

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

CHARLES MAJOR, et. al,	:	No. 05-CV-03091
	:	
	:	
Plaintiffs,	:	Judge Jerome B. Simandle
	:	
v.	:	Magistrate Judge Joel Schneider
	:	
NEW JERSEY DEPARTMENT OF	:	<b>Return Date: December 7, 2009</b>
TRANSPORTATION, et. al,	:	
	:	
	:	
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF STATE DEFENDANTS’ MOTION TO  
DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND  
12(b)(6)**

Gregory F. Cirillo  
John J. Higson  
Holly R. Rogers  
**DILWORTH PAXSON LLP**  
Liberty View – Suite 700  
457 Haddonfield Road  
Cherry Hill, NJ 08002  
Telephone: (856) 675-1900  
Facsimile: (856) 663-8855

Dated: November 2, 2009

*Attorneys for Defendants New Jersey  
Department of Transportation, New Jersey  
Motor Vehicle Commission, Kris Kolluri,  
John F. Lettiere, Sharon Harrington, Diane  
Legreide, Vincent Schulze, and Michael  
Calorel*

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## I. INTRODUCTION

Plaintiffs, African American owners of commercial buses engaged in interstate common carrier services in New Jersey, are suing State entities and their employees for alleged violations of federal and State laws. Specifically, Plaintiffs allege that they have been unfairly singled out for inspections, summonses, and impoundment on account of their race by the New Jersey Department of Transportation, New Jersey Motor Vehicle Commission, and their agents. Sovereign immunity, however, expressly prohibits Plaintiffs from maintaining this action in federal court against the State entities and employees. The doctrine of qualified immunity similarly prohibits Plaintiffs from suing the individual employees of these State entities. This Court therefore lacks subject matter jurisdiction over Plaintiffs' claims.

In addition, Plaintiffs want this Court to inject itself into State judicial proceedings involving important State interests and to undo dispositions of New Jersey State courts. Pursuant to long-standing United States Supreme Court precedent, as established in *Younger v. Harris*, *Rooker v. Fidelity Trust Co.* and *District of Columbia Court of Appeals v. Feldman*, this Court should dismiss Plaintiffs' claims.

Moreover, even assuming subject matter jurisdiction exists, Plaintiffs' Complaint fails to meet the minimal requirements for presenting colorable federal and State claims. Plaintiffs broadly allege "ongoing" violations of their rights, without pointing to any specific date, person, or incident during which their rights were violated. This pleading does not put the State Defendants on notice of what actions form the basis of the Complaint. Because Plaintiffs fail to ascribe any date to any alleged violation, Plaintiffs have failed to allege facts occurring within the statute of limitations. They also fail to allege facts demonstrating a right to relief for violation of their civil rights, conversion or a conspiracy. Significantly, Plaintiffs have had three

chances to get their pleadings right, through the initial complaint (Docket # 1), the amended complaint (Docket # 3), and the present second amended complaint (Docket # 128)<sup>1</sup>. Despite three chances, Plaintiffs have not pointed to any actions by State Defendants that entitle Plaintiffs to relief. For these reasons, Plaintiffs' claims should be dismissed.

## **II. FACTUAL HISTORY AND RELEVANT PROCEDURAL POSTURE**

Plaintiffs have commenced this action against the New Jersey Department of Transportation and the New Jersey Motor Vehicle Commission, along with several of their employees, alleging a series of federal and State civil rights claims.<sup>2</sup> As set forth in the Complaint, Plaintiffs are African American owners and operators of commercial bus tours between Pennsylvania and Atlantic City. [Compl. ¶¶ 1, 24.] Plaintiffs allege that, beginning in 2000, their buses have been repeatedly inspected, issued summonses, taken out of service, and impounded by State Defendants. [*Id.* ¶¶ 24, 26.]<sup>3</sup>

As alleged in the Complaint, State Defendants carry out their inspection duties in accordance with the Motor Carrier Safety Assistance Program ("MCSAP") regulations. [*Id.* ¶ 27.]

The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMV). The goal of the MCSAP is to reduce CMV-involved accidents, fatalities and injuries through consistent,

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<sup>1</sup> The second amended complaint (Docket # 128) will be referred to as "Complaint" and will be cited to as "Compl." followed by paragraph number(s).

<sup>2</sup> Defendants include the New Jersey Department of Transportation ("NJDOT"); the New Jersey Motor Vehicle Commission ("NJMVC"); Kris Kolluri, former Commissioner of the NJDOT; John F. Lettiere, former Commissioner of the NJDOT; Sharon Harrington, former Chief Administrator of the NJMVC; Diane Legreide, former Chief Administrator of the NJMVC; Vincent Schulze, Chief of the Commercial Bus Inspection and Investigation Unit for the NJDOT; and Michael Calorel, Principal Investigator for the NJDOT. These defendants will be collectively referred to as "State Defendants" and the individually named defendants will be referred to as "Individual State Defendants." Jimmy's Lakeside Garage ("Jimmy's") and James Restuccio are other defendants.

<sup>3</sup> Plaintiffs assert that these actions began in 2000, when the NJMVC assumed responsibility for commercial bus safety inspection from the State Police. [*Id.* ¶ 27.]

uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to accidents. The MCSAP also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs) for both interstate and intrastate motor carriers and drivers.

49 C.F.R. § 350.101.<sup>4</sup>

All States, including New Jersey, are eligible to receive MCSAP grants directly from the Federal Motor Carrier Safety Administration (“FMCSA”), provided they meet certain conditions, including assuming “responsibility for improving motor carrier safety and adopting and enforcing state safety laws and regulations that are compatible with” the Federal Regulations. 49 C.F.R. §§ 350.107, 350.201(a). In that regard, States are allowed and encouraged to promulgate their own enforcement laws. 49 C.F.R. §§ 303.3, 350.201(a), 355.1 *et seq.* New Jersey has expressly adopted the rules pertaining to safety of equipment found in the Federal Regulations at 49 C.F.R. § 393 *et seq.* See N.J.A.C. 16:53-1.1 (adopting the Federal Regulations at 49 C.F.R. § 393 *et seq.*); N.J.A.C. 6:53-3.1 (applying the Federal Regulations at 49 C.F.R. § 393 *et seq.* to all autobuses engaged in interstate common carrier services).

MCSAP regulations allow vehicles to be taken out of service for violations that would likely lead to an accident or breakdown. [Compl. ¶ 30.] According to MCSAP regulations, “[a]uthorized personnel shall declare and mark ‘out of service’ any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown.

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<sup>4</sup> Because Plaintiffs rely on the MCSAP regulations as an integral part of their Complaint, and because it is a matter of public record, the Court may consider the purpose and contents of the MCSAP as stated in the Code of Federal Regulations and may also consider the New Jersey Administrative Code, which adopts MCSAP measures. See *Rivera v. Algarin*, No. 08-1360, 2009 WL 2606653, at \*3 (3d Cir. Aug. 26, 2009).

An ‘Out of Service Vehicle’ sticker shall be used to mark vehicles ‘out of service.’” 49 C.F.R. § 396.9(c)(1). Vehicles bearing an “out of service” sticker may not be operated until repaired but may be towed by a vehicle using a crane or hoist:

No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked ‘out of service’ until all repairs required by the ‘out of service notice’ have been satisfactorily completed. The term ‘operate’ as used in this section shall include towing the vehicle, except that vehicles marked ‘out of service’ may be towed away by means of a vehicle using a crane or hoist.

49 C.F.R. § 369.9(c)(2); *see also* N.J.A.C. 16:53A-5.1, 5.3, 6.3. According to Plaintiffs, they were subjected to the highest level of inspection – Level 1 – requiring inspection of the inside outside, passenger compartment, and undercarriage of the bus. [Compl. ¶¶ 31, 32.] This is the type of inspection required of all autobuses engaging in interstate and intrastate common carrier service, such as Plaintiffs. 49 C.F.R. § 393; N.J.A.C. 16:53-3.1 *et seq.*

Plaintiffs do not allege that they were stopped any more frequently than white bus owners or operators. Rather, Plaintiffs allege that State Defendants often required Plaintiffs to have their buses towed to distant locations, such as Jimmy’s, resulting in towing costs, while allowing white owners and operators to drive their buses directly to repair centers. [*Id.* ¶¶ 34, 35, 37.] They further allege that State Defendants have fabricated violations and have taken Plaintiffs’ buses out of service based upon race. [*Id.* ¶ 37.] Plaintiffs generally assert that these alleged discriminatory practices have resulted in a reduction or elimination of Plaintiffs’ trips to Atlantic City and a loss of business. [*Id.* at ¶¶ 24, 40.]

