

**Attorneys for Plaintiff:**

**Joseph Reisinger, Esquire, Pro Se  
Joseph R. Reisinger, Esquire, LLC  
444 South Franklin Street  
Wilkes-Barre, PA 18702**

**Attorneys for Defendant(s):**

**Kevin T. Fogerty, Esquire  
Mill Run Office Center  
1275 Glenlivet Drive, Suite 150  
Allentown, PA 18106  
(610)366-0950**

**Donald H. Brobst, Esquire  
Rosenn, Jenkins & Greenwald, LLP  
15 South Franklin Street  
Wilkes Barre, PA 18711-0075  
(570)826-5655**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JOSEPH R. REISINGER,**

**Plaintiff,**

**v.**

**THE CITY OF WILKES BARRE;  
THOMAS LEIGHTON;  
FRANCES KRATZ;  
GREGORY BARROUK;  
MICHAEL KERMEC and  
THE CRADLE COMPANY II, INC.**

**Defendants.**

**:CIVIL ACTION – LAW**

**:**

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**:JURY TRIAL DEMANDED**

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**:(Judge Conaboy)**

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**: No. 3:09-CV-210**

## CASE MANAGEMENT PLAN

Instructions: In many cases there will be more parties in the action than there are spaces provided in this form. Each party shall provide all requested information. If the space on this form is not sufficient, the form should be retyped or additional pages attached.

No party may submit a separate Case Management Plan. Disagreements among parties with respect to any of the matters below shall set be set forth in the appropriate section.

Having complied with the meet and confer requirements set forth in the LOCAL RULES, or with any orders specifically modifying their application in the above-captioned matter, the parties hereby submit the following Joint Case Management Plan.

(Revised 4/97)

### **1.0 Principal Issues**

**1.1** - *Separately for each party, please give a statement summarizing this case:*

*By plaintiff(s):*

No response received from Plaintiff.

*By defendant(s) City of Wilkes-Barre, Thomas Leighton, Francis Kratz and Gregory Barrouk (collectively, the "City" Defendants):*

Plaintiff has instituted this action under the Civil Rights Act, 42 U.S.C. §1983, alleging the Defendants violated his constitutional rights under the Fourth Amendment, his right to procedural and substantive due process, his right to equal protection, and his right to freedom of speech. He also avers pendent state law claims against the Defendants for invasion of privacy, interference with contractual relationships, civil conspiracy and intentional infliction of emotional distress. Plaintiff was the owner of numerous buildings in the City of Wilkes-Barre. The building at 444-446 South Franklin Street was posted and closed by the Wilkes-Barre City Department of Health for violations of the City Code after inspection by the Wilkes-Barre Community Action Team ("CAT"). That property was to remain vacated until the property owner requested reinspection of the property after he had abated the violations. On February 23, 2007 the City Health Department and the Defendant Building Code Official Kratz did a follow up inspection because of a complaint received from employees in the Plaintiff's office located there. At that

time, the inspection showed the health violations had been abated. However, Building Code Official Kratz found numerous building violations and therefore the property remained posted and closed. On April 3, 2007 the Building Code Official and the Health Department inspected the premises at 444-446 South Franklin Street again. Those premises were still in violation of the City Building Code and hence remained posted and closed.

Subsequently, Plaintiff was prevented from moving his office from 444-446 South Franklin Street into 448 South Franklin Street because there was no electricity to the building and because that property was not zoned for commercial use. The City Defendants did not post and close 442 South Franklin Street as alleged in the Complaint. Moreover, the City Defendants did not require the Plaintiff to vacate the Plaintiff's office location at 62-64 West Ross Street as alleged in the Complaint.

At all times, the members of the CAT lawfully entered onto the Plaintiff's premises to conduct inspections of the Plaintiff's properties. The properties which were posted and closed as noted above were done so for proper reasons – namely, violations of the City Code. Plaintiff never appealed the posting and closure of those units although he could have done so.

At no time were the City Defendants acting in concert with Defendant Cadle (“Cadle”) or Defendant Michael Kermec (“Kermec”), an employee of Cadle. Cadle and Kermec had nothing to do with the citing of the Plaintiff's properties for building code and health code violations.

The Plaintiff's Complaint erroneously alleges that Mayor Thomas Leighton was a Real Estate Broker for the Defendant Cadle. Mayor Leighton was never a Real Estate Broker for Cadle; he was retained by Cadle to do appraisals on the Plaintiff's properties on which Cadle had mortgages; that had nothing to do with the City CAT citing certain of Plaintiff's properties for violations of the City Code.

Therefore, there has been no violation of Plaintiff's constitutional rights, and the Plaintiff has no pendent state law claims against the Defendants.

Discovery has been concluded and all that is needed a deadline for the filing of dispositive motions. (See Docket Entries Nos. 49-51, 76.)

*By defendant(s) Michael Kermec and The Cadle Company II, Inc. (collectively, the “Cadle Defendants”):*

Cadle Defendants incorporate Document No. 12 as more fully set forth herein at length.

