

1 HEATHER FERBERT, City Attorney
M. TRAVIS PHELPS, Assistant City Attorney
2 ELIZABETH L.A. BIGGERSTAFF, Deputy City Attorney
California State Bar No. 310286
3 Office of the City Attorney
1200 Third Avenue, Suite 1100
4 San Diego, California 92101-4100
Telephone: (619) 533-5800
5 Facsimile: (619) 533-5856

6 Attorneys for Defendants
CITY OF SAN DIEGO and SDPD Off. Brandon Lopez
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10	ABDULLAH WRIGHT,	}	Case No. 24-cv-02089-GPC-BLM
11	Plaintiff,	}	DEFENDANTS' REPLY TO
12	v.	}	PLAINTIFF'S OPPOSITION TO
13	CITY OF SAN DIEGO, SDPD Off.	}	DEFENDANTS' MOTION TO
14	Brandon Lopez,	}	DISMISS
15	Defendants.	}	District Judge: Hon. Gonzalo P. Curiel
16		}	Court Room: 2D
17		}	Magistrate Judge: Hon. Barbara L.
18		}	Major
		}	Hearing date: April 18, 2025
		}	Time: 1:30 p.m.
		}	Court Room: 2D

19 Plaintiff's rests his opposition entirely on the RIPA statistics cited in the
20 complaint. However, such reliance is a fragile foundation that does not support the
21 weight of his argument. Without support, Plaintiff's equal protection, failure to train,
22 and Bane act causes of action fail to state a claim and must be dismissed.

23 **A. Plaintiff's Reliance on RIPA Statistics is Misplaced as the Statistical**
24 **Data Does Not State a Claim and is Irrelevant Here.**

25 The City could not find a single case in the Ninth Circuit or in California that
26 relies on RIPA statistics to support a Failure to Train claim. Nevertheless, Plaintiff
27 does not include any relevant data to his incident date and does not allege a single
28 deficient training program. Courts in this district have held that similar statistical data

1 is insufficient to state a *Monell* claim.

2 In *Whyte v. City of San Diego*, Judge Burns dismissed a *Monell* Failure to Train
3 claim that relied on four different studies and reports. No. 21cv1159-LAB-MDD,
4 2022 WL 17491178, *1, *4 (S.D. Cal. Dec. 7, 2022). There, Plaintiffs relied on a San
5 Diego State University 2016 study, a 2019 NBC San Diego report, a National Justice
6 Database Report, and a Police Scorecard evaluation. *Id.* Plaintiffs alleged these
7 studies showed the SDPD had well-known discriminatory policing practices,
8 resulting from the City’s failure to train. *Id.* The Court held “these allegations fall far
9 short of the threshold needed to properly plead a failure-to-train theory.” *Id.* at *5.
10 The Court found they did not “touch on the issue of insufficient training of SDPD
11 officers, nor do any suggest that insufficient training is what ‘actually caused’ the
12 constitutional violations alleged.” *Id.*

13 In *Piccini v. City of San Diego*, the Plaintiff relied on two of the four studies
14 listed above. No.: 21-CV-01343-W-KSC, 2022 WL 2788753, *1, *4 (S.D. Cal. July
15 15, 2022). Judge Whalen held the studies failed to support a Failure to Train claim
16 because “the studies do not involve . . . insufficient training for Policy 1.04 [the policy
17 at issue].” *Id.* In another case, Judge Whelan confirmed the use of these studies do
18 not support a *Monell* claim because they “do not identify what is allegedly deficient
19 about the City’s . . . training . . . nor connect the disparities in stops, searches, and
20 arrests to SDPD officers acting without reasonable suspicion or probable cause.”
21 *Spriggs v. City of San Diego*, No. 24-cv-01006-W-KSC, 2024 WL 4469218, *1, *7
22 (S.D. Cal. Oct. 9, 2024).

