DOCKET NO. CV-06-4019420	:	SUPERIOR COURT
C.R. KLEWIN NORTHEAST, LLC.	:	J.D. OF HARTFORD
VS.	:	AT HARTFORD
JAMES T. FLEMING, COMMISSIONER DEPARTMENT OF PUBLIC WORKS FOR THE STATE OF CONNECTICUT, M. JODI RELL, GOVERNOR OF THE STATE OF CONNECTICUT; and NANCY WYMAN, COMPTROLLER OF THE STATE OF CONNECTICUT	:	MAY 19, 2006

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO STRIKE

I. INTRODUCTION

Defendants seek to nullify the Governor's statutory authority to compromise and certify for payment, disputed claims against the State, and to elevate subordinate public officers to the status of "super-executives" who have the power to disregard not only the Governor's orders, but the duties imposed upon them by the legislature,[1] by holding that the judiciary cannot compel these subordinate officials to do otherwise. Defendants ask the Court to conclude that, when they disregard the Governor's certification and refuse to fulfill their statutory duties, the victims of their misconduct must simply proceed as if they had no certified and statutory right to immediate payment, and must instead sue the underlying state agency for breach of the agreement that gave rise to the certification (subject of course to a Claim Commissioner approval to waive the State's sovereign immunity from such a suit), or

[1] Specifically, C.G.S. § 3-7(c) provides that, when the Governor agrees to compromise a disputed claim against a state agency, she "shall certify to the proper officer or department or agency of the state the amount to be received or paid under such compromise." Section 3-7(c) further provides that "such certificate shall constitute sufficient authority to such officer or department or agency to pay or receive the amount therein specified in full settlement of such claim." Section 3-112 provides that the defendant Comptroller "shall . . . (3) . . . give orders on the Treasurer for the balance found and allowed."

proceed as if both the certification and the underlying settlement agreement never existed, and file an arbitration for a breach of the contract underlying the settlement agreement. Plaintiff respectfully requests that the Court decline defendants' invitation to undermine the statutory claims compromise process by making it a farce for private participants and ignoring the mandatory obligations imposed upon the state officials involved.

II. PROCEDURAL BACKGROUND

Plaintiff initiated this mandamus action to compel the payment of amounts which the Governor certified for payment under C.G.S. § 3-7. On January 26, 2006, defendants moved to dismiss the complaint on the ground that (1) plaintiff's claim was precluded by Sovereign Immunity; and (2) C.G.S. §§ 4-160 and 4-61 provided plaintiff with adequate alternative remedies. Defendants based both of these arguments on the assertion that ""regardless of how the plaintiff characterizes its claims and unilateral expectancies, it cannot be disputed that this is a contract action," rather than an action to compel the performance of ministerial duties imposed by statute. Def. Memorandum of Law in Support of Motion to Dismiss, p.2. Specifically, Defendants argued that they had Sovereign Immunity because plaintiff's complaint "merely" alleges "that the State breached an alleged agreement and does not rise to the level of 'exceeding authority.'" Id., p.6. Defendants argued that C.G.S. § 4-160 provided plaintiff with an "adequate remedy" because "the plaintiff is a business alleging the breach of a contract with a readily ascertainable monetary value." Id., p.8. Finally, defendants argued that C.G.S. § 4-61 provided plaintiff with an "adequate remedy" because "the plaintiff here could pursue its claims under the parties construction contract pursuant to § 4-61." Id., pp.11-12.

Rejecting defendants' mischaracterization of plaintiff's lawsuit as a breach of contract action, rather than an action to compel the performance of statutory duties, this Court correctly concluded that "[t]he complaint seeks relief from the inaction of state officers which is alleged to be in excess of and in contravention of their duties" and that "the complaint sufficiently alleges that the failure of these two defendants to pay Klewin's claim as authorized by the Governor is in violation of their duties under the law." Memorandum of Decision on Motion to Dismiss, dated April 18, 2006, pp.8, 10. Based on this conclusion, this Court found that defendants did not have sovereign immunity and denied the motion to dismiss. The Court declined to rule on defendants' other argument in support of dismissal, stating that "whether there is an adequate alternative remedy must await a hearing on the merits." Id., p.8, fn.5, citing, D'Eramo v. Smith, 273 Conn. 610, 615 (2005).

