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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 ABDULLAH WRIGHT,) Case No. 24-cv-02089-GPC-BLM
13 Plaintiff,)
14 v.) **DEFENDANTS CITY OF SAN**
15 CITY OF SAN DIEGO, SDPD Off.) **DIEGO AND SDPD OFFICER**
Brandon Lopez,) **BRANDON LOPEZ’S REPLY IN**
16 Defendants.) **SUPPORT OF THEIR MOTION**
) **FOR CERTIFICATION OF**
) **INTERLOCUTORY APPEAL AND**
) **MOTION FOR STAY PENDING**
) **DETERMINATION**
17) Hearing Date: August 15, 2025
18) Hearing Time: 1:30 p.m.
19) Judge: Hon. Gonzalo P. Curiel
20) Courtroom: 2D

21 Defendants City of San Diego and SDPD Officer Brandon Lopez respectfully
22 submit this reply in support of their Motion for Certification of Interlocutory Appeal
23 and Motion for Stay Pending Determination. Defendants file this reply in opposition
24 to Plaintiff’s Response in Opposition.

25 **I. ARGUMENTS**

26 Plaintiff’s Reply makes the overarching argument that the City’s Motion
27 should not be granted because the use of statistics to make a prima facie showing of
28 *Monell* liability at the pleading stage is proper. While Plaintiff makes several

1 arguments in opposition to the City’s motion for certification that the City will
2 respond to, the manner in which statistics are used as prima facie evidence of *Monell*
3 liability is the problem that the City brings to this Court’s attention and for which it
4 seeks certification.

5 The City’s primary argument is that courts should not engage in the task of
6 interpreting statistics to arrive at the conclusion that plaintiffs have or have not pled
7 sufficient “facts” to make a prima facie showing of *Monell* liability at the pleading
8 stage. Using statistics as evidence of *Monell* liability at the pleading stage, as further
9 argued below, creates a problem by asking courts to independently analyze what the
10 statistics show and ultimately what they mean. Statistics are often unreliable and they
11 are, many times, not representative of the proposition for which they are offered as
12 evidence.

13 The United States Supreme Court has warned: “We caution only that statistics
14 are not irrefutable; they come in infinite variety and, like any other kind of evidence,
15 they may be rebutted. In short, their usefulness depends on all of the surrounding
16 facts and circumstances.” *International Brotherhood of Teamsters v. U.S.*, 431 U.S.
17 324, 340 (1977) (internal citations omitted). This is why statistics, if they are used at
18 all, should be used as complementary evidence during a case in chief to support, or
19 defend, a party’s position and not as prima facie evidence of *Monell* liability. The
20 controlling and relevant case law supports this position.

21 **A. Statistics Are Not Prima Facie Evidence of a *Monell* Violation.**

22 The primary problem presented using statistics as prima facie evidence of
23 *Monell* liability at the pleading stage is that while statistics may show discriminatory
24 impact, they do not show discriminatory intent or purpose. *Washington v. Davis*, 426
25 U.S. 229, 239 (1976.) Fourteenth Amendment equal protection cases, such as
26 Plaintiff’s, require a showing of discriminatory intent, which is not supported by
27 Plaintiff’s proffered statistics. This is a significant pleading deficiency because
28 Plaintiff’s *Monell* allegations rest entirely upon statistical data in both his original

1 complaint and his first amended complaint. (ECF No. 1 at ¶¶ 17–24; ECF No. 14 at
2 ¶¶ 17–24.) This statistical evidence and “Plaintiff’s allegations concerning his
3 alleged illegal traffic stop” are the bases upon which this Court concluded in its order
4 on the City’s motion to dismiss that Plaintiff had made “a plausible allegation that
5 Officer Lopez acted with discriminatory intent against Plaintiff when he was detained
6 and arrested.” (ECF No. 13 at 7–8.) This Court also accepted Plaintiff’s statistics as
7 evidence of a comparator class in Plaintiff’s equal protection claim because this
8 finding is “supported by the statistical data relied on by Plaintiff.” (*Id.* at 9.)

