IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

HEMP INDUSTRY LEADERS OF TEXAS, et. al.	§	
	§	
v.	§	**CASE NO. 4:24-cv-944**
	§	
CITY OF ALLEN, et. al.	§	

DEFENDANT SHERIFF JIM SKINNER'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW **SHERIFF JIM SKINNER,** one of four Defendants, pursuant to Federal Rule of Civil Procedure 12(b)(6), and files his MOTION TO DISMISS, and would show:

I.
INTRODUCTION AND OVERVIEW

Plaintiffs have sued the City of Allen, its Chief of Police [Steve Dye], Collin County Sheriff Jim Skinner,[1] and the United States Drug Enforcement Agency ("DEA") arising from the DEA and then the City of Allen's investigation and eventual arrest of Plaintiff Sabhie Khan for selling Hemp products which exceeded the legal limits of THC - a criminal case/prosecution which is still ongoing. Stripped of its rhetoric and culled from the rote regurgitation of requested relief masquerading as federal and/or state claims, the gist of Plaintiffs' lawsuit is that they believe Khan's arrest was illegal. The City of Allen and Chief Dye have exhaustively detailed why the Plaintiffs' various claims fail for myriad reasons,[2] and same is incorporated herein by reference, so this MOTION will focus on the

[1]The caption of PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2] identifies "SHERIFF JIM SKINNER AND UNKNOWN COLLIN COUNTY SHERIFF'S OFFICE DEPUTIES (in their official capacities and individually)" yet the body avers that "These UNKNOWN COLLIN COUNTY SHERIFF'S DEPUTY POLICE OFFICERS are being sued in their individual capacities." See, AMENDED COMPLAINT [Dkt. 2], paragraph 6.

[2]See, DEFENDANTS THE CITY OF ALLEN AND STEVE DYE'S MOTION AND BRIEF TO DISMISS AND MOTION TO STAY [Dkt. 16].

Plaintiffs sparse and wholly conclusory allegations against Sheriff Skinner and the corresponding failure to allege any viable claims against him in any capacity.

Simply put, the very limited role of the Collin County Sheriff's Office was to assist in the search and arrest of Plaintiff Khan on August 27, 2024. This slender thread connecting the Collin County Sheriff's Office to this case cannot support any plausible federal and/or state claims, particularly when viewed through the lens of Sheriff Skinner's Qualified Immunity and absence of any actionable conduct of, let alone viable allegations against, Collin County. Dismissal of Sheriff Skinner in any capacity should follow.

II.
GROUNDS FOR RELIEF

Pursuant to Local Rule CV-7(a)(1), Sheriff Jim Skinner requests the Court decide the following issues:

1. Whether Plaintiffs claims must be dismissed under the *Younger* abstention doctrine;

2. Whether the Independent Intermediary doctrine bars Plaintiffs' claims;

3. Whether Plaintiffs have plead any plausible claims against Sheriff Skinner where there are no allegations of any direct or personal involvement by Sheriff Skinner;

4. Whether Plaintiffs have plead any claims which overcome Sheriff Skinner's entitlement to Qualified Immunity;

5. Whether Plaintiffs have plead any plausible claims for "conspiracy" against Sheriff Skinner since Plaintiffs' allegations are not factually specific nor do they even establish a viable conspiracy;

6. Whether Plaintiffs have made sufficient factual allegations to state a prima facie case for their municipal liability/*Monell* claim, if any, against Collin County;

7. Whether Plaintiffs have plead any plausible Failure to Train/Supervise claims;

8. Whether Plaintiffs have plead plausible claims for Declaratory Judgment relief; and

9. Whether Plaintiffs have plead any plausible claims for Injunctive relief.

III.
PERTINENT FACTUAL BACKGROUND

For purposes of dismissal under FED. R. CIV. P. 12(b)(6), the following are pertinent facts gleaned from Plaintiffs' lawsuit[3]. Moreover, the events surrounding the investigation, search, and arrest of Plaintiff Khan - and Plaintiffs' various allegations and causes of action - are detailed in DEFENDANTS THE CITY OF ALLEN AND STEVE DYE'S MOTION AND BRIEF TO DISMISS AND MOTION TO STAY [Dkt. 16], so the following discussion will focus on the Plaintiffs' few allegations, if really even any, against Sheriff Skinner and the Collin County Sheriff's Office.

Plaintiffs correctly aver that Jim Skinner is the duly elected Sheriff of Collin County, Texas.[4] It is unclear if Plaintiffs are suing Sheriff Skinner in his personal or in his official capacity because the caption identifies "SHERIFF JIM SKINNER AND UNKNOWN COLLIN COUNTY SHERIFF'S OFFICE DEPUTIES (in their official capacities and individually)" yet the body avers that "These UNKNOWN COLLIN COUNTY SHERIFF'S DEPUTY POLICE OFFICERS are being sued in their individual capacities."[5] Regarding factual allegations, besides identifying Sheriff Skinner in the caption and as a Defendant, the only other allegation(s) against him involve a recorded informal forum/discussion of law enforcement officials talking about Hemp sales and other law enforcement issues occurring in early September 2024, which was after Plaintiff Khan's arrest.[6]

---

[3]Because this motion is brought pursuant to Fed. R. Civ. P. 12(b)(6), the factual allegations in PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2] are taken as true but not necessarily the conclusory statements and bald assertions. However, nothing contained herein is intended to serve as a waiver of Defendant Skinner's right to challenge the veracity of same at trial or in the presentation of a further dispositive motions, if same even necessary. By filing this MOTION TO DISMISS, Sheriff Skinner is not stipulating that the allegations of Plaintiffs are true nor in any way acquiescing in the allegations contained in the PLAINTIFFS' ORIGINAL AMENDED COMPLAINT. Rather, under the standards set forth above, Sheriff Skinner contends that even if Plaintiffs' sparse and specious allegations were factual, which he vehemently denies, Sheriff Skinner would still be entitled to dismissal as a matter of law.

[4]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2]; see also, https://www.collincountytx.gov/sheriff/about/the-sheriff

[5]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 6.

