

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

<b>STEPHEN EDWARDS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 05-18</b>
	:	
<b>CITY OF PHILADELPHIA, <u>et al.</u></b>	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**November 15, 2006**

Plaintiff Stephen Edwards (“Plaintiff”) brings this action for violations of 42 U.S.C. § 1983 (“§ 1983”) (Counts One through Four), 42 U.S.C. § 1985 (“§ 1985”) (Count Five), and for intentional infliction of emotional distress (Count Six) against Defendants City of Philadelphia (the “City”), Police Commissioner Sylvester Johnson (“Commissioner Johnson”), and Police Officer Steven Nolan (“Officer Nolan”) (collectively, “Defendants”). Defendants have filed a Motion to Dismiss all counts of the Complaint. For the reasons that follow the Motion will be granted in part and denied in part.

**I. BACKGROUND**

Accepting as true the allegations of the Complaint, as we must at this stage of the proceedings, the pertinent facts are as follows. Plaintiff is a former police officer of the City of Philadelphia. Amended Complaint ¶ 3. On September 19, 1998, Plaintiff was attacked by Vernon Pryor (“Pryor”), who attempted to remove Plaintiff’s handgun. Id. at ¶ 18. Plaintiff defended himself, and during the struggle, his gun discharged and struck Pryor. Id. On July 26, 2000, Plaintiff was arrested and subsequently fired. Id. at ¶ 19. Officer Nolan “caused the arrest and firing to occur,” and further requested that criminal charges be brought against Plaintiff. Id.

Commissioner Johnson issued the notice of firing based on Officer Nolan's account of the events. Id. On January 17, 2003, Plaintiff was acquitted of the charges, and thereafter sought to be reinstated as a police officer. Id. at ¶ 22. However, Plaintiff was required to challenge the firing through an arbitration process. Id.<sup>1</sup>

## **II. LEGAL STANDARD**

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations of the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

## **III. ANALYSIS**

Plaintiff challenges his termination and alleges that, by firing and refusing to rehire him after he was acquitted of the charge for which he was dismissed, Defendants deprived him of his constitutional rights under the First and Fourteenth Amendments. While Plaintiff does not dispute that he was dismissed pursuant to a police department policy of firing officers who have been arrested, he alleges that the policy was applied unevenly, causing African-American officers to be subjected to harsher discipline than their white counterparts. In support of this contention,

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<sup>1</sup> Plaintiff has not indicated whether he actually participated in an arbitration process.

Plaintiff alleges that two similarly-situated white police officers who were terminated after being arrested were reinstated without having to resort to an arbitration proceeding. Plaintiff argues that he received disparate treatment because he is African-American and that the discrimination amounted to a violation of his constitutional rights.

## **A. Statute of Limitations**

### **1. § 1983 Claims**

The statute of limitations for bringing a civil rights claim under § 1983 is the same as the state statute of limitations for bringing a personal injury action. Lyons v. Emerick, 2006 WL 1876657, at \*2 (3d Cir. July 7, 2006). The parties agree that Pennsylvania's two-year statute of limitations is applicable (see 42 Pa. Con. Stat. § 5524), but disagree as to when it began to run. Defendants allege that the statute of limitations began to run on July 26, 2000, when Plaintiff received notice that he would be terminated and would be required to go through arbitration in order to seek reinstatement. See Motion to Dismiss, at 4-5. Plaintiff responds that the limitations period did not begin to run until after January 17, 2003, when he was acquitted, sought unsuccessfully to be rehired, and learned that similarly situated white officers had been reinstated.<sup>2</sup>

Plaintiff's interpretation is correct, but only with respect to the claims arising from Defendants' allegedly wrongful refusal to rehire him, not with respect to the claims pertaining to improper termination. "Under federal law, which governs the accrual of section 1983 claims, the limitations period begins to run from the time when the plaintiff knows or has reason to know of

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<sup>2</sup> Plaintiff argues that he did not know he was subject to disparate treatment until he discovered that the white officers had been rehired.

