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

CHRISTOPHER ALTIERI and PET WORLD, INC.,	:	
Plaintiffs,	:	**CIVIL ACTION**
v.	:	
PENNSYLVANIA STATE POLICE,	:	
COLONEL PAUL EVANKO, Individually and in his Official Capacity as Commissioner, Pennsylvania State Police,	:	
TROOPER ROBERT EGAN, Individually and in his official capacity as Trooper, Pennsylvania State Police,	:	
DRUG ENFORCEMENT ADMINISTRATION,	:	
AGENT THOMAS TERRY, Individually and in his official capacity as Agent, Drug Enforcement Agency,	:	
CITY OF BETHLEHEM,	:	
OFFICER EDWARD HUGHES, Individually and in his official capacity as Officer, Special Operations Vice Unit,	:	
LIEUTENANT FRANK DONCHEZ, Individually and in his official capacity as Lieutenant, Bethlehem Police Department,	:	
BOROUGH OF HELLERTOWN,	:	
CHIEF ROBERT BALUM, Individually	:	

and in his official capacity as Chief of Police, Borough of Hellertown,	:	
JAMES SIGWORTH, Individually and in his official capacity as Borough Manager of Hellertown,	:	
STEVEN DONCEVIC, Individually and in his official capacity as Zoning Officer, Borough of Hellertown,	:	
OFFICER JOHN DOE, Whose name is currently unknown, individually and in his official capacity as police officer, Borough of Hellertown,	:	
OFFICER JOHN DOE, II, Whose name is currently unknown, individually and in his official capacity as police officer, Borough of Hellertown,	:	**No. 98-CV-5495**
Defendants.	:	

MEMORANDUM & ORDER

MEMORANDUM

DuBois, J. April 19, 2000

I. INTRODUCTION

Currently before the Court are three motions to dismiss the Complaint. The first motion to dismiss was filed by the Pennsylvania State Police ("state police" or "PSP"), PSP Colonel Paul Evanko ("Colonel Evanko"), and PSP Trooper Robert Egan ("Trooper Egan", and, together with Colonel Evanko and the PSP, the "Commonwealth defendants"). The second motion to dismiss was filed by the City of Bethlehem Police Department ("Bethlehem police"), Bethlehem police Officer Edward Hughes ("Officer Hughes"), and Bethlehem police sergeant

Frank Donchez ("Sergeant Donchez" , and, together with Officer Hughes and the Bethlehem police, the "Bethlehem defendants").[1] The third motion was filed by the United States Drug Enforcement Agency ("DEA") and DEA agent Thomas Terry ("Agent Terry", and, together with the DEA, the "federal defendants").

II. BACKGROUND

Plaintiff filed a 234 paragraph Complaint with a wealth of factual allegations on a variety of factual matters. As a result of the acts of the defendants detailed in the Complaint, Altieri alleges that he has sustained a variety of injuries including loss of livelihood and the ability to advance his career, loss of respect, loss of liberty and property interests, and an irreparably damaged reputation.

The facts relevant to the present motions, as alleged in the Complaint, are as follows:

Plaintiff Christopher Altieri is a resident of Allentown, Pennsylvania. Plaintiff Pet World, Inc. ("Pet World" and, together with Altieri, "plaintiffs") is a Pennsylvania corporation, operated by Altieri, with a principal place of business in Hellertown, Pennsylvania.

A. Altieri's work as a confidential informant

In the Spring of 1994, while working as a confidential informant for the Bethlehem police, Altieri witnessed police misconduct, including the singling out of black and Hispanic males and the use of excessive force by Bethlehem police officers. Altieri was critical

[1]At all times relevant to this suit, Frank Donchez was a sergeant on the Bethlehem police force; he has since been promoted to lieutenant.

of these practices in conversations with Officer Edward Hughes and other Bethlehem police officers, and subsequently stopped working for the Bethlehem police.

On March 21, 1995, Altieri met with Palenchar, Officer Hughes, Sergeant Donchez, and Agent Terry to discuss work as a confidential informant for the DEA. At that meeting, Agent Terry proposed paying Altieri and Palenchar for their work with money skimmed off the top of any cash seizure. Agent Terry asked Altieri and Palenchar to sign "confidential individual" forms and to have their pictures taken in what Agent Terry described as a preliminary step if they decided to work with the DEA.

At the meeting, Altieri said he was unsure about working as a confidential informant for the DEA, but he signed the cooperating individual form that Agent Terry provided with the explicit understanding that its contents would never be disclosed. The next day, Altieri spoke with Palenchar and an unnamed Bethlehem police officer, and told them that he did not want to participate in the DEA investigation because it involved illegal activities.

B. Alleged retaliation against plaintiffs

On March 30, 1995, Palenchar met with Agent Terry and Officer Hughes at the Bethlehem police station. At that meeting, the three men expressed their anger with Altieri for his criticism of the Bethlehem police and for refusing to participate in the DEA investigation, and agreed to use their respective positions to harass Altieri.

In August or September, 1995, Palenchar asked Altieri a series of strange questions, such as, "Do you think someone could buy drugs down in Florida?"; "How much could someone make from selling drugs?"; and, "How could someone transport drugs from

Florida to Pennsylvania?" As Palenchar's questions continued, Altieri began to challenge Palenchar's motives.

Over the next four months, the Bethlehem police and Agent Terry investigated Altieri. As part of this investigation, Altieri's mail was monitored, he was followed on his vacation, and people he knew and with whom he did business were subjected to interviews and were told that Altieri was a "drug kingpin." In addition, Pet World and its customers were placed under police surveillance.

In July, 1997, Altieri complained to the Bureau of Professional Responsibility--which performs oversight of DEA agents--about Agent Terry. In November, 1997, Officer Hughes told Palenchar that he and Agent Terry had been cleared of any wrongdoing, and that Altieri would "get his" for having them investigated.

C. Altieri's application to the Pennsylvania State Police

In August, 1994, Altieri took the entrance examination for the Pennsylvania State Police. On June 27, 1996, the state police informed Altieri that he had successfully completed the written examination, oral interview, physical examination, and the strength and agility test as part of his application for employment. All that remained, according to the state police, was for Altieri to complete a background investigation. In August, 1996, Altieri was interviewed by Trooper Egan, along with another state police trooper, Trooper Candidas.

Around the same time as Altieri's interview with Trooper Egan, Officer Hughes arranged a meeting between Trooper Egan and Corporal Ronald Garza of the state police, Sergeant Donchez of the Bethlehem police, and Palenchar to discuss ways to keep Altieri out of

the state police. In that connection, Officer Hughes suggested to Trooper Egan that he contact Agent Terry of the DEA.

On November 2, 1996, Altieri received a letter from the PSP informing him that the Background Investigation Screening Board ("screening board") had not reached a decision on his application, and that he would have a decision by the date of the screening board's next meeting. Altieri heard nothing until March 17, 1997, when Trooper Egan asked him to meet to answer some more questions. When Altieri arrived, Trooper Egan, accompanied by Corporal Garza, told Altieri that there were two questions holding up Altieri's application.

First, Trooper Egan asked Altieri if he was a confidential informant for the DEA. Altieri responded that he went to a meeting and discussed the possibility of working for the DEA, but had declined to do so. Second, Trooper Egan asked whether Altieri knew that he had been the subject of a criminal investigation. Altieri said that he did not, but recalled for Trooper Egan the odd conversation that Altieri had with Palenchar about drug dealing. Altieri also told Trooper Egan and Corporal Garza that he thought the investigations into his activities and background and the accusations made about him were retaliatory for his refusal to get involved with improper activities of the Bethlehem police and DEA.

On May 8, 1997, the PSP Bureau of Personnel informed Altieri that the screening board had disqualified him for appointment to the state police. The decision stated that Altieri was disqualified for lying during the interview process--specifically for stating that he had not signed any paperwork for the DEA. Moreover, the decision noted that Altieri had not volunteered information about his contact with the DEA, offering it only after Trooper Egan

confronted him with it. Altieri appealed the hiring decision through the PSP's internal appeal process.

On June 30, 1997, a hearing was held before a Background Investigation Hearing Board ("hearing board") on Altieri's appeal of the screening board's decision. On April 13, 1998, the state police personnel bureau informed Altieri that the hearing board had upheld the decision of the screening board despite acknowledging that Altieri had never done any work for the DEA, that he had never been paid by the DEA, and that an official DEA document disclosed that he had no official status, implied or otherwise, as an agent or employee of the DEA. Altieri filed an appeal of this decision to the PSP's Background Investigation Appeal Board ("appeal board"). On May 22, 1998, the state police personnel bureau wrote to Altieri, informing him that the appeal board had upheld the decision of the hearing board.