[6]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraphs 98-102; Plaintiffs' Ex. V

Plaintiff sets out comments from Sheriff Skinner, then avers that "Skinner has no factual basis so support THC causing a high rate of overdose cases anywhere; indeed, Collin County Government reports Fentanyl as the 'top overdose death.'"[7]

Concerning Collin County, or more precisely, the Collin County Sheriff's Office, Plaintiffs dramatically aver that "The DEA, Allen Police Department, and Collin County Sheriff's Office targeted Khan's small business, bringing the full force of the federal government, teamed with aggressive, headline-seeking police department, and together they treated Khan like the kingpin of a drug cartel, despite hemp being legal."[8] Plaintiffs describe that "On August 27, 2024, Allen Police Officers, Collin County Sheriff's Office Deputies and DEA Agents raided Plaintiff Khan's business located at 1546 E. Stacy Rd., Ste. 197, Allen, TX 75002, searched and seized numerous items and arrested Mr. Khan."[9] They further aver "The City of Allen, the Collin County Sheriff's Office and the Allen Police Department have created a climate of fear among H.I.L.T. members, discouraging them from participating in normal business activities and interactions with law enforcement."[10] Continuing Plaintiffs contend "Khan has been subjected to shame and ridicule as a result of the knowingly false statements made by law enforcement, the media, and specifically Defendant Dye, the Collin County Sheriff's Office, and the Allen Police Department."[11] Besides these few paragraphs, there are no other "Factual Allegations" about or against Sheriff Skinner and/or the Collin County Sheriff's Office.[12]

---

[7]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 98

[8]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 12

[9]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 60; see also paragraph 62

[10]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 68

[11]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 71

[12]See, generally, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2]

Notably, the search of Plaintiff Khan's business and his arrest was effectuated pursuant to warrant(s) sought by the City of Allen and issued by Hon. Dan Wilson, a long time and now retired Collin County Court at Law Judge.[13] Plaintiff Khan was arrested, pursuant to such warrant, for the Second Degree Felony of Manufacturing/Delivery of a Controlled Substance.[14] He was booked into the Collin County Jail on August 29, 2024, and released that same day after posting a $7,500 bond.[15]

IV.
STANDARD OF REVIEW

To survive a motion to dismiss under FED. R. CIV. P. 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Guidry v. American Public Life Ins. Co.*, 512 F.3d 177, 180 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1974 (2007)). A claim is plausible "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, 678 (2009). The plausibility standard "asks for more than a sheer possibility that the defendant has acted unlawfully." *Id.* at 679. The Supreme Court's decision in *Twombly* "retire[d]" the standard espoused in *Conley v. Gibson* which spoke of the "accepted rule that a complaint should not be dismissed for failure to state a claim 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," in favor of its current standard requiring plausibility. *Id.* at1968-70 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

Under FED. R. CIV. P. 8, "the complaint must contain either direct allegations on every material point necessary to sustain a recovery . . . or contain allegations from which an inference

---

[13]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraphs 62, 65; Plaintiff's Ex. N

[14]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 62

[15]See, JAIL RECORDS SEARCH DETAIL, publicly available at cijspub.co.collin.tx.us/SecurePA/JailingDetail.aspx?JailingID=566132

fairly may be drawn" under a relevant legal theory. *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995) (*quoting* 3 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d §1216 at 156-159).When reviewing a complaint to determine whether it contains all of the essential elements of a plaintiff's theory of recovery, "[t]he court is not required to 'conjure up unplead allegations or construe elaborately arcane scripts' to save [the] complaint." *Id*. (*quoting Gooley v. Mobile Oil Corp.*, 851 F.2d 513, 514 (1st Cir. 1988)). If the complaint "lacks an allegation regarding a required element necessary to obtain relief," dismissal is proper. *Id*. (*quoting* 2A MOORE'S FEDERAL PRACTICE ¶12.07 [2.-5] at 12-91). . "Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011)(cleaned up).

The pleading standard under Rule 8 "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft*, 556 U.S. at 679. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id*. When considering a motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6), courts must accept all well pleaded facts in the complaint as true; however, legal conclusions "are not entitled to the [same] assumption of truth" nor are courts bound to "accept as true a legal conclusion couched as a factual allegation." *Id.* If, after removing legal conclusions, a complaint merely "tenders naked assertions devoid of further factual enhancement," dismissal under Rule 12(b)(6) is proper. *Id.* at 678.

As detailed below, evaluated under this standard, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT, which is actually violative of the Eastern District Local Rules regarding Civil Rights complaints, does not plausibly allege any claims against Collin County Sheriff Jim Skinner.

V.
YOUNGER ABSTENTION DOCTRINE BARS PLAINTIFFS' CLAIMS

In *Younger v. Harris*, 401 U.S. 37, 43-44, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), the Supreme Court held that principles of comity and federalism require federal courts to avoid interference with ongoing state proceedings if the state court provides an adequate forum to present federal constitutional challenges. *Younger* abstention is required when there is: (1) "an ongoing state judicial proceeding"; (2) that "implicate[s] important state interests"; and (3) offers "adequate opportunity" to "raise constitutional challenges." *Middlesex Cty. Ethics Comm'n v. Garden State Bar Ass'n,* 457 U.S. 423, 432, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982).

Co-Defendants City of Allen and Chief Dye have thoroughly discussed the preclusive impact of the *Younger* doctrine on this case[16] and same applies with full force to Sheriff Skinner. Thus, the Co-Defendants' briefing and argument on same is incorporated herein as if fully set forth.

VI.
INDEPENDENT INTERMEDIARY DOCTRINE BARS PLAINTIFFS' CLAIMS

The Fifth Circuit applies the "independent intermediary doctrine" to claims that a detention or arrest occurred without legal process. *Villareal v. City of Laredo*, 94 F. 4th 374, 393 (5th Cir. 2024)(en banc); *Hughes v. Garcia*, 100 F.4th 611 (5th Cir. 2024); *Buehler v. City of Austin/Austin Police Dep't,* 824 F.3d 548 (5th Cir. 2016); *Cuadra v. Houston Indep. Sch. Dist.,* 626 F.3d 808, 813 (5th Cir. 2010); *Jennings v. Patton,* 644 F.3d 297, 300-01 (5th Cir. 2011). Under such doctrine, "'if facts supporting an arrest are placed before an independent intermediary such as a magistrate or grand jury, the intermediary's decision breaks the chain of causation' for the Fourth Amendment violation." *Hughes v. Garcia*, 100 F.4th 611 (5th Cir. 2024)(quoting *Jennings* 644 F.3d at 300-01 (5th

[16]See, DEFENDANTS THE CITY OF ALLEN AND STEVE DYE'S MOTION AND BRIEF TO DISMISS AND MOTION TO STAY [Dkt. 16], paragraph V

Cir. 2011)(quoting *Cuadra,* 626 F.3d at 813). This rule applies "even if the independent intermediary's action occurred after the arrest, and even if the arrestee was never convicted of any crime." *Buehler,* 824 F.3d 548 "'[B]ecause the intermediary's deliberations protect even officers with malicious intent,' a plaintiff must show that the official's malicious motive led the official to withhold relevant information or otherwise misdirect the independent intermediary by omission or commission," thereby "tainting" the independent intermediary's decision. *McLin v. Ard*, 866 F.3d 682, 689 (5th Cir. 2017). Plaintiff is required to allege such a "taint" along with "other facts supporting the inference" that such a taint existed. *Id.* at 690.