Notwithstanding this court's ruling, defendants filed the present motion to strike the complaint on the ground that plaintiff has adequate alternative remedies and seek to postpone the previously scheduled hearing on the merits. From the erroneous premise that plaintiff's mandamus action is simply "a basic breach of contract case," which this Court rejected less than one month before, Defendants again argue that plaintiff has adequate alternative remedies because "Plaintiff can file a claim with the Claims Commissioner, under Conn.Gen.Stat. 4-147 to enforce the alleged Compromise, or file suit pursuant to Conn.Gen.Stat. § 4-61 on the underlying disputed construction claims that led to the compromise." Defendants' Memorandum of Law in Support of Motion to Strike, p.5 (emphasis added).[2] What defendants do not contend, because they could not do so, is that

[2] ; See also Id., p.6 ("In other words, plaintiff claims there is a binding and legally enforceable agreement with the State that has been breached," and "mandamus is not appropriate for a breach of contract claim."); p.8 ("The plaintiff is a business alleging the breach of a contract with a readily

plaintiff could file a claim under either C.G.S. § 4-147 or § 4-61 to enforce its rights, and defendants' duties under C.G.S. § 3-7. As set forth more fully herein, for this reason, neither C.G.S. § 4-147, nor § 4-61 constitute "adequate remedies at law" that preclude plaintiff's mandamus action.

III. ARGUMENT

A. STANDARD OF REVIEW

"The purpose of a motion to strike is to contest ··· the legal sufficiency of the allegations of any complaint ··· to state a claim upon which relief can be granted." (Internal quotation marks omitted.) Fort Trumbull Conservancy, LLC v. Alves, 262 Conn. 480 (2003). The role of the trial court in ruling on a motion to strike is "to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) Dodd v. Middlesex Mutual Assurance Co., 242 Conn. 375, 378 (1997). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Internal quotation marks omitted.) Faulkner v. United Technologies Corp., 240 Conn. 576, 580 (1997). "[G]rounds other than those specified should not be considered by the trial court in passing upon a motion to strike ···" Grazo v. Stamford, 255 Conn. 245, 259 (2001).

B. SECTIONS 4-160 AND 4-61 ARE NOT "ADEQUATE REMEDIES" BECAUSE THEY DO NOT ALLOW PLAINTIFF TO ENFORCE ITS RIGHTS, AND DEFENDANTS' DUTIES, UNDER C.G.S. § 3-7(C)

1. A Writ of Mandamus Is The Appropriate Remedy To Compel A Public Official To Perform A Duty Imposed By Law

Defendants do not dispute that they have a mandatory, statutory duty to pay to plaintiff $1.2 million dollars, as certified by the Governor, which they have failed to fulfill,

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ascertainable monetary value. As such . . . plaintiff has an adequate remedy in the form of a claim for money damages in the Claims Commission.")

and that plaintiff has a clear legal right to be paid this money. Def. Br., pp.2 7 5, fn.3. It is a matter of well-established law that "[w]here a public officer proposes to proceed in plain disregard of the rules of law established for his governance . . . his conduct is tantamount to a refusal to act at all and mandamus lies, not only to compel him to act but to direct that action along the prescribed way." State v. Erickson, 104 Conn. 542, 133 A.2d 683, 685 (1926). Thus, in Erickson, the Connecticut Supreme Court held that the plaintiff was entitled to a writ of mandamus to compel the tax assessor to perform his statutory duty to fill out the tax list, and to do so using the statutorily required standards. Id., 133 A.2d at 685, citing, C.G.S. §§ 1138, 1183.

More recently, in Vartuli v. Sotire, 192 Conn. 353, 366 (1984), the Connecticut Supreme Court reaffirmed this principle and upheld trial court issuance of a writ of mandamus directing a zoning enforcement officer to issue a building permit to which the plaintiffs were entitled as a matter of law. Id., at 366; See also Loyens v. Town of Easton, 2006 WL 932308 (March 22, 2006) (J.D. Fairfield) (Richards, J.) (issuing writ of mandamus to compel zoning enforcement officer to issue permit authorized by Zoning Board of Appeals because: "It is clear that the decision of a Zoning Enforcement official are subordinate to those of the Zoning Board of Appeals. 'The Zoning Board of Appeals is endowed with liberal discretion unfettered by the zoning officer.' Therefore, when a Zoning Board of Appeals decision has been issued . . . that party [the zoning enforcement officer] has no discretion but to comply with the Zoning Board of Appeals decision.") (citations omitted).

