UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EMMANUEL ANDRO Plaintiff	]	
v.	]	Civil Action No. 15- 13030-NMG
TOWN OF BROOKLINE, ET AL. Defendants	]	

DEFENDANT STEVEN W. TOMPKINS'
MEMORANDUM IN SUPPORT OF HIS MOTION FOR JUDGMENT
ON THE PLEADINGS

I. INTRODUCTION

Pro Se Plaintiff Emmanuel Andro (Andro) brings this Twelve Count Complaint against numerous state and federal officials including Suffolk County Sheriff Steven W. Tompkins[1] (Tompkins). The basis of his complaint is plaintiff's allegation that his detention by the Brookline Police pursuant to an immigration detainer, and his subsequent detention by the U.S. Immigration and Customs Enforcement (ICE), violated his constitutional rights. Tompkins is named in Count IV (Unreasonable seizure; Deprivation of Liberty and Due Process); Count V (Due Process); and Count VII (False Arrest/False Imprisonment) of Andro's Complaint. He is being sued in his official and individual capacities. (Complaint ¶ 46). Tompkins filed an answer to the Complaint on May 24, 2016, and now moves for judgment on the pleadings pursuant to Fed. R. Civ. P. 12 (c) and 12 (h)(2)(B).

[1] The Complaint also names Suffolk Does 31- 40 – who have not been identified or served with process in this matter.

II. FACTS AS RELATED TO TOMPKINS

Andro was arrested for violation of a restraining order by the Brookline Police Department ultimately turned over to ICE custody. He alleges his ICE Detainer was illegal. (See the complaint generally). He was transported from Burlington to the South Bay House of Correction (HOC) and held for 18 days and 17 nights. (Complaint ¶ 76). While jailed at South Bay, Andro alleges he was denied access to basic services, such as access to the law library. (Complaint ¶ 78). Andro asserts he reported several issues to HOC officials, and his ICE jailors, however does not identify what the "issues" were, or to whom he complained. (Complaint ¶ 78). With regard to Tompkins the Complaint asserts:

A) At all relevant time to this Complaint, Defendant Tompkins knew or should have known that his subordinates including Suffolk Does 21 – 30 (sic) detain individuals without probable cause for an agency (namely ICE) that issue unlawful detainers. Defendant Tompkins knew or should have known that his subordinates routinely kept detaining subjects of such detainers even after all lawful bases for detention had expired, in violation of the Fourth Amendment. (Complaint ¶ 108)

B) Defendant Tompkins knew or should have known that his subordinates regularly failed to act on requests from detainees to be provided access to Court hearing, thereby violating the Due Process Clause. (Complaint ¶ 109).

C) Defendant Tompkins failed to implement any policies or provide any training to his subordinates regarding the treatment of individuals held solely on the purported authority of immigration detainers. (Complaint ¶ 110).

D) Defendant Tompkins formulated, implemented, encouraged or willfully ignored these policies and customs (or lack of policies and customs) with deliberate indifference to the high risk of violating Mr. Andro's constitutional rights under the Fourth and Fourteenth Amendments. (Complaint ¶ 110).

E) Defendant Tompkins had the power and the authority to change these policies or customs, but he did not, thereby causing the violation of Mr. Andro's constitutional rights. (Complaint ¶ 112).

The Complaint does not allege Tompkins was involved in the arrest of Andro or in issuing the detainer that he claims was unlawful. Tompkins had no involvement with Andro at all while he was housed at the HOC.

