UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIZABETH B. HORTON,	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	3:98CV01834 (JCH)
	:	
TOWN OF BROOKFIELD, et al.,	:	
Defendants.	:	MARCH 15, 2001

RULING ON DEFENDANT S MOTION FOR SUMMARY JUDGMENT [DKT. NO. 55] AND MOTION TO DISMISS [DKT. NO. 58]

This is a cause of action for damages brought by the plaintiff, Elizabeth Horton ("Horton"), alleging excessive force, false arrest and imprisonment, malicious prosecution and discrimination based on gender arising from the arrest of Horton on September 10, 1996. The cause of action was brought pursuant to 42 U.S.C. §§1983 and 1988, the United States and Connecticut Constitutions, and Connecticut common law against the Town of Brookfield, several police officers employed by the Town, the Candlewood Lake Club Owners Corporation ("CLC Corp."), and Daniel Caldwell ("Caldwell").

This court previously dismissed the civil rights claims as to defendant CLC Corp. and granted judgment on the pleadings as to defendant Caldwell. See Ruling, May 3, 1999 at 1 [Dkt. No. 19]; Ruling, June 14, 2000 [Dkt. No. 48]. The municipal defendants filed a motion for summary judgment on all claims and

defendant CLC Corp. filed a motion to dismiss the state law claims against it should the municipal defendants 'motion be granted. For the reasons hereinafter cited, both the municipal defendants 'motion for summary judgment and CLC Corp.'s motion to dismiss are granted .

I. FACTUAL BACKGROUND[1]

On September 10, 1996, Officers Tony C. Augustine ("Augustine"), Gregory N. Waldmiller ("Waldmiller"), and Lawrence V. Bostock ("Bostock") of the Brookfield Police Department were dispatched to the plaintiff's residence. Upon arrival, the officers obtained an oral and a written statement from Caldwell.

In his statements, Caldwell informed the officers that he owned the New Milford Foundry and Machine Co. and that he had been contracted by the CLC Corp. to maintain the CLC Corp. water system. Caldwell stated that he was instructed by Jack Maloney, an officer of the CLC Corp, to turn off the water to the Horton residence. Caldwell stated that he arrived at the Horton residence and turned the water off at a little before 10:00 p.m. on September 10, 1996. According to Caldwell's statements, Horton then approached him and a

[1] Based on the complaint and the Local Rule 9(c) statements of facts, the following facts are undisputed unless otherwise indicated. Horton did not provide a Local Rule 9(c)(2) statement that was responsive to the municipal defendants '9(c)(1) statement as the Rule 9 provides. Instead, Horton provided a separate statement of material facts not in dispute.

confrontation ensued in which Horton called Caldwell a "son of a bitch" and told him he was "real sneaky harassing a single elderly woman." Stmt. of Material Facts Not in Dispute [Dkt. No. 56] Exs. A, B. Caldwell responded that he was only doing his job, at which point he saw Horton bend down by the right rear tire of his truck. Caldwell asked Horton if she was vandalizing his truck. Caldwell heard a piece of metal drop near Horton. Caldwell asked Horton to stand back from his truck and attempted to inspect the truck but was blocked by Horton. Caldwell then reached in his vehicle to use his cell phone. He called Maloney and was speaking to him when Horton grabbed Caldwell's arm and attempted to take some papers he was holding. Caldwell asked Maloney to call the police. Caldwell reported that he later found part of a kitchen fork by the right rear tire of his truck.

After giving his statement, Caldwell indicated to the officers that he wanted to press charges against Horton. Two of the officers contacted Horton who was inside her house at the time. Horton did not allow the officers inside her residence and remained inside her house while the officers interviewed her from outside. Horton stated that her water had been turned off. She denied grabbing Caldwell and denied that she had been involved in an altercation. Horton then told the officers she did not want to talk any further without a witness or attorney.

After interviewing her, the officers arrested Horton for breach of peace in

violation of Conn. Gen Stat. § 53a-181. Horton alleges that she was handcuffed and transported to the Brookfield Police Department for processing. Brookfield Police Department regulation 4.7.17(A) states, in pertinent part: "For the protection and safety of the officer and others, all persons arrested and transported by the Brookfield Police Department will be handcuffed." Stmt. of Material Facts Not in Dispute [Dkt. No. 56] Ex. D.

