UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

	CIVIL ACTION NO. 3:06-CV-12238-KPN
DAVID BUNN; JUDITH BUNN; CHRISTENA DODGE; DANIEL COLLINS; JAMIE DODGE, COUGAR JOHN BUNN; PHOENIX DODGE per proxima amici CHRISTENA DODGE, JUSTICE DODGE, per proxima amici CHRISTENA DODGE, Plaintiffs	)
vs.	)
CHIEF KEVIN GLEASON, OFFICER KENNETH FITZGERALD, AGENT SCOTT E. HALEY, HOLLAND POLICE OFFICER JOHN DOE 1, HOLLAND POLICE OFFICER JOHN DOE 2, HOLLAND POLICE OFFICER JOHN DOE 3, HOLLAND POLICE OFFICER JOHN DOE 4, HOLLAND POLICE OFFICER JOHN DOE 5, HOLLAND POLICE OFFICER JOHN DOE 6, EASTERN HAMPDEN TASK FORCE AGENT JOHN DOE 1, EASTERN HAMPDEN TASK FORCE AGENT JOHN DOE 2, EASTERN HAMPDEN TASK FORCE AGENT JOHN DOE 3, EASTERN HAMPDEN TASK FORCE AGENT JOHN DOE 4, EASTERN HAMPDEN TASK FORCE AGENT JOHN DOE 5, in their official and individual capacities Defendants.	) OCTOBER 17, 2008

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The Plaintiffs filed the present action against the Holland Police Chief Kevin Gleason (hereinafter, "Chief Gleason") and Holland Police Officer Kenneth Fitzgerald, (hereinafter, "Officer Fitzgerald") among other defendants.[1] Chief Gleason initiated, participated and conducted an investigation against the plaintiff, David Bunn, (hereinafter, "Mr. Bunn"), in

retaliation for Mr. Bunn's public speech, specifically, his pro-marijuana activism. The property where Mr. Bunn resided was searched pursuant to a search warrant (hereinafter, "Raid") and Mr. Bunn's family was victimized and terrorized during the Raid.

The Plaintiffs, Mr. Bunn and his family, Judith Bunn, (hereinafter, "Mrs. Bunn"), Cougar Bunn, (hereinafter, "Cougar Bunn"), Daniel Collins, (hereinafter, "Mr. Collins"), Christena Dodge, (hereinafter, "Mrs. Dodge"), Jamie Dodge, (hereinafter, "Mr. Dodge"), Phoenix Dodge (hereinafter, "Phoenix Dodge") and Justice Dodge, (hereinafter, "Justice Dodge") brought this action for the violation of their First, Fourth and Fourteenth Amendment rights as follows: (1) Count One alleges a violation of Mr. & Mrs. Bunn, Mr. & Mrs. Dodge, and Mr. Collins' Fourth Amendment Rights for unlawful search and seizure pursuant to 42 U.S.C. Section 1983; (2) Count Two alleges a violation of the Fourth Amendment rights for false arrest of Mrs. Bunn and Mrs. Dodge; (3) Count Three alleges a violation of the Fourteenth Amendment rights for excessive force of Mr. & Mrs. Dodge and Mr. Collins; (4) Count Four alleges a violation of the First Amendment rights of Mr. & Mrs. Bunn and Mr. & Mrs. Dodge; (5) Count Five alleges a violation of the Fourteenth Amendment Substantive Due Process rights of all of the Plaintiffs; (6) Count Six alleges a claim of Intentional Infliction of Emotional Distress for all of the Plaintiffs.

The Defendants, Chief Gleason and Officer Fitzgerald, filed a Motion for Summary Judgment against all of the above claims. The Plaintiffs now file this memorandum in opposition to their Motion for Summary Judgment.

II. FACTS[2]

At approximately 8:00 a.m. on March 27, 2003, in a house located at 90 Maybrook Road

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[1] The current action is only maintained against Gleason and Fitzgerald.

