



## **SPECIAL POLICE ORGANIZATION OF NEW JERSEY v. CITY OF NEWARK et al**

2019 | Cited 0 times | D. New Jersey | September 16, 2019

Eldridge Hawkins, Esq. 60 Evergreen Place Suite 510 East Orange, NJ 07018 Counsel for Plaintiffs  
Franklin Barbosa, Jr. Schenck, Price, Smith & King, LLP 220 Park Avenue P.O. Box 991 Florham  
Park, NJ 07932 Counsel for Defendant Anthony Ambrose Yvette Gibbons, Esq. Law Offices of Yvette  
Gibbons, LLC 4 South Orange Avenue No. 139 South Orange, NJ 07079 Counsel for Defendants City  
of Newark, Ras Baraka, LaMonica McIver, Luis A. Quintana, John Sharpe James, Joseph A.  
McCallum, Jr., Anibal Ramos, Jr., Augusto Amador, Eddie Osborne, Carlos M. Gonzalez, Harry Roes  
1-10

LETTER OPINION FILED WITH THE CLERK OF THE COURT Re: Special Police Organization of  
New Jersey v. City of Newark, et al. Civil Action No. 19-8444 (SDW) (LDW) Counsel:

Before this Court Federal Rules s City of Newark, Ras Baraka, LaMonica McIver, Luis A. Quintana,  
John Sharpe James, Joseph A. McCallum, Jr., Anibal Ramos, Jr., Augusto Amador, Eddie Osborne,  
Carlos M. Gonzalez, and Harry Roe - NOT FOR PUBLICATION UNITED STATES DISTRICT  
COURT

DISTRICT OF NEW JERSEY CHAMBERS OF SUSAN D. WIGENTON UNITED STATES  
DISTRICT JUDGE

September 13, 2019

MARTIN LUTHER KING COURTHOUSE

50 WALNUT ST. NEWARK, NJ 07101

973-645-5903

10) Motion to Dismiss pursuant to Rule 12(b)(5) and (6); 1

and (iii) Plaintiffs Special Police Organization of New Jersey and its members 2

(collectively, to File a Second Amended Complaint 3 . This Court has jurisdiction pursuant to 28  
U.S.C. §§ 1331 and 1367. Venue is proper pursuant to 28 U.S.C. § 1391(b). This Court, having  
considered the For the reasons discussed below, respective Motions to Dismiss are GRANTED  
without prejudice, and DENIED without prejudice.



# SPECIAL POLICE ORGANIZATION OF NEW JERSEY v. CITY OF NEWARK et al

2019 | Cited 0 times | D. New Jersey | September 16, 2019

## I. BACKGROUND & PROCEDURAL HISTORY

As Special Police Officers, Through the instant action, they take issue with Newark Police Department General Order 06- 06- , which provides:

Special Police Officers are required to volunteer twenty (20) hours within a one (1) year period. . . . These hours can be completed by working in the capacity of a Newark Special Police Officer at special events or by conducting other functions as instructed by the Public Safety Director or the Chief of Police for the City of Newark. . . . Failure to do so may result in disciplinary action. (GO 06-04 dated Oct. 5, 2017, ECF No. 9-1 at 49, 60; see also ECF No. 9 at 7-8 ¶¶ 2-5.) 4

Plaintiffs allege, inter alia, that Defendants are forcing Plaintiffs to work for no pay or less pay as compared to regular police officers. (ECF No. 9 at 8 ¶¶ 4-5.)

On March 13, 2019, Plaintiffs brought the instant suit against the City of Newark Public Safety Director Anthony Ambrose, Mayor Ras Baraka, and City

1 2 The following members are included in the suit as plaintiffs: Heriberto Acevado, Juan Alvira, James Andrews, Palmer Amos, Joaquin Ayerbe, Jorge Alex Barbosa, Jabree Bell, Renaldo Barte, Thiago Bethonico, Alphonse Benton, Kyle Brown, Clifton Burchett, Carlos Cabrera, Abalina Caraballo, Tracy Childress, Caroline Clark, Luciano Collazo, Vincent Cordi, Charlie Davis, Curtis Dorch, Tuwan Floyd, Willie Floyd, Michael Gillens, Kendall Golden, Gennaro Guanci, Ismael Guerrero, Giovanni Giida, Harrison Hogue, Mark Halloway, Jerome Jewell, Wilbert Johnson, Victor Jorge, Larry King, Darrell Lampley, Alana Lawrence, Giuseppe Maiorano, Benjamin Mauriello, Delvis Matos, Maria Melendez, Walter Melvin, John Meyers, Hortense Merritt, Reginald Merritt, Eusebio Moreira, Mark Odom, David Paige, Oscar Pannella, Ronald M. Petford, Iris Philson, Ricardo Pratt, Manny Rebimbas, Gary Robinson, Miguel J. Rodriguez, Jaime Rivera, Carmine Russo, Hakeem Saleem, Israel Segarra, John Silva, Alberto Smith, Shawn Simmons, Anthony Sutton, Luis Soto, Elliot Taylor, Dikran Tehlikian, Roberto Tellez, Alain Varela, George Vasquez, Louis Walker, Admiral Wimberly, Timothy Wise, James Wright, Tariq Yasin, and Devin Zamora. (ECF No. 9 at 3 ¶ 1.) 3 Plead [sic] request for leave to file a Second Amended Complaint. 4 volunteer requirements. (See, e.g., GO 06-04 dated Dec. 19, 2016, ECF No. 9-1 at 36, 47.)

