

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

L.H., a MINOR, by her : CIVIL ACTION
guardians, G.H. and M.H. :
 :
v. :
 :
COLONEL PAUL J. EVANKO et al. : NO. 00-5805

MEMORANDUM

Giles, C.J.

May 30, 2001

I. INTRODUCTION

Plaintiff filed this action on November 15, 2000, and an amended complaint on January 9, 2001, against the following Pennsylvania state police officials: Pennsylvania State Police Commissioner, Colonel Paul J. Evanko, former Trooper Michael K. Evans, Lieutenant David B. Kreiser, Sergeant Kevin T. Krupiewski, Sergeant Gary Fasy, Corporal Gary L. Dance, Jr., Corporal Laura Bowman, Deputy Commissioner John Does (#1-5), Major John Does (#1-5), Captain John Does (#1-5), Lieutenant John Does (#1-5), Sergeant John Does (#1-5), Corporal John Does (#1-5), and Trooper John Does (#1-5), alleging that these officers, in their individual and official capacities, caused serious injuries to the plaintiff and violated her rights guaranteed by the Fourth and Fourteenth Amendments, and in violation of 42 U.S.C. §§ 1983, 1985, 1986, and 1988. Plaintiff seeks compensatory and punitive damages, as well as attorney's fees, pursuant to 42 U.S.C. § 1988.

Now before the court are two virtually identical motions to

dismiss, each pursuant to Fed R. Civ. P. 12(b)(1) and 12(b)(6) - a Motion of Evanko to Dismiss All Claims Against Him in the Amended Complaint, and a Motion of Kreiser, Krupiewski, Bowman, and Dance¹ to Dismiss All Claims Against Them.² For the reasons below, the motions are granted in part, and denied in part.

II. FACTUAL BACKGROUND

Consistent with the review standards applicable to a motion to dismiss, Fed. R. Civ. P. 12(b)(6), the alleged facts, viewed in the light most favorable to the plaintiff, follow.

On September 19, 1999, plaintiff L.H., then a 15-year-old girl, was reported by her father as a runaway to local police. (Am. Compl. ¶¶ 36, 41.) Later that date, plaintiff was picked up by state police in Berks County, Pennsylvania, and was transferred from the Pennsylvania state police-Reading Barracks to defendant, Trooper Michael K. Evans, and his partner Mark Dooling of the Pennsylvania state police-Skipack Barracks. (Am. Compl. ¶¶ 38-39.) Plaintiff was handcuffed, placed into a police vehicle, and driven to the State Police Barracks at Skipack. (Am. Compl. ¶ 42.) While en route, Trooper Evans, in the

¹Corporal Dance joined Kreiser, Krupiewski, and Bowman's motion on February 21, 2001.

²Throughout this opinion, Evanko, Kreiser, Krupiewski, Bowman, and Dance will be referred to collectively as "moving defendants."

presence of Trooper Dooling, asked lewd questions and made sexual remarks to plaintiff. (Am. Compl. ¶ 43.) Upon arrival at the barracks, Trooper Evans uncuffed plaintiff and took her into the barracks garage. (Am. Compl. ¶ 44.)

While plaintiff was in police custody at the barracks, her father, M.H. arrived at the barracks to pick her up. (Am. Compl. ¶ 45.) During this time, Trooper Evans proceeded to make further lewd comments to plaintiff while fondling his own genitalia. (Am. Compl. ¶ 46.) He then had indecent direct contact with plaintiff's genitalia and also requested that she expose her breasts to him. (Am. Compl. ¶ 47.) Trooper Evans proceeded to masturbate in front of plaintiff inside the police barracks and outside the Southeast Training Center of the police barracks. (Am. Compl. ¶ 48.) Outside of the barracks, he grabbed plaintiff's buttocks. (Am. Compl. ¶ 49.) Further, he propositioned plaintiff to perform sexual acts for money. (Am. Compl. ¶ 50.)

Plaintiff claims that the defendants, who were charged with the responsibility of testing, hiring, training, and supervising members of the Pennsylvania State Police Department, knew or should have known by exercise of reasonable diligence, that Trooper Evans had engaged in a pattern of prior unlawful and inappropriate arrests, sexual advances, and sexual assaults upon female citizens of Pennsylvania. (Am. Compl. ¶¶ 52-64.)

