

1 MICHELE A. McKENZIE (SBN 209657)

2 TIMOTHY A. SCOTT (SBN 215074)

3 MICHELLE C. ANGELES (SBN 298883)

4 MCKENZIE SCOTT PC

5 1350 Columbia Street, Suite 600

6 San Diego, California 92101

7 Tel: (619) 794-0451

8 Fax: (619) 202-7461

9 Email:

mmckenzie@mckenziescott.com

tscott@mckenziescott.com

mangeles@mckenziescott.com

10 *Attorneys for Abdullah Wright*

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13
14 ABDULLAH WRIGHT,

15 Plaintiff,

16
17 vs.

18 CITY OF SAN DIEGO,

19 SDPD Off. Brandon Lopez,

20 Defendants.

Case No.: 24cv2089-GPC-BLM

Hon. Gonzalo P. Curiel

Courtroom: 2D

Date: June 27, 2025

Time: 1:30 p.m.

21 PLAINTIFF’S RESPONSE IN
22 OPPOSITION TO “DEFENDANTS
23 CITY OF SAN DIEGO AND SDPD
24 OFFICER BRANDON LOPEZ’S
25 NOTICE OF MOTION AND
MOTION FOR CERTIFICATION
OF INTERLOCUTORY APPEAL
AND MOTION FOR STAY
PENDING DETERMINATION”
(ECF 18).

27 PLAINTIFF’S RESPONSE IN OPPOSITION TO “DEFENDANTS CITY
28 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” (ECF 18).

TABLE OF CONTENTS

1

2 I. Introduction..... 1

3 II. Interlocutory appeals are permitted under 28 U.S.C. § 1292(b)

4 only in “exceptional” circumstances. 2

5 A. Section 1292(b) is to be “applied sparingly,” “construed narrowly,”

6 and is limited to “exceptional situations.” 2

7 B. Because the City fails to demonstrate a “controlling question of

8 law,” involving a “substantial ground for difference of opinion,” and an

9 immediate appeal would not “materially advance the ultimate

10 termination of the litigation,” Section 1292(b) does not permit an

11 interlocutory appeal here..... 3

12 1. The City has not demonstrated a “controlling question of law”

13 justifying an interlocutory appeal..... 4

14 a) Defendant City is seeking certification of a mixed question of

15 fact and law, thus an interlocutory appeal is inappropriate. 4

16 b) The City’s case citations reveal fact-driven inquiries

17 evaluating individual complaints, not pure questions of law..... 6

18 2. Defendant City can point to no “substantial ground for difference

19 of opinion.” 12

20 3. Defendant City cannot show that an interlocutory appeal here

21 would “materially advance the ultimate termination of the

22 litigation.” 14

23 III. Conclusion. 15

24

25

26

27

28

TABLE OF AUTHORITIES

Cases

Abdul-Hafeez v. City of San Diego, No. 24-CV-1184-RSH-DDL,
2025 WL 696993 (S.D. Cal. Mar. 4, 2025) 10, 11

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 6, 10

Belin v. Starz Ent., LLC, No. 2:21-CV-09586-FWS-PLA,
2024 WL 5185313 (C.D. Cal. Oct. 25, 2024) 4

Boykins v. City of San Diego, No. 21-CV-01812-AJB-AHG,
2022 WL 3362273 (S.D. Cal. Aug. 15, 2022)..... 10

City of Chula Vista v. Monsanto Co., No. 18CV1942-WQH-AGS,
2019 WL 1317330 (S.D. Cal. Mar. 22, 2019) 5

Couch v. Telescope Inc.,
611 F.3d 629 (9th Cir. 2010) 3, 13

Heard v. Cnty. of San Bernardino, No. 5:20-CV-02335-JWH-KKX,
2021 WL 5083336 (C.D. Cal. Oct. 12, 2021) 11, 12

Henley v. Jacobs, No. C 18-2244 SBA,
2019 WL 8333448 (N.D. Cal. Oct. 25, 2019) 14