Council members 5

. (ECF No. 1.) On May 1, 2019, Defendants moved to dismiss the Complaint. (ECF Nos. 6-7.) However, because Plaintiffs timely amended their pleadings on May 17, 2019, (ECF Nos. 9, 13.) eight-count Amended Complaint alleges: (i) reckless intentional infliction of severe emotional distress; (ii) negligent, reckless, wanton disregard for rights; (iii) involuntary service in violation of 18 U.S.C. § 241 and Article I, paragraph 20 of the New Jersey Constitution; (iv) violations of New Jersey ; (v) intentional and reckless infliction of severe emotional distress; (vi) violations of N.J. Stat. Ann. §§



# SPECIAL POLICE ORGANIZATION OF NEW JERSEY v. CITY OF NEWARK et al

2019 | Cited 0 times | D. New Jersey | September 16, 2019

10:1-2, 10:5-12(f), 10:6-4, 40A:9-6; (vii) claims under N.J. Stat Ann. § 10:6-2(c); and (viii) violations of federal and New Jersey Civil Rights Acts, 42 U.S.C. §§ 1981, 1983, 1985, 1986, 1988, N.J. Stat. Ann § 10:6-2(c). (ECF No. 9.)

On June 14, 2019, Defendants filed the instant Motions to Dismiss the Amended Complaint. (ECF Nos. 16- and cross moved for leave to file a Second Amended Complaint. (ECF No. 22-9.) Plaintiffs also filed an 22-12.) 6

On July 29, 2019, Defendants submitted briefs in further support of their respective motions and in opposition to -37). Plaintiffs filed a sur-reply on August 8, 2019, which this Court rejected as impermissible under the Local Civil Rules. (ECF Nos. 38, 40.)

## II. STANDARD OF REVIEW

tatement of the claim showing that the Fed. R. Civ. P. 8(a)(2). Rule 8 conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be e Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted); see also Phillips v. Cty. of Allegheny

In considering a motion to dismiss under Rule 12(b)(6), a c allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine Phillips as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); see also Fowler v. UPMC Shadyside, 578 F.3d 203 (3d Cir. 2009) (discussing the Iqbal standard). Determining whether the allegations -specific task that requires the reviewing court to draw Iqbal -pleaded facts 5

The named City Council members are Defendants LaMonica McIver, Luis A. Quintana, John Sharpe James, Joseph A. McCallum, Jr., Anibal Ramos, Jr., Augusto Amador, Eddie Osborne, Carlos M. Gonzalez, an -10). (ECF No. 9 at 5 ¶ 3(e).) 6 arguments or request for relief.

8(a)(2). Id.

## III. DISCUSSION

### A. Federal Claims

i. 18 U.S.C. § 241 (Count Three) The Amended Complaint alleges that Defendants violated 18 U.S.C. § 241, prohibits conspiracies undertaken to deprive an individual of his civil rights Varughese v. Robert Wood Johnson Med. Sch., No. 16-02828, 2017 WL 4270523, at \*13 (D.N.J. Sept. 26, 2017) (quoting United States v. Piekarsky, 687 F.3d 134, 144 (3d Cir. 2012)). However, § 241 is a criminal statute that



## SPECIAL POLICE ORGANIZATION OF NEW JERSEY v. CITY OF NEWARK et al

2019 | Cited 0 times | D. New Jersey | September 16, 2019

does not provide a private right of action to plaintiffs in civil suits. *Id.* (citing *Watson v. Wash. Twp. of Gloucester Cty. Pub. Sch. Dist.*, 413 466, 468 (3d Cir. 2011)). § 241 claim is dismissed because it fails to state a claim upon which relief can be granted.

