

JOSEPH JACKSON,

Appellant,

-against-

RICHARD BUTLER

and

THE CITY OF BERGENFIELD,

Appellees.

RECORD

Revised: August 3, 2001

JUSTICE COURT, PRECINCT 5  
THE CITY OF BERGENFIELD  
STATE OF HAMILTON

No. 955382

WARRANT FOR ARREST

TO ALL PEACE OFFICERS OF THE STATE OF HAMILTON

A criminal information statement has been filed in this Court by the City of Bergenfield Police Officer Richard Butler against Joseph Jackson charging the following:

I have found reasonable cause to believe Joseph Jackson has been selling a white powdery substance resembling cocaine on the corner of Woodlawn Avenue and Eighteenth Street, City of Bergenfield, Hamilton. I have found reasonable cause to believe that such offenses were committed and that the accused committed them, and reason to believe that the accused will not appear in response to a summons, or that a warrant is otherwise inappropriate.

YOU ARE THEREFORE COMMANDED to arrest the accused and bring him before this Court to answer the charges. If this Court is unavailable, or if the arrest is made in another county, you shall take him before the nearest or most accessible magistrate. You may release him at the discretion of the aforementioned magistrate.

/s/ \_\_\_\_\_  
Norman Steele  
Justice of the Peace

Dated: July 6, 1998

SUPERIOR COURT  
OF THE STATE OF HAMILTON

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THE PEOPLE OF THE STATE OF	:	
HAMILTON,	:	
	:	
-against-	:	INDICTMENT
	:	
JOSEPH JACKSON,	:	
	:	
Defendant.	:	

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IZER, J.

Based on information provided by the City of Bergenfield Police Officer Richard Butler, the People of the State of Hamilton indict Defendant Joseph Jackson on the following charges:

Possession and sale of a controlled substance.

/s/ \_\_\_\_\_  
Jack Izer  
Superior Court Judge  
Superior Court of the  
State of Hamilton

Dated: July 8, 1998

## **RELEASE ORDER**

It is hereby ordered that Defendant be released, provided that he comply with the standard conditions and all other conditions below.

### ***I. Standard Conditions of Release***

When released, Defendant shall appear at the City of Bergenfield Courthouse at all times required by this Court during the pendency of this case. In addition, Defendant shall:

- (1) Appear to answer and submit himself to all further orders and processes of the Court having jurisdiction of the case;
- (2) Refrain from committing any criminal offense;
- (3) Not depart the State of Hamilton without leave of the Court; and
- (4) If released during an appeal, prosecute his appeal with due diligence.

### ***II. Additional Conditions of Release***

The Court finds that the following additional conditions are necessary to assure Defendant's appearance as required:

- (1) Defendant will execute an appearance bond binding himself to pay the State of Hamilton the sum of \$5,000 in the event that he fails to comply with its conditions.

### **WARNING TO DEFENDANT:**

You have the right to be present at your trial and at a number of other proceedings of which you will be notified. If you do not appear at the time set by the Court, a warrant will be issued for your arrest *and the proceeding will begin without you.*

### ***III. Consequences of Violating This Order***

If Defendant violates any condition of an appearance bond, the Court may order the bond and any security deposited in connection therewith forfeited to the State of Hamilton.

In addition, the Court may issue a warrant for Defendant's arrest upon learning of his violation of any of the conditions of his release. After a hearing, if the Court finds that Defendant has not complied with any of the conditions of his release, it may modify the conditions or revoke his release altogether.

If he was released on a felony charge and the Court finds the proof evident or the presumption great that he committed a felony during the period of release, it shall revoke his release.

Such Defendant would also be subject to an additional criminal charge, and upon conviction, could be punished by imprisonment for not more than five years in the state prison in addition to the punishment that would otherwise be imposable for the crime committed during the period of release.

Upon finding that Defendant has willfully violated its terms, the Court may also find him in Contempt of Court and sentence him to a term of imprisonment, a fine or both.

***IV. Acknowledgment by Defendant***

I understand the standard conditions and all other conditions of my release above, and the forfeitures and penalties applicable in the event I violate them.

