08-4873-cv

United States Court of Appeals
for the Second Circuit

ELIOT I. BERNSTEIN, individually, P. STEPHEN LAMONT, on behalf of SHAREHOLDERS OF IVIEWIT HOLDINGS, INC., IVIEWIT TECHNOLOGIES, INC., UVIEW.COM, INC., IVIEWIT.COM, INC., I.C., INC., IVIEWIT.COM LLC, IVIWEWIT LLC. IVIEWIT CORPORATION, IVIEWIT, INC. and PATENT INTEREST HOLDERS,

Plaintiffs-Appellants,

v.

APPELLATE DIVISION FIRST DEPARTMENT DEPARTMENTAL,
(*caption continued on inside front cover*)

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF FOR NEW YORK STATE DEFENDANTS-APPELLEES

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Dated: April 29, 2009

(*caption continued from front cover*)

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Defendants-Appellees.

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STATUTES

PRELIMINARY STATEMENT

In this pro se action, the plaintiffs-appellants, Eliot I. Bernstein and P. Stephen Lamont, individually and on behalf of numerous entities in which they claim to have an interest (collectively, "plaintiffs"), allege a sprawling international conspiracy, involving nearly two hundred defendants, to steal video technology that they claim to have invented. Their convoluted, and often incomprehensible amended complaint is more than three hundred pages, and among other things ties the defendants to episodes of car bombing, attempted murder, the Enron bankruptcy, and the resolution of the 2000 presidential election.

Although the plaintiffs allege twelve causes of action, the majority of their grievances do not concern, or allege any misconduct by any New York State actor. Insofar as they sue State Defendants, their claims arise primarily from their allegations that state judicial disciplinary bodies and their employees "whitewashed" or otherwise mishandled plaintiffs' complaints against various attorneys who provided them legal services.[1]

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[1] The parties and the district court have treated the Amended Complaint as the operative pleading. The Amended Complaint names many additional state officers, including the Office of the New York Attorney General, and New York State itself, as defendants. These additional defendants were never served, however, and the district court,

(continued...)

By an August 8, 2008 order, the United States District Court for the Southern District of New York (Scheindlin, J.) dismissed this action in its entirety (S.A. 415-60). In particular, the district court held that the Eleventh Amendment to the United States Constitution bars plaintiffs' claims against the State, its judicial bodies, and all state officials sued in their official capacity. The court also found that the individual state defendants are entitled to judicial, quasi-judicial, or qualified immunity. Moreover, the court held that the plaintiffs' claims are time-barred, and in any event, fail to state a claim for relief against the State Defendants on the merits, because the plaintiffs do not have a constitutional right to cause an investigation of an attorney by a judicial disciplinary committee, and lack standing to assert any such claim related to official investigations of attorneys. Finally, insofar as the plaintiffs seek review of state judicial

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[1] (...continued)
by Order dated May 9, 2008, stayed service of the Amended Complaint on any newly named defendants pending resolution of the motions to dismiss (Supplemental Appendix for Defendants-Appellees Foley & Lardner LLP, Steven C. Becker, Douglas A. Boehme, William J. Dick, Michael C. Grebe, Proskauer Rose LLP, Kenneth Rubenstein, Steven C. Krane and the Estate of Stephen Kaye [S.A.] 31.4).

decisions, their suit is additionally barred by the *Rooker-Feldman* doctrine.[2]

STATEMENT OF JURISDICTION

Plaintiffs assert claims for violation of their rights under the United States Constitution, as well as various federal statutes, thereby invoking the district court's jurisdiction under 28 U.S.C. § 1331. As is explained below, the district court lacked subject matter jurisdiction over the State Defendants because of Eleventh Amendment, absolute and quasi-judicial immunity, and the *Rooker-Feldman* doctrine. This Court has appellate jurisdiction under 28 U.S.C. § 1291, because this is an appeal from the district court's final judgment, entered on August 11, 2008. Bernstein filed his notice of appeal on August 28, 2008.

[2] Although the plaintiffs brought this action jointly, they have appealed separately, because Bernstein now challenges Lamont's standing. *See* Bernstein Br. at 8-9, 12-13. Nevertheless, because the two plaintiffs raise the same arguments, this brief addresses the claims of both plaintiffs.

ISSUES PRESENTED FOR REVIEW

1. Have the State Defendants violated the plaintiffs' federal rights where they have no right to demand a governmental investigation, and lack standing to assert any such claim?

2. Even if the plaintiffs stated claims, does the Eleventh such claims where the State has not consented to suit, and the claims have been brought against arms of the State and state officers in their official capacities?

3. Are the individual state defendants entitled to absolute immunity from suit based on the theories of judicial or quasi-judicial immunity, or qualified immunity, where the claims against them are based on their alleged judicial misconduct and where they have not violated any established federal rights?

3. Does the *Rooker-Feldman* doctrine bar plaintiffs' federal claims where they essentially seek federal district court review of state court judgments made in attorney disciplinary proceedings?

STATEMENT OF THE CASE

A. Facts[3]

As the district court noted, the Amended Complaint "presents a dramatic story of intrigue" (S.A. 415) which, in the plaintiffs' estimation, "depict[s] a conspiratorial pattern of fraud, deceit, and misrepresentation, that runs so wide and so deep, that it tears at the very fabric, and becomes the litmus test, of what has come to be known as free commerce through inventors' rights and due process in this country" (S.A. 43, ¶7). The pleading consists of more than 1,100 paragraphs, names more than 180 defendants, and contains numerous complicated charts purporting to clarify networks of wrongdoing; at best, it is difficult to follow (S.A. 32-354). Moreover, most of the Amended Complaint does not address the conduct of any State Defendants. Insofar as the plaintiffs spell out a coherent narrative against them, the district court's opinion and the briefs of several other defendants adequately detail the general factual background of the complaint.

[3] The facts are taken from the Amended Complaint, and are assumed to be true, but only for purposes of this appeal.

