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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ABDULLAH WRIGHT, Plaintiff, v. CITY OF SAN DIEGO, SDPD Off. Brandon Lopez, Defendants.	Case No. 24-cv-02089-GPC-BLM **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS CITY OF SAN DIEGO AND SDPD OFFICER BRANDON LOPEZ'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT** District Judge: Hon. Gonzalo P. Curiel Court Room: 2D Magistrate Judge: Hon. Barbara L. Major Court Room: 3D Hearing date: March 21, 2025 Time: 1:30 p.m. Court Room: 2D

Plaintiff's pointillist complaint offers only scattered dots of isolated facts, leaving the true nature of the interaction with Officer Brandon Lopez obscured. The facts necessary to reveal the full picture are missing from the complaint, failing to provide the broader context. However, even taking Plaintiff's allegations as true, the complaint fails to establish the necessary elements to support his Equal Protection claim, the *Monell* Failure to Train claim, and the Bane Act claim. Because Plaintiff failed to plead those claims, Defendants respectfully request this Court to grant its motion to dismiss.

I. BACKGROUND

Plaintiff's allegations include the following: Plaintiff alleges he stopped at a stop sign, then parked the car on the street, and Plaintiff and his brothers exited the car to walk down the street and do sprints back up the street. (Dkt. No. 1 at ¶¶ 40, 43, 56.) He further alleges that after driving by four times, Officer Lopez approached Plaintiff asking if the vehicle was his, which he confirmed it was, then with no reasonable suspicion or probable cause, Officer Lopez detained him. (*Id.* at ¶¶ 60, 72, 73, 75.) Then, Plaintiff states, Officer Lopez handcuffed him, had Plaintiff's brother call their father, and explained that he arrested Plaintiff for an unreported vehicle theft. (*Id.* at ¶¶ 80, 85, 88.) Plaintiff's father confirmed the vehicle was his and Plaintiff was released without being charged. (*Id.* at ¶¶ 91–92.)

However, the police worn body camera footage, which is not before the Court and not necessary for this motion, will reveal the full picture.[1] Officer Lopez's *Terry* stop was based on reasonable suspicion, including the following: Plaintiff rolled through a stop sign, quickly curbed the vehicle he was driving (curbing is when a person intentionally parks very quickly next to a curb to ditch a stolen vehicle), two individuals quickly exited the car, Plaintiff exited the vehicle with all three individuals walking away from the car, and then observed all three looking back at him multiple times.

Nevertheless, ignoring these facts and taking Plaintiff's allegations as true, Plaintiff fails to allege three of the six causes of action in the complaint: (1) the Second Cause of Action for Equal Protection, (2) the Third Cause of Action for *Monell* Failure to Train, and (3) the Fourth Cause of Action for Bane Act.

II. LEGAL STANDARDS

Federal Rule of Civil Procedure ("Rule") 12(b)(6) permits dismissal for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

[1] The City of San Diego showed Plaintiff's counsel the police body worn camera footage pertaining to the stop during a meet and confer prior to this motion being filed.

Rule 12(b)(6) requires the Court to dismiss claims that fail to establish a cognizable legal theory or do not allege sufficient facts to support a cognizable legal theory. *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) (citation omitted). Under Rule 8(a)(2) a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted).

To survive a Rule 12(b)(6) motion to dismiss, a complaint does not need detailed factual allegations, but it must provide allegations that raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555. While the plausibility standard is not a probability test, it does require more than a mere possibility the defendant acted unlawfully. *Id.* at 556. "When evaluating a Rule 12(b)(6) motion, the Court must accept all material allegations in the complaint as true, and construe them in the light most favorable to the non-moving party." *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710 F.3d 946, 956 (9th Cir. 2013) (citation omitted). When dismissal is appropriate, leave to amend should generally be given freely. *Id.* If the plaintiff's proposed amendment would fail to cure the pleading's deficiencies and amendment would be futile, the court may dismiss without leave. *Id.*

