

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

CHRISTOPHER MAFFUCCI, et al. : CIVIL ACTION  
:   
v. :   
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CITY OF PHILADELPHIA, et al. : NO. 98-CV-2718

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**MAY 20, 1999**

Just over two years ago, an inspector from Philadelphia's Department of Licenses and Inspections ("L&I") knocked on Plaintiffs' Christopher Maffucci ("Maffucci") and Selena Fitanides ("Fitanides") door and demanded entrance. Plaintiffs, both lawyers, refused to allow the inspector in without the search warrant they believed was necessary under long established Supreme Court precedent. Since that day they have insistently maintained their constitutional right to the protections of a search warrant in myriad proceedings where their right to a warrant never was recognized. Now asserting that right once again, they have created a record that reveals at best a casual treatment of procedural and substantive constitutional rights. Presently before the Court is Plaintiffs' Revised Motion for Partial Summary Judgment. For the reasons that follow, Plaintiffs' motion is granted in part.

**I. BACKGROUND**

Plaintiffs Maffucci and Fitanides purchased a home located at 1433 South 10th Street from the Archdiocese of Philadelphia in January 1996.<sup>1</sup> They soon after began working on the

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<sup>1</sup>Jean Conti Associates purchased 1431 S. 10th Street from the Archdiocese, (Defs.' Mem. Resp. Pls.' Mot. Summ. J. at 5), and later sold that property to Magdalen Braden, who previously was a plaintiff in this action. She since has settled her claims with Defendants.

property, removing carpeting, paneling, linoleum; sanding the floors; and painting the walls and ceilings. On Saturday morning, April 13, 1996, Dominic Verdi, an Acting District Supervisor of L&I, came to Plaintiffs' door and demanded entry into their home to conduct an inspection.<sup>2</sup> Verdi claimed L&I had received an anonymous tip that Plaintiffs were working on their home and wanted to see whether that work required permits from the City.<sup>3</sup> Plaintiffs, who believed none of the work they were doing required permits, declined to allow Verdi into their home.

The situation between Plaintiffs and Verdi then escalated: Verdi radioed to have police officers come to the scene to document his encounter with Plaintiffs, and Plaintiffs began to insist more forcefully that Verdi needed a warrant to inspect their home. Verdi responded that he did not need a warrant to inspect their homes. "I tried to explain to them that I'm not there for a search warrant. I'm not confiscating anything. I just need to find out what work is going on in the property." (Verdi Dep. at 40.) Verdi left after he and Plaintiffs argued for forty-five minutes in front of Plaintiffs' home. Later that day, on his way home from work, Verdi noticed a large dumpster behind Plaintiffs' home.

L&I pasted a Stop-Work order on Plaintiffs' window on Monday, April 15. Under this order, Plaintiffs could not occupy their home. Two days later, they received a Notice of Violation from L&I that stated they had violated the law when they refused to allow Verdi to

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<sup>2</sup>A District Supervisor's responsibilities are "administrative and technical," consisting primarily of supervising field inspectors, interacting with parties interested in learning about L&I and City policies, and maintaining records. (Licenses and Inspections District Supervisor description.) Conducting residential inspections is not specifically listed in this description, although that function arguably might fall within the "related work" potentially required. See id.

<sup>3</sup>Verdi apparently knew of an additional complaint filed with L&I, but did not share this information with Plaintiffs when he sought to enter their home. (Verdi Dep. at 30, 34).

inspect their home. Plaintiffs met with two L&I Deputy Commissioners, Edward McLaughlin (“McLaughlin”) and Mary-Rita D’Alessandro (“D’Alessandro”), to discuss the order and violation notice, and once again advanced their theory that L&I was constitutionally required to obtain a warrant before it could demand entry into their home. McLaughlin and D’Alessandro declined to remove the order or dismiss the violation, and, because Plaintiffs persisted in asserting what they believed were their rights, McLaughlin and D’Alessandro decided to pursue what seems to be the City’s usual strategy when it wants access to a property: it filed a complaint in equity in Philadelphia County’s Court of Common Pleas, seeking an order permitting the inspection of Plaintiffs’ home. The City also requests a hearing as part of this procedure. The City supplements its procedure with another regular practice: attached to the complaint it filed in this case was a presigned verification signed by James Gavarone (“Gavarone”), chief of L&I’s enforcement unit. Gavarone signs dozens of verifications at a time to be attached to complaints filed by L&I but seldom, if ever, actually reviews the complaint. (Marshall Dep. at 14-16.) Gavarone did not review the complaint filed against Plaintiffs. (Gavarone Dep. at 9-10.)

