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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KATIE ANN BARCELO and	) Case No. : 25-cv-00329-BAS-AHG
JUSTIN ROBERTS,	)
Plaintiff,	) PLAINTIFFS' OPPOSITION TO
vs.	) DEFENDANT CITY OF SAN DIEGO'S
	) MOTION TO DISMISS THE FIRST
	) AMENDED COMPLAINT;
CITY OF SAN DIEGO, 51	) MEMORANDUM OF POINTS AND
STRATEGIES L.L.C. doing business	) AUTHORITIES
as S & S TOWING, SEAN	)
GERMAINE METCALF, SONYA	) HEARING DATE: July 11, 2025
DEFREITAS-METCALF, 5471	) TIME: 2:00 P.M.
BAYVIEW HEIGHTS, L.P., MAAC	) CTRM: 1280
BAYVIEW HEIGHTS, L.L.C., CRP	)
VALENCIA POINTE L.P., MAAC	)
VALENCIA POINTE MGP L.L.C.	)
and DOES 1 through 10,	)
INCLUSIVE,	)
Defendants.	) UNITED STATES DISTRICT JUDGE
	) HON. CYNTHIA BASHANT

PLAINTIFFS' OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION TO DISMISS
THE FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

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FACTUAL BACKGROUND

Plaintiffs incorporate the facts as alleged in the First Amended Complaint. (Dkt. 5, ¶¶ 1-160 [“FAC”].) Plaintiffs repeat the facts herein only as necessary to rebut Defendants’ arguments.

ARGUMENT

I. GENERAL STANDARDS FOR PLEADINGS AND MOTIONS TO DISMISS UNDER THE FEDERAL RULES OF CIVIL PROCEDURE.

“Pleadings need suffice only to put the opposing party on notice of the claim.” *Fontana v. Haskin*, 262 F.3d 871, 877 (9th Cir. 2001). “All pleadings shall be construed as to do substantial justice,” and “[n]o technical forms of pleading . . . are required.” Fed. R. Civ. P. 8(e)(1), (f). While “Plaintiffs are not required to allege legal theories, . . . doing so makes it more likely that the opposing party will have notice and better understanding of what is at issue.” *Fontana*, 262 F.3d at 877. The standard for evaluating the sufficiency of pleadings under Rule 12(b)(6) is as follows:

First, . . . allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. **Second**, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation. *AE ex rel. Hernandez v. City of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) [emphases added]). In considering a defendant’s Motion to Dismiss, the Court must accept all factual allegations of the complaint as true and construe those facts, as well as the inferences from those facts, in the light most favorable to Plaintiff. *See Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). The Ninth Circuit “relax[es] pleading requirements where the relevant facts are known only to the defendant.” *Soo Park v. Thompson*, 851 F.3d 910, 928 (9th Cir. 2017) (quoting *Concha v. London*, 62 F.3d 1493, 1503 (9th Cir. 1995)).

As to *Monell* claims, “the question of whether a policy or custom exists [is] a jury question.” *Trevino v. Gates*, 99 F.3d 911, 920 (9th Cir. 1996). The Supreme Court has rejected any “heightened pleading standard” for *Monell* claims, as such a standard would be “impossible to square . . . with the liberal system of ‘notice pleading’ set up by the Federal Rules.” *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993). *See also Erickson v. Pardus*, 551 U.S. 89 (2007); *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506 (2002). The Ninth Circuit recently reaffirmed that “a *Monell* claim filed by way of 42 U.S.C. § 1983 will withstand a motion to dismiss ‘even if the claim is based on nothing more than a bare allegation that the individual officers’ conduct conformed to official policy, custom, or practice.’ ” ¹*Reyes v. City of Santa Ana*, __ F.App’x __ (9th Cir., Oct. 22, 2020) (quoting *Lee v. City of L.A.*, 250 F.3d 668, 682–83 (9th Cir. 2001)). *See also Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 624 (9th Cir. 1988); *Shah v. Cty. of Los Angeles*, 797 F.2d 743, 747 (9th Cir. 1986); *Guillory v. County of Orange*, 731 F.2d 1379, 1381–82 (9th Cir. 1984). This line of “bare allegation” *Monell* cases has not “been implicitly overruled” by *Iqbal* or *Twombly*, and the Court has resisted making any such pronouncement. *See AE ex rel. Hernandez v. Cty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012); *Starr v. Baca*, 652 F.3d 1202, 1215 (9th Cir. 2011).

