UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDRE YOUNGBLOOD,

Plaintiff,

v.

CITY OF NEW YORK, DETECTIVE LOUIS PENA #6992, OFFICER JESUS SANCHEZ #5644, and C.O. T.J. #19297,

Defendants.

No. 15-CV-3541 (RA)
No. 16-CV-6100 (RA)

MEMORANDUM OPINION & ORDER

RONNIE ABRAMS, United States District Judge:

These consolidated actions, which are brought pursuant to 42 U.S.C. § 1983, arise out of the March 10, 2015 arrest of *pro se* Plaintiff Andre Youngblood at St. Barnabas Hospital in the Bronx. Plaintiff filed the first action ("Youngblood I") on April 28, 2015. On June 27, 2016, the Honorable Analisa Torres, to whom the case was previously assigned, granted in part and denied in part the motion of the City of New York and Detective Louis Pena (collectively, "Defendants") to dismiss the First Amended Complaint (the "FAC") pursuant to Federal Rule of Civil Procedure 12(c). On August 1, 2016, Plaintiff commenced a second action ("Youngblood II"), which was consolidated with Youngblood I shortly thereafter. On November 29, 2016, Plaintiff filed a Second Amended Complaint (the "SAC") in Youngblood I. Defendants now move to dismiss the Youngblood I SAC in part and the Youngblood II Complaint in its entirety pursuant to Rules 12(b)(6) and (f). For the reasons that follow, Defendants' motion is GRANTED in part and DENIED in part as to the Youngblood I SAC, and GRANTED as to the Youngblood II Complaint.

BACKGROUND

I. Procedural History

Youngblood I was commenced on April 28, 2015. In Youngblood I, Plaintiff asserts claims against Pena, the City of New York, Officer Jesus Sanchez, and C.O. T.J., although Sanchez and T.J. have not been served. Plaintiff filed the Youngblood I FAC on June 16, 2015. Youngblood I FAC, No. 15-CV-3541, ECF No. 8. On November 16, 2015, Defendants moved to dismiss the Youngblood I FAC pursuant to Rule 12(c). On June 27, 2016, Judge Torres granted Defendants' motion in part and denied it in part. *See generally* Mem. & Order ("June 27 Op."), No. 15-CV-3541, ECF No. 42. In particular, Judge Torres denied the motion as to Plaintiff's false arrest claim against Pena, but dismissed all of Plaintiff's other claims—for malicious abuse of process, excessive force, deliberate indifference to serious medical needs, and claims brought pursuant to the First Amendment, Equal Protection Clause, and *Monell v. Department of Social Services*, 436 U.S. 658 (1978). *Id.* at 4–10, 10 n.6. Plaintiff was given leave to replead his excessive force, deliberate indifference, First Amendment, and Equal Protection Clause claims by November 25, 2016. *Id.*; Order, No. 15-CV-3541, ECF No. 47. On November 29, 2016, Plaintiff filed a document that was construed as his second amended complaint, and which is now the operative complaint in Youngblood I. *See* Youngblood I SAC, No. 15-CV-3541, ECF No. 49; Order, 15-CV-3541, ECF No. 50. The Youngblood I SAC explicitly alleges four claims pursuant to § 1983: (1) malicious abuse of process, (2) denial of a right to a fair trial, (3) excessive force, and (4) *Monell* municipal liability. It also mentions "equal protection under the law" and includes facts that the Court construes as alleging a deliberate indifference claim. Youngblood I SAC 7.

Youngblood II was commenced on August 1, 2016. As in Youngblood I, Plaintiff asserts claims against Pena, the City of New York, Sanchez, and T.J.[1] Youngblood I and Youngblood II were consolidated on August 18, 2016. Order, No. 15-CV-3541, ECF No. 45 & No. 16-CV-6100, ECF No. 10.

On January 26, 2017, the City of New York and Pena filed the instant motion. Defs.' Mot. Dismiss, No. 15-CV-3541, ECF No. 57 & No. 16-CV-6100, ECF No. 23. After Defendants filed their motion, the Court received two letters from Plaintiff. On February 28, 2017, the Court received Plaintiff's letter about, *inter alia*, being the beneficiary of a trust. Pl.'s Letter, No. 15-CV-3541, ECF No. 67 & No. 16-CV-6100, ECF No. 29. On March 2, 2017, the Court received Plaintiff's letter about the Fourth Amendment's warrant requirement. Pl.'s Letter ("Mar. 2 Letter"), No. 16-CV-6100, ECF No. 33. Defendants have requested that the Court deem their motion to dismiss unopposed and fully briefed because Plaintiff's letters were not responsive to their arguments. Defs.' Letter, No. 15-CV-3541, ECF No. 69 & No. 16-CV-6100, ECF No. 35. To the extent Plaintiff's letters are responsive to Defendants' motion to dismiss, the Court will construe them to be his opposition brief. The motion is therefore fully submitted.[2]

The consolidated cases were reassigned to the undersigned on April 5, 2017.