Further, defendants knew or should have known with exercise of reasonable diligence, that Trooper Evans had engaged in a pattern of prior illicit sexual conduct whereby he made improper sexual advances to minors, had openly displayed in his police locker pictures of a local woman posing nude against his police vehicle, had exposed himself at a party at the residence of Defendant Corporal Laura Bowman, and had pranced naked in and about the hot tub of Corporal Bowman. (Am. Compl. ¶¶ 54-57, 61.) Despite this knowledge, some or all of the defendants assigned Trooper Evans to training at the sex crimes unit where he was trained to investigate sex crimes and further trained in the profiling of potential sex crimes victims which, as a uniformed police trooper, he improperly used to profile the victims of his illegal and illicit sexual conduct, including L.H. (Am. Compl. ¶ 55.) Plaintiff also alleges that these prior illicit and illegal sexual acts, advances, and assaults by Evans had been reported to defendants prior to his assaults upon L.H. (Am. Compl. ¶ 56.) Further, other Pennsylvania State Troopers from Skippack Barracks, including Sergeant Gary Fasy, made improper and illicit sexual advances to female citizens of Pennsylvania while on duty and after receiving complaints from other victims of Evans' conduct. (Am. Compl. ¶ 57.) Plaintiff claims that all of the defendants condoned, encouraged and/or approved of Evans' prior egregious conduct by failing to impose any significant

disciplinary action upon him once they learned of each prior similar event and thus all defendants acted with deliberate indifference to Evans' offensive acts by failing to take action obviously necessary to stop his behavior. (Am. Compl. ¶¶ 58-61.)

Evans was arrested in February 2000, for committing illicit and illegal sexual acts against six female Pennsylvania citizens while on duty. (Am. Compl. ¶ 63.) At the time of his arrest, a representative of the Pennsylvania State Police made statements at a press conference indicating that Evans was under scrutiny by the Pennsylvania State Police from around the time of the initial complaint against him. (Am. Compl. ¶ 63.) Thus, plaintiff claims, defendants were no doubt aware that Evans might pose a threat to female citizens before he came into contact with L.H. (Am. Compl. ¶ 64.) In October 2000, Evans pled guilty to eleven counts of criminal conduct, including corruption of the morals of a minor, indecent assault, and official oppression, including admission of guilt relating to his conduct towards L.H.³ (Am. Compl. ¶ 65.)

³As a matter of law, Evans' admission of guilt and criminal plea of guilty establish, through the principles of res judicata and collateral estoppel, that he committed the actions against plaintiff, as set forth above.

III. DISCUSSION

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) may be treated as either a facial or factual challenge to the court's subject matter jurisdiction. Gould Electronics Inc. V. United States, 220 F.3d 169, 176 (3d Cir. 2000). In reviewing a facial attack, as in this case moving defendants' Eleventh Amendment immunity argument, the court must only consider the allegations of the complaint, in the light most favorable to the plaintiff. Id.

Dismissal under Federal Rule of Civil Procedure 12(b)(6) is appropriate only if, accepting the well-pled allegations of the complaint as true, and drawing all reasonable inferences in the light most favorable to plaintiff, it appears that a plaintiff could prove no set of facts that would entitle it to relief. See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989); Weiner v. Quaker Oats Co., 129 F.3d 310 (3d Cir. 1997); Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989).

A. Eleventh Amendment Immunity

The Eleventh Amendment provides, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." Const. Amend. XI. Further, a suit may

not be brought against a state officer, in his or her official capacity, for money damages to be paid by the state treasury, unless Congress has specifically abrogated immunity. Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989).

Moving defendants argue that the Eleventh Amendment bars all claims for damages against them in their official capacities, because Congress has not abrogated Eleventh Amendment immunity for any of plaintiff's claims. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100(1984); Quern v. Jordan, 440 U.S. 332 (1979); Boykin v. Bloomsburg Univ. of Pa., 893 F. Supp. 378 (M.D. Pa. 1995), aff'd, 91 F.3d 122 (3d Cir. 1996), cert. denied, 117 S. Ct. 739 (1997).