ii. 42 U.S.C. § 1981 (Count Eight) To state a claim under § 1981, Plaintiffs must allege: (1) that they are members of a racial minority; (2) that Defendants intentionally discriminated against Plaintiffs on the basis of race; and (3) discrimination concerning one or more of the activities enumerated in the statute[,] which includes the right to make and enforce contr Varughese, 2017 WL 4270523, at \*6 (D.N.J. Sept. 26, 2017) (quoting *Brown v. Philip Morris Inc.*, 250 F.3d 789, 797 (3d Cir. 2001)). The Amended Complaint does not set forth any facts to suggest that Plaintiffs were discriminated against based on their races or ethnicities§ 1981 claim is dismissed.

iii. 42 U.S.C. § 1983 (Count Eight) means to redress violations of federal law commit *Woodyard v. Cty. of Essex*, see also *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). Here, the Fourteenth Amendment rights to equal protection and due process. However, on the Fifth Amendment is misplaced because Defendants are not federal actors. See *Telzer v.*

*Borough of Englewood Cliffs*, No. 13-4306, 2018 WL 1757026, at \*7 n.6 (D.N.J. Apr. 12, 2018) (citing *Malloy v. Hogan*, 378 U.S. 1, 6 (1964)) ( ). Therefore,

-9 at 22-23); , No. 18-15986, 2019 WL 2099840 To establish an equal protection claim, a plaintiff must allege that he is either: (1) a member of a protected class and defendants treated him differently from members of an unprotected class, or (2) he belongs to a class of one and

defendants treated him differently from others similarly situated without any rational basis for the difference in treatment. -of-one theory of equal protection has no application in the public employ *Engquist v. Or. Dep t of Agr.*, 553 U.S. 591, 607 (2008). 7

Because Plaintiffs claim relates to the terms and conditions of their employment as Special Police for Newark, their equal protection claim is dismissed.

claims are also insufficiently pled. To prevail on either a substantive or procedural due process s conduct, a plaintiff must establish as a threshold matter that he has a protected property interest to which the Fourteenth s due process protection applies. *Otero v. Port Auth. of N.Y.*, No. 14-1655, 2016 WL 1260682, at \*6 (D.N.J. Mar. 31, 2016) (quoting *Nicholas v. Pa. State Univ.*, 227 F.3d 133, 139-40 (3d Cir. 2000)). Here, Plaintiffs assert their desire to be paid at the same rate as regular police officers but have failed to articulate any constitutionally protected property interests. See *Bd. of Regents v. Roth* To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. ; *Otero v. Port Auth. of N.Y.*, No. 14-1655, 2016 WL 1260682, at \*10 (D.N.J. Mar. 31, 2016) (dismissing [Port Authority Police Department] fundamental interests .



## SPECIAL POLICE ORGANIZATION OF NEW JERSEY v. CITY OF NEWARK et al

2019 | Cited 0 times | D. New Jersey | September 16, 2019

procedural and substantive due process claims are dismissed. The Amended Complaint also alleges that GO 06-04 violates the Thirteenth Amendment. (ECF No. 9 at 8 ¶ 5, 10 ¶ 9.) compulsory labor akin to African slavery United States v. Kozminski, 487 U.S. 931, 942 (1988) (quoting Butler v. Perry, 240 U.S. 328, 332 (1916)). In every case in which [the Supreme] Court has found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction Id. at 943. The twenty hours of volunteer work required to maintain e of involuntary servitude prohibited by the Thirteenth Amendment. claim are dismissed. 8

7 See also Douglas Asphalt Co. v. Qore, Inc., 541 F.3d 1269, 1274 (11th Cir. 2008) (applying Engquist to a government- Seymour s Boatyard, Inc. v. Town of Huntington, No. 08-3248, 2009 WL 1514610, at \*7 (E.D.N.Y. June Engquist decisions made outside the government-employee con . 8 It is further noted that the statute of limitations for § 1983 actions in New Jersey is two years. See Backof v. N.J. State Police see also N.J. Stat. Ann. § 2A:14-2. Though Plaintiffs argue that their claims are timely because they arise from GO 06-04 as renewed on October 5, 2017, (ECF No. 22-9 at 27), the Amended Complaint alleges that Newark Special Police have been forced to volunteer twenty hours a year since 2012. (ECF No. 9 at 8 ¶ 5.) The continuin Bennett v. Susquehanna Cty. Children & Youth Servs. Morganroth & Morganroth v. Norris, McLaughlin & Marcus, P.C., 331 F.3d 406, 417 n.6 (3d Cir. 2003)). Thus, are likely time barred.

iv. 42 U.S.C. §§ 1985 and 1986 (Count Eight) Section 1985(3) creates a private right of action for persons injured by a conspiracy formed § 1985(3). To state a claim under § 1985(3), Plaintiff must allege:

(1) a conspiracy; (2) motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons to the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States. Pagliaroli v. Ahsan, No. 18-9683, 2019 WL 979244, at \*5 (D.N.J. Feb. 28, 2019) (quoting Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997)). Here, Plaintiffs have failed to set forth facts from conspiratorial agreement or discriminatory animus. See Carpenter v. Ashby 684, 687 (3d Cir. 2009) (citing Health Clinic, 506 U.S. 263, 267-68 (1993)). conclusory allegations of Id. (citations omitted).

