UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

AMERICAN NEWS & INFORMATION SVCS. : INC. and EDWARD PERUTA,

CIVIL ACTION NO.: 3 : 15-CV-01209-RNC

Plaintiffs

vs.

JAMES C. ROVELLA, MICHAEL COATES, BRANDON J. O'BRIEN, SEAN SPELL, BRIAN FOLEY, ET al.,

Defendants December 18, 2015

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

The defendants, Michael Coates, Brandon O'Brien, Sean Spell, Brian Foley and John Does #1 through #6 hereby submit the following memorandum in support of their motion to dismiss.

I. FACTS AND PROCEDURAL HISTORY

The plaintiffs, Edward Peruta and American News and Information Services, Inc. have brought suit against the defendants alleging violation of their rights under the First and Fourteenth Amendments of the United States Constitution and Article First §§ 4 and 5 of the Connecticut Constitution. Specifically, the plaintiffs allege that they are members of the public and/or news reporters and news agencies and that on two separate occasions they responded to ongoing scenes of police activity and were prevented from filming the scenes when the areas of cordoned off police investigation area was expanded. (Complaint, Doc. #1, ¶111-7).

The plaintiffs allege that the first instance occurred on September 12, 2014, when Mr. Peruta "as a member of the public, a journalist, and representative of American News, reported to the scene of a homicide in the City of Hartford on Septe,ber 12, 2014, at approximately 9:20 p.m. in the vicinity of 519 Park Street." Id., at 39. The plaintiff claims that when he arrived on scene "HPD [Hartford Police Department], Hartford Fire Department ... , and Emergency

Medical Services (collectively, "Hartford Public Safety" ... were on-scene working in a clearly delineated area cordoned to exclude entry by anyone except individuals permitted entry by Hartford Public Safety." Id., at 40. The plaintiffs allege that Mr. Peruta stood outside the cordoned off area and began to film the "Hartford Public Safety activity." Id., at 71144-47. The plaintiffs allege that after approximately 20 minutes, Officer John Doe #1 informed Mr. Peruta that the crimes scene and cordoned off area were being expanded. M., at 48. The plaintiff claims that he changed location in response to the increase of the cordoned off area and continued to film. Id., at 71149-53. The plaintiffs allege that after Mr. Peruta moved, Sgt. Spell "pointed directly at Peruta, ordered the HPD officer to remove Peruta from the area to prevent Peruta from filming the homicide victim, and threatened Peruta with arrest for recording the crime scene." Id., at 54-55. The plaintiffs claim that the cordoned off area was then expanded again "to move a block further" away and that Mr. Peruta and other members of the public were ordered to move. Id., at TT. The plaintiff's claim that Sgt. Spell threatened the plaintiff with arrest if he "had to be told to move again." M., at 71161.

The plaintiffs allege that following this September 12, 2014 incident, Mr. Peruta filed a citizen's complaint related to the incident on or about September 12, 2014. Id., at ¶ 69. The plaintiffs allege that defendant Lt. Michael Coates assigned the internal affairs investigation in relation to the complaint to defendant Lt. Brandon O'Brien. Id., at ¶ 70. The plaintiff alleges that curding the course of the internal affairs investigation, Sgt. Spell informed Lt. O'Brien that the crime scene had been expanded in " because the areas of expansion in which Peruta had been standing prior to the expansions had been indentified had been idenitified as areas of interest," specifically, that that Sgt. Spell had "received reports of armed men in the area who had fled from the crime scene and his order to expand the cordoned area designated as a crime scene were justified for the protection of the public." Id., at 71174-75. The plaintiffs allege that Sgt .Spell confirmed that he ordered Peruta and other individuals who were present to disperse

under threat of arrest. Id., at ¶ 77. The plaintiffs allege that Sgt. Spell was exonerated because Lt. O'Brien adopted Sgt. Spell's explanation that "the cordoned area designated by the HPD as a crime scene had expanded to preserve the crime scene and for public safety reasons[.]" The plaintiff's claim that Lt. O'Brien exonerated Sgt. Spell without requiring that Sgt. Spell "make a written statement under oath." Id., at 78. The plaintiffs claim Sgt. Spell's statement are contradicted by video evidence that Mr. Peruta had provided to HPD, which the plaintiffs claim demonstrate that the expansion of the crime scene "occurred for any reason other than to prevent Peruta from videotaping or otherwise recording HPD activities of public concern and interest." Id., at 80.

