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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

**DEFENDANTS CITY OF SAN
DIEGO AND SDPD OFFICER
BRANDON LOPEZ’S NOTICE OF
MOTION AND MOTION FOR
CERTIFICATION OF
INTERLOCUTORY APPEAL AND
MOTION FOR STAY PENDING
DETERMINATION**

[28 U.S.C. § 1292(B)]

Hearing Date: August 15, 2025

Hearing Time: 1:30 p.m.

Courtroom: 2D

Judge: Hon. Gonzalo Curiel

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on August 15, 2025, at 1:30 p.m., or as
3 soon thereafter as the matter may be heard before the Honorable Gonzalo P. Curiel
4 in Courtroom 2D of the United States District Court for the Southern District of
5 California, 333 West Broadway, San Diego, CA 92101, defendants City of San
6 Diego and San Diego Police Department Officer Brandon Lopez (collectively the
7 “Defendants”) hereby move this Court for an order certifying for interlocutory
8 appeal an issue raised in the Order Granting in Part and Denying in Part
9 Defendant’s Motion to Dismiss with Leave to Amend (Order) at ECF No. 13.
10 Defendants seek an immediate appeal of the following question:

11
12 Can statistical data or media reports make a prima facie
13 showing of a *Monell* claim and constitute credible evidence
14 of the existence of a constitutionally violative policy
against a municipality?

15 Pursuant to 28 U.S.C. § 1292(b), district courts may certify interlocutory
16 appeals where “appellate review of a particular ruling will materially advance
17 disposition of the claims before the trial court.” *Morrison-Knudsen Co., Inc. v.*
18 *Archer*, 655 F.2d 962, 966 (9th Cir. 1981). An issue may be certified under
19 § 1292(b) if: (1) it involves a controlling question of law, (2) as to which there is
20 substantial ground for difference of opinion, and (3) an immediate appeal may
21 materially advance the ultimate termination of the litigation. *Google Inc. v.*
22 *Rockstar Consortium U.S. LP*, 2014 WL 4145506, at *1 (N.D. Cal. Aug. 20, 2014).

23 The issue Defendants seek leave to appeal involves a controlling question of
24 law that could materially affect the outcome of this litigation and is purely legal.
25 There is a substantial ground for difference of opinion on this issue, as evidenced
26 by the lack of controlling law within the Ninth Circuit and the contradictory
27 conclusions different courts within the Southern District of California have reached
28

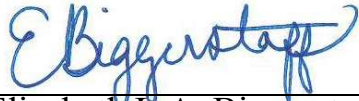
1 on this question. An immediate appeal would avoid needless delay and advance the
2 interests of justice.

3 Defendants' motion is based on this Notice of Motion and Motion, the
4 accompanying Memorandum of Points and Authorities, any other matters of which
5 the Court may take judicial notice, other documents on file in this action, and any
6 oral argument of counsel.

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Dated: May 15, 2025

HEATHER FERBERT, City Attorney

By 
Elizabeth L.A. Biggerstaff
Manuel Arambula
Deputy City Attorneys

Attorneys for Defendants
City of San Diego and
SDPD Officer Brandon Lopez

I. INTRODUCTION

1
2 Plaintiff is an 18-year-old Black individual who was detained by Officer Lopez
3 on September 24, 2023. Officer Lopez was patrolling in a neighborhood near San
4 Diego State University when he saw a white car roll through a stop sign and quickly
5 pull over to park against a curb. Officer Lopez noted two individuals quickly exited
6 the car from the passenger side and back seat while the driver tied his shoes and
7 exited a few moments later. Officer Lopez saw that the three individuals quickly
8 walked away from the car and thought this was suspicious because these actions may
9 indicate the possibility that the vehicle they were in had been stolen. Officer Lopez
10 exited his patrol car, approached the vehicle, and checked the driver’s side door. He
11 found the door unlocked, opened it, and the car’s alarm went off. Officer Lopez then
12 got back in his patrol vehicle and drove by the three individuals who had left the
13 vehicle, Plaintiff and his two brothers. As Officer Lopez drove by, he asked
14 Plaintiff’s brothers for directions to learn if they were familiar with the area. They
15 responded that they did not know the area. Officer Lopez then parked his patrol car,
16 approached Plaintiff, and asked him if he had the keys to the white car. Plaintiff
17 replied that he had left the car’s keys in the vehicle. Officer Lopez thought Plaintiff
18 leaving the keys in the car was suspicious because people don’t generally turn on a
19 car’s alarm and then leave their keys in that car.

