

**IN THE CIRCUIT COURT  
FOURTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA  
IN AND FOR BAY COUNTY**

**CASE NO.:19-3820-CA**

**KRISTINA TRIPP, THOMAS MCFATTER,  
MICHAEL MURRERO-DELGADO, AMBER  
LYN TIDWELL, CONRAD FORRENCE,  
PAULA COOPER, CAMERON WILSON,  
JOSHUA FOSTER, and NORMANDO  
BROWN, individually and on  
behalf of all other similarly situated,**

**Plaintiff,**

**v.**

**TOMMY FORD, SHERIFF OF BAY COUNTY,  
FLORIDA,**

**Defendant.**

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**ORDER DENYING MOTION TO DISMISS PLAINTIFFS' THIRD  
AMENDED COMPLAINT**

**THIS MATTER** is before the Court on Defendant's Motion to Dismiss Plaintiffs' Third Amended Complaint and Motion to Strike, filed July 13, 2021. The Motion was heard on December 13, 2021. Having considered said Motion, court file and records, and being otherwise fully advised, this Court finds as follows:

This case stems from the conditions and events at the Bay County Jail during and in the aftermath of Hurricane Michael. The initial Complaint against the Sheriff was filed on October 7, 2019. On June 1, 2021, after a hearing, this Court granted Defendant's Motion to Dismiss the Second Amended Complaint, and on June 23, 2021, Plaintiffs filed their Third Amended Complaint.

On July 13, 2021, Defendant filed the underlying Motion and asked the Court to dismiss Plaintiffs' complaint once again. Similar to the assertions contained in his prior motions, Defendant claimed, among other things, that his actions after Hurricane Michael damaged the jail are immune from suit because all common questions of law and fact contain the discretionary government processes

during a state of emergency after a natural disaster. He further realleged that all conditions described in the Plaintiffs' complaint resulted from his discretionary decision not to evacuate the jail. Defendant also argued that the Third Amended Complaint lacked enough specificity and took issue with how Plaintiffs structured the allegations in the Complaint's separate paragraphs.

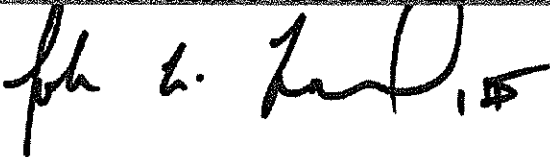
A motion to dismiss tests the legal sufficiency of the complaint. *See, e.g., The Fla. Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006). The Court's consideration of a motion to dismiss is limited to the four corners of the challenged pleading. *See Swerdlin v. Florida Mun. Ins. Trust*, 162 So. 3d 96, 97 (Fla. 4th DCA 2014). When considering a motion to dismiss, the court cannot speculate as to whether the allegations will ultimately be proven. *Brock v. Bowein*, 99 So. 3d 580 (Fla. 2d DCA 2012) (holding the complaint stated a claim for interpleader). Accordingly, all allegations must be taken as true, and all reasonable inferences must be construed in the non-moving party's favor. *Minor v. Brunetti*, 43 So. 3d 178, 179 (Fla. 3d DCA 2010).

It should be noted that in their Third Amended Complaint, Plaintiffs allege that the described conditions and events originated as a result of Defendant's failure to create or follow an emergency plan as required under the applicable Florida Statutes and the Florida Model Jail Standards (FMJS). While the Court recognizes that the FMJS are silent about what such emergency plans should contain, under FMJS 2. 8a)5.a)1), the failure of Defendant's policy and procedure directives to include Emergency Plans is considered a serious violation. Accordingly, the Court finds that a motion to dismiss is not the proper procedural vehicle to resolve any issues concerning the emergency caused by Hurricane Michael. *See City of Pinellas Park v. Brown*, 604 So. 2d 1222 (Fla. 1992); *Robles v. Metropolitan Dade County*, 802 So. 2d 453 (Fla. 3d DCA 2001) (holding that the officer's choice between risks involved a "discretionary act of executive decision making."). At this stage of the litigation, the question before the Court is whether the Plaintiffs have adequately pled the existence or the lack of specific policies and Defendant's breach. The Court finds that enough allegations are made in the Third Amended Complaint to satisfy this requirement. The Court further finds that the remaining arguments raised by Defendant do not justify the dismissal or striking of any portions of Plaintiffs' Third Amended Complaint.

Therefore, it is

**ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss Plaintiffs' Third Amended Complaint and Motion to Strike, filed July 13, 2021, is hereby **DENIED**. Defendant shall have thirty (30) days from the date of this Order to file his Answer.

**DONE AND ORDERED** this **Monday, December 27, 2021**, in Panama City, Bay County, Florida.

03-2019-CA-003820-CA 12/27/2021 07:22:31 AM  


John L. Fishel, II, Judge  
03-2019-CA-003820-CA 12/27/2021 07:22:31 AM

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