

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELAINE CASE, *as Administratrix of the
Estate of KASEEM J. PANKEY,*

Plaintiff,

-against-

ADRIAN H. ANDERSON, *individually and in his
official capacity as Sheriff of the County of Dutchess;*
JOHN DOE (1) and RICHARD ROE (1), Deputy
Sheriffs of the County of Dutchess; THE COUNTY
OF DUTCHESS; RONALD J. SPERO, *individually
and in his official capacity as Chief of the Town of
Poughkeepsie Police Department,* JOHN DOE (2)
and RICHARD ROE (2), Police Officers in the Town
of Poughkeepsie Police Department; TOWN OF
POUGHKEEPSIE; JOHN DOE (3) and RICHARD
ROE (3), Police Officers and/or Dispatchers in the
City of Poughkeepsie Police Department;
WESTCHESTER MEDICAL CENTER HEALTH
CARE CORPORATION, *doing business as,*
WESTCHESTER MEDICAL CENTER, *through its
subsidiary,* THE MIDHUDSON REGIONAL
HOSPITAL OF WESTCHESTER MEDICAL
CENTER; and CORRECTIONAL MEDICAL
CARE, INC.,

Defendants.

No. 16 Civ. 983 (NSR)

OPINION & ORDER

NELSON S. ROMÁN, United States District Judge

This case concerns the events surrounding the pre-trial detainment and eventual suicide of Mr. Kaseem J. Pankey, who was admitted to and escaped from a mental health facility at The MidHudson Regional Hospital of Westchester Medical Center (the “Hospital”), later arrested by police officers from the City of Poughkeepsie (the “City”) pursuant to an outstanding criminal

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warrant previously issued by the Town of Poughkeepsie (the “Town”), thereafter transferred to the custody of the Town and arraigned on the warrant, and held at the County of Dutchess (the “County”) jail for two days until his death on November 26, 2014. Plaintiff Elaine Case, grandmother to the deceased and administratrix of his estate, alleges that during these events Mr. Pankey was subjected to negligence and deprivations of his Fourteenth Amendment Due Process rights in violation of 42 U.S.C. § 1983.

On behalf of Mr. Pankey’s estate, Plaintiff brings this action against the County, the County Sheriff Adrian H. Anderson (“Sheriff Anderson”), Deputy Sheriffs for the County John Doe (1) and Richard Roe (1) (the “County Deputies”); Correctional Medical Care, Inc. (“CMC”); the Town, the Town Chief of Police Ronald J. Spero (“Chief Spero”), Town Officers John Doe (2) and Richard Roe (2) (the “Town Officers”); the City, Police Officers and/or Dispatchers in the City Police Department John Doe (3) and Richard Roe (3) (the “City Officers”); and Westchester Medical Center Health Care Corporation, doing business as Westchester Medical Center through its subsidiary the Hospital, for the alleged violations of state and federal law. All Defendants have moved to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) or 12(c). Plaintiff has cross-moved to amend the operative complaint in order to specifically allege claims against the City Officers.¹

For the following reasons, Plaintiff’s motion to amend is GRANTED and Defendants’ motions to dismiss are GRANTED in part and DENIED in part.

¹ As part of Plaintiff’s opposition to the City’s motion to dismiss, she indicated she was withdrawing her claims against Chief Knapp of the City of Poughkeepsie Police Department and the City, but she has since clarified that she continues to assert negligence claims against the City despite withdrawing her federal claims. (See Letter from Counsel for Plaintiff dated Oct. 19, 2016 (“Plaintiff [] requests that the arguments contained in her Memorandum in support of her negligence claims against the City Police Officers also be read in support of her negligence claim against the City under the doctrine of *respondeat superior*.”), ECF No. 94.)

BACKGROUND

I. Factual Allegations²

Over the span of less than a week, Kaseem J. Pankey was, as Plaintiff alleges, negligently allowed to leave the Hospital and subjected to additional negligence and deliberate indifference to his mental health problems as he was shuffled between various law enforcement agencies.

a. Admitted to the Hospital

On November 20, 2014, Mr. Pankey was admitted to Defendant Hospital's facilities as a psychiatric patient. (PAC ¶ 23.) At that time, he was accompanied by City of Poughkeepsie police officers (*id.* ¶ 53) and his grandmother, Plaintiff Elaine Case—who informed the Hospital of her relationship to Mr. Pankey and that he lived with her, and provided the Hospital with her contact information (*id.* ¶ 24). This was not the first time Mr. Pankey had been admitted to the Hospital as a psychiatric patient or that they were informed of his familial and living relationship with Mrs. Case. (*Id.* ¶ 25.)

After he was admitted, the Hospital's mental health treatment unit diagnosed him with, among other disorders, suicidal behavior and psychosis, and provided him with medication. (*Id.* ¶¶ 26-27.) At this time, he expressed to Hospital staff members that he sought protection from “devils and their demons.” (*Id.* ¶ 28.) On the same day as his admission to the Hospital, the staff determined he required inpatient mental health stabilization. (*Id.* ¶ 30.)