Recently, in *Hughes*, the Fifth Circuit explained its approach to the Independent Intermediary Doctrine, the *Franks* exception, and interplay with assertion of Qualified Immunity, summarizing:

> We first (A) explain the independent intermediary doctrine and the *Franks* exception to it. Then we (B) apply that doctrine to Few and Garcia's reckless or intentional misstatements and omissions in the warrant documents. Finally we (C) explain that the warrant affidavit could not have established probable cause without the offending misstatements and omissions.
>
> *Hughes*, 100 F. 4th at 619.

1. Probable cause found by Judge Wilson to search and arrest Plaintiff Khan

Here, Plaintiff Khan's search and arrest was presented to and reviewed by an impartial intermediary [Judge Dan Wilson] who determined that probable cause existed for the matter to go forward with prosecution. Specifically, Judge Wilson expressly found that probable cause existed for the offense of Second Degree Felony of Manufacturing/Delivery of a Controlled Substance.[17] The criminal matter is now pending with the Collin District Attorney's Office.

When probable cause was found by Judge Wilson commencing prosecution, the causal chain was broken and there can be no liability against the person(s) involved. *De Angelis v. City of El*

[17]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraphs 62, 65; Plaintiff's Ex. N

Paso, 265 Fed. App'x 390, 396 (5th Cir. 2008)("this court has held that 'if the facts supporting an arrest are put before an intermediary such as a magistrate or grand jury, the intermediary's decision to issue a warrant or return an indictment breaks the causal chain and insulates the arresting party'");*Conrad v. Krc*, No. 6:15-CV-77, 2016 U.S. Dist. LEXIS 142938, 2016 WL 5853738, at *7 (E.D. Tex. June 17, 2016), aff'd, 678 F. App'x 236 (5th Cir. 2017)(dismissing Plaintiff's §1983 claim for retaliation in violation of Plaintiff's First Amendment rights because "Conrad was also indicted by a grand jury for the offense of Assault on a Public Servant. Defendants have shown probable cause for the charges pursued against Conrad."); *Vann v. Paxton*, 4:18-cv-00570, 2019 WL 4392527, 2019 U.S. Dist. LEXIS 127672, at *27-28 (E.D. Tex. Apr. 18, 2019)("Furthermore, Plaintiff was indicted by a grand jury for possession of a controlled substance. [citing *Conrad*]. Accordingly, even assuming the Plaintiff was arrested in retaliation for his comments to Officer Chambers, his claim necessarily fails because he has no right to be free from a valid arrest that is also motivated by ulterior reasons and supported by probable cause. Plaintiff cannot prove he was engaged in a protected form of First Amendment expression; he cannot prove a constitutional violation in connection with Officer Chambers's conduct."), report and recommendation adopted, *Vann v. Paxton*, 4:18-cv-00570, 2019 WL 3451012, 2019 U.S. Dist. LEXIS 127453 (E.D. Tex. July 31, 2019). As a result, Plaintiffs' claims for illegal search and false arrest are facially implausible.

2. *Franks* doctrine does not apply and Plaintiffs' allegations of "taint" are not only conclusory but wholly absent regarding Sheriff Skinnner

Admittedly, the Independent Intermediary doctrine and its protection do not apply "where a warrant affidavit (1) contains false statements or material omissions (2) made with at least reckless disregard for the truth that (3) were necessary to the finding of probable cause." *Hughes*, 100 F.4th at 619 (quoting *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676, 57 L. Ed. 2d 667

(1978)) (internal quotations omitted). If these three elements are met, the Court must then perform a "corrected affidavit analysis" to determine whether the warrant affidavit would have supported probable cause if the misstatements and material omissions were eliminated. *Hughes*, 100 F.4th at 620 (citing *Terwilliger v. Reyna*, 4 F.4th at 270, 283 5th Cir. 2021)). Here, however, Plaintiffs' attempt to allege some type "taint" misses the mark completely. Plaintiffs offer a few very global allegations, none of which even mention Sheriff Skinner or any employees of the Collin County Sheriff's Office.[18] Such contentions confirm that Plaintiffs misunderstand and conflate Sheriff Skinner's narrow role in this situation - which was limited to assisting with the search and arrest of Plaintiff Khan. There are no allegations, nor could there be, that Sheriff Skinner or any employee of the Collin County Sheriff's Office in any way tainted the warrant procurement process.

Simply put, the vague examples cited by Plaintiffs do not render the AFFIDAVIT FOR SEARCH WARRANT defective nor certainly demonstrate that Sheriff Skinner acted with a malicious motive which led him to withhold relevant information or otherwise misdirect the independent intermediary [Judge Wilson] by omission or commission. Plaintiffs' tepid examples, when compared to the inclusion of objective information in the AFFIDAVIT FOR SEARCH WARRANT setting out more than ample probable cause, falls flat. This is particularly problematic since their own pleading and its exhibit confirms that Sheriff Skinner was not involved in obtaining the warrants.

This Court, as directed by the Fifth Circuit in *Hughes*, can conclude that AFFIDAVIT FOR SEARCH WARRANT defective would have supported probable cause if the [alleged] misstatements and material omissions [if even any] were eliminated.

---

[18] See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 90 ("Further, officers have likely omitted, misrepresented, or mistaken the law (in a very nuanced area of the law that the magistrate may have no experience with) had occurred and misled the magistrate into signing the Warrant for entry and seizing the legal items in a lawful business."

VII.
PLAINTIFF'S COMPLAINT FAILS TO STATE ANY PLAUSIBLE CLAIMS AGAINST SHERIFF SKINNER IN HIS INDIVIDUAL CAPACITY

1. Plaintiffs cannot prevail against Sheriff Skinner because Plaintiffs fail to allege any personal involvement by Sheriff Skinner in any claims asserted herein

The Plaintiffs misdirect their ire at anyone who was [in their opinion] involved in the underlying search and arrest of Plaintiff Khan and the related efforts to ensure that Hemp products are lawfully sold to the public. Plaintiffs improperly seek to ensnare Sheriff Skinner in this lawsuit, but fail to sufficiently allege any personal involvement of the Sheriff - because there was none.

