SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

----------X

DEBRA MULÉ and SCOTT DAVIS,

Plaintiffs,

– against –

COUNTY OF NASSAU, BRUCE BLAKEMAN, in his official capacity as Nassau County Executive, and ANTHONY J. LaROCCO, in his capacity as Nassau County Sheriff,

Defendants.

----------X

Index No. 602642/2025

Hon. GARY M. CARLTON
IAS/Trial Part 23

DECISION AND ORDER

Motion Seq. 009

The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed.....	175-185
Opposing Affidavits (Affirmations).....	208-214, 220-221
Reply Affidavits (Affirmations).....	269-271

Upon the foregoing papers, defendants move for an order, pursuant to CPLR 3211(a)(7), granting dismissal of the amended complaint for failure to state a cause of action. Plaintiffs oppose the motion. For the reasons set forth herein, the motion is denied.

FACTS AND PROCEDURAL HISTORY

On February 4, 2025, plaintiffs commenced this action pursuant to General Municipal Law § 51, challenging the legality of defendants' provisional emergency special deputy sheriffs program (the "program"). Plaintiffs allege, among other things, that County Law § 655, cited as the statutory basis for the program, does not permit the establishment of an emergency special deputy program absent a declared emergency, and that the program is unlawful and constitutes a waste of public funds. On April 16, 2025, defendants interposed an answer and asserted a counterclaim under New York's anti-SLAPP statute based on statements attributed to defendant Blakeman that were referenced in the complaint.

On May 9, 2025, plaintiffs served an amended complaint, which removed a FOIL cause of action but otherwise left the allegations substantially unchanged. On June 27, 2025, defendants served an answer to the amended complaint, reasserting their anti-SLAPP counterclaim and incorporating allegations concerning a related action between the parties.

In September 2025, defendants moved to dismiss the amended complaint pursuant to CPLR 3211(a)(7), (e), and (g), arguing, among other things, that this action constituted a SLAPP suit which failed to state a claim and lacked a substantial basis in law. Although defendants did not

specifically seek dismissal pursuant to CPLR 3211(a)(3) in their notice of motion, they also raised arguments concerning standing, which both sides addressed on the merits in their papers. By order dated October 7, 2025, the Court denied the motion, finding that defendants failed to demonstrate that this action constituted an "action involving public petition and participation" within the meaning of Civil Rights Law § 76-a(1)(a) and that plaintiffs sufficiently pleaded standing.

The parties thereafter commenced discovery, which remains ongoing. No depositions have been conducted as of the date of this order. The parties also filed multiple motions relating to discovery and defendants' anti-SLAPP counterclaim, which was dismissed by order dated October 17, 2025.

In February 2026, defendants filed the instant motion.

PARTIES' CONTENTIONS

Defendants argue that the program is lawful and authorized by the relevant statutory provisions. They contend that plaintiffs' challenge rests, in part, on the erroneous premise that the County may not lawfully recruit, organize, or train special deputies unless and until an emergency has been declared. According to defendants, such a construction is unreasonable and contrary to the purpose of emergency preparedness. Defendants further argue that plaintiffs' asserted public-safety concerns are speculative, since the amended complaint does not identify any actual deployment or any concrete instance in which such authority has been exercised.

Defendants also contend that plaintiffs have failed to plead the essential elements of a taxpayer action under General Municipal Law § 51. In particular, they argue that the amended complaint does not allege fraud, collusion, corruption, bad faith, or the use of public funds for an entirely illegal purpose. Rather, according to defendants, plaintiffs allege only that defendants acted unlawfully in establishing the program, which defendants maintain is insufficient as a matter of law. Defendants therefore contend that the amended complaint reflects, at most, a disagreement with the County's policy choices concerning emergency preparedness, rather than a cognizable taxpayer claim.

In opposition, plaintiffs argue, as a threshold matter, that defendants' second motion to dismiss is procedurally improper under the single-motion rule set forth in CPLR 3211(e) and should be denied as a repetitive attempt to delay discovery in this action. On the merits, they contend that the amended complaint adequately states a cause of action under General Municipal Law § 51. They argue that the challenged program is unlawful because County Law § 655 does not authorize defendants to deputize civilians and confer upon them peace or police officer powers outside the statutory and regulatory framework governing law enforcement. Plaintiffs further contend that any authority conferred by County Law § 655 is limited to periods of actual emergency and does not permit defendants to create or maintain the program in advance of such an emergency. According to plaintiffs, defendants' contrary interpretation is inconsistent with the governing statutory scheme. Plaintiffs also contend that the amended complaint sufficiently alleges that the program imperils the public interest and may result in public injury or public mischief by authorizing an armed and insufficiently trained force outside the existing statutory framework governing law enforcement authority. Finally, plaintiffs argue that defendants' assertions

regarding the program's utility, safety, and scope improperly raise factual disputes that cannot be resolved on a motion to dismiss, and that further discovery is required.

