Quintero v. City of Waterbury

United States District Court for the District of Connecticut

February 12, 2026, Decided

3:26-CV-84-VDO

Reporter
2026 U.S. Dist. LEXIS 31126 *; 2026 LX 66270

MIRIAM DEL SOCORRO MARTINEZ QUINTERO, Plaintiff, v. CITY OF WATERBURY ET AL, Defendants.
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Opinion

RULING GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED *IN FORMAPAUPERIS* [*1] AND RECOMMENDING PARTIAL DISMISSAL OF PLAINTIFF'S COMPLAINT

On January 15, 2026, the plaintiff Miriam del Socorro Martinez Quintero, proceeding *prose*, filed a complaint against the City of Waterbury; Tom Wengertsman, Matthew Sevilla, Frank Baker, and Tom Fitzgerald in their individual and official capacities; and John Does 1-10. (Doc. No. 1). The plaintiff states that the defendants entered her home without authorization, conducted unlawful inspections, and created false or unsupported reports, leading to the disconnection of her electrical service for 71 days. (*Id.* at 2). The plaintiff also filed a Motion for Leave to Proceed *InForma Pauperis*. (Doc. No. 2).

On January 20, 2026, the Court (Oliver, J.) referred to the undersigned the plaintiff's motion for leave to proceed *in forma pauperis* and an initial review of the complaint pursuant to 28 U.S.C. § 1915. (Doc. No. 10.). For the reasons that follow, the Court **GRANTS** the plaintiff's motion to proceed *in forma pauperis*. The Court recommends that: (1) the plaintiff's § 1983 claims against the defendants Tom Wengertsman, Matthew Sevilla, Frank Baker, and Tom Fitzgerald in their official [*2] capacities be dismissed with prejudice and with leave to amend; (2) the plaintiff's § 1983 claims against Wengertsman and Sevilla in their individual capacities be permitted to proceed; (3) the plaintiff's § 1983 claims against Baker and Fitzgerald in their individual capacities be dismissed with prejudice and with leave to amend; (4) the plaintiff's § 1983 claims against the City of Waterbury be dismissed with prejudice and with leave to amend; (5) the plaintiff's claims of negligence be permitted to proceed; and (6) the plaintiff's claims against John Does 1-10 be dismissed with prejudice and with leave to amend.

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I. LEGAL STANDARD

28 U.S.C. § 1915 authorizes the Court to grant *in forma pauperis* status to an indigent plaintiff who submits an affidavit demonstrating their inability to pay the required filing fee. 28 U.S.C. § 1915(a)(1). The same statute also contains a provision that protects against the abuse of this privilege. *See* 28 U.S.C. § 1915(e). Subsection (e) provides that the Court "shall dismiss the case at any time if [it] determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

A valid complaint [*3] need not plead "detailed factual allegations," but it must state "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also* Fed. R. Civ. P. 8(a)(2). A claim is plausible on its face where the facts pleaded "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Stated differently, the complaint needs to "disclose sufficient information to permit the defendant 'to have a fair understanding of what the plaintiff is complaining about and to know whether there is a legal basis for recovery.'" *Kittay v. Kornstein*, 230 F.3d 531,

541 (2d Cir. 2000) (quoting *Ricciuti* v. *New YorkCity Transit Auth.*, 941 F.2d 119, 123 (2d Cir. 1991)).

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An action has no arguable legal basis when the defendant is immune from suit. *See Neitzkev. Williams*, 490 U.S. 319, 327 (1989); *Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) ("A complaint will be dismissed as frivolous when it is clear that the defendants are immune from suit.") (internal quotations omitted). Where there is a lack of subject matter jurisdiction, dismissal is mandatory. *See Manway Constr. Co. v. Hous. Auth. of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983).

When, as here, a plaintiff is proceeding *pro se*, the Court must "construe [the] complaint liberally and interpret it to raise the strongest arguments that it suggests . . . ." *McFadden v. Noeth*, 827 F. App'x 20, 24 (2d Cir. 2020) (quoting *Chavis v. Chappius*, 618 F.3d 162, 171 (2d Cir. 2010)); *see Stancuna v. New Haven Legal Assistance*, 383 F. App'x 23, 24 (2d Cir. 2010) ("[W]e nonetheless construe the submissions of a *pro se* litigant liberally and interpret them so as to raise the strongest arguments that [*4] they suggest." (internal quotations omitted)).