[2] The Plaintiffs rely on the Plaintiffs' Statement of Facts in Dispute that is attached in support of

in Holland Massachusetts, (hereinafter, "Bunn Home"), Mr. & Mrs. Dodge were asleep along with their two infant children, when they were awoken by yelling and pounding on their door. At the same time, in the same house, nineteen year old Daniel Collins and his girlfriend were also woken by eight men dressed in uniforms and black outfits who were pointing guns in their face. Mr. Dodge, Mr. Collins and his girlfriend were handcuffed and detained for over an hour as their personal property was searched and destroyed. Mrs. Dodge tried to care for and subdue her two infants but was not allowed to change her son's diaper or pacify her children with toys. Mr. Collins and the Dodge family did not sell drugs. Twenty months later criminal charges were issued against Mrs. Dodge. The reason for this ultimate disturbance and violation of privacy, was because Mrs. Dodge and Mr. Collin's father, Mr. Bunn, had recently lead a pro-marijuana protest in Holland and Holland Police Chief Gleason did not like that.

On March 27, 2003, Mr. Bunn was in the hospital, as he had been since March 20, 2003, and his wife Mrs. Bunn, was traveling to visit him in the hospital. When Mrs. Bunn arrived at the hospital, she was greeted with the news that her house had been stormed by State Police, Holland Police and members of a Drug Task Force. Upon returning to her home, she found her personal property destroyed, her children and grandchildren terrorized, and her property taken. Twenty months later, criminal charges were issued against Mrs. Bunn. Mrs. Bunn did not sell drugs but she lived with and was married to a medical marijuana user and pro-marijuana activist, Mr. Bunn, and Holland Police Chief Gleason did not like that.

III. STANDARD OF REVIEW

A motion for summary judgment must be allowed if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a

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the facts set forth in this section.

matter of law." Fed. R. Civ. P. 56(c). "To succeed [in a motion for summary judgment], the moving party must show that there is an absence of evidence to support the nonmoving's party's position." Rogers v. Fair, 902 F.2d 140, 143 (1st Cir. 1990); see also Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

"Once the moving party has properly supported its motion for summary judgment, the burden shifts to the non-moving party, who 'may not rest on mere allegations or denials of his pleading, but must set forth specific facts showing there is a genuine issue for trial.'" Barbour v. Dynamics Research Corp., 63 F.3d 32, 37 (1st Cir. 1995), quoting, Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

"There must be 'sufficient evidence favoring the nonmoving party for a [reasonable] jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted.'" Rogers, 902 F.2d at 143, quoting, Anderson, 477 U.S. at 249-50, 106 S. Ct. 2505) (citations and footnote in Anderson omitted). All reasonable inferences must be drawn in favor of the nonmoving party, see, e.g., Barbour, 63 F.3d at 36, but "those inferences 'must flow rationally from the underlying facts; that is, a suggested inference must ascend to what common sense and human experience indicates is an acceptable level of probability,'" Rubinovitz v. Rogato, 60 F.3d 906, 911 (1st Cir. 1995), quoting, National Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 743 (1st Cir. 1995).

IV. ARGUMENT

A. As to First Count: Violation of David Bunn, Judith A. Bunn, Daniel Collins, Christena Dodge and Jamie Dodge's Fourth Amendment Rights (Unlawful Search And Seizure), Pursuant to 42 U.S.C. § 1983, as to all Defendants.

1. Chief Gleason was an active participant in the investigation and preparation of the Search Warrant which was not supported by Probable Cause.

The Fourth Amendment's warrant requirement is violated when false statements are intentionally or recklessly used to obtain a warrant and the finding of probable cause rests on those false statements. See Franks v. Delaware, 438 U.S. 154 (1978); Aponte Matos v. Toledo Dávila, 135 F.3d 182, 187 (1st Cir. 1998). Further, a Fourth Amendment violation may be established if a [plaintiff] can show that officers acted in reckless disregard, with a 'high degree of awareness of [the] probable falsity' " of statements made in support of an arrest warrant. Forest v. Pawtucket Police Dep't, 377 F.3d 52, 58 (1st Cir.2004) (citation omitted), cert. denied, ---- U.S. ----, 125 S. Ct. 1315, 161 L.Ed.2d 111 (2005). Similarly, the intentional or reckless omission of material exculpatory facts from information presented to a magistrate may also amount to a Fourth Amendment violation. DeLoach v. Bevers, 922 F.2d 618, 622 (10th Cir.1990) (upholding verdict for plaintiff where jury could have inferred that defendant police detective deliberately or recklessly excluded the exculpatory opinion of an important medical expert from the affidavit). Burke v. Town Of Walpole, 405 F.3d 66, 81 (1st Cir. 2005).

