IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR WALTON COUNTY, FLORIDA

CASE NO.: 25CF123
FELONY

STATE OF FLORIDA,
Plaintiff,

v.

JOSEPH TURNER,
Defendant,

_____/

DEFENDANT'S THIRD RECIPROCAL DISCOVERY SUBMISSION PURSUANT TO Fl. R. Cr. P. 3.220(d)

COMES NOW the Defendant, JOSEPH TURNER, by and through his undersigned Counsel and files this Reciprocal Discovery Submission Pursuant to Fl. R. Cr. P. 3.220:

Documents:

FEDERAL MOTION TO DISMISS FILED BY WALTON COUNTY ALLEGING NO WRONGDOING BY DEFENDANTS TURNER OR ROBERTSON (ATTACHED).

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-filing to the Office of the State Attorney, SAO2_leon@leoncountyfl.gov, this 26th day of February, 2026.

/s/Kathleen M. Bogenschutz
KATHLEEN M. BOGENSCHUTZ
Fla. Bar No.: 75318
BOGENSCHUTZ PLLC
521 N. Adams Street
Tallahassee, Florida 32301
Telephone No.: 850-273-8327

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

TERESA LOWERY,

Plaintiff,

v. CASE NO.: 3:26-cv-000790-TKW-ZCB

WALTON COUNTY, FLORIDA,
DONNA JOHNS, individually,
QUINN ROBERTSON, individually,
and JOSEPH TURNER, individually,

Defendants.

DEFENDANT COUNTY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COMES NOW, Defendant Walton County, Florida ("County"), by and through its undersigned counsel and pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, and in the manner required by the United States District Court for the Northern District of Florida Local Rules 7.1, submits his Motion to Dismiss Plaintiff's Complaint and states:

1. On December 12, 2025, Plaintiff filed her Complaint [ECF1-1] in the case styled *Teresa Lowery v. Walton County, Florida, Donna Johns*

individually, Quinn Robertson individually, and Joseph Turner individually, Case No.: 2025-CA-663, in the Circuit Court of the First Judicial Circuit, in and for Walton County, Florida. Defendant County, with consent from Co-Defendants, timely removed the case to this Court.

2. Plaintiff's Complaint alleges 10 counts against various Defendants, as follows:

Count I – Defamation against Johns

Count II – Invasion of Privacy – Intrusion against Walton County

Count III – Invasion of Privacy – Intrusion against Johns

Count IV – Invasion of Privacy – Intrusion against Robertson

Count V – Invasion of Privacy – Intrusion against Turner

Count VI – Invasion of Privacy – Public Disclosure of Private Events against Walton County

Count VII – Invasion of Privacy – Public Disclosure of Private Events against Johns

Count VIII – Invasion of Privacy – Public Disclosure of Private Events against Robertson

Count IX – Invasion of Privacy – Public Disclosure of Private Events against Turner

Count X – 42 USC 1983 – Unreasonable Search and Seizure under Fourth Amendment against Walton County

3. Plaintiff fails to state a cause of action against the County.

4. The County is entitled to sovereign immunity pursuant to Fla. Stat. §768.28(9) for any claims arising under Florida law because such allegations concern discretionary governmental functions of the County.

5. Plaintiff fails to state a cause of action against the County because there is no alleged policy that caused the Plaintiff's alleged constitutional deprivation; therefore, relief cannot be granted and the Federal claims against the County should be dismissed.

MEMORANDUM OF LAW

STANDARD OF REVIEW

In ruling on a Rule 12(b)(6) motion, the Court must accept all factual allegations as true and construe them in a light most favorable to the plaintiff. *Christopher v. Harbury*, 536 U.S. 403, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002); *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). Pursuant to Rule 8(a)(2), Fed. R. Civ. P., a Complaint must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (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. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). While detailed factual allegations are not required, the pleader must do more than merely invoke labels, conclusions, and the formulaic elements of a cause of action. *Iqbal* at 678 citing *Twombly*, 550 U.S. at 555.