Significantly, all summonses received by Plaintiffs were resolved by the Atlantic City Municipal Court, which either reached a disposition of guilty or dismissed the case based on a

plea agreement. [See Exhibit “A” attached hereto; Exhibit “B” attached hereto; Compl. ¶ 37.]<sup>5</sup> Exhibit A attached hereto is a representative sample of adjudications brought by Plaintiffs in the Atlantic City Municipal Court. Exhibit B attached hereto is a representative sample of the summonses issued to Plaintiffs by the NJDOT and/or NJMVC. None of Plaintiffs appealed any of the Municipal Court’s rulings through the State legal system. Instead, Plaintiffs filed an initial complaint on June 15, 2005 (Docket # 1) alleging violations of, *inter alia*, 42 U.S.C. §§ 1981 and 1983. On August 11, 2008, Plaintiffs filed the present Complaint. The Complaint contains causes of action for (1) civil rights violations under 42 U.S.C. § 1983 (Count I); (2) violation of 42 U.S.C. § 1981 (Count II); (3) conspiracy to violate federal rights under 42 U.S.C. § 1985(3) (Count III); (4) violations of the New Jersey Civil Rights Act, N.J. Stat. Ann. § 10:6-2(c), (e) (Count IV); (5) conversion (Count V); and (6) civil conspiracy (Count VI). Notably, the Complaint was the first time that Plaintiffs asserted their 42 U.S.C. § 1985(3) and civil conspiracy claims. Plaintiffs seek both compensatory and punitive damages, disgorgement of any fees paid as a result of State Defendants’ allegedly discriminatory acts, the return of any buses still held, and an order “permanently enjoining” State Defendants (and all persons working in concert with them) from engaging in race discrimination or otherwise violating Plaintiffs’ rights and privileges under the Constitutions of the United States and New Jersey.<sup>6</sup>

### **III. LEGAL ARGUMENT**

Plaintiffs’ Complaint should be dismissed pursuant to Federal Rules of Civil Procedure 12(b)(1) and/or 12(b)(6). Because this Court’s subject matter jurisdiction is a threshold question,

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<sup>5</sup> In two instances, a disposition was not reached because there was a warrant outstanding. [See Ex. A.]

<sup>6</sup> Pursuant to the order of Magistrate Judge Schneider, State Defendants were precluded from filing its motion to dismiss the Complaint until this time.

State Defendants first address grounds for dismissal pursuant to Rule 12(b)(1), followed by the grounds for dismissal pursuant to Rule 12(b)(6).

**A. The Claims Should Be Dismissed Pursuant to Federal Rule of Civil Procedure 12(b)(1).**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a court may grant a motion to dismiss for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). In deciding such a motion, a court must focus on whether it has jurisdiction to hear the claims and to grant relief. *Lueder v. New Jersey Bd. of Nursing*, No. 99-5744, 2000 WL 959490, at \*4 (D.N.J. July 11, 2000) (Simandle, J.).<sup>7</sup> There are two types of challenges that may be raised based on subject matter jurisdiction: “facial” challenges and “factual” challenges. *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 636 F.Supp.2d 359, 362 (D.N.J. 2009). A facial challenge rests on whether a plaintiff properly pleaded jurisdiction, whereas a factual attack rests on facts outside of the pleadings. *Id.*

If the 12(b)(1) motion raises a facial challenge to subject matter jurisdiction, such as a challenge based on immunity, a court should consider the allegations in the complaint and any documents referenced therein or attached thereto in the light most favorable to plaintiff. *Pappas v. Twp. of Galloway*, 565 F.Supp.2d 581, 586 (D.N.J. 2008). Consideration of a Rule 12(b)(1) motion based on a factual challenge to jurisdiction, however, attaches no presumption of truthfulness to a plaintiff’s allegations. *Id.* Accordingly, “a court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Landsman*, 636 F.Supp.2d at 362. A court may thus find facts based on affidavits or materials submitted to the Court. *Lueder*, 2000 WL 959490, at \*4. If a factual challenge arises, the burden of proving jurisdiction rests with the plaintiff. *Pappas*, 565 F.Supp.2d at 581.

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<sup>7</sup> Copies of all unpublished decisions cited herein are attached hereto, in alphabetical order, as Exhibit “C.”

Pursuant to Federal Rule of Civil Procedure 12(b)(1), this Court lacks subject matter jurisdiction over Plaintiffs' claims for four reasons: (1) Plaintiffs' claims are barred by sovereign immunity; (2) Plaintiffs' claims against the Individual State Defendants are barred by qualified immunity; (3) the Court should abstain pursuant to the *Younger v. Harris* doctrine; and (4) the *Rooker-Feldman* doctrine applies.

**1. Plaintiffs' claims are barred by sovereign immunity.**

"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. The Supreme Court has long recognized sovereign immunity and has commented that it:

is something of a misnomer, for the sovereign immunity of the States neither derives from nor is limited by the terms of the Eleventh Amendment. Rather, as the Constitution's structure, and its history, and the authoritative interpretations by [the Supreme Court] make clear, the States' immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today . . . except as altered by the plan of the Convention or certain constitutional Amendments.

*Alden v. Maine*, 527 U.S. 706, 712-13 (1999) (discussing the "invoidable" and "residuary" sovereignty States retained following ratification of the United States Constitution).<sup>8</sup> A State entity or actor is entitled to sovereign immunity if a judgment against the defendants would either be paid out of the State treasury, would interfere with State government administration, or would operate to compel the State to act or restrain from acting. *Edelman v. Jordan*, 415 U.S.

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<sup>8</sup> Plaintiffs' federal claims must be dismissed based on Eleventh Amendment sovereign immunity, while Plaintiffs' State law claims are subject to sovereign immunity for the reasons espoused in *Alden v. Maine*, 527 U.S. 706 (1999). See also *Allen v. Fauver*, 768 A.2d 1055, 1058 (N.J. 2001) (discussing application of sovereign immunity in New Jersey). If the Court determines that only the federal claims should be dismissed based on Eleventh Amendment sovereign immunity, the State law claims should still be dismissed because this Court should not exercise its supplemental jurisdiction over the State law claims where the federal claims have been dismissed. See 28 U.S.C. 1367(c)(3).

651, 663 (1974); *see also Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71 (1989); *Lassoff v. New Jersey*, 414 F.Supp.2d 483, 488 (D.N.J. 2006).

Sovereign immunity is not merely a defense to liability; it is immunity from suit. *See Fed. Mar. Comm'n v. S.C. State Port Auth.*, 535 U.S. 743, 766 (2002). The preeminent purpose of sovereign immunity is “to accord States the dignity that is consistent with their status as sovereign entities.” *Id.* at 760. An “unconsenting [S]tate is immune from suit in federal court filed by one of its own citizens, irrespective of the type of relief sought.” *Pappas*, 565 F.Supp.2d at 586-87 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-100 (1984)). Thus, sovereign immunity stands for the principle that States should be free to govern in accordance with the will of their citizens and should not be brought into federal court to answer complaints of private persons. *Fed. Mar. Comm'n*, 535 U.S. at 766.

There are three limited exceptions to State sovereign immunity. First, Congress may abrogate a State’s sovereign immunity for rights protected under the Fourteenth Amendment, through “an unequivocal expression of congressional intent to ‘overturn the constitutionally guaranteed immunity of the several States.’” *Pennhurst*, 465 U.S. at 99; *see also Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999). Second, a State may consent to a suit by making “a ‘clear declaration’ that it intends to submit itself” to a court’s jurisdiction. *Coll. Sav. Bank*, 527 U.S. at 675-76; *see also Blatchford v. Native Vill. of Noatak & Circle Vill.*, 501 U.S. 775, 779 (1991); *Pennhurst*, 465 U.S. 89, 99 (holding that anything less than unequivocal waiver of immunity will not subject a State to suit). Third, suits may proceed against State officials in their *official* capacity where a plaintiff seeks *prospective injunctive* relief – i.e., non-damage claims – for ongoing violations of *federal* law. *Longoria v. New Jersey*, 168 F.Supp.2d 308, 318 (D.N.J. 2001).

**(a) NJDOT and NJMVC are State entities and all claims asserted against them should be dismissed.**

Plaintiffs assert all six of their causes of action (Counts I through VI) against NJDOT and NJMVC. NJDOT has consistently been held to be a State entity and, therefore, is immune from suit in federal court. *See, e.g., Red Star Rowing & Transp. Co. v. Dep't. of Transp. of New Jersey*, 423 F.2d 104, 105-06 (3d Cir. 1970); *Citizen's Comm. for Env'tl. Prot. v. United States Coast Guard*, 456 F. Supp. 101, 102 (D.N.J. 1978). Similarly, NJMVC has been recognized as a State entity and, therefore, is immune from suit in this Court. *See Bowers v. Nat'l Collegiate Athletic Ass'n*, 475 F.3d 524, 545 (3d Cir. 2007); *see also* N.J. Stat. Ann. § 39:2A-4 (enabling act providing that the NJMVC is hereby “constituted as an instrumentality of the State exercising public and governmental functions, and the exercise by the commission of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State”); N.J. Stat. Ann. § 39:2A-24 (mandating that NJMVC is a “State agency” subject to all absolute and qualified immunities provided to public entities and public employees by law).