The motion judge for the Court of Common Pleas held a hearing on the City’s complaint on May 23, 1996. The judge first asked to speak with the parties in his robing room. Off the record, the City apparently summarized its argument at this time, offering Verdi’s observation of the dumpster and its contents as the primary evidence of construction activity at Plaintiffs’ home. (Marshall Dep. at 22-23.) Plaintiffs rebutted that this procedure was constitutionally defective. Unable to get Plaintiffs to agree to the inspection, the judge ended the conference. Now back in the courtroom and on the record, the City advanced its theory that there was a legal distinction between an inspection and a search, and that it was entitled to conduct an inspection on the

authority of the Philadelphia Code. (Hrg. of 5/23/96, at 3, 5-6.) The court, too, embraced this theory, *id.* at 3, and granted the City's motion. The court's order allowed L&I to conduct a "full and complete interior and exterior inspection." (Order of 5/30/96, at 1.)

Plaintiffs appealed the order to the Commonwealth Court. There, Judge Charles Mirarchi held a two hour hearing on Plaintiffs' motion to stay the inspection. Judge Mirarchi affirmed the motion judge's decision, specifically allowing L&I inspectors to be accompanied by law enforcement officers while in Plaintiffs' home.

Empowered to conduct the inspection, McLaughlin and D'Alessandro selected an inspection team that consisted of three code enforcement officers, three deputy sheriffs, an investigator from the Philadelphia Department of Revenue, and a police officer. This team searched the entire interior and exterior of Plaintiffs' home and took photographs to document the home's condition. Two of the three L&I inspectors found violations of the Code and issued citations.

Plaintiffs appealed these citations to the Board of Building Standards ("BBS") and the Board of License and Inspection Review ("Review Board"), arguing these citations were issued in retaliation for Plaintiffs' assertion of their still unrecognized constitutional rights. The Review Board eventually sustained most of Plaintiffs' appeals, but not on constitutional grounds. During the appeal process, however, Plaintiffs received three notices from Verdi and Brett Martin, who was one of the two L&I inspectors who issued citations to Plaintiffs, demanding "reinspection" of Plaintiffs' home. Plaintiffs did not honor these demands. About one month after the last of these notices, Plaintiffs received a letter from Assistant City Solicitor Donna Marshall ("Marshall") notifying them of a "status hearing" before the motion judge. Plaintiffs attended the

“status hearing,” where the City, to Plaintiffs’ surprise, moved to enjoin Plaintiffs from challenging the need for permits. The court granted the City’s request after a contentious hearing, but the Commonwealth Court stayed this order.

Plaintiffs also appealed the motion judge’s original order that permitted the search of Plaintiffs’ home. The Commonwealth Court dismissed this appeal as moot, and the Supreme Court denied allocatur, based on Marshall’s representations that the City had dismissed all violations assessed against Plaintiffs and all Stop-Work orders had been lifted. This, in fact, was untrue, as the City admitted to this Court. Braden v. City of Phila., No. 98-CV-2718, 1998 WL 633988, at \*3 n.2 (E.D. Pa. Aug. 21, 1998). The City actually did not dismiss the violations until very recently, after it retained private counsel.

Plaintiffs sued the City, Verdi, McLaughlin, D’Alessandro, and those involved in the inspection of their home on constitutional, procedural, and common law theories. They now seek summary judgment on several of those claims.

## **II. DISCUSSION**

### **A. The Summary Judgment Standard.**

Summary judgment is appropriate if the record shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue of fact is genuine only if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” and the applicable substantive law determines what facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The nonmoving parties are entitled to every favorable inference that can be drawn from the record. Sharrar v. Felsing, 128 F.3d 810, 817 (3d Cir. 1997). The nonmovants, however, may not avoid summary judgment

by relying on evidence that is merely colorable or not significantly probative, Anderson, 477 U.S. 249-50, and similarly may not rely on mere allegations, general denials, or vague statements, Quiroga v. Hasbro, Inc., 934 F.2d 497, 500 (3d Cir.), cert. denied, 502 U.S. 940 (1991).

