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

JANICE S. SPIRK	:	CIVIL ACTION
	:	
v.	:	
	:	
CENTENNIAL SCHOOL DISTRICT,	:	
CENTENNIAL SCHOOL DISTRICT BOARD	:	
OF DIRECTORS and DAVID BLATT,	:	
SUPERINTENDENT OF SCHOOLS	:	NO. 04-cv-4821

M E M O R A N D U M and O R D E R

February 22, 2005

PRATTER, District Judge

I. INTRODUCTION

This case involves Janice S. Spirk, a former Assistant Principal and Principal within the Centennial School District (the "School District"), who alleges that she was subjected to a number of unlawful actions by the School District, the School District Board of Directors (the "Board") and/or David Blatt, the School District Superintendent of Schools, during her employment with the School District, inter alia, violations of the following: the First and Fourteenth[1] Amendments to the United States Constitution; 42 U.S.C. § 1983; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 (the "FMLA"); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII"); the Age Discrimination in Employment Act, 29

[1] Spirk's causes of action include alleged violations of both the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment.

U.S.C. § 621, et seq. (the "ADEA"), the Pennsylvania Human Relations Act, 43 P.S. § 951, et. seq. (the "PHRA"); and the Constitution of the Commonwealth of Pennsylvania. The School District, the Board and Mr. Blatt (collectively, the "School District Defendants"), have filed a Motion to Dismiss requesting that the Court dismiss Counts I, II, V and VI of the Complaint.[2] Additionally, the School District Defendants have requested that the Court strike certain portions of paragraph 74 in Count III of the Complaint because emotional distress damages are not available under the FMLA. Furthermore, within the Motion to Dismiss, the School District Defendants have included a Motion for More Definite Statement, requesting that the Court order Ms. Spirk to separately plead her claims predicated upon the First Amendment and both the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment because, Defendants allege, they "cannot identify what alleged individual or joint conduct on the part of the Defendants violates which clause(s)."

As discussed in somewhat greater detail below, the Court has concluded that the Motion, as presented, is without merit and will be denied in all respects. In so ruling, the Court is not so much ruling on the potential merits of the claims (for it remains to be seen the extent to which Ms. Spirk will be able to prove her claims), as reaching the conclusion that the Motion was ill-conceived due, it seems, to a puzzling failure on the part of the movants to review, much less appreciate, the governing judicial opinions and statutory provisions applicable to the claims presented in the Complaint.

[2] Count IV alleges violations of the ADEA and is not a subject of the Defendants' Motion to Dismiss. With respect to Count III the Defendants have raised only the impropriety of a claim for emotional distress damages.

II. DISCUSSION

A. Standard of Review

A Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests the legal sufficiency of the complaint. Winterberg v. CNA Ins. Co., 868 F. Supp. 713, 718 (E.D. Pa. 2004). When considering a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept the complainant's allegations as true, Hishon v. King & Spalding, 467 U.S. 69, 73 (1984), and must consider "all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant." Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). A complaint may be dismissed "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon, 467 U.S. at 73; see also, Conley v. Gibson, 355 U.S. 41, 45-46 (1957) ("a complaint should not be dismissed for failure to state a claim unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief").

The pleading standards against which the Complaint is to be measured are those set out in the Federal Rules of Civil Procedure, most notably Fed.R.Civ.P. 8(a) and (e), which call upon the pleader to present "a short and plain statement of the claim" where "[e]ach averment . . . shall be simple, concise, and direct." The United States Supreme Court described the simplified pleading permitted by the Federal Rules as that which "will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley, 355 U.S. at 47. Indeed, the Supreme Court has reaffirmed the liberal notice-pleading requirements by stating that a prima facie case is "an evidentiary standard, not a pleading requirement." Swierkiewicz v. Sorema

N.A., 534 U.S. 506, 510 (2002). These are the pleading standards the Court is obliged to apply to Ms. Spirk's Complaint.

B. No Heightened Pleading Standard

The United States Supreme Court, in the seminal case of Leatherman v. Tarrant County, 507 U.S. 163 (1993) (unanimous decision), stated clearly that no heightened pleading standard exists with regard to claims brought pursuant to 42 U.S.C. § 1983:

> We think that it is impossible to square the "heightened pleading standard" applied by the Fifth Circuit in this [§ 1983] case with the liberal system of "notice pleading" set up by the Federal Rules. Rule 8(a)(2) requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief." In Conley v. Gibson, 355 U.S. 41 (1957), we said in effect that the Rule meant what it said:
>
> > "[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id., at 47 (footnote omitted).

