2023 WL 4201127 (E.D.La.) (Trial Motion, Memorandum and Affidavit)
United States District Court, E.D. Louisiana.

Frances TAPPS, Plaintiff,

v.

Randolph MCCLENDON, et al., Defendants.

No. 21-CV-13.
May 30, 2023.

Section: S-4

Memorandum in Support of Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56

Daniel R. Martiny, LSB#9012, James B. Mullaly, LSB#28296, Martiny & Associates, LLC, 131 Airline Drive, Suite 201, Metairie, Louisiana 70001, Telephone: (504) 834-7676, Facsimile: (504) 834-5409, Email: danny@martinylaw.com.

Judge: Lemmon.
Magistrate: Roby.

MAY IT PLEASE THE COURT:

Defendant, Sheriff JOSEPH LOPINTO III, in his official capacity as the Sheriff of Jefferson Parish ("the Sheriff"), has moved this Honorable Court for summary judgment. This case arose out of an off-duty JPSO Sheriff's Department Deputy, Randolph McClendon, approaching Plaintiff on behalf of Mr. Faisal Siddiqui and/or HUM Management, to secure the keys to Plaintiff's apartment that was managed by HUM Management. Mr. McClendon's actions were not for the benefit of the Sheriff and were not in the course and scope of his employment with the Sheriff's Office or under color of law.

Plaintiff cannot show that the Sheriff is liable in his official capacity under federal or state law and these claims should be dismissed.

I. STATEMENT OF THE CASE

A. PLAINTIFF'S ALLEGATIONS

Despite the simple fact set, much of which is captured on a video recording, Plaintiff's Complaint is 25 pages long and contains over 112 individually enumerated Paragraphs. R. Doc. 1.

Regarding the *Monell* (municipal liability) and *respondeat superior* claims against the Sheriff at issue in this Motion, Plaintiffs' Complaint is the consummate formulaic (cut-and-paste) recitation of the elements of a cause of action. [1]

Foremost, Plaintiff does not even allege that Randolph McClendon was acting in the course and scope of his employment during the relevant times. R. Doc. 1, ¶ 13.

Plaintiff then makes allegations about prior Sheriff's that are entirely irrelevant and are included solely to disparage and malign the Sheriff's Office as part of a pattern and practice of the ACLU over the last couple of years. *Id.* at ¶¶ 19-22. These allegations are not worthy of consideration.

Likewise unworthy of consideration are Plaintiff's allegations in Paragraphs 23-28. As set forth below, these allegations are not relevant to the Court's consideration of any claim against the Sheriff.

Plaintiff asserts her *Monell* claim thusly:

Defendant Lopinto violated Ms. Tapps' right to be free from an unreasonable seizure under the Fourth Amendment to the United States Constitution. Defendant Lopinto did so by establishing institutional policies and practices that resulted in the negligent hiring, retention, and supervision of JPSO deputies, including McClendon. Defendant Lopinto also did so by failing to investigate, punish, and seek the decertification of deputies who abuse their power, including McClendon. Ms. Tapps was individually harmed by these policies, patterns, and practices because they resulted in the unconstitutional seizure by Defendant McClendon. At all pertinent times, Defendant Lopinto acted unreasonably, recklessly, and with deliberate indifference and disregard for Ms. Tapps' safety and constitutional rights by establishing the above-described policies, practices, or patterns. Defendant Lopinto is therefore liable to Ms. Tapps for the violation of constitutional rights described above pursuant to Monell v. Dep't of Social Servs., 436 U.S. 658 (1978).

R. Doc. 1, ¶¶ 73-77.

Plaintiff alleges the following state law claims against the Sheriff: Defendant Lopinto owed Ms. Tapps a duty to exercise reasonable care in the hiring, retention, and supervision of McClendon. The position of a sheriff's deputy comes with significant power and authority, and a sheriff's deputy has a unique opportunity to engage in precisely the unlawful conduct alleged herein. But for the cloak of authority conferred on him by JPSO, Defendant McClendon would not have been able to commit the unconstitutional acts and engage in the tortious conduct described in this Complaint.

