UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION
CIVIL ACTION NO. 4:26-CV-00208-GNS

TIMBERLYNN FLOYD PLAINTIFF

v.

SERGEANT JOSHUA HENDRICKSON,
in his official and individual capacities, et al. DEFENDANTS

MOTION FOR PARTIAL DISMISSAL

Come Defendant, Sergeant Johsua Hendrickson, in his individual capacity only, by counsel and pursuant to Fed. R. Civ. P. 12(b)(6) and LR 7.1 and respectfully moves this Court to enter the Order filed in conjunction with this Motion thereby dismissing portions of Plaintiff's Complaint. A memorandum in support is filed concurrently with this Motion and same is adopted and incorporated by reference as if fully set forth herein

WHEREFORE, Defendant Sergeant Joshua Hendrickson respectfully moves this Court for entry of the Order filed concurrently with this Motion, thereby dismissing Plaintiff's claims couched in alleged violations of the Fourth Amendment and arising from *Monell* as asserted against Defendant Hendrickson in his individual capacity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that on this 29th day of May, 2026, the foregoing document was filed and sent via electronic service through the Kentucky Court of Justice electronic filing system and/or U.S. Mail to:

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MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL DISMISSAL

Comes Defendant, Sergeant Johsua Hendrickson, in his individual capacity, by counsel and pursuant to Fed. R. Civ. P. 12(b)(6) and LR 7.1, hereby states as follows for his Memorandum of Law in Support of his Motion for Partial Dismissal,

INTRODUCTION

This lawsuit arises from an interaction between Plaintiff, the driver of her vehicle and multiple officers and deputies from Henderson Police Department and Henderson County Sheriff's Office. [DN 1, *passim.*]. On or about July 10, 2025, Officer Howell attempted to initiate a traffic stop on a vehicle registered to Plaintiff, Timberlynn Floyd. Instead, the vehicle fled from officers and a pursuit ensued. [DN 1, ¶¶21-25, 31]. Shortly thereafter, Officer Treg Duvall and Officer Elam Coots joined the pursuit. [DN 1, ¶¶38-40, 41]. As the pursuit proceeded outside of city limits, Lieutenant Stone requested assistance from Henderson County Sheriff's Office. [DN 1, ¶43]. Pursuant to Lieutenant Stone's request, Deputy Gary Jones took over the pursuit, secondary to authorization from Joshua Hendrickson. [DN 1, ¶¶48, 49]. After Deputy Jones took over the pursuit, the driver stopped the vehicle only after striking a curb in a roundabout on U.S. 60 East. [DN 1, ¶37]. Once the vehicle stopped, Deputy Jones exited his patrol vehicle and yelled at the

driver to "stop." [DN 1, ¶58]. After this command, amidst rapidly evolving circumstances, Deputy Jones ended up firing four gunshots towards the suspect vehicle. [DN 1, ¶¶59-63]. As a result of this gunfire, Timberlynn Floyd, who was a passenger at the time of this incident, sustained a gunshot wound to her leg. [DN 1, ¶¶65, 66].

Timberlynn Floyd now sues several officers and deputies who were directly and indirectly involved with this incident. One of the Defendants named in this lawsuit is Sergeant Hendrickson. Plaintiff asserts the following causes of action against Sergeant Hendrickson: (1) Fourth Amendment Violations arising from excessive force; (2) *Monell* violation due to failure to train and supervise; (3) Negligence; and, (4) Gross Negligence. Pursuant to the federal law, Plaintiff's claim of alleged violations of the Fourth Amendment and *Monell* fail as a matter of law.

LAW AND ARGUMENT

I. Standard of Review

A claim is appropriately dismissed pursuant to Federal Rule Civil Procedure 12(b)(6) when the Complaint fails to state a claim upon which relief can be granted. *Fed. R. Civ. Pro. 12(b)(6).* When faced with motion pursuant to Rule 12(b)(6), the court is to "construe the complaint in a light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inference in favor of the plaintiff." *DirectTV, Inc. v. Treesh,* 487 F.3d 471, 476 (6th Cir. 2007). Despite this standard, the court is **not** required to "accept as true legal conclusions or unwarranted factual inferences." *Id.* (quotation omitted). Sixth Circuit courts have repeatedly opined, "legal conclusions masquerading as factual allegations will not suffice." *Edison v. State of Term. Dep't. of Children's Servs.,* 510 F.3d 631, 634 (6th Cir. 2007); *Bright v. Gallia Co., Ohio,* 753 F.3d 639, 652 (6th Cir. 2014); *Lillard v. Shelby Co. Bd. of Educ.,* 76 F.3d 716, 726 (6th Cir. 1996).

A Complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." *Fed. R. Civ. P. 8(a)(2).* It is this Court's responsibility to evaluate Plaintiff's Complaint and ascertain whether it sufficiently states facts to support a claim for relief that is plausible on its face. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). Surviving a Rule 12(b)(6) motion requires "[f]actual allegations contained in [the] complaint [that] 'raise a right to relief above the speculative level.'" *Bassett v. Nat'l Collegiate Athletic Ass'n,* 528 F.3d 426, 430 (6th Cir. 2008). In other words, Plaintiff's allegations "must do more than create speculation or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief." *LULAC v. Bredesen,* 500 F.3d 523, 527 (6th Cir. 2007) (emphasis in original); *Iqbal,* 556 U.S. at 678 (holding allegations must be "more than a sheer possibility that a defendant has acted unlawfully.") For the following reasons, Plaintiff's claims arising from alleged violations of the Fourth Amendment and *Monell* are appropriately dismissed.

II. Plaintiff's Claims of Fourth Amendment Violations and Violations of *Monell* Fall Short of Federal Pleading Requirements

Pursuant to the Federal Rules of Civil Procedure, Plaintiff is required to make in her Complaint "a short and plain statement of the claim showing that the pleader is entitled to relief[,]" in order to "give the defendant fair notice of what the…claim is and the grounds upon which it rests[.]" *FRCP 8(a)(2); Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555 (quoting *Papasan v. Allain,* 478 U.S. 265 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). "Factual allegations must be enough to raise a right to relief above the speculative level[.]"

Twombly, 550 U.S. at 555; 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d ed. 2004) ("[T]he pleading must contain something more…than…a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"). "[S]omething beyond the mere possibility of loss causation must be alleged, lest a plaintiff with 'a largely groundless claim' be allowed to 'take up the time of a number of other people[.]'" *Dura Pharmaceuticals, Inc. v. Broudo,* 544 U.S. 336 (2005) (quoting *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723 (1975)). It is this Court that retains the power to insist upon some specificity in pleading before allowing a massive factual controversy to proceed. *Associated Gen. Contractors of Cal., Inc. v. Carpenters,* 459 U.S. 519, 528 (1983). It is the Plaintiff's duty to plead factual allegations sufficient to compel this Court to believe her claims have substantive plausibility of entitling her to recovery under the law. *Twombly,* 550 U.S. at 560-61; *Ashcroft v. Iqbal,* 556 U.S. 662 (2009); *Courie v. Alcoa Wheel & Forged Products,* 577 F.3d 625 (6th Cir. 2009) ("[A] civil complaint only survives a motion to dismiss it if 'contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'").

Plaintiff has asserted only that Sergeant Hendrickson was, at all relevant times, employed by Henderson County Sheriff's office and acting under color of state law when he authorized Deputy Gary Jones to pursue the vehicle in which Plaintiff was a passenger, despite lacking knowledge of any serious felony being committed by the occupants. [DN 1, ¶¶11, 12, 49, 50]. Relying upon these factual assertions, Plaintiff claims she is entitled to recovery under the law due to Sergeant Hendrickson violating her Fourth Amendment rights by using excessive force and failing to train and supervise Defendant Jones. [DN 1, ¶¶ 78, 84]. To substantiate her claims arising from alleged Fourth Amendment violations, Plaintiff is required to state facts sufficient to satisfy each requisite element. *FRCP 8(a)(2); Twombly,* 550 U.S. 544 (2007); *Broudo,* 544 U.S.

336 (2005); *Blue Chip Stamps,* 421 U.S. 723 (1975); *Iqbal,* 556 U.S. 662 (2009); *Courie,* 577 F.3d 625 (6th Cir. 2009); 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d ed. 2004). She has failed to do so.

For the reasons set forth below, Plaintiff has failed to meet the notice-pleading standard to which her Complaint is subject to under the Federal Rules of Civil Procedure and her claims against Sergeant Hendrickson, in his individual capacity, arising from alleged Fourth Amendment violations and liability pursuant to *Monell* are appropriately dismissed. *FRCP 8(a)(2); Twombly,* 550 U.S. 544 (2007); *Broudo,* 544 U.S. 336 (2005); *Blue Chip Stamps,* 421 U.S. 723 (1975); *Iqbal,* 556 U.S. 662 (2009); *Courie,* 577 F.3d 625 (6th Cir. 2009).

A. Plaintiff Has Failed to Plead a Cognizable Claim of Fourth Amendment Violations Against Sgt. Hendrickson

"To state a claim under 42 U.S.C. §1983, a plaintiff must present facts sufficient to show that the defendants, acting under color of state law, deprived him of a specific right or interest secured by the Constitution or laws of the United States." *Meals v. City of Memphis, Tenn.,* 493 F.3d 720 (6th Cir. 2007); *42 U.S.C. §1983.* Along with protecting against unreasonable searches, "[t]he Fourth Amendment protects against 'unreasonable seizures,' not unreasonable or even outrageous conduct in general." *Galas v. McKee,* 801 F.2d 200 (6th Cir. 1986); *Co. of Sacramento v. Lewis,* 523 U.S. 833 (1998). "The Fourth Amendment's prohibition against unreasonable seizures prohibits the use of excessive force against free citizens." *Fisher v. City of Memphis,* 234 F.3d 312, 318-19 (6th Cir. 2000).

