

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

RICHARD OLENIACZ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-346
)	Hon. Nora Barry Fischer
FORMER OFFICER JEREMY CUMBERLEDGE, ET AL.,)	
)	
Defendants.)	
)	

MEMORANDUM ORDER

This is a civil rights case wherein Plaintiff Richard Oleniacz seeks damages against Plum Borough and several of its police officers stemming from a 2013 search of his residence. (Docket No. 14). Presently before the Court is Defendants' Motion to Dismiss Amended Complaint in Part.¹ (Docket No. 15). In response to Defendants' Motion to Dismiss, Plaintiff both provided a substantive response and sought leave of Court to amend his *Monell* claim if the Court found it lacking. (Docket No. 19). Although Defendants' arguments are well taken, given the nature of this case (*i.e.*, a civil rights action), the Court needs to treat same with some degree of lenity, *see Releford v. Pa. State Univ.*, Civ. No. 10-1621, 2011 WL 900946, at *12 (M.D. Pa. Mar. 14, 2011). Further, Defendants continually make the assertion that Sergeant Kapusta is not a policymaker in briefing and at oral argument, yet the Court needs facts regarding Sergeant Kapusta's duties and responsibilities on the day in question to make that determination. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 126 (1988). Plaintiff will be given an opportunity to

¹ The Court notes that this is the second Motion to Dismiss filed in this action. (Docket Nos. 3, 15). In the first Motion, Defendants sought to dismiss both claims against them. (Docket No. 3). In the second Motion, Defendants only seek dismissal of the *Monell* claim Plaintiff brings. (Docket No. 15).

again amend his Complaint.

AND NOW, this 10th day of July, 2015, for the foregoing reasons,

IT IS HEREBY ORDERED that Plaintiff's request for leave to file a Second Amended Complaint is GRANTED; said Second Amended Complaint shall be filed by **August 10, 2015**.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss Plaintiff's Amended Complaint in Part is DENIED, as moot, given the Court's grant of leave to amend.

s/Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc/ecf: All counsel of record