Plaintiff counters that, in this case, the Pennsylvania State Police Skippack barracks acted as de facto municipal police, as there exists no local law enforcement agency in the municipality of Telford, Pennsylvania. As such, when on September 19, 1999, L.H. was missing, her father telephoned his local law enforcement agency, which happened to be the Pennsylvania State Police. Thus, even as an arm of a state agency, plaintiff posits, the Pennsylvania State Police Skippack Barrack may be considered local municipal law enforcement, and plaintiff is entitled to explore the "dual function of the PSP as it relates to Monell through discovery." (Pl. Resp. at 8.) See Ainsworth Aristocrat Int'l Party v. Tourism Co. of Commonwealth

of Puerto Rico, 818 F. 2d 1034, 1038 (1st Cir. 1989) ("The decision whether a state institution or entity is an arm of the state for Eleventh Amendment purposes should not be made without a full examination of all the factors.").

Ainsworth held that the trial court's finding that a defendant tourism company was an arm of Puerto Rico for Eleventh Amendment purposes was not supported by sufficient evidence, because the trial court did not consider "local law and decisions defining the status and nature of the agency involved in its relation to the sovereign.'" Id. at 1037 (quoting Blake v. Kline, 612 F.2d 718, 722 (3d Cir. 1979), cert. denied, 447 U.S. 921 (1980)(additional citations removed)).

Applying Ainsworth analysis to the instant case is specious. Even if the Pennsylvania State Police in Skippack receive local funding, a point which was never alleged in plaintiff's amended complaint, that would not suffice to change the "status and nature" of what is in essence an arm of the state. A tourism company like the defendant in Ainsworth is simply not analogous to the defendants in this case, officers of a state police department.

Moreover, if plaintiff were to prevail in a suit against defendants in their official capacities, damages would be paid by the state treasury, which, especially when coupled with moving defendants' status as state officials subject to state

regulation, is impermissible under the Eleventh Amendment. "The third circuit has determined Eleventh Amendment immunity by examining the evidence on three factors: (1) the source of funding--i.e., whether payment of any judgment would come from the state's treasury, (2) the status of the agency/individual under state law, and (3) the degree of autonomy from state regulation." Carter v. City of Philadelphia, 181 F.3d 339, 347 (3d Cir. 1999) (citing Fitchik v. New Jersey Transit Rail Operations, Inc., 873 F.2d 655 (3d Cir. 1989)). These three factors, known as the Fitchik factors, are not weighed evenly, and the third circuit has twice held en banc that the "'most important'" question in determining Eleventh Amendment immunity is "'whether any judgment would be paid from the state treasury.'" Carter, 181 F.3d at 348 (quoting Bolden v. Southeastern Pennsylvania Transportation Authority, 953 F.2d 807, 816 (3d Cir. 1991); Fitchik, 873 F.2d at 659).

Plaintiff also refers repeatedly in her amended complaint to state constitutional violations and tort claims against all defendants in their official capacities. These claims are all barred by sovereign immunity, which has not been waived under Pennsylvania law. See PA CONST. Art. I, Sec. 11; 1 Pa. C.S.A. § 2310; Faust v. Commonwealth of Pennsylvania, 592 A.2d 835 (Pa. Commw. 1991), appeal denied, 607 A.2d 257 (Pa. 1992).

Thus, pursuant to the Eleventh Amendment, all of plaintiff's

claims against the moving defendants in their official, as opposed to their individual, capacities, must be dismissed.

B. Section 1983 Claims

To state a claim under 42 U.S.C. § 1983, plaintiff must allege (1) a deprivation of a federally protected right, and (2) commission of the deprivation by one acting under color of state law. See Lake v. Arnold, 112 F.3d 682, 689 (3d Cir. 1997).

Further, where it is alleged that a Section 1983 violation is based upon a failure to train or supervise municipal employees, there must be proof of intentional misconduct by the policymaker or deliberate indifference by the policymaker before municipal liability may attach. There must be pled and proven that there is an intentional or deliberate abandonment of a known duty. A duty may be established by written rules and regulations or may arise from knowledge of a pattern of employee misbehavior that is likely to cause public harm. Carter v. City of Philadelphia, 181 F.3d 339, 357 (3d Cir. 1999) (citing City of Canton v. Harris, 489 U.S. 378, 388 (1989)).