Horton was processed and released on a written promise to appear in court. On or about September 26, 1996, the criminal charge of breach of peace was dismissed by the Superior Court contingent upon Horton's performance of ten hours of community service and payment of a $40.00 fine.

Horton alleges that she suffered "physical pain and suffering and emotional trauma and suffering." Complaint ¶ 69(c), 70(c). Specifically, Horton alleges she suffered injuries to her right shoulder, knee, and hip caused by carrying water for the 78 days that her water was turned off.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is only appropriate when there is no genuine issue as to a material fact, and the moving party is entitled to judgment as a matter of law. See Fed.R.Civ.P. 56(c); Galabya v. New York City Bd. of Educ., 202 F.3d 636, 639 (2d Cir. 2000) (citing Fagan v. New York State Elec. & Gas Corp., 186 F.3d 127, 132 (2d Cir. 1999)). The burden of showing that no genuine factual dispute exists rests upon the moving party. See Carlton v. Mystic Transp., Inc., 202 F.3d 129, 133 (2d Cir. 2000) (citing Gallo v. Prudential Residential Servs., Ltd. Partnership, 22 F.3d 1219, 1223 (2d Cir. 1994)). Once the moving party establishes that there is an absence of evidence to support the non-moving party's case, the burden shifts to the non-moving party to "set forth specific facts showing that there is genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).

In assessing the record to determine if such issues do exist, all ambiguities must be resolved and all inferences drawn in favor of the party against whom summary judgment is sought. See Anderson, 477 U.S. at 255; Heilweil v. Mount Sinai Hosp., 32 F.3d 718, 721 (2d Cir.1994). "This remedy that precludes a trial is properly granted only when no rational finder of fact could find in favor of the non-moving party." Carlton, 202 F.3d at 134. When reasonable persons, applying

the proper legal standards, could differ in their responses to the questions raised on the basis of the evidence presented, the question is best left to the jury. See Sologub v. City of New York, 202 F.3d 175, 178 (2d Cir. 2000).

B. Malicious Prosecution, False Arrest, and False Imprisonment

The municipal defendants argue that they are entitled to summary judgment on the malicious prosecution, false arrest, and false imprisonment claims because Horton did not obtain a favorable termination of the underlying criminal charges and because the defendants had probable cause to arrest Horton. Horton responds that she was not validly convicted of the underlying offense and that the defendants did not have probable cause as a matter of law.

1. Favorable Termination of Underlying Criminal Charges

An action for malicious prosecution may support liability under 42 U.S.C. § 1983. See Conway v. Mount Kisco, 750 F.2d 205, 214 (2d Cir. 1984). The Fourth Amendment provides the source for a § 1983 claim premised on a person's arrest. Singer v. Fulton County Sheriff, 63 F.3d 110, 115 (2d Cir. 1995) (citing Albright v. Oliver, 510 U.S. 266, 266-67 (1994)). Once a plaintiff presents a claim of malicious prosecution under § 1983, the court must inquire, first, whether the defendant's conduct was tortious under state law, and, second, whether the plaintiff's injuries were caused by the deprivation of liberty guaranteed by the Fourth

Amendment. Id. at 116.

Determining whether a defendant's conduct was tortious is governed by state law. Russell v. Smith, 68 F.3d 33, 36 (2d Cir. 1995) (citing Janetka v. Dabe, 892 F.2d 187, 189 (2d Cir. 1989). To establish a malicious prosecution cause of action under Connecticut law, the plaintiff must prove "'want of probable cause, malice, and a termination of suit in the plaintiff's favor.'" DeLaurentis v. City of New Haven, 220 Conn. 225, 248 (1991)(quoting Vandersluis v. Weil, 176 Conn. 353, 356 (1978)).

