

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

MICHAEL DEGROAT, Individually
and as Administrator of the Estate of
Derek DeGroat, Sheila Marie DeGroat,
Breeanna DeGroat, and Derek Edward
Michael DeGroat by Lindsey Erk as
parent and natural guardian,

Plaintiffs,

v.

SERGEANT PAUL V. CAVALLARO, et
al.,

Defendants.

CIVIL ACTION NO. 3:16-cv-1186

(JUDGE CAPUTO)

ORDER

NOW, this 17th day of May, 2017, **IT IS HEREBY ORDERED** that the moving Defendants' Motion to Dismiss (Doc. 26) is **GRANTED in part and DENIED in part**.

- (1) The following claims are **DISMISSED with prejudice**:
 - (a) Plaintiffs' Fourteenth Amendment substantive due process claim contained in Count I;
 - (b) Count IX, only to the extent that this Court asserts a claim for negligent infliction of emotional distress ("NIED") that is already asserted in Count III;
 - (c) All claims pursuant to 42 U.S.C. § 1983 against members of the Pennsylvania State Police ("PSP") in their **official capacities** that seek retrospective monetary relief; and
 - (d) All state-law claims asserted against members of the PSP in their **official capacities**.
- (2) The following claims are **DISMISSED without prejudice**:
 - (a) Plaintiffs' failure-to-intervene claim contained in Count I;

(b) Count IV; and

(c) Count VI.

- (3) Plaintiffs have **twenty-one (21) days** from the date of entry of this Order to file a second amended complaint to properly plead the claims dismissed without prejudice herein, if they are able to do so; otherwise, these claims will be **dismissed with prejudice.**

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge