UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PHILIP SULLIVAN, CHARLOTTE SULLIVAN, Plaintiffs, v. JEFFREY STEIN, et al, Defendants.	: : : : : : : : : :	Civil No. 3:03cv1203 (MRK)

MEMORANDUM OF DECISION

In this action, Plaintiffs Philip Sullivan and Charlotte Sullivan ("the Sullivans") have sued 28 defendants – including several state judges, an Assistant State's Attorney, the Town of Farmington, police officers, former attorneys for the Sullivans, and several members of the Sullivans' family – under 42 U.S.C. §§ 1983 and 1985 for claims arising from an alleged eviction of the Sullivans from a dwelling at 37 Valley View Drive, Farmington, Connecticut, an alleged delay in a summary process entry and detainer action filed by the Sullivans in Connecticut Superior Court, and an allegedly meritless criminal action filed against Philip Sullivan in state court. The Sullivans filed an Amended Complaint on August 18, 2003 [doc. #7] ("Amended Compl.").[1]

[1] The Amended Complaint names the following Defendants: Judges Thomas Bishop, Antoinette Dupont, and Joseph Flynn of the Connecticut Appellate Court; Judges Juliett Crawford and Angelo dos Santos of the Connecticut Superior Court; Assistant State's Attorney Terri Sonneman; the State of Connecticut Criminal Justice Division; Gregory Zigmont and Charles Coffey, Inspectors for the State of Connecticut's Criminal Justice Division; Chief of Police Michael Whalen and Officers Devine, Troy Williams, and Robert Herbert of the Town of Farmington; the Town of Farmington; Edward McAnaney; Thomas DeLisa; Maryanne DeLisa; James Hyland; Kathryn Hyland; Mary Crowell; Jeffrey Stein; Lee Johnson; Doris D'Ambrosio; Rachel Baird; William S. Palmieri; Wayne Boulton; and the employees and/or officers of the

This Memorandum addresses the numerous motions that are currently pending before the Court, including a number of motions to dismiss the Sullivans' Amended Complaint. *See* Motion to Dismiss of Thomas and Maryanne DeLisa [doc. #63]; Defendant Lee Johnson's Motion to Dismiss [doc. #67]; Motion to Dismiss of Defendants Edward McAnaney, Jeffrey Stein, James Hyland, Kathryn Hyland, and Mary Crowell [doc. #73]; Motion to Dismiss of Defendant Robert J. Kor [doc. #75]; Motion to Dismiss All Claims Against All State Defendants [doc. #78]; Defendant Wayne Boulton's Motion to Dismiss [doc. #83]; Rachel M. Baird's Motion to Dismiss [doc. #103]; and Defendant Doris D'Ambrosio's Motion to Dismiss [doc. #109]. The following Defendants have not moved to dismiss the Amended Complaint: Chief of Police Michael Whalen, Officers Devine, Troy Williams, and Robert Herbert, William S. Palmieri, J.W. Green Co., Inc., and the Town of Farmington.

Also pending before the Court are the following motions: Plaintiffs' Motion to Amend Claim 1 & Claim 32 of Their Amended Complaint [doc. #85]; Defendant Edward McAnaney's, Jeffrey Stein's, James Hyland's, Kathryn Hyland's, and Mary Crowell's Motion to Amend Their Claim 1 and Claim 32 of Their Amended Complaint [doc. #97]; Defendants Town of Farmington's, Chief Michael Whalen's, Officer Devine's, Officer Troy Williams' and Officer David Herbert's Motion for A More Particular Statement of Claims 1 and 32 in Their February 25, 2004 Amended Complaint [doc. #102]; Wayne Boulton's Motion for Bond as Security for Costs [doc. #115]; Wayne Boulton's Motion for Bond as Security for Costs [doc. #116]; Motion Regarding Disclosure of Privileged Information [doc. #117]; Plaintiffs' Motion to Amend Claim 30 of Their Amended Complaint [doc. #119]; J.W. Green Co.'s Motion for Bond As Security for

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J.W. Greene Co., Inc.

Costs [doc. #122]; Thomas and Maryanne DeLisa's Motion for Bond As Security for Costs [doc. #129]; Defendant Lee Johnson's Motion for Bond [doc. #130]; Robert J. Kor's Motion for Bond As Security for Costs [doc. #133]; Robert J. Kor's Motion for Bond As Security for Costs [doc. #134]; and Plaintiff's Motion to Strike Defendant McAnaney's, Stein's, Hyland's and Crowell's Objection to Plaintiffs' Motion to Amend Claim 30 of Their Amended Complaint [doc. #136].

I. Preliminary Matters

The background to this dispute is described in *Sullivan v. DeLisa*, No. CVN0091831FA, 2002 WL 523076 (Conn. Super. Jan. 10, 2002), familiarity with which is assumed.[2] In that case, Judge Juliett Crawford of the Connecticut Superior Court denied the Sullivans' application for a prejudgment remedy in the amount of $231,251.00 against three members of the Sullivans' family, including Mr. Sullivan's mother, Mary E. Crowell. The case pending before this Court involves the identical plaintiffs, several common defendants, and similar events. However, in the present action, the Sullivans have named additional defendants in connection with events leading up to and following the Superior Court's decision in *Sullivan v. DeLisa* – including the judicial proceedings relating to an entry and detainer action, which remains pending before the Superior Court, the prejudgment remedy proceedings before Judge Crawford, and criminal proceedings against Mr. Sullivan following his arrest on or about May 25, 2001. Amended Compl. at 9-11.

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[2] On a motion to dismiss the Court is generally limited to the four corners of the complaint. However, in this case, the Sullivans in Claim 25 refer to Judge Crawford's January 10, 2002 prejudgment remedy decision, and, therefore, this Court may refer to that decision in connection with the motions to dismiss. *See, e.g., Taylor v. Vermont Dept. of Educ.*, 313 F.3d 768, 776 ("[The court's] consideration is generally limited to the facts as presented within the four corners of the complaint, to documents attached to the complaint, or to documents incorporated within the complaint by reference.") (citing *Hayden v. County of Nassau*, 180 F.3d 42, 54 (2d Cir. 1999)).

For purposes of the motions to dismiss, the Court assumes the truth of the allegations set forth in the Amended Complaint and will draw all reasonable inferences in the Sullivans' favor. *See ICM Holding, Inc. v. MCI Worldcom, Inc.,* 238 F.3d 219, 221 (2d Cir. 2001). The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." *Ryder Energy Distribution v. Merrill Lynch Commodities, Inc*., 748 F.2d 774, 779 (2d Cir.1984). Furthermore, "[s]ince most *pro se* plaintiffs lack familiarity with the formalities of pleading requirements, [the Court] must construe *pro se* complaints liberally, applying a more flexible standard to evaluate their sufficiency than [it] would when reviewing a complaint submitted by counsel." *Lerman v. Bd. of Elections in the City of New York*, 232 F.3d 135, 139-40 (2d Cir. 2000); *see McEachin v. McGuinnis*, 357 F.3d 197, 200 (2d Cir. 2004); *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980) (*per curiam*). Accordingly, the Court recognizes that "[i]n order to justify the dismissal of the plaintiffs' *pro se* complaint, it must be beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Lerman*, 232 F.3d at 140 (citations and quotation marks omitted).

Finally, before addressing the Defendants' motions to dismiss, the Court will consider the Sullivans' Motion to Amend Claim 30 of Their Amended Complaint [doc. #119], and the Sullivans' Motion to Amend Claim 1 and Claim 32 of Their Amended Complaint [doc. #85]. "Under Fed.R.Civ.P. 15(a), leave to amend a complaint should be 'freely given when justice so requires.'" *Ellis v. Chao*, 336 F.3d 114, 127 (2d Cir. 2003). The Court therefore GRANTS the Sullivans' Motion to Amend Claim 30 of Their Amended Complaint [doc. #119], and the Sullivans' Motion to Amend Claim 1 and Claim 32 of Their Amended Complaint [doc. #85]. In

addressing the pending motions to dismiss, the Court will therefore consider the allegations of both the Amended Complaint [doc. #7] as well as Revised Claims 1, 30 and 32, and will treat the pending motions to dismiss as directed not only to the Amended Complaint but also to Revised Claims 1, 30, and 32.

II. Section 1985(3)

In their Amended Complaint, the Sullivans have asserted a conspiracy claim under 42 U.S.C. § 1985 against all Defendants, and all Defendants who filed motions to dismiss have moved to dismiss that claim. While the Sullivans do not specify in their Amended Complaint which subsection of § 1985 they invoke in support of their conspiracy claim, only subsection (3), entitled "Depriving a person of rights or privileges," is arguably applicable to the Sullivans' claims. "The elements of a claim under § 1985(3) are: '(1) a conspiracy; (2) for the purposes of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, . . .; (3) an act in furtherance of the conspiracy; (4) whereby a person is . . . deprived of any right of a citizen of the United States.'" *Brown v. City of Oneonta*, *New York*, 221 F.3d 329, 341 (2d Cir. 2000) (quoting *Mian v. Donaldson, Lufkin & Jenrette Secs.*, *Inc.* 7 F.3d 1085, 1087 (2d Cir. 1993) (*per curiam*).

