UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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ISRAEL PEREZ and MAGDALENO ESTRADA ESCAMILLA, on behalf of themselves and all other Mexican/Chicano day laborers and/or Latino day laborers similarly situated,

Plaintiffs,

-against-

MEMORANDUM AND DECISION
01-CV-6201 (JS) (WDW)

POSSE COMITATUS, SHERIFF'S POSSE COMITATUS, AMERICAN PATROL, THE CREATIVITY MOVEMENT, NATIONAL ALLIANCE, SACHEM QUALITY OF LIFE, INC., WORLD CHURCH OF THE CREATOR, CHRISTOPHER SLAVIN, and RYAN WAGNER,

Defendants.
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A P P E A R A N C E S :

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For Defendants
Posse Comitatus,
Sheriff's Posse Comitatus,
The Creativity Movement,
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and	Paul Aronow, Esq. 5 Donna Court Holtsville, NY 11742
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American Patrol	No Appearance
Christopher Slavin	No Appearance

SEYBERT, District Judge:

Pending before the Court are (1) motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) by defendant Sachem Quality of Life Organization ("Sachem") filed on December 10, 2001 and by defendants Posse Comitatus, Sheriff's Posse Comitatus, The Creativity Movement, World Church Creator and the National Alliance ("Posse Comitatus Defendants") filed on December 11, 2001; and, (2) motions for sanctions pursuant to Rule 11 by the same defendants filed on January 31, 2002 and February 1, 2002, respectively.

By letter dated February 6, 2002, defendant Ryan Wagner joined in the motions to dismiss but expressly disavowed joining in on the defendants' motions for sanctions. Wagner's letter motion did not, however, advance any independent legal arguments. The remaining defendants have not appeared.[1]

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[1]During the pendency of this motion, plaintiff moved for a default judgment against defendant American Patrol (see Pl. Mot., filed Mar. 26, 2002) and defendant Slavin, which was stayed pursuant to a stipulation filed on August 26, 2002.

I. PROCEDURAL BACKGROUND

In their complaint filed on September 17, 2001, plaintiffs describe themselves as Mexican/Chicano day laborers who bring the instant action on behalf of themselves and others similarly situated who have been and continue to be subjected to hatred and discriminatory acts directed at them as a result of their status as members of a Hispanic minority and as immigrants. See Compl. ¶¶ 5-13. The plaintiffs' civil rights claims, brought pursuant to 42 U.S.C. §§ 1981, 1985, 1985(3), 1985 and 1988, have their genesis in a brutal attack upon the plaintiffs on the morning of September 17, 2000 by individual defendants Christopher Slavin ("Slavin") and Ryan Wagner ("Wagner"). Compl. ¶¶ 20-93. Plaintiffs allege that the remaining defendants are unincorporated associations comprised of white persons formed for the purpose of promoting hatred and intolerance against non-white immigrants and that these organizational defendants conspired with Slavin and Wagner in order to deprive the plaintiffs of their constitutional rights; they further allege that the organizational defendants have provided and continue to provide both material and ideological support to Slavin and Wagner. Compl. ¶¶ 2, 7-13, 79, 84, 88.

In addition, plaintiffs assert claims against these private defendants for deprivation of their constitutional rights under the First, Thirteenth and Fourteenth Amendments to the Constitution as

well as pursuant to state law.[2] They seek injunctive relief and an award of monetary damages in the amount of $3 million.

The moving defendants argue that the complaint must be dismissed because the plaintiffs have failed to allege that the organizational defendants or any of their members undertook any act, entered into agreements with the individual defendants or participated in any way in the brutal attack by defendants Slavin and Wagner. They assert that the complaint is bereft of any allegations concerning defendants' participation or their affiliation with or knowledge of Slavin or Wagner prior to this action. They urge the Court to dismiss the complaint because its allegations regarding their participation in a civil rights conspiracy are wholly conclusory and thus deficient as a matter of law. They further argue that because the claims are based upon