20 Based on all these facts, Officer Lopez told Plaintiff he was detaining him on
21 the reasonable suspicion that Plaintiff was possibly driving an “unreported stolen
22 vehicle.” Officer Lopez placed Plaintiff in handcuffs as Plaintiff explained it was his
23 dad’s car and he had permission to drive it. One of the brothers called the father who
24 quickly confirmed the car was his and not stolen and Officer Lopez then removed the
25 handcuffs. In total, Plaintiff was handcuffed for approximately three minutes.
26 Plaintiff’s father drove to the scene and demanded an explanation for his son’s
27 detention. Officer Lopez’s superior officers also drove to the scene and explained to
28 Plaintiff’s father the basis of Officer Lopez’s reasonable suspicion.

1 Plaintiff filed this lawsuit and alleges Officer Lopez and the City violated his
2 civil rights. Plaintiff brought the following causes of action: 1) 42 U.S.C. § 1983 –
3 Fourth/Fourteenth Amendment Unlawful Seizure against Officer Lopez; 2) 42
4 U.S.C. § 1983 – Fourteenth Amendment Equal Protection against Officer Lopez; 3)
5 42 U.S.C. § 1983 – *Monell* claim against the City for Failure to Train; 4) Bane Act
6 violations against the Defendants; and 5) Negligence against all Defendants.

7 On January 10, 2025, Defendants filed a Fed. R. Civ. P. 12(b)(6) motion to
8 dismiss (MTD) the second, third, and fourth causes of action of Plaintiff’s complaint.
9 (ECF No. 6-1/MTD.) Relevant to this Motion for Certification (Motion), Defendants
10 challenged Plaintiff’s reliance on statistics and media reports as prima facie evidence
11 that the City’s “established customs inflict[ed] the constitutional injury.” *Clouthie*
12 *v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249 (9th Cir. 2010), overruled on other
13 grounds by *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016)
14 (quoting *Monell v. Dept. of Social Service of the City of New York*, 436 U.S. 658, 708
15 (1978).)

16 Defendants argued in the Motion that the statistics and media reports cited by
17 Plaintiff “do not support a conclusion that racial profiling or racial bias was the
18 moving force behind the alleged violations of Plaintiff’s constitutional rights.” (MTD
19 at p. 8.) This Court made a contrary finding in the Order stating that “[a]t the motion
20 to dismiss stage . . . the Court concludes that the statistics from 2018 to 2020 create
21 a plausible inference of discriminatory intent to support an equal protection claim as
22 well as a *Monell* failure to train cause of action.” (Order at n.3.) Based on this conflict,
23 Defendants ask this Court to certify the following question for appeal.

24 **II. QUESTION FOR CERTIFICATION**

25 Can statistical data or media reports make a prima facie
26 showing of a *Monell* claim and constitute credible evidence
27 of the existence of a constitutionally violative policy
28 against a municipality?

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III. LEGAL STANDARD

Although in general, district court rulings cannot be appealed until final judgment is entered, 28 U.S.C. § 1292(b) allows for district courts to certify interlocutory appeals where “appellate review of a particular ruling will materially advance disposition of the claims before the trial court.” *Morrison-Knudsen Co., Inc. v. Archer*, 655 F.2d 962, 966 (9th Cir. 1981). In order to certify an order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), the Court must find that an interlocutory order: (1) involves a controlling question of law; (2) there is substantial ground for difference of opinion on that question; and (3) a resolution of the legal issue will materially advance the ultimate termination of the litigation. This result is also appropriate if the appeal arises, as here, from the denial of a motion to dismiss. *See, e.g., Owens v. Okure*, 488 U.S. 235, 237-38, (1989).