D. Plaintiffs' problems in Hellertown

In late Autumn, 1997, Robert Balum ("Chief Balum"), the Chief of the Hellertown Police Force ("Hellertown police"), and Steve Doncevic ("Officer Doncevic"), a Hellertown Zoning Officer, called a state official to block Altieri's effort to obtain an unspecified permit for Pet World. Chief Balum and Officer Doncevic told this state official that they had a large file on Altieri, that they did not want him in Hellertown, and that they were going to make things very difficult for Altieri. Earlier, Chief Balum, Officer Doncevic, and James Sigworth, the Hellertown Borough Manager, along with two unknown Hellertown police officers, John Doe and John Doe II (collectively, the "Hellertown defendants"), detained Altieri for over an hour at Pet World, without probable cause or any other legitimate ground. Chief Balum, Borough

Manager Sigworth, and Officer Doncevic also engaged in a series of searches of Altieri and Pet World.

III. PROCEDURAL HISTORY

Plaintiffs filed the Complaint on October 16, 1998. In the Complaint, plaintiffs assert causes of action against Officer Hughes, Sergeant Donchez, Trooper Egan, Colonel Evanko, Agent Terry, Chief Balum, Officer Doncevic, James Sigworth, John Doe, and John Doe II (the "individual defendants") under 42 U.S.C. § 1983 ("§ 1983") (Count I); against the City of Bethlehem and Borough of Hellertown (the "municipal defendants") under § 1983 (Count II); against Agent Terry under Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) (Count III); against the DEA under 5 U.S.C. § 702 (Count IV); against all defendants under 42 U.S.C. § 1981 ("§ 1981") (Count V); against all defendants under 42 U.S.C. § 1982 ("§ 1982") (Count VI); against all defendants under 42 U.S.C. § 1985 ("§ 1985") and 42 U.S.C. § 1986 ("§ 1986") (Count VII); against Officer Hughes, Sergeant Donchez, Trooper Egan, Agent Terry, Chief Balum, Officer Doncevic, and James Sigworth for defamation (Count VIII); and against Officer Hughes, Sergeant Donchez, Trooper Egan, Agent Terry, Chief Balum, Officer Doncevic, and James Sigworth for tortious interference with contract (Count IX) (together with Count VIII, the "state law claims").

Commonwealth defendants filed a motion to dismiss the Complaint on December 22, 1998. The plaintiffs filed a memorandum in opposition to the Commonwealth defendants' motion on January 8, 1999.

Bethlehem defendants filed a motion to dismiss the Complaint on January 25, 1999. The plaintiffs filed a memorandum in opposition to the Bethlehem defendants' motion to dismiss on February 5, 1999.

Federal defendants filed a motion to dismiss the Complaint on February 26, 1999. The plaintiffs filed a memorandum in opposition to the federal defendants' motion to dismiss on March 12, 1999. The federal defendants filed a reply memorandum in further support of their motion to dismiss on March 19, 1999. The plaintiffs filed a sur-reply on March 29, 1999.[2] On August 10, 1999, this case was reassigned to this Court from the calendar of Judge Gawthrop.

IV. STANDARD OF REVIEW

Rule 12(b)(6) of the federal rules of civil procedure provides that, in response to a pleading, a defense of "failure to state a claim upon which relief can be granted" may be raised by motion. Fed. R. Civ. P. 12(b)(6). In considering a motion to dismiss under Rule 12(b)(6), a court must take all well pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). The court must only consider those facts alleged in the complaint in considering such a motion. See ALA v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). A complaint should be dismissed if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishin v. King & Spaulding, 467 U.S. 69, 73 (1984).

V. ANALYSIS

[2]The Hellertown defendants have not filed a motion to dismiss the Complaint.

A. Sovereign immunity

Federal defendants argue that all of plaintiffs' claims against the DEA should be dismissed on the ground that it is immune from suit under principles of sovereign immunity; Commonwealth defendants and Bethlehem defendants argue that all of plaintiffs' claims against the PSP and Bethlehem police, respectively, should be dismissed pursuant to the 11th Amendment.

The Court notes that, in a suit against a government official in his official capacity, "the real party in interest ... is the governmental entity and not the named official ...." Hafer v. Melo, 502 U.S. 21, 25 (1991). Therefore, the Court's analysis as to the DEA also applies to the claims against Agent Terry in his official capacity, the Court's analysis as to the PSP also applies to the claims against Colonel Evanko and Trooper Egan in their official capacities, and the Court's analysis as to the Bethlehem police also applies to Sergeant Donchez and Officer Hughes in their official capacities.

1. Federal sovereign immunity--DEA

Federal defendants argue that any claims against the DEA must be dismissed because, as an arm of the United States government, it has sovereign immunity. The United States, as a sovereign, is immune from suit unless it consents to be sued. See United States v. Mitchell, 445 U.S. 535, 538 (1980). The Court concludes that the DEA is an instrumentality of the United States having no existence apart from the United States, and, as such, is entitled to this immunity as well. See Clinton County Commissioner v. United States Environmental Protection Agency, 116 F.3d 1018, 1025 (3d Cir. 1997) (en banc).

When a plaintiff seeks to sue an instrumentality of the United States, he must "identify a specific statutory provision that waives the government's sovereign immunity from suit." Id. at 1021 (citing United States v. Sherwood, 312 U.S. 584, 586 (1941)). A waiver of immunity must be unequivocal and is narrowly construed. See id. Plaintiffs argue that the United States has waived the DEA's sovereign immunity through the Administrative Procedures Act, 5 U.S.C.A. § 702 (West Supp. 1999) (the "APA").

The APA waives the United States' sovereign immunity for any "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute ...." Id. For this waiver of sovereign immunity to be effective, the legal wrong in question must stem from an "agency action." Agency action is defined as "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C.A. § 551(13) (West Supp. 1999). In this case, plaintiffs fail to identify any agency action taken against them. Thus, the APA does not apply, and the DEA has sovereign immunity. Accordingly, plaintiffs' claims against the DEA and Agent Terry in his official capacity will be dismissed.

2. 11th Amendment sovereign immunity

The 11th amendment provides that 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." U.S. Const. amend. XI. While the Amendment does not, on its face, bar suits against a state by its own citizens, it has always been so interpreted. See Edelman v. Jordan, 415 U.S. 651, 662-63

(1974). The 11th amendment's bar extends to departments or agencies of the state having no existence apart from the state. See Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981).

a. Pennsylvania State Police

Commonwealth defendants argue that any claims against the state police and the individual Commonwealth defendants in their official capacities are barred by the 11th amendment. The Court concludes that the state police is a department or agency of the state having no existence apart from the state. See Smith v. Luciani, No. Civ. A. 97-3613, 1998 WL 151803, at *4 (E.D.Pa. March 31, 1998). As an arm of the state, the state police are entitled to any 11th amendment immunity to which the Commonwealth is entitled in this case. See Regents of the University of California v. Doe, 519 U.S. 425, 430 n.5 (1997). A state can only be sued in federal court if it consents, or if Congress validly abrogates the state's 11th amendment immunity. See Wheeling & Lake Erie Railway Co. v. Public Utility Comm. Of the Commonwealth of Pa., 141 F.3d 88, 91 (3d Cir. 1998).

Pennsylvania has, by statute, specifically withheld consent to be sued in federal court. See 42 Pa. C.S.A. § 8521(b). Moreover, the Civil Rights Acts, such as § 1983, do not abrogate a state's immunity under the 11th amendment. See Kentucky v. Graham, 473 U.S. 159, 169 n. 17 (1985). Thus, pursuant to the 11th amendment, plaintiff's claims against the PSP and Colonel Evanko and Trooper Egan in their official capacities will be dismissed.

b. Bethlehem police

Bethlehem defendants argue that any claims against the Bethlehem police and against Sergeant Donchez and Officer Hughes in their official capacities are barred by the 11th amendment. This argument can only be described as frivolous, because it is well settled that the

11th Amendment does not apply to local government units. See Monell v. New York City Dep't. Of Social Services, 462 U.S. 658, 690 n.54 (1978). Therefore, the Court will deny Bethlehem defendants' motion to dismiss the Complaint under the 11th amendment.