A. Clearly established law requiring personal involvement

Personal involvement is an essential element of a Section 1983 civil rights cause of action. *Thompson v. Steele,* 709 F.2d 381, 382 (5th Cir. 1983); *Lozano v. Smith*, 718 F.2d 756, 768 (5th Cir. 1983). An individual defendant "must have been personally involved in the alleged constitutional deprivation or have engaged in wrongful conduct that is causally connected to the constitutional violation." *Turner v. Lieutenant Driver*, 848 F.3d 678, 695-96 (5th Cir. 2017)(citing *Mesa v. Prejean*, 543 F.3d 264, 274 (5th Cir. 2008)). Stated differently, "a plaintiff bringing a section 1983 action must specify the personal involvement of each defendant." *Murphy v. Kellar*, 950 F.2d 290, 292 (5th Cir. 1992); *Jacquez v. Procunier*, 801 F.2d 789, 793 (5th Cir. 1986).

Courts in the Eastern District of Texas and their Magistrate Judges have consistently found that a §1983 claim requires allegations of personal involvement - by each identified Defendant(s) - in acts causing the alleged deprivation of a Plaintiff's constitutional rights, dismissing cases when such allegations are absent. See, i.e., *Pompura v. Willis*, 4:16-cv-766 (E.D. Tex 2017) (Priest-Johnson, J.)("a §1983 claim requires personal involvement in acts causing the deprivation

of a Plaintiff's constitutional rights.")(citing *Lozano*); *Bowling v. Willis*, No. 4:18-CV-610, 2019 WL 2517090, 2019 U.S. Dist. LEXIS 106180, at *25-26("As Plaintiff does not allege any personal involvement by DA Willis her complaint should be dismissed under Rule 12(b)(6).")(E.D. Tex. Apr. 2, 2019)(Nowak, J.), report and recommendation adopted sub nom. *Bowling v. Dahlheimer*, No. 4:18-CV-610, 2019 U.S. Dist. LEXIS 132262, 2019 WL 3712025 (E.D. Tex. Aug. 7, 2019). Former Magistrate Judge Nowak summarized this fundamental requirement of specific allegations of personal involvement as follows:

> Moreover, "[a] complaint does not satisfy the requirements of *Iqbal* and *Twombly* by lumping together all defendants, while providing no factual basis to distinguish their conduct." *Bowling v. Willis*, No. 4:18-CV-610-ALMCAN, 2019 U.S. Dist. LEXIS 106180, 2019 WL 2517090, at *9 (E.D. Tex. Apr. 2, 2019)(citation omitted), report and recommendation adopted sub nom. *Bowling v. Dahlheimer*, No. 4:18-CV-610, 2019 U.S. Dist. LEXIS 132262, 2019 WL 3712025 (E.D. Tex. Aug. 7, 2019). A Plaintiff's Complaint is deficient where it largely lumps together all defendants and fails to distinguish their conduct. See *Springs v. Sec'y Diaz*, No. 21CV862-MMA (AGS), 2021 U.S. Dist. LEXIS 101673, 2021 WL 2184851, at *6 (S.D. Cal. May 28, 2021)(dismissing the pro se plaintiff's § 1983 claims because the complaint "fails to contain individualized allegations against these Defendants regarding their involvement"); cf. *Dodson v. Cnty. Comm'rs of Mayes Cnty.*, No. 18-CV-221-TCK-FHM, 2019 U.S. Dist. LEXIS 77706, 2019 WL 2030122, at *5 (N.D. Okla. May 8, 2019)(dismissing the complaint "for failure to adequately allege a claim for supervisory liability" because the complaint lumped the defendants "together without identifying the specific actions each defendant took or failed to take during the incident giving rise to the action"). As the Tenth Circuit explained, "it is particularly important in a §1983 case brought against a number of government actors sued in their individual capacity that the complaint make clear exactly who is alleged to have done what to whom as distinguished from collective allegations." *Brown v. Montoya*, 662 F.3d 1152, 1165 (10th Cir. 2011)(cleaned up). For this additional reason, Plaintiff has failed to properly allege a §1983 claim against Defendants.

Dillenberg v. Watts, 4:20-CV-458, 2021 U.S. Dist. LEXIS 128848, at * fn 23 (E.D. Tex. June 18, 2021), Adopted by, Dismissed by, in part, Dismissed by, Without prejudice, in part *Dillenberg v. Watts*, 2021 U.S. Dist. LEXIS 127872 (E.D. Tex., July 9, 2021).

B. Plaintiff's ORIGINAL AMENDED COMPLAINT fails to make sufficient allegations of personal involvement by Sheriff Skinner

Plaintiff's ORIGINAL AMENDED COMPLAINT exemplifies a lawsuit which fails to contain individualized allegations concerning Sheriff Skinner's alleged involvement in purported violations of Plaintiffs' constitutional rights. The paucity of factual allegations against Sheriff Skinner is underscored by the sparse mention of him [besides in the caption and the identity of parties] in the entire one hundred twenty seven (127) page pleading, related to an informal forum/discussion of law enforcement officials talking about Hemp sales and other law enforcement issues occurring in early September 2024, which was after Plaintiff Khan's arrest.[19] The majority of the allegations indiscriminately intermix all of the other Defendants by global and generic reference, or more importantly, completely omit Sheriff Skinner. As previously noted, there are no factual allegations of any involvement at all by Sheriff Skinner in the procurement or effectuation of the warrants for Plaintiff Khan or the other actions decried by Plaintiffs. The sparse allegations against Sheriff Skinner, as a matter of law, are insufficient to aver any plausible claims against Sheriff Skinner.

2. Plaintiffs have failed to allege any viable claims which would overcome Sheriff Skinner's qualified immunity.

Plaintiffs pre-emptive attempt to thwart an assertion of Qualified Immunity by contending they only seek injunctive relief rings hollow. Plaintiffs' ORIGINAL AMENDED COMPLAINT is replete with references to claims of "financial loss"[20], recovery of "money damages,"[21] and allegations that Plaintiffs reputations have been "impugned" and "Khan's mental and physical health injured."[22]

---

[19]See, PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraphs 98-102; Plaintiffs' Ex. V

[20]See, i.e., PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraphs 67

[21]See, i.e., PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 105

[22]See, i.e., PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 149

Qualified Immunity shields Defendant Skinner from any liability. There was no constitutional violation by him nor was his conduct objectively unreasonable.

