UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

M. PETER KUCK, individually and on behalf of others similarly situated,	:	
Plaintiffs,	:	**CASE NO.: 3:07-cv-1390(VLB)**
v.	:	
JOHN A. DANAHER, III, COMMISSIONER, CONNECTICUT DEPARTMENT OF PUBLIC SAFETY, in his official and individual capacities, ALBERT J. MASEK, JR., COMMANDING OFFICER, CONNECTICUT DEPARTMENT OF PUBLIC SAFETY, in his official and individual capacities,	:	
Defendants.	:	**AUGUST 4, 2008**

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION OF DECISION DENYING PLAINTIFF'S MOTIONS TO AMEND AND FOR JOINDER AND GRANTING DEFENDANTS' MOTION TO DISMISS

Plaintiff M. Peter Kuck, individually and on behalf of others similarly situated, hereby moves, pursuant to Rule 7(c)(1)[1] of the Local Civil Rules for the District of Connecticut, for reconsideration of the Court's Memorandum of Decision Denying Plaintiff's Motions to Amend and for Joinder and Granting Defendant's Motion to Dismiss ("Decision and Order") dated July 25, 2008. (doc. # 33.)

Plaintiff respectfully asks that the Court reconsider eight of its findings of facts and conclusions and the standards used in determining Defendants' Motion to Dismiss (doc. # 13) and Plaintiff's Notice of Amended Complaint, or Alternately,

[1] **Local Civil Rule 7(c)(1) provides: "Motions for reconsideration shall be filed and served within ten (10) days of the filing of the decision or order from which such relief is sought, and shall be accompanied by a memorandum setting forth concisely the matters or controlling decisions which counsel believes the Court overlooked in the initial decision or order."**

Request for Leave of Court to File Amended Complaint and Motion to Supplement Complaint (doc. # 19) dated January 22, 2008, and Motion for Joinder of Party Defendants (doc. # 20) dated January 22, 2008.

In addition, since the filing of the Complaint and Plaintiff's foregoing motions to amend, supplement, and join, the United States Supreme Court has decided the matter of District of Columbia v. Heller, 128 S.Ct. 2783 (2008), holding that the "Second Amendment right to keep and bear arms is exercised individually and belongs to all Americans." Id at 2791. This decision of the United States Supreme Court, in particular, affects the balance of interests under Mathews v. Eldridge in the Court's determination of the adequacy of the procedural due process afforded Plaintiff. See subsection III(A)(4), below.

I. BACKGROUND SUMMARY

Plaintiff filed a Complaint in three counts on September 17, 2007. (doc. # 1.) Defendants moved for dismissal on November 30, 2007. (doc. # 13.) Plaintiff responded by memorandum opposing Defendants' Motion to Dismiss on January 22, 2008. (doc. # 18.) Plaintiff requested leave to file an amended complaint supplementing the Complaint with new allegations of fact acquired after September 17, 2007, through responses to Freedom of Information Act requests for email communications transmitted to and from the Board of Firearms Permit Examiners (BFPE) email accounts. (doc. # 19.) Defendants filed a memorandum opposing Plaintiff's Motion for Joinder and Request for Leave to Amend on March 3, 2008. (doc. # 26.) Plaintiff filed a Reply Brief on April 3, 2008. (doc. # 32.) The Court issued its Memorandum of Decision Denying Plaintiff's Motions to Amend

and for Joinder and Granting Defendant's Motion to Dismiss ("Decision and Order") dated July 25, 2008. (doc. # 33.)

II. LEGAL STANDARD

Plaintiff's Complaint "need only satisfy Rule 8(a)'s standard of a 'short and plain statement of the claim showing that [she] is entitled to relief.'" Boykin v. KeyCorp, 521 F.3d 202, 213 (2d Cir. 2008) (bracketed language in original) (quoting Fed. R. Civ. P. 8(a)(2)). In Boykin, the Second Circuit discussed the Supreme Court's decision in Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007), as the "source of some uncertainty" in applying the "appropriate standard for assessing the sufficiency of pleadings under Rule 8(a)." Boykin, 521 F.3d at 213. See also Iqbal v. Hasty, 490 F.3d 143, 155 (2d Cir. 2007). The Boykin panel, stating its agreement with the Second Circuit panel deciding Iqbal, concluded that Twombly is "not requiring a universal standard of heightened fact pleading, but is instead requiring a flexible 'plausibility standard,' which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim *plausible*." Boykin, 521 F.3d at 213 (emphasis in original) (quoting Iqbal, 490 F.3d at 157-58); see also Van Dorsten v. Provident Life and Acc. Ins. Co., 554 F.Supp.2d 285, 287 (D.Conn. 2008) (After citing its previous decisions regarding Rule 12(b)(6) and the defendant's reliance on Twombly in moving to dismiss, the court resolved: "Nevertheless, the Second Circuit concluded that "[a]fter careful consideration of the [Supreme] Court's opinion and the conflicting signals from it that we have identified, we believe that the Court is not requiring a universal standard of heightened fact pleading....")

(quoting Iqbal, 490 F.3d at 157).

In deciding a motion to dismiss for failure to state a claim under Rule 12(b)(6), the court "'construe[s] the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor.'" Goldstein v. Pataki, 516 F.3d 50, 56 (2d Cir. 2008) (bracketed language not in original) (quoting Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002)). The court "accept[s] the facts alleged in the amended complaint as true." Spool v. World Child Intern. Adoption Agency, 520 F.3d 178, 180 (2d Cir. 2008) (bracketed language not in original) (citing GICC Capital Corp. v. Tech. Fin. Corp., 67 F.3d 463, 465 (2d Cir.1995)).[2]

III. ARGUMENTS OF LAW

A. The Court's Decision and Order Does Not Accept the Alleged Facts as True

In its Decision and Order, the Court disregards facts alleged in the Complaint and Amended Complaint, relies on facts not contained in the record, and then uses the facts not contained in the record to support its order of dismissal.

1. Decision And Order Finding No. 1 Not Alleged By Plaintiff

"When Kuck applied for renewal in 2007, the public safety department's licensing unit requested that he provide his birth certificate, United States passport, or voter registration card because pistol permits cannot be issued to illegal aliens pursuant to Conn. Gen. Stat. § 29-36f(b)(9)." (Decision and Order at 2) (doc. # 33.)

