SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 52

----------X DECISION & ORDER

RONALD DAVIS,

Plaintiff, Index No.: 157581/2016

-against-

THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT,

Defendants.

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ALEXANDER M. TISCH, J.

This action arises out of damages allegedly sustained by plaintiff Ronald Davis when he was arrested and detained by defendant the New York City Police Department (NYPD) for over eight hours and was purportedly denied access to medical treatment. Defendants the City of New York and the NYPD move, pursuant to CPLR 3211 (a) (5) and (7), for an order dismissing plaintiff's state claims of false arrest, false imprisonment, assault, battery, defamation, and negligence, for failing to timely serve a notice of claim. Defendants further move, pursuant to CPLR 3211 (a) (7), for an order dismissing the federal causes of action, as insufficiently pled. In addition, defendants move, pursuant to CPLR 3211 (a) (7), for an order dismissing the complaint in its entirety for failure to comply with the particularity requirements delineated in CPLR 3013 and in General Municipal Law (GML) § 50-e.[1] For the reasons set forth below, defendants' motion is granted in its entirety and the complaint is dismissed.

BACKGROUND AND FACTUAL ALLEGATIONS

Plaintiff was arrested and detained on September 9, 2014. According to the complaint, plaintiff was "falsely arrested and wrongfully kept in custody for over eight hours." Complaint, ¶ 4. Plaintiff continues that he was "falsely prosecuted in New York County for a violation of the Penal Law

[1] Defendants additionally seek dismissal of the negligence claim, pursuant to CPLR 3211 (a) (7), as a claim of negligence cannot be maintained in connection to a false arrest claim. They also seek dismissal of the complaint as against the NYPD as it is not a suable entity.

§ 265.01," and that the criminal charges were subsequently dismissed on June 16, 2015. He states that there was no probable cause to believe that he had committed a crime, but that he was "profiled and the victim of an errant stop and frisk policy which has been found to be unconstitutional." *Id.*, ¶ 14.

Plaintiff states that he is a kidney transplant recipient who must take his medication on a fixed schedule. After he was arrested, he was allegedly denied his medication and was "in great fear of losing his kidney." *Id.*, ¶ 6. Plaintiff believes that, by falsely arresting him, he was caused "to endure great fear, apprehension, assault, battery, defamation and a violation of his federal and state civil rights." *Id.*, ¶ 11. In addition, plaintiff alleges that defendants were "negligent in their apprehension of the plaintiff." *Id.*, ¶ 15.

Through counsel, plaintiff filed a notice of claim with defendants on August 19, 2015. It states that plaintiff was "wrongfully arrested, detained and charged with a crime all in violation of his state and federal constitutional rights." Notice of claim, ¶ 2. The nature of the claim is listed as "[f]alse arrest and imprisonment; abuse of process; vindictive and malicious prosecution; invasion of privacy; illegal search and seizure; defamation and a denial of state and federal civil rights." *Id.* The notice of claim continues, in relevant part, as follows:

> "The time when, the place where and the manner in which the claim arose:
> September 8, 2014 at approximately 1:00 p.m. at New York, New York when claimant was wrongfully arrested for an alleged violation of Penal Law § 265.01.[1] He was given a desk appearance ticket but wrongfully incarcerated for approximately eight (8) hours. On June 16, 2015, after numerous court appearances the case (Docket No. 2014NY072126) was dismissed and sealed. The claimant is a kidney transplant patient and a diabetic. He was denied his medication, dehydrated and suffered a panic attack over the potential rejection or damage to his kidney." *Id.*, ¶ 3.

Notice of Claim

Defendants move to dismiss plaintiff's state law claims grounded in false arrest, false imprisonment, assault, battery, defamation and negligence for failure to timely serve a notice of claim. According to defendants, except for the malicious prosecution claim, the other state claims began to

[1] "Criminal possession of a weapon in the fourth degree."

accrue on September 8, 2014, which was the date of plaintiff's arrest and the date of his release from police custody. Plaintiff served his notice of claim on August 19, 2015 and served his complaint on September 9, 2016.

