

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

JOHN T. AND ESTHER N. DODERO,  
et al.

Plaintiffs,

v.

CASE NO.: 3:20-cv-05358-RV/HTC

WALTON COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
FLORIDA; MICHAEL A. ADKINSON, JR.,  
IN HIS OFFICIAL CAPACITY AS WALTON  
COUNTY SHERIFF,

Defendants.

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**MOTION TO DISMISS BY SHERIFF MICHAEL A. ADKINSON, JR.**

Pursuant to Rule 12(b), Federal Rules of Civil Procedure, Defendant Sheriff Michael A. Adkinson, Jr., moves for an order dismissing the Complaint against him [ECF. 1], and in support states:

1. Plaintiffs are self-described individual and corporate owners of beachfront properties in south Walton County, Florida.
2. At issue is Walton County ordinance 2020-09 [ECF.1-5], enacted by the Walton County Board of County Commissioners on April 2, 2020, as a result of the COVID-19 pandemic, which temporarily closes all Walton County beaches

and makes it unlawful for any person to enter or remain on the same (hereinafter “the Ordinance”).

3. Plaintiffs challenge the Ordinance on the following grounds:

Count:	Claim for Relief:
I	Violation of the Fifth Amendment’s Takings Clause
II	Declaratory Judgment/Preemption
III	Violation of Florida’s Constitutional Right to Privacy
IV	Fourteenth Amendment – Substantive Due Process
V	Fourth Amendment Right Against Unreasonable Seizure
VI	Declaratory Judgment/Lack of Statutory Authority

4. Plaintiffs bring the six counts against both the County and the Sheriff without distinction and ask this Court to declare the Ordinance unconstitutional and invalid; to enjoin the County and Sheriff from enforcing the Ordinance; and to find both Defendants have violated certain constitutional rights and award them damages therefor.

5. To the extent Plaintiffs’ claims for relief challenge the validity of the Ordinance, the Sheriff is not a proper defendant. As for their claims for constitutional violations, Plaintiffs fail to state a claim for relief against the Sheriff as they fail to show any unconstitutional policy which is the cause thereof.

6. The Sheriff is entitled to dismissal of all claims against him as a matter of law.

WHEREFORE, Defendant Sheriff Michael A. Adkinson, Jr., respectfully requests this Court dismiss all claims against him.

#### **CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

Under Local Rule 7.1(D), a conference with opposing counsel is not required for this Motion which would determine the outcome of claims pending against the Sheriff.

#### **MEMORANDUM OF LAW**

Under N.D. Fla. Loc. R. 7.1(E), the Sheriff offers the following Memorandum of Law in support of his Motion to Dismiss.

##### **I. Standard of Review.**

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007)).

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal* at 678 (citing *Twombly* at 556); see also *Speaker v. U.S. Dept. of Health*, 623 F.3d 1371, 1380 (11th Cir. 2010). The Court must disregard “[l]egal conclusion[s] couched as [ ] factual allegation[s]”

and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Iqbal*, 556 U.S. at 678. The Court must then consider the remaining factual allegations to determine if they “plausibly” suggest an entitlement to relief. *Id.* at 679.<sup>1</sup> A complaint that “pleads facts that are ‘merely consistent with’ a defendant’s liability,” falls “short of the line between possibility and plausibility.” *Iqbal*, at 678. (quoting *Twombly* at 557).

**II. The Sheriff is not a proper defendant for any claims challenging the constitutionality of the Ordinance.**

The Complaint fails to set forth which of the six counts are brought against the Sheriff as opposed to the County. To the extent Plaintiffs’ complaint seeks a declaration that Ordinance 2020-09 is facially unconstitutional, the underpinning of all six counts, the Sheriff is not a proper party to such a challenge and should be dismissed from all such claims.

The Florida Constitution separately creates political subdivisions called counties and a variety of county officers, including a sheriff. Art. VIII, §§ 1(a) and (d), Fla. Const. As an independently elected constitutional officer, the Sheriff is a wholly separate legal entity with no policymaking authority over the

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<sup>1</sup> Unlike factual allegations, conclusions in a pleading “are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. at 664. On the contrary, legal conclusions “must be supported by factual allegations.” *Id.* Indeed, “conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal.” *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003).

