UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ANDREA BELENO, on behalf of her infant son and on behalf of the class similarly situated, GEOFFREY N. COURTNEY, on behalf of two children of his and on behalf of the class similarly situated, MARYANN OVERATH, on behalf of two minor children of hers, KEITH A. TAYLOR, on behalf of his infant daughter, and NANCY PACHECO, Plaintiffs v.	§	
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, DAVID L. LAKEY, M.D., in His Official Capacity as Commissioner of the Texas Department of State Health Services, TEXAS A&M UNIVERSITY, NANCY W. DICKEY, M.D., in Her Official Capacity as President, Texas A&M Health Science Center & Vice Chancellor for Health Affairs, and RODERICK E. McCALLUM, in His Official Capacity as Interim Dean, Texas A&M Health Science Center School of Rural Public Health, Defendants.	§	CIVIL ACTION NO. SA09CA0188-FB

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' ORIGINAL COMPLAINT

TABLE OF CONTENTS

TABLE OF CONTENTS ii

STATEMENT OF THE CASE 1

ARGUMENT AND AUTHORITY

I. Standards for Dismissal. 3

II. This Court Has Jurisdiction Over Plaintiffs' Claims

A. Eleventh Amendment Immunity Does Not Bar Plaintiffs' Claims Brought Directly Against DSHS and TAMU, but Not Individual Defendants. 4
B. Eleventh Amendment Immunity Does Not Bar Claims Brought Under the Texas Constitution and Texas Common Law for Injunctive and Declaratory Relief 4
C. Plaintiffs Have Standing to Bring This Action 5

III. Plaintiffs Have Stated Claims Upon Which Relief May Be Granted

A. The Cause of Action is § 1983, the Texas Constitution, and Texas Common Law 6
B. Plaintiffs Have Stated a Fourth Amendment Claim 6
C. Plaintiffs Have Stated a Claim for Violation of Constitutionally Protected Liberty and Privacy Rights 9
D. Texas A&M Defendants' Official Roles in the NBS program are Matters of Fact Not Appropriate for Resolution in a Motion to Dismiss 11

CONCLUSION AND PRAYER 12

CERTIFICATE OF SERVICE 12

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ANDREA BELENO, on behalf of her infant son and on behalf of the class similarly situated, GEOFFREY N. COURTNEY, on behalf of two children of his and on behalf of the class similarly situated, MARYANN OVERATH, on behalf of two minor children of hers, KEITH A. TAYLOR, on behalf of his infant daughter, and NANCY PACHECO, Plaintiffs	§	
v.	§	CIVIL ACTION NO. SA09CA0188-FB
TEXAS DEPARTMENT OF STATE HEALTH SERVICES, DAVID L. LAKEY, M.D., in His Official Capacity as Commissioner of the Texas Department of State Health Services, TEXAS A&M UNIVERSITY, NANCY W. DICKEY, M.D., in Her Official Capacity as President, Texas A&M Health Science Center & Vice Chancellor for Health Affairs, and RODERICK E. McCALLUM, in His Official Capacity as Interim Dean, Texas A&M Health Science Center School of Rural Public Health, Defendants	§	

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss their Original Complaint, brought pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

STATEMENT OF THE CASE

Plaintiffs Andrea Beleno, Geoffrey Courtney, Maryann Overath, Keith Taylor, and Nancy Pacheco seek declaratory and injunctive relief on behalf of themselves, their children, and the class, alleging discriminatory and unlawful deprivation of their children's constitutional rights by Defendants (and of the class) under color of law and in violation of the Fourth and

Fourteenth Amendments to the U.S. Constitution. Plaintiffs also bring forward supplemental claims under Texas constitutional law and common law privacy. *Complaint at* ¶¶*22-26*. Ms. Pacheco, expecting her first child in August 2009, participates in the case for prospective relief only.[1] *Complaint at* ¶*8*.