In addition, the Second Circuit has stated that a § 1985(3) conspiracy "must be motivated by racial animus." *Brown*, 221 F.3d at 341; *see Mian*, 7 F.3d at 1088; *cf. Grillo v. New York City Transit Auth.*, 291 F.3d 231, 234 (2d Cir. 2002) ("In order to survive a motion for summary judgment on his Title VII, equal protection, and § 1985(3) conspiracy claims, plaintiff must come forward with at least some credible evidence that the actions of the individual [defendants] were motivated by racial animus or ill-will.). If an allegation of racial animus is required, there is no

question that the Sullivans are not entitled to relief on their § 1985(3) claim. *See Torres v. Droun*, No. 3:01CV1844, 2004 WL 721729, at *8 (D. Conn. March 30, 2004) (dismissing § 1985(3) claim because plaintiff alleged no facts in the amended complaint from which racial motivation for the alleged motivation may be found or inferred). Nowhere in any of the Sullivans' numerous submissions to this Court have they alleged that they were deprived of their rights because of their race or that the alleged § 1985(3) conspiracy was motivated by racial animus. Indeed, in response to the Defendants' argument that the Sullivans have failed to allege racial animus as the motivation for the conspiracy, the Sullivans made no allegations or even suggestions of racial animus.

There is an indication in language from some Second Circuit decisions that perhaps some "class-based" animus beyond racial animus might suffice under § 1985(3). Thus, in *Thomas v. Roach*, 165 F.3d 137 (2d Cir. 1999), the Second Circuit, quoting language from *Griffin v. Breckenridge*, 403 U.S. 88 (1971), stated that the § 1985(3) "conspiracy must also be motivated by some racial *or perhaps otherwise class-based*, invidious discriminatory animus behind the conspirators' action." 165 F.3d at 146 (emphasis added); *see also Graham v. Henderson*, 89 F.3d 75, 82 (2d Cir. 1996). Notably, however, so far as this Court can determine, with the exception of religious-based discrimination,[3] no Second Circuit decision has upheld a § 1985(3) claim on the basis of anything other than racial animus.[4] Moreover, commenting upon the "perhaps

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[3] *See LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 427 (2d Cir. 1995) (recognizing that "proof that the defendants' [discriminatory] impetus was the plaintiffs' religion suffices" for § 1985(3)).

[4] *See*, *e.g., Posr v. Court Officer Shield No. 207*, 180 F.3d 409, 419 (2d Cir. 1999) (rejecting plaintiff's assertion that he was the victim of a § 1985(3) conspiracy on the basis of his *pro se* status, and that *pro se* litigants are a protected class, stating that plaintiff "cites no

otherwise class-based" language from *Griffin* that is quoted by the Second Circuit in *Thomas*, the Supreme Court has noted:

> [w]hatever may be the precise meaning of 'class' for the purposes of *Griffin's* speculative extension of § 1985(3) beyond race, the term unquestionably connotes something more than a group of individuals who share a desire to engage in conduct that the § 1985(3) defendant disfavors. Otherwise, innumerable tort plaintiffs would be able to assert causes of action under § 1985(3) by simply defining an aggrieved class as those seeking to engage in the activity the defendant has interfered with. This definitional ploy would convert the statute into the 'general federal tort law' it was the very purpose of the animus requirement to avoid. As Justice Blackmun has cogently put it, 'the class cannot be defined simply as the group of victims of the tortious action.'" 403 U.S. at 269 (quoting *Carpenters*, 463 U.S. at 850 (dissenting opinion)) (citation omitted).

Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 269 (1993).

Apparently, the Sullivans hope to fit within this "perhaps otherwise class-based" language from *Griffin* for in their response to Defendants' motions to dismiss, the Sullivans assert that the "*pro se* plaintiffs did not specifically set forth their membership in the 'tenant class'; however said 'class' is prevalent in every Claim of the Plaintiffs' Amended Complaint." Plaintiffs' Objection to Motion to Dismiss of Defendant Lee Johnson [doc. #81] at 6. Even under the most expansive reading of the "perhaps otherwise class-based" language from *Griffin,* however, the Sullivans' alleged status as members of a "tenant class," without more, does not state a viable claim under §1985(3). While not expressly delimiting the reach of § 1985(3), the Supreme Court has held,

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authority for the latter proposition. But even if that contention were granted, the claim would fail, because his allegation that the defendants discriminated against him on the basis of his pro se status is as conclusory as his claim that the officers were motivated by racial animus."); *Graham*, 89 F.3d at 82 (denying plaintiff's contention that plaintiff's allegation of a conspiracy by prison officials against him for his leadership role in protesting the proposed loss of showers in the prison industrial workshop provided an adequate basis for a § 1985(3) claim); *Town of West Hartford v. Operation Rescue*, 991 F.2d 1039, 1046 (2d Cir. 1993) ("'Women seeking abortion' is not a qualifying class.").

"We find no convincing support in the legislative history for the proposition that the provision was intended to reach conspiracies motivated by bias towards others on account of their economic views, status, or activities." *United Bhd. of Carpenters & Joiners of Amer. v. Scott*, 463 U.S. 825, 836 (1983). Other circuits have strictly construed the scope of § 1985(3).[5] None has applied it to an economic class of the sort alleged by the Sullivans, and for good reason. Permitting the Sullivans to advance a § 1985(3) conspiracy claim based on their declared membership in the tenant class would effectively treat § 1985(3) as a source of "general federal tort law," the precise concern expressed by the Supreme Court in *Bray*, 506 U.S. at 269. In short, a bare allegation that defendants have discriminated against members of a so-called "tenant class" is insufficient as a matter of law to state a claim under § 1985(3).

Moreover, and in any event, the Amended Complaint is utterly devoid of factual allegations to even remotely suggest that the Sullivans were targeted by virtue of their tenant

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[5]The Ninth Circuit has noted that "[w]e have held that § 1985(3) extends beyond race only when the class in question can show that there has been a governmental determination that its members require and warrant special federal assistance in protecting their civil rights." *Orin v. Barclay*, 272 F. 3d 1207, 1217 n.4 (9th Cir. 2001). The Fifth Circuit has construed § 1985(3) to require "an allegation of a race-based conspiracy to present a claim under § 1985(3)." *Horaist v. Doctor's Hosp. of Opelousas*, 255 F.3d 261, 271 (5th Cir. 2001). The Seventh Circuit has "clarified that otherwise class-based invidiously discriminatory animus includes conspiracies to discriminate against persons based on sex, religion, ethnicity or political loyalty." *Brokaw v. Mercer County*, 235 F.3d 1000, 1024 (7th Cir. 2000). The Third Circuit has applied § 1985(3) beyond race, but only to the extent that women and the handicapped, like those in certain racial groups, "traditionally suffered not only physical barriers but the badge of inferiority emplaced by a society that often shuns their presence." *Lake v. Arnold*, 112 F.3d 682, 688 (3d Cir. 1997). The Sixth Circuit has held that "[a] class protected by section 1985(3) must possess the characteristics of a discrete and insular minority, such as race, national origin, or gender." *Haverstick Enter., Inc. v. Fin. Fed. Credit, Inc.*, 32 F.3d 989, 994 (6th Cir. 1994). The Tenth Circuit has determined that "[t]he other 'class-based animus' language [of *Griffin*]. . . has been narrowly construed and does not, for example, reach conspiracies motivated by an economic or commercial bias." *Tilton v. Richardson*, 6 F.3d 683, 686 (10th Cir. 1993).

status. *See Ford v. Moore*, 237 F.3d 156, 162 (2d Cir. 2001) (finding that plaintiff's § 1985(3) conspiracy claim failed for lack of any evidence of the requisite discriminatory intent); *see also Thomas*, 165 F.3d at 147 ("[E]ven if [plaintiff] had shown evidence of a conspiracy, he alleged no facts and presented no evidence that could have shown that the [defendants] acted with class-based discriminatory animus.").

Therefore, the Sullivans' § 1985(3) conspiracy claim against all Defendants in this case is dismissed.

III. Section 1983 Claims

The Sullivans also assert § 1983 claims against all Defendants, and all Defendants who have filed motions to dismiss have sought to dismiss the Sullivans' § 1983 claims under either Fed. R. Civ. P. 12(b)(1) or 12(b)(6). To facilitate the discussion of those motions, the Court has grouped the movants into three categories: (1) the Judicial Defendants; (2) the State Defendants; and (3) Private Actor Defendants.

A. Judicial Defendants

In their Amended Complaint, the Sullivans sue five Judicial Defendants. Judge Juliett Crawford of the Housing Session of the Superior Court of New Britain and the presiding judge in *Sullivan v. DeLisa* is named in Claims 16-18 for dissolving a stipulated temporary injunction prohibiting the sale of 37 Valley Drive, for denying the Sullivans' request to withdraw their prejudgment remedy application, for depriving the Sullivans of a meaningful opportunity to be heard on their entry and detainer complaint within eight days, and for issuing an order requiring the Sullivans to remove their tangible possessions from 37 Valley View Drive. Judge Angelo dos Santos of the Housing Session of the Superior Court of New Britain is named in Claims 19-

21 for issuing an allegedly arbitrary order limiting the Sullivans to nine hours to examine witnesses in Housing Court, for considering on the record in open court the Sullivans' subpoena applications and hearing objections to the applications, and for not allowing Mr. Sullivan, who was accompanied by counsel at the time, to personally examine witnesses and argue motions. Judges Joseph Flynn, Thomas Bishop, and Antoinette DuPont, all Judges of Connecticut's Appellate Court, are named in Claim 25 for affirming Judge Crawford's decision in *Sullivan v. DeLisa* without issuing an opinion. *See Sullivan v. DeLisa*, 74 Conn. App. 902 (Conn. App. Ct. 2002).