IBLC Abogados, S.C. v. Bracamonte, No. 11-CV-2380-GPC-KSC,
2013 WL 5418047 (S.D. Cal. Sept. 26, 2013) 2, 15

In re Cement Antitrust Litig. (MDL No. 296),
673 F.2d 1020 (9th Cir. 1981) 2

James v. Price Stern Sloan, Inc.,
283 F.3d 1064 (9th Cir. 2002) 2

1 *Karoun Dairies, Inc. v. Karlacti, Inc.*, No. 08CV1521 AJB (WVG),
2 2014 WL 11906588 (S.D. Cal. Sept. 3, 2014) 4
3 *McKinnie v. City of San Diego*, No. 3:24-CV-00827-H-SBC,
4 2024 WL 4126062 (S.D. Cal. Sept. 9, 2024) 11
5 *Monell v. Dep't of Soc. Servs. of City of New York*,
6 436 U.S. 658 (1978) passim
7 *Piccini v. City of San Diego*, No. 21-CV-01343-W-KSC,
8 2022 WL 2788753 (S.D. Cal. July 15, 2022) 7, 8
9 *Reese v. BP Expl. (Alaska) Inc.*,
10 643 F.3d 681 (9th Cir. 2011) 14
11 *Russell v. City of San Diego*, No. 24CV0527-GPC(SBC),
12 2025 WL 297034 (S.D. Cal. Jan. 24, 2025) 11
13 *Spriggs v. City of San Diego*, No. 24-CV-01006-W-KSC,
14 2024 WL 4469218 (S.D. Cal. Oct. 9, 2024)..... 7, 8
15 *Spriggs v. City of San Diego*, No. 24-CV-1006 W (KSC),
16 2025 WL 474918 (S.D. Cal. Feb. 12, 2025) 9
17 *Swint v. Chambers Cnty. Comm'n*,
18 514 U.S. 35 (1995) 3
19 *U. S. Rubber Co. v. Wright*,
20 359 F.2d 784 (9th Cir. 1966) 15
21 *United States v. Woodbury*,
22 263 F.2d 784 (9th Cir. 1959) 4
23 *Whyte v. City of San Diego*, No. 21CV1159-LAB-MDD,
24 2022 WL 17491178 (S.D. Cal. Dec. 7, 2022) 9

24 **Statutes**

25 28 U.S.C. § 1292(b) passim

27 PLAINTIFF’S RESPONSE IN OPPOSITION TO “DEFENDANTS CITY
28 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” (ECF 18).

1 **I. Introduction.**

2 Plaintiff Abdullah Wright respectfully submits this response in
3 opposition to “Defendants City of San Diego and SDPD Officer
4 Brandon Lopez’s Notice of Motion and Motion for Certification of
5 Interlocutory Appeal and Motion for Stay Pending Determination.”¹
6 [ECF 18.] Because (1) the question Defendant City is seeking to certify
7 does not involve a “controlling question of law,” (2) it is neither “novel”
8 nor “exceptional,” (3) the City can point to no “substantial ground for
9 difference of opinion,” and (4) a resolution of the question would not
10

11
12
13 ¹ Both Defendants appear to be bringing this motion under 28 U.S.C.
14 § 1292(b). *See generally* ECF 18. But the *Monell* cause of action
15 discussed in Defendants’ motion is against the City only, not the
16 individual officer. *See* ECF 1 at ¶¶ 130-140; *see also Monell v. Dep’t of*
17 *Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978) (holding that
18 municipalities “can be sued directly under § 1983 for monetary,
19 declaratory, or injunctive relief where . . . the action that is alleged to
20 be unconstitutional implements or executes a policy statement,
21 ordinance, regulation, or decision officially adopted and promulgated
22 by that body’s officers”). Accordingly, Plaintiff Wright responds here as
23 if the City is moving this Court to certify a question under § 1292(b)
24 and both Defendants are moving to stay these proceedings.

1 “materially advance” the termination of the litigation, the Defendants’
2 motions should be denied.

3 **II. Interlocutory appeals are permitted under 28 U.S.C.**
4 **§ 1292(b) only in “exceptional” circumstances.**

5 **A. Section 1292(b) is to be “applied sparingly,”**
6 **“construed narrowly,” and is limited to “exceptional**
7 **situations.”**

8 Interlocutory appeals under 28 U.S.C. § 1292(b) are permitted
9 only in “exceptional situations” where allowing such an appeal “would
10 avoid protracted and expensive litigation.” *In re Cement Antitrust*
11 *Litig. (MDL No. 296)*, 673 F.2d 1020, 1026 (9th Cir. 1981) (discussing
12 interlocutory appeals under Section 1292(b) as being appropriate in
13 “exceptional circumstances,” “exceptional situations,” and “exceptional
14 cases”) (citations omitted). The Ninth Circuit has recognized that
15 Section 1292(b) should be “applied sparingly.” *Id.* at 1027; *see also*
16 *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1067 n.6 (9th Cir.
17 2002) (“Section 1292(b) is a departure from the normal rule that only
18 final judgments are appealable, and therefore must be construed
19 narrowly.”).

20 As the party seeking a departure from the final-judgment rule,
21 the Defendant City bears the “burden of establishing the existence of
22 such exceptional circumstances.” *IBLC Abogados, S.C. v. Bracamonte*,
23 No. 11-CV-2380-GPC-KSC, 2013 WL 5418047, at *1 (S.D. Cal. Sept.
24 26, 2013) (citation omitted). When making the certification demanded

1 here, the district court must “expressly find in writing that all three
2 § 1292(b) requirements are met.” *Couch v. Telescope Inc.*, 611 F.3d 629,
3 633 (9th Cir. 2010). Congress committed the decision whether to
4 permit an interlocutory appeal of an otherwise non-appealable order to
5 the sound discretion of the district courts. *See Swint v. Chambers Cnty.*
6 *Comm'n*, 514 U.S. 35, 47 (1995).

7 **B. Because the City fails to demonstrate a “controlling**
8 **question of law,” involving a “substantial ground for**
9 **difference of opinion,” and an immediate appeal**
10 **would not “materially advance the ultimate**
11 **termination of the litigation,” Section 1292(b) does**
12 **not permit an interlocutory appeal here.**

Title 28 U.S.C. § 1292 provides in pertinent part:

13 When a district judge, in making in a civil action an order
14 not otherwise appealable under this section, shall be of the
15 opinion that such order involves [1] a controlling question of
16 law as to which [2] there is substantial ground for difference
17 of opinion and [3] that an immediate appeal from the order
may materially advance the ultimate termination of the
litigation, he shall so state in writing in such order.

18 28 U.S.C. § 1292(b). Because none of these three requirements are met
19 here, the City’s motion should be denied.
20
21
22
23
24

1 (S.D. Cal. Mar. 22, 2019) (“Courts in the Ninth Circuit have
2 determined that mixed questions of fact and law are not appropriate
3 for interlocutory appeal under § 1292(b).”) (citations omitted).

4 Here, Defendant City is seeking an expansive *per se* ruling from
5 the Ninth Circuit that *as a matter of law* empirical evidence (i.e.,
6 statistical data) cannot be used to demonstrate a pattern and practice
7 of unconstitutional activity or to support a finding of “deliberate
8 indifference” for a *Monell* claim². In support of its request for an order
9 granting it leave to file an interlocutory appeal, the City is unable to
10 find even one case—in or out of this District/in or out of this Circuit—
11 that supports the holding it seeks. The district court cases the City
12 does cite demonstrate that the question it seeks to appeal is not a
13 “controlling question of law,” but instead is a mixed question of law
14 and fact. Each of the orders the City cites in its motion (both those that
15 ruled in its favor and those that did not) demonstrates courts
16 diligently applying facts to the law, not interpreting or construing a
17

18
19
20
21 ² The entirety of the proposed question the City seeks to certify is: “Can
22 statistical data constitute sufficient factual matter of a Monell claim to
23 allege the prima facie existence of a constitutionally violative policy
24 against a municipality?” [ECF 18 at 12.]