Chief Gleason argues that he is not liable for the Raid of the Bunn Home because he did not sign the actual Search Warrant and Agent Haley from the Drug Task Force signed the warrant. Chief Gleason did, however, (1) initiate an investigation against the Mr. Bunn; (2) actively participate in the investigation of Mr. Bunn and the residents of the Bunn Home; (3) and contribute the majority of the information that was included in the Search Warrant. That information was not accurate and Chief Gleason knew that the information he provided to Agent Haley was not accurate.

Specifically, Chief Gleason provided Scott Haley information for the sole purpose of the preparation of the Search Warrant, as follows: (1) Chief Gleason requested a copy of a newspaper article featuring a pro-marijuana protest that Mr. Bunn conducted and gave it to

Agent Haley; (2) Chief Gleason researched the criminal histories of the residents of the Bunn Home, prior to the Raid and gave the criminal background checks to Agent Haley; (3) Chief Gleason provided license pictures of the residents of the Bunn Home; (4) Chief Gleason gathered information regarding the description and ownership of the van owned by the plaintiffs.

Agent Haley relied on the information that Chief Gleason provided to him to draft the search warrant: "Chief Gleason is a fellow police officer and the information he gives me is certainly privy for me to put in the police report. If an officer or agent is working with me on an investigation and he has seen or uncovered something, then he is reliable in the fact that he's a police officer and he's working the investigation with me."

Chief Gleason made misrepresentations to Agent Haley to be added to the Search Warrant and Chief Gleason knew the statements he made to Agent Haley were false.

At no point did the Drug Task Force or Agent Haley take over the investigation of Mr. Bunn, which lead to the drafting of the Search Warrant of the Bunn Home, from Chief Gleason or the Holland Police Department.

Chief Gleason told Agent Haley that Mr. Bunn was selling drugs out of the Bunn Home although his personal knowledge was contrary. Chief Gleason did not have information that the residents of the Bunn Home were selling drugs.

As Chief Gleason testified:

> 6 Q. So, prior to the execution of the search
> 7 warrant, had you heard of David Bunn?
> 8 A. Yes.
> 9 Q. What had you heard about him?
> 10 A. Again, rumors around town, there was
> 11 a lot of drugs up there, and not necessarily
> 12 dealing but just a lot of drugs up there.

Gleason Depo., p. 123

With the exception of the details of the "controlled buys", the information in the Search Warrant were provided by Chief Gleason to Agent Haley. Agent Haley relied on the reputation of Chief Gleason and did not further corroborate the information that Chief Gleason gave him. Chief Gleason is the responsible party for the drafting of the Search Warrant and was critically involved in the preparation of the Search Warrant.

The Defendants argue that the Search Warrant was based upon Probable Cause. "Probable cause . . . exists if the facts and circumstances within the relevant actors' knowledge and of which they had reasonably reliable information would suffice to warrant a prudent person in believing that a person has committed or is about to commit a crime." Burke, 405 F.3d at 80 (internal quotation marks omitted; citation omitted).

The probable cause determination made by a magistrate who issues a warrant is entitled to "substantial deference." Id. at 79. The sale of marijuana did not occur at the Bunn Home

The information that Chief Gleason provided to Agent Haley was either false, material to the probable cause determination, or otherwise caused them harm. See Aponte Matos, 135 F.3d at 187 ("[T]he material that is the subject of the alleged falsity or reckless disregard must be necessary to establish probable cause. It is not enough to allege negligence or innocent mistake") (citations omitted).

