UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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JOSEPH J. SERVISS, STATHIS COULOURIS, M.G. THOMPSON, individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

PAUL J. MARGIOTTA, ESQ., as Executive Director, of the Suffolk County Traffic and Parking Violation Agency; PAUL H. SENZER, ESQ., a Judicial Hearing Officer at the Suffolk County Traffic and Parking Violation Agency; JOHN DOE, ESQ., a Judicial Hearing Officer at the Suffolk County Traffic and Parking Violation Agency; and THE COUNTY OF SUFFOLK,

Defendants.
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REPORT AND RECOMMENDATION

CV 15-3411 (JMA) (ARL)

LINDSAY, Magistrate Judge:

Plaintiffs Joseph J. Serviss ("Serviss"), Stathis Coulouris ("Coulouris") and M.G. Thompson ("Thompson") (collectively, "Plaintiffs"), bring this putative class action on behalf of themselves and all others who are similarly situated for alleged civil rights violations under 42 U.S.C. § 1983 ("Section 1983") against Defendant County of Suffolk ("Suffolk County" or the "County"); Suffolk County Traffic and Parking Violations Agency ("SCTPVA") Executive Director Paul J. Margiotta ("Margiotta"); and SCTPVA Judicial Hearing Officers Paul H. Senzer ("JHO Senzer") and John Doe ("JHO Doe") (collectively the "Individual Defendants") (together with the County, "Defendants"). Before the Court, on referral from District Judge Azrack, is the motion by Defendants to dismiss the complaint pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6). For the reasons that follow, the Court respectfully recommends that

Defendants' motion be granted.

BACKGROUND

The following facts are drawn from the complaint, exhibits attached thereto, and matters of which judicial notice may be taken, and with the exception of the latter category, are accepted as true for purposes of the instant motion.[1] *Samuels v. Air Transp. Local 504*, 992 F.2d 12, 15 (2d Cir. 1993).

I. The SCTPVA

Suffolk County created the SCTPVA to adjudicate, under the authority of the Suffolk County District Court, motorists who are alleged of committing offenses in violation of the New York State Vehicle and Traffic Law ("NYVTL"). Compl. ¶ 2. The SCTPVA is headed by an Executive Director; at all times relevant to the complaint, Margiotta was the Executive Director. *Id.* ¶¶ 3, 21. The Executive Director is responsible for the oversight and administration of the SCTPVA and establishes rules, regulations, procedures and forms as he or she may deem necessary to carry out the functions of the SCTPVA. *Id.* ¶ 4. In addition, the Executive Director hires attorneys to act as JHOs who adjudicate traffic matters in the SCTPVA. *Id.* ¶ 6. The attorneys who prosecute the traffic matters are known as Traffic Prosecutors, and they have the same power as a district attorney would otherwise have in the prosecution of any traffic or parking infraction which may be prosecuted before the Suffolk County District Court. *Id.* ¶¶ 8-9.

Plaintiffs are all motorists who were prosecuted in the SCTPVA. The Court reviews the

[1] *See Global Network Commc'ns, Inc. v. City of N.Y.*, 458 F.3d 150, 157 (2d Cir. 2006) ("A court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related

claims asserted by each specific Plaintiff below.

II. Plaintiff Coulouris

Coulouris was prosecuted for speeding. *Id.* ¶ 40. He pled not guilty and appeared in the New York State Traffic Violations Bureau ("NYSTVB") until that office closed, and his case was moved to the newly-created SCTPVA. *Id.* ¶¶ 43-46. According to Coulouris, the SCTPVA never notified him of a new appearance date. *Id.* ¶ 47. Instead, the next communication he received was a May 2, 2014 notice that his license would be suspended unless he appeared by June 7, 2014. *Id.* ¶¶ 47-48, 53.

On May 9, 2014, Coulouris appeared at the SCTPVA. *Id.* ¶ 54. While discussing his case with a Traffic Prosecutor, Margiotta ordered him to be removed from court. *Id.* ¶ 55. As a result, Coulouris was denied the opportunity and never appeared before a JHO. *Id.* ¶ 56. Margiotta ordered JHO Doe to suspend Coulouris' driver's license, which he subsequently did. *Id.* ¶¶ 57-58. Coulouris alleges that Margiotta and JHO Doe lacked authority to suspend his license and improperly did so without granting him an opportunity to be heard. *Id.* ¶¶ 63-64. On June 24, 2014, Coulouris was "coerced" to plead guilty to the speeding ticket in order to terminate the suspension and paid a fine in the amount of $150.00, plus an administrative fee of $55.00 and surcharge of $80.00. *Id.* ¶¶ 68-69. Coulouris further alleges that the deprivation of his license resulted in undue hardship. *Id.* ¶ 70.