In a tort action, a notice of claim must be served on the City of New York within 90 days after the claim arises. According to defendants, as plaintiff's notice of claim was served after the 90-day period began to toll, it is untimely and is considered a nullity. Defendants note that plaintiff did not request to file a late notice of claim prior to expiration of the one year and 90-day statute of limitations for these claims.

In addition to serving a late notice of claim, defendants allege that plaintiff's complaint is untimely with respect these claims, as the complaint was also served after the statute of limitations expired for these claims. As a result, defendants argue that all state claims, except for the claim for malicious prosecution, should be dismissed as a matter of law as untimely.

Moreover, in addition to the procedural deficiencies, defendants assert that the complaint should be dismissed because the notice of claim was substantively deficient. For instance, on the notice of claim, the location of the incident is listed as New York, New York, and this information is too broad for defendants to be able to conduct a meaningful investigation.

In opposition, plaintiff argues that defendants have not been prejudiced by the delay as they never objected to the late service of the notice of claim and they already conducted the GML § 50-h examination of plaintiff on April 8, 2016. Moreover, plaintiff believes that defendants' actions "misled" plaintiff into believing that the late notice of claim had been accepted by defendants and that he was not required to seek leave to serve a late notice of claim. He explains that defendants already conducted the GML § 50-h examination of plaintiff on April 8, 2016 and they engaged in additional motion practice with him. Furthermore, defendants did not claim that there was any subsequent change to the circumstances of the action after the 90-day expiration period that may hinder their investigation.

Finally, according to plaintiff, the notice of claim provided sufficient notice to the defendants for them to investigate the claim.

Plaintiff alleges that his complaint was timely served, given that the statute of limitations for serving his complaint was tolled during the period between the demand for a pre-suit examination pursuant to GML § 50-h and when the examination took place.

Insufficiently Pled Claims

Alternatively, defendants argue that the state causes of action, including the one for malicious prosecution, must be dismissed pursuant to CPLR 3211 (a) (7) for failing to comply with the particularity requirements as set forth in CPLR 3013.[2]

According to defendants, plaintiff's complaint is "devoid of specificity," not even alleging the events leading up the arrest, the location of the arrest, the circumstances surrounding the arrest, the actions of the individual officers involved in the arrest, among other important details. Luedtke affirmation, ¶ 23. In relevant part, defendants allege that the cause of action alleging malicious prosecution only speculates that plaintiff was maliciously prosecuted and does not allege any malice on defendants' part.

In opposition, in pertinent part, plaintiff argues that defendants fail to establish that there was probable cause for plaintiff's arrest. According to plaintiff, for purposes of this motion, his testimony indicates that defendants' conduct when they initially stopped him, which ultimately led to his arrest, was unlawful. He maintains that a subsequent dismissal of charges is proof to establish the lack of probable cause at the time of the arrest. He continues that he has sufficiently pled a claim for false imprisonment as "[t]here is no dispute that the Plaintiff was arrested and intentionally detained, and the basis for which was shown to be an errant stop and frisk policy, which was found to be unconstitutional and resulted in dismissal and sealing of the underlying charges." Liotti affirmation, ¶ 51.

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[2] In light of the Court's determination dismissing most of the state claims for failure to timely serve a notice of claim, the Court need not address the additional grounds for dismissal as presented by defendants or address plaintiff's arguments in response.

As a result, in relevant part, plaintiff argues that he has sufficiently pled all the elements for a viable malicious prosecution claim. First, as the complaint in the underlying criminal matter was signed by one of the arresting officers, plaintiff states that he has demonstrated that the police officers initiated prosecution against him. Second, plaintiff states that the criminal proceeding terminated in his favor as the underlying charges were dismissed, and that this dismissal indicates a lack of probable cause. Finally, defendants' malice can be inferred from the lack of probable cause in arresting plaintiff.