The Complaint does not make it immediately clear how Sergeant Hendrickson allegedly used "objectively unreasonable deadly force" against her. [DN 1, *passim.*] Due to the fact Plaintiff alleges she was subject to a vehicle pursuit and gunfire but makes no allegations that Sergeant

Hendrickson was in any way connected to the gunfire, Defendant believes her basis for claiming he used unreasonable force arises from the vehicle pursuit. [DN 1, *passim.*].

The United States Supreme Court has repeatedly instructed that a police pursuit, on its own, does not amount to a use of force within the meaning of the Fourth Amendment. *Lewis,* 523 U.S. 833 (1998); *California v. Hodari D.,* 499 U.S. 621 (1991); *Galas v. McKee,* 801 F.2d 200 (1986). To understand the limitations of the Fourth Amendment, we must first address the purpose. The Fourth Amendment provides,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall use, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Brower v. Co. of Inyo, 489 U.S. 593 (1989).

Plaintiff makes no allegations that Defendant Hendrickson subjected her to an unlawful search, therefore her claim of excessive force constituting violation of her Fourth Amendment rights against Sergeant Hendrickson must arise from an alleged wrongful seizure. [DN 1, *passim.*]; *Brower,* 489 U.S. 593 (1989). In *Tennessee v. Garner,* the court determined that a police officer's fatal shooting of a fleeing suspect constituted a Fourth Amendment "seizure," reasoning, "[w]henever an officer restrains the freedom of a person to walk away, he has seized that person." *Garner,* 471 U.S. 1, 7 (1985). The pillar of the *Garner* holding is that "[v]iolation of the Fourth Amendment requires an intentional acquisition of physical control." *Brower,* 489 U.S. at 596. The United States Supreme Court has clarified this brightline rule, explaining,

> It is clear, in other words, that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement (the innocent passerby), nor even whenever there is a governmentally caused and governmentally *desired* termination of an individual's freedom of movement (the fleeing felon), but only when there is a governmental termination of freedom of movement *through means intentionally applied.*

Brower, 489 U.S. at 597.

Years later, the United States Supreme Court emphasized the importance of affirming the limited scope of the Fourth Amendment to unreasonable searches and seizures, and not including pursuits within that scope, explaining,

> We do not think it desirable, even as a policy matter, to stretch the Fourth Amendment beyond its words and beyond the meaning of arrest, as respondent urges. Street pursuits always place the public at some risk, and compliance with police orders to stop should therefore be encouraged. Only a few of those orders, we must presume, will be without adequate basis, and since the addressee has no ready means of identifying the deficient ones it almost invariably is the responsible course to comply. Unlawful orders will not be deterred, moreover, by sanctioning through the exclusionary rule those of them that are *not* obeyed. Since policemen do not command "Stop!" expecting to be ignored, or give chase hoping to be outrun, it fully suffices to apply the deterrent to their genuine, successful seizures.

Hodari D., 499 U.S. at 626-627 (internal citations omitted).

Recently, the United States Supreme Court was required to re-examine whether a police pursuit, on its own violations the Fourth Amendment. In *Lewis,* Deputy Stapp witnessed a motorcycle driving at a high rate of speed, which was operated by Bryan Willard and carrying Phillip Lewis as a passenger. *Lewis,* 523 U.S. at 836. Accordingly, Deputy Stapp attempted to initiate a traffic stop, but Willard fled and a pursuit commenced. *Id.* The pursuit lasted approximately a mile and a half and ended when the motorcycle tipped over. *Id.* As a result of this incident, the passenger sued Deputy Stapp pursuant to §1983. *Id.* In its opinion, the *Lewis* Court explained that the Fourth Amendment is limited only to searches and seizures, and reiterated the importance of excluding police pursuits as seizures under the Fourth Amendment, instructing, "a police pursuit in attempting to seize a person does not amount to a 'seizure' within the meaning of the Fourth Amendment." *Lewis,* 523 U.S. at 844-45. (1998) (quoting *Hodari,* 499 U.S. at 626)).