Plaintiff has alleged that defendants, pursuant to the customs, policies, and practices of the Pennsylvania State Police, caused her to suffer sexual assault, false arrest, and false imprisonment claims in violation of the Fourth and

Fourteenth Amendments.⁴

1. False Imprisonment

Moving defendants argue that the complaint concedes probable cause for "seizing" L.H., after her father reported that the minor had run away. They further point out that the complaint does not even allege that Evans sexually assaulted L.H. or somehow violated her constitutional rights in the course of effecting the seizure, as nothing more than lewd talk occurred in the car.

Plaintiff responds that, as pled in the amended complaint, while L.H. was in the custody of the Pennsylvania State Police, her father arrived at the barracks to pick her up. (Comp. ¶ 45.) During this time at the barracks, Evans proceeded not only to make lewd comments, while fondling his genitalia, (Am. Compl. ¶ 46), but also had indecent direct contact with her genitalia and requested that plaintiff expose her breasts to him. (Comp. ¶ 47.)

Even if an initial apprehension is justified by probable cause, an officer still possesses an obligation to act reasonably regarding the necessary length of custodial detention. See

⁴Moving defendants also refer to Fifth Amendment allegations that are plaintiff averred in her initial complaint but has not alleged in the amended complaint before the court. Accordingly, those arguments will not be addressed in this opinion.

McConney v. City of Houston, 863 F.2d 1180 (5th Cir. 1989). In McConney, the plaintiff was arrested with probable cause for public intoxication, when in reality he was a diabetic in distress who was not wearing his medical emergency alert bracelet. Id. at 1182. After it had become obvious to police that the plaintiff was not intoxicated, plaintiff attempted to pay his bail and leave, but his request was denied. Id. at 1183. Instead, he was placed in a holding cell and not released until the next day. Id. Following this incident, the plaintiff brought a Section 1983 claim against the City of Houston, claiming false imprisonment. The fifth circuit found that, while probable cause justified the arrest, and a reasonable period of detention was justified, once probable cause is found, an officer "may [not] close his eyes to all subsequent developments." Id. at 1184 (citing Thompson v. Olson, 798 F.2d 552, 556 (1st Cir. 1986)). "[P]robable cause to arrest does not suspend an officer's continuing obligation to act 'reasonably.'" Id.

Here, according to the facts as pled in the complaint, Trooper Evans continued to detain L.H. for some time after her father had arrived at the barracks to pick her up, in order to continue to sexually abuse her. (Am. Compl. ¶¶ 45-50.) Moving defendants argue that this case is not analogous to McConney, because the time frame of the detention in this case was relatively short, and the byproduct of standard police operating

procedure, which requires the questioning of a runaway child as to her reasons for running away, specifically if she had committed any crime and if she was running away from an environment of neglect or abuse that could implicate her parents. (Kreiser et al. Mot. to Dismiss, at 10.)

Viewing the facts as pled in a light most favorable to the plaintiff, the court must assume that Trooper Evans continued to detain L.H. after he had become aware that her father had arrived at the barracks. (Am. Compl. ¶¶ 45-50.) Further, the court must also assume that Trooper Evans' reasons for continuing to detain L.H. were to prolong his sexual abuse of her, which the complaint alleges he in fact did, not to question her about her motives for running away or the quality of her home life. (Am. Compl. ¶¶ 46-50.) Following McConney, as this court chooses to do, continued detention, for even a short period of time, is per se unreasonable.

If, after discovery, it can be demonstrated that Trooper Evans had not been made aware that L.H.'s father had come for her, and thus thought he was duty-bound to detain L.H. until her parent or guardian arrived, then defendants could pursue, in a summary judgment motion, the contention that Trooper Evans was reasonable in the length of time he detained L.H. and thus did not falsely imprison her in violation of Section 1983, will be considered. Until that time, the false imprisonment claim still

stands.