² The following facts are taken from Plaintiffs' proposed third amended complaint (ECF No. 86, Ex. A) (“PAC”). See *Polanco v. NCO Portfolio Mgmt., Inc.*, 23 F. Supp. 3d 363, 366 n.1 (S.D.N.Y. 2014) (Freeman, J.) (accepting facts alleged in proposed amended complaint as true for the purposes of deciding a motion to amend). Many of the allegations contained therein are made “upon information and belief,” which is still permissible post-*Iqbal* to the extent they are not conclusory or speculative. See *New York v. United Parcel Serv., Inc.*, 131 F. Supp. 3d 132, 137 (S.D.N.Y. 2015) (quoting *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010)) (“A plaintiff may plead facts alleged upon information and belief ‘where the facts are peculiarly within the possession and control of the defendant.’”).

Over the course of the next two days, Mr. Pankey was agitated and disruptive during meals, refused the medication provided for him, and shouted at staff members. (*Id.* ¶¶ 31-32.) He stated his belief that he was being held hostage and made frequent requests to leave the facility. (*Id.* ¶ 32.) The staff determined he was “disorganized, delusional, and in need of reorienting.” (*Id.*) During this time, Mr. Pankey caused a number of “Code Green” events to occur—*i.e.*, he tried to leave the facility despite the staff determining he required inpatient services. (*Id.* ¶ 29.)

On November 22, 2014, after becoming increasingly unstable and agitated, stating to staff members that he was “God” and “God does not have to take meds,” he pushed past a staff member near a safety exit door and absconded from the Hospital. (*Id.* ¶¶ 34-35.) The Hospital issued a Code Green and staff members tried to locate Mr. Pankey, but could not. (*Id.* ¶ 36.)

Plaintiff alleges the Hospital was negligent in allowing Mr. Pankey to leave the facility, for not properly restraining him, for failing to have adequate security measures in place to prevent him from leaving, for failing to supervise him, and for failing to properly medicate him. (*Id.* ¶ 159.)

b. After the Escape

After Mr. Pankey escaped, a psychiatrist employed at the Hospital issued an order pursuant to § 9.55 of the New York State Mental Hygiene Law requiring Mr. Pankey be apprehended by law enforcement authorities. (*Id.* ¶ 38.)³ Hospital staff called various police agencies within the County of Dutchess, including the City of Poughkeepsie police and the Town of Poughkeepsie police. (*Id.* ¶¶ 39-40, 54, 57.) Plaintiff alleges the Hospital was negligent,

³ The order is referenced throughout Plaintiff’s complaint, and the City has provided a copy as part of its motion to dismiss. (*See* Decl. Thomas F. Kelly III in Supp. City Mot. (“Kelly Decl.”), Ex. F (Mental Hygiene order issued the evening of Nov. 22, 2014), ECF No. 90.) The Court takes judicial notice of the text of the order.

however, because it failed to send copies of the Mental Hygiene order to all local law enforcement agencies. (*Id.* ¶ 159.)

When the Defendant Town police received the call from the Hospital, they informed the staff member that he should contact the City police because Mr. Pankey's home address was within the City's jurisdiction. (*Id.* ¶¶ 40-41, 55.) The Town is alleged to have made no efforts to apprehend Mr. Pankey. (*Id.* ¶ 46.) The Hospital also contacted the Defendant City Officers, who were familiar with Mr. Pankey and knew of his psychiatric problems, and informed them that he needed to be apprehended pursuant to a Mental Hygiene order issued that day. (*Id.* ¶¶ 56-57.) The Hospital explained that he was a "threat to his [own] safety" and "to the safety and well-being of others[.]" (*Id.* ¶ 57.) Nevertheless, the City Officers made no efforts to apprehend Mr. Pankey, to return him to the Hospital, or to contact Mrs. Case. (*Id.* ¶ 58.)

c. Apprehended by the City and Turned Over to the Town

On November 25, 2014, the City Officers apprehended Mr. Pankey (*id.* ¶ 59), but despite their knowledge of his psychiatric history and of the Mental Hygiene order, they did not attempt to enforce the order or to contact Mrs. Case (*id.* ¶¶ 60-61). Instead, the City advised the Town that Mr. Pankey had been apprehended and held for arraignment. (*Id.* ¶¶ 42, 59.) The City turned Mr. Pankey over to the Town because of an outstanding criminal warrant,⁴ and allegedly made no efforts to inform the Town of the Mental Hygiene order. (*Id.* ¶¶ 43, 47, 62.) Plaintiff

⁴ The warrant is referenced in Plaintiff's complaint (PAC ¶¶ 43, 48), and the Town has provided a copy as part of its motion to dismiss. (*See* Decl. Steven C. Stern in Supp. Town Mot. ("Stern Decl."), Ex. A (arrest warrant issued by Justice Paul O. Sullivan of the Town of Poughkeepsie Justice Court on November 19, 2014 for the crime of grand larceny), ECF No. 110.) The Court takes judicial notice of the text of the warrant, though, as with the text of the Mental Hygiene order (*see supra* note 3), it does not impact the viability of Plaintiff's claims. Additionally, the Court notes that the City Officers were alerted to Mr. Pankey's activities on November 25 when he asked a store owner for money and "grabbed a free cookie off of the counter" as he exited the store. (*See* Kelly Decl., Ex. E.)

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