[2] See Decision and Order at 1-2 (doc. # 33) ("Pursuant to Fed. R. Civ. P. 12(b)(6), the defendants move to dismiss on the ground of failure to state claims upon which relief can be granted.").

First, Plaintiff does not allege that he applied for an "eligibility certificate" so General Statutes § 29-36f(b)(9), cited by the Court, is inapplicable.[3]

Second, Plaintiff alleges that the Connecticut State Department of Public Safety ("public safety department") demanded that he provide a United States passport or birth certificate.[4] Plaintiff does not allege that the public safety

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[3] The Court's Decision and Order references a statute applicable to "eligibility certificates." Conn. Gen. Stat. § 29-36f(b)(9). Plaintiff does not allege that he sought an eligibility certificate so General Statutes § 29-36f(b)(9) is inapplicable to the Complaint and the Amended Complaint. Plaintiff does allege that he sought to renew his state permit. Plaintiff's Reply Brief discusses the applicable statutes as follows: "Section § 29-28(b) of the Connecticut General Statutes lists ten grounds for denial of an application for a state permit or temporary state permit. Section 29-32b(b) incorporates these ten grounds listed in section 29-28(b) as grounds for denial of an application to renew a state permit. State law mandates that the DPS Commissioner 'investigate each applicant for renewal of a state permit to ensure that such applicant is eligible under state law for such permit or for renewal of such permit.' Conn. Gen. Stat. § 29-29(d). The only ground relevant to the DPS Defendants' denial of Plaintiff's state permit renewal application is found at section 29-28(b)(9), which states: "No state or temporary state permit to carry a pistol or revolver shall be issued under this subsection if the applicant … (9) is an alien illegally or unlawfully in the United States." (Reply Brief at 3) (doc. # 32.)

[4] See Complaint at paragraphs: "27. The DPS demanded that Plaintiff submit a birth certificate or United States passport for renewal. 28. Plaintiff spoke with Sergeant Ronald Bastura ("Sgt. Bastura"), the Executive Officer of the SLFU, about the basis for demanding the submission of a birth certificate or United States passport as a condition for renewing a pistol permit. 33. The SLFU informed the Board in 2005 that the SFLU had requested United States passports since September 11, 2001, but that no one would be denied renewal if a United States passport was not produced." (emphasis added.). See Amended Complaint at paragraphs: "32. The Department demanded that Plaintiff submit a birth certificate or United States passport for renewal. 33. Plaintiff discussed with Sergeant Bastura, the SFLU Executive Officer of the SLFU, the Department's authority to demand the submission of a birth certificate or United States passport as a condition for renewing a state permit. 34. Sergeant Bastura told Plaintiff that since September 11, 2001, it was SFLU policy to demand a United States passport or birth certificate as a condition for renewing a state permit. 35. The submission of a United States passport or birth certificate was never a requirement for renewal of a state permit. … 37. The Department did not require that Plaintiff provide a birth certificate, United States passport, or voter registration card with any of his five (5) year state permit renewal applications until the renewal application submitted on or about March 19, 2007. 38. The Department does not require the submission of a birth certificate, United States passport, or voter registration card with every state permit renewal application. 39. In the February, 2006, session of the state General Assembly, language in Raised Bill No. 307 that would have imposed a requirement that a birth certificate, naturalization certificate or valid United States passport be required for citizens of the United States making application for a temporary state permit under General Statutes §§ 29-28 was rejected. 40. In a May 14, 2007, letter to Commissioner Danaher, Adams told Commissioner Danaher that General Statutes § 29-30 did not require the presentation of any one particular type of identification. 41. In his May, 14, 2007, letter to Commissioner Danaher, Adams asked Commissioner Danaher to reference a federal law or regulation that would require a particular type of identification as a condition for the renewal of a state permit. 42. Commissioner Danaher never responded to Adams' requests in the May 14, 2007, letter. 43. Sergeant Bastura knew on March 19, 2007, when he informed Plaintiff of the SFLU policy conditioning the renewal of a state permit upon the

department "requested" that he provide his birth certificate, United States passport, or voter registration card as stated in the Court's Decision and Order. (Decision and Order at 2) (doc. # 33.)

Third, Plaintiff does not allege that the public safety department demanded his birth certificate or United States passport for the reason, as stated by the Court's Decision and Order, "because pistol permits cannot be issued to illegal aliens pursuant to Conn. Gen. Stat. §§ 36f(b)(9)." (Decision and Order at 2) (doc. # 33.) Plaintiff alleges the opposite for the reasons stated in his Reply Brief.[5] See

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submission of a United States passport or birth certificate that the policy violated the law. (emphasis added.) … 45. On April 17, 2007, Plaintiff requested information from Captain Masek about the SFLU's denial of Plaintiff's state permit renewal. 46. Captain Masek responded to Plaintiff that the Department sent Plaintiff a renewal form and instructions pursuant to General Statutes § 29-30(f) and that Plaintiff had failed to provide the documentation required for renewal. 47. Captain Masek instructed Plaintiff by letter dated April 26, 2007: "Enclosed please find another copy of the instruction sheet, which states the documentation that DPS will accept for establishing one's United States citizenship or legal residency. For establishing citizenship, we require the submission of a birth certificate, United States passport or voter registration card." 48. The Department, acting through its Legal Affairs Section, and Captain Masek, has failed to provide Plaintiff any basis in law for the Department demand that Plaintiff provide a birth certificate, United States passport, or voter registration card as a condition for renewal of a pistol permit pursuant to General Statutes § 29-30. 49. In June, 2005, the Board, upon receipt of a letter from YCGG questioning the SFLU's lawful basis for demanding United States passports as a condition for renewal of a state permit, requested that the Department clarify the basis for the SFLU policy. 50. The YCGG informed the Board in its June, 2005, letter that the demand for United States passports was an arbitrary and possibly illegal change in state permit renewal requirements. 51. The SLFU informed the Board in 2005 that the SFLU had requested United States passports since September 11, 2001, but that no one would be denied renewal if a United States passport was not produced."