Leatherman, 507 U.S. at 168.

Nonetheless, the School District Defendants incorrectly argue, according to Parsons v. City of Phila. Coordinating Office of Drug and Alcohol Abuse Programs, 833 F.Supp. 1108, 1120 (E.D. Pa. 1993), that in civil rights cases, the standard for pleading is more stringent than in other types of cases. The Parsons decision held that "[i]n civil rights cases, the standard for pleading is more stringent than in other types of cases." (citing Frazier v. Southeastern Pennsylvania Transp. Auth., 785 F.2d 65, 67 (3d Cir. 1986); Scott v. Rieht, 690 F.Supp. 368, 370 (E.D. Pa. 1988)). While such a heightened pleading standard may have existed in this Circuit prior to Leatherman, the Parsons decision cannot and should not be relied upon by either litigants

or courts in the face of the clarity of Leatherman's statement of the pleading standards. The Court presumes that more diligent research prior to submission of their Motion would have permitted the movants to discover the seminal Leatherman decision and reconsider their arguments accordingly.

Therefore, the School District Defendants' Motion to Dismiss Count I of the Complaint, for failure to plead with greater specificity, is denied.

C. The PHRA and Plaintiff's Familial Status Cause of Action

In their motion papers, the School District Defendants ignore the plain wording of the Pennsylvania Human Relations Act, Right to Freedom from Discrimination in Employment, Housing and Public Accommodation, 43 P.S. § 953, to argue that the Plaintiff has no standing to bring a discrimination claim based on *familial status*. The Defendants make this argument despite the following language in the specific law at issue:

> The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any public accommodation and of any housing accommodation and commercial property without discrimination because of race, color, **familial status**, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act.

43 P.S. § 953 (emphasis added). Therefore, the School District Defendants' Motion to Dismiss Count V of the Complaint is denied.

D. Municipal Defendants are Considered "Persons" in Section 1983 Complaints.

The School District Defendants also ignore another seminal United States Supreme Court decision, Monell v. Dept. of Social Services of New York, 436 U.S. 658 (1978), which unequivocally held that a municipal government is to be considered a "person" for the purposes of a Section 1983 complaint. The School District Defendants, citing Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989) and Bennett v. School Directors of Dist. 204, 941 F.Supp. 763 (N.D. Ill. 1996), argue that "[n]either a school district nor its board of directors, when acting in their individual capacities, is a 'person' for purposes of suit section [sic] under 1983." This argument glosses over the independent concepts of State liability and municipal liability, a topic of debate that was squarely discussed by the Supreme Court in Will and such argument was either missed or ignored by counsel for the School District Defendants. See 491 U.S. at 67 f.7. After reaffirming the doctrine of sovereign immunity, holding that the States, themselves, cannot be sued pursuant to Section 1983, the Supreme Court clarified its position with regard to municipal liability:

> Our recognition in Monell v. New York City Dept. of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), **that a municipality is a person under § 1983, is fully consistent with this reasoning**. In Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980), we noted that by the time of the enactment of § 1983, municipalities no longer retained the sovereign immunity they had previously shared with the States. "[B]y the end of the 19th century, courts regularly held that in imposing a specific duty on the municipality either in its charter or by statute, the State had impliedly withdrawn the city's immunity from liability for the nonperformance or misperformance of its obligation," id., at 646, 100 S.Ct., at 1413, and, as a result, municipalities had been held liable for damages "in a multitude of cases" involving previously immune activities, id., at 646-647, 100 S.Ct., at 1413. (Emphasis added).

491 U.S. at 67 f.7. Furthermore, the Supreme Court found in Monell that:

> Our analysis of the legislative history of the Civil Rights Act of 1871 compels the

> conclusion that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies. Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person," by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels.

Id. at 690-91 (emphasis in original) (footnotes omitted). However, vicarious liability does not attach to municipalities:

> we conclude that a municipality cannot be held liable *solely* because it employs a tortfeasor--or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.

Id. at 691 (emphasis in original). Furthermore, it is the formal or informal policies and/or practices of the municipality on which liability rests:

> We conclude, therefore, that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

Id. at 694. Therefore, the United States Supreme Court concluded in Monell that "absent a clear statement in the legislative history . . . there is no justification for excluding municipalities from the 'persons' covered by [§ 1983]." Id. at 701.

