

**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 TRANSPORTATION, et al.,	:	<b>Return Date: February 1, 2010</b>
	:	
	:	
Defendants.	:	

**REPLY BRIEF IN FURTHER SUPPORT OF STATE DEFENDANTS' MOTION TO  
DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND  
12(b)(6)**

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## **I. INTRODUCTION**

In their opening papers, State Defendants challenged Plaintiffs' Second Amended Complaint on numerous grounds.<sup>1</sup> Plaintiffs have not contested many of State Defendants' arguments, including that Plaintiffs have failed to meet the minimal pleading requirements for presenting colorable federal and State claims for conspiracy, punitive damages, and racial animus and that State Defendants are not "persons" subject to suit under § 1983 (Count I), § 1985(3) (Count III) and the NJCRA (Count IV). Plaintiffs also do not even address the fact that their State law claims are legally insufficient and that they failed to file a timely notice as is required under the New Jersey Tort Claims Act. Plaintiffs do not contest these arguments for one simple reason: they cannot. Accordingly, these claims should be dismissed.

With respect to the arguments Plaintiffs do address, they are clearly incorrect. Specifically, Plaintiffs fail to adequately refute the undeniable fact that the Eleventh Amendment bars their claims. Plaintiffs' attempt to invoke the limited, individual-based exceptions to Eleventh Amendment immunity fails because the Second Amended Complaint does not contain a single allegation of personal conduct on the part of the Individual State Defendants. The doctrine of qualified immunity similarly prohibits Plaintiffs from suing the Individual State Defendants. In addition, Plaintiffs have failed to rebut that the *Younger* and *Rooker-Feldman* abstention doctrines apply. Finally, Plaintiffs have failed to allege a single act occurring within the statute of limitations, making their claims time barred.

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<sup>1</sup> Unless otherwise indicated, the definitions used in State Defendants' opening brief will also be used herein.

## II. LEGAL ARGUMENT

### A. Plaintiffs' Claims Are Barred By The Eleventh Amendment.

In their opening papers, State Defendants established that Eleventh Amendment immunity mandates dismissal of Plaintiffs' claims. Specifically, State Defendants presented irrefutable authority establishing that NJDOT and NJMVC, along with the Individual State Defendants in their official capacities, are state entities for purposes of Eleventh Amendment immunity and that State Defendants are therefore immune from Plaintiffs' suit. *See* State Defendants' Brief (November 2, 2009) at 18-24 (Docket No. 260-2).<sup>2</sup>

Given the overwhelming authority in State Defendants' favor, it is not surprising that Plaintiffs barely attempt to counter these arguments. Indeed, the only argument Plaintiffs muster is that Congress somehow abrogated Eleventh Amendment immunity for Plaintiffs' claims. In support, Plaintiffs quote a section of Title VI. The problem with this argument, however, is that **Plaintiffs have not included a Title VI claim in their Second Amended Complaint.** Indeed, Plaintiffs acknowledge this fatal fact. *See* Plaintiffs' Brief (January 4, 2010) at 18 (Docket No. 285)<sup>3</sup> (“To be clear, the **operative Complaint does not expressly plead a Title VI claim.**”) (emphasis added).<sup>4</sup> Plaintiffs' assertion that Title VI somehow abrogates Eleventh Amendment immunity for the other statutes cited as the **actual** causes of action in the Second Amended Complaint (i.e. §§ 1983, 1981 and/or 1985(3)) is not supported by any authority and is specifically contrary to the authority cited by State Defendants. Consequently, **all** claims (Counts I through VI) against NJDOT and NJMVC and all **damage** claims (Counts I through VI) against the Individual State Defendants in their official capacities should be dismissed.

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<sup>2</sup> State Defendants' Brief will be referred to as “Def. Br.” followed by page number(s).

<sup>3</sup> Plaintiffs' Brief will be referred to as “Pl. Br.” followed by page number(s).

<sup>4</sup> That Plaintiffs are yet again seeking leave to amend their Second Amended Complaint to add a Title VI claim should have no bearing on the fact that the actual complaint before this Court contains no such cause of action.