B. Individual capacity claims against Colonel Paul Evanko, commander of the state police

Plaintiffs named as a defendant Colonel Evanko, commander of the state police, in his individual capacity. Plaintiffs asserted, in their Complaint, that "at all times [relevant], Defendants were engaged in a joint venture; the individual defendants assisted each other in performing the various actions described and lent their support and the authority of their office to each other during said events." Complaint, ¶146. Commonwealth defendants argue that, other than this general statement, there is no allegation that Colonel Evanko participated in this conspiracy or in any other liability-creating conduct and that the general statement is insufficient to state a claim against the Colonel.

"A complaint cannot survive a motion to dismiss if it contains only conclusory allegations of conspiracy, but does not support those allegations with averments of the underlying facts." Id.; see Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). In this case, plaintiffs present a conclusion of conspiracy between the defendants, but allege no details of Colonel Evanko's involvement in the conspiracy or any other liability-creating conduct. Accordingly, all claims against Colonel Evanko in his individual capacity will be dismissed without prejudice to plaintiffs' right to file an amended complaint against the Colonel in his individual capacity if, under the facts of the case, they can allege his participation in the conspiracy or other liability-creating conduct with sufficient specificity.

C. § 1983 and Bivens claims

In Count III of the Complaint, plaintiffs assert a claim against Agent Terry under Bivens. In Bivens, the Supreme Court created a cause of action against federal officers who, while acting under color of federal law, violate a citizen's Constitutional rights. See 403 U.S. at 397. The question of whether a plaintiffs' rights have been violated--i.e., whether they have been deprived of a right secured to them by the Constitution or federal statute--is the same for both a § 1983 action and a Bivens action. See Butz v. Economou, 438 U.S. 478, 504 (1978). Thus, the Court will analyze plaintiffs' § 1983 and Bivens claims--Counts I and III--against Agent Terry together.

In Count I of the Complaint, plaintiffs assert claims against the individual defendants under § 1983. In Count II of the Complaint, plaintiffs assert claims against the municipal defendants under § 1983.

42 U.S.C. § 1983 provides, in relevant part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected any ...person ...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable in an action at law, suit in equity, or other proper proceeding for redress ...." 42 U.S.C.A. § 1983 (West Supp. 1999). Corporations are "persons" within the meaning of § 1983, and can bring suit for violations of their rights. See ANR Pipeline Company v. Michigan Public Service Comm'n, 608 F. Supp. 43, 45 (W.D.Mich. 1984); Planned Parenthood Ass'n/Chicago Area v. Chicago Transit Auth., 592 F. Supp. 544, 552 (N.D.Ill. 1984).

To state a cause of action under § 1983, a plaintiff must show that "(1) the defendants acted under color of [state] law; and (2) their actions deprived [the plaintiffs] of rights

secured by the Constitution or federal statutes." Anderson v. Davila, 125 F.3d 148, 159 (3d Cir. 1997). Because § 1983 provides a remedy for violations of federal law by persons acting under color of state law, "federal agencies and officers are facially exempt from section 1983 liability inasmuch as in the normal course of events they act pursuant to federal law." Hindes v. Federal Deposit Insurance Corporation, 137 F.3d 148, 158 (3d Cir. 1998). However, when a federal official acts in conspiracy with state officials, he acts under color of state law and is therefore subject to § 1983 liability. See id.

1. Individual defendants' liability under § 1983

All of plaintiffs' § 1983 claims are based on a conspiracy theory. Plaintiffs allege a conspiracy between Agent Terry, Trooper Egan, Officer Hughes, and Sergeant Donchez (the "conspirators") to violate their rights. To prove a conspiracy under § 1983, a plaintiff must show: (1) an agreement between two or more state actors or between a state actor and a private entity; (2) to act in concert to inflict an unconstitutional injury; and, (3) an overt act done in furtherance of that goal causing damages. See Pangburn v. Culbertson, 200 F.3d 65, 72 (2d Cir. 1999). Plaintiffs allege the existence of an agreement between the conspirators, and Trooper Egan, Officer Hughes, and Sergeant Donchez are all state actors. Thus, plaintiffs have satisfied the first element of a conspiracy. Plaintiffs also allege a number of overt acts by the conspirators in furtherance of the goal of the conspiracy--harassing Altieri--thus satisfying the third element of a conspiracy. Finally, plaintiffs allege that the conspirators acted in concert.

The question remaining for this Court is whether plaintiffs allege that such action sought to inflict an unconstitutional injury. In that connection, the Complaint alleges that

plaintiffs have been deprived of their rights under the first, fourth, fifth, and fourteenth amendments to the constitution. The Court will analyze each of these claims in turn.

a. First amendment claims

Plaintiffs allege that the individual defendants and the municipal defendants violated their rights to free speech and freedom of association, as secured by the first amendment.

(1) Free speech

Plaintiffs allege that they suffered various retaliatory acts as a result of Altieri voicing his concerns over the way that the Bethlehem police treated black and Hispanic males. They claim that the conspirators retaliated against them by preventing Altieri from getting a job with the PSP and by improperly investigating and monitoring Pet World and Altieri.

The Supreme Court has held that an individual can bring a claim against the government or a government actor when the government actor retaliates against an individual for exercising a right to free speech. See Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 283-84 (1977). "Retaliation for the exercise of constitutionally protected rights is itself a violation of rights secured by the Constitution actionable under section 1983." White v. Napoleon, 897 F.2d 103, 111-12 (3d Cir. 1990). To succeed with a claim for retaliation, a plaintiff must prove three things: (1) that he engaged in protected activity; (2) that the government responded with retaliation; and, (3) that the protected activity was the cause of the government's retaliation. See Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997).

Speech is protected conduct when it relates to "any matter of political, social, or other concern to the community." Connick v. Myers, 461 U.S. 138, 146 (1983). In this case, Altieri says he spoke about perceived police misconduct, which is certainly a matter of concern

to the community. As for the retaliatory response, plaintiffs allege that defendants undertook to investigate Altieri, to maintain surveillance of Pet World, and to prevent Altieri from obtaining a position with the PSP. Finally, as for the retaliation being based on the protected conduct, plaintiffs claimed that Altieri's speech was the motivating factor behind the conspiracy and the attempts to harass him. Thus, plaintiffs allege violations of § 1983 and Bivens against Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes in their individual capacities with regard to Altieri's right to free speech.

(2) Freedom of association

Plaintiffs also allege that the individual defendants and the municipal defendants violated Altieri's first amendment right of association by retaliating against Altieri for associating with black and Hispanic men. In connection with this claim, plaintiffs say Altieri attempted to associate himself with black and Hispanic men by voicing his concerns over their treatment at the hands of the Bethlehem police.

A claim for retaliating against an individual who exercises his right to free association is cognizable. See Rode, 845 F.2d at 1204. To make such a claim, a plaintiff must demonstrate that he suffered adverse action, at the hands of the government, as a result of his taking part in protected activity.

The Supreme Court has recognized two, related types of association: association based on intimate human relationships in which the association is a fundamental element of liberty and associations formed to engage in protected first amendment activities, such as religion or speech. See Roberts v. United States Jaycees, 468 U.S. 609, 617-18 (1984). In this case, plaintiffs do not allege an intimate relationship, but rather an association formed to engage in

speech. Moreover, plaintiffs do not allege that Altieri associated with anyone else in voicing his distaste for the activities of the Bethlehem police. Instead, they allege that he spoke directly to the officers, on his own, and it is that speech upon which defendants based their retaliation.

The Court concludes that such conduct does not constitute an association formed to engage in protected first amendment activities. Therefore, plaintiffs' § 1983 and Bivens claims against Agent Terry, Trooper Egan, Officer Hughes, and Sergeant Donchez in their individual capacities will be dismissed to the extent that they are based on violations of plaintiffs' right to freedom of association.

b. Fourth amendment claims

Plaintiffs argue that they can maintain a § 1983 claim because the individual defendants and the municipal defendants violated plaintiffs' fourth amendment rights. They allege that, in late 1995, Altieri's mail was monitored, he was followed on vacation, and Pet World and its customers were monitored. Plaintiffs also allege that Altieri was detained at Pet World for over an hour by John Doe and John Doe II of the Hellertown police without explanation.