III. Plaintiff M.G. Thompson

On February 21, 2015, Thompson was issued a speeding ticket returnable in the SCTPVA. *Id.* ¶ 72. He entered a plea of not guilty and requested a supporting deposition on March 7, 2015. *Id.* ¶ 73. On May 12, 2015, Thompson filed and served a motion to dismiss the

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filings.").

simplified traffic information as facially insufficient because of the failure to serve a supporting deposition. *Id.* ¶ 74. The SCTPVA rejected the motion to dismiss – notwithstanding the fact that the SCTPVA and Traffic Prosecutor "accepted" the motion and stamped it received – because Thompson failed to include an affirmation of service indicating that the Traffic Prosecutor's Office was served with the motion. *Id.* ¶¶ 75-77.

On May 19, 2015, Thompson filed and served a second motion to dismiss with a return date of May 27, 2015. *Id.* ¶ 79. On May 21, 2015, the motion clerk notified Thompson that his motion was placed on the calendar for May 29, 2015. *Id.* ¶ 80. According to Thompson, the Traffic Prosecutor did not serve any opposition to the motion. *Id.* ¶ 81.

On May 29th, Thompson's counsel appeared on Thompson's behalf. *Id.* ¶ 82. The case was called into the record, Thompson's non-appearance was noted, and the unopposed motion to dismiss was denied. *Id.* JHO Senzer then issued a bench warrant for Thompson's arrest, *id.*, and the Traffic Prosecutor refused to allow Thompson's counsel to appear before JHO Senzer to address the court, *id.* ¶ 83. Later that day, Thompson appeared with counsel, and JHO Senzer vacated the warrant. *Id.* ¶ 84. JHO Senzer set bail in the amount of $750.00, and Thompson was taken into custody and his driver's license suspended. *Id.* ¶¶ 84-85. Thompson thereafter filed an Article 78 proceeding, and his suspension was vacated pending the proceeding. *Id.* ¶ 89.

IV. Plaintiff Serviss

A. Disobeying Traffic Control Device Ticket

On February 13, 2013, Serviss was ticketed for disobeying a traffic control device for crossing over a solid line on the expressway. *Id.* ¶ 90. The ticket required Serviss to appear by mail to the NYSTVB; Serviss subsequently pled not guilty via mail to this office. *Id.* ¶¶ 91-92.

On March 29, 2013, Serviss received notice that his not guilty plea was on file with the NYSTVB. *Id.* ¶ 93. Thereafter, his case was moved to the SCTPVA; Serviss attended two plea conferences there, but a plea agreement could not be reached. *Id.* ¶¶ 95-97. According to Serviss, notice he received from the SCTPVA on November 9, 2013 indicated that if a plea bargain could not be agreed upon, a trial would be set. *Id.* ¶ 96. Nonetheless, Serviss was never notified of a trial date. *Id.* ¶ 98.

On April 4, 2014, Serviss received a notice that his license would be suspended for failing to appear for sixty days unless he appeared by May 8, 2014. *Id.* ¶¶ 99-104 and Ex. F. Prior to May 8th, Serviss retained counsel and entered into a plea agreement in which the charge was reduced to a parking violation with a penalty of $200.00 plus an administrative fee of $55.00. *Id.* ¶ 105. Serviss did not pay the fine because he did not have the money, and then he "forgot" about it. *Id.* Ex. H at 1.

B. Expired Inspection Ticket

On September 30, 2014, Serviss received a separate ticket for driving with an expired inspection certificate. *Id.* ¶ 120. Serviss plead not guilty, and a pre-trial conference was scheduled for January 14, 2015. *Id.* ¶ 126 and Ex. L. The notice indicated that if no plea bargain could be agreed upon, a trial date would be set. *Id.* and Ex. L. The notice further indicated that a failure to appear would result in the suspension of his driver's license. *Id.* Ex. L.

