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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABDULLAH WRIGHT, Plaintiff, vs. CITY OF SAN DIEGO, SDPD Off. Brandon Lopez, Defendants.	Case No.: 24CV2089-GPC-BLM Hon. Gonzalo P. Curiel Courtroom: 2D Date: April 18, 2025 Time: 1:30 p.m. PLAINTIFF'S RESPONSE IN OPPOSITION TO "DEFENDANTS CITY OF SAN DIEGO AND SDPD OFFICER BRANDON LOPEZ'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT" (ECF 6)

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I. Introduction.

Plaintiff Abdullah Wright respectfully submits this response in opposition to "Defendants City of San Diego and SDPD Officer Brandon Lopez's Motion to Dismiss Plaintiff's Complaint." [ECF 6 & 6-1.] Defendants' motion seeks dismissal of Claims 2, 3, and 4 of Plaintiff's Complaint. Defendants do not challenge Claims 1, 5, or 6. [*Id.*]

II. Relevant legal standard for consideration of Defendants' motion.

In order to state a claim under 42 U.S.C. § 1983 as to Claims 2 and 3 of his Complaint, Plaintiff Wright "'[1] must allege the violation of a right secured by the Constitution and laws of the United States, and [2] must show that the alleged deprivation was committed by a person acting under color of state law.' *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988)." *Naffe v. Frey*, 789 F.3d 1030, 1035–36 (9th Cir. 2015). Defendants City and Off. Lopez do not dispute the second prong (that he was acting under color of state law). The only question before this Court is whether the Complaint has alleged "the violation of a right secured by the Constitution."

As to Claim 4 (the Bane Act), "[t]o sufficiently plead a violation of the Bane Act, 'a plaintiff must show (1) intentional interference or attempted interference with a state or federal constitutional or legal right, and (2) the interference or attempted interference was by threats, intimidation or coercion.' *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 67 (2015) (citations omitted)." *Kang by & through Young*

v. Custer, No. 1:23-CV-01519-KES-CDB, 2024 WL 1994319, at *3 (E.D. Cal. May 6, 2024). The "offending threat, intimidation, or coercion need not be independent from the coercion associated with an alleged constitutional violation that is inherently coercive," such as an illegal arrest. *Id.* (citing *Cornell v. City & Cnty. of San Francisco*, 17 Cal. App. 5th 766, 799-800, 802 n.31 (2017) (holding that a properly pleaded unlawful arrest is inherently coercive, thus plaintiff need not allege a further coercive, intimidating, or threatening act)). *See also Hulet v. Cnty. of Tuolumne*, No. 1:23-CV-01217-KES-HBK, 2024 WL 3758360, at *12 (E.D. Cal. Aug. 12, 2024) ("under the Bane Act the offending threat, intimidation, or coercion need not be transactionally independent from an alleged constitutional violation") (citation omitted).

If Plaintiff Wright's Complaint were "devoid of factual allegations that give rise to a plausible inference" of any elements, then dismissal under Fed. R. Civ. P. 12(b)(6) would be proper. *Naffe*, 789 F.3d at 1036. But since the "federal rules require only a 'short and plain statement of the claim showing that the pleader is entitled to relief' . . . [t]he Rule 8 standard contains 'a powerful presumption against rejecting pleadings for failure to state a claim.' *Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 386 (5th Cir.1985); *see also Hall v. City of Santa Barbara*, 833 F.2d 1270, 1274 (9th Cir.1986) ('It is axiomatic that "[t]he motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted."') (quoting 5 Charles Alan Wright &

Arthur R. Miller, Federal Practice & Procedure § 1357, at 598 (1969)).” *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 248–49 (9th Cir. 1997).

When resolving a motion to dismiss, the court must “accept the allegations as true and construe them in the light most favorable to the plaintiff.” *Abramson v. Brownstein*, 897 F.2d 389, 391 (9th Cir. 1990) (citation omitted). The court is “required to read” the allegations “charitably.” *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521 (9th Cir. 1994) (citation omitted). “Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Abramson*, 897 F.2d at 391 (internal quotation marks and citation omitted).