II. FINANCIAL AFFIDAVIT

The Court determines indigency within the meaning of § 1915 by reviewing an applicant's

assets and expenses as typically stated on a declaration or financial affidavit submitted with the motion to proceed *in forma pauperis* ("IFP"). As a general matter, applicants seeking IFP status are not required to "demonstrate absolute destitution." *Potnick v. E. State Hosp.*, 701 F.2d 243, 244 (2d Cir. 1983) (*per curiam*). Rather, they must establish that they cannot afford to pay for both the necessities of life and the costs of litigation. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). "The decision of whether to grant an application to proceed [IFP] rests within the sound discretion of the court." *Robert C. v. Kijakazi*, No. 3:22-CV-120 (SRU), 2022 WL 2287600, at *1 (D. Conn. Feb. 10, 2022) (citing *Anderson v. Coughlin*, 700 F.2d 37, 42 (2d

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Cir. 1983)).

Here, the plaintiff attested that she is self-employed as a landlord but has "had no income due to a lack of tenants." (Doc. No. 2 at 3). She receives $2,800 per month in retirement funds. (*Id.*). She cares for her disabled daughter. (*Id.*). She and her partner own a multifamily house in Waterbury, with an estimated value of $300,000. (*Id.* at 4). The mortgage balance is $243,535: "Normally paid from rental income; currently covering expenses with a HELOC loan due to temporary vacancy." (*Id.*). She also owns a 2005 Honda [*5] Civic with a $18,870.88 loan due, and her partner owns a 2011 Jeep Liberty, which is paid off. (*Id.*). She has $38,000 in savings. (*Id.*).

As to her monthly obligations, the plaintiff states that she pays $2,507 for her mortgage, $415.25 in property taxes, $164 for electricity, $300 for water, $110 for the phone bill, $90 for Internet, $441 for her car payment, $100 in gas and maintenance for her car, $360 for car insurance, $362 in other insurance, $400 for food, $200 for transportation, $278 for solar panels, $431 for HVAC, $461 in auto loans, and $334.18 for her HELOC loan, totaling $6,953.43. (*Id.* at 5). She also owes a $129,174.86 debt to EverBright LLC; a $47,249.32 debt to Four Leaf Credit Union for her HELOC loan; a $18,870.88 debt to Westlake Financial for her car; and a $47,985 debt to Total Mechanical Systems, LLC. (*Id.*). She states: "I received no rental income during the 71-day power outage, and even though the power was reconnected, I have gone months without any new tenants, which has resulted in income being less than [expected], forcing me to use a [HELOC] and consequently acquire more debt." (*Id.* at 6).

Despite the plaintiff having $38,000 in savings, her debt far exceeds [*6] $200,000, thus countering the conclusion that her savings should be available to pay the filing fees. Accordingly, the Court concludes the plaintiff cannot afford to pay for both the necessities of life and the costs of litigation. The plaintiff's Motion for Leave to Proceed *In Forma Pauperis* is **GRANTED**.

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III. MERITS OF THE COMPLAINT

A. Factual Background

The plaintiff owns a multifamily residential property at 20 Albert Place, Waterbury, Connecticut, in which she resides. (Doc. No. 1 at 2). The plaintiff alleges that, on or about March 26, 2025, she hired "a duly licensed solar and electrical company to perform authorized electrical upgrades at her property." (*Id.* at 3). She alleges that the defendant Tom Wengertsman, an

electrical inspector employed by the City of Waterbury, refused to approve the electrical upgrades and "failed to issue any written inspection report, correction notice, or clear instructions identifying alleged deficiencies." (*Id.* at 2-3).

On May 22, 2025, Wengertsman conducted an inspection at the plaintiff's property; the plaintiff alleges that the inspection was "legally limited" to the basement, where the electrical panels are located, and the exterior side of the [*7] house, where the meters are installed. (Doc. No. 1 at 3). She alleges that Wengertsman called the defendant Matthew Sevilla, an inspector with the Waterbury Fire Department, and Sevilla joined the inspection "despite not being originally authorized or scheduled to participate in the inspection." (*Id.* at 2-3).

The plaintiff alleges that Wengertsman and Sevilla entered her private residence without "informed consent," a warrant, or emergency circumstances. (Doc. No. 1 at 3). Sevilla allegedly demanded access to the property's rental units, which the plaintiff granted "under coercion and without being informed of her constitutional rights." (*Id.*).

The plaintiff alleges that Sevilla then called her electric utility company and reported a fire, which prompted the immediate disconnection of electrical service to her entire property. (Doc. No. 1 at 3). The plaintiff claims: "No fire, imminent danger, or actual electrical hazard existed at the

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time of the disconnection. Had such danger existed, Defendant Wengertsman would have permitted the necessary replacements during his initial inspection on March 26, 2025." (*Id.*).

