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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HENRY VARGAS,

Plaintiff,

v.

ROBERT MEEHAN, JEFF CAMISCIOLI,
f/n/u DRELIC, KEVIN AMOS and ROBERT
ANDREZZI, individually and as
officers of the Garfield Police
Department and employees of the
Borough of Garfield, and JOHN DOE
individually and as an Assistant
Bergen County Prosecutor,

Defendants.

Case No.: 2:11-cv-02833(KM-MCA)

Civil Action

**DEFENDANTS' STATEMENT OF
MATERIAL FACTS IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT PURSUANT TO
FED. R. CIV. PRO. 56.1**

Defendants, Robert Meehan, Jeff Camiscoli, Kevin Drelic, Kevin Amos and Robert Andrezzi, by and through their attorneys, PIRO, ZINNA, CIFELLI, PARIS & GENITEMPO, hereby submit the following Statement of Material Facts Not in Dispute pursuant to Fed.R.Civ.Pro. 56.1 in support of said Defendants' Motion for Summary Judgment pursuant to Fed.R.Civ.Pro. 56:

1. The within matter consists of claims by Plaintiff Henry Vargas (hereinafter "Plaintiff") against certain police officers of the City of Garfield, including the Garfield

Police Chief, for alleged violations of Plaintiff's Federal and State Constitutional Rights.

2. Specifically, Plaintiff claims violations under 42 U.S.C. §1983 and §1985 as well as under N.J.S.A. 10:6-1 et. seq.
3. In and around the first half of 2007, Plaintiff resided at 63-65 Cadmus Avenue in Elmwood Park, New Jersey, in an apartment with Jonathan DiCrezencio (hereinafter "DiCrezencio") and Mark Amos (hereinafter "Mark Amos"), son of Defendant Kevin Amos (hereinafter "Defendant Amos"). At the time, Defendant Amos was a Deputy Chief in the Garfield Police Department and is now Chief. See Plaintiff's Complaint, a copy of which is annexed hereto, with exhibits, as Exhibit A.
4. In May 2007, following a lengthy investigation by the Passaic County Prosecutor's office that included wire-taps conducted by the Elmwood Park Police Department, Plaintiff and his roommate DiCrezencio were arrested on charges of possession of marijuana in the 2nd degree. A search warrant was issued for Plaintiff's home, which was executed. See Exhibit A to Plaintiff's Complaint.
5. Plaintiff alleges that several days prior to his arrest, Mark Amos moved out of 63-65 Cadmus in the middle of the night, abandoning his personal property there, including a bed and his clothes. Id.

6. Mark Amos was never arrested or charged with the drug offenses with which Plaintiff was charged. In fact, the application for a search warrant presented to the Elmwood Park Municipal Court subsequent to Plaintiff's arrest did not make any mention of Mark Amos. See Exhibit B to the Complaint.
7. Subsequently, in June 2007, Mark Amos became an officer in the Garfield Police Department.
8. As a result of his arrest, Plaintiff pleaded guilty to possession of a controlled dangerous substances in the third degree, and was placed on probation. See Deposition of Henry V. Vargas ("Vargas Dep.") 64:1-15 annexed as Exhibit A to the Certification of Daniel R. Bevere ("Bevere Cert."), submitted herewith.
9. Plaintiff contends that following his arrest, the Garfield police began a course of harassment, intimidation and retaliation against him. Plaintiff contends that this course of harassment, intimidation and retaliation was directed by then Deputy Chief and now Police Chief Kevin Amos and acquiesced in by then Police Chief Robert Andrezzi. See Plaintiff's Complaint.

10. Plaintiff contends that this harassment consisted of the following:

- a. On September 28, 2007, Plaintiff was stopped by Defendant Jeff Camiscioli (hereinafter "Defendant Camiscioli"), a Sergeant in the Garfield Police Department, because he was double-parked. Vargas Dep. 105:7-106:15; 108:24-109:24; See also Deposition of Jeffrey Camiscioli ("Camiscioli Dep.") 27:7-17; 27:18-28:9, annexed as Exhibit B to the Bevere Cert.
- b. This stop led to Plaintiff being arrested by Officer Drelic for obstruction of justice and unlawful possession of a weapon. Camiscioli Dep. 33:2-25.
- c. In June, 2008, Plaintiff was arrested by Officer Robert Meehan for aggravated assault. See Complaint.
- d. Plaintiff was subsequently indicted on this charge but the indictment was later dismissed by Judge Eugene Austin, Superior Court, Bergen County at the request of the Bergen County Prosecutor. Id.
- e. Plaintiff contends that during the period of September 2007 through June of 2008, he was the subject of numerous traffic stops by Officer Meehan, Officer Camiscoli and Officer Drelic. Id.