Generally, "[w]hat a person knowingly exposes to the pubic, even in his own home or office, is not a subject of Fourth Amendment protection." United States v. Katz, 389 U.S. 347, 351 (1967). Thus, the fourth amendment is not violated when visual observation of an individual takes place from a public place, because that person has exposed his whereabouts to the public. See United States v. Knotts, 460 U.S. 276, 281-82 (1983). Similarly, no fourth amendment violation occurs when a location is monitored visually, and visual surveillance is not enhanced scientifically. See United States v. Karo, 468 U.S. 705, 721 (1984).

Defendants argue that plaintiffs' alleged fourth amendment violations amount to no more than what is permitted by Knotts and Karo. However, it is unclear from the Complaint whether plaintiffs are alleging surveillance from public places or other types of surveillance which might be proscribed. Because this issue arises on a motion to dismiss, the Court must view the Complaint in the light most favorable to plaintiffs. See Jenkins, 395 U.S. at 421. Under that standard, the Court concludes plaintiffs have stated a valid claim under the fourth amendment with respect to the allegations that Altieri's mail was monitored and that Pet World and its customers were under police surveillance. Thus, the Court will deny the motions to dismiss the § 1983 and Bivens claims against Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes in their individual capacities to the extent that plaintiffs' allege that the monitoring of Altieri's mail and of Pet World violated their rights under the fourth amendment.

To the extent that plaintiffs seek to hold the conspirators liable for actions taken by John Doe and John Doe II of the Hellertown police--including the detention of Altieri--they fail to allege that John Doe and John Doe II participated in the conspiracy with the other defendants to violate Altieri's fourth amendment rights. Plaintiffs do not allege that there was any contact between any of the conspirators and the Hellertown defendants or the existence of an agreement between any of the Hellertown defendants and any of the conspirators. Instead, plaintiffs state only that all defendants aided one another in committing the charged violations. Such an allegation is insufficient, because a complaint must contain more than conclusory allegations of a conspiracy. See Rode, 845 F.2d at 1207; Pangburn, 200 F.3d at 72.

Plaintiffs' § 1983 and Bivens claims against Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes in their individual capacities which are based on a violation of the

fourth amendment as a result of Altieri's detention by John Doe and John Doe II will be dismissed without prejudice to plaintiffs' right to file an amended complaint if, under the facts of the case, they can allege participation by John Doe and/or John Doe II in the conspiracy with sufficient specificity.

3. Fifth and fourteenth amendment claims

Plaintiffs also allege that the individual defendants and the municipal defendants violated their fifth and fourteenth amendment rights by infringing on plaintiffs' property interests and liberty interests without due process and infringing on plaintiffs' right to equal protection.

a. Property interests

Plaintiffs complain that the individual defendants and the municipal defendants interfered with Altieri's right to pursue his occupation without due process, thereby depriving Altieri of his procedural due process rights under the fifth and fourteenth amendments. Federal defendants argue that Altieri had no property rights in his employment, and that, therefore, no process was due.

The requirements of procedural due process apply only where a plaintiff has been deprived of life, liberty, or property. See Board of Regents of State Colleges v. Roth, 408 U.S. 564, 569-70 (1972). Before an individual is deprived of a protected interest, he must be afforded the opportunity for a hearing, except in extraordinary circumstances where some governmental interest justifies delaying the hearing until after the government action. See id. at 570, n. 7. A property right is not defined by the Constitution, but rather by some external source, such as state law. See id. at 576.

Pennsylvania requires all new members of the state police to serve an 18 month probationary period. See 71 Pa. C.S.A. § 65(f) (Purdon's 1999). State police cadets in this statutory probationary period have no property interest in their position. See Graham v. Pennsylvania State Police, 160 Pa. Cmwlth. 377, 381-82 (1993);Blanding v. Pennsylvania State Police, 12 F.3d 1303, 1307 (3d Cir. 1993). Although this Court can find no direct precedent dealing with individuals who are involved in the PSP's interview process, the Court sees no meaningful distinction between individuals in the interview process and cadets in their probationary period. Accordingly, this Court concludes that applicants to the PSP have no protected property interest in any anticipated employment. Because plaintiffs have not identified a protected property interest, the § 1983 and Bivens claims against Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes in their individual capacities will be dismissed to the extent that they rely on deprivation of a property right.

b. Liberty interests

Plaintiffs also allege that the individual defendants and the municipal defendants deprived them of liberty interests without due process of law. This claim is based on Agent Terry's interference with Altieri's prospective employment with the PSP by defaming him--telling various individuals he was a "drug kingpin"--and the Hellertown defendants' detention of Altieri. Defendants argue that plaintiffs have not identified a protected liberty interest, and that no process is due.

The concept of a liberty interest, although somewhat nebulous, is broad. "Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful

knowledge ... and generally to enjoy those privileges long recognized ... as essential to the orderly pursuit of happiness by free men." Roth, 408 U.S. at 572.

The Supreme Court has held that, for a defamatory statement to infringe upon an individual's liberty interest, it is not enough that the statement stigmatize that individual. See Paul v. Davis, 424 U.S. 693, 701 (1976). The Paul Court held that "the weight of our decisions establishes no constitutional doctrine converting every defamation by a public official into a deprivation of liberty within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Id. at 702. Finally, the Paul Court ruled that defamation only infringes on a liberty interest where "a right or status previously recognized by state law was distinctly altered or extinguished. It was this alteration officially removing the interest from the recognition and protection previously afforded by the State, which [is] sufficient to invoke the procedural guarantees contained in the Due Process Clause of the Fourteenth Amendment." Id. at 711.

In this case, Altieri did not have a right to future employment with the state police under Pennsylvania law. See Blanding, 12 F.3d at 1307. Thus, defendants' conduct in interfering with his prospective employment by the state police did not implicate a protected liberty interest. Moreover, plaintiffs do not allege that the defamation had an effect on any other protected interest. Therefore, the Court concludes that plaintiffs do not allege any defamation which constituted a violation of a protected liberty interest.

Plaintiffs also allege that Altieri's liberty was violated without due process when he was detained by John Doe and John Doe II, the two Hellertown police officers. Such conduct, if tied to the conspiracy, would implicate a protected liberty interest. However, as discussed above, plaintiffs do not allege, with sufficient specificity, that the Hellertown defendants were

involved in a conspiracy with any of the other defendants. As a result, the conspirators cannot be liable for the actions of the Hellertown defendants.

Plaintiffs' § 1983 and Bivens claims against Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes in their individual capacities, to the extent that they rest on a claimed deprivation of plaintiffs' liberty interests by the Hellertown police will be dismissed without prejudice to plaintiffs' right to file an amended complaint if, under the facts of the case, they can allege the Hellertown defendants' participation in the conspiracy with sufficient specificity.

c. Equal protection

Plaintiffs also allege that the individual defendants and the municipal defendants violated Altieri's right to equal protection under the fifth and fourteenth amendments because Altieri was treated differently than other applicants for the PSP who did not speak on matters of public concern.

Where government action burdens fundamental rights, it is subject to strict scrutiny in an equal protection challenge. See Illinois State Bd. Of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979). The right to speak on matters of public concern is such a fundamental right. See Connick v. Myers, 461 U.S. 138, 147 (1983). When an action is subject to strict scrutiny, a state must demonstrate that its classification is necessary to serve a compelling governmental interest. See id.

At this stage of the case, defendants have not advanced a compelling government interest that their actions might have served. Moreover, plaintiffs allege that Altieri was treated differently from other, similarly situated individuals--applicants to the state police. Accordingly,

with respect to the § 1983 and Bivens claims, the Court concludes that plaintiffs have alleged a violation of the equal protection guarantees of the fifth and fourteenth amendments as to Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes in their individual capacities for the purposes of the § 1983 and Bivens claims.

4. Qualified immunity

Defendants argue that they are entitled to qualified immunity with respect to plaintiffs' claims. Qualified immunity is an affirmative defense which shields public officials from suit for official actions unless those actions are taken in violation of clearly established law. See Harlow v. Fitzgerald, 457 U.S. 800, 814 (1982).

The purpose of qualified immunity is to weed out meritless lawsuits quickly, and therefore spare public officials the costs of litigation. See id. To achieve this goal, courts should dismiss those cases in which the plaintiff has not alleged the violation of a clearly established constitutional or statutory right of which a reasonably competent public official would have been aware. See id. at 818.

The first step of a qualified immunity analysis is to determine whether the plaintiff alleges the violation of a constitutional or statutory right. See Siegert v. Gilley, 500 U.S. 226, 232 (1991). In this case, as discussed above, plaintiffs allege violations of their rights under the first amendment's guarantee of free speech, the fourth amendment's protection against illegal searches and seizures, and the fifth and fourteenth amendment's guarantee of equal protection. Therefore, plaintiffs have satisfied this initial burden.