**B. Plaintiffs' Fourth Amendment Claim.**

Plaintiffs first move for partial summary judgment against the City, D'Alessandro, McLaughlin, Verdi, Gavarone, and the four law enforcement officers who participated in the inspection, arguing these defendants violated their Fourth Amendment rights. Defendants characterize Plaintiffs' position as requiring compliance with criminal warrant procedures, which Defendants state do not provide the many protections the City's complaint in equity and hearing system affords. The very fact, Defendants argue, that the hearing is adversarial demonstrates this method's superior protections. Implicit in this argument is the distinction espoused by the City between "inspections" and "searches."

**1. Plaintiffs' Fourth Amendment Claim Against the City.**

The federal Constitution, however, does not recognize this distinction, and instead imposes a requirement that administrative searches of homes must first be validated by a warrant. In Camera v. Municipal Court, 387 U.S. 523 (1967), an inspector from San Francisco's Division of Housing Inspection sought to enter Camera's apartment to conduct a routine annual inspection, but Camera refused to allow the inspection unless the inspector first secured a warrant. Id. at 526. The Supreme Court agreed with Camera, and found that administrative searches in residences were "significant intrusions" that necessitated the Fourth Amendment protection of a warrant, even where the inspection was part of a general, routine regulatory scheme. Id. at 534, 536. The warrant procedure, the Court reasoned, would protect homeowners

from inappropriate, overly broad, or unauthorized inspections, and would bridle the inspector's exercise of discretion when in a home. Id. at 532. The semantic distinction between an "inspection" and "search" therefore bears no constitutional significance because it shields homeowners from these protections, rather than serve Fourth Amendment interests.

Those Fourth Amendment interests were not served by the hearing. First, the court embraced the distinction between "inspection" and "search," and found Plaintiffs' argument that the Fourth Amendment was applicable to be totally without merit. Because the hearing proceeded under this distinction, Plaintiffs' Fourth Amendment rights were never considered, much less protected. Second, the court's order permitting a full and complete interior and exterior inspection" hardly protected Plaintiffs' against an over broad inspection or one in which the inspectors enjoyed full, unchecked discretion. Cf. United States v. Conley, 4 F.3d 1200, 1208 (3d Cir. 1993) (stating the Fourth Amendment prohibits general warrants), cert. denied, 510 U.S. 1177 (1994). Rather, the order empowered Defendants to inspect every inch of the home.<sup>4</sup> The warrant requirement, therefore, was not served explicitly or substantially; believing the Fourth Amendment was inapplicable, and the City was absolutely entitled, by virtue of the Code, to inspect Plaintiffs' home, the motion judge could not possibly have provided the protections contemplated by the Court in Camera. The hearing that occurred was not an attempt to defend Plaintiffs' constitutional rights; it was a proceeding designed solely to ensure the City received

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<sup>4</sup>Defendants claim Verdi, after he originally demanded entrance into Plaintiffs' home, learned that only one deed was listed in the City's records, thereby raising the possibility that the walls between 1431 and 1433 S. 10th Street had been breached, and Plaintiffs might be attempting to repair this. Even assuming Verdi did learn this and the City presented this evidence to the court, the order was not limited to examining the integrity of the connecting walls; it was a universal authorization.

the access the court believed the City was entitled to.<sup>5</sup> Regrettably, Camera's protections were invisible at the hearing.

Moreover, the City's process ignored the procedure mandated by the Code the City purported to enforce. The commentary to Building Officials and Code Enforcement Administration Code § 115.4 (1990) ("BOCA"), states that absent consent, inspectors, like law enforcement officers, must comply with Fourth Amendment requirements and obtain a search warrant supported by probable cause. Defendants' attention should have been focused on this commentary: they cited Plaintiffs for violating this section.