Plaintiff asserts that his complaint "contains precise and detailed statements," and continues that the "Verified Complaint therefore gives sufficient notice to the court and the Defendants of the transactions, occurrences, or series of transactions or occurrences, intended to be proved." Liotti affirmation, ¶ 23. Moreover, plaintiff asserts that, in response to defendants' motion, he "need not allege the events leading up to the arrest, the circumstances surrounding the arrest itself, the manner in which he was arrested, or the actions of the individual officers involved in the underlying incident." *Id.*, ¶ 50.

He summarizes that his complaint sufficiently establishes the following, in relevant part:

> "In falsely arresting the Plaintiff, the Defendants caused him to endure great fear, apprehension, assault, battery, defamation and a violation of his federal and state civil rights. Moreover, there was no probable cause to believe that the Plaintiff ever committed a crime. Further, as a result, the Plaintiff suffered physical damages in being denied his necessary medication, and also incurred considerable expenses in having to go to court several times before the criminal charges were finally dismissed." *Id.*, ¶ 10.

Federal Claims

Defendants further argue that the federal claims brought under 42 USC § 1983 must also be dismissed as insufficiently pled. With respect to the federal civil rights claim, defendants argue that plaintiff has not pled specific instances of an official unconstitutional policy or custom. They continue that the cause of action for denial of medical treatment fails to meet the pleading specificity requirements, as, among other reasons, it fails to name any individual officers or their individual involvement.

In opposition, plaintiff argues that he has adequately pled that his civil rights were violated when defendants deprived him of medical treatment while he was in police custody. In addition, plaintiff maintains that he was the "victim of the unconstitutional practice of 'stopping and frisking' without probable cause." Liotta affirmation, ¶ 89.

DISCUSSION

At the outset, as noted by defendants, the NYPD is a non-suable agency as it is an agency of the City of New York. *See* New York City Charter § 396: "All actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law." Accordingly, all claims against the NYPD must be dismissed as a matter of law. *See e.g. Montes v King*, 2002 US Dist LEXIS 4412, *17, 2002 WL 424318, *5 (SD NY 2002) ("The claims against the [NYPD] should also be dismissed because under section 396 of the New York City Charter, the NYPD is not a suable entity").

Notice of Claim

"On a motion to dismiss a complaint pursuant to CPLR 3211 (a) (5) on the ground that the complaint is barred by the applicable statute of limitations, the defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired." *Barry v Cadman Towers, Inc.*, 136 AD3d 951, 952 (2d Dept 2016). Service of a notice of claim is required prior to the commencement of a tort action against a municipal to enable "authorities to investigate, collect evidence and evaluate the merit of a claim. . . ." *Davis v City of New York*, 153 AD3d 658, 660 (2d Dept 2017) (internal quotation marks and citation omitted); *see* GML § 50-e (1) (a). The notice of claim shall be served "within ninety days after the claim arises." *see* GML § 50-e (1) (a). Here, petitioner did not timely file his notice of claim.

Although GML § 50-e (5) gives the court discretion to grant leave to serve a late notice of claim upon consideration of the factors set forth in the statute, "[t]he extension shall not exceed the time limited for the commencement of an action by the claimant against the public corporation." Therefore,

"once the statute of limitations has expired, the court is without discretion to entertain an application for leave to file a late notice of claim." *Matter of Goffredo v City of New York*, 33 AD3d 346, 347 (1st Dept 2006).