the injury which is the basis of the section 1983 action.” Montgomery v. De Simone, 159 F.3d 120, 126 (3d Cir. 1998); see also Genty v. Resolution Trust Corp., 937 F.2d 899, 919 (3d Cir. 1991); Green v. Philadelphia County Prisons, 2006 WL 2869527, at \*6 (E.D. Pa. Oct. 4, 2006). Plaintiff could not reasonably have known of the alleged discrimination until he learned that similarly situated white officers had been rehired without arbitration. Since he claims that he did not learn of the disparate treatment until January 2003, his Fourteenth Amendment Equal Protection and First Amendment Retaliation (hereinafter, “Equal Protection and Retaliation”) claims,<sup>3</sup> brought within the two-year limitations period, were timely.<sup>4</sup>

The same cannot be said for a number of Plaintiff’s other claims, which pertain directly to the manner and circumstances of his termination. Plaintiff argues that (1) his due process rights were violated because he was denied pre- and post-termination notice and was not informed of the true basis for his termination; (2) his termination was wrongful because it constituted punishment and retaliation for constitutionally-protected conduct (i.e., self defense); and (3) Defendants did not question him or permit him to explain the circumstances of the incident that led to his July 26, 2000 arrest. The aforementioned allegations challenge either the basis for termination (i.e., whether or not it was pretextual), or the manner in which it was handled. Each of the allegations dates back to Plaintiff’s termination in July 2000, more than four years before he filed the instant Complaint.

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<sup>3</sup> Plaintiff alleges that he was retaliated against “for going to trial and winning.” Plaintiff’s Memorandum in Opposition to Motion to Dismiss (hereinafter, “Memo in Opposition”), at 3.

<sup>4</sup> Plaintiff filed the instant Complaint on January 4, 2005.

Plaintiff argues that all of his claims are timely under the “Continuing Violations Doctrine.” The doctrine is an “equitable exception to the timely filing requirement and holds that when a defendant's conduct is part of a continuing practice, [a legal] action is timely so long as the last act evidencing the continuing practice falls within the limitations period.” Mitchell v. Guzick, 138 Fed. Appx. 496, 501 (3d Cir. 2005) (citations omitted). The following factors will determine whether the doctrine applies: (1) whether the violations constitute the same type of discrimination, tending to connect them in a continuing violation; (2) whether the acts are recurring or more in the nature of isolated incidents; and (3) whether the act had a “degree of permanence” which should trigger the plaintiff's awareness of and duty to assert his rights and whether the consequences of the act would continue even in the absence of a continuing intent to discriminate. Cowell v. Palmer Tp., 263 F.3d 286, 292 (3d Cir. 2001). Of these, the third factor is the most important. Id.

The events surrounding Plaintiff's termination unquestionably should have triggered an awareness to assert his rights. “The continuing violations doctrine should not provide a means for relieving plaintiffs from their duty to exercise reasonable diligence in pursuing their claims.” Id. at 295. See also National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 113 (2002):

Discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges... acts such as termination, failure to promote, denial of transfer, or *refusal to hire* are easy to identify. Each incident of discrimination and each retaliatory adverse employment decision constitutes a separate actionable ‘unlawful employment practice.’

Id. at 113-114 (emphasis added). Accordingly, the Court finds the Continuing Violations Doctrine to be inapplicable in this case, and all the claims pertaining to the reason for and

manner of termination will be dismissed as untimely. However, the Equal Protection and Retaliation claims, which relate to Defendants' allegedly wrongful failure to rehire him, are timely.