When a Court considers "a Motion to Dismiss, all facts set forth in the plaintiff's complaint 'are to be accepted as true and the court limits its consideration to the pleading and exhibits attached thereto.'" *GSW, Inc. v. Long County*, 999 F.2d 1508, 1510 (11th Cir. 1993). A complaint may not be dismissed pursuant to Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Lopez v. First Union Nat'l Bank of Fla.*, 129 F.3d 1186, 1189 (11th Cir. 1997) (citing *Pataula Elec. Membership Corp. v. Whitworth*, 951 F.2d 1238, 1240 (11th Cir. 1992).

I. Plaintiff's Complaint is a Shotgun Pleading

A "shotgun pleading" is one that "employs a multitude of claims and incorporates by reference all of its actual allegations into each claim, making it nearly impossible for Defendants and the Court to determine with any certainty which factual allegations give rise to which claims for relief." *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1356 (11th Cir. 2018).

A "shotgun pleading" is a complaint that violates either Rule 8(a)(2) or

10(b), Federal Rules of Civil Procedure, or both. *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021)(citing *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). Shotgun pleadings "are flatly forbidden by the spirit, if not the letter, of these rules because they are calculated to confuse the "enemy," and the Court, so that theories for relief not provided by law and which can prejudice an opponent's case, especially before the jury, can be masked. *Barmapov*, 986 F.3d at 1324.

The Eleventh Circuit has recognized four general categories of shotgun pleadings, as follows:

> The most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint. The next most common type, at least as far as our published opinions on the subject reflect, is a complaint that does not commit the mortal sin of re-alleging all preceding counts but is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action. The third type of shotgun pleading is one that commits the sin of not separating into a different count each cause of action or claim for relief. Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.

Weiland v. Palm Beach Cnty. Sheriff's Ofc., 792 F.3d 1313, 1321–23 (11th Cir. 2015).

"The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id*. The Complaint, as drafted, falls within the prohibited "shotgun pleading" categories because it is replete with conclusory allegations and immaterial facts and it violates Rule 8(a)(2), Fed. R. Civ. P., because it includes multiple allegations in each paragraph as opposed to "a short plain statement" regarding the allegations against the Defendants. For example, in paragraph 11, Plaintiff supplies multiple allegations that make it impossible to provide answers to as required by the Rules. See also ECF1-1, ¶¶ 10, 12-14, 16. As Plaintiff's Complaint is a shotgun pleading, it is due to be dismissed.

II. Invasion of Privacy Claims (Counts II and VI) are due to be dismissed because Plaintiff fails to state a claim against the County.

Plaintiff fails to allege that any acts by the County were intentional; thus, Plaintiff fails to state a cause of action against the County as to Counts II and VI. Invasion of privacy is an intentional tort recognized under Florida law. *Farmer v. Humana*, 582 F.Supp.3d 1176, 1188 (M.D. Fla. 2022) citing *T.G. v. Sears, Roebuck & Co.*, No. 06-61228-CIV, 2006 WL 8432512, at *6 (S.D. Fla. Nov. 20, 2006). See also, *Rowell v. Holt*, 850 So.2d 474, 478 n.1

(Fla. 2003). Florida has long recognized that there is no such thing as a negligent intentional tort. See *Sanders v. Miami*, 672 So.2d 46, 47 (Fla. 3d DCA 1996).

Claims wherein the Plaintiff alleges negligence as opposed to intentional acts are routinely dismissed. See *Carlisi v. Sprintcom, Inc.*, No. 06-60751-CIV-DIMITROULEAS, 2006 WL 8432613, at *2 (S.D. Fla. Sept. 6, 2006)(negligently maintaining records allowing a third party to gain access is not sufficient to state a claim of invasion of privacy.) Currently, there are no allegations that the actions of the County were intentional such that Counts II and VI would survive. Since there is no such thing as a negligent intentional tort, Counts II and VI are due to be dismissed.

a. Count II is due to be dismissed because Plaintiff fails to allege the elements of the tort.

