

No. _____

In The
Supreme Court of the United States

ROBERT BELLO,

Petitioner,

v.

ROCKLAND COUNTY, NEW YORK, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

APPENDIX

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Appendix A

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of May, two thousand twenty-one.

PRESENT: AMALYA L. KEARSE,
JOSÉ A. CABRANES,
ROSEMARY S. POOLER,
Circuit Judges.

ROBERT BELLO,
Plaintiff-Appellant,

v.

20-1879-cv

ROCKLAND COUNTY, NEW YORK, SHERIFF
LOUIS FALCO, III, Individually, THOMAS SIMETI,
Individually,

Defendants-Appellees,
“JOHN DOES 1-5”, Individually,
Defendants.

FOR PLAINTIFF-APPELLANT: AMY L. BELLANTONI, The Bellantoni Law Firm, PLLC, Scarsdale, NY.

FOR DEFENDANTS-APPELLEES: ROBERT B. WEISSMAN, Saretsky Katz Dranoff, LLP, Elmsford, NY.

Appeal from an order of the United States District Court for the Southern District of New York (Vincent L. Briccetti, *Judge*).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the May 11, 2020 judgment of the District Court be and hereby is **AFFIRMED**.

Plaintiff-appellant Robert Bello (“Bello”) appeals from a judgment of the District Court granting defendants-appellees’ motion for judgment on the pleadings on Bello’s claims that the defendants, Rockland County, Rockland County Sheriff Louis Falco III and Counsel to the Sheriff Thomas Simeti (together, “Rockland County”), violated his Fourteenth and Fourth Amendment rights when they would not return firearms, confiscated pursuant to a letter “entitled, ‘Notice of Suspension and Order to Surrender Weapons’” (Complaint ¶ 33) (the “Surrender Order”). The Surrender Order, issued by the Honorable Thomas E. Walsh II (*see id.* ¶ 32), a justice of the New York State Supreme Court, directed Lori Bello, Bello’s mother, with whom he

resided, to “turn in all weapons she owns or co-owns and/or which are listed on her pistol permit to the Rockland County Sheriff’s Office within 48 hours” (*id.* ¶ 32). We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review a District Court’s grant of a motion for judgment on the pleadings *de novo*, accepting the complaint’s factual allegations as true and drawing all reasonable inferences in the plaintiff’s favor. *Hayden v. Patterson*, 594 F.3d 150, 160 (2d Cir. 2010). “To survive a Rule 12© motion, the complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face.” *Kirkendall v. Halliburton, Inc.*, 707 F.3d 173, 178-79 (2d Cir. 2013) (internal quotation marks omitted). However, “we ‘are not bound to accept as true a legal conclusion couched as a factual allegation,’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)), nor are we required to accept as true allegations that are wholly conclusory, *see, e.g., Iqbal*, 556 U.S. at 678-79, 681, 686.

A.

On appeal, Bello challenges the District Court’s dismissal of his post-deprivation Fourteenth Amendment claims. He argues that Rockland County violated his procedural due process rights when it refused to return the confiscated firearms. We disagree.

In reviewing Bello’s procedural due process claim, we note that the Complaint plainly alleges that Bello possessed a property interest in the guns that he co-

owned with Lori Bello, stating that the guns “registered to Lori Bello’s pistol license were also registered to, and listed on the back of, Robert Bello’s pistol license” (Complaint ¶ 28). However, we cannot accept Bello’s assertions that he had no adequate remedy to require the Sheriff’s Department to restore the guns to his possession.

The Complaint’s allegations that “no person other than Lori Bello” was a “subject of” the Surrender Order (*id.* ¶ 35), that, in issuing the Surrender Order, Justice Walsh was performing a “ministerial function” rather than an act that was judicial (*id.* ¶ 37), and that there were no procedures available to him to regain possession of the guns he co-owned with Lori Bello (*id.* ¶¶ 93, 114), are assertions of legal conclusions that the court is not required to accept. First, the assertion that issuance of the Surrender Order by a State Supreme Court Justice in Rockland County was merely a ministerial act, not a judicial act, is a legal characterization that is untenable. *See generally Libertarian Party of Erie Cnty. V. Cuomo*, 970 F.3d 106, 117 (2d Cir. 2020) (except as to New York City and Long Island, the New York State statutory scheme governing gun possession places the authority with respect to firearms license applications in “state judges,” and a decision as to the permissibility of firearm possession that “ar[ises] out of an individual case before” such a judge is a “judicial act[]” (internal quotation marks omitted)). Second, the assertion that Lori Bello was the only person the Surrender Order purported to affect is belied by the Surrender Order itself, which, as the Complaint alleges, expressly included the direction that Lori Bello surrender guns she “co-owns” (Complaint ¶ 32).

As an alleged co-owner of the guns listed on Lori Bello's license, Bello was plainly affected by the order that Lori Bello turn them over to the Sheriff's Department, and he accordingly plainly had standing to seek directly from Judge Walsh a modification of the Surrender Order to permit the Sheriff's Department to return possession of the guns to Bello. Accordingly, we agree with the District Court that his procedural due process claim fails because he did not utilize the process he had available to him, namely, seeking an amendment to the Surrender Order from Justice Walsh or from the New York appellate courts.

B.

Bello also argues that Rockland County violated his Fourth Amendment rights by retaining the seized weapons. Again, we agree with the District Court that Rockland County's actions did not violate the Fourth Amendment. "Where, as in this case, an initial seizure of property was reasonable, defendants' failure to return the items does not, by itself, state a separate Fourth Amendment claim of unreasonable seizure." *Shaul v. Cherry Valley-Springfield Cent. Sch. Dist.*, 363 F.3d 177, 187 (2d Cir. 2004). The mere fact that Rockland County continued to possess the seized firearms therefore does not give rise to a plausible Fourth Amendment claim.

C.

Bello contends that the District Court erred when it found that the individual defendants were entitled to "quasi-judicial immunity." As we find that Bello has failed to plead an underlying violation of his

constitutional rights, it is not necessary to reach the issue of whether the Sheriff's retention of Bello's firearms is protected by judicial immunity.

D.

Finally, Bello argues that the District Court erred when it dismissed his *Monell* claim. *Monell v. Dep't of Soc. Servs. Of City of New York*, 436 U.S. 658 (1978). We again disagree. As our analysis above demonstrates, he has failed adequately to plead an underlying violation of his constitutional rights.

CONCLUSION

We have reviewed all of the arguments raised by Bello on appeal and find them to be without merit. For the foregoing reasons, we **AFFIRM** the May 11, 2020 judgment of the District Court.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe, Clerk

Appendix B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

19 CV 3514 (VB)

ROBERT BELLO,
Plaintiff,

v.

ROCKLAND COUNTY, New York; Sheriff LOUIS
FALCO, III; THOMAS SIMETI; and JOHN DOES 1–
5,
Defendants.

OPINION AND ORDER

Briccetti, J.:

Plaintiff Robert Bello brings this Section 1983 action against defendants Rockland County, Rockland County Sheriff Louis Falco, III, Counsel to the Sheriff Thomas Simeti, and John Does 1–5, alleging that the seizure and retention of certain firearms violated plaintiff's Fourth and Fourteenth Amendment rights.

Now pending is defendants' motion for judgment on the pleadings pursuant to Rule 12(c). (Doc. #27).

For the reasons set forth below, the motion is GRANTED.

The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

BACKGROUND

For the purpose of ruling on the motion for judgment on the pleadings, the Court accepts as true all well-pleaded factual allegations in the amended complaint, as summarized below.

At all relevant times, plaintiff resided with his mother, Lori Bello, in Rockland County, New York, and held a valid and duly issued New York State pistol license. Although Ms. Bello also had a valid and duly issued New York State pistol license, her license lapsed on January 31, 2018, pursuant to the New York SAFE Act recertification requirement.

The SAFE Act requires existing licensees to recertify their licenses on or by January 31, 2018, and every five years thereafter. Pursuant to the SAFE Act, “Failure to recertify [one’s pistol license] shall act as a revocation of such license.” N.Y. Penal Law § 400.00(10)(b).