I agree to comply fully with each of the conditions imposed on my release and to notify the Court promptly in the event I change the address indicated below.

/s/ \_\_\_\_\_  
Defendant  
Joseph Jackson  
1919 Captain's Lane  
Bergenfield, Hamilton 01010  
(919) 915-0919

/s/ \_\_\_\_\_  
Jack Izer  
Superior Court Judge  
Superior Court of the  
State of Hamilton

Entered on: July 8, 1998

SUPERIOR COURT  
OF THE STATE OF HAMILTON

THE PEOPLE OF THE STATE OF	:	
HAMILTON,	:	
	:	
-against-	:	NOTICE OF DISMISSAL
	:	OF INDICTMENT
JOSEPH JACKSON,	:	
	:	
Defendant.	:	
	:	

IZER, J.

Because it has come to the attention of this Court that the information provided by the City of Bergenfield Police Officer Richard Butler was intentionally fabricated, the indictment issued against Defendant Joseph Jackson on July 8, 1998, and all provisions of the Release Order issued on July 8, 1998, are hereby DISMISSED.

/s/ \_\_\_\_\_  
Jack Izer  
Superior Court Judge  
Superior Court of the  
State of Hamilton

Dated: September 30, 1998

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF HAMILTON

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JOSEPH JACKSON,	:	
	:	
Plaintiff,	:	00-CV-1262-BERNLW
	:	
-against-	:	COMPLAINT
	:	
RICHARD BUTLER and	:	
THE CITY OF BERGENFIELD,	:	
Defendants.	:	

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Plaintiff, Joseph Jackson, by and through his attorney, Jeff Scottster, alleges the following:

PARTIES

1. Plaintiff Joseph Jackson is and, at all times mentioned in this Complaint, was a citizen of the United States and of the City of Bergenfield in the State of Hamilton. Plaintiff is a well-known architect. He lives with his wife and six children in Bergenfield.

2. Defendant, the City of Bergenfield, is and, at all times mentioned in this Complaint, was an incorporated city in the State of Hamilton.

3. Defendant Richard Butler is and, at all times mentioned in this Complaint, was a citizen of the United States and the City of Bergenfield in the State of Hamilton. Defendant Richard Butler is, and at all times mentioned in this Complaint, was employed by the City of Bergenfield Police Department. Defendant Richard Butler is currently receiving in-patient treatment for a mental disease or disorder.

JURISDICTION AND VENUE

4. This is a civil action brought pursuant to 42 U.S.C. § 1983 (1994 & Supp 1996) seeking monetary relief.

5. This Court has jurisdiction over the action pursuant to 28 U.S.C. § 1343(a)(3) (1994).

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) (1994), as all of the events giving rise to this Complaint occurred within the Northern District of Hamilton.

## BACKGROUND

7. On July 6, 1998, City of Bergenfield Police Officer Richard Butler filed a criminal information statement with the City of Bergenfield Police Department alleging that Mr. Jackson was involved in the sale of a controlled substance.

8. On July 6, 1998, a warrant was issued for the arrest of Mr. Jackson.

9. On July 7, 1998, upon learning of the warrant for his arrest, Mr. Jackson voluntarily surrendered himself to the City of Bergenfield authorities.

10. On July 8, 1998, based upon information provided by Officer Butler, Mr. Jackson was indicted in the Superior Court of the State of Hamilton for the possession and sale of a controlled substance.

11. On July 8, 1998, Mr. Jackson was released from custody subject to the restrictions stated in the Release Order signed by Superior Court Judge Jack Izer.

12. The pretrial restrictions set forth in the Release Order issued by Judge Izer restricted Plaintiff's liberty in the following ways:

a. Plaintiff was required to answer and submit himself to all further orders and processes of the court.

b. Plaintiff was prohibited from leaving the State of Hamilton without leave of the Court.

c. Plaintiff was required to post a \$5,000 appearance bond.

13. The deprivations of liberty listed in paragraphs (12) (a), (12) (b), and (12) (c) amounted to a seizure within the meaning of the Fourth Amendment.

