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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH – NORTHERN DIVISION

KARL SHAWN NICHOLAS, Plaintiff, v. ZACHARY C. FRATTO, in his individual capacity; and CLEARFIELD CITY, a municipal corporation, Defendants.	**DEFENDANTS ZACHARY C. FRATTO'S AND CLEARFIELD CITY'S 12(b)(6) MOTION TO DISMISS** Civil No. 1:25-cv-00078-DAK Judge Dale A. Kimball Magistrate Judge Jared C. Bennett

Because Plaintiff fails to state a claim against either Defendant, Officer Zachary C. Fratto and Clearfield City move to dismiss Plaintiff's complaint under Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief may be granted. In support, Defendants would show the following:

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[1] In ruling on a motion to dismiss under Rule 12(b)(6), "[i]n addition to the complaint, the district court may consider documents referred to in the complaint if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity." *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 (10th Cir. 2002). See also, *Berneike v. CitiMortgage, Inc.*, 708 F.3d 1141, 1146 (10th Cir. 2013). Indeed, "[w]hen, as is the case here, there is clear contrary video evidence of the incident at issue, the court is not bound to accept Plaintiff's version of the facts." *Thomas v. Durastanti*, 607 F.3d 655, 659 (10th Cir. 2010).

RELIEF REQUESTED

- Dismiss Plaintiff's first cause of action under 42 U.S.C. § 1983 for alleged unreasonable detention and arrest, search and seizure without probable cause, and use of excessive force against Officer Fratto.
- Dismiss Plaintiff's second cause of action under 42 U.S.C. § 1983 against Clearfield City for its alleged deliberate indifference toward Plaintiff's rights, and its failure to revise policies, supervise, or train officers against the use of leg sweep takedowns due to its potential of causing serious injury to the subject.

Plaintiff's factual allegations fail to show a plausible claim for relief against either Defendant under the law applicable to Plaintiff's claims.

First, divorced from Plaintiff's conclusory arguments, as required under Rule 12(b)(6), Plaintiff's factual allegations fail to identify any constitutional violation by Officer Fratto as to Plaintiff's investigative stop and detention or Officer Fratto's use of minimal, open-hand force to overcome Plaintiff's undeniable physical resistance to Officer Fratto's investigative efforts. To be sure, Plaintiff further fails in his burden to allege facts to demonstrate the inapplicability of the presumption of Officer Fratto's immunity from suit which Plaintiff must disprove.

Second, even if, purely *arguendo*, Plaintiff could allege facts raising a question of any constitutional violation, Plaintiff falls far short of his burden to allege facts to show any constitutional violation he claims was caused by the operation of an unconstitutional policy adopted by the city's policymaker—its city council—with deliberate indifference to a likely constitutional violation, such that the policy was the "moving force"—that is the policy actually caused—conduct by Officer Fratto that may have been unconstitutional.

NATURE AND STAGE OF PROCEEDINGS

This is a lawsuit under 42 U.S.C. § 1983, asserting claims of unreasonable detention, alleged arrest, search and seizure without probable cause, and excessive force against Officer

Fratto, and municipal liability against Clearfield City for the city's alleged policy which Plaintiff only conclusorily claims was the moving force behind Officer Fratto's alleged unconstitutional conduct. Defendants move to dismiss all claims under Fed. R. Civ. P. 12(b)(6).

FACTUAL ALLEGATIONS

Plaintiff's *factual* pleading allegations are generally direct quotes from the attached exhibits which the Court may and should consider: Officer Fratto's incident report, recordings from Officer Fratto's body-worn and patrol unit cameras, as well as the Clearfield Police Department's use of force investigation report, and media statement regarding the incident. Beyond lifting his factual allegations from these undisputed records, Plaintiff adds only conclusory arguments unsupported by any additional facts. Because Plaintiff refers to and incorporates the video footage throughout Plaintiff's complaint, the Court should review the video to determine what it actually shows rather than relying on Plaintiff's inaccurate and misleading characterization of the incident which forms the basis of this suit.[2] The records Plaintiff quotes, and thus Plaintiff's factual allegations, allege the following:

1. In the early morning hours of July 25, 2024, Officer Fratto was patrolling the Legend Hills shopping complex because the shopping center had been the site of prior criminal activity.

2. At about 3:00 a.m., Officer Fratto observed Plaintiff "emerging from the shadows at the Legend Hills shopping complex."[3]

[2] See, *Scott v. Harris*, 550 U.S. 372, 380 (2007).

[3] *See* Incident Report, attached as Exhibit A, at p.3

3. Officer Fratto activated his patrol unit camera at 3:00 a.m. along with all his light bar's white light beams as he turned his cruiser to investigate.[4]

4. Approximately thirty seconds later, at 3:01 a.m., Officer Fratto initiated his body-worn camera.[5]

5. From that point through the completion of all of Officer Fratto's interactions with Plaintiff, all interactions between the two were videotaped by either or both dash-cam or body-worn camera.

