

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

THOMAS HOLLOWAY : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, ET AL. : NO. 99-CV-3270

ORDER - MEMORANDUM

AND NOW, this 5th day of October, 1999, Counts I, II, and III, to the extent they rely on the 42 U.S.C. § 1981, or the Fifth, Sixth, Eighth and Thirteenth amendments to the United States Constitution, are dismissed for failure to state a claim on which relief can be granted.¹ Fed. R. Civ. P. 12(b)(6). The motion to dismiss as to claims asserted against former police chief commissioner Richard Neal is denied by virtue of the allegation that he “knew” of his subordinates’ purported discriminatory conduct. Complaint, ¶ 51. The alternative allegation that “he should have known” is insufficient and is, sua sponte, stricken.²

Edmund V. Ludwig, J.

¹ These claims were withdrawn in plaintiff’s response to defendants’ motion to dismiss.

² The Complaint states a claim for supervisor liability under 42 U.S.C. § 1983 adequate to withstand a motion to dismiss. See Dawes v. Philadelphia Gas Commission, 421 F. Supp. 806, 821 (E.D. Pa. 1976) (“where an individual . . . is alleged to be liable . . . by virtue of his position as supervisor of those directly responsible, the Complaint nevertheless must aver ‘personal involvement’ on the part of the supervisor, at least to the extent that he knew of, and acquiesced in, the unconstitutional conduct of his subordinates.”)(citation omitted).