In the present situation, the claims for false arrest, false imprisonment, assault, battery, defamation and negligence started to accrue on September 8, 2014. Pursuant to GML § 50-i (1) (c), "the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based." One year and 90 days from the date of the arrest on September 8, 2014 would be on December 7, 2015. Plaintiff failed to timely move for leave to file a late notice of claim. Accordingly, this Court has no discretion to extend the time to serve this late notice of claim. *See e.g. Matter of N.M. v Westchester County Health Care Corp.*, 10 AD3d 421, 423 (2d Dept 2004) ("Because [petitioner] did not seek leave to serve WCHCC with a late notice of claim until September 2002, well after the one year and 90-day statute of limitations period had expired, the Supreme Court was without authority to grant the branch of the petition concerning her claim").

Plaintiff argues that defendants should be equitably estopped from asserting lack of notice of claim. He explains that defendants' conduct, such as scheduling and conducting a pre-suit examination, misled and discouraged plaintiff from making a timely application for leave to serve a late notice of claim. Courts have found that equitable estoppel:

> "is to be invoked sparingly and only under exceptional circumstances. [W]here a governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his [or her] position to his [or her] detriment or prejudice, that subdivision should be estopped from asserting a right or defense which it otherwise could have raised." *Feliciano v New York City Hous. Auth.*, 123 AD3d 876, 877 (2d Dept 2014) (internal quotation marks and citations omitted).

There is no indication that equitable estoppel applies in the instant situation. Defendants were "under no obligation to aid plaintiff[] in prosecuting [his] claims . . . ." *Cane v City of New York*, 209 AD2d 217, 217 (1st Dept 1994). Moreover, "[t]he fact that [defendants] engaged in pretrial discovery does not constitute a waiver of the requirements regarding the time and manner of service of the notice

of claim, nor does it preclude [defendants] from raising the untimeliness of the notice of claim after the statute of limitations had expired." *Hall v City of New York*, 1 AD3d 254, 256 (1st Dept 2003).

Regardless of defendants' conduct with respect to the notice of claim, plaintiff still failed to serve the complaint within the statute of limitations. Accordingly, "plaintiff [] failed to make the requisite showing that [he] changed [his] position to [his] detriment or prejudice as a result of relying upon defendant's alleged wrongful conduct." *Flores v City of New York*, 62 AD3d 506, 506-507 (1st Dept 2009) (citations omitted).

Even assuming, arguendo, the City of New York was equitably estopped from asserting the affirmative defense that plaintiff failed to timely serve his notice of claim, the portion of the complaint alleging claims for false arrest, false imprisonment, assault, battery, defamation and negligence must still be dismissed as untimely. As noted above, notwithstanding the late notice of claim, the complaint itself was served on September 9, 2016, outside the one year and 90-day statute of limitations.

Pursuant to GML § 50-i (3), "[n]othing contained herein or in section fifty-h of this chapter shall operate to extend the period limited by subdivision one of this section for the commencement of an action or special proceeding." Accordingly, contrary to plaintiff's contention, the "statute of limitations was not tolled during the period between the defendant's demand for a hearing pursuant to General Municipal Law § 50-h and that hearing." *Mourato v Suffolk County Water Auth.*, 159 AD3d 890, 890 (2d Dept 2018) (citations omitted); *see also Doddy v City of New York*, 45 AD3d 431, 431 (1st Dept 2007) (As the one year and 90-day statute of limitations was not tolled, complaint was dismissed as time barred under GML § 50-i [1] [c]).

"Plaintiff was required to allege in [his] complaint compliance with the notice of claim condition precedents to suit." *Reaves v City of New York*, 177 AD2d 437, 437 (1st Dept 1991). As plaintiff's notice of claim was untimely, it is a nullity. Accordingly, defendants' motion pursuant to CPLR 3211 (a) (5) granting dismissal of the claims for false arrest, false imprisonment, assault, battery, defamation and negligence, is granted as these claims are untimely.

CPLR 3211 (a) (7)

On a motion to dismiss pursuant to CPLR 3211 (a) (7), "the facts as alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference," and the court must determine simply "whether the facts as alleged fit within any cognizable legal theory." *Mendelovitz v Cohen*, 37 AD3d 670, 671 (2d Dept 2007). However, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration." *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013) (internal quotation marks and citation omitted). Pursuant to CPLR 3013, "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense."