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[2]Plaintiffs' First Cause of Action is asserted only against defendants Wagner and Slavin for violation of 42 U.S.C. §§ 1981 and 1985, based upon the alleged deprivation of equal protection. Plaintiffs' Second, Third and Fourth causes of action are asserted against the individual and organizational defendants under 42 U.S.C. §§ 1985(3) (Second), 1986 (Third), and 1988. Although the claims are not asserted under Section 1983 -- and none of the defendants are state actors -- plaintiffs' Fourth cause of action asserts constitutional violations by each defendant for infringement of the plaintiffs' rights: to travel, to equal protection, to "be free from the badges and incidents of slavery," to be free from "assault and battery motivated by racial prejudice" and to be free from conspiracies to deprive them of such constitutional rights. See Compl. ¶¶ 80, 88-92. Plaintiffs' Fifth cause of action states a claim under analogous state civil rights statutes and the New York state constitution. See ¶¶ Compl. 95-97. Plaintiffs' remaining causes of action are asserted against all of the defendants for intentional infliction of emotional distress (Sixth), battery (Seventh), assault (Eighth) and false imprisonment (Ninth).

their alleged political views, they are barred under the First Amendment. See, e.g. Sachem Rule 12 Memo. of Law at 1-10; Posse Comitatus Rule 12 Memo. of Law at 2-8.

In their separately filed motions, defendants seek sanctions against plaintiffs and their attorney because the complaint is frivolous. Defendants assert that the allegations are "deliberately vague" and re-assert that the First Amendment bars the claims. As such, the defendants argue that the plaintiffs could not have had a good faith basis for bringing suit against them. See Sachem Rule 11 Memo. of Law at 2-15; Posse Comitatus Rule 11 Memo. of Law at 7-10.

In response, plaintiffs argue that they have alleged facts in support of their allegations in conformance with Rule 8 of the Federal Rules of Civil Procedure and that they are not required to have knowledge of specific details of the conspiracy at the pleading stage. See Pl. Rule 12 Memo. of Law at 6-12. Plaintiffs assert that the defendants may be held liable for "encouraging" Slavin and Wagner and for acting as the catalyst for the attack. See id. at 13. Plaintiffs dispute that their conspiracy claims are barred by the First Amendment and assert that the cases cited by the defendants are distinguishable. See id. at 13-29. Finally, plaintiffs argue that in the event that the Court finds that the allegations against the moving defendants are lacking, the Court should grant them leave to amend or to proceed with discovery.

II. FACTUAL BACKGROUND

In sum, the complaint sets forth in detail an attack which occurred on September 17, 2000. On that day, defendants Slavin and Wagner lured the plaintiffs, Israel Perez and Magdaleno Estrada Escamilla, to an abandoned building with the promise of a day's paid labor. Compl. ¶¶ 21-40. Within minutes of their arrival, Slavin and Wagner led the plaintiffs into the basement of the building and viciously attacked them with their fists, a post hole digger and a knife. Compl. ¶¶ 41-69. Plaintiffs allege that the attack was intentional and racially motivated. Compl. ¶¶ 68-69.

The complaint identifies the organizational defendants as "unincorporated associations composed of white persons which advocate[] race hatred, religious intolerance, white supremacy against Black people, Hispanics, and various minorities and religious groups" as well as "immigrants and day laborers." Compl. ¶ 7 (Posse Comitatus); ¶ 8 (Sheriff's Posse Comitatus), ¶ 9 (American Patrol); ¶ 10 (The Creativity Movement); ¶ 11 (National Alliance); ¶ 12 (Sachem Quality of Life, Inc.); ¶ 13 (World Church of the Creator). Plaintiffs' allegations against the organizational defendants are set forth in summary fashion at paragraphs 2 and 20 of the complaint, wherein they allege:

> These associations, groups and organizations all of which promote hatred and intolerance against immigrants and day laborers, upon information and belief, provided DEFENDANTS SLAVIN and WAGNER with support and assistance, both material and ideological.

Compl. ¶ 2.

