UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

HECTOR SEGURA,

Plaintiff, v. CITY OF SAN DIEGO, et al.,

Defendants.

Case No.: 3:22-cv-01029-RBM-AHG

ORDER MOTION FOR JUDGMENT ON THE PLEADINGS [Doc. 29]

On October 3, 2023,

-opposition in support of MJP. (Doc. 31.) On October 17, 2023, Plaintiff filed an (Doc. 32.) 1

On October 24, 2023, Defendant filed a reply. (Doc. 33.) In the MJP, Defendant argues Plaintiff fails to identify any policy or allege sufficient facts for any custom . (Doc. 29-1 at 4 6.) Defendant argues City of San Id. at 6.) Defendant argues Plaintiff

1 Plaintiff titles his document as an Id. at 1), fails to establish that a government official with final policy-making authority ratified a mayor he references. (Id. at 6 7.)

Defendant also argues Plaintiff fails to plead sufficient facts for his failure to train claim concerning any training program and how it was inadequate, fails to plead a pattern of similar constitutional violations, and fails to link a failure in training to the alleged violation of his constitutional rights. (Id. at 7 8.) substantive due process claim should be dismissed because he fails to allege any egregious

or outrageous behavior on the part of the City of San Diego. (Id. at 8.) Defendant also sufficient facts of purposeful discrimination. (Id. at 8 9.)

The Court finds the matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed below, GRANTED.

I. BACKGROUND 2 A. Initial Incident

On April 24, 202[0], Plaintiff was cutting a tree to help the City of San Diego. Tony Naputi, a police officer approached Plaintiff, said, come here signally with his hand. He was in a fighting stance. 3

are you the one with machete? Id. ¶ 12.) The machete, one of the tools Plaintiff used to cut the tree, was put away and not next to Plaintiff at the time. (Id.) Plaintiff tried to turn on his phone camera jumped Plaintiff and put him in a choke hold. (Id. ¶¶ 13 14.) ///

2 reflect the factual or legal opinions of the Court. 3 While paragraph 11 states the incident occurred on April 24, 2022, the FAC earlier states the incident occurred on April 24, 2020. (See FAC ¶¶ 1, 11.) It appears to the Court, based on its review of the FAC, that April 24, 2020 appears to be the correct date.

When the ambulance arrived, paramedics told Officer Naputi to let Plaintiff go and stated that Plaintiff Id. ¶ 15.) The paramedics kept telling Officer Naputi to get off of Plaintiff. (Id. ¶ 16.)

A second officer arrived at the scene and said the officer was choking [Plaintiff] because the officer choking [Plaintiff] knows jiu jitsu. Id. ¶ 17.) Officer Naputi told Plaintiff he was choking him because Plaintiff Id. ¶ 18.)

not arrested and [was] sent to a mental hospital that day. [He] felt [he] almost died and suffered a mental breakdown. Id. ¶ 19.) As a direct and proximate result Fourth, Fifth, and Fourteenth Amendment rights to be free from unreasonable searches and seizures and rights to equal protection and the due process of law were denied. (Id. ¶ 20.) Plaintiff suffered physical and emotional pain and suffering, emotional trauma, loss of income and earning capacity, and seeks all costs allowed by law. (Id.) He seeks $50,000 in damages. (Id. ¶ 1.)

B. Claims 1 Through 3 Excessive Force, Failure to Supervise and Train, and

Monell Violations

1. Excessive Force Plaintiff alleges [t]he choke-hold and physical take down and beating up of [Plaintiff] deprived [him] of [his] rights and privileges and immunities under the 4th, and 14th Amendments. Id. ¶ 22.) His pain and suffering and now trauma and emotional distress and now [he] panic[s] when [he] see[s] a police officer thinking they are going to kill [him] [and] [they] violated [his] 1983 rights under 42 United States Code as the police was acting under the color of authority and pursuant to the customs, policies, and procedures by the Defendants and CITY OF SAN DIEGO police department. Id. ¶ 23 (cleaned up).)