Defendant Lopinto breached his duty by hiring and retaining Defendant McClendon, despite the fact that Defendant McClendon had previously been arrested and resigned from a position with JPSO. JPSO's pre-hiring investigation of Defendant McClendon was grossly inadequate and did not appropriately account for his history of misconduct. Had JPSO conducted an adequate investigation of McClendon, JPSO would not have hired or retained him. Defendant Lopinto also breached his duty to exercise reasonable care in the supervision of Defendant McClendon. JPSO lacked adequate policies, systems, and controls to ensure that Defendant McClendon did not abuse his position of power by using his authority as a sheriff's deputy to engage in the unlawful activity described herein.

R. Doc. 1, ¶¶ 105-107.

B. STATEMENT OF THE UNCONTESTED MATERIAL FACTS

It is uncontested that at the relevant times Mr. McClendon was not on duty or performing any duties associated with the Jefferson Parish Sheriff's Office at any relevant time. *See* McClendon Response to Discovery, attached as Exhibit 1.

It is uncontested that Mr. McClendon never indicated to Plaintiff or anyone that he was acting on behalf of the Sheriff or serving any legal process. *Id.; see also* Declaration of Mr. McClendon, R. Doc. 73-1; deposition of Mr. McClendon, attached as Exhibit 2, at. Pp. 7-9, 11-13, 16, 20, 23-26, 29-30, 32, 38-39, 47-48, 49, 50-53.

It is uncontested that at all pertinent times, Mr. McClendon was acting as an agent for and on behalf of Mr. Faisal Siddiqui and/or HUM Management. *See* R. Doc. 73-1; Exhibit 2.

It is uncontested that "[o]n January 7, 2021, Mr. Siddiqui had the right to control [Mr. McClendon's] actions at 2736 Greenwood Street with regard to how [he] attempted to obtain the keys... At all times relevant to the events at issue [Mr. McClendon] was aware that it was property controlled by Mr. Siddiqui, directly or indirectly, and he had the right to control what [Mr. McClendon] did with regard to the property once [he] agreed to pick up the keys on his behalf from Ms. Tapp." R. Doc. 73-1, ¶ 9.

It is uncontested that while on scene Mr. McClendon never "flashed any police equipment." Exhibit 2, at 32:13-14.

II. STANDARD OF REVIEW ON SUMMARY JUDGMENT

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Disraeli v. Rotunda,* 489 F.3d 628, 631 (5th Cir. *2007)(quoting* Fed. R. Civ. P. 56(c)).

Once the moving party shows that no genuine issue of material fact exists, the non-movant must respond by *"set[ting] forth specific facts showing that there is a genuine issue for trial." Beard v. Banks,* 548 U.S. 521, 529 (2006) (*quoting Celotex Corp. v. Catrett,* 447 U.S. 317, 323 (1986)) (*quoting* Fed. R. Civ. P. 56(e)) (emphasis added by *Beard* Court). All reasonable inferences are drawn in favor of the nonmoving party. However, the nonmoving party "cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or 'only a scintilla of evidence.'" *Hathaway v. Bazany,* 507 F.3d 312, 319 (5th Cir. 2007) (*citing Turner v. Baylor Richardson Medical Center,* 476 F.3d 337, 343 (5th Cir.2007) (additional citation omitted).

III. MR. MCCLENDON WAS NOT ACTING UNDER COLOR OF LAW

Foremost, Plaintiff does not even allege that Randolph McClendon was acting in the course and scope of his employment during the relevant times. R. Doc. 1, ¶ 13. The issue is thus foreclosed, and the Court need not consider whether the Sheriff is vicariously liable.

Likewise, Mr. McClendon was not acting under color of law.

Section 1983 provides a remedy against "every person," who under color of state law, deprives another of any rights secured by the Constitution and laws of the United States. 42 U.S.C. § *1983; Monell v.Dep't of Soc. Servs.,* 436 U.S. 658 (1978). The statute is not itself a source of substantive rights; it merely provides a method for vindicating federal rights conferred elsewhere. *Olabisiomotosho v. City of Hous.,* 185 F.3d 521, 525 (5th Cir. 1999). To pursue a claim under § 1983, a plaintiff must: (1) allege a violation of rights secured by the Constitution or laws of the United States; and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law. *Sw. Bell Tel., LP v. City of Hous.,* 529 F.3d 257, 260 (5th Cir. 2008); *see also West v. Atkins,* 487 U.S. 42, 48 (1988).

The first step in alleging and proving a § 1983 claim is that the allegedly unconstitutional actions must have been performed by a person acting under the color of law. 42 U.S.C. § 1983.