> Upon information and belief, prior to September 17, 2001 and including all times thereafter, defendants SLAVIN and WAGNER were subjected to and adopted the influences and ideologies of [the organizational defendants]. Through and by this influence, individual defendants were encouraged and felt empowered to perform the acts of violence against plaintiffs which violated the rights set forth herein.

Compl. ¶ 20.

Plaintiffs further allege that Slavin and Wagner "acted in association and in furtherance of the aims and goals of anti-immigrant, and anti-day laborer organizations" and that "[e]ach...group[] perpetuated unlawful discriminatory acts and abuse and served as a catalyst and impetus for the actions" of Slavin and Wagner, who are alleged to have attended Posse Comitatus meetings. Compl. ¶¶ 70-71.

III. STANDARD GOVERNING MOTION TO DISMISS

A district court should grant a motion to dismiss under 12(b)(6) of the Federal Rules of Civil Procedure only if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-250, 109 S. Ct. 2983, 2906 (1989)(quoting Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232 (1984)). In applying this standard, a district court must "read the facts of the case in the complaint in the light most favorable" to the plaintiff, and accept these allegations as true. Id. at 249, 109 S. Ct. at 2906.

Where a complaint alleges a conspiracy to violate civil rights and a defendant's participation in that conspiracy, however, vague and conclusory allegations "are properly disregarded where the specific allegations of the complaint do not amount to an agreement to violate the plaintiff's civil rights." Okwedy v. Molinari, 150 F. Supp.2d 508, 512 (E.D.N.Y. 2001) (citing X-Men Security, Inc. v. Pataki, 196 F.3d 56, 71 (2d Cir. 1999)).

IV. DISCUSSION

A. Motions to Dismiss

1. Claims against the Organizational Defendants Cannot be Sustained Under First Amendment Jurisprudence

The gravamen of the complaint against the organizational defendants is that they may be held liable as "conspirators" because their political views encouraged Slavin and Wagner to attack immigrant workers. Under long-established constitutional jurisprudence, plaintiffs' claims cannot be sustained.

In National Association for Advancement of Colored People v. Claiborne Hardware Company, the Supreme Court reversed a determination by the Mississippi State Supreme Court that found the NAACP was civilly liable to white store owners because, through the rhetoric of its leaders, it encouraged and caused its members to engage in violent conduct. See NAACP v. Claiborne, 458 U.S. 886, 890-96, 102 S. Ct. 3409 (1982). The Supreme Court concluded that the First Amendment did not permit the imposition of liability on NAACP leaders based upon their emotionally charged speeches,

emphasizing that even "advocacy of the use of force or violence does not remove speech from the protection of the First Amendment." Id. at 927.

It is well established that the First Amendment immunizes organizations and their members from civil liability based merely upon the advocacy of their ideas, without regard to the nature or extent of the plaintiffs' injuries. See Stevens v. Tillman, 855 F.2d 394, 399 (7th Cir. 1988) (stating that "speech must be protected even when it injures, lest the scope of debate be curtailed"), cert. denied, 489 U.S. 1065, 109 S. Ct. 1339 (1989); Herceg v. Hustler Magazine, 814 F.2d 1017, 1024 (5th Cir. 1987), cert. denied, 458 U.S. 959, 108 S. Ct. 1219 (1988); see also Vill. of Skokie v. Nat'l Socialist Party of Am., 69 Ill.2d 605, 615, 373 N.E. 21, 24 (Ill. 1978) (rejecting as unconstitutional the argument that speech which could lead to violence could be suppressed).

Although the First Amendment does not protect violent conduct which may be reasonably imputed to defendants, the plaintiffs have not alleged that the moving defendants committed any violent acts or set forth a factual basis by which they might be held accountable for the conduct of co-defendants Slavin and Wagner. See NAACP v. Claiborne, 458 U.S. at 916-17, 102 S. Ct. at 3427. Construing the complaint liberally in plaintiffs' favor, the complaint sets forth specific facts about Slavin's and Wagner's conduct but only conclusory allegations about the organizations'

and theorizes that they were somehow affiliated. There are no facts offered, however, to support this conclusion or which would lead to a reasonable inference that in carrying out their attack, Slavin and Wagner intended to accomplish defendants' specific organizational goals through violence. See id. at 919, 102 S. Ct. at 3428-29.