## 2. Remaining Claims

In addition to his § 1983 claims, Plaintiff alleges violations of § 1985 and asserts a pendant state claim for intentional infliction of emotional distress. The two-year limitations period that governs § 1983 claims also applies to these claims. Ormsby v. Luzerne County Dept. of Public Welfare Office of Human Services, 149 Fed. Appx. 60, 62 (3d Cir. 2005); Bougher v. University of Pittsburgh, 882 F.2d 74, 79 (3d Cir. 1989); Walsh v. U.S., 2006 WL 1617273, at \*4 (M.D. Pa. June 9, 2006). A conspiracy claim under § 1985 accrues when the plaintiff knows or has reason to know of the injury which is the basis of his action. Antoine ex rel. Antoine v. Rucker, 2006 WL 1966649, at \*12 (D.N.J. July 12, 2006) (citing Singleton v. City of New York, 632 F.2d 185, 194-195 (2d Cir.1980)). Here, Plaintiff alleges that Officer Nolan (and possibly other employees of the City) "entered into an agreement to keep Mr. Edward [sic] off the force and ... to use Mr. Prayer's [sic] testimony to prevent Plaintiff from regaining his employment with the City as a police officer ..." Amended Complaint ¶ 52. He further alleges that "the conspiracy was not known about or discovered until after January 17, 2003." Memo in Opposition, at 4. The Court is required, at this stage of the litigation, to assume the truth of Plaintiff's well-pleaded allegations and factual assertions. Accordingly, the conspiracy claim will be considered timely. The same conclusion is applicable to Plaintiff's intentional infliction of emotional distress claim, which might reasonably be found to arise from the events of January 2003.

## B. Rule 12(b)(6) Analysis

Having concluded that Plaintiff's § 1983 Equal Protection and Retaliation claims, § 1985 conspiracy claim, and pendant state claim were timely-filed, the Court will review each to determine if Plaintiff has stated a claim upon which relief may be granted.

### 1. § 1983 Equal Protection and Retaliation Claims

Plaintiff alleges that “the City has a policy to treat protected class members differently than non protected class members” in terms of employment conditions and discipline, and that the policy results in “disparate, different, and unequal treatment against minorities.” Amended Complaint ¶¶ 47, 49. He further asserts that “the City and [Commissioner] Johnson do not equally apply the policy...” *id.* at ¶ 12, and that “the City and [Commissioner] Johnson have reinstated white officers who were fired solely because of an arrest while [Commissioner] Johnson and the City require minority blacks, such as Plaintiff, to go through the arbitration process...” *Id.* at ¶ 48. Such conduct, Plaintiff argues, is a violation of the Fourteenth Amendment Equal Protection Clause. *See* Memo in Opposition, at 3.<sup>5</sup> In addition, Plaintiff alleges that by refusing to rehire him, Defendants retaliated against him “for going to trial and winning” in violation of the First Amendment. *See id.*<sup>6</sup>

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<sup>5</sup> “To state a claim under the Equal Protection Clause, a § 1983 plaintiff must allege that a state actor intentionally discriminated against the plaintiff because of membership in a protected class.” *Yi v. Federal Bureau of Prisons*, 2003 WL 21321411, at \*1 (E.D. Pa. June 3, 2003) (citing *Herron v. Harrison*, 203 F.3d 410, 417 (6th Cir. 2000)).

<sup>6</sup> To state a § 1983 retaliation claim for the exercise of First Amendment rights, the plaintiff must allege that: “(1) he or she engaged in a protected employee activity; (2) the employer took an adverse employment action after or contemporaneous with the protected activity; and (3) a causal link exists between the protected activity and the adverse action.” *Sloan v. City of Pittsburgh*, 110 Fed. Appx. 207, 211 (3d Cir. 2004).