These facts are discussed herein only insofar as [is] necessary to understand the allegations against the State Defendants.

1. The Technology Theft Conspiracy

In 1997, Bernstein, along with others, invented video technologies ("the inventions") which permit transmission of video signals using significantly less bandwidth than other technologies (S.A. 101, ¶¶ 240-242). Along with Lamont, the two helped form the Iviewit Companies to commercialize the inventions (S.A. 40, 44, ¶¶ 1, 11-13). The plaintiffs allege that they consulted various attorneys and law firms with regard to patenting the Inventions, but that all of these individuals and firms conspired to steal the inventions and to deprive plaintiffs of the beneficial use of their technology (*see* S.A. 81-100). The named defendants are, *inter alia*, Proskauer Rose LLP, Foley & Lardner LLP, and Meltzer, Lippe, Goldstein & Breitstone, LLP, as well as numerous individual attorneys employed by these firms, or somehow affiliated with them (S.A. 100-107, 115-120). Among other things, they claim that Proskauer created a series of illegitimate companies with names similar to Iviewit to facilitate the theft of their inventions (S.A. 109, ¶ 273). In addition, plaintiffs have

identified numerous corporate entities as being involved in the conspiracy, largely by using the inventions without paying royalties (S.A. 100-115). These companies include the former Enron Corporation, which, according to plaintiffs, "booked enormous revenue through [Enron Broadband] without a single movie to distribute," but because they lost the inventions, suffered "massive losses" which may, in fact, have been "one of the major reasons for Enron's bankruptcy" (S.A. 124-125, ¶¶ 358, 361, 362).

2. The Cover-up Conspiracy

The plaintiffs claim that upon discovering the theft, they became subject to various threats that were made in an effort to ensure their silence. For example, they allege that Brian Utley, the president of one of the illegitimate companies created by Proskauer, flew to Iviewit's California offices and told Bernstein "that if he did not shut up about what was discovered. . . that he and law firms would destroy him, his family and his companies," and that Bernstein should "watch his back upon returning to his family in Florida, as Proskauer and Foley would be watching and waiting" (S.A. 111, 120, ¶ 287, 337). In response, Bernstein instructed his wife and children to flee from their family home (S.A. 120, ¶ 338).

Nonetheless, the plaintiffs claim that Bernstein's family vehicle was "car-bombed Iraqi style," in an attempt, by the defendants, to murder Bernstein and his family (S.A. 111, ¶ 288). *See* Bernstein App. Br. at 13.

In addition to these activities, the plaintiffs claim that State Bar Officials in Florida, Virginia and New York, as well as the Boca Raton Police Department, joined in the cover-up conspiracy. Concerning the New York State Defendants in particular, the plaintiffs allege that beginning in February 2003, they filed grievances against various attorneys, allegedly involved in the misconduct, with the Disciplinary Committee for the Appellate Division, First Department ("the Committee") (S.A. 170-179, ¶¶ 610-648). They further claim that these complaints were not properly handled, and that the State Defendants "whitewashed" the grievances (S.A. 170-187, ¶¶ 610-691). In particular, they allege that Proskauer arranged to have defendant Steven C. Krane, one of their partners who also served on the Committee, to have the plaintiffs' complaints delayed and dismissed (S.A. 171, ¶ 612). Plaintiffs were further dissatisfied after these complaints were transferred to the Disciplinary Committee for the Appellate Division, Second Department (S.A. 179-187, ¶¶ 649-691). They also contacted the Honorable Judith Kaye, then Chief Judge of the New York Court of Appeals, but

she "failed to intervene" (S.A. 185, ¶ 686). Similarly, the Lawyers Fund for Client Protection failed to render any assistance to the plaintiffs.

B. The Current Action

The plaintiffs filed this suit, alleging that the State Defendants violated their right to due process under the U.S. Constitution, participated in a conspiracy under the racketeer Influenced and Corrupt Organizations Act ("RICO") 18 U.S.C. ¶¶ 1961-1968, and violated their rights under a variety of other federal statutes and state common law. They seek monetary relief of more than one trillion dollars, and extensive injunctive relief, including the appointment of federal monitors to oversee the operations of the State Disciplinary Committees (S.A. 301-309, 332-333).

In an order dated August 8, 2008, the district court dismissed the complaint on numerous grounds, including failure to satisfy the statute of limitations, failure to allege wrongdoing, Eleventh Amendment Immunity, judicial and quasi-judicial immunity, qualified immunity, and failure to state a claim (S.A. 446-458). In particular, the court noted that "plaintiffs have no cognizable interest in attorney disciplinary proceedings or in

having certain claims investigated" (S.A. 455). The court further noted that even if the complaint had not been dismissed on all of these grounds, several claims would have been barred by the Rooker-Feldman doctrine, the complaint would have been dismissed for failure to comply with Rule 8(a) of the Federal Rules of Civil Procedure, requiring "a short and plain statement of the claim," and that the plaintiffs lacked standing to assert a claim based upon failure to initiate or reach certain results in attorney disciplinary proceedings, even if such a cause of action existed (S.A. 456-458).

STANDARD OF REVIEW

This Court reviews a district court's dismissal of a complaint under Rules 12(b)(1) and 12(b)(6) *de novo*. *See Jaghory v. N.Y. State Dep't of Educ.*, 131 F.3d 326, 329 (2d Cir. 1997). Moreover, in order to avoid dismissal, a complaint must "state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

SUMMARY OF ARGUMENT

The plaintiffs have not alleged any deprivation of a federal right actionable under § 1983,or any other constitutional violation, and even if they had, they lack standing to raise such a claim, which is, in all events, time barred. If the plaintiffs had stated a claim, the Eleventh Amendment nonetheless bars this action against the State and all of its judicial arms, and the state officers in their official capacity. The State has never consented to suit in federal court under § 1983, and the plaintiffs fail to demonstrate that an exception for suits seeking injunctive relief applies here. In addition, because the individual state defendants were acting in a judicial or quasi-judicial capacity, they are protected by principles of absolute immunity. Moreover, because they did not violate any clear federal right, the State Defendants also are protected by qualified immunity. Finally, the suit is barred by the *Rooker-Feldman* doctrine insofar as it seeks review of state disciplinary proceedings.