None of the exceptions apply. Courts have consistently held that Congress has not abrogated sovereign immunity for actions under 42 U.S.C. §§ 1983, 1981 or 1985. *Quern v. Jordan*, 440 U.S. 332, 341-45 (1979); *Pappas*, 565 F.Supp.2d at 586-87; *Bennett v. City of Atlantic City*, 288 F.Supp.2d 675, 683 (D.N.J. 2003). Plaintiffs have not and cannot point to any State statute abrogating sovereign immunity or demonstrating that the State entities have consented to suit. Importantly, the New Jersey Tort Claims Act, which allows suits against public entities and their employees in State courts, does not contain an express consent to suit in

federal courts and thus is not a waiver of sovereign immunity.<sup>9</sup> *Ritchie v. Cahall*, 386 F.Supp. 1207, 1209 (D.N.J. 1974).

All claims against NJDOT and NJMVC (Counts I through VI) should be dismissed in their entirety based upon sovereign immunity.

**(b) The damage claims asserted against the Individual State Defendants in their official capacity should be dismissed.**

Plaintiffs assert damage claims against the Individual State Defendants in their official capacity (Counts I through VI). Claims against State officials acting in their *official* capacity cannot proceed in federal court. *See Kentucky v. Graham*, 473 U.S. 159, 169 (1985); *Pennhurst*, 465 U.S. at 100-01; *Bennett*, 288 F.Supp.2d at 679 (stating that “[t]he breadth of State sovereign immunity protects not only States, but expands to protect entities and persons who can show that, even though the State is not the named defendant, ‘the State is the real, substantial party in interest’”). Sovereign immunity bars suit against State officials in their official capacity because it “is not a suit against the official but rather is a suit against the official’s office. As such, it is no different from a suit against the State itself.” *Will*, 491 U.S. at 71.

As with the claims against NJDOT and NJMVC, none of the exceptions apply. Congress has not abrogated immunity for any of the asserted claims, none of the Individual State Defendants has consented to suit<sup>10</sup> and Plaintiffs seek monetary relief through their damage claims. Plaintiffs’ damage claims against the Individual State Defendants in their official capacity should accordingly be dismissed based upon sovereign immunity.

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<sup>9</sup> Plaintiffs’ New Jersey State law tort claims are also subject to dismissal for failure to provide timely notice as set forth, *infra*, in § III,B,8. *See* N.J. Stat. Ann. § 59:8-8.

<sup>10</sup> Nor could the Individual State Defendants consent to suit, as the only way a State can consent to suit is through an act of legislature. *Alden*, 527 U.S. at 757-58.

**(c) The remaining claims against the Individual State Defendants in their individual capacity and for injunctive relief should also be dismissed.**

As noted, sovereign immunity clearly bars Plaintiffs' claims against the NJDOT and the NJMVC, as well as damage claims against the Individual State Defendants sued in their official capacity. Plaintiffs also assert damage claims against the Individual State Defendants in their individual capacity, as well as claims for prospective injunctive relief against the Individual State Defendants in their official capacity for violations of State and federal laws.

Plaintiffs' individual capacity claims for damages must fail because the Complaint utterly lacks a single allegation demonstrating that the Individual State Defendants acted in a manner outside of their duties as employees of the NJDOT or the NJMVC. *See Watts v. Internal Revenue Serv.*, 925 F.Supp. 271, 275 (D.N.J. 1996) (holding individual employees of Internal Revenue Service sued in individual capacity entitled to sovereign immunity where employees imposed tax liens, a duty within the scope of their employment); *see also Slinger v. New Jersey*, No. 07-5561, 2008 WL 4126181, at \*9-11 (D.N.J. Sept. 4, 2008) (dismissing plaintiffs' individual capacity claims against officials employed by the New Jersey Prosecutor's Office where Plaintiffs claimed that the officials had improperly brought charges against them in violation of their constitutional rights because the officials acted within the scope of their duties as one of the responsibilities of the prosecutor's office is to enforce the laws); *Kandil v. Yurkovic*, No. 06-4701, 2007 WL 4547365, at \*1 (D.N.J. Dec.18, 2007) (holding sovereign immunity applied to a county prosecutor's office, barring all of plaintiff's claims, including claims of negligent training and supervision).

Rather, all of the actions forming the basis of the Complaint were taken in the Individual State Defendants' official capacity for the State entities. Likewise, Plaintiffs' official capacity claims for injunctive relief must fail because such claims may not proceed for alleged violations

of State law and injunctive relief for alleged violations of federal law is not proper in this instance.

The complaint contains no allegations demonstrating that the Individual State Defendants acted in a manner outside their duties as employees of the NJDOT or the NJMVC. Rather, all of the claims relate to the manner in which these officials did their jobs for these State entities, particularly as those responsible for inspecting and issuing summonses to buses operating in Atlantic City under the purview of the NJDOT or NJMVC. *See, e.g.*, 49 C.F.R. § 393 *et seq.*; N.J.A.C. 16:53-1.1, 3.1. The claims against the Individual State Defendants should also be dismissed based upon Plaintiffs' failure to meet the requisite pleading requirements for individual liability. *See* §§ III,B,4(a), *infra*. Although no well-pleaded allegations exist that any Individual State Defendant acted with racial animus or malice, Plaintiffs' tort claims are also barred by the New Jersey Tort Claims Act, N.J. Stat. Ann. § 59:2-10 ("A public entity is not liable for the acts or omissions of a public employee constituting a crime, actual fraud, actual malice, or willful misconduct."). Under these circumstances, the individual capacity claims should be dismissed.

Finally, Plaintiffs' request for prospective injunctive relief should be dismissed or severely limited. As set forth above, Plaintiffs broadly seek injunctive relief against the Individual State Defendants to prevent "ongoing" violations of their civil rights. To the extent Plaintiffs seek injunctive relief related to their State law claims (Counts IV-VI), that request should be dismissed in its entirety. *See Pennhurst*, 465 U.S. at 101 (prospective injunctive relief against State officials not available to enforce State law claims). As for the federal claims, those claims should be dismissed for the reasons set forth below.

**2. Plaintiffs' claims against the Individual State Defendants are barred by the doctrine of qualified immunity.**

Under the doctrine of qualified immunity, State actors performing discretionary functions “are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To overcome application of qualified immunity, a plaintiff must establish both (i) that the official’s conduct violated a constitutional right; and (ii) that such constitutional right was clearly established at the time of the alleged misconduct. *Pearson v. Callahan*, 129 S.Ct. 808, 815-16, 818 (2009). A right is clearly established if it is “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Here, Plaintiffs have failed to allege that any official’s conduct violated a constitutional right or, for that matter, that any of the Individual State Defendants engaged in any particular activity at all. To establish the violation of a constitutional right, Plaintiffs must allege that the Individual State Defendants had “personal involvement in the alleged wrongs . . . Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence.” *See Tarpley v. State of New Jersey*, No. 05-2321, 2006 WL 267085, at \*2 (D.N.J. Jan. 31, 2006) (Simandle, J.). Plaintiffs’ Complaint is completely devoid of allegations that any Individual State Defendant had any personal involvement in the alleged wrongs.

Assuming, *arguendo*, that Plaintiffs have adequately alleged that an Individual State Defendant had personal involvement in the deprivation of one of Plaintiffs’ constitutional rights, the constitutional right was not clearly established at the time of the alleged violation. Qualified immunity shields those officers from liability that mistakenly, but reasonably, believed their actions were lawful. *Torres v. United States*, 200 F.3d 179, 184 (3d Cir. 1999). Therefore,

Plaintiffs must establish that it would have been clear to a reasonable person “that his conduct was unlawful in the situation he confronted.” *Jimenez v. New Jersey*, 245 F.Supp.2d 585, 587 (D.N.J. 2003).

Plaintiffs have utterly failed to allege any facts that could support a finding that the Individual State Defendants unreasonably believed their actions to be lawful. Individual State Defendants acted pursuant to the regulations set forth under the MCSAP through the Code of Federal Regulations and New Jersey Administrative Code. *See* 49 C.F.R. § 393 *et seq.*; N.J.A.C. 63:15-1.1, 3.1. Plaintiffs had the opportunity to contest the violations emanating from the allegedly tainted inspections in the Atlantic City Municipal Court. The Complaint, however, contains no allegations that Plaintiff raised these issues in the Municipal Court. Because Plaintiffs have failed to allege any facts demonstrating that any Individual State Defendant was aware that he was violating one of Plaintiffs’ constitutional rights, the Individual State Defendants should be dismissed from this case based on qualified immunity.