If any claim is dismissed, “leave to amend should be granted if it appears at all possible that the plaintiff can correct the defect.” *Balistreri v. Pacifica Police Dept.*, 901 F. 2d 696, 701 (9th Cir. 1990) (internal quotation marks and citation omitted); *see also Scott v. Eversole*, 522 F. 2d 1110, 1116 (9th Cir. 1975). If any claims are dismissed by this Court, Plaintiff Wright respectfully requests leave to file an amended complaint to cure any deficiencies.

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III. Because Plaintiff Wright has sufficiently alleged disparate treatment based on his membership in a cognizable class, and included detailed facts showing that there was no reasonable suspicion to detain nor probable cause to arrest him, the motion to dismiss Claim 2 (equal protection) for failure to state a claim should be denied.

A. The Complaint provides facts and data entitling Plaintiff Wright to relief.

Defendants assert that Plaintiff Wright has failed to allege any specific facts that Defendant Off. Lopez "intended to discriminate" against him. [ECF 6-1 at 4.] This is incorrect. Plaintiff Wright alleges that he followed all applicable laws while driving his vehicle and while walking on the sidewalk on an early weekend afternoon, such that there was no legal basis whatsoever to stop or arrest him. *See, e.g.*, ECF 1 at ¶¶4 (he legally drove his own vehicle), 27 (he had no criminal history—there was no 4th waiver), 39-40 (he stopped at the stop sign complying with traffic laws), 44 (he has a valid driver's license), 45 (he has valid auto insurance), 46 (he has valid registration on his vehicle), 48 (he does not have illegally tinted windows), 50 (he is not missing his license plates), 52 (his vehicle has absolutely no violations of the vehicle code), 54 (he committed no violations of the vehicle code whatsoever), 67 & 75 (there was no reasonable suspicion or probable cause to detain him), 77 (there was no reasonable suspicion or probable cause to handcuff him behind his back and arrest him).

Yet, despite the utter lack of reasonable suspicion or probable cause to detain or arrest, Defendant nevertheless arrested Plaintiff Wright and placed him in handcuffs. [ECF 1 at ¶¶75-82.] In their

motion, Defendants intimate that body camera footage exists showing "Plaintiff rolled through a stop sign, quickly curbed the vehicle he was driving (curbing is when a person intentionally parks very quickly next to a curb to ditch a stolen vehicle), two individuals quickly exited the car, Plaintiff exited the vehicle with all three individuals walking away from the car, and then [Defendant Off. Lopez] observed all three looking back at him multiple times." [ECF 6-1 at 2.] To be clear, *if* body camera footage exists corroborating the "alternative facts" asserted by Defendants in their motion, it is not what was shown to Plaintiff's counsel. The video shown to Plaintiff's counsel first showed Plaintiff as he was being detained and arrested by Defendant Off. Lopez. It does not show a rolling stop. It does not show a "curbing." It does not show Plaintiff or his brothers exiting their car. It does not show them walking away from the car. And it does not show them looking at Defendant Off. Lopez "multiple times." Of course, none of this is relevant to the instant motion, as Defendants admit. [*Id.*]

Plaintiff Wright also provides ample evidence in his Complaint that—based on the City's own data—San Diego law enforcement disproportionately conduct vehicle and pedestrian stops on Black individuals compared to white individuals, given their relative representation in the population. [ECF 1 at ¶¶17-24.] The Supreme Court has instructed that "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts." *Washington v. Davis*, 426 U.S. 229, 242 (1976). When a fact finder is asked to determine "whether invidious discriminatory purpose was a

motivating factor" it must engage in "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 266 (1977). Where the facts demonstrate no basis whatsoever to justify a police stop and arrest, and where—as here—there is extensive statistical evidence showing disproportionate stops of Black individuals in vehicles and on foot (even when controlling for crime rates, poverty rates, and neighborhood demographics) the Complaint more than "nudge[s] [Plaintiff Wright's] claims across the line from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