III. DISCUSSION

Plaintiff fails so support three of his six claims with any factual basis. First, Plaintiff alleges Officer Lopez violated his equal protection rights. However, Plaintiff fails to ascertain a similarly situated class and impermissibly bases his claims on "information and belief." Second, Plaintiff's Failure to Train claim against the City under *Monell* fails because Plaintiff does not allege a single training policy or show how any training policies are deficient and Plaintiff's reliance on RIPA data does not point to any training policies or show causation. Finally, Plaintiff's Bane Act claim fails because Plaintiff has not alleged beyond recitation of the elements that Officer Lopez acted intentionally or with reckless disregard. For these reasons, the City respectfully requests the Court grant its dismissal motion.

A. Plaintiff Fails to State an Equal Protection Claim.

Plaintiff fatally fails to allege to any specific facts that Officer Lopez intended to discriminate against Plaintiff based on his class membership or that he was treated differently than another similarly situated class. Rather, Plaintiff includes only conclusory allegations based on purported "information and belief," which fail to state an equal protection claim. (Dkt. No. 1 at ¶¶ 65, 69, 76, 78, 124–129.)

To state a 42 U.S.C. § 1983 Equal Protection violation, Plaintiff must show Officer Lopez "acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class, and that plaintiff was treated differently from persons similarly situated." *Lam v. City & Cty. of San Francisco*, 868 F. Supp. 2d 928, 951 (N.D. Cal. 2012) (internal quotations omitted). Plaintiff must demonstrate "(1) that the plaintiff was treated differently from others similarly situated; (2) this unequal treatment was based on an impermissible classification; (3) that the defendant acted with discriminatory intent in applying this classification; and (4) the plaintiff suffered injury as a result of the discriminatory

classification." *Id.*

Here, Plaintiff only alleges on information and belief that Officer Lopez approached and handcuffed him "because he is a young Black man." (Dkt. No. 1 at ¶¶ 65, 69, 76, 78.) However, "[i]n the post-*Twombly* and Iqbal era, pleading on information and belief, without more, is insufficient to survive a motion to dismiss for failure to state a claim." *Solis v. City of Fresno*, No. 1:11–CV–00053 AWI GSA, 2012 WL 868681, *1, *8 (E.D. Cal. Mar. 13, 2012); *see Twombly*, 550 U.S. at 570. While Plaintiff alleges the San Diego Police Department has a history of racial discrimination in stops, none of these allegations mentions Officer Lopez specifically. (Dkt. No. 1 at ¶¶ 17–24.) Thus, Plaintiff failed to allege intentional unlawful discrimination by Officer Lopez.

The only allegations, then, supporting the equal protection claim are the conclusory ones alleging race was the motivating factor in Officer Lopez's stop and that Officer Lopez intentionally treated Plaintiff different than white individuals. (Dkt. No. 1 at ¶¶ 128–129.) Notably, these allegations are mere recitations of the equal protection legal standards and lack any actual factual detail. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

Finally, Plaintiff's comparative class lacks any defining contours to allow the Court to determine whether they were similarly situated to Plaintiff. (Dkt. No. 1 at ¶ 129.) Separate groups of individuals are similarly situated when their circumstances are essentially "indistinguishable" or "in all relevant respects alike." *Ross v. Moffitt*, 417 U.S. 600, 609 (1974); *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). Here, Plaintiff alleges the similarly situated class is "white individuals in San Diego." (Dkt. No. 1 at ¶ 129) This does not include enough factual detail to determine the class of "white individuals in San Diego" is similarly situated to Plaintiff because the class is extremely broad, can be interpreted in so many ways, and does not allege any specifics on how white individuals are indistinguishable from Plaintiff or

are in all relevant aspects like Plaintiff.

Thus, Plaintiff's equal protection claim should be dismissed as it does not allege any specific facts demonstrating intentional discrimination, allegations based on information and belief cannot support this claim, and the comparative class is undefined.