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[1] Plaintiff has sued "T.I." in Youngblood II, but this defendant appears to be the same individual as "T.J." Not only do T.J. and T.I. have the same badge number, but in the original complaint in Youngblood I, Plaintiff referred to this individual as both T.I. (in the caption) and T.J. (in the section identifying the parties in the complaint). For consistency, the Court will refer to this defendant as T.J. going forward.

[2] The Court also received a letter from Plaintiff on March 22, 2017, which is labeled a "reply memorandum" and in which Plaintiff writes that he "was acting as agent for the 'person' for which [he] charged a fee $2,500 in gold and silver coin . . . . [He] also discloses exactly how [he] remained 'on dry land' and never passed the 'bar' to enter the 'ship' never entering civil jurisdiction." Pl.'s Letter, No. 15-CV-3541, ECF No. 71 & No. 16-CV-6100, ECF No. 37. Because the letter's content is unrelated to Plaintiff's complaints, the Court declines to construe it as a surreply. *See Alsaifullah v. Furco*, No. 12-CV-2907, 2013 WL 3972514, at *4 n.3 (S.D.N.Y. Aug. 2, 2013).

II. Youngblood's Claims[3]

The allegations in the Youngblood I FAC, which Plaintiff appears to have incorporated into the Youngblood I SAC, *see* Youngblood I SAC 2–5, 7, are discussed in more detail in Judge Torres' June 27, 2016 opinion, with which the Court assumes familiarity. In essence, Plaintiff alleges that: (1) he was admitted to St. Barnabas Hospital on March 5, 2015 with "walking pneumonia and flexor tendon rupture of [his] right hand"; (2) on March 10, 2015, while Plaintiff was awaiting surgery on his right hand, several police officers, including Pena, forcibly removed Plaintiff from the hospital pursuant to a warrant issued by a state magistrate judge in South Carolina for the arrest of "Andri Youngblood," who Plaintiff contends is a different person; (3) Pena lied to the attending physician, who said Plaintiff needed to stay in the hospital, by stating that Plaintiff would be brought back to the hospital for hand surgery after he was arraigned; (4) Plaintiff was instead incarcerated; and (5) his hand surgery was delayed until late summer 2015, resulting in serious damage to his hand. *See* June 27 Op. 1–3.

Like the FAC, the Youngblood I SAC asserts claims for malicious abuse of process, excessive force, and municipal liability. Youngblood I SAC 2, 4–7. It also mentions "equal protection under the law" and alleges facts that could be construed as bringing a deliberate

[3] The following facts are taken from Plaintiff's various complaints and briefs and Judge Torres' prior decision, and are assumed to be true for purposes of this motion. *See Atterbury v. U.S. Marshals Serv.*, 805 F.3d 398, 403 (2d Cir. 2015); *Mantis Transp. v. Kenner*, 45 F. Supp. 3d 229, 233 n.3 (E.D.N.Y. 2014) (considering facts from prior decisions that were based on the same underlying allegations in resolving a motion to dismiss involving a *pro se* litigant); *Gadson v. Goord*, No. 96-CV-7544, 1997 WL 714878, at *1 n.2 (S.D.N.Y. Nov. 17, 1997) ("[T]he mandate to read the papers of *pro se* litigants generously makes it appropriate to consider plaintiff's additional materials, such as his opposition memorandum," on a motion to dismiss.). Furthermore, "*pro se* pleadings may be read together to determine whether a plaintiff conceivably could be entitled to relief." *Pagan v. N.Y. State Div. of Parole*, No. 98-CV-5840, 2002 WL 398682, at *3 (S.D.N.Y. Mar. 13, 2002) (collecting cases); *see also id.* at *4 ("Determining whether a *pro se* plaintiff intended to abandon the legal theories in his first complaint by filing an amended complaint is . . . sometimes difficult because '[a] *pro se* party may not fully understand the superseding effect of the second pleading.'" (quoting *Austin v. Ford Models, Inc.*, 149 F.3d 148, 155 (2d Cir. 1998))).

indifference claim. *Id.* at 7. It includes as well a new claim for the denial of the constitutional right to a fair trial. *Id.* at 2–3. In particular, Plaintiff alleges that Defendants "lacked probable cause to initiate criminal proceedings" against him; "created false evidence of warrants with Judge Priscilla Bridges Baldwin against" Plaintiff; "forwarded false evidence and false information of the wrong name with no photos on warrant to prosecutors in the New York County District Attorney's Office"; and "misled the prosecutor's [sic] by creating false evidence against Plaintiff . . . and there[]after providing false testimony throughout the criminal proceedings." *Id.* at 1, 3.