The second step in a qualified immunity analysis is to determine whether the constitutional violations that plaintiffs have identified were clearly established at the time

defendants violated those rights. See Harlow, 457 U.S. at 818-19. When deciding whether the law is clearly established, courts must be wary of looking at the constitutional issue too abstractly. See Assaf v. Fields, 178 F. 3d 170, 177 (3d Cir. 1999). The right the official is alleged to have violated must have been clearly established in a more definite sense. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Id.

The Court concludes that the violations that plaintiffs identified, to the extent they survive the motions to dismiss, were all clearly established by the time of the events in this case. Plaintiffs have identified a violation of Altieri's right to free speech by identifying conduct which amounted to retaliation for exercising that right. The Mt. Healthy decision, discussing the existence of a claim of retaliation under the first amendment, was decided in 1977 by the Supreme Court. Therefore, the first amendment rights that the conspirators allegedly violated were clearly established at the time of the events in question in this case.

Plaintiffs also allege a violation of the fourth amendment's prohibition on illegal searches and seizures. The bounds of the fourth amendment's protections are well-defined. The Supreme Court decided Katz in 1967, Knotts in 1983, and Karo a year later. All of these cases were decided more than a decade before the incidents in question took place. Thus, plaintiffs' fourth amendment rights were clearly established at the time of the alleged violations of those rights.

Similarly, the violations of the fifth and fourteenth amendments that the plaintiffs identify were clearly established when the events in this case took place. In 1983, the Supreme Court decided, in Connick, that the right to speak on a matter of public concern is a fundamental

right; in 1979, in Socialist Workers' Party, the Supreme Court decided that the government cannot discriminate against citizens in the exercise of fundamental rights, and that such a challenge is subject to strict scrutiny. The fifth and fourteenth amendment rights defendants are alleged to have violated were clearly established before the occurrence of the events in this case. Thus the Court concludes that the conspirators are not entitled to qualified immunity with respect to any of these claims.

2. City of Bethlehem's liability under § 1983

Count II of the Complaint asserts § 1983 claims against the City of Bethlehem and the Borough of Hellertown. In Monell, the Supreme Court held that § 1983 liability attaches to a municipality only when a municipal official, acting with the necessary policy-making authority, intentionally or with deliberate indifference to the rights of individuals establishes or knows of and acquiesces in a policy, custom or practice which deprives individuals of constitutional or statutory rights. See Bryan County v. Brown, 520 U.S. 397, 404-05 (1997); Canton v. Harris, 489 U.S. 378, 388 (1989); Montgomery v. DeSimone, 159 F.3d 120, 126-27 (3d Cir. 1998).

To establish municipal liability under Monell, a plaintiff must "'identify the challenged policy, [practice or custom], attribute it to the city itself, and show a causal link between the execution of the policy, [practice or custom] and the injury suffered.'" Fullman v. Philadelphia Int'l Airport, 49 F. Supp.2d 434, 445 (E.D.Pa. 1999) (quoting Losch v. Borough of Parkesburg, 736 F.2d 903, 910 (3d Cir. 1984)). "In order to establish a claim based on a policy of inaction... plaintiffs must allege facts tending to establish a prior pattern of similar violations, contemporaneous knowledge of improper conduct, or failure to remedy continuing constitutional

deprivations." Boemer v. Patterson, No. Civ. A. 86-2902, 1987 WL 13741, at *4 (E.D.Pa. July 14, 1987).

In the Complaint, plaintiffs allege that the City of Bethlehem had a policy or practice of improperly investigating its officers in the face of civilian complaints, and a policy or practice of improperly supervising Bethlehem police officers regarding violations of citizens' constitutional rights. In order to prevail on a failure to supervise theory under § 1983, plaintiffs must demonstrate that a municipal action "was taken with deliberate indifference as to its known or obvious consequences. A showing of simple or even heightened negligence will not suffice." Bryan County, 520 U.S. at 407.

Plaintiffs allege that Altieri spoke to various members of the Bethlehem police about the violations that he witnessed, but that they were permitted to continue. Moreover, they allege that these policies, customs or practices were the result of deliberate indifference on the part of the City of Bethlehem, and that such policies, customs or practices caused Altieri's injuries.

Bethlehem defendants do not argue that plaintiffs fail to allege a claim under Monell. Instead, they argue that this Court should dismiss plaintiffs' § 1983 claims against the Bethlehem police because plaintiffs fail to identify a constitutional or statutory right of which they have been deprived. As discussed above, however, plaintiffs have alleged violations of their rights under the first amendment--freedom of speech--the fourth amendment--freedom from unreasonable searches--and the fifth amendment--right to equal protection. Therefore, the Court will not dismiss plaintiffs' § 1983 claims against the City of Bethlehem.

D. § 1981 claims

Section 1981 provides, in relevant part,

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and no other. 42 U.S.C.A. § 1981 (West Supp. 1999).

Generally, a plaintiff must demonstrate that he is a member of a racially cognizable group as an element of a § 1981 claim. See Wood v. Cohen, No. Civ. A. 97-3707, 1998 WL 88387, at *5 (E.D.Pa. March 2, 1998). However, a "white person who is injured as a result of his or her efforts to defend the rights of non-whites" can bring a claim under § 1981. Alder v. Columbia Historical Society, 690 F. Supp. 9, 15 (D.D.C. 1988) (citing various Courts of Appeals); see Riccobono v. Whitpain Twp., 497 F. Supp. 1364 (E.D.Pa. 1980); Gordon v. City of Cartersville, Ga., 522 F. Supp. 753, 756 (N.D.Ga. 1981) (collecting cases). Plaintiffs allege that Altieri was injured because he spoke on behalf of black and Hispanic males. Therefore, the Court concludes that plaintiffs have satisfied this element of a § 1981 claim.

Plaintiffs must also establish that the discrimination concerned one or more of the activities enumerated in § 1981. See Cohen, 1998 WL 88387, at *5. In the Complaint, plaintiffs allege that Altieri was in the process of making a contract with the state police. Although there was no agreement, the conspirators' conduct, if proven, hindered Altieri's ability to negotiate a contract with the state police. For instance, Trooper Egan delayed Altieri's application, and reported that Altieri lied during his interview, which Altieri says was not true. Agent Terry

informed Trooper Egan that Altieri worked for the DEA as a confidential informant, which Altieri also denies. The conspirators met and expressed their intent to prevent Altieri from obtaining a position with the state police.

Interfering with the formation of a contract can violate § 1981. See Blanding, 12 F.3d at 1310. Therefore, the Court concludes that plaintiffs allege a violation of § 1981 against Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes in their individual capacities, and the motions to dismiss plaintiffs' § 1981 claims will be denied.

Liability under § 1981 is personal in nature, and cannot be imposed vicariously. See Boykin v. Bloomsburg University, 893 F. Supp. 400, 406 (M.D.Pa. 1995), aff'd 91 F.3d 122 (3d Cir. 1996). Thus, to establish municipal liability under § 1981, as under § 1983, plaintiffs must prove that the interference with their Altieri's contractual rights was the result of a policy, custom, or practice of the Bethlehem police. See id. Plaintiffs have not so alleged. Accordingly, the motion to dismiss the § 1981 claims against the Bethlehem police and Sergeant Donchez and Officer Hughes in their official capacities will be granted.

E. § 1982 claims

42 U.S.C. § 1982 provides, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C.A. § 1982 (West Supp. 1999) ("§ 1982a"). A claim under § 1982 requires proof of the same animus as a claim under § 1981. See O'Hare v. Colonial School District, No. Civ. A. 99-0399, 1999 WL 773506, at *2 (E.D.Pa. September 29, 1999); Gordon, 522 F. Supp. at 756. However, to state a claim under § 1982, a

plaintiff must allege the impairment of the type of property interest protected by the statutory language. See City of Memphis v. Greene, 451 U.S. 100, 123-24 (1981).