In *Chang v. Cnty. of Siskiyou*, defendants similarly moved to dismiss plaintiffs' equal protection claims for failure to state a claim. *Chang v. Cnty. of Siskiyou*, No. 2:22-CV-01378-KJM-AC, 2024 WL 3890000, at *11 (E.D. Cal. Aug. 21, 2024). As here, those defendants alleged that plaintiffs' complaint failed to establish that the defendants' actions were motivated by race. In denying defendants' Rule 12(b)(6) motion, the trial court relied in part on the exact type of data put forth by Plaintiff Wright here (in that case disproportionate traffic stops of Asian individuals compared to their population in the community and compared to white individuals) to determine that the plaintiffs' "allegations are more than 'naked assertions' or 'conclusory statements.'" *Id.* *3 & 11 (citation omitted). Plaintiff Wright has not only provided extensive detail about his own stop and arrest and the utter lack of legal basis for either [ECF 1 at ¶¶25-92]; he has provided

years of data showing that Black individuals in San Diego, like himself, are disproportionately stopped by law enforcement both in vehicle and pedestrian encounters [ECF 1 at ¶¶17-24]. Like the plaintiffs in *Chang*, his allegations are more than "naked assertions" or "conclusory statements."

B. Allegations on "information and belief" are permissible where the facts are "peculiarly within the possession and control of the defendant or where the belief is based on factual information that makes the inference of culpability plausible."

Defendants also argue that Plaintiff Wright cannot use "information and belief" to plead his claims relative to Defendant Off. Lopez's intent. [ECF 6-1 at 5.] In support of this position, Defendants cite *Solis v. City of Fresno*, No. 1:11–CV–00053 AWI GSA, 2012 WL 868681 (E.D. Cal. Mar. 13, 2012). [ECF 6-1 at 5.] In *Solis,* the trial court dismissed a complaint alleging an equal protection violation under the "class of one" theory where the plaintiff was prosecuted for felony vandalism following a domestic dispute. The plaintiff in *Solis* believed she was "irrational[ly]" treated differently than other people prosecuted for vandalism, but did not allege that she was part of a protected class. *Id.* at *8. In fact, the plaintiff in *Solis* could not identify anyone who—for her "class of one" claim—was similarly situated.

In contrast, Plaintiff Wright has provided detailed data that in San Diego, similarly situated white drivers and pedestrians are treated differently than Black drivers and pedestrians like himself.

[ECF 1 at ¶¶17-24.] In *Soo Park v. Thompson*, the Ninth Circuit reversed a district court's dismissal of a complaint under Rule 12(b)(6) for failure to state a claim and noted that "'[t]he *Twombly* plausibility standard . . . does not prevent a plaintiff from pleading facts alleged upon information and belief where the facts are peculiarly within the possession and control of the defendant or where the belief is based on factual information that makes the inference of culpability plausible.' *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010) (citations and quotation marks omitted); *see also Concha v. London*, 62 F.3d 1493, 1503 (9th Cir. 1995) ('[W]e relax pleading requirements where the relevant facts are known only to the defendant.')." *Soo Park v. Thompson*, 851 F.3d 910, 928 (9th Cir. 2017).

In *Starr v. Baca*, the Ninth Circuit reversed the dismissal of a complaint under Rule 12(b)(6) explaining that:

> [i]f there are two alternative explanations, one advanced by defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6). Plaintiff's complaint may be dismissed only when defendant's plausible alternative explanation is so convincing that plaintiff's explanation is *im*plausible. The standard at this stage of the litigation is not that plaintiff's explanation must be true or even probable. The factual allegations of the complaint need only plausibly suggest an entitlement to relief.

Starr v. Baca, 652 F.3d 1202, 1216–17 (9th Cir. 2011) (internal quotation marks and citation omitted) (emphasis added). Here, Plaintiff Wright's explanation—a stop and arrest based on the color of

his skin and for a crime that never occurred—plausibly suggests he is entitled to relief. Defendants' motion should be denied.