Further, Plaintiffs' constitutional injury was not cured by their appeal to the Commonwealth Court. Although that court's decision was far more considered than the Court of Common Pleas', the Commonwealth Court did not vindicate Plaintiffs' rights under Camera by requiring a warrant. Further, it affirmed the motion judge's order that permitted an over broad search and failed to impose any restriction that would have limited the inspectors' discretion in

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<sup>5</sup>Legislative schemes may be suitable substitutes for the warrant requirement, but only in the limited context of "pervasively regulated business[es]." United States v. Biswell, 406 U.S. 311, 316 (1972); see also United States v. Villarreal, 963 F.2d 770, 775 (5th Cir. 1992). Even in these cases, however, the scheme must meet certain warrant requirements, like a focused search, that limit the inspector's discretion. Villarreal, 963 F.2d at 775; Bionic Auto Parts & Sales, Inc. v. Fahner, 721 F.2d 1072, 1078 (7th Cir. 1983). These cases provide no persuasive authority because of the vastly different expectations of privacy attached to homes and businesses, see Bionic Auto, 721 F.2d at 1078, but do demonstrate the minimum procedural safeguards the Constitution demands. Significantly, the Court of Common Pleas' order failed to meet even these minimum requirements. Finally, it must be emphasized that warrantless administrative searches generally are not permitted. In fact, in the case upon which Defendants rely to oppose Plaintiffs' Fourth Amendment claim, Martin v. International Matex Tank Terminals--Bayonne, 928 F.2d 614 (3d Cir. 1991), the government obtained warrants to conduct administrative searches, id. at 617-18.

an effective way.<sup>6</sup> Moreover, the Commonwealth Court appeared to maintain the “inspection” or “search” distinction that led the motion judge to grant the City’s request almost as a matter of course. (Hrg. of 5/28/96, at 70.) This appeal, then, neither recognized nor served Plaintiffs’ Fourth Amendment rights.

## **2. Plaintiffs’ Article I, Section 8 Claim Against the City.**

The City’s procedure also violated the Pennsylvania Constitution. Pennsylvania courts have not hesitated to find greater rights under Article I, Section 8 of the Pennsylvania Constitution than the Fourth Amendment provides, and have consistently maintained that the Fourth Amendment merely is the foundation on which Pennsylvania builds its protections against governmental intrusions. See Commonwealth v. Edmunds, 586 A.2d 887, 894-95, 905-06 (Pa. 1991); see also Note, The Pennsylvania Supreme Court’s Continued Defense of Individuals from Coercive State Action, Commonwealth v. Matos, 672 A.2d 769 (Pa. 1996), 70 Temp. L. Rev. 1037, 1042-45 (1997) (tracing Pennsylvania’s expanding search and seizure protections compared to the Fourth Amendment’s). Because of its heightened protections, the guarantees of Article I, Section 8 manifestly are offended when the Fourth Amendment is offended, and therefore the City’s violation of Camera also contravened the Pennsylvania Constitution.

## **3. Plaintiffs’ Fourth Amendment and Article I, Section 8 Claims Against Gavarone and D’Alessandro.**

In addition to pressing their contention that the City’s administrative search procedure was constitutionally defective, Plaintiffs also urge the Court to examine the process by which the City obtained the order to search their home. Specifically, Plaintiffs argue they are entitled to

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<sup>6</sup>Judge Mirarchi permitted a “reasonable” inspection. (Hrg. of 5/28/96, at 70.)

summary judgment against the City, Gavarone, and D'Alessandro because D'Alessandro initiated a complaint that contained false information and a false verification by Gavarone. Plaintiffs claim there is no evidence to support the contentions the City raised in its complaint and that many of those allegations were boilerplate, see Marshall Dep. at 34, but the Court finds Defendants have pointed to just enough evidence to demonstrate genuine issues of material fact that counsel against a finding that the complaint contained false information.<sup>7</sup>

There also is a genuine issue of material fact as to D'Alessandro's role in causing the false verification to be filed. While it seems certain that she knew of the false verification practice and could have predicted a false verification would accompany the complaint filed against Plaintiffs, see Gavarone Dep. at 8-10 ("I signed about a hundred of these at a time and send [sic] them to the law department, so they have them on file there."), the record does not conclusively show she authorized or reviewed this particular complaint, see D'Alessandro Dep. at 67-68 (showing that she initially ordered the complaint be filed, but not explicitly demonstrating she subsequently reviewed the complaint). Summary judgment against D'Alessandro is not appropriate on this claim.

