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

ADRANIH ERNAY, ADRIAN ERNAY, : CIVIL ACTION

WENDELL WESLEY, OTIS RAGLAND, LINDA FAUST, WILLIAM CHRISTY, A

Minor By and Through His Natural Parent :

Guardian Linda Faust, DENASIA

CHRISTY, A Minor By and Through Her Natural Parent and Guardian Linda Faust

Plaintiffs,

v.

CHRIS SWATSKI, JOHN DOE #1 THROUGH #6

Defendants.

NO. 10-1035

ORDER

AND NOW, this 23rd day of June, 2010, upon consideration of Defendant Chris Swatski's Motion To Dismiss In Part (Document No. 2, filed April 7, 2010); and Plaintiffs' Reply To Defendant Swatski's Motion To Dismiss In Part (Document No. 3, filed April 21, 2010), IT IS ORDERED that defendant Swatski's Motion To Dismiss In Part is GRANTED IN PART AND DENIED IN PART, as follows:

- a. The part of defendant's motion which seeks a dismissal of claims against Defendant Swatski in his official capacity is **GRANTED** and those claims are **DISMISSED WITH PREJUDICE**;
- b. The part of defendant's motion which seeks a dismissal of claims asserted by minor plaintiffs William Christy and Denasia Christy in Count One of the Complaint is **GRANTED**

WITHOUT PREJUDICE to plaintiffs' right to file an Amended Complaint within twenty days if

warranted by the facts;

c. The part of defendant's motion which seeks a dismissal of plaintiffs' state law claim is

MARKED WITHDRAWN by agreement of the parties; and

d. The part of defendant's motion which seeks a dismissal of the excessive force claim in

Count Three is **DENIED WITHOUT PREJUDICE** to defendant's right to assert the defense of

qualified immunity, and any other appropriate defense, after relevant discovery by summary

judgment motion and/or at trial.

IT IS FURTHER ORDERED that a scheduling conference shall be conducted in due

course;

IT IS FURTHER ORDERED that the caption of this case shall be amended to delete

reference to plaintiffs William Christy and Denasia Christy.

BY THE COURT:

/s/ Hon. Jan E. DuBois

JAN E. DUBOIS, J.

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