Serviss failed to appear at the pre-trial conference. *Id.* ¶¶ 126-27 and Ex. M. On February 7, 2015, Serviss received a notice that his license would be suspended on March 14, 2015 for failure to appear or pay outstanding fines unless he responded to this notice. *Id.* ¶¶ 127-32 and Ex. M.

On February 20, 2015, Serviss went to the SCTPVA but was told that he could not appear before a JHO to address his expired inspection ticket unless he paid his outstanding fine of $200.00 for the previous ticket (disobeying a traffic control device). *Id.* ¶¶ 133-37. He was also advised that the $200.00 penalty had tripled to $600.00 as a late fee for failure to timely pay and the administrative fee increased to $105.00. *Id.* ¶¶ 106-08 and Ex. G. He was further told that he had to pay this amount in full. *Id.* ¶¶ 107-08 and Ex. G. Serviss again tried to appear on March 11, 2015, but was given the same information. *Id.* ¶¶ 135-37. On March 14, 2015, Serviss' license was suspended. *Id.* ¶ 139 and Ex. O. As a result, the New York State Department of Motor Vehicles imposed a "Scofflaw Suspension Termination Fee" in the amount of $70.00 per ticket. *Id.* ¶ 140.

Ultimately, Serviss paid the fees for the prior ticket in two installments, on April 20, 2015 and June 4, 2015. *Id.* ¶¶ 115, 119, 141-44. He also paid the $70.00 Scofflaw Suspension Termination Fee on the expired inspection ticket. *Id.* ¶ 144. He was then allowed to appear on this ticket. *Id.* Serviss alleges that if Margiotta had not prevented him from appearing on the expired inspection ticket, his driver's license would not have been suspended, and he would not have had to pay the $70.00 Scofflaw Suspension Termination Fee. *Id.* ¶¶ 148, 193-97.

V. Procedural History

This action involves similar issues and some of the same parties involved in five other cases before this Court, which were consolidated for pretrial and administrative purposes by Judge Azrack on August 25, 2015. All five of these cases have since been dismissed: (1) *Medrano v. Margiotta*, 15-cv-3097 (adopting report and recommendation that case be dismissed); (2) *Medrano v. Margiotta*, 15-cv-3704 (adopting report and recommendation that

case be remanded); (3) *Brunswick v. Margiotta*, 15-cv-03705 (dismissed via voluntary dismissal); (4) *Brunswick v. Melbardis*, 15-cv-03706 (dismissed via voluntary dismissal); and (5) *Thompson v. Senzer*, 15-cv-03736 (adopting report and recommendation that case be remanded).

The instant lawsuit was filed on June 12, 2015. ECF No. 1. The complaint asserts several constitutional violations, including a violation of the Excessive Fines Clause of the Eighth Amendment; various violations of the Due Process Clause; and a conspiracy to violate civil rights. Defendants filed their fully briefed motion to dismiss on March 29, 2016, ECF No. 23, and Judge Azrack referred the motion to the undersigned on May 1, 2017.

DISCUSSION

I. Standard of Law

The Supreme Court clarified the appropriate pleading standard in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), in which the court set forth a two-pronged approach to be utilized in analyzing a motion to dismiss. District courts are to first "identify [ ] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 679. Though "legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* Second, if a complaint contains "well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* "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. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a [d]efendant has acted unlawfully." *Id.* at 678 (citing

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556-57 (2007) (internal citations omitted)).

II. Analysis

Plaintiffs' claims for violations of their constitutional rights are cognizable under 42 U.S.C. § 1983, which provides procedures for redress for the deprivation of civil rights. In order to maintain a civil rights action under Section 1983, Plaintiffs must allege two essential elements: (1) the Defendants acted under color of state law; and (2) as a result of the Defendants' actions, Plaintiff suffered a denial of their federal statutory rights, or their constitutional rights or privileges. *See Cornejo v. Bell*, 592 F.3d 121, 127 (2d Cir. 2010).

A. Liability of the Individual Defendants

In their moving papers, Defendants argue that the claims against all the individual defendants should be dismissed because Margiotta is entitled to prosecutorial immunity and the JHOs are entitled to judicial immunity. In response, Plaintiffs assert that this request should be denied as frivolous because such immunities apply to officials being sued in their personal capacities only, and Plaintiffs' claims are limited to suing Defendants in their official capacities. *See* Pls.' Mem. in Opp'n at 5-6, ECF No. 23-3. Thus, insofar as the complaint can be construed to assert claims against the individual defendants in their personal capacities, the Court reports and recommends that such claims be dismissed.

