

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

KATIE ANN BARCELO and JUSTIN  
ROBERTS,

Plaintiffs,

v.

CITY OF SAN DIEGO, *et al.*,

Defendants.

Case No. 25-cv-00329-BAS-AHG

**ORDER GRANTING DEFENDANT  
CITY OF SAN DIEGO'S MOTION  
TO DISMISS**

**(ECF No. 15)**

Presently before the Court is Defendant City of San Diego's Motion to Dismiss. (ECF No. 15.) For the reasons stated below, the Motion is **GRANTED**. The Court also **GRANTS** Plaintiffs Katie Ann Barcelo and Jason Roberts leave to amend on all causes of action. Plaintiffs may file an amended complaint on or before October 31, 2025.

**I. BACKGROUND**

On February 26, 2024, Plaintiff Katie Ann Barcelo parked Plaintiff Jason Roberts' 2017 Hyundai Elantra ("Hyundai") in a lane marked red near her friend's apartment complex. (ECF No. 5 ¶ 34.) A tow truck driver, employed by Defendant S&S Towing, started to hook the Hyundai to a tow truck and prepare it for towing. (*Id.* ¶ 35.) Plaintiff

1 Barcelo confronted the tow truck driver and called the San Diego Police Department. (*Id.*  
2 ¶¶ 35–40.) When police officers from the San Diego Police Department arrived on the  
3 scene, they allegedly told Plaintiff Barcelo that the tow truck driver could tow the Hyundai  
4 because it was parked in a fire lane and allegedly instructed the tow truck driver to do so.  
5 (*Id.* ¶ 44.) Plaintiffs were later unable to retrieve the Hyundai from Defendant S&S  
6 Towing. (*Id.* ¶¶ 47–49.)

7 Following the car towing incident described above, Plaintiffs Katie Ann Barcelo and  
8 Justin Roberts (“Plaintiffs”) initiated this action by filing a complaint on February 13,  
9 2025—alleging causes of action under 42 U.S.C. § 1983 and under California state law  
10 against Defendants City of San Diego (“City”) and 51 Strategies L.L.C., *d/b/a* S&S  
11 Towing, among others. (ECF No. 1.) Plaintiffs filed an amended complaint on March 11,  
12 2025, now including claims for damages. (ECF No. 5.) On May 27, 2025, City filed a  
13 motion to dismiss regarding Plaintiffs’ claims against just City. (ECF No. 15.) Plaintiffs  
14 filed an opposition to City’s motion to dismiss. (ECF No. 19.) City filed a reply. (ECF  
15 No. 20.)

## 16 **II. LEGAL STANDARD**

17 A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the  
18 complaint. Fed. R. Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).  
19 The court must accept all factual allegations pleaded in the complaint as true and draw all  
20 reasonable inferences from them in favor of the non-moving party. *Cahill v. Liberty Mut.*  
21 *Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). To avoid a Rule 12(b)(6) dismissal, a  
22 complaint need not contain detailed factual allegations; rather, it must plead “enough facts  
23 to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550  
24 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual  
25 content that allows the court to draw the reasonable inference that the defendant is liable  
26 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*,  
27 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a  
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1 defendant's liability, it ‘stops short of the line between possibility and plausibility of  
2 entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

3 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
4 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
5 cause of action will not do.” *Twombly*, 550 U.S. at 555 (alteration in original) (quoting  
6 *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A court need not accept “legal conclusions”  
7 as true. *Iqbal*, 556 U.S. at 678. Although the court accepts plaintiff’s factual allegations as  
8 true, it is not proper for the court to assume that “the [plaintiff] can prove facts that it has  
9 not alleged or that the defendants have violated the. . . law[ ] in ways that have not been  
10 alleged.” *Associated Gen. Contractors of California, Inc. v. California State Council of*  
11 *Carpenters*, 459 U.S. 519, 526 (1983). Conclusory allegations unsupported by any specific  
12 facts are not sufficient to defeat a motion to dismiss. *McCarthy v. Mayo*, 827 F.2d 1310,  
13 1316 (9th Cir. 1987).

### 14 **III. ANALYSIS**

#### 15 **A. Plaintiffs’ Claims Under 42 U.S.C. § 1983**

16 Plaintiffs bring a cause of action under 42 U.S.C. § 1983 against City for its allegedly  
17 inadequate training policies for police officers that were a proximate cause of the violation  
18 of Plaintiffs’ Fourth Amendment and First Amendment rights. (ECF No. 5 ¶¶ 72–75.) The  
19 training policies were allegedly inadequate because they failed to instruct the San Diego  
20 Police Department about California Private Property Impound towing laws, that a curb  
21 painted red is not necessarily a fire lane, and that “if the owner of a vehicle that is...being  
22 towed pursuant to a Private Property Impound, returns to the scene of the tow and demands  
23 the release of the vehicle ...the towing company must immediately and unconditionally  
24 release the vehicle to the owner of the vehicle or the owner’s agent.” (*Id.*) Further,  
25 Plaintiffs allege that the San Diego Police Department had notice of the allegedly predatory  
26 towing practices of Defendant S&S Towing for the past three years, because it posted a  
27 bulletin detailing such practices—yet still failed to train its employees on those practices.  
28 (ECF No. 19 at 8:17–9:19.)