11. Notwithstanding Plaintiff's assertion that his arrests / traffic stops were not justified, discovery has revealed to the contrary and that the Officers had probable cause to stop, detain and/or arrest on each occasion.
12. For example, in regard to the September, 2007 traffic stop that culminated in Plaintiff's arrest, Plaintiff was illegally, double parked, which was why he was approached in his vehicle by Officer Camiscoli. Camiscoli Dep. 33:2-25.
13. When Sgt. Camiscoli asked Plaintiff for his driving credentials and vehicle paperwork, Plaintiff argued with Sgt. Camiscoli, refused to provide his paperwork, accused him of harassing him and started cursing at him. Vargas Dep. 105:7-106:15; 108:24-109:24. Camiscoli Dep. 27:7-17; 27:18-28:9.
14. Defendant Camiscoli that, prior to this stop, he was not personally familiar with Plaintiff, but had been advised by his superior officers to "watch your back" with regard to Plaintiff, as part of a department wide general practice for any individual who was described as "particularly dangerous or who had a history of assault on police officers" as Plaintiff did. Camiscoli Dep. 19:18-20:17.

15. Defendant Camiscioli had also received orders that there was to be a zero tolerance policy for persons double parking in the area where Plaintiff had double-parked. See Camiscioli Dep. 27:18-28:9,
16. During this encounter with Plaintiff, Defendant Camiscioli, viewed a baseball bat in Plaintiff's vehicle within arm's length. Accordingly, he requested that Plaintiff exit said vehicle. Camiscioli Dep. 33:2-34:9.
17. Plaintiff refused to get out of the vehicle on Sgt. Camiscoli's command and had to be removed from the vehicle by Defendant Camiscioli, who subsequently arrested him for obstruction and for possession of a weapon under N.J.S.A. 2C:39-5D. Camiscioli Dep. 33:2-25.
18. According to Plaintiff, the charges stemming from the September 2007 arrest have never been heard by the Garfield Municipal Court, and a motion for a change in venue has been pending since summer 2008. Vargas Dep. 114:6-115:7; 115:23-116:23.
19. This is the only incident of harassment, intimidation or retaliation that Plaintiff alleges as to Defendant Camiscoli.
20. As to Defendant Meehan, Plaintiff alleges that in May 2008, shortly after Meehan graduated from the Police Academy, Meehan accosted Plaintiff in the street and accused him of

"disrespecting" him by flaunting an open bottle of liquor while he [Plaintiff] was driving and that Defendant Meehan was on patrol. Plaintiff also alleged that Defendant Meehan told Plaintiff that he intended to "get him." Vargas Dep. 119:12-20.

21. Despite these allegations, Plaintiff by his own admission testified that Defendant Meehan never stopped or even communicated with Plaintiff on the date in question. Rather, Plaintiff alleges that Defendant Meehan drove by Plaintiff and that..."nothing happened." Vargas Dep. 120:6-14; 121:18-20.

22. In May of 2008, Defendant Meehan issued Plaintiff a ticket for failing to stop at a stop sign. Vargas Dep. 130:18-20. This charge, according to Plaintiff has never been adjudicated by the Garfield Municipal Court and a change of venue motion has been pending since the summer of 2008. Id.

23. As to the June 2008 incident, Plaintiff claims that he came upon a fight on Grand Street in Garfield between two rival groups of young people. Plaintiff contends that, even though he was not part of the melee', he jumped in to "assist" the Garfield police who he claims were "outnumbered." He claims that he was then wrongfully charged with aggravated assault by Officer Meehan. See Complaint.

24. Defendant Meehan testified, however, that while he was in the process of trying to arrest a suspect, he was struck in the head with a rock by Plaintiff. This is why he charged him with aggravated assault. See Deposition of Robert Meehan ("Meehan Dep."), annexed to the Bevere Cert. as Exhibit C, page: 22:25-23:7; 25:3-13.