II. THIS COURT SHOULD DENY DEFENDANTS’ RULE 12(b)(6) MOTION AS TO PLAINTIFFS’ 42 U.S.C. § 1983 CLAIMS.

A. Municipal Liability Under § 1983.

As used in 42 U.S.C. § 1983, the term “person” includes cities, counties, and other local / municipal government entities. *See Monell v. New York City Dep’t of Social Services*, 436 U.S. 658 (1978). However, under *Monell* and § 1983, a municipal entity

¹ This standard exists in part because of the Ninth Circuit’s recognition that facts necessary to prove *Monell* claims are often “largely within the control of the defendant and often can be obtained only through discovery.” *See Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119, 1124 (9th Cir. 2002).

1 “may not be held liable . . . unless a policy, practice, or custom of the entity can be shown
2 to be a moving force behind a violation of constitutional rights.” *See Dougherty v. City of*
3 *Covina*, 654 F.3d 892, 900-901 (9th Cir. 2011). Thus, to establish that a government entity
4 is liable under *Monell*, a Plaintiff must prove: “ ‘(1) that [she] possessed a constitutional
5 right of which [s]he was deprived; (2) that the municipality had a policy; (3) that this
6 policy amounts to deliberate indifference to [her] constitutional right; and, (4) that the
7 policy is the moving force behind the constitutional violation.’ ” *Wilson v. Hays*, 228 F.
8 Supp. 3d 1100, 1112 (S.D. Cal. 2017) (alterations in original) (quoting *Dougherty*, 654
9 F.3d and *Plumeau v. Sch. Dist. No. 40 Cty. of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997)).
10

11 The failure of a municipality to train its employees “may amount to a policy
12 of deliberate indifference” under *Monell* “if the need to train was obvious and the failure
13 to do so made a violation of constitutional rights likely.” *Dougherty*, 654 F.3d at 900
14 (citing *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)). “Mere negligence in training
15 or supervision, however,” is insufficient. *Ibid.* A municipal entity must have “actual or
16 constructive notice that a particular omission in [its] training program causes [municipal]
17 employees to violate citizens’ constitutional rights.” *Connick v. Thompson*, 563 U.S. 51,
18 61 (2011). Under this standard, a “failure to train” claim is sufficient where it alleges a
19 “pattern of similar constitutional violations by untrained employees.” *Board of Cty.*
20 *Com’rs of Bryan Cty. v. Brown*, 520 U.S. 397, 409 (1997).
21

22 However, the Court has also recognized some instances where “the
23 unconstitutional consequences of failing to train could be so patently obvious that a
24 [municipality] could be liable under § 1983 without proof of a pre-existing pattern of
25 violations.” *See Flores v. Cty. of Los Angeles*, 758 F.3d 1154, 1159 (9th Cir. 2014). A
26 municipality’s failure “to train its employees to handle recurring situations present[s] an
27 obvious potential for” constitutional violations. *Connick*, 563 U.S. at 62.
28

1 Recently, the Ninth Circuit in *Castro* clarified that “deliberate indifference,” for
2 purposes of *Monell* liability, is judged under an objective standard, and overruled *Gibson*
3 *v. County of Washoe*, 290 F.3d 1175, 1195 (9th Cir. 2002) “[t]o the extent that *Gibson* or
4 our other cases suggest otherwise[.]” *Castro v. County of Los Angeles*, 833 F.3d 1060,
5 1076 (9th Cir. 2016).

6 **B. This Court Should Deny Defendants’ Motion as to Plaintiffs’ *Monell***
7 **Claim Because Plaintiffs Have Sufficiently Alleged That Defendant**
8 **City’s Unconstitutional Policies, Customs, and Practices Caused the**
9 **Constitutional Harm in This Case.**

10 The FAC alleges that agents of Defendant CITY committed two substantive
11 violations of Constitutional rights under 42 U.S.C. § 1983: retaliation under the First
12 Amendment, and deprivation of property without due process of law under the
13 Fourteenth Amendment. (FAC ¶¶ 30—71.) Defendants do not challenge the sufficiency
14 of those underlying claims, and they must be taken as legally sufficient for purposes of
15 this motion.