14. On September 30, 1998, the indictment against Mr. Jackson was dismissed because information surfaced that the allegations referred to in Officer Butler's criminal information statement that lead to the indictment were intentionally fabricated.

15. Officer Butler lacked probable cause to charge Mr. Jackson with the offense.

16. The dismissal of the indictment constitutes a termination of the prosecution in favor of Mr. Jackson.

17. Officer Butler acted unreasonably and with malice in bringing the criminal prosecution. Officer Butler is the ex-husband of Mr. Jackson's wife. Officer Butler's actions were motivated by malice, jealousy, and rage. He is currently on unpaid leave from the Bergenfield Police Department.

18. Because the pretrial restrictions of liberty placed on Mr. Jackson constituted an unreasonable seizure in violation of the Fourth Amendment, these restrictions give rise to a constitutional injury under 42 U.S.C. § 1983 for which relief may be granted.

19. Plaintiff seeks \$10,000 in compensatory damages and \$1,000,000 in punitive damages pursuant to 42 U.S.C § 1983, and attorney's fees pursuant to 42 U.S.C. § 1988 (1994 & Supp. 1996).

/s/ \_\_\_\_\_

Jeff Scottster  
Attorney for Plaintiff  
81078 Geneva Drive  
Bergenfield, Hamilton 02020

Dated: August 30, 2000

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF HAMILTON

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JOSEPH JACKSON,	:	
	:	
Plaintiff,	:	00-CV-1262-BERNLW
	:	
-against-	:	DEFENDANTS’ MOTION TO
	:	DISMISS PLAINTIFF’S
RICHARD BUTLER and	:	COMPLAINT
THE CITY OF BERGENFIELD,	:	AND
	:	MEMORANDUM
Defendants.	:	IN SUPPORT THEREOF
	:	

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Defendants Richard Butler and the City of Bergenfield, by and through their attorney, Arlene Marsha, ask the Court to dismiss the above-captioned action, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the ground that Plaintiff has failed to state a claim upon which relief can be granted.

Albright v. Oliver held that pretrial liberty deprivations, such as restrictions on the right to interstate travel and the requirement to appear in court, are to be analyzed under the Fourth Amendment rather than the Due Process Clause of the Fourteenth Amendment. 510 U.S. 266, 271 (1994) (plurality opinion). The plurality opinion in Albright did not decide the issue of which pretrial liberty deprivations rise to the level of an unreasonable seizure in violation of the Fourth Amendment. Id. at 275. The fact that Albright has held that certain pretrial liberty deprivations should be analyzed under the rubric of the Fourth Amendment rather than the Due Process Clause of the Fourteenth Amendment does not mean that the Supreme Court intended to dramatically reverse the entire body of Fourth Amendment precedent. This Fourth Amendment jurisprudence conclusively demonstrates that the restrictions contained in Joseph Jackson’s pretrial Release Order do not amount to a pretrial deprivation of liberty protected by the Fourth Amendment. This Court should not be influenced by the singular concurrence in Albright by Justice Ginsburg that announced the novel concept of a continuing seizure in order to justify finding that the accused was seized within the meaning of the Fourth Amendment as a result of the conditions of his pretrial release. Id. at 279 (Ginsburg, J., concurring).

The core concerns of the Fourth Amendment address the period of initial arrest, not the conditions of subsequent release. Most Fourth Amendment jurisprudence focuses on arrests, probable cause to make arrests, and what constitutes a valid warrant. See Bell v. Wolfish, 441 U.S. 520, 533 (1979). The Supreme Court has stated that the Fourth Amendment applies to the “initial decision to detain [the] accused.” Id. at 533-34. More recently, the Supreme Court held that a “seizure is a single act, and not a continuous fact.” California v. Hodari D., 499 U.S. 621, 625 (1991) (citing Thompson v. Whitman, 18 Wall. 457, 471 (1874)).

In Brower v. County of Inyo, the Supreme Court held that a show of authority does not amount to a seizure unless it results in the “intentional acquisition of physical control” over the subject and causes a “termination of freedom of movement.” 489 U.S. 593, 596-97 (1989).