The plaintiff must thus allege and prove that the prosecution terminated in some manner indicating that the claimant was not guilty of the offense charged. Roesch v. Otarola, 980 F.2d 850, 852-53 (2d Cir. 1992); DeLaurentis, 220 Conn. at 251-52. If, as a matter of law, the criminal action was not terminated in Horton's favor, summary judgment should be granted on the false prosecution claim in the municipal defendants 'favor.

In a false arrest or false imprisonment cause of action, a conviction is conclusive proof of probable cause and a plaintiff may not challenge probable cause in the face of a valid judgment of conviction. Konon v. Fornal, 612 F. Supp. 68, 71 (D.Conn. 1985); Pouncey v. Ryan, 396 F. Supp. 126, 127 (D.Conn. 1975). "A person who thinks there is not even probable cause to believe he committed the

crime with which he is charged must pursue the criminal case to an acquittal or an unqualified dismissal." Roesch, 980 F.2d at 853. Therefore, if a valid judgment of conviction exists, the municipal defendants are entitled to summary judgment on the false imprisonment and false arrest claims as well as the malicious prosecution claims.

The court finds that genuine issues of material fact exist as to whether the prosecution was terminated in Horton's favor or whether it was conditionally dismissed. The municipal defendants argue that the charges against Horton were dismissed on the condition that she perform ten hours of community service and pay $40.00. However, there is no record of the disposition of the case from either the court or the prosecutor and the record before the court is inadequate under Fed. R. Civ. P. 56 to establish the disposition of the case. It is not clear from the record whether the case was dismissed or the prosecution was abandoned.

In addition, there is no record of what Horton agreed to or understood at the time she agreed to perform the community service and pay the fine. Horton contends that she was never given an opportunity to plead to the offense, was not informed of the nature of the case, and was not informed of the legal ramifications of agreeing to do community service. Therefore, although a qualified dismissal would be grounds for granting the motion for summary judgment in the malicious

prosecution claim in this case, a genuine issue of material fact exists as to the disposition of the criminal case against Horton. The motion for summary judgment on this basis is denied.

2. Probable Cause

The defendants argue that they are entitled to summary judgment on the malicious prosecution, false arrest, and false imprisonment claims because they had probable cause to arrest Horton. Section 1983 claims for malicious prosecution, false arrest, and false imprisonment are substantially similar to common law tort claims of the same. Singer, 63 F.3d at 118. In addition to the common law elements, however, in order to prevail on a section 1983 claim, the plaintiff must prove that the prosecution, arrest, or detention violated the Constitution or a federal statute. Cook v. Sheldon, 41 F.3d 73, 77 (2d Cir. 1994); Easton v. Sundram, 947 F.2d 1011, 1016 (2d Cir. 1991); Decker v. Dampus, 981 F. Supp. 851, 856-57 (S.D.N.Y. 1997).

Whether a constitutional claim or a claim under state tort law, a claim for false arrest, false imprisonment, or malicious prosecution may be established only if there was no probable cause to support the plaintiff's arrest and detention. Zanghi v. Inc. Village of Old Brookville, 752 F.2d 42 (2d Cir. 1985); Simpson v. Saroff, 741 F. Supp. 1073, 1077 (S.D.N.Y. 1990)(citing Pierson v. Ray, 386 U.S. 547 (1967));

Pouncey, 396 F. Supp. at 127. The existence of probable cause is an absolute protection against an action for false arrest, false imprisonment, or malicious prosecution. Vandersluis v. Weil, 176 Conn. 353, 356 (1978). "[W]hat facts, and whether particular facts, constitute probable cause is always a question of law." Id. However, "when the facts themselves are disputed, the court may submit the issue of probable cause . . . to the jury as a mixed question of law and fact." DeLaurentis, 220 Conn. at 253-54.

In order to be entitled to summary judgment, "the officer must adduce sufficient facts that no reasonable jury, looking at the evidence in the light most favorable to . . . the plaintiff, could conclude that it was objectively unreasonable for the officer to believe that probable cause did not exist. '" Ham v. Greene, 248 Conn. 508, 521-22 (1999) (quoting Golino v. New Haven, 950 F.2d 864, 870 (2d Cir. 1991)). If "'any reasonable trier of fact could find that the defendants 'actions were objectively unreasonable, then the defendants are not entitled to summary judgment. '" Id. (quoting Lennon v. Miller, 66 F.3d 416, 420 (2d Cir. 1995)).