The plaintiff's electrical service was disconnected for 71 days, through July [*8] 31, 2025. (Doc. No. 1 at 3-4). The plaintiff alleges that she fully complied with all requirements imposed by the Fire Department, even though the report the department provided "did not identify any electrical issues." (*Id.* at 4). Wengertsman finally approved the plaintiff's hiring of a licensed professional to replace electrical panels and the meter socket, at her own expense. (*Id.*).

The plaintiff alleges that the defendant Frank Baker was the supervisor of the City of Waterbury Electrical Inspections Department and exercised supervisory authority over Wengertsman. (Doc. No. 1 at 4). Similarly, she alleges that the defendant Tom Fitzgerald was the Fire Marshal and Chief of the Waterbury Fire Department and exercised supervisory authority over Sevilla. (*Id.*). The plaintiff alleges that Baker and Fitzgerald "knew or should have known of the illegal inspection practices, lack of written reports, and prolonged electrical disconnection, and failed to intervene, correct, or prevent the ongoing violations" by Wengertsman and Sevilla. (*Id.*).

The plaintiff alleges that, due to the prolonged disconnection of her electrical service, she endured "unsafe living conditions, loss of rental income, [*9] spoiled food, generator use, emotional distress, reputational harm, and severe financial hardship." (Doc. No. 1 at 4).

The plaintiff states that she timely filed an administrative claim and Notice of Claim with the City of Waterbury, and that she subsequently received a formal denial of her claim, "thereby exhausting all available administrative remedies prior to initiating this action." (Doc. No. 1 at 5).

The plaintiff alleges the following constitutional and Connecticut state law claims:

Defendants violated Plaintiff's Fourth Amendment rights by entering and inspecting her private residence without a warrant, without valid consent, and without emergency circumstances.

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Defendants violated Plaintiff's procedural due process rights under the Fourteenth Amendment by ordering and causing the disconnection of essential electrical service without prior notice, without a hearing, and without legal justification.

Defendants' conduct also violated substantive due process, as the prolonged deprivation of electricity in an occupied residential property was arbitrary, conscience-shocking, and wholly disproportionate to any legitimate governmental purpose.

. . .

Defendants owed Plaintiff a duty to act reasonably and in accordance with [*10] Connecticut law and accepted municipal inspection standards.

Defendants breached that duty by exceeding their authority, failing to issue required reports, making false or unsupported statements, and causing the illegal disconnection of essential electrical service.

(Doc. No. 1 at 5-6) (cleaned up). The plaintiff argues that the individual defendants are not entitled

to qualified immunity. (*Id.* at 6).

The plaintiff further argues that the City of Waterbury is subject to *Monell* liability "due to

its policies, customs, and practices, including failure to adequately train and supervise employees

and failure to implement written procedures governing inspections, reporting, and service

disconnections." (Doc. No. 1 at 6).

B. Discussion

1. The Plaintiff's Constitutional Claims

The plaintiff alleges various civil rights violations pursuant to 42 U.S.C. § 1983. (Doc. No.

1 at 5-6). "[T]o state a claim under § 1983, a plaintiff must allege a violation of rights secured by

the Constitution or laws of the United States, and that such violation was committed by a person

acting under the color of state law." *Kern v. City of Rochester*, 93 F.3d 38, 43 (2d Cir. 1996). "The

traditional definition of acting under color of state law requires that the defendant in a § 1983

action have exercised power [*11] 'possessed by virtue of state law and made possible only because the

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wrongdoer is clothed with the authority of state law.'" *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). "Section 1983 does not create substantive rights," but "provides a means to redress the deprivation of a federal right guaranteed elsewhere." *Diggs v. Town of Manchester*, 303 F. Supp. 2d 163, 182 (D. Conn. 2004). "Violations of rights thus give rise to § 1983 actions." *Shakhnes v. Berlin*, 689 F.3d 244, 250 (2d Cir. 2012). Cities are considered state actors for the purposes of § 1983. *See, e.g.*, *Ware v. City of Buffalo*, 186 F. Supp. 2d 324, 331 (W.D.N.Y. 2001) (citing *Comm'rs of Bryan Cty. v. Brown,* 520 U.S. 397, 405 (1997)).

a. Defendants Tom Wengertsman and Matthew Sevilla

The plaintiff has named the defendants Wengertsman and Sevilla in their individual and official capacities. (Doc. No. 1 at 1, 2). "Because an official capacity suit against a government official 'is, in all respects other than name, to be treated as a suit against the [government] entity' itself, an official capacity suit 'merge[s] into [the] claims against the [government entity].'"