Plaintiff’s assertion that he was seized as a result of the restriction on leaving the State of Hamilton during the pendency of his prosecution and the requirement to attend pretrial hearings must fail because there has been no “intentional acquisition of physical control” over the Plaintiff. Id. Nor did the pretrial restrictions constitute a “termination of freedom of movement” within the meaning of the Fourth Amendment. Id. The Plaintiff was free to travel throughout the State of Hamilton during the entire period that his Release Order was in effect. Furthermore, he never requested to leave the State of Hamilton during the time the Release Order was in effect and was never actually required to attend any pretrial hearings.

The First Circuit has recently rejected the notion of a continuing seizure in the context of a 42 U.S.C. § 1983 claim for malicious prosecution. Britton v. Maloney, 196 F.3d 24, 29 (1<sup>st</sup> Cir. 1999). The accused in Britton was issued a summons that threatened him with arrest if he failed to appear in court. Id. at 27. The First Circuit, however, refused to hold that this restriction deprived the accused of his liberty in such a way so as to constitute a Fourth Amendment seizure. Id. at 29. See also Reed v. City of Chicago, 77 F.3d 1049 (7<sup>th</sup> Cir. 1996).

The novel concept of continuing seizure has also been explicitly rejected by two other circuit courts and questioned by a third. The Fourth Circuit rejected the continuing seizure approach in deciding a 42 U.S.C. § 1983 claim of excessive force after arrest. Riley v. Dorton, 115 F.3d 1159, 1162-64 (4<sup>th</sup> Cir. 1997) (en banc) (“A review of the Supreme Court’s basic jurisprudence reinforces our refusal to adopt a ‘continuing seizure theory’ of the Fourth Amendment.”) Similarly, the Fifth Circuit refused to apply the continuing seizure approach to a claim of excessive force against a pretrial detainee who was killed while attempting to escape from custody during transport from one holding cell to another. Brothers v. Klevenhagen, 28 F.3d 452, 457 (5<sup>th</sup> Cir. 1994). The Eleventh Circuit has also expressed concerns about the continuing seizure approach to a 42 U.S.C. § 1983 claim of malicious prosecution. Whiting v. Traylor, 85 F.3d 581, 584 (11<sup>th</sup> Cir. 1996).

The fact that the Fourth and Fifth Circuits have rejected the continuing seizure concept in the context of an excessive force claim raises serious doubts about the continuing seizure concept in the malicious prosecution context. The duration of a seizure for Fourth Amendment purposes should not depend on whether a claimant is bringing a claim for malicious prosecution or for excessive force. The protection of the Fourth Amendment terminates after the period of initial arrest regardless of the particular constitutional claim that is raised.

For the reasons stated above, this Court should grant Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) (1994) for failure to state a claim upon which relief may be granted.

/s/ \_\_\_\_\_  
Arlene Marsha  
Assistant City Attorney  
for the City of Bergenfield  
1951 Victor's Boulevard  
Bergenfield, Hamilton 03030

Dated: November 15, 2000



The concept of a continuing seizure is consistent with the larger body of Fourth Amendment precedent. The Supreme Court has established that liberty deprivations regulated by the Fourth Amendment are not limited to physical detentions. California v. Hodari D., 499 U.S. 621, 625-27 (1991). The Supreme Court has also held that a seizure occurs within the meaning of the Fourth Amendment when there is a show of authority that restrains the liberty of a citizen. Terry v. Ohio, 392 U.S. 1, 19 n. 16 (1968). A Fourth Amendment seizure has also been defined as any “governmental termination of freedom of movement *through means intentionally applied.*” Brower v. County of Inyo, 489 U.S. 593, 597 (1989) (emphasis in original).

The Supreme Court has intimated that burdensome conditions of pretrial release may be addressed under the Fourth Amendment. Gerstein v. Pugh, 420 U.S. 103, 114 (1975). In holding that “the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest,” the Court stated, “[e]ven pretrial release may be accompanied by burdensome conditions that effect a significant restraint of liberty.” Id. at 114. Gerstein indicates, therefore, that the liberties protected by the Fourth Amendment include the accused’s freedom to travel while on pretrial release.