In her Complaint, Plaintiff asserts that Sergeant Hendrickson violated her Fourth Amendment rights by authorizing Deputy Gary Jones to pursue the vehicle in which she was a passenger, despite lacking knowledge of any serious felony having been committed by the vehicle's occupants and failing to train and supervise Defendant Jones. *Compl.,* ¶¶49, 50,78, 84. Nowhere in the Complaint does Plaintiff allege facts sufficient to establish that Sergeant Hendrickson subjected her to a search and federal law makes it clear that a police pursuit does not constitute a seizure under the Fourth Amendment. [DN 1, *passim.*]; *Lewis,* 523 U.S. 833 (1998); *California v. Hodari D.,* 499 U.S. 621 (1991); *Galas v. McKee,* 801 F.2d 200 (1986); *Brower,* 489 U.S. 593, 596 (1989); *Hodari D.,* 499 U.S. at 628. Consequently, Plaintiff has failed to assert any allegations that Sergeant Hendrickson took action, which would be subject to the Fourth Amendment. [DN 1, *passim.*]; *Lewis,* 523 U.S. 833 (1998); *California v. Hodari D.,* 499 U.S. 621 (1991); *Galas v. McKee,* 801 F.2d 200 (1986); *Brower,* 489 U.S. 593, 596 (1989); *Hodari D.,* 499 U.S. at 628. This failure leaves Plaintiff's Complaint falling short of the notice-pleading standard required by this Court, therefore her claims alleging violations of the Fourth Amendment against Sergeant Hendrickson are appropriately dismissed. *FRCP 8(a)(2); Twombly,* 550 U.S. 544 (2007); *Broudo,* 544 U.S. 336 (2005); *Blue Chip Stamps,* 421 U.S. 723 (1975); *Iqbal,* 556 U.S. 662 (2009); *Courie,* 577 F.3d 625 (6th Cir. 2009); *Lewis,* 523 U.S. 833 (1998); *California v. Hodari D.,* 499 U.S. 621 (1991); *Galas v. McKee,* 801 F.2d 200 (1986); *Brower,* 489 U.S. 593, 596 (1989); *Hodari D.,* 499 U.S. at 628.

B. Sergeant Hendrickson Cannot Be Held Liable for Deputy Jones' Alleged Use of Excessive Force

To hold an officer liable for another's use of excessive force via §1983, a plaintiff must prove the bystanding officer actively participated in the use of excessive force, supervised the

officer, or the defendant officer owed the victim a duty of protection against the use of excessive force. *Turner v. Scott,* 119 F.3d 425 (1997); *Binay v. Bettendorf,* 601 F.3d 640 (2010). As established, Plaintiff has failed plead facts sufficient to establish that Sergeant Hendrickson used force against her. *FRCP 8(a)(2); Twombly,* 550 U.S. 544 (2007); *Broudo,* 544 U.S. 336 (2005); *Blue Chip Stamps,* 421 U.S. 723 (1975); *Iqbal,* 556 U.S. 662 (2009); *Courie,* 577 F.3d 625 (6th Cir. 2009); *Lewis,* 523 U.S. 833 (1998); *California v. Hodari D.,* 499 U.S. 621 (1991); *Galas v. McKee,* 801 F.2d 200 (1986); *Brower,* 489 U.S. 593, 596 (1989); *Hodari D.,* 499 U.S. at 628. Consequently, this Court must determine whether Plaintiff has sufficiently plead causes of action against Defendant Hendrickson arising from his supervision of Deputy Jones or duty to protect Plaintiff. *Turner,* 119 F.3d 425 (1997); *Binay,* 601 F.3d 640 (2010).

i. Sergeant Hendrickson Did Not Have the Opportunity or Means to Intervene

"[A]n officer's 'mere presence' at the scene of excessive force generally does not suffice to hold the office liable for the force." *Chaney-Snell v. Young,* 98 F.4th 699 (6th Cir. 2024) (quoting *Ashcroft v. Iqbal,* 556 U.S. 662 (2009)). In some cases, officers can be held liable for a Fourth Amendment excessive force violation when they were not the ones who actively used force, but they failed to intervene in the use of excessive force. *Goodwin v. City of Painesville,* 781 F.3d 314 (6th Cir. 2015); *Durham v. Nu'Man,* 97 F.3d 862, 866-67 (6th Cir. 1996). "A police officer may be held liable for failure to intervene during the application of excessive force when: '(1) the officer observed or had reason to know that excessive force would be or was being used; and (2) the officer had both the opportunity and the means to prevent the harm from occurring.'" *Goodwin,* 781 F.3d 314 (6th Cir. 2015) (quoting *Turner v. Scott,* 119 F.3d 425, 429 (6th Cir. 1997)).

Federal courts have established that the first element is satisfied when the bystanding officer either observes the subject force being used or, prior to the use of force, is put on notice of

his colleague's intent to use force. *Turner,* 119 F.3d 425 (6th Cir. 1997) (emphasis added); *Chaney-Snell,* 98 F.4th 699 (2024); *Kent v. Oakland Co.,* 810 F.3d 384 (6th Cir. 2016). In other words, absent proof that the bystanding officer had reason to know the offending officer would use force, it is a stringent requirement that the bystanding officer have actually observed the allegedly unconstitutional use of force. *Turner,* 119 F.3d 425 (6th Cir. 1997) (emphasis added); *Chaney-Snell,* 98 F.4th 699 (2024); *Kent v. Oakland Co.,* 810 F.3d 384 (6th Cir. 2016); *Pineda v. Hamilton Co., Ohio,* 977 F.3d 483 (6th Cir. 2020); *Alexander v. Carter ex rel. Byrd,* 733 F.App'x 256, 264 (6th Cir. 2018); *Pennington v. Terry,* 644 F.App'x 533, 548 (6th Cir. 2016); *Kowolonek v. Moore,* 463 F.App'x 531, 539 (6th Cir. 2012); *Murray-Ruhl v. Passinault,* 246 F.App'x 338, 347-48 (Sixth Cir. 2007); *Wright v. City of Euclid,* 962 F.3d 852, 872 (6th Cir. 2020); *Smith v. City of Troy,* 874 F.3d 938, 945-46 (6th Cir. 2017).