23 More recently in *Russell v. City of San Diego*, this Court dismissed a *Monell*
24 claim based on the same four reports as *Whyte*. No.: 24cv0527-GPC(SBC), 2024 WL
25 4308794, *1, *5 (S.D. Cal. Sep. 26, 2024). This Court held these types of statistical
26 allegations *could* support constitutional violations if the following is alleged: the
27 relevant years of data, whether the City had actual or constructive notice of the
28 reports, and whether the data is San Diego-based. *Id.*

1 Here, Plaintiff similarly relies on statistical data in attempting to allege a
2 *Monell* Failure to Train cause of action. (Dkt. No. 1 ¶¶ 17–24;130–140.) However,
3 as this Court noted in *Russell*, Plaintiff fails to include the data from the relevant
4 years to his claim. (Dkt. No. 1 ¶¶ 17–24.) The cited data lists statistics from July 2018
5 to June 2019 or Q3 2018 to Q3 2020, but Plaintiff’s incident occurred on September
6 24, 2023. (Dkt. No. 1 ¶¶ 21, 23, 24, 36.) Further, Plaintiff refers to the RIPA 2023
7 Annual Report, however, that report’s data is from 2021, years before this incident.
8 (*Id.* ¶ 19; Racial and Identity Profiling Advisory Board, Annual Report 2023 at 7.)
9 Further, Plaintiff does not allege that the City had actual or constructive notice of
10 these reports or whether the City participated in them. Much of the data from the
11 RIPA reports is based on cities all over California and the data specific to San Diego
12 does not discuss insufficient training or state that the lack of such training is the
13 moving force behind Plaintiff’s constitutional violations. Finally, the RIPA data does
14 not identify what training policies are deficient.

15 Plaintiff’s opposition fails to explain how data from years prior to his incident
16 supports his Failure to Train theory. (Dkt. No. 9 at 21.) Rather, Plaintiff only argues
17 irrelevant data should be found to plausibly state a claim because relevant data is
18 unavailable. (*Id.*) Plaintiff cites no case law supporting this theory and this Court and
19 District have suggested that only relevant data may support a *Monell* claim. *See*
20 *Russell*, 2024 WL 4308794 at *5 (“the FAC does not allege the relevant years for the
21 Police Scorecard.”). Because there is no correlation to the data relied on and the
22 City’s training policies—or lack thereof—the data fails to support Plaintiff’s *Monell*
23 and equal protection claims.

24 **B. Plaintiff’s Failure to Identify a Deficient Training Program is Fatal**
25 **to the *Monell* Claim.**

26 Plaintiff presents a novel argument that they do not have to allege a deficient
27 training program in a *Monell* Failure to Train claim. (Dkt. No. 9 at 15–18.) The
28 Supreme Court established a three-part test for this theory, beginning with whether

1 the training program is adequate. *City of Canton v. Harris*, 489 U.S. 378, 391 (1989).
2 The Ninth Circuit and the Southern District have similarly held that the first element
3 requires alleging an inadequate training program. *Merritt v. County of Los Angeles*,
4 875 F.2d 765, 770 (9th Cir. 1989); *Astorga v. County of San Diego*, No.: 3:21-cv-
5 00463-BEN-KSC, 2022 WL 1556164, *1, *5 (S.D. Cal. May 17, 2022).

6 The Supreme Court held such a stringent standard is necessary for a Failure to
7 Train claim otherwise cities would have “*de facto respondeat superior* liability.” *City*
8 *of Canton*, 489 U.S. at 379. Without such notice that a training course is deficient,
9 decisionmakers can hardly be said to have deliberately chosen a training program
10 that will” violate constitutional rights. Moreover, for liability to attach, the “identified
11 deficiency in a city’s training program must be closely related to the ultimate injury.”
12 *City of Canton*, 489 U.S. at 391.

13 Ignoring this, Plaintiff asserts its failure to identify an inadequate training
14 program “is of no moment.” (Dkt. No. 9 at 16.) Yet despite this novel theory, Plaintiff
15 does have to allege a particular omission in the City’s training program which causes
16 city employees to violate citizens’ constitutional rights such that the city may be
17 deemed deliberately indifferent if the policymakers choose to retain that program. *Id.*
18 at 396. But he failed to do so.

19 Plaintiff fails to identify a single deficient training program, instead relying on
20 RIPA data and conclusory allegations. (Dkt. No. 9 at 17.) This data is irrelevant, as
21 it does not address the City’s training programs, or any alleged deficiencies, which
22 the City was deliberately indifferent to. (Dkt. No. 1 ¶¶ 17–20.) Further, Plaintiff does
23 not explain how the RIPA data is relevant against the City of San Diego when the
24 data include statistics from all of California. This fails to support a *Monell* claim
25 because it fails to show how any City-specific training deficiencies violated
26 individuals’ rights. The Police Scorecard data is equally unpersuasive, as it does not
27 assess whether stops were based on reasonable suspicion or probable cause. (*Id.* ¶¶
28 21–23.) Thus, this data fails to show how any City-specific training program was

1 deliberately indifferent to citizens’ rights. The City cannot be said to have
2 deliberately chosen a training program that violates San Diegan’s rights when no
3 training program is alleged, and the data cited is out of date and so generalized that
4 no line can be drawn from a City training program to Plaintiff’s ultimate injury.