Moving defendants also contend that, even if Evans falsely imprisoned plaintiff, they are not liable for Evans' actions under Section 1983, because plaintiff did not allege in her amended complaint that Evans had a prior history of falsely imprisoning individuals, much less that moving defendants had actual or constructive knowledge of such prior behavior.

To the contrary, viewing the facts in a light most favorable to the plaintiff, the court must find that plaintiff has indeed pled a pattern of misconduct on the part of Trooper Evans that had put, or reasonably should have put, moving defendants on notice that Trooper Evans would likely engage in misconduct that would include the false imprisonment of a female arrestee. Plaintiff alleges in her amended complaint that moving defendants "knew, or by the exercise of reasonable diligence, should have known that Defendant, Trooper Michael K. Evans, had not been properly hired, trained, and supervised, and that he had engaged in a pattern of using force, duress, threats of arrest, and violence to compel sexual acts from the female citizens of the Commonwealth of Pennsylvania, such that it reached the level of gross and simple negligence and deliberate indifference to the deprivation of Plaintiff, L.H.'s, constitutional rights." (Am. Compl. ¶ 59.) Further, plaintiff also avers that moving defendants

knew that multiple internal affairs investigations of Defendant, Trooper Michael K. Evans had taken place as a result of Defendant, Michael K. Evans' pervasive engagement in a pattern of using force, duress, threats of arrest, and violence to compel sexual acts from female citizens of the Commonwealth of Pennsylvania, and despite such knowledge, failed to take any action against Defendant, Trooper Michael K. Evans, and as a direct result thereof, Plaintiff, L.H., was falsely imprisoned by Defendant, Trooper Michael K. Evans, and subjected to illegal force, duress, sexual assault and abuse and this failure of the aforesaid Defendants to act constituted a level of gross negligence, recklessness, and a deliberate indifference to the deprivation of Plaintiff, L.H.'s constitutional rights.

(Am. Compl. ¶ 61.) Surely if, as plaintiff pleads, moving defendants were aware of Trooper Evans' use of force and duress to sexually assault and abuse females, it was reasonably foreseeable that Evans' force and duress would manifest itself in the false imprisonment of a female arrestee, such as L.H. Thus, moving defendants' motion to dismiss this count against them must be denied.

2. Qualified Immunity

Moving defendants further argue that they enjoy qualified immunity, thus barring the plaintiff's false imprisonment claim. Qualified immunity is an affirmative defense which shields public officials from suit stemming from their official actions, unless those actions are taken in violation of clearly established law.

Harlow v. Fitzgerald, 457 U.S. 800, 814 (1982); Karnes v. Skrutski, 62 F.3d 485, 491 (3d Cir. 1995). Whether defendants is entitled to qualified immunity should be determined at the earliest possible stage in the litigation, because it constitutes immunity from suit and discovery, not just a defense to liability. See Anderson v. Creighton, 483 U.S. 635, 646 n.6 (1987); Harlow, 457 U.S. at 818.

Moving defendants contend that plaintiff's false imprisonment claim is barred by qualified immunity, because Trooper Evans' lack of probable cause, as alleged in the amended complaint, has no factual antecedent; in other words, no pattern of Trooper Evans' behavior--viz. false imprisonment--has been alleged to suffice to have placed moving defendants on notice.

The court disagrees. As discussed supra, plaintiff's amended complaint sufficiently alleges that defendants knew, or reasonably should have known, of Trooper Evans' pattern of "pervasive engagement in a pattern of using force, duress, threats of arrest, and violence to compel sexual acts from female citizens of the Commonwealth of Pennsylvania," such that false imprisonment of a female citizen such as L.H. was certainly foreseeable. (Am. Compl. ¶ 61.)

Moving defendants further argue that qualified immunity bars the plaintiff's lack of training claim, because, according to some circuits, lack of training and supervision do not reasonably

contribute to patently illegal sexual behavior. See Andrews v. Fowler, 98 F.3d 1069, 1077 (8th Cir. 1996); Barney v. Pulsipher, 143 F.3d 1299, 1307 (10th Cir. 1998); Williams v. Board of County Com'rs of Unified Government of Wyandotte County, 2000 WL 1375267, at *5 (D. Kan. 2000). While Trooper Evans was clearly in a state car and in uniform, moving defendants put forth, his alleged sexual misconduct was also so clearly unlawful that whether he was even acting under color of state law is unclear, thus qualified immunity bars all claims against moving defendants.