(a) Municipal Liability Under § 1983

A plaintiff seeking relief under § 1983 must show that he has been deprived of a right secured by the Constitution and laws of the United States, and that the defendant was acting under color of state law.<sup>7</sup> Harvey v. Plains Tp. Police Dept., 421 F.3d 185, 189 (3d Cir. 2005) (citations omitted). In Monell v. Dept. of Social Serv. of City of N.Y., 436 U.S. 658, 691 (1978), the Supreme Court held that liability arising from § 1983 violations cannot be imposed under the doctrine of *respondeat superior*. Liability can be imposed only when the alleged injury is inflicted as part of a government policy or custom. See Oaks v. City of Philadelphia, 59 Fed. Appx. 502, 503 (3d Cir. 2003). A government policy is made when a decision-maker holding final authority to establish municipal policy with respect to the action issues an official proclamation, policy, or edict. Pembaur v. City of Cincinnati, 475 U.S. 469, 481(1986) (cited in Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990) (internal quotations omitted)). Alternatively, a course of conduct may be considered a custom when “practices of state officials are so permanent and well settled as to virtually constitute law.” Andrews, 895 F.2d at 1480 (citing Monell, 436 U.S. at 690 (citations omitted)). Moreover, a plaintiff must show that the policy or custom amounts to “deliberate indifference” to his or her rights.

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<sup>7</sup> 42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Carswell v. Borough of Homestead, 381 F.3d 235, 244 (3d Cir. 2004) (quoted in Glass v. City of Philadelphia, 2006 WL 2873992, at \*26 (E.D. Pa. Oct. 10, 2006)). Courts have repeatedly held that police commissioners are to be considered policymakers for purposes of municipal liability under § 1983. See Jacobs v. City of Philadelphia, 2004 WL 2850081, \*3 (E.D. Pa. Dec. 10, 2004); Glass, 2006 WL 2873992, at \*27. However, “liability will attach only if the police commissioner acted either with deliberate indifference or had knowledge of and acquiesced to an unconstitutional policy or custom.” Glass, 2006 WL 2873992, at \*27.

In support of his claim of municipal liability, Plaintiff alleges that by refusing to rehire him when similarly-situated white officers were reinstated without arbitration, Defendants, acting with deliberate indifference, deprived him of his equal protection rights and retaliated against him for exercising his constitutional right to trial.<sup>8</sup> He further alleges that the wrongful conduct was part of a policy of discrimination against African-American employees. Amended Complaint ¶¶ 15, 47-50. Having identified the predicate constitutional rights, an alleged policy of discrimination amounting to deliberate indifference, and a causal link between the protected activity and the adverse action, Plaintiff has alleged facts sufficient to maintain a claim for municipal liability under § 1983.

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<sup>8</sup> Courts have repeatedly held that refusal to rehire a former employee, if caused by the employee’s decision to engage in constitutionally protected activity, may constitute an “adverse employment action.” See Rutan v. Republican Party of Illinois, 497 U.S. 62, 72, (1990); Wheeler v. Natale, 137 F. Supp. 2d 301, 304 (S.D.N.Y. 2001). See also Bernheim v. Litt, 79 F.3d 318, 327 (2d Cir. 1996) (“It is beyond question that a state agency may not discharge, refuse to rehire, fail to promote, or demote a public employee in retaliation for speaking on a matter of public concern”).

(b) Individual Liability Under § 1983

In addition to suing the City, Plaintiff appears to bring § 1983 claims against Commissioner Johnson and Officer Nolan in their individual capacities, alleging that “each defendant is a persons [sic] as intended under 42 U.S.C. 1983, and each defendant for all times relevant hereto acted under color of state law and an illegal agreement and/or policy, custom or practice...” Amended Complaint ¶ 4. Suits brought against state actors in their personal capacity “seek to impose individual liability upon a government officer for actions taken under color of state law.” Hafer v. Melo, 502 U.S. 21, 25 (1991). In order to establish individual liability under § 1983, a plaintiff must “show that an official, acting under color of state law, caused the deprivation of a federal right.” Id.

As discussed above, Plaintiff’s only timely-filed actionable claims are those that arise directly from the allegedly wrongful decision not to rehire him after he was acquitted. A decision by Commissioner Johnson not to rehire Plaintiff could be part of his official duty as police commissioner. However, there is no allegation that Officer Nolan was involved in the decision not to reinstate Plaintiff. Nor is there any suggestion that Officer Nolan had the authority to make hiring decisions. “Congress enacted § 1983 to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.” Hafer, 502 U.S. at 28 (citations omitted). Since Plaintiff has failed to allege that Officer Nolan was involved in or authorized to make personnel decisions, the § 1983 claim against him in his individual capacity will be dismissed. However, in keeping with the liberal standard of Rule 12(b)(6), the Court cannot conclude that there is no set of facts on which plaintiff could prevail

in a § 1983 claim against Commissioner Johnson individually. See Marion v. City of Philadelphia/Water Dept., 161 F. Supp. 2d 381, 387 (E.D. Pa. 2001).