In considering the second element, whether an officer had the opportunity to stop the use of force, courts are instructed to evaluate whether the force used lasted "long enough" that the observing officer had a realistic chance to end it. *Chaney-Snell,* 98 F.4th at 722. Federal law provides guidance on how much time constitutes "long enough," explaining, "an officer without forewarning generally will not have the ability to stop a colleague's force if the force continues for 'ten seconds or less[.]'" *Chaney-Snell,* 98 F.4th at 722 (quoting *Pineda v. Hamilton Co., Ohio,* 977 F.3d 483 (6th Cir. 2020) (quoting *Alexander v. Carter ex rel. Byrd,* 733 F.App'x 256, 264 (6th Cir. 2018))). In fact, federal courts have expressly stated that officers "could not face liability for a colleague's decision to tase or shoot a suspect when this force ended in seconds." *Chaney-Snell,* 98 F.4th at 722; *Pennington v. Terry,* 644 F.App'x 533, 548 (6th Cir. 2016); *Kowolonek v. Moore,* 463 F.App'x 531, 539 (6th Cir. 2012); *Murray-Ruhl v. Passinault,* 246 F.App'x 338, 347-48 (Sixth Cir. 2007). Lastly, when evaluating whether a bystanding officer had the means and opportunity

to intervene with a use of force, the Sixth Circuit has instructed that proximity to the force being used should be considered to determine whether a realistic opportunity existed to intervene. *Kent,* 810 F.3d 384 (6th Cir. 2016).

In *Turner,* the Sixth Circuit evaluated whether liability could be imposed upon a bystanding officer for failure to intervene when the officer did not actually observe the force being used. *Turner,* 119 F.3d 425 (6th Cir. 1997). After a review of the required elements, the *Turner* Court held that the bystanding officer, Officer Scott, could not be liable for a failure to intervene because his complete lack of awareness of the occurrence made it impossible for him to have prevented it. *Turner,* 119 F.3d at 430.

Sergeant Hendrickson is indistinguishable from Officer Scott with respect to the means and opportunity to intervene. The incident of force used during the subject incident is Deputy Jones' discharging his firearm. [DN 1, *passim.*]; *Lewis,* 523 U.S. 833 (1998); *California v. Hodari D.,* 499 U.S. 621 (1991); *Galas v. McKee,* 801 F.2d 200 (1986); *Brower,* 489 U.S. 593, 596 (1989). It is Plaintiff's burden to prove that Sergeant Hendrickson observed or had reason to know that Deputy Jones would use alleged excessive force and that Sergeant Hendrickson had the means and opportunity to prevent Plaintiff from being harmed by that allegedly excessive force. *Goodwin,* 781 F.3d 314 (6th Cir. 2015); *Turner,* 119 F.3d 425, 429 (6th Cir. 1997). Plaintiff makes **no** allegations that Sergeant Hendrickson observed the force used by Deputy Jones or that Sergeant Hendrickson had reason to know Deputy Jones would fire his weapon. [DN 1, *passim.*]. Accordingly, Plaintiff has failed to plead sufficient factual allegations that would make it even possible for her to recover under a theory of a failure to intervene. *FRCP 8(a)(2); Twombly,* 550 U.S. 544 (2007); *Broudo,* 544 U.S. 336 (2005); *Blue Chip Stamps,* 421 U.S. 723 (1975); *Iqbal,* 556 U.S. 662 (2009); *Courie,* 577 F.3d 625 (6th Cir. 2009); *Goodwin,* 781 F.3d 314 (6th Cir. 2015);

Turner, 119 F.3d 425, 429 (6th Cir. 1997). Consequently, any claims Plaintiff attempts to assert against Sergeant Hendrickson for failure to intervene with the force used by Deputy Jones should be dismissed as a matter of law. *Goodwin,* 781 F.3d 314 (6th Cir. 2015); *Turner,* 119 F.3d 425, 429 (6th Cir. 1997); *Chaney-Snell,* 98 F.4th 699 (2024); *Kent,* 810 F.3d 384 (6th Cir. 2016); *Pineda,* 977 F.3d 483 (6th Cir. 2020); *Alexander,* 733 F.App'x 256, 264 (6th Cir. 2018); *Pennington,* 644 F.App'x 533, 548 (6th Cir. 2016); *Kowolonek,* 463 F.App'x 531, 539 (6th Cir. 2012); *Murray-Ruhl,* 246 F.App'x 338, 347-48 (Sixth Cir. 2007); *Wright,* 962 F.3d 852, 872 (6th Cir. 2020); *Smith,* 874 F.3d 938, 945-46 (6th Cir. 2017).