> Probable cause to arrest depends upon whether, at the moment the arrest was made the facts and circumstances within the arresting officers 'knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense.

Adams v. Williams, 407 U.S. 143, 148 (1972) (citations and internal quotations

omitted). A law enforcement official has probable cause to arrest if he received information from someone like the putative victim or eyewitness, who it appears reasonable to believe is telling the truth. Miloslavsky v. AES Engineeering Soc., Inc., 808 F. Supp. 351, 355 (S.D.N.Y. 1992) (citing Daniels v. United States, 393 F.2d 359, 361 (D.C.Cir.1968)). "An arresting officer advised of a crime by a person who claims to be the victim, and who has signed a complaint . . ., has probable cause to effect an arrest absent circumstances that raise doubts as to the victim's veracity." Singer v. Fulton County Sheriff, 63 F.3d 110, 119 (2d Cir. 1995).

In this case, it is undisputed that the officers who were dispatched to Horton's residence obtained an oral and a written statement by Caldwell. In those statements, Caldwell said that Horton called him a "son of a bitch," appeared to have damaged his vehicle, and grabbed him in an attempt to take papers that were in his possession. It is also undisputed that Horton would not allow the officers into her home to discuss the incident and that they, therefore, had to assess the situation without a face-to-face interview with her. Thus, in making the determination that probable cause existed to arrest Horton for breach of peace, the officers relied on the statements by Caldwell, having no reason to doubt his veracity.

Under Connecticut General Statutes § 53a-181, "[a] person is guilty of breach

of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or (2) assaults or strikes another; or (3) threatens to commit any crime against another person or his property . . . ." Based on the statements provided by Caldwell, the officers had probable cause to believe that Horton, intending to cause inconvenience or annoyance, either engaged in violent behavior, assaulted Caldwell, or threatened him. Horton provides no evidence, other than her own denial of the events, that the officers had any reason to doubt Caldwell's veracity. Because a "[p]laintiff's denial does not, standing alone, create a genuine issue of material fact as to whether [the officers] had probable cause to arrest [her]," Pravda v. City of Albany, 956 F. Supp. 174, 185 (N.D.N.Y. 1997), the plaintiff cannot survive summary judgment on this basis.

The plaintiff argues that the officers did not have probable cause because they did not observe Horton engaging in any of the behaviors that constitute breach of peace. However, probable cause depends upon whether the facts and circumstances within the arresting officers' knowledge were sufficient to believe that the suspect had committed or was committing an offense. Adams, 407 U.S. at 148. The officer need not witness the actual offense.

Horton further argues that the police did not have probable cause because they only arrested her when she requested an attorney or witness. This argument is without merit. In Webb v. Ethridge, on which Horton relies, the plaintiff was arrested for obstructing or hindering an officer. 849 F.2d 546, 549-50 (11th Cir. 1988). The Eleventh Circuit found genuine issues of material fact regarding the extent to which the plaintiff interfered with the officer. Id. One issue was whether the plaintiff actually refused to provide information or only requested an attorney before he would provide information. Id. The request for an attorney was thus related to the facts and circumstances surrounding the crime for which the plaintiff was arrested. In this case, Horton's arrest was based on the information received from Caldwell. Her request for an attorney was unrelated to the crime for which she was charged and is therefore not relevant to the determination of whether the officers had probable cause.

The municipal defendants have established that the facts and circumstances within the officers' knowledge when they arrested Horton were based on reasonably trustworthy information and were sufficient to warrant a prudent man to believe that Horton had committed the offense of breach of peace. Based on that information, no reasonable jury, even looking at the evidence in the light most favorable to the plaintiff, could conclude that it was objectively unreasonable for the

officers to believe that probable cause existed. While the arrest of the plaintiff may not have been the least aggressive means of resolving the situation, the officers had probable cause to do so. Because Horton has failed to established that genuine issues of material fact exist as to the facts that support a finding of probable cause, summary judgment is granted as to the claims for false arrest, false imprisonment, and malicious prosecution.