According to the Affidavit "Chief Gleason reported . . . that the Holland Police Dept. had been receiving information that a David Bunn whom lives with his family on Maybrook Rd. in that town was selling marijuana from the house [and] . . . that David G. Bunn who lives at that address has a history of drug offenses."

Reckless disregard for the truth in the submission of a warrant application may be

established where an officer "in fact entertained serious doubts as to the truth of the allegations" or where "circumstances evinc[ed] obvious reasons to doubt the veracity of the allegations" in the application. United States v. Ranney, 298 F.3d 74, 78 (1st Cir.2002) (internal quotation marks omitted). Burke, 405 F.3d at 81.

2. The Doctrine of Qualified Immunity Does Not Protect Chief Gleason.

Qualified immunity is intended to shield public officials in the course of performing discretionary acts "from civil damages liability as long as their actions could reasonably have been thought constant with the rights they are alleged to have violated." Anderson v. Creighton, 483 U.S. 635, 638 (1987). The qualified immunity defense is favored early in the proceedings so that costs and expenses of trial can be avoided where the defense is dispositive. See, Saucier v. Katz, 533 U.S. 194, 200 (2001).

Qualified immunity shields government officials from liability for civil damages when their actions "do not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

Qualified immunity provides protection to "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). The relevant question, then, is "whether a reasonable official could have believed his actions were lawful in light of clearly established law and the information the official possessed at the time of his allegedly unlawful conduct." McBride v. Taylor, 924 F.2d 386, 389 (1st Cir. 1991).

If no constitutional right is violated, a defendant is entitled to qualified immunity as a matter of law. Saucier v. Katz, 533 U.S. 194, 201 (2001). The First Circuit

applies a three step approach to the qualified immunity analysis: "(i) whether the plaintiff's allegations, if true, establish a constitutional violation; (ii) whether the constitutional right at issue was clearly established at the time of the putative violation; and (iii) whether a reasonable [official], situated similarly to the defendant, would have understood the challenged act or omission to contravene the discerned constitutional right." Burke v. Town of Walpole, 405 F.3d 66, 77 (1st Cir. 2005) (internal quotation marks omitted; citation omitted).

The Defendants are not entitled to Qualified Immunity and therefore, the Motion for Summary Judgment should be denied.

B. As to Second Count: Violation of Judith A. Bunn and Christena Dodge's Fourth Amendment Rights (False Arrest), Pursuant to 42 U.S.C. § 1983, as to all Defendants.

In the Second Count, the plaintiffs, Judith A. Bunn and Christena Dodge, allege "the plaintiffs Bunn and Dodge were falsely arrested as their arrest was based upon an illegal search and seizure and there was not probable cause to arrest Bunn and Dodge." Complaint at ¶ 58(f).

The Defendants direct the Court to review the tort law of false arrest as to this Count, however, the appropriate analysis is in a malicious prosecution context. The First Circuit held "as a general rule, an unlawful arrest pursuant to a warrant will be more closely analogous to the common law tort of malicious prosecution. An arrest warrant constitutes legal process and it is the tort of malicious prosecution that permits damages for confinement pursuant to legal process." Calero-Colon v. Betancourt-Lerbon, 68 F. 3d 1 (1st Cir. 1995). The Court ruled in Lewis v. Kendrick, that although probable cause to arrest " is an objective matter, and not defended by the officer's subjective intent" the probable cause issue is for the jury." Id, 944 F. 2d 949, 953 (1st Cir. 1991).

The Defendants argue that the criminal complaints sought against Mrs. Dodge and Mrs.

Bunn were because they were found to be in possession of marijuana when the Warrant was executed. Mrs. Bunn was not present when the Search Warrant was executed and no marijuana was found on Mrs. Bunn's possession. Similarly, the marijuana found in Mrs. Dodge's bedroom was not on her possession. Further, the officers, specifically Officer Fitzgerald, moved the marijuana to the child's crib and took a photo of the marijuana in the crib.

