liability." Id. at

"Second, as to the subjective prong, the plaintiff must allege that the charged official acted with a sufficiently culpable state of Veloz, 35 F.Supp.2d at 311 (citing Hathaway, 37 F.3d at 66 (citing Wilson v. 294, 298 (1991))). "The sufficiently culpable state of mind ... is one of deliberate indifference to an inmate's health or safety, ... equivalent of recklessly disregarding that risk." Farmer v. Brennan, 511 825, 834, 835 (1994) (internal quotation marks and citation omitted); see also Salahuddin, 467 F.3d at 281 ("must be aware that his conduct creates a risk"). Therefore, a defendant cannot be found liable for deliberate indifference "unless [he is] ... both ... aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and ... draw[s] the inference." Farmer, 511 at 837; see also v. Barnabas Hosp., 151F.Supp.2d303,

"In short, in order to avoid dismissal, a plaintiff must allege conduct that shocks the conscience." Veloz, 35 F.Supp.2d at 311 (internal quotation marks and citation omitted). "[I]nadvertent failure to provide adequate medical care" may not constitute an Eighth Amendment violation. Estelle, 429 at

Negligence in diagnosis or treatment will not constitute a valid claim of medical mistreatment under the Eighth Amendment. Id. at see also Hemmings v. Gorczyk, 134 F.3d (2d Cir. 1998) (citations omitted) (holding that "Hemmings' claims of inadequate treatment ... by Dr. Vargas, are at most claims of negligence, which fall short of the deliberate indifference to serious medical needs required to establish an Eighth Amendment violation"). Thus, allegations amounting to medical "malpractice" will not suffice as constitutional violations under a § 1983 deliberate indifference claim. Estelle, 429

at n.14.

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10 The Court will address the subjective prong first because it is dispositive here. A. Plaintiff Has Failed to State a Claim that Dr. Agriantonis

was Deliberately Indifferent to Plaintiff's Medical Needs

claim is based on two conclusory allegations, that Dr. Agriantonis the premature release of and that he "should have also known that plaintiff would not receive prescribed medications while in the custody of the Am. Compl. §IV., 7.) Even with the liberal pleading standards afforded a pro se complaint, Plaintiff has failed to allege by Dr. Agriantonis. There are no allegations from which one

can draw a reasonable inference that Defendant had a sufficiently culpable state of mind.

Plaintiff is not objecting to the medical treatment that he received from Dr. Agriantonis. He alleges no objection to any diagnosis or care that he received by Defendant at Elmhurst Hospital. Moreover, measures were taken to facilitate care even after he was first discharged from the hospital. Plaintiff left Elmhurst Hospital with his prescribed medicines.

Am. Compl. 8.) And Elmhurst Hospital scheduled a follow-up appointment to see Plaintiff five days after he was discharged. Aff. Ex. 1 at D755.) Therefore,

allegations indicate that he was given reasonable medical care, undermining his claim of by Dr. Agriantonis.

Against this backdrop, Plaintiff makes the conclusory allegation that Dr. Agriantonis discharged him prematurely without any hint of why Plaintiff believes that his discharge was premature. Am. Compl. 7.) Affidavit appears to argue that he was not well enough to be discharged. For instance, he states that a nurse told him "that I had to even though he complaints. Aff. 6.) And that Plaintiff not walk without pain .... " (Id. 7.) Even if Plaintiff had alleged that he was too sick to be discharged by Dr. Agriantonis on January 25, such allegations would rise at most to the

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U.S. level of negligence or malpractice, but neither is actionable as a § 1983 claim. Estelle v. Gamble, 429 97, and n.14 (1976); Hemmings, 134 F.3d at Salahuddin, 467 F.3d at 281. Allegations amounting to disagreement over the form or timing of treatments are not actionable. Estelle, 429 at (dismissed deliberate indifference claim against physician, finding that most," the plaintiff had alleged malpractice, and as such the proper forum is the state court," where the plaintiff alleged essentially that should have been done" for his back); see also Villar v. Ramos, No. 13 Cv. 8422, Dist. LEXIS 71381, at *8 (S.D.N.Y. Jun. 5, (dismissingpro se plaintiffs deliberate indifference claim where allegations included that the plaintiffs colon cancer was not timely treated with chemotherapy).

Plaintiff has provided no factual allegations that Dr. Agriantonis's decision to discharge him from Elmhurst Hospital on January 25, after Plaintiff had received surgery and spent five days in the hospital, deviated from reasonable medical practice, much less that Dr. Agriantonis acted with a culpable state of mind in making that decision.