What potentially remain then are damage claims against the Individual State Defendants in their personal capacities and claims for injunctive relief against these same individuals in their official capacities.<sup>5</sup> In their opening papers, State Defendants acknowledged these exceptions to Eleventh Amendment immunity. The fact that these exceptions exist, however, does not give a plaintiff *carte blanche* to add individuals to a complaint. Rather, in order to invoke these exceptions, a plaintiff must include allegations of **personal** misconduct by the named individuals. *See Rode v. Dellarciprete*, 845 F.2d 1195, 1207-08 (3d Cir. 1988) (dismissing §§ 1983 and 1985(2) claims against individuals because plaintiff failed to allege individuals' participation or actual knowledge of and acquiescence in alleged violations); *Tarpley v. State of New Jersey*, No. 05-2321, 2006 WL 267085, at \*2 (D.N.J. Jan. 31, 2006) (Simandle, J.) (for violation of constitutional right, plaintiff must allege that individual defendant had "personal involvement in the alleged wrongs").

In the Second Amended Complaint, Plaintiffs named six individuals as defendants – Kolluri, Lettiere, Harrington, Schulze, Calorel and Legriede. The Second Amended Complaint, however, contains absolutely no allegations against these individuals showing that they personally acted in a manner outside their duties as employees of the NJDOT or the NJMVC or otherwise personally engaged in conduct which violated Plaintiffs' constitutional rights. Based on what exists in the Second Amended Complaint, Plaintiffs simply cannot maintain these individual claims.

Plaintiffs seem to acknowledge this point because they make no effort to tell the Court where such allegations appear in the Second Amended Complaint. Rather, Plaintiffs assert that discovery has revealed some alleged personal misconduct against **certain** of the Individual State

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<sup>5</sup> Any claim for prospective injunctive relief to enforce State law claims (Count IV) should be dismissed because Eleventh Amendment immunity bars such relief. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984) (prospective injunctive relief against State officials not available to enforce State law claims).

Defendants.<sup>6</sup> Plaintiffs also seek to amend for a third time to avoid the fact that what they actually pleaded in their Second Amended Complaint is insufficient.<sup>7</sup> Yet, even if the Court were to consider the “facts” in Plaintiffs’ proposed Third Amended Complaint, these new “allegations” are also insufficient.<sup>8</sup>

Notably, Plaintiffs continue to push claims against Kolluri and Lettiere, but there are absolutely **no** allegations of misconduct against these two individual defendants in the Second Amended Complaint, the proposed Third Amended Complaint or Plaintiffs’ “statement of the case.” Kolluri and Lettiere’s names simply do not appear anywhere other than the caption. At the very least, these two individual defendants should be dismissed from these proceedings.

**B. Plaintiffs’ Claims Should Be Dismissed Based Upon Qualified Immunity.**

Plaintiffs assert the incontrovertible fact that freedom from racial discrimination is a clearly established constitutional right. Equally indisputable, however, is that Plaintiffs have failed to identify in the Second Amended Complaint any specific Individual State Defendant who engaged in any act at all, much less racial discrimination. Qualified immunity shields any official who does not violate a clearly established constitutional right. *Pearson v. Callahan*, 129 S.Ct. 808, 815-16, 818 (2009). As there are no allegations that any of the Individual State

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<sup>6</sup> In their purported “statement of the case,” Plaintiffs include their familiar recitation of what they claim discovery has revealed. State Defendants could surely include their own statement of the case which would knock down and remove the gloss Plaintiffs provide. This motion to dismiss, however, is simply not the proper forum in which to do that. Rather, in considering State Defendants’ facial challenge to subject matter jurisdiction based on Eleventh Amendment immunity pursuant to Federal Rule of Civil Procedure 12(b)(1), the Court must look no further than the allegations contained in the four corners of the Second Amended Complaint. *See Pappas v. Twp. of Galloway*, 565 F.Supp.2d 581, 586 (D.N.J. 2008) (Simandle, J.).

<sup>7</sup> This request – which comes nearly five years after this action was initiated and at the conclusion of discovery – will be addressed in the State Defendants’ response to the motion to amend and should be rejected.

<sup>8</sup> Although Plaintiffs make references to Harrington, Schulze, Calorel and Legriede in the proposed Third Amended Complaint, such references do not suffice. Because Plaintiffs do not include personal, individualized claims against these defendants, the claims against them should be dismissed.

Defendants engaged in any particular conduct at all, the Individual State Defendants are entitled to qualified immunity. *See* Def. Br. at 13-14.

