IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FLORENCE WALLACE ET AL., Plaintiffs, v. ROBERT J. POWELL ET AL., Defendants.	**CONSOLIDATED TO:** Civil Action No. 3:09-cv-0286 (JUDGE CAPUTO)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM CONWAY ET AL., Plaintiffs, v. MICHAEL T. CONAHAN ET AL., Defendants.	Civil Action No. 3:09-cv-0291 (JUDGE CAPUTO)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

H.T. ET AL., Plaintiffs, v. MARK A. CIAVARELLA, JR. ET AL., Defendants.	Civil Action No. 3:09-cv-0357 (JUDGE CAPUTO)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SAMANTHA HUMANIK, Plaintiff, v. MARK A. CIAVARELLA, JR. ET AL., Defendants.	Civil Action No. 3:09-cv-0630 (JUDGE CAPUTO)

PLAINTIFFS' RESPONSE IN OPPOSITION TO LUZERNE COUNTY'S MOTION TO DISMISS ALL CLAIMS AGAINST IT BY ALL PLAINTIFFS

Although the Court has evaluated Plaintiffs' claims against Luzerne County ("Luzerne" or "the County") on three prior occasions, the Court "has never had before it the question of whether to dismiss Luzerne County from this action entirely." (*See* Doc. No. 446.) On April 1, 2010, Luzerne filed a motion to dismiss, in their entirety, the claims against it in the Master Complaint for Class Actions (the "Class Complaint," Doc. No. 136) and the Individual Plaintiffs' Master Long Form Complaint (the "Individual Complaint," Doc. No. 134). (*See* Doc. No. 450.) Because this Court is not currently bound by its prior decisions in the context of denying Plaintiffs' motions for leave to amend their claims against Luzerne, and for the other reasons set out below, Luzerne's instant motion to dismiss should be denied in its entirety.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On June 25, 2009, Class Plaintiffs filed the Class Complaint, consolidating the factual allegations and claims in Nos. 09-0291 and 09-0357 (s*ee* Doc. No. 136), and Individual Plaintiffs filed the Individual Complaint, consolidating the factual allegations and claims in Nos. 09-0286 and 09-0630 (*see* Doc. No. 134).

The Class Complaint includes, in Count VIII, a claim against Luzerne County (the "County" or "Luzerne") for violation of Class Plaintiffs' Fifth, Sixth, and Fourteenth Amendment rights to counsel and to enter a knowing, intelligent, and voluntary guilty plea. (CAC ¶¶ 778-768.) Class Plaintiffs allege that "[f]rom 2003 through 2008, county actors with responsibility for ensuring the lawful and constitutional operation of the Luzerne County juvenile court – including, but not limited to, the Luzerne County District Attorney and the Luzerne County Public Defender – were routinely non-compliant with controlling United States Supreme Court case law, Pennsylvania statutory law, and Pennsylvania court rules regarding plaintiffs' due process rights." (CAC ¶ 783.)

The Individual Complaint includes, in Count VI, a claim against Luzerne for violation of Individual Plaintiffs' substantive and procedural due process rights based on policies and customs promulgated by judges of the Court of Common Pleas and county probation officers that, similarly, were non-compliant with controlling United States Supreme Court case law, Pennsylvania statutory law, and

Pennsylvania court rules. (IC ¶¶ 140-55.) Individual Plaintiffs also allege that Defendant Michael Conahan was a person with final authority for Luzerne, regarding taking official action with respect to the funding of the Luzerne County Juvenile Detention Facility. Therefore, these actions represent the "policy" of Luzerne and Luzerne is liable under 42 U.S.C. § 1983 for these actions. Further, Defendant Conahan took these actions as part of a larger conspiracy to violate all Plaintiffs' constitutional rights. (*See* IC ¶¶ 143-44.)

On July 27, 2009, Luzerne filed a motion to dismiss all claims against it on immunity grounds derivative of the immunity accorded to the individual County actors identified in the Complaints. (*See* Doc. No. 218.) On November 20, 2009, the Court denied Luzerne's motion, concluding that "Luzerne County is . . . not protected by any of the aforementioned immunity doctrines" applicable to the individual County actors. (Doc. No. 336, at 24.)