1 To bring a § 1983 claim, Plaintiffs must plead that: (1) City acted under color of  
2 state law and (2) deprived Plaintiffs of a constitutional right. *Gibson v. United States*, 781  
3 F.2d 1334, 1338 (9th Cir. 1986). To assert a § 1983 claim against a municipality, Plaintiffs  
4 must demonstrate that the alleged constitutional deprivation was the product of a City  
5 policy, practice, or custom. *See Bd. of Cnty. Comm’rs of Bryan Cnty., Okl. v. Brown*, 520  
6 U.S. 397, 403 (1997); *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989); *Monell v.*  
7 *Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978)

8 Here, Plaintiffs allege that the basis for municipal liability is the failure of the San  
9 Diego Police Department to train its officers. “To allege a failure to train [as the basis for  
10 § 1983 liability for a municipality], a plaintiff must include sufficient facts to support a  
11 reasonable inference (1) of a constitutional violation; (2) of a municipal training policy that  
12 amounts to a deliberate indifference to constitutional rights; and (3) that the constitutional  
13 injury would not have resulted if the municipality properly trained their employees.”  
14 *Benavidez v. County of San Diego*, 993 F.3d 1134, 1153–54 (9th Cir. 2021) (citing  
15 *Blankenhorn v. City of Orange*, 485 F.3d 463, 484 (9th Cir. 2007)). For a municipality to  
16 have exercised “deliberate indifference to constitutional rights,” the municipality must  
17 have “actual or constructive notice that a particular omission in [its] training program  
18 causes [municipal] employees to violate citizens’ constitutional rights.” *Connick v.*  
19 *Thompson*, 563 U.S. 51, 61 (2011).

20 The Court finds that Plaintiffs have failed to allege a particular police training  
21 program that led to the alleged violation of Plaintiffs’ constitutional rights. Additionally,  
22 the Court agrees with City that a single encounter with municipal personnel cannot  
23 generally evince a constitutionally deficient training policy by a municipal entity. (ECF  
24 No. 15-1 at 5.) *See also Benavidez*, 993 F.3d at 1154 (9th Cir. 2021) (“[A] single instance  
25 of unlawful conduct is insufficient to state a claim for municipal liability under section  
26 1983.”); *Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 937 (S.D. Cal. 2022) (granting a  
27 motion to dismiss a plaintiff’s claim against a municipal defendant because “an inadequate  
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1 training policy itself cannot be inferred from a single incident” (citing *Hyde v. City of*  
2 *Willcox*, 23 F.4th 863, 874–875 (9th Cir. 2022))).

3 Further, Plaintiffs’ allegation that City had awareness of illegal towing practices  
4 (ECF No. 19 at 8:17–9:19) does not prove that the San Diego Police Department: 1) has  
5 failed to train its police officers; and 2) that such alleged training failures commonly result  
6 in constitutional violations by police officers responding to towing incidents. *See Connick*,  
7 563 U.S. at 61 (Plaintiffs must allege, in part, that “the training program causes [municipal]  
8 employees to violate citizens’ constitutional rights”).

9 In other words, while the fact that City is generally aware of illegal towing practices  
10 within the city is consistent with finding liability, it “stops short of the line between  
11 possibility and plausibility of entitlement to relief” under Rule 12(b)(6). *Iqbal*, 556 U.S.  
12 at 678 (2009) (quoting *Twombly*, 550 U.S. at 557). Therefore, the Court **GRANTS** City’s  
13 motion to dismiss Plaintiffs’ § 1983 claims without prejudice.

#### 14 **B. Plaintiffs’ California Common-Law Claims against City**

15 Plaintiffs also bring causes of action against City under California state common law  
16 tort theories. Namely, Plaintiffs sue City for conversion/trespass to chattels (ECF No. 5 ¶  
17 91), negligence (ECF No. 5 ¶¶ 107–111), and intentional infliction of emotional distress  
18 (ECF No. 5 ¶ 116).

19 In California, all government tort liability must be based on a statute. California  
20 Government Code § 815, a provision in the California Tort Claims Act, states that “[e]xcept  
21 as otherwise provided by statute. . . [a] public entity is not liable for an injury, whether  
22 such injury arises out of an act or omission of the public entity or a public employee or any  
23 other person.” Cal. Gov’t Code § 815. This section “abolishes common law tort liability for  
24 public entities.” *Miklosy v. Regents of University of California*, 44 Cal. 4th 876, 899  
25 (2008).