Defendants David L. Lackey, Commissioner of the Texas Department of State Health Services (DSHS), Nancy W. Dickey, M.D., President of the Texas A&M Health Science Center & Vice Chancellor for Health Affairs, and Roderick E. McCallum, Interim Dean of Texas A&M Health Science Center School of Rural Public Health ("Science Center") are sued in their official capacities only. *Complaint at* ¶¶*9-12*. DSHS and Texas A&M University (TAMU) were named initially to provide notice to the agencies of their officials as Defendants. *Complaint at* ¶*12*.

Since 2002, Defendants (1) have unlawfully collected (or "seized") the blood samples taken from all babies in Texas at time of birth; and (2) continue to unlawfully store those samples or "spots" indefinitely at the Science Center for undisclosed purposes unrelated to the purposes for which the blood was originally drawn, without knowledge or consent of the infants' parents. *Complaint at* ¶ *13*.

Plaintiffs do not object to the state's mandated newborn screening (NBS) program. They *do* object to Defendants' continued unlawful deprivation of their children's constitutional rights in not destroying and continuing to store for undisclosed purposes the blood samples of their infants expropriated indefinitely without their knowledge or consent.[2]

---

[1] The question of whether Plaintiffs' claim for prospective relief may be moot depends on implementation of legislation just passed by the Texas legislature (HB-1672). The new law amends existing law to add provisions for additional disclosures to parents, to allow for parents, legal guardians, and managing conservators to instruct DSHS to destroy a child's bloodspots after testing is complete, and to address confidentiality and permissible post-testing use of the blood specimens. The Governor signed HB-1672 on May 27, 2009, and it became effective on that date. For a full text and history of HB-1672, *see* http://www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=81R&Bill=HB1672.

[2] Prior to 2002, Defendants engaged in the same practice, but claim they kept the infant blood spots for a limited duration. Plaintiff Overath had two children born prior to 2002, but she has no

Therefore, Plaintiffs continue to be deprived of (1) their constitutional right to be free from unlawful search and seizure; (2) their fundamental liberty federal liberty and privacy interests; and (3) their fundamental privacy rights under the Bill of Rights of the Texas Constitution and Texas common law. *Complaint at* ¶¶ *22-26.*

ARGUMENT AND AUTHORITY

I. Standards for Dismissal

A claim must be dismissed, pursuant to Rule 12(b)(1), "when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). The party seeking to invoke the court's subject matter jurisdiction has the burden of establishing that such jurisdiction exists. *Hartford Ins. Group v. LouCon Inc.*, 293 F.3d 908, 910 (5th Cir. 2002).

Rule 12(b)(6) motions are disfavored in the law, and a court will rarely encounter circumstances that justify granting them. *Mahone v. Addicks Utility District of Harris County*, 836 F.2d 921, 926 (5th Cir. 1988). A court may dismiss a claim only when it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations found in the complaint. *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984). A motion to dismiss should not be granted unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim that would entitle him or her to relief. *Campbell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5th Cir. 1986). The claimant is not required to set out in detail the facts upon which the claim is based. Rather, the Rules require that the claim simply give the defendant "fair notice." *Leatherman v. Tarrant Co. Narcotics Intelligence & Coordination*, 507 U.S. 163, 168 (1993). Further, a court may not look beyond the pleadings. *Blackburn v. City of*

---

assurance or confidence that Defendants have actually destroyed her children's samples. Nor does she have any idea what kind of research was performed on her sons' blood samples or "spots." *See Complaint* ¶ *21*.

Marshall, 42 F.3d 925, 931 (5th Cir. 1995). The court must accept as true the allegations in the complaint, and must view the allegations in the light most favorable to the plaintiff. *Id.* The allegations in the claim need only give the defendants fair notice of the nature of the claim and the grounds on which it rests. *See Mahone*, 836 F.2d at 926. The Rules also dictate that the pleadings be liberally construed "as to do substantial justice." *Id.*

II. This Court Has Jurisdiction Over Plaintiffs' Claims

A. Eleventh Amendment Immunity Does Not Bar Plaintiffs' Claims Brought Directly Against DSHS and TAMU Individual Defendants