Lori Bello failed to recertify her pistol license on or before January 31, 2018. Thus, her license was revoked. At the time of revocation, Ms. Bello had ten registered handguns listed on the back of her pistol license. Plaintiff alleges those ten guns were registered to, and also listed on, the back of his pistol license. Plaintiff claims the guns were in his “sole and exclusive possession, ownership, and custody.” (Doc. #21 (“Am. Compl.”) ¶ 30).

On November 1, 2018, Hon. Thomas E. Walsh, II, a Justice of the New York State Supreme Court, issued Lori Bello a “Notice of Suspension & Order to Surrender Weapons” (the “Surrender Order”). (Doc. #28 (“Weissman Decl.”) Ex. B). According to the amended complaint, the Surrender Order was precipitated by “a report about Lori Bello to the

Division of Criminal Justice Services” pursuant to Section 9.46 of the New York Mental Hygiene Law. (Am. Compl. § 38). The Surrender Order stated that, in accordance with Section 9.46, Ms. Bello’s pistol permit was suspended, and directed that she “turn in all weapons you own or co-own and/or which are listed on your permit **immediately** to the Rockland County Sheriff’s Department within forty-eight (48) hours.”

When a person’s license is suspended or revoked pursuant to Section 9.46 of the Mental Hygiene Law:

[S]uch person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, or shotguns owned or possessed by such person shall be surrendered to an appropriate law enforcement agency In the event such license, firearm, shotgun, or rifle is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons.

N.Y. Penal Law § 400.00(11)(c).

On November 2, 2018, Rockland County Sheriff’s Deputies (John Does 1–5) allegedly arrived at the home plaintiff shared with Lori Bello. Plaintiff alleges Ms. Bello told the officers that her pistol license had expired, she did not own or possess handguns, and the handguns on her pistol license belonged to plaintiff and were stored in a safe to which only plaintiff had access. Plaintiff claims the officers instructed Ms. Bello to tell plaintiff to come home to open the safe so

that the officers could seize the guns. Plaintiff alleges the officers seized the guns even though he told them he was the sole owner and possessor of the guns. According to plaintiff, the seizure was “without a warrant, without consent, without probable cause.” (Am. Compl. ¶ 62).

Plaintiff also alleges that sometime after the November 2, 2018, seizure, he contacted the Rockland County Sheriff’s Department to seek the return of the guns. He claims defendants refused to return or release the guns, and that a “detective in the property section of the Sheriff’s Office indicated that he could not return Mr. Bello’s property to him because of the policies, customs, and procedures established, enacted, and enforced by Sheriff Falco and Thomas Simeti.” (Am. Compl. ¶ 68).

Plaintiff further alleges that on December 8, 2018, he made a second attempt, this time through his attorney, to regain possession of the firearms. In a letter to Sheriff Falco, plaintiff’s attorney stated each of the guns seized by law enforcement “are owned solely by Robert J. Bello, as indicated on the attached New York State Pistol License.” (Weissman Decl. Ex. C). Counsel also provided a sworn declaration from plaintiff, attesting to the fact that the guns were his and his alone. Plaintiff’s attorney requested the Sheriff’s Department “schedule a time for Mr. Bello to pick up his firearms.” (*Id.*).

By letter dated January 18, 2019, Simeti, on behalf of Sheriff Falco, replied to plaintiff’s counsel’s letter. Simeti wrote:

[T]he Order directed Lori Bello “to turn in all weapons [she] own[s] or co-own[s] and/or which are listed on [her] permit **immediately**

to the Rockland County Sheriff's Department within forty-eight (48) hours." . . . Pursuant to the Order, Lori Bello surrendered all of the weapons identified on her pistol permit to the Sheriff's Office. In this regard, on this date, I have confirmed with the Pistol Clerk that the Order has not expired or been vacated, modified or superseded by a subsequent Order from Justice Walsh.

Consequently, upon our review, there is a legal and/or factual impediment for the Sheriff's Office to return these weapons to Robert J. Bello.

(Weissman Decl. Ex. F) (second, third, and fifth alterations in original).

According to plaintiff, as of the date of filing the amended complaint, the ten handguns remain in the possession of the Rockland County Sheriff's Department.

DISCUSSION

I. Standard of Review

At any time after the pleadings close and before trial commences, a party may move for judgment on the pleadings under Rule 12(c). See Citibank, N.A. v. Morgan Stanley & Co. Int'l, PLC, 724 F. Supp. 2d 407, 414 (S.D.N.Y. 2010). "The standard for addressing a Rule 12(c) motion for judgment on the pleadings is the same as that for a Rule 12(b)(6) motion to dismiss for

failure to state a claim.” Cleveland v. Caplaw Enters., 448 F.3d 518, 520 (2d Cir. 2006).¹

In either case, the Court evaluates the sufficiency of the operative complaint under the “two-pronged approach” articulated by the Supreme Court in Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). First, a plaintiff’s legal conclusions and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” are not entitled to the assumption of truth and are thus not sufficient to withstand a motion to dismiss. Id. at 678; Hayden v. Paterson, 594 F.3d 150, 161 (2d Cir. 2010). Second, “[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” Ashcroft v. Iqbal, 556 U.S. at 679.

In evaluating a Rule 12(c) motion, “a court may consider only the complaint, any written instrument attached to the complaint as an exhibit, any statements or documents incorporated in it by reference, and any document upon which the complaint heavily relies.” In re Thelen LLP, 736 F.3d 213, 219 (2d Cir. 2013).

Here, defendants submitted exhibits in support of the motion—arguing such exhibits were incorporated into the amended complaint by reference—and plaintiff submitted exhibits in opposition to the motion. The Court considers five documents upon which the amended complaint heavily relies, the accuracy and authenticity of which are not in dispute: the complaint in Cocuzza v. Rockland County, et al., 17 CV 8217 (KMK) (Weissman Decl. Ex. G); relevant

¹ Unless otherwise indicated, case quotations omit all internal citations, quotation marks, footnotes, and alterations.

portions of the deposition transcript of Sheriff Falco in the Cocuzza case (Doc. #33 (“Bellantoni Decl.”) Ex. 1; Weissman Decl. Ex. H); the Surrender Order (Weissman Decl. Ex. B); plaintiff’s counsel’s December 8, 2018, letter to Sheriff Falco and accompanying declaration from plaintiff (Weissman Decl. Ex. C); and Simeti’s January 18, 2019, response to the December 8 letter (Weissman Decl. Ex. F).

II. Due Process Claims

Defendants Falco and Simeti argue the Court should grant them judgment on the pleadings on plaintiff’s post-deprivation violation of due process claim.²

The Court agrees.

The Fourteenth Amendment commands that no “State shall . . . deprive any person of . . . property, without due process of law.” U.S. Const. amend. XIV, § 1.

A. Substantive Due Process

To state a substantive due process claim, a plaintiff must allege the complained-of state action compromised a constitutionally protected liberty or property right, and the state action that deprived plaintiff of that interest was oppressive or arbitrary. MC v. Airlington Cent. Sch. Dist., 2012 WL 3020087,

² In plaintiff’s opposition to the motion to dismiss, plaintiff abandons his claim respecting defendants’ initial seizure of the firearms. (See Doc. #32 (“Pl. Mem.”) at 1) (“The issue is not whether the government’s initial possession of the property was lawful; plaintiff is not challenging the initial possession of the firearms.”).

at *5 (S.D.N.Y. July 24, 2012). The allegations must demonstrate more than mere conduct that is incorrect or ill advised. Cunney v. Bd. of Trs. of Grand View, 660 F.3d 612, 626 (2d Cir. 2011). Indeed, substantive due process “is the right to be free of arbitrary government action that infringes a protected right.” O’Connor v. Pierson, 426 F.3d 187, 200 n.6 (2d Cir. 2005) (emphasis in original).

The plaintiff must also plausibly allege that the defendant’s conduct was “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” Matican v. City of New York, 524 F.3d 151, 155 (2d Cir. 2008).

