2011 WL 102752
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United States District Court,
S.D. New York.

Rose Marie QADER, Plaintiff,
v.
COHEN & SLAMOWITZ, Jeffrey F. Cohen, Carlos Colon, New York State Consumer Protection Board, New York Lawyers' Fund for Client Protection, and Bronx County Bar Association, Defendants.

No. 10 CV 01664 GBD. | Jan. 10, 2011.

Opinion

MEMORANDUM DECISION AND ORDER

GEORGE B. DANIELS, District Judge.

***1** Plaintiff Rose Marie Qader, proceeding *pro se,* brings this suit arising from an allegedly improper garnishment of a bank or trust account in which she has an interest. It is difficult to discern Plaintiffs allegations and claims from her substantially incoherent and unintelligible Complaint. It appears that Plaintiff alleges the following: (a) Defendant law firm Cohen & Slamowitz, LLP, and Defendant Jeffrey F. Cohen fraudulently obtained a default judgment against Plaintiff and then fraudulently garnished Plaintiff's account with the help of Defendant Carlos Colon, an employee of Banco Popular, in the amount of "$41,900.37 + $6,000"; and (b) Plaintiff reported the alleged misconduct to Defendants the New York State Consumer Protection Board and the New York Lawyers' Fund for Client Protection (collectively, the "State Defendants") and Defendant Bronx County Bar Association ("Bronx Bar"), but these Defendants neither investigated her complaints nor prosecuted Cohen and Cohen & Slamowitz.

As a result of the aforementioned events, it appears that Plaintiff asserts claims for violations of various state and federal laws. Plaintiff asserts claims against Cohen, Colon, and Cohen & Slamowitz for: (1) violation of the "right to all citizens to federal court access to file a civil action" pursuant to 28 U.S.C. § 1331; (2) "right to federal court access for relief from systematic violations of civil and constitutional rights occurring under color of state law and under color of federal law" pursuant to 42 U.S.C. § 1983–1988; (3) perjury; (4) racketeering in violation of state and federal law; and (5) violation of the Privacy of Consumer Financial Information regulations, 12 C.F.R. 40.1 *et. seq* . Plaintiff asserts claims against the State Defendants and the Bronx Bar for: (1) violation of the Seventh Amendment pursuant to 42 U.S.C. § 1983; (2) violation of "Fifth Amendment due process and equal protection; and (3) "right to federal court access for relief from systematic violations of civil and constitutional rights occurring under color of state law and under color of federal law" pursuant to 42 U.S.C. § 1983–1988.

Pending before this Court are five motions: [1] (1) Plaintiff moves to amend the Complaint; (2) Defendant Cohen moves to dismiss Plaintiff's claims against him pursuant to Fed.R.Civ.P. 12(b)(5) for insufficient service of process and pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted; (3) Defendants the New York State Consumer Protection Board and the New York Lawyers' Fund for Client Protection similarly move to dismiss Plaintiff's claims against them, and additionally pursuant to Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction; and (4) Defendant Bronx County Bar Association's ("Bronx Bar") moves to dismiss Plaintiff's claims against it solely pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim.

STANDARDS OF REVIEW

A. 12(b)(1) Motion

***2** "[A] claim is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Morrison v. Nat'l Austl. Bank Ltd.,* 547 F.3d 167, 170 (2d Cir.2008). "A plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." *Makarova v. United States,* 201 F.3d 110, 113 (2d Cir.2000); *see also Whitmore v. Arkansas,* 495 U.S. 149, 154, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) ("It is well established ... that before a federal court can consider the merits of a legal claim, the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue."). "[T]he court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff." *NRDC v. Johnson,* 461 F.3d 164, 171 (2d Cir.2006); *see also Warth v. Seldin,* 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343. 501 (1975).