The Defendants argue that no reasonable police officer would believe that Chief Gleason and Officer Fitzgerald's actions constituted a false arrest where Judith Bunn and Christena Dodge were not taken into custody and where marijuana was found in their bedrooms. The Defendants however, ignores the tort of malicious prosecution that permits damages for confinement pursuant to legal process, to which process Mrs. Bunn and Mrs. Dodge were subject.

The Defendants further argue that Qualified Immunity prevent liability on Chief Gleason or Officer Fitzgerald. The Supreme Court ruled in Malley v. Briggs, that the mere fact that a judge or magistrate issues an arrest warrant does not automatically insulate the officer who applied for the arrest warrant from liability for an unconstitutional arrest. The Court in Malley rejected the district court's reasoning that the judge's decision to issue the warrant breaks the chain between the application for the warrant and the unconstitutional arrest. Id, 475 U.S. at 344.

The criminal charges for Mrs. Dodge were for Class D Drug Possession (Exhibit 10) although Chief Gleason's narrative report indicated that "a search of the bedroom of Christina Dodge found a pipe with residue of burnt marijuana was located on a shelf just above an infants crib. Also marijuana was recovered from this room." (Exhibit 9). The bedroom was shared by Christena Dodge and Jamie Dodge. There was no evidence that the marijuana or pipe belonged

to Christena Dodge. The application for criminal complaint filed by Chief Gleason was not accurate and Chief Gleason had no evidence to support his criminal complaint.

The criminal charges for Mrs. Bunn were for Class D Possession (Exhibit 8) although in Chief Gleason's Incident Report dated April 2, 2003, does not identify Mrs. Bunn as the owner of any of the marijuana or paraphernalia. All of the drugs and other properties are identified as being owned by either Mr. Bunn or Mrs. Dodge. There was no basis for the criminal complaint against Mrs. Bunn and Chief Gleason knew that but intentionally filed the charges against Mrs. Bunn.

Chief Gleason filed criminal charges against Mrs. Bunn and Mrs. Dodge without any evidence or basis. Mrs. Bunn and Mrs. Dodge were arrested pursuant to legal process and charged with possession of drugs, which were subsequently dismissed. Chief Gleason violated the Plaintiffs' Fourth Amendment rights and is not entitled to qualified immunity. Therefore, the Defendants' Motion for Summary Judgment should be denied.

C. As to Third Count: Violation of Daniel Collins, Christena Dodge and Jamie Dodge's Fourth Amendment Rights (Excessive Force Beyond the Scope of the Search Warrant), Pursuant to 42 U.S.C. § 1983, as to all Defendants.

The plaintiffs' complaint alleges that the "Collins and the Dodge family were forcibly and violently handcuffed for over an hour and a half and were not allowed to attend to the minor children in the house during the illegal search and seizure of their property and the defendants

used excessive force beyond the scope of the search warrant…." Complaint at ¶ 61.

There was not justifiable reason for the Plaintiffs to be handcuffed and detained during the search of the Bunn Home. Agent Haley testified that the residents of the Bunn Home were uncommonly calm and cooperative. He also testified that is was unusual for no arrests to be made during the execution of a search warrant.

The Mr. Collins was terrorized during the Raid: I was sleeping downstairs in my room with my girlfriend. Neither of us had any clothes on. And next thing I know, there is a pounding outside my bedroom door which was locked. And I'm getting up, throwing my pants on, thinking somebody's breaking into my bedroom, my house. I hear wham, wham, wham on the door. So, I jump up, throw my pants on, and get ready to defend myself because I think somebody's breaking into my house. And next thing I know, there's cops pointing guns in my face, telling me to get on the ground, get on the ground. Then they brought me upstairs in handcuffs, sat me at the table and searched the house. . . .I got thrown down to the ground really quick, but I know there was probably three going -- three guns pointed at me and five pointed at my girlfriend. . . . They forced her to get out of bed naked. They would not throw her any clothes or anything to wrap her body up with. Forced her to get out of bed naked and go out to the dresser and pull out clothes while five of them watched her . . .I know five people were watching her. That's what she told me. . . . I was there but I was facing -- I was on the ground with my face on the ground with somebody's knee in my back. I couldn't stand up and look around, couldn't talk. Every time I went to talk, they would tell me to shut up. . . . They were tearing my house apart…. There was two officers in the kitchen watching over us looking through stuff and the rest of them were tearing through our house. I could hear noises throughout our entire house, stuff breaking, crashing and falling. . . . the people who were in my room broke a whole bunch of my stuff