Rossy v. City of Buffalo, No. 23-7296-CV, 2025 WL 816301, at *4 (2d Cir. Mar. 14, 2025) (summary order) (first quoting *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); and then quoting

Quinones v. City of Binghamton, 997 F.3d 461, 466 n.2 (2d Cir. 2021)). Thus, "an official capacity suit 'require[s] proof of a municipal policy or custom, whereas personal liability,' which is sought through an individual capacity suit, 'require[s] only that [the defendant] himself caused the deprivation of a federal right while acting under color of state law.'" *Id.*

(quoting *McCray v. Cnty. of Suffolk, N.Y.*, 598 F. App'x 48, 50 (2d Cir. 2015) (summary [*12] order)). The defense of qualified immunity is only applicable to claims against individual defendants sued in their individual capacities. *Jackler v. Byrne*, 658 F.3d 225, 244 (2d Cir. 2011). As discussed below, *supra* III.B.1.c, the plaintiff has not made specific claims pertaining to a municipal policy

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or custom, so Wengerstman and Sevilla are not liable in their official capacities. The Court therefore recommends that the § 1983 claims against Wengertsman and Sevilla in their official capacities be **DISMISSED** with prejudice and with leave to amend.

As for the claims against Wengertsman and Sevilla in their individual capacities, generally, "a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law." *West*, 487 U.S. at 50. Wengertsman and Sevilla both acted under the color of state law in the events alleged in the complaint- Wengertsman as a city electrical inspector and Sevilla as a city fire inspector. (Doc. No. 1 at 2-4). Further, "[i]n order to prevail in an action for damages in an individual capacity claim under § 1983, a plaintiff must establish the defendant's personal involvement in the constitutional violations alleged." *Gowins v. Greiner*, No. 01 CIV. 6933 (GEL), 2002 WL 1770772, at *6 (S.D.N.Y. July 31, 2002). The plaintiff has plausibly alleged that Wengertsman [*13]

and Sevilla were personally involved in the events at issue in the complaint. (*See generally* Doc. No. 1). Thus, Wengertsman and Sevilla can be liable pursuant to § 1983 in their individual capacities if they violated the plaintiff's constitutional rights.1

1 The plaintiff claims that Wengertsman and Sevilla are not entitled to qualified immunity. (Doc. No. 1 at 6). "Qualified immunity protects public officials from liability for civil damages when one of two conditions is satisfied: (a) the defendant's action did not violate clearly established law, or (b) it was objectively reasonable for the defendant to believe that his action did not violate such law." *Garcia v. Does*, 779 F.3d 84, 92 (2d Cir. 2015) (quoting *Russo v. City of Bridgeport*, 479 F.3d 196, 211 (2d Cir. 2007)). "Qualified immunity 'depends on the circumstances and motivations of the official's actions, as established by the evidence [presented at trial' or obtained during discovery,'" so the Court need not reach the issue at this stage. *Bailey v. Riehl*, No. 3:24-CV-00993-SVN, 2024 WL 4904638, at *7 (D. Conn. Nov. 27, 2024) (quoting *Emiabata v. Bartolomeo,* No. 3:21-CV-00776 (OAW), 2022 WL 4080348, at *8 (D. Conn. Jan. 3, 2022)).

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i. The Plaintiff's Fourth Amendment Claim Against Wengertsman and Sevilla

The plaintiff alleges that Wengerstman and Sevilla violated her Fourth Amendment rights by "entering and inspecting her private residence without a warrant, without valid consent, and without emergency circumstances." (Doc. No. 1 at 5). She also [*14] alleges that she allowed Sevilla to access her property's rented units "under coercion and without being informed of her constitutional rights." (*Id.* at 3).

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Because the home is the "first among equals" in the Fourth Amendment's eyes, *Florida v.Jardines*, 569 U.S. 1, 6 (2013), warrantless searches of a private dwelling are "presumptively unreasonable." *United States v. Simmons*, 661 F.3d 151, 156-157 (2d Cir. 2011); *see also Groh v.Ramirez*, 540 U.S. 551, 559 (2004) ("Because the right of a [person] to retreat into [the] home and there be free from unreasonable governmental intrusion stands at the very core of the Fourth Amendment, our cases have firmly established the basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable."). To overcome that presumption, the government must show a reasonable exception, such as consent or exigent circumstances. *United States v. Iverson*, 897 F.3d 450, 458 (2d Cir. 2018).