The Sullivans' claims against all Judicial Defendants must be dismissed because the doctrine of absolute immunity protects judges from suits, like the Sullivans', that are brought against judges in their judicial capacities. *Mireles v. Waco*, 502 U.S. 9, 12 (1991) (*per curiam*) (judicial immunity is immunity from suit); *see also Rolle v. Berkowitz*, No. 03 Civ. 7129, 2004 WL 287678, at *2 (S.D.N.Y. Feb. 11, 2004).

The Second Circuit has fashioned a two-part test based on the Supreme Court's opinion in *Stump v. Sparkman*, 435 U.S. 349 (1978), to determine whether a judicial officer is entitled to absolute immunity. "First, a judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of authority; rather, he will be subject to liability only when he has acted in the *clear absence of all jurisdiction* . . . [;] [s]econd, a judge is immune only for actions performed in his judicial capacity." *Tucker v. Outwater*, 118 F.3d 930, 933 (2d Cir. 1997) (quotation and citation omitted) (emphasis in original); *see Montero v. Travis*, 171 F.3d 757, 761 n.2 (2d Cir. 1999). The Second Circuit has emphasized that "[t]he cloak of immunity is not pierced by allegations of bad faith or malice, even though 'unfairness and

injustice to a litigant may result on occasion.'" *Tucker*, 118 F.3d at 932 (quoting *Mireles*, 502 U.S. at 9).

The Sullivans' allegations in their Amended Complaint are insufficient to deprive the Judicial Defendants of the absolute immunity that they must enjoy in order to perform their judicial work without fear of retribution from disappointed litigants such as the Sullivans. "[J]udicial immunity . . . protect[s] judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants.'" *Austern v. Chicago Bd. Options Exch.*, 898 F.2d 882, 885 (2d Cir. 1990) (quoting *Forrester v. White*, 484 U.S. 219, 225 (1988)). The actions the Sullivans attribute to the Judicial Defendants in Claims 16-21 and Claim 25 were unquestionably performed in their judicial capacities. Moreover, even reading the Amended Complaint in the light most favorable to the Sullivans, the Court cannot conceive of a set of facts consistent with the allegations in the Amended Complaint that would establish that the Judicial Defendants acted in the clear absence of *all* jurisdiction, as is required by the Supreme Court and the Second Circuit to strip the Judicial Defendants of their absolute immunity. Accordingly, the Sullivans' claims against all of the Judicial Defendants, Claims 16-21 and 25 of the Amended Complaint, are hereby dismissed under the doctrine of absolute immunity.

B. The State Defendants

1. Assistant State's Attorney. In Claim 24B, the Sullivans allege that Assistant State's Attorney Terri Sonneman conspired with Defendant William S. Palmieri, one of the Sullivans' private attorneys, and with Criminal Division Inspector Gregory Zigmont "to conceal the State of Connecticut's lack of evidence to support the criminal action" pending against Mr. Sullivan. Revised Claim 30 of the Amended Complaint names Assistant State's Attorney

Sonneman both in her individual and official capacities for a variety of actions, including her alleged failure on or about October 11, 2000 to investigate conflicting statements contained in the Sullivans' entry and detainer complaint and statements in the criminal complaint filed by the State against Mr. Sullivan; her alleged failure to suspect that probable cause did not exist to support Inspectors Zigmont and Coffey's entries into the Sullivans' dwelling between September 29, 2000 and February 28, 2001; and for her alleged requests for continuances in the criminal proceeding against Mr. Sullivan.

"Absolute immunity is reserved for officials who perform 'special functions' and deserve absolute protection from damages liability. Among those are prosecutors . . . when they function as advocates for the state in circumstances intimately associated with the judicial phase of the criminal process." *Bernard v. County of Suffolk*, 356 F.3d 495, 502 (2d Cir. 2004) (citations and quotation marks omitted). The Second Circuit observed in *Pinaud v. County of Suffolk* that "[t]he doctrine of absolute prosecutorial immunity creates a formidable obstacle for a plaintiff seeking to maintain a civil rights action against a [prosecutor], as it provides that 'prosecutors are absolutely immune from liability under § 1983 for their conduct in initiating a prosecution and in presenting the State's case, insofar as that conduct is intimately associated with the judicial phase of the criminal process.'" 52 F.3d 1139, 1147 (2d Cir. 1995) (quoting *Burns v. Reed*, 500 U.S. 478, 486 (1991) (citation and quotation marks omitted).

It is apparent from the allegations of the Amended Complaint that the Sullivans seek to impose § 1983 liability on Assistant State's Attorney Sonneman for her actions and decisions as an advocate for the State in circumstances intimately associated with the criminal proceeding involving Mr. Sullivan. A defendant who is engaged in advocative functions, such as Assistant

State's Attorney Sonneman, "will be denied absolute immunity only if [she] acts 'without any colorable claim of authority.'" *Bernard*, 356 F.3d at 504 (quoting *Schloss v. Bouse*, 876 F.2d 287, 291 (2d Cir. 1989). Emphasizing this functional approach to claims of prosecutorial immunity, the Second Circuit has explained that the "appropriate inquiry is not whether the authorized acts are performed with good or bad *motive*, but whether the *acts* at issue are beyond the prosecutor's authority. Accordingly, where a prosecutor is sued under § 1983 for unconstitutional abuse of his discretion to initiate prosecutions, a court will begin by considering whether relevant statutes authorize prosecution for the charged conduct." *Id.*

The Sullivans do not allege that Assistant State's Attorney Sonneman initiated charges against Mr. Sullivan without a statutory basis. The only criminal charge against Mr. Sullivan mentioned in the Amended Complaint, in Claim 11B, is a criminal complaint for eavesdropping. Eavesdropping is a crime recognized in Connecticut's General Statutes. *See* Conn. Gen. Stat. § 53a-187, *et seq*. The Amended Complaint thus fails to allege, or even suggest, that Assistant State's Attorney Sonneman acted without a statutory basis in initiating charges against Mr. Sullivan,

If, as here, the laws authorize prosecution for the charged crimes, the Second Circuit next requires a court to "consider whether the defendant has intertwined his exercise of authorized prosecutorial discretion with other, unauthorized conduct. For example, where a prosecutor has linked his authorized discretion to initiate or drop criminal charges to an unauthorized demand for a bribe, sexual favors, or the defendant's performance of a religious act, absolute immunity has been denied." *Bernard*, 356 F.3d at 504. Claims 24B and Revised Claim 30 do not allege any conduct by Assistant State's Attorney Sonneman that could be conceivably be regarded as

unauthorized. Certainly seeking continuances, instituting charges, and evaluating probable cause are all authorized duties of a prosecutor. The fact that the Sullivans believe that the Assistant State's Attorney performed those authorized duties improperly or even in bad faith does not deprive her of the absolute immunity she needs to perform her advocative functions for the State. In the absence of any allegations of unauthorized conduct, "the fact that improper motives may [have] influence[d] [her] authorized discretion cannot deprive [her] of absolute immunity." *Id.* Indeed, in *Dory v. Ryan*, 25 F.3d 81 (2d Cir. 1996), the Second Circuit held that absolute immunity attaches to a prosecutor performing advocative duties, even though she allegedly conspired to present false evidence at trial. *Id*. at 83. The court stated that "[t]he fact that such a conspiracy is certainly not something that is *properly* within the role of a prosecutor is immaterial, because the immunity attaches to his function, not to the manner in which her performed it." *Id.*

Since the Sullivans fail in the Amended Complaint to allege any conduct that could defeat Assistant State's Attorney Sonneman's entitlement to absolute prosecutorial immunity, the Court dismisses all § 1983 claims against Assistant State's Attorney Sonneman in both her individual and official capacities.

2. Connecticut Division of Criminal Justice. Claim 34 of the Amended Complaint names the Connecticut Division of Criminal Justice as a defendant. Because the Connecticut Division of Criminal Justice is entitled to immunity under the Eleventh Amendment, the Court dismisses all claims against the Division.

The Eleventh Amendment provides that "[t]he 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 of Subjects of any Foreign State." U.S. Const. amend XI. As the Second Circuit recently reinforced, despite the seemingly narrow text of the Amendment, "it has been construed more broadly to render states and their agencies immune from suits brought by private parties in federal court." *In re Charter Oak Assocs.*, 361 F.3d 760, 765 (2d Cir. 2004) (quoting *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996)). "State sovereign immunity is not just a 'personal privilege' of the state, but also a jurisdictional limitation on the power of federal courts. The Eleventh Amendment effectively places suits by private parties against states outside the ambit of Article III of the Constitution." *In re Charter Oak Assocs.*, 361 F.3d at 765 (quoting *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675 (1999)); *see Seminole Tribe*, 517 U.S. at 54. A state's immunity under the Eleventh Amendment is subject to only two qualifications: "First, Congress can abrogate a state's immunity if it unequivocally expresses its intent to do so and acts pursuant to a valid exercise of power." *In re Charter Oak Assocs.*, 361 F.3d at 765 (citation omitted). "Second, a state can waive its immunity from suit." *Id.*; *see e.g., Lapides v. Bd. of Regents of the Univ. Sys.*, 535 U.S. 613, 618 (2002).

The Sullivans recognize in the Amended Complaint that "the Connecticut Division of Criminal Justice is a department of the State of Connecticut." Amended Compl. at 8. In addition, the Sullivans have not asserted that Congress unequivocally expressed its intent to abrogate Connecticut's sovereign immunity or that the State had waived its immunity, and the Court itself is unaware of any such abrogation or waiver. Therefore, Claim 34 of Amended Complaint against the Connecticut Division of Criminal Justice is barred by the Eleventh Amendment and is hereby dismissed.