The Supreme Court has held that "under 'color' of law means under 'pretense' of law. Thus, acts of officers in the ambit of their personal pursuits are plainly excluded." *Screws v. United States,* 325 U.S. 91, 111 (1945). The "color of law" analysis "does not depend on [an officer's] on- or off-duty status a the time of the alleged violation," but rather, a "court must consider: (1) whether the officer misused or abused his official power, and (2) if there is a nexus between the victim, the improper conduct,

and the officer's performance of official duties." *Bustos v. Martini Club Inc.,* 599 F.3d 458, 464-65 (5th Cir. 2010) (internal quotations marks and alterations omitted) (upholding dismissal of § 1983 claim where plaintiff did not allege facts to suggest off-duty officers who assaulted him at a bar misused or abused their official power). "If an officer pursues personal objectives without using his official power as a means to achieve his private aim, he has not acted under color of state law." *Id.*

Tellingly here, there are no allegations of specific actions by Mr. McClendon that would lead to the conclusion that he was acting as a police officer. *See Duffour v. Guillot,* 2013 WL 5673605, at *1-6 (E.D. La. Oct. 17, 2013)(plaintiff did not allege any "facts to support the legal conclusion that a policy or custom was the moving force behind any constitutional harm" where the plaintiff was assaulted by an off-duty police officer at a bar); *Cruz v. Fulton,* 2016 WL 4543613, at *9-10 (E.D. La. Aug. 31, 2016) (off-duty officer, who was dressed in plain clothes and did not identify himself as a police officer, acted out of "purely personal considerations" when he assaulted and battered an individual with whom he was in a traffic accident). *Compare Smith v. Carruth,* 2017 WL 785345, at *3 (E.D. La. Mar. 1, 2017) (finding that an off-duty police officer acted under color of law when he flashed his police badge, handcuffed, *Mirandized,* and placed his victim under arrest for prostitution before raping her).

Instead, Plaintiffs allegations indicate that Mr. McClendon was not acting as a police officer as opposed to private citizen or off-duty police officer in his personal capacities. Plaintiff alleges that "[d]uring the encounter on January 7, 2021, McClendon again insisted that Ms. Tapps' landlord-whom he referred to multiple times as his **"partner"-had** instructed him to collect back rent from Ms. Tapps or take her keys." R. Doc. 1, ¶ 36 (emphasis added). Further, "[a]t one point during the encounter, Ms. Tapps told McClendon that he was not her landlord, to which he replied, "I am." When Ms. Tapps stated that a Jefferson Parish sheriff's Case deputy had no role in a private rent dispute, McClendon replied that he was at her home as a "private citizen." *Id.,* at ¶ 41. "McClendon admitted that he did not have an eviction notice to serve, let alone a court order requiring Ms. Tapps to vacate her home." *Id.,* at ¶ 45.

Furthermore, the uncontested material facts bely any notion that Mr. McClendon was acting under color of law.

It is uncontested that at the relevant times Mr. McClendon was not on duty or performing any duties associated with the Jefferson Parish Sheriff's Office. *See* McClendon Response to Discovery, attached as Exhibit 1.

It is uncontested that Mr. McClendon never indicated to Plaintiff or anyone that he was acting on behalf of the Sheriff or serving any legal process. *Id.; see also* Declaration of Mr. McClendon, R. Doc. 73-1; deposition of Mr. McClendon, attached as Exhibit 2, at. Pp. 7-9, 11-13, 16, 20, 23-26, 29-30, 32, 38-39, 47-48, 49, 50-53.

It is uncontested that at all pertinent times, Mr. McClendon was acting as an agent for and on behalf of Mr. Faisal Siddiqui and/or HUM Management. *See* R. Doc. 73-1; Exhibit 2.

It is uncontested that "[o]n January 7, 2021, Mr. Siddiqui had the right to control [Mr. McClendon's] actions at 2736 Greenwood Street with regard to how [he] attempted to obtain the keys... At all times relevant to the events at issue [Mr. McClendon] was aware that it was property controlled by Mr. Siddiqui, directly or indirectly, and he had the right to control what [Mr. McClendon] did with regard to the property once [he] agreed to pick up the keys on his behalf from Ms. Tapp." R. Doc. 73-1, ¶ 9.

It is uncontested that while on scene Mr. McClendon never "flashed any police equipment." Exhibit 2, at 32:13-14.