ARGUMENT

POINT I

THE DEFENDANTS HAVE NOT DEPRIVED THE PLAINTIFFS OF THEIR FEDERAL DUE PROCESS RIGHTS

In order to recover damages for violation of their due process rights, or to claim damages for any constitutional deprivation, plaintiffs must identify "a right, privilege, or immunity secured by the Constitution or laws of the United States" that allegedly has been deprived. *Dwares v. City of N.Y.*, 985 F.2d 94, 98 (2d Cir. 1993). Thus, they must first demonstrate that a federal right was implicated by the failure of the State Defendants to investigate, to their satisfaction, the attorney grievances they filed with the state disciplinary bodies. But, importantly, the plaintiffs have not demonstrated the existence of any such right. Indeed, "courts within the Second Circuit have determined that there is . . . no constitutional right to an investigation by government officials." *Nieves v. Gonzalez*, No. 05 Civ. 17, 2006 WL 758615, at *4 (W.D.N.Y. Mar. 2, 2006) (quotation marks and citation omitted).

Moreover, it is clear under New York law that a complainant lacks standing to compel a disciplinary investigation of an attorney or judicial

officer. *See Matter of Sassower v. Comm'n on Judicial Conduct of N.Y.*, 289 A.D.2d 119 (1st Dep't 2001) (affirming dismissal of article 78 proceeding because Commission has discretion as to whether to commence an investigation of alleged judicial misconduct); *Matter of Morrow v. Cahill*, 278 A.D.2d 123 (1st Dep't 2000) (complainant lacked standing to compel a disciplinary committee investigation of his former counsel); *Matter of Mantell v. N.Y. State Comm'n on Judicial Conduct*, 277 A.D.2d 96 (1st Dep't 2000) (complainant lacked standing to require Commission to investigate all facially meritorious complaints of judicial misconduct). Therefore, the plaintiffs have not shown any right under federal law to an investigation of an attorney for any alleged judicial misconduct. Thus, the dismissal of the amended complaint should be affirmed on the merits.

In addition, the district court also relied upon the untimeliness of plaintiffs' claims in dismissing their suit. Plaintiffs do not contest this ruling in their appellate brief. Instead, Bernstein makes several references to "attempted murder," suggesting that there is no statute of limitations for this crime. But this could not preserve any of his civil claims, even if he had sufficiently alleged the involvement of any of the defendants in such conduct. Nor have the plaintiffs presented any basis for equitable tolling of

the statute of limitations, which requires a showing that they were "'prevented in some extraordinary way from exercising [their] rights.'" *See Pearl v. City of Long Beach*, 296 F.3d 76, 85 (2d Cir. 2002) (*quoting Miller v. Int'l Tel & Tel Corp.*, 755 F.2d 20, 24 (2d Cir. 1985) (equitable tolling is available only where a plaintiff "could show that it would have been impossible for a reasonably prudent person to learn" about his or her cause of action)). Consequently, the dismissal of the amended complaint may be affirmed for the self-sufficient reason of failing to satisfy the statute of limitations.

POINT II

THE ELEVENTH AMENDMENT BARS THIS ACTION AGAINST THE STATE, THE OFFICE OF COURT ADMINISTRATION,[4] THE JUDICIAL BODIES AND STATE OFFICERS IN THEIR OFFICIAL CAPACITIES

Even if the plaintiffs had established the deprivation of a federal right, the Eleventh Amendment bars this suit against the State, its agencies, and the State defendants in their official capacities. The Eleventh Amendment provides a State, its agencies, and its officers sued in their official capacities with immunity from suit in federal court where, as here, there has been no consent by the State to be sued. *Papasan v. Allain*, 478 U.S. 265, 276 (1986) ("[I]n the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment. This bar exists whether the relief sought is legal or equitable.") (quotation marks and citation omitted)). Because the State has not waived its immunity to suits brought under 42 U.S.C. § 1983, the plaintiffs' suit here must be dismissed. *See Bd. of Trs. of the Univ. of Ala.*

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[4] The State and the Office of Court Administration were named as defendants in the Amended Complaint. However, as noted earlier, these putative parties have not been served. Nonetheless, even if they, and other non-served parties to the Amended Complaint, were properly part of this appeal, they would be entitled to dismissal for the same reasons that this suit has been dismissed against the other State Defendants.

v. Garrett, 531 U.S. 356, 363 (2001) ("The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in federal court."). Similarly, because the OCA and the Disciplinary Committees are part of the judicial arm of the State, they also are immune from suit. *McGinty v. New York*, 251 F.3d 84, 95 (2d Cir. 2001) (Eleventh Amendment immunity extends to entities that are "'arms of the state"'). Additionally , the Eleventh Amendment bar extends to suits in federal courts against state officials acting in their official capacity. *See Ford v. Reynolds*, 316 F.3d 351, 354 (2d Cir. 2003).

Bernstein contends in his present brief that finding the State and its bodies immune from suit is premature, because he has not had an opportunity to conduct discovery. *See* Bernstein App. Br. at 33-36. But this argument ignores the fact that under the Eleventh Amendment, the State is immune from liability and suit, thus, obviating the need to defend the suit. While there is a limited exception that allows a suit for injunctive relief, challenging the constitutionality of a state official's actions in enforcing state law or policy, *see Ex Parte Young*, 209 U.S. 123 (1908), that exception does not apply here. In this case, the plaintiffs sue the individual defendants as officers of the state judiciary. As such, the State is the real

party in interest. To invoke the *Ex Parte Young* exception, the state officer against whom suit is brought must be alleged to have "some connection with the enforcement of [an] act that is in continued violation of federal law." *Dairy Mart Convenience Stores, Inc. v. Nickel*, 411 F.3d 367, 372-73 (2d Cir. 2005) (quotation marks and citations omitted). Here, there are no such allegations. Therefore the individual state defendants also are immune from suit in their official capacities.