because there was eight people in a small bedroom knocking all my stuff around on the floor. DVD player was broken. Models that I had previously built had been broken. Pictures that I had had in picture frames had been broken. Glass on the floor." Collins Depo., p. 51, 52, 57, 60, 73.

Plaintiffs specifically identified Chief Gleason in the house during the Raid. Mr. Collins identified Chief Gleason in his bedroom holding a gun to his face. Mrs. Dodge identified Chief Gleason in the kitchen where the residents were detained during the search and identified him as the individual who hung up the phone while she was talking to her father in the hospital. Christena Dodge also identified Officer Fitzgerald as being present in the house. Chief Gleason's actions were not lawful in light of the cooperative and subdued nature of the residents despite the surprise and violence of the events of the Raid. Therefore, the Defendants' Motion for Summary Judgment should be denied.

D. As to Fourth Count: Violation of First Amendment Rights of David Bunn, Judith A. Bunn, Christena Dodge and Jamie Dodge as to the Defendants, Gleason.

The plaintiffs' complaint alleges that "the defendants retaliated against the Bunns for their public speech by: (1) falsely searching and seizing their property; (2) false arresting Judith Bunn and the Bunns' daughter, Christena; (3) threatening and harassing the Bunns' children and grandchildren, Daniel Collins, Christena Dodge, Jamie Dodge, Cougar John Bunn, Phoenix Dodge and Justice Dodge; and (4) refusing to return the seized property that was taken as a result of the illegal search and seizure…." Complaint at ¶ 64(a).

A First Amendment retaliation claim requires proof of the following elements: (1) the existence of a right protected by the First Amendment; (2) that the exercise of that right was a substantial motivating factor in the decision to take the adverse action; and (3) that the adverse action chilled the exercise of the protected right.

The Plaintiffs can demonstrate each of these elements. First, Mr. Bunn was a medical

marijuana activist and an activist for the legalization of marijuana. Chief Gleason was aware of Mr. Bunn's activism. He knew that Mr. Bunn lead a protest that was reported in the newspaper. The actual newspaper article was attached to the search warrant. Chief Gleason initiated the search on Mr. Bunn's home, made him the target of his investigation and targeted Mr. Bunn during the execution of the search warrant.

The Defendants' direct the court to the recent decision of Hartman v. Moore, 547 U.S. 250 (2006). However, the presence of probable cause does not determine the action for retaliatory arrest because it simply provides one possible justification for the challenged arrest, and under established Supreme Court precedent, the presence of an alternate, non-retaliatory justification for the challenged action does not, as a matter of law, defeat a retaliation claim. A First Amendment challenge to an arrest, unlike, for instance, a Fourth Amendment challenge, does not rest on an allegation that the arrest was unsupported by probable cause. The First Amendment thus concerns itself with impermissible intent in an effort to prevent the government from achieving a kind of constitutional end around that would allow it to circumvent the First Amendment's restrictions.

So if the arresting officer's desire to retaliate was the actual cause of the arrest, the arrest will be actionable under the First Amendment. The presence of probable cause does not conclusively determine actual intent—it provides but one possible explanation for the occurrence of the arrest. Consequently, a plaintiff in a retaliation challenge to an arrest can logically maintain that his arrest was the actual result of impermissible retaliation even where the arrest was supported by judicially validated probable cause.

The evidence shows that Chief Gleason knew of Mr. Bunn's activism and because of that he was motivated to remove the Bunns from Holland, which he effectively did through his

campaign targeted against Mr. Bunn and his family. Therefore, the Defendants' Motion for Summary Judgment should be denied.