16 The FAC “reallege[s] and incorporate[s] . . . the allegations set forth in paragraphs
17 1 through 62,” and further alleges that Defendant CITY is liable for those violations
18 under *Monell* based upon its failure to train its employees. (FAC ¶¶ 72—83.)
19 Specifically, the FAC alleges that “on February 26, 2024 when defendants [DOES,
20 agents of CITY,] deprived plaintiffs of their particular rights under the United States
21 Constitution, they were acting under the color of state law, as they were acting pursuant
22 to joint, concerted and conspiratorial action in a joint effort to deprive the plaintiffs of
23 their federal constitutional rights[.]” (FAC ¶ 73.) The FAC alleges several specific ways
24 in which Defendant CITY’s training policies were Constitutionally deficient:
25

26 the training policies of defendants CITY and DOES 7 through 10, inclusive,
27 were not adequate to train their police officers and other sworn peace officer
28 personnel employed by CITY to handle the usual and recurring situations
with which they must deal with as sworn peace officers, to wit; **1) by failing**

1 to properly and adequately train San Diego Police Department police
2 officers about California Private Property Impound towing laws, such
3 as on Cal. Veh. Code § 22658(l) and Cal. Veh. Code § 22658(g)(1)(B)
4 and (C) , and 2) by failing to train its police officers and supervisors that
5 a curb merely painted red is not a Fire Lane under California state law
6 unless there is stenciling on the red curb that states FIRE LANE or that
7 there is a sign next to the red painted curb that states FIRE LANE, and
8 3) by failing to train its police officers and other officers, agents and
9 employees that if the owner of a vehicle that is wrongfully parked and
10 subject to being towed pursuant to a Private Property Impound, returns
11 to the scene of the tow and demands the release of the vehicle before the
12 vehicle is off of the private property and in transit, that the towing
13 company must immediately and unconditionally release the vehicle to the
14 owner of the vehicle or the owner's agent.

15 (FAC ¶ 74 [emphases added].) The FAC alleges that “the failure of CITY and DOES 7
16 through 10, inclusive, to properly train its police officers regarding the laws involved in
17 private property impounds was a proximate cause of the constitutional violations
18 committed by” its agents. (*Id.* ¶ 75.) The FAC further alleges that “Defendants CITY and
19 DOES 7 through 10, inclusive, . . . were deliberately indifferent to the obvious
20 consequences of their failure to train their police officers” to correct the deficiencies
21 identified above. (*Id.* ¶ 80.) The FAC alleges that “[t]he failure of defendants CITY and
22 DOES 7 through 10, inclusive” was “so closely related to the deprivation of plaintiffs’
23 rights as to be the moving force that caused the ultimate injuries to the plaintiffs.” (*Id.* ¶
24 81.) The facts alleged in the FAC, taken as true, are sufficient to state a claim against
25 Defendant CITY under *Monell* and to defeat Defendants’ Rule 12(b)(6) motion. *See*
26 *Reyes v. City of Santa Ana*, __ F.App’x __ (9th Cir., Oct. 22, 2020); *Lee v. City of L.A.*, 250
27 F.3d 668, 682–83 (9th Cir. 2001).

28 Defendant CITY asserts that “Plaintiff alleges the department failed to train
officers regarding private tows,” but that “[i]t does not include an actual training policy
that the City has in effect that is deliberately indifferent to the public’s rights.” (Dkt. 15.1
at 4.) However, Defendant CITY overlooks the fact that the alleged basis for its liability

1 is its *failure to train* its agents / officers. Plaintiffs need not allege an “actual training
2 policy” when it is the absence of an adequate policy that caused the alleged
3 Constitutional violations.

4 Defendant CITY also argues that “Plaintiffs failed to allege any notice the City had
5 with respect to any alleged deficiency in training.” (*Id.*) However, the FAC specifically
6 alleges that CITY’s agents / officers faced “usual and recurring situations,” with “obvious
7 consequences [of] fail[ing] to train their police officers” properly, like enforcing
8 “California Private Property Impound towing laws, such as on Cal. Veh. Code § 22658(l)
9 and Cal. Veh. Code § 22658(g)(1)(B) and (C),” and encountering “a painted red curb
10 [that] is not a Fire Lane[.]” (FAC ¶ 74.) For purposes of *Monell*, a “recurring situation”
11 with “obvious consequences” suffices to put Defendant CITY on notice that its failures to
12 adequately train will cause Constitutional violations. *Connick*, 563 U.S. at 62; *Castro*,
13 833 F.3d at 1076. The above cited portions of Cal. Veh. Code § 22658 exist precisely
14 because of “recurring situations” around unauthorized motor vehicle towing, which has
15 historically been used as a front for, inter alia, auto theft and extortion enterprises. *See*,
16 *e.g.*, *People ex rel. Renne v. Servantes*, 86 Cal.App.4th 1081, 1092 (2001). Indeed, The
17 San Diego Police Department had notice of “illegal towing practices . . . in the City of
18 San Diego over the last three years,” because it published a bulletin addressing this very
19 subject last year. *See* the San Diego Police Department bulletin, “SDPD
20 INVESTIGATING ILLEGAL PRACTICES BY S&S TOWING IN THE CITY OF SAN
21 DIEGO” (August 15, 2024 [available online at
22 [https://www.sandiego.gov/sites/default/files/2024-08/20240815-sdpd-investigating-](https://www.sandiego.gov/sites/default/files/2024-08/20240815-sdpd-investigating-illegal-practices-by-ss-towing-in-the-city-of-san-diego.pdf)
23 [illegal-practices-by-ss-towing-in-the-city-of-san-diego.pdf](https://www.sandiego.gov/sites/default/files/2024-08/20240815-sdpd-investigating-illegal-practices-by-ss-towing-in-the-city-of-san-diego.pdf)]). That bulletin reads, in part:

24
25 The San Diego Police Department (SDPD) is looking for additional information
26 from anyone who believes they may have been victims of illegal towing
27 practices by S&S Towing in the City of San Diego over the last three years.
28

1 Last Spring, the City Attorney’s Affirmative Civil Enforcement (ACE) Unit
2 received complaints about unfair business practices by S&S Towing primarily in
3 immigrant communities and launched an internal investigation. The ACE Unit
4 interviewed victims and witnesses, researched S&S’s business operations, and
5 inspected its tow yard. After confirming predatory practices were occurring, the
ACE Unit referred the matter to SDPD for potential criminal prosecution.

6 ...

7 Although SDPD already has several victims they are working with on the
8 investigation, the Department believes there may be more victims in the City of
San Diego.

9 *Id.* Thus, Defendant CITY, through SDPD, admits that it is was aware of recurring
10 problems surrounding “predatory towing” in violation of Cal. Veh. Code § 22658
11 because those violations had been occurring at least “over the last three years,” and CITY
12 had “interviewed victims and witnesses.” *Id.* Moreover, the perpetrators of “predatory
13 towing” identified by CITY happen to be S&S Towing, which is a party to this action,
14 along with its agents. *Id.* CITY surely had notice of this “usual and recurring” situation
15 given that it involves the same exact party violating Cal. Veh. Code § 22658 “over the
16 last three years.” *Id.* Even if S&S Towing were not involved, SDPF has a dedicated
17 “Traffic Special Investigations Unit,” with an e-mail tip line for “towing fraud.” There is
18 no reasonable argument that Defendant CITY lacked noticed of the “obvious
19 consequences” of failing to adequately train its officers on this exact subject.

20 Accordingly, the facts alleged in the FAC are clearly sufficient for purposes of
21 alleging a *Monell* claim based upon CITY’s failure to train. Defendant CITY’s motion, as
22 to Plaintiffs’ *Monell* claims, must be denied.

1 **III. THIS COURT SHOULD DENY DEFENDANTS’ RULE 12(b)(6)**
2 **MOTION AS TO PLAINTIFFS’ STATE LAW CLAIMS.**

3 **A. Defendant CITY’s Motion Fails as to Plaintiffs’ Fourth, Fifth, and**
4 **Sixth Claims Because the FAC Alleges Statutory Bases for These**
5 **State Law Claims, and the Claims are Otherwise Adequately Plead.**

6 Defendant DOES, agents of CITY, are “public employees,” and are thus liable “to
7 the same extent as a private person” under Cal. Gov. Code § 820(a). Defendant CITY of
8 San Diego is a “public entity,” and is thus “liable for injury proximately caused by” its
9 agents under Gov’t Code, § 815.2. These provisions of the California Tort Claims Act
10 operate as a limited waiver of sovereign immunity. Under this regime, “when there is
11 negligence, the rule is liability, [and] immunity is the exception.” *Johnson v. State*, 69
12 Cal.2d 782, 798 (1968).

13 Here, the FAC alleges state law claims for Conversion / Trespass to Chattels,
14 Negligence, and Intentional Infliction of Emotional Distress (“IIED”). (FAC ¶¶ 84-116.)
15 With regard to Conversion, the FAC alleges that CITY is “liable to plaintiffs pursuant to
16 Cal. Gov’t Code §§ 815.2(a) and 820.” (*Id.* ¶ 91.) With regard to negligence and IIED,
17 the FAC incorporates these statutory authorities into Plaintiffs’ Fifth and Sixth claims.
18 (FAC ¶¶ 94, 112.) Thus, Plaintiffs’ FAC has alleged statutory bases for CITY’s liability
19 under the CTCA.
20