The government terminated Mr. Jackson’s otherwise absolute right to travel beyond the State of Hamilton without court permission during the entire course of his twelve-week prosecution. The only difference between this case and Terry is that in Terry, an immediate threat of physical force lay behind the officer’s command. In this case, it is the authority of the court that lay behind the command. These two types of orders, both administered by the state, are indistinguishable for Fourth Amendment purposes. The actions of the State against Mr. Jackson amounted to a seizure under any of the aforementioned Supreme Court definitions.

Four Supreme Court Justices commenting on this particular issue in Albright correctly applied Fourth Amendment precedent in adopting the concept of a continuing seizure in the context of a claim for malicious prosecution. 510 U.S. at 279. In particular, Justice Ginsburg’s concurrence noted that:

A person facing serious criminal charges is hardly freed from the state’s control upon his release from a police officer’s physical grip. He is required to appear in court at the state’s command. He is often subject to the condition that he seek formal permission from the court (at significant expense) before exercising what would otherwise be his unquestioned right to travel outside the jurisdiction.

Id. at 278 (Ginsburg, J., concurring).

Mr. Jackson’s liberty was restrained by the conditions of his pretrial release order, thereby constituting an unreasonable seizure in violation of the Fourth Amendment. Because Mr. Jackson

has shown a constitutional injury, this Court should deny Defendants' Motion to Dismiss, and relief must be made available pursuant to 42 U.S.C. § 1983.

/s/ \_\_\_\_\_

Jeff Scottster  
Attorney for Plaintiff  
81078 Geneva Drive  
Bergenfield, Hamilton 02020

Dated: December 15, 2000

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF HAMILTON

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JOSEPH JACKSON,	:	
	:	
Plaintiff,	:	00-CV-1262-BERNLW
	:	
-against-	:	ORDER GRANTING
	:	DEFENDANTS' MOTION TO
RICHARD BUTLER and	:	DISMISS FOR FAILURE TO
THE CITY OF BERGENFIELD,	:	STATE A CLAIM
Defendants.	:	AND JUDGMENT
	:	

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WHEATLY, J.

Plaintiff Joseph Jackson (“Mr. Jackson”) brought this action pursuant to 42 U.S.C. § 1983 (1994 & Supp. 1996) against Officer Richard Butler (“Officer Butler”) and the City of Bergenfield in order to redress alleged violations of his civil rights that occurred due to the conditions of a release order that was issued after he was indicted for possession and sale of a controlled substance. Defendants have moved to dismiss Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure 12 (b)(6) for failure to state a claim upon which relief may be granted. Defendants’ Motion to Dismiss is GRANTED.

BACKGROUND

After voluntarily surrendering on July 7, 1998 to an arrest warrant issued on July 6, 1998, Mr. Jackson was released from custody subject to a pretrial release order issued by Superior Court Judge Jack Izer. According to the terms of the release order, Mr. Jackson was not permitted to leave the State of Hamilton during the pendency of his prosecution, and he was required to appear at all pretrial hearings. During the pendency of the prosecution, Mr. Jackson was never actually required to attend any pretrial hearings, nor did Mr. Jackson ever request permission to leave the State of Hamilton. The prosecution was dropped twelve weeks later because it was discovered that the statement that Officer Butler gave to the magistrate in order to secure the warrant for Mr. Jackson’s arrest, which was subsequently used to indict Mr. Jackson, was maliciously and intentionally fabricated.

Mr. Jackson is now suing Officer Butler and the City of Bergenfield for malicious prosecution pursuant to 42 U.S.C. § 1983. Mr. Jackson has conceded that he is time-barred by the statute of limitations from asserting that his initial voluntary surrender on July 7, 1998, to the City of Bergenfield authorities, constitutes a Fourth Amendment seizure. Consequently, the only remaining question is whether Mr. Jackson’s allegation that the restrictive conditions of his pretrial release order amounted to an unreasonable seizure in violation of the Fourth Amendment.

## DISCUSSION

In Albright v. Oliver, a plurality of the Supreme Court held that a 42 U.S.C. § 1983 claim for malicious prosecution must be premised on a violation of a Fourth Amendment right rather than on a violation of the right to Due Process under the Fourteenth Amendment. 510 U.S. 266, 271 (1994) (plurality opinion).