25. As to Defendant Drelic, Plaintiff asserts that "[o]n many occasions in 2007 and 2008, [he] was stopped by Defendant Drelic, on various pretexts for various violations, both moving violations and equipment violations. See Complaint. At deposition, however, Plaintiff could not recall whether or not Defendant Drelic ever issued him a ticket or criminal summons for these stops. See Vargas Dep. 85:7-10.

26. Most importantly, Plaintiff, by his own admission, states that the last of these stops occurred a month *prior* to his arrest by Officer Meehan in June, 2008. See Vargas Dep. 85:11-18.

27. Defendant Amos denies ever having directed anybody to bring charges against Plaintiff. See Deposition of Kevin Amos ("Amos Dep."), annexed to the Bevere Cert. as Exhibit D, page: 48:1-3. Further, upon notification by Plaintiff's attorney of alleged harassment by Garfield Police Officers, Defendant Amos spoke with Defendants Camiscioli, Meehan and Drelic and advised them in the event that they had any

contact with Plaintiff, a field supervisor was to be present. See also Interrogatory Answers of Kevin Amos ("Amos Rogs."), annexed to the Bevere Cert. as Exhibit E, Interrogatory ¶20.

28. Defendant Andrezzi was never advised as to the details/content of Elmwood Parks's investigation and did not receive any information regarding the involvement of any vehicle. See Deposition of Robert Andrezzi ("Andrezzi Dep."), annexed to the Bevere Cert. as Exhibit F, page 8:19-9:13. Further, Defendant Andrezzi retired in April 2008 and thus was unaware as to any charges/indictments of the Plaintiff. See Andrezzi Dep. 12:1-4; 16:1-18; See also Interrogatory Answers of Robert Andrezzi ("Andrezzi Rogs."), annexed to the Bevere Cert. as Exhibit G, ¶¶ 14-18.
29. Most significantly, Plaintiff filed his lawsuit in May of 2011, more than two years after the last arrest and/or motor vehicle stop in Garfield which forms the basis of his Complaint. Accordingly, Plaintiff's lawsuit is barred by the two year statute of limitations applicable to 42 U.S.C. 1983 actions and actions under N.J.S.A. 10:6-2.

PIRO, ZINNA, CIFELLI, PARIS
& GENITEMPO, LLC
Attorneys for Defendants

By: /s/ Daniel R. Bevere
DANIEL R. BEVERE
A Member of the Firm

Dated: September 8, 2014

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HENRY V. VARGAS,

Plaintiff,

v

CASE NO.: 2;11-cv-02833 CCC JAD

**ROBERT MEEHAN; JEFF
CAMISCIOLI; f/n/u DRELIC; KEVIN
AMOS; and ROBERT ANDREZZI,
individually and as an officers of the
Garfield Police Department and
employees of the Borough of Garfield,
and JOHN DOE individually and as an
Assistant Bergen County Prosecutor,**

COUNTERSTATEMENT of FACTS

Defendants.

Plaintiff, responding to Defendants' Statement of Material Facts, says:

1. He admits the allegations of ¶s 1 to 10.
2. He denies the allegations of ¶ 11 as conclusory.
3. He admits that he was double parked on this occasion, as stated in ¶ 12; but denies that this was the reason that he was approached by Defendant Camiscioli. See Pltf Cert. ¶ 8.
4. He denies that he refused to give his Camiscioli his paperwork as stated in ¶ 13, and says that Camiscioli acknowledged that he did give it to him while arguing about the reason for the stop. See Pltf Cert. ¶ 9..
5. He neither admits nor denies the allegations of ¶ 14

6. He admits that Camiscioli gave the testimony outlined at ¶s 15 and 16.
7. He denies the allegations of ¶ 17, and says that he did comply. See Pltf Cert ¶ 9.
8. He admits the allegations of ¶ 18,19 and 20.
9. He neither admits nor denies the allegations of ¶ 21
10. He admits the allegations of ¶ 22 and 23.
11. He denies the allegations of ¶ 24,
12. He admits the allegations of ¶ 25 and 26.
13. He admits that Defendant Amos gave the testimony outlined at ¶ 27
14. He admits the allegations of ¶ 28.
15. He admits the allegations of ¶ 29, except that he says that there are still two opne caharges against him in Garfield municipal court, which are aslo part of this action; and they have not been resolved nor do Defendants contend that they are dismissed or otherwise resolved.