The Youngblood II Complaint contains a less detailed version of the same allegations from Youngblood I—that on March 10, 2015, Plaintiff was forcibly removed from St. Barnabas Hospital despite the fact that he was suffering from pneumonia and was scheduled to undergo hand surgery and that these conditions went untreated after Plaintiff was incarcerated—and appears to assert deliberate indifference to serious medical needs and false arrest claims. Youngblood II Compl. 2–4, 7–8, No. 16-CV-6100, ECF No. 2; *see also* Mar. 2 Letter 1.

LEGAL STANDARD

On a Rule 12(b)(6) motion, the Court "accept[s] as true the allegations in the complaint and draw[s] all reasonable inferences in favor of the plaintiff." *Atterbury*, 805 F.3d at 403. "This rule applies with particular force where the plaintiff alleges civil rights violations or where the complaint is submitted *pro se*." *Thompson v. Carter*, 284 F.3d 411, 416 (2d Cir. 2002) (quoting *Chance v. Armstrong*, 143 F.3d 698, 701 (2d Cir. 1998)). To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is 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." *Id.* "Where, as here, the complaint was filed *pro se*, it must be construed liberally with 'special solicitude' and interpreted to raise the strongest claims that it suggests." *Hogan v. Fischer*, 738 F.3d 509, 515 (2d Cir. 2013) (quoting *Hill v. Curcione*, 657 F.3d 116, 122 (2d Cir 2011)). "Nonetheless, a *pro se* complaint must state a plausible claim for relief." *Id.*

DISCUSSION

I. Youngblood I

In her June 27 opinion, Judge Torres denied Defendants' motion to dismiss Plaintiff's false arrest claim as to Pena. She also granted Plaintiff leave to amend the Youngblood I FAC to address the pleading deficiencies related to his excessive force, deliberate indifference to serious medical needs, First Amendment, and Equal Protection Clause claims. June 27 Op. 7, 9–10, 10 n.6.

A. Excessive Force, Equal Protection Clause, and First Amendment Claims

Plaintiff's only allegations regarding the use of excessive force—that "[t]he level of force employed by defendants was objectively unreasonable and in violation of [his] constitutional rights," and that, "[a]s a result . . . , [Plaintiff] was subjected to excessive force and sustained, *inter alia*, physical and emotional injuries," Youngblood I SAC 4—continue to constitute "labels and conclusions" that do not plausibly state an excessive force claim, *Twombly*, 550 U.S. at 555. Plaintiff references "equal protection under the law," Youngblood I SAC 7, but does not allege any facts to plausibly plead a violation of the Equal Protection Clause, and the Youngblood I SAC does not mention the First Amendment. Accordingly, Plaintiff has failed to address any of the pleading deficiencies outlined by Judge Torres in the June 27 opinion with regard to these claims. Defendants' motion as to these claims is granted.

B. Deliberate Indifference to Serious Medical Needs

Although the Youngblood I SAC does not explicitly plead a deliberate indifference claim, Plaintiff alleges that "Pena conspired with Dr. Raja[,] a non-party[,] to forge medical release documents," and that, as a result, he was "forcibly discharged from medical care and denied medication by defendants." Youngblood I SAC 7 (quotation marks omitted). He also explicitly incorporates by reference the Youngblood I FAC, *id.*, which Judge Torres construed as alleging a deliberate indifference claim, and which provided more detail. In particular, the Youngblood I FAC alleged that Plaintiff was admitted to St. Barnabas Hospital for walking pneumonia and to undergo surgery on his right hand due to a flexor tendon rupture; that he was denied medical attention; that his medication was confiscated; and that the officers did this with "malice." June 27 Op. 1–3; Youngblood I FAC ¶ 13. Plaintiff also previously alleged that, when the attending physician told Pena "in no uncertain words that Plaintiff needed to stay in the hospital," Pena "lied" to the doctor, stating that Plaintiff would be brought back to the hospital for hand surgery once he was arraigned. June 27 Op. 2. Plaintiff alleges that he did not receive surgery on his right hand until late summer 2015 and that, as a result, he has lost use of his hand. *Id.* at 3.