ii. Plaintiff has Failed to Plead Sufficient Facts for Supervisory Liability

Supervisory liability under §1983 arises from the United States Supreme Court's opinion in *Rizzo v. Goode. Leach,* 891 F.2d 1241 (6th Cir. 1989). The United States Supreme Court "rejected the idea that supervisory liability under section 1983 could attach on the basis of *respondeat superior* holding that the mere failure to act was not a sufficient basis for liability." *Leach,* 891 F.2d at 1246; *Rizzo,* 423 U.S. 362, 371 (1976). "Instead, officials should be personally liable in damages only for their own unconstitutional behavior." *Id.* Further, "[t]he law is clear that liability of supervisory personnel must be based on more than merely the right to control employees." *Hays v. Jefferson,* 668 F.2d 869, 872 (6th Cir. 1982). "[A] claim of failure to supervise or properly train under section 1983 cannot be based on simple negligence." *Hays,* 668 F.2d at 872; *Daniel v. Williams,* 474 U.S. 327 (1986). In reliance upon the instruction in *Rizzo,* the *Hays* Court instructed,

> [A] failure of a supervisory official to supervise, control, or train the offending individual [employees] is not actionable absent a showing that the official either encouraged or in some way directly participated in it. At a minimum a plaintiff must show that the official at least implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending [employees].

Hays, 668 F.2d at 874.

At a minimum, Plaintiff is required to show that the supervisor "at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers." *Colvin v. Caruso,* 605 F.3d 282, 292 (6th Cir. 2010) (quoting *Cardinal,* 564 F.3d at 803)).

In *Colvin,* after review of the evidentiary record, the Sixth Circuit concluded that when a plaintiff fails to so much as allege that the defending supervisor had any active involvement in the §1983 violation, the claim is appropriately dismissed. *Colvin,* 605 F.3d at 292. Similarly, in *Combs v. Wilkinson,* the Sixth Circuit affirmed dismissal of claims for §1983 brought against law enforcement defendants where the defendants did not encourage or directly participate in the alleged misconduct giving rise to violations of §1983. *Combs,* 315 F.3d 548, 558-59 (6th Cir. 2002).

The question posed to the Sixth Circuit Court in *Graves v. Malone* is on point with the matter now facing this Court. In *Graves,* a supervisor, Sergeant Gary Hedger, ordered deputies to enter a trailer with their weapons drawn. *Graves,* 810 Fed.Appx. 414 (6th Cir. 2020). At the time this order was issued, plaintiff, Ronnie Graves, was believed to be in a trailer, armed with a weapon, and experiencing a serious mental episode. *Id.* Upon entry into the trailer, Graves refused to comply with deputy commands and raised a fist at the deputies, in which he held an unknown small, dark object. *Id.* Upon perceiving this action as a threat, one of the deputies shot at Graves but missed. *Id.* Another deputy, who also perceived Graves' action as a threat, shot at graves twice, one of which hit Graves in the face leading to serious facial disfigurations. *Id.* Several seconds later, a third deputy tased Graves. *Id.* Among several claims, Graves sued Sergeant Hedger, alleging that he used excessive force in violation of the Fourth Amendment. *Id.* Upon motion for summary judgment, the district court dismissed the claims brought against Sergeant Hedger's

motion for summary judgment, which was affirmed by the Sixth Circuit. *Id.* In affirming dismissal of the claims against Sergeant Hedger, the Sixth Circuit instructed,

> There are separate tests for supervisory liability and liability for failure to protect: Supervisory liability, in the §1983 context, requires "more than an attenuated connection between the injury and the supervisor's alleged wrongful conduct." Instead, "supervisory liability requires some 'active unconstitutional behavior' on the part of the supervisor." Put differently, the failure to supervise is only actionable if "the supervisor either encouraged the specific incident of misconduct or in some other way directly participated in it." We have "interpreted this standard to mean that 'at a minimum,' the plaintiff must show that the defendant 'at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers.'" Liability for failure to protect, meanwhile, arises when "(1) the officer observed or had reason to know that excessive force would be or was being used; and (2) the officer had both the opportunity and the means to prevent the harm from occurring."
>
> […]
>
> In cases where we have found supervisory liability for excessive force, it has been where the government official ordered, or at least implicitly authorized, the use of force. Here, the record shows that Hedger ordered or authorized only the *circumstances* that, perhaps, ultimately led to the use of force; indeed, Myers and Potratz both testified that the decision to shoot was their own. Mere creation of the circumstances in which force is ultimately deployed does not give rise to a constitutional violation.
>
> […]
>
> Nothing in the record establishes that Hedger had reason to know that Myers and Potratz would discharge their weapons, and nothing in the record establishes that Hedger would have had the opportunity and means to prevent them from discharging their weapons. We therefore conclude that the district court properly granted judgment for Hedger in Graves's claims for supervisory liability and failure to protect.