[5] See Reply Brief at 4 (doc. # 32) ("Our state statutes place the burden on the DPS Defendants to provide "just and proper cause" prior to denying a state permit renewal application on the ground that a person is an "alien illegally or unlawfully in the United States." Conn. Gen. Stat. §§ 29-29(b)(9), 29-32b(b). The law does not place the burden on a person to prove to the DPS Defendants that the person is not "an alien illegally or unlawfully in the United States." Despite the DPS Defendants' position that Plaintiff "simply has it wrong" on his "non-renewal," the distinction between placing the burden on the DPS Defendants and placing the burden on the Plaintiff is an important distinction that defines no less than the status and relationship of an individual to his or her government.

If the government may deny rights based upon a person's status as an "alien illegally or unlawfully in the United States" and the government enforces this mandate to deny rights unless a person proves that he or she is not "an alien illegally or unlawfully in the United States," then rather than needing cause to deny a person his or her rights, the government may deny rights based on a person's refusal to prove that he or she has certain rights. The DPS Defendants, seek, invidiously, to place the burden on a person of proving that he or she is not "an alien illegally or

Conn. Gen. Stat. § 29-28(b). If the legislature had intended that renewal of a state permit be conditioned upon the presentation of a birth certificate, United States passport, or voter registration card then the legislature would have passed this requirement into law. Not only is the presentation of a birth certificate, United States passport, or voter registration card not mandated by law, the requirement has been rejected by the state legislature.[6]

The finding by the Court that the public safety department "requested" a birth certificate, United States passport, or voter registration card from the Plaintiff because a pistol permit cannot be issued to an illegal alien is contradicted by the allegations in the Amended Complaint that the public safety department did not "request" or demand a United States passport or birth certificate from every applicant for renewal and that the BFPE chairman did not find that it was a requirement under the law.[7] The issue then is what "just cause"

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unlawfully in the United States" rather than accepting its legislatively mandated burden of needing "just and proper cause" to deny a state permit on the ground that a person is "an alien illegally and unlawfully in the United States." If September 11, 2001, or various Homeland Security Acts necessitate a shift in this burden, our democratic-based government still requires that the shift occur as a result of the legislative process not as a product of law enforcement edict.").

[6] See Amended Complaint at ¶ 39: "In the February, 2006, session of the state General Assembly, language in Raised Bill No. 307 that would have imposed a requirement that a birth certificate, naturalization certificate or valid United States passport be required for citizens of the United States making application for a temporary state permit under General Statutes §§ 29-28 was rejected." (emphasis added.)

[7] See Complaint at paragraph 33: "The SLFU informed the Board in 2005 that the SFLU had requested United States passports since September 11, 2001, but that no one would be denied renewal if a United States passport was not produced." See Amended Complaint at paragraphs: "38. The Department does not require the submission of a birth certificate, United States passport, or voter registration card with every state permit renewal application. 39. In the February, 2006, session of the state General Assembly, language in Raised Bill No. 307 that would have imposed a requirement that a birth certificate, naturalization certificate or valid United States passport be required for citizens of the United States making application for a temporary state permit under General Statutes §§ 29-28 was rejected. 40. In a May 14, 2007, letter to Commissioner Danaher, Adams told Commissioner Danaher that General Statutes § 29-30 did not require the presentation of any one particular type of identification.51. The SLFU informed the Board in 2005 that the SFLU had requested United States passports since September 11, 2001, but that no one would be denied renewal if a United States passport was not produced." (emphasis added).

the public safety department had to find that Plaintiff was an illegal alien. Plaintiff alleges that he is a United States citizen.[8] The Defendants had no "just cause" to find that Plaintiff is an illegal alien.[9] An inference favorable to Plaintiff is that the denial of a state permit for no "just cause" is suspect and unlawful. The unlawful denial of a property or liberty interest is a substantive due process violation. The lack of an opportunity for timely hearing is a procedural due process violation. The arbitrary imposition of a requirement, in consideration of the exercise of free speech alleged in the Complaint and Amended Complaint by the Plaintiff is a violation of the First Amendment.

2. Decision And Order Finding No. 2 Not Alleged By Plaintiff

"He [Plaintiff] declined to provide any of the requested documents in 2007, asserting that the request was unconstitutional." (Decision and Order at 2-3) (doc. # 33.)

Plaintiff never asserted to the DPS Defendants that their demand was unconstitutional. See Complaint at ¶¶ 1-96 and Amended Complaint at ¶¶ 1-247. Plaintiff requested information about the demand that he provide a birth certificate or United States passport. When Plaintiff was not provided any basis in law for the demand, he declined to submit the United State passport or birth certificate. In filing his Complaint, Plaintiff alleged that he was denied an opportunity to be heard at a meaningful time and in a meaningful manner on the issue of whether his declination to submit a United States passport or birth

[8] See Complaint at ¶ 6 and Amended Complaint at ¶ 5.

[9] For example, (1) Plaintiff was required to submit his birth certificate in 1982 as proof of United States citizenship. The DPS Defendants had no "just cause" to find that Plaintiff's citizenship had been revoked since 1982. (2) Plaintiff's valid state pistol permit was proof of United States citizenship. (3) State law does not permit the Governor to appoint an illegal alien to the BFPE.

certificate provided just cause for the Defendants to find that he was an illegal alien. See Complaint and Amended Complaint at Count One. Plaintiff alleged that the arbitrary requirements for renewal of state permits and the fourteen (14) to twenty (20) month period for opportunity to be heard constituted a denial of substantive due process. See Complaint and Amended Complaint at Count Two. Plaintiff alleged that the imposition of the requirement that he submit a birth certificate or United States passport, because it was contrary to the law and not imposed upon everyone and because the Defendants knew that Plaintiff would wait a substantial period for review, was in retaliation for the exercise of his First Amendment rights. See Complaint and Amended Complaint at Count Three.

The Plaintiff never alleged that the licensing unit's demand that he provide a United States passport or birth certificate was unconstitutional because, first, it is not a law, policy, or practice, set forth in writing. Plaintiff does allege that the Defendants' arbitrary use of such requirements not contained in the law, without opportunity for timely opportunity to be heard on the imposition of such requirements, is a violation of the Due Process Clause of the Fifth and Fourteenth Amendments.