While a controlling question of law may have a dispositive effect on the litigation, it need only materially advance the litigation in order for an interlocutory appeal to be permissible. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 2011). An issue of law may also be considered “controlling” if reversal of an order would terminate the action. *Klinghoffer v. S.N.C. Achille Lauro*, 921 F.2d 21, 24 (2nd Cir.1990). The party seeking interlocutory review bears the burden of showing that all of these factors are met. *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th Cir. 2010).

IV. ARGUMENTS

Defendants seek the certification of an interlocutory appeal on the issue of Plaintiff’s use of statistical data and media reports as the sole basis for his *Monell* claims. Defendants raised this issue in their 12(b)(6) Motion to Dismiss Plaintiff’s Complaint. This issue meets the requirements for certification of an interlocutory appeal under 28 U.S.C. § 1292(b). This issue is a contested question of law that is significant, important, and would benefit from a clear decision from the Ninth Circuit Court of Appeals. Addressing this issue now instead of waiting for the conclusion of

1 any potential trial would advance the ultimate termination of this litigation and
2 thereby preserve the resources of the parties and the Court.

3 As further argued below, this issue has resulted in different decisions by
4 different courts within the Southern District of California. This discrete issue has
5 resulted in *Monell* causes of action being dismissed in five cases, entirely or in part,
6 based on the same, or substantially the same, statistical data used by Plaintiff to allege
7 the existence of *Monell* policies by the City. This discrete issue has also resulted in
8 the denial of three motions to dismiss *Monell* causes of action based on exactly the
9 same statistical evidence. This decisional disparity is precisely the kind of situation
10 an interlocutory appeal under Section 1292(b) was meant to address.

11 **A. The Issues Plaintiff Seeks to Certify Involve Controlling Questions**
12 **of Law.**

13 The issue Defendants seek to certify involves a controlling issue of law. The
14 Ninth Circuit has held a controlling issue of law is one that could “materially affect
15 the outcome of litigation in the district court.” *In re Cement Antitrust Litig.*, 673 F.2d
16 1020, 1026 (9th Cir. 1981); *see also Dalie v. Pulte Home Corp.*, 636 F. Supp. 2d
17 1025, 1028 (E.D. Cal. 2009) (holding that certification is appropriate where the
18 certified question “will affect the course of the litigation”). An issue need not be
19 dispositive to be considered controlling, *In re Cement*, 673 F.2d at 1026, and even
20 “issues collateral to the merits may be the proper subject of an interlocutory appeal.”
21 *Kuehner v. Dickinson & Co.*, 84 F.3d 316, 319 (9th Cir. 1996) (quoting *In re Cement*,
22 673 F.2d at 1027 n.5).

23 Whether or not a plaintiff can show the prima facie existence of a municipal
24 policy in a complaint is a controlling question of law. When a plaintiff fails to
25 sufficiently plead sufficient facts to infer *Monell* liability, these causes of action are
26 dismissed. “To survive a motion to dismiss, a complaint must contain sufficient
27 factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face.’”
28 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550

1 U.S. 544, 570 (2007)).

2 **B. There Is a Substantial Ground for Difference of Opinion on the**
3 **Questions Plaintiff Seeks to Certify.**

4 “Courts traditionally will find that a substantial ground for difference of
5 opinion exists where ‘the circuits are in dispute on the question and the court of
6 appeals of the circuit has not spoken on the point, if complicated questions arise under
7 foreign law, or if novel and difficult questions of first impression are presented.’”
8 *Lee v. Postmates Inc.*, No. 18-CV-03421-JCS, 2019 WL 1864442, at *2 (N.D. Cal.
9 Apr. 25, 2019) (quoting *Couch*, 611 F.3d at 633).