The second incident occurred on August 7, 2015 when Mr. Peruta heard a dispatch over the police scanner "for a mental health disturbance at 38 Kelsey Street." Id., at ¶ 82. The plaintiff claims that he responded to the scene, and that he "positioned himself wearing a News Media baseball hat on his head, American News press credentials around his neck, and a handgun openly carried and secured in his shoulder holster," in the area across the street from 38 Kelsey Street. Id., at 85-92. From that position the plaintiff alleges that he had "clear-sight to the rear open doors of the ambulance parked in front of 38 Kelsey Street and the interior entryway and stairs through the open front doors of 38 Kelsey Street." Id., at ¶ 93. The plaintiffs allege that Mr. Peruta began to video tape and "otherwise record" the activities that were occurring within the cordoned area. Id., at ¶ 94. The plaintiff alleges that as he began to videotape, defendant Sgt. Spell, "the on-scene supervisor" ordered other Hartford Police Officers to expand the cordoned off area, and the manner in which the cordon was expanded included the area in which Mr. Peruta was standing. Id., at 71195-96. The plaintiffs allege that John Doe #6 ordered Mr. Peruta to "remove himself from the location across from 38 Kelsey Street to the other side of either the cordon extending from eat to west across Kelsey Street to the north of Peruta or the cordon extending east to west across Kelsey Street to the south of

Peruta." The plaintiffs claim that Mr. Peruta was threatened with arrest if he did not comply. M., at 97. The plaintiff claims that the defendants "confidently avoided a videotaped records of a course of events leading to and following the reported injuries of two officers and the untimely death of a 26-year-old-male. Id., at 100.

The plaintiff brings his complaint in two counts. Count One is brought against "All defendants" by both plaintiffs and alleges that the defendant have violated the First and Fourteenth Amendments of the United States Constitution. Specifically, the plaintiffs alleges that the actions of the defendants, including the threats of Sgt. Spell to arrest Mr. Peruta, "stopped Peruta from gathering information about HPD activities of public concern and interest, leaving HPD with exclusive control over the narrative of what occurred on September 12, 2014 at the Park Street crime scene in the absence of videotape." Id., at ¶ 111. The plaintiff alleges that John Doe #6's threats to arrest Mr. Peruta and Sgt. Spell's supervision of the August 7, 2015 crime scene "stopped Peruta from gathering information about HPD activities of public concern and interest, leaving HPD with exclusive control over the narrative of what occurred on August 7, 2015, at the Kelset Street crime scene in the absence of videotape." Id., at ¶ 112. The plaintiff claims that the defendants' action forced him to choose between "standing up for the First Amendment on September 12, 2014 , and August 7, 2015, or criminal arrest." The plaintiff claims that the threat of arrested "chill[ed]" his First Amendment expression. Id., at T114-1185.

Count Two of the complaint alleges violations of the First and Fourteenth Amendments of the United States Constitution against defendant Chief Rovella, Deputy Chief Foley, Lt. Coates and Lt. O'Brien. Specifically, the plaintiffs complain that the Harford Police Department has a policy, which is followed by the defendants, of defining to which media sources it will choose to release information, and plaintiffs claim that they are not among the media agencies to whom the defendants choose to release information. The plaintiffs allege that defendants' choice to recognize some news agencies and not others violates the plaintiffs' rights

under the First and Fourteenth Amendments to "gather news and information of public interest and concern." Id., at 711118-128.