Plaintiff also makes the conclusory allegation that Dr. Agriantonis have also known that plaintiff would not receive prescribed medications while in the custody of the NYPD." (Second Am. Compl. 7.) Plaintiffs opposition submission sheds no light on this conclusory allegation. Nonetheless, that Dr. Agriantonis should have known of the alleged risk is not enough to allege that he had a sufficiently culpable state of mind. As the Supreme Court held in Farmer v. Brennan, official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." 511 at 838. In sum, one cannot draw a reasonable inference from the allegations that Dr. Agriantonis had actual or constructive knowledge of the alleged risk, and that he recklessly disregarded it by choosing to ignore it.

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Plaintiff's Farmer, 511 at 835, 837; 151 F.Supp.2d at 311; Veloz, 35 F. Supp.2d at 312 (dismissed pro se plaintiff's deliberate indifference claim in part because there was no allegation that "Dr. was aware of a serious risk to Veloz's health that he chose to ignore .... Here, Veloz does not allege that Dr. was in any way responsible for either rescheduling [surgery] or that the rescheduling caused serious medical needs to go untreated").

Nor can one draw even an inference from the allegations that Dr. Agriantonis took on the duty of ensuring that was given his medications after he was released from Elmhurst Hospital on January 25, Rather, "on the facts alleged, a factfinder would be compelled to conclude that the doctor[] here acted as doctors ordinarily do--prescribing treatment and leaving it to the patient, or the patient's guardians, to ensure that the course of treatment be carried out." Mahone v. City of New York, No. Dist. at *13 (S.D.N.Y. Apr. 11, (ruling that the plaintiff failed to facts that would permit the conclusion that the doctors here took on the responsibility of assuring that prison personnel facilitated compliance with the course of treatment they had recommended," id. at* 11, where the plaintiff alleged that was not the doctors' acts, but their omissions, that constituted deliberate indifference to his medical needs." at* 13).

Here, has failed to allege indifference" by Dr. Agriantonis to

medical needs, and therefore § 1983 claim against Dr. Agriantonis is

B. Plaintiff's Deliberate Indifference Claim Does Not Allege

Sufficiently Medical Needs Dr. Agriantonis argues that fails to allege at discharge his condition was 'life-threatening' or 'fast-degenerating' and offers no facts from which a reasonable inference of same could be drawn." (Def. Memo. of Law 5.) The Court agrees. Rather,

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(Pl. Opp. "complications" life allegations indicate that any claims of resulting injuries run to the New City enforcement officers, not Dr. Agriantonis.

alleges that he received surgery at Hospital after sustaining a gunshot wound by the defendant officers. Am. Compl. 1-3.) He further alleges that after his release from Hospital on January 25, the Precinct deprived him of his for over hours," and as he to be returned to Elmhurst" with

abdominal and back pain." Am. Compl. §III., 9.) He was then returned to police custody. (Id.) Subsequently, on January 27, he "was admitted to Jamaica hospital with complications deriving from the deliberate outrageous conditions under which he was held while in [police custody] since his release from the hospital." (Id. Thus, to the extent that alleges the third criteria of a § 1983 claim, that Defendants' "acts were the proximate cause of [his] injuries," his deliberate indifference claim does not with Dr. Agriantonis but rather with the New City law enforcement officials who allegedly shot him and/or did not give him the prescribed medications. Even if there were allegations of injuries attributable to Dr. Agriantonis, they would fail to meet the serious" prong of a deliberate indifference claim.

As Defendant noted, medical needs at the time that Dr. Agriantonis discharged him from Elmhurst Hospital are not alleged to be life-threatening or urgent. Hathaway, 37 F.3d at 66. As for the alleged that arose in police custody after he was from Elmhurst, Affidavit describes them as constipation post intestinal surgery, nausea, abdominal distention, and the pain on my lower back and my abdominal area was horrible and constant." Aff. 16.) These do not allege threatening or degenerative injuries" to suffice as constitutional violations.

13 DISMISSED.

Plaintiff

CONCLUSION

DISMISSED. Order

SO ORDERED.

I SANDRA TOWNES -

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States Here, where Plaintiff has failed to allege that Dr. Agriantonis was deliberately indifferent to a sufficiently serious medical need, Plaintiffs § 1983 claim against Dr. Agriantonis is

C. The Court Need Not Address Dr. Agriantonis's Arguments Regarding

State Law Claims Where Has Not Alleged Any Such Claims Plaintiff has not alleged any state law claims in this case against any of the defendants. Accordingly, the Court need not address Dr. Agriantonis's arguments that this Court should not exercise jurisdiction over pendant state law claims and that a claim for negligence would be time-barred. (Def. Memo. of Law 8-9.)

For the reasons set forth above, Defendant Dr. Agriantonis' s motion to dismiss is GRANTED. Plaintiffs§ 1983 claim as to Dr. Agriantonis is This Memorandum and resolves ECF Numbers 66, 67, and 71.

Isl Sandra L. Townes

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Dated:

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United District Judge

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