§ 1982 only protects real and personal property interests, and courts have expressly held that it does not apply to employment claims. See, e.g., Schirmer v. Eastman Kodak, No. 86-3533, 1987 WL 9280 (E.D.Pa. April 9, 1987), aff'd 86 F.2d 591 (3d Cir. 1989); Rick Nolan's Auto Body Shop, Inc. v. Allstate Insurance Co., 711 F. Supp. 475, 476-77 (N.D.Ill. 1989) (collecting cases). Plaintiffs do not allege an impairment of any right to inherit, purchase, lease, sell, hold, or convey real or personal property. Therefore, plaintiffs § 1982 claims against the Bethlehem police, Agent Terry and Trooper Egan in their individual capacities, and Sergeant Donchez and Officer Hughes in both their official and individual capacities will be dismissed.

E. §§ 1985-1986 claims

Section 1985 creates causes of action for three types of conspiracies to interfere with civil rights. Plaintiffs allege violations of 1985(2) and of 1985(3).

Section 1985(2) creates a cause of action where

> two or more persons ... conspire to deter by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict...; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws. 42 U.S.C.A. § 1985(2) (West Supp. 1999).

This provision details two circumstances in which the cause of action will lie--when there has been obstruction of justice, including, for instance, intimidating or injuring witnesses, and when

there has been a conspiracy for the purpose of impeding the due course of justice in any state or territory. See Messa v. Allstate Insurance Co., 897 F. Supp. 876, 881 (E.D.Pa. 1995).

Where a plaintiff was not a witness, juror, or litigant in a proceeding in federal court, there is no cause of action under the first clause of § 1985(2). See Rode, 845 F.2d at 1207. Although Altieri was involved with law enforcement officials, serving as a confidential informant for the Bethlehem police, plaintiffs do not allege that he was a witness, or a prospective witness, in federal court. Therefore, plaintiffs have failed to state a claim under the first clause of § 1985(2).

The second clause of § 1985(2) makes actionable conspiracies in any state or territory which have as their object the obstruction of justice which would constitute a denial of equal protection of the laws. See Brawer v. Horowitz, 535 F.2d 830, 840 (3d Cir. 1976). Although plaintiffs allege the existence of a conspiracy, they do not allege that the object of the conspiracy was to obstruct justice. Thus, they have failed to state a claim under the second clause of § 1985(2) claim.

Because plaintiffs have failed to state a claim under either clause of § 1985(2), that part of the Complaint based on § 1985(2) against the Bethlehem police, Agent Terry and Trooper Egan in their individual capacities, and Sergeant Donchez and Officer Hughes in both their official and individual capacities will be dismissed.

Section 1985(3) creates a cause of action against any two persons who "conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws ...." 42 U.S.C.A. § 1985(3) (West Supp. 1999). "To come within [§ 1985(3)] a complaint must allege

that the defendants did (1) conspire ... (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws. It must then assert that one or more of the conspirators (3) did, or caused to be done, any act in furtherance of the object of the conspiracy, whereby another was (4a) injured in his person or property or (4b) deprived of having and exercising any right or privilege of a citizen of the United States." Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

Plaintiffs allege a conspiracy between Agent Terry, Officer Hughes, Sergeant Donchez, and Trooper Egan, the purpose of which was to deny Altieri the right to free speech and equal protection. Plaintiffs further claim that a number of defendants took actions, including investigating Altieri and recommending against his appointment to the PSP, in furtherance of the conspiracy. Finally, plaintiffs allege a violation of Altieri's rights to free speech and equal protection as a result of his criticism of the racially discriminatory policies of the Bethlehem police.

The Third Circuit has held that a person who is not a member of a racial minority, but who criticized his employer for its allegedly racially discriminatory practices, can state a cause of action under § 1985(3). See Robison v. Canterbury Village, Inc., 848 F.2d 424, 430 n. 7 (3d Cir. 1988) (citing Richardson v. Miller, 446 F.2d 1247 (3d Cir. 1971)). Therefore, the Court concludes that plaintiffs have asserted a claim under § 1985(3) against Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes in their individual capacities.

Section 1986 provides a cause of action against persons who fail to prevent a conspiracy which is actionable under § 1985. Section 1986 provides, "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 the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured ...." 42 U.S.C.A. § 1986 (West Supp. 1999). Unless a plaintiff has a claim under § 1985, he cannot pursue a claim under § 1986. See Sambrick v. Borough of Norristown, 639 F. Supp. 1351, 1354 (E.D.Pa. 1986).

Plaintiffs allege that each of the conspirators knew in advance of the wrongs to be visited upon Altieri, and failed to prevent them. They also allege that each of the conspirators was a law enforcement official, inferring that each defendant had the power to stop the violations of Altieri's constitutional rights. Therefore, plaintiffs have asserted a valid claim under § 1986 against Agent Terry, Trooper Egan, Sergeant Donchez, and Officer Hughes in their individual capacities.

The Bethlehem police and Sergeant Donchez and Officer Hughes in their official capacities cannot be liable on a respondeat superior theory under § 1985 or § 1986. See Polk County v. Dodson, 454 U.S. 312 (1981) (no respondeat superior liability in civil rights cases); Boykin, 893 F. Supp. at 404; Bernard v. Calejo, 17 F. Supp.2d 1311, 1314-15 (S.D.Fla. 1998). Instead, plaintiffs must allege that their injuries were the result of a policy, custom or practice of the Bethlehem police. Plaintiffs do not so allege. Accordingly, the Court grants Bethlehem defendants' motion to dismiss as it relates to plaintiffs' § 1985 and § 1986 claims against the Bethlehem police and Sergeant Donchez and Officer Hughes in their official capacities.

F. State law claims

Plaintiffs have also brought state law claims against Agent Terry, Trooper Egan, Sergeant Donchez and Officer Hughes for defamation and tortious interference with contract.

1. Agent Terry

Federal defendants argue that, under the Westfall Act, Agent Terry is immune from state law claims. The Westfall Act, which amended the Federal Tort Claims Act, 28 U.S.C.A. § 1346(b), 2671-2680 (West Supp. 1999), provides that, in any action "arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment," upon certification of the Attorney General that a defendant was acting within the scope of his or her employment, the United States is the only proper defendant. 28 U.S.C.A. § 2679 (West Supp. 1999).

In this case, Michael Stiles, the United States Attorney for the Eastern District of Pennsylvania, on behalf of the Attorney General, twice certified that Agent Terry was acting within the scope of his employment. Plaintiffs challenged that certification. The Supreme Court, in this context, has noted that "executive determinations generally are subject to judicial review and that mechanical judgments are not the kind federal courts are set up to render." Gutierrez de Martinez v. Lamango, 515 U.S. 417, 434 (1995). Therefore, the Court held in Lamango that scope-of-employment certifications are subject to judicial review. See id. at 436.

A plaintiff challenging a certification under the Westfall Act has the burden of coming forward with specific facts rebutting the certification. See Melo v. Hafer, 13 F.3d 736, 742 (3d Cir. 1994) ("Hafer II"); Valenzuela v. Thrifty Rent-A-Car, No. Civ. A. 94-7752, 1995 WL 708109, at *1 (E.D.Pa. November 20, 1995). Before ruling on a motion to substitute the

government for an individual federal defendant, a court should permit limited discovery and, if necessary, conduct a hearing if there is a genuine issue of fact material to the scope of employment issue. See Hafer II, 13 F.3d at 742. Both the discovery and the hearing, if it is held, should be circumscribed as narrowly as possible, because to do otherwise would subject the parties to the burdens of discovery, which the Westfall Act seeks to avoid. See id. at 741-42.

Plaintiffs have raised a question as to whether the actions of Agent Terry which form the basis of the suit were within the scope of his employment. Therefore, the federal defendants' motion to dismiss the state law claims against Agent Terry will be denied.

2. Trooper Egan

Commonwealth defendants argue that Trooper Egan is immune from suit as to the state law claims under Pennsylvania law. Pennsylvania law provides for statutory immunity of the Commonwealth and its employees. "Pursuant to section 11 of Article 1 of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity." Pa. Stat. Ann. tit.1, § 2310 (West 1999).

"In other words, if the Commonwealth is entitled to sovereign immunity under [this act], then its officials and employees acting within the scope of their duties are likewise immune." Moore v. Commonwealth, 538 A.2d 111, 115 (Pa. Commw. 1988). The General Assembly has provided nine enumerated, exclusive exceptions to this general grant of immunity: (1) the operation of a motor vehicle in the control or possession of a Commonwealth party; (2)

health care employees; (3) care, custody or control of personal property; (4) Commonwealth-owned property; (5) potholes or other dangerous conditions; (6) care, custody, or control of animals; (7) liquor store sales; (8) National Guard activities; and, (9) toxoids and vaccines. See 42 Pa.C.S.A. § 8522 (Purdon's 1999).