1 “controlling question of law.” The City cannot satisfy the first
2 requirement of § 1292(b).

3
4 **b) The City’s case citations reveal fact-driven**
5 **inquiries evaluating individual complaints,**
6 **not pure questions of law.**

7 In support of its motion for interlocutory appeal, the City cites
8 numerous other cases filed in the Southern District of California
9 involving *Monell* liability and Fed. R. Civ. P. 12(b)(6) challenges to the
10 allegations. In ruling on Rule 12(b)(6) motions, courts must evaluate if
11 the plaintiff has pled “sufficient factual matter” which, if accepted as
12 true would “state a claim to relief that is plausible on its face.”
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations and
14 citations omitted). The Supreme Court has noted that “facial
15 plausibility” exists “when the plaintiff pleads factual content that
16 allows the court to draw the reasonable inference that the defendant is
17 liable for the misconduct alleged.” *Id.* (citation omitted).

18 In evaluating the Rule 12(b)(6) motions before them, the various
19 district courts in this District do just that: they evaluate whether the
20 plaintiffs before them have pled sufficient “factual matter” or “factual
21 content” to permit the court to “draw the reasonable inference that the
22 defendant is liable for the misconduct alleged.” None of the decisions
23 that the City cites involve the resolution of a controlling question of
24 law. None hold that empirical evidence cannot be used to demonstrate

1 a pattern and practice of unconstitutional activity or to support a
2 finding of “deliberate indifference” on the part of the municipality as
3 required for *Monell* liability. In fact, some of the opinions ruling in the
4 City’s favor *expressly disclaim* making that holding. *See, e.g., Spriggs*
5 *v. City of San Diego*, No. 24-CV-01006-W-KSC, 2024 WL 4469218, at
6 *7 (S.D. Cal. Oct. 9, 2024) (“To be clear, the Court is *not* holding the
7 kinds of studies Plaintiff cites can *never* be used to establish a pattern
8 or practice for *Monell* claims or put municipalities like the City on
9 notice of constitutionally deficient practices”) (emphasis in
10 original) and *Spriggs v. City of San Diego*, No. 24-CV-1006 W (KSC),
11 2025 WL 474918, at *5 (S.D. Cal. Feb. 12, 2025) (same).

12 Each case involves different plaintiffs alleging different
13 constitutional violations under different sets of facts. Each supports
14 their claims with different evidence. The courts necessarily evaluated
15 the facts alleged in the complaints, and compared them to the required
16 legal standards. For example, the City cites *Piccini v. City of San*
17 *Diego*, No. 21-CV-01343-W-KSC, 2022 WL 2788753 (S.D. Cal. July 15,
18 2022) presumably as an example of the question it wants certified on
19 appeal. [ECF 18 at 9 (showing *Piccini* is a case where the City’s motion
20 was “granted” in its favor).] But the question answered by the Court in
21 *Piccini* is not whether “statistical data” can ever support a *Monell*
22 claim for failure to train (as suggested by the City’s table). In *Piccini*,
23 the Court (Hon. Thomas J. Whelan) found that the data provided by
24

26 PLAINTIFF’S RESPONSE IN OPPOSITION TO “DEFENDANTS CITY
27 OF SAN DIEGO AND SDPD OFFICER BRANDON LOPEZ’S NOTICE
28 OF MOTION AND MOTION FOR CERTIFICATION OF
INTERLOCUTORY APPEAL AND MOTION FOR STAY PENDING
DETERMINATION” (ECF 18).

1 the plaintiff suggesting that SDPD “discriminates based on race and
2 color with regard to traffic stops and prosecutions” was not sufficient
3 to show a failure to train relative to that plaintiff’s “excessive force”
4 claim, or a failure-to-train claim relative to City’s “Use of Force Policy.”
5 *Piccini*, 2022 WL 2788753, at *4. Thus, *Piccini* simply holds that data
6 on race-based stops by SDPD did not support a reasonable inference of
7 a failure to train on excessive force or the use of force sufficient to
8 establish *Monell* liability in that complaint.