**1.2** *The facts that the parties dispute are:*

1. Did the condition of the Plaintiff's properties violate the Wilkes-Barre City Code so as to justify their posting and closing by the City Health Department and/or Building Code Official?
2. Was there any improper forced evacuation of the Plaintiff from his office location?
3. Did the City Defendants act in concert with Defendant Cadle or Defendant Kermec with respect to the Plaintiff's properties?
4. Cadle Defendants incorporate Document No. 12 as more fully set forth herein at length.

**1.3** *The legal issues that the parties dispute are:*

1. Did the Defendants conduct an illegal search and/or seizure of Plaintiff's property in violation of the Fourth Amendment?
2. Did the Defendants violate the Plaintiff's right to procedural due process?
3. Did the Defendants violate the Plaintiff's right to substantive due process?
4. Did the Defendants violate the Plaintiff's First Amendment rights?
5. Did the Defendants engage in activity that would constitute an invasion of privacy under Pennsylvania State Tort law?
6. Did the Defendants interfere with the contractual relationships of the Plaintiff in a manner that would give rise to a claim for interference with contractual relationships under Pennsylvania law?
7. Did the Defendants engage in activity that would give rise to a cause of action of intentional infliction of emotional distress under Pennsylvania law?
8. Did the Defendants act in concert in a manner that would give rise to a claim of civil conspiracy under Pennsylvania law?

9. Are the Plaintiff's State law claims against the City Defendants barred as untimely given the Plaintiff's failure to give timely notice of the claims to the City as required by Pennsylvania law?

10. Has the Plaintiff set forth a violation of a clearly established constitutional right which the individual City Defendants would believe or understand they violated by their conduct, and hence are said individual Defendants entitled to qualified immunity with respect to the civil rights claims?

11. Are the individual Defendants entitled to absolute immunity under Pennsylvania Law with respect to the state law claim?

12. Whether the individual City Defendants believed in good faith that their conduct was lawful and hence immune from liability?

13. Does the City have liability under Section 1983 because it had an unconstitutional policy, practice or custom that violated the Plaintiff's constitutional rights?

14. Were any of acts of the Defendants the proximate cause or the cause in fact of any harm suffered by the Plaintiff?

15. Cadle Defendants incorporate Document No. 12 as more fully set forth herein at length.

1.4 *Identify any unresolved issues as to service of process, personal jurisdiction, subject matter jurisdiction, or venue:*

N/A.

1.5 *Identify any named parties that have not yet been served:*

N/A.

1.6 *Identify any additional parties that:*

plaintiff(s) intends to join: N/A.

defendant(s) intends to join: N/A.

1.7 *Identify any additional claims that:*

plaintiff(s) intends to add: N/A.

defendant(s) intends to add: N/A.

## 2.0 Disclosures

2.1 *Separately for each party, list by name and title/position each person whose identity has been disclosed.*

Disclosed by Plaintiff:

<u>Name</u>	<u>Title/Position</u>
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Disclosed by City Defendants:

<u>Name</u>	<u>Title/Position</u>
Thomas Leighton	Mayor of the City of Wilkes-Barre
Francis Kratz	Wilkes-Barre City Building Code Official
Gregory Barrouk	Assistant to the Mayor and Coordinator Of the City Community Action Team
Ed Pesotski	Wilkes-Barre City Environmental Health Inspector
William Sharksnas	Wilkes-Barre City Fire Chief
Joe Rodano	Wilkes-Barre City Health Inspector
Leon Schuster	Wilkes-Barre City Zoning Officer
Laralee Remensnyder	Captain in Wilkes-Barre City Police Dept.

## 3.0 Motions

*Identify any motion(s) whose early resolution would likely have a significant effect either on the scope of discovery or other aspects of the litigation:*

<u>Nature of Motion</u>	<u>Moving Party</u>	<u>Anticipated Filing Date</u>
Summary Judgment	City Defendants	February 28, 2011
Summary Judgment	Cadle Defendants	February 28, 2011

#### **4.0 Discovery**

4.1 Briefly describe any discovery that has been completed or is in progress:

By plaintiff(s):

By defendant(s): Discovery is concluded.

4.2 Describe any discovery that all parties agree should be conducted, indicating for each discovery undertaking its purpose or what kinds of information will be developed through it (e.g., "plaintiff will depose Mr. Jones, defendant's controller, to learn what defendant's revenue recognition policies were and how they were applied to the kinds of contracts in this case"): Discovery is concluded.

4.3 Describe any discovery that one or more parties want(s) to conduct but to which another party objects, indicating for each such discovery undertaking its purpose or what kinds of information would be developed through it: Discovery is concluded.

4.4 Identify any subject area limitations on discovery that one or more parties would like imposed, at the first stage of or throughout the litigation: Discovery is concluded.