POINT III

THIS SUIT IS BARRED BY PRINCIPLES OF ABSOLUTE IMMUNITY AND QUALIFIED IMMUNITY

The individual defendants are also protected in their individual capacities by principles of absolute and qualified immunity. Absolute judicial immunity protects judges acting in their judicial capacity, while absolute quasi-judicial immunity protects other state officers acting in a judicial capacity. Qualified immunity protects all state officers who do not violate a clear federal constitutional right.

A. Absolute Judicial and Quasi-Judicial Immunity

"Absolute immunity . . . has long shielded judges from damages liability for actions taken in the exercise of their judicial functions." *Austern v. Chicago Bd. Options Exch., Inc.*, 898 F.2d 882, 885 (2d Cir. 1990). The doctrine is "justified and defined by the *functions* it protects and serves, not by the person to whom it attaches," *Forrester v. White*, 484 U.S. 219, 227 (1988) (quotation marks and citation omitted). Therefore, absolute immunity has also been extended to executive branch officials who perform quasi-judicial or prosecutorial functions. *Austern*, 898 F.2d at 885; *see also Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) ("It is . . . well established that officials acting in a judicial capacity are entitled to absolute immunity against § 1983 actions, and this immunity acts as a complete shield to claims for money damages."). Attorney disciplinary proceedings are "judicial in nature," so the presiding officers are protected by absolute immunity. *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 433-34 (1982).

Here, the various state judges who have been named as defendants are absolutely immune for any actions taken during the conduct of their duties with respect to reviewing or monitoring the attorney disciplinary

process. The Amended Complaint, despite its prolixity, does not even specify any alleged wrongdoing on the part of most of these judges, aside from noting Judge Kaye's failure to intervene on behalf of the plaintiffs. Similarly, the various court attorneys and staff at the judicial disciplinary bodies and the state courts acted in a judicial capacity with respect to the attorney grievances that plaintiffs filed. All of these officials performed functions that were judicial in nature, and they all are protected by quasi-judicial immunity.

B. Qualified Immunity

The state defendants as individuals also are entitled to qualified immunity. In evaluating whether a defendant is entitled to qualified immunity, the court performs a two-part test, first asking whether the facts establish a constitutional violation, and if so, whether it would be clear to a reasonable officer that his conduct was unlawful given the situation he confronted. *See Sira v. Morton*, 380 F.3d 57, 68-69 (2d Cir. 2004). If the allegations do not establish a constitutional violation, the analysis ceases, and the defendant is entitled to qualified immunity. *Id.* Here, as explained below, the plaintiffs have not established any violation of their federal

constitutional rights. Therefore, all of the individual defendants are entitled to qualified immunity.

POINT IV

THE *ROOKER-FELDMAN* DOCTRINE BARS ANY CLAIM THAT SEEKS TO OVERTURN PRIOR STATE-COURT RULINGS

The district court correctly noted that some of the plaintiffs' claims would be barred by the *Rooker-Feldman* doctrine. Indeed, to the extent that the state judicial disciplinary bodies dismissed the plaintiffs' attorney grievance complaints, this case is a paradigm for application of the doctrine: plaintiffs have pleaded federal claims are that "essentially invite[] federal courts of first instance to review and reverse unfavorable state-court judgments," *Exxon Mobil Corp. v. Saudi Basics Indus. Corp.,* 544 U.S. 280, 283 (2005). The *Rooker-Feldman* doctrine recognizes that while 28 U.S.C. § 1331 grants the federal district courts "original jurisdiction" over civil actions raising federal claims, it does not grant the district courts appellate jurisdiction over the judgments or decisions of state tribunals. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 416 (1923). Pursuant to 28

U.S.C. § 1257, federal jurisdiction to reverse or modify state-court judgments rests only in the United States Supreme Court. *See Exxon Mobil*, 544 U.S. at 291-92. While it is not entirely clear from the plaintiffs' complaint whether there are state grievances still pending, to the extent that the plaintiffs challenge determinations made by the disciplinary committees, these claims are barred.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the dismissal of all claims against the State Defendants.

Dated: New York, New York
April 29, 2009

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Only the Westlaw citation is currently available.

United States District Court,
W.D. New York.
Luis NIEVES and Maya Jones Nieves, FN1
Plaintiffs,

FN1. Because Luis Nieves filed this lawsuit subsequent to Maya Jones Nieves' October 12, 2004 request that she be placed on Luis Nieves' negative correspondence and telephone list and subsequent to the October 16, 2004 filing of a complaint against Luis Nieves with the New York City Police Department after receipt of a threatening letter and because the Complaint does not appear to assert a separate cause of action on behalf of Maya Jones Nieves, the Court will refer to Luis Nieves as the sole plaintiff in this action for purposes of this Report, Recommendation and Order. Dkt. # 10, pp. 24 & 39; Dkt. # 17, Exh. H.

v.
Frances GONZALEZ, et al., Defendants.
No. 05-CV-00017S(SR).

March 2, 2006.

Luis Nieves, Auburn, NY, pro se.

Maya Jones Nieves, Brooklyn, NY, pro se.

REPORT, RECOMMENDATION AND ORDER

SCHROEDER, Magistrate J.

***1** This case was referred to the undersigned by the Hon. William M. Skretny, pursuant to 28 U.S.C. § 636(b)(1), for all pretrial matters and to hear and report upon dispositive motions. Dkt. # 13.

Currently before the Court is plaintiff's motion for summary judgment (Dkt. # 10); defendant Frances Gonzalez' motion for summary judgment (Dkt.# 17); and plaintiff's motions for default judgment against defendants J. Johnson (Dkt. # 20), Booker (Dkt.# 21), and John Doe. Dkt. # 22. For the following reasons, it is recommended that plaintiff's motion for summary judgment be denied; defendant Gonzales' motion for summary judgment be granted; and plaintiff's motions for default judgment be denied.

BACKGROUND

Plaintiff, Luis Nieves, an inmate at Auburn Correctional Facility, paid the filing fee and commenced this action, *pro se*, pursuant to 42 U.S.C. § 1983, in the Eastern District of New York on November 12, 2004. Dkt.1 & 3. The Clerk of the Court issued Summons' for all four of the defendants, *to wit*, Frances Gonzalez; C.O. Booker; C.O. J. Johnson; and John Doe, on November 12, 2004. Dkt. # 1. Plaintiff filed a Return of Service form FN2 for each defendant with the Clerk of the Court on December 3, 2004. Dkt. # 2. Each form indicates that plaintiff executed service by mail from his address at P.O. Box 618, 135 State Street, Auburn, New York. FN3 Dkt. # 2. Receipts from the United States Postal Service, Express Mail, are attached to these forms. Dkt. # 2. Three of these forms were addressed to defendants at the Attica Correctional Facility, P.O. Box 149, Attica, New York 14011 and the fourth was addressed to Frances Gonzalez, New York Police Department, 480 Knickerbocker Avenue, Brooklyn, N.Y. 11237. Dkt. # 2.

FN2. The Return of Service form contains a footnote stating, "As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure."

FN3. This is the address for inmate mail at the Auburn Correctional Facility.

Plaintiff's Complaint alleges that on June 28, 2004, while in protective custody at the Attica Correctional Facility ("Attica"), Corrections Officer ("C.O.") J. Johnson conducted a random search of plaintiff's cell. Dkt. # 3. During this search, C.O. Johnson and the porter accompanying him, a gang leader named Billy, stole plaintiff's property, including "addresses, phone numbers, bank notes, non legal and legal letters...." Dkt. # 3. Billy was subsequently observed passing these addresses and phone numbers to other members of his gang. Dkt. # 3. C.O. Johnson and Billy then began "to steal" all plaintiff's incoming and outgoing mail with his wife, family, friends, attorneys, and law enforcement agencies. Dkt. # 3. Billy impersonated plaintiff and responded to his mail. Dkt. # 3.

On August 4, 2004, plaintiff alleges that he handed a sealed letter of complaint addressed to the Superintendent or Sergeant of Attica to a correctional counselor for the Special Housing Unit named as defendant John Doe. Dkt. # 3. This individual allegedly diverted the grievance to C.O. Booker, who gave it to Billy. Dkt. # 3.

Plaintiff also alleges that on August 5, 2004, plaintiff gave C.O. Booker a letter addressed to the New York City Police Department, which contained the address of his wife and family members, and thereafter observed C.O. Booker, C.O. Johnson and Billy passing xeroxed copies of the letter to other inmates, who wrote letters to his wife, family members and the New York City Police Department, thereby misleading the New York Police Department's investigations and endangering lives. Dkt. # 3.

***2** On August 7, 2004, plaintiff states that New York City Police Officer Frances Gonzalez signed for a letter sent by plaintiff and then returned the letter to sender without investigating the allegations contained within the letter. Dkt. # 3. Plaintiff also complains that Officer Gonzalez' failure to investigate caused the Superintendent of Attica to restrict plaintiff's communication with his wife. Dkt. # 3.

In a Memorandum and Order filed January 7, 2005, United States District Judge Gershon transferred this matter, *sua sponte*, to the Western District of New York. Dkt. # 3.

In support of his motion for summary judgment, plaintiff attached a copy of his August 5, 2004 letter to the 83rd Precinct of the New York City Police Department, which requested that the police send undercover officers to the home of his wife and family members to remove them before they were kidnaped and murdered by gang members. Dkt. # 10, pp. 16-17. Plaintiff also attached a copy of a memorandum from the Superintendent of Auburn, dated October 12, 2004, informing plaintiff that Maya Jones Nieves [FN4] had informed the facility that she did not wish to receive any communication from him, either in writing or by telephone, and warning plaintiff that disciplinary action would be taken against him if he attempted any further contact with her. Dkt. # 10, pp. 24 & 39. Plaintiff also submitted a copy of a misbehavior report arising from plaintiff's violation of an order [FN5] preventing him from any communication with Officer Gonzalez after plaintiff sent her mail on January 27, 2004. Dkt. # 10, p. 29. Plaintiff was found not guilty of harassment, but was sentenced to 75 days in the Special Housing Unit ("SHU"), for refusing a direct order. Dkt. # 10, p. 30.

> FN4. On October 16, 2004, Maya Jones Nieves filed a complaint with the 83rd Precinct alleging that plaintiff sent her threatening letters. Dkt. # 17, Exh. H.
>
> FN5. According to the misbehavior report, plaintiff received notice of the inclusion of Officer Gonzalez on his negative correspondence list on December 10, 2004. Dkt. # 10, p. 29.

In support of her motion for summary judgment, defendant Gonzales affirms that she is a New York City Police Officer assigned to the 83rd Precinct. Dkt. # 17, Exh. B, ¶ 2. On August 7, 2004, Officer Gonzalez was assigned to the reception area of the

83rd Precinct, where her job duties included signing for incoming mail. Dkt. # 17, Exh. B, ¶ 3. She did not open or distribute such mail, but placed it in a basket for a Police Administrative Assistant to open and distribute. Dkt. # 17, Exh. B, ¶ 3. She did not open or read plaintiff's letter dated August 5, 2004. Dkt. # 17, Exh. B, ¶ 4.

Officer Gonzalez received and opened letters from plaintiff dated September 19, 2004 FN6 and October 20, 2004 FN7 which were addressed to her personally. Dkt. # 17, Exh. B, ¶ 5. Because she did not understand the meaning of the letters, which contained cryptic references to gang activity and violence, and did not know plaintiff or understand why he was writing to her, Officer Gonzalez brought these letters to the attention of her supervisors and filed a complaint with the 83rd Precinct. Dkt. # 17, Exh. B, ¶¶ 6-9.