B. Plaintiff's Fails to State a Failure to Train Claim.

Plaintiff's failure to train claim fails because it lacks any factual basis alleging any City training program is the moving force behind Plaintiff's alleged constitutional deprivations. Rather, Plaintiff only includes one conclusory allegation regarding the City's training program and instead relies on statistics taken from the California Racial and Identity Profiling Act ("RIPA") to turn correlation into causation. (Dkt. No. 1 at ¶¶ 17–24.)

"In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983." *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Failure to train may serve as a basis for § 1983 municipal liability only "where failure to train amounts to deliberate indifference to rights of persons with whom the police come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). Deliberate indifference requires proof that the municipal entity "disregarded a known or obvious consequence" that a particular omission in its training program would cause city employees to violate citizens' constitutional rights. *See Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 410 (1997). "Thus, when [the municipal entity is] on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights, the city may be deemed deliberately indifferent if the policymakers choose[s] to retain that program." *Connick*, 563 U.S. at 61 (citing *Brown*, 520 U.S. at 407).

"To allege a failure to train, a plaintiff must include sufficient facts to support

a reasonable inference (1) of a constitutional violation; (2) of a municipal training policy that amounts to a deliberate indifference to constitutional rights; and (3) that the constitutional injury would not have resulted if the municipality properly trained their employees." *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1153–54 (9th Cir. 2021) (citing *Blankenhorn v. City of Orange*, 485 F.3d 463, 484 (9th Cir. 2007)). A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train. *See Oklahoma City v. Tuttle*, 471 U.S. 808, 822–23 (1985) (plurality opinion).

Factual specificity is required when making a failure to train claim. In *Mong Kim Tran v. City of Garden Grove*, the Court found that conclusory allegations of inadequate police training was insufficient to state a *Monell* claim where the plaintiff did not plead specific allegations regarding what the trainings were, how they were deficient, or how they caused plaintiff harm. No. SACV 11–1236 DOC (ANx), 2012 WL 405088, *1, *4 (C.D. Cal. Feb. 7, 2012). Also, liability for failure to train cannot be established simply by showing that an injury could have been avoided if a public employee had better or more training. *Ting v. United States*, 927 F.2d 1504, 1512 (9th Cir. 1991).

Here, Plaintiff fails to name a single inadequate training program. The only allegations regarding the City's training program merely state: "The training policies of Defendant City of San Diego were not adequate to prevent" constitutional violations. (Dkt. No. 1 at ¶ 138.) That lone, vague, and conclusory allegation does not meet the pleading standard because it fails to include any specific allegations regarding what the City-specific trainings were, how they were inadequate, or how they caused Plaintiff harm.

Further, Plaintiff cannot rely on his own incident for a failure to train claim. "[G]enerally, a single instance of unlawful conduct is insufficient to state a claim for municipal liability under section 1983." *Benavidez v. County of San Diego*, 993 F.3d 1134, 1154 (9th Cir. 2021) (citation omitted). But "[s]ingle acts may trigger

municipal liability where 'fault and causation' were clearly traceable to a municipality's legislative body or some other authorized decisionmaker." *Id.* (quoting *Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 406 (1997)). Here, Plaintiff has not included any allegations supporting a theory-of-one cause of action or attempting to draw a clearly traceable line between his incident and the City.

Finally, Plaintiff's allegations regarding RIPA statistics also fail to support his failure to train theory. (Dkt. No. 1 at ¶¶ 17–24.) Plaintiff cites to a number of statistics relating to the number of Black individuals stopped in California, (¶ 18); the percentage of Black individuals stopped by San Diego Police officers from July 2018 through June 2019, (¶ 21); the comparative number of Black individuals stopped by SDPD also from July 2018 through June 2019, (¶ 22); the purported reasons SDPD stopped Black individuals during the same time frame, (¶ 23); and the percentage of Black San Diegans stopped during Q3 2018 to Q3 2020, (¶ 24).