Malicious Prosecution

"A cause of action for malicious prosecution accrues when the criminal proceeding terminates favorably to the plaintiff." *Bumbury v City of New York*, 62 AD3d 621, 621 (1st Dept 2009). Here, plaintiff alleges that the criminal charges were dismissed on June 16, 2015. The statute of limitations for plaintiff's malicious prosecution claim began to run when the charges were dismissed against plaintiff on September 9, 2015. Thus, plaintiff's notice of claim and complaint are timely with respect to that claim.

"The elements of the tort of malicious prosecution are: (1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, (2) the termination of the proceeding in favor of the accused, (3) the absence of probable cause for the criminal proceeding and (4) actual malice." *De Lourdes Torres v Jones*, 26 NY3d 742, 760 (2016) (internal quotation marks and citations omitted).

Contrary to plaintiff's contention, "[n]otwithstanding the broad pleading standard, bare legal conclusions with no factual specificity do not suffice to withstand a motion to dismiss." *Mid-Hudson Val. Fed. Credit Union v Quartararo & Lois, LLC,* 155 AD3d 1218, 1219 (3d Dept 2017), *affd* 31 NY3d

1090, 1091 (2018). In the instant situation, plaintiff's allegations do not meet the requirements of CPLR 3013 as they do not provide the essential basic facts necessary to address the remaining state claim for malicious prosecution. The complaint does not set forth the underlying circumstances surrounding his arrest, the location of the arrest or even the police officers' actions with respect to his arrest and his detainment. Nonetheless, he argues that he has established a claim for malicious prosecution by alleging that the police officers initiated the prosecution against him, the charges were dismissed, there was no probable cause for the criminal proceeding and that defendants' malice is inferred from the lack of probable cause.

Probable cause "requires a showing of such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe that [the subject] had committed the [crime]." *Jenkins v City of New York*, 2 AD3d 291, 292 (1st Dept 2003) (internal quotation marks and citation omitted). Plaintiff fails to plead a lack of probable cause for the criminal proceeding. Here, although plaintiff was arrested and charged with criminal possession of a weapon in the fourth degree, he then vaguely alleges, without any details surrounding the arrest, that probable cause was lacking for the initial arrest.

"Actual malice may also be inferred from a total lack of probable cause or from defendant's intentionally providing false information to law enforcement authorities." *Cardoza v City of New York*, 139 AD3d 151, 164 (1st Dept 2016) (internal citations omitted). Even if plaintiff was able to establish a lack of probable cause, his malicious prosecution claim would be dismissed for a lack of malice. *See e.g. Brown v Sears Roebuck & Co.*, 297 AD2d 205, 208 (1st Dept 2002) ("Failure to establish any one of these elements defeats the entire [malicious prosecution] claim"). In the instant situation, plaintiff does not adequately plead that the police officers acted with malice as he does not allege that they intentionally provided false information in support of his criminal charges.

Plaintiff alleges that defendants were negligent in their initial apprehension of plaintiff by arresting and charging him. However, it is well settled that "[t]he claimant is clearly seeking damages

for wrongful arrest and detention. As such, he may not recover under broad general principles of negligence . . . but must proceed by way of traditional remedies of false arrest and imprisonment." *Simon v State*, 12 AD3d 171, 171 (1st Dept 2004) (internal quotation marks and citation omitted). In conclusion, the claim for malicious prosecution is dismissed for failing to state a cause of action.

Federal Civil Rights Claims

It is well settled that "[a] notice of claim is not required to assert a claim for civil rights violations." *Swinton v City of New York*, 61 AD3d 557, 558 (1st Dept 2009). Therefore, the timeliness of the notice of claim is irrelevant for plaintiff's civil rights claims. Furthermore, as claims premised on violations of 42 USC § 1983 are subject to a three-year statute of limitations, plaintiff's federal claims are timely.