**3. Plaintiffs’ Complaint should be dismissed pursuant to the *Younger* doctrine.**

*Younger v. Harris*, 401 U.S. 37 (1971), and its progeny “espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances.” *Middlesex County Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423, 431 (1982); *Cade v. Newman*, 422 F.Supp.2d 463, 466 (D.N.J. 2006). *Younger* requires that federal courts abstain from enjoining, either explicitly or implicitly, any State civil proceeding implicating important State interests. *Port Auth. Police Benevolent Ass’n, Inc. v. Port Auth. of New York and New Jersey Police Dep’t*, 973 F.2d 169, 173 (3d Cir. 1992); *see also Middlesex*, 457 U.S. at 431 (“The policies underlying *Younger* are fully applicable to noncriminal judicial

proceedings when important state issues are involved.”); *Zahl v. Harper*, 282 F.3d 204, 208-09 (3d Cir. 2002).

*Younger* abstention is appropriate when: (1) there is a pending State judicial proceeding; (2) the State proceeding implicates important State interests; and (3) there is an adequate opportunity to raise the constitutional challenges in the State proceedings. *Zahl*, 282 F.3d at 209; *Port Auth. Police Benevolent Ass’n*, 973 F.2d at 173. The definition of “pending” for purposes of *Younger* abstention includes final determinations of municipal courts where no appeal therefrom has been sought:

[A] coercive administrative proceeding has been initiated by the State in a state forum, where adequate state-court judicial review of the administrative determination is available to the federal claimants, and where the claimants have chosen not to pursue their state-court judicial remedies but have instead sought to invalidate the State’s judgment by filing a federal action.

*O’Neill v. Philadelphia*, 32 F.3d 785, 791 (3d Cir. 1994) (abstaining pursuant to *Younger* where plaintiffs lost their parking ticket challenges before a municipal adjudicative body and failed to seek State-court judicial review, opting instead to file a complaint in federal court alleging, *inter alia*, violation of their due process rights under § 1983); *see also W.K. v. New Jersey Div. of Dev. Disabilities*, 974 F.Supp. 791, 794 (D.N.J. 1997) (“It is well-settled that ‘[f]or *Younger* purposes, a state’s trial and appeals process is treated as a unitary system, and for a federal court to disrupt its integrity by intervening in midprocess would demonstrate a lack of respect for the State as sovereign.”). In addition, the definition of “judicial” for purposes of the *Younger* doctrine includes final determinations of municipal courts because such determinations involve the application of existing law to the facts of a particular case. *See Zahl*, 282 F.3d at 209; *Lueder*, 2000 WL 959490, at \*5. In other words, a proceeding is judicial in nature if it “investigates,

declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist.” *W.K.*, 974 F.Supp. at 794 n.2.

Here, all three prongs under the *Younger* doctrine are met. As set forth above, Plaintiffs had the opportunity to contest each and every summons they received from the NJDOT or NJMVC before the Atlantic City Municipal Court. The Complaint contains no allegations that Plaintiffs were ever deprived of that opportunity. In each instance, Plaintiffs contested their summons without raising the present challenges to the Atlantic City Municipal Court. In addition, Plaintiffs had the right to appeal judgments of the Municipal Court to the Superior Court, Law Division, but failed to do so. N.J. R. Civ. P. 4:74-2-4:74-4. Plaintiffs also had the right to appeal any final judgment of the Superior Court or State Administrative Agencies to the Appellate Division, but failed to do so. *Id.* at 2:2-3. Plaintiffs could have appealed from any final judgment of the Appellate Division to the New Jersey Supreme Court and, ultimately, to the United States Supreme Court, but failed to do so. *Id.* at 2:2-1; 28 U.S.C. § 1257. Simply put, there are no allegations that Plaintiffs ever raised the alleged constitutional claims they seek to raise in this action either in front of the Municipal Court or on appeal in State court.

Rather than raising their issues before the Atlantic City Municipal Court or pursuing the appropriate appeal in the New Jersey State Courts, Plaintiffs have sought instead to invalidate the Municipal Court’s judgments by filing this federal action seeking, *inter alia*, “disgorgement” of any fines they paid to the State. *Younger* requires abstention in this instance because there are judicial proceedings pending where Plaintiffs could bring or could have brought their constitutional challenges. *See Lueder*, 2000 WL 959490, at \*7 (“When a plaintiff has the right to appeal an administrative board’s decision to the New Jersey Appellate Division, he has an

adequate opportunity to raise constitutional claims because state courts are as legally competent as federal courts to adjudicate federal constitutional claims.”).

With regard to important state interests, the NJMVC was established by the Executive Branch of the New Jersey State Government pursuant to the New Jersey Constitution and through the Motor Vehicle Security and Customer Service Act (the “Act”). N.J. Stat. Ann. §§ 39:2A-1, 4. The NJMVC has as its “immediate goal the improvement of the **safety and security of the State’s motor vehicle licensing, registration, titling and inspection system.**” N.J. Stat. Ann. § 39:2A-29 (emphasis added). Importantly, the “exercise of the powers granted by [the Act] will be in all respects **for the benefit of the people of the State**, for the increase of their commerce and prosperity, and the improvement of their health and living conditions . . . .” N.J. Stat. Ann. § 39:2A-31 (emphasis added). There is no question that important State interests are implicated here.

Simply put, Plaintiffs want the federal court to inject itself into a State judicial proceeding involving important State interests and undo adjudications made by State courts. In doing so, Plaintiffs seek to bypass their obligation to raise their constitutional complaints with the State courts both at the trial court and appellate levels. *Younger* teaches that the State’s interest in adjudicating claims such as Plaintiffs’ cannot be disregarded. Plaintiffs have failed to plead any special circumstances that would take this case out of the reach of *Younger*. Because Plaintiffs must present their challenges in the first instance to the State Courts of New Jersey, this Court should abstain from hearing Plaintiffs’ claims pursuant to the *Younger* abstention doctrine and Rule 12(b)(1).

**4. Plaintiffs' Complaint should be dismissed pursuant to the *Rooker-Feldman* doctrine.**

28 U.S.C. § 1257 provides: “Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . . .” The negative implication of this rule, as set forth in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1983), and *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), is that lower federal courts lack subject matter jurisdiction to review final judgments of the highest court of the respective States. *E.B. v. Verniero*, 119 F.3d 1077, 1090 (3d Cir. 1997). The Third Circuit has interpreted the *Rooker-Feldman* doctrine to encompass final decisions of lower State courts as well. *Id.*; *Forchion v. New Jersey*, No. 06-623, 2007 WL 2248112, at \*2 (D.N.J. Aug. 1, 2007) (Simandle, J.) (applying *Rooker-Feldman* doctrine to federal claim seeking reversal of decisions rendered by State judicial bodies, from which plaintiff had the right to State appellate review). The Third Circuit has explained that “[u]nder *Rooker-Feldman*, a federal court lacks subject matter jurisdiction when, in order to grant the relief sought, the federal court must conclude that the state court’s judgment in a prior proceeding was entered in error, or must take action that would render the state judgment ineffectual.” *Gary v. Braddock Cemetery*, 517 F.3d 195, 206 (3d Cir. 2008) (internal quotations omitted).

The *Rooker-Feldman* doctrine applies to cases “brought by state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Church of the Universal Brotherhood v. Farmington Twp. Supervisors*, 296 Fed.Appx. 285, 289 (3d Cir. 2008). Moreover, the *Rooker-Feldman* doctrine applies to claims brought in federal court that are inextricably intertwined with a State adjudication where federal relief “can only be predicated upon a conviction that the state court was wrong.” *Forchion*, 2007 WL 2248112, at \*2.

Importantly, if a plaintiff's claim in federal court is inextricably intertwined with a State court adjudication, the district court lacks jurisdiction over the claim **even if it was not raised in the State court**. *Id.* “[A] party’s recourse for an adverse decision in state court is an appeal to the appropriate state appellate court, and ultimately to the United States Supreme Court under § 1257, not a separate action in federal court.” *Id.* (alterations omitted).