Here, to the extent plaintiff alleges Falco and Simeti’s retention of the firearms constitutes a substantive due process violation, that claim must be dismissed. In his amended complaint, plaintiff acknowledges the government’s action was not arbitrary, as he concedes Lori Bello’s pistol license had expired and the seized firearms were listed on her license. Moreover, plaintiff does not challenge the existence of Justice Walsh’s Surrender Order, but rather its effect. Further, as a general matter, the seizure and retention of firearms is neither extreme nor outrageous. Accordingly, to the extent plaintiff’s Fourteenth Amendment post-deprivation claim suggests the derogation of substantive due process, the claim must be dismissed.

B. Procedural Due Process

To evaluate a procedural due process claim, the Court conducts a two-step inquiry, asking: (1) whether the plaintiff possesses a liberty or property interest and, if so, (2) what process he is due before he

can be deprived of that interest. See Ciambriello v. County of Nassau, 292 F.3d 307, 313 (2d Cir. 2002).

“The touchstone of due process, of course, is ‘the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.’” Spinelli v. City of New York, 579 F.3d 160, 169 (2d Cir. 2009) (quoting Mathews v. Eldridge, 424 U.S. 319, 348–49 (1976)). Notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Dusenbery v. United States, 534 U.S. 161, 168 (2002). Notice “must set forth the alleged misconduct with particularity,” although “[t]he particularity with which alleged misconduct must be described varies with the facts and circumstances of the individual case.” Spinelli v. City of New York, 579 F.3d at 172.

To provide constitutional due process, law enforcement agencies are not required to provide to property owners seeking the return of lawfully seized property detailed and specific instructions on available state law remedies. See City of W. Covina v. Perkins, 525 U.S. 234, 241 (1999). Individuals have a responsibility to educate themselves about the law. Indeed, “[t]he entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny.” Atkins v. Parker, 472 U.S. 115, 131 (1985). State law remedies “are established by published, generally available state statutes and case law.” City of W. Covina v. Perkins, 525 U.S. at 241. “Once the property owner is informed that his property has been seized, he can

turn to these public sources to learn about the remedial procedures available to him.” Id.

Here, plaintiff plausibly alleges a property interest in the guns that the Sheriff’s Department seized and retained. See Panzella v. Sposato, 863 F.3d 210, 218 (2d Cir. 2017), as amended (July 18, 2017) (“there is no dispute that Panzella has a property interest in her longarms and that the County’s retention of her longarms affected that interest”).

However, plaintiff’s claim fails on the second prong of the procedural due process inquiry because there was process available to plaintiff that he opted not to pursue.

Due process does not require defendants, upon learning of plaintiff’s ownership interest in the firearms, to give plaintiff some additional process or return the guns while the Surrender Order remains in effect. Nor does due process require defendants to explain to plaintiff what he could do to get the guns back. See City of W. Covina v. Perkins, 525 U.S. at 241.

As noted above, plaintiff no longer challenges the initial seizure of the firearms. (See Pl. Mem. at 1). At the time the firearms were seized, plaintiff had notice of the Surrender Order. Instead of seeking to have the order vacated—which plaintiff, in concert with his mother Lori Bello, could have done—plaintiff asked the Sheriff’s Department to return the guns. The Sheriff’s Department told plaintiff it would not return the guns while a valid Surrender Order remained in place. Indeed, Simeti wrote to plaintiff’s attorney on January 18, 2019, and explained that the Sheriff’s Department was not returning the firearms because Simeti “confirmed with the Pistol Clerk that the Order has not expired or been vacated, modified or

superseded by a subsequent Order from Justice Walsh.” (Weissman Decl. Ex. F). Plaintiff could have sought relief from Justice Walsh or from a State appellate court. Instead, plaintiff took his gripe to the Sheriff’s Department, which was not in a position to overrule a validly issued order.

Further, the reason defendants confiscated the guns had not changed. Lori Bello’s pistol license expired, and when it did, the ten guns the Sheriff’s Department seized were still listed on the license. Moreover, Ms. Bello was the subject of a report pursuant to Section 9.46 of the Mental Hygiene Law, which led to the Surrender Order. Plaintiff knew the Sheriff’s Department seized the guns, and why. Plaintiff also knew to whom he could appeal to get the guns back. But plaintiff took no steps to invalidate Justice Walsh’s Surrender Order. Due process demanded no more. Cf. Panzella v. Sposato, 863 F.3d at 217.

Accordingly, defendants are entitled to judgment on the pleadings as to plaintiff’s Fourteenth Amendment procedural due process claim.

III. Fourth Amendment Claim

Defendants Falco and Simetti argue plaintiff’s Fourth Amendment claim should be dismissed because the Fourth Amendment does not protect against the government’s failure to return lawfully seized property.

The Court agrees.

The Fourth Amendment prohibits unreasonable seizures. “A seizure occurs when there is some meaningful interference with an individual’s possessory interest in his or her property.” United

States v. Jacobsen, 466 U.S. 109, 113 (1984). However, when an individual consents to the surrender of property after an officer's lawful entry, such a seizure is reasonable. Kaminsky v. Schriro, 760 F. App'x 69, 72 (2d Cir. 2019) (summary order). Furthermore, the government's failure to return lawfully seized property is not an unreasonable seizure under the Fourth Amendment. Shaul v. Cherry Valley-Springfield Cent. Sch. Dist., 363 F.3d 177, 187 (2d Cir. 2004). In other words, the government's continued retention of property does not constitute an additional seizure or transform a lawful seizure into an unlawful one. Malapanis v. Regan, 335 F. Supp. 2d 285, 291 (D. Conn. 2004) (citing Fox v. Van Oosterum, 176 F.3d 342, 351 (6th Cir. 1999)).

Here, plaintiff has abandoned his claim that the initial seizure of the firearms was unlawful. (See Pl. Mem. at 1). Therefore, under well-settled Circuit precedent, plaintiff has no Fourth Amendment claim against defendants for retaining the lawfully seized guns. See Shaul v. Cherry Valley-Springfield Cent. Sch. Dist., 363 F.3d at 187.

For the above reasons, plaintiff cannot plausibly state a Fourth Amendment claim respecting the seizure and retention of the firearms.

IV. Quasi-Judicial Immunity

Falco and Simeti further argue they are entitled to quasi-judicial immunity because they were acting pursuant to a valid order issued by Justice Walsh.

The Court agrees.

The Supreme Court has held that "state judges are absolutely immune from liability for their judicial acts." Briscoe v. LaHue, 460 U.S. 325, 334 (1983). The

Supreme Court “has extended absolute immunity to certain others who perform functions closely associated with the judicial process,” Cleavinger v. Saxner, 474 U.S. 193, 200 (1985)—i.e., to those who perform “quasi-judicial” functions. Tomlins v. Vill. of Wappinger Falls Zoning Bd. of Appeals, 812 F. Supp. 2d 357, 365 (S.D.N.Y. 2011).

To qualify for quasi-judicial immunity, “[t]he proponent of a claim to absolute immunity bears the burden of establishing the justification for such immunity.” Antoine v. Byers & Anderson, 508 U.S. 429, 432 (1993).

[T]he touchstone for the doctrine’s applicability has been performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights. When judicial immunity is extended to officials other than judges, it is because their judgments are functionally comparable to those of judges—that is, because they, too, exercise a discretionary judgment as a part of their function.

Id. at 435–36.

“The applicability of quasi-judicial immunity is determined by considering not the identity of the actor but rather the nature of the functions the actor performs.” Tomlins v. Vill. of Wappinger Falls Zoning Bd. of Appeals, 812 F. Supp. 2d at 365 (citing Austern v. Chi. Bd. Options Exch., Inc., 898 F.2d 882, 885 (2d Cir. 1990)). “In applying this ‘functional’ approach, a court must consider the following factors to determine

whether a particular individual is entitled to quasi-judicial immunity:

(a) the need to assure that the individual can perform his functions without harassment or intimidation; (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) insulation from political influence; (d) the importance of precedent; (e) the adversary nature of the process; and (f) the correctability of error on appeal.

Cleavinger v. Saxner, 474 U.S. at 202; accord Gross v. Rell, 585 F.3d 72, 88 (2d Cir. 2009).