B. 12(b)(5) Motion

"Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." *Dynegy Midstream Servs. v. Trammochem*, 451 F.3d 89, 94 (2d Cir.2006) (internal quotation marks and citation omitted); *see Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) ("The requirement that jurisdiction be established as a threshold matter spring[s] from the nature and limits of the judicial power of the United States and is inflexible and without exception.") (internal quotation marks and citation omitted). "[T]he plaintiff bears the burden of proving adequate service." *Burda Media, Inc. v. Viertel*, 417 F.3d 292, 298–99 (2d Cir.2005) (citation omitted). The plaintiff must, "through specific factual allegations and any supporting materials, make a prima facie showing that service was proper." *Kwon v. Yun*, 2006 U.S. Dist. LEXIS 7386, at *6, 2006 WL 416375 (S.D.N.Y. Feb. 21, 2006) (collecting cases). "Conclusory statements are insufficient to overcome a defendant's sworn affidavit that he was not served." *Darden v. DaimlerChrysler N. Am. Holding Corp.*, 191 F.Supp.2d 382, 387 (S.D.N.Y.2002) (citing *Howard v. Klynveld Peat Marwick Goerdeler*, 977 F.Supp. 654, 658 (S.D.N.Y.1997), *aff'd*, 173 F.3d 844 (2d Cir.1999)). Also, the court "must look to matters outside the complaint to determine whether it has jurisdiction." *Id.* at 387.

C. 12(b)(6) Motion

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, ––– U.S. ––––, ––––, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). This standard is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A court should not dismiss a complaint for failure to state a claim if the factual allegations sufficiently "raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. "[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)) (internal quotation marks omitted).

***3** The task of the court in ruling on a motion to dismiss is to "assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." *In re Initial Pub. Offering Sec. Litig.*, 383 F.Supp.2d 566, 574 (S.D.N.Y.2005) (internal quotation marks and citation omitted). The court must accept all well-pleaded factual allegations in the complaint as true, and draw all reasonable inferences in the plaintiff's favor. *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir.2002). In deciding a motion to dismiss, the Court is not limited to the face of the complaint. The Court "may [also] consider any written instrument attached to the complaint, statements or documents incorporated into the complaint by reference, and documents possessed by or known to the plaintiff and upon which it relied in bringing the suit." *ATSI Commc'ns v. Shaar Fund. Ltd.*, 493 F.3d 87, 98 (2d Cir.2007).

STATE DEFENDANTS' 12(b)(1) MOTION

Pursuant to the Eleventh Amendment, states are entitled to sovereign immunity and may not be sued without their consent. *See Permhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984). A state agency with state officials acting in their official capacities is similarly entitled to immunity. *See Papasan v. Allain*, 478 U.S. 265, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (noting that a suit "in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment"); *see also Scherman v. N.Y. State Banking Dep't*, 2010 U.S. Dist. LEXIS 26288, at *15, 2010 WL 997378 (S.D.N.Y. Mar. 19, 2010) (noting that "for Eleventh Amendment purposes, governmental entities of the state that are considered 'arms of the state' receive Eleventh Amendment immunity") (citations omitted); *see also Posr v. Court Officer Shield # 207*, 180 F.3d 409 (2d Cir.1999). There are only two recognized exceptions in which an individual may sue a state or state agency: when either (1) Congress authorizes such a suit in the exercise of its power to enforce the Fourteenth Amendment or (2) a state waives its sovereign immunity by consenting to suit. *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999).

The State Defendants are entitled to sovereign immunity. Each is a state agency that was acting in its official capacity with respect to the events alleged by Plaintiff. None of the exceptions apply. Plaintiff has not identified a statute wherein Congress abrogates the traditional sovereign immunity of states with respect to suits brought under[2] 42 U.S.C. § 1983,[3] 42 U.S.C. § 1985,[4] or 42 U.S.C. § 1986.[5] Plaintiff has also not identified a statute wherein the state of New York

expressly waives its immunity from suits under any of the aforementioned statutes. [6] *See Mamot v. Bd. of Regents*, 367 Fed. Appx. 191, 192 (2d Cir.2010) ("It is well-established that New York has not consented to § 1983 suits in federal court ....") (citing *Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 38–40 (2d Cir.1977)); *Finkelman v. New York State Police*, 2007 U.S. Dist. LEXIS 74986, at *7–8 (S.D.N .Y. Aug. 20, 2007) (citing for §§ 1985–1986, *Gasparik v. Stony Brook University*, 2007 U.S. Dist. LEXIS 49471, 2007 WL 2026612 (E.D.N.Y. July 9, 2007); *Quirk v. City of New York*, 2003 U.S. Dist. LEXIS 6063, 2003 WL 1872714 (S.D.N.Y. Apr. 10, 2003)). Accordingly, the State Defendants are immune from liability.