The court disagrees. As plaintiff has pled in her amended complaint, lack of training and supervision played a direct role in Trooper Evans' ability to engage in sexual misconduct while on the job, in direct violation of her Fourth and Fourteenth Amendment rights. (Am. Compl. ¶¶ 52, 58, 59, 62.) Plaintiff has stated a claim that defendants violated clearly established constitutional law and, as such, moving defendants are not entitled to qualified immunity.

3. Implied First Amendment Claim

Paragraph 102 of plaintiff's amended complaint states that defendants attempted to conceal the facts surrounding L.H.'s injuries and thus deprived plaintiff of her right of access to the courts and right to petition for redress of grievances.

Plaintiff has alleged no factual support as to how she was deprived of these rights; further, plaintiff's filing of the present complaint undercuts her allegation. Accordingly, any implied First Amendment claim against moving defendants must be dismissed.

4. Deliberate Indifference

Moving defendants further contend that, even if Trooper Evans did violate L.H.'s constitutional rights under the Fourth and Fourteenth Amendments, their own culpability in failing to train, discipline, or otherwise prevent Evans from engaging in illicit acts with plaintiff, does not rise to the level of liability required under Section 1983.

There is no respondeat superior or vicarious liability in Section 1983 claims. See Monell v. Dept. of Soc. Svcs. Of the City of New York, 436 U.S. 658, 694 (1978). "[T]he standard for personal liability under section 1983 is the same as that for municipal liability." Carter, 181 F.3d at 356 (citing Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989)). In order to establish a Section 1983 claim, a plaintiff must prove that defendants "personally 'participated in violating [her] rights, ... that [they] directed others to violate them, or that [they] ... had knowledge of and acquiesced in [their] subordinates' violations.'" Robinson v. Pittsburgh, 120 F.3d

1286, 1293 (3d Cir. 1997) (quoting Baker v. Monroe Twp., 50 F.3d 1186, 1190-91 (3d Cir. 1995)). "[A]ctual knowledge and acquiescence' suffices for supervisory liability because it can be equated with 'personal direction' and 'direct discrimination by the supervisor.'" Id. at 1294 (quoting Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)). "Where a supervisor with authority over a subordinate knows that the subordinate is violating someone's rights but fails to stop the subordinate from doing so, the factfinder may usually infer that the supervisor 'acquiesced' in (i.e., tacitly assented to or accepted) the subordinate's conduct." Id.

Moreover, a state officer may be held liable under Section 1983 if he exercises or fails to exercise supervisory authority, but only if that official "has exhibited deliberate indifference to the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989). An officer's failure to train or supervise an employee amounts to "deliberate indifference" to the Section 1983 rights of the person with whom the employee will come into contact. See Carter, 181 F.3d at 357 (citing City of Canton v. Harris, 489 U.S. 378, 388 (1989)). To hold a police official liable under Section 1983 for the unconstitutional actions of one of his officers, a plaintiff is also required to establish a causal connection between the official's actions and the officer's unconstitutional activity. Black v. Stephens, 662

F.2d 181, 189 (3d Cir. 1981).

Viewing the facts in a light most favorable to the plaintiff, plaintiff has averred all the requisite elements to establish a cause of action against moving defendants under Section 1983. Plaintiff has pled that defendants were charged with the responsibility of testing, training, and supervising Trooper Evans, (Am. Compl. ¶ 52), and were or reasonably should have been aware of his tendencies based upon the required background check that was conducted on Trooper Evans prior to his employ with the Pennsylvania State Police (Am. Compl. ¶ 62). Further, defendants were, or reasonably should have been aware of Trooper Evans' conduct while employed by the Pennsylvania State Police based upon complaints filed and Internal Affairs investigations conducted. (Am. Compl. ¶ 61.) Evans' past conduct and psychological profile showed that he presented a clear danger to the general public, which should have prohibited his hire by the Pennsylvania State Police. (Am. Compl. ¶ 58.) During his tenure as a state trooper, Evans engaged in a pattern of using force, duress, and threats of arrest and violence to compel sexual acts from the female citizens of Pennsylvania. (Am. Compl. ¶ 59.)