C. Excessive Force

The municipal defendants argue that summary judgment should be granted on the excessive force claim because Horton alleges only that the officers used excessive force by handcuffing her and, without more, handcuffing does not constitute excessive force. Horton responds that the officers had no cause or authority to handcuff her and, by doing so, they used excessive force.

"To establish a Fourth Amendment excessive-force claim, a plaintiff must show that the force used by the officer was, in light of the facts and circumstances confronting him, 'objectively unreasonable' under Fourth Amendment standards." Finnegan v. Fountain, 915 F.2d 817, 823 (2d Cir. 1990)(citing Graham v. Connor, 490 U.S. 386, 396 (1989)). While it is not per se reasonable to apply handcuffs during an arrest, see Soares v. Connecticut, 8 F.3d 917, 921 (2d Cir.1993), "neither the Supreme Court nor the Second Circuit has established that a person has the

right not to be handcuffed in the course of a particular arrest, even if he does not resist or attempt to flee." Id. at 921. Further, "there is still no clear authority on whether and under what circumstances, if any, a person has a constitutional right not to be handcuffed in the course of an arrest." Id.

Handcuffing has been found to give rise to a claim of excessive force where an individual suffers an injury as a result of being handcuffed. Gonzales v. City of New York, 2000 WL 516682, at *4 (E.D.N.Y. March 7, 2000); Simpson v. Saroff, 741 F. Supp. 1073, 1078 (S.D.N.Y. 1990). In addition, other circuits have held that it may be inappropriate to use handcuffs in the face of a known injury. Walton v. City of Southfield, 995 F.2d 1331, 1342 (6th Cir.1993); Palmer v. Sanderson, 9 F.3d 1433, 1436 (9th Cir.1993). Where the plaintiff does not allege that a prior injury existed or that an injury resulted from being handcuffed, however, courts have found that no constitutional violation exists and have dismissed the claims. Scott v. County of Nassau, 1998 WL 874840, at *5 (E.D.N.Y. Dec. 11, 1998)(granting summary judgment where there were no additional allegations of excessive force or allegations of prior injury); Murphy v. Neuberger, 1996 WL 442797, at *8 (Aug. 6, 1996 S.D.N.Y.)(granting motion to dismiss where plaintiff did not allege that he suffered any injury as a result of being handcuffed); see also Foster v. Metropolitan Airports Comm'n, 914 F.2d 1076, 1082 (8th Cir. 1990)(affirming grant of

summary judgment where plaintiff did not provide evidence of permanent injury).

Horton has not offered any facts or made any allegation of excessive force beyond being handcuffed. She has not alleged or provided any evidence of permanent injury as a result of being handcuffed, of pre-existing injury of which the officers were aware, or of a request for medical treatment while being handcuffed. "Simply placing a suspect in handcuffs and requiring [her] to keep [her] hands behind [her] back for transportation . . . [does] not to give rise to a constitutional violation." Scott, 1998 WL 87840, at *5 (citing Murphy v. Neuberger, 1996 WL 442797, at *8 (S.D.N.Y. 1996)). Thus, without more, even construing the evidence in the light most favorable to the plaintiff, a reasonable jury could not find that the use of handcuffs on Horton was unreasonable in violation of her constitutional rights. The municipal defendants' motion for summary judgment with regard to the excessive force claim is therefore granted.[2]

D. Equal Protection

The municipal defendants argue that summary judgment should be granted with respect to Horton's claim that she was placed under arrest because of her

[2] Because the court grants summary judgment on the merits as to the malicious prosecution, false arrest, false imprisonment, and excessive force claims, it does not reach the defendants' argument that they are entitled to qualified immunity.

gender because Horton does not provide any evidence of gender discrimination. Horton responds that the determination of whether she was discriminated against should be a question of fact for the jury.

While it is not clear from the complaint, Horton presumably brings her gender discrimination claim under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. "As a general matter, the equal protection clause serves to protect suspect classes and fundamental interests against inequitable treatment . . .." LeClair v. Saunders, 627 F.2d 606, 611 (2d Cir. 1980)(citing Dandridge v. Williams, 397 U.S. 471, 487 (1970)). The equal protection clause "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). Therefore, the equal protection clause is "primarily concerned with classes or groups, not individuals." LeClair, 627 F.2d at 611. In order to succeed under the equal protection clause, a plaintiff must thus "allege something more than a tort, personal to that plaintiff." Id.

Horton has not provided any evidence that her arrest was in any way related to her gender. In addition, Horton has not alleged facts to support a claim that she was treated any differently from similarly situated male suspects or that she is aware of any other similarly situated suspects. Without any facts, the plaintiff's mere

allegation that she was arrested because of her gender is insufficient to support her claim. The municipal defendants 'motion for summary judgment as to the equal protection claim is thus granted for failure to demonstrate a genuine issue of material fact.

E. Town of Brookfield

Horton's allegations against the Town of Brookfield are based on the conduct of the individual officers who responded to her house on September 10, 1996. Because the court has granted summary judgment as to each of the claims against the individuals officers, the Town of Brookfield cannot be held liable. The municipal defendants 'motion for summary judgment is thus granted as to the claims against the Town of Brookfield.

F. State Law Claims

Horton's remaining claims are state common law and state constitutional claims. Specifically, Counts III, IV, and IX remain alleging state constitutional claims and a state common law defamation claim against the municipal defendants. Counts VI, VII, VIII, and IX remain alleging state common law property, intentional and negligent emotional distress, and defamation claims against CLC Corp. The municipal defendants argue that the court should decline to exercise

jurisdiction over the remaining claims against them since the federal claims have been dismissed. Defendant CLC Corp. filed a separate motion to dismiss [Dkt. No. 58] asking the court to decline to exercise jurisdiction over the remaining state claims against it.

Under 28 U.S.C. § 1367(c)(3), "[t]he district courts may decline to exercise supplemental jurisdiction over a [state law] claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). "[P]endent jurisdiction is a doctrine of discretion, not of plaintiff's right." United Mine Workers v. Gibbs, 38 U.S. 715, 726 (1966). While dismissal of the state claims is not absolutely mandatory, Rosado v. Wyman, 397 U.S. 397, 403-05 (1970); Carnegie-Mellon University v. Cohill, 484 U.S. 343, 350 n. 7 (1988), the basis for retaining jurisdiction is weak when the federal claims are dismissed before trial. Gibbs, 383 U.S. at 726. When "all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." Carnegie-Mellon, 484 U.S. at 350 n. 7. See DiLaura v. Power Authority of New York, 982 F.2d 73, 80 (2d Cir. 1992); Baylis v. Marriott Corp., 843 F.2d 648, 664-65 (2d Cir. 1988); Indep. Bankers Ass'n v. Marine Midland Bank, 757 F.2d 453,

464 (2d Cir.1985).

In balancing the factors in this case, the court declines to exercise supplemental jurisdiction over the remaining claims. The case is two years old and nearly ready for trial. In addition, the court has ruled on various dispositive motions and developed familiarity with the issues in the case. However, none of the court's rulings have specifically addressed the remaining state law claims, and the court is not familiar with those claims. Further, the remaining claims are not related to any federal policy issues nor do they run the risk of being preempted by federal law. Gibbs, 383 U.S. at 727; DiLaura, 982 F.2d 80. The claims are purely state law claims and, particularly since some of them involve issues of state constitutional law, are better decided by the state courts. Therefore, the court declines to exercise jurisdiction over the state law claims and those claims are dismissed without prejudice.

III. CONCLUSION

For the foregoing reasons, the municipal defendants 'motion for summary judgment [Dkt. No. 54] is GRANTED and CLC Corp.'s motion to dismiss [Dkt. No. 58] is GRANTED. Counts III, IV, VI, VII, VIII, and IX of the plaintiff's complaint are dismissed without prejudice. The clerk is hereby directed to close the case.

SO ORDERED.

Dated at Bridgeport, Connecticut this 15th day of March, 2001.

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Janet C. Hall
United States District Judge