9 A close review of the other Judge Whelan opinions cited by the
10 City demonstrate that they also do not support the City’s position here.
11 In *Spriggs v. City of San Diego*, cited twice by the City in its table
12 [ECF 18 at 9], the Court takes pains to note that its holding is *not* as
13 broad as the City is currently suggesting: “To be clear, the Court is *not*
14 holding the kinds of studies Plaintiff cites can *never* be used to
15 establish a pattern or practice for *Monell* claims or put municipalities
16 like the City on notice of constitutionally deficient practices”
17 *Spriggs v. City of San Diego*, No. 24-CV-01006-W-KSC, 2024 WL
18 4469218, at *7 (S.D. Cal. Oct. 9, 2024) (emphasis in original). The
19 Court then gives the plaintiff in *Spriggs* leave to amend his complaint.
20

21 In the second *Spriggs* opinion, the Court again takes pains to
22 point out that it is “*not*” saying such data or studies can “*never* be used
23 to establish a pattern or practice for *Monell* claims or put
24 municipalities like the City on notice of constitutionally deficient

1 practices” just that the plaintiff failed to connect the dots in his
2 complaint—and then the Court gives the plaintiff leave to amend once
3 again. *Spriggs v. City of San Diego*, No. 24-CV-1006 W (KSC), 2025
4 WL 474918, at *5 (S.D. Cal. Feb. 12, 2025) (internal quotation and
5 citation omitted) (emphasis in original).

6 In *Whyte v. City of San Diego*, the district court granted the
7 City’s Rule 12(b)(6) motion to dismiss the plaintiffs’ *Monell* claims.
8 *Whyte v. City of San Diego*, No. 21CV1159-LAB-MDD, 2022 WL
9 17491178 (S.D. Cal. Dec. 7, 2022)³. But that case, too, does not support
10 the broad proposition that the City is seeking that this Court certify
11 here. The court did not hold as a matter of law that empirical
12 evidence/data/studies cannot be used to demonstrate a pattern and
13 practice of unconstitutional activity or to support a finding of
14 “deliberate indifference” under *Monell*. See generally *id.* at *3-5.
15 Instead, the district court evaluated the particular facts put forward
16 by the plaintiffs in that case, measured those facts against the law
17 (again, evincing that this exercise is a mixed question of fact and law),
18

19
20
21 ³ In its motion, the City’s listed citation for *Whyte* is actually the
22 citation for the first order of this Court in *Russell v. City of San Diego*,
23 No. 24CV0527, from September 2024. [ECF 18 at 9.] The correct
24 citation for the order in *Whyte* is listed *supra*.

1 and found in that particular case that the plaintiffs fell short of what
2 was required under *Iqbal. Id.* at *2-5.

3 In *Boykins v. City of San Diego*, plaintiffs who were stopped and
4 cited for a broken taillight violation and other offenses brought a
5 § 1983 case alleging that their pretextual stop was a violation of their
6 constitutional rights. *Boykins v. City of San Diego*, No. 21-CV-01812-
7 AJB-AHG, 2022 WL 3362273 (S.D. Cal. Aug. 15, 2022). In a fact-
8 driven inquiry, the district court concluded that the plaintiffs failed to
9 demonstrate a pattern of similar constitutional violations as necessary
10 for their *Monell* claim to continue. *Id.* at *7-9. The court then granted
11 leave to file a second amended complaint to cure these defects. *Id.* at
12 *9. Interestingly, in that same order, the court noted that the race-
13 based statistics should *not* be stricken from the complaint because they
14 were an “attempt to illustrate a ‘settled practice or custom’ of racial
15 bias within the SDPD” and “relate directly to Plaintiffs' *Monell* claim.”
16 *Id.* Thus the court found “these allegations have a bearing on the
17 subject matter of litigation.” *Id.* The *Boykins* court therefore did not
18 reject the idea that statistics could demonstrate prior constitutional
19 violations or put the City on notice as to deficient training or practices
20 relative to *Monell* claims. It provides no support to the City here.