DEFENDANT COHEN'S 12(b)(5) MOTION

***4** Fed.R.Civ.P. 4(3) provides that personal service may be effected on an individual by: (1) "delivering a copy of the summons and of the complaint to the individual personally"; (2) "leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there"; or (3) "delivering a copy of each to an agent authorized by appointment or by law to receive service of process." Fed.R.Civ.P. 4(3) also provides that service is proper if in compliance with the law of the forum state. Here, in New York, N.Y. C.P.L.R. §§ 308 and 312–a enumerate several methods of service over a natural person consistent with proper notice and procedural due process.

Based upon the affirmation of service filed by Plaintiff on February 8, 2010, Plaintiff mailed a copy of the Summons and Complaint via certified mail to Jeffrey F. Cohen. *See* Docket # 5, pg. 20. Defendant Cohen, who never waived service, acknowledges receipt of those documents, but alleges that "Plaintiff never attempted to deliver the Summons or Complaint to Mr. Cohen's home or office." Affidavit of Diane K. Kanca ¶ 9. Plaintiff neither makes any factual allegations nor offers any supporting evidence to demonstrate that she took additional efforts to effect service of process on Defendant. There also have not been any court orders providing for service of process by an alternative method.

Service solely by certified mail is insufficient under both New York and federal law. *See Underwood v. Shukat*, 2002 U.S. Dist. LEXIS 10778, at *, 2002 WL 1315597S–9 (S.D.N.Y. June 14, 2002) ("New York's C.P.L.R. § 308 does not provide exclusively for mailing as a proper method of service—regardless of whether the plaintiff is proceeding *pro se* or with counsel."); *King v. Rivera*, 1999 U.S. Dist. LEXIS 1514, at *3 n. 1, 1999 WL 76831 (S.D.N.Y. Feb. 16, 1999) ("Unless a defendant waives service of a summons, service by mail (or certified mail) is insufficient.") (citing Fed.R.Civ.P. 4; N.Y. C.P.L.R. §§ 308, 311); *see, e.g., Bender v. GSA*, 539 F.Supp.2d 702 (S.D.N.Y.2008); *Brown v. Avstreih*, 1997 U.S. Dist. LEXIS 2025 (S.D.N.Y. Feb. 25, 1997); *Schafer v. Wadman*, 1992 U.S. Dist. LEXIS 17538, 1992 WL 350750 (S.D.N.Y.1992); *Klein v. Educational Loan Serv.*, 71 A.D.3d 957, 897 N.Y.S.2d 220, 221–22 (App.Div.2010). Therefore, Plaintiff has failed to satisfy her burden to demonstrate proper service of process.

Accordingly, Plaintiff failed to properly serve Defendant Cohen, and thus Defendant's motion to dismiss for insufficient service of process is thus granted. [7] It is unnecessary to consider the merits. *See Arrowsmith v. United Press Int'l*, 320 F.2d 219, 221 (2d Cir.1963) (en banc) ("[L]ogic compel[s] initial consideration of the issue of jurisdiction .... [A] court without such jurisdiction lacks power to dismiss a complaint for failure to state a claim."). Nevertheless, Defendant's motion to dismiss for failure to state a claim is, for the reasons stated below, also granted.

DEFENDANT COHEN'S AND DEFENDANT BRONX BAR'S 12(b)(6) MOTIONS

***5** Federal law does not authorize a private cause of action for some of Plaintiff's claims. 28 U.S.C. § 1331 is a jurisdictional statute and does not itself provide for a substantive basis for relief. 42 U .S.C. § 1984 no longer exists. *See United States v. Singleton*, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883) (overturning part of the statute); *see also* Act of June 25, 1948, ch 645, § 21, 62 Stat. 862 (repealing the remaining sections). Neither 42 U.S.C. § 1987 nor 42 U.S.C. § 1988 creates a private cause of action. *See Moor v. County of Alameda*, 411 U.S. 693, 702, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973) (section 1988); *Carpenter v. Ashby*, 2009 U.S.App. LEXIS 20265, at *9, 2009 WL 2893198 (3d Cir. Sept. 10, 2009) (section 1987); *Seneca Constitutional Rights Org. v. George*, 348 F.Supp. 51. 54 n. 1 (W.D.N.Y.1972) (section 1987). The perjury claim, 18 U.S.C. § 1621, which is based upon a criminal statute, is enforceable only by the United States Department of Justice, not by private individuals. *See, e.g., Luckett v. Bure*, 290 F.3d 493, 497 (2d Cir.2002) ("We affirm the district court's dismissal of [Plaintiff's] claims of sabotage, forgery, and perjury, which are crimes and therefore

do not give rise to civil causes of action."); *Sanchez v. Dankert*, 2002 U.S. Dist. LEXIS 3660, at *31–32, 2002 WL 529503 (S.D.N .Y. Feb. 22, 2002) (collecting district court cases on perjury). Finally, Plaintiff has not identified a legal basis for allowing a private cause of action under the regulations governing the Privacy of Consumer Financial Information for Banks and Banking, 12 C.F.R. 40.1 *et. seq.* Accordingly, Plaintiffs claims pursuant to the aforementioned statutes fail as a matter of law.