In apparent recognition of the fact that mandamus is imminently appropriate to compel the performance of a statutory duty, defendants ask the court to characterize this

action as a suit for money damages based on a breach of contract, instead of a mandamus action, simply because compelling defendants to fulfill their statutory duties C.G.S. §§ 3-7(c) and 3-112 would result in the payment of money to plaintiff. Def. Br., pp.7-8. This argument has no merit.

First, this Court has already found that plaintiff's complaint seeks the enforcement of statutory duties, and is not merely a breach of contract action, as defendants argued in support of their motion to dismiss. Second, it is beyond question that a mandamus action is not transformed into a claim for money damages merely because compliance with the statutory duty sought to be enforced would result in the payment of money to the plaintiff. See Bowen v. Massachusetts, 487 U.S. 879, 893-901, 108 S. Ct. 2722 (1988) ("The fact that a judicial remedy may require one party to pay money to another is not sufficient reason to characterize the relief as 'money damages'."); State v. D' Aulisa, 133 Conn. 414 (1947) (Mandamus is a proper remedy to require a town comptroller to pay teachers' and superintendents' salaries. The duty is ministerial.); Brown v. Lawlor, 119 Conn. 155 (1934) (Mandamus is a proper remedy to compel payment of retirement pensions to fireman and policemen.); Branard v. Staub, 61 Conn. 570 (1892) (Mandamus is proper remedy to compel the State Controller to pay the plaintiff a sum claimed by him to be due as his salary as the Governor's executive secretary.)[3]; State v. Staub, 61 Conn. 553 (1892) (Where the law fixes the amount of claim, or if the account is liquidated, and manner of payment is

[3] See also Board of Administration v. Wilson, 61 Cal. Rptr 2d 207, 52 Cal. App. 4th 1109, rev. den. ("Mandamus, which seeks order compelling official to perform a mandatory duty, is not an action against state for money, even though the result compels a public official to release money wrongfully obtained."); Anselmo v. King, 902 F. Supp. 273, 275 (D.D.C. 1995) (Where a mandamus action seeks funds to which a statute entitles a plaintiff rather than seeking money compensation for losses a plaintiff may have suffered by virtue of the withholding of those funds, the relief sought is specific relief and not classical money damages. This action for mandamus is not an action for money damages and sovereign immunity is not implicated.)

agreed upon by the parties, the comptroller's duty is to draw his order in payment of it. This is a ministerial act. Whenever any public officer, however high, is commanded by any constitution or statute to perform a ministerial act, the performance may be compelled by mandamus.); Alcorn v. Dowe, 9 Conn. Sup. 440 (1941) (Mandamus is the proper remedy to require the comptroller to make payment to the plaintiff for any difference in pay between his state salary and his military salary in accordance with the applicable statute. Compliance with the statute is a ministerial act.); Mossup Trucking Co. v. MacDonald, 5 Conn.Sup. 114 (1937) (mandamus is "the proper remedy to require a public officer charged with the performance of a duty to perform it by issuing the necessary certification or voucher to the State Comptroller. There would be no difficulty about this if the sum so due is liquidated."); Alcorn v. Dowe, 10 Conn.Sup. 346 (1942) (same);[4]

Indeed, in Milford Ed. Ass'n v. Board of Ed. Of Town of Milford, 167 Conn. 513 (1975), upon which defendants rely (Def Brief, p.4), the Supreme Court reiterated that, because a writ of mandamus "commands the performance of a duty. It acts upon the request of one who has a complete and immediate legal right," a writ of mandamus would be appropriate to compel a public official to perform her duty to compensate the plaintiff, if there was a statute that fixed the amount of compensation due. Id., at 520-521.

Accordingly, it is beyond dispute that mandamus is an appropriate remedy to compel defendants to perform their duties pursuant to C.G.S. §§ 3-7 and 3-112(3).

[4] In 1992, Attorney General Blumenthal himself issued an opinion that mandamus is a proper remedy to enforce the Comptroller's statutory duties. Op. Atty. Gen. No. 92-035. His current current argument on behalf these defendants- who previously received and relied his recommendation that the compromise be accepted-contradicts that earlier opinion and those of his predecessors,. e.g. Alcorn v. Dowe, 10 Conn. 346 (1942); Alcorn v. Dowe, 9 Conn. Sup. 440 (1941).