## 2. § 1985 Claim

In support of his § 1985 claim, Plaintiff alleges that “the City, through its employees, such as but not limited to [Officer] Nolan, and Mr. Pryor entered into an agreement to keep Mr. Edward [sic] off the force and retaliate for protected activity.” Amended Complaint ¶ 52. Plaintiff alleges that as part of the conspiracy, Pryor provided “testimony to prevent Plaintiff from regaining his employment.” Id. In addition, Pryor agreed not to pursue a lawsuit for excessive force against the City, and in exchange was employed as a corrections officer despite his alleged criminal background. See id.

Section 1985 provides for claims for three types of conspiracies to interfere with civil rights. See Altieri v. Pennsylvania State Police, 2000 WL 427272, at \*15 -16 (E.D. Pa. Apr. 20, 2000). Plaintiff does not specify which of the three allegedly occurred. Defendants argue that § 1985(2) is not actionable because Plaintiff has failed to allege that Defendants engaged in obstruction of justice and do not offer a position with respect to the remaining subsections.<sup>9</sup> The Court agrees that § 1985(2) would not entitle Plaintiff to relief because there is no allegation that the purpose of the alleged conspiracy was to obstruct justice, or that Pryor was instructed to testify falsely. See Brawer v. Horowitz, 535 F.2d 830, 840 (3d Cir. 1976)

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<sup>9</sup> 42 U.S.C. § 1985(2) provides that a cause of action exists when “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.” Id.

(dismissing §1985(2) claim for failure to allege obstruction of justice such as false testimony or suppression of exculpatory evidence). However, the elements of § 1985(3), if properly pled, may entitle Plaintiff to relief. In order to state a claim under that subsection, Plaintiff must establish: “(1) a conspiracy by the defendants; (2) designed to deprive plaintiff of the equal protection of the laws or equal privileges and immunities; (3) the commission of an overt act in furtherance of that conspiracy; (4) a resultant injury to person or property or a deprivation of any right or privilege of citizens; and (5) defendants' actions were motivated by a racial or otherwise class-based invidiously discriminatory animus.” Ginter v. Skahill, 2006 WL 3043083, at \*10 (E.D. Pa. Oct. 27, 2006) (citations omitted).

By alleging that Officer Nolan, motivated by racial bias, conspired with Pryor to deprive Plaintiff of his equal protection rights (i.e., the right to be treated fairly with respect to a hiring decision), and that Pryor’s procured testimony and decision to withdraw his civil lawsuit amounted to overt acts in furtherance of the conspiracy, Plaintiff has alleged sufficient facts to maintain a conspiracy claim. In addition, by alleging that Officer Nolan was acting pursuant to an established policy or custom of racial discrimination, Plaintiff has stated a claim for municipal liability. See Palace v. Deaver, 845 F. Supp. 1088 (E.D. Pa. 1994); DiBenedetto v. City of Reading, 1998 WL 474145, at \*10 (E.D. Pa. July 16, 1998) (in order to hold a municipality liable under § 1985(3), Plaintiff must show that wrongful actions were taken pursuant to an established policy, practice or custom). However, there is no allegation that Commissioner Johnson in any way participated in the alleged conspiracy involving Pryor. In the absence of any allegation of specific conspiratorial conduct or facts that would support the inference of participation, Plaintiff’s § 1985(3) claim against Commissioner Johnson in his

individual capacity must fail. See North American Roofing & Sheet Metal Co., Inc. v. Building & Const. Trades Council of Philadelphia & Vicinity, 2000 WL 230214, at \*5 (E.D. Pa. Feb. 29, 2000); Fraser v. Pennsylvania State System of Higher Educ., 1994 WL 242527, at \*7 (E.D. Pa. June 6, 1994).