In the June 27 opinion, Judge Torres evaluated Youngblood's deliberate indifference claim under the Due Process Clause of the Fourteenth Amendment, which applies to pretrial detainees in state custody.[4] June 27 Op. 7. To state a claim for deliberate indifference to serious medical needs, a plaintiff must satisfy a two-prong test alleging, first, that "the alleged deprivation of adequate medical care [was] sufficiently serious," *Spavone v. N.Y. State Dep't of Corr. Servs.*, 719 F.3d 127, 138 (2d Cir. 2013) (quotation marks omitted), and, second, that the defendant acted with

[4] The Court will assume for purposes of this motion that Plaintiff was a pretrial detainee during the relevant period.

deliberate indifference or a "sufficiently culpable state of mind," *Chance*, 143 F.3d at 702 (quoting *Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir. 1994)). Judge Torres found that Youngblood had alleged a sufficiently serious medical condition, but had failed to plead deliberate indifference on the part of Pena or any of the unnamed officers. June 27 Op. 7–9.

Since Judge Torres issued her opinion, however, and following the Supreme Court's decision in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), the Second Circuit reexamined the deliberate indifference analysis for pretrial detainees. *Darnell v. Pineiro*, 849 F.3d 17, 34–35 (2d Cir. 2017).[5] In particular, after *Darnell*, a plaintiff suing under the Fourteenth Amendment can establish a claim based on a defendant's recklessness—*i.e.*, that he "knew, or should have known" that "an excessive risk to health or safety" would result. *Id.* at 35; *see also Lloyd v. City of New York*, No. 14-CV-9968, 2017 WL 1207838, at *9 (S.D.N.Y. Mar. 31, 2017). As before, however, more than negligence is required to hold a defendant liable. *Darnell*, 849 F.3d at 36.

Applying the standard set forth in *Darnell*, the Court finds that Plaintiff, at this early stage, has sufficiently alleged a deliberate indifference claim. First, the Court agrees with Judge Torres that Plaintiff has alleged a sufficiently serious medical condition. Plaintiff contends that he suffered from a ruptured flexor tendon in his right hand, which he can no longer use fully due to the lack of treatment. Second, as to the deliberate indifference prong, Plaintiff has alleged that Pena "lied" to the attending physician, June 27 Op. 2; the attending physician told Pena "in no uncertain words that Plaintiff needed to stay in the hospital," *id.*; the officers acted with "malice," Youngblood I FAC ¶ 13; and that Pena "conspired" to forge medical release documents,

[5] "Although *Darnell* involved a challenge to conditions of confinement, the holding of the decision is broad enough to extend to medical deliberate-indifference claims." *Feliciano v. Anderson*, No. 15-CV-4106, 2017 WL 1189747, at *13 (S.D.N.Y. Mar. 30, 2017); *see also Darnell*, 849 F.3d at 33 n.9 ("[D]eliberate indifference means the same thing for each type of claim under the Fourteenth Amendment.").

Youngblood I SAC 7. Given that Plaintiff is *pro se*, the Court finds that these allegations are sufficient to plead that Pena "should have known" that an excessive risk to Plaintiff's health or safety would result. Accordingly, Defendants' motion to dismiss Youngblood's deliberate indifference claim is denied.

C. Malicious Abuse of Process and Municipal Liability

The Youngblood I SAC also includes claims for malicious abuse of process and municipal liability, despite the fact that Judge Torres did not grant Plaintiff leave to replead those claims. The Court could dismiss these claims on this ground alone. *See Palm Beach Strategic Income, LP v. Salzman*, 457 F. App'x 40, 43 (2d Cir. 2012) (summary order) ("District courts in this Circuit have routinely dismissed claims in amended complaints where the court granted leave to amend for a limited purpose and the plaintiff filed an amended complaint exceeding the scope of the permission granted."); *see also Pagan*, 2002 WL 398682, at *3 (dismissing with prejudice new claims in an amended complaint that were outside the scope of the court's order granting the *pro se* plaintiff leave to amend). However, given Plaintiff's *pro se* status, the Court declines to dismiss these claims solely because they exceed the scope of the leave granted. *See Ong v. Park Manor (Middletown Park) Rehab. & Healthcare Ctr.*, No. 12-CV-974, 2015 WL 5729969, at *22 (S.D.N.Y. Sept. 30, 2015) ("Given Plaintiff's pro se status, and the Court's obligation to liberally construe pro se pleadings, the Court is hesitant to dismiss Plaintiff's [amended complaints] on this ground."); *Moriates v. City of New York*, No. 13-CV-4845, 2016 WL 3566656, at *2 (E.D.N.Y. June 24, 2016) ("For *pro se* litigants, broad leave to replead is generally appropriate, since they lack the legal acumen and experience to differentiate successful claims from unsuccessful ones.").