Plaintiff's other alleged facts will be discussed as needed below.

II. LAW AND ARGUMENT

A. Standard of Review on Motion to Dismiss

Rule 12(b)(2) , (4) and (5) of the Federal Rules of Civil Procedure provide that defenses of lack of personal jurisdiction, insufficient process and insufficient service of process may be asserted via a motion to dismiss. Rule 12(b) (6) of the Federal Rules of Civil Procedure provides that a defense of failure to state a claim upon which relief may be granted may be presented via a motion to dismiss.

A motion to dismiss for failure to state a claim, pursuant to Rule 12(b)(6), tests only the adequacy of the complaint. United States v. City of N.Y., 359 F.3d 83, 87 (2d Cir. 2004). In deciding a motion to dismiss, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir.1996) (internal quotations omitted).

"[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed fact allegations, a plaintiffs obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964-5, 167 L.Ed.2d 929 (2007).

"Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.' Id., *quoting,* Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (internal citations omitted).

B. Plaintiff's claims allegations against the John Does #1 through John Doe #6 must be dismissed for failure to identify the defendants in the summons.

The plaintiff's complaint alleges that John Does #1 through #6 were police officers employed by the City of Hartford, and are all sued in both their "official and individual capacities." (Complaint, Doc. #1, 71125-27).

The Fifth Amendment of the Constitution of the United States provides, "No person shall ... be deprived of life, liberty, or property, without due process of law[.]" It is a bedrock principle of constitutional law that notice and an opportunity to be heard are fundamental requisites of due process of law, and that a deprivation of property in the form of a civil judgment requires due process just as equally as a criminal or other proceeding.

> `Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.' *Mullane v. Central Hanover Bank & Tr. Co.,* 339 U.S. 306, at 313, 70 S.Ct. 652, at 656, 94 L.Ed. 865. **'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.** *Milliken v. Meyer,* 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278; *Grannis v. Ordean,* 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363; *Priest v. Board of Trustees of Town of Las Vegas,* 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; *Roller v. Holly,* 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 52.' Id., at 314, 70 S.Ct. at 657. Questions frequently arise as to the adequacy of a particular form of notice in a particular case. See, e.g., *Schroeder v. City of New York,* 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255; *New York v. New York, N.H. & **H.R. Co.,*** 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333; 1191 *Walker v. Hutchinson City,* 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178; *Mullane v. Central Hanover Bank & Tr. Co.,* supra. But as to the basic requirement of notice itself there can be no doubt ...

Armstrong v. Manzo, 380 U.S. 545, 550 (1965) (emphasis added). *See also, e.g.,* Louisville & N.R. Co. v. Schmidt, 177 U.S. 230, 235 (1900) ("sufficient notice and adequate opportunity has been afforded him to defend" are elements of due process); Grannis v. Ordean, 234 U.S. 385, 394 (1914) ("The fundamental requiste of due process of law is the opportunity to

be heard. ... And it is to this end, of course, that summons or equivalent notice is employed.").

The requirement that a defendant be identified in a summons and complaint is an axiomatic element of due process. Without actually being identified in the summons it is impossible for the purported defendant to know that he has been sued. It is for this reason that Federal Rule of Civil Procedure 4(a)(1) provides that "A summons must: (A) name the court and the parties; (B) be directed to the defendant ... [and] (E) notify the defendant that a failure to appear and defendant will result in a default judgment against the defendant for the relief demanded in the complaint [.]"

As has been stated by the Second Circuit, "It is a general principle of tort law that a tort victim who cannot identify the tortfeasor cannot bring suit." Valentin v. Dinkins, 121 F.3d 72, 75 (2d Cir. 1997). "As a general rule, "the use of 'John Doe' to identify a defendant is not favored..." In re Murphy, 482 F. App'x 624, 627 (2d Cir. 2012). The court have permitted some leniency to *pro se* plaintiffs, particularly those who are incarcerated, to allow "John Doe" complaints with the purposes of allowing some discovery to permit the plaintiff to identify the alleged tortfeasor. Valentin v. Dinkins, 121 F.3d 72, 75 (2d Cir. 1997) ("This rule has been relaxed, however, in actions brought by *pro se* litigants."). The plaintiff in this action, however, is neither incarcerated nor his he acting *pro se*.