21 Defendant CITY argues that “Direct tort liability of public entities, which Plaintiff
22 seeks to impose, must be based on a specific statute declaring them to be liable[.]” (Dkt.
23 15-1 at 6.) Plaintiffs have done exactly that. (FAC ¶¶ 91, 94, 112.) Defendant CITY
24 overlooks the FAC’s clear citation to statutory authority for CITY’s liability. Nowhere
25 does CITY’s motion address liability of public employees or entities under Cal. Gov’t
26 Code §§ 815.2(a) or 820. Aside from its reference to sovereign immunity generally—
27 which, as explained above, has been waived by statute—Defendant CITY cites none of
28 the statutory immunity provisions in the CTCA. *See e.g.*, Cal. Gov’t Code § 845.6

1 (offering limited immunity for “Failure to Provide Immediate Medical Care” to
2 prisoners). Thus, Defendant CITY’s “sovereign immunity” argument fails.

3 Defendant CITY argues that “Plaintiffs’ sixth cause of action for intentional
4 infliction of emotional distress has been insufficiently pled because Plaintiffs do not
5 plead any of the elements for this cause of action.” (Dkt. 15-1 at 6-7.) However,
6 Defendant CITY overlooks the fact that the Plaintiffs’ sixth claim “reallege[s] and
7 incorporate[s] . . . the allegations set forth in paragraphs 1 through 111[.]” (FAC ¶ 112.)
8 Plaintiffs are not required to recite the elements of IIED in their Complaint; they need
9 only allege facts that, taken as true, satisfy those elements. Generally, the
10 “outrageousness” of the conduct at issue is a question of fact unless there is some legal
11 reason it cannot be. *See Plotnik v. Meihaus*, 208 Cal.App.4th 1590, 1614 (2012).
12 Defendant CITY asserts that there is “no description of any ‘extreme and outrageous
13 conduct,’” but that is a question for the jury. *Plotnik*, 208 Cal.App.4th at 1614.

14 Thus, Defendant CITY’s motion, as to Plaintiffs’ Fourth, Fifth, and Sixth claims,
15 must be denied.
16

17 **B. Defendant CITY’s Motion as to Plaintiff’s Seventh Claim Should be**
18 **Denied.**

19 Plaintiffs’ Seventh claim—a cause of action for “Violation of Cal. Veh Code §
20 22658”—also “reallege[s] and incorporate[s] . . . paragraphs 1 through 116[.]” (FAC ¶
21 117.) Defendant CITY argues that “the facts set forth from paragraph 117 through 124
22 make no allegations that the City violated Vehicle Code section 22658.” (Dkt. 15-1 at 7.)
23 Defendants overlook the fact that all preceding paragraphs were “realleged and
24 incorporated” into Plaintiffs’ Seventh claim. Contrary to Defendant CITY’s assertion, the
25 facts set forth in those paragraphs clearly allege that agents of “City violated Vehicle
26 Code section 22658.”
27

28 Thus, Defendants’ motion as to Plaintiffs’ Seventh claim must be denied.

C. Defendant CITY's Motion, as to Plaintiff Roberts, Must be Denied.

Defendant CITY asserts that "Plaintiff Justin Roberts' only involvement in the facts plead is that he owns the subject vehicle," and thus that "[t]here is no basis for Roberts to make a Monell claim against the City." (Dkt. 15-1 at 8.) Defendant CITY cites no authority whatsoever for this argument, and Plaintiffs should not be required to guess at how exactly how CITY intended to support its argument. Suffice to say that Plaintiff Roberts has Constitutional rights like anyone else, including a Fourteenth Amendment property right in his vehicle. Because Defendant has not briefed or supported this argument in any meaningful way, it should not sway this Court, and Plaintiffs should not be required to respond to it.

Accordingly, Defendants' motion as to Plaintiffs' state law claims must be denied.

**IV. IF THIS COURT FINDS THAT PLAINTIFFS HAVE NOT
SUFFICIENTLY PLEAD ONE OR MORE CLAIMS, THE COURT
SHOULD GRANT PLAINTIFFS LEAVE TO AMEND.**

Dismissal with leave to amend should be freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2) This policy is applied with "extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Dismissal without leave to amend is appropriate only when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003). If this Honorable Court finds Plaintiffs' FAC wanting in specificity or detail, this Court should grant Plaintiffs leave to amend so that they may cure those defects.

CONCLUSION

For the reasons above, Defendants' Motion to Dismiss should be DENIED.

Date: June 27, 2025

s/Jerry L. Steering
JERRY L. STEERING