E. As to Fifth Count: Violation of all of the Plaintiffs' Fourteenth Amendment Substantive Due Process Rights as to all Defendants.

The Plaintiffs' claims under the Fourteenth amendment Substantive Due Process clause are based upon the conduct of Chief Gleason prior to, during and after the Raid.

All of the Plaintiffs are victims of Chief Gleason's campaign against Mr. Bunn. Mr. Bunn was the target of Chief Gleason's investigation after Chief Gleason became aware of Mr. Bunn's activism for marijuana. Chief Gleason's attempt to eradicate Mr. Bunn and his political opinions on medical marijuana and the legalization of marijuana motivated the inception of the investigation, the contact with the Drug Task Force, the use of a compromised individual to be part of the "controlled buys", the execution of the search warrant and the continued harassment of the residents of the family after the Raid.

Mrs. Bunn's rights were violated by Chief Gleason's extreme and outrageous conduct as follows: Mrs. Bunn was criminally charged without justification. She was verbally attacked by Chief Gleason when she requested the property back that was taken during the Raid. Mrs. Bunn was subject to unjustified inquiry from the Board of Health upon Chief Gleason's request. This conduct is not relegated to the actual Raid but the effect on her and her family that forced her and her family to move out of Holland.

Mrs. Dodge, Mr. Dodge and Mr. Collins were terrorized, threatened and frightened during the raid. Their personal property was broken and was faced with weapons in his face by eight law enforcement officers. Chief Gleason was participated and supervised the conduct during the Raid.

Mr. Bunn was the target of Chief Gleason's conduct. The investigation, Raid and post

Raid conduct has chilled Mr. Bunn's speech, forced him to move out of Holland and his property was taken and destroyed.

The conduct demonstrated by Chief Gleason shocks the conscience and therefore plaintiffs' substantive due process claims must succeed and the Defendants' Motion for Summary Judgment should be denied.

F. As to Sixth Count: Intentional Infliction of Emotional Distress by all Plaintiffs Against all Defendants.

The plaintiffs must demonstrate the following to succeed on a claim for Intentional Infliction of Emotional Distress.:(1) the defendant intended to inflict emotional distress, or knew or should have known that emotional distress was the likely result of his conduct; … (2) that the conduct was "extreme and outrageous," was "beyond all possible bounds of decency" and was "utterly intolerable in a civilized community," … (3) that the actions of the defendant were the cause of the plaintiff's distress; … and (4) that the emotional distress sustained by the plaintiff was "severe" and of such a nature that no reasonable [person] could be expected to endure it. Agis v. Howard Johnson Co., 371 Mass. 140, 144-145 (1976) (internal citations omitted).

The conduct of Chief Gleason in targeting Mr. Bunn which lead to the Raid upon the Bunn Home was extreme and outrageous. It is not just the actions of the Chief during the Raid but his participation in the campaign to target and retaliate against Mr. Bunn. The victims of this campaign were Mr. Bunn's family who were terrorized, woken from their sleep and threatened with guns and violence. There is no more extreme and outrageous conduct than the be subject to this type of unjustified conduct from a government official. The Plaintiffs have demonstrated that (1) Chief Gleason intended to inflict emotional distress; (2) the conduct was "extreme and

outrageous," was "beyond all possible bounds of decency" and was "utterly intolerable in a civilized community"; (3) that the actions of the defendant were the cause of the plaintiff's distress; and(4) that the emotional distress sustained by the plaintiff was "severe". Therefore, the Defendants' Motion for Summary Judgment should be denied.

CONCLUSION

For the foregoing reasons, the Plaintiffs have demonstrated that the defendants are not entitled to summary judgment on the Plaintiffs' claims. Therefore, the Plaintiffs seek a denial of the Defendants' Motion for Summary Judgment.

THE PLAINTIFFS,
BY: _____/s/ *Erin O'Neil-Baker*_____

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 17th day of October, 2008.

_____/s/ *Erin I. O'Neil-Baker*_____

Erin O'Neil-Baker