The plaintiff has plausibly pled that Wengertsman and Sevilla entered and inspected her private residence without a warrant, her consent, or exigent circumstances. The plaintiff states that the inspection of her property was "legally limited to the basement where the electrical panels are located and the exterior [*15] side of the house where the meters are installed," thus plausibly pleading that the defendants did not have authority-with a warrant or otherwise-to enter her home. (Doc. No. 1 at 3). She further states that the defendants did not have her consent to enter her residence,

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and that "[n]o fire, imminent danger, or actual electrical hazard existed at the time." (*Id.*). Thus, the Court recommends this claim be permitted to proceed.

As for the plaintiff's claim that Sevilla obtained access to the property's rented units through coercion, a landlord "generally does not have a reasonable expectation of privacy with respect to property that he has rented to a tenant and that is occupied by that tenant."

Mangino v. Inc. Vill. of Patchogue, 739 F. Supp. 2d 205, 234 (E.D.N.Y. 2010), *on reconsideration in part*, 814 F. Supp. 2d 242 (E.D.N.Y. 2011). Additionally, "[t]he law is clear that a landlord cannot consent to the search of a tenant's apartment." *United States v. Mahama*, No. 3:23-CR-177, 2024 WL 3826686, at *3 (D. Conn. Aug. 15, 2024) (citing *United States v. Brown*, 961 F.2d 1039, 1041 (2d Cir. 1992)). However, the plaintiff's complaint does not state whether the rented units Sevilla entered were rented or occupied at the time, so it is plausible that the plaintiff did have a reasonable expectation of privacy in the rented units. (*See generally* Doc. No. 1). Thus, at this stage of the case, the Court recommends this claim be permitted to proceed. [*16]

ii. The Plaintiff's Procedural Due Process Claim Against Wengertsman and Sevilla

The plaintiff alleges that Wengertsman and Sevilla violated her procedural due process rights under the Fourteenth Amendment by "ordering and causing the disconnection of essential electrical service without prior notice, without a hearing, and without legal justification."

(Doc. No. 1 at 5). She alleges that Sevilla "made a telephone call reporting a fire to the electric utility company, which caused the immediate disconnection of electrical service to Plaintiff's entire property." (*Id.* at 3).

Procedural due process claimants must (1) "identify a constitutionally protected property or liberty interest"; and (2) "demonstrate that the government has deprived [them] of the interest without due process of law." *Hudson Shore Assocs. Ltd. P'ship v. New York*, 139 F.4th 99, 113

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(2d Cir. 2025) (quoting *Weinstein v. Albright*, 261 F.3d 127, 134 (2d Cir. 2001)). When the deprivation in question occurs during an "established state procedure," due process is satisfied by the "combination" of "some form of pre-deprivation hearing" and a "post-deprivation remedy" with "the opportunity to obtain full judicial review." *Rivera-Powell v. N.Y.C. Bd. of Elections*, 470 F.3d 458, 466-467 (2d Cir. 2006). Pre-deprivation hearings "need not be elaborate," but must include "notice and an opportunity to respond." *Hudson Shore*, 139 F.4th at 113 (quoting *Rivera-Powell*, 470 F.3d at 467).

To establish that [*17] the challenged action deprived a claimant of a protected property interest, "a plaintiff must establish 'a legitimate claim of entitlement,' one 'created and . . .defined by existing rules or understandings that stem from an independent source,' including [] state law."

Ace Partners, LLC v. Town of E. Hartford, 883 F.3d 190, 195 (2d Cir. 2018) (quoting *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)). The plaintiff has plausibly identified a property interest-her income from renting the units in her property-that Wengertsman and Sevilla deprived her of by reporting a fire to her electrical utilities company without any form of pre-deprivation hearing. Thus, the Court recommends this claim be permitted to proceed.

iii. The Plaintiff's Substantive Due Process Claim Against Wengertsman and Sevilla

The plaintiff alleges that the defendants' conduct also violated substantive due process: "the prolonged deprivation of electricity in an occupied residential property was arbitrary, conscience-shocking, and wholly disproportionate to any legitimate governmental purpose." (Doc. No. 1 at 5).

To state a substantive due process claim, a plaintiff must allege that (1) it had a "valid property interest" and (2) the defendant "infringed on that property right in an arbitrary or irrational manner." *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007). As noted above,

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the [*18] plaintiff has established that she had a valid property interest in her rental income. The plaintiff has also adequately alleged that the conduct of Wengertsman and Sevilla in reporting a fire to the electric utility company, thereby causing the immediate disconnection of the plaintiff's electrical service and the loss of her rental income, was arbitrary and irrational: she alleges that "[n]o fire, imminent danger, or actual electrical hazard existed at the time" and that no other explanation was provided. (Doc. No. 3). Thus, the Court recommends this claim be permitted to proceed.

b. Defendants Frank Baker and Tom Fitzgerald

The plaintiff has named the defendants Frank Baker and Tom Fitzgerald in their individual and official capacities. (Doc. No. 1 at 1, 2). As discussed above, *see infra* III.B.1.a, an official capacity suit requires proof of a municipal policy or custom. The plaintiff has not made specific claims pertaining to a municipal policy or custom, *see supra* III.B.1.c, so Baker and Fitzgerald are not liable in their official capacities.