This theory of "guilt by association" is untenable in either the civil or criminal context. See id. (citing cases). As noted by the Supreme Court, "[f]or liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims." Id. at 920, 102 S. Ct. at 3429; see Weiss v. Willow Tree Civic Assoc., 467 F. Supp. 803, 816-17 (S.D.N.Y. 1979) (noting that the "protection of the First Amendment does not depend on 'motivation'; it depends on the nature of the defendants' conduct" and finding that the "[d]efendants' activities described in the complaint fall squarely under the protection of the First Amendment's guarantees of citizens' rights 'peaceably to assemble and to petition the Government for a redress of grievances.'").

Rather than address defendants' discussion of a long line of cases which are binding upon this Court, the plaintiffs rely extensively[3] on the Fourth Circuit's decision in Rice v. Paladin

[3]See Pls. Opp'n Memo. of Law at 16-19.

Enterprises, Inc., 128 F.3d 233 (4th Cir. 1997), cert. denied, 523 U.S. 1074, 118 S. Ct. 1515 (1998), a case which may best be described as that involving a hit-man's "how-to" book and which is inapposite to the case at bar. In the context of a summary judgment motion, the Rice court distinguished the concept of "abstract advocacy" - which is protected speech - from the book's detailed instructions about how to be a professional murderer, including "exhaustively detailed instructions on the planning, commission, and concealment" of the crime. See id. at 255. The Second Circuit, citing the Rice decision, noted its narrow holding by acknowledging that such speech was not found to fall outside the scope of First Amendment protection on a categorical basis but only because "the instructions counseled the listener how to commit illegal acts." See Universal City Studios, Inc. v. Corley, 273 F.3d 429, 447 n.18 (2d Cir. 2001).

Citing Rice, plaintiffs argue that allegations that defendants spread idealogies of "hatred against minorities" compels the conclusion that defendants cannot use the First Amendment as a shield to civil liability. See Pls. Memo. of Law at 20 (citing Compl. at ¶¶ 95). Pausing to consider whether the speech at issue in this case is of the type that falls outside the scope of constitutional protection, the Court finds the plaintiffs' argument unavailing; here the complaint does not allege what, if any, "instructions" Slavin and Wagner received from the defendants and

is devoid of any allegations of conduct employed by the organizational defendants which could be found to immediately have provoked the September 2000 attack. See NAACP v. Claiborne, 458 U.S. at 927, 102 S. Ct. at 3433 (noting that "fighting words" are those that "provoke immediate violence" and finding that individual's "emotionally charged rhetoric...did not transcend the bounds of protected speech"); see also Bradenburg v. Ohio, 395 U.S. 444, 89 S. Ct. 1827 (1969) (reversing a criminal conviction for failure to distinguish between advocacy and incitement to imminent lawless action); Herceg v. Hustler Magazine, 814 F.2d at 1022 (noting that the "crucial element to lowering the first amendment shield is the imminence of the threatened evil"). Absent factual allegations concerning the organizational defendants' unlawful or violent acts or specific reference to "fighting words" which would fall outside the realm of constitutionally protected speech, the First Amendment bars these claims.

2. Insufficiency of all federal claims based upon a civil rights conspiracy

The organizational defendants further contend that the claims against them must be dismissed because the plaintiffs have failed to allege their involvement in the alleged conspiracy with adequate specificity. Accepting the allegations as true for purposes of these motions, the Court must determine whether the facts are sufficiently specific. Because the Court concludes that all of the claims against the organizational defendants are insufficient, the

claims are dismissed.