3. Inspectors Zigmont and Coffey. Claim 12 of the Amended Complaint names as defendants Inspectors Zigmont and Coffey of the Connecticut Criminal Justice Division. Claim 12 alleges that, on January 22, 2001, the inspectors entered and searched the Sullivans' dwelling at 37 Valley View Drive without a warrant and thereby violated the Sullivans' rights to privacy, due process, and equal protection under the Fourth and Fourteenth Amendments. Inspector Zigmont is also named in Claim 24B for allegedly conspiring "to conceal the State of Connecticut's lack of evidence to support the criminal action" pending against Mr. Sullivan, and in Claims 27-29 for allegedly entering the Sullivans' residence on January 22, 2001 without a warrant, for allegedly planting evidence, and for allegedly obtaining a warrant on January 23, 2001 on the basis of false statements and in the absence of probable cause. It appears from the allegations of the Amended Complaint that the Sullivans seek relief from Inspectors Zigmont and Coffey only in their official capacities.

To the extent that the Sullivans seek damages from Inspectors Zigmont and Coffey in their official capacities, the Sullivans' claims against the inspectors are barred by the Eleventh Amendment for the reasons previously stated in the discussion of the claims against the Connecticut Division of Criminal Justice . *Muntaqim v. Coombe*, 2004 WL 870474, at *23 (2d Cir. Apr. 23, 2004) (finding that plaintiff's suit against defendant state officials was barred by the Eleventh Amendment to the extent that plaintiff sought damages against the defendants in their official capacities). The Supreme Court explained in *Kentucky v. Graham*, 473 U.S. 159 (1985):

> Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under the color of state law. Official capacity suits, in contrast, generally represent only another way of pleading an action against an entity of which an officer is an agent. As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects

> other than name, to be treated as a suit against the entity. It is *not* a suit against the official personally, for the real party in interest is the entity. Thus, while an award of damages against an official in his personal capacity can be executed only against the officials' personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself.

Id. at 165-66 (citations and quotation marks omitted) (emphasis in original); *see Frank v. Relin*, 1 F.3d 1317, 1326 (2d Cir. 1993).

While the Eleventh Amendment prohibits recovery of monetary damages from state officials acting in their official capacities, there is "a limited exception to the general principle of sovereign immunity [that] allows a suit for injunctive relief challenging the constitutionality of a state official's actions in enforcing state law under the theory that such a suit is not one against the State, and therefore not barred by the Eleventh Amendment." *Ford v. Reynolds,* 316 F.3d 351, 354-55 (2d Cir. 2003); *see CSX Transp. v. New York State Office of Real Prop. Servs.*, 306 F.3d 87, 98 (2d Cir. 2002). In determining whether the *Ex Parte Young* doctrine applies to this case, so as to permit the Sullivans' suit against the named defendants in their official capacities, "a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Ford*, 316 F.3d at 355 (quoting *Verizon Md. v. Pub. Serv. Comm'n of Md.,* 535 U.S. 635, 636 (2002)).

None of the Sullivans' claims against Inspectors Zigmont and Coffey seeks relief that could properly be characterized as prospective in nature. Claim 12 focuses on redressing past conduct dating to approximately September 29, 2000, the date on which the inspectors allegedly entered and searched the Sullivans' purported dwelling without notice, without consent of the Sullivans, and without leave of the Housing Court. Likewise, Claim 33 seeks redress from the inspectors for alleged conduct occurring between approximately September 27, 2000 through

April 19, 2001. Claim 27 seeks relief from Inspector Zigmont in his official capacity for entering the Sullivans' purported dwelling on January 22, 2001 without warrant, without notice or consent of the Sullivans and without leave of the Housing Court. Claims 28 and 29 against Inspector Zigmont are similarly retrospective in nature, claiming that on January 22, 2001, Inspector Zigmont unlawfully searched the Sullivans' purported dwelling, planted evidence during the search, and obtained a search warrant on January 25, 2001 on the basis of false statements and omissions.

Accordingly, the Court dismisses Claims 12, 27, 28, 29, and 33 insofar as those claims seek relief from Inspectors Zigmont and Coffey in their official capacities. However, as is discussed below, the Court intends to grant the Sullivans an opportunity to amend their complaint. *See Davis v. Goord*, 320 F.3d 346, 352 (2d Cir. 2003) ("Certainly the court should not dismiss without granting leave to amend at least once when a liberal reading of the [*pro se*] complaint gives any indication that a valid claim might be stated.") (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (*per curiam*). At that time, the Sullivan will be permitted to seek amendments naming Inspectors Zigmont and Coffey in their *individual* capacities since the Eleventh Amendment would not bar individual capacity claims against these state officials. *See Hafer v. Melo*, 502 U.S. 21, 30-31 (1991) ("[T]he Eleventh Amendment does not erect a barrier against suits to impose individual and personal liability on state officials under § 1983."). The Court declines at this point to decide whether the Sullivans have valid claims against the Inspectors in their individual capacities since no such claims have as yet been asserted.

C. The Private Defendants.

The Sullivans have also sued numerous former attorneys and private individuals,

including certain of the Sullivans' family members (collectively, the "Private Defendants"), under § 1983 for various constitutional claims. Section 1983 provides, in pertinent part, that

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

42 U.S.C. § 1983. "'In order to state a claim under § 1983, a plaintiff must allege that he was injured by either a state actor or a private party acting under color of state law.'" *Ciambriello*, 292 F.3d at 323 (quoting *Spear v. Town of West Hartford*, 954 F.2d 63, 68 (2d Cir. 1992).

The Sullivans name several attorneys as defendants in their Amended Complaint, most of whom represented the Sullivans during various aspects of the proceedings in state court that have led to this action. The Sullivans contend that the named attorneys "acted under color of law as an officer of the court licensed by the State of Connecticut to practice." It is well-settled, however, that private attorneys do not act under color of state law and are not state actors simply by virtue of their state-issued licenses to practice law. *See, e.g., Rodriguez v. Weprin,* 116 F.3d 62, 65-66 (2d Cir.1997) (private attorney not a state actor law by virtue of his appointment by the court to represent a defendant in a state criminal proceeding); *Fine v. City of New York*, 529 F.2d 70, 74 (2d Cir. 1975) (private attorney not a state actor); *Agron v. Douglas W. Dunham, Esq. & Assocs.*, No. 02 Civ.10071, 2004 WL 691682, at *3 (S.D.N.Y. Mar. 31, 2004) ("It is well-established that as a matter of law a private attorney is not a state actor."); *Cunningham v. Fisch*, 01 Civ. 1123, 2001 U.S. Dist. LEXIS 17483, at *11 (S.D.N.Y. Oct. 26, 2001) ("'[A] lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law'

within the meaning of § 1983.'") (quoting *Polk County v. Davidson*, 454 U.S. 312 (1981)).

The attorney defendants, therefore, are presumed to be private actors. In addition, the Sullivans acknowledge that the DeLisas and Ms. Hyland are private actors, *see* Revised Claim 1, and the Amended Complaint does not claim that either Mrs. Crowell – Mr. Sullivan's mother – or Mr. Hyland are state actors. All of the Private Defendants are thus beyond the reach of § 1983 liability, unless they engaged in conduct that can be characterized as state action or they acted in concert with a state actor to violate the Sullivans' constitutional rights. *Ciambriello*, 292 F.3d at 323.

This Court has recently had the opportunity to consider the state action doctrine as applied to a private actor in *Szekeres v. Schaeffer*, 304 F. Supp. 2d. 296, 304-05 (D. Conn. 2003). As *Szekeres* emphasizes, when analyzing allegations of state action, the court must begin "'by identifying the specific conduct of which the plaintiff complains.'" *Id*. at 306 (quoting *Tancredi v. Met. Life Ins. Co.*, 316 F.3d 308, 312 (2d Cir. 2003)). "In order to satisfy the state action requirement where the defendant is a private entity, the allegedly unconstitutional conduct must be "fairly attributable" to the state." *Tancredi*, 316 F.3d at 312. "Conduct that is ostensibly private can be fairly attributed to the state only if there is 'such a close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" *Id.* (quoting *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001)). Accordingly, "[s]tate action may properly be found where the state exercises 'coercive power' over, is 'entwined in [the] management or control' of, or provides 'significant encouragement, either overt or covert' to, a private actor, or where the private actor 'operates as a willful participant in joint activity with the State or its agents,' is 'controlled by an agency of the

State,' has been delegated a "public function' by the state, or is 'entwined with governmental policies.'" *Id.* at 313 (quoting *Brentwood Acad.,* 531 U.S. at 296).