Plaintiff , as and for an affirmative statement of material facts, says:

1. In and around the first half of 2007, Plaintiff resided at 63-65 Cadmus Avenue in Elmwood Park, New Jersey, in an apartment with Jonathan DiCrezencio and Mark Amos, the son of Defendant herein Kevin Amos. **(Pltf. Cert., ¶ 1)**

2. In May 2007, following a lengthy investigation by the Passaic County Prosecutor's office that included wire-taps conducted by the Elmwood Park Police Department, Plaintiff and his roommate DiCrezencio were arrested on charges of possession of marijuana in the 2d degree. A search warrant was issued for Plaintiff's home, which was

executed. A copy of the investigative report by the Elmwood Police Department prominently mentions Mark Amos, the son of Defendant Amos (**Exhibit A; Pltf. Cert., ¶2**).

3. A few days before Plaintiff was arrested, Mark Amos suddenly moved out of 63-65 Cadmus in the middle of the night, without notice, abandoning his personal property there including a bed and his clothes. Mark Amos was never arrested or charged. (**Pltf. Cert., ¶3**).

4. In June 2007, Mark Amos became an officer in the Garfield Police Department, and his father has since become Chief. (**Pltf. Cert., ¶4**).

5. Eventually, Plaintiff pleaded guilty to possession in the third degree, and was placed on probation. (**Pltf. Cert., ¶ 5**).

6. Shortly after the raid and his arrest, the Garfield Police began a course of harassment, intimidation and retaliation directed at Plaintiff. (**Pltf. Cert., ¶s 6 to 23**).

7. Plaintiff was at the time frequently in Garfield even though his residence was in Elmwood Park. (**Pltf. Cert., ¶ 6**).

8. On September 28, 2007, Plaintiff was stopped by Defendant Jeff Camiscoli, a Sergeant in the Garfield Police Department on the pretext that he was double parked. Plaintiff argued with Camiscoli, accused him of harassing him, and cursed at him. (**Pltf. Cert., ¶s 8**)..

9. At that time, Sgt. Camiscoli decided to search Plaintiff's car, saw a baseball bat on the back seat and arrested him on a charge of **NJSA 2C:39-5D**. He also arrested him for resisting arrest. Plaintiff was taken into custody, hand cuffed, transported to the police station where he was photographed, and fingerprinted, and detained in custody for several

hours. At the station, Camiscoli told Plaintiff that he had to arrest him for something because too many people had witnessed Plaintiff “disrespecting “ him (**Pltf. Cert., ¶ 9**)..

10. While Plaintiff was being processed on this charge, Drelic approached him and said “Who do you think you are, you fat fuck? Get ready to pay! I’ll pull you over every time I see you!”. (**Pltf. Cert., ¶ 10**).

11. Those charges have never been heard by the Garfield Municipal Court, and a motion for a change in venue has been pending since summer 2008. (**Pltf. Cert., ¶s 11 and 23**).

12. On many occasions in 2007 and 2008, Plaintiff was stopped by Defendant Drelic, on various pretexts for various violations, both moving violations and equipment violations; and Drelic frequently followed him in the patrol car, sometimes even tailgating him. (**Pltf. Cert., ¶ 12**).

13. In or about May 2008, Defendant Meehan and Mark Amos graduated from the police academy and became regular Garfield police officers. (**Pltf. Cert., ¶ 13**).

14. At or about that time or shortly thereafter, Meehan accosted Plaintiff in the street and accused him of “disrespecting” him by flaunting an open bottle of liquor while he [Plaintiff] was driving and Meehan was on patrol. Meehan never made a stop for this alleged incident, and it was a fabrication. Meehan told Plaintiff that he intended to “get him”. (**Pltf. Cert., ¶ 14**).

15. In May 2008, Defendant Meehan issued a stop sign violation to Plaintiff. At the time and subsequently, Meehan admitted that it was not justified. That charge has

never been adjudicated by the Garfield Municipal Court, and a change of venue motion has been pending since summer 2008. (**Pltf. Cert., ¶ 15**).