6. Between 0:18-0:30 on Ex. D, Plaintiff crossed in front of the patrol car looking over his right shoulder back at Officer Fratto and then did the same over his left shoulder.

7. As established on Ex. D at 0:55, and Ex. E at 0:27, Officer Fratto pulls up beside Plaintiff as Plaintiff continues walking, during which time Plaintiff does not stop so Officer Fratto, after slowly driving behind Plaintiff for less than one minute, stops and gets out of his patrol car to approach Plaintiff on foot.

8. As established on Ex. D at 1:01-1:11, and Ex. E at 0:30-0:41, Plaintiff crosses back in front of the patrol car while looking directly at Officer Fratto who was then on foot, after which Plaintiff took off running away from Officer Fratto.

9. As the audio portions of the videos reveal, during both Officer Fratto's initial approach and as Plaintiff ran from Officer Fratto, there was loud car and road noise and significant distance between Plaintiff and Officer Fratto which would have required the two to yell if either were attempting to communicate with the other.

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[4] *Id; see also* Officer Fratto's patrol unit camera recording, attached as Exhibit D.

[5] *See* Officer Fratto's body-worn camera recording, attached as Exhibit E.

10. Having observed Plaintiff running away, Officer Fratto returned to his patrol car to pursue Plaintiff to investigate further. Ex. D at 1:18-2:07; Ex. E at 0:50-1:34.

11. Upon locating Plaintiff, Officer Fratto rolls down the passenger-side window and asks Plaintiff why he was running; stating it was "kinda weird" that Plaintiff was in the mall parking lot that late at night when none of the mall businesses were open. Ex. D at 2:07-2:36; Ex. E at 1:38-2:00; DKT 1 at ¶¶ 24-26.

12. *Without answering* Officer Fratto's question, Plaintiff immediately displays hostility toward Officer Fratto, giving short, curt answers and telling Officer Fratto to "leave [him] alone" and that Plaintiff was "fed up." *Id.* When Officer Fratto asks what Plaintiff was fed up with, Plaintiff did not answer. *Id.*

13. Plaintiff's unusually combative attitude, coupled with Plaintiff's flight when he saw Officer Fratto earlier, fueled Officer Fratto's further suspicion that Plaintiff may have been involved in, or attempting to perpetrate a crime in the mall area.

14. While Plaintiff alleges he is a person with intellectual disabilities, Plaintiff does not plead any facts to even suggest, let alone show Officer Fratto, who initially thought Plaintiff's behavior to be consistent with drug or alcohol intoxication, was or could have been aware of Plaintiff's alleged medical condition.

15. What Officer Fratto also objectively observed, however, was that Plaintiff was "sweating profusely" and "his body language showed similar symptoms of someone under the influence of narcotics, as demonstrated by his odd walk and aggravated attitude." Ex. A at p.3.

16. Officer Fratto again attempted to continue his non-custodial interview of Plaintiff to obtain more information from Plaintiff as to what Plaintiff was doing in the mall parking lot at that time

of night, but, instead of simply answering, Plaintiff again told Officer Fratto belligerently to "quit following [him]" and to "go away." Ex. D at 3:19-3:44; Ex. E at 2:51-3:18; DKT 1 at ¶ 28.

17. Based on the totality of the circumstances, Plaintiff's own pleadings admit, and the video evidence confirms, Officer Fratto believed he had reasonable suspicion to stop Plaintiff and ask for Plaintiff's identification.

18. At about the same time, Officer Fratto witnessed Plaintiff cross the street behind Officer Fratto's patrol car, outside of a designated crosswalk, and into the parking lot for the Pepper Ridge apartment complex. Ex. A at p.3; DKT 1 at ¶ 32.

19. Officer Fratto turned his patrol car around and followed Plaintiff into the Pepper Ridge parking lot at which point he exited the patrol car and told Plaintiff that Plaintiff has to stop because he cannot cross the road like that. Officer Fratto again asked Plaintiff what he was doing out here. Ex. D at 4:00-4:38; Ex. E at 3:45-4:04.

20. Officer Fratto proceeded to request Plaintiff's identification twelve times within four minutes. Ex. E at 4:33-8:27. Each time Plaintiff refused. *Id.* During that same time frame, Plaintiff is seen in the body-worn video staggering and/or attempting to walk away. *Id.* Instead of complying with Officer Fratto's request for identification, Plaintiff threatened to have Officer Fratto fired at least five times. *Id.*

21. Although Plaintiff refused Officer Fratto's repeated requests for Plaintiff's identification, Plaintiff did tell Officer Fratto that Plaintiff had recently left a bar.

22. Officer Fratto calmly explained to Plaintiff at least three times within two minutes that, because Plaintiff refused to provide identification despite repeated requests, Officer Fratto intended to place handcuffs on Plaintiff if Plaintiff would not voluntarily provide his identification.