Even if alleged conduct by a private party does not amount to state action for the purposes of § 1983 liability, a private party may also be subject to suit under § 1983 if the private party acted in concert or conspired with a state actor to violate a plaintiff's constitutional rights.[6] "To state a claim against a private entity on a section 1983 conspiracy theory, the complaint must allege facts demonstrating that the private entity acted in concert with the state actor to commit an unconstitutional act." *Ciambriello*, 292 F.3d at 324. "Put differently, a private actor acts under color of state law when the private actor 'is a willful participant in joint activity with the State or its agents.'" *Id.* (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970)). However, in order to survive a motion to dismiss on a § 1983 conspiracy claim, a plaintiff "must allege (1) an agreement between a state actor and a private party; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages." *Id.* at 324-25 (citing *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999)). "In addition, 'complaints containing only conclusory, vague, or general allegations that the defendants have engaged in a conspiracy to deprive the plaintiff of his constitutional rights are properly dismissed; diffuse and expansive allegations are insufficient, unless amplified by specific

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[6] Although the Sullivans have not explicitly advanced a § 1983 conspiracy theory in their Amended Complaint, the Court is required to construe the Sullivans' complaint liberally, and in view of the Sullivans' § 1985 conspiracy claim, the Court will assume that the Sullivans also intended to allege a § 1983 conspiracy claim against the Private Defendants. *See Branmun v. Meachum*, 77 F.3d 626, 628-29 (2d Cir. 1996) ("When considering the sufficiency of a *pro se* complaint, [the court] must construe it liberally, applying less stringent standards than when a plaintiff is represented by counsel.") (citation and quotation marks omitted).

instances of misconduct.'" *Id.* (citing *Dwares v. City of New York*, 985 F.2d 94, 199 (2d Cir. 1993). "A private party involved in a conspiracy with state actors can be liable under § 1983, but to sustain such a claim, the plaintiff must allege facts showing an agreement or meeting of the minds between the state actor and private actor to engage in a conspiracy to deprive the plaintiff of a constitutional right." *Colon v. Town of West Hartford*, No. Civ. 3:00CV168, 2001 WL 45464, at *7 (D. Conn. Jan. 5, 2001).

The Court will, therefore, address the allegations regarding each of the Private Defendants to determine whether the Amended Complaint, and any of the revised claims, states a claim under § 1983 against any of the Private Defendants on either of two possible grounds: (a) that the Private Defendants' actions constituted state action because their conduct was fairly attributable to the State; or (b) that the Private Defendants conspired with a state actor to deprive the Sullivans of certain constitutional protections.

1. Jeffrey Stein. Mr. Stein, who is described in the Amended Complaint as a "Defendant attorney," is named in Claims 2-4. Claims 2-4 cover roughly the period from March 2000 through October 2000, during which the Sullivans broadly allege that Mr. Stein conspired with various defendants, including Farmington police officers, to deprive the Sullivans of their rented dwelling, to lock the Sullivans out of their dwelling, and to threaten the Sullivans with arrest if they attempted to enter their dwelling.

While a *pro se* party's allegations are to be accorded liberal treatment at the motion to dismiss stage, the Court concludes that Claims 2-4 do not allege sufficient facts to support a § 1983 conspiracy claim against Mr. Stein. None of the claims asserted against Mr. Stein provides any facts about when he entered into any alleged conspiracy, what he might have said to any state

actors that could have assisted them in engaging in allegedly unlawful conduct, or what overt actions, if any, Mr. Stein took in furtherance of any alleged conspiracy. In fact, the Sullivans' allegations amount to nothing more than general accusations that Mr. Stein acted in concert with state actors without setting forth any facts that would show that Mr. Stein was a "willful participant in joint activity with the State or its agents." *Ciambriello*, 292 F.3d at 324. The Second Circuit has made it clear that generalized allegations of a conspiracy such as that asserted by the Sullivans are insufficient to state a § 1983 claim against a private defendant. *Id.*; *see Polur v. Raffe*, 912 F.2d 52, 56 (2d Cir. 1990) (dismissal of § 1983 conspiracy claim appropriate because plaintiff relied on "vague, prolix allegations of conspiracy without pleading any overt acts or providing a basis in fact for his claim"). In addition, the Sullivans do not present any facts that show a close nexus between Mr. Stein and the police officers or any other state actor that would warrant treating Mr. Stein's behavior as that of the State itself for the purposes of § 1983.

Claim 2 of the Amended Complaint is also deficient because it asserts that Mr. Stein, "acting under color of law as an officer of the court licensed by the State of Connecticut to practice law, knowingly conspired with Defendants Maryanne Delisa, Thomas Delisa, Kathryn Hyland, James Hyland and Mary Crowell to engage in extreme and outrageous conduct that commenced the unlawful deprivation of the Plaintiffs from their rented dwelling." In order to survive a motion to dismiss on a § 1983 conspiracy claim, a plaintiff must allege "an agreement between a state actor and a private party. . ." *Ciambriello*, 292 F.3d at 324-25. Yet, Claim 2 alleges only that Mr. Stein conspired with defendants who are themselves private actors. In addition, insofar as Claim 2 asserts that Mr. Stein's license to practice law makes him a state actor, the Sullivans are wrong for the reasons previously stated.

The Court therefore dismisses the Sullivans' § 1983 claims against Mr. Stein.

2. Thomas and Maryanne DeLisa, James and Kathryn Hyland, and Mary Crowell. Maryanne DeLisa is Mr. Sullivan's sister and Ms. Crowell is Mr. Sullivan's mother. *Sullivan*, 2002 WL 523076, at *3. The DeLisas, the Hylands and Ms. Crowell are named in Claim 2 along with Mr. Stein. For the reasons stated above with respect to Mr. Stein, the § 1983 claim asserted in Claim 2 against the DeLisas, the Hylands, and Ms. Crowell must also be dismissed.

The Sullivans also name the DeLisas, Ms. Hyland, and Ms. Crowell in Revised Claim 1 for conduct allegedly undertaken in conjunction with Farmington Police Chief Whalen and Officers Devine and Herbert to violate the Sullivans' rights under the Fourteenth Amendment and Connecticut state statutory and common law. Specifically, Revised Count 1 alleges that the DeLisas and Ms. Hyland entered the Sullivans' rented dwelling on July 11, 2000 and prohibited the Sullivans' entry into the dwelling. Mr. Sullivan claims that he told the DeLisas and Ms. Hyland to leave and when they refused, Mr. Sullivan called the Farmington Police requesting protection and assistance to remove these defendants from the premises. The police officers, including Chief of Police Whalen and Officers Devine and Williams, arrived and upon consultation with the disputing parties the officers purportedly refused to remove these defendants from the dwelling as Mr. Sullivan had demanded. The Sullivans also allege the following:

> Plaintiff Philip Sullivan repeatedly demanded more of a reason from said Police Officers, but they willfully refused to ask the private party Defendants to leave and told the Plaintiff not to call them again, to get a lawyer and go to civil court if he didn't like it. In an effort to quell a potentially violent situation, the Plaintiffs were forced to flee their home and seek temporary shelter while the Defendant Police Officers and Delisas and Hyland remained behind at the home of the Plaintiffs.

Revised Claim 1 does not allege facts demonstrating that any of the Private Defendants conspired or acted jointly with the police officers to deny the Sullivans their constitutional rights. Rather, Revised Claim 1 only vaguely and in conclusory fashion asserts that there was concerted action between the Private Defendants and the police officers. While the Court appreciates and understands that the Sullivans are entitled to a generous treatment on account of their *pro se* status and the present stage of litigation, the Court cannot conclude that Revised Claim 1, as currently pleaded, states a viable § 1983 conspiracy claim. *See Contes v. City of New York*, No. 99 Civ. 1597, 1999 WL 500140, at *5 (S.D.N.Y. July 14, 1999) ("Even though the Court must construe a *pro se* plaintiff's pleadings liberally, the plaintiff must still allege some factual basis to substantiate her conclusion that the state and private defendants conspired to deprive her of her constitutionally protected interests."). Nor can the Court conclude from the allegations of Revised Claim 1 that the DeLisas, Ms. Hyland, or Ms. Crowell engaged in conduct that can be fairly attributable to the State, subjecting them to § 1983 liability. Therefore, Revised Claim 1 is dismissed insofar as it alleges that the DeLisas, Ms. Hyland, and Ms. Crowell violated the Sullivans' Fourteenth Amendment rights on the basis of § 1983.

Claim 6 alleges that, on or about September 7, 2000, Officers Devine and Herbert "in response to a report of stolen property by Plaintiff Philip Sullivan conspired with defendants Thomas Delisa and Maryanne Delisa and certain officers . . . in the theft of" Mr. Sullivan's bulldozer and that, despite the DeLisas' alleged confession to police that they had stolen the bulldozer, the police officers chose not to act. These allegations do not adequately plead a § 1983 conspiracy between the DeLisas and the police. First, as Claim 6 states, the police responded to Mr. Sullivan's report of stolen property. Second, the Court agrees with the DeLisas'

observation in their Memorandum of Law in Support of DeLisa Defendants' Motion to Dismiss [doc. #64], that their purported confession, as alleged in Claim 6, "is inconsistent with any claim the DeLisas stole the bulldozer pursuant to an agreement with town police officers to deprive the plaintiff of his rights." *Id.* at 8. As with the claims against the other Private Defendants, the Amended Complaint and revised claims do not contain any factual allegations sufficient to state a conspiracy claim but rather, only conclusory allegations. Such conclusory statements are insufficient as a matter of law. *See O'Diah v. New York City*, No. 02 CIV. 274, 2002 WL 1941179, at *11 (S.D.N.Y. Aug. 21, 2002) ("Allegations of conspiracy must be pled with particularity and will not withstand a motion to dismiss if they are conclusory and vague.").

Claims 27 and 28 are asserted against the Hylands, the DeLisas, and Ms. Crowell. Both claims allege that, on or about January 22, 2001, "without warrant, without notice to or consent of the Plaintiffs and without leave of the Housing Court," Inspector Zigmont "conspired with James Hyland [purportedly acting as an agent of the state of Connecticut] in combination with defendant McAnaney and defendants named in" Claims 1 through 15 and Claim 30, entered" and searched the Sullivans' property. The Court dismisses Claim 28 as to the Hylands, the DeLisas, and Ms. Crowell pursuant to Fed. R. Civ. P. 12(f) as Claim 28 is repetitive of Claim 27. *See Wynder v. McMahon*, 360 F.3d 73, 81 (2d Cir. 2004) (indicating that a court may strike any portions of a complaint that are redundant). Moreover, construed liberally, the allegations against the Hylands, the DeLisas, and Ms. Crowell in Claim 27 are insufficient to withstand dismissal at this stage. The Sullivans baldly assert that Mr. Hyland was a state actor who conspired with Inspector Zigmont to effect a warrantless search of the Sullivans' property, and that Ms. Hyland, the DeLisas, and Ms. Crowell joined in the conspiracy by planting evidence.