Each one of the *Rooker-Feldman* elements is met here. Plaintiffs either entered into a plea agreement or were found guilty of safety violations at the Atlantic City Municipal Court level. Plaintiffs are, in essence, complaining of the injuries caused by the judgments of the Atlantic City Municipal Court, which are inextricably intertwined with Plaintiffs’ federal claims. [See, e.g., Compl. ¶¶ 37, 39 (“forcing Plaintiffs to pay thousands of dollars in illegal fines”) (“forced Plaintiffs to pay unwarranted, illegal, and substantial amounts for, *inter alia*, unnecessary towing, repairs, substitute bus service, storage fees, fines, and court fees”).] Plaintiffs appeared in Municipal Court and did not raise these issues, nor did they appeal their claims through the New Jersey State courts, making the *Rooker-Feldman* doctrine applicable in this instance. See *Sutton v. Sutton*, 71 F.Supp.2d 383, 392 (D.N.J. 1999) (Simandle, J.) (abstaining from hearing federal claims based on the *Rooker-Feldman* doctrine where Probate Court rendered decisions, stating that those decisions were adjudications, declaring and enforcing liabilities under the law and “[a]ny review of those decisions could be handled through the appellate procedures of the New Jersey state courts”).

The Atlantic City Municipal Court’s decisions were rendered prior to the filing of this Complaint, and Plaintiffs are inviting this Court to review and reject those decisions. Every time Plaintiffs received a summons they had the opportunity to raise their present challenges to the Municipal Court, but failed to do so. Thus, based on the *Rooker-Feldman* doctrine, this Court

does not have subject matter jurisdiction over Plaintiffs' claims and should accordingly dismiss the Complaint pursuant to Rule 12(b)(1).

**B. The Claims Should Be Dismissed Pursuant to Federal Rule of Civil Procedure 12(b)(6).**

Even assuming that the Court had subject matter jurisdiction, Plaintiffs' claims should be dismissed for legal insufficiency pursuant to Federal Rule of Civil Procedure 12(b)(6) because (1) Plaintiffs have failed to allege any actions occurring within the applicable two year statute of limitations; (2) State Defendants are not "persons" within the meaning of the State and federal civil rights statutes; (3) Plaintiffs are not entitled to punitive damages on any of their claims because there are no allegations that State Defendants committed the alleged acts with malice; (4) Plaintiffs have failed to allege a violation of § 1983 because there are no allegations that the Individual State Defendants participated in the alleged violations or that they violated the United States Constitution or other law; (5) Plaintiffs have failed to allege a violation of § 1981 because there are no allegations from which discriminatory animus may be inferred; (6) Plaintiffs have failed to allege a violation of § 1985(3) because there are no allegations that a conspiratorial agreement was reached between State Defendants or any facts from which discriminatory animus may be inferred; (7) Plaintiffs have failed to allege a violation of NJCRA for the same reasons they failed to allege a § 1983 claim; (8) Plaintiffs have failed to file a notice setting forth the content of their State tort claims; (9) Plaintiffs have failed to allege a claim for conversion because the allegations pertain to Jimmy's only, and there are no allegations that State Defendants ever exercised control or dominion over Plaintiffs' property; and (10) Plaintiffs have failed to allege a claim for civil conspiracy because there are no allegations that a conspiratorial agreement was reached between State Defendants.

Importantly, the standard, although well-established, has recently been clarified by the Supreme Court. In this regard, while a court must accept as true all well-pleaded factual allegations, it need not accept as true legal conclusions. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). Nor must a court accept implausible inferences from factual allegations. *Id.* at 1949-50. Importantly, “[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements do not suffice.” *Id.*; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (stating that a pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do”).

“Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not shown-that the pleader is entitled to relief.” *Iqbal*, 129 S.Ct. at 1950 (internal quotation marks omitted). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. It is not sufficient to merely provide a statement of facts that creates suspicion of a legally cognizable right of action. *Id.* Rather, the allegations in the complaint must “nudge” the plaintiff’s claims “across the line from conceivable to plausible.” *Iqbal*, 129 S.Ct. at 1950-51; *Twombly*, 550 U.S. 544. In deciding whether a plaintiff has satisfied these requirements for purposes of a motion to dismiss, a court may consider the allegations of the complaint, exhibits attached thereto, and matters of public record, including judicial proceedings. *Lum v. Bank of America*, 361 F.3d 217, 222 n.3 (3d Cir. 2004).

1. **Counts I (§ 1983), II (§ 1981), III (§ 1985(3)), IV (NJCREA), and VI (Civil Conspiracy) should be dismissed, in whole or in part, as untimely for failing to have been brought within the statute of limitations.**

The Complaint asserts causes of action based upon alleged violations of 42 U.S.C. §§ 1983 (Count I), 1981 (Count II) and 1985(3) (Count III), as well as violations of the NJCREA

(Count IV) and a claim for civil conspiracy (Count VI). The timeliness of §§ 1981(a), 1983, and 1985(3) claims is governed by the forum State's personal injury statute, which in this instance is two years.<sup>11</sup> N.J. Stat. Ann. § 2A:14-2; *see also Jones*, 541 U.S. at 382-83 (addressing § 1981(a)); *Garland*, 270 Fed. Appx. at 103 (same); *Kost v. Kozakiewicz*, 1 F.3d 176, 189-90 (3d Cir. 1993) (addressing § 1983); *Bougher v. Univ. of Pittsburgh*, 882 F.2d 74, 79 (3d Cir. 1989) (addressing § 1985(3)). The two year statute of limitations also governs Plaintiffs' NJCRA and civil conspiracy claims. *See Kirkland v. Morglevich*, No. 04-1651, 2008 WL 5272028, at \*10 (D.N.J. Dec. 16, 2008).

The statute of limitations runs from **each** overt act causing plaintiff damage. *Bougher*, 882 F.2d at 80. The statute of limitations thus begins to run when plaintiff knows or has reason to know of the injury or acts forming the basis of his complaint. *Id.* The statute begins to run even though plaintiff may not know "the full legal significance of the material facts in the case." *Hauptmann v. Wilentz*, 570 F.Supp. 351, 397 n.46 (D.N.J. 1983). Importantly, a plaintiff may not piggy-back an act otherwise barred by the statute of limitations onto acts occurring within the relevant time period. *Wells v. Rockefeller*, 728 F.2d 209, 217 (3d Cir. 1984).

Here, Plaintiffs' claims should be dismissed in their entirety because Plaintiffs simply have not provided a date for any alleged violation occurring within the statute of limitations. Rather, they broadly allege that the actions are "continuing." These pleadings are insufficient because, as noted, the statute of limitations begins to run from **each** instance. The only reference

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<sup>11</sup> Section 1981(a) provides every person within the jurisdiction of the United States the same right "to make and enforce contracts . . ." 42 U.S.C. § 1981(a). In 1991, § 1981 was amended through subsection (b) to include a prohibition against conduct that occurs **after** the formation of a contract. 42 U.S.C. § 1981(b); *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 373 (2004). Only where a § 1981 claim is made possible due to the 1991 amendment will a four-year statute of limitations apply. 28 U.S.C. § 1658; *Jones*, 541 U.S. at 373. Because Plaintiffs' § 1981 claims could have been brought under subsection (a), they are governed by New Jersey's two-year personal injury statute. *See id.* at 382-83; *Garland v. US Airways Inc.*, 270 Fed. Appx. 99, 103 (3d Cir. 2008) (holding that, where a plaintiff could have filed his § 1981 claim under the pre-1990 version of § 1981, the forum state's personal injury statute applied).

to any time period in Plaintiffs' Complaint is to 2000, "when NJMVC assumed responsibility for commercial bus safety inspection from the State Police." [Compl. ¶ 27.] That is when, based on the allegations in the Complaint, Plaintiffs knew or should have known of the bases of their causes of action. Plaintiffs have provided no other well-pleaded allegations to suggest that the statute of limitations accrued on any other date.<sup>12</sup> Thus, the statute of limitations began to run in 2000. Notably, Plaintiffs filed their § 1985(3) and civil conspiracy claims for the first time on August 11, 2008 when they filed the Complaint.<sup>13</sup> Plaintiffs filed their other claims on June 15, 2005. Because Plaintiffs' claims are stale, they should be dismissed in their entirety.

**2. Counts I (§ 1983), III (§ 1985(3)) and IV (NJCRA) should be dismissed because none of the State Defendants are "persons" subject to suit.**

By their very terms, §§ 1983 and 1985(3) only apply to a defendant that fits within the definition of a "person." 42 U.S.C. § 1983 ("Every **person** who . . . 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 . . .") (emphasis added); 42 U.S.C. § 1985(3) ("If two or more **persons** in any State or Territory conspire . . .") (emphasis added). "Person" for these purposes does not include a State or State

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<sup>12</sup> Plaintiffs allege that Defendants' conduct is "ongoing." [Compl. ¶ 52.] This allegation is a legal conclusion not entitled to an assumption of truth. *Iqbal*, 129 S.Ct. at 1949-50. Plaintiffs have not alleged any well-pleaded facts entitled to the assumption of truth that could lead the Court to conclude that Plaintiffs have a cause of action that accrued within the statute of limitations. Although not well-pleaded, each of Plaintiffs was involved in discrete incidents on different dates involving different factual circumstances. Because the statute of limitations runs from each overt act causing Plaintiffs damage, Plaintiffs' claims must be dismissed for failure to state a claim. *See Bougher*, 882 F.2d at 80.