5 In addition to arguing no training program must be specified, Plaintiff points
6 to his other allegations to support his claim. (Dkt. No. 9 at 16.) However, these
7 allegations are merely conclusory and still state no specific training program. The
8 only allegation relating to training states that “[t]raining policies of Defendant City
9 of San Diego were not adequate to prevent [constitutional] violations” (Dkt. No.
10 1 ¶ 138.) Plaintiff argues such threadbare allegations are sufficient because it is
11 accompanied by the RIPA data. (Dkt. No. 9 at 16–17.) However, as noted above, the
12 RIPA and other statistical data fails to support the *Monell* claim. Without that,
13 Plaintiff is left with his threadbare allegation and his case is akin to *Mong Kim Tran*
14 and *Ting*, where the Court dismissed *Monell* claims for threadbare, conclusory
15 allegations. *Mong Kim Train v. City of Garden Grove*, No. SACV 11–1236 DOC
16 (ANx), 2012 WL 405088, *1, *4 (C.D. Cal. Feb. 7, 2012); *Ting v. United States*, 927
17 F.2d 1504, 1512 (9th Cir. 1991).

18 Judge Battaglia held similarly when a *Monell* Failure to Train claim alleged
19 the same style of conclusory allegations. *Sanders v. City of National City*, No. 20-cv-
20 00085-AJB-BLM, 2020 WL 6361932, *4 (S.D. Cal. Oct. 29, 2020). The Court there
21 noted the plaintiff did not allege a specific training policy, but rather made vague
22 references to “training policies.” *Id.* The Court held these “overly generalized
23 allegations do not suffice.” *Id.* In a list of deficiencies, the Court stated Plaintiff did
24 not allege how the City failed to train its officers, what topics were missing from
25 training, how the training was deficient, whether policymakers were aware of such
26 deficiency, or how inadequate training caused plaintiff’s constitutional violations. *Id.*
27 Here, Plaintiff’s complaint contains similar generalized allegations and thus fails to
28 allege any a *Monell* claim.

1 Thus, despite Plaintiff’s claim that RIPA statistics suffice, and he need not
2 allege a deficient training program, he has not stated a *Monell* claim, and the City
3 respectfully requests the Court dismiss it.

4 **C. Plaintiff’s Overgeneralized Comparative Class Fails to State an**
5 **Equal Protection Claim.**

6 Plaintiff’s equal protection theory swallows the purpose of a similarly situated
7 class. Plaintiff argues in his opposition that Plaintiff’s protected class is Black drivers
8 and pedestrians within San Diego and the comparative class is white individuals in
9 vehicle and pedestrian stops within San Diego. (Dkt. No. 9 at 15.) Although Plaintiff
10 states this is a “well-defined” class, it includes every single interaction between a San
11 Diego police officer and a white or black individual in a vehicle or walking down the
12 street. This is impermissibly broad and fails.

13 Plaintiff must identify a similarly situated class against which Plaintiff’s class
14 can be compared to bring an equal protection claim. *Freeman v. City of Santa Ana*,
15 68 F.3d 1180, 1187 (9th Cir. 1995). “The groups must be comprised of similarly
16 situated persons so that the factor motivating the alleged discrimination can be
17 identified.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005).
18 Separate groups of individuals are similarly situated when their circumstances are
19 essentially “indistinguishable” or “in all relevant respects alike.” *Ross v. Moffitt*, 417
20 U.S. 600, 609 (1974); *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

21 Here, Plaintiff’s proposed comparison between white drivers and pedestrians
22 and black drivers and pedestrians is too broad because it fails to account for relevant
23 factors that could affect officer’s treatment of them. Plaintiff must show that all white
24 drivers and pedestrians are similarly situated in all relevant aspects were treated
25 differently, yet this overly expansive class fails to consider relevant factors such as
26 the time, location, and circumstances of the police stop. Further, there could be
27 substantive differences in the behaviors and actions leading up to police encounters.
28 Painting such a broad stroke ignores these key contextual factors. Plaintiff is not

1 similarly situated to a white driver who was pulled over for running a red light,
2 swerving due to intoxication, or a white pedestrian fleeing a robbery or completing a
3 drug transaction. Plaintiff's attempt to compare all Black drivers and pedestrians to
4 all white drivers and pedestrians disregards the necessary specificity required in equal
5 protection claims, making the class definition too broad to be legally viable. Plaintiff
6 fails to cite any cases supporting his classification theory.