But the Sullivans do not make even a *de minimis* showing in their Amended Complaint that there was an agreement between Mr. Hyland and Inspector Zigmont to work in concert to deprive the Sullivans of their constitutional rights. Claims 27 is also insufficient under § 1983 as there are no allegations that would permit the Court to treat the Hylands', the DeLisas', or Ms. Crowell's actions as attributable to the State itself. *Tancredi*, 316 F.3d at 312. Accordingly, the Court dismisses the claims against the Hylands, the DeLisas, and Ms. Crowell brought pursuant to § 1983 in Claims 27 and 28.

Mr. Hyland is also named in Claim 13. Claim 13 asserts that, on or about September 29, 2000, Mr. Hyland met Inspectors Zigmont and Coffey at the Sullivans' dwelling and that they allegedly conspired to falsely establish that the Sullivans had not resided as renters at their dwelling for 30 years but, rather, that the Sullivans resided as tenants-at-will who had abandoned their alleged dwelling. The Sullivans further contend in Claim 13 that Mr. Hyland chose not to tell the inspectors that there was a conspiracy to lock the Sullivans out of their dwelling, and that Mr. Hyland and the inspectors thereafter entered and searched the Sullivans' dwelling.

The allegations in Claim 13 are insufficient to state a claim for either state action or a § 1983 conspiracy. Mr. Hyland's alleged failure to inform the inspectors of a vast and insidious conspiracy belies the Sullivans' claim that the inspectors were knowing participants in any conspiracy. At the very least, Claim 13 founders on its own failure to allege that Mr. Hyland and the inspectors agreed to work in concert to violate the Sullivans' constitutional rights. *Pollack v. Nash*, 58 F. Supp. 2d 294, 300 (S.D.N.Y. 1999) ("[C]omplaints containing only conclusory, vague, or general allegations that the defendants have engaged in a conspiracy to deprive the plaintiff of his constitutional rights are properly dismissed: diffuse and expansive allegations are

insufficient, unless amplified by specific instances of misconduct."). Therefore, the Fourth and Fourteenth Amendment causes of action brought against Mr. Hyland pursuant to § 1983 must be dismissed.

Claims 29 states that Mr. Hyland conspired with Inspector Zigmont to deprive the Sullivans of their Fourth, Fifth, and Fourteenth Amendment rights, and entered the Sullivans' alleged dwelling and commenced a warrantless search and seizure on or about April 19, 2001. As against Mr. Hyland, Claim 29 merely alleges that Inspector Zigmont

> conspired with Defendant James Hyland [acting as an agent of the state of Connecticut] and without notice or consent of the plaintiffs . . . and in combination with defendant McAnaney and defendants named in Claims 1 through 15 and Claim 30 entered plaintiffs' rented dwelling unit . . . with another inspector and initiated a search and seizure within said dwelling upon an un-executed warrant.

Claim 29 does not point to "any specific evidence of communications between" the inspector and Mr. Hyland, *Gyadu v. Hartford Ins. Co.*, 197 F.3d 590, 591 (2d Cir. 1999), nor does Claim 29 contain anything more than "conclusory, vague, or general allegations of conspiracy to deprive" the Sullivans of consitutional rights. *Id.* This is not a satisfactory basis upon which to find either state action or to state a claim for a § 1983 conspiracy. *Id*.

Finally, Claim 33 alleges that Mr. Hyland violated the Sullivans' Fourth and Fourteenth Amendment rights by conspiring with Inspectors Zigmont and Coffey from September 27, 2000 through April 19, 2001 and, together, opened "locked file cabinets and boxes owned by Plaintiff Philip Sullivan and removed Plaintiff's intellectual properties in the form of written documents, made copies of them and returned them to unlocked storage devices in plaintiffs' dwelling." Absent from Claim 33 are any factual assertions by the Sullivans that Mr. Hyland and the

inspectors reached an understanding to act in concert to effect a constitutional deprivation upon the Sullivans. The Sullivans' conspiracy claim cannot, therefore, be sustained on the basis of their current allegations. *See Romer v. Morgenthau*, 119 F. Supp. 2d 346, 363 (S.D.N.Y. 2000) ("[P]laintiff must provide some factual basis supporting a 'meeting of the minds,' such as that defendants 'entered into an agreement, express or tacit, to achieve the unlawful end.'"). Furthermore, Claim 33 offers no basis upon which to transform Mr. Hyland into a state actor. *Tancredi*, 316 F.3d at 312. Therefore, the Sullivans' § 1983 claims against Mr. Hyland are dismissed.

3. Lee Johnson and Robert Kor. The Sullivans name Mr. Johnson in Claim 7, alleging that "[o]n or about July 13, 2000 and August 2000 Defendants' Attorney Lee Johnson . . . consulted with Plaintiffs as to their having been forced and harassed out of their home by the named defendants in Claim 1 and 2 and knowingly chose not to advise Plaintiffs of their rights under" various Connecticut statutes and that Mr. Johnson thereby "joined in the conspiracy with named defendants in Claims 1 and 2 . . ." Claim 8 alleges that, on or about August 18, 2000, Mr. Kor, an attorney, consulted with the Sullivans regarding their eviction from their rented dwelling, but failed to inform the Sullivans of their rights under several Connecticut statutes, and that Mr. Kor failed to advise the Sullivans that Mr. Johnson should have known about their rights under the statutes. Claim 8 asserts that in failing to advise the Sullivans of their rights, Mr. Kor "knowingly joined in the conspiracy with" the defendants in Claims 1, 2 and 7.

The allegations in Claims 7 and 8 do not, even viewed in the light most favorable to the Sullivans, satisfy either the state action or the § 1983 conspiracy elements. While police officers were allegedly involved in the events described in Revised Claim 1 and Claim 2, Mr. Johnson's

and Mr. Kor's alleged failure to inform the Sullivans of possible resultant legal violations does not amount to an agreement or concerted action between a state actor and either Mr. Johnson or Mr. Kor to deprive the Sullivans of their rights. *See Berman v. Turecki*, 885 F. Supp. 528, 534 (S.D.N.Y. 1995) (dismissing conspiracy claims because plaintiff provided "no supporting facts [] from which a trier of fact could infer a meeting of the minds between" defendant, a psychiatrist, and an FBI agent, "concerning a course of action intended to deprive [plaintiff] of his constitutional rights"). At best, these claims of allegedly inadequate legal counsel would give rise to a state law claim of legal malpractice; they certainly do not state a § 1983 claim for violation of any federal constitutional rights. Therefore, Claims 7 and 8 against Mr. Johnson and Mr. Kor are dismissed.

4. Doris D'Ambrosio. Claims 9A, 9B, 10, 11A are brought against Ms. D'Ambrosio for her decisions and actions performed in her capacity as an attorney for the Sullivans. Although the Amended Complaint does not indicate clearly the period during which Ms. D'Ambrosio represented the Sullivans, the claims against Ms. D'Ambrosio involve conduct occurring between approximately September 2000 and May 2001.

Claim 9A asserts that Ms. D'Ambrosio failed to advise the Sullivans that their civil rights had been violated on July 11, 2000 and September 7, 2000 by the Defendants named in Revised Claim 1, and Claims 2, 5 and 6 assert that when Ms. D'Ambrosio filed an entry and detainer action in Superior Court on behalf of the Sullivans against members of the Sullivans' family, Ms. D'Ambrosio chose not to include all necessary defendants. Claim 9B alleges that Ms. D'Ambrosio misinformed the Sullivans about when they would have an opportunity to submit to the court evidence regarding damages, and it further asserts that Ms. D'Ambrosio proceeded to

induce the Sullivans into a stipulation agreement with members of the Sullivans' family in accordance with a series of steps planned by the Defendants in Claims 1 and 2. Claim 10 alleges that Mr. D'Ambrosio's decision not to advise the Sullivans that an allegedly false criminal complaint was filed against Mr. Sullivan by Ms. Crowell on or about September 18, 2000 was a contributing factor in causing the delay of the Sullivans' Superior Court housing action. Claim 11A alleges that Ms. D'Ambrosio failed to advise the Sullivans that Defendants in Claim 2 were unlawfully searching the Sullivans' dwelling.

For the reasons stated above with respect to the claims against Mr. Johnson and Mr. Kor, all of the Sullivans' § 1983 claims against Ms. D'Ambrosio are also dismissed. The Amended Complaint does not allege sufficient facts that, if believed, would establish that, at any time relevant to this case, there was an agreement between Ms. D'Ambrosio and a state actor to deprive the Sullivans of their constitutional rights, that Ms. D'Ambrosio committed an overt act in furtherance of that goal, or that Ms. D'Ambrosio engaged in any conduct in concert with a state actor that would render Ms. D'Ambrosio subject to suit under § 1983 for constitutional violations on a conspiracy theory. In short, the Sullivans have not provided a "factual basis supporting a 'meeting of minds', such as that defendants 'entered into an agreement, express or tacit, to achieve an unlawful end." *Romer*, 119 F. Supp. 2d at 363. And, "[i]n the absence of specific claims of unlawful cooperation with state officials, an attorney engaged in civil litigation on behalf of a private client cannot be said to be acting under color of state law." *Gangemi v. Johnson*, No. 98 Civ. 8470, 1999 WL 777861, at *3 (S.D.N.Y. Sept. 30, 1999).