In Griffin v. Breckenridge, the Supreme Court extended Section 1985(3) to reach private conspiracies. See Griffin v. Breckenridge, 403 U.S. 88, 91 S. Ct. 1790 (1971). In order to prove a private conspiracy under Section 1985(3), the plaintiff must establish "that defendants (1) engaged in 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; (3) acted in furtherance of the conspiracy; and (4) deprived such person or class of persons the exercise of any right or privilege of a citizen of the United States." New York Nat'l Org. for Women v. Terry, 886 F.2d 1339, 1358 (2d Cir. 1989), cert. denied, 495 U.S. 947, 110 S. Ct. 2206 (1990).

Notwithstanding the federal rules' liberal pleading standards, the Second Circuit has recognized that certain claims "are so easily made...that, despite the general rule...detailed fact pleading is required to withstand a motion to dismiss." Angola v. Civiletti, 666 F.2d 1, 4 (2d Cir. 1981). A plaintiff claiming a civil rights conspiracy pursuant to 42 U.S.C. § 1985 must put forth more than "vague or conclusory allegations." Srubar v. Rudd, 875 F. Supp. 155, 162 (S.D.N.Y. 1994), aff'd, 71 F.3d 406 (2d Cir. 1995); Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977). In considering such claims, "diffuse and expansive allegations are

insufficient, unless amplified by specific instances of misconduct." Id. In order to survive a Rule 12(b)(6) motion, the court must find allegations that the defendants "engaged in acts that are reasonably related to promoting the claimed conspiracy." Hayes v. Sweeney, 961 F. Supp. 467 (W.D.N.Y. 1997) (citing Birnbaum v. Trussell, 347 F.2d 86, 89 (2d Cir. 1965)). Because a claim of conspiracy is premised upon an agreement between the defendants, the plaintiff must

> allege that the defendants agreed to commit an illegal act with another person...In other words, allegations of conspiracy must be supported by factual allegations suggesting a "meeting of the minds" among conspirators to "direct[] themselves towards an unconstitutional action."

Long Island Lighting Co. v. Cuomo, 666 F. Supp. 370, 425-26 (N.D.N.Y. 1987), aff'd in part, vacated in part, 888 F.2d 230 (2d Cir. 1989).

Here, plaintiffs' allegations provide no details which would support a nexus between defendants Slavin and Wagner and the organizational defendants. Rather, plaintiffs contend, in sweeping general terms, that each of the organizational defendants encouraged, aided and abetted and provided support for Slavin and Wagner which somehow supported their plan to lure the plaintiffs into an abandoned building and beat them until they were near death. These conclusory allegations do not set forth specific facts about or conduct by the organizational defendants to show their participation in the alleged conspiracy or that the

organizational defendants committed overt acts, or were in any way causally connected to the attacks. Without factual support, the claims against the organizational defendants fail to state a claim under Section 1985(3).

Under similar circumstances, courts in this Circuit consistently dismiss civil rights conspiracy claims asserted pursuant to Section 1985(3). See, e.g., X-Men Sec., Inc. v. Pataki, 196 F.3d 56, 65-66, 71-72 (2d Cir. 1999) (reversing lower court decision which sustained the complaint and specifically finding that the court erred in denying a motion to dismiss in view of complaint's conclusory allegations of civil rights conspiracy and where the "only concrete acts ascribed to [the defendants were] attending meetings, making statements, and writing letters"); Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977) (plaintiff's collective allegations of conspiracy against the "defendants" failed to plead any facts supporting a nexus between their conduct and a broad conspiracy to harass him); Okwedy v. Molinari, 150 F. Supp.2d at 508 (noting that conclusory allegations that defendant made public statements and inference that other defendants were influenced thereby did not sufficiently allege conspiratorial conduct); Econ. Opportunity Comm'n of Nassau County v. County of Nassau et al., 106 F. Supp.2d 433, 442 (E.D.N.Y. 2000) (dismissing claim based on conclusory allegations regarding defendants' motivations in the absence of specific facts); Rini v. Zwirn, 886