9 This Court’s acceptance of Plaintiff’s proffered statistics is therefore the
10 lynchpin of a significant portion of Plaintiff’s federal causes of action. Absent this
11 Court’s acceptance of Plaintiff’s statistical data, Plaintiff cannot make a prima facie
12 showing of *Monell* liability in his FAC because a single incident is typically not
13 enough to demonstrate the existence of a *Monell* custom or policy—and Plaintiff
14 conceded he was not bringing a claim based on the single instance exception. *City of*
15 *Oklahoma v. Tuttle*, 471 U.S. 808, 821 (1985). The only other evidence Plaintiff
16 offers in support of his constitutional claims are the facts of his arrest. (ECF No. 14
17 at ¶¶ 25–96.) “To infer the existence of a city policy from the isolated misconduct of
18 a single, low-level officer, and then to hold the city liable on the basis of that policy,
19 would amount to permitting precisely the theory of strict respondeat superior liability
20 rejected in *Monell*.” *Id.* at 831.

21 The statistical evidence proffered by Plaintiff may show a disproportionate
22 racial impact related to traffic stops, but it cannot show racially discriminatory intent
23 or purpose. Plaintiff needs to show “[p]roof of racially discriminatory intent or
24 purpose [which] is required to show a violation of the Equal Protection Clause.”
25 *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S.
26 252, 265 (1977). Without such a showing, Plaintiff’s equal protection and failure to
27 train causes of action fail at the pleading stage. Plaintiff cannot make such a showing
28 because statistics do not support a finding of intentional discrimination. *U.S. v.*

1 *Redondo-Lemos*, 27 F.3d 439, 443 (9th Cir. 1994.) The reason statistics do not
2 support a finding of intentional discrimination is that statistical studies, such as those
3 proffered by Plaintiff, show the occurrence of a purportedly discriminatory actions,
4 not the motivation behind those actions.

5 While statistics may be probative, appellate courts have consistently held that
6 statistical evidence alone cannot show discriminatory purpose or intent. *McCleskey*
7 *v. Kemp*, 481 U.S. 279, 296 (1987); *Jefferson v. Hackney*, 406 U.S. 535, 548 (1972);
8 *Redondo-Lemos, supra*, 27 F.3d at 443. Even the assumption that proffered statistics
9 are valid “does not include the assumption that the [statistics] show[] that racial
10 considerations actually enter[ed] into any” allegedly discriminatory decisions.
11 *McCleskey*, 481 U.S. at 291 n.7. To the extent that prior appellate opinions expressed
12 “that the substantially disproportionate racial impact of [an] official practice standing
13 alone and without regard to discriminatory purpose, suffices to prove racial
14 discrimination violating the Equal Protection Clause,” those cases have been
15 overruled. *Washington*, 426 U.S. at 244–45.

16 More recently, district courts within the Ninth Circuit and outside of the
17 Southern District of California have affirmed the principle that statistics do not show
18 discriminatory purpose or intent in *Monell* claims. *Greenstone v. Las Vegas Metro.*
19 *Police Dep’t*, No. 2:23-cv-00290-GMN-NJK, 2024 WL 385213 at *13 (D. Nev. Jan.
20 31, 2024) (“[D]istrict courts within the Ninth Circuit have found statistical arguments
21 insufficient to show facts necessary for alleging an improper custom. . . . For a *Monell*
22 claim, context is needed to connect the data to a finding that the individuals who
23 underly the statistic suffered a constitutional violation.”); *see Baca v. Anderson*, No.
24 22-02461, 2023, 2023 WL 11892957 at *6 (N.D. Cal. Feb. 23, 2023) (“Without more
25 information, it is impossible for me to evaluate this statistic to determine what (if
26 any) import it may have for a *Monell* analysis.”).

27 District courts outside of the Ninth Circuit have also dismissed cases at the
28 pleading stage where *Monell* claims were solely based on statistical evidence or

1 media reports. *Nance v. City of New York*, No. 09–CV–2786 (ENV)(VVP), 2011 WL
2 2837491 at *9 (E.D.N.Y. July 14, 2011) (dismissing a municipal liability claim under
3 Rule 12(b)(6) where the plaintiff “trot[ted] out the magic words from *Monell*—
4 ‘practice, policy, and custom’—without providing a shred of factual support for her
5 claim aside from a general allusion to ‘statistic[s]’ ” about similar occurrences); *Perez*
6 *v. New York City Dep’t of Corr.*, No. 10–CV–2697 (RRM)(RML), 2012 WL 3704744
7 at *6 (E.D.N.Y. Aug. 2012) (dismissing a *Monell* claim under Rule 12(b)(6) where
8 the plaintiff “relie[d] on unsubstantiated and general allegations in newspaper articles
9 and a blog post to suggest that the [complained of] conduct” had previously occurred;
10 finding that the articles, “if true, at best cite a handful of instances the specifics of
11 which are not clear.”).