III. ARGUMENT

1. LEGAL STANDARD FOR MOTION FOR JUDGMENT ON THE PLEADINGS

Rule 12(c) permits a party to move for judgment on the pleadings at any time "after the pleadings are closed," as long as the motion does not delay a trial of the case. Fed. R. Civ. P. 12(c). A Rule 12(c) motion is treated similarly to a Rule 12(b)(6) motion. *Perez- Acevedo v. Rivero-Cubano*, 520 F.3d 26, 29 (1st Cir. 2008). To survive such a motion, the complaint must contain factual allegations that "raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

A Rule 12(c) motion differs from a Rule 12(b)(6) motion in that it implicates the pleadings as a whole. "In the archetypical case, the fate of such a motion will depend upon whether the pleadings, taken as a whole, reveal any potential dispute about one or more of the material facts." *Gulf Coast Bank & Trust Co. v. Reder*, 355 F.3d 35, 38 (1st Cir. 2004). "Because a Rule 12(c) motion calls for an assessment of the merits of the case at an embryonic stage, the court must view the facts contained in the pleadings in the light most favorable to the nonmovant and draw all reasonable inferences therefrom. . . ." *Perez-Acevedo at 29*, quoting *R.G. Fin. Corp. v. Vergara-Nunez*, 446 F.3d 178, 182 (1st Cir. 2006).

Here, even viewing all facts in favor of the Plaintiff, Tompkins is entitled to judgment.

2. THE COMPLAINT FAILS TO STATE A FEDERAL CIVIL RIGHTS CLAIM AGAINST DEFENDANT TOMPKINS

As stated, the Complaint with regard to Tompkins merely pleads vague and conclusory statements that are legal conclusions and the elements of the causes of action alleged. The Complaint is completely void of any factual basis to support a Constitutional claim against Tompkins. Tompkins is entitled to judgment as outlined below.

(1) Tompkins (In His Official Capacity) Is Entitled To Eleventh Amendment Immunity.

The Eleventh Amendment to the United States Constitution provides that states and state officials in their official capacities are not subject to suit in the federal courts of the United States. The federal courts have long held that they lack jurisdiction to entertain suits against individual states and their officials, unless the state has waived its immunity. See, e.g., *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996), quoting *Hans v. Louisiana*, 134 U.S. 1, 15 (1890) (noting that "[f]or over a century we have reaffirmed that federal jurisdiction over suits against unconsenting states 'was not contemplated when establishing the judicial power of the United States'"). See also, *Kentucky v. Graham*, 473 U.S. 159, 167 n. 14 (1985) ("[u]nless a State has waived its Eleventh Amendment immunity or Congress has overridden it,… a State cannot be sued directly in its own name regardless of the relief sought"). The Eleventh Amendment also bars individual actions in federal court against states and their officials for violations of state law. *Pennhurst State School & Hosp. v Halderman*, 465 U.S. 89, 106 (1984); *BT INS, Inc. v. Univ. of Mass*., 2010 WL 4179678 (D. Mass. 2010) (Woodlock, J.) (Court dismissed state law claims against arms of the Commonwealth). "[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment." *Pennhurst*, 465 U.S. at 106.

Effective January 1, 2010, the Commonwealth of Massachusetts assumed control of the Suffolk County Sheriff's Department.[2] As of that date all Department employees, including Sheriff Tompkins, became employees of the Commonwealth. Mass. St. 2009, c. 61, §§13&15. As such, they are accorded sovereign immunity. This Court has repeatedly held that "modern Massachusetts Sheriff's Departments [are] arms of the state entitled to sovereign immunity." *Jeffrey Gallo, et al. v. Essex County Sheriff's Department*, 2011 WL 1155385, at *3; citing *Adams v. Cousins*, No. 06-40117-FDS-2009 WL 1873584, at *6 (D. Mass. Mar. 31, 2009) (Essex County Sheriff) (Saylor, J.) ("As a state agency, the Sheriff's Department is protected by the state's immunity from suit under the Eleventh Amendment, unless that immunity is waived."); *Maraj v. Massachusetts*, 836 F.Supp.2d 17, 24-26 (D.Mass. 2011); *Christoforo v. Lupo*, No. 03-12307-RGS, 2005 WL 3037076, at *3 n.3 (D. Mass. Nov. 14, 2005) (Essex County Sheriff) (Stearns, J.) (damages claim dismissed against Essex County Sheriff Cousins in his official capacity, as the claim "is one against the Commonwealth and is therefore precluded by the Eleventh Amendment's Sovereign Immunity Clause."); *see also Kelley v. DiPaola*, 379 F.Supp.2d 96, 100 (D.Mass.2005) (Middlesex County Sheriff) (Gorton, J.) (official capacity §1983 claims dismissed against Sheriff and his employees because they were state officials, not subject to suit under §1983.); *Broner v. Flynn*, 311 F.Supp.2d 227, 233 (D.Mass.2004) (Swartwood, U.S.M.J.) (§1983 claims against Worcester County Sheriff in his official capacity properly dismissed because he is a state official and the state is not a person for purposes of §1983.)