16. On June 28, 2008, Plaintiff came upon a fight on Grand Street in Garfield, between two rival groups of young people. At the time he arrived police were trying to break up this fight, and Plaintiff intervened to assist the Garfield Police who were heavily outnumbered. (**Pltf. Cert., ¶ 16**).

17. Despite his assistance, two days later Defendant Meehan brought a charge of aggravated assault against Plaintiff, asserting that he had struck him in the head during this melee with a large rock. (**Pltf. Cert., ¶ 17**).

18. Defendant Meehan did not seek medical treatment on this occasion, displayed no visible injury, and admitted at the Grand Jury that he was uninjured. (**Exhibit A**)

19. Plaintiff surrendered, was arrested on the charge, taken into custody, fingerprinted and photographed, held on \$1000 bail and detained in custody for several hours. (**Pltf. Cert., ¶ 19**).

20. Plaintiff was subsequently indicted for assault with a deadly weapon as a result of this incident, which indictment was finally dismissed verbally by Judge Austin on January 7, 2010 confirmed by Order dated January 14, 2010. (**Pltf. Cert., ¶ 21**).

21. Defendants Amos and Andrezzi were Chief sequentially when these events took place; were on actual and constructive notice of the harassment; and took no effective steps to stop it. On information and belief, the harassment of Plaintiff was directed by Defendant Amos in an effort to intimidate Plaintiff into keeping his silence about his son PO

Mark Amos. Chief Amos took the unusual step of going to the Elmwood park Police HQ and speaking to Captain DiPasquale when that department wanted to follow up the drug dealing investigation with Defendant Amos' son (**Exhibit B**).

22. Over the intervening months, Plaintiff surreptitiously recorded many officers of the Garfield Police Department commenting on the above incidents and others. Among other things, those officers acknowledged that there had been no assault on Officer Meehan on June 28, 2008, and that that charge was a fabrication; that the department was out to get Plaintiff and that there were orders from higher police authorities to do so. They also acknowledged that it was because of his affiliation with Mark Amos, now a Garfield Police Officer, that this harassment, intimidation and retaliation was occurring. (**Pltf. Cert., ¶ 22**).

23 Plaintiff's criminal attorney bought his recordings of the Garfield police officers to the attention of the Bergen County Prosecutor's Office, which failed to present the exculpatory evidence to the Grand Jury; and failed to investigate the conduct of the Garfield police.

Dated: november 24, 2014

/s/ George J Cotz 0463

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HENRY V. VARGAS

Plaintiff,

v.

ROBERT MEEHAN, ET AL.

Defendants.

Civil Action No. 2:11-cv-2833-CCC-JAD

OPINION

CECCHI, District Judge.

I. INTRODUCTION

This matter comes before the Court on the motion of Defendants Robert Meehan, Jeff Camiscoli, Officer Drelic, Kevin Amos and Robert Andrezzi (collectively, “Defendants”) to dismiss Plaintiff’s Complaint.¹ (Docket Entry No. 14). Plaintiff Henry Vargas (“Plaintiff”) opposed Defendants’ motion and filed a cross-motion for leave to amend his Complaint. (Docket Entry No. 16). The Court’s jurisdiction in this matter is premised on 42 U.S.C. § 1983. The Court has considered the submissions made in support of and in opposition to the instant

¹ Defendants’ motion is styled as a motion for judgment on the pleadings “pursuant to Federal Rule of Civil Procedure 12(b)(6).” Because Rule 12(b)(6) governs motions to dismiss, the Court construes Defendants’ application as a such. In any event, the same legal standard applies to both a motion for judgment on the pleadings and a motion to dismiss pursuant to Rule 12(b)(6). Revell v. Port Auth. of New York, New Jersey, 598 F.3d 128, 134 (3d Cir. 2010) (citing Turbe v. Gov’t of the V.I., 938 F.2d 427, 428 (3d Cir.1991) (“A motion for judgment on the pleadings based on the defense that the plaintiff has failed to state a claim is analyzed under the same standards that apply to a Rule 12(b)(6) motion”).

motions.² This matter is decided without oral argument pursuant to Federal Rule of Civil Procedure 78. Based on the reasons that follow, Defendants' motion to dismiss is denied, and Plaintiff's motion to amend is granted.