Meanwhile, on August 27, 2009, Plaintiffs filed their first motions for leave to amend the Individual and Class Complaints. (*See* Doc. No. 249, 250.) Among other things, Plaintiffs' proposed amendments clarified their claims that Luzerne County had violated 42 U.S.C. § 1983, pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), because, as a matter of custom, practice, and policy, final County decision-makers acted with deliberate indifference to the constitutional rights of Plaintiffs. The proposed amendments did not add

additional counts against Luzerne.

On November 20, 2009, the same day it denied Luzerne's motion to dismiss on immunity grounds, the Court denied Plaintiffs' motions for leave to amend, using the standard applicable to motions to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. No. 335.) The Court held that (1) "for the specific conduct alleged the district attorney was a state, not county, official," (2) "the only final policy-maker for Luzerne County [of the policy-makers identified in the proposed amended complaints] was the Luzerne County Commissioners," and (3) "the alleged conduct of the commissioners fails to state a claim for liability under § 1983." (*Id.* at 22-23, 31.)

On December 17, 2009, based on new evidence regarding the district attorney's failure to train and supervise the assistant district attorneys appearing in juvenile court, Class Plaintiffs filed a second motion for leave amend the Class Complaint to add a claim against Luzerne County for violation of 42 U.S.C. § 1983 on the basis of the district attorney's failure to adequately train and supervise. (*See* Doc. 375.) On March 1, 2010, the Court denied Class Plaintiffs' second motion to amend, again employing the Rule 12(b)(6) standard, finding that "the Luzerne County District Attorney acted as a state official in training subordinate assistant district attorneys." (Doc. No. 411, at 12.)

As a result of the denial of Luzerne's motion to dismiss on immunity

grounds and the denial of Plaintiffs motions for leave to amend the Complaints, the original master Complaints remain operative and are the subject of Luzerne's instant motion to dismiss.

II. ARGUMENT

A. LEGAL STANDARD

In reviewing a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a district court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008). The notice pleading standard of Federal Rule of Civil Procedure 8(a)(2) – which governs all of Plaintiffs' allegations against Luzerne County – does not require "detailed factual allegations." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It requires only that a plaintiff plead sufficient facts to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Id.* (citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

A court may not dismiss a complaint merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits. *Phillips*, 515 F.3d at 231 (citing *Twombly*, 550 U.S. at 556). The pleading standard requires only that the complaint "state a claim to relief that is plausible on its face."

Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 570). The court must deny a motion to dismiss "'if, in view of what is alleged, it can reasonably be conceived that the plaintiffs . . . could, upon a trial, establish a case which would entitle them to . . . relief.'" *Phillips*, 515 F.3d at 233 (quoting *Twombly*, 550 U.S. at 563 n.8).

In deciding motions to dismiss, a court may consider the allegations in the complaint, exhibits attached to the complaint, matters of public record, and other documents that form the basis of a claim. *Lum v. Bank of Am.*, 361 F.3d 217, 221 n.3 (3d Cir. 2004); *see also Watterson v. Page*, 987 F.2d 1, 3-4 (1st Cir. 1993) (affirming the district court's consideration of "certain facts set out in public documents plaintiffs attached to an opposition they filed to the motion to dismiss" and treating those documents as part of the pleadings).

B. The Law Of The Case Doctrine Does Not Absolutely Bar Reconsideration Of Issues Previously Addressed By This Court

Luzerne describes the "law of the case" doctrine as absolute, prohibiting the Court from reassessing Plaintiffs' claims against it. (*See* Doc. No. 451, at 8-9.) However, while the doctrine "posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case," *Christianson v. Colt Indus. Operating Co.*, 486 U.S. 800, 816 (1988) (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)), the doctrine is discretionary and flexible. It "does not restrict a court's power but rather governs