Therefore, Mr. McClendon was not acting under color of law. The Court can end its inquiry here. Plaintiffs Section 1983 claims against the Sheriff should be dismissed.

IV. ALTERNATIVELY, PLAINTIFF'S *MONELL* CLAIMS AGAINST THE SHERIFF IN HIS OFFICIAL CAPACITY FAIL AS A MATTER OF LAW

"Well settled Section 1983 jurisprudence establishes that supervisory officials cannot be held vicariously liable for their subordinates' actions. Supervisory officials may be held liable only if: (i) they affirmatively participate in acts that cause constitutional deprivation; or (ii) implement unconstitutional policies that causally result in plaintiff's injury." [2]

Here, Plaintiff only sues the Sheriff in his official capacity as Sheriff of Jefferson Parish. R. Doc. 1, ¶ 14.

A. STANDARD FOR LIABILITY

A suit against a government official in his official capacity is treated as a suit against the entity. [3] Furthermore, no liability exists for governmental entities based on a vicarious liability or a *respondeat superior* theory. [4] Instead the municipality will be liable only when an official policy or custom inflicts the injury of which the plaintiff complains. [5] The plaintiff has the burden of proving that there was a constitutional deprivation and that a municipal policy was the driving force behind the constitutional deprivation. [6]

"Official policy is ordinarily contained in duly promulgated policy statements, ordinances or regulations. But a policy may also be evidenced by custom, that is: (2)... a persistent, widespread practice of City officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy... Actions of officers or employees of a municipality do not render the municipality liable under section 1983 unless they execute official policy as above defined." *Piotrowski v. City of Houston,* 237 F.3d 567 (5th Cir. 2001)(internal citations omitted).

The "official policy" requirement can be met in three different ways. [7] First, when the municipality promulgates a generally applicable statement of policy and the injury resulted from that policy. [8] Second, when no "official policy" exists, but the action of the policy maker violated a constitutional right and third, when the policymaker fails to act to control its agents when it was "so obvious, and the inadequacy [of existing practice] so likely to result in the violation of constitutional rights, that the policymake[r] ... can reasonably be said to have been deliberately indifferent to the need." [9] Deliberate indifference of this sort is a stringent test, and "a showing of simple or even heightened negligence will not suffice" to prove municipal culpability. [10] The single incident exception is a very narrow one that courts have been reluctant to expand. [11]

There are two fundamental requirements for holding a municipality liable: culpability and causation. *Snyder v. Trapagnier,* 142 F. 3d 791 (5th Cir. *1998)(citing Monell,* 436 U.S. 658, 98 S.Ct. 2018, L.Ed. 2d 611 (1978)). A Plaintiff must establish both the causal link ("moving force") and the municipality's degree of culpability ("deliberate indifference" to federally protected rights), declaring "[w]here a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into *respondeat superior* liability." *Board of County Commissioners of Bryan County, Okl. v. Brown,* 520 U.S. 397, 117 S.Ct. 1382, 137 L.Ed. 2d 626 (1997).

Thus, a plaintiff seeking to prevail must first prove a direct causal link between the municipal policy and the constitutional deprivation; she then must establish that the city consciously enacted a policy reflecting "deliberate indifference" to the constitutional rights of its citizens *City of Canton v. Harris,* 489 U.S. 378, 389, 109 S.Ct. at 1205 (1989); *See also Watson v. City of New Orleans,* 2000 WL 126921 (E.D.La. 2/3/2000).

In virtually every instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident." Permitting a lesser standard than deliberate indifference would "engage the federal courts in an endless exercise of second-guessing municipal employee training programs. This is an exercise we believe the federal courts are ill suited to undertake as well as one that would implicate serious questions of federalism."

City of Canton, 489 U.S. at 392, 109 S.Ct. 1197.

B. PLAINTIFF HAS FAILED TO ALLEGE OR ESTABLISH A *MONELL* CLAIM

The relevant burden of proof and standard of liability was succinctly summarized by the U.S. Fifth Circuit in *James v. Harris County,* 577 F.3d 612 (5th Cir. 2009):

To hold a municipality liable under § 1983 for the misconduct of an employee, a plaintiff must show, in addition to a constitutional violation, that an official policy promulgated by the muncipality's policymaker was the moving force behind, or actual cause of, the constitutional injury. The official policy itself must be unconstitutional or, if not, must have been adopted with deliberate indifference to the known or obvious fact that such constitutional violations would result.