Moreover, the Plaintiff is statutorily barred from suing Tompkins in his official capacity. Section 1983 claims lie only against "persons." 42 U.S.C. § 1983. The Supreme Court has held

[2]Mass. St. 2009, c. 61 (effective January 1, 2010) (transferring Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk Sheriffs and their employees to the Commonwealth.)

that states, including state officials in their official capacities, are not "persons" subject to suit under § 1983. *Will v. Michigan Dept. State Police,* 491 U.S. 58,71 (1989).

Accordingly, Tompkins is entitled to judgment on the federal civil rights violations asserted against him in his official capacity.

(2) The Plaintiff Failed to Plead a Plausible Factual Basis to Support His Claims Against Tompkins Individually.

Tompkins can only be held liable on the basis of his own acts of omissions, and not for the unconstitutional conduct of his subordinates. *Leavitt v. Correctional Medical Services, Inc.,* 645 F.3d 484, 502 (1st Cir. 2011). In order to establish that the Tompkins caused a deprivation of Andro's constitutional rights, the Plaintiff must allege facts supporting an inference that Tompkins was deliberately indifferent. Deliberate indifference "defines a narrow band of conduct. *" Feeney v. Corr. Med. Servs., Inc.,* 464 F.3d 158, 162 (1st Cir. 2006).

The 'deliberate' part of deliberate indifference requires "that a prison official subjectively must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Burrell v. Hampshire County,* 307 F.3d 1,7 (1st Cir. 2002). The 'indifference' part means that even if prison officials are aware of the risk, "they cannot be deliberately indifferent if they responded reasonably to the risk, even if the harm ultimately was not avoided." *Id.* "Thus, under the second requirement of *Farmer,* Plaintiffs must show: (1) the Defendant knew of (1) a substantial risk (2) of serious harm and (3) disregarded that risk." *Calderon-Ortiz v. LaBoy-Alvarado,* 300 F.3d 60, 64 (1st Cir. 2002). Finally, "[a]ny inquiry into the reasonableness of the prison officials' actions incorporates due regard for prison officials' unenviable task of keeping dangerous men in safe custody under humane conditions." *Burrell*, 307 F.3d at 8.

Plaintiff's complaint is completely void of any factual claim of such a state of mind of Tompkins to constitute a viable claim of deliberate indifference. Plaintiff asserts that Tompkins "knew, or should have known" of the alleged violation, i.e. that ICE issued a detainer without probable cause, but provides no support for this bald assertion. Plaintiff's allegations that Tompkins "knew or should have known" of the alleged violative conduct without more is not sufficient under *Twombly* and *Iqba.* Therefore Tompkins is entitled judgment.

Plaintiff asserts that he complained about conditions at the House of Correction to staff. (Complaint ¶ 78). There is absolutely no reference to any communication or correspondence between Andro and Tompkins that would support the contention that the Tompkins knew of the alleged complaints and disregarded them. As such, the claims against the Tompkins in his individual capacity must be dismissed.

(3) "Supervisory Liability" is Both Factually and Legally Unsupported.

Similar to the issue of *respondeat superior,* there is no supervisory liability with respect to Plaintiff's claims against the Tompkins. In emphasizing that government officials are only liable for their own misconduct, the Supreme Court has called the term "supervisory liability" "a misnomer." *Ashcroft v. Iqbal,* 129 S.Ct. 1937, 1949 (2009). A supervisor may be liable as a "primary violator or direct participant in the rights-violating incident," or liability may attach "if a responsible official supervises, trains, or hires a subordinate with deliberate indifference toward the possibility that deficient performance of the task eventually may contribute to a civil rights deprivation." *Camilo-Robles v. Zapata,* 175 F.3d 41, 44 (1st Cir.1999).