3. Decision And Order Finding No. 3 Not Alleged By Plaintiff

"Consequently, in April 2007, the licensing unit declined to renew Kuck's permit." (Decision and Order at 3) (doc. # 33.)

The Decision and Order links two sentences together as follows:

- **He [Plaintiff] declined to provide any of the requested documents in 2007, asserting that the request was unconstitutional. (Decision and Order at 2-3) (doc. # 33.)**

- **Consequently, in April 2007, the licensing unit declined to renew Kuck's permit. (Decision and Order at 3) (doc. # 33.)**

Plaintiff does not allege that the submission of a birth certificate or United States passport was a requirement for state pistol permit renewal. Plaintiff alleges that the state legislature had rejected such a requirement. Therefore, Plaintiff cannot have alleged nor is it plausible to find that Plaintiff alleged that the licensing unit's decision to decline to renew Plaintiff's state permit was based on Plaintiff's declination to submit the documents. The law does not support this inference. The law states that the licensing unit may decline to renew if it finds that an applicant is an illegal alien. Conn. Gen. Stat. § 29-28(b). The law does not state that the licensing unit may decline to renew if someone fails to prove that they are not an illegal alien. See Amended Complaint at ¶ 39 ("In the February, 2006, session of the state General Assembly, language in Raised Bill No. 307 that would have imposed a requirement that a birth certificate, naturalization certificate or valid United States passport be required for citizens of the United States making application for a temporary state permit under General Statutes §§ 29-28 was rejected." (emphasis added.)

4. Decision And Order Finding No. 4 Not Alleged By Plaintiff

"Because parties commonly endure significant delays in securing administrative and judicial review, the Court cannot conclude that a nineteen-month wait for a hearing is so inadequate as to make the availability of review by the firearms board 'meaningless and nonexistent.'" (Decision and Order at 5-6) (quoting Gyadu v. Workers' Compensation Com'n, 129 F.3d 113, 1997 WL 716128 at * 2) (doc. # 33.)

The standard on a motion to dismiss is not whether the Court can conclude that the Plaintiff's allegations of fact are true or that inferences drawn from those

allegations in support of the claims have been proven; the standard demands that the Court "'construe the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor.'" Goldstein v. Pataki, 516 F.3d at 56 (bracketed language added) (quoting Chambers v. Time Warner, Inc., 282 F.3d at 152). The relevant finding is whether it is plausible, accepting all factual allegations of the Complaint and Amended Complaint as true and drawing all reasonable inferences in the Plaintiff's favor, that a minimum nineteen (19) month wait period is inadequate due process. In finding that it cannot conclude that the availability of review is inadequate, the Court implies that it cannot find that the availability of review is adequate. Otherwise the finding would have been that the wait period provides adequate opportunity for review. Unless the Court finds that the availability of the review period is adequate, then the procedural due process claim cannot be dismissed.

In consideration of the recent United States Supreme Court decision in District of Columbia v. Heller, 128 S.Ct. 2783, 2799 (2008), and in consideration of the fact that there has been no discovery or findings regarding the three Mathews v. Eldridge, 424 U.S. 319, 335 (1976), factors, the record does not support a conclusion that the availability of review by the Board is adequate. "Due process is inevitably a fact-intensive inquiry." Krimstock v. Kelly, 306 F.3d 40, 51 (2d Cir. 2002) (citing Connecticut v. Doehr, 501 U.S. 1, 10 (1991) ("[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances."). "The "'timing and nature of the required hearing will depend on appropriate accommodation of the competing interests

involved.'" Id (quoting Logan v. Zimmerman Brush Co., 455 U.S. 422, 434 (1982)).

Whether a nineteen (19) to twenty-two (22) month delay is warranted is dependent on the facts and the law. An important federal constitutional right is implicated in the right to keep and bear arms under the Second Amendment to the United States Constitution. District of Columbia v. Heller, 128 S.Ct. 2783, 2799 (2008).[10] The Complaint and Amended Complaint plausibly allege that a delay of fourteen (14) to twenty-months (22) is not an adequate opportunity for hearing of state or federal constitutional claims.

In Mathews v. Eldridge, 424 U.S. 319, 335 (1976) the Supreme Court stated:

> **[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.**

In discussing the enumerated constitutional right under the Second Amendment to keep and bear arms and rejecting the "interest-balancing" approach of Justice Breyer's dissent in Heller, Justice Scalia writes: "We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding 'interest-balancing' approach." Heller, 128 S.Ct. at

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[10] The United States Supreme Court held on June 26, 2008, in the case of District of Columbia v. Heller, 128 S.Ct. 2783, 2799 (2008), that "the Second Amendment conferred an individual right to keep and bear arms." The "Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." Id at 2797. "'[T]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence.'" Id (quoting United States v. Cruikshank, 92 U.S. 542 (553 (1876)). "The Second Amendment declares that it shall not be infringed ...." Id at 2798.

2821. "Like the First [Amendment], [the Second Amendment] is the very *product* of an interest-balancing by the people-which Justice Breyer would now conduct for them anew. And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." Id. Since filing the Complaint and Amended Complaint, not only has it become plausible that the nineteen (19) to twenty-two (22) month wait period for review fails to provide adequate procedural due process guarantees to review, but it is plausible that no post-deprivation hearing in the context of denials, revocations, and non-renewals of state pistol permits meets the due process right to a meaningful opportunity to be heard.[11]

In Connecticut, a motor vehicle operator arrested for driving under the influence of alcohol or drugs is afforded a pre-deprivation hearing prior to the suspension of his motor vehicle license with limited exceptions. Conn. Gen. Stat. § 14-227b.[12] The operator receives a notice that his license will be suspended in

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[11] If and when pre-deprivation hearings are required prior to the denial, revocation, or non-renewal of state pistol permits, it is reasonable to assume that the state will not schedule pre-deprivation hearings fourteen (14) to twenty-two (22) months in the future. The Connecticut Department of Motor Vehicles, despite the numerous arrests for operating under the influence and the important state interests in keeping impaired drivers off the road so that they and others are not killed in motor vehicle accidents, manages to schedule pre-deprivation hearings within the thirty-day period prior to the suspension date. The consequence of not scheduling a due process hearing for a motor vehicle operator is that the operator maintains his or her license. When a due process hearing occurs post-deprivation, as when a state permit is denied, revoked, or not renewed, then the state's interest results in a prolonged wait period for an opportunity to be heard. The greater the private interest, the greater that arises from the prolonged wait. According to the United States Supreme Court, there is no greater interest in the United States than the right to keep and bear arms. It is an intrinsic right that precedes the written word of the Constitution. The right to operate a motor vehicle is not an intrinsic right and still motor vehicle operators in Connecticut are afforded more due process than state pistol permit holders.