The United States Supreme Court reaffirmed its holdings in Monell within the Leatherman opinion:

> To be sure, we reaffirmed in Monell that "a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." 436 U.S. at 691, 98 S. Ct. at 2036. But, contrary to respondents' assertions, this protection against liability does not encompass immunity from suit. Indeed, this argument is flatly contradicted by Monell and our later decisions involving municipal liability under § 1983. In Monell, **we overruled** Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L.Ed. 2d 492 (1961), **insofar as it held that local governments were wholly immune from suit under § 1983**, though we did reserve decision on whether municipalities are entitled to some form of limited immunity. 436 U.S. at 701, 98 S. Ct. at 2041. Yet, when we took that issue up again in Owen v. City of Independence, 445 U.S. 622, 650, 100 S. Ct. 1398, 1415, 63 L.Ed. 2d 673 (1980), **we rejected a claim that municipalities should be afforded qualified immunity**, much like that afforded individual officials, based on the good faith of their agents. **These decisions make it quite clear that, unlike various government officials, municipalities do not enjoy immunity from suit--either absolute or qualified**--under § 1983. **In short, a municipality can be sued under § 1983, but it cannot be held liable unless a municipal policy or custom caused the constitutional injury**.

Leatherman, 507 U.S. at 166 (emphasis added).

The law could not be any clearer–a municipal subdivision, such as the School District, is considered a "person" for the purposes of a Section 1983 complaint. See Monell, 436 U.S. at 690. Therefore, the School District Defendants' Motion to Dismiss Count I of the Complaint for failure to state a claim is denied.

E. Plaintiffs' Claims Under the Pennsylvania Constitution

School District Defendants have also argued that the Plaintiff does not have a private cause of action, for damages, with regard to an alleged violation of the Pennsylvania Constitution, specifically, the Pennsylvania Equal Rights Amendment (the "Pennsylvania ERA").

It is unclear whether the Plaintiff can sue *for damages* with regard to her claim brought pursuant to the Pennsylvania Constitution, see Ryan v. General Machine Products, 277 F.Supp.

2d 585, 595 (E.D. Pa. 2003)[3]. However, the Court of Appeals for the Third Circuit has held that "a private right of action is available for cases of gender discrimination under the Pennsylvania ERA." Pfeiffer v. Marion Center Area School District, et al., 917 F.2d 779, 789 (3d Cir. 1990)[4]; see also, Bartholomew on Behalf of Bartholomew v. Foster, 541 A.2d 393 (Pa. Commw. Ct. 1988), aff'd, 563 A.2d 1390 (Pa. 1989); Welsch v. Aetna Ins. Co., 494 A.2d 409 (Pa. Super. Ct. 1985).

Therefore, the School District Defendants' Motion to Dismiss Count VI of the Complaint is denied because, at this juncture, the Court believes it to be appropriate to heed the pronouncement of the Court of Appeals for the Third Circuit that a private right of action is available for allegations of gender discrimination under the Pennsylvania ERA. See Pfeiffer, 917 F.2d at 789.

F. Failure to Exhaust Administrative Remedies and the Proper Scope of Spirk's Complaint

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[3] The court in Ryan found that "[t]he Supreme Court of Pennsylvania has not ruled on the issue of whether there is a private cause of action for damages under the state constitution, and the federal courts in this Circuit that have considered the issue have concluded that there is no such right under the Pennsylvania Constitution." See also, Douris v. Schweiker, 229 F.Supp. 2d 391, 405 (E.D. Pa. 2002) (citing Kelleher v. City of Reading, No. 01-3386, 2001 WL 1132401, at *2-3, 2001 U.S. Dist. LEXIS 14958, at *9-10 (E.D. Pa. Sept. 24, 2001) (citing Dooley v. City of Philadelphia, 153 F.Supp. 2d 628, 663 (E.D. Pa. 2001)); Sabatini v. Reinstein, No. 99-2393, 1999 WL 636667, at *3, 1999 U.S. Dist. LEXIS 12820, at *6 (E.D. Pa. Aug. 20, 1999); Holder v. City of Allentown, No. 91-240, 1994 WL 236546, *3, 1994 U.S. Dist. LEXIS 7220, at * 11 (E.D. Pa. May 19, 1994); Lees v. West Greene Sch. Dist., 632 F.Supp. 1327, 1335 (W.D. Pa. 1986); Pendrell v. Chatham Coll., 386 F.Supp. 341, 344 (W.D. Pa. 1974)).