2. Failure to Supervise and Train The City of San Diego failed to supervise and train its police officers. (Id. ¶ 24.)

3. Monell Policy or Custom The [has] a culture of excessive force in dealing with citizens who have mental issues and because of this, [Plaintiff] ha[s] been traumatized and afraid to file a lawsuit and incapacitated to do so and should have any statute of limitations tolled. (Id. ¶ 25.) The has been harassing [Plaintiff] since [he] was 11 years old. They have been stalking [him] and pulling [him] over for no reason in [his] neighborhood. [He] [has] always complained and the supervisors and the people in charge of the City of San Diego have done nothing about it. Id. ¶¶ 26 27.) Although the City of San Diego claims they follow their own rules they have for many years had a custom and policy of following certain members of the community. For example, [Plaintiff] ha[s] been targeted since [he] was 11 years old because [he] [is] a short, brown skin minority. Id. ¶ 29.)

The City of San Diego was supposed to send a Psychiatric Emergency Response T Id. ¶ 28.) This custom and practice of not sending the PERT team has been ratified by the Chief of Police and by the Mayor and its workers. Id. ¶ 30.)

Internal Affairs informed Plaintiff that violated the policies about excessive force and not wearing a cam so to prove case. Id. ¶ 35.) The City and the Police Officers have never in the past done anything to officers about not having cameras or calling the PERT team and about excessive force. These actions by Tony Naputi in other cases other than have always been ratified so he knew that he was not going to be in trouble because he always engages in this behavior, and no one does anything to him. (Id. ¶ 36.)

C. Commission on Police Practices Letter

Plaintiff received a letter from Internal Affairs stating officers violated policy of the San Diego Police Department and informed Plaintiff he had one year to file a lawsuit. (Id. ¶ 38.) In a May 12, 2021 ed an Internal Affairs

s including the Internal Affairs findings concern . (Id. at 6.) an officer used force consisting of physical strength and the Carotid Restraint when he detained [Plaintiff] and [Plaintiff] suffered cuts and scrapes on [his] elbow and knees as a result of the force used in this incident the alleged act was legal, justified, and proper and within policy procedure and law; the

Commission agreed. (Id. the officer was discourteous to [Plaintiff] when he called [him] a criminal[,] Internal Affairs sustained the allegation finding the officer committed all or part of the alleged act of misconduct; the Commission agreed. (Id.)

Internal Affairs sustained, and the Commission agreed, that the investigation officer violated Department Procedure 1.49 Section Ia&c [when] he failed to keep his BWC in buffer mode while on duty and activate his BWC while en-route to an enforcement related radio call Id.) Internal Affairs sustained, and the Commission agreed, that the officers violated Department Procedure 1.04 Section VI.A, when they failed to describe all the force they used during arrest and failed to complete a Use

of Force, Blue Team Entry Id.)

II. LEGAL STANDARD Federal Rule of Civil Procedure 12(c) allows parties to move for judgment on the pleadings after the pleadings have motion for judgment on the pleadings is the same as the standard for a Rule 12(b)(6) motion

to dismiss. Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1053 & Dworkin

v. Hustler Magazine Inc. pleadings is proper when the moving party clearly establishes on the face of the pleadings

that no material issue of fact remains to be resolved and that it is entitled to judgment as a Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1989). A court must not consider matters beyond the pleadings; otherwise, such a proceeding must properly be treated as a motion for summary judgment. Id.; see also , 654 F.3d 919, 925 n.6

Conservation Force v. Salazar, 646 F.3d 1240, 1241 42 (9th Cir. 2011) (quoting Navarro

v. Block, 250 F.3d 729, 732 (9th Cir. 2001)). An action may be dismissed for failure to Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007 pleads factual content that allows the court to draw the reasonable inference that the

defendant is liable for the misconduct alleged. The plausibility standard is not akin to a Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citations omitted).

in the complaint as true and construe[s] the pleadings in the light most favorable to the

Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008).

III. DISCUSSION Monell claims fail as a matter of law because the FAC lacks sufficient allegations to establish a claim against the City of San Diego under Monell , 436 U.S. 658 (1978). (Doc. 29-1 at 4 8.) Defendant also argues Plain because the FAC fails to allege sufficient facts of egregious or outrageous behavior. (Id.

failure to allege sufficient facts of purposeful discrimination. (Id. at 8 9.) The Court will

A. Non-Opposition

On October 3, 2023, Defendant filed a statement o -opposition in MJP. (Doc. 31.) to its MJP was due on September 26, 2023 and Plaintiff did not file an opposition or

statement of non-opposition as of filing on October 3, 2023. (Id. at 1.) under Civil Local Rule 7.1. (Id. at 3.) Defendant also explains that Plaintiff requested

additional time for his opposition on September 26, 2023, specifically one week, and Defendant sent a joint motion to extend the time to respond, but Plaintiff never responded. (Id. at 3 4.) Defendant argues Plaintiff also failed to express any need for an extension until his opposition due date and failed to show good cause for an extension. (Id. at 4 5.) (Id. at 1 2.)