As for the plaintiff's claims against Baker and Fitzgerald in their individual capacities, under § 1983, an individual may only be liable if they [*19] were "personally involved in the alleged deprivation." *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107, 127 (2d Cir. 2004). A plaintiff may show the individual's personal involvement through "direct participation in the alleged constitutional violation; [their] failure to remedy the wrong after being informed of the violation; [their] grossly negligent supervision of subordinates who committed the wrongful acts; or [their] exhibition of deliberate indifference by failing to act on information indicating that the unconstitutional acts were occurring." *Mallison v. Conn. Off. of Early Childhood*, 634 F. Supp. 3d 21, 36 (D. Conn. 2022). Generally, "[g]overnment officials may not be held liable for the

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unconstitutional conduct of their subordinates under a theory of *respondeat superior*." *Morgan v.Dzurenda*, 956 F.3d 84, 89 (2d Cir. 2020).

The plaintiff does not allege that Baker or Fitzgerald directly participated in the alleged constitutional violations, nor that they failed to remedy the wrong after being informed of the violation. (*See generally* Doc. No. 1). Instead, the plaintiff alleges that Baker and Fitzgerald exercised supervisory authority over Wengertsman and Sevilla, respectively, and that Baker and Fitzgerald "knew or should have known" of the alleged illegal inspection practices and "failed to intervene, correct, or prevent the ongoing violations." (Doc. No. 1 at 4). These [*20] allegations are not sufficient. The plaintiff has not claimed with factual allegations that Baker and Fitzgerald were grossly negligent in their supervision of Wengertsman and Sevilla, or that Baker and Fitzgerald were aware of unconstitutional acts and failed to act. (*See generally* Doc. No. 1). Thus, the plaintiff has not alleged that Baker or Fitzgerald were personally involved in the alleged deprivation of her rights, and the Court recommends that the plaintiff's § 1983 claims against Baker and Fitzgerald in their individual capacities be **DISMISSED** with prejudice and with leave to amend.

c. Defendant City of Waterbury

"Undoubtedly, municipalities themselves are subject to suit under Section 1983." *Ortiz v.Bridgeport Police Dep't*, No. 3:14-CV-1614 (CSH), 2017 WL 2818980, at *3 (D. Conn. June 29, 2017) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978)). However, a municipality cannot be held liable under § 1983 for an injury inflicted solely by its employees or agents. *Monell*, 436 U.S. at 694. For a municipality to be liable for the actions of its officers under § 1983, a municipal policy or custom must be alleged and proven. *Vippolis v. Village of Haverstraw*, 768 F.2d 40, 44 (2d Cir. 1985). The policy of which the plaintiff complains must be made by one "whose edicts or acts may be said to fairly represent official policy"; municipal liability attaches

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only where the decisionmaker possesses final authority to establish the municipal policy. [*21] *Monell*, 436 U.S. at 694. Further, the policy must cause the violation of the plaintiff's constitutional rights.

See id. at 692. "A plaintiff seeking to recover for a constitutional violation against a municipality

. . . must instead demonstrate that 'the municipality was the moving force behind the injury alleged.'" *Chiaravallo v. Middletown Transit Dist.*, 561 F. Supp. 3d 257, 286-287 (D. Conn. 2021) (quoting *Agosto v. New York City Dep't of Education*, 982 F.3d 86, 98 (2d Cir. 2020)). Thus, "a plaintiff must establish that the municipality violated a federally protected right through (1) municipal policy, (2) municipal custom or practice, or (3) the decision of a municipal policymaker with final policymaking authority." *Id.* at 287 (quoting *Zherka v. DiFiore*, 412 F. App'x 345, 348 (2d Cir. 2011)).