**C. Plaintiffs' Claims Should Be Dismissed Based Upon The *Younger* Doctrine.**

Plaintiffs concede that the State proceedings at issue here implicate important State interests, satisfying the second prong of *Younger* abstention. Plaintiffs, however, contest the first and third *Younger* prongs, *to wit*, Plaintiffs claim that there is no pending State judicial proceeding and that there was no adequate opportunity to raise the constitutional challenges in the State proceeding. *See* Pl. Br. at 24-28. Plaintiffs are wrong on both accounts.

**1. There are pending State judicial proceedings.**

**(a) Plaintiffs are contesting tickets or fines heard in State court.**

Plaintiffs attempt to escape *Younger* abstention by claiming that they are not contesting tickets or fines. *See* Pl. Br. at 21-22. This claim is contradicted by the clear face of the Second Amended Complaint, which states:

- State Defendants “have discriminated against Plaintiffs on account of their race: *inter alia*, **ticketing and fining** Plaintiffs without just cause . . . .” Compl. ¶ 25 (emphasis added).
- “After stopping Plaintiffs’ buses without cause and **issuing unwarranted tickets** . . . . These racially-motivated actions contravene applicable regulations and have caused Plaintiffs **severe economic harm.**” Compl. ¶ 26 (emphasis added).
- “Defendants have fabricated violations . . . forcing Plaintiffs to pay **thousands of dollars in illegal fines** . . . .” Compl. ¶37 (emphasis added).
- “Defendants’ discriminatory actions have, *inter alia*: (1) forced Plaintiffs to pay unwarranted, illegal, and substantial amounts for, *inter alia*, unnecessary . . . **fines, and court fees** . . . .” Compl. ¶ 39 (emphasis added).

Because Plaintiffs are contesting tickets and fines pending before the Atlantic City Municipal Court, *Younger* abstention is appropriate.<sup>9</sup>

**(b) The tickets and/or fines are pending in State court.**

“The Supreme Court has clearly stated that a case which has proceeded to judgment is still pending for *Younger* purposes as long as appellate remedies have not been exhausted.” *Schall v. Joyce*, 885 F.2d 101, 110 (3d Cir. 1989) (citing *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350 (1989)). Nonetheless, Plaintiffs contend that *Younger* abstention does not apply even if there was a related prior State court judgment and no appeal was taken. *See* Pl. Br. at 24-28. Plaintiffs are inaccurate in light of the facts and the law.

In support of their argument, Plaintiffs rely on *Ankenbrandt v. Richards*, 504 U.S. 689 (1992). *Ankenbrandt*, however, is inapposite because in that case there was “no allegation by respondents of any pending state proceedings.”<sup>10</sup> *Id.* at 705. Unlike *Ankenbrandt*, this case clearly involves State proceedings that were pending before, during and after Plaintiffs initiated this action on June 15, 2005 (Docket No. 1). *See* Def. Br. at Ex. A. Indeed, many of the adjudications in the Atlantic City Municipal Court include offenses that occurred prior to the filing of the initial complaint, but which had a trial date and disposition post-dating that filing. *See id.* Regardless, any case that has proceeded to judgment is still pending for *Younger* purposes as long as appellate remedies have not been exhausted because:

A party would demonstrate a lack of respect for the State sovereign if it attempted to procure federal intervention by terminating the

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<sup>9</sup> To the extent this Court believes that Plaintiffs are only seeking disgorgement of fees paid to Jimmy’s Lakeside Garage, Paragraph 92(c) in the Prayer for Relief must then be dismissed as against State Defendants.

<sup>10</sup> Likewise, Plaintiffs’ reliance on *Gwynedd Props. v. Lower Gwynedd Twp.*, 970 F.2d 1195 (3d Cir. 1992), is misplaced. In *Gwynedd Properties*, the Third Circuit Court of Appeals held that the first *Younger* prong (that there were ongoing State proceedings) **had been satisfied**. *Id.* at 1200. The Court did not apply *Younger*, however, because the second *Younger* prong had not been satisfied (that important state interests were implicated). *Id.* at 1203. Here, Plaintiffs concede that important State issues are involved and therefore do not contest the second *Younger* prong. Therefore, *Gwynedd Properties* does not support Plaintiffs’ argument.

state judicial process prematurely-forgoing the state appeal to attack the trial court's judgment in federal court. A necessary concomitant of *Younger* is that a party wishing to contest in federal court the judgment of a state judicial tribunal must exhaust his state appellate remedies before seeking relief in the District Court.