Congress provided 42 U.S.C. § 1983 as a method for seeking relief against a state official for a federal constitutional violation. *Hearth, Inc. v. Department of Public Welfare*, 617 F.2d 381, 382-383 (5th Cir. 1980). Plaintiffs properly brought their constitutional claims pursuant to § 1983. *See Civil Cover Sheet*, *Doc. 1-2, Section VI.*[3]

B. Eleventh Amendment Immunity Does Not Bar Claims Brought Under the Texas Constitution and Texas Common Law for Injunctive and Declaratory Relief

Plaintiffs' claims under the Texas Constitution and Texas common law are within the jurisdiction of this Court because Plaintiffs could bring the same claims in Texas state court. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984).

Defendants' indefinite, surreptitious expropriation of the infants' blood samples, without parental knowledge or consent, unrelated to the purposes of the newborn screening program, were outside the scope of the authority conferred by the Texas Health and Safety Code § 33.002, and the relief sought here — destruction of the infant blood samples[4] — does not impact directly on the State itself. Moreover, the State did not delegate authority to the individual Defendants to secretly seize and store indefinitely infant blood samples for purposes unrelated to the newborn

[3] Plaintiffs will replead to this include in the initial complaint if the Court finds it necessary.

[4] Or otherwise secure informed consent from affected parents to maintain such blood samples and spots. *Complaint at p.9, Prayer for Relief.*

screening program. Therefore, the state law claims brought against the named state officials acting outside the scope of their authority are not barred by Eleventh Amendment immunity.

Moreover, the Supreme Court of Texas recognizes the right to declaratory and injunctive relief for rights arising from the Texas Constitution. *City of Beaumont v. Boullion*, 896 S.W.2d 143 (Tex. 1995). Plaintiffs here ask for declaratory and injunctive relief under their state claims, rendering *Pennhurst* inapplicable, despite Defendants' contention otherwise, and attorney's fees and costs, pursuant to 42 U.S.C. § 1988.

C. Plaintiffs Have Standing to Bring This Action

Plaintiffs have met all elements of standing. To satisfy Art III's standing requirements, a plaintiff must show "injury in fact, causation, and redressability." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Defendants contend Plaintiffs have not met the first element of standing — they have shown no injury in fact. Indeed, fear that an event may occur in the future is speculative and is not enough to support standing. *Los Angeles v. Lyons,* 461 U.S. 95 (1983). Here, however, the storage of the infants' blood samples is an injury that has occurred and continues to occur, and there is a reasonable fear of the potential for misuse because of the continued storage. Continuous and pervasive acts resulting in reasonable fear is enough for injury in fact. *Friends of the Earth, Inc. v. Laidlaw Env't Servs.*, 528 U.S. 167, 184-185 (2000).

If a police officer, for example, goes into one's bedroom and takes a diary or personal financial information without a warrant and proceeds to hold it indefinitely for an undisclosed purpose without consent or knowledge, this is an injury *per se*. The situation here is similar: Plaintiffs do not have to prove that misuse has occurred or is likely to occur, as Defendants contend. Plaintiffs have met their burden to survive a Rule 12(b)(1) motion. Taking all of Plaintiffs' factual allegations as true, the facts established by the complaint demonstrate injury in fact, causation, and redressability. The injury here, Defendants' unlawful surreptitious collection

and seizure and indeterminate storage of the blood samples without informed parental consent for undisclosed and unrelated purposes different from that for which they were originally drawn, can be fully redressed by their destruction.[5] *Complaint at ¶¶13, 23, 25, 26.*

III. Plaintiffs Have Stated Claims Upon Which Relief May Be Granted

A. The Cause of Action is Brought Under § 1983, the Texas Constitution, and Texas Common Law

Plaintiffs properly brought their cause of action under 42 U.S.C. § 1983. *See Civil Cover Sheet*, *Doc. 1-2, Section VI.*