22 Additionally, in *Abdul-Hafeez v. City of San Diego*, another case
23 cited by the City purportedly in support of its position [ECF 18 at 9],
24 the district court also did not hold that empirical evidence could not be

1 used to support a *Monell* claim. Instead, the district court held that the
2 plaintiff’s alleged constitutional violation—that police should not have
3 been *kneeling* on plaintiff’s back while he was *prone*—was not
4 addressed by the studies cited by the plaintiff in his complaint. The
5 district court (Hon. Robert S. Huie) granted the City’s 12(b)(6) motion
6 to dismiss but gave the plaintiff leave to amend his complaint. *Abdul-*
7 *Hafeez v. City of San Diego*, No. 24-CV-1184-RSH-DDL, 2025 WL
8 696993, at *8 (S.D. Cal. Mar. 4, 2025) (“The studies Plaintiff cite do not
9 discuss SDPD officers kneeling on a prone individual’s back.”).

10 The orders discussed above as well as those in *McKinnie v. City*
11 *of San Diego*, No. 3:24-CV-00827-H-SBC, 2024 WL 4126062 (S.D. Cal.
12 Sept. 9, 2024), *Russell v. City of San Diego*, No. 24CV0527-GPC(SBC),
13 2025 WL 297034 (S.D. Cal. Jan. 24, 2025), and in this matter
14 demonstrate not that there is a “controlling question of law” with
15 which courts of this District are grappling and interpreting in
16 conflicting ways, but instead demonstrate that courts are engaging in
17 fact-driven inquiries dictated by Fed. R. Civ. P. 12(b)(6) under
18 prevailing Supreme Court law.⁴ Defendant City fails to meet the first
19

20
21
22 ⁴ The City also cites this Court to the Central District of California
23 case of *Heard v. Cnty. of San Bernardino*, No. 5:20-CV-02335-JWH-
24 KXX, 2021 WL 5083336 (C.D. Cal. Oct. 12, 2021) to emphasize that

1 requirement of § 1292(b) and on that basis alone the requested
2 certification should be denied.

3
4 **2. Defendant City can point to no “substantial
5 ground for difference of opinion.”**

6 The Ninth Circuit has articulated that a “substantial ground for
7 a difference of opinion” exists under § 1292(b) “where the circuits are
8 in dispute on the question and the court of appeals of the circuit has
9 not spoken on the point, if complicated questions arise under foreign
10 law, or if novel and difficult questions of first impression are

11
12
13 the issue it is seeking to appeal before final judgment presents an
14 issue relevant to other courts. *See* ECF 18 at 11. But *Heard* doesn’t
15 support the City’s position either. In *Heard*, the district court did not
16 determine as a matter of law that statistics/data/empirical
17 evidence/studies cannot be used to demonstrate a pattern or practice of
18 unconstitutional activity or to establish “deliberate indifference”
19 necessary for a *Monell* claim. Instead, the *Heard* court, just like the
20 district court opinions discussed *supra*, embarked on a fact-specific
21 analysis looking at what the plaintiff alleged in his second amended
22 complaint and determined that he fell short in the required showing he
23 needed to make (not that statistics or studies could never be used to
24 show a municipality was on notice that it needed more or different
25 training to preserve constitutional rights).

1 presented.” *Couch*, 611 F.3d at 633 (internal quotations and citation
2 omitted). But the Court has also noted that a party’s strong
3 disagreement with a court’s ruling is not sufficient to satisfy this
4 prong.⁵ *Id.* The Ninth Circuit has also emphasized that the fact “[t]hat
5 settled law might be applied differently does not establish a
6 substantial ground for difference of opinion.” *Id.* (citations omitted).
7 Here, the City has pointed to no other cases in any other circuits that
8 have set forth the broad, *per se* rule it seeks here. That different courts
9 within this District have ruled differently based on the unique set of
10 facts present in each case before them does not constitute a
11 “substantial ground for difference of opinion” per § 1292(b).
12