*Schall*, 885 F.2d at 110, 112 (quotations and alterations omitted) (citing *New Orleans*, 491 U.S. 350). Because Plaintiffs have not exhausted their appellate remedies in State court, *Younger* abstention is appropriate.

**2. Plaintiffs had an adequate opportunity to raise their constitutional challenges in the State proceedings.**

“The Supreme Court has held that the burden on this point rests on the federal plaintiff to show that state procedural law barred presentation of its claims.” *Pappas*, 565 F.Supp.2d at 589-90 (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987)). Plaintiffs have simply failed to meet their burden of proving that they could not assert their claims in State court for three reasons: (1) *Younger* applies to proceedings in the Atlantic City Municipal Court; (2) *Younger* applies to Plaintiffs' claims for declaratory and injunctive relief; and (3) *Younger* applies to Plaintiffs' claims for monetary damages.

**(a) *Younger* applies to proceedings in the Atlantic City Municipal Court.**

Plaintiffs claim that they could not raise their present claims in the Municipal Court actions because “[s]uch proceedings are criminal or quasi-criminal in nature, and do not provide any opportunity for an accused to seek civil discovery and/or assert civil claims for monetary relief.” See Pl. Br. at 22. Plaintiffs' claim is remarkable given that *Younger* itself **involved abstention from State criminal proceedings**. *Younger v. Harris*, 401 U.S. 37 (1971). Indeed, *Younger* abstention originally prohibited interference by federal courts with State criminal proceedings only. See *id.* Later, *Younger* abstention was extended to include interference with certain civil proceedings as well. See *Middlesex County Ethics Comm. v. Garden State Bar*

*Ass'n*, 457 U.S. 423, 432 (1982). Thus, Plaintiffs' argument that the Municipal Court actions are criminal or quasi-criminal only supports application of *Younger*.

Moreover, Plaintiffs "cannot escape *Younger* abstention by failing to assert remedies in a timely manner in state court." *Schall*, 885 F.2d at 107 (internal alterations omitted) (citing *Pennzoil*, 481 U.S. at n.16). The question is not whether Plaintiffs may presently raise their claims, but whether they **could have** raised their claims in State court. *Id.* It is well known that States have concurrent jurisdiction over claims under the Civil Rights Acts, including §§ 1983, 1981 and 1985(3). See *Trancrel v. Mayor and Council of Bloomfield*, 583 F.Supp. 1548, 1551 (D.N.J. 1984). Moreover, Plaintiffs could have appealed to the Superior Court, which is a court of "original general jurisdiction in all causes." *Id.* (quoting N.J. Const. art. 6, § 3, ¶ 2). Plaintiffs therefore could have raised their claims in the Superior Court as well as in Municipal Court. Because Plaintiffs could have raised their claims in State Court, *Younger* applies.<sup>11</sup>

**(b) *Younger* applies to Plaintiffs' claims for declaratory and injunctive relief.**

It is well settled that a court may dismiss an action pursuant to *Younger* where a plaintiff claims injunctive and/or declaratory relief. *Samuels v. Mackell*, 401 U.S. 66 (1971); *Bey v. Conner*, No. 09-0493, 2009 WL 348907, at \*5 (D.N.J. Feb. 10, 2009) (Simandle, J.). Here, Plaintiffs have asserted claims for injunctive relief in each and every count of their Second Amended Complaint and in the Prayer for Relief. Compl. ¶¶ 53, 59, 65, 77, 83, 90, and 92. Plaintiffs also seek declaratory relief. Compl. ¶ 92. Because Plaintiffs do not contest that *Younger* abstention applies to these forms of relief, such claims should be dismissed.

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<sup>11</sup> Plaintiffs also err in their assertion that *Younger* somehow does not apply because the Atlantic City Municipal Court is not a party to their federal Complaint. Plaintiffs cite to no authority supporting this proposition. Indeed, the United State Supreme Court has held that, even if a State court proceeding is between two private parties, the State's interest in ensuring that its orders and judgments not be rendered nugatory is sufficient to require *Younger* abstention. *Schall*, 885 F.2d at 109 (citing *Pennzoil*, 481 U.S. 1). Thus, *Younger* may apply even though the Municipal Court is not a party.