[12] The due process afforded a motor vehicle is exhaustive and detailed. Section 14-227b(e)(1) provides: "Except as provided in subdivision (2) of this subsection, upon receipt of such report, the Commissioner of Motor Vehicles may suspend any license or nonresident operating privilege of such person effective as of a date certain, which date shall be not later than thirty days after the date such person received notice of such person's arrest by the police officer. Any person whose license or operating privilege has been suspended in accordance with this subdivision shall

thirty days and is afforded seven days to contact the motor vehicle department to schedule a hearing. The hearing is held prior to the expiration of the thirty day period scheduled for suspension and a decision rendered. Id. In consideration of Heller, the revocation of a pistol permit is due no less process. See Fishbein v. Kozlowski, 252 Conn. 38, 50 (1999) ("Our narrow reading of the probable cause requirement in subsection (f) is fully consistent with the requirements of due process. We are persuaded that the statute's probable cause requirement, coupled with its provision for an administrative hearing, affords a driver all the constitutional protection to which he is entitled. Due process requires that '[a] state must afford notice and opportunity for hearing appropriate to the nature of the case before the [license suspension] becomes effective.") (Internal quotation marks omitted) (citing Hickey v. Commissioner of Motor Vehicles, 170 Conn. 136, 144 (1976)).

5. Decision And Order Finding No. 5 Not Alleged By Plaintiff

"Kuck has not alleged any facts that rise to the high level needed to maintain a substantive due process claim. The government action, namely, the licensing unit's denial of Kuck's renewal permit application, on the basis of Kuck's refusal to provide documentation of his citizenship, was not egregious, outrageous, or shocking to the contemporary conscience." (Decision and Order at 6) (doc # 33.)

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automatically be entitled to a hearing before the commissioner to be held prior to the effective date of the suspension. The commissioner shall send a suspension notice to such person informing such person that such person's operator's license or nonresident operating privilege is suspended as of a date certain and that such person is entitled to a hearing prior to the effective date of the suspension and may schedule such hearing by contacting the Department of Motor Vehicles not later than seven days after the date of mailing of such suspension notice." (emphasis added.) The state interest is ensuring that intoxicated motor vehicle operators do not drive and injure or kill others on the roadway. Still, a pre-deprivation hearing is afforded.

Plaintiff alleges facts in addition to the licensing unit's denial of his renewal to support his substantive due process claims.[13] In his Amended Complaint, filed after he obtained emails through Freedom of Information Act requests, Plaintiff alleges egregious conduct on the part of the Defendants trampling the intrinsic property and liberty rights of the Plaintiff to defend himself and to keep and bear arms under the Second Amendment to the United States Constitution and our state constitution.[14] In Natale v. Town of Ridgefield, 170 F.3d 258, 259 (2d Cir.

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[13] For the reasons stated under subsection 3, above, entitled "Decision And Order Finding No. 3 Not Alleged By Plaintiff," Plaintiff states that the exclusive causative connection found by the Court between Plaintiff's refusal to provide the demanded documents and the non-renewal of his state pistol permit are not alleged in the Complaint.

[14] The Amended Complaint alleges in paragraphs: "66. In appointing Adams to a term coterminous with her own term, Governor Rell divested the Board of its regulatory mandate to hold a biennial election for the Chairperson. 67. Adams called for an election in October, 2007, only after Plaintiff's Complaint in the instant action was filed. … 71. The Board Secretary is responsible for all secretarial duties defined in sections 29-32b-5 through 29-32b-15 of the Regulations, including: a. Accepting appeals to the Board. b.Conducting a thorough inquiry of the facts of the appeal. When the Secretary determines that the information obtained relative to the appeal is sufficient to permit the conduct of a fair and impartial hearing, the Secretary shall set a date for a hearing and give reasonable notice of the time and place of the hearing to the appellant and to the issuing authority. c. Determining the manner in which a verbatim transcript of each hearing held before the Board is maintained. d. Compelling attendance at hearings by subpoena. e. Postponing, recessing, or rescheduling hearings at the Secretary's discretion when the Board is not in session. 74. State statutes and regulations provide flexibility and discretion to the Board Secretary so that state permits revoked without apparent just and proper cause may be scheduled forthwith for hearing. 76. The Board Secretary's authority to review the facts and schedule appeals operates as a check and balance and to prevent the Department's abuse of its authority to issue, revoke, or deny renewal of state permits. 77. In preventing the Plaintiff from performing his duties as Secretary, Adams and Mazzoccoli divested the Board of its oversight of the Department's exercise of its authority to issue, revoke, or deny renewal of state permits. … 106. In direct sabotage of the Secretary's regulatory functions and Plaintiff's request, Adams told Mazzoccoli on June 25, 2007, not to contact the Department about its response to the May 14, 2007, letter, stating: "I spoke to them [DPS] a couple of weeks ago and the commissioner's office is drafting a response. No offense to secretaries, but the fact that 'the Secretary wants to know' is irrelevant. He [Kuck] needs to be reminded that ALL he gets to do is keep track of minutes." 107. When Adams told Mazzoccoli that Plaintiff needed to be reminded that all he [Kuck] was authorized to do was to keep track of minutes, Adams, knowing that Board regulations existed and knowing that section 29-32b-3 of the Regulations placed responsibility on the Secretary for all secretarial duties defined in sections 29-32b-5 through 29-32b-15, sabotaged Plaintiff's efforts to decrease the backlog and exert civilian oversight on the revocation activities of the SFLU. … 112. In April, 2007, Adams and Mazzoccoli initiated contacts with Maryann Boord, Governor Rell's Director of Boards and Commissions in the Office of the Governor. 113. Previously, by letter dated January 25, 2007, Plaintiff, in response to an inquiry from Director Boord, indicated to Director Boord that he wished to continue his service on the Board. 114. Together, Adams and Mazzoccoli drafted a letter to the Office of the Governor to oppose and subvert Plaintiff's