Invasion of privacy by intrusion requires Plaintiff to establish that someone "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns…if the intrusion would be highly offensive to a reasonable person." *Jackman v. Cebrink-Swartz*, 334 So.3d 653, 656 (Fla. 2d 2021) citing Restatement (Second) of Torts § 652B (Am. Law Inst. 1977). Florida law narrows the definition by requiring one to "show an intrusion into a private place and not merely a private activity." *Hammer v. Sorenson*, 824 Fed.Appx. 689, 695 (11th Cir. 2020) relying on

Allstate Ins. Co. v. Ginsberg, 863 So.2d 156, 161 n.3, 162 (Fla. 2003). Finally, "Florida law equates the 'highly offensive to a reasonable person' element from the intrusion-upon-seclusion cause of action with the 'outrageousness' element of the intentional-infliction-of-emotional distress cause of action. *Hammer*, 824 Fed.Appx. at 696 citing *Stoddard v. Wohlfahrt*, 573 So.2d 1060, 1062-1063 (Fla. 5th DCA 1991). To assess the conduct, the question is "whether such behavior is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency,'" … and it is a matter of law, not a question of fact. *Stoddard*, 573 So.2d at 1063 citing *Ponton v. Scarfone*, 468 So.2d 1009, 1011 (Fla. 2d DCA 1985).

In *Stoddard*, the Fifth DCA stated:

> All will admit that some intrusions into one's personal life are so indecent and outrageous and calculated to cause such excruciating mental pain to all but the most callous that it would be a reproach to the law not to allow redress. On the other hand, it is equally clear that society cannot protect the … thin-skinned against trivial invasions of privacy that the normal person suffers with equanimity. The mores and the law must distinguish one from the other.

573 So.2d at 1063 citing 2 F. Harper, F. James & O. Gray, THE LAW OF TORTS §9.7, at 667 (1986). Meaning not every intrusion is a tort.

Plaintiff has failed to allege any conduct by the County that would be objectively outrageous such that the claim in Count II would survive. First, Plaintiff alleges that the text messages were received by the County

Commissioners via email from Suzanne Harris, who is allegedly a citizen advocate and not an employee of the County. [ECF1-1, ¶11]. Second, Plaintiff specifically alleges that actors on behalf of the County actively intervened to stop the reading of Plaintiff's alleged private text messages, which again were received by presumably a private citizen based on Plaintiff's allegations. [ECF1-_1, ¶¶12-13]. Finally, Plaintiff fails to include what, if anything, the text messages between her and Charles Galloway, who previously was an employee with the County as alleged by Plaintiff in paragraph 10, said. Thus, there is no way to determine "whether such behavior[, i.e. attempting to share the text messages,] is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.'" Relying on *Stoddard*, 573 So.2d at 1063 citing *Ponton*, 468 So.2d at 1011. Therefore, Count II is due to be dismissed with prejudice.

b. Count VI is due to be dismissed because Plaintiff fails to allege the elements of the tort.

To establish the elements of "invasion of privacy by disclosure of private facts" as Plaintiff appears to allege in Count VI, the Plaintiff must prove "(1) the publication, (2) of private facts, (3) that are offensive, and (4) are not of public concern." *Farmer v. Humana*, 582 F.Supp.3d at 1188 citing *Woodward v. Sunbeam Television Corp.*, 616 So.2d 501, 503 (Fla. 3d DCA 1993). Plaintiff alleges in paragraph 10 that the text messages related to

Galloway "expressing frustration with" the three individually named Defendants. She does not allege that she said anything to Galloway that would meet elements two or three. Furthermore, element four requires that it not be of public concern, but the allegations by Plaintiff indicate that the text messages may very well be of public concern as they allegedly involved critique of County officials.

Moreover, as to the first element, Plaintiff alleges in paragraph 13 of her Complaint [ECF1-1] that the "publication" of the text messages was "interrupted." In paragraph 14, Plaintiff goes further to allege that an agenda item regarding possible disciplinary action against her, arising from her text messages with Galloway, was removed and was never presented to the public. Thus, there is no way for Plaintiff to establish the elements of invasion of privacy by publication of private facts; thus, Count VI should be dismissed with prejudice.