Section 1986 claims are predicated on underlying violations of § 1985. See Whitehead v. Wetzel Rogin v. Bensalem Twp., 616 F.2d 680, 696 (3d Cir. 1980)) ( claimant does not set forth a cause of action under the latter, [his] claim under the former must . Because Plaintiffs have not set forth a viable § 1985 claim, their § 1986 claim also fails.

v. 42 U.S.C. § 1988 (Count Eight) Section 1988(b) the court, in its discretion, may allow the prevailing party . . . a reasonable attorneys fee 1981, 1983, 1985, and 1986. Because the predicate federal claims are insufficiently pled, is dismissed.



## SPECIAL POLICE ORGANIZATION OF NEW JERSEY v. CITY OF NEWARK et al

2019 | Cited 0 times | D. New Jersey | September 16, 2019

B. State Law Claims Although 28 U.S.C. § 1367 permits federal courts to exercise jurisdiction over state law United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966); see also Stehney v. Perry, 907 F. Supp. 806, 825 (D.N.J. 1995) claims if all federal claims are di , 101 F.3d 925 (3d Cir. 1996); Washington v. Specialty Risk Servs., No. 12-1393, 2012 WL 3528051, at \*2 (D.N.J. Aug. 15, 2012) (noting that

the district court must Hedges v. Musco, 204 F.3d 109, 123 (3d Cir. 2000)) (internal citations omitted). claims have been dismissed and this Court declines to exercise supplemental jurisdiction over Plaintiffs state law claims.

C. Leave to Amend amend its pleading only with the opposing partys written consent or the courts leave. Fed. R. Civ. P. 15(a)(2). Generally, [i]n the absence of undue delay, bad faith or dilatory motive on the part of the movant, leave to amend In re Merck & Co., Inc. Secs., Derivative & ERISA Litig., 493 F.3d 393, 400 (3d Cir. 2007). However, a district court acts within its discretion where it denies leave to amend because the amendment would be futile. Id. Futility means that the complaint, as amended, would fail to state a claim upon which relief Id. (quoting In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997)).

Here, Plaintiffs seek to assert additional claims in their proposed Second Amended Complaint, including, racketeering, retaliation, breach of the implied covenant of good faith and (ECF No. 23-3.) As a preliminary matter, advised amended pleading that shall indicate in what respect(s) it differs from the pleading which it

proposes to amend, by bracketing or striking through materials to be deleted and underlining materials to be added. at 2 n.1.) fails to properly indicate how the proposed Second Amended Complaint differs from the Amended Complaint. Notwithstanding this procedural defect, the amendments would not cure any of the abovementioned deficiencies, and the newly asserted claims are similarly unclear and conclusory. proposed Second Amended Complaint still fails to state a claim upon which relief can be granted. See Budhun v. Reading Hosp. & Med. Ctr., 765 F.3d 245, 259 (3d Cir. 2014).

### IV. CONCLUSION

For the reasons set forth above, GRANTED without prejudice, and is DENIED without prejudice. 9

An appropriate Order follows.

/s/ Susan D. Wigenton SUSAN D. WIGENTON, U.S.D.J

9 . (ECF Nos. 24-25.) Whereas Plaintiffs first filed their Amended Complaint on May 17, 2019, they may not enter defaults against Defendants based solely on proof that their original Complaint was



## **SPECIAL POLICE ORGANIZATION OF NEW JERSEY v. CITY OF NEWARK et al**

2019 | Cited 0 times | D. New Jersey | September 16, 2019

served on March 27, 2019. Furthermore, on or about May 30, 2019, Defendants sought and obtained extensions of time to answer, move, or otherwise respond to the Amended Complaint. (ECF Nos. 14-15.) Thereafter, they timely filed their Motions to Dismiss. (ECF Nos. 16-17.) In light of the foregoing t against Defendants is DENIED.

Orig: Clerk cc: Parties Leda Dunn Wettre, U.S.M.J.