reappointment to the Board. 115. Adams and Mazzoccoli tried to find out personal information about Plaintiff to present to the Governor's office as cause to not reappoint him. 116. Mazzoccoli and Adams investigated Plaintiff's YCGG participation which led Adams to congratulate Mazzoccoli for her "great sleuthing" to which Mazzoccoli responded that Adams should have seen what she [Mazzoccoli] found during the divorce. 117. The draft letter to the Governor's office represented that Adams had previously met with Department staff and a compromise was reached "to review double the amount of cases every other month, which as a result has reduced the backlog six (6) months." 118. The backlog was not in fact reduced by six (6) months at any time during the year 2007. 119. Mazzoccoli defended the Department against Plaintiff's efforts to reduce the backlog, writing to the Governor's office that the review of appeal cases is just small part of Department duties and the Department did not have the time or manpower to better address the issue. 120. Adams reviewed Mazzoccoli's draft letter to the Governor with approval and indicated he would look at it more closely and meet with Mazzoccoli. … 124. Mazzoccoli told Adams: "Our relationship with DPS has been further damaged and there are at least 3 local officers who are very angry with a remark made by Peter [Kuck]. Every officer in the room made an audible groan and one officer asked if he could have a copy of the transcript. I received a call from Maryann Boord at home and spoke with her this morning I told her about some of what Peter [Kuck] did yesterday." … 128. In July, 2007, Mazzoccoli and Adams continued to discuss preventing Plaintiff's reappointment to the Board with Director Boord's cooperation. 129. Adams reminded Mazzoccoli to remind Director Boord that time was of the essence because Plaintiff's appeal of the nonrenewal of his own state permit was coming up before the Board even though it was not scheduled for hearing until November 13, 2008. 130. On July 17, 2007, Mazzoccoli wrote to Adams that Plaintiff would never be removed because Director Boord was leaving her position in the Governor's office. 131. In July, 2007, Mazzoccoli reported to Adams that Detective Mattson and Detective Karanda attempted to meet with Director Boord at the Governor's office but Director Boord convinced the detectives that she had enough information and would send a letter to the YCGG requesting a list of three (3) names in nomination for Plaintiff's position on the Board as the YCGG representative. 132. Detective Mattson holds the express opinion that guns should not be possessed by persons not affiliated with law enforcement. … 137. Following Detective Mattson's and Detective Karanda's aborted meeting with Director Boord in July, 2007, Mazzoccoli told Adams that she wished "Maryann" [Director Boord] was not leaving her position in the Governor's office because Mazzoccoli did not believe that anything would "be done about Peter [Kuck] now that Maryann [Director Boord] is leaving." 183. In April, 2007, Mazzoccoli informed Adams that the number of hearings scheduled for the upcoming April, 2007, Board meeting numbered six (6). 184. Adams told Mazzoccoli that Plaintiff would "flip" when he learned that only six (6) appeals were scheduled for hearing and asked Mazzoccoli if the Department would add more appeals to the schedule. 185. Although it was too late for Mazzoccoli to send timely notices to appellants for April, 2007, hearings, she told Adams: "Too late to send hearing notices, but I can adjust the agenda to show cases resolved at the meeting instead of prior to the meeting. I can easily adjust 3 cases, 040-06, 073-06 and 278-05, that were just issued permits last week. Let me know and I will change the agenda and call Det. Mattson. I'm positive she won't mind." 186. Adams approved Mazzoccoli's plan by responding: "Yes, please do that since it'll be a more accurate reflection of what we've accomplished." 187. Adams then asked Mazzoccoli how the number of cases scheduled for hearing in April, 2007, had decreased from forty (40) to six (6) over the course of the prior few weeks. 188. One of the reasons for the decrease in the number of appeals scheduled for hearing in April, 2007, was that Mazzoccoli faxed the list of forty (40) appellants to Detective Mattson for review on March 8, 2007. 189. Detective Mattson left phone messages for Mazzoccoli on March 9, 2007, updating Mazzoccoli with the Department plans to resolve certain appeals by reinstatement, issuance, or barring the state permits. 190. State statutes and regulations provide no authority for Commissioner Danaher or his delegates to resolve appeals by reinstatement of state permits. 191. Following a conversation with Detective Mattson, Mazzoccoli told Adams that Detective Mattson refused to add three (3) more cases to the April, 2007, agenda. 192. Detective Mattson was concerned that Plaintiff would sense that she was not being truthful if she did as Mazzoccoli and Adams asked. 193. Adams and Mazzoccoli failed to convince Detective Mattson to falsify records and lie to the Board. 217. Without this oversight by the Board Secretary, the

1999), the Second Circuit reviewed an appeal from the Town of Ridgefield following a jury verdict in favor of the property-owner plaintiff who claimed in the trial court that "the action of local officials in denying him permits … deprived him of his constitutionally protectable right not to be deprived of his property without due process of law." The Second Circuit set aside the verdict:

> **We conclude that the verdict must be set aside because the jury was not instructed that liability could be established only upon a finding that the Natales were deprived of any property interest they might have had in the permits by conduct that violated the substantive standards of the Due Process Clause, *i.e.,* conduct that is so outrageously arbitrary as to constitute a gross abuse of governmental authority.**

A denial of substantive due process "is not established simply by proving that someone did not obtain what he or she is entitled to under state law." Natale, 170 F.3d at 262 (citing and quoting, *inter alia*, Pearson v. City of Grand Blanc, 961 F.2d 1211, 1221 (6th Cir. 1992) ("To prevail, a plaintiff must show that the state administrative agency has been guilty of arbitrary and capricious action in the strict sense, meaning that there is no rational basis for the ... decision.") (citation and internal quotation marks omitted). "Substantive due process standards are