Here, the complaint does not set forth any allegations relating to the existence of an official or unofficial City of Waterbury municipal policy or its equivalent, and therefore necessarily fails to demonstrate that any such policy was the moving force behind the underlying constitutional violations. Indeed, the complaint does not allege, or even suggest, that the defendants' conduct was pursuant to an official City of Waterbury policy, or some *de facto* custom of illegally inspecting properties and foregoing written reports. (*See generally* Doc. No. 1). The plaintiff does not "establish any incidents of substantive fact outside of [the incident] [*22] . . . to demonstrate a municipal policy or custom which resulted in alleged constitutional violations." *Nash v. Vill. ofEndicott*, No. 8:08-CV-541, 2010 WL 3807051, at *4 (N.D.N.Y. Sept. 22, 2010). Moreover, other than being identified as a defendant, the complaint does not specifically set forth any cause of action against the City of Waterbury, except to suggest that the City is subject to *Monell* liability "due to its policies, customs, and practices, including failure to adequately train and supervise employees and failure to implement written procedures governing inspections, reporting, and

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service disconnections." (Doc. No. 1 at 6). The Court finds that these conclusory allegations are insufficient to make out a municipal liability claim against the City of Waterbury and consequently recommends that the § 1983 claims against the City of Waterbury be **DISMISSED** with prejudice and with leave to amend.

2. The Plaintiff's State Law Claims of Negligence

The plaintiff alleges: "Defendants owed Plaintiff a duty to act reasonably and in accordance with Connecticut law and accepted municipal inspection standards. Defendants breached that duty by exceeding their authority, failing to issue required reports, making false or unsupported statements, and causing the illegal disconnection of essential [*23] electrical service. Defendants knew or should have known that their conduct would cause foreseeable harm." (Doc. No. 1 at 6). The plaintiff does not specifically name the defendants in connection with the claims, but the

complaint alleges that Wengertsman failed to issue a written inspection report; Sevilla arrived at her property "despite not being originally authorized or scheduled to participate in the inspection"; Sevilla made a false statement to the plaintiff's electric utility company that there was a fire at the property; Wengertsman and Sevilla's inspection exceeded legal parameters; and Baker and Fitzgerald "knew or should have known of the illegal inspection practices, lack of written reports, and prolonged electrical disconnection, and failed to intervene, correct, or prevent the ongoing violations." (Doc. No. 1 at 3-4). The plaintiff does not allege negligence by the City of Waterbury. (*See generallyid.*).

When a federal district court has original jurisdiction pursuant to federal question jurisdiction, "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form [*24] part of the same case or controversy under Article III of the United States Constitution." *In re Teva Sec. Litig.*, 512

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F. Supp. 3d 321, 345 (D. Conn. 2021) (quoting 28 U.S.C. § 1367(a)). The plaintiff's claims of negligence stem from the same incidents as her § 1983 claims, so the district court may exercise supplemental jurisdiction over the plaintiff's state law claims.

The plaintiff has plausibly alleged that the defendants were negligent. Under Connecticut law, the elements of negligence are duty, breach of that duty, causation, and actual injury." *McDermott v. State*, 316 Conn. 601, 609 (2015). Wengertsman and Sevilla, as city inspectors, had a duty to the plaintiff to conduct an inspection, and she has sufficiently alleged that they breached that duty by going outside the scope of their inspection and then reporting a fire to the electrical utility company without justification. The plaintiff has alleged that Wengertsman and Sevilla called the electrical utility company, thus causing the plaintiff's injury of a loss of rental income. The plaintiff alleges fewer specific facts about Baker and Fitzgerald's negligence, but it is sufficient at this stage that she alleged that they supervised Wengerstman and Sevilla and they "knew or should have known of the illegal inspection practices, lack of written reports, and prolonged [*25] electrical disconnection, and failed to intervene, correct, or prevent the ongoing violations." (Doc. No. 1 at 3-4). Baker and Fitzgerald plausibly had a duty to the plaintiff, as a property owner, to ensure their employees properly conducted inspections, and she alleges they breached that duty, leading to the loss of her rental income. Thus, the Court recommends that the plaintiff's claims of negligence be permitted to proceed.2

2 Under Connecticut law, "a municipal employee . . . has a qualified immunity in the performance of governmental acts" that are "performed wholly for the direct benefit of the public and are supervisory or discretionary in nature." *Violano v. Fernandez*, 280 Conn. 310, 318 (2006) (citing Conn. Genn. Stat. § 52-557n(a)(2)(B)). A discretionary act "requires the exercise of judgment." *Id.* Municipal employees can be liable for negligently performing ministerial acts, which are acts "to be performed in a prescribed manner without the exercise of judgment or discretion." *Morant v. City of New Haven*, No. 3:22-CV-00630 (SVN), 2025 WL 2821260, at *24 (D. Conn. Oct. 3, 2025) (quoting *Borelli v. Renaldi*, 336 Conn. 1, 13 (2020)). At this stage in the litigation, the Court need not reach the issue of whether the defendants are entitled to qualified immunity on the plaintiff's claims of negligence.