To the extent Plaintiffs assert claims against the individual defendants in their official capacities, these claims must fail because they are duplicative of the claims asserted by Plaintiffs against Suffolk County. *See Gazzola v. County of Nassau*, No. 16-cv-0909, 2016 WL 6068138, at *4 (E.D.N.Y. Oct. 13, 2016) ("Within the Second Circuit, where a plaintiff names both the municipal entity and an official in his or her official capacity, district courts have consistently

dismissed the official capacity claims as redundant.") (citations and internal quotation marks omitted) (collecting cases); *Berlyavsky v. N.Y. City Dep't of Envtl. Prot.*, No. 14-CV-03217, 2015 WL 5772266, at *18 (E.D.N.Y. Aug. 28, 2015) ("To the extent that Plaintiff asserts §§ 1981 and 1983 against individual municipal employees in their official capacity, such claims should be dismissed as 'duplicative and redundant' of the claims against the City of New York."), *Report and Recommendation adopted as modified on other grounds*, 2015 WL 5772255 (E.D.N.Y. Sept. 30, 2015), and *aff'd*, --- F. App'x ----, 2016 WL 7402667 (2d Cir. 2016). Accordingly, the Court respectfully recommends that all claims against the individual defendants be dismissed.

B. Municipal Liability

A municipality or municipal entity cannot be held liable under Section 1983 on a respondeat superior theory. *See Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691 (1978). Rather, a municipal entity may only be held liable if the alleged offending conduct was undertaken pursuant to "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by [the municipal] officers[,] . . . [or] governmental 'custom' even though such a custom has not received formal approval through the [municipality's] official decision[]making channels." *Id.* at 690-91. The plaintiff must show a "direct causal link between a municipal policy or custom, and the alleged constitutional deprivation." *City of Canton v. Harris*, 489 U.S. 378, 385 (1989). Thus, to establish a municipal liability claim under Section 1983, Plaintiffs must show that their constitutional rights were violated as the result of a policy, custom or practice of the municipality.

In their moving brief, Defendants assert many arguments as to why Plaintiffs' Section

1983 claims fail to state a claim. For instance, they argue that the complaint asserts nothing more than conclusory allegations, where it contains any allegations at all, regarding the existence of a County policy or custom. Defendants also argue that the complaint fails to plausibly allege a causal link between such a policy and a constitutional violation. In response, Plaintiffs merely repeat the allegations of the complaint verbatim and fail to address any of Defendants' arguments or cite to any controlling authority. Indeed, while Plaintiffs assert in their brief that Margiotta has been delegated final policymaking authority and that he has "'established rules, regulations, procedures and policies of the [SCTPVA] that violate the . . . [Constitution],'" Pls.' Mem. in Opp'n at 5, ECF No. 23-3 (quoting Compl. ¶ 10), Plaintiffs' brief fails to identify any specific policy Margiotta has actually promulgated.

The complaint, however, does identify three policies attributable to Margiotta: (1) a policy of pleading charges to parking violations to trigger late fees, Compl. ¶ 155; (2) a policy of imposing fines for parking violations between $400.00 and $480.00 to trigger late fees, *id.* ¶ 156; and (3) a policy of requiring outstanding fees to be paid before allowing individuals to appear before the SCTPVA, *id.* ¶ 195. For the reasons stated below, the Court finds that Plaintiffs have failed to plead facts supporting these claims.

To show a policy, custom, or practice for purposes of *Monell*, a plaintiff need not identify an expressly adopted rule. Rather, the existence of a municipal policy or custom may be plead in any of the following four ways:

> A plaintiff may allege (1) the existence of a formal policy which is officially endorsed by the municipality; (2) actions taken or decisions made by municipal officials with final decision making authority, which caused the alleged violation of plaintiff's civil rights; (3) a practice so persistent and widespread that it constitutes a custom of which constructive knowledge can be implied on the part of policymaking officials; or (4) a failure by policy makers to properly train or supervise their subordinates, amounting to

> deliberate indifference to the rights of those who come in contact with municipal employees.

Calicchio v. Sachem Cent. Sch. Dist., 185 F. Supp. 3d 303, 311 (E.D.N.Y. May 5, 2016).