F. Supp. 270, 293 (E.D.N.Y. 1995) (finding that the "conclusory allegation" against a defendant political organization and its treasurer did "not suffice as an affirmative act, nor...[set forth] any allegation of a causal connection" to the alleged conspiracy but sustaining claims against one individual based on allegations of his personal involvement); Catholic War Veterans v. City of New York, 576 F. Supp. 71, 74-75 (S.D.N.Y. 1983) (dismissing complaint against various private defendants lacking specific factual allegations that defendants acted as part of the conspiracy); see also Upper Hudson Planned Parenthood, Inc. v. Doe, 836 F. Supp. 939, 947 (N.D.N.Y. 1991) (dismissing claims against a church for plaintiffs' failure to allege any facts to show that the individual defendants, abortion protesters, were associated with the church), aff'd, 29 F.3d 620 (2d Cir. 1994).

Conversely, courts sustain conspiracy claims which, unlike those alleged here, are based on facts which connect the defendants to the conspiracy. See, e.g., Dwares v. City of New York, 985 F.2d 94, 100 (2d Cir. 1993) (reversing dismissal of Section 1985(3) claim in view of factual allegations that the defendant officers, on the scene of an attack -- through specified words and conduct -- permitted "skinheads" to engage in and continue their assault); Hayes v. Sweeney, 961 F. Supp. at 479 (denying defendants' motion to dismiss in light of allegations of "specific instances in which the defendants acted together"); see also New York Nat'l Org. for

Women v. Terry, 704 F. Supp. 1247, 1260 (S.D.N.Y. 1989) (denying defendants' Rule 12(b)(6) motion, citing stipulated facts that showed defendants repeatedly denied access to abortion facilities and would continue to do so), aff'd as modified, 886 F.2d at 1359 (2d Cir. 1989) (affirming denial of defendants' motion for summary judgment based upon organizational literature which encouraged unlawful activity and record which established that "defendants facilitated the conspiracy by providing transportation and accommodations to participants"), cert. denied, 495 U.S. 947, 110 S. Ct. 2206 (1990).

Here, in opposing the motion, plaintiffs argue that their claims should be sustained because their specific allegations concerning Slavin and Wagner, read together with their conclusory allegations against the organizational defendants, should be deemed sufficient. Ignoring the aforementioned body of case law regarding the pleading burdens imposed in civil rights cases, plaintiffs argue that they need only place the defendants on notice of the nature of their claim in compliance with Rule 8 and extensively rely on cases which are inapposite or which lack precedential value.[4] See, e.g., Pls. Opp'n Memo. of Law at 8-12 (relying

[4]For example, in support of their proposition that they need only comply with Rule 8's liberal pleading requirements, plaintiffs rely on a North Carolina district court case. Pls. Opp'n Memo. of Law at 9 (citing Waller v. Butkovich, 584 F. Supp. 909, 931 (M.D.N.C. 1984). In that case, however, the court acknowledged that, pursuant to Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99 (1957), the fair notice requirement takes on special import when a conspiracy is alleged. The court expressly noted

repeatedly on cases addressing pleading anti-trust conspiracies).

The Court concludes that although the claims against Slavin and Wagner shall be sustained at this juncture, allegations that the organizational defendants, through their "influences and ideologies...encouraged and...empowered [Slavin and Wagner] to perform the acts of violence against plaintiffs" in violation of their rights (Compl. ¶¶ 20, 70-72, 78-81) are too conclusory to withstand the motions to dismiss plaintiffs' second cause of action pursuant to 42 U.S.C. § 1985(3). Moreover, because plaintiffs have failed to establish any involvement by these organizational defendants, the remaining causes of action are likewise dismissed.[5]

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that,

> In most cases, a bare conclusory allegation of "conspiracy" or "concerted action" will not suffice. The plaintiffs must expressly allege an agreement or make averments of "communication, consultation, cooperation, or command" from which such an agreement can be inferred. See Weathers v. Ebert, 505 F.2d 514, 517 (4th Cir. 1974). Allegations that the defendants' actions combined to injure the plaintiffs are not a sufficient basis from which to imply a conspiracy. See Davis v. Sprouse, 405 F. Supp. 45, 46 (E.D. Va.1975).
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> Additionally, the plaintiffs must make "specific factual allegations connecting the defendant to the injury...." Sigler v. LeVan, 485 F. Supp. 185, 196 (D. Md. 1980); see also Ostrer v. Aronwald, 567 F.2d 551 (2nd Cir.1977).