10 Substantial grounds for a difference of opinion requires merely showing that
11 there is a genuine dispute over the legal points in question. *In re Cement Antitrust*,
12 *supra*, 673 F.2d at 1026. There is an absence of Ninth Circuit authority on this issue
13 and there are conflicting district court decisions from the Southern District on the key
14 points involved here. Where an order sought to be certified for an interlocutory appeal
15 raises new and important problems or issues of first impression, like the dismissal
16 Order here does, immediate review is warranted. *Bauman v. United States Dist.*, 557
17 F.2d 650, 654–55 (9th Cir. 1977).

18 This Court denied Defendants’ motion to dismiss Plaintiff’s failure to train
19 cause of action; a cause of action which cited to the Police Scorecard and a report by
20 the Center for Policing Equity. (ECF No. 13 at 7.) In reaching its conclusion, this
21 Court found that “statistical data and the City of San Diego’s knowledge of racial
22 disparities in police stops provide sufficient facts to allege the City’s deliberate
23 indifference” for failure to train. (*Id.* at 13)

24 A different court assessed the exact same *Monell* failure to train claims in an
25 unrelated case, based on exactly the same studies and reports, but came to the
26 opposite conclusion. In *Whyte v. City of San Diego*, the court concluded that “none
27 of the studies or reports support the theory that the City was deliberately indifferent
28 to the alleged inadequate training identified....” 3:21-cv-01159-LAB-MDD, 2024

1 WL 4308794, at *9 (S.D. Cal. Dec. 7, 2022). The table below is a compendium of
 2 recent decisions in other Section 1983 cases before courts in the Southern District of
 3 California where seven other plaintiffs used the same statistical data to allege *Monell*
 4 liability against the City. The information below only reflects—as either granted or
 5 denied—the disposition of those causes of action alleging statistical data as the basis
 6 for *Monell* liability.

Case	Case No.	Decision	12(b)(6)
Piccini v. City of San Diego	3:21-cv-01343-W-KSC 2022 WL 2788753	07/15/2022	Granted
Boykins v. City of San Diego	3:21-cv-01812-AJB-AHG 2022 WL 3362273	08/15/2022	Granted
Whyte v. City of San Diego	3:21-cv-01159-LAB-MDD 2024 WL 4308794	12/07/2022	Granted
McKinnie v. City of San Diego	3:24-cv-00827-H-SBC 2024 WL 4126062	09/09/2024	Denied
Spriggs v. City of San Diego*	3:24-cv-01006-W-KSC 2024 WL 4469218	10/09/2024	Granted
Russell v. City of San Diego*	3:24-cv-0527-GPC-SBC 2025 WL 297034	01/24/2025	Denied
Spriggs v. City of San Diego*	3:24-cv-01006-W-KSC 2025 WL 474918	02/12/2025	Granted
Abdul-Hafeez v. City of San Diego*	24-cv-1184-RSH-DDL 2025 WL 696993	03/04/2025	Granted
Wright v. City of San Diego*	3:24-cv-2089-GPC-BLM 2025 WL 1222507	04/28/2025	Denied

27 This graph clearly exhibits the disparity in outcomes based on the same factual

28 * Currently active case.

1 allegations on *Monell* causes of action as those alleged by Plaintiff. Such a disparity
2 is exactly the “difference of opinion” that should be addressed through a certified
3 interlocutory appeal.

4 **C. A Stay Should Be Granted Pending the Resolution of this**
5 **Interlocutory Appeal.**

6 If this Court grants Defendants’ Motion, it should also stay all proceedings.
7 Courts can issue a stay in the proceedings to facilitate the most efficient, accurate
8 resolution of the matter and further the best interests of the Court and parties. *See*
9 *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is
10 incidental to the power inherent in every court to control the disposition of the causes
11 on its docket with economy of time and effort for itself, for counsel, and for
12 litigants.”); *Moriarty v. American General Life Insurance Company*, No.: 3:17-cv-
13 1709-JO-WVG, 2023 WL 6280967, at *3 (S.D. Cal. Sept. 26, 2023) (issuing a stay
14 when certifying an order for interlocutory appeal). A district court has “broad
15 discretion to decide whether a stay is appropriate to promote economy of time and
16 effort of itself, counsel, and the litigants.” *Casas v. Victoria’s Secret Stores, LLC*,
17 2015 WL 13446989, at *5 (C.D. Cal. Apr. 9, 2015).