Under New York County Law § 650, “[t]he sheriff shall perform the duties prescribed by law as an officer of the court.” One such duty of the Sheriff as an official of the court is to carry out the mandates of the court. Tornheim v. Eason, 363 F. Supp. 2d 674, 676–77 (S.D.N.Y. 2005), aff’d, 175 F. App’x 427 (2d Cir. 2006) (summary order). New York General Construction Law § 28–a defines “mandate” to include: “A writ, process or other written direction, issued pursuant to law . . . by a . . . judge . . . and commanding . . . an officer . . . named or otherwise designated therein, to do . . . an act therein specified.” In addition, N.Y. C.P.L.R. § 2223 states that an “officer to whom a mandate is given to be executed shall . . . execute the mandate according to its command.” “Accordingly, when a sheriff executes a facially valid court order, he is ‘afforded complete protection from liability . . . for any proper act done in

its execution.” Tornheim v. Eason, 363 F. Supp. 2d at 676–77 (quoting Iovinella v. Sheriff of Schenectady Co., 67 A.D.2d 1037 (3d Dep’t) app. denied 47 N.Y.2d 707 (1979)); see also Maldonado v. New York County Sheriff, 2006 WL 2588911, at *3 (S.D.N.Y. Sept. 6, 2006) (collecting cases).

Defendants John Does seized, and defendants Falco and Simeti retained, the firearms listed on Lori Bello’s pistol license pursuant to a facially valid Surrender Order issued by Justice Walsh. Consequently, the defendants are entitled to absolute quasi-judicial immunity.

Plaintiff’s argument that Justice Walsh was acting as a pistol licensing officer, rather than a state court judge, is not persuasive. As defendants correctly point out, the pertinent statute states that in Rockland County, a “licensing officer” is “a judge or justice of a court of record having his office in the county of issuance.” N.Y. Penal Law § 265.00(10). Moreover, the Surrender Order is on official letterhead. There is nothing in the Surrender Order to suggest Justice Walsh was not acting as an officer of the court when it was issued.

As an additional matter, the fact that the Sheriff’s Deputies seized the weapons prior to the expiration of the forty-eight-hour window for surrender is of no moment. This is because plaintiff does not challenge the initial seizure of the firearms. (See Pl. Mem. at 1).

Accordingly, the individual defendants are protected by absolute quasi-judicial immunity because they were acting pursuant to an order of a New York state court judge.

V. Monell Claim

Because plaintiff has not adequately pleaded an underlying violation of his constitutional rights, his claim against Rockland County pursuant to Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978), must be dismissed. See Segal v. City of New York, 459 F.3d 207, 219 (2d Cir. 2006).

Moreover, any allegations respecting a policy or practice violative of the Second, Fourth, or Fourteenth Amendments that was at issue in the Cocuzza case are inapposite. In that case, the plaintiff alleged Rockland County and Sheriff Falco refused to return his firearms after a temporary order of protection respecting the firearms had been vacated. (Weissman Decl. Ex. G ¶ 25). Further, and more importantly, the policy plaintiff alleges is unconstitutional here—that the Sheriff's Department would “take the weapons in for safekeeping until such time that an Article 78 was received by the department to return said weapons”—which was at issue in Cocuzza, is no longer the policy or process in Rockland County. (Bellantoni Decl. Ex. 1 at 21, 24, 25; Weissman Decl. Ex. H at 26). For this additional reason, plaintiff fails sufficiently to allege a Monell claim against Rockland County.

VI. Leave to Amend

Rule 15(a)(2) of the Federal Rules of Civil Procedure instructs that courts “should freely give leave” to amend a complaint “when justice so requires.” However, leave to amend may “properly be denied for . . . ‘futility of amendment.’” Ruotolo v. City of New York, 514 F.3d 184, 191 (2d Cir. 2008) (quoting

Foman v. Davis, 371 U.S. 178, 182 (1962)). “An amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss pursuant to [Rule] 12(b)(6).” Lucente v. Int’l Bus. Machs. Corp., 310 F.3d 243, 258 (2d Cir. 2002) (addressing futility of amendment under same standard applicable to dismissals pursuant to Rule 12(c)).

The amended complaint contains no allegations suggesting plaintiff has an actionable federal claim against any defendant that he “inadequately or inartfully pleaded” and “should therefore be given a chance to reframe.” See Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000). The problems with plaintiff’s claims are substantive, and better pleading will not cure them. Moreover, plaintiff, who is represented by counsel, has already had an opportunity to amend his pleading, and did so, following receipt of the defendants’ original motion to dismiss, which was substantively similar to the instant motion. Nevertheless, the problems with plaintiff’s pleading persist. For these reasons, further amendment would be futile.

CONCLUSION

The motion for judgment on the pleadings is GRANTED.

The Clerk is directed to terminate the motion (Doc. # 27) and close this case.

Dated: May 11, 2020
White Plains, NY

SO ORDERED:

/s/ Vincent L. Briccetti
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

19 CIVIL 3514 (VB)

ROBERT BELLO,
Plaintiff,
-against-

ROCKLAND COUNTY, New York; Sheriff LOUIS
FALCO, III; THOMAS SIMETI; and JOHN DOES 1-
5,
Defendants.

JUDGMENT

It is hereby **ORDERED, ADJUDGED AND
DECREED**: That for the reasons stated in the
Court's Opinion and Order dated May 11, 2020, the
motion for judgment on the pleadings is granted, and
this case is closed.

Dated: New York, New York
May 11, 2020

RUBY J. KRAJICK
Clerk of Court

BY:
/S/ _____
Deputy Clerk

Appendix C

RELEVANT CONSTITUTIONAL AND
STATUTORY PROVISIONS

U.S. Const. amend. IV

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 issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N.Y. Penal Law § 265.20

(a)(1)(f) A person voluntarily surrendering such weapon, instrument, appliance or substance, provided that such surrender shall be made to the superintendent of the division of state police or a member thereof designated by such superintendent, or to the sheriff of the county in which such person

resides, or in the county of Nassau or in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown in the county of Suffolk to the commissioner of police or a member of the police department thereof designated by such commissioner, or if such person resides in a city, town other than one named in this subparagraph, or village to the police commissioner or head of the police force or department thereof or to a member of the force or department designated by such commissioner or head; and provided, further, that the same shall be surrendered by such person in accordance with such terms and conditions as may be established by such superintendent, sheriff, police force or department. Nothing in this paragraph shall be construed as granting immunity from prosecution for any crime or offense except that of unlawful possession of such weapons, instruments, appliances or substances surrendered as herein provided. A person who possesses any such weapon, instrument, appliance or substance as an executor or administrator or any other lawful possessor of such property of a decedent may continue to possess such property for a period not over fifteen days. If such property is not lawfully disposed of within such period the possessor shall deliver it to an appropriate official described in this paragraph or such property may be delivered to the superintendent of state police. Such officer shall hold it and shall thereafter deliver it on the written request of such executor, administrator or other lawful possessor of such property to a named person, provided such named person is licensed to or is otherwise lawfully permitted to possess the same. If no request to deliver the property is received by such official within one year of the delivery of such

property, such official shall dispose of it in accordance with the provisions of section 400.05 of this chapter.

N.Y. Penal Law § 400.00(11)

(b) Whenever the director of community services or his or her designee makes a report pursuant to section 9.46 of the mental hygiene law, the division of criminal justice services shall convey such information, whenever it determines that the person named in the report possesses a license issued pursuant to this section, to the appropriate licensing official, who shall issue an order suspending or revoking such license.

(c) In any instance in which a person's license is suspended or revoked under paragraph (a) or (b) of this subdivision, such person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, or shotguns owned or possessed by such person shall be surrendered to an appropriate law enforcement agency as provided in subparagraph (f) of paragraph one of subdivision a of section 265.20 of this chapter. In the event such license, firearm, shotgun, or rifle is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons.