C. Black drivers and pedestrians in the City of San Diego are a cognizable class.

Defendants also argue that the "comparative class is undefined" and "lacks any defining contours to allow the Court to determine whether they were similarly situated to Plaintiff." [ECF 6-1 at 5 & 6.] But Plaintiff Wright's complaint clearly alleges he is a Black driver and pedestrian within San Diego [ECF 1 at ¶¶4, 26, 36-40, 43, 56-80]. His complaint also alleges that white individuals in San Diego are not stopped in vehicle and pedestrian stops at the rates of Black individuals. [ECF 1 at ¶¶19, 21, 24, 129.] The class of similarly situated individuals is well-defined and this Court should reject Defendants' request for a dismissal of Claim 2.

IV. Plaintiff Wright has stated a claim for relief in Claim 3, his Section 1983 cause of action based on Defendant City of San Diego's failure to train its law enforcement that they cannot use race as a factor to stop or arrest.

A. Purported failure to identify "the" deficient training program does not defeat Plaintiff's claim.

In the seminal case *City of Canton, Ohio v. Harris*, the Supreme Court made clear that *Monell* liability lies not only when a city enforces a policy that is in and of itself unconstitutional, but also when it knows (or should know) of an obvious need for training, it disregards that obvious need, and that failure results in a constitutional deprivation. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 (1989)

("it may happen that in light of the duties assigned to specific officers . . . the need for *more or different training* is so obvious, and *the inadequacy so likely to result in the violation of constitutional rights*, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury.") (emphasis added). Defendant City's argument that Plaintiff's *Monell* claim fails because he has failed to identify *the* "inadequate training program" is of no moment. [ECF 6-1 at 7.] Plaintiff Wright alleges that Defendant City of San Diego knows or should have known that its police force is disproportionately stopping Black individuals in vehicle and pedestrian stops at least in part because of their race and that even with this knowledge, Defendant City remained deliberately indifferent to the need to "train its officers that consideration of a target's race does not constitute reasonable suspicion to stop or probable cause to arrest," and that this failure "deprived Plaintiff Wright of his right to be free from unlawful seizures and equal protection under the laws of the United States." [ECF 1 at ¶¶131-140.]

In support of its position that Plaintiff Wright has failed to state a claim for a "failure to train" theory of liability under § 1983 in Claim 3, Defendant City of San Diego relies on *Mong Kim Tran v. City of Garden Grove*, No. SACV 11-1236 DOC ANX, 2012 WL 405088 (C.D. Cal. Feb. 7, 2012). In *Mong Kim Tran*, a plaintiff who was charged

with and pled guilty to resisting a police officer attempted to pursue a § 1983 case despite *Heck v. Humphrey*, 512 U.S. 477, 479 (1994). Most of the claims were dismissed because of the "*Heck* bar." *See Mong Kim Tran*, 2012 WL 405088, *3-6. But he also attempted to raise a failure to train claim with this one sentence in his complaint: defendant "failed to train, supervise, and discipline police officers, including defendant Charles Starnes, as to prevent the unlawful stopping, detention, interrogation of plaintiff." *Id.* at *4. The trial court in *Mong Kim Tran* rightly found this one sentence insufficient and dismissed his claim. Unlike the plaintiff in *Mong Kim Tran*, Plaintiff Wright pled *years of data* showing San Diego's disparate treatment of a cognizable class to which he belongs. [ECF 1 at ¶¶21-24.]

Plaintiff Wright has alleged that Defendant City of San Diego knew or should have known that "Black individuals are disproportionately stopped by San Diego Police officers compared to their proportion in the community," [ECF 1 at ¶131]; that "Black individuals are disproportionately stopped by San Diego Police officers compared to their proportion in the community even when controlling for crime rates, poverty rates, and neighborhood demographics," [ECF 1 at ¶132]; that "its officers use race, in particular being Black, as a factor contributing to warrantless stops and seizures," [ECF 1 at ¶133]; that "continuing to allow its officers use race, in particular being Black, as a factor contributing to warrantless stops and seizures, would continue to cause Black persons in San Diego to be deprived of their constitutional rights, including to be free of illegal searches and

seizures, and the right to equal protection under the law," [ECF 1 at ¶134].