The complaint does not contain allegations to substantiate either the first or third *Monell* categories since Plaintiffs have not alleged specific facts which plausibly suggest either the existence of a formal policy or a persistent and widespread practice. *See, e.g.*, Vail v. City of N.Y., 68 F. Supp. 3d 412, 431 (S.D.N.Y. 2014) ("A municipal policy may be pronounced or tacit and reflected in either action or inaction, but either way Plaintiff must allege it with factual specificity, rather than by bare and conclusory statements.") (citations and internal quotation marks omitted). Similarly, with regard to the fourth category, assuming that Margiotta was a policy maker, there are no allegations that he failed to properly train or supervise his subordinates – the Traffic Prosecutors and JHOs – and there are no allegations that Margiotta acted with deliberate indifference to their unconstitutional or potentially unconstitutional actions. "To establish deliberate indifference[,] a plaintiff must show that a policymaking official was aware of constitutional injury, or the risk of constitutional injury, but failed to take appropriate action to prevent or sanction violations of constitutional rights." *Jones v. Town of East Haven*, 691 F.3d 72, 81 (2d Cir. 2012). "[D]emonstration of deliberate indifference requires a showing that the official made a conscious choice, and was not merely negligent." *Id.* Here, the complaint contains nothing more than conclusory assertions of isolated incidents by employees below the policy making level and does not allege that Margiotta consciously ignored them. *See Fiedler v. Incandela*, --- F. Supp. 2d ----, No. 14-cv-2572, 2016 WL 7406442, at *13 (E.D.N.Y. Dec. 6, 2016) ("It is well established that a single incident involving an employee below the policymaking level will not suffice to support an inference of municipal custom or policy.")

(citations and internal quotation marks omitted); *Johnson v. City of N.Y.*, No. 12-CV-2484, 2012 WL 2394894, at *1 (E.D.N.Y. June 25, 2012) ("Neither the mere recitation of a failure to train municipal employees nor of a single incident like that here is sufficient to raise an inference or the existence of a custom, policy, or practice.").

Lastly, with regard to the second *Monell* category – actions taken by municipal officials with final decision making authority which caused the alleged violation of Plaintiffs' civil rights – Plaintiffs allege that Margiotta "instituted a policy and procedure at the [SCTPVA] to plead the charges to a parking violation to trigger the late fee penalty [and] . . . to impose a fine for a parking violation in the average range of $400.00 to $480.00 dollars per parking violation to trigger the late fee penalty." Compl. ¶¶ 155-56. Even assuming Margiotta had final policy making authority, there are no facts in the complaint to support this allegation. *See Benacquista v. Spratt*, --- F. Supp. 3d ----, No. 1:16-CV-581, 2016 WL 6803156, at *7 (N.D.N.Y. Nov. 17, 2016) ("Even at the motion-to-dismiss stage, a plaintiff cannot merely assert the existence of a municipal policy or custom in conclusory terms, but rather 'must allege facts tending to support, at least circumstantially, an inference that such a municipal policy or custom exists.'") (quoting *Santos v. New York City*, 847 F. Supp. 2d 573, 576 (S.D.N.Y. 2012)). Thompson alleges that his license was suspended and he was arrested after he failed to appear at a hearing; there is no mention of fees. Coulouris alleges that Margiotta and JHO Doe suspended his driver's license without authority, and he was forced to plead guilty to his speeding ticket in order to terminate the suspension and pay a fine of $150.00, an administration fee of $55.00 and a surcharge of $80.00. There is no reference to pleading down to a parking violation to trigger late fees of $400.00 to $480.00. Finally, Serviss alleges that through counsel, he pled down to a parking

violation. However, he alleges that the fine was only $200.00 plus a $55.00 fee, and that he incurred a late fee because he did not have the money to pay the fine and then "forgot" about the fee altogether.