### 3. Pendant State Claim

The final count of the Amended Complaint alleges that Defendants' discriminatory conduct amounted to intentional infliction of emotional distress, and that as a result of the tortious conduct, Plaintiff suffered "mood changes, anger, depression, loss of sleep, and other such changes..." Amended Complaint ¶ 56.<sup>10</sup>

Intentional infliction of emotional distress is a state tort, in this case derived from Pennsylvania substantive law. Andrews v. City of Philadelphia, 895 F.2d 1469, 1486 (3d Cir. 1990). Such a claim lies "where a person, whose acts constitute extreme or outrageous conduct, intentionally inflicts severe emotional distress on another person." Tancredi v. Cooper, 2003

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<sup>10</sup> Defendants argue that the Pennsylvania Political Subdivision Tort Claims Act (the "Act") immunizes them from tort liability, and that Plaintiff's claim does not fall under any of the Act's enumerated exceptions. See 42 Pa. Const. Stat. Ann. §§ 8541-42. Defendants are correct that the municipal defendants are immune. However, the Act does not provide immunity for individual defendants where "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." Gremo v. Karlin, 363 F. Supp.2d 771, 793-794 (E.D. Pa. 2005). "'Willful misconduct' in this context has the same meaning as the term 'intentional tort.'" Brown v. Muhlenberg Tp., 269 F.3d 205, 214 (3d Cir. 2001); see also Gremo, 363 F. Supp. 2d at 794 ("'willful misconduct' as used in the Tort Claims Act requires evidence that the defendants actually knew that their conduct was illegal" (citing Sameric Corp. of Delaware v. City of Philadelphia, 142 F.3d 582, 600-01 (3d Cir. 1998) (internal quotations omitted)). In this case, Plaintiff is alleging that Defendants committed an intentional tort, and that their actions were willful. Therefore, while the City and Commissioner Johnson in his official capacity are immune from this type of claim, immunity would not extend to Commissioner Johnson and Officer Nolan in their individual capacities.

WL 22213699, at \*5 (E.D. Pa. Sept. 3, 2003). Courts are generally reluctant to declare conduct sufficiently “outrageous” to warrant recovery for intentional infliction of emotional distress. See Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988) (“It has been said that the conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society”); see also E.E.O.C. v. Chestnut Hill Hosp., 874 F. Supp. 92, 96 (E.D. Pa. 1995); Harry v. City of Philadelphia, 2004 WL 1387319, at \*15 (E.D. Pa. June 18, 2004).

While it is “extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress,” Cox, 861 F.2d at 395, the Court cannot conclude at this time that it is certain that no relief could be granted under any set of facts that could be proved by Plaintiff. Accordingly, Plaintiff has satisfied the pleading requirements with respect to the state law claim.

#### **IV. CONCLUSION**

Defendants’ Motion to Dismiss will be granted with respect to the following claims: (1) Plaintiff’s § 1983 claims challenging the basis for and manner of his termination; (2) the § 1983 claim against Officer Nolan in his individual capacity; and (3) the § 1985 claim against Commissioner Johnson in his individual capacity. The Motion to Dismiss will be denied with respect to the remaining claims. An appropriate Order follows.

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	:	
<b>CITY OF PHILADELPHIA, <u>et al.</u></b>	:	

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of November, 2006, upon consideration of Defendants' Motion to Dismiss (docket no. 19), and Plaintiff's Opposition thereto (docket no. 20), and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **GRANTED** in part and **DENIED** in part.

Accordingly, the following claims are dismissed:

1. The § 1983 claims challenging the basis for and manner of Plaintiff's termination.
2. The § 1983 claim against Officer Nolan in his individual capacity.
3. The § 1985 claim against Commissioner Johnson in his individual capacity.

**BY THE COURT:**

/s/ Bruce W. Kauffman  
**BRUCE W. KAUFFMAN, J**