DISCUSSION

As a threshold matter, defendants previously moved to dismiss the amended complaint pursuant to CPLR 3211(a)(7), and the present motion substantially overlaps with issues that either were raised, or could have been raised, on the earlier application. To the extent defendants contend that the Court failed to address or misapprehended arguments previously advanced, the proper course would have been to seek leave to reargue, not to file a second motion to dismiss. While the Court is mindful that the Second Department has more recently construed the single-motion rule in CPLR 3211(e) as applying to pre-answer motions (*see Newlands Asset Holding Trust v Vasquez*, 218 AD3d 786, 787 [2d Dept 2023]), that does not render successive CPLR 3211(a)(7) motion practice unobjectionable where, as here, the later motion substantially reprises arguments previously made or available on the prior motion. In any event, the Court need not rest its determination on that procedural ground, because even assuming the merits of the motion are properly reached, dismissal is not warranted.

"On a motion pursuant to CPLR 3211 (a) (7) to dismiss the complaint for failure to state a cause of action, the court must give the complaint a liberal construction, accept the facts alleged therein as true, provide the plaintiff the benefit of every possible favorable inference, and 'determine only whether the facts as alleged fit within any cognizable legal theory' " (*Perez v Y & M Transp. Corp.*, 219 AD3d 1449, 1450 [2d Dept 2023], quoting *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). " 'The ultimate question is whether, accepting the allegations and affording these inferences, plaintiff can succeed upon any reasonable view of the facts stated' " (*Perez v Y & M Transp. Corp.*, 219 AD3d at 1450-1451, quoting *Doe v Bloomberg L.P.*, 36 NY3d 450, 454 [2021]). Dismissal is warranted only where the plaintiff fails to plead facts supporting an element of the claim, or where the factual allegations and the inferences to be drawn therefrom do not give rise to a legally viable claim (*see Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

General Municipal Law § 51 authorizes taxpayers to maintain an action to prevent waste, injury to public funds, or illegal official acts (*see Godfrey v Spano*, 13 NY3d 358, 373 [2009]). To state a claim under this statute, a plaintiff taxpayer is required to allege that "the challenged act constituted a waste of or injury to public funds or, alternatively, that the challenged act was both illegal and 'imperil[ed] the public interests or [was] calculated to work public injury or produce some public mischief' " (*Long Is. Pine Barrens Socy., Inc. v County of Suffolk*, 122 AD3d 688, 690 [2d Dept 2014], quoting *Matter of Korn v Gulotta*, 72 NY2d 363, 372 [1988]). "A taxpayer suit under General Municipal Law § 51 lies only when the [governmental] acts complained of are fraudulent, or a waste of public property in the sense that they represent a use of public property or funds for entirely illegal purposes" (*Tilcon N.Y., Inc. v Town of New Windsor*, 172 AD3d 942, 946 [2d Dept 2019] [internal quotation marks omitted]).

Accepting the allegations of the amended complaint as true and according plaintiffs the benefit of every favorable inference, the amended complaint sufficiently pleads a cognizable taxpayer action under General Municipal Law § 51. County Law § 655 authorizes a sheriff, during

an emergency, to "deputize orally or in writing such number of additional special deputies as he deems necessary." Plaintiffs allege, among other things, that defendants are expending public funds on a program that is unlawful because it exceeds the authority conferred by County Law § 655, operates outside the statutory and regulatory framework governing police and peace officer powers, and is being created and maintained in the absence of an actual emergency, contrary to the express language of the statute. Plaintiffs further allege that the program imperils the public interest and poses various safety risks. At this stage of the litigation, those allegations are sufficient to fit within a cognizable legal theory under General Municipal Law § 51.

Any arguments concerning the scope, purpose, safety, and necessity of the program involve factual matters that cannot be resolved on a motion pursuant to CPLR 3211(a)(7). Insofar as defendants rely on the affidavit of Deputy Undersheriff Thomas M. Sullivan and related factual assertions in support of the program, such submissions do not conclusively defeat the amended complaint as a matter of law. Rather, they underscore that factual issues remain and that disclosure is ongoing.

That conclusion is particularly appropriate here, where depositions have not yet been conducted and at least some of the facts relevant to the alleged scope of the program, the expenditures associated with it, and the nature of the authority to be exercised by program participants remain within defendants' possession or control. While the mere hope that discovery may reveal relevant facts is insufficient to defeat a motion to dismiss, denial of such a motion may be warranted where facts essential to justify opposition may exist but cannot yet be stated, particularly where discovery has not yet taken place and the pertinent information is largely within the movant's knowledge (*see* CPLR 3211[d]; *Arnone v Burke*, 211 AD3d 998, 999 [2d Dept 2022]). At a minimum, this is not a case in which the amended complaint may be rejected as legally insufficient as a matter of law at this stage.

Accordingly, it is

ORDERED that the motion is denied.

This constitutes the Decision and Order of the Court.

Dated: March 24, 2026
Mineola, N.Y.

Hon. Gary M. Carlton, J.S.C.