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<sup>7</sup>Plaintiffs argue that they are entitled to summary judgment on the false information issue because Defendants admitted that they made an allegation in their complaint in equity "knowing it to be untrue in an attempt to manufacture probable cause for a search of private homes in violation of plaintiffs' constitutional rights." Compl. ¶ 37. Reading Defendants' answer as expansively as possible, the Court declines to find Defendants have admitted this allegation, although it certainly understands why Plaintiffs claim the allegation is admitted. Defendants answered this allegation "Plaintiffs' characterizations of the Complaint in Equity are denied, insofar as said Complaint is in writing and speaks for itself." Answer ¶ 37. This answer limits the denial in such a way as to make it entirely unresponsive to Plaintiffs' allegation. At best, this answer presents another instance of boilerplate litigation that very conceivably could have jeopardized much of the defense. The Court is constrained to again point out that Defendants had not yet hired private counsel when they filed their answer.

The Court also will not enter summary judgment against Gavarone on Plaintiffs' false verification claim against Gavarone, although no genuine issue of material fact exists. He admitted to signing stacks of verifications to be attached to complaints at some later date, (Gavarone Dep. at 8-10), and with every signature he violated the statute referenced in the verification. Defendants seek to minimize the import of this practice by claiming many "procedural safeguards" follow the complaint and the court did not issue its order based solely on the complaint, (Defs.' Mem. at 22), but the Court finds little comfort in those safeguards; a complaint containing boilerplate allegations, accompanied by a false verification, that initiates proceedings in which well-settled constitutional rights are ignored seems to fall a little short of protecting homeowners like Plaintiffs. Gavarone knowingly provided a false verification in violation of 18 Pa. Cons. Stat. Ann. § 4904 (a)(2), (b) (West 1983), but this does not necessarily constitute a violation of Plaintiffs' federal and Pennsylvania constitutional rights. Criminal warrants, which generally pose more exacting requirements than administrative search warrants, still may be valid despite false or misleading statements in the accompanying affidavit if the false statements related to non-material facts, or those not essential to a finding of probable cause. Franks v. Delaware, 438 U.S. 154, 155-56 (1978); Commonwealth v. Clark, 602 A.2d 1323, 1325 (Pa. Super. Ct.), appeal denied, 618 A.2d 398 (1992), and cert. denied, 507 U.S. 1030 (1993). The Court cannot find the complaint's false verification affected the process in a substantive way, and Plaintiffs' motion on this issue is denied.

**4. Plaintiffs' Fourth Amendment and Article I, Section 8 Claims Against D'Alessandro and Verdi.**

Plaintiffs also seek summary judgment against D'Alessandro and Verdi on the theory that each initiated a process they knew or should have known violated Plaintiffs' constitutional rights. Plaintiffs are entitled to summary judgment. D'Alessandro, as a lawyer, and Verdi, by virtue of his position as Acting District Supervisor,<sup>8</sup> should have been familiar with precedent as clearly established as Camera. D'Alessandro and Verdi are not absolved of their ignorance even if this conclusion is too demanding, because the Code itself states that absent consent, a search warrant is required to enter a home. BOCA § 115.4 commentary. Finally, as Plaintiffs point out, they repeatedly told both D'Alessandro and Verdi of their constitutional rights. D'Alessandro and Verdi have no legitimate excuse for violating Plaintiffs' rights; they were charged with knowing these rights and were explicitly confronted with them. Plaintiffs are entitled to summary judgment on these Fourth Amendment and Article I, Section 8 claims. See Malley v. Briggs, 475 U.S. 335, 341 (1986) (stating the qualified immunity defense "provides ample protection to all but the plainly incompetent or those who knowingly violate the law").

#### **5. Plaintiffs' Fourth Amendment and Article I, Section 8 Claims Against The Law Enforcement Officers.**

Plaintiffs seek summary judgment against the four law enforcement officers who were present during the inspection of Plaintiffs' home. Plaintiffs state they are entitled to summary judgment because they believe the three sheriffs and one police officer exceeded the scope of the motion judge's order. This is an issue for the jury; whether the officers were permitted under the order to walk throughout the house, and, if not, whether they deliberately exceeded the scope of

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<sup>8</sup>"Considerable knowledge" of the laws relating to enforcement of the Code is a prerequisite for the District Supervisor position. (Licenses and Inspections District Supervisor description, at 1.)

the order are factual issues the Court cannot properly resolve here. Plaintiffs' motion on this claim is denied.