[4] The Ryan court, supra, neither referenced the Third Circuit's holding in Pfeiffer nor addressed whether a litigant may prosecute an equitable claim with regard to the PERA. Ryan merely held that the plaintiff could not sue *for damages* under the Pennsylvania Constitution. See 277 F.Supp. 2d at 595.

The scope of Ms. Spirk's claims must be limited to the acts alleged in her prior administrative charge(s) or those discovered during a reasonable investigation arising from those charge(s). See Ostapowicz v. Johnson Bronze Co., 541 F.2d 394, 398-99 (3d Cir. 1976) ("The parameters of the civil action in the district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination, including new acts which occurred during the pendency of proceedings before the Commission.") (internal citations omitted). Thus, Ms. Spirk has only failed to exhaust her administrative remedies if the acts alleged in the Complaint are not "fairly within the scope of the prior EEOC complaint, or the investigation arising therefrom." See Antol v. Perry, 83 F.3d 1291, 1295 (3d Cir. 1986) (quoting Waiters v. Parsons, 729 F.2d 233 (3d Cir. 1984)).

The School District Defendants' argument that Ms. Spirk has failed to exhaust her administrative remedies neglects to consider page two (2) of Spirk's "Charge of Discrimination," dated March 11, 2004, in which there is a clear indication that Ms. Spirk believed that discriminatory treatment was continuing during the pendency of her complaint before the EEOC and the PHRC. Moreover, the School District Defendants ignore the large "X" in the "Continuing Action" box within the section of the "Charge of Discrimination" form that indicates the dates of the alleged discrimination. Therefore, a reasonable investigation arising from Ms. Spirk's initial charges likely would have disclosed the subsequent allegations that precipitated the filing of her Complaint. See Ostapowicz, 541 F.2d at 398-99. From a plain reading of the Complaint, it cannot be said that Ms. Spirk's allegations of continuing discrimination were not "fairly within the scope of the prior EEOC complaint," or within a proper investigation that should have arisen therefrom, see Antol v. Perry, 83 F.3d at 1295.

Furthermore, the Court of Appeals for the Third Circuit has also held that once any charge is filed with the EEOC, "the scope of a resulting private civil action in the district court is 'defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination . . . .'" Hicks v. ABT Associates, 572 F.2d 960, 966 (3d Cir. 1978) (quoting Ostapowicz v. Johnson Bronze Co., 541 F.2d at 398-99. Accord, Jenkins v. Blue Cross Mutual Hospital Insurance, Inc., 538 F.2d 164, 167-78 (7th Cir.) (en banc), cert. denied, 429 U.S. 986 (1976); Gamble v. Birmingham Southern Railway Co., 514 F.2d 678, 687-88 (5th Cir. 1975). In Hicks, supra, the court rejected the defendant's proposed limitation that the EEOC investigation sets the outer limit to the scope of a complaint. Thus, the Hicks court held that "[i]f the EEOC's investigation is unreasonably narrow or improperly conducted, the plaintiff should not be barred from his statutory right to a civil action." Hicks, 572 F.2d at 966. Moreover, "a civil suit will lie even where the EEOC has failed to give defendant notice of the charge or has failed to attempt to reconcile the parties either because of administrative failure or because of its finding of no reasonable cause." Id.; see also, e.g., Gamble, 514 F.2d at 688-89 (5th Cir. 1975). Further, Hicks suggests that for this Court to find that Ms. Spirk failed to exhaust her administrative remedies, the School District Defendants would need to show that they had been unfairly prejudiced by the expansion of the scope of the civil action beyond that of the EEOC investigation. See 572 F.2d at 966; See also, e.g., Fesel v. Masonic Home of Delaware, 428 F.Supp. 573, 576 (D.Del. 1977). The Court finds that the record, at this point, contains no evidence of such unfair prejudice.

Therefore, for the reasons stated above, the School District Defendants' Motion to Dismiss Count II of the Complaint, for lack of jurisdiction, pursuant to Fed.R.Civ.P. 12(b)(1), is

denied.

G. Emotional Distress Damages

The parties agree that emotional distress damages are not recoverable under the FMLA. Therefore, pursuant to Fed.R.Civ.P. 12(f), the portion of paragraph 74 in Count III of the Complaint that references emotional distress damages is stricken.