18 Here, the determination of this issue will impact the causes of action that move
19 forward, whether the Ninth Circuit’s decision is to allow or to forbid the use of
20 statistical data and media reports as prima facie evidence of *Monell* liability against
21 municipalities. Further, the Ninth Circuit may also issue a ruling that is a hybrid of
22 these two positions, which would also nullify any work completed in the interim. The
23 question for certification is an issue of first impression and this matter should be
24 stayed so that neither the parties nor this Court unnecessarily litigate matters that will
25 in all likelihood be mooted by the Ninth Circuit’s appellate decision.

26 Accordingly, a stay pending interlocutory appeal is appropriate here because
27 it would promote judicial efficiency and is the public interest of conserving both the
28 Court’s and the City’s resources. In the alternative, Defendants request the Court stay

1 any discovery on the *Monell* causes of action.

2 **V. CONCLUSION**

3 The question for certification presents a controlling question of law. Whether
4 or not statistical evidence or media reports alone can constitute prima facie evidence
5 of a *Monell* practice is of national importance. Municipalities such as the City of San
6 Diego are regularly sued under 28 U.S.C. § 1983 and *Monell* claims are the sole
7 vehicle for assigning liability. Whether or not statistical evidence or media reports
8 can be used to allege prima facie evidence of *Monell* liability at the pleading stage is
9 of broad concern.

10 While grounds for a substantial difference of opinion exist between the courts
11 in the Southern District of California, the question raised by this certification is hardly
12 limited to this district. A plaintiff sued San Bernadino County and pled *Monell*
13 liability through the use of a “2017 media report,” “a 2020 Los Angeles Times
14 investigation of complaints against the Sherriff’s Department,” and findings by the
15 “California Racial and Identity Advisory [] Board...” *Heard v. County of San*
16 *Bernadino*, No. 5:20-cv-02335-JWH-KKx, 2021 WL 5083336, *6 (C.D. Cal. Oct.
17 12, 2021). The *Heard* court found that the “allegations in the [operative complaint]
18 are conclusory or pertain to sporadic incidents, factually distinct circumstances, or
19 generalizations that do not show that the County acted with *deliberate* indifference.”
20 *Id.* at *7 (emphasis in original.) The question for certification is therefore an
21 important one to plaintiffs and municipalities throughout the Ninth Circuit.

22 Moreover, the absence of any Ninth Circuit authority on the majority of the
23 claims made by Plaintiff warrants certification for an immediate appeal. Appellate
24 resolution of a fundamental issue of liability at the threshold pleading stage materially
25 advances the ultimate termination of the litigation, and thereby avoids unnecessary
26 delay and expense in having to litigate further issues, where plaintiffs cannot state
27 legitimate claims in the first instance. *See Steering Committee v. United States*, 6
28 F.3d 572, 575 n. 1 (9th Cir. 1993).

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VI. PRAYER

Thus, Defendants respectfully request that this Court issue an order as follows:

1. Certify the following question for immediate interlocutory appeal:
 Can statistical data constitute sufficient
 factual matter of a *Monell* claim to allege the
 prima facie existence of a constitutionally
 violative policy against a municipality?
2. Stay all proceedings before this Court pending the resolution of this
 interlocutory appeal; and
3. For such other orders and relief as the court deems proper.

Dated: May 15, 2025

HEATHER FERBERT, City Attorney

By 

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 Manuel Arambula
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SDPD Officer Brandon Lopez