Graves, 810 Fed.Appx. at 420-21.

The instant matter mirrors the question posed to a Sixth Circuit court in *Francis v. Huff.* In *Francis,* on-duty deputies pursued a vehicle they perceived to be acting suspiciously. Throughout the pursuit, the deputies' supervisor, Defendant Noorbergen, monitored and was supervising. *Francis,* 590 F.Supp.3d 1092 (E.D. Tenn., 2022). Upon reaching a dead end the fleeing vehicle stopped and one of the deputies approached the vehicle on foot. *Id.* Once the deputy reached the

vehicle, the suspect refused to comply with deputies' commands and ultimately struck one deputy with his vehicle, leading to the deputies firing their weapons in the plaintiff's direction. *Id.* Consequently, the deputies and Defendant Noorbergen were sued under 42 U.S.C. §1983, in part asserting Defendant Noorbergen violated the Fourth Amendment by failing to terminate the vehicle pursuit which led to the alleged excessive force used by deputies. *Id.* In accordance with the foregoing federal precedent, the *Francis* Court dismissed the claims against Defendant Noorbergen, in part instructing that Defendant Noorbergen's supervision of the pursuit was not enough and the requisite evidence to prove her active involvement or opportunity to intervene was not presented and therefore the claims against her could not survive. *Id.*

In this case, Plaintiff has not alleged Sergeant Hendrickson had **any** involvement with the force used by Defendant Jones, let alone that Sergeant Hendrickson expressly or implicitly authorized, approved, or knowingly acquiesced to Deputy Jones discharging his firearm. [DN 1, *passim.*]; *Graves,* 810 Fed.Appx. 414 (6th Cir. 2020). As was the case in *Graves,* at best Plaintiff alleges that Sergeant Hendrickson authorized the pursuit which ultimately led to the use of force, which is insufficient grounds to support a recovery. *Graves,* 810 Fed.Appx. 414 (6th Cir. 2020). Furthermore, other courts in the Sixth Circuit have held that supervision of a pursuit is inadequate grounds to find liability under §1983. *Francis,* 590 F.Supp.3d 1092 (E.D. Tenn., 2022). Plaintiff's failure to insomuch as assert factual allegations that Sergeant Hendrickson was even aware of Deputy Jones' discharge of his firearm in real time is detrimental to Plaintiff's claim for supervisor liability under §1983 and Plaintiff should be precluded from recovering under this theory. *Hays,* 668 F.2d at 872; *Daniel,* 474 U.S. 327 (1986); *Colvin v. Caruso,* 605 F.3d 282, 292 (6th Cir. 2010); *Graves,* 810 Fed.Appx. 414 (6th Cir. 2020); *Francis,* 590 F.Supp.3d 1092 (E.D. Tenn., 2022).

C. Sergeant Hendrickson Cannot Be Held Liable for *Monell* Violations in his Individual Capacity

In *Monell,* the United States Supreme Court established that municipalities' liability under 42 U.S.C. §1983 is "limited to deprivation of federally protected rights caused by action taken 'pursuant to official municipal policy of some nature[.]'" *Pembaur v. City of Cincinnati,* 475 U.S. 469 (1986); *Monell v. New York City Dept. of Social Services,* 436 U.S. 658, 691 (1978). The *Monell* Court expressly instructed, "Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort." *Pembaur,* 475 U.S. at 477 (quoting *Monell,* 436 U.S. at 691).

> *Monell* is a case about responsibility. In the first part of the opinion, we held that local government units could be made liable under §1983 for deprivations of federal rights, overruling a contrary holding in *Monroe v. Pape.* In the second part of the opinion, we recognized a limitation on this liability and concluded that a municipality cannot be made liable by application of the doctrine of *respondeat superior.* In part, this conclusion rested upon the language of §1983, which imposes liability only on a person who "subjects, or causes to be subjected," any individual to a deprivation or federal rights; we noted that this language "cannot easily be read to impose liability vicariously on government bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor." Primarily, however, our conclusion rested upon the legislative history, which disclosed that, while Congress never questioned its power to impose civil liability on municipalities for their *own* illegal acts, Congress did doubt its constitutional power to impose such liability in order to oblige municipalities to control the conduct of *others.* We found that, because of these doubts, Congress chose not to create such obligations in §1983. Recognizing that this would be the effect of a federal law of *respondeat superior,* we concluded that §1983 could not be interpreted to incorporate doctrines of vicarious liability.

Pembaur, 475 U.S. at 478 (quoting *Monell,* 436 U.S. at 692-94) (citations omitted).