Furthermore, where a plaintiff has had "ample opportunity" to identify the alleged tortfeasors such leniency should not be extended. In re Murphy, 482 F. App'x 624, 627 (2d Cir. 2012). In this case, the plaintiffs have alleged that they are members of the press, who come in frequent contact with the police. (Indeed, the plaintiff Edward Peruta, appears to have such frequent interaction with some of the officers that he is on a first name basis with them. *See,* Complaint, Doc. #1, ¶ 68). Additionally, the plaintiff has alleged that he videotaped some or all of the incidents at issue. The plaintiff could readily have obtained the officer's identities from reviewing his own video recordings, and from requesting publically available police reports.

The plaintiff's complaint in this case does not identified the six "John Doe" defendants by name, and the complaint does not set forth any information to indicate that he was prevented from doing so. **Furthermore, the docket of this case does not indicate that any summons was ever issued to them, and therefore, their names clearly were not included upon the summons.** Therefore, the plaintiff's complaint against the John Doe defendants should be dismissed for failure to identity the alleged tort feasors, as permitting a civil action to proceed against unidentified defendants, who, consequently have not notice of the pending claims against them is a violation of the alleged tortfeasors due process rights.

C. Plaintiff's allegations against the John Does #1 through John Doe #6 must be dismissed for insufficient process and insufficient service of process.

An additional component of due process, is not only the requirement of being named in the summons, but also of actually being served. Federal Rule of Civil Procedure 4(e) provides that an individual may be served either in a manner that comports with state law, or by "(2)(A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process." Federal Rule of Civil Procedure 4(d) provide a procedure for waiver of serving a summons in particular cases.

Furthermore, Federal Rule of Civil Procedure 4(m) provides, "If a defendant is not served within 120 days after the complaint is filed, the court — on motion of on its own after notice to the plaintiff — must dismiss the action without prejudice against the defendant or order that service be made within sufficient time." *See also,* Romagnano v. Town of Colchester, 354 F. Supp. 2d 129, 133-34 (D. Conn. 2004) (holding "[Plaintiff] did not properly ascertain the identity of the John Doe defendants and, because the unidentified defendants were included in the summons and complaint, filed August 26, 2003, [Plaintiff] would have had to serve the them within the 120—day requirement of Fed.R.Civ.P 4(m).").

The plaintiff has not filed with the court any valid waiver of service as against the John Doe defendants. Furthermore, the records of this litigation do not indicate that any summons was ever issued against the six John Doe defendants. Nor has the plaintiff filed a return of service as to any of the John Doe defendants. The plaintiff filed this case in the district court on August 10, 2014, which was more than 120 days ago. Therefore, the John Doe defendants have not been identified in any summons, and have not been served with any process. Therefore, the allegations against the six John doe defendants must be dismissed for insufficient process, lack of service and insufficient service of process.

D. Plaintiffs' complaint fails to state a claim upon which relief may be granted as to all defendants because the facts alleged in the plaintiffs' complaint do not constitute a violation of the plaintiffs' First Amendment rights.