**(c) *Younger* applies to Plaintiffs' damages claims.**

Plaintiffs' assertion that *Younger* abstention does not apply to a claim for monetary relief is wholly disingenuous. Plaintiffs rely on *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706, 721 (1996), and *Marran v. Marran*, 376 F.3d 143, 155 (3d Cir. 2004), for this proposition. Simply put, *Marran* did not declare *Younger* abstention improper when damages are sought; rather it stated that the "Supreme Court has never explicitly decided whether *Younger* abstention covers actions for damages as well as equitable relief." 376 F.3d at 154-55.<sup>12</sup> Indeed, *Marran* recognized the rule requiring courts to stay (rather than dismiss) damages claims. *Id.* (citing *Deakins v. Monaghan*, 484 U.S. 193, 202 (1988)).

Similarly, *Quackenbush* is unavailing for Plaintiffs. That case did not deal with *Younger* abstention, but rather was a challenge to application of *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). 517 U.S. 706. Moreover, that case said "we have not held that abstention principles are completely inapplicable in damages actions." *Id.* at 730. Rather, *Quackenbush* found that courts may stay damages actions based on abstention. *Id.* at 721, 730; *see also* 12 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4252 (3d ed. 2010) ("It has been held also that a suit for damages under the federal civil rights statute cannot be brought if it would have a substantially disruptive effect upon ongoing state criminal proceedings.").

**D. Plaintiffs' Claims Should Be Dismissed Based Upon *Rooker-Feldman*.**

Relying on the fact that they never raised their present claims in State court, Plaintiffs claim that *Rooker-Feldman* abstention is not appropriate here because "Plaintiffs are not seeking to undermine any state-court judgment." *See* Pl. Br. at 30. Through the plain language of their Second Amended Complaint, however, Plaintiffs claim that they have been discriminated against

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<sup>12</sup> Notably, *Marran* was decided **after** *Quackenbush*, the Supreme Court case which Plaintiffs incorrectly claim holds *Younger* abstention improper when damages are sought.

through unwarranted and illegal tickets and fines based on fabricated violations. Compl. ¶¶ 25, 26, 37, 39. The Atlantic City Municipal Court heard every summons and reached a disposition of guilty or dismissed the case based on a plea agreement.

*Rooker-Feldman* applies to Plaintiffs' claims because the requested relief would negate the Municipal Court's dispositions. See *Forchion v. New Jersey*, No. 06-623, 2007 WL 2248112, at \*2 (D.N.J. Aug. 1, 2007) (Simandle, J.); see also *McKnight v. Pierre Bryant*, No. 09-5128, 2009 U.S. Dist. LEXIS 101638, at \*7 (D.N.J. Nov. 2, 2009) ("[A] federal claim is inextricably intertwined with an issue adjudicated in state court when . . . the federal court must take action that would negate the state court's judgment."<sup>13</sup> Thus, this Court lacks jurisdiction over Plaintiffs' claims, even though they were not raised in State court. *Id.*

**E. Counts I-IV And VI Should Be Dismissed For Failing To Have Been Brought Within The Statute Of Limitations.**

The statute of limitations bars Plaintiffs' claims because a racial profiling claim accrues on the date of the allegedly wrongful traffic stop. *Hilton v. Kronenfeld*, No. 04-6420, 2008 WL 305276, at \*8 (D.N.J. Jan. 29, 2008) ("*Hilton I*").<sup>14</sup> Plaintiffs have alleged no specific wrongful stop, but rather make a general assertion that they were subjected to racial profiling since 2000.

<sup>13</sup> To refute application of *Rooker-Feldman* abstention, Plaintiffs rely primarily on *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411 (3d Cir. 2003). In that case, it was held that *Rooker-Feldman* did not apply to a federal action because a decision in plaintiffs' favor on the federal claims would not mean that the State court's ruling was in error. *Id.* at 423. Here, unlike in *Desi's Pizza*, a finding that State Defendants issued illegal and unwarranted tickets and fines necessarily implicates that the Atlantic City Municipal Court's judgments were in error. Thus, *Desi's Pizza* does not apply. Likewise, Plaintiffs' reliance on *Parkview Assocs. P'ship v. City of Lebanon*, 225 F.3d 321, 326 (3d Cir. 2000), and *Marran*, 376 F.3d at 154, is unavailing because, in both cases, it was found that an adjudication in federal court would not implicate a State court error.