Trooper Egan is a state police officer, which makes him an employee of the Commonwealth of Pennsylvania. See Shoop v. Dauphin County, 766 F. Supp. 1327, 1334 (M.D.Pa. 1991). The Commonwealth Court of Pennsylvania has held that there is no exception to sovereign immunity for malicious, willful, criminal, or fraudulent acts taken in the course of one's employment. See Yakowicz v. McDermott, 210 Pa. Cmwlth. 479, 488 n.5 (1988). In Yakowicz, the Commonwealth Court ruled that an employee who commits a defamatory act is still entitled to sovereign immunity. See id. at 488. The pending claims involve none of the statutory exceptions to sovereign immunity. Therefore, in light of the holding in Yakowicz, the Court concludes that Trooper Egan is immune from the state law claims under Pennsylvania law. Accordingly, the state law claims against Trooper Egan will be dismissed.

3. Bethlehem defendants

Bethlehem defendants assert that they are immune from the plaintiffs' state law claims. To support this point, they point this Court to Pennsylvania's codification of sovereign immunity, 1 Pa.C.S.A. § 2310, which is quoted above. However, § 2310 only applies to the Commonwealth and its employees. Bethlehem defendants are a municipality and two municipal employees, none of whom are protected by this provision. See Yakowicz, 210 Pa. Cmwlth. at 1334, n.5 (distinguishing between immunity for the Commonwealth and immunity for municipalities and municipal employees).

The Pennsylvania Code provides local agencies with immunity from "any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa. C.S.A. § 8541 (Purdon's 1999). Although there are nine exceptions to this immunity discussed above, none are applicable to the claims involved in this case. Accordingly, the Court concludes that Sergeant Donchez and Officer Hughes are immune from suit on plaintiffs' state law claims in their official capacities.

The Pennsylvania Code also provides that, with respect to individual capacity claims, employees of a local agency are entitled to the same immunity as their employer. See 42 Pa. C.S.A. § 8545 (Purdon's 1999). However, the Code creates an exception to this immunity for "damages on account of an injury caused by the act of the employee in which it is judicially determined that the act of the employee caused the injury and that such act constituted a crime, actual fraud, actual malice, or willful misconduct ...." 42 Pa.C.S.A. § 8550 (Purdon's 1999).

Plaintiffs state law claims of defamation and tortious interference with contract are both intentional torts in Pennsylvania. See Factor v. Goode, 149 Pa. Cmwlth. 81, 87 (1992) (defamation); Yakowicz, 548 210 Pa. Cmwth. at 488 n. 5 (defamation); Ruffing v. 84 Lumber Co., 410 Pa. Super. 459, 467 (1992) (tortious interference with contract). In connection with those intentional torts, the Court must determine whether plaintiffs allege that defendants acted with actual malice or that their acts amounted to willful misconduct.

In order to prevail on a claim of defamation, plaintiffs must prove: "(1) the defamatory character of the communication; (2) publication by the defendant; (3) its application to the plaintiff; (4) understanding by the recipient of its defamatory meaning; (5) understanding by the recipient of it as intended to be applied to plaintiff; (6) special harm to the plaintiff; (7)

abuse of a conditionally privileged occasion." Rush v. Philadelphia Newspapers, Inc., 732 A.2d 648, 651-52 (Pa. Super. 1999). Plaintiffs allege that defendants made the defamatory statements maliciously. Such an allegation brings plaintiffs' defamation claim within the ambit of § 8550. See Yakowicz, 120 Pa. Cmwth. at 488, n.5 (noting that § 8550 would "permit a defamation action based on malicious publication to be brought against a local agency employee").

In order to prevail on a claim of tortious interference with contract, plaintiffs must prove (1) a prospective contractual relation; (2) the purpose or intent to harm the plaintiff by preventing the relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and, (4) the occasioning of actual damage resulting from defendant's conduct. See Ruffing, 410 Pa. Super. at 467 (citing Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 208 (1979). Plaintiffs allege that the interference with contract was undertaken intentionally and outside the scope of defendants' duties. Such an allegation brings plaintiffs tortious interference with contract claim within the ambit of §8550. Thus, Bethlehem defendants' motion to dismiss the state law claims against Sergeant Donchez and Officer Hughes in their individual capacities will be denied.

VI. CONCLUSION

Plaintiffs claims against the DEA, and Agent Terry in his official capacity, are barred by the doctrine of sovereign immunity. Plaintiffs assert valid claims against Agent Terry in his individual capacity under §1983 and Bivens for violations of the right to free speech, the right to freedom from unreasonable searches, and the right to equal protection, and under §§ 1981, 1985(3), and 1986. However, plaintiffs fail to assert valid claims against Agent Terry in his individual capacity under § 1982, §1985(2), or § 1983 for violations of the right to free

association, the actions of the Hellertown defendants, or violation of protected property and liberty interests. Plaintiffs' state law claims against Agent Terry in his individual capacity are not barred under the Westfall Act on the present state of the record.

Plaintiffs' claims against the state police and Colonel Evanko and Trooper Egan in their official capacities are barred by the 11th amendment. Plaintiffs fail to allege, with sufficient specificity, Colonel Evanko's participation in the alleged conspiracy. Plaintiffs assert valid claims against Trooper Egan in his individual capacity under §1983 for violations of the right to free speech, the right to freedom from unreasonable searches, and the right to equal protection, and under §§ 1981, 1985(3), and 1986. However, plaintiffs fail to assert valid claims against Trooper Egan in his individual capacity under § 1982, §1985(2), or § 1983 for violations of the right to free association, the actions of the Hellertown defendants or violation of protected property and liberty interests. Plaintiffs' state law claims against Trooper Egan are barred under Pennsylvania law.

Plaintiffs allege valid claims under § 1983 against the City of Bethlehem and against Sergeant Donchez and Officer Hughes in both their official and individual capacities for violations of the right to free speech, the right to freedom from unreasonable searches, and the right to equal protection. However, plaintiffs fail to assert valid claims against the City of Bethlehem, Sergeant Donchez and Officer Hughes in both their official and individual capacities under § 1983 for violations of the right to free association, the actions of the Hellertown defendants, or violation of protected property and liberty interests. Plaintiffs assert valid claims against Sergeant Donchez and Officer Hughes in their individual capacities under § 1981, § 1985(3) and § 1986, but fail to do so under § 1982 and § 1985(2). Plaintiffs fail to allege valid

claims against the City of Bethlehem and Sergeant Donchez and Officer Hughes in their official capacities under §1981, § 1982, §1985 and § 1986. Pennsylvania law bars plaintiffs' state law claims against the City of Bethlehem and Sergeant Donchez and Officer Hughes in their official capacities, but such claims can proceed against Sergeant Donchez and Officer Hughes in their individual capacities.

An appropriate order follows:

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

CHRISTOPHER ALTIERI and PET WORLD, INC.,	:	
Plaintiffs,	:	**CIVIL ACTION**
v.	:	
PENNSYLVANIA STATE POLICE,	:	
COLONEL PAUL EVANKO, Individually and in his Official Capacity as, Commissioner, Pennsylvania State Police,	:	
TROOPER ROBERT EGAN, Individually and in his official capacity as Trooper, Pennsylvania State Police,	:	
DRUG ENFORCEMENT ADMINISTRATION,	:	
AGENT THOMAS TERRY, Individually and in his official capacity as Agent, Drug Enforcement Agency,	:	
CITY OF BETHLEHEM,	:	
OFFICER EDWARD HUGHES, Individually and in his official capacity as Officer, Special Operations Vice Unit,	:	
LIEUTENANT FRANK DONCHEZ, Individually and in his official capacity as Lieutenant, Bethlehem Police Department,	:	
BOROUGH OF HELLERTOWN,	:	
CHIEF ROBERT BALUM, Individually	:	

and in his official capacity as Chief of Police, Borough of Hellertown,	:	
JAMES SIGWORTH, Individually and in his official capacity as Borough Manager of Hellertown,	:	
STEVEN DONCEVIC, Individually and in his official capacity as Zoning Officer, Borough of Hellertown,	:	
OFFICER JOHN DOE, Whose name is currently unknown, individually and in his official capacity as police officer, Borough of Hellertown,	:	
OFFICER JOHN DOE, II, Whose name is currently unknown, individually and in his official capacity as police officer, Borough of Hellertown,	:	**No. 98-CV-5495**
Defendants.	:	