The plaintiffs' complaint alleged that Mr. Peruta arrived at two different active crimes scenes, and/or scenes in which police investigation and activity was actively ongoing within minute of the events occurring. Notably, the plaintiffs admit that the first incident was an active homicide investigation in which the deceased victim of the homicide was still present at the scene, and that Hartford Police, Hartford Fire Department and Hartford Emergency Medical Services were activity engaged in their respective responsibilities. (Complaint, Doc. #1, ¶¶39-40). The plaintiffs admit that the second incident involved a "mental health disturbance," and he claims that the incident ultimately resulted in "injuries of two officers and the untimely death of a 26 year old male." (Complaint, Doc. #1, 71183 and 100.). Interestingly, the plaintiffs also admit that Mr. Peruta arrived at the potentially volatile scene of a "mental health disturbance" openly carrying a handgun. M., at 92. The gravamen of the plaintiff's complaint is that in both instances that Hartford Police enlarged the boundaries of the cordoned off areas of investigation, which resulted in the plaintiff and other members of the public being required to move farther away from the areas of investigation, which interfered with his ability to take video of ongoing, and active police investigations.

The Supreme Court has long delineated between the First Amendment rights to free speech and free press, which is the right to be free from prior restraint, from the right to gather information. There is not constitutional right to gather information. As the Supreme Court has repeatedly held, "The right to speak and publish does not carry with it the unrestrained right to gather information." Zemel v. Rusk, 381 U.S. 1, 17 (1965).

"Beyond question, the role of the media is important; acting as the "eyes and ears" of the public, they can be a powerful and constructive force, contributing to remedial action in the conduct of public business. They have served that function since the beginning of the Republic, but like all other components of our society media representatives are subject to limits." Houchins v. KQED, Inc., 438 U.S. 1, 8 (1978). "This Court has never intimated a First Amendment guarantee of a right of access to all sources of information within government control." Id., at 9.

"There is an undoubted right to gather news from any source by means within the law but that affords no basis for the claim that the First Amendment compels others-private persons or governments-to supply information." Id., 438 U.S. 1, 11 (1978) (internal quotations and citations omitted).

> "Despite the fact that news gathering may be hampered, the press is regularly excluded from grand jury proceedings, our own conferences, the meetings of other official bodies gathered in executive session, and the meetings of private organizations. Newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded, and they may be prohibited from attending or publishing information about trials if such restrictions are necessary to assure a defendant a fair trial before an impartial tribunal."

Branzburg v. Hayes, 408 U.S. 665, 684-85 (1972). *See also,* PG Pub. Co. v. Aichele, 705 F.3d 91, 113 (3d Cir.) cert. denied, 133 S. Ct. 2771 (2013) ("There is no protected First Amendment right of access to a polling place for news-gathering purposes.)

> The First and Fourteenth Amendments bar government from interfering in any way with a free press. The Constitution does not, however, require government to accord the press special access to information not shared by members of the public generally. It is one thing to say that a journalist is free to seek out sources

> of information not available to members of the general public, that he is entitled to some constitutional protection of the confidentiality of such sources, ... and that government cannot restrain the publication of news emanating from such sources. ... It is quite another thing to suggest that the Constitution imposes upon government the affirmative duty to make available to journalists sources of information not available to members of the public generally.

Pell v. Procunier, 417 U.S. 817, 834 (1974) (internal citations omitted).

The Supreme Court and the Circuit Courts have routinely held that governments may limit access to information that it controls. *See e.g.,* Houchins v. KQED, Inc., 438 U.S. 1, 15-16 (1978) (prison official may limit press access to prisons); Los Angeles Police Dep't v. United Reporting Pub. Corp., 528 U.S. 32, 40 (1999) (" ... what we have before us is nothing more than a governmental denial of access to information in its possession. California could decide not to give out arrestee information at all without violating the First Amendment"); Tribune Review Pub. Co. v. Thomas, 254 F.2d 883, 885 (3d Cir. 1958) (Pennsylvania court rules regulating the taking of photographs in and about the courthouse area does not violate the First Amendment); Garrett v. Estelle, 556 F.2d 1274 (5th Cor. 1977), *cert. denied,* 428 U.S. 914 (1978) (First Amendment did not require State of Texas to allow news cameramen to film executions in state prison). *See also,* Seattle Times Co. v. Rhinehart, 467 U.S. 20, 32 (1984) ("A litigant has no First Amendment right of access to information made available only for purposes of trying his suit"); Galella v. Onassis, 487 F.2d 986, 995 (2d Cir. 1973) (free-lance photographer's harassing conduct in photographing public figure was not protected by the First Amendment).