In the instant action, Andro does not allege that Tompkins was a direct participant in addressing his alleged complaints to HOC and ICE staff. Accordingly, the Plaintiff cannot meet his burden in establishing that the Tompkins "displayed deliberate indifference toward [Andro's] rights… and had some causal connection to the subsequent tort." Id. Therefore, the Complaint

lacks any factual support for its "supervisory liability" claim and is plainly insufficient to establish a claim under § 1983.

(4) Qualified Immunity Bars the Plaintiff's Claims Against Tompkins.

The Plaintiff has not pled facts sufficient to overcome qualified immunity. Qualified immunity is an entitlement not to stand trial or face the other burdens of the litigation. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). The privilege is immunity from suit, not merely a defense to liability. *Feliciano-Hernandez v. Pereira-Castillo*, 663 F.3d 527, 533 (1st Cir. 2011)(citing *Maldonado v. Fontanes*, 568 F.3d 263, 268 (1st Cir. 2009)). "Moreover, because qualified immunity affords 'an immunity from suit rather than a mere defense to liability,' *Mitchell, at 526*, the Supreme Court has stressed the importance of resolving questions of immunity at the earliest possible stage in litigation." *Landry v. Mier*, 921 F. Supp. 880, 884-5 (D. Mass. 1996) (citing *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982)); *see also Hunter v. Bryant*, 502 U.S. 224, 227 (1991); *Siegert v. Gilley*, 500 U.S. 226, 233 (1991)).

The immunity may only be overcome by a showing that an official participated *personally* in depriving the plaintiff of a clearly established constitutional right. *Febus-Rodriguez v. Betancourt-Lebron*, 14 F.3d 87, 91 (1st Cir. 1994); *Howe v. Town of North Andover* 784 F.Supp.2d 24, 29 (D. Mass. 2011). Here, there is no allegation that Tompkins was personally involved in Andro's short stay at the HOC.

Courts should follow a two-part inquiry in order to determine whether a defendant is entitled to qualified immunity. *Haley v. City of Boston*, 657 F.3d 39, 47 (1st Cir. 2011)(citing *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). To determine whether a defendant has qualified immunity, "[a] court must decide: (1) whether the facts…shown by the plaintiff make out a violation of a constitutional right; and (2) if so, whether the right was "clearly established"

at the time of the defendants' alleged violation." *Maldonado*, at 268-9. "A right is clearly established only if 'it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.' " *Soto–Torres v. Fraticelli*, 654 F.3d 153, 158 (1st Cir.2011) (quoting *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004)). The test at this stage is one of objective legal reasonableness. *See Feliciano-Hernandez*, at 533. *Anderson v. Creighton*, 483 U.S. 635, 639, 641 (1987); *Lallemand v. Univ. of Rhode Island*, 9 F.3d 214, 215 (1st Cir. 1993) (qualified immunity "is available if the [defendant's] action was objectively reasonable even if later found to be mistaken"). These two parts of the analysis may be considered in either order. See, *Pearson*, at 237.

Qualified immunity is designed to balance two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. *Pearson*, at 231. "When properly applied, it protects all but "the plainly incompetent or those who knowingly violate the law.'" *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (*citing Malley v. Briggs*, 475 U.S. 335, 341 (1986)). It "requires merely that a reasonable official could believe that his conduct was lawful." *Olmeda v. Ortiz-Quinonez*, 434 F.3d 62, 65 (1st Cir. 2006).

In the subject action, Plaintiff does not plausibly assert factual allegations establishing that Tompkins personally deprived Andro of his civil rights. In addition, Andro fails to articulate that Tompkins had actual knowledge of the alleged violative conduct. Accordingly, Plaintiff fails to articulate claims against Tompkins that would pierce his qualified immunity.