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3. Defendants John Does 1-10

The plaintiff does not allege specific action by "Defendants John Does [*26] 1-10." The plaintiff alleges: "Defendants John Does 1-10 are unknown employees, supervisors, or agents of the City of Waterbury whose identities will be discovered during litigation." (Doc. No. 1 at 3).

Under Rule 8 of the Federal Rules of Civil Procedure, "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* "This short and plain statement must be 'sufficient to give the defendants fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" *Ruggiero v. Mobile CrisisTeam*, No. 3:12-CV-499 (VLB), 2012 WL 4854660, at *3 (D. Conn. Oct. 11, 2012) (quoting *Jones v. Nat'l Commc'ns and Surveillance Networks*, 22 Fed. App'x. 31, 32 (2d. Cir. 2008)). "[The Court] may dismiss [a] complaint in its entirety in those cases 'in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.'" *Gonzalez v. Maurer*, No. 3:17-CV-1402 (MPS), 2018 WL 401527, at *4 (D. Conn. Jan. 12, 2018) (quoting *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988)).

The plaintiff has not stated a claim upon which relief may be granted against John Does 1-10. *See, e.g.*, *Atuahene v. City of Hartford*, 10 F. App'x 33, 34 (2d Cir. 2001) ("By lumping all the defendants together in each

claim and providing no factual basis to distinguish their conduct, [the plaintiff]'s complaint failed to satisfy th[e] minimum standard [set forth in Rule 8]."); *Ying Li v.City of New York*, 246 F. Supp. 3d 578, 598 (E.D.N.Y 2017) ("Pleadings that do not differentiate which defendant was involved in the unlawful conduct are insufficient to state a claim."). [*27] Thus, the Court recommends that the claims against John Does 1-10 be **DISMISSED** with prejudice and with leave to amend.

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C. Leave to Amend

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that "[t]he court should freely give leave [to amend] when justice so requires." However, "[l]eave to amend, though liberally granted, may properly be denied for: undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). "[A] proposed claim is futile if, accepting the facts alleged by the party seeking amendment as true and construing them in the light most favorable to that party, it does not plausibly give rise to an entitlement to relief." *Fraser v. Caribe*, No. 3:20-CV-71 (SVN), 2022 WL 1210720, at *3 (D. Conn. Apr. 25, 2022) (internal quotations omitted). Given that this is first complaint filed in this case and the plaintiff is *pro se*, the Court recommends the plaintiff be granted leave to amend her complaint.

IV.CONCLUSION

For the reasons stated above, the plaintiff's Motion to Proceed *In Forma Pauperis* (Doc. No. 2) is **GRANTED**. The Court further recommends that:

(1) the plaintiff's § 1983 claims against the defendants Tom Wengertsman, [*28] Matthew Sevilla, Frank Baker, and Tom Fitzgerald in their official capacities be **DISMISSED** with prejudice and with leave to amend;

(2) the plaintiff's § 1983 claims against Wengertsman and Sevilla in their individual capacities be permitted to proceed;

(3) the plaintiff's § 1983 claims against Baker and Fitzgerald in their individual capacities be **DISMISSED** with prejudice and with leave to amend;

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(4) the plaintiff's § 1983 claims against the City of Waterbury be **DISMISSED** with prejudice and with leave to amend;

(5) the plaintiff's claims of negligence be permitted to proceed; and

(6) the plaintiff's claims against John Does 1-10 be **DISMISSED** with prejudice and with leave to amend.

This is a Recommended Ruling. *See* FED. R. CIV. P. 72(b)(1). Any objections to this

Recommended Ruling must be filed with the Clerk of the Court within fourteen (14) days after filing of such order. *See* D. CONN. L. CIV. R. 72.2(a). Any party receiving notice or an order or recommended ruling from the Clerk by mail shall have five (5) additional days to file any objection. *See* D. CONN. L. CIV. R. 72.2(a). Failure to file a timely objection will preclude appellate review. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a) & 72; D. CONN. L. CIV. R. 72.2; *Impala v.U.S. Dep't of Just.*, 670 F. App'x 32 (2d Cir. 2016) (summary order) (failure to file timely objection to Magistrate Judge's recommended ruling will preclude further appeal to [*29] Second Circuit); *Smallv. Sec'y of H.H.S.*, 892 F.2d 15 (2d Cir. 1989) (*per curiam*).

Dated at New Haven, Connecticut, on this 12th day of February, 2026.

/s/ Robert M. Spector, U.S.M.J. Robert M. Spector

United States Magistrate Judge

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