FN6. The September 19, 2004 letter states, in part,

> On Aug. 5th 2004 I sent a certified mail w/ return receipt and haven't had a response regards [sic] my calls of emergencies. I sent a letter to have undercover officers to response [sic] to a possible on-going: extortion, kidnapping, hostage or any kind of illegal activities that would endangered [sic] a child's welfare. I came to find out that it was all true ... and as a results [sic] of officers going into the apartment gunfire erupted and 2 of my children were murdered by suspects and wounding my wife by a gun shot.
>
> Dkt. # 17, Exh. E.

FN7. The October 20, 2004 letter states, in part,

> On August 5th, 2004 I sent your station house a certified mail with return receipt it was return [sic]-sign by Frances Gonzales.
>
> My mail were [sic] tamper with, and possibly or not sent to your station house with a letter complaint or not. No response was made regarding the matter.
>
> I am still investigating this matter about the certified mail of August 5th, 2004.
>
> Without your assistance, I'm obligated to sue this Police Department to obtain what I'm looking into regarding the certified mail of August 5th, 2004.
>
> * * *
>
> Also, shortly thereafter, other prisoners wrote letters to your precinct house regarding Maya Jones....
>
> Dkt. # 17, Exh. F.

On November 1, 2004, Officer Gonzalez obtained the general number for the New York State Inspector General's Office and informed Inspector Frank Biggit that she was receiving unwanted personal correspondence from a prison inmate. Dkt. # 17, Exh. B, ¶ 10. On November 15, 2004, Officer Gonzalez received a copy of the complaint in this action, by, mail, at the 83rd Precinct. Dkt. # 17, Exh. B, ¶ 11.

***3** On December 22, 2004, Officer Gonzales received a letter from officials at Auburn stating that plaintiff would not be allowed to write to her. Dkt.17, Exh. B, ¶ 12 & Exh. G. On January 24, 2005, Officer Gonzalez received a copy of four documents labeled, “Interrogatories,” from plaintiff. Dkt. # 17, Exh. B, ¶ 15. She contacted Inspector Biggit, who subsequently asked Officer Gonzalez to testify at plaintiff's disciplinary hearing. Dkt. # 17, Exh. B, ¶ 16. Officer Gonzalez declined to participate in plaintiff's disciplinary hearing. Dkt. # 17, Exh. B, ¶ 16.

DISCUSSION AND ANALYSIS

Motion for Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."Fed.R.Civ.P. 56(c)."In reaching this determination, the court must assess whether there are any material factual issues to be tried while resolving ambiguities and drawing reasonable inferences against the moving party, and must give extra latitude to a pro se plaintiff." *Thomas v. Irvin,* 981 F.Supp. 794, 799 (W.D.N.Y.1997) (internal citations omitted).

A fact is "material" only if it has some effect on the outcome of the suit. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see Catanzaro v. Weiden,* 140 F.3d 91, 93 (2d Cir.1998). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson,* 477 U.S. at 248;*see Bryant v. Maffucci,* 923 F.2d 979 (2d Cir.), *cert. denied,* 502 U.S. 849, 112 S.Ct. 152, 116 L.Ed.2d 117 (1991).

Once the moving party has met its burden of "demonstrating the absence of a genuine issue of material fact, the nonmoving party must come forward with enough evidence to support a jury verdict in its favor, and the motion will not be defeated merely upon a 'metaphysical doubt' concerning the facts, or on the basis of conjecture or surmise." *Bryant,* 923 F.2d at 982. A party seeking to defeat a motion for summary judgment

must do more than make broad factual allegations and invoke the appropriate statute. The [party] must also show, by affidavits or as otherwise provided in Rule 56 of the Federal Rules of Civil Procedure, that there are specific factual issues that can only be resolved at trial.

Colon v. Coughlin, 58 F.3d 865, 872 (2d Cir.1995).

Pursuant to Fed.R.Civ.P. 56(e), affidavits in support of or in opposition to a motion for summary judgment "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."Thus, affidavits "must be admissible themselves or must contain evidence that will be presented in an admissible form at trial." *Santos v. Murdock,* 243 F.3d 681, 683 (2d Cir.2001), *citing Celotex Corp. v. Catrett,* 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *see also H. Sand & Co. v. Airtemp Corp.,* 934 F.2d 450, 454-55 (2d Cir.1991) (hearsay testimony that would not be admissible if testified to at trial may not properly be set forth in an affidavit).

Duty to Investigate

***4** Defendant Frances Gonzalez seeks summary judgment on the ground that she had no duty to investigate plaintiff's complaint. Dkt. # 18, pp. 8-12.

As the Supreme Court of the United States has repeatedly noted, " § 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." *Graham v. Connor,* 490 U.S. 386, 393-94, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) (internal quotations omitted)."To state a claim for relief in an action brought under § 1983, [plaintiffs] must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law." *American Mfrs. Mut. Ins. Co. v. Sullivan,* 526 U.S. 40, 49-50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999). The Court must determine the specific constitutional right allegedly infringed before it can assess whether the defendant violated that right. *Graham,* 490 U.S. at 394.

The Supreme Court of the United States has "recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure

life, liberty, or property interests of which the government itself may not deprive the individual." *DeShaney v. Winnebago Soc. Servs.*, 489 U.S. 189, 196, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989). As a result, "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." *Id.* at 197;*see also Castle Rock v. Gonzales*, --- U.S. ----, 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005) (no property interest in police enforcement of a restraining order).

More specifically, courts within the Second Circuit have determined that "[t]here is ... no constitutional right to an investigation by government officials." *Bal v. City of New York*, 1995 WL 46700, at *2 (S.D.N.Y. Feb.7, 1995), *quoting Dep't of Investigation of the City of New York v. Stone*, 1992 WL 23202, at *2 (S.D.N.Y. Feb 4, 1992), *aff'd* 99 F.3d 402 (1995), *cert. denied*, 517 U.S. 1225, 116 S.Ct. 1859, 134 L.Ed.2d 958 (1996). In *Lewis v. Gallivan*, for example, the Hon. David G. Larimer determined that plaintiff, an inmate at the Wende Correctional Facility, had "no cognizable claim" that the Erie County Sheriff and Erie County District Attorney, *inter alia*,"were under an obligation to investigate or prosecute" plaintiff's claims that correctional officers had threatened him. 315 F.Supp.2d 313, 317 (W.D.N.Y.2004).