13 There is no “novel” issue the City can point to either. There is no
14 new rule or case that it is seeking to have this Court or the Ninth
15 Circuit interpret or construe. The Ninth Circuit has explained that
16

17 ⁵ Here, Defendants argue that this Court’s denial of their motion to
18 dismiss is the “conflict,” on which they base their request to file an
19 interlocutory appeal. *See* ECF 18 at 5 (explaining that they filed a
20 motion to dismiss, this Court ruled against them in a “contrary
21 finding” and “[b]ased on this conflict, Defendants ask this Court” for
22 permission to file an interlocutory appeal). But the Ninth Circuit has
23 noted that disagreement with a ruling, even if it is a “strong
24 disagreement,” is not sufficient to satisfy the second prong of § 1292(b).
25

1 § 1292(b)'s discussion of "substantial ground for difference of opinion"
2 applies to situations presenting "novel legal issues." *Reese v. BP Expl.*
3 *(Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 2011); *see also Henley v.*
4 *Jacobs*, No. C 18-2244 SBA, 2019 WL 8333448, at *3 (N.D. Cal. Oct.
5 25, 2019) (declining request for interlocutory appeal where defendant
6 could point to no novel or difficult questions of first impression but
7 instead disagreed with the court's application of the facts to the law in
8 ruling on a Fed. R. Civ. P. 12(b)(6) motion). Defendant City fails to
9 satisfy the second § 1292(b) requirement as well.
10

11 **3. Defendant City cannot show that an**
12 **interlocutory appeal here would "materially**
13 **advance the ultimate termination of the**
14 **litigation."**

15 Section 1292(b) also requires the district judge certifying such an
16 appeal to make a determination that the interlocutory appeal may
17 "materially advance the ultimate termination of the litigation." Here,
18 resolution of this issue (the *Monell* claim)—even if the City were to
19 obtain a favorable result on appeal—would not result in dismissal of
20 any parties to this litigation since the City is a defendant in Claims 4,
21 5, and 6 as well. *Cf. Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 688
22 (9th Cir. 2011) (finding interlocutory appeal appropriate under
23 § 1292(b) where favorable appellate determination could result in the
24 appealing defendant being dismissed from the litigation); *see also*

1 *IBLC Abogados, S.C.*, No. 11-CV-2380-GPC-KSC, 2013 WL 5418047,
2 at *3 (“Material advancement may be found where reversal on
3 interlocutory appeal may remove a defendant or claims in the
4 litigation.”) (citation omitted).

5 Additionally, an interlocutory appeal here would resolve—at
6 most—one cause of action (Claim 3 only) and leave pending the
7 remaining five causes of action against Defendant Lopez and
8 Defendant City. *See U. S. Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th
9 Cir. 1966) (finding interlocutory appeal improvidently granted where
10 appeal involved “uncertain question of law relevant to only one of
11 several causes of action” and thus “no disposition [the appellate court]
12 might make of th[e] appeal on its merits could materially affect the
13 course of the litigation in the district court.”). Thus, even a favorable
14 ruling for the City on appeal here would not “materially advance the
15 ultimate termination of the litigation” as required by § 1292(b). The
16 City fails to satisfy the final § 1292(b) factor as well.

18 **III. Conclusion.**

19 Because the City fails to demonstrate how it satisfies any of the
20 required showings under § 1292(b), Mr. Wright respectfully requests
21 this Court deny its request for an exception to the final-judgment rule
22 and deny the Defendants’ motion to stay these proceedings.

1 Respectfully submitted,

2 DATED: June 6, 2025

s/Michele Akemi McKenzie

3 MICHELE AKEMI MCKENZIE

4 TIMOTHY A. SCOTT

5 MICHELLE C. ANGELES

MCKENZIE SCOTT PC

6 *Attorneys for Abdullah Wright*

7 Email:

mmckenzie@mckenziescott.com

8 tscott@mckenziescott.com

9 mangeles@mckenziescott.com