A. Doctrine of Qualified Immunity and two-prong analysis of same

Qualified immunity protects officials from suit and liability unless their conduct violates a clearly established constitutional right. *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). Qualified immunity "'gives government officials breathing room to make reasonable but mistaken judgments,' and 'protects all but the plainly incompetent or those who knowingly violate the law.'" *Messerschmidt v. Millender*, 565 U.S. 535, 547, 132 S. Ct. 1235, 182 L.Ed.2d 47(2012)(quoting *Ashcroft v. Al-Kidd*, 563 U.S. 731, 743, 131 S. Ct. 2074, 179 L.Ed.2d 1149). When a defendant asserts qualified immunity and has established that the alleged actions were conducted pursuant to the exercise of his discretionary authority, the burden then shifts to the Plaintiff to rebut this defense. *Saldana v. Garza*, 684 F.2d 1159, 1163 (5th Cir. 1982). "[A] plaintiff seeking to overcome qualified immunity must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity." *Backe v. LeBlanc*, 691 F.3d 645, 648-49 (5th Cir. 2012).

In *Pearson v. Callahan*, the Supreme Court refined the two-prong immunity analysis holding that a Court, in its discretion, could resolve either prong first in light of the circumstances of a particular case. See, *Pearson v. Callahan*, 555 U.S. 223, 236-37 (2009). This Court can thus determine the sequence it deems appropriate to evaluate Plaintiff's claims - - i.e, (1) whether a statutory or constitutional right was violated on the facts alleged, or (2) whether the Defendant's actions violated clearly established statutory or constitutional rights which a reasonable person would have known. *Griggs v. Brewer*, 841 F.3d 308, 312 (5th Cir. 2004).

Regarding this second prong, "If the defendants actions violated a clearly established constitutional right, the court then asks whether qualified immunity is still appropriate because the defendant's actions were 'objectively reasonable' in light of 'law which was clearly established at

the time of the disputed action.'". *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010). The second prong analysis is better understood as involving two separate inquiries: first, whether the allegedly violated Constitutional rights were clearly established at the time of the incident; and second, if so, whether the conduct of Defendant was objectively unreasonable in the light of the clearly established law existing at that time. *Hare v. City of Corinth,* 135 F.3d 320, 326 (5th Cir. 1998)(en banc).

B. Plaintiffs fail to plead any cognizable claims which overcome Sheriff Skinner's Qualified Immunity

Plaintiffs fail on both prongs of the Qualified Immunity analysis concerning the plethora of claims they apparently seeks to assert against Sheriff Skinner.

1. Clearly Established law

The applicable law regarding Failure to Train and Failure to Supervise is detailed below and incorporated again herein by reference. The applicable law regarding Plaintiffs various other theories is detailed in Co-Defendants' Motion To Dismiss[23] and also incorporated herein by reference.

2. No constitutional violation by Sheriff Skinner, and further, his conduct was objectively reasonable

As discussed above, Sheriff Skinner had no personal involvement in the procurement or effectuation of the warrants involving Plaintiff Khan. There are no credible allegations - if really any allegations at all - that Sheriff Skinner's role as the Sheriff of Collin County resulted in a violation of Plaintiffs' constitutional rights or was in any way objectively unreasonable. Qualified Immunity prevails and Sheriff Skinner should be dismissed on this basis alone.

---

[23] See, DEFENDANTS THE CITY OF ALLEN AND STEVE DYE'S MOTION AND BRIEF TO DISMISS AND MOTION TO STAY [Dkt. 16], paragraph VI

3. Plaintiffs have failed to plead any cognizable claim for "Conspiracy"

To prove a conspiracy, a plaintiff must prove an actual deprivation of a constitutional right. *Slavin v. Curry*, 574 F.2d 1256, 1261 (5th Cir. 1978); *Villanueva v. McInnis*, 723 F.2d 414, 418 (5th Cir. 1984); see also *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1183 (5th Cir. 1990). "The elements of civil conspiracy are (1) an actual violation of a right protected under § 1983 and (2) actions taken in concert by the defendants with the specific intent to violate the aforementioned right." *Kerr v. Lyford*, 171 F.3d 330, 340 (5th Cir. 1990). Mere conclusory allegations of conspiracy, absent reference to material facts, do not state a cause of action under 42 U.S.C. § 1983. See *Marts v. Hines*, 68 F.3d 134, 136 (5th Cir. 1995) (en banc). Specific facts must be pleaded when a conspiracy is alleged; mere conclusory allegations will not suffice. *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986). Plaintiff must allege the operative facts of the alleged conspiracy. *Lynch v. Cannatella*, 810 F.2d 1363, 1369-70 (5th Cir. 1987). The Fifth Circuit has noted that "charges as to conspiracies must be based on substantial and affirmative allegations, and no mere gossamer web of conclusion or interference, as here, trifles light as air," will suffice to sustain a claim of conspiracy. *Crummer Co. v. Du Pont*, 223 F.2d 238, 245 (5th Cir. 1955, reh. den.).

In *Shawn Ray v. Collin Co. Sheriff's Off.*, 4:20-cv-856, 2024 WL 1340586, 2024 U.S. Dist. LEXIS 57993, Adopted by, Motion denied by, Objection overruled by, Dismissed by, in part, Dismissed by, Without prejudice, in part, Judgment entered by *Shawn Ray v. Collin Co. Sheriff's Off.*, 2024 U.S. Dist. LEXIS 55751 (E.D. Tex., Mar. 27, 2024), a Plaintiff's conspiracy claim against Sheriff Skinner was dismissed, citing the foregoing authorities and holding:

> "In the instant case, Plaintiff fails to show a deprivation of a constitutional right. Furthermore, he provides nothing to substantiate his claim of conspiracy other than his bare and conclusory assertion that one existed. Accordingly, he wholly fails to state a conspiracy claim."

Id at 2024 U.S. Dist. LEXIS 57993, at *10. Like in *Ray*, Plaintiffs' conspiracy claim wholly fails

VIII.
PLAINTIFFS' COMPLAINT FAILS TO STATE ANY PLAUSIBLE CLAIMS AGAINST SHERIFF SKINNER IN HIS OFFICIAL CAPACITY

Plaintiffs appear to only make their "Count 3: Municipal Liability Under 42 U.S.C. § 1983" against "The City of Allen and Chief Dye."[24] However, to the extent they seek to assert a *Monell* claim against Sheriff Skinner, they cannot. "Official capacity" claims are actually claims against Collin County - and Plaintiffs have wholly failed to plead any plausible claims against the County.