N.Y. Mental Hygiene Law § 9.46

(b) Notwithstanding any other law to the contrary, when a mental health professional currently providing treatment services to a person

determines, in the exercise of reasonable professional judgment, that such person is likely to engage in conduct that would result in serious harm to self or others, he or she shall be required to report, as soon as practicable, to the director of community services, or the director's designee, who shall report to the division of criminal justice services whenever he or she agrees that the person is likely to engage in such conduct. Information transmitted to the division of criminal justice services shall be limited to names and other non-clinical identifying information, which may only be used for determining whether a license issued pursuant to section 400.00 of the penal law should be suspended or revoked, or for determining whether a person is ineligible for a license issued pursuant to section 400.00 of the penal law, or is no longer permitted under state or federal law to possess a firearm.

Appendix D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

19 Civ. 3514 (VB)

ROBERT BELLO,
Plaintiff,
-against-

ROCKLAND COUNTY, New York; Sheriff LOUIS
FALCO, III, Individually, THOMAS SIMETI,
Individually, and “JOHN DOES 1–5”, Individually,
Defendants.

FIRST AMENDED COMPLAINT

Jury Trial Demanded

Plaintiff, ROBERT BELLO, by and through his
attorneys, The Bellantoni Law Firm, PLLC, for his
First Amended Complaint respectfully states:

NATURE OF THE ACTION

1. This is an action for compensatory, economic,
and punitive damages proximately resulting from the
actions of the defendants’ violations of the plaintiff’s
Constitutional Rights under the Fourth and
Fourteenth Amendments pursuant to 42 U.S.C. §
1983.

JURISDICTION

2. The Court's jurisdiction over the plaintiff's federal claims is invoked pursuant to 28 U.S.C. §§ 1331, 1343.

THE PARTIES

3. Plaintiff, ROBERT BELLO, (hereinafter "Mr. Bello" or "Robert Bello"), is a domiciliary of the State of New York and a resident of Rockland County, New York.

4. Defendant, ROCKLAND COUNTY, New York (hereinafter the "County"), is a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of this state.

5. Defendant, Sheriff LOUIS FALCO, III, (hereinafter "Sheriff Falco"), at all times relevant herein, was the duly elected Sheriff of, and employed by, Rockland County, New York. Defendant Sheriff Falco is sued herein in his individual and personal capacity only.

6. As the Sheriff of Rockland County, Sheriff Falco is empowered with the authority to create, set and enforce the policies of the Rockland County Sheriff's Office (the "Sheriff's Office") with respect to, *inter alia*, the release of property seized by and/or surrendered to the Sheriff's Office and its law enforcement officers.

7. At all times relevant herein, Sheriff Falco was empowered with the authority to release to their lawful owner firearms and/or long guns that were surrendered to and/or seized by the Sheriff's Office, where there was no legal impediment to their return to the lawful owner.

8. At all times relevant herein, Sheriff Falco was acting on behalf of, and in furtherance of the interests of, the Rockland County Sheriff's Office and Rockland County, New York.

9. Defendant, ROCKLAND COUNTY, is liable for the acts and omissions of Sheriff Falco based on the existence of *Monell* liability, as set forth more fully below.

10. At all times relevant herein, Sheriff Falco was acting pursuant to the established policies and procedures of Rockland County and the Rockland County Sheriff's Office.

11. Defendant, THOMAS SIMETI, (hereinafter "Mr. Simeti"), at all times relevant herein to the claims herein, was the legal advisor to Sheriff Falco, bearing the title "Counsel to the Sheriff".

12. At all times relevant to this matter, Mr. Simeti and Sheriff Falco were personally involved in the creation and/or implementation and enforcement of existing policies and procedures of the Sheriff's Office related to the release and/or continued seizure of firearms surrendered to and/or seized by the Sheriff's Office.

13. Sheriff Falco and Mr. Simeti each had personal involvement in the events giving rise to the violation of Mr. Bello's fundamental civil rights as protected by the United States Constitution, including without limitation, the refusal to return Mr. Bello's property/firearms to him.

14. Defendants, "JOHN DOES 1-5", are sued herein in their individual and personal capacities only. At all times relevant to this action, "JOHN DOES 1-5" were employed by the Rockland County Sheriff's Office as law enforcement officers. "JOHN DOES 1-5" personally seized Mr. Bello's

property/firearms from his home without any probable cause, legal authority, or privilege to do so.

THE MATERIAL FACTS

15. At all times relevant herein, Robert Bello held a valid and duly issued New York State Pistol License.

16. Mr. Bello has held a pistol license without incident or any wrongdoing on his part since its issuance.

17. At no time relevant to the allegations contained herein did Mr. Bello have any legal or factual prohibitors to the possession, use, or ownership of firearms.

18. At all times relevant herein, each of Mr. Bello's firearms was stored in a gun safe, under Mr. Bello's sole control, fully secured by a mechanical lock with a combination known only to Mr. Bello.

19. At all times relevant herein, no person other than Mr. Bello knew the combination to his gun safes, and no person other than Mr. Bello had access to his gun safes or the contents therein.

20. In November 2018, Robert Bello resided with his mother, Lori Bello, in Rockland County, New York.

21. In 2011, Lori Bello had applied for, and was there after issued, a New York State Pistol License in Rockland County.

22. In 2011, pistol licenses in New York State did not have an expiration date; licensees were not required to recertify their pistol license in order to maintain validity.

23. In 2013, the New York State SAFE Act was enacted, which required existing licensees to recertify

their pistol licenses on or before January 31, 2018, and every five years thereafter.

24. “Failure to recertify [one’s pistol license] shall act as a revocation of such license.” Penal Law §400.00(10)(b).

25. Lori Bello did not recertify her pistol license on or before January 31, 2018 as required by the passage of the SAFE Act in 2013. (See, Penal Law §400.00).

26. Lori Bello’s pistol license was, therefore, revoked by operation of the statute as of February 1, 2018.

27. When Lori Bello’s pistol license was active, there were 10 handguns (the “handguns” or the “10 handguns”) registered to her, which were listed on the back of her pistol license.

28. The 10 handguns registered to Lori Bello’s pistol license were also registered to, and listed on the back of, Robert Bello’s pistol license.

29. Since the automatic statutory revocation of her pistol license on January 31, 2018, Lori Bello has not owned, possessed, or had any legal claim to the 10 handguns on her pistol permit.

30. Since prior to January 31, 2018, the 10 handguns have been under the sole and exclusive possession, ownership, and custody of Robert Bello.

November 2, 2018 Warrantless Seizure of Robert Bello’s Firearms

31. In November 2018, Lori Bello did not own, have possession of, or access to, any firearms including the 10 handguns formerly registered to her pistol permit.

32. By letter dated November 1, 2018, Rockland County Pistol Licensing Officer Hon. Thomas E. Walsh, II (i) represented to Lori Bello that her pistol permit was suspended as a result of a report made about her pursuant to Mental Hygiene Law §9.46; (ii) directed Lori Bello to turn in all weapons she owns or co-owns and/or which are listed on her pistol permit to the Rockland County Sheriff's Office within 48 hours; and (iii) directed Lori Bello to turn in her pistol permit to the Rockland County Clerk's Office.

33. The letter was entitled, "Notice of Suspension and Order to Surrender Weapons" ("Notice of Suspension").

34. The letter was addressed to Lori Bello only.

35. No agency or person other than Lori Bello was the subject of the Notice of Suspension.

36. No state court action or proceeding was initiated or pending as a result of the issuance of the Notice of Suspension.

37. The Notice of Suspension was a ministerial function performed by Judge Walsh in his capacity as a licensing officer, because it was mandated by operation of Penal Law statute §400.00(11).

38. The provisions of §400.00(11)(c) were triggered by a precipitating event, to wit, a report about Lori Bello to the Division of Criminal Justice Services pursuant to Mental Hygiene Law §9.46.

39. Under Penal Law § 400.00(11)(b), when a report about a person is made pursuant to MHL §9.46, the Division of Criminal Justice Services (via the NYS Police) is required to notify the local licensing officer that a MHL §9 .46 report was made. The licensing officer is then required to issue an Order suspending or revoking the individual's pistol license.

40. Under Penal Law §400.00(11)(c), the licensee is required to surrender his/her pistol license to the appropriate licensing official, and any and all firearms, rifles, or shotguns owned or possessed to an appropriate law enforcement agency.

41. The Notice of Suspension was not a seizure order, search warrant, or any other type of Judicial Order.

42. The Notice of Suspension was (i) a notice to Lori Bello pursuant to §400.00(11)(c) to surrender her firearms and (ii) the concomitant suspension her pistol license.

43. The Notice of Suspension was not directed to the Rockland County Sheriff's Office, and it did not authorize or Order the Sheriff's Deputies to enter the Bello home or to seize Robert Bello's property on November 2, 2018.

44. The Notice of Suspension did not order or direct the Sheriff's Office to perform any act.

45. No letter, notice, or Judicial Order was issued pertaining to Robert Bello or his ownership/possession of firearms.

46. On November 2, 2018- prior to the expiration of the 48-hour time period provided by Judge Walsh's letter- Rockland County Sheriff's Deputies ("John Does 1-5") arrived at the home of Lori and Robert Bello to seize Lori Bello's firearms.

47. In November 2018, Lori Bello did not own, co-own, or possess any firearms, and she had no firearms to surrender to the Sheriff's Office.

48. The Sheriff's Deputies did not have, and were not acting under the authority of, any search warrant, seizure warrant, seizure order, or Judicial Order.

49. The Notice of Suspension did not grant the Sheriff's Deputies any authority to search or seize Robert Bello's firearms.

50. The Notice of Suspension indicated that (i) the Sheriff's Office [and other law enforcement agencies] would be notified of the suspension of Lori Bello's pistol license; and (ii) that Lori Bello may be arrested if she is found in possession of any firearms.

51. Lori Bello informed the officers ("John Does 1-5") that her pistol license had expired long ago, that she did not own or have access to any firearms, that the handguns formerly listed on her pistol license belonged to her son Robert Bello and were stored inside of his gun safe, which she could not access.

52. Lori Bello, in fact, had no means of accessing the contents of the gun safe in which Robert Bello stored the 10 handguns.

53. Because Lori Bello did not own or co-own any firearms, and because she had no access to any of the handguns identified on her invalid and statutorily revoked pistol license, there were no firearms for her to surrender to the Sheriff's Deputies.

54. The Sheriff's Deputies demanded that Lori Bello contact Robert Bello to come home to open his gun safe for the purpose of seizing his handguns.

55. When Robert Bello arrived home, he informed the Sheriff's Deputies that the firearms in his gun safes belonged solely to him, that he was the only person who had access to his gun safes and the contents therein, and that his mother had no access to the contents of his gun safes.

56. Robert Bello did not consent to the seizure of his firearms.

57. The Sheriff's Deputies had no privilege, legal authority, or probable cause to seize Robert Bello's property.

58. The Sheriff's Deputies personally observed that Robert Bello was in compliance with the provisions of Penal Law §265.45, which provides a criminal penalty to firearms owners who fail to secure their firearms from individuals who have legal prohibitors to the possession of such firearms.

59. The Notice of Suspension issued by Judge Walsh was not directed at Robert Bello and had no legal effect on Robert Bello's legal right and/or protected interest in his private property.

60. The scope and effect of the Notice of Suspension was limited to (i) the suspension of Lori Bello's [already invalid] pistol license; and (ii) the requirement that Lori Bello surrender all firearms that she owned, co-owned, or that were listed on her pistol license.

61. Lori Bello could not actually or legally surrender the handguns that were formerly valid and statutorily revoked pistol permit because she no longer owned, possessed, or had access to such handguns.

62. The Sheriff Deputies seized Robert Bello's firearms from his locked safe, to which Lori Bello had no access, without a warrant, without consent, without probable cause, and in the absence of any exigent circumstances.

63. The warrantless seizure of the 10 handguns from Robert Bello was unlawful and in violation of his civil rights.

64. The Sheriff's Deputies made no attempt to seek a search warrant or seizure Order before seizing for Robert Bello's 10 handguns.

65. There was no legal or factual basis for the Sheriff's Deputies to seize Robert Bello's handguns.

First Attempt to Regain Possession of Private Property

66. After the Sheriff's Deputies seized his property/firearms, Mr. Bello contacted the Sheriff's Office to secure the return of his property.

67. The defendants refused to return or release Robert Bello's property despite the absence of any legal or factual preclusion to his possession of his property, the absence of any ownership interest in the firearms by Lori Bello, and despite Robert Bello's demonstration to the Sheriff's Deputies that Lori Bello had no access to the firearms.

68. The detective in the property section of the Sheriff's Office indicated that he could not return Mr. Bello's property to him because of the policies, customs, and procedures established, enacted, and enforced by Sheriff Falco and Thomas Simeti.

69. Sheriff Falco and Mr. Simeti have established, enacted, and enforced policies, customs, and procedures of unlawfully refusing to release and/or return firearms to their lawful owner in spite of the lack of any legal or factual impediment to the property owner's possession of such private property/firearms.

70. Sheriff Falco and Mr. Simeti have established, enacted, and enforced policies, customs, and procedures of unlawfully refusing to release and/or return firearms to their lawful owner in spite of the absence of any legal authority and/or privilege to continue to retain such private property/firearms.

71. Sheriff Falco and Mr. Simeti have established, enacted, and enforced policies, customs, and

procedures of forcing property owners to expend money on, *inter alia*, legal counsel and/or commence legal proceedings in order to secure the return of their property/firearms.

72. Sheriff Falco and Mr. Simeiti have established, enacted, and enforced policies, customs, and procedures of failing to provide pre- or post-deprivation notice and an opportunity to be heard regarding the seizure of firearms nor post-deprivation due process related to the release of firearms.

Second Attempt to Regain Possession of Private Property

73. By way of a letter from his attorney dated December 8, 2018, addressed and mailed directly to Sheriff Falco, Mr. Bello again requested the return of his firearms from the Sheriff's Office.

74. Attached to counsel's letter was the sworn Verification of Robert Bello indicating the same information that was conveyed to the Deputies when they were inside of his home: at the time the firearms were seized from his home by the Sheriff's Deputies in November 2018, he was the sole owner of the firearms, the firearms had been stored in a secured and locked gun safe, that Lori Bello had no access to his gun safes or the contents therein, Lori Bello's pistol license had expired prior to that date, upon their return he would continue to store his firearms in the gun safes to which no third party had access, and that there was no legal or factual impediment to the return of his firearms.

Personal Involvement of Sheriff Falco and Thomas Simeti

75. Counsel's December 8, 2018 letter to Sheriff Falco placed him, Thomas Simeti (as borne out below), and the County on notice of the ongoing violation of Robert Bello's civil rights and the lack of any legal authority to retain the Mr. Bello's private property.

76. It is the custom and practice of Sheriff Falco that, when he receives legal mail, it is automatically forwarded by his personal secretary to his legal advisor, here, defendant Thomas Simeti. Mr. Simeti and Sheriff Falco thereafter meet and discuss the substance and legal issues contained in the letter, and they come to a conclusion and decision of what action to take, if any. Sheriff Falco testified under oath to this custom and practice in the matter of *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK)(PED).

77. Sheriff Falco further testified that the above custom and practice had been in place and enforced by his predecessor for years before he assumed the position of Sheriff. Sheriff Falco testified under oath to this custom and practice in the matter of *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK) (PED).

78. The decision not to release and/or return Robert Bello's personal property was made by and between Sheriff Falco and Thomas Simeti, indicating their mutual and personal involvement in the complained of civil rights violations.

79. By letter dated January 18, 2019, Sheriff Falco communicated his response to counsel's December 8, 2018 letter through defendant Thomas Simeti.

80. The letterhead and signature block identify Thomas Simeti as “Counsel to the Sheriff”.

81. In the Sheriff’s response letter, Mr. Simeti informs that the decision not to return Robert Bello’s property was made “upon *our review*”. (emphasis added).

82. Mr. Simeti’s written response on behalf of Sheriff Falco is consistent with the preexisting policy and procedure, that was continued by Sheriff Falco upon assuming office, of his secretary forwarding legal mail to his legal advisor (Thomas Simeti), and thereafter having a discussion with Mr. Simeti about the substance of the letter, and coming to a conclusion and decision of what action to take, if any.