26 Here, Plaintiffs have provided California Government Code §§ 815.2(a) and 820 as  
27 the statutory basis for their conversion, negligence, and intentional infliction of emotional  
28 distress claims directly against City. (ECF No. 5 ¶¶ 84–116.) Section 820 does not provide

1 a statutory basis for liability against City because it concerns public employees, rather than  
2 public entities. *Est. of Nunis by & through Nunis v. City of Chula Vista*, No. 21-CV-01627-  
3 AJB-DEB, 2023 WL 6035705, at \*4 (S.D. Cal. Feb. 8, 2023). Similarly, Section 815.2  
4 makes a public entity vicariously liable for its *employees'* actions but does not support a  
5 claim of a public entity's *own* failure to appropriately supervise or train its employees.  
6 *Winger v. City of Garden Grove*, No. SACV130267AGRNBX, 2013 WL 12376992, at \*5  
7 (C.D. Cal. Aug. 12, 2013). Therefore, City cannot be sued under theories of direct tort  
8 liability under §§ 815.2(a) and 820.

9 The California Tort Claims Act does allow for vicarious liability of a public entity  
10 for harm caused by an employee acting within the scope of his or her employment. *See* Cal  
11 Gov't Code § 815.2; *see also Jones v. City of Los Angeles*, No. CV057270DSFVBKX,  
12 2005 WL 8156568, at \*3 (C.D. Cal. Dec. 12, 2005). Given that Does 1 and 2 (City's police  
13 officers at the scene of the towing) were acting within the scope of their employment with  
14 City, if their actions can give rise to liability under Plaintiffs' tort claims, City could be  
15 vicariously liable. However, in their papers, Plaintiffs seek to impose direct—rather than  
16 vicarious—liability against City. (*See* ECF No. 19 at 8:21–23.) Thus, the Court also  
17 **GRANTS** City's motion to dismiss Plaintiffs' causes of action for conversion/trespass to  
18 chattels (ECF No. 5 ¶ 91), negligence (ECF No. 5 ¶¶ 107–111), and intentional infliction  
19 of emotional distress (ECF No. 5 ¶ 116) without prejudice.

20 **C. Plaintiffs' California Vehicle Code § 22658 Claim**

21 Plaintiffs do not make any specific factual allegations surrounding how City's  
22 conduct arises to a claim under California Vehicle Code § 22658. Instead, their factual  
23 allegations focus on the allegedly illegal acts of a private towing company, and not City.  
24 Thus, the Court **GRANTS** City's motion to dismiss Plaintiffs' California Vehicle Code §  
25 22658 claim under Rule 12(b)(6) without prejudice.

26 **D. Leave to Amend**

27 The Court dismisses Plaintiffs' claims against City without prejudice, and **GRANTS**  
28 Plaintiffs leave to amend on their 42 U.S.C. § 1983 claims, California state law tort claims

1 (including conversion/trespass, negligence, and intentional infliction of emotional  
2 distress), and California Vehicle Code § 22658 claim.

3 Importantly, the California Government Claims Act “requires that ‘all claims for  
4 money or damages against local public entities’ be presented to the responsible public  
5 entity before a lawsuit is filed.” *City of Stockton v. Superior Court*, 42 Cal.4th 730, 734  
6 (2007) (quoting Cal. Gov’t Code § 905). If a plaintiff fails to timely present a claim to the  
7 public entity, he may not bring a lawsuit against that entity. *See* Cal. Gov’t Code §§ 945.4,  
8 911.2; *City of Stockton*, 42 Cal.4th at 734 (“Failure to present a timely claim bars suit  
9 against the entity.”) Plaintiffs failed to allege that they filed an administrative claim under  
10 the California Government Claims Act in their initial complaint (ECF No. 1). *See* Cal.  
11 Gov’t Code §§ 905, 945.4, 911.2; *State of California v. Superior Court*, 32 Cal. 4th 1234,  
12 1237 (2004); *Johnson v. City & Cnty. of San Francisco*, No. 23-CV-02110-HSG, 2023 WL  
13 7003697, at \*3 (N.D. Cal. Oct. 23, 2023; *Mangold v. California Public Utilities Comm’n*,  
14 67 F.3d 1470, 1477 (9th Cir. 1995).

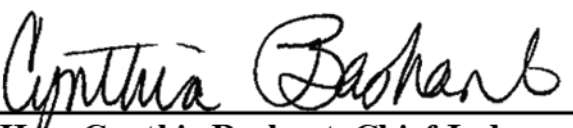
15 Thus, in amending their complaint, the Court finds that Plaintiffs must allege  
16 sufficient facts to establish either compliance with or excusal from the Government Claims  
17 Act requirements to properly state any claims against City for damages. *Johnson*, 2023  
18 WL 7003697, at \*3.

#### 19 **IV. CONCLUSION**

20 For the reasons discussed, Defendant City of San Diego’s Motion to Dismiss (ECF  
21 No. 15) is **GRANTED**. The Court also **GRANTS** Plaintiffs Katie Ann Barcelo and Jason  
22 Roberts leave to amend on all causes of action. Plaintiffs may file an amended complaint  
23 on or before October 31, 2025.

24 **IT IS SO ORDERED.**

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26 **DATED: October 10, 2025**

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Hon. Cynthia Bashant, Chief Judge  
United States District Court