Plaintiff has failed to plead the requisite elements for the remaining claims. First and foremost, Plaintiff's Complaint is devoid of factual allegations regarding the wrongdoing of the Defendants. This failure is sufficient grounds to dismiss the Complaint as to all of the Defendants. *See Twombly*, 550 U.S. at 555 ("a complaint must contain enough factual allegations "to raise a right to relief above the speculative level"). Nevertheless, after liberally construing the Complaint given that Plaintiff is proceeding *pro se*, Plaintiff's allegations cannot sustain any of the remaining claims.

With respect to the claims pursuant to 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) "[t]he conduct complained of must have been committed by a person acting under color of state law," *Pitchell v. Callan*, 13 F.3d 545, 547 (2d Cir.1994) (citing *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981)); and (2) "the conduct complained of must have deprived a person of rights, privileges or immunities secured by the Constitution or laws of the United States." *Id.*

Here, none of the conduct discernible from Plaintiff's Complaint constitutes a redressable federal constitutional violation. The claims are also deficient because none of the remaining Defendants are state actors. Cohen and Colon are individuals. The Bronx Bar and Cohen & Slamowitz are private entities, not city, state, or federal agencies. Plaintiff never alleges that any of the Defendants acted "under color of law," as is required to hold private persons liable. *See United States v. Price*, 383 U.S. 787, 794, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966). Thus, the claims pursuant to 42 U.S.C. § 1983 must be dismissed. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982) ("Careful adherence to the 'state action' requirement preserves an area of individual freedom by limiting the reach of federal law and federal judicial power.").

***6** With respect to the claim pursuant to 42 U.S.C. § 1985, "a plaintiff must allege (1) a conspiracy (2) for the purpose of depriving a person or class of persons of the equal protection of the laws, or the equal privileges and immunities under the laws; (3) an overt act in furtherance of the conspiracy; and (4) an injury to the plaintiffs person or property, or a deprivation of a right or privilege of a citizen of the United States." *Traggis v. St. Barbara's Greek Orthodox Church*, 851 F.2d 584, 586–587 (2d Cir.1988) (citing *Griffin v. Breckenridge*, 403 U.S. 88, 102–03, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1970)).

Once again, none of the conduct discernible from Plaintiff's Complaint constitutes a redressable federal constitutional violation. The claim is also deficient because the Complaint is devoid of any factual allegations regarding a conspiracy perpetrated by any of the Defendants. Plaintiff provides only unsupported conclusory allegations that a conspiracy existed, which are insufficient. *See Sommer v. Dixon*, 709 F.2d 173, 175 (2d Cir.1983) (A "complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss."). Plaintiff also never makes any factual allegations that the alleged conspiracy was "motivated by some racial or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action." *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 791 (2d Cir.2007) (citation and internal quotation marks omitted). A conspiracy due simply to personal malice of the conspirators is insufficient to sustain a claim pursuant to 42 U.S.C. § 1985. *See United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S. 825, 850, 103 S.Ct. 3352, 77 L.Ed.2d 1049 (1983) ("[T]he intended victims must be victims not because of any personal malice the conspirators have toward them, but because of their membership in or affiliation with a particular class."). Therefore, the claim must be dismissed.

With respect to the claim pursuant to 42 U.S.C. § 1986, a plaintiff must first allege a valid § 1985 claim. *See Mian*, 7 F.3d at 1088; *see, e.g., Graham v. Henderson*, 89 F.3d 75, 82 (2d Cir.1996); *Gagliardi v. Village of Pawling*, 18 F.3d 188, 194 (2d Cir.1994). Having failed to set forth a cognizable predicate claim, Plaintiffs § 1986 claim necessarily fails as to all of the remaining Defendants.