Monell Liability

83. The Notice of Suspension to Lori Bello was mandated by the statutory requirements of Penal Law §400.00(11), to wit, ensuring that individuals who are subject of a MHL §9.46 report to the Division of Criminal Justice Services do not have access to firearms.

84. The purpose of the Notice of Suspension was to comply with §400.00(11), to ensure that Lori Bello did not have access to firearms.

85. The Sheriff Deputies who seized the 10 handguns, Sheriff Falco, and Thomas Simeti knew that Robert Bello had secured his firearms from Lori Bello and any other third person by means of locked gun safes to which no other person had access.

86. The Notice of Suspension had no legal force or effect on Robert Bello, his property rights, or his gun rights.

87. Since 2009/2010, it has been the policy of the Sheriff's Office not to return firearms belonging to members of the public who had surrendered them to the Rockland County Sheriff's Office for safekeeping [as opposed to firearms seized in relation to a criminal matter]. Sheriff Falco testified under oath to this policy and procedure in the matter of *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK)(PED).

88. Under Sheriff Falco's policy and procedure, such firearms would not be returned to the lawful owners in spite of the absence of any legal authority for the Sheriff's Office to retain such private property, and even where there was no legal or factual impediment to the release of such private property to its owner. Sheriff Falco testified under oath to this policy and procedure in the matter of *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK)(PED).

89. Sheriff Falco testified that, under the aforementioned policy and procedure, the property owner would be required to file an Article 78 proceeding in state court to obtain a court order requiring the Sheriff's Office to return the firearms. Sheriff Falco testified under oath to this policy and procedure in the matter of *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK)(PED).

90. If the owner of the private property did not pursue an Article 78 proceeding, they would never regain possession of their property because the Sheriff's Office would not release it otherwise. Sheriff Falco testified under oath to this policy and procedure in the matter of *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK)(PED).

91. "[P]lacing the burden of going forward on the person whose property was taken is even more onerous, as it requires that such person give up not

only time, but also money to initiate a lawsuit and retain an attorney ... It seems to [be] a shocking thing that our police can seize a citizen's property and then when he seeks to get it back challenge him to prove his title to the satisfaction of a jury." *Panzella v Sposato*, 863 F3d 210, 213 (2d Cir 2017) citing, for a discussion of such Article 78 proceedings, *Razzano v County of Nassau*, 765 F Supp 2d 176, 188-189 (EDNY 2011) (internal citations omitted) (finding that an Article 78 proceeding presents a significant risk of erroneous deprivation of private property).

92. Sheriff Falco, as the policy maker for Rockland County's Sheriff's Office, testified under oath that he continued to enforce the above policy and procedure when he assumed the position of Rockland County Sheriff. Sheriff Falco testified under oath to this policy and procedure in the matter of *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK)(PED).

93. The Rockland County Sheriff's Office has no procedure in place for post-deprivation due process for the return of private property.

95. Sheriff Falco and Thomas Simeti established, enacted, and continue to enforce unlawful policies, customs, and procedures knowingly and with deliberate indifference to the constitutional rights of its residents, including Robert Bello.

96. Sheriff Falco and Thomas Simeti's continued seizure of Mr. Bello's property is malicious and ill-willed, as they have no legal grounds or authority to possess and/or continue to retain Mr. Bello's firearms.

97. The defendants' actions and policies violated clearly established law, to wit, the plain language of the Fourth Amendment, which has been established since 1789. The defendants conducted a warrantless and unreasonable search and seizure of Robert Bello's

handguns, there were no exigent circumstances warranting the seizure of Robert Bello's handguns because the handguns were secured from being accessed by the ineligible person, to wit, Lori Bello. There was also no Order authorizing the defendants to seize the handguns at issue, the handguns were no longer owned or possessed by Lori Bello, nor were they accessible by her. The terms of the Notice of Suspension did not order the Sheriff's Office to do anything; it ordered Lori Bello to surrender firearms that she owned or co-owned. Because Lori Bello neither owned nor possessed any firearms, she had no firearms to surrender.

98. Assuming *arguendo* the legality of the Sheriff's Deputies' initial actions in going to Lori Bello's home to secure firearms based on the Notice of Suspension, Penal Law §400.00(11)(c), and/or Penal Law §265, prior to seizing Robert Bello's handguns, the Deputies were made aware that (i) Lori Bello no longer owned the handguns; (ii) Lori Bello no longer had any property interest in the handguns by virtue of the expiration of her pistol license; (iii) Lori Bello had no legal right to surrender Robert Bello's handguns because they were not her property; and (iv) Lori Bello had no ability to surrender the handguns because she had no access to the safe in which Robert Bello stored them.

99. The Sheriff's Deputies were aware that Lori Bello had no access to the handguns by virtue of the fact that they ordered her to call Robert Bello to return home to open his safe so the Deputies could seize his firearms, because Lori Bello had no access Robert Bello's locked gun safe.

100. It was not objectively reasonable for Sheriff Falco and Thomas Simeti to believe that their refusal

to return Robert Bello's property was not a violation of his Fourth Amendment rights.

101. Sheriff Falco and Thomas Simeti were aware and continue to be aware, by virtue of Robert Bello's Verification under oath attached to counsel's December 8, 2018 letter, that he is and will continue to be in full compliance with the SAFE Act storage provisions of Penal Law §265.45.

102. Sheriff Falco and Thomas Simeti were aware and continue to be aware that the Notice of Suspension only affected and pertained to *Lori Bello's* possession of firearms.

103. Sheriff Falco and Thomas Simeti were aware and continue to be aware that the Notice of Suspension did not affect Robert Bello's rights to possess his firearms.

104. Sheriff Falco and Thomas Simeti were aware and continue to be aware that there is no Judicial Order in place authorizing or requiring the Sheriff's Office to seize or retain Robert Bello's firearms.

105. Sheriff Falco and Thomas Simeti were aware and continue to be aware that there is no Judicial Order prohibiting the return of Robert Bello's firearms to him.

106. Sheriff Falco and Thomas Simeti were aware and continue to be aware that there is no legal or factual impediment to their return of Robert Bello's firearms to him.

107. Sheriff Falco and Thomas Simeti were aware and continue to be aware that a Court Order is not required for them to return Robert Bello's firearms.

108. Sheriff Falco and Thomas Simeti were aware and continue to be aware that the Notice of Suspension was not addressed to the Sheriff's Office, did not pertain to the Sheriff's Office, and did not

Order, require, or authorize the Sheriff's Office to take any action.

109. The defendants' blanket policy of retaining private property of a particular individual without any legal authority to possess such private property is unconstitutional.

110. The defendants have, on other occasions, refused to return private property/firearms belonging to individuals knowing, and in spite of the fact that, they had no legal authority or privilege to possess/continue to retain such property/firearms, for example the plaintiff in *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK)(PED).

111. The defendants have on other occasions forced individuals to retain counsel and/or engage in legal proceedings to secure the return of their private property/firearms knowing, and in spite of the fact that, they had no legal authority or privilege to possess/continue to retain such property/firearms, for example the plaintiff in *Cocuzza v. Rockland County, et al.* 17 Civ. 8217 (KMK)(PED).

112. The defendants' actions and policies violate clearly established law, to wit, the Fourteenth Amendment, ratified in 1868, which prohibits the governments within the states from denying to any person "life, liberty, or property without due process of law".

113. The defendants have no procedure for ensuring the protection of the public's right to pre-deprivation or post-deprivation due process.

114. The defendants did not provide Robert Bello with any pre-deprivation or post-deprivation right to due process.

115. To date, Mr. Bello's property/firearms have not been released by the defendants, causing him

irreparable harm by virtue of the *per se* violation of his civil rights.

116. The defendants do not have legal authority, privilege, or the consent of Robert Bello to possess or continue to retain possession of his property/firearms.

117. After being informed of the violations of Robert Bello's constitutional rights through counsel's letter, Sheriff Falco and Thomas Simeci failed to remedy the wrong and persisted in the violations.