In Plaintiff argues that the City of San (Doc. 32 at 1 2.) Plaintiff explains that if he did not include that allegation in his FAC, he

requests leave to amend to add it. (Id.) Id. at 2.) Plaintiff

attached a June 1, 2020 news article about the San Dieg use of carotid restrains, or chokeholds, as a use-of-force procedure. (Id. at 4 6.)

objects to untimely request to amend the FAC. (Doc. 33 at 1, 4.)

P that in the event Plaintiff files an amended complaint, the Court will adhere to

amber Rules. (Doc. 9 at 9.) Accordingly, the Court is entitled to disregard However, g pro se (Doc. 32). ng. The Court will not entertain any further untimely filings and will strike or otherwise reject any future filings that fail to comply with the Local Rules Federal Rules.

A. Monell claims Municipalities cannot be held vicariously liable under 42 U.S.C. § 1983 for the actions of their employees. Monell, 436 U.S. at

or acts may fairly be said to represent official policy, inflicts the injury that the government Id. at 694. To prevail in a civil action against a hat he possessed a constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that this policy Oviatt By & Through

Waugh v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting City of Canton v. Harris, 489 U.S. 378, 389 91 (1989)).

A plaintiff may establish municipal liability under 42 U.S.C. § 1983 in one of three constitutional violation pursuant to a formal governmental policy or a longstanding practice

or custom which constitutes the standard operating procedure of the local governmental Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (internal quotation marks omitted) (quoting Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989)). Second, the policy- Id. at 1346 47 (citations omitted).

Finally, a municipality may be held liable for inadequate training of its employees, but only is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can City of Canton, 489 U.S. at 390. ///

1. Policy of San Diego Municipal Code, a single policy, procedure, or order of its Police Department,

of the City of San Diego is supposed to have committed the constitutional violation or violations -1 at 5.) Plaintiff argues that the City of San Diego rescinded tions. (Doc. 32 at 1 2.) However, Plaintiff does not specify the chokehold policy at issue anywhere in his FAC. Accordingly, Plaintiff has failed to identify a policy amounting to deliberate indifference to his constitutional rights and that the policy was the moving force behind the constitutional violation of his rights. See Pearce, 954 F.2d at 1474.

2. Custom culture of excessive force in dealing with is a

generalized allegation offering no specific examples, no facts to support the notion that the culture is so widespread that it constitutes a standard operating procedure, or how this culture relates to the subject incident. -1 at 6.) Defendant further argues that lacks specific examples, suggests no inception date, and discusses no other

litigation, publications, or studies [supporting] the notion that this purported custom is longstanding or widespread enough to constitute a standard operating procedure. Id.) violation of those policies. (Id.)

Oyenik v. Corizon Health Inc. Navarro v. Block, ust be founded upon practices of sufficient duration, frequency and consistency that the conduct Id. (quoting Trevino v. Gates, 99 e that, although not authorized by written law or express municipal policy, is so permanent and well-settled as J.M. by & Through Rodriguez v. Cnty. of Stanislaus, No. 1:18-cv-01034-LJO-SAB, 2018 WL 5879725, at *3 (E.D. Cal. Nov. 7, 2018) (quoting St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) and Los Angeles Police Protective League v. Gates, 907 F.2d 879, 890 (9th Cir. 1990)). The Ninth Circuit re insufficient to establish a custom or policy, we have not established what number of similar incidents would be sufficient to Oyenik).

Plaintiff fails to point to other instances for his three asserted bases of custom and practice above, including a culture of excessive force in dealing with citizens with mental health issues, harassing and stalking of following certain members of the community, and not sending the PERT team. (See FAC ¶¶ 25 30.) See Oyenik . The Court concludes Plaintiff fails to state sufficient allegations proving the existence of a practice so widespread, permanent, and well settled as to constitute a custom or practice.

3. Ratification Defendant argues Plaintiff fails to establish a government official with final policy- chief of police and mayor , failing to identify any other

cases, and failing to describe how the pu constitutional rights. (Doc. 29-1 at 6 7.) Plaintiff alleges the chief of police and mayor

conduct in other cases was ratified so he knew he would not get in trouble for engaging in

this behavior. (FAC ¶¶ 30, 36.)