Reading the *pro se* complaint liberally, plaintiff alleges that Officer Frances Gonzalez failed to discharge her duty to investigate plaintiff's allegations of threats against his wife and family members and that, as a result of this failure, plaintiff's relationship with his wife was damaged. Dkt. # 3. Since Officer Gonzalez was under no duty to investigate these claims, it is recommended that her motion for summary judgment dismissing plaintiff's complaint be granted.

Retaliation

In his motion for summary judgment, plaintiff claims that he was subjected to 75 days in SHU in retaliation for filing this lawsuit. Dkt. # 10, p. 2. Officer Gonzalez asserts that she would be entitled to summary judgment on any claim of retaliation because her complaint to the Inspector General was not made under color of law and was not motivated by plaintiff's lawsuit. Dkt. # 18, pp. 12-18.

***5** Since the alleged retaliation followed the filing of the complaint, the complaint does not include a claim of retaliation. Accordingly, there is no such claim upon which the Court can grant or deny summary judgment. Thus, the appropriate question is whether plaintiff should be permitted to amend his complaint to assert a cause of action for retaliation. *See Beckman v. United States Postal Serv.*, 79 F.Supp.2d 394, 407 (S.D.N.Y.2000) (Although it is inappropriate to raise new claims in submissions in opposition to a summary judgment motion, the court may grant leave to amend the complaint to incorporate such claims).

Fed.R.Civ.P. 15(a) provides that a party may amend a pleading by leave of court or by written consent of the adverse party. Leave to amend is to be "freely granted" unless the party seeking leave has acted in bad faith, there has been an undue delay in seeking leave, there will be unfair prejudice to the opposing party if leave is granted, or the proposed amendment would be futile. *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962); *State Teachers Retirement Bd. v. Fluor Corp.*, 654 F.2d 843, 856 (2d Cir.1981); Fed.R.Civ.P. 15(a). The decision to grant or deny a motion for leave to amend a pleading is within the discretion of the district court. *Foman*, 371 U.S. at 182.

To establish a *prima facie* case of First Amendment retaliation, a plaintiff must establish: (1) that the speech or conduct at issue was protected; (2) that the defendant took adverse action against the plaintiff; and (3) that there was a causal connection between the protected speech and the adverse action. *Scott v. Coughlin*, 344 F.3d 282, 287 (2d Cir.2003).

A prison inmate retains those First Amendment

rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119, 125, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1977). However, prisoners do not have a right to unrestricted correspondence nor do they have a right to be free from reasonable punishment for violation of prison rules. *Malsh v. Garcia*, 971 F.Supp. 133, 137 (S.D.N.Y.1997). DOCS Directive No. 4422, which permits disciplinary action against inmates who submit mail to individuals on their negative correspondence list, is a permissible restriction of an inmate First Amendment rights. *See Hall v. Curran*, 818 F.2d 1040, 1044 (2d Cir.1987) ("Directive 4422 conforms to the *Martinez* requirement that the substantial government interest advanced must be unrelated to the suppression of expression"), *citing Procunier v. Martinez*, 416 U.S. 396, 413, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974); *Marsh*, 971 F.Supp. at 137-38 (same); *see also*, *Grant v. Hollins*, 65 Fed. Appx., 351 (2003) (unpublished summary order). In addition, although prisoners retain the constitutional right to meaningful access to the courts, prisoners alleging violation of this right in the context of a § 1983 action must demonstrate actual harm, *e.g.*, that a "nonfrivolous legal claim had been frustrated or was being impeded." *Lewis v. Casey*, 518 U.S. 343, 353, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) (footnotes omitted); *see Bounds v. Smith*, 430 U.S. 817, 823, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

***6** In the instant case, plaintiff successfully filed his lawsuit and mailed the summons and complaint to Officer Gonzalez prior to the inclusion of Officer Gonzalez on his negative correspondence list. Thus, his ability to access the Court to file his Complaint was not impeded in any way. Plaintiff's decision to serve interrogatories upon Officer Gonzalez subsequent to her inclusion on his negative correspondence list does not impact his right to meaningful access to the courts, as plaintiff does not need to communicate directly with Officer Gonzalez in order to prosecute his claim. *See Malsh*, 971 F.Supp. at 137 (plaintiff's First Amendment rights were not violated by disciplinary action taken against plaintiff who attempted to send documents regarding pending paternity suit to a woman on his negative correspondence list). Plaintiff could have simply waited for appearance of counsel on behalf of Officer Gonzalez before serving discovery demands or, if he felt there was an immediate need for such discovery, he could have advised the Court as to his inability to serve discovery demands upon Officer Gonzalez directly. Since the inclusion of Officer Gonzalez on plaintiff's negative correspondence list had no adverse effect upon the status of this action, and plaintiff had no independent constitutional right to correspond with her, it is recommended that plaintiff not be permitted to amend his complaint to assert a claim of retaliation.

Motions for Default Judgment

Plaintiff moves for default judgment against defendants J. Johnson, Booker, and John Doe. Dkt.20-22.

"The procedural steps contemplated by the Federal Rules of Civil Procedure following a defendant's failure to plead or defend as required by the Rules begin with the entry of a default by the clerk upon a plaintiff's request." *Meehan v. Snow*, 652 F.2d 274, 276 (2d Cir.1981); *see*Fed.R.Civ.P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.")."Then, pursuant to Rule 55(c), the defendant has an opportunity to seek to have the default set aside."*Id.; see*Fed.R.Civ.P. 55(c) ("For good cause shown the court may set aside an entry of default ...")."If that motion is not made or is unsuccessful, and if no hearing is needed to ascertain damages, judgment by default may be entered by the court or, if the defendant has not appeared, by the clerk."*Id.; see*Fed.R.Civ.P. 55(b).