III. The County is entitled to sovereign immunity and dismissal of the State law claims against it.

Plaintiff has, in the alternative, alleged state law invasion of privacy and public disclosure of private events claims against the County. Plaintiff's allegations indicate the acts of the individually named Defendants were made while acting within the course and scope of their duties as County Commissioners, but at the same time, Plaintiff alleges that their acts may

have been done with malicious intent; therefore, the County cannot be liable and is entitled to sovereign immunity as a matter of law.

Florida courts, and Fla. Stat. §768.28, hold that "either the agency is liable under Florida law, or the employee, but not both." *Ratlieff v. City of Ft. Lauderdale*, 748 F.Supp.3d 1202, 1272 (S.D. Fla. 2024) (internal citations omitted). "State officers, employees, or agents are entitled to statutory immunity when acting within the course and scope of their employment and without bad faith, malice, or in a matter exhibiting wanton and willful disregard for human rights…." *Id*. (citations omitted). "Conversely, the state entity is entitled to sovereign immunity where the employee acts outside the scope of employment or when he or she acts with bad faith, malice, or in a manner exhibiting wanton and willful disregard for human rights…." *Id*. (citations omitted). The issue of sovereign immunity "can be decided as a matter of law when the facts compel that outcome." *Id.* (citations omitted). See also Fla. Stat. §768.28(9)(a).

Plaintiff's state law claims against the County are pled in the alternative; however, as addressed above, the claims can either proceed against the County or the individually named Defendants, but not both. The County submits the Plaintiff has failed to adequately allege any facts that would justify claims against the County or the individually named

Defendants; however, assuming *arguendo* that Plaintiff has satisfactorily alleged that the individually named Defendants acted with bad faith, malice, or in a manner exhibiting wanton or willful disregard for the Plaintiff, then the claims against the County fail, and this Court should dismiss Counts II and VI.

IV. Plaintiff fails to allege a cause of action against the County under 42 U.S.C. §1983 for an unreasonable search and seizure under the Fourth Amendment.

The Fourth Amendment undisputedly protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. However, Plaintiff has made no allegations that the County unlawfully searched or seized anything from Plaintiff. Rather, Plaintiff's allegations in her Complaint [ECF1-1] in paragraph 11 that a private citizen, Suzanne Harris, sent a communication to "all the County Commissioners" with attachments of a "private text message exchange between Plaintiff and Galloway from November 17, 2023." At no time does Plaintiff allege that the County somehow unlawfully obtained these alleged text messages.

Plaintiff conclusorily alleges that an individual named Jason Cook "procured" the messages and provided them to Defendants Robertson and/or Turner. [ECF1-1, ¶90]. Unlike with an attorney-client privilege, there

is no prohibition for one private citizen to share his or her conversation with another private citizen, and Plaintiff fails to allege how the messages were "procured" in violation of Plaintiff's Fourth Amendment rights. Furthermore, Plaintiff previously alleged, and adopted and incorporated by way of reference into Count X, that her friend Galloway was "previously [an] employee of Walton County." [EC1-1, ¶10]. Simply saying, without providing more, that the text message exchange was "private," Plaintiff's Fourth Amendment claim fails and the County is entitled to dismissal.

a. Plaintiff's claim also fails under *Monell* and the County is entitled to dismissal.

Governmental entities under *Monell* may be held liable pursuant to § 1983 claim only for the execution of governmental policies or customs. *Quinn v. Monroe County*, 330 F.3d 1320, 1325 (11th Cir.2003). A government actor's policy must be more than loosely related to some constitutional violation; indeed "[t]he official policy or custom must be the moving force of the constitutional violation in order to establish liability of a government body under § 1983." *Cuesta v. Sch. Bd. of Miami-Dade County, Fla.*, 285 F.3d 962, 967 (11th Cir.2002) (citing *Gilmere v. City of Atlanta, Ga.*, 737 F.2d 894, 901 (11th Cir.1984)) (internal quotes omitted). Indeed, Plaintiffs "must demonstrate a direct causal link between the municipal action and the

deprivation of federal rights." *Bd. of the County Comm'rs v. Brown,* 520 U.S. 397, 404 (1997).