2. A Remedy That Does Not Allow The Plaintiff To Compel The Public Official To Fulfill Her Duty Is Not "Adequate."

An application for a writ of mandamus will be precluded where the plaintiff has an adequate, alternative remedy. However,

> [a] remedy, to be adequate, must be one 'which will place the relator in status quo, that is, in the same position he would have been had the duty been performed. * * * Indeed, it must be more than this; it must be a remedy which itself enforces in some way the performance **of the particular duty**, and not merely a remedy which in the end saves the party to whom the duty is owed unharmed by its nonperformance.

Erickson, 133 A.2d 683 at 686 (emphasis added). As this Court recently concluded, the plaintiff seeks to enforce defendants' statutory duty to pay the claim which the Governor certified to be paid pursuant to C.G.S. § 3-7. Decision on Motion to Dismiss, dated April 18, 2006, pp.8, 10.

The Connecticut Supreme Court has repeatedly rejected the argument that defendants in this case make, *inter alia*, that plaintiff has an "adequate alternative remedy" merely because plaintiff might conceivably achieve a similar end result (the payment of $1.2 million dollars), if it successfully pursued a different remedy (damages), based on a different theory of recovery (breach of a settlement agreement or of the underlying construction contract). For example, in Erickson, the defendant argued that mandamus was not appropriate because the plaintiff had the alternative remedy of appealing to the tax board, which had authority to equalize and adjust the valuations of property, and otherwise revise the list. Id., 133 A.2d at 686, citing, C.G.S. § 1232. The Court rejected this argument explaining that, even though plaintiff could have achieved the end result it sought through an appeal to the tax board, such an appeal was not adequate to secure that to which the plaintiff was entitled "to wit, the honest judgment of

the assessors as to the value of property in the first instance" and thus, the availability of an appeal to the tax board did not preclude plaintiff's right to seek a writ of mandamus. Id. (emphasis added); See also State v. Jenks, 150 Conn. 444, 451 (1963) (same).

Similarly, in Vartuli, supra, the Connecticut Supreme Court rejected the defendant zoning enforcement officer's argument that the plaintiff had an adequate remedy by an appeal of the zoning board's denial of the plaintiff's application for a building permit as an alternative to the issuance of a writ of mandamus ordering him to issue the building permit. The Court's explanation is quite telling as it applies to this case:

> This contention misconstrues what constitutes an adequate remedy for the purposes of mandamus. An adequate remedy is one that "enforces in some way the performance of the particular duty, and not merely a remedy which in the end saves the party to whom the duty is owed unharmed by its nonperformance." The trial court correctly held that the zoning appeal, which could do no more than secure approval of the coastal site plan, *which already had been approved by operation of law*, did not vindicate the plaintiffs' right to the immediate issuance of a building permit.

Id., at 366 (emphasis added), quoting, Erickson, supra, 104 Conn. at 549 and State ex rel. Golembeske v. White, 168 Conn. 278, 283 (1975). As in Vertuli, and Erickson, supra, in this case, a suit for breach of contract, which could do no more than secure a judgment that plaintiff is entitled to a specified sum of money, *to which defendants concede plaintiff is already entitled by virtue of the Governor's certification and applicable law*, would not vindicate plaintiff's right to immediate payment by defendants of the sums certified by the Governor.

Moreover, Waterbury Equity Hotel, LLC v. City of Waterbury, 85 Conn.App. 480 (2004) is consistent with the Supreme Court's holdings in Erickson, Jenks, and Vertuli.and therefore defendant's reliance is quixotically puzzling. See Def. Br., p.5. The plaintiff in Waterbury Equity Hotel filed an appeal from decision of the board of assessment appeals

denying its request for reduction in its assessed property value pursuant to both C.G.S. § 12-117a (which authorizes a taxpayer to appeal to the superior court from an adverse ruling of the tax board) and pursuant to C.G.S. § 12-119 (which authorizes a taxpayer to bring a claim that the tax was imposed by a town that had no authority to tax the subject property, or that the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of [the real] property). Waterbury Equity Hotel, 85 Conn.App. at 501.