3. THE COMPLAINT FAILS TO STATE A NEGLIGENCE/TORT CLAIM AGAINST DEFENDANT TOMPKINS

Count VII of the Complaint alleges False Arrest/False Imprisonment and states: *Tompkins intentionally, recklessly and/or negligently established and/or enforced policies and practices that caused Mr. Andro to be unlawfully and tortuously detained*. (Complaint ¶ 173). Again there is no factual support for such a claim. Additionally, Count VII must be dismissed as to Tompkins based on state law principals of sovereign immunity and the provisions of the Massachusetts Tort Claims Act (MTCA). These sources place limitations not only on the jurisdiction of state courts, but also on causes of action provided for under state law. They are thus applied by federal courts confronting civil claims under Massachusetts law. See, *Crete v. City of Lowell*, 418 F.3d 54, 60-65 (1st Cir. 2005).

(1) The Claim Is Barred By Sovereign Immunity.

Under its common law, the Commonwealth enjoys sovereign immunity against civil actions. *DeRoche v. Massachusetts Comm'n Against Discrimination*, 447 Mass. 1, 12, 848 N.E.2d 1197, 1205 (2006); *Morris v. Massachusetts Maritime Academy*, 409 Mass. 179, 181-86, 565 N.E.2d 422, 424-27 (1991). Those acting on the Commonwealth's behalf are entitled to the same protection when sued in their official capacities. *See, e.g., Sullivan v. Chief Justice for Admin. & Management of the Trial Court*, 448 Mass. 15, 24-27, 858 N.E.2d 699, 708-11 (2006) (discussing availability of sovereign immunity defense for Chief Justice of Administration and Management against claims for declaratory and equitable relief, where immunity not waived).

In enacting the MTCA, the Massachusetts Legislature waived the protection of sovereign immunity as to tort claims only in certain limited circumstances, *see* Mass. Gen. Laws ch. 258, §§ 1-13; *Sharon v. City of Newton*, 437 Mass. 99, 111, 769 N.E.2d 738, 748 (2002) (MTCA

"abrogat[es] sovereign immunity only within a narrow statutory framework"), and subject to several exceptions, *see* Mass. Gen. Laws ch. 258, § 10. When a claim falls within an exception listed in Mass. Gen. Laws ch. 258 § 10, the assumption of liability does not apply, and immunity is retained. *See Kent v. Commonwealth*, 437 Mass. 312, 315 n.4, 771 N.E.2d 770, 773 (2002); *cf. Irwin v. Commissioner of Dep't of Youth Servs.*, 388 Mass. 810, 811, 448 N.E.2d 721, 722 (1983) (MTCA did not waive sovereign immunity in federal court).

For example, the MTCA does not waive immunity with respect to intentional torts, including false arrest and false imprisonment and the like. *See* Mass. Gen. Laws ch. 258, § 10(c) (excluding "any claim arising out of an intentional tort, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations or interference with contractual relations"). Thus, to the extent the plaintiff seeks to bring any intentional tort claims against Tompkins, the claim is barred by sovereign immunity.

(2) Tompkins Is Immune From Suit For Negligent Acts.

If Andro seeks recovery against Tompkins on a negligence theory, the claim is still barred. Pursuant to the MTCA, public employees acting within the scope of their employment are not liable for their negligent acts. The statute specifically provides that "…no such employee…shall be liable for any injury or death caused by his negligent or wrongful omission while acting within the scope of his office or his employment. Mass Gen. L. ch. 258, § 2; *Gross v. Bohn*, 782 F. Supp. 173 (D. Mass. 1991) (Arrestee failed to state a claim for negligence under the Massachusetts Tort Claim Act where the arrestee did not allege that the police officer acted in any capacity other than as a police officer); *Armstrong v. Lamy*, 938 F.Supp. 1018, 1042

(D.Mass1996) ("The MTCA thus protects a 'public employee' from negligence claims arising out of his or her office of employment.") *Caisse v. Dubois*, 346 F.3d 213, 218 (1st Cir. 2003). ("Caisse's negligence claims against the Department of Corrections defendants in their individual capacities are barred because the Tort Claims Act shields public employees from personal liability for negligent conduct."), Mass Gen L. ch. 258, §2.