Waller v. Butkovich, 584 F. Supp. 909, 931 (M.D.N.C. 1984).

[5]Absent a statutory basis, plaintiffs may not bring claims for constitutional violations against these private party defendants as alleged in the Fourth cause of action. Moreover, because none of the parties advanced arguments regarding whether

See Hahn v. Sargent, 523 F.2d 461, 469-70 (1st Cir. 1975), cert. denied, 425 U.S. 904, 96 S. Ct. 1495 (1976).

B. Plaintiff's Motion to Amend and Defendants' Motion for Rule 11 Sanctions

As noted, plaintiffs's failure to allege facts to support their claims that the organizational defendants acted unlawfully or to show that their messages are of the type that abrogate First Amendment protection warrants dismissal. Moreover, because the plaintiffs' theory of liability against the organizational defendants is constitutionally untenable, plaintiff's application to amend as against these defendants is denied. See Health-Chem Corp. v. Baker, 915 F.2d 805, 810 (2d Cir. 1990).

In evaluating a Rule 11 motion, the court must "'resolve all doubts in favor of the signer.'" Hampton Bays Connections, Inc. v. Duffy, 127 F. Supp.2d 364 (E.D.N.Y. 2001) (quoting Oliveri v. Thompson, 803 F.2d 1265, 1275 (2d Cir. 1986), cert. denied, 480 U.S. 918, 107 S. Ct. 1373 (1987)). Pursuant to the Rule, a party or an attorney has an affirmative duty to make "reasonable inquiry

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the asserted constitutional claims under the First, Thirteenth, and Fourteenth Amendments are actionable against these private parties, the Court similarly does not address the issue. See Emanuel v. Barry, 724 F. Supp. 1096, 1102-03 (E.D.N.Y. 1989) (distinguishing between constitutional claims which require allegation of state action and those which may be alleged against private actors under Section 1985(3)). Plaintiffs' fifth and sixth causes of action, wherein the plaintiffs collectively allege that the "defendants" are liable for assault, battery, false imprisonment (Compl. ¶¶ 95-97) and intentional infliction of emotional distress (Compl. ¶¶ 100-03) fail to state causes of action against the organizational defendants.

into the facts and the law." See Bus. Guides, Inc. v. Chromatic Comm. Enter., Inc., 498 U.S. 533, 542-43, 111 S. Ct. 922, 929 (1991). The imposition of sanctions against attorneys is discretionary and may be warranted "where an attorney's conduct degrades the legal profession and disserves justice." MacDraw, Inc. v. CIT Group Equip. Fin., Inc., 73 F.3d 1253, 1262 (2d Cir. 1996).

The Court notes that civil rights attorneys are held to no lesser standard than their colleagues. See Oliveri v. Thompson, 803 F.2d at 1280. Mindful of its need to exercise caution, the Court declines to impose sanctions in this case where there is some arguable basis for sustaining the civil rights claims against the two individual defendants. See Levy v. City of New York, 726 F. Supp. 1446, 1457 (S.D.N.Y. 1989)). Accordingly, in consideration of the facts and circumstances presented in this case, the Court DENIES the defendants' motions for sanctions.

V. CONCLUSION

For all of the reasons stated herein, the motions to dismiss by defendant Sachem Quality of Life Organization ("Sachem") filed on December 10, 2001 and by defendants Posse Comitatus, Sheriff's Posse Comitatus, The Creativity Movement, World Church Creator and the National Alliance ("Posse Comitatus Defendants"), filed on December 11, 2001 are GRANTED and the claims against these defendants are dismissed, with prejudice. Defendants' motions for sanctions pursuant to Rule 11 are DENIED.

SO ORDERED.

JOANNA SEYBERT
United States District Judge

Dated: Central Islip New York
September 10, 2002