II. BACKGROUND

On or about May 18, 2011, Plaintiff filed a Complaint with this Court seeking redress for alleged violations of his federal and state constitutional rights by Defendants Robert Meehan, Jeff Camiscioli, Officer Drelic, Kevin Amos and Robert Andrezzi. All of the named defendants are police officers in the City of Garfield, New Jersey. In his Complaint, Plaintiff alleges that he was subjected to several instances of unlawful arrest, search and seizure, and police stops. Plaintiff contends that these events violated his constitutional rights and demonstrate a pattern of harassment by Defendants.

The following recitation of facts is taken from Plaintiff's Complaint. In May 2007, after a lengthy investigation by the Passaic County Prosecutor's office, Plaintiff was arrested on charges of possession of marijuana in the second degree. (Compl. ¶ 7). A search warrant was issued for Plaintiff's apartment in Elmwood Park, New Jersey and Plaintiff subsequently pled guilty on the charges levied in connection with the May 2007 arrest. (Id. ¶¶ 10-11). Just prior to his arrest, Plaintiff shared his Elmwood Park apartment with Mark Amos, son of Defendant Kevin Amos, the chief of the Garfield police department. (Id. ¶¶ 6, 9). Plaintiff asserts that the search warrant issued for the Elmwood Park apartment made no mention of Mark Amos and that Mark Amos was never arrested for marijuana possession, despite his inclusion in a related

² The Court considers any new arguments not presented by the parties to be waived. See Brenner v. Local 514, United Bhd. Of Carpenters & Joiners, 927 F.2d 1283, 1298 (3d Cir. 1991) ("It is well established that failure to raise an issue in the district court constitutes a waiver of the argument.").

investigational report prepared by the Elmwood Park police department. (Id. ¶¶ 7, 10). Plaintiff alleges that, subsequent to his May 2007 arrest, certain Garfield police officers “began a course of harassment, intimidation and retaliation directed at Plaintiff.” (Id. ¶ 12). Plaintiff asserts that this conduct was “directed by Defendant Amos in an effort to intimidate Plaintiff into keeping quiet about his son PO Mark Amos.” (Id. ¶ 28).

In his Complaint, Plaintiff identifies two arrests which he claims give rise to violations of his constitutional rights. The first arrest occurred on September 28, 2007, when Plaintiff was arrested by Defendant Camiscoli for resisting arrest. (Id. ¶¶ 15-16). The second arrest took place on June 28, 2008, when Plaintiff was arrested for aggravated assault by Defendant Meehan. (Id. ¶¶ 23-26). In addition, Plaintiff asserts that he was subjected to illegal traffic stops and searches “[o]n many occasions in 2007 and 2008.” (Id. ¶ 19). Plaintiff specifically describes only one such stop however, which took place in May 2008 by Defendant Meehan. (Id. ¶ 22). Plaintiff further alleges that he surreptitiously recorded unnamed Garfield police officers commenting on the incidents described in the Complaint. (Id. ¶ 29). According to Plaintiff, the recorded officers acknowledged that Plaintiff was arrested and/or stopped based on fabricated charges because of his affiliation with Mark Amos. (Id.) Plaintiff contends that his attorney brought the recordings to the attention of the Bergen County Prosecutor’s Office, “which failed to present the exculpatory evidence to the Grand Jury.” (Id. ¶ 30).³

Based on the foregoing incidents, Plaintiff claims that Defendants violated his civil rights arising under the federal and New Jersey constitutions. Plaintiff’s Complaint asserts seven causes of action in that regard. Count One asserts that the search of Plaintiff’s vehicle and his

³ Plaintiff’s Complaint does not further describe the Grand Jury proceedings. The Complaint names a John Doe defendant, described as an Assistant Bergen County Prosecutor, in connection with the failure to present evidence to the grand jury.

arrest on September 28, 2007 violated Plaintiff's civil rights under 42 U.S.C. § 1983. Count Two asserts that Plaintiff's arrest on June 30, 2008 likewise violated Section 1983. Count Three alleges harassment based on traffic stops and threats, in violation of Section 1983. Counts Four, Five and Six claim that the aforementioned conduct violates the New Jersey Constitution, giving rise to claims under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq.* Counts Seven and Eight allege that a John Doe defendant, identified as an Assistant Bergen County Prosecutor, failed to present the exculpatory transcripts of Plaintiff's conversations with Defendant Meehan to the grand jury, in violation of Section 1983 and the New Jersey Civil Rights Act. Lastly, Count Nine alleges that Defendants conspired to deprive him of his federal and state constitutional rights, in violation of 42 U.S.C. § 1985.