Public employees under the statute are defined as "elected or appointed officers or employees of any public employer" and public employers include "the commonwealth and any county ...." M. G. L. c. 258, § 1. As Sheriff of Suffolk County, Tompkins is a public employee as defined under the MTCA. He is immune from any personal liability for alleged negligence in his capacity as Sheriff.

(3) The Claim Is Barred By Mass. Gen. L. ch. 258 §10 (b).

Similarly, the MTCA does not extend liability to tort claims based on discretionary functions. Mass. Gen. L. ch. c. 258, § 10(b) exempts from liability "any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment, whether or not the discretion involved is abused." A two-pronged analysis is utilized to determine what constitutes a discretionary function within the meaning of c. 258, § 10(b). *Harry Stoller & Co. v. Lowell*, 412 Mass. 139 (1992). The first part of the analysis is to "determine whether the governmental actor had any discretion at all as to what course of conduct to follow." *Stoller*, supra at 141. The second part of the analysis is to determine "whether the discretion exercised rises to the level of policy-making or planning, as that is the only type of discretion immunized by § 10(b)." *Alake v. City of Boston*, 40 Mass. App. Ct. 610, 612 (1996) (citing *Harry Stoller & Co. v. Lowell*). "Decisions about allocating limited resources to provide

adequate security qualify as policy decisions within the meaning of § 10(b), are exempt from suit under the act." See, *Doe v. New Bedford Housing Authority*, 417 Mass. 278, 286 (1993). Tompkins' decision to accept detainees from ICE was discretionary, and was clearly a policy making decision. Even if Andro's detention by ICE was improper, Tompkins' decision to hold ICE detainees was a discretionary function, thus he is shielded from liability resulting from Andro's detention.

(4) The Claim Is Barred By Mass. Gen. L. ch. 258 §4.

Finally, even if sovereign immunity and the above provisions of the MTCA did not bar the plaintiff's state-law tort claims, he could not maintain this action under the MTCA because he fails to allege compliance with the MTCA's presentment requirements. Under § 4 of the MTCA, "[b]efore any civil action for damages may be brought against a public employer, the claimant must present his claim to the employer's executive officer; only if the claim is denied, or if the executive officer fails to deny the claim within six months of its presentment, may the claimant file a civil suit." *Pruner*, 382 Mass. at 315, 415 N.E.2d at 210. Section 4's requirement of "[p]resentment is … a statutory condition precedent to recovery under G.L. c. 258." *Vasys v. Metropolitan Dist. Comm'n*, 387 Mass. 51, 55, 438 N.E.2d 836, 840 (1982). The failure to allege presentment provides an additional, independent basis for the dismissal of the plaintiff's state-law tort claims under Fed. R. Civ. P. 12(b)(6). *See G & B Associates, Inc. v. City of Springfield*, 39 Mass. App. Ct. 51, 54, 653 N.E.2d 203, 206 (1995) ("If the claimant fails to make any presentment of his or her claim prior to bringing an action against the public employer, the plaintiff's complaint is subject to dismissal on a motion made under Mass. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted." (Quotation omitted.)); *Lodge*, 21 Mass. App. Ct. at 284, 486 N.E.2d at 768 ("A plaintiff must demonstrate that he has properly

complied with the presentment requirement when the defendant raises the issue in a timely manner.").

IV. CONCLUSION

For the reasons outlined above, Tompkins' Motion for Judgment on the Pleadings should be granted and the Plaintiff's claims against Tompkins dismissed.

Respectfully submitted
For Steven W. Tompkins
By,
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August 23, 2016

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2016, this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and a paper copy will be sent the Plaintiff via first class mail at the following address:

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/s/ Kathleen M Cawley
Kathleen M. Cawley

Local Rule 7.1 Certification

I certify that I consulted with the plaintiff via telephone on August 22, 2016 in an effort to narrow the issues raised by this motion.

/s/ Kathleen M. Cawley

Kathleen M. Cawley