<sup>13</sup> Plaintiffs' conspiracy claims do not relate back to the filing date of the original complaint for purposes of the statute of limitations. Relation back is only allowed for claims asserted in the amended pleading that "arose out of the conduct, transaction or occurrence set out—or attempted to be set out—in the original pleading." Fed. R. Civ. P. 15(c)(2). Because Plaintiffs' claim of conspiracy, which requires a meeting of the minds of co-conspirators, does not arise out of the conduct, transaction or occurrence set out in the original pleading, Plaintiffs' claims do not relate back. *See Twombly*, 550 U.S. at 557. Even if the conspiracy claims do relate back, they are still untimely because Plaintiffs did not file their initial complaint until June 15, 2005.

officials acting in their official capacities. *See Will*, 491 U.S. at 71. The requirement that the party sued be a “person” is the same under the New Jersey Civil Rights Act. N.J.S.A. 10:6-2.

As set forth above, it is well-established that the NJDOT and the NJMVC, as well as their employees and officials, are State entities or actors. State entities or officials are not “persons” subject to suit under §§ 1983 and 1985(3) and the NJCRA. Consequently, Counts I, III and IV should be dismissed for failure to state a claim upon which relief could be granted.

**3. Plaintiffs are not entitled to punitive damages on any of their claims (Counts I through VI).**

Plaintiffs seek punitive damages on all counts of their Complaint. Punitive damages are available only “when the defendant’s conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.” *Brennan v. Norton*, 350 F.3d 399, 428-29 (3d Cir. 2003). Plaintiffs’ Complaint raises no allegations to support a punitive damages award. Plaintiffs’ conclusory allegation that the State Defendants “committed the foregoing acts intentionally and with actual malice” is nothing more than a threadbare recital of the elements of a cause of action for punitive damages.<sup>14</sup> *Iqbal*, 129 S.Ct. at 1949-50 (stating that “[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements do not suffice . . . . A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’”). As such, Plaintiffs have failed to allege sufficient facts that could entitle them to an award of punitive damages and Plaintiffs’ claims for that relief should be dismissed.

**4. Count I (§ 1983) should be dismissed as legally insufficient.**

Count I alleges a claim under 42 U.S.C. § 1983 for various alleged constitutional infringements. To state a § 1983 cause of action, a plaintiff must allege that: (1) the conduct

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<sup>14</sup> *See* discussion in §III,B,6(b), *infra*.

complained of was committed by a person acting under color of State law, and (2) that such conduct deprived a person of rights, privileges and immunities secured by the Constitution or laws of the United States. *Bougher*, 882 F.2d at 78 (3d Cir. 1989). As set forth above, State Defendants are not “persons” capable of being sued within the meaning of § 1983 and, therefore, Plaintiffs’ § 1983 claims should be dismissed. Notwithstanding this fact, Plaintiffs’ § 1983 claim fails for additional, independent reasons.

**(a) The Individual State Defendants may not be sued in their individual capacities because no allegations of direct participation exist.**

Plaintiffs have alleged § 1983 claims against the Individual State Defendants in their individual capacity. These Individual State Defendants should be dismissed from suit in their individual capacity because Plaintiffs have failed to state a claim against them. In an individual capacity suit, a plaintiff may impose personal liability on a government official for action taken under color of State law. *Kentucky*, 473 U.S. at 165-66. To sustain such a claim, a plaintiff must allege that the official personally participated in the events constituting the alleged violation. *Snyder v. Baumecker*, 708 F.Supp. 1451, 1458 (D.N.J. 1989). Without allegations of personal involvement, no individual liability can attach to an individual official. *Id.* at 1458-59. Thus, in order to state a § 1983 claim, “a plaintiff must plead that **each** Government-official defendant, through **the official’s own individual actions**, has violated the Constitution.” *Iqbal*, 129 S.Ct. at 1948 (emphasis added).

Where a claim is alleged against a supervisor, individual liability may only attach where there are allegations of personal involvement as well as allegations that the supervisor directed the actions of supervisees or actually knew of the actions and acquiesced in them. *Jetter v. Beard*, 130 Fed. Appx. 523, 526 (3d Cir. 2005).

A defendant in a civil rights action must have personal involvement in the alleged wrongs, liability cannot be predicated solely on the operation of *respondeat superior*. Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of personal direction or actual knowledge and acquiescence must be made with appropriate particularity.

*Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988) (citations omitted); *see also Atkinson v. Taylor*, 316 F.3d 257, 270 (3d Cir. 2003); *Tarpley*, 2006 WL 267085, at \*2.

Plaintiffs have not come close to satisfying this pleading requirement. Plaintiffs have not alleged any facts to support a conclusion that the Individual State Defendants had any personal involvement in the alleged violations. Thus, Plaintiffs' claims against the Individual State Defendants in their individual capacity fail to state a cause of action upon which relief can be granted under 42 U.S.C. § 1983 and should be dismissed.<sup>15</sup>

**(b) Plaintiffs have not adequately alleged that State Defendants deprived them of rights, privileges and immunities secured by the Constitution.**

Section 1983 does not create any rights, but rather provides a remedy for violation of rights created by the United States Constitution or other federal law. *Mayer v. Gottheiner*, 382 F.Supp.2d 635, 646-47 (D.N.J. 2005). To establish that such a right has been violated, a plaintiff must "identify the exact contours of the underlying right said to have been violated." *Id.* at 647. Here, Plaintiffs have alleged violations of their rights to equal protection of the laws and due process of law, secured by the Fourteenth Amendment to the United States Constitution. They also alleged interference with interstate commerce and the right to travel.

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<sup>15</sup> For the same reasons, Plaintiffs' §§ 1981 and 1985(3) as well as their NJCRA, conversion and civil conspiracy claims fail.

**(i) Plaintiffs' Fourteenth Amendment equal protection claim fails.**

The Fourteenth Amendment provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1. This clause prohibits racial profiling through selective enforcement of the law. *Whren v. United States*, 517 U.S. 806, 813 (1996). In order to state a racial profiling claim in the equal protection context, a plaintiff must allege and prove that the defendant's actions "(1) had a discriminatory effect and (2) were motivated by a discriminatory purpose." *Bradley v. United States*, 299 F.3d 197, 205 (3d Cir. 2002). Plaintiffs' Complaint fails to sufficiently allege discriminatory purpose.

In order to survive a motion to dismiss for failure to state a § 1983 claim, there must be factual allegations that suggest some racial or otherwise invidiously discriminatory animus behind State Defendants' actions. Conclusory allegations of motive, without more, are insufficient to survive a motion to dismiss. Plaintiffs need to allege more by way of factual content to "nudge" their claims of purposeful discrimination "across the line from conceivable to plausible." Accordingly, Plaintiffs' § 1983 claim should be dismissed with prejudice for failure to adequately allege racial animus on the part of State Defendants.

**(ii) Plaintiffs' Fourteenth Amendment due process claim fails.**

Plaintiffs allege that State Defendants have violated the Fourteenth Amendment by depriving Plaintiffs of their property without procedural due process of law. [See Compl. ¶¶ 46, 47.] The Fourteenth Amendment prohibits any State from depriving any person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1. Property loss caused by

State or local government officials, however, does not give rise to a procedural due process claim under § 1983 if a meaningful post-deprivation remedy for the loss is available under State law. *Albudairy v. Deiter*, 307 Fed.Appx. 604, 605 (3d Cir. 2008).

The New Jersey Tort Claims Act, N.J. Stat. Ann. § 59:1-1, *et seq.*, is a State law that provides post-deprivation judicial remedies to persons who allege that a State or local government has deprived them of property. *Id.* Thus, Plaintiffs' recourse in this case would be in the form of an action under the New Jersey Tort Claims Act. *See id.* Although a New Jersey Tort Claims Act claim under the facts as alleged would likely not have any merit, because Plaintiffs have a remedy available under State law, their § 1983 due process claim should be dismissed.