However, there is no correlation between these statistics and this incident. First, the statistics listed occurred from either July 2018–June 2019 or Q3 2018–Q3 2020, but Plaintiff's interaction with Officer Lopez occurred on September 24, 2023. (Dkt. No. 1 at ¶ 36.) While Plaintiff purports to allege data from the RIPA 2023 Annual Report, the 2023 Report clearly states the data used is from January 1, 2021 to December 31, 2021. (*Id.* at 19; Racial and Identity Profiling Advisory Board, *Annual Report 2023* at 7.[2]) So even if this data was taken as true, the statistics do not cover the date Plaintiff was detained.

But more importantly, the statistics do not support a conclusion that racial profiling or racial bias was the moving force behind the alleged violations of Plaintiff's constitutional rights. Plaintiff's statistics relating to racial profiling do not support the lack of a training policy to deter racial profiling. Plaintiff's

[2] Racial and Identity Profiling Advisory Board, *Annual Report 2023*, at 7 (available online at https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf).

recitations of these statistics are too generalized, refer to time periods prior to 2023, and do not lead to the conclusions Plaintiff tries to reach in his complaint. The Ninth Circuit has previously indicated that statistics, like the RIPA data, cannot support a *Monell* claim. *See United States v. Redondo-Lemos*, 27 F.3d 439, 443–44 (9th Cir. 1994);

In *Gonzalez v. City of Tustin*, a district court dismissed a failure to train theory on similar grounds. Case No. 8:23-cv-01274-FWS-ADS, 2024 WL 3086684, *1 (C.D. Cal. June 4, 2024). There, the plaintiffs alleged RIPA statistics to show the City of Tustin had a practice or custom of disproportionately stopping, handcuffing, and restraining Hispanic or Latinx individuals. *Id.* Although the Court did not analyze the RIPA data, it acknowledged and summarized the data, ultimately finding the plaintiffs did not state a failure to train claim. *Id.* at *8, *10.

Thus, Plaintiff's failure to train theory fails because Plaintiff did not allege a single deficient training program, his single incident cannot support the theory alone, and the RIPA data does not show any training deficiencies either.

C. Plaintiff's Bane Act Claim Fails.

Plaintiff fails to allege the necessary elements for a Bane Act Claim. The Bane Act requires a "a specific intent to violate the arrestee's right to freedom from unreasonable seizure." *Cornell v. City & County of San Francisco*, 17 Cal. App. 5th 766, 801 (2017); *Reese v. County of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018). "Reckless disregard" of a person's constitutional rights can be evidence of a specific intent to deprive. *Id.* at 1045.

Here, Plaintiff does not allege Officer Lopez specifically intended to violate Plaintiff's rights. (*See* Dkt. No. 1 at ¶¶ 141–45.) Plaintiff only points to Officer Lopez's apparent "reckless disregard" in a conclusory way, without explaining how his actions showed a reckless disregard for Plaintiff's constitutional rights. (*Id.* at 142.) Plaintiff's prior allegations that Officer Lopez violated Plaintiff's rights "because [Plaintiff] is a young Black man" are impermissibly based on information

and belief and do not include any additional allegations giving rise to a reasonable inference. Under the *Iqbal* standard, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." 556 U.S. at 678.

Thus, Plaintiff's Bane Act claim fails because he only includes conclusory and threadbare allegations, mere recitations of the statute, regarding Officer Lopez's specific intent.

IV. CONCLUSION

Plaintiff's complaint crumbles under scrutiny, offering allegations that are as vague as they are unsupported. The Equal Protection claim relies on threadbare assertions, failing to identify a similarly situated class or any factual basis for intentional discrimination. The *Monell* Failure to Train claim fares no better, presenting only hollow references to RIPA statistics that neither pinpoint deficient policies nor establish causation. Finally, the Bane Act claim is a recitation of legal elements without substance, lacking any facts to show intentional or reckless conduct by Officer Lopez. Accordingly, the City respectfully requests that the Court dismiss them in their entirety.

Dated: January 10, 2025

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