ORDER

AND NOW, to wit, this 19th day of April, 2000, upon consideration of Commonwealth Defendants' Motion to Dismiss (Doc. No. 4, filed December 23, 1998), Plaintiffs' Opposition to the Motion to Dismiss of Defendants Pennsylvania State Police, Colonel Paul J. Evanko and Trooper Robert Egan (Doc. No. 5, filed January 8, 1999), Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes Motion to Dismiss Plaintiff's Complaint (Doc. No. 7, filed January 25, 1999), Plaintiffs' Opposition to the Motion to Dismiss of Defendants Bethlehem, Hughes and Donchez (Doc. No. 9, filed February 5, 1999), Motion to Dismiss of Defendants The United States Drug Enforcement Administration and DEA Special Agent Thomas Terry (Doc. No. 12, filed February 26, 1999), Plaintiffs' Opposition to the

Motion to Dismiss of Defendants United States Drug Enforcement Administration and DEA Agent Thomas Terry (Doc. No. 14, filed March 12, 1999), Reply Memorandum in Further Support of the Federal Defendants' Motion to Dismiss and Supplemental Certification Under the Westfall Act (Doc. No. 15, filed March 27, 1999), and Plaintiffs' Sur-Reply in Opposition to the Motion to Dismiss of Defendants United States Drug Enforcement Administration and DEA Agent Thomas Terry (Doc. No. 16, filed March 29, 1999), it is **ORDERED** that:

1. Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko, and Trooper Robert Egan's Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**, as follows:

a. Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **GRANTED** as to Plaintiffs' claims against the Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan in their official capacities and those claims are **DISMISSED**;

b. Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **GRANTED** as to Plaintiff's claims against Colonel Paul Evanko in his individual capacity and those claims are **DISMISSED WITHOUT PREJUDICE** to Plaintiffs' right to file an amended complaint;

c. Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** with respect to Plaintiffs' claims against Trooper Robert Egan in his individual capacity, as follows:

(1) Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **GRANTED** as to Plaintiffs' claims against Trooper Robert Egan in his individual capacity based on 42 U.S.C. § 1983 to the extent that they are based on violations of Plaintiffs' right of freedom of association and deprivations of plaintiffs' property and liberty interests under the Fifth and Fourteenth Amendments and those claims are **DISMISSED**;

(2) Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **DENIED** with respect to Plaintiffs' claims against Trooper Robert Egan in his individual capacity under 42 U.S.C. § 1983 to the extent they are based on violations of Plaintiffs' rights of freedom of speech, freedom from unlawful searches and seizures and equal protection;

(3) Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against Trooper Robert Egan in his individual capacity under 42 U.S.C. § 1983 to the extent they are based on the actions of John Doe and John Doe II of the Hellertown Police and those claims are **DISMISSED WITHOUT PREJUDICE** to Plaintiffs' right to file an amended complaint.

(4) Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **DENIED** with respect to Plaintiffs' claims against Trooper Robert Egan in his individual capacity under 42 U.S.C. § 1981, 42 U.S.C. § 1985(3), and 42 U.S.C. § 1986;

(5) Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against Trooper Robert Egan in his individual capacity under 42 U.S.C. § 1982 and 42 U.S.C. § 1985(2) and those claims are **DISMISSED**;

(6) Defendants Commonwealth of Pennsylvania State Police, Colonel Paul Evanko and Trooper Robert Egan's Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against Trooper Robert Egan in his individual capacity for defamation and tortious interference with contract and those claims are **DISMISSED**;

d. Commonwealth Defendants' Motion to Dismiss is **DENIED** in all other respects;

2. Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**, as follows:

a. Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** with respect to Plaintiffs' claims against the City of Bethlehem and Lieutenant Frank Donchez and Officer Edward Hughes in their individual and official capacities, as follows:

(1) Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against the City of Bethlehem and Lieutenant Frank Donchez and Officer Edward Hughes in their official and individual capacities based on 42 U.S.C. § 1983 to the extent that they are based on a violation of plaintiffs' right of freedom of association and on deprivations of plaintiffs'

property and liberty interests under the Fifth and Fourteenth Amendments and those claims are **DISMISSED**;

(2) Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **DENIED** with respect to Plaintiffs' claims against the City of Bethlehem and Lieutenant Frank Donchez and Officer Edward Hughes in their official and individual capacities under 42 U.S.C. § 1983 to the extent they are based on violations of Plaintiffs' rights of freedom of speech, freedom from unlawful searches and seizures and equal protection;

(3) Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against the City of Bethlehem, Lieutenant Frank Donchez and Officer Edward Hughes in their official and individual capacities under 42 U.S.C. § 1983 to the extent they are based on the actions of John Doe and John Doe II of the Hellertown Police and those claims are **DISMISSED WITHOUT PREJUDICE** to Plaintiffs' right to file an amended complaint.

(4) Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against the City of Bethlehem and Lieutenant Frank Donchez and Officer Edward Hughes in their official capacities based on 42 U.S.C. § 1981, 42 U.S.C. § 1982, 42 U.S.C. § 1985(2), 42 U.S.C. § 1985(3), and 42 U.S.C. § 1986 and those claims are **DISMISSED**;

(5) Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **GRANTED** with respect to Plaintiff's claims against the City of Bethlehem, Lieutenant Frank Donchez and Officer Edward Hughes in their

official capacities for defamation and tortious interference with contract and those claims are **DISMISSED**;

b. Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** with respect to Plaintiffs' claims against Lieutenant Frank Donchez and Officer Edward Hughes in their individual capacities, as follows:

(1) Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **DENIED** with respect to Plaintiffs' claims against Lieutenant Frank Donchez and Officer Edward Hughes in their individual capacities based on 42 U.S.C. § 1981, 42 U.S.C. § 1985(3), and 42 U.S.C. § 1986;

(2) Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against Lieutenant Frank Donchez and Officer Edward Hughes in their individual capacities and those claims are **DISMISSED**;

(3) Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **DENIED** with respect to Plaintiffs' claims against Lieutenant Frank Donchez and Officer Edward Hughes in their individual capacities for defamation and tortious interference with contract;

c. Defendants City of Bethlehem, Lieutenant Frank Donchez, and Officer Edward Hughes' Motion to Dismiss is **DENIED** in all other respects;

3. Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**, as follows:

a. Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against the United States Drug Enforcement Agency and Agent Thomas Terry in his official capacity and those claims are **DISMISSED**;

b. Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART** with respect to Agent Thomas Terry in his individual capacity, as follows:

(1) Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against Agent Thomas Terry in his individual capacity based on 42 U.S.C. § 1983 and Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), to the extent that they are based on a violation of plaintiffs' rights of freedom of association and on deprivations of plaintiffs' property and liberty interests under the Fifth and Fourteenth Amendments and those claims are **DISMISSED**;

(2) Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **DENIED** with respect to Plaintiffs' claims against Agent Thomas Terry in his individual capacity under 42 U.S.C. § 1983 and Bivens to the extent they are based on violations of Plaintiffs' rights of freedom of speech, freedom from unlawful searches and equal protection;

(3) Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against Agent Thomas Terry in his individual capacity under 42 U.S.C. § 1983 and Bivens to the extent

they are based on the actions of John Doe and John Doe II of the Hellertown Police and those claims are **DISMISSED WITHOUT PREJUDICE** to Plaintiffs' right to file an amended complaint.

(4) Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **DENIED** with respect to Plaintiffs' claims against Agent Thomas Terry in his individual capacity based on 42 U.S.C. § 1981, 42 U.S.C. § 1985(3), and 42 U.S.C. § 1986;

(5) Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **GRANTED** with respect to Plaintiffs' claims against Agent Thomas Terry in his individual capacity based on 42 U.S.C. § 1982 and 42 U.S.C. § 1985(2) and those claims are **DISMISSED**;

(6) Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **DENIED** with respect Plaintiffs' claims against Agent Thomas Terry in his individual capacity for defamation and tortious interference with contract;

(7) Defendants United States Drug Enforcement Agency and Agent Thomas Terry's Motion to Dismiss is **DENIED** in all other respects.

4. Plaintiffs are **GRANTED** leave to file an amended complaint in accordance with this Memorandum and Order within twenty days of this Order; one copy of any amended complaint shall be served on Chambers (Room 12613) when the original is filed; and,

5. A preliminary pretrial conference will be **SCHEDULED** in due course.

BY THE COURT:

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JAN E. DUBOIS, J.