**(iii) Plaintiffs' interference with interstate commerce claim fails.**

The Commerce Clause of the United States Constitution states that Congress has the power “[t]o regulate Commerce . . . among the several States . . . .” U.S. Const. art. I, § 8. The Commerce Clause has been interpreted to prohibit States - even in the absence of congressional action - from passing laws that negatively impact the free flow of interstate commerce. *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 440 (1978). “At the same time, however, it never has been doubted that much [S]tate legislation, designed to serve legitimate [S]tate interests and applied without discrimination against interstate commerce, does not violate the Commerce Clause even though it affects commerce.” *Id.*

Plaintiffs' reliance on the Commerce Clause is misplaced. As noted, the Commerce Clause prohibits **States** from **passing laws** that impact interstate commerce. *See, e.g., id.* at 440 (seeking to enjoin enforcement of a Wisconsin statute that, for safety reasons, prevented trucks longer than 55 feet from being operated on highways within that State); *Bibb v. Navajo Freight*

*Lines, Inc.*, 359 U.S. 520 (1959) (seeking to enjoin enforcement of an Illinois law that required mud flaps on vehicles for safety reasons as violative of Commerce Clause); *see also Camden County Bd. of Chosen Freeholders v. Beretta U.S.A. Corp.*, 123 F.Supp.2d 245, 254 (D.N.J. 2000) (Simandle, J.) (citing cases and stating, “the cases focusing on the commerce clause have considered state statutes or regulations”). Here, Plaintiffs are in effect challenging the MCSAP, which they admit is a federal grant program, administered by the Federal Motor Carrier Safety Administration. All of the State Defendants’ actions are the result of the MCSAP and the New Jersey Administrative Code, promulgated pursuant to and incorporating the provisions of the MCSAP. Thus, based on the allegations in the Complaint, the congressional power to regulate commerce among the several States has not been impacted. *See* U.S. Const. art. I, § 8. Plaintiffs’ interstate commerce claim should therefore be dismissed.

**(iv) Plaintiffs’ interference with the right to travel claim fails.**

Although the right to interstate travel is not expressly contained in the United States Constitution, interstate travel is a firmly embedded fundamental right. *Saenz v. Roe*, 526 U.S. 489, 498 (1999). The right to travel embraces three different components:

It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.

*Id.* at 501.

Here, Plaintiffs claim that State Defendants “have interfered with and prevented Plaintiffs from exercising their Constitutional right to travel freely between the several states.” [Compl. ¶ 49.] Contrary to this conclusory allegation, however, are Plaintiffs’ own well-pleaded facts. Indeed, according to the well-pleaded facts of the Complaint, Plaintiffs operate tour buses

between Pennsylvania and New Jersey on Friday and Saturday nights. [Compl. ¶ 24.] Therefore, according to the well-pleaded facts in the Complaint, Plaintiffs have failed to state a claim for interference with the right to travel.

In addition, the right to travel protects individuals only from statutes, rules, and regulations that unreasonably burden or restrict the right to travel. 16A C.J.S. *Constitutional Law* § 693 (2009). Plaintiffs have utterly failed to allege that any statute, rule or regulation has restricted their right to travel. The only statute Plaintiffs point to is the MCSAP, which the State of New Jersey has adopted. Plaintiffs, however, do not complain that such statute impedes their right to travel. Accordingly, Plaintiffs have failed to state a claim and their right to travel claim should be dismissed.

**5. Count II (§ 1981) should be dismissed as legally insufficient.**

Count II alleges violations of § 1981 on the basis of discriminatory interference with Plaintiffs' right to contract. Section 1981 prohibits racial discrimination in the making and enforcement of contracts, and provides in pertinent 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 to no other.

42 U.S.C. § 1981(a).

In order to state a claim under § 1981, a plaintiff must allege facts in support of the following elements: (1) that they are a member of a racial minority; (2) intent to discriminate on the basis of race by the defendant; and (3) discrimination concerning one or more of the activities enumerated in § 1981, including the right to make and enforce contracts. *Brown v. Philip Morris*

*Inc.*, 250 F.3d 789, 797 (3d Cir. 2001). Here, Plaintiffs have failed to sufficiently allege intent to discriminate on the basis of race.

As explained more fully below in § III,B,6(b), “conclusory allegations of racial bias do not establish discriminatory intent.” *Coleman v. State of New Jersey Div. of Youth & Family Servs.*, 246 F.Supp.2d 384, 390 (D.N.J. 2003). In other words, a plaintiff may not simply recite the threadbare elements of a claim. *Iqbal*, 129 S.Ct. at 1949-50. Rather, to set forth a claim under § 1981, plaintiffs must allege that defendants intended to discriminate on the basis of race **and** facts from which a discriminatory animus may be inferred. *Clarke v. Eisenhower*, 199 Fed.Appx. 174, 175 (3d Cir. 2006).

The Complaint contains nothing more than bald assertions that State Defendants “have discriminated against Plaintiffs on account of their race.” [Compl. ¶ 25.] Such allegations need not be accepted as true. Turning to the well-pleaded factual allegations that must be taken as true, Plaintiffs have failed to state a § 1981 claim of racial animus. Plaintiffs needed to allege more by way of factual content to “nudge” their claims of purposeful discrimination “across the line from conceivable to plausible.” Accordingly, Plaintiffs’ § 1981 claim should be dismissed with prejudice for failure to adequately allege racial animus on the part of State Defendants themselves.

**6. Count III (§ 1985(3)) should be dismissed as legally insufficient.**

Count III alleges a violation of § 1985(3) on the basis of an alleged conspiracy to deprive Plaintiffs equal protection of the laws and equal privileges and immunities under the laws. Section 1985(3) provides:

If two or more persons in any State or Territory 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 . . . in any case of

conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3). In order to state a claim under § 1985(3), a plaintiff must allege:

(1) a conspiracy; (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; and (3) an act in furtherance of the conspiracy; (4) whereby a person or property is injured in his person or property or deprived of any right or privilege of a citizen of the United States.

*Farber v. City of Paterson*, 440 F.3d 131, 134 (3d Cir. 2006). Here, Plaintiffs have failed to allege facts showing a conspiracy or racial animus sufficient to state a claim upon which relief can be granted. Therefore, Plaintiffs' § 1985(3) claims should be dismissed with prejudice.

**(a) Plaintiffs have failed to sufficiently allege a conspiracy.**

With respect to the first element of conspiracy, a plaintiff must allege enough factual matter to suggest that an agreement was made between defendants. *Twombly*, 550 U.S. at 555-56. Allegations of an “unlawful agreement” are legal conclusions not entitled to the assumption of truth. *Iqbal*, 129 S.Ct. at 1950 (citing *Twombly*, 550 U.S. at 555). Rather, a complaint must contain sufficient factual allegations showing a “meeting of the minds.” *Twombly*, 550 U.S. at 557.

Moreover, allegations of parallel conduct by alleged conspirators along with a bare assertion of conspiracy will not suffice for purposes of stating a claim. *Id.* at 556-57. “Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality.” *Id.* Importantly, an

allegation of parallel conduct is not sufficient to state a claim where the allegation is compatible with lawful behavior. *Iqbal*, 129 S.Ct. at 1950.

Here, Plaintiffs' allegations of an "agreement" and "conspiracy" are legal conclusions not entitled to the assumption of truth. Plaintiffs have failed to provide any factual allegations showing a "meeting of the minds." Plaintiffs do not even identify which Individual State Defendants allegedly engaged in a meeting of the minds to form an agreement. Plaintiffs' allegations of parallel conduct by unidentified individuals is not sufficient to state a § 1985(3) conspiracy claim. *See Tarpley*, 2006 WL 267085, at \*2 ("A defendant in a civil rights action must have personal involvement in the alleged wrongs . . ."). Because Plaintiffs have failed to allege any facts suggesting a meeting of the minds among co-conspirators or any other facts sufficient to state a claim, Plaintiffs' § 1985(3) claim must be dismissed with prejudice.

**(b) Plaintiffs have failed to sufficiently allege racial animus.**

Assuming, *arguendo*, Plaintiffs have sufficiently alleged a conspiracy, their § 1985(3) claim must still be dismissed because Plaintiffs have failed to sufficiently allege racial animus. In order to survive a motion to dismiss for failure to state a claim, there must be factual allegations that suggest some racial or otherwise invidiously discriminatory animus behind the alleged co-conspirators' actions. *Farber*, 440 F.3d at 135. Broad allegations of "racial profiling" are not sufficient. *See Iqbal*, 129 S.Ct. at 1951 (finding that allegations that defendants "knew of, condoned, and willfully and maliciously agreed to subject [plaintiff] to harsh conditions of confinement as a matter of policy, solely on account of his religion, race, and/or national origin and for no legitimate penological interest" were **not** entitled to the assumption of truth). Nor are mere conclusory allegations that a plaintiff has been deprived of his constitutional rights. *Coleman*, 246 F.Supp.2d at 390. Rather, a plaintiff must allege facts

that plausibly suggest a discriminatory state of mind or from which discriminatory intent may be inferred. *Iqbal*, 129 S.Ct. at 1952.