7 In *Sykes v. City of Henderson*, the Court found the plaintiff stated an equal
8 protection claim based on illegal racial profiling. 738 F. Supp. 3d 1344, 1352 (D.
9 Nev. 2024). There, several individuals witnessed a robbery in a park, including a
10 white woman and two black individuals. *Id.* at 1351. When the police arrived, they
11 told plaintiff—one of the two black individual witnesses—to put his hands up,
12 questioned him, and ran a warrant check. *Id.* at 1348. However, the officers did not
13 treat the white woman as a suspect, only approaching her as witness. *Id.* at 1352. The
14 Court stated the officers' disparate treatment of the similarly situated white woman
15 was enough to support the inference that officers treated Sykes differently based on
16 his race. *Id.* at 1352–53. This classification is valid because both individuals were in
17 the park, witnessed a crime, and were virtually indistinguishable to officers, with race
18 being the only difference in their treatment.

19 However, the numerous differences between “white individuals in San Diego”
20 (Dkt. No. 1 ¶ 129), and Plaintiff make it impossible to determine whether those
21 individuals are truly “indistinguishable” or alike in all relevant respects to Plaintiff.
22 *See Ross v. Moffitt*, 417 U.S. 600, 609 (1974). As a result, there is no basis to conclude
23 that Officer Lopez's treated Plaintiff based on race. Thus, Plaintiff has not pled a
24 similarly situated class and his equal protection claim must fail.

25 **D. Plaintiff's Conclusory and Information and Belief Allegations Fail**
26 **to Plausibly Allege Intentional Discrimination.**

27 Plaintiff's opposition fails to address the City's argument that the unlawful
28 discrimination element of his equal protection claim cannot be alleged on information

1 and belief. Rather, Plaintiff’s opposition discusses generally whether information and
2 belief allegations can be used to support a claim. (Dkt. No. 9 at 13–14.) Plaintiff fails
3 to cite a single case holding that information and belief allegations can be used to
4 support the intentional discrimination element required for an Equal Protection claim.
5 To state an Equal Protection violation, Plaintiff must show Officer Lopez “acted with
6 an intent or purpose to discriminate against the plaintiff based upon membership in a
7 protected class, and that plaintiff was treated differently from persons similarly
8 situated.” *Lam v. City & Cty. of San Francisco*, 868 F. Supp. 2d 928, 951 (N.D. Cal.
9 2012) (internal quotations omitted).

10 Plaintiff cites *Soo Park v. Thompson* in support of his argument that
11 information and belief allegations can support a cause of action when the factual
12 information necessary is within the defendants’ hands. (Dkt. No. 9 at 14.) However,
13 that case is inapposite and factually distinguishable. First, *Soo Park* does not analyze
14 an equal protection claim, only a 1983 civil conspiracy claim. 851 F.3d 910, 928 (9th
15 Cir. 2017). *Soo Park*, on trial for murder, sought to present evidence implicating
16 another suspect, Gilmore. *Id.* at 915–16. The detective pressured Gilmore’s
17 girlfriend, Ayala, not to testify by threatening her with charges, preventing Park from
18 introducing exculpatory evidence. *Id.* Park sued, alleging a conspiracy to violate her
19 rights. The Court found her claims plausible, emphasizing the detailed factual
20 allegations of the detective’s behavior alongside those made on information and
21 belief. *Id.* at 928–29.

22 Here, unlike *Soo Park*, Plaintiff has not alleged any specific factual allegations
23 regarding Officer Lopez’s intentional discrimination. Plaintiff’s lone allegation is
24 based on information and belief, setting this case apart from *Soo Park*, where there
25 were more allegations than just information and belief, making the inference of
26 culpability plausible. The other two cases Plaintiff cites, *Arista* and *Concha*, come
27 straight from the *Soo Park* opinion and have no applicability to the instant case. (Dkt.
28 No. 9 at 14; *Soo Park*, 851 F.3d at 928.) *Arista* is a Second Circuit case and does not

1 address intentional discrimination under Equal Protection. *Arista Records, LLC v.*
2 *Doe 3*, 604 F.3d 110 (2d Cir. 2010). Yet even there, the Court noted the information
3 and belief allegations were backed by factual assertions in an exhibit to the complaint,
4 providing the necessary factual support. *Id.* at 121. *Concha* is also irrelevant, as it
5 fails to address information and belief allegations, simply holding Rule 9’s
6 heightened pleading standard does not apply to breach of fiduciary duty. *Concha v.*
7 *London*, 62 F.3d 1493, 1502–03.