Yet, despite this knowledge, Defendant City of San Diego failed "to train its officers not to use race as a factor in stopping individuals deprived Plaintiff Wright of his Fourth Amendment rights and his right to equal protection under the law," [ECF 1 at ¶135]; failed "to train its officers that consideration of a target's race does not constitute reasonable suspicion to stop or probable cause to arrest deprived Plaintiff Wright of his right to be free from unlawful seizures and equal protection under the laws of the United States," [ECF 1 at ¶136]. Additionally, the "training policies of Defendant City of San Diego were not adequate to prevent violations of the Fourth and Fourteenth Amendments by San Diego Police officers," [ECF 1 at ¶138]; "Defendant City of San Diego was deliberately indifferent to the substantial risk its policies were inadequate to prevent violations of law by its officers," [ECF 1 at ¶139]; and the "failure of Defendant City of San Diego to prevent violations of law by its officers caused the deprivation of Plaintiff Wright's rights by Defendant Officer Lopez, that is, Defendant City of San Diego's failure to prevent violations of law by its officers played a substantial part in bringing about or actually causing the injury or damage to Plaintiff Wright," [ECF 1 at ¶140]. Plaintiff Wright's Complaint is a far cry from the one sentence pled by the plaintiff in *Mong Kim Tran*.

B. Plaintiff Wright has not relied on a "single incident" theory of *Monell* liability.

Defendant City argues that Plaintiff Wright's *Monell* claim also fails because he relies on a "single incident" but "has not included any allegations supporting a theory-of-one cause of action." [ECF 6-1 at 7-8.] Plaintiff Wright has pled that his own unlawful detention and arrest are evidence of Defendant City's failure to train San Diego Police Officers that it is a violation of both the Fourth Amendment and the Equal Protection Clause to use race as a factor in determining who to stop and arrest. [ECF 1 at ¶¶135-140.] But he does not rely only on his own detention and arrest. Instead, the *years* of data set forth in the complaint—showing that persons with a similar protected characteristic as Plaintiff Wright (his race) are disproportionately stopped by San Diego law enforcement even when controlling for crime rates, poverty rates, and neighborhood demographics—are evidence of a widespread failure to train by Defendant City, not a "single incident." [ECF 1 at ¶¶131-134.] Further, the fact that in California, law enforcement is taking "no action as the result of stop most frequently during stops of individuals they perceived to be Black compared to individuals of other racial/ethnic groups" means that those "stopped Black individuals," like Plaintiff Wright, "were not engaged in criminal activity." [ECF 1 at ¶20.]

Defendant City's relies on *Benavidez v. Cnty. of San Diego* to support its "single incident" argument. [ECF 6-1 at 7-8.] *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134 (9th Cir. 2021). In *Benavides*, the

plaintiffs alleged that the defendant County failed to obtain parental consent and advise the parents of their right to be present at a medical examination of their minor children in violation of County policy. *Id.* at 1140-1141. Plaintiffs in *Benavides*, unlike Plaintiff Wright, *alleged* the violation of the County policy was a "single incident" and did not point to any other incidences of violations of the County's policy. *Id.* at 1153-1154. Here, Plaintiff Wright has pled years of evidence from Defendant City itself showing a *knowledge* of unexplained, disparate stops as well as a *continuing failure* on the part of Defendant City *to train* its officers not to use race as a factor in its stops and arrests. [ECF 1 at ¶¶135-140.] Plaintiff Wright has also pled that this failure to train caused his injury (i.e., had Defendant City properly trained its officers that race could not be used in this fashion, the suspicionless stop and illegal arrest of Plaintiff Wright would not have occurred and he would not have suffered the injuries he has suffered). [*Id.*] This is simply not a "single incident" case.

C. Years of Defendant City of San Diego's own data show unexplained, disparate stops of Black individuals disproportionate to their presence in the community.