The complaint also alleges that Margiotta required Plaintiffs and class members to "pay outstanding fees prior to being permitted to appear on a traffic ticket or having an opportunity to appear before a [JHO]." Compl. ¶ 195. The only facts supporting this allegation pertain to Serviss who alleges that he could not appear before a JHO on his expired inspection ticket unless he paid outstanding fines on a previous ticket for disobeying a traffic control device and, as a result, his license was suspended. Exhibits attached to the complaint reflect that Serviss was given notice on February 7, 2015 that pursuant to NYVTL § 510(4-a), his license could be suspended on March 14, 2015 for failure to pay his fine. *Id.* Ex. M. Because Serviss did not pay by March 14, 2015, his driver's license was suspended pursuant to the statute. When he finally paid all outstanding fees the following month, the suspension was terminated and he was permitted to appear on his second ticket. Based on these allegations, Serviss is not alleging a policy promulgated by Margiotta. Rather, he seems to be alleging that NYVTL § 510(4-a) – the statute pursuant to which his license was suspended – is unconstitutional. Insofar as this claim appears to challenge the constitutionality of a state statute, Plaintiffs are required to notify the New York State Attorney General under New York State Executive Law 71(1). Absent such notice, "[t]he court having jurisdiction in an action or proceeding in which the constitutionality of a statute, rule or regulation is challenged, shall not consider any challenge to the constitutionality of such statute, rule or regulation unless proof of service of the notice required by this section . . . is filed with such court." N.Y. Exec. Law § 71(3). In addition, federal law

requires that notice be given to the State Attorney General when a lawsuit calls in question the constitutionality of a state law. *See* 28 U.S.C. § 2403(a). Here, there is no indication that the New York State Attorney General has received notice and been given the opportunity to intervene, nor have Plaintiffs requested an opportunity to effectuate such service. In light of the foregoing, the Court finds that Plaintiffs have failed to allege a Section 1983 claim. In addition, to the extent Plaintiffs are challenging the constitutionality of NYVTL § 510(4-a), the Court reports and recommends that any such challenge be dismissed.[2]

B. Conspiracy Claim

Plaintiffs assert a conspiracy to violate civil rights claim under 42 U.S.C. § 1985. Compl. ¶¶ 203-06. In order to make out a Section 1985(3) claim, "the plaintiff must allege and prove four elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." *United Bhd. of Carpenters v. Scott*, 463 U.S. 825, 828-29 (1983); *see also Johnson v. Doyle*, No. 12-CV-4723, 2012 WL 5398185, at *1 (E.D.N.Y.

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[2] To the extent Serviss is asserting a claim for denial of access to the courts, his claim fails. "'To state a claim for denial of access to the courts, a plaintiff must assert non-conclusory allegations demonstrating that (1) the defendant acted deliberately and maliciously, and (2) the plaintiff suffered an actual injury.'" *Burroughs v. Petrone*, 138 F. Supp. 3d 182, 210 (N.D.N.Y. 2015) (quoting *Lewis v. Casey*, 518 U.S. 343, 353 (1996)). Here, neither element is plausibly supported by the allegations. First, there are no allegations that Margiotta acted maliciously; rather the complaint alleges that Serviss' driver's license was temporarily suspended and he was not permitted to appear before a JHO until he paid all outstanding fees, pursuant to New York law. Second, Serviss has not alleged that he suffered any actual injury as a result of any alleged denial of access; rather any injury he suffered was a direct result of his failure to pay outstanding fines.

Nov. 5, 2012). "[A] plaintiff must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end." *Webb v. Goord*, 340 F.3d 105, 110 (2d Cir. 2003) (citations and internal quotation marks omitted).

Here, Plaintiffs offer only conclusory allegations to support this cause of action. The complaint does not allege which Defendants may have conspired and fails to allege that any meeting of the minds occurred among any or all of the Defendants. It also fails to allege an "overt act" by any of the Defendants in furtherance of any such agreement. As such, Plaintiffs cannot state a claim under § 1985. *See Kiryas Joel Alliance v. Vill. of Kirjas Joel*, 495 F. App'x 183, 190 (Sept. 10, 2012) (affirming dismissal where plaintiffs provided only vague and conclusory allegations of an unlawful agreement); *Gyadu v. Hartford Ins. Co.*, 197 F.3d 590, 591 (2d Cir.1999) (per curiam) ("[A] complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss.") (citation and internal quotation marks omitted)). Accordingly, the Court respectfully report and recommends that this claim be dismissed.

CONCLUSION

For the reasons stated above, the Court respectfully reports and recommends that Defendants' motion to dismiss be granted in its entirety.

OBJECTIONS

A copy of this Report and Recommendation is being electronically filed on the date below. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to the undersigned within fourteen (14) days of service. Any

requests for an extension of time for filing objections must be directed to Judge Azrack prior to the expiration of the fourteen (14) day period for filing objections. Failure to file objections within this period waives the right to appeal the District Court's Order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
May 25, 2017

_________/s/_____________________
ARLENE R. LINDSAY
United States Magistrate Judge