Individual capacity suits seek to impose personal liability upon a government official for actions he takes under the color of law. *Kentucky v. Graham,* 473 U.S. 159 (1985). In *Heyerman,* the Sixth Circuit instructed that an officer cannot be held liable under §1983, in his individual capacity, for alleged failure to adequately supervise, as a matter of law, and to do so "improperly conflates a §1983 claim of individual supervisory liability with one of municipal liability."

Heyerman, 680 F.3d at 647; *Phillips v. Roane Co.,* 534 F.3d 531, 543 (6th Cir. 2008); *Miller v. Calhoun Co.,* 408 F.3d 809, 817 n. 3 (6th Cir. 2005) (indicating that where there is an absence of personal involvement, failure-to-train claims against individual defendants are properly deemed to be brought against them in their official capacities and are treated as claims against the county). Recently, the Sixth Circuit instructed that "for supervisor liability to attach, there must be 'more than an attenuated connection between the injury and the supervisor's alleged wrongful conduct." *Venema v. West,* 133 F.4th 625 (6th Cir. 2025) (quoting *Peatross v. City of Memphis,* 818 F.3d 233, 241 (6th Cir. 2016)). "'[A] mere failure to act will not suffice to establish supervisory liability' in the context of a constitutional claim." *Venema,* 133 F.4th at 633 (quoting *Peatross,* 818 F.3d at 241. "[A]t a minimum, the plaintiff must show that the defendant at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers[,]" and "[a] supervisory official's failure to supervise, control, or train an offending subordinate is not actionable without this minimum showing." *Venema,* 133 F.4th at 633 (quoting *Shehee v. Luttrell,* 199 F.3d 295, 300 (6th Cir. 1999)).

Plaintiff has asserted a *Monell* claim against Sergeant Hendrickson, in his individual capacity, for being "deliberately indifferent to the Constitutional rights and safety of the public, including the Plaintiff in his failure to train and supervise Defendant Jones." [DN 1, ¶84]. This allegation against Sergeant Hendrickson, individually, does not comply with the purpose of *Monell* and falls outside its scope. *Pembaur,* 475 U.S. 469 (1986) (Civil liability may be imposed upon municipalities for their *own* illegal acts, but not for the acts of others); *Monell,* 436 U.S. 658, 691 (1978). In fact, federal law expressly prohibits Sergeant Hendrickson being held liable for allegedly failing to supervise Deputy Jones under §1983. *Heyerman,* 680 F.3d at 647; *Phillips,* 534 F.3d 531, 543 (6th Cir. 2008); *Miller,* 408 F.3d 809, 817 n. 3 (6th Cir. 2005). Plaintiff makes

no allegations that Sergeant Hendrickson's training and supervision of Deputy Jones was improper or faulty, but only that Sergeant Hendrickson failed to act at all in training and supervising Deputy Jones. [DN 1, ¶84]. Recent instruction from the Sixth Circuit confirms that Plaintiff's allegations are insufficient to entitle him to recovery under the law. *Venema,* 133 F.4th at 633 ("'[A] mere failure to act will not suffice to establish supervisory liability' in the context of a constitutional claim."); *Peatross,* 818 F.3d at 241. Therefore, Plaintiff's *Monell* claim asserted against Sergeant Hendrickson in his individual capacity must be dismissed, as it is not supported by sufficient factual allegations or legal authority. *Heyerman,* 680 F.3d at 647; *Phillips,* 534 F.3d 531, 543 (6th Cir. 2008); *Miller,* 408 F.3d 809, 817 n. 3 (6th Cir. 2005); *Pembaur,* 475 U.S. 469 (1986); *Monell,* 436 U.S. 658, 691 (1978); *Venema,* 133 F.4th at 633; *Peatross,* 818 F.3d at 241.

CONCLUSION

For the reasons set forth herein and pursuant to Federal Rule of Civil Procedure 12(b)(6) and Local Rule 7.1, Defendant Joshua Hendrickson respectfully moves this Court to enter the Order filed in conjunction with this Motion thereby dismissing Plaintiff's claims asserted against Sergeant Hendrickson, in his individual capacity, arising from alleged violations of the Fourth Amendment and *Monell.* Both aforementioned claims are appropriately dismissed with prejudice, as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that on this 29th day of May, 2026, the foregoing document was filed and sent via electronic service through the Kentucky Court of Justice electronic filing system and/or U.S. Mail to:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION
CIVIL ACTION NO. 4:26-CV-00208-GNS

TIMBERLYNN FLOYD PLAINTIFF

v.

SERGEANT JOSHUA HENDRICKSON,
in his official and individual capacities, et al. DEFENDANTS

MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL DISMISSAL

Motion having been made and the Court being otherwise sufficiently advised;

Defendant Hendrickson's Motion for Partial Dismissal is hereby GRANTED. Accordingly, Plaintiff's claims against Defendant Hendrickson arising from alleged violations of the Fourth Amendment and *Monell*, as asserted against Defendant Hendrickson in his individual capacity, are dismissed with prejudice.