12 In keeping with the principle of limiting the types of cases where statistical
13 evidence can be used to prove racially discriminatory purpose or intent, the Ninth
14 Circuit and the Supreme Court have proscribed the use of statistics in all cases except
15 Title VII and jury selection cases. *McCleskey*, 481 U.S. at 294–95 (declining to use
16 a statistical study directly addressing the facts of the case as evidence of
17 discriminatory purpose or intent in a Fourteenth Amendment Equal Protection
18 challenge); *Redondo-Lemos*, 27 F.3d at 444.

19 This proscription is particularly appropriate in § 1983 cases because
20 discriminatory intent cannot be deduced from statistical evidence because statistics
21 cannot speak to a deliberate choice necessarily made to vindicate a specific intent or
22 achieve a particular purpose. “[M]unicipal liability under § 1983 attaches where—
23 and only where—a deliberate choice to follow a course of action is made from among
24 various alternatives” by municipal policymakers. *Pembaur v. Cincinnati*, 475 U.S.
25 469, 483–84 (1986). Whatever deductions can be drawn from statistical evidence, a
26 deliberate intent or purpose to discriminate is not one of them. The exception to this
27 proscription occurs when a statistical pattern is patently obvious as found in *Yick Wo*
28

1 *v. Hopkins*, 118 U.S. 356 (1886) and *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).¹
2 “But such cases are rare. Absent a pattern as stark as that in *Gomillion or Yick Wo*,
3 impact alone is not determinative, and the Court must look to other evidence.” *Village*
4 *of Arlington Heights*, *supra*, 429 U.S. at 266. Something more than statistics is
5 typically necessary to make a showing on intent. *Id.* It is this “other evidence” that is
6 missing in Plaintiff’s FAC.

7 **B. Plaintiff’s Arguments Against Certification are Unavailing.**

8 Plaintiff makes several arguments in opposition that cannot be credited.
9 Plaintiff first argues that “[t]he City’s case citations reveal fact-driven inquiries
10 evaluating individual complaints, not pure questions of law.” (Opp’n at p. 6.) The
11 point of the City’s request for certification is that the question as to whether statistics
12 can be used to prove a prima facie case of *Monell* liability is a question of law. It is
13 the factual inquiry that makes the use of statistics problematic because this inquiry
14 asks courts to individually assess the meaning and impact of the proffered statistics
15 in order to determine if they might equal intent. This question was first answered in
16 *Washington v. Davis* then reaffirmed thrice in *McCleskey v. Kemp*, *Jefferson v.*
17 *Hackney*, and *U.S. v. Redondo-Lemos*.

18 Plaintiff also argues that the “City can point to no substantial ground for
19 difference of opinion.” (Opp’n at p. 12.) While the City believes it has shown that
20 there is a substantial ground for difference of opinion between the courts in the
21 Southern District, the district court cases within and without the Ninth Circuit show
22 this noted difference of opinion is not geographically limited.

23 Lastly, Plaintiff argues that the “City cannot show that an interlocutory appeal
24 here would “materially advance the ultimate termination of the litigation.” (Opp’n at
25

26 ¹ As noted in *McCleskey v. Kemp*, 481 U.S. at 293 n.12, the “stark pattern[s]” of racial
27 discriminatory impact that per se demonstrated a constitutional violation shown by
28 the statistical evidence in *Gomillion* and *Yick Wo* were 100% and 98.75%,
respectively.

1 p. 14–15.) If the City prevails on interlocutory appeal, Plaintiff’s second and third
2 causes of action should be dismissed, as his only non-statistical showing consists of
3 the facts surrounding his own arrest. (ECF No. 14 at ¶¶ 17–96.) This is a proposition
4 that is supported in Plaintiff’s Opposition. (Opp’n at p. 15.)

5 **II. CONCLUSION**

6 Plaintiff’s reliance on statistical data to make a prima facie showing for his
7 *Monell* and equal protection claims fails under controlling precedent, which does not
8 permit an inference of the City’s purported discriminatory intent based solely on such
9 evidence. Moreover, bare statistics cannot provide context and do not speak to
10 motives or purpose. Statistics speak the language of the individual who compiled
11 them and are subject to differing interpretations by others. Or as Mark Twain said:
12 “Facts are stubborn things, but statistics are pliable.” This pliability should be tested
13 when plaintiffs and defendants are able to question the veracity of the statistics in
14 question, not before.

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16 Dated: June 13, 2025

HEATHER FERBERT, City Attorney

17
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21 CITY OF SAN DIEGO and
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