Mere dissatisfaction with the outcome of Ms. D'Ambrosio's legal efforts on behalf of the Sullivans does not provide sufficient grounds for finding that Ms. D'Ambrosio was actively

planning with the Sullivans' adversaries to contravene the Sullivans' constitutional rights in violation of § 1983 or that Ms. D'Ambrosio's alleged conduct may be fairly treated as that of the State itself. *Tancredi*, 316 F.3d at 312; *see Desiderio v. Nat'l Ass'n of Secs. Dealers, Inc.*, 191 F.3d 198, 207 (2d Cir. 1999) (noting that *Blum v. Yaretsky*, 457 U.S. 991, 1004-05 (1982), "requires a nexus between the state and the *specific conduct* of which plaintiff complains") (emphasis added); *Gangemi*, 1999 WL 777861, at *3-4 (dismissing plaintiff's complaint, stating that "[w]hile a private individual need not be a state official to be considered a state actor, he must have 'acted together with or ha[ve] obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State' to be considered a state actor") (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)). Accordingly, the Court dismisses all § 1983 claims against Ms. D'Ambrosio.

5. Edward McAnaney. Claims 11B, 15 through 20, 22, 23, 27, and 28 assert that Mr. McAnaney, whom the Sullivans tersely describe as a "defendant attorney," engaged in conspiratorial activities with the DeLisas, the Hylands, Ms. Crowell, state judges, a private attorney, and State inspectors. Clam 11B alleges that Mr. McAnaney entered into a stipulation with the Sullivans that would give the Sullivans access to their dwelling to assess the condition of their possessions, but that Mr. McAnaney knew that the Defendants had no intention of complying with the terms of the stipulation. Claim 11B also alleges that Mr. McAnaney conspired with DeLisas, the Hylands, and Ms. Crowell to file a false criminal complaint for eavesdropping in order to induce the Sullivans to withdraw their entry and detainer complaint. Claim 11B does not identify a state actor with whom Mr. McAnaney conspired nor does Claim 11B allege facts that would indicate that Mr. McAnaney acted under color of state law, therefore

the Fourth and Fourteenth Amendment actions brought in Claim 11B against Mr. McAnaney pursuant to § 1983 cannot be sustained.

Claim 15 alleges that Mr. McAnaney conspired with Judge Crawford and all Defendants named in Revised Claim1 and Claims 2-14 by moving, without cause, in the Superior Court to dissolve a temporary stipulated injunction prohibiting the sale of the Sullivans' dwelling. Claim 15 also states that Mr. McAnaney engaged in a lawful act, but that he "knowingly did so in an unlawful way." Claim 15 does not, however, allege facts showing that Mr. McAnaney acted in coordinated effort with state actors or that he was controlled by or acted under the influence of the state. Likewise, Claims 16 through 20 and Claim 22 fail to describe any illegal conduct, unilateral or in concert with Judge Crawford or Judge Dos Santos, that could suggest that there existed an agreement to engage in a combined effort to deprive the Sullivans of their constitutional rights. The Sullivans' allegations are merely conclusory, devoid of factual support, and, therefore, wholly insufficient to establish that Mr. McAnaney was a state actor or a private actor involved in a § 1983 conspiracy. *Dwares*, 985 F.2d 94, 100 (2d Cir. 1993) ("[C]omplaints containing only conclusory, vague, or general allegations that the defendants have engaged in a conspiracy to deprive the plaintiff of his constitutional rights are properly dismissed."). Claims 15 through 20 are not salvaged by reference to the Defendants named in Revised Claim 1, which includes police officers, because Claims 15 through 20 make no mention of how Mr. McAnaney was in league with the Farmington police officers and, thereby, fails "to specify in detail the factual basis necessary to enable [Mr. McAnaney] intelligently to prepare [his] defense." *Ciambriello*, 292 F.3d at 325.

Claim 23 alleges that Mr. McAnaney and Mr. Palmieri, the Sullivans' attorney from

approximately December 2001 to January 2003, conspired with all the Defendants named in Revised Claim 1, Claims 2 through 20, and Claims 26 through 34 to delay the final determination by the Superior Court of the Sullivans' entry and detainer action by not proceeding with the criminal case against Mr. Sullivan. Again, however, Claim 23 lacks any facts alleging that Mr. McAnaney was a state actor whose actions are fairly attributable to the State or that Mr. McAnaney engaged in a § 1983 conspiracy with another state actor. As stated previously, a conspiracy among wholly private actors is not within the purview of § 1983. *Ciambriello*, 292 F.3d at 324-25. Moreover, speculation and invocation of the word "conspiracy" are not sufficient to state a claim against a private party under § 1983.

Claims 27 and 28, as they relate to Mr. McAnaney, are redundant, since each alleges that Mr. McAnaney conspired with Inspector Zigmont to enter and search the Sullivans' putative dwelling on January 22, 2001 without a warrant. The Court dismisses Claim 28 as to Mr. McAnaney pursuant to Fed. R. Civ. P. 12(f) as duplicative of Claim 27. *See Wynder*, 360 F.3d at 81. As to Claim 27, for substantially the same reasons stated above with respect to Claim 27 as it applies to Mr. Hyland, the Court concludes that there is no basis to maintain a § 1983 action for violations of the Fourth, Fifth, and Fourteenth Amendments against Mr. McAnaney either on the basis of a conspiracy with a state actor or as a result of a close nexus between the State and Mr. McAnaney's alleged actions on January 22, 2001. *Brentwood Acad.*, 531 U.S. at 295.

In sum, the Court dismisses all § 1983 claims against Mr. McAnaney.

6. Rachel Baird. Ms. Baird, the Sullivans' attorney from approximately June 14, 2001 to December 2001, is named in Claims 14, 17, and 18 in connection with her legal representation of the Sullivans in Superior Court proceedings. Claims 14, 17, and 18 allege that

Ms. Baird, the Sullivans' attorney at that time, did the following: conspired with Judge Crawford to deny the Sullivans a meaningful opportunity to be heard in court in connection with the Sullivans' request for prejudgment remedy; entrapped the Sullivans by filing a request for a prejudgment remedy on behalf of the Sullivans which allegedly affected the merits of their entry and detainer action, thereby working in concert with Judge Crawford to deny the Sullivans an opportunity to be heard at a meaningful time; and worked with Judge Crawford and other Defendants to issue an order directing the Sullivans to remove their belongings from 37 Valley View Drive.

Viewing these allegations liberally and in the light most favorable to the Sullivans, the Court concludes that Claims 14, 17, and 18, do not, individually or collectively, state a § 1983 conspiracy claim or otherwise allege sufficient facts to permit an inference that Ms. Baird's actions as the Sullivans' attorney are fairly attributable to the State. *Cranley v. Nat'l Life Ins. Co. of Vermont*, 318 F.3d 105, 111 (2d Cir. 2003) ("[A] plaintiff must show that the allegedly unconstitutional conduct is "fairly attributable" to the state."). Furthermore, the claims naming Ms. Baird do not describe an overt act on the part of Ms. Baird in furtherance of an alleged agreement with a state actor to violate the Sullivans' constitutional rights. Rather, the allegations of a conspiracy between Ms. Baird and Judge Crawford are merely vague, speculative, and conclusory and, therefore, do not establish that Ms. Baird was a state actor or a private actor who was a part of a § 1983 conspiracy. *See Polur*, 912 F.2d at 56 ("It is incumbent on a plaintiff to state more than conclusory allegations to avoid dismissal of a claim predicated on a conspiracy to deprive him of his constitutional rights."). As a consequence, all Fourth, Fifth, and Fourteenth Amendment claims brought against Ms. Baird pursuant to § 1983 in Claims 14, 17 and 18 are

hereby dismissed.

7. Wayne Boulton. Claim 31 alleges that "[b]etween June 2001 and August 1, 2001 attorney Wayne Boulton . . . employed as a member of O'Connell, Flaherty & Attmore, L.L.C., joined the combined efforts of defendants named in [] Claims 1, 2, 5, 7, 8, 9, 11, 14, and 15 to delay the Superior Court Housing [] proceeding as long as possible by choosing not to advise his clients, the Plaintiffs herein, that their civil rights had been violated . . . and thereby joined the conspiracy" to violate the Sullivans' rights under the Fourth, Fifth, and Fourteenth Amendments.

As with the claims against Ms. D'Ambrosio, Mr. Johnson, and Mr. Kor, Claim 31 merely complains of allegedly inadequate legal services provided to the Sullivans by their own private attorney. Such allegations may state a claim under state law for legal malpractice but they cannot support a claim under § 1983 for violations of the Constitution. Therefore, insofar as Claim 31 asserts a claim under § 1983 against Mr. Boulton, that claim is dismissed.

IV. Supplemental Jurisdiction Over State Law Claims

In addition to alleging federal claims under §§ 1983 and 1985 against the Judicial, State, and Private Defendants, the Sullivans also assert various state law claims against those defendants, including claims for alleged violation of Article First of the Connecticut Constitution and intentional infliction of emotional distress. Having dismissed all federal claims against the Private Defendants, the Court must determine whether to exercise its discretion to assert supplemental jurisdiction over the remaining state law claims against each of these defendants.