**6. Plaintiff's Retaliation Claims Against the City, D'Alessandro, McLaughlin, and Verdi.**

Similarly, Plaintiffs are not entitled to summary judgment on their retaliations claim. Plaintiffs allege Defendants issued the violations and Stop-Work orders and compiled an inspection team of three L&I inspectors, a tax investigator, and four law enforcement officers as retaliation for their exercise of their rights under Camera. Defendants point to evidence that they cited the violations based upon their inspection and issued the Stop-Work orders based upon their belief that Plaintiffs were performing work on their home without permits, and it will be for the jury to decide whether these explanations are credible. Whether Defendants deliberately exceeded the scope of the motion judge's order by assembling that inspection team also will be a jury issue. Plaintiffs' motion on these claims is denied.

**C. Plaintiffs' Due Process Claims Against the City, D'Alessandro, and Verdi.**

Plaintiffs finally move for summary judgment against the City, D'Alessandro, and Verdi, claiming each Defendant violated Plaintiffs' procedural and substantive due process rights. Plaintiffs' procedural due process argument revolves around their claim that they never received notice that the City would present a motion for a permanent injunction at the "status hearing" before the motion judge, which argument Plaintiffs supplement with references to D'Alessandro's and Marshall's erroneous statements to the Commonwealth Court. Defendants essentially stress the fact that because the Commonwealth Court stayed the motion judge's order, Plaintiffs suffered no deprivation. Even if this is true, Plaintiffs argue, Defendants nevertheless

violated Plaintiffs' substantive due process rights through their malicious and arbitrary behavior.

The Court will deny Plaintiffs' motion on the procedural due process claim. Plaintiffs argue they were deprived of their right to exclude others from their home, but they never provide any citation to the record to show this is so. The Court accordingly will not grant summary judgment on this claim.

Further, the Court will not grant Plaintiffs' motion on their substantive due process claim. A genuine issue of material fact exists whether Defendants deliberately and arbitrarily abused its power, see *Midnight Sessions, Ltd. v. City of Phila.*, 945 F.2d 667, 683 (3d Cir. 1991), cert. denied, 503 U.S. 984 (1992), and the Court will reserve resolution of this claim for the jury.

### **III. CONCLUSION**

Undaunted by the Constitution and Supreme Court precedent, and undeterred by the City's own Code, Defendants steadfastly maintained their absolute right to proceed unchecked into Plaintiffs' home. Along the way, Defendants complicated the injuries their conduct visited through a general disregard for the law, punctuated by a false verification and repeated misrepresentations to courts. Fortunately for Plaintiffs, they possessed the stamina necessary to vindicate their position that the government, even when serving administrative purposes, is subject to Fourth Amendment constraints. Plaintiffs may present the remainder of their case to a jury.

An Order follows.

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**ORDER**

AND NOW, this 20th day of May, 1999, upon consideration of Plaintiffs' Revised Motion for Partial Summary Judgment (Document No. 47), Defendants' response thereto, and Plaintiffs' reply, it is hereby **ORDERED**:

1. Plaintiffs' Revised Motion for Summary Judgment (Document No. 47) supplants Plaintiffs' Motion for Summary Judgment (Document No. 32), and therefore Plaintiffs' Motion for Summary Judgment (Document No. 32) is **DISMISSED**;

2. Plaintiffs' revised motion for summary judgment on Counts I and III is **GRANTED** in part;

3. Judgment on Counts I and III is entered in favor of Plaintiffs and against Defendant the City of Philadelphia;

4. Judgment on Counts I and III is entered in favor of Plaintiffs and against Defendants Mary-Rita D'Alessandro and Dominic Verdi in their individual capacities;

5. Plaintiffs' revised motion for summary judgment on Counts I and III is **DENIED** with respect to Defendants Edward McLaughlin, James Gavarone, John Polsky, John Student, Michael Saia, and Kyle Smith;

6. Plaintiffs' revised motion for summary judgment on Count II is **DENIED**; and

7. Plaintiffs' requests for injunctive relief are **DENIED** as moot.

BY THE COURT:

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JAMES MCGIRR KELLY, J.