Finally, Defendant City urges this Court to disregard the data provided by Plaintiff Wright in his complaint for two reasons: (1) the data doesn't cover the period of Plaintiff Wright's illegal arrest [ECF 6-1 at 8-9] and (2) the Ninth Circuit has supposedly indicated that statistics can't support a *Monell* claim [ECF 6-1 at 9].

As to its first point, Plaintiff Wright provided this Court with the most up-to-date available racial profiling data at the time of the filing of his Complaint. The 2025 RIPA report was not released until January 1, 2025 (almost two months after the Complaint [ECF 1] was filed) and covers only data through the end of 2023. *See* Racial and Identity Profiling Advisory Board, Annual Report 2025 (Jan. 1, 2025), a*vailable at* https://oag.ca.gov/system/files/media/ripa-board-report-2025.pdf. There is a delay between when the data is reported by law enforcement agencies and when it is made publicly available by the State of California, Department of Justice, Racial and Identity Profiling Advisory Board. Where, as here, this Court is considering a Rule 12(b)(6) motion to dismiss—where no discovery has occurred and expert testimony is not yet available—the question is not whether Plaintiff has conclusively proved a constitutional violation but whether his Complaint *plausibly* states one. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.") (citation omitted). The Supreme Court has noted that "plausibility" is not "probability." *Id*. Plaintiff Wright has alleged that the Defendant City of San Diego has known about the disproportionate stops of Black individuals—in fact the data showing this disparate impact is recorded and reported by Defendant City itself. [ECF 1 at ¶¶21-24.] Yet, despite this knowledge, and the knowledge that "the need for more or different training [was] so obvious, and the inadequacy so likely to result in the

violation of constitutional rights," *Canton v. Harris*, 489 U.S. at 390, Defendant City of San Diego continued to utilize training policies that "were not adequate to prevent violations of the Fourth and Fourteenth Amendments by San Diego Police officers." [ECF 1 at ¶138.]

D. The Ninth Circuit has *not*, as Defendant City curiously asserts, "previously indicated that statistics, like RIPA data, cannot support a *Monell* claim."

In support of its request that this Court dismiss Claim 3, Defendant City boldly states that the "Ninth Circuit has previously indicated that statistics, like the RIPA data, cannot support a *Monell* claim." [ECF 6-1 at 9.] This is not so. In support of this claim, Defendant City refers this Court to *United States v. Redondo-Lemos*, 27 F.3d 439, 443–44 (9th Cir. 1994). This is a criminal case—and as such there is no *Monell* claim—that dealt with criminal defendants' attempts to prove that male drug carriers were treated more harshly in the plea bargaining process than female drug carriers in the District of Arizona. *Id.* at 441. The "random statistics" relied on by the criminal defendants in that case consisted of two data points: (1) information compiled by the local probation offices showing that male drug offenders averaged sentences of 36 months while female drug offenders averaged sentences of 32 months and that 11% of males received straight probation compared to 35% of females and (2) information from the U.S. Sentencing Commission showing that "nationwide, 61.5% of men who committed crimes subject to mandatory minimum sentences received them, while only 50% of women did." *Id.* at 443-444.

The Ninth Circuit held that these "random statistics" did not prove that prosecutorial charging decisions were motivated by discriminatory intent. *Id*. at 444. This case is inapposite.

Finally, as to Claim 3, Defendant City cites *Gonzalez v. City of Tustin*, No. 8:23-CV-01274-FWS-ADS, 2024 WL 3086684 (C.D. Cal. June 4, 2024) to discount the statistical evidence put forth by Plaintiff Wright here. [ECF 6-1 at 9.] In *Gonzalez*, in evaluating the Rule 12(b)(6) motion to dismiss the district court found that *the complaint itself alleged* that the defendants used force against the plaintiffs *because* "Plaintiffs attempted to enter the crime scene or grappled with the suspect." *Id*. at *6. As such, the district court could not conclude that the racial profiling set forth by plaintiffs in their complaint was the cause-in-fact of their injuries and thus the court did "not assess" plaintiffs' statistics at all. *Id.* Like *Redondo-Lemos*, *Gonzalez* provides Defendant City no support for its position.