Official policy can arise... in the form of a widespread practice that is so common and well-settled as to constitute a custom that fairly represents municipal policy. A policy is official only when it results from the decision or acquiescence of the municipal officer or body with final policymaking authority over the subject matter of the offending policy...

Although an official policy can render a municipality culpable, there can be no municipal liability unless it is the moving force behind the constitutional violation. In other words, a plaintiff must show direct causation, i.e., that there was a direct causal link between the policy and the violation.

A plaintiff must also show that, where the official policy itself is not facially unconstitutional, it was adopted with deliberate indifference' as to its known or obvious consequences. Deliberate indifference is a degree of culpability beyond mere negligence or even gross negligence; it must amount to an intentional choice, not merely an unintentionally negligent oversight. [12]

In this case, Plaintiff vaguely asserts a failure to supervise or train theory of liability against the Sheriff. R. Doc. 1, at ¶ 72-77.

In *City of Canton v. Harris,* 489 U.S. 378,388 (1989), the Supreme Court expanded *Monell* to include claims for inadequate police training. To recover under a failure to train theory, the plaintiff must demonstrate that (1) the failure to train amounted to deliberate indifference to the right of persons with whom the policy came in contact and (2) the municipality's policy actually caused a constitutional injury. *Id.* at 389-90. "All failure to act claims, such as... failure to train [or] supervise... involve the same basic elements: inadequacy, deliberate indifference, and causation." *Skinner v. Ard,* 519 F.Supp.3d 301, 314 (M.D. La. 2021) (deGravelles, J.) (citation omitted).

Here, none of the foregoing elements are met.

First, Plaintiff has not identified any policy, pattern or practice that was the alleged moving force behind any alleged Constitutional harm. No statement of written policy. No practice. No pattern of similar incidents. Indeed, Plaintiff's allegations are so scant, they do not even reach the level of a formulaic recitation of the elements of a cause of action. The Court can dismiss Plaintiff's *Monell* claim on the pleadings.

Second, Plaintiffs cannot show that the Sheriff was deliberately indifferent to a known and obvious need to supervise or train.

"Deliberate indifference," defined by the Supreme Court as a "conscious disregard for the consequences of their action," can be demonstrated by showing a supervisor's "continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees." *Rivera v. Bonner,* 952 F.3d 560, 567 (5 th Cir. 2017) (quoting *Bd. of Cy. Comm'rs of Bryan Cty., Okl. v. Brown,* 520 U.S. 397, 407 (1997)). To constitute deliberate indifference, the failure to train must reflect a deliberate or conscious choice made by municipal policymakers. *Id.*

As a rule, "[p]roof of more than a single instance of the lack of training or supervision causing a violation of constitutional rights is normally required before such lack of training or supervision constitutes deliberate indifference." *Thompson v. Upshur Cnty, Tex.,* 245 F.3d 447, 459 (5th Cir. 2001) (internal quotations and citations omitted). The plaintiff must ordinarily show at least a pattern of similar violations. *Id.* Moreover, the inadequacy of training must be obvious and obviously likely to result in a constitutional violation. *Id.*

To succeed on this third and most difficult prong, "a plaintiff usually must demonstrate a pattern of violations and that the inadequacy of the training" or supervision is "obvious and obviously likely to result in a constitutional violation." *Cousin v. Small,* 325 F.3d 627, 637 (5th Cir. 2003)).

Here, Plaintiff has not alleged and has made absolutely no showing that the Sheriff knew of and consciously disregarded an obvious need for training. Plaintiff fails to meet the third element of their *Monell* claim.

Third, Plaintiff failed to plead or to make any showing, even in the most cursory fashion, that any promulgated policy, pattern of misconduct, or alleged negligent training, supervision, etc. was the ***moving force*** behind any alleged Constitutional harm. *See Palmer v. Marion County,* 327 F.3d 588, 594 (7th Cir.2003) (explaining that "to establish a genuine question of fact as to whether [the defendant was] deliberately indifferent to [the plaintiffs] safety," the plaintiff must show that the defendant has "a custom or policy that contributed to the infliction of the assault and his resulting injury"). There is simply no evidence adduced to support culpability or causation whatsoever.

Thus, even assuming Plaintiff had made a showing of unconstitutionality, Plaintiff's claims would still fail. *See James,* 577 F.3d at 617 (Plaintiff is unable to "offer any empirical evidence relating to [Defendants] that could connect [Plaintiffs'] general theory to the facts of this case.")