As eloquently expressed by the Third Circuit:

> The big jump which the plaintiffs' case takes is from this completely solid foundation regarding freedom of utterance to a super-structure supported by assertion only. They say that since the right to publish photographs of newsworthy subjects is within the ambit of constitutional protection 'the right to take such photographs inexorably follows.' They do not press the point so inexorably, however, as the unqualified statement would indicate. They grant that a court may prohibit the taking of photographs in the court room. Evidently they do not wish to challenge rule 53 of the Federal Rules of Criminal Procedure, 18 U.S.C.A.[1] Nor canon 35, Canons of Judicial Ethics of the American Bar Association.[2] Nor do they deny outright the statement of the district court that the press here has no more right than any other member of the public although they

> do say that the district judge made more of this than he should have. Judge Fuld speaking for the majority in United Press Associations v. Valente, 1954, 308 N.Y. 71, 123 N.E.2d 777, 778, said of the right of free speech, 'That right has, * * * never been held to confer upon the press a constitutionally protected *885 right of access to sources of information not available to others.'
>
> Realizing that we are not dealing with freedom of expression at all but with rules having to do with gaining access to information on matters of public interest, can it be argued that here there is some constitutional right for everybody not to be interfered with in finding out things about everybody else? We suppose it would not be contended that a newspaper reporter or any other citizen could insist upon entering another's land without permission to find out something he wanted to know. In the same way merely because someone's private letters might be interesting as gossip or as models of English composition it would hardly be argued that one could open another's desk and read through what he finds there. Could an interested observer insist on the constitutional right to take motion pictures of a private family in and about its household contrary to that family's wishes? **We think that this question of getting at what one wants to know, either to inform the public or to satisfy one's individual curiosity is a far cry from the type of freedom of expression, comment, criticism so fully protected by the first and fourteenth amendments of the Constitution.**
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> Tribune Review Pub. Co. v. Thomas, 254 F.2d 883, 884-85 (3d Cir. 1958) (emphasis added).

In this case, the plaintiffs simply have not stated a First Amendment claim against any of the defendants. The plaintiffs allege that Mr. Peruta arrived at an active homicide investigation and a scene involving a "mental health disturbance," both of which were scenes of active police investigations, and scene at which ambulances and emergence medical services were present. The plaintiffs allege only that in both instances the police increased the cordoned off area of investigation and police activity, and that in doing so the police excluded both Mr. Peruta, and members of the public from observing and filming the active investigations. Although the plaintiffs allege that prior to the expansion of the cordoned area, Mr. Peruta was standing in areas in which other members of the public were present, noticeably absent from the plaintiffs' complaint is any allegation that he was treated differently than other members of the public once the investigative area was expanded. The plaintiffs have not alleged that other members of the public were permitted to film when Mr. Peruta was not. The plaintiffs have not alleged that

other media members were given access to the crime scenes and Mr. Peruta was not.

In short, the gravamen of the plaintiffs' complaints against all of the defendants is that they are dissatisfied with the level of access to information that the defendants afforded Mr. Peruta. The plaintiffs' second count simply complains that the Hartford Police Department chooses not to specifically release information to him as a member of the media. The Hartford Police are under no constitution obligation to release information to anyone, including the plaintiffs.

The allegations of the plaintiffs' complaint do not rise to the level of a First Amendment violation. Therefore, both Counts One and Two of the plaintiffs' complaint should be dismissed for failure to state a claim upon which relief may be granted.

THE DEFENDANT,
Brian J. Foley, Michael Coates, Brandon J. O'Brien, Sean Spell, John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5 and John Doe #6

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CERTIFICATION

This is to hereby certify that on December 18, 2015, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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