1. Plaintiffs' "official capacity" claims against Sheriff Skinner are actually claims against Collin County

"Official-capacity suits . . . 'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" *Kentucky. v. Graham*, 473 U.S. 159, 165, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985) (quoting *Monell v. Dep't of Soc. Servs*., 436 U.S. 658, 690 n.55, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)). Courts in the Eastern District have consistently concluded that claims against Sheriff Skinner in his official capacity are claims against Collin County:

* *Eckiss v. Skinner*, 4:22-cv-258, 2023 WL 10409037, 2023 U.S. Dist. LEXIS 236424, at 10 (E.D. Tex. Oct. 18, 2023)("To the extent Plaintiff sues Sheriff Skinner in his official capacity, the claims are treated as claims for municipal liability against Collin County. . .");

* *Bone v. Skinner*, No. 4:21-CV-201, 2022 WL 912100, 2022 U.S. Dist. LEXIS 55464 at *15-16 (E.D. Tex. Feb. 24, 2022)("Plaintiff's § 1983 action against Sheriff [Skinner] in [his] official capacity is, in effect, a claim against [Collin] County.") (citations omitted)(alterations in original), report and recommendation adopted, No. 4:21-CV-201, 2022 U.S. Dist. LEXIS 55456, 2022 WL 906191 (E.D. Tex. Mar. 27, 2022);

* *Cadenhead v. Collin Cnty. Det. Facility*, 4:22-cv-596, 2023 WL 4981609, 2023 U.S. Dist. LEXIS 135828, at 12-13 (E.D. Tex. June 1, 2023)("Thus, any Section 1983 action against Sheriff Skinner in his official capacity is, in effect, a claim against Collin County.");

[24] See, i.e., PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 121

* *Gibson v. Skinner*, 4:22-cv-2023, 2023 WL 5810496, 2023 U.S. Dist. LEXIS 159268, at *26 (E.D. Tex. Aug. 3, 2023)("Thus, any Section 1983 claims against Defendants in their official capacities are, in effect, claims against Collin County."), report and recommendation adopted, 2023 U.S. Dist. LEXIS 158663, 2023 WL 5807836 (E.D. Tex. Sept. 7, 2023);

* *Simpson v. Skinner*, 4:23-cv-463, 2024 WL 3825263, 2024 U.S. Dist. LEXIS 145741, at *18 (E.D. Tex. June 13, 2024)("Thus, any §1983 claims against Defendants in their official capacities are, in effect, claims against Collin County."), Adopted by, Dismissed by, Judgment entered by *Simpson v. Skinner*, 2024 U.S. Dist. LEXIS 144698 (E.D. Tex., Aug. 14, 2024);

* *Shawn Ray v. Collin Co. Sheriff's Off.*, 4:20-cv-856, 2024 WL 1340586, 2024 U.S. Dist. LEXIS 57993, at *14 ("To the extent Plaintiff sues the Sheriff Office Defendants in their official capacities, the claims are treated as claims for municipal liability against Collin County, . . ."), Adopted by, Motion denied by, Objection overruled by, Dismissed by, in part, Dismissed by, Without prejudice, in part, Judgment entered by *Shawn Ray v. Collin Co. Sheriff's Off.*, 2024 U.S. Dist. LEXIS 55751 (E.D. Tex., Mar. 27, 2024);

* *Delmast v. Collin Cnty.*, No. 4:21-cv-398, 2022 WL 4362457, 2022 U.S. Dist. LEXIS 170253, at *11-12 (E.D. Tex. Aug. 23, 2022)("Plaintiff's official capacity claims against Sheriff Skinner are treated as claims for municipal liability against Collin County, . . .");

* *Spence v. Taylor*, 4:21-cv-00616, 2022 WL 20804040, 2022 U.S. Dist. LEXIS, at *6, (E.D. Tex. Aug. 1, 2022)("Plaintiff's official capacity claims against Taylor and Sheriff Skinner for damages should thus be dismissed."), Adopted by, Dismissed by, Judgment entered by *Spence v. Taylor*, 2023 U.S. Dist. LEXIS, 173083, Affirmed by *Spence v. Taylor*, 2024 U.S. App. LEXIS 22462, 2024 WL 4039744 (5th Cir. Tex., Sept. 4, 2024); and

* *Venzor v. Collin County, Tex.*, No. 4:20-CV-318, 2022 WL 666989, 2022 U.S. Dist. LEXIS 38980, , at *21-22 (E.D. Tex. Feb. 16, 2022)("Here, Plaintiff's Section 1983 claim against Sheriff Skinner in his official capacity is duplicative of Plaintiff's claim against Collin County and should, thus, be dismissed."), report and recommendation adopted sub nom. *Venzor v. Collin Cnty., Tex.*, No. 4:20-CV-318-ALMKPJ, 2022 U.S. Dist. LEXIS 38892, 2022 WL 656828 (E.D. Tex. Mar. 4, 2022).

Thus, any claims against Sheriff Skinner in his official capacity are, in legal effect, a claim against Collin County.

2. Plaintiffs have not properly plead nor could they establish *Monell* liability against Collin County

Plaintiffs bear the burden to plead facts that plausibly support each element of §1983 municipal liability claim. *See Iqbal*, 556 U.S. at 678. Plaintiffs have failed to do so here.

A governmental entity such as Collin County can be sued and subjected to monetary damages and injunctive relief under 42 U.S.C. §1983 only if its official policy or custom causes a person to be deprived of a federally protected right. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 694 (1978). Fundamentally, municipal (governmental) liability under §1983 requires proof of three elements: a policymaker; an official policy [or custom]; and a violation of constitutional rights whose 'moving force' is the policy or custom." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001). An isolated incident cannot be the basis for holding a County liable. In any event, the Plaintiff must identify the policy, connect the policy to the County itself and show that his injury and damage was incurred because of the application of that specific policy. *Bennett v. City of Slidell*, 728 F.2d 762, 767 (5th Cir. 1984) cert. denied, 472 U.S. 1016 (1985).

A. As a matter of law, the Collin County Sheriff Jim Skinner is the County's final policy maker with respect to law enforcement operations

The first of the three attribution principles for municipal (governmental) liability under §1983 is the involvement of a final policymaker. *Piotrowski*, 237 F.3d at 578. As the Fifth Circuit noted pointedly in *Piotrowski*, "several Supreme Court cases have discussed the policymaker criterion for municipal liability." *Id.* at 579.