Accordingly, Plaintiff's claims against the Sheriff in his official capacity should be dismissed as a matter of law.

IV. PLAINTIFFS STATE NEGLIGENT HIRING, TRAINING, RETENTION AND SUPERVISION CLAIMS AGAINST THE SHERIFF FAIL

Plaintiff alleges that the Sheriff is liable under Louisiana State law for failure his alleged negligent hiring, training, retention and supervision of the Mr. McClendon. R. Doc. 1, ¶¶ 105-107.

However, pursuant to La. R.S. 9:2798.1, a Parish Sheriff is immune to these state law claims. *Gregor v. Argenot Great Cent. Ins. La.,* 851 So.2d 959, 966 (La. 2002); *Curran v. Aleshire,* 67 F.Supp.3d 741, 763-64 (E.D. La. 2014); *Hoffpauir v. Columbia Cas. Co.,* No. 12-403-JJB, 2013 WL 5934699, at *12 (M.D. La. Nov. 5, 2013); *Roberts v. City of Shreveport,* 397 F.3d 287, 296 (5th Cir. 2005).

The Honorable Judge Vance recently summarized the law:
Louisiana courts and federal courts applying Louisiana law have interpreted [La. Rev. Stat. 9:2798.1] to render officers immune from liability for state-law claims for negligent training, hiring, supervision, and retention. *See id.* (La. Rev. Stat. 9:2798.1(B) renders police chief immune from state-law claims premised on his "training officers under his command"); *Smith v. Lafayette Parish Sheriff's Dep't,* 874 So.2d 863, 868 (La.App. 3 Cir. 2004) (sheriff's hiring/retention policy was a discretionary act" for purposes of immunity under La. Rev. Stat. 9:2798.1); *Hoffpauir v. Columbia Cas. Co.,* No. 12-403, 2013 WL 5934699, at *12 (M.D. La. Nov. 5, 2013)("[T]he hiring, training, and supervision policy of the Livingston Parish Sheriff's Department is a discretionary function."); *Skinner v. Ard,* 519 F.Supp.3d 301, 321 (M.D. La. Feb. 3, 2021) (sheriff's "duties to train, supervise, and hire are not prescribed by law or regulation, and these duties are grounded in policy considerations").

Burke v. Lopinto, No. 21-1588, at *31-32 (E.D. La. March 7, 2023)

Therefore, the Sheriff is immune, and Plaintiff's claims should be dismissed.

CONCLUSION

For the foregoing reasons, the Sheriff, in his official capacity, is entitled to summary judgment in his favor and dismissal of Plaintiff's claims against him in his official capacity with prejudice and at Plaintiff's cost.

Respectfully submitted,

/s/ James B. Mullaly

DANIEL R. MARTINY, LSB#9012

JAMES B. MULLALY, LSB#28296

MARTINY & ASSOCIATES, LLC

131 Airline Drive

Suite 201

Metairie, Louisiana 70001

Telephone: (504) 834-7676

Facsimile: (504) 834-5409

Email: danny@martinylaw.com

Footnotes

1 *See Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007)("A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'")

2 *Mouille v. City of Live Oak, Texas,* 977 F.3d 924, 929 (La. App. 5 Cir. 11/20/92) (citations omitted).

3 *See Lee v. Morial,* 2000 WL 726882 at *2 (E.D.La. June 2, 2000).

4 *Price v. Housing Authority of New Orleans,* 2002 WL 179193 (E.D.La. Oct. 11, 2002)

5 *Monell v. Department of Social Services,* 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

6 *Id.*

7 *Piotrowski v. City of Houston,* 237 F.3d 567, 579 (5th Cir. 2001) *citing Bennett v. City of Slidell,* 728 F.2d 762, 768 n. 3 (5th Cir. 1984).

8 *Id.*

9 *Id.* at 471.

10 *Id.*; *citing Bryan County,* 520 U.S. at 407, 117 S.Ct. at 1389, 1390.

11 *See Pineda v. City of Houston,* 291 F.3d 325, 334- 35 (5th Cir.2002) ("Charged to administer a regime without *respondeat superior,* we necessarily have been wary of finding municipal liability on the basis of [the single-incident] exception for a failure to train claim.").

12 *James,* 577 F.3d at 615-616.

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