Besides proof of unconstitutional acts, custom or policy may be proved by establishing the delegation of final policymaking authority from one official to another and the ratification of the acts of a subordinate by a final policymaker. *Mandel v. Doe*, 888 F.2d 783, 791 (11th Cir. 1989) (citing *City of Oklahoma v. Tuttle*, 471 U.S. 808, 834 (1985). Only governmental officers or groups that have final policymaking authority may subject the governmental entity to a claim under § 1983. See *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988); *Campbell v. Rainbow City, Ala.*, 434 F.3d 1306, 1312 (11th Cir.2006), *cert. denied*, 127 S.Ct. 559 (2006).

Thus, to establish *Monell* liability, the decisions and actions of any individuals identified by Plaintiff must be final and unreviewable, but if someone could intervene and review it, then that person is not the final policymaker. *Southern Atlantic Companies, LLC v. Sch. Bd. of Orange County, Fla.*, 699 Fed.Appx. 842, 846-47 (11th Cir. 2017). Section 1983 recovery from a governmental entity is limited to acts that are, properly speaking, acts of the entity – that is, acts which the entity has officially sanctioned or ordered. *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986). For § 1983 liability to attach to a government entity, the official must possess

the authority and responsibility for establishing final policy with respect to the issue in question. *Mandel v. Doe*, 888 F.2d 783 (11th Cir. 1989). No final policymaking authority exists where the official's decisions are subject to, or constrained by, meaningful administrative review. *Morro v. City of Birmingham*, 117 F.3d 508 (11th Cir. 1997); *Scala v. City of Winter Park*, 116 F.3d 1396 (11th Cir. 1997). Policymaking authority is not conferred by the mere delegation of authority to a subordinate to exercise discretion and a governmental entity is not responsible for the unauthorized actions of its lower-level employees, unless the entity's final decision makers participated in establishing a policy or custom which directly or indirectly resulted in the constitutional violation. *Buzzi v. Gomez*, 62 F.Supp. 2d 1344 (S.D. Fla. 1999).

Plaintiff has not done anything more than conclusorily allege that these individually named Defendants, specifically Robertson and/or Turner, are final policymakers or final decision-makers, but in the same Complaint, Plaintiff alleges the alleged actions of the individually named Defendants were thwarted by the actions of either others on the Board or the County Attorney. [ECF1-1, ¶¶91, 13-14].

Furthermore, municipal liability cannot be established based on one incident in isolation, because one incident is not sufficient to establish a

custom. "Rather, the incident must result from a demonstrated practice." See *McDowell v. Brown*, 392 F.3d 1283, 1289–90 (11th Cir. 2004). The custom must be so established and permanent that it carries the force of law. *Id.* at 1290. See also, *Piazza v. Jefferson County, Alabama*, 923 F.3d 947, 957 (11th Cir. 2019). Plaintiff has failed to allege, and cannot allege, that the actions complained of were allegedly more than one isolated incident. Since none of the individually named Defendants can be deemed final policymakers and, since Plaintiff cannot allege that the complained-of conduct involved more than one incident, then Plaintiff's Fourth Amendment claim fails and Count X is due to be dismissed with prejudice.

WHEREFORE, Defendant Walton County, Florida respectfully requests that this Court grant its Motion to Dismiss.

Dated February 4, 2026.

WARNER LAW FIRM, P. A.

/s/ Alyssa M. Yarbrough
ALYSSA M. YARBROUGH
Florida Bar No. 103407
WILLIAM G. WARNER
Florida Bar No. 346829
501 West 11th Street, Suite A
Panama City, Florida 32401
Phone No. (850) 784-7772
pleadings@warnerlaw.us
Counsel for Defendant County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was filed on February 4, 2026, via CM/ECF, which will provide service to:

Marie A. Mattox, Esq.
MARIE A. MATTOX, P.A.
203 North Gadsden Street
Tallahassee, Florida 32301
marie@mattoxlaw.com
michelle@mattoxlaw.com
marlene@mattoxlaw.com
Counsel for Plaintiff

/s/ Alyssa M. Yarbrough
ALYSSA M. YARBROUGH
Florida Bar No. 103407