<sup>14</sup> In *Hilton I*, a plaintiff brought a § 1983 claim arising out of a traffic stop allegedly motivated by racial profiling. *Hilton*, 2008 WL 305276, at \*1. The claim was dismissed because the traffic stop occurred more than two years prior to Plaintiff's suit. *Id.* at \*8. The court said: "At the traffic stop, Plaintiff knew—or should have known—of his injuries that formed the basis of these claims." *Id.* Upon Motion for Reconsideration, the court reiterated that "[m]ost Courts in this District agree that a selective enforcement claim based on racial profiling accrues upon the stop, search and seizure made pursuant to selective enforcement of the law." *Hilton v. Whitman*, No. 04-6420, 2008 WL 5272190, at \*10 (D.N.J. Dec. 16, 2008) ("*Hilton II*"). Further, the court also dismissed plaintiff's §§ 1985(3) and 1986 claims, as both arose out of the same instance of racial profiling, and both were therefore barred by the statute of limitations. *Id.* at \*\*10-11.

Compl. ¶ 27. Because Plaintiffs' claims accrued on the date of each allegedly wrongful stop, in the absence of allegations of a single stop occurring within the limitations period, the Court should dismiss Plaintiffs' claims as time barred.

Plaintiffs urge the Court to toll the statute of limitations based on a continuing violations theory that exists for hostile work environment claims. *See W. Philadelphia Elec. Co. v. Philadelphia Elec. Co.*, 45 F.3d 744 (3d Cir. 1995); *Wilson v. Wal-Mart Stores*, 729 A.2d 1006 (N.J. 1999). Notably, Plaintiffs fail to cite a single case extending this theory to racial profiling claims. Indeed, no such case exists because the rule applicable to hostile work environment claims (where cumulative conditions are required) does not apply to racial profiling claims (where a plaintiff need only allege one wrongful traffic stop). A wrongful stop is considered a discrete act from which the statute of limitations begins to run. *See Hilton I*, 2008 WL 305276, at \*8; *Hilton II*, 2008 WL 5272190, at \*10. Therefore, Plaintiffs cannot avoid the ramifications of dragging their feet by putting the word "continuing" in their Second Amended Complaint without a single fact to back it up.

In addition, "[e]quitable tolling, which affords relief from inflexible, harsh or unfair application of a statute of limitations, does not excuse claimants from exercising the reasonable insight and diligence required to pursue their claims." *Freeman v. State*, 788 A.2d 867, 880 (N.J. Super. Ct. App. Div. 2002).<sup>15</sup> Because Plaintiffs allegedly suspected discrimination in 2000 and failed to file suit for nearly five years as a result only of their own inaction, Plaintiffs' claims are time barred. *See id.*; *see also Hart v. J.T. Baker Chem. Co.*, 598 F.2d 829, 833-34 (3d Cir. 1979). Indeed, according to Plaintiffs' "statement of the case," they were fully aware of the alleged discrimination and even had their attorney send a letter detailing the alleged

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<sup>15</sup> Federal Courts apply state law regarding tolling the statute of limitations unless such an application would "defeat the goals of the federal statute at issue." *Cooper v. Gloucester County Corr. Officers*, No. 08-103, 2008 U.S. Dist. LEXIS 6267, at \*9 (D.N.J. Jan. 28, 2008) (Simandle, J.).

discrimination to State Defendants on September 11, 2003. Pl. Br. at 10 and Ex. H. In that letter, Plaintiffs stated that State Defendants were allegedly engaged in “racial profiling” as of 1998. *Id.* at Ex. H. Yet Plaintiffs did not file suit. Rather, they allowed their claims to lapse, through no one’s fault but their own. For these reasons, Plaintiffs’ claims are stale and should be dismissed.

### III. CONCLUSION

For all the foregoing reasons, State Defendants respectfully request that the Court grant their motion to dismiss.

Respectfully submitted,

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Dated: January 25, 2010

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 25, 2010, the undersigned caused to be served a copy of the foregoing Reply Brief in further Support of State Defendants' Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and all supporting documents via first class mail, postage prepaid, as indicated below. Notice of this filing will also be sent to all attorneys of record in this matter by operation of the Court's electronic filing system.

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