B. Plaintiffs Have Stated a Fourth Amendment Claim

Plaintiffs have properly specified actions by Defendants that give rise to violations under the Fourth Amendment and the Texas Constitution to be free from unlawful search and seizure. *Complaint at* ¶¶*22-23.* Plaintiffs' complaint clearly states that, since 2002, Defendants have routinely and unlawfully collected blood samples from all babies in Texas at time of birth and stored that blood or "spots" indefinitely at the Science Center for undisclosed research unrelated to the purposes for which the blood was originally drawn, without the knowledge or consent of the parents, and continue to do so. *Complaint at ¶13.* Defendants' actions, done under color of law and official authority, intentionally, and with complete, deliberate, conscious and callous indifference to the constitutional rights of Plaintiffs' children and of the class, deprived them of their right to be free from unlawful search and seizure, and continue to do so. *Complaint at ¶22.*

Defendants misconstrue Plaintiffs' complaint by concluding that "Plaintiffs state that they are *not* challenging the initial collection of blood that is used for the NBS testing." Plaintiffs do not object to the state's mandated newborn screening program so long as safeguards are in place to destroy an infant's samples within a reasonable period of time. *Complaint at ¶16.*

[5] Defendants could also otherwise secure informed consent from affected parents to maintain such blood samples and spots. *Complaint at p.9, Prayer for Relief.*

Plaintiffs, however, do challenge the secret seizure of the initial NBS collection as a continuing deprivation of rights insofar as Plaintiffs and the class did not provide consent to or have knowledge that Defendants would unlawfully store and use the samples in such a manner. Defendants did not have consent to draw infants' blood for indefinite storage and undisclosed research, and did so deceptively.

Blood drawn pursuant to Chapter 33 of the Texas Health & Safety Code for the newborn screening program did not require parental consent. *Complaint at ¶15.* Defendants used their narrow authority under the NBS statute to collect blood to use in entirely different purposes from the statutory authorization. Their actions were not authorized by any statute, state, or federal law. Defendants misconstrue Plaintiffs' complaint to conclude that they concede the legality of the initial collection for purposes of undisclosed seizure. *Complaint at ¶¶13,16.* Insofar as Defendants manipulated and used the initial NBS unlawfully and deceptively, Plaintiffs' Fourth Amendment claims are based upon the continuing deprivation of the class' rights, initiating from the initial collection after the purposes of NBS were accomplished to the present.

No one denies that the Fourth Amendment "does not proscribe all searches and seizures, but only those that are unreasonable" and that a person's right to be free from searches and seizures is not absolute and may be reasonably regulated when the State has a sufficiency weighty interest. *Skinner v. Oklahoma*, 316 U.S. 535, 619 (1942); *Winston v. Lee*, 470 U.S. 753, 760 (1985). Defendants argue that, since there is no question that the public health reasons behind the NBS program satisfy the balancing test, they need make no showing of a similar weighty interest for seizing and storing infant blood samples indefinitely for undisclosed purposes. However, they cannot articulate any compelling state justification for such secretive and non-consensual indefinite seizure of infants' blood. *Complaint at ¶15.*

Nor is there any merit to Defendants' claim that "the mere storage of a specimen after it

is drawn (without parental objection) is not a further invasion, as a matter of fact and logic." If a gentlemen provides a semen sample for fertility testing and it is further stored, without his consent, at another location for a future undisclosed purpose, certainly the fact that the storage is passive and that he has no further contact with his semen sample is irrelevant. That the bodily fluids contain deeply private medical and genetic information and are being stored indefinitely for undisclosed nonconsensual purposes is relevant.

Defendants further state there is no conceivable privacy interest implicated once the specimens are de-identified of any connection to the blood donor, as they are if used for research purposes.[6] This does not address that the specimens were initially collected without statutory authority or parental consent.

Plaintiffs' pleading supports the contention that their constitutional rights are being violated resulting from their infants' blood samples being unlawfully collected and stored indefinitely for undisclosed research purposes. *Complaint at ¶13.* Plaintiffs' pleadings "contain something more … than … a statement of facts that merely creates a suspicion [of] a legally cognizable right of action" and raises a right to relief "above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Defendants' contention that Plaintiffs must allege facts supporting Plaintiffs' contention that the blood samples (have been) or are being used in a manner that violates constitutional rights not only ignores Plaintiffs' contention that the surreptitious use and collection violates constitutional rights, but also misconstrues the standards for dismissal under Rule 12(b)(6), that is, the complaint must contain … allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995).