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Department has been allowed to delay the return of state permits by up to twenty-two (22) months in cases in which the Department knows that a hearing before the Board will result in the restoration of a state permit. 218. The legislative intent that the Board oversee the revocation decisions of the SFLU is apparent in the absence of any authority granted to the SFLU to return revoked state permits without an order of the Board after review and hearing. 219. The SFLU's abuse of its authority to revoke state permits is apparent in the number of state permits returned without a Board hearing after a sixteen (16) to twenty-two (22) month hearing delay. … 220. By the time the Department settles cases on the day of hearing before the Board, the aggrieved person has been denied the pistol permit without evidence or basis in law for a sixteen (16) to twenty-two (22) month time period. 221. The Department's abuse of its statutory authority and intentional delay in preparing and submitting information to the Board for review have created a *de facto* state permit waiting and suspension period not contemplated under the law but used by the Department as a procedural mechanism to punish citizens for transgressing policies that the Department has implemented or supports but which have no bases in the law."

violated only by conduct that is so outrageously arbitrary as to constitute a gross abuse of governmental authority." Natale, 170 F.3d at 263 (citing and quoting, *inter alia*, Silverman v. Barry, 845 F.2d 1072, 1080 (D.C.Cir. 1988) ("Only a substantial infringement of state law prompted by personal or group animus, or a deliberate flouting of the law that trammels significant personal or property rights, qualifies for relief under § 1983.") (citation omitted).

The Plaintiff alleges in his Complaint at paragraph 74 and in his Amended Complaint at paragraph 132: "A member of the SLFU, Detective Barbara Mattson ("Det. Mattson"), has stated her opinion to Plaintiff that guns should not be possessed by persons not affiliated with law enforcement." The Complaint and the Amended Complaint allege "a substantial infringement of state law prompted by personal or group animus, or a deliberate flouting of the law that trammels significant personal or property rights … ." Silverman v. Barry, 845 F.2d at 1080. Plaintiff alleges that state and federal constitutional rights have been trammeled prompted by a personal animus against him as a member of a Ye Connecticut Gun Guild[15] and as an advocate of the right of the individual to keep and bear arms.

6. Decision and Order Finding No. 6

"He [Plaintiff] acknowledges that his application was denied for failure to provide documentation of his citizenship, a reason entirely distinct and unrelated to his exercise of free speech." (Decision and Order at 7) (doc. # 33.)

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[15] The Complaint alleges in ¶ 11 and the Amended Complaint alleges at ¶ 60: The stated purposes of Ye Connecticut Gun Guild, Inc. are (a) to establish and maintain in Connecticut a permanent organization for the promotion of friendship among, and for the mutual benefit of, persons interested in the collection, preservation, and use of arms and accessories and (2) to take a united stand in opposing legislation or regulation at any level of government which may be injurious to the collection, preservation, possession, or use of firearms by responsible collectors, shooters, sportsmen, and other firearms owners.

For the reasons stated under subsection 3, above, entitled "Decision And Order Finding No. 3 Not Alleged By Plaintiff," Plaintiff states that the causative connection found by the Court between Plaintiff's refusal to provide the demanded documents and the non-renewal of his state pistol permit is not found in the Complaint or the Amended Complaint and it is not reasonable to draw the inference from the Complaint and the Amended Complaint that the Plaintiff claims that the reason for the non-renewal of his state pistol permit was his refusal to provide the demanded documents.

7. Decision and Order Finding No. 7

"In order to renew a permit, the licensing unit requires documentation of citizenship pursuant to Conn. Gen. Stat. § 29-36f(b)(9)."[16] (Decision and Order at 7) (doc. # 33.)

The allegations in Plaintiff's Complaint and Amended Complaint are contrary, in their entirety, to this finding.[17] See subsection 1, above, entitled "Decision And Order Finding No. 1 Not Alleged By Plaintiff and n. 4, above.

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[16] **The Court's Decision and Order references a statute applicable to "eligibility certificates." Conn. Gen. Stat. § 29-36f(b)(9). Plaintiff does not allege that he sought an eligibility certificate so General Statutes § 29-36f(b)(9) is inapplicable to the Complaint and the Amended Complaint. Plaintiff does allege that he sought to renew his state permit. Plaintiff's Reply Brief discusses the applicable statutes as follows: "Section § 29-28(b) of the Connecticut General Statutes lists ten grounds for denial of an application for a state permit or temporary state permit. Section 29-32b(b) incorporates these ten grounds listed in section 29-28(b) as grounds for denial of an application to renew a state permit. State law mandates that the DPS Commissioner 'investigate each applicant for renewal of a state permit to ensure that such applicant is eligible under state law for such permit or for renewal of such permit.' Conn. Gen. Stat. § 29-29(d). The only ground relevant to the DPS Defendants' denial of Plaintiff's state permit renewal application is found at section 29-28(b)(9), which states: "No state or temporary state permit to carry a pistol or revolver shall be issued under this subsection if the applicant … (9) is an alien illegally or unlawfully in the United States." (Reply Brief at 3) (doc. # 32.)**

[17] **Preliminarily, the issues raised in the Complaint and Amended Complaint are limited to the demand by the licensing unit that Plaintiff submit a birth certificate, United States passport, or voter registration card. The licensing unit is entitled to look in its lawfully maintained data bases to determine if Plaintiff or any other applicant is a United States citizen. It is difficult to understand how the Connecticut State Department of Public Safety is not able to independently verify that an individual is a United States citizen. The state interest in knowing whether an**

8. Decision and Order Finding No. 8

"Therefore, the licensing unit would have denied Kuck's application regardless of any statements he made that allegedly displeased the defendants." (Decision and Order at 7) (doc. # 33.)