118. Even if Sheriff Falco and Thomas Simeci incorrectly assumed and/or believed that Lori Bello's pistol permit was valid in November and December 2018, Lori Bello did not have access to, possession, or ownership of the handguns listed on her pistol permit since before January 31, 2018.

119. Even assuming *arguendo* that on November 2, 2018 Lori Bello had a valid pistol permit, had access to, possessed, and owned the handguns listed on her pistol permit, the Notice of Suspension required *Lori Bello* to take action to surrender her firearms and her pistol permit. The Notice of Suspension did not Order directing the Sheriff's Office to take any action; no Order exists that forbids the release of firearms surrendered under §400.00(11)(c) to a lawful owner of such property who is not prohibited from firearm possession. Once returned, the legal responsibility is thereafter on the lawful owner of the firearms to store the firearms securely from being accessed by the ineligible person.

120. Sheriff Falco, who holds an elected position, unlawfully forces firearm owners to expend time and money to commence a state court action and obtain a Court Order to get their property back because he does not want the responsibility of making the

decision to return the firearms. In other words, to protect his reputation and/or elected position, Sheriff Falco chooses to violate the constitutional rights of people whose firearms he has no legal authority to retain over adherence to the Constitution he took an oath to uphold.

121. Penal Law §265.20, which details the surrender procedure for compliance with §400.00(11), only requires the surrender of the firearms by the prohibited person; it does not contain any language prohibiting the release of the firearms to a third party once surrendered or requiring any type of Order.

122. Neither §400.00(11), §265.20, nor the Notice of Suspension contain any language prohibiting the law enforcement agency to whom the firearms are surrendered (the Sheriff's Office) from releasing them to a lawful owner (Robert Bello), a Federal Firearms Licensee ("FFL") or any other eligible third party and/or property owner.

123. The purpose of §400.00(11) and §265.20 is to remove firearms from being accessed by prohibited persons.

124. The return of Robert Bello's firearms does not conflict with §400.00(11), §265.20, or the Notice of Suspension.

125. Based on the above, it was not objectively reasonable for the Sheriff's Deputies to believe that their seizure of Robert Bello's property was not a violation of his right to pre-deprivation due process under the Fourteenth Amendment.

126. Based on the above, it was not objectively reasonable for Sheriff Falco and Thomas Simeti to believe that their refusal to return Robert Bello's property was not a violation of his right to post-

deprivation due process under the Fourteenth Amendment.

127. It was not objectively reasonable for Sheriff Falco and Thomas Simeti to believe that, due to their unwillingness to return Robert Bello's firearms, they were not obligated to create a procedure for post-deprivation due process, to include holding a hearing before a neutral hearing officer provided by the County, at which the defendants have the burden of proving their entitlement to retain the property.

128. Sheriff Falco and Thomas Simeti continued to enforce policies and/or customs, and allowed the continuance of policies under which unconstitutional practices continue to occur, to wit, requiring individuals with no legal or factual prohibition to firearm possession to expend time and expense, and bear the burden of proving, their entitlement to the return of their property, when the burden of proving authority to possess private property is on the defendant government officials.

129. Sheriff Falco and Thomas Simeti exhibited deliberate indifference to Robert Bello's rights by failing to act on the information provided in counsel's December 8, 2018 letter informing that unconstitutional acts were occurring and they were violating Robert Bello's civil rights.

130. At no time relevant to the allegations in this Amended Complaint has Robert Bello been the subject of, or a party to, any state court proceeding nor was he the subject of the Notice of Suspension letter.

131. At no time relevant to the allegations in this Amended Complaint has Robert Bello been party to any state court action nor was there any judicial order or notice issued against him, *ex parte* or otherwise.

132. The injuries complained of by Robert Bello were not caused by a state court judgment - there has been no "judgment" issued relating to the allegations in this Amended Complaint and/or against Robert Bello.

133. The injuries complained of by Robert Bello were caused by, and are alleged to have been caused by, the defendants - not by the Notice of Suspension issued to Lori Bello.

134. The defendants' actions have caused Robert Bello to suffer loss of enjoyment of life, loss of property, economic damages, violations of his civil rights and, *inter alia*, legally presumed damages resulting from the violation of his civil rights.

AS AND FOR A FIRST CAUSE OF ACTION

135. Repeats and realleges paragraphs "1" through and including "134".

136. Under the theory that each and every defendant is liable to plaintiff for violations of his Constitutional right to pre-deprivation due process under the Fourteenth Amendment pursuant to 42 U.S.C. §1983.

AS AND FOR A SECOND CAUSE OF ACTION

137. Repeats and realleges paragraphs "1" through and including "134".

138. Under the theory that each and every defendant is liable to plaintiff for violations of his Constitutional right to post-deprivation due process under the Fourteenth Amendment pursuant to 42 U.S.C. §1983.

AS AND FOR A THIRD CAUSE OF ACTION

138. Repeats and realleges paragraphs “1” through and including “134”.

139. Under the theory that each and every defendant is liable to plaintiff for violations of his Constitutional Rights under the Fourth Amendment for the deprivation of his personal property pursuant to 42 U.S.C. § 1983.

AS AND FOR A FOURTH CAUSE OF ACTION

140. Repeats and realleges paragraphs “1” through and including “134”.

141. Under the theory that defendants Sheriff Falco, Thomas Simeti, and Rockland County are liable to the plaintiff for violations of his Constitutional rights under the Fourth Amendment for the unlawful retention of his personal property pursuant to 42 U.S.C. §1983.

AS AND FOR A FIFTH CAUSE OF ACTION

142. Repeats and realleges paragraphs “1” through and including “134”.

143. Under the theory that, by creating, maintaining, enforcing, following, and/or applying the unconstitutional customs, procedures, and policies described herein, and lack thereof, the County of Rockland is liable to the plaintiff under *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018 (1978) for the violations of his Constitutional Rights as alleged herein pursuant to 42 U.S.C. § 1983.

WHEREFORE, a Judgment is respectfully requested against the defendants and in favor of the plaintiff:

- Ordering the return of the plaintiff's property, to wit, his firearms;
- Awarding against each and every defendant, at a minimum, presumed nominal damages for the *per se* violations of his constitutional rights;
- Awarding against each and every defendant compensatory, exemplary damages as the jury may determine;
- Awarding against each and every individual defendant punitive damages as the jury may determine;
- Awarding against each and every defendant economic damages;
- Awarding costs, disbursements, and reasonable attorney's fees pursuant to 42 U.S.C. § 1988;
- Granting such other and further relief as the Court deems necessary and proper.

Dated: September 23, 2019
Scarsdale, New York

THE BELLANTONI LAW FIRM, PLLC
Attorneys for Plaintiff, Robert Bello

By: _____/s/
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Appendix E



State Of New York
Rockland County Courthouse
Supreme & County Courts
One Couth Main Street
New City, New York 10956-3550

THOMAS E. WALSH II
Supreme Court Justice

November 1, 2018

Lorie E. Bello
7 Reina Lane
Valley Cottage, New York 10989

Re: Pistol License – **Notice of Suspension &
Order to Surrender Weapons**

Dear Ms. Bello,

I have been advised by the New York State Police that it has been determined that you may “likely engage in conduct that will cause serious harm to self or others,” in accordance with section 9.46 of the New York State Mental Hygiene Law.

Pending resolution of that case, your pistol permit is hereby suspended and you are directed to turn in all weapons you own or co-own and/or which are listed on your permit **immediately** to the Rockland County

Sheriff's Department within forty-eight (48) hours. Additionally, you are directed to **turn in your permit to the Pistol Clerk.**

You must comply with the conditions of suspension listed above. In doing so you will avoid possible ramifications of this order by complying immediately and surrendering the weapons listed on your license and the license as noted above.

The local police, Rockland County Sheriff's Department, and the New York State Police will be advised of this suspension, and you are now liable to be arrested if you are found in violation of the sections of the Penal Law regarding illegal possession of guns.

Very truly yours,

/s/ THOMAS E. WALSH II, JSC

cc: Pistol Clerk
District Attorney
Clarkstown Police Department
R.C. Sheriff
New York State Police, Albany, New York