Nevertheless, the malicious abuse of process and municipal liability claims in the Youngblood I SAC suffer from the same defects as in the FAC. Like with the FAC, the Youngblood I SAC simply restates the pleading requirements for malicious abuse of process and

does not, as required, identify any "collateral objective that is outside the legitimate ends of the process" that Defendants sought to achieve. *Savino v. City of New York*, 331 F.3d 63, 76 (2d Cir. 2003); *see also* June 27 Op. 6; Youngblood I SAC 2. And Plaintiff's contentions regarding his claim of municipal liability against the City of New York are identical to those included in the FAC. *Compare* Youngblood I FAC ¶¶ 31–40, *with* Youngblood I SAC 4–7. As Judge Torres concluded, these allegations are conclusory assertions and are insufficient to state a claim under *Monell*. June 27 Op. 9–10. Accordingly, Plaintiff's malicious abuse of process and municipal liability claims are dismissed.

D. Constitutional Right to a Fair Trial

Plaintiff raises a new § 1983 claim—that he was denied his constitutional right to a fair trial—in his most recent amended complaint. Youngblood I SAC 2–4. Despite the fact that Judge Torres did not grant Plaintiff leave to assert this claim, the Court declines to strike it pursuant to Rule 12(f) given Plaintiff's *pro se* status.

The Second Circuit has held that "[w]hen a police officer creates false information likely to influence a jury's decision and forwards that information to prosecutors, he violates the accused's constitutional right to a fair trial, and the harm occasioned by such an unconscionable action is redressable in an action for damages under 42 U.S.C. § 1983." *Ricciuti v. N.Y.C. Transit Auth.*, 124 F.3d 123, 130 (2d Cir. 1997). The elements of a fair trial claim based on fabrication of information are met when "(1) [an] investigating official (2) fabricates information (3) that is likely to influence a jury's verdict, (4) forwards that information to prosecutors, and (5) the plaintiff suffers a deprivation of life, liberty, or property as a result." *Garnett v. Undercover Officer C0039*, 838 F.3d 265, 279 (2d Cir. 2016). Probable cause is not a defense. *See Ricciuti,* 124 F.3d at 129–130. Here, Plaintiff alleges that "Defendants created false evidence of warrants," "Defendants withheld exculpatory evidence [of Plaintiff's] I.D. [from] the District Attorney," "Defendants

forwarded false evidence and false information of the wrong name with no photo on warrant to prosecutors in the New York County District Attorney's Office," "Defendants misled the prosecutor's [sic] by creating false evidence against [Plaintiff] . . . and there[]after providing false testimony throughout the criminal proceedings," and, "[a]s a result of the foregoing, plaintiff's liberty was restricted for an extended period of time." Youngblood I SAC 1, 3–4.

Defendants argue that this claim should be dismissed because Plaintiff has failed to allege personal involvement. Defs.' Br. 15–16, No. 15-CV-3541, ECF No. 58 & No. 16-CV-6100, ECF No. 24. Plaintiff, however, has previously alleged that Pena falsely identified Plaintiff as the person in the warrant despite Plaintiff's protestations and identification to the contrary, and that Pena falsely told the judge that "he had checked and he had the 'right guy.'" June 27 Op. 2–3.

At this early stage, these allegations are sufficient to state a fair trial claim against Pena. Accordingly, Defendants' motion to dismiss Plaintiffs' fair trial claim is denied.