In Lytle v. Carl, the Ninth Circuit explained that a ratification theory of Monell ve[d] a subordinates decision and the basis for it ... The policymaker must have [had] knowledge of the constitutional violation and actually approve[d] 382 F.2d 978, 987 (9th Cir. 2004). because he does not identify

or knowledge of any similar alleged violations in other cases.

4. Failure to Train Defendant argues Plaintiff fails to plead facts for his failure to train claim concerning any training program and how it was inadequate, fails to plead a pattern of similar constitutional violations, and fails to link a failure in training to the alleged violation of his constitutional rights. (Doc. 29-1 at 7 8.) 32 at 2.) While Plaintiff alleged the City of San Diego failed to supervise and train its

police officers (FAC ¶ 24), City of Canton, 489 U.S. at 390.

B. Substantive Due Process Defendant argues Plaintiff allege any conduct on the part of the City of San Diego that was sufficiently egregious or outrageous. (Doc. 29-1 at 8.) Plaintiff fails to respond to this argument and thus it is deemed waived. See Galaviz v. Fed. Bureau of Investigation, Case No. C19-1611JLR, 2020 WL 208044, at *4 (W.D. Wash. Jan. 14, 2020) Federal courts consider the failure to respond to a motion to dismiss a claim to constitute a waiver of the claim at issue. Heraldez v. Bayview Loan Servicing, LLC, Case No. CV 16-1978-R, 2016 WL 10834101,

at *2 (C.D. Cal. Dec. 15, 2016) Failure to oppose constitutes a waiver or abandonment of the issue. Stichting Pensioenfonds ABP v. Countrywide Fin. Corp., 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011)).

C. Equal Protection sufficient facts of purposeful discrimination. (Doc. 29-1 at 9 10.) Plaintiff fails to respond to this argument and thus it is deemed waived. See Galaviz, 2020 WL 208044, at *4 Federal courts consider the failure to respond to a motion to dismiss a claim to constitute a waiver of the claim at issue. Heraldez, 2016 WL 10834101, at *2 Failure to oppose constitutes a waiver or abandonment of the issue. Stichting Pensioenfonds ABP, 802 F. Supp. 2d at 1132).

D. Leave to Amend In his opposition, Plaintiff requests leave to amend his FAC. (Doc. 32 at 1 2.) contains an untimely request to amend the FAC, to which Defendant objects. (Doc. 33 at

1, 4.) Generally, pro se litigants should be given an opportunity to amend their complaints. Lopez v.

Smith, 203 F.3d 1122, 1131 (9th Cir. 2000). But a court is not required to allow leave to amend if the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile. Bowles v. Reade, 198 F.3d 752, 758 (9th Cir. 1999) (internal citation omitted); see also , 542 Fed. 561, 562 (9th Cir. 2013) (affirming dismissal without leave to amend when further amendment would be futile).

The Court previously granted Plaintiff leave to amend his initial complaint. (Doc. 9 at 8.) Plaintiff failed to fix the pleading deficiencies in his Monell claims. opportunity to fix these deficiencies, the Monell custom,

ratification, and failure to train as well as his substantive due process and equal protection claims are futile. Therefore, those claims are DISMISSED WITH PREJUDICE. Monell policy claim concerning a chokehold policy articulated in his untimely opposition, not the FAC, is not necessarily futile and will GRANT LEAVE TO AMEND that claim. See e.g., Ramsey v. City of Santa Ana, Case No. 8:21-cv-00825-JLS-KES, 2023 WL 3432264, at *8 (C.D. Cal. Mar. 17, 2023) (denying summary judgment on a Monell policy claim concerning a policy of the Santa Ana Police y resulting in unconstitutional excessive force).

IV. CONCLUSION For the foregoing reasons MJP (Doc. 29-1) is GRANTED Monell custom, ratification, and failure to train as well as substantive due process and equal

protection claims discussed above are DISMISSED WITH PREJUDICE. Monell policy claim is DISMISSED WITH LEAVE TO AMEND. Plaintiff may file a

second amended complaint on or before May 3, 2024. excessive force claim and Monell claim concerning officers not wearing cameras, which Defendant did not address, survive the MJP.

IT IS SO ORDERED. DATE: April 18, 2024

_____ HON. RUTH BERMUDEZ MONTENEGRO UNITED STATES DISTRICT JUDGE