Moreover, once he was hired, defendants condoned, encouraged and/or approved of Evans' egregious conduct by failing to impose significant disciplinary action, despite receipt of complaints

regarding his behavior. (Am. Compl. ¶¶ 60, 83.) Instead, defendants enabled Evans to receive Sex Crimes training, which taught him to profile victims of sexual predators, training he subsequently used to prey upon L.H. and other female citizens of Pennsylvania. (Am. Compl. ¶ 83.) These allegations, taken together, suffice to state a claim against moving defendants under Section 1983.

C. Section 1985 and Section 1986 Claims

In order to state a claim under 42 U.S.C. § 1985(3), plaintiff must allege (1) a conspiracy that is (2) motivated by racial or other class-based discriminatory animus to deprive, directly or indirectly, any person or class of persons equal protection of the laws; there must also be (3) an act in furtherance of the conspiracy that (4) causes an injury to her person or property or a deprivation of any right or privilege of a citizen of the United States. See United Brotherhood of Carpenters & Joiners of America, Local 610 v. Scott, 463 U.S. 825, 829-30 (1983). Gender is one of the immutable characteristics that has been held as a sufficient class basis for purposes of Section 1985(3). See Great American Fed. Sav & Loan Assoc. v. Novotny, 442 U.S. 366, 376 (1979).

Moving defendants contend that plaintiff has not stated a claim under Section 1985(3), because, while L.H. alleges

discriminatory animus based on gender, she does not allege beyond a conclusory allegation that defendants' action or inaction was motivated by gender-based considerations.

On the contrary, plaintiff's amended complaint states in particular that

[t]he conspiracy between the Defendants herein is clearly evidenced by the fact that multiple complaints were received from prior victims of Defendant, Trooper Evans' illicit and illegal sexual advances and assaults which complaints were directed, upon information and belief, to each of the defendants herein and despite receipt of those complaints, the defendants failed to discipline, supervise, or take any other action which was obviously necessary to prevent Defendant, Trooper Evans, from engaging in further illicit and illegal conduct against other female citizens of the Commonwealth of Pennsylvania, including Plaintiff, L.H. Moreover, the fact that Defendant, Trooper Evans, was approved by his supervisors, after they received these prior complaints, to receive sex crimes training wherein he was trained by the Pennsylvania State Police to profile victims of sexual predators and which training he subsequently used to prey upon female citizens of the Commonwealth of Pennsylvania based upon their gender, including Plaintiff, L.H.

(Am. Compl. ¶ 83.)

Since plaintiff's complaint clearly alleges conspiracy, as well as the inference of the requisite gender discriminatory animus, it suffices to assert a claim under Section 1985(3).

Section 1986 creates a derivative cause of action from Section 1985 and provides, in pertinent part, "Every person who,

having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing commission of same, shall be liable. . . ." 42 U.S.C. § 1986. Since plaintiff has established a claim under Section 1985(3), the court finds that she also has a derivative claim under Section 1986.

IV. CONCLUSION

For the foregoing reasons, moving defendants respective motions to dismiss plaintiff's amended complaint are granted, in part, and denied, in part.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

L.H., a MINOR, by her : CIVIL ACTION
guardians, G.H. and M.H. :
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v. :
 :
COLONEL PAUL J. EVANKO et al. : NO. 00-5805

ORDER

Giles, C.J.

AND NOW, this ___ day of May 2001, upon consideration of Defendant Evanko's Motion to Dismiss All Claims Against Him in the Amended Complaint, and Defendants' Motion of Kreiser, Krupiewski, Bowman, and Dance to Dismiss All Claims Against Them, and the arguments of the parties, for the reasons outlined in the attached memorandum, it is hereby ORDERED that the motions are GRANTED as to all counts against Defendants in their official capacities and as to any implied First Amendment claim against Defendants; and the motions are DENIED as to Plaintiff's claims pursuant to 42 U.S.C. §§ 1983, 1985(3), and 1986.

BY THE COURT:

JAMES T. GILES C.J.

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to