E. Leave to Amend

A *pro se* litigant should generally be granted leave to amend his complaint. *See Shomo v. City of New York*, 579 F.3d 176, 183 (2d Cir. 2009). However, "where the plaintiff is unable to demonstrate that he would be able to amend his complaint in a manner which would survive dismissal, opportunity to replead is rightfully denied." *Hayden v. Cty. of Nassau*, 180 F.3d 42, 53 (2d Cir. 1999). Here, despite the fact that Judge Torres identified what pleading deficiencies Plaintiff needed to overcome in a second amended complaint, the Youngblood I SAC still has failed to allege any facts that would give rise to excessive force, Equal Protection Clause, malicious abuse of process, or municipal liability claims. *See George v. Pathways to Hous., Inc.*, No. 10-CV-9505, 2012 WL 2512964, at *7 (S.D.N.Y. June 29, 2012); *United States v. Brow*, 462 F. App'x 19, 21 (2d Cir. 2012) (summary order). Accordingly, the Court concludes that granting Plaintiff

yet another opportunity to amend his complaint as to these claims would be futile, and the Youngblood I SAC is dismissed in part without leave to amend.

II. Youngblood II

As stated above, Plaintiff makes the same allegations against the same individual defendants in Youngblood II as in Youngblood I. Indeed, the Youngblood II Complaint is the same form Plaintiff submitted to initiate the Youngblood I action, which was in turn superseded by the Youngblood I FAC. *Compare* Youngblood II Compl., *with* Youngblood I Compl., No. 15-CV-3541, ECF No. 2. The Youngblood II Complaint, however, includes fewer details than either the Youngblood I FAC or SAC. To the extent Plaintiff is attempting to bring any of the claims the Court has dismissed, they fail for the reasons stated above and in Judge Torres' June 27 opinion. To the extent Plaintiff is attempting to bring any of the claims that survived, they are dismissed as duplicative of the claims pending in Youngblood I. *See Curtis v. Citibank, N.A.*, 226 F.3d 133, 139 (2d Cir. 2000) ("[P]laintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant[s] at the same time.").

The Court therefore grants Defendants' motion to dismiss the Youngblood II Complaint in its entirety without leave to amend.

III. Service Issues

Neither Sanchez nor T.J. has been served in Youngblood I. On July 10, 2015, the New York City Department of Correction declined service on behalf of Sanchez and T.J. because it could not identify the individuals based on the information provided. No. 15-CV-3541, ECF No. 16.

On January 13, 2017, the Honorable Henry B. Pitman, U.S. Magistrate Judge, issued an order directing Plaintiff to provide identifying information for T.J. by January 27, 2017. Order, No. 15-CV-3541, ECF No. 56 & No. 16-CV-6100, ECF No. 22. Plaintiff has failed to do so. By

August 21, 2017, Plaintiff must provide the Court and defense counsel with such information, or his claims against T.J. will be dismissed for failure to prosecute pursuant to Rule 41(b). If Defendants have any information regarding the identity of T.J., they shall inform the Court of this information by the same date.

Pursuant to Judge Pitman's January 13 Order, Defendants informed the Court that an EMT with the name Jesus Sanchez and the shield number 5644 was identified on Plaintiff's injury-to-inmate form on the date of the incident. Defs.' Letter, No. 15-CV-3541, ECF No. 62; *id.* Ex. A. Given that this is an *in forma pauperis* case, the Court will issue an order directing the U.S. Marshals to serve the summons and complaint on Sanchez.

Because Plaintiff, however, has failed to state viable excessive force, Equal Protection Clause, malicious abuse of process, or municipal liability claims, it would be futile to allow him to bring these claims against either Sanchez or T.J. *See Washington v. Westchester Cty. Dep't of Corr.*, No. 13-CV-5322, 2015 WL 408941, at *6 (S.D.N.Y. Jan. 30, 2015) ("If, however, Plaintiff's allegations were insufficient to establish a viable Section 1983 claim, it would be futile to permit amendment of the complaint for this purpose (and, by extension, to issue a *Valentin* order)."); *Taylor v. OBCC-Grievance Coordinator Kennedy*, No. 14-CV-4708, 2016 WL 4702436, at *1 n.1 (E.D.N.Y. Sept. 7, 2016). Accordingly, to the extent Sanchez or T.J. are served with a summons and complaint, they need not defend against these claims.

CONCLUSION

For the reasons stated above, Defendants' motion to dismiss the Youngblood I SAC is GRANTED in part and DENIED in part, and Defendants' motion to dismiss the Youngblood II Complaint is GRANTED in its entirety.

The Clerk of Court is respectfully directed to: (1) terminate the motions at ECF No. 57 in No. 15-CV-3541 and ECF No. 23 in No. 16-CV-6100; (2) close No. 16-CV-6100; and (3) terminate the City of New York from No. 15-CV-3541.

SO ORDERED.

Dated: July 24, 2017
New York, New York

Ronnie Abrams
United States District Judge