Finally, with respect to the federal racketeering claim, "[a plaintiff] must allege that the defendant has violated the substantive RICO statute, 18 U.S.C. § 1962 (1976) ...:(1) that the defendant (2) through the commission of two or more acts (3) constituting a 'pattern' (4) of 'racketeering activity' (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an 'enterprise' (7) the

activities of which affect interstate or foreign commerce." *Moss v. Morgan Stanley, Inc.*, 719 F.2d 5. 17 (2d Cir.1983) (citing 18 U.S.C. § 1962(a)-(c) (1976)). Then a plaintiff "must allege that he was 'injured in his business or property by reason of a violation of section 1962.' " *Id.; see also* 18 U.S.C. § 1964(c) (1976).

***7** Here, the Complaint contains no factual allegations indicating the existence of a legal entity or association in fact, *see* 18 U .S.C. § 1961(4), in which Defendants Cohen, Cohen & Slamowitz, and Colon participated. The Complaint does not identify or even allege conduct suggesting the occurrence of—at least two acts indictable under a variety of state and federal criminal statutes. *See* 18 U.S.C. § 1961(1), (5). Furthermore, the Complaint provides no basis to infer that Defendants' alleged misconduct had even a minimal effect on interstate commerce. *See DeFalco v. Bernas*, 244 F.3d 286, 309 (2d Cir.2001); *United States v. Barton*, 647 F.2d 224, 233 (2d Cir.1981). All of the parties appear to be located in New York, and all of the events seem to have transpired in New York. Therefore, Plaintiff has failed to satisfy her burden. The federal racketeering claim must be dismissed.

Accordingly, Plaintiff has failed to state a federal cause of action. This Court declines to exercise supplemental jurisdiction over Plaintiff's state claim for racketeering, and thus that claim is also dismissed. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966) ("Certainly, if the federal claims are dismissed before trial ... the state claims should be dismissed as well."); *see also* 28 U.S.C. § 1367(a), (c) ("The district courts may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction.").

CONCLUSION

Defendants' motion to dismiss is GRANTED. Plaintiff's Complaint is hereby DISMISSED as to all Defendants. [8]

SO ORDERED.

Footnotes

1 To date, neither Cohen & Slamowitz nor Colon have appeared in this action. Based upon the Affirmation of Service filed by Plaintiff, *see* Docket # 5, Plaintiff mailed a copy of the Summons and Complaint via certified mail on March 8, 2010. This method of service is insufficient in the instant action. *See* discussion of Cohen's 12(b)(5) motion.

2 The provisions under which Plaintiff seeks relief that do not provide for a private cause of action—namely, 42 U.S.C. § 1984 and 42 U.S.C. §§ 1987–1988 are not addressed. *See, infra,* discussion of 12(b)(6) motions.

3 *See Quern v. Jordan*, 440 U.S. 332, 341, 99 S.Ct. 1139, 59 L.Ed.2d 358 (1979) (section 1983).

4 *See Ding v. Bendo*, 2006 U.S. Dist. LEXIS 24339, at *11 n. 1, 2006 WL 752824 (E.D.N.Y. Mar. 23, 2006) ("[I]t is well-settled that a State and its instrumentalities are not 'persons' subject to suit under § 1983. *Spencer v. Doe*, 139 F.3d 107, 111 (2d Cir.1998), and there is no reason to suspect the Congress intended the term 'persons' to take on a different meaning in § 1985."); *Degrafinreid v. Ricks*, 2004 U.S. Dist. LEXIS 24448, at *15, 2004 WL 2793168 (S.D.N.Y. Dec. 6, 2004) (citing *Fincher v. State of Florida Dep't of Labor & Employment Sec.*, 798 F.2d 1371, 1371 (11th Cir.1986) ("We find no express congressional abrogation of the state's Eleventh Amendment immunity with respect to 42 U.S.C. § 1985 actions.")).

5 *Cf. Mian v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 7 F.3d 1085, 1087 (2d Cir.1993) ("a § 1986 claim must be predicated upon a valid § 1985 claim").

6 *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 99, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984).

7 Plaintiff's Affirmations of Service, *see* Docket # 4 and 5, indicate that Plaintiff relied solely upon certified mail as a method of service for all of the Defendants. To the extent that Plaintiff either did not take any additional efforts to effect service or did not have consent, all of the Defendants were insufficiently served. This is sufficient grounds alone to dismiss the Complaint as to all of the Defendants.

8 Plaintiff's motion for leave to file an amended complaint (Docket Entry # 14) is denied as futile. Plaintiff's motion for summary judgment (Docket Entry # 16) is denied.