---

[6] Plaintiffs cannot be assured that their infants' blood samples have been de-identified, or that Defendants cannot re-identify them. This contention of Defendants, which Plaintiffs deny, is outside the pleading and record for this motion. Rather, under the rules, Plaintiffs' pleading must be taken as true.

C. Plaintiffs Have Stated a Claim for Violation of Constitutionally-Protected Liberty and Privacy Rights

Plaintiffs have properly specified actions by Defendants that give rise to violations of liberty and privacy rights under the Fourteenth Amendment. *Complaint at* ¶¶*24-25.* Precedent is clear that the initial step in establishing a violation of an individual's constitutional privacy rights is to establish whether the interest the individual is seeking to protect is a personal right that is "fundamental or 'implicit in the concept of ordered liberty.'" *Roe v. Wade*, 410 U.S. 113 (1973). And though Plaintiffs must establish that the interest they are seeking to protect falls within one of the recognized "zones of privacy," these are certainly not limited to matters relating to marriage, procreation, contraception, family relationships, child rearing and education, as Defendants suggest. These are merely some examples, not an exhaustive list, of areas in which there are limitations on the state's power to substantively regulate conduct.

"Zones of privacy" may be created by more specific constitutional guarantees and thereby impose limits on government power. This case falls within these areas. The infant blood spots contain deeply private medical and genetic information, and were expropriated without knowledge or consent -- a claim directly relating to bodily integrity. Certainly, as medical and electronic technology advances, the "zones of privacy" must adjust accordingly.

Defendants contend that Plaintiffs make only a vague and generalized privacy claim without satisfying the threshold requirement of a Fourteenth Amendment claim. However, under Rule 12(b)(6), the allegations need only give Defendants fair notice of the nature of the claim and the grounds on which it rests. *See Mahone*, 836 F.2d at 926. Plaintiffs have stated a cognizable claim. Simply because a claim may not be based directly on decades-old precedent does not make the threats to the constitutional rights of privacy and liberty any less serious in a newer age.

Defendants' comparison of this case to *Whalen* is inapposite. *Whalen* held that a New York statute, which required that the state be provided with a copy of every prescription for certain drugs and which also provided security measures for that information in the state's possession, was not an unconstitutional violation of privacy. *Whalen v. Roe*, 429 U.S. 589 (1977). In *Whalen*, an electorally accountable legislature passed statutory authority allowing the collection, whereas in this case, authority is absent.[7]

Further, in *Whalen*, the state had a vital interest "in controlling the distribution of dangerous drugs [and sought] to experiment with new techniques for control." *Id* at 598. Here, the state has shown no vital interest in secretly seizing blood samples for purposes unrelated to that for which the blood was originally drawn, without knowledge or consent of the parents. That "[p]rivacy interests are adequately protected if there are statutes that provide safeguards against disclosure of personal information collected by the government" hinges on the personal information collected being pursuant to statutory authority, which demands legislative accountability for the intrusion of privacy interests for vital state interest.[8] *Dearmore v. City of Garland,* 400 F.Supp.2d 894, 905 (N.D. Tex. 2005), *aff'd*, 519 F.3d 517 (5th Cir. 2008), *cert. denied*, 129 S. Ct. 131 (2008)(citing *Whalen*, 429 U.S. at 599-606).

Defendants' comparison of this case to *Dearmore* is improper. In *Dearmore*, the U.S. District Court for the Northern District of Texas held that the city ordinance requiring a landowner applying for a permit to lease his property to disclose his name, address, and driver's license number, and those of the tenant, did not constitute and invasion of privacy because the landowner's driver's license number is protected from disclosure under Texas law. *Dearmore*,

---

[7] The key to the *Whalen* case is that the legislature's enactment of the patient-identification requirement was a reasonable exercise of New York's broad police powers.