The Court's Decision and Order Finding No. 8 is a conclusion based on its finding that documentation of citizenship is required for the renewal of a state pistol permit. First, Plaintiff does not argue whether the licensing unit needs documentation confirming citizenship. Plaintiff does allege that he is not required to submit such documentation in the form of a birth certificate, United

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individual is a United States citizen cannot rely on self-reporting. See Reply Brief at 4-5 (doc. # 32) ("The DPS Defendants argue that the State has a compelling interest in ensuring that those with state permits are not "alien[s] illegally or unlawfully in the United States." If the State's interest in ensuring that persons with state permits are not "alien[s] illegally or unlawfully in the United States" is as compelling as argued in the State's memorandum, then the State would not wait until a person holds his or her state permit for a five year period before ensuring, at the time of renewal every five years, that the person is not "an alien illegally or unlawfully in the United States." For such a compelling interest, the State should have a data system that informs when a person's becomes "an alien illegally or unlawfully in the United States." This would prevent a person from receiving a state permit, for example, on April 3, 2008, then becoming "an alien illegally or unlawfully in the United States" immediately following that date with the DPS Defendants unaware of that change until April 2, 2013, when that person fails to submit a birth certificate, United States passport, or voter registration card with his or her state permit renewal application. In addition, that person may still have one or more of these documents to submit to the DPS Defendants despite having become "an alien illegally or unlawfully in the United States between April 3, 2008, and April 2, 2013. The mere possession of one or more of these documents cannot satisfy the DPS Defendants that a person is not "an alien illegally or unlawfully in the United States" when such a compelling state interest, as alleged in the Defendants' opposition memorandum, exists. For this reason, section 29-29(d) mandates that DPS Defendants "investigate each applicant for renewal of a state permit to ensure that such applicant is eligible under state law for such permit or for renewal of such permit." Conn. Gen. Stat. § 29-29(d). One may reasonably argue that by simply asking for a birth certificate, United States passport, or voter registration card from a person applying for a state permit renewal, the DPS Defendants have abdicated their mandate to conduct an investigation by placing the burden on the person making application to conduct the DPS Defendants' investigation.

If the DPS Defendants do not have the resources or capacity to determine whether a person is "an alien illegally or unlawfully in the United States," then it is the executive branch's burden to approach the legislative branch to inform the duly elected members of that body that the State has no means of determining whether a person is "an alien unlawfully or illegally in the United States." The legislature may then decide to appropriate funds or take other measures so law enforcement may have a data base to determine whether a person is "an alien illegally or unlawfully in the United States."

The Complaint and Amended Complaint do not dispute the licensing unit's ability to gather documentation of Plaintiff's citizenship from sources other than the Plaintiff.

States passport, or voter registration card. See n. 17, above. Plaintiff alleges that the demand for a birth certificate or United States passport from him was arbitrary and unlawful. Plaintiff claims that the arbitrary requirement and denial of his renewal was in retaliation for the exercise of his First Amendment rights that displeased the Defendants. Plaintiff alleges that the Defendants' acts were egregious and shocking because Defendants knew that Plaintiff would be subject to a minimum nineteen (19) month wait period before his appeal to the BFPE would be reviewed. Plaintiff alleges in his Amended Complaint that the Board Defendants condoned and abetted the DPS Defendants in delaying Plaintiff's opportunity for hearing by preventing Plaintiff from performing his duties as the BFPE Secretary to decrease the backlog of appeals. Plaintiff claims that a member of the licensing unit, the foundation of decisions for state pistol permit issuance, was biased against individual gun possession and that the Board Defendants, through the Office of the Governor, attempted to remove Plaintiff from the Board.

B. The Court's Decision and Order – Motion to Supplement

In his Notice of Amended Complaint, or Alternately, Request for Leave of Court to File Amended Complaint and Motion to Supplement Complaint ("Motion to Amend") (doc. # 19) dated January 22, 2008, Plaintiff relied upon Rule 15(d) of the Federal Rules of Civil Procedure, which states:

> **Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original**

> **pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.**

"An application for leave to file a supplemental pleading is addressed to the discretion of the court, and permission should be freely granted where such supplementation will promote the economic and speedy disposition of the controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any other party." Bornholdt v. Brady, 869 F.2d 57, 68 (2d Cir. 1989).

The motion to amend and supplement was supported by Plaintiff's proposed Amended Complaint attached as Exhibit 1, which (1) incorporated the information gathered subsequent to September 17, 2007, in support of Plaintiff's claims and (2) supplemented the Complaint with events occurring after September 17, 2007, including Plaintiff's removal as Secretary of the Board of Firearms Permit Examiners. In its Decision and Order, the Court deemed the Plaintiff's motion to amend and for joinder "futile." (Decision and Order at 7) (doc. # 33.) "Determinations of futility are made under the same standards that govern Rule 12(b)(6) motions to dismiss." Nettis v. Levitt, 241 F.3d 186, 194 (2d Cir. 2007).

In Kassner v. 2nd Avenue Delicatessen Inc., 496 F.3d 229, 244 (2d Cir. 2007), the court found: "Because the complaint, for the reasons discussed previously, is, with respect to some claims, sufficient to withstand a motion to dismiss under Rule 12(b)(6), the district court's futility analysis rested on an incorrect conclusion of law." In the instant case, because the Complaint states a

claim for relief under the standards set forth in Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007, Boykin v. KeyCorp, 521 F.3d 202, 213 (2d Cir. 2008), Spool v. World Child Intern. Adoption Agency, 520 F.3d 178, 180 (2d Cir. 2008) Goldstein v. Pataki, 516 F.3d 50, 56 (2d Cir. 2008), Igbal v. Hasty, 490 F.3d 143, 155 (2d Cir. 2007), the Amended Complaint would supplement the Complaint with information gathered subsequent and with transactions and events occurring after its filing. The Amended Complaint supplements the Complaint as set forth in the footnotes attached to subsection III(A)(1)-(8), above. For the same reasons stated in subsection III(A)(1)-(8), above, the Plaintiff's motion to amend and supplement the Complaint would not be futile.

IV. CONCLUSION

For the foregoing reasons and arguments of law, Plaintiff respectfully requests that the Court reconsider its Decision and Order dismissing Plaintiff's Complaint and rendering judgment against Plaintiff.

PLAINTIFFS
M. PETER KUCK, individually and on behalf of others similarly situated

BY: /s/ Rachel M. Baird
Rachel M. Baird (ct12131)
Law Office of Rachel M. Baird
100 Pearl St Fl 14
Hartford CT 06103-4500
Tel: (860) 249-7238
Fax: (860) 626-9992
Email: rbaird@rachelbairdlaw.com

CERTIFICATION OF SERVICE

I HEREBY CERTIFY THAT on August 4, 2008, a copy of the foregoing Plaintiff's Memorandum of Law in Support of Motion for Reconsideration of Decision Denying Plaintiff's Motions to Amend and for Joinder and Granting Defendants' Motion to Dismiss was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Rachel M. Baird
Rachel M. Baird
Commissioner of the Superior Court