Contrary to defendants' characterization (See Def. Br., p.5), the taxpayer in that case did not seek a writ of mandamus. Instead, the defendant argued that the plaintiff's sole remedy was a writ of mandamus, and thus, that the trial court did not have authority to hear the plaintiff's appeal. Id., at 500. The Court of Appeals rejected the defendant's argument on the ground that C.G.S. §§ 12-117a and 12-119 were specifically designed to vindicate the plaintiff's claim in that case – which was that that the defendant had over assessed its property - and authorized the plaintiff's appeal. Id. The Court further distinguished between cases such as the one before it, where mandamus was not appropriate because C.G.S. §§ 12-117a or 12-119 provided remedies for the specific right the taxpayer sought to vindicate, and cases such as Jenks, in which mandamus was appropriate, because the same statutes were not suited to vindicate the specific right that those taxpayers sought to enforce. Id., at 502, fn.10.

As in Erickson, Jenks, and Vertuli, and unlike in Waterbury Equity Hotel, none of the so-called remedies proposed by the defendants would vindicate the legal right that plaintiff seeks to enforce in this case, to wit, the right to immediate payment of the certified claim pursuant to C.G.S. §§ 3-7 and 3-112(3). In fact, defendants proposed

"remedies" are even more inadequate than the alternatives available to the plaintiffs in Erickson, Jenks, and Vertuli. In those cases, the plaintiff at least had the opportunity to directly challenge the propriety of the officer's conduct in a venue where that officer's determination could be overruled, while the "remedies" that defendants in this case propose, preclude plaintiff from asserting any claim based on the violation of the duty imposed by C.G.S. § 3-7. Bloom v. Gershon, 271 Conn. 96, 106, 111 (2004) (holding Claims Commission only has jurisdiction under 4-160 over claims for money damages); Department of Public Works v. ECAP Construction Co., 250 Conn. 553 (1999) (§ 4-61 applies only to disputed claims under construction contracts and does not even extend to claimed breaches of a settlement of the disputed claims.)[5]

3. Defendants Have Not Cited A Single Authority That Supports That C.G.S. §§ 4-160 and 4-61 Are Adequate Alternative Remedies Under The Circumstances Of This Case

Not surprisingly, defendants cannot refer the Court to any authority remotely supporting their argument that either C.G.S. §§ 4-160 and 4-61 are adequate alternative remedies to a writ of mandamus to compel defendants to perform their statutory duties. Not one case to which defendants point this Court even discussed the question of whether C.G.S. §§ 4-160 and 4-61 could provide adequate alternative remedies to an application

[5] Although defendants improperly assert facts outside of the complaint, i.e. that plaintiff initially filed a claim with the Claims Commissioner (Def. Br., p.7), plaintiff's earlier filing is irrelevant as to whether C.G.S. § 4-160 provides an adequate alternative remedy to the present application for a writ of mandamus to vindicate plaintiff's rights under C.G.S. §§ 3-7 and 3-112(3). See D'Eramo, 273 Conn. at 613-614, 616-618 (noting that plaintiff filed a claim with the Claims Commissioner, but filed mandamus action before the date scheduled for the hearing before the Claims Commissioner and holding that plaintiff was not required to proceed with the hearing before the Claims Commissioner prior to filing the mandamus action.). Assuming *arguendo*, that this court finds the filing had some relevance, plaintiff proffers and can prove at a hearing that it filed the claim in reliance on promises by the Attorney General's office that it would file an appearance and agree to a prompt hearing, which that office later repudiated thereby making the Plaintiff's Claims Commissioner filing irrelevant.

for a writ of mandamus to compel a defendant to perform a duty imposed by statute. All but one of defendants' cases involved claimed breaches of a contract in contrast to the violation of a statutory duty.[6] These cases do not support that C.G.S. §§ 4-160 and 4-61 are adequate remedies for the violation of a statutory duty, which plaintiff alleges in this case.

Defendants' own authorities acknowledge that they are not. For example, in Milford Ed. Ass'n, (Def. Br., p.6) , the Court specifically found that a breach of contract action was an adequate alternative remedy because the plaintiffs were not seeking to enforce the performance of a statutory duty to which they had a complete and immediate legal right (as the plaintiff in this case is seeking to do), but were, instead seeking a judicial interpretation of a contract, the terms of which were subject to dispute (which the plaintiff in this case is not asking the court to do). Id., at 520-521.