Since the plaintiff has not moved for entry of de-

fault, the motion for default judgment is premature. *See Multani v. United States Dep't of Justice*, 1998 WL 951813, No. 97-CV-628A, at * (W.D.N.Y.1998) (plaintiff not entitled to a default judgment where the initial step of securing the entry of default was omitted). Moreover, entry of default would not be warranted because it is clear that plaintiff's attempted service of the complaint was insufficient to obtain personal jurisdiction over the defendants. *See Multani*, 1998 WL 951813, at *3; *Kearney v. New York State Legislature*, 103 F.R.D. 625, 628-29 (E.D.N.Y.1984).

***7** The Return of Service form provided to the plaintiff by the court specifically advises plaintiff to see Rule 4 of the Federal Rules of Civil Procedure with respect to who may serve a summons. Dkt. # 2. Fed.R.Civ.P. 4(c)(2) provides that service of a summons and complaint "may be effected by any person who is not a party and who is at least 18 years of age."However, the Return of Service forms indicate that plaintiff attempted to serve the summons and complaint himself. Dkt. # 2. In addition, although plaintiff checked the box indicating that the summons and complaints were served personally upon the defendants, the attached receipts from the United States Postal Service, Express Mail, indicate that they were sent by mail to the Attica Correctional Facility. Dkt. # 2. This is insufficient. *See*Fed.R.Civ.P. 4)(d) & (e); N.Y. C.P.L.R. 308.

"Where service of process is insufficient, the courts have broad discretion to dismiss the action or to retain the case but quash the service that has been made on defendant." *Overhoff v. Health Care Plan*, No. 99-CV-152A, 1999 WL 605706, at *2 (W.D.N.Y. June 22, 1999), *quoting Montalbano v. Easco Hand Tools*, 766 F.2d 737, 740 (2d Cir.1985)."Where there is a strong probability that process can be properly effectuated, the service should be quashed and the action preserved."*Id.*, *quoting Montalbano*, 766 F.2d at 740. Here, there is a reason to believe that plaintiff will be able to properly serve defendants Johnson and Booker and that he will be able to discern the identity of the correctional counselor for the Special Housing Unit on duty on August 24, 2004 through discovery so as to obtain proper service over the John Doe defendant. Accordingly, it is recommended that service upon these defendants be quashed and plaintiff afforded 120 days to file proof of service with the court in accordance with Fed.R.Civ.P. 4(l) & (m).[FN8] *See id.*

FN8. Inasmuch as it does not appear that plaintiff's complaint was screened in accordance with 28 U.S.C. § 1915A by the Eastern District of New York, the Court notes that plaintiff's remaining allegations withstand such criteria.

CONCLUSION

For the foregoing reasons, it is RECOMMENDED that plaintiff's motion for summary judgment (Dkt.# 10), be DENIED; defendant Gonzalez' motion for summary judgment (Dkt.# 17), be GRANTED; plaintiff's motion for default judgment against defendant J. Johnson (Dkt.# 20), be DENIED; plaintiff's motion for default judgment against defendant Booker (Dkt.# 21), be DENIED; and plaintiff's motion for default judgment against defendant John Doe (Dkt.# 22), be DENIED.

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, that this Report, Recommendation and Order be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report, Recommendation and Order must be filed with the Clerk of this Court within ten (10) days after receipt of a copy of this Report, Recommendation and Order in accordance with the above statute, Fed.R.Civ.P. 72(b) and Local Rule 72.3(a)(3).

The district judge will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but was not presented to the magistrate judge in the first instance. *See, e.g., Patterson-Leitch Co. v. Massachusetts Mun.*

Wholesale Electric Co., 840 F.2d 985 (1st Cir.1988).

***8** *Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Wesolek v. Canadair Ltd.*, 838 F.2d 55 (2d Cir.1988).

The parties are reminded that, pursuant to Rule 72.3(a)(3) of the Local Rules for the Western District of New York, "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority."*Failure to comply with the provisions of Rule 72.3(a)(3), or with the similar provisions of Rule 72.3(a)(2) (concerning objections to a Magistrate Judge's Report, Recommendation and Order), may result in the District Judge's refusal to consider the objection.*

The Clerk is hereby directed to send a copy of this Report, Recommendation and Order to the plaintiff and to the attorney for the defendant Frances Gonzales.

If the district judge accepts the recommendation to permit service, the Clerk of the Court should be directed to issue to summons for defendants Booker and Johnson to plaintiff. Because plaintiff paid the filing fee, he is responsible for service of the summons and complaint. However, as an inmate of a correctional facility proceeding *pro se*, he may request service by the United States Marshal at a nominal cost, as explained in the attached *Notice Regarding Service of Summons and Complaint with Attached Request for U.S. Marshal Service.*

W.D.N.Y.,2006.
Nieves v. Gonzalez
Not Reported in F.Supp.2d, 2006 WL 758615 (W.D.N.Y.)

END OF DOCUMENT

CERTIFICATE OF SERVICE

OREN L. ZEVE, declares:

I am over eighteen years of age and an Assistant Solicitor General in the office of Andrew M. Cuomo, Attorney General of the State of New York, attorney for New York State Defendants-Appellees. On the 29th day of April, 2009, I served or caused to be served the attached Brief for State Defendants -Appellees:

(i) by regular United States Postal Service mail, and
(ii) one Portable Document Format (PDF) copy by electronic mail pursuant to Local Rule 25,

upon the following named person(s):

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ANTI-VIRUS CERTIFICATION FORM

See Second Circuit Interim Local Rule 25(a)6.

CASE NAME: Bernstein v Appellate Division First Department Departmental

DOCKET NUMBER: 08-4873cv

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Date: 10/08/2008