Admittedly, Plaintiffs were not required to plead the identity of Collin County's final policy-maker pertinent to their §1983 claims,[25] but they are still required to plead at least enough factual

[25]See, i.e., *Groden v. City of Dallas*, 826 F.3d 280, 285 (5th Cir. 2016) (holding that a § 1983 plaintiff is not required to plead the identity of the final governmental policymaker).

matter to permit a reasonable inference of involvement by the relevant County policymaker. Here, Plaintiffs do not plead anything at all about Sheriff Skinner.[26]

As a matter of well-settled law, the final policymaker for all law enforcement operations by Collin County is the duly elected Collin County Sheriff Jim Skinner, who oversees the operations of the Collin County Sheriff's Office. Under settled Texas law, the county Sheriff is the chief (final) county policymaker for law enforcement, and the Sheriff's directives establish county policy. *See*, *e.g.*, *Turner v. Upton County*, 915 F.2d 133, 136 (5th Cir. 1990) ("It has long been recognized that, in Texas, the county Sheriff is the county's final policymaker in the area of law enforcement . . . by virtue of the office to which the sheriff has been elected.").[27] So, although Plaintiffs were not required to plead the identity of the County's final policymaker with respect to law enforcement operations, their Complaint's facial plausibility must be measured against the nonconclusory facts that they do plead, if any, that would permit a reasonable inference of the final policymaker's involvement—that is, Sheriff Skinner's involvement—in the Sheriff's Office employees' conduct of which Plaintiffs complains.

Here, Plaintiffs fail to plead any facts which, if true, would establish Sheriff Skinner's involvement in the supposed search and arrest of Plaintiff Khan about which Plaintiffs complain. Therefore, Plaintiffs' AMENDED COMPLAINT fails to satisfy the first attribution principle of § 1983 governmental liability - involvement of a final policymaker.

---

[26]See, i.e., PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 120-128

[27]Nothing has changed in the intervening years since the Fifth Circuit decided *Turner*. "[I]n Texas, '[t]he sheriff is without question the county's final policymaker in the area of law enforcement.'" *Jackson v. Ford*, 544 F. App'x 268, 272 (5th Cir. 2013) (per curiam) (quoting *Colle v. Brazos County*, 981 F.2d 237, 244 (5th Cir. 1993); TEX. LOC. GOV'T CODE § 351.041 (West 2011)); *see also Feliz v. El Paso County*, 441 F. Supp. 3d 488, 503 (W.D. Tex. Feb. 27, 2020) ("Texas law is clear that a sheriff is a county's 'final policymaker in the area of law enforcement,' including county jails." (citations omitted)), *cited in Rodriguez v. S. Health Partners, Inc.*, No. 3:20-CV-0045-D, 2020 WL 2928486, at *14 (N.D. Tex. June 3, 2020) (Fitzwater, J.). Thus, there is a long line of precedent that establishes the county Sheriff as a county's final policymaker for all county law enforcement operations.

B. Plaintiffs fail to sufficiently plead existence of offending Policy or Custom of Collin County

Official policy is defined as:

1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy making authority; or

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. Actual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy making authority.

Webster v. City of Houston, 735 F.2d 838, 841 (5th Cir. 1984); *Bennett v. City of Slidell*, 735 F.2d 861, 862 (5th Cir. 1984).

The existence of a constitutionally deficient policy cannot be inferred from a single wrongful act. *O'Quinn v. Manuel*, 773 F. 2d 605, 610 (5th Cir. 1985) (citing *City of Oklahoma v. Tuttle,* 471 U.S. 808, 105 S. Ct. 2427, 85 L.Ed. 2d 791 (1985); see also, *Tuttle*, 105 S. Ct. at 2436 (plurality opinion) "[W]here the policy relied upon is not itself unconstitutional, considerably more proof than the single incident [of unconstitutional conduct forming the basis of the section 1983 action] will be necessary in every case to establish both the requisite fault on the part of the municipality, and the causal connection between the 'policy' and the constitutional deprivation."

"To survive a motion to dismiss, a complaint's 'description of a policy or custom and its relationship to the underlying constitutional violation . . . cannot be conclusory; it must contain specific facts.'" *Balle v. Nueces County*, 952 F.3d 552, 559 (5th Cir. 2017) (quoting *Spiller v. City of Tex. City, Police Dep't*, 130 F.3d 162, 167 (5th Cir. 1997)), Thus, in order to defeat the County's entitlement to dismissal, the Plaintiffs must come forward with more than mere allegations that their purported constitutional deprivations were caused by the application of an official policy, custom or practice of Collin County. They fail to do so.

In the instant case, Plaintiffs lacks any allegations identifying a specific official policy or custom of Collin County that caused their alleged constitutional violation. In fact, Collin County is not mentioned at all in Count 3.[28] While Plaintiffs parrots some of the buzzwords "policies, practices, and customs" regarding City of Allen, they do not plead the existence of a written policy statement, ordinance or regulation regarding Collin County, so they must necessarily rely upon the existence of a Sheriff's Office custom defined by the Fifth Circuit in *Webster*, i.e.,

> a persistent, widespread practice of [government] 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 [governmental] policy.

Piotrowski, 237 F.3d at 579 (citing *Webster v. City of Houston*, 735 F.2d 838, 841 (5th Cir. 1984)).

Again, there is nothing in Count 3 regarding Collin County. Giving Plaintiffs the benefit of a generous reading of their AMENDED COMPLAINT, one might infer that they plead that Collin County's custom was to search and arrest persons without sufficient probable cause. However, that is insufficient. Plaintiffs fail to plead nonconclusory facts that permit a reasonable inference that illegal searches and/or seizures was either commonplace or persistent. *See Gomez v. Palomo*, No. 1:23-CV-098, 2023 WL 9187612, at *3 (S.D. Tex. Oct. 30, 2023), report and recommendation adopted, No. 1:23-CV-00098, 2024 WL 115226 (S.D. Tex. Jan. 10, 2024) (explaining that in certain circumstances a persistent, widespread practice that is so commonplace as to constitute a custom can also be treated as policy) (citing *Piotrowski*, 237 F.3d at 579). Here, however, Plaintiffs pleads only facts related to Plaintiff Khan's search and arrest [which Sheriff Skinner contends was amply supported by probable cause as underscored by Judge Wilson's finding of same], but no facts to permit an inference that alleged illegal searches and seizures was either widespread or persistent, particularly with respect to Collin County. *See Agwata v. Tarrant Cnty. Hosp. Dist.*, No. 4:23-CV-

[28] See, i.e., PLAINTIFFS' ORIGINAL AMENDED COMPLAINT [Dkt. 2], paragraph 120-128

00586-P, 2024 WL 1446588, at *3 (N.D. Tex. Apr. 3, 2024) (Pittman, J.) (slip copy) ("While Agwata does point to specific acts of alleged discrimination and inappropriate workplace behavior, she does not point to any actual policy or customs, just isolated incidents. These types of isolated incidents are insufficient to satisfy the standards laid out for 'policy or custom'") (citing *Bennett*, 728 F.2d at 768 n.3). Therefore, the AMENDED COMPLAINT fails to satisfy the second attribution principle of §1983 governmental liability with respect to the existence of a Collin County custom.