"Section 1983 permits a plaintiff whose federal constitutional rights have been violated to sue any 'person' who acted to deprive him of those rights, under color state law." *Van Hoven v City of New York*, 2018 US Dist LEXIS 143015, *20 (SD NY 2018). Under certain circumstances, a municipality may "qualify as a 'person'. . . subject to suit." *Id.* at *21, citing *Monell v Department of Soc. Servs. of City of New York*, 436 US 658, 690-691 (1978). The City of New York may be liable for civil rights violations if plaintiff shows that his civil rights were violated as a result of "an official government policy, custom or widespread practice." *De Lourdes Torres v Jones*, 26 NY3d at 762. "[T]he existence of such a policy may be shown by proof that the municipality had a custom or practice that was both widespread and reflected a deliberate indifference to its citizens' constitutional rights." *Id.* at 768.

Claims under 42 USC § 1983 against the City of New York

The Court notes that plaintiff's failure to name individual actors as defendants does not necessarily preclude plaintiff for adequately pleading federal claims. *See Van Hoven v City of New York* (2018 US Dist LEXIS 143015 at *21) ("a plaintiff may proceed on a Monell claim without even naming any individual actors as defendants"). Nevertheless, for the City of New York to be held liable, its "custom or practice had to be the 'moving force' behind plaintiff's constitutional injury." *De Lourdes*

Torres v Jones 26 NY3d at 762 (citation omitted). In addition, the City of New York "cannot be held liable pursuant to 42 USC § 1983 based solely upon the doctrine of respondeat superior or vicarious liability" for any purported actions of the police officers involved. *Liu v New York City Police Dept.*, 216 AD2d 67, 68 (1st Dept 1995).

"A cause of action under 42 USC § 1983 exists where the evidence demonstrates that an individual has suffered a deprivation of rights as a result of an official policy or custom, and must be pleaded with specific allegations of fact." *Leung v City of New York*, 216 AD2d 10, 11 (1st Dept 1995) (internal citations omitted). Here, plaintiff failed to adequately plead a cause of action under 42 USC § 1983 as he fails to allege any particular facts of the underlying incident and only makes vague and conclusory statements. Moreover, plaintiff provides no factual support, beyond his individual situation, that the NYPD has a policy or practice of "stopping and frisking," without probable cause. Liotti affirmation, ¶ 89. *See e.g. De Lourdes Torres v Jones* (26 NY3d at 768-769) ("Here, the evidence does not support an inference that the City and the NYPD had a widespread custom of [stopping and frisking] in violation of their constitutional rights, nor is there any proof that such a policy caused the allegedly wrongful arrest and prosecution of plaintiff").

In addition, to the extent that plaintiff alleged that he was denied his medication, plaintiff's "complaint failed to allege any facts from which it could be reasonably inferred that the defendants had a policy or custom of depriving medical treatment to persons in police custody." *Vargas v City of New York*, 105 AD3d 834, 837 (2d Dept 2013).

Denial of Medical Treatment

Claims for deliberate indifference to serious medical needs, when, like here, are brought by pretrial detainees, are evaluated under the due process clause of the fourteenth amendment. *Youngblood v City of New York*, 2017 WL 3176002, *4, 2017 US Dist LEXIS 115683, *10 (SD NY 2017). For a plaintiff to establish a claim for deliberate indifference to serious medical needs, he "must satisfy a two-prong test alleging, first, that the alleged deprivation of adequate medical care [was] sufficiently serious,

and, second, that the defendant acted with deliberate indifference or a sufficiently culpable state of mind." *Id.* (quotation marks and citations omitted). To satisfy the first prong, plaintiff must provide evidence that he suffered from an "objectively serious medical condition defined as a condition of urgency, one that may produce death, degeneration, or extreme pain." *Gersbacher v City of New York*, 2017 WL 4402538, *13, 2017 US Dist LEXIS 162707, *34 (SD NY 2017) (internal quotation marks and citation omitted). The second prong, a "sufficiently culpable state of mind," can be shown by "proving a defendant's recklessness - that is, that a defendant knew, or should have known that his or her conduct posed an excessive risk to health or safety." *Id.*, 2017 WL 4402538 at *13, 2017 US Dist LEXIS 162707 at *35. (internal quotation marks and citations omitted).

