

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

CAROL ANN D'ALESSANDRIS,

Plaintiff,

v.

CASE NO: 8:07-cv-1975-T-26TGW

JAMES LEY, SARASOTA COUNTY, and  
AMALGAMATED TRANSIT UNION  
LOCAL 1701, A.F.L.-C.I.O., C.L.C.,

Defendants.

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**ORDER**

Defendants filed a motion to dismiss Plaintiff's complaint in state court prior to removing the case to this Court. Having reviewed the well-pleaded allegations consistent with governing federal law and rules of civil procedure, the Court is of the opinion that the motion is due to be denied because (1) the complaint contains "enough facts to state a claim to relief that is plausible on its face"<sup>1</sup> and (2) the federal rules of procedure do not contain a parallel rule to Florida Rule of Civil Procedure 1.130(a).

The Court is concerned, however, that Plaintiff has not clearly indicated whether she is suing Defendant Ley in his individual or official capacity. If she is suing him in his official capacity, Defendant's argument would have merit in that Eleventh Circuit

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<sup>1</sup> Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1974 (2007).

precedent clearly holds that a suit against a municipal officer in his or her official capacity are in reality a suit against the governmental entity which that officer represents. See Busby v. City of Orlando, 931 F.2d 764, 776 (11<sup>th</sup> Cir. 1991). Thus, if Plaintiff is suing Defendant Ley in his official capacity, it would be redundant because she is already suing the governmental entity he represents - Sarasota County. See Abusaid v. Hillsborough County Bd. Of County Comm'ners, 405 F.3d 1298, 1302 n.3 (11<sup>th</sup> Cir. 2005). In order to clear up this confusion, the Court will direct Plaintiff to replead her complaint, being mindful of the holdings of Busby and Abusaid.

Accordingly, it is ordered and adjudged as follows:

- 1) Defendants' Motion to Dismiss (Dkt. 3) is denied.
- 2) Plaintiff shall file a repleader within 10 days of this order.
- 3) Defendants shall file their responses within 10 days of service of the repleader.

**DONE AND ORDERED** at Tampa, Florida, on November 2, 2007.

s/Richard A. Lazzara  
**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record