C. Plaintiffs do not sufficiently plead facts supporting a causal link between any unconstitutional policies or customs of Collin County and their claimed injuries.

The third element of a § 1983 municipal liability claim requires a plaintiff to prove that a city's policy or custom was the moving force of the violation of a plaintiff's constitutional rights. *Piotrowski*, 237 F.3d at 578. To prove the policy or custom was the "moving force," there must be a direct causal link between the municipal policy and a plaintiff's alleged constitutional deprivation. The United States Supreme Court highlighted the importance of the causation element in *Monell* when explaining that Congress specifically provided that A's tort becomes B's liability only if B caused A to subject another to a tort. *Monell*, 436 U.S. at 692 Therefore, § 1983 municipal liability does not attach where the third element of causation is absent. *Id*.

Because Plaintiffs cannot identify a policy, they similarly have not made factual allegations showing any official Collin County policy was the moving force behind a violation of a constitutional right. Instead, Plaintiffs make conclusory statements about the City of Allen, but nothing about Collin County. Plaintiffs' statements falls short of being a threadbare recital of the elements—much less meet the factual pleading burden for a *Monell* claim. For these reasons, Plaintiffs' AMENDED COMPLAINT fails to satisfy all three elements for municipal liability under *Monell*. As such, this Court should dismiss Plaintiffs' municipal liability claim against the County.

4. Collin County cannot be held vicariously liable herein as matter of law.

A governmental entity cannot be held vicariously liable under 42 U.S.C.§1983 for purported unconstitutional acts committed by its employees. *Pembaur vs. City of Cincinnati*, 106 S.Ct. 1292, 1298 (1986); *Monell vs. Department of Social Serv.,* 98 S.Ct. 2018, 2037 (1978); *Brown vs. Bryan County*, 53 F.3d 1410 (5th Cir. 1985); *Piotrowski vs. City of Houston*, 51 F.3d 512 (5th Cir. 1995); *Harris vs. City of Pagedale*, 821 F.2d 499, 504 (8th Cir. 1987). Thus, to the extent that Plaintiffs seeks to foist liability onto Collin County for the acts of its employees, they simply cannot do so.

IX.
PLAINTIFFS FAIL TO PLEAD PLAUSIBLE RIGHT TO INJUNCTIVE RELIEF

Regarding injunctive relief, Plaintiffs request this Court to essentially stop the enforcement of criminal laws against them. They repeat, ad nauseam, their litany of requested relief which is basically that the seized property be returned and they be allowed to operate without interference by law enforcement or any other governmental agencies. Neither the facts nor law support their request.

A party seeking a temporary restraining order and/or preliminary injunction must establish each of the following elements: (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest. *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011). Further, "Past exposure to illegal conduct does not itself show a present case or controversy regarding injunctive relief. . . if unaccompanied by any continuing, present adverse effects." *Doe v. Carter*, No. 7:10-CV-147-O, 2011 U.S. Dist. LEXIS 120725, 2011 WL 4962060, at *2 (N.D. Tex. Oct. 19, 2011) (citing *O'Shea v. Littleton*, 414 U.S. 488, 495-96, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974)).

Plaintiffs have failed to plead any plausible claims for injunctive relief because Plaintiffs do not plead facts to show, let alone permit an inference, that they suffer a continuing harm or a real and immediate threat of repeated injury in the future. Their remedy for purported problems concerning the warrants and/or proceeding with the criminal case is a matter to be addressed by the State Court in the criminal cases. Nor has Plaintiff sufficiently alleged that they can prevail on the merits as detailed above and also by the Allen Co-Defendants, particularly as to prospective relief, precluding injunctive relief. Moreover, as a practical matter, Plaintiffs' request that all seized inventory be returned is misdirected when it comes to Sheriff Skinner since neither he nor the Collin County Sheriff's Office are in possession of the seized items.

X.
PLAINTIFFS ARE NOT ENTITLED TO DECLARATORY RELIEF

Dismissing the underlying substantive claim against Defendants effectively resolves any dispute as to Plaintiffs' request for Declaratory Judgment against them. Declaratory relief is simply unavailable in the absence of some "judicially remediable right." *Schilling v. Rogers*, 363 U.S. 666, 677, 80 S. Ct. 1288, 4 L. Ed. 2d 1478 (1960). Simply put, unless the Plaintiffs have a valid claim, they has no basis for the Court to issue any declaratory judgment against Sheriff Skinner and/or Collin County. See, i.e., *Reitz v. City of Abilene*, No. 1:16-CV-0181-BL, 2017 WL 3046881, 2017 U.S. Dist. LEXIS 110673, at* n. 9 (N.D. Tex. May 25, 2017).

XI.
INCORPORATION OF OTHER DEFENDANTS' ARGUMENT AND BRIEFING

To the extent applicable to Sheriff Skinner, he incorporates by reference and adopts as if fully set forth all issues, arguments and authority made by any of the Co-Defendants in any pleading or motion which may be relevant to and/or dispositive of the claims being brought by the Plaintiffs.

XII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant **SHERIFF JIM SKINNER** prays that the Court grant his MOTION TO DISMISS; that it dismiss the Plaintiffs' claims and pleas for damages, and that Sheriff Skinner have such other relief, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

By: /s/ *Robert J. Davis*

ROBERT J. DAVIS
State Bar No. 05543500
KYLE THOMAS BARRY
State Bar No. 24122284
MATTHEWS, SHIELS, KNOTT, EDEN, DAVIS & BEANLAND, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251
972/234-3400 (office)
972/234-1750 (telecopier)
bdavis@mssattorneys.com
kbarry@mssattorneys.com

ATTORNEYS FOR DEFENDANT COLLIN COUNTY SHERIFF JIM SKINNER

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2024, I electronically filed the foregoing document with the clerk of the Court for the Eastern District, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means: David K. Sergi, Anthony J. Fusco, and Jim Jeffrey.

/s/ *Robert J. Davis*
ROBERT J. DAVIS