County. *Troupe v. Sarasota County, Florida*, No. 8:02-CV-53 T24MAP, 2004 WL 5572030, at \*11 (M.D. Fla. Jan. 22, 2004), *aff'd*, 419 F.3d 1160 (11th Cir. 2005). As part of the executive branch of government, and pursuant to section 30.15, Florida Statutes, Florida Sheriffs are responsible for executing process, attending court terms, executing court orders, suppressing tumults and riots, and acting as conservators of peace. Further, in times of a declared state of emergency, as exist here, all sheriffs are under a statutory obligation to enforce all laws passed pursuant to Florida's "State Emergency Management Act," sections 252.31-252.60, Florida Statutes. § 252.47, Fla. Stat. (2019)("The law enforcement authorities of the state and the political subdivisions thereof **shall enforce** the orders and rules issued pursuant to ss. 252.31-252.90" (emphasis added)).

The County, through the Board of County Commissioners is solely responsible for developing and passing laws within the County. Art. VIII, §§ 1(f) and (g). As such Ordinance 2020-09 is a creation of the Walton County Board of County Commissioners. [ECF. 1-5] After passage of any such law, Sheriff Adkinson, as the chief law enforcement officer of Walton County, is responsible for enforcing all duly enacted laws. The Sheriff has no authority or ability to repeal, amend, or alter Ordinance 2020-09 in any manner. Further, given the current state of emergency, the Sheriff lacks any discretion whether to enforce

the law as passed. To the contrary, the Sheriff is obligated to enforce the provision, a mandate set forth in section 252.47, Florida Statutes. As a member of the executive branch, the Sheriff is not in a position to respond to the Plaintiffs' constitutional challenge of the ordinance adopted by the legislative branch. See *Allied Veterans of the World, Inc., v. Phone-Sweeps, LLC*, No. 6:11-cv-155-Orl-28DAB, 2012 WL 3111992, at \*4 (M.D. Fla. July 30, 2012) (“[T]he County is the proper “policymaker” to defend a constitutional challenge to one of its ordinances.”) The legislative body that adopted the law, here the Board of County Commissioners, is best suited to explain and defend the governmental interest it determined the ordinance serves, and how the ordinance as written is tailored to meet those interests.

The County and the Sheriff belong to independent branches of government for which the Florida Constitution specifically provides that “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” Art. II, § 5, Fla. Const. Plaintiffs point to no statutory or caselaw authority providing a basis for determining that Florida law intended the Sheriff to be liable for policies devised and implemented by the legislative branch of the County over whom the Sheriff has no control. See, e.g., *Pinfield v. Williams*, No. 6:00-cv-01601-Orl-19JGG (M.D. Fla. March 8, 2004) (holding there is “no basis for concluding that Florida

law intending the Sheriff to be liable for policies devised and implemented by a member of the [legislative] branch over whom the Sheriff had not one iota of control and had a statutory obligation to obey.”); See also *Turquitt v. Jefferson County*, 137 F.3d 1285, 1292 (11th Cir. 1998) (“[L]ocal governments can never be liable under § 1983 for the acts of those whom the local government has no authority to control.)

**III. Plaintiffs fail to demonstrate a Sheriff policy which was the cause of any constitutional violation.**

Although the Sheriff might be the proper defendant for claims related to the *enforcement* of the Ordinance in some circumstances,<sup>2</sup> in this case, Plaintiffs fail to state a claim for relief against the Sheriff because any constitutional violation is not the result of an unconstitutional policy of the Sheriff.

A local government entity, such as a sheriff’s office, cannot be held liable under 42 U.S.C. § 1983 for the injuries caused by its employees under a theory of *respondeat superior*. *Gurrera v. Palm Beach County Sheriff’s Office*, 657 Fed. App’x 886, 893 (11th Cir. 2016). Instead, to hold a sheriff’s office liable, a plaintiff must allege facts showing that the sheriff’s office had a custom or policy that caused the violation. *Id.* “The custom or policy must be the ‘moving force’

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<sup>2</sup> See *Allied Veterans*, 2012 WL 3111992 \*4 (M.D. Fla. 2012) (Sheriff was a proper defendant where he conceded he set policy for the enforcement of the ordinance.)

behind the constitutional deprivation for a court to find sufficient causation.” *Id.* (quoting *Monell v. Department of Social Services of City of N.Y.*, 436 U.S. 658, 694 (1978)).