8 Plaintiff also relies on *Starr v. Baca*, however, although this case is irrelevant
9 to the facts at hand, it demonstrates how Plaintiff fails to state a claim. (Dkt. No. 9 at
10 14.) First, *Starr* does not discuss equal protection or allegations made on information
11 and belief. 652 F.3d 1202 (9th Cir. 2011). Nevertheless, the Court found *Starr*
12 plausibly alleged deliberate indifference by alleging “detailed factual allegations that
13 go well beyond reciting the elements of a claim of deliberate indifference.” *Id.* at
14 1216. The Court noted this included over 17 paragraphs of factual allegations
15 specifying instances of past mistreatment by the Sheriff or his employees. *Id.* at
16 1208–12. Based on these, the Court found “the factual allegations in *Starr*’s
17 complaint plausibly suggest” deliberate indifference. *Id.* at 1216.

18 Here, Plaintiff did not plead any factual allegations alleging Officer Lopez
19 intentionally discriminated against him. There is only one allegation that mentions
20 intentional discrimination and it is conclusory: “Plaintiff Wright was intentionally
21 treated differently by Defendant Officer Lopez than white individuals in San Diego.”
22 (Dkt. No. 1 ¶ 129.) Plaintiff’s other allegations are based on information and belief
23 that Lopez handcuffed him “because he is a young Black man” do not plead
24 intentional discrimination. (*Id.* ¶¶ 65, 69, 76, 78.) Accepting such a standard would
25 allow any person stopped by police to assert an equal protection claim with mere
26 speculation on information and belief.

27 **E. Plaintiff’s Allegations Do Not Amount to Reckless Disregard.**

28 Courts have held that to satisfy the Bane Act’s intent requirement a plaintiff

1 only needs to allege the defendant acted with a reckless disregard for the person’s
2 rights. *Reese v. Cty. of Sacramento*, 888 F.3d 1030, 1045 (9th Cir. 2018). Here,
3 Plaintiff’s facts do not plausibly allege reckless disregard as Plaintiff includes no
4 allegations regarding Lopez’s subjective intent to recklessly disregard Plaintiff’s
5 rights. *Cornell v. City & Cty. of San Francisco*, 17 Cal. App. 5th 766, 804 (2017).
6 Plaintiff only includes legal conclusions or information and belief allegations.

7 In *Hulet v. County of Tuolumne*, relied on by Plaintiff, the Court found the
8 plaintiff stated a Bane Act claim because Hulet plead the deputies violated his rights
9 with deliberate indifference or reckless disregard, and stated 69 facts demonstrating
10 it. No. 1:23-cv-01217-KES-HBK, 2024 WL 3758360, *1, *13 (E.D. Cal. Aug. 12,
11 2024). These facts reference not only the deputies’ allegedly illegal actions, but also
12 the subjective knowledge the deputies had during their actions. For example, the
13 Court notes the plaintiff alleged “the deputies body-slammed him onto his back,
14 which they knew to be injured, thus further injuring his T11 and T12 vertebrae.” *Id.*
15 (emphasis added). The Court also points out allegations that the deputies “wrenched
16 his injured arm behind his back, knowing that just touching it caused him pain.” *Id.*
17 (emphasis added). These facts, the Court held, demonstrate a reckless disregard of
18 Hulet’s rights and plead the subjective intent element.

19 Here, Plaintiff does not plead any facts regarding Officer Lopez’s subjective
20 knowledge—outside of legal conclusions that Officer Lopez acted without
21 reasonable suspicion or probable cause and allegations pled only on information and
22 belief—to disregard Plaintiff’s rights. Allegations putting forth legal conclusions are
23 not enough, nor are allegations alleging specific intent on information and belief.
24 Thus, Plaintiff fails to state a claim.

25 Dated: February 14, 2025

HEATHER FERBERT, City Attorney

26 By s/Elizabeth L. A. Biggerstaff
27 Elizabeth L.A. Biggerstaff
28 Deputy City Attorney
Defendants City and Lopez