Defendants now move to dismiss Plaintiff's Complaint, asserting that it was not filed within the governing two-year statute of limitations. Plaintiff opposed Defendants' motion and has also filed a motion for leave to amend his Complaint.

III. LEGAL STANDARD

For a complaint to survive dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6), it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In evaluating the sufficiency of a complaint, the Court must accept all well-pleaded factual allegations in the complaint as true and draw all reasonable inferences in favor of the non-moving party. See Phillips v. Cnty. of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. Furthermore, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor

does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Iqbal, 129 S. Ct. at 1949.

Motions to amend the pleadings are governed by Federal Rule of Civil Procedure 15. Rule 15(a)(1)(B) applies to Plaintiff’s motion to amend, given the procedural history of this matter. Under that provision “... a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(1)(B). The decision to grant leave to amend is left within the discretion of the district court. Toll Bros., Inc. v. Township of Readington, 555 F.3d 131, 144 n. 10 (3d Cir.2009); Coventry v. U.S. Steel Corp., 856 F.2d 514, 518–521 (3d. Cir.1988)). The Third Circuit has shown a strong liberality in allowing amendments under Rule 15 in order to ensure that claims will be decided on the merits rather than on technicalities. Dole v. Arco Chemical Co., 921 F.2d 484, 487 (3d Cir.1990); Bechtel v. Robinson, 886 F.2d 644, 652 (3d Cir.1989). Thus, an amendment must be permitted in the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment. Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir.2002) (citing Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)).

IV. DISCUSSION

Defendants move to dismiss Plaintiff’s Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief may be granted. Defendants contend that Plaintiff’s claims are time-barred under the governing two-year statute of limitations.⁴ In support of their motion, Defendants highlight that the incidents described in Plaintiff’s Complaint all

⁴ The parties do not dispute that a two-year statute of limitations governs Plaintiff’s claims. (See Pl. Br. in Support of Mot. to Amend 1).

occurred in 2007 and 2008. As Plaintiff's Complaint was not filed until May 18, 2011, Defendants assert that this action must be dismissed with prejudice.

Plaintiff opposed Defendants' motion and has sought leave to file an amended complaint to clarify that this action was instituted within the two-year limitations period. In sum and substance, Plaintiff requests leave of court to amend the pleadings to demonstrate that Defendants' engaged in additional alleged wrongful conduct in 2009, rendering the Complaint timely. Specifically, Plaintiff seeks to assert additional allegations regarding Defendants' conversations with the Bergen County Prosecutor's Office, Defendants' continued harassment of Plaintiff, and the false presentation of testimony to the grand jury in 2008. Plaintiff further asserts that he cannot adequately respond to Defendants' statute of limitations argument until he conducts discovery. Lastly, Plaintiff contends that Defendants' actions were part of a "continuing violation" of Plaintiff's federal and state constitutional rights.⁵

Given the liberal standard governing motions to amend, the Court exercises its discretion to allow Plaintiff the opportunity to file an Amended Complaint (in the form annexed to its moving papers) which sets forth allegations of purportedly wrongful conduct occurring in 2009. At this early stage of the litigation, where discovery is ongoing, the Court finds it appropriate to allow Plaintiff to amend the pleadings to clarify his allegations. In so doing, the Court does not opine as to whether Plaintiff's claims would survive a motion for summary judgment once discovery is complete. Rather, the Court merely finds that, at this stage, Plaintiff should be granted leave to amend his pleading.

⁵ The Court takes no position by way of this Opinion regarding the applicability of the continuing violations doctrine.

Because Plaintiff has been granted leave to file his Amended Complaint, Defendants' motion to dismiss is denied without prejudice. Defendants may renew their arguments by way of a dispositive motion once discovery is complete.

V. CONCLUSION

Based on the reasons set forth above, Plaintiff's motion to amend is granted and Defendants' motion to dismiss is denied without prejudice.

An appropriate Order accompanies this Opinion.



CLAIRE C. CECCHI, U.S.D.J.