H. Motion for a More Definite Statement

The School District Defendants have requested that the Court order Ms. Spirk to separately plead her claims predicated upon the First Amendment and both the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment. However, after reviewing the Defendants' argument and the Complaint, the Court is confident that, after familiarizing themselves with the applicable law, and through the regular discovery process, counsel for the School District Defendants will have little trouble identifying the individual or joint conduct of their clients that Ms. Spirk claims allegedly violates each of the referenced Constitutional clauses.

Therefore, the Motion for a More Definite Statement, pursuant to Fed.R.Civ.P. 12(e), is denied.

III. CONCLUSION

Most of the arguments on which the School District Defendants based their Motion to

Dismiss are without any legal support. Leatherman and Monell are two such controlling, seminal cases with regard to the proper presentation of appropriate claims and defenses for lawsuits brought pursuant to Section 1983 that the Defendants' failure to discuss or even cite either of these Supreme Court cases is most surprising. Likewise, the Defendants' argument that the Plaintiff has no standing to sue under the PHRA, based on familial status, when the actual statute clearly and unequivocally states that discrimination based on familial status is a viable cause of action, suggests a lack of thoroughness that is also indicated by the apparent failure to read and understand Ms. Spirk's Charge of Discrimination. These oversights seem to have caused Defendants to make the baseless argument to the Court that Ms. Spirk failed to exhaust her administrative remedies.

If the Motion to Dismiss and the accompanying Brief in Support had displayed but a single example of less than exemplary research or analysis, it would have gone unaddressed here inasmuch as occasional oversights, while disappointing, are understandable, generally innocent, and sometimes unavoidable. However, here, the incidents of deficiencies are too numerous to ignore and too fundamental to excuse. Inasmuch as defense counsel are seasoned and experienced attorneys who know well their obligations as advocates, including those set forth in Rules 1.1, 3.1, 3.2, 3.3 and 5.1 of the Rules of Professional Conduct, the Court looks forward to an improved, heightened standard of submissions from counsel as this case proceeds.

For the reasons stated above, the School District Defendants' Motion to Dismiss Counts I, II, V and VI is denied. Paragraph 74 of the Complaint is stricken to the extent that that paragraph suggests or contains an allegation that emotional distress damages are available under the FMLA. Finally, the School District Defendants' Motion for More Definite Statement is

denied.

An appropriate Order follows.

BY THE COURT:

/S/_____

GENE E.K. PRATTER

UNITED STATES DISTRICT JUDGE

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

JANICE S. SPIRK	:	CIVIL ACTION
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CENTENNIAL SCHOOL DISTRICT,	:	
CENTENNIAL SCHOOL DISTRICT BOARD	:	
OF DIRECTORS and DAVID BLATT,	:	
SUPERINTENDENT OF SCHOOLS	:	NO. 04-cv-4821

O R D E R

February 22, 2005

PRATTER, District Judge

AND NOW, this 22nd day of February, 2005, upon consideration of the Complaint (Docket No. 1), filed by Plaintiff Janice S. Spirk, the Motion to Dismiss, the Motion to Strike, the Motion for More Definite Statement and the Brief in Support (Docket Nos. 5 and 6), filed by Defendants Centennial School District, the Centennial School District Board of Directors and David Blatt, the Centennial School District Superintendent of Schools (the "School District Defendants"), the Plaintiff's Answer to the Motion to Dismiss (Docket No. 8), the Plaintiff's Memorandum of Law Opposing the Motion to Dismiss (Docket No. 8), and for the reasons more fully stated in the accompanying Memorandum, it is hereby ORDERED that:

1. The Motion to Dismiss Count I of the Complaint is DENIED;

2. The Motion for More Definite Statement regarding Count I of the Complaint is DENIED;

3. The Motion to Dismiss Count II of the Complaint is DENIED;

4. The Motion to Strike the portion of paragraph 74 in Count III of the Complaint, with regard to emotional distress damages, is GRANTED.

5. The Motion to Dismiss Count V of the Complaint is DENIED;

6. The Motion to Dismiss Count VI of the Complaint is DENIED;

7. The oral argument previously scheduled for Wednesday, February 23, 2005, regarding the School District Defendants' Motion to Dismiss, is CANCELLED; and

8. The School District Defendants shall file their respective Answers to the Complaint within fifteen (15) days of the date of this ORDER.

IT IS SO ORDERED.

BY THE COURT:

/S/_____

GENE E.K. PRATTER

UNITED STATES DISTRICT JUDGE