UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

D&N GARAGE, INC. *et al.*,

Plaintiffs,

Case No. 21-cv-10440
Hon. Matthew F. Leitman

v.

OGEMAW COUNTY BOARD OF COMMISSIONERS, *et al.*,

Defendants.
_____/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS (ECF No. 53)

On November 21, 2022, the Court held a hearing on a motion to dismiss filed by Defendants the County of Ogemaw, the Ogemaw County Board of Commissioners, current Ogemaw County Sheriff Brian Gilbert, Sr., Sheriff's Deputies Brian Gilbert, Jr., Justin Noffsinger, Mike O'Dell, Dalton Worthy, and Robert Weishuhn, former Ogemaw County Sheriff Howard Hanft, former Ogemaw County Undersheriff Leigh David, and Ogemaw County Prosecutor LaDonna Shultz (collectively, "Defendants"). (*See* Mot., ECF No. 53.) For the reasons explained on the record during the motion hearing, **IT IS HEREBY ORDERED** as follows:

- Defendants' motion to dismiss Plaintiffs' claims against Defendants Ogemaw County, the Ogemaw County Board of Commissioners, and Shultz pursuant to *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658 (1978) is **DENIED**;
- Defendants' motion to dismiss Plaintiffs' First Amendment retaliation claims as pleaded in Count II of the Amended Complaint is **GRANTED**. Count II of the Amended Complaint is **DISMISSED**. However, the Court grants Plaintiffs leave to amend to re-plead these claims in a Second Amended Complaint. If Plaintiffs re-plead these claims, they shall, on a Defendant by Defendant basis, specifically identify (1) what protected activity each Defendant was aware of and (2) what conduct each Defendant took as a result of that knowledge.
- Defendants' motion to dismiss Plaintiffs' due process claim is **DENIED**;
- Defendants' motion to dismiss Plaintiffs' claims brought under 42 U.S.C. §§ 1985 and 1986 as pleaded in Counts IV and V of the Amended Complaint is **GRANTED**. Counts IV and V of the Amended Complaint are **DISMISSED**.
- Defendants' motion to dismiss Plaintiffs' supervisory liability claims against Defendants Gilbert, Sr. and Hanft is **GRANTED**. Those claims are **DISMISSED**; and

- Defendants' motion to dismiss Plaintiffs' request for injunctive relief against Defendants Hanft and David as pleaded in Count IV of the Amended Complaint is **GRANTED.** The claim for injunctive relief in Count IV is **DISMISSED** as to Defendants Hanft and David.

  IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: November 21, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on November 21, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126