For a state actor to violate the Fourth Amendment by initiating a malicious prosecution claim against an individual, the criminal charges at issue must impose “some deprivation of liberty consistent with the concept of [a] ‘seizure’.” Singer v. Fulton County Sheriff, 63 F.3d 110, 116 (2d Cir. 1995).

Mr. Jackson had his freedom limited when he was restricted from leaving the State of Hamilton for the duration of his prosecution, he was required to appear in court for all pretrial hearings, and he was required to post an appearance bond.

These limitations on Mr. Jackson’s freedom do not rise to the level of a constitutional deprivation of liberty under the Fourth Amendment. We reject Justice Ginsburg’s solitary concurrence in Albright that certain restrictive conditions imposed on an accused pursuant to a pretrial release order during the pendency of a criminal proceeding may constitute a constitutional violation sufficient to support a 42 U.S.C. § 1983 claim for malicious prosecution.

First, the release order condition that Mr. Jackson could not leave the State of Hamilton without permission of the court does not amount to a Fourth Amendment seizure. Fourth Amendment jurisprudence makes clear that a seizure within the meaning of the Fourth Amendment concerns the period of initial arrest only. It does not extend to the period after initial arrest through the pretrial period. See Riley v. Dorton, 115 F.3d 1159, 1162-63 (4<sup>th</sup> Cir. 1997) (en banc).

Furthermore, a person who is free to move about in his own state can hardly be considered seized within the meaning of the Fourth Amendment. There is no evidence in the record that Mr. Jackson ever sought permission to travel outside the State of Hamilton or that such a request was denied. Similarly, there is no evidence that Mr. Jackson wished to travel out of the State of Hamilton but decided to forgo the opportunity rather than seek permission. Additionally, Mr. Jackson was never required to actually attend any pretrial proceedings.

The State, on the other hand, has a vital interest in issuing such restrictive conditions on pretrial release orders. These restrictions are essential to maintain efficient criminal proceedings. They help ensure that the accused will be present at pretrial hearings and depositions.

Second, the release order requirement that Mr. Jackson appear in court does not amount to a Fourth Amendment seizure. Reading the Fourth Amendment so broadly would mean that any issuance of a summons, call to jury duty, or subpoena to testify would constitute a Fourth Amendment seizure. An extension of the Fourth Amendment to this level not only belies the text of the Amendment, but is inimical to Fourth Amendment precedent.

In this regard, we agree with the statements of the dissent in Murphy v. Lynn, 118 F.3d 938, 953-55 (2d Cir. 1997) (Jacobs, J., dissenting). That dissent noted that a “defendant’s court appearances were occasions for the conduct of due process.” Id. at 955. This Court refuses to turn the requirement to appear in court in one’s own defense into a Fourth Amendment seizure. Doing so will have the effect of “transmut[ing] due process itself into a constitutional tort.” Id.

For the foregoing reasons, Defendants’ Motion to Dismiss for Failure to State a Claim is hereby GRANTED. Judgment for Defendants is entered accordingly.

/s/ \_\_\_\_\_  
Neville Wheatly  
United States District Judge  
United States District Court  
Northern District of Hamilton

Dated: January 19, 2001

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF HAMILTON

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JOSEPH JACKSON,	:	
Plaintiff,	:	00-CV-1262-BERNLW
	:	
-against-	:	NOTICE OF APPEAL
	:	
RICHARD BUTLER and	:	
THE CITY OF BERGENFIELD,	:	
Defendants.	:	

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NOTICE IS HEREBY GIVEN, that Plaintiff in the above-named action, by his attorney, Jeff Scottster, appeals to the United States Court of Appeals for the Eighteenth Circuit from the Order of the United States District Court for the Northern District of Hamilton, dated January 19, 2001, granting Defendants' Motion to Dismiss for Failure to State a Claim.

/s/ \_\_\_\_\_  
Jeff Scottster  
Attorney for Plaintiff  
81078 Geneva Drive  
Bergenfield, Hamilton 02020

Dated: February 15, 2001