In determining whether a plaintiff has stated a claim for purposeful discrimination, the court must keep in mind that “[p]urposeful discrimination requires more than intent as volition or intent as awareness of consequences. It instead involves a decisionmaker’s undertaking a course of action because of, not merely in spite of, the action’s adverse effects upon an identifiable group.” *Iqbal*, 129 S.Ct. at 1948 (internal citations and quotation marks omitted). The allegations in the complaint must “nudge” the plaintiff’s claims “across the line from conceivable to plausible.” *Iqbal*, 129 S.Ct. at 1950-51 (relying on *Twombly*, 550 U.S. 544). Importantly, where there is a legal, alternative explanation for defendants’ actions, a plaintiff has failed to allege sufficient facts to nudge his claims into the realm of plausibility. *Iqbal*, 129 S.Ct. at 1950-51. Moreover, a complaint is insufficient unless it contains factual allegations that defendants **themselves** acted on account of race. *Id.* at 1952 (holding that defendants cannot be held liable on account of *respondeat superior*).

Here, Plaintiffs have failed to allege with the required particularity that State Defendants themselves acted with racial animus. Rather, they allege facts from which the Court could infer that discrimination is not a plausible conclusion. Plaintiffs have done nothing more than allege broadly conclusory allegations that State Defendants engaged in “racial profiling” or acted “on account of [Plaintiffs’] race.” [Compl. ¶¶ 25, 28.] They also allege that State Defendants acted “intentionally and with actual malice.” [*Id.* ¶ 63.] These allegations are not entitled to an assumption of truth.

Turning to the allegations in the Complaint that are entitled to an assumption of truth, Plaintiffs allege that they operate tour buses between Pennsylvania and Atlantic City. [*Id.* ¶ 24.]

In 2000, NJMVC assumed responsibility for commercial bus safety inspection from the State Police. [*Id.* ¶ 27.] State Defendants purport to carry out their inspection duties in accordance with MCSAP regulations. [*Id.*] “The goal of the MCSAP is to reduce [commercial motor vehicles (“CMV”)]-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs.” 49 C.F.R. § 350.101. Safety programs operating pursuant to the MCSAP increase the “likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to accidents.” *Id.*

Based on the allegations in the Complaint, the Complaint does not show that State Defendants **themselves** undertook a course of action on account of Plaintiffs’ race. There is no allegation that plausibly suggests that NJDOT or NJMVC adopted any policy on account of Plaintiffs’ race. Indeed, Plaintiffs do not allege anything not prescribed in the MCSAP or New Jersey Regulations, including issuance of summonses. In addition, there are no allegations that could support a finding of racial animus on the part of the Individual State Defendants. Instead, the Complaint plausibly suggests that State Defendants acted in order to increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to crashes. Plaintiffs needed to allege more by way of factual content to nudge their claims of purposeful discrimination across the line from conceivable to plausible. Accordingly, Plaintiffs’ § 1985(3) claims should be dismissed with prejudice for failure to adequately allege racial animus on the part of State Defendants themselves.

**7. Count IV (NJCRA) should be dismissed as legally insufficient.**

The New Jersey Civil Rights Act (“NJCRA”) was intended to serve as an analog to § 1983 and courts should therefore apply existing § 1983 jurisprudence to NJCRA claims.

*Chapman v. New Jersey*, No. 08-4130, 2009 WL 2634888, at \*3 (D.N.J. Aug. 25, 2009). For the same reasons Plaintiffs' § 1983 claims fail, the NJCRA claims should be dismissed.

**8. Counts V (Conversion) and VI (Civil Conspiracy) should be dismissed because Plaintiffs failed to file a timely notice as is required under the New Jersey Tort Claims Act.**

Under the New Jersey Tort Claims Act, N.J. Stat. Ann. § 59:1-1, *et seq.*, no lawsuit may be brought against a public entity or employer unless the plaintiff first serves the public entity or employer with a notice setting forth the content of the presented claim within 90 days of the accrual of the claim. N.J. Stat. Ann. § 59:8-8. "The claimant shall be forever barred from recovery against a public entity or public employee if . . . [h]e failed to file his claim with the public entity within 90 days of accrual of his claim except as otherwise provided in section 59:8-9." N.J. Stat. Ann. § 59:8-8. Because Plaintiffs have failed to file the requisite notice, their State law tort claims against State Defendants should be dismissed. *See Lassoff*, 414 F.Supp.2d at 489-90.

**9. Count V (Conversion) should be dismissed as legally insufficient.**

Under New Jersey law, conversion is the wrongful exercise of dominion and control over the property of another in a manner inconsistent with the other person's rights in that property. *Peloro v. United States*, 488 F.3d 163, 173-74 (3d Cir. 2007) (internal quotations omitted). In the instant case, the Court should dismiss Plaintiffs' conversion claim as against State Defendants, to the extent so alleged, because it is not alleged that State Defendants ever retained possession of Plaintiffs' property. Plaintiffs allege only that Defendant Jimmy's unlawfully retained Plaintiffs' property. [Compl. ¶ 79.] Thus, based on the allegations in the Complaint, State Defendants did not exercise dominion or control over Plaintiffs' property. Therefore, the Court should dismiss Plaintiffs' conversion claim as against State Defendants.

**10. Count VI (Civil Conspiracy) should be dismissed as legally insufficient.**

The “well-established” elements of a civil conspiracy are “the combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against...another, and an overt act that results in damage.” *LoBiondo v. Schwartz*, 970 A.2d 1007, 1029 (N.J. 2009). A plaintiff must “at least plead circumstantial facts supporting the logical inference that the alleged conspirators had a meeting of the minds and thus reached an understanding to work towards a common goal.”<sup>16</sup> *Tumi, Inc. v. Excel Corp.*, No. 05-0477, 2005 U.S. Dist. LEXIS 16027, at \*17 (D.N.J. Aug. 1, 2005) (emphasis in original). “[C]onclusory allegations of conspiracy are insufficient to state a cause of action where the Complaint fails to allege facts constituting the conspiracy, its object and accomplishment.” *Id.* at \*17-18 (internal quotations omitted).

Here, Plaintiffs have failed to set forth factual allegations demonstrating any agreement between State Defendants. In addition to Plaintiffs’ failure to set forth allegations establishing a “meeting of the minds,” Plaintiffs do not even identify which State Defendants allegedly formed an agreement. Moreover, apart from their broad, conclusory allegations that need not be accepted as true, Plaintiffs have failed to allege any facts to demonstrate that State Defendants themselves engaged in an underlying wrong. *See Doug Grant, Inc. v. Bay Casino Corp.*, 3 F.Supp.2d 518, 536 (D.N.J. 1998) (“The gravaman of an action in civil conspiracy is not the conspiracy itself, but the underlying wrong, which, absent the conspiracy, would give a right of action.”). Therefore, the Court must dismiss Plaintiffs’ civil conspiracy claim.

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<sup>16</sup> To allege a claim under 42 U.S.C. § 1985(3), a plaintiff must allege the elements of a civil conspiracy. *See Hall v. Clinton*, 285 F.3d 74, 83 (D.C. Cir. 2002); *Slater v. Susquehanna County*, 613 F.Supp.2d 653, 667 (M.D. Pa. 2009). Defendants therefore incorporate as though fully set forth herein their argument as set forth, *supra*, in § III,B,6(a).

#### IV. CONCLUSION

This Court lacks subject matter jurisdiction to hear Plaintiffs' claims due to sovereign and qualified immunity. In addition, Plaintiffs' claims should be dismissed based on the *Younger* and *Rooker-Feldman* doctrines because Plaintiffs are seeking to invalidate adjudications of the Atlantic City Municipal Court without pursuing the appropriate State court channels. Plaintiffs have had three chances to get their pleadings right but still have failed to allege any actions on the part of State Defendants that have occurred within the statute of limitations or that could entitle Plaintiffs to relief. Plaintiffs' broad allegations of "ongoing" violations are simply insufficient because they fail to point to any specific date, person, or incident during which their rights were violated. Such pleadings do not place State Defendants on notice of what actions form the basis of the Complaint, which should accordingly be dismissed with prejudice for failure to state a claim.

Respectfully submitted,

/s/ John J. Higson

Gregory F. Cirillo

John J. Higson

Holly R. Rogers

**DILWORTH PAXSON LLP**

1500 Market Street, Suite 3500E

Philadelphia, PA 19102

[higsonjj@dilworthlaw.com](mailto:higsonjj@dilworthlaw.com)

Tel: (215) 575-7000

Fax: (215) 575-7200

*Attorneys for Defendants New Jersey  
Department of Transportation, New Jersey  
Motor Vehicle Commission, Kris Kolluri, John  
F. Lettiere, Sharon Harrington, Diane  
Legreide, Vincent Schulze, and Michael  
Calorel*

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