Plaintiffs have failed even to allege facts showing that the Sheriff had any official policy or custom that has caused a constitutional deprivation. Rather, Plaintiffs have simply alleged that certain Sheriff’s Office deputies have occupied private beachfront properties while enforcing the County’s ordinance and threatened to arrest or fine Plaintiffs. This fails to state a claim against the Sheriff’s Office pursuant to section 1983.

Liability under section 1983 against a local government entity attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986). “[T]he word ‘policy’ generally implies a course of action consciously chosen from among various alternatives.” *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 822 (1985). A policy or action cannot be said to speak for the Sheriff if the Sheriff has no say in what policy or action the County takes. See, e.g., *Grech v. Clayton County, Ga.*, 335 F.3d 1326, 1331 (11th Cir. 2003).

When identifying the policymaker for purposes of local government liability under section 1983, courts must focus on who exercises control over the official. *Grech*, 335 F.3d at 1330. For example, when a county prosecutor orders sheriff's deputies to enter a clinic and seize an individual, the county prosecutor is the policymaker, and the county may be liable under section 1983 for the unlawful arrest. *Pembaur*, 475 U.S. at 485. When a chief judge orders a sheriff's deputy to confiscate an individual's materials and escort him away from the courthouse, the chief judge is the final policymaker, not the sheriff's office. *Pinfield*, No. 6:00-cv-1601-ORL-19JGG (M.D. Fla. March 8, 2004). Where a sheriff simply complies with a statutory duty he has no apparent discretion to decline, the sheriff is not the policymaker. See, e.g., *Pinfield*, No. 6:00-cv-1601-ORL-19JGG (M.D. Fla. March 8, 2004).

Under the State Emergency Management Act, political subdivisions in Florida are empowered to waive the procedures and formalities otherwise required of each political subdivision to take whatever prudent action to ensure the health, safety, and welfare of the community. § 252.38, Fla. Stat. (2019). State law requires law enforcement authorities of the state and the political subdivisions to enforce orders and rules enacted pursuant to the State Emergency Management Act. § 252.47, Fla. Stat. (2019).

Here, the County passed the subject ordinance for the purpose of emergency management in response to the Governor's declaration of a State of Emergency. [ECF. 1-5] The County cited the Emergency Management Act for authority for its enactment. [ECF. 1-5]. Under section 252.47, Florida Statutes, the Sheriff has no discretion in whether to enforce this ordinance. The Sheriff does not have the ability to choose a course of action from among alternatives. State law requires him to enforce the ordinance. The Sheriff is simply complying with a statutory duty he has no apparent discretion to decline. The County, through state law, has effectively exercised control over the deputies who are enforcing its law. If any constitutional deprivation has occurred, the only possible "moving force" behind it could be the County's ordinance. Thus, the County – not the Sheriff – is the policymaker in this case, and Plaintiffs have failed to state a claim against the Sheriff under section 1983 based on custom or policy.

#### **IV. Conclusion**

As more fully stated herein, Sheriff Adkinson is not the proper defendant as to any constitutional challenges to the Ordinance, and any policy which caused the deprivation of a constitutional right is not the Sheriff's and Plaintiffs cannot state a claim for relief against him. Pursuant to Fed. R. Civ. P. 12(b)(6), the Sheriff is entitled to dismissal of all claims against him.

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)**

The undersigned certifies that the foregoing Memorandum of Law complies with the word limit imposed by Local Rule 7.1(F), because it contains only 2,083 words.

Respectfully submitted this 10th day of April 2020.

*/s/ Gwendolyn P. Adkins*

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ATTORNEYS FOR DEFENDANT  
MICHAEL A. ADKINSON, JR., IN HIS  
OFFICIAL CAPACITY AS WALTON  
COUNTY SHERIFF

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b)(3) and N.D. Fla. Loc. R. 5.1, this document is being filed electronically and service shall be through the Court's transmission facilities on all persons appearing before this Court.

*/s/ Gwendolyn P. Adkins*

Attorney