Under 28 U.S.C. § 1367(a) a court may in certain circumstances exercise supplemental jurisdiction over a party or claim even though the Court otherwise lacks original federal

jurisdiction over that party or claim. Section 1367(a) states, in pertinent part, as follows:

> in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy . . . Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1367(a). *See Greenblatt v. Delta Plumbing & Heating Corp.*, 68 F.3d 561, 576 (2d Cir. 1995). Thus, § 1367(a) "makes pendent party jurisdiction possible where the claim in question arises out of the same set of facts that give rise to an anchoring federal question claim against another party." *Kirschner v. Klemons*, 225 F.3d 227, 239 (2d Cir. 2000). However, "[t]he power to exercise supplemental jurisdiction pursuant to § 1367(a) need not be exercised in every case in which it exists. Supplemental jurisdiction remains a matter of discretion, not of right." *Aday v. Sony Music Entm't, Inc.*, No. 96 Civ. 0991, 1997 WL 598410, at *5 (S.D.N.Y. Sept. 25, 1997). "The district court may exercise considerable discretion over what state claims it will include within its supplemental jurisdiction in a particular case as provided by § 1367(c)." *Cushing v. Moore*, 970 F.2d 1103, 1110 (2d Cir. 1992).

In particular, a district court may decline to exercise its supplemental jurisdiction over a claim under subsection (a) if –

> (1) the claim raises a novel or complex issue of State law,
> (2) the claim substantially predominates over the claim or claims over which it has original jurisdiction, or
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). "In exercising its discretion with respect to retaining supplemental jurisdiction, the district court must balance several factors 'including considerations of judicial

economy, convenience, and fairness to litigants.'" *Correspondent Serv. Corp. v. First Equities Corp. of Florida*, 338 F.3d 119, 126 (2d Cir. 2003) (quoting *Purgess v. Sharrock, M.D.*, 33 F.3d 134, 138 (2d Cir. 1994).

The Court is aware that there might exist some degree of overlap between the federal claims against those defendants who have not filed motions to dismiss and the state law claims against those defendants who have filed motions to dismiss and whose federal claims have now been dismissed. Nevertheless, the Court concludes that efficiency and fairness would best be served by declining to exercise supplemental jurisdiction over the state law claims against the Judicial, State, and Private Defendants.

The Court bases its decision to refrain from exercising supplemental jurisdiction over the Sullivans' remaining state law claims against the Judicial Defendants, the State Defendants, Mr. Stein, the DeLisas, the Hylands, Ms. Crowell, Mr. Johnson, Mr. Kor, Ms. D'Ambrosio, Mr. McAnaney, Ms. Baird, and Mr. Boulton on several considerations. First, this case was filed in July 2003, and, thus, neither the case nor the motions to dismiss have been pending long before this Court. Second, the remaining claims against the Judicial Defendants, the State Defendants, Mr. Stein, the DeLisas, the Hylands, Ms. Crowell, Mr. Johnson, Mr. Kor, Ms. D'Ambrosio, Mr. McAnaney, Ms. Baird, and Mr. Boulton are purely state law claims befitting the expertise and experience of a state court**.** Third, and most importantly, there is pending in state court a suit by the Sullivans involving similar issues and parties as the case before this Court. Therefore, taking all factors into consideration, the Court believes it is in the interests of efficiency and fairness to refrain from exercising supplemental jurisdiction over the remaining state law claims. The Court therefore declines to exercise supplemental jurisdiction over any state law claims against any of

the defendants for whom the Court has dismissed federal claims – namely, the Judicial Defendants, the State Defendants, and the Private Defendants. The Court notes, however, that the Sullivans may chose, as described below, to attempt to replead certain federal claims against certain of the foregoing defendants in response to this decision, and if the Sullivans do so, the Court would be willing at that time to reconsider whether it should exercise supplemental jurisdiction over any state law claims against any such defendant.[7]

V. Summary of Rulings.

A. Motions to Dismiss.

For the foregoing reasons, the Court GRANTS the following motions to dismiss in their entirety: the Motion to Dismiss All Claims Against All State Defendants [doc. #78]; Motion to Dismiss of Thomas and Maryanne DeLisa [doc. #63]; the Motion to Dismiss of Defendants Edward McAnaney, Jeffrey Stein, James Hyland, Kathryn Hyland, and Mary Crowell [doc. #73]; Defendant Lee Johnson's Motion to Dismiss [doc. #67]; the Motion to Dismiss of Defendant Robert J. Kor [doc. #75]; Defendant Doris D'Ambrosio's Motion to Dismiss [doc. #109]; Rachel M. Baird's Motion to Dismiss [doc. #103]; and Defendant Wayne Boulton's Motion to Dismiss [doc. #83].

As a consequence of these rulings, the following parties and claims remain in this case: Claim 1 as to Chief of Police Michael Whalen, and Officers Devine and Williams for violation of the Fourteenth Amendment under § 1983 as well as state law claims against them for allegedly

[7] The Sullivans are cautioned to be aware of the statutes of limitations governing any of their state law claims for under 28 U.S.C. § 1367(d) the period of limitations for any pendent state law claim that is dismissed at the same time as or after the dismissal of a federal claim "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

violating Article First of the Connecticut Constitution and for intentional infliction of emotional distress; Claim 6 as to Officers Devine and Herbert for violations of the Fifth and Fourteenth Amendments under § 1983 as well as state law claims for allegedly violating Article First of the Connecticut Constitution and for intentional infliction of emotional distress; Claim 22 as to William S. Palmieri for violation of the Fourteenth Amendment under § 1983 as well as state law claims for allegedly violating Article First of the Connecticut Constitution and for intentional infliction of emotional distress; Claims 23, 24A, and 24B as to William S. Palmieri for violations of the Fourth, Fifth, and Fourteenth Amendments under § 1983 as well as state law claims for allegedly violating Article First of the Connecticut Constitution and for intentional infliction of emotional distress; Claim 26 as to the employees and/or officers of the J.W. Greene Co., Inc. for violation of the Fourteenth Amendment under § 1983 as well as state law claims for allegedly violating Article First of the Connecticut Constitution and for intentional infliction of emotional distress; Revised Claim 32 as to the Town of Farmington for violation of the Fourth and Fourteenth Amendment under § 1983 as well as state law claims for allegedly violating Article First of the Connecticut Constitution and for intentional infliction of emotional distress. All other claims against all other defendants have now been dismissed.

B. Other Rulings.

In addition to the rulings on the motions to dismiss, the Court also issues the following rulings: Plaintiffs' Motion to Amend Claim 1 and Claim 32 of Their Amended Complaint [doc. #85] is GRANTED; Plaintiffs' Motion to Amend Claim 30 of Their Amended Complaint [doc. #119] is GRANTED; Defendants Town of Farmington's, Chief Michael Whalen's, Officer Devine's, Officer Troy Williams', and Officer David Herbert's Motion for A More Particular

Statement of Claims 1 and 32 in Their February 25, 2004 Amended Complaint [doc. #102] is hereby DENIED as moot; Wayne Boulton's Motion for Bond As Security for Costs [doc. #115] is DENIED as moot; Wayne Boulton's Motion for Bond As Security for Costs [doc. #116] is DENIED as moot; the Motion Regarding Disclosure of Privileged Information [doc. #117] is DENIED as moot; the Plaintiffs' Motion to Amend Claim 30 of Their Amended Complaint [doc. #119] is GRANTED; Doris D'Ambrosio's Motion for Bond As Security for Costs [doc. #121] is DENIED as moot; J.W. Green Co.'s Motion for Bond As Security for Costs [doc. #122] is GRANTED, and the Sullivans are ordered to remit a cash deposit or bond in the amount of $500 to the Clerk's Office by **June 9, 2004**; Thomas and Mayanne DeLisa's Motion for Bond as Security for Costs [doc. #129] is DENIED as moot; Defendant Lee Johnson's Motion for Bond [doc. #130] is DENIED as moot; Robert J. Kor's Motion for Bond As Security for Costs [doc. #133] is DENIED as moot; Robert J. Kor's Motion for Bond As Security for Costs [doc. #134] is DENIED as moot; and the Plaintiffs' Motion to Strike Defendant McAnaney's, Stein's, Hyland's and Crowell's Objection to Plaintiffs' Motion to Amend Claim 30 of their Amended Complaint [doc. #136] is DENIED as moot.

C. Right To Seek Amendments In Response To This Decision.

Recognizing that the Sullivans are *pro se* litigants, the Sullivans shall have the opportunity to file proposed amendments to the Amended Complaint and Revised Claims in response to this decision. Any such proposed amendments must be filed no later than **June 24, 2004.** The Court wishes to emphasize that by permitting the Sullivans to seek amendments under Fed. R. Civ. P. 15, the Court has not yet determined whether the Sullivans will be entitled to amend their pleadings or in what respect the Court will permit amendments. The defendants will

be entitled to oppose any amendment the Sullivans may propose and the Court will consider the merits of any proposed amendment at that time.

The Court advises the Sullivans that if they seek to amend this Amended Complaint and Revised Claims in any manner, they should file: (a) a separate motion to amend explaining their amendments and the reasons why this Court should permit their amendments and (b) a complete, proposed Second Amended Complaint that includes all of the claims that are unaffected by this decision (as described previously), that includes all of the Sullivans' proposed changes, and that eliminates any abandoned claims and defendants. The Sullivans should not file proposed amended claims on separate pages as they did when they filed their Motion to Amend Claim 1 and Claim 32 of Their Amended Complaint [doc. #85] and their Motion to Amend Claim 30 of Their Amended Complaint [doc. #119].

Finally, the Sullivans shall remit a cash deposit or bond in the amount of $500 to the Clerks' Office no later than **June 9, 2004**.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: May 21, 2004.