V. Plaintiff Wright has adequately pled his Bane Act claim.

Finally, Defendants complain that, as to the Bane Act violation alleged in Claim 4, Plaintiff Wright has failed to "explain[] how [Defendant Off. Lopez's] actions showed a reckless disregard for Plaintiff's constitutional rights." [ECF 6-1 at 9.] But Plaintiff Wright can meet the specific intent test required by the Bane Act by showing that "(1) 'the right at issue [is] clearly delineated and plainly applicable under the circumstances of the case' and (2) 'the defendant commit[ed] the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that ...

right,' which can be shown by pleading reckless disregard of the right. *Cornell*, 17 Cal. App. 5th at 803, 804; *id.*" *Hulet v. Cnty. of Tuolumne,* No. 1:23-CV-01217-KES-HBK, 2024 WL 3758360, at *13 (E.D. Cal. Aug. 12, 2024). Here, the "federal and state constitutional right to be free from arrest without probable cause" is neither "vague" nor "novel." *Cornell v. City & Cnty. of San Francisco*, 17 Cal. App. 5th 766, 803, 225 Cal. Rptr. 3d 356, 386 (2017), *as modified* (Nov. 17, 2017). Similarly, the "constitutional right to be free from such invidious discrimination is so well established and so essential to the preservation of our constitutional order that all public officials must be charged with knowledge of it." *Flores v. Pierce*, 617 F.2d 1386, 1392 (9th Cir. 1980). The court in *Cornell* described the "reckless disregard" inquiry as involving both subjective and objective considerations. *Cornell*, 17 Cal. App. 5th at 804 ("all of the objective circumstances surrounding the unlawful arrest, both before it and after it"). Plaintiff Wright alleges that Defendant Off. Lopez acted with reckless disregard of his rights and "states many facts to support that claim" *Hulet,* 2024 WL 3758360, at *13, such as:

> 1) there was no legal basis whatsoever to stop and/or arrest him [ECF 1 at ¶¶4 (he legally drove his own vehicle), 27 (he had no criminal history—there was no 4th waiver), 39-40 (he stopped at the stop sign complying with traffic laws), 44 (he has a valid driver's license), 45 (he has valid auto insurance), 46 (he has valid registration on his vehicle), 48 (he does not have illegally tinted windows), 50 (he is not missing his license plates), 52 (his vehicle has absolutely no violations of the vehicle code), 54 (he committed no violations of the vehicle code whatsoever)];

2) despite the lack of reasonable suspicion or probable cause Defendant Off. Lopez nevertheless stopped Plaintiff Wright, ordered him to come talk to him, detained him, and handcuffed Plaintiff Wright behind his back, [ECF 1 at ¶¶67, 68, 75, 77, 79];

3) Defendant Off. Lopez ultimately arrested him *for felony vehicle theft*, a crime which unquestionably had not occurred [ECF 1 at ¶94.]

4) this unlawful arrest occurred due, at least in part, to Plaintiff Wright's race [ECF 1 at ¶¶65, 69, 76, 78];

5) Defendant Off. Lopez thus acted with reckless disregard of Plaintiff Wright's right to be free from unreasonable seizures and to the equal protection of the laws [ECF 1 at ¶142].

Plaintiff Wright need allege "only enough facts to state a claim to relief that is plausible on its face." *Twombly,* 550 U.S. at 570. The detailed facts of the encounter with Defendant Off. Lopez plausibly state a claim for relief under the Bane Act.

VI. Conclusion.

Plaintiff Wright need only "nudge[] [his] claims across the line from conceivable to plausible" at this stage of the proceedings. *Twombly*, 550 U.S. at 570. His detailed Complaint more than accomplishes this task. Defendants' motions to dismiss Claims 2, 3, and 4 should be denied.

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Respectfully submitted,

DATED: January 31, 2025

s/Michele Akemi McKenzie

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