In Alter and Associates, LLC v. Lantz, 90 Conn.App. 15 (2005) (Def. Br., p.9), the plaintiff sought an injunction to compel defendants to perform their duties under a contract, and sought a writ of mandamus to compel the defendants to perform their corresponding ministerial duties under the state bidding and purchasing statutes, C.G.S. 4-a-50 et seq. While the Alter Court upheld dismissal of injunctive relief on the ground that money damages are an adequate remedy for a claimed breach of contract, the pursuit of which required plaintiff to obtain a waiver of sovereign immunity from the Claim Commissioner (Id., at 21-23), significantly, in addressing the trial court's ruling on plaintiff's mandamus action, the Court stated that "we lack any basis" to determine whether the trial court correctly dismissed the mandamus action because the trial court "nowhere addressed the merits of the plaintiff's claim that, because of our state competitive bidding statutes, the

[6] Indeed, the plaintiffs in Department of Public Works v. ECAP Construction Co., 250 Conn. 553 (1999) and 184 Windsor Ave., LLC v. State, 274 Conn. 302 (2005), upon which defendants rely (Def. Br., pp.6, 8, 9), had not even applied for a writ of mandamus.

defendants' contractual obligations were ministerial in nature."[7] Thus, just as in Milford Ed. Ass'n, the Court in Alter, recognized that the mere fact that a contract was involved could not be sufficient to preclude a mandamus action where the plaintiff alleged the violation of a ministerial duty created by statute. The Court clearly did not hold that plaintiff's claim for damages for breach of contract was an adequate alternative remedy that could justify precluding the plaintiff's mandamus action, as defendants misleadingly imply. Def. Br., p.9. To the extent that Alter has any bearing on this case, it demonstrates that the possibility of obtaining money damages for a breach of the underlying contract is not a basis to preclude plaintiff's application for a writ of mandamus seeking performance of statutory duties.

IV. CONCLUSION

Neither C.G.S. § 4-160 nor C.G.S. § 4-61, would allow plaintiff to enforce its rights under C.G.S. §§ 3-7 and 3-112(3) to be paid pursuant to the Governor's certification. Neither statute provides a venue to enforce this right. To the contrary, requiring plaintiff to proceed against the defendants under these statutes would completely deprive plaintiff of any the benefit of the Governor's certification and any opportunity to enforce the duties which the certification created, and compel plaintiff to pursue entirely different remedies (damages) based on different factual and legal theories (based on breaches of the underlying

[7] In Alter ,that the Appellate Court failed to hold that the plaintiff's ability to pursue a claim for damages or that the plaintiff needed a waiver of the state's sovereign immunity from the Claims Commissioner provided a basis for the trial court to dismiss the plaintiff's application for a writ of mandamus, is not surprising – and it was no mistake. It is well-established that, as this court concluded, sovereign immunity does not apply to a mandamus action (See Ruling on Motion to Dismiss, dated May 11, 2006) and thus, that C.G.S. § 4-160 does not require a plaintiff to seek permission from the claims commissioner prior to filing a mandamus action. D'Eramo, 273 Conn. at 615-619; See also Mossup Trucking, supra ("The rule that a State is immune from suit in its own courts does not apply to an action of mandamus brought to compel a public officer to perform public duties delegated to him, since the State, as well as individuals is interested in the fulfillment of the purposes of the office which he holds.")

construction contract and settlement agreement). These statutes thus do not provide an adequate alternative remedy by which plaintiff can enforce its statutory rights, and a mandamus action is appropriate. See Chamber of Commerce of Great Waterbury, Inc. v. Murphy, 179 Conn. 712, 720 (1980). For the foregoing reasons, plaintiff respectfully requests that the Court deny defendants' Motion to Strike.

PLAINTIFF,

By: _____

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ORDER

The above Objection is sustained/overruled this ____ day of _____, 2006.

The Court

By_____
Judge/Asst. Clerk

CERTIFICATION

I HEREBY CERTIFY that a copy of the foregoing Notice was sent via certified mail, return receipt requested, on ---------- to:

Assistant Attorney General Nancy Arnold
Assistant Attorney General Eileen M. Meskill
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

_____
Eliot B. Gersten
Commissioner of the Superior Court