[8] Depending on its implementation, HB-1672 may cure this from May 27, 2009 forward, but provides no relief to those whose rights were violated prior to HB-1672.

400 F. Supp.2d at 904.

Aside from distinguishing the cases on the ground that landowners will provide information voluntarily and with consent if they wish to lease their property, and Plaintiffs here had no opportunity to do the same, Defendants' listing of adequate security provisions in place to protect Plaintiffs' privacy interests are premature at this stage in proceedings, and outside the pleading and record for purposes of this motion.

Though the newly enacted amendments to Chapter 33 of the Texas Health and Safety Code specifically codifies required disclosures, which must be made at the time of the infant's delivery informing the parent of potential post-testing uses, the parent's right to opt out of such uses, and the parent's ability to direct destruction of the blood specimen, this offers no form of relief for Plaintiffs as their infants' blood was expropriated prior to passage of the amendments. Thus, Plaintiffs have properly specified actions on Defendants' part that give rise to violations of liberty and privacy rights conferred under the Fourteenth Amendment. *Complaint at ¶¶ 24-25.*

D. Texas A&M Defendants' Official Roles in the NBS program are Matters of Fact Not Appropriate for Resolution in a Motion to Dismiss

Certainly, a plaintiff must generally "identify a policy or custom that gave rise to the plaintiff's injury *before he may prevail*." *Mack v. City of Abilene*, 461 F.3d 547 (5th Cir. 2006) (citing *Canton v. Harris*, 489 U.S. 378, 389 (1989)). However, Plaintiffs have shown such a custom and policy, which Defendants do not even dispute. Having met this burden in their initial pleading, Plaintiffs are entitle to move forward with discovery and depose Defendants. There is nothing about Plaintiffs' complaint, and Defendants offer no argument otherwise, to indicate Plaintiffs will be unable to prove individual Defendants' liability based on some conceivable theory, the standard of review appropriate to a Rule 12(c) motion.

CONCLUSION AND PRAYER

For the reasons stated herein, Plaintiffs request that the Court deny Defendants' Motion to Dismiss Plaintiffs' Original Complaint.

Dated: June 9, 2009

Respectfully Submitted,

/s/ James C. Harrington

James C. Harrington
State Bar No. 09048500
Wayne Krause
State Bar No. 24032644

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Dr.
Austin, TX 78741
(512) 474-5073 [phone]
(512) 474-0726 [fax]

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true copy of this document was sent on June 9, 2009, to counsel for Defendants, Nancy K. Juren, Assistant Attorney General, Attorney in Charge, via fax at (512) 320-0667, and also was filed electronically and thereby served on the same.

/s/ James C. Harrington

James C. Harrington

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ANDREA BELENO, on behalf of her infant son and on behalf of the class similarly situated, GEOFFREY N. COURTNEY, on behalf of two children of his and on behalf of the class similarly situated, MARYANN OVERATH, on behalf of two minor children of hers, KEITH A. TAYLOR, on behalf of his infant daughter, and NANCY PACHECO, Plaintiffs v. TEXAS DEPARTMENT OF STATE HEALTH SERVICES, DAVID L. LAKEY, M.D., in His Official Capacity as Commissioner of the Texas Department of State Health Services, TEXAS A&M UNIVERSITY, NANCY W. DICKEY, M.D., in Her Official Capacity as President, Texas A&M Health Science Center & Vice Chancellor for Health Affairs, and RODERICK E. McCALLUM, in His Official Capacity as Interim Dean, Texas A&M Health Science Center School of Rural Public Health, Defendants	§	CIVIL ACTION NO. SA09CA0188-FB

ORDER DENYING DEFENDANTS' MOTION
TO DISMISS PLAINTIFFS' ORIGINAL COMPLAINT

This Court has considered Defendants' Motion to Dismiss Plaintiffs' Original Complaint, and the Court, after reviewing the pleadings, is of the opinion the same should be denied.

It is so ORDERED.

SIGNED AND ENTERED this _____ day of _________________, 2009.

____
UNITED STATES DISTRICT JUDGE
FRED BIERY