its exercise of discretion." *Pub. Interest Research Group of NJ, Inc. v. Magnesium Elektron*, 123 F.3d 111, 116 (3d Cir. 1997); *see also Christianson*, 486 U.S. at 817. While a court should exercise that discretion judiciously, "[a] court has the power to revisit prior decisions of its own . . . in any circumstance.'" *Christianson*, 486 U.S. at 817 (quoting *Arizona*, 460 U.S. at 618 n.8). In particular, the doctrine does not prevent a court from "clarifying or correcting an earlier, ambiguous ruling" or from "reconsider[ing] an issue . . . whenever it appears that a previous ruling, even if unambiguous, might lead to an unjust result." *In re Pharmacy Benefit Managers Antitrust Litig.*, 582 F.3d 432, 439 (3d Cir. 2009) (quoting *Swietlowich v. County of Bucks*, 610 F.2d 1157, 1164 (3d Cir.1979)). Accordingly, there is no bar to a reexamination of issues the Court previously decided in the context of Plaintiffs' response to Luzerne County's first motion to dismiss on immunity grounds, Plaintiffs' first motion for leave to amend, or Class Plaintiffs' second motion for leave to amend.

C. Plaintiffs Incorporate By Reference Their Arguments That They Adequately Allege A Section 1983 Claim Against Luzerne

In prior briefs, Plaintiffs have addressed Luzerne's arguments that Plaintiffs fail to state a claim against the County. Plaintiffs therefore incorporate by reference their arguments that they have sufficiently alleged a § 1983 claim against Luzerne, as discussed in the following: Plaintiffs' Reply Brief in Support of Motion for Leave to Amend Individual Plaintiffs' Master Long Form Complaint

(Doc. No. 310); Plaintiffs' Reply Brief in Support of Motion for Leave to Amend Master Complaint for Class Actions (Doc. No. 311); Class Plaintiffs' Brief in Support of Their Second Motion for Leave to Amend the Master Complaint for Class Actions (Doc. No. 383); and Class Plaintiffs' Reply Brief in Support of Their Second Motion for Leave to Amend the Master Complaint for Class Actions (Doc. No. 408).[1]

Specifically, Plaintiffs incorporate by reference their arguments that:

- The Court of Common Pleas judges acted as final policy-makers for the County (Doc. 310, at 10-20);
- Probation officers acted as final policy-makers for the County (Doc. No. 310, at 10-18);
- The district attorneys acted as final policy-makers for the County (Doc. Nos. 311, at 19-27; 383, at 13-21; and 408, at 2-12);
- The public defenders acted as final policy-makers for the County (Doc. No. 311, at 27-30);
- Plaintiffs sufficiently allege customs and/or policies pursuant to *Monell* (Doc. Nos. 310, at 10-18; 311, at 7-13; 408, at 10-21);

[1] At the April 21, 2010 Case Management Conference, the Court granted Plaintiffs' request to incorporate arguments by reference in responding to Defendants' motions to dismiss.

- Plaintiffs sufficiently allege that County officials' failure to train or supervise amounted to deliberate indifference to Plaintiffs' rights (Doc. Nos. 383, at 16-21; 408, at 2-21);
- Plaintiffs sufficiently allege a causal connection between the County's customs and policies (including their failure to train or supervise) and Plaintiffs' injuries (Doc. Nos. 310, at 22; 311, at 14-18; 408, at 12-21); and
- A county is not immune from liability on the basis that the policy-maker would be immune if sued in his individual capacity (Doc. Nos. 310, at 21-22; 311, at 26 n.16; 408, at 4-5).

With respect to Luzerne's new argument that Plaintiffs fail to plead the elements of a malicious prosecution claim, Plaintiffs incorporate their arguments in Part II.C of Plaintiffs' May 10, 2010 Brief in Opposition to the Motions to Dismiss of Defendants Barbara Conahan; Cindy Ciavarella; Robert J. Powell; Vision Holdings, LLC; Mid-Atlantic Youth Services Corp.; PA Child Care, LLC; Western PA Child Care LLC; Robert K. Mericle; and Mericle Construction, Inc.

Finally, Luzerne argues that Plaintiffs have not sufficiently alleged facts sufficient to sustain a § 1983 conspiracy claim or retaliation claim against Luzerne. Because Plaintiffs have not alleged conspiracy or retaliation claims against Luzerne County, Plaintiffs need not address those arguments.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Luzerne's Motion to Dismiss in its entirety. A proposed order is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Daniel Segal, hereby certify that, on this 10th day of May, 2010, the foregoing Response in Opposition Luzerne County's Motion to Dismiss All Claims Against It by All Plaintiffs was filed and made available via CM/ECF to all counsel of record. Additionally, the foregoing response was served by First Class mail upon the following:

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