4.5 For each of the following discovery tools, recommend the per-party or per-side limitation (specify a number) that should be fixed,

subject to later modification by stipulation or court order on an appropriate showing (where the parties cannot agree, set forth separately the limits recommended by plaintiff(s) and by defendant(s)):

4.5.1 depositions (excluding experts) to be taken by:

plaintiff(s): N/A                      defendant(s): N/A

4.5.2 interrogatories to be served by:

plaintiff(s): N/A                      defendant(s): N/A

4.5.3 document production requests to be served by:

plaintiff(s): N/A                      defendant(s): N/A

4.5.4 requests for admission to be served by:

plaintiff(s): N/A                      defendant(s): N/A

4.6 Discovery of Electronically Stored Information - N/A

\_\_\_ Counsel certify that they have conferred about the matters addressed in M.D. Pa LR 26.1 and that they are in agreement about how those matters will be addressed in discovery.

\_\_\_ Counsel certify that they have conferred about the matters addressed in M.D. Pa LR 26.1 and that they are in agreement about how those matters will be addressed in discovery with the following exceptions:

## **5.0 Protective Order**

5.1 If entry of a protective order is sought, attach to this statement a copy of the proposed order. Include a statement justifying the propriety of such a protective order under existing Third Circuit precedent.



N/A

5.2 If there is a dispute about whether a protective order should be entered, or about certain terms of the proposed order, briefly summarize each party's position below:

N/A

## 6.0 Scheduling

6.1 Final date for joining additional parties:

N/A Plaintiff(s)

N/A Defendant(s)

6.2 Final date for amending pleadings:

N/A Plaintiff(s)

N/A Defendant(s)

6.3 All fact discovery to be commenced in time to be completed by:  
Discovery is concluded.

6.4 All potentially dispositive motions should be filed by:

2/28/11

6.5 Reports from retained experts due:

from plaintiff(s) by: N/A

from defendant(s) by: N/A

6.6 Supplementations due: N/A

6.7 All expert discovery commenced in time to be completed by:

N/A

6.8 This case may be appropriate for trial in approximately: N/A

6.9 Suggested Date for the final Pretrial Conference: N/A

6.10 Trial: N/A

6.10.0 Suggested Date for Trial: N/A

**7.0 Certification of Settlement Authority (All Parties Shall Complete the Certification)**

I hereby certify that the following individual(s) have settlement authority.

Plaintiff:

Joseph R. Reisinger, Esquire, Pro Se  
444 South Franklin Street  
Wilkes Barre, PA 18702 657

City Defendants:

Maura McInnis, Esquire  
Darwin  
9 Farm Springs Road  
Farmington, CT 06032

Cadle and Kermec:

Dan Cadle or Peter Barta  
The Cadle Company II, Inc.  
100 North Center Street  
Newton Falls, OH 44444

**8.0 Alternative Dispute Resolution (“ADR”)**

**8.1** *Identify any ADR procedure to which this case already has been assigned or which the parties have agreed to use.*

ADR procedure: N/A.

Date ADR to be commenced: N/A.

Date ADR to be completed: N/A.

**8.2** *If the parties have been unable to agree on an ADR procedure, but one or more parties believes that the case is appropriate for such a procedure, identify the party or parties that recommend ADR and the specific ADR process recommended: N/A.*

**8.3** *If all parties share the view that no ADR procedure should be used in this case, set forth the basis for that view:*

N/A.

**9.0 Consent to Jurisdiction by a Magistrate Judge**

*Indicate whether all parties agree, pursuant to 28 U.S.C. § 636(c)(1), to have a magistrate judge preside as judge of the case with appeal lying to the United States Court of Appeals for the Third Circuit:*

All parties agree to jurisdiction by a magistrate judge of this court: \_\_\_\_\_Y  
X\_\_\_\_\_N

If the parties agree to proceed before a magistrate judge, please indicate below which location is desired for the proceedings: N/A

\_\_\_\_\_Scranton  
\_\_\_\_\_Wilkes-Barre  
\_\_\_\_\_Harrisburg

**10.0 Other Matters**

*Make any other suggestions for the case development process, settlement, or trial that may be useful or necessary to the efficient and just resolution of the dispute.*

None.

## **11.0 Identification of Lead Counsel**

*Identify by name, address, and telephone number lead counsel for each party:*

Dated:

\_\_\_\_\_  
Joseph R. Resinger, Esquire, Pro Se

**Kevin T. Fogerty, Esquire**  
**Mill Run Office Center**  
**1275 Glenlivet Drive, Suite 150**  
**Allentown, PA 18106**  
**(610)366-0950**

Dated: 1/6/11

/S/ Kevin T. Fogerty, Esquire  
Attorney for Cadle Defendants

**Donald H. Brobst, Esquire**  
**Rosenn, Jenkins & Greenwald, LLP**  
**15 South Franklin Street**  
**Wilkes Barre, PA 18711-0075**  
(570) 826-5655 – telephone  
(570) 706-3409 – facsimile  
[dbrobst@rjglaw.com](mailto:dbrobst@rjglaw.com)  
PA17833

Dated: 1/6/11

/S/ Donald H. Brobst, Esquire  
Attorney for Defendants  
City of Wilkes-Barre, Thomas Leighton,  
Francis Kratz and Gregory Barrouk