Plaintiff's deliberate indifference claim is premised on the allegation that the police officers knew or should have known that their conduct posed an excessive risk to plaintiff's health. Plaintiff states that he is the recipient of a kidney transplant and that he is a diabetic who must take medication on a fixed schedule. Plaintiff alleges that, he was denied his medication after his arrest and kept in custody over eight hours. He continues that he advised defendants of the need for him to take his medication or his transplanted kidney may be rejected or damaged.

Although plaintiff claims that he did not receive his medication for over eight hours, plaintiff did not state his medication schedule or the urgency to remain on schedule. *See e.g. Feliciano v Anderson*, 2017 US Dist LEXIS 47893, *29, 2017 WL 1189747, *11 (SD NY 2017) (citations omitted) (Court found that any alleged delay did not violate plaintiff's constitutional rights where, "[t]here are, for example, no allegations that his conditions were life-threatening and fast-degenerating, or that they worsened because of the delay, or that the delay was punitive").

Nevertheless, for purposes of this motion, by alleging that he was the recipient of a kidney transplant and suffered from diabetes, plaintiff sufficiently stated that he suffered from an objectively serious medical condition. However, plaintiff has not satisfied the second prong of the analysis, as he has not alleged that defendants acted recklessly, nor has he made any allegations against any police

officer individually. "[C]onclusory allegations that medical staff defendants were aware of a prisoner's medical needs and failed to provide adequate care are generally insufficient to state a claim for inadequate medical care." *Turner v City of New York*, 2017 US Dist LEXIS 205235, *8, 2017 WL 6942760, at *4 (SD NY 2017) (internal quotation marks and citations omitted). *Compare Youngblood v City of New York*, 2017 WL 3176002, *4, 2017 US Dist LEXIS 115683 at *11-12 (Court found plaintiff sufficiently alleged that defendants should have known an excessive risk to plaintiff's health would result after they were advised to keep plaintiff in the hospital for surgery, but then forged medical release documents and did not return him to the hospital for surgery, resulting in loss of full use in his hand from lack of treatment).

While plaintiff may not necessarily have to name the individual police officers at this time, he is mistaken in his assertion that he can wait for discovery before pleading facts about the conduct of the individual officers in support of each element of his claims. "The mere hope that discovery might provide some factual support for a cause of action is insufficient to avoid dismissal of a patently defective cause of action." *Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 144 (2017) (internal quotation marks and citation omitted).

Plaintiff has alleged that defendants were negligent when they failed to provide him with his medication while he was in police custody. However, a standard greater than "mere negligence" is required for liability. *Darnell v Pineiro*, 849 F3d 17, 36 (2d Cir 2017). Moreover, plaintiff's "negligence claim, which is based on personal injuries [he] allegedly suffered when [he was] arrested, is fatally defective because there is no cause of action for false arrest or false imprisonment sounding in negligence." *Swinton v City of New York*, 61 AD3d at 558.

Accordingly, as set forth above, defendants are granted dismissal of plaintiff's federal claims for failure to state a cause of action.

CONCLUSION

Accordingly, it is ORDERED that defendants the City of New York and the New York City Police Department's motion for an order, pursuant to CPLR 3211 (a) (5) and (7), dismissing the complaint is granted, and the complaint is dismissed in its entirety, with costs and disbursements to said defendants as taxed by the Clerk of the Court upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: December 14, 2018

ENTER:

A.J.S.C.

HON. ALEXANDER M. TISCH