Id. at 6:36-8:23. Yet, Plaintiff continued to refuse to provide his identification to Officer Fratto. *Id.*

23. Officer Fratto then instructed Plaintiff to put his hands behind his head and Officer Fratto moved to restrain Plaintiff. *Id* at 8:34. Instead of complying with this instruction, Plaintiff raised his hands up and out in front of himself instead of behind his back as directed by Officer Fratto. *Id.*

24. Officer Fratto did not lunge at Plaintiff, but since he was alone without any backup and dealing with a belligerent, non-compliant individual, Officer Fratto moved quickly toward Plaintiff to avoid any potential fight from Plaintiff. *Id.*

25. Officer Fratto was able to get hold of Plaintiff's right arm, but Plaintiff fought and physically resisted, pulling his arms away, and refusing to place either hand behind his back as instructed by Officer Fratto. *Id.* at 8:34- 8:48.

26. To overcome Plaintiff's physical resistance, Officer Fratto first attempted to gain a hold of Plaintiff's left arm to bring it behind Plaintiff's back to be handcuffed *Id.* Plaintiff continued to fight and resist Officer Fratto's attempts to quickly and safely detain him. *Id.*

27. In response to Plaintiff's continued physical resistance, Officer Fratto, made a split-second judgment under a tense, uncertain, and rapidly evolving situation, to perform a takedown maneuver to restrain Plaintiff in a safe manner for both of them. *Id.*

28. Despite Plaintiff's unsupported attempt to characterize Officer Fratto's open-hand maneuver, it is not clear on video what maneuver he employed, but Officer Fratto identifies his effort in the incident report. *Id.*; Ex. A at p.4.

29. What is clear on the body-worn video is that Plaintiff continued to fight and physically resist even when Plaintiff was on the ground, prompting Officer Fratto to radio backup officers to "step it up" because Plaintiff was fighting Officer Fratto at that point. Ex. E at 8:48-10:55.

30. Plaintiff suffered no more "injury" than a left elbow "road-rash injury," *either* from the takedown or more likely due to Plaintiff's continued fighting and resistance while on the ground as Plaintiff refused to produce his left arm and attempted to keep it underneath his body. *Id.*

31. Officer Fratto intended to arrest Plaintiff, but when Officer Fratto read Plaintiff his *Miranda* rights, Plaintiff said he did not understand his rights. Due to Plaintiff's professed lack of understanding, Officer Fratto did not question Plaintiff. Officer Fratto issued Plaintiff a citation for interfering with a police officer.

SUMMARY OF THE ARGUMENT

Plaintiff fails to allege facts which state a plausible claim for relief. Plaintiff's allegations do not show a violation of the Fourth or Fourteenth Amendments to the United States Constitution. Plaintiff's allegations do not overcome either of the two elements of the presumption of Officer Fratto's qualified immunity. Plaintiff fails to allege facts to demonstrate the extremely rare exception to the law that governmental entities are not generally liable for alleged unconstitutional acts of their employees, unless the governmental entity itself caused a constitutional violation.

ARGUMENT AND AUTHORITIES

I. Standard of Review

In reviewing a Fed. R. Civ. P. 12(b)(6) motion to dismiss, the court "accepts as true well-pleaded factual allegations and views the allegations in the light most favorable to the plaintiff, drawing all reasonable inferences in the plaintiff's favor." *Jenkins v. Haaland*, No. 2:21-CV-00385,

2022 WL 1913918, at *3 (D. Utah Apr. 28, 2022). However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to state a claim. *Schadel v. Gochis*, No. 2:19-CV-00494, 2020 WL 4500644, at *3 (D. Utah Aug. 5, 2020). Accord. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007); *see also* *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A court does not accept legal conclusions as true. Rather, a complaint "must be supported by factual allegations" that make out a viable claim. *Iqbal*, 556 U.S. at 679. Allegations must "raise a right to relief above the speculative level." *Bick v. Utah State Univ.*, No. 1:19-CV-00084-DBB, 2021 WL 2379600, at *1 (D. Utah June 10, 2021). The Court is "not bound by conclusory allegations, unwarranted inferences, or legal conclusions." *Hackford v. Babbitt*, 14 F.3d 1457, 1465 (10th Cir. 1994).

II. Qualified Immunity

"When a § 1983 defendant asserts qualified immunity, this affirmative defense 'creates a presumption that [the defendant is] immune from suit.'" *Sanchez v. Guzman*, 105 F.4th 1285, 1292 (10th Cir.), cert. denied, ___ U.S. ___, 145 S. Ct. 1052 (2025). "[P]olice officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue." *Kisela v. Hughes*, 584 U.S. 100, 104 (2018). See also, *Mullenix v. Luna*, 577 U.S. 7, 13 (2015).

The doctrine of "[q]ualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S.731, 735 (2011). This is a heavy burden and its proof lays with plaintiff to establish both prongs. *Palacios v. Fortuna*, 61 F.4th 1248, 1256 (10th Cir. 2023). "If the plaintiff fails to establish either prong of the two-pronged qualified-immunity standard, the

defendant prevails on the defense." *Blackmore v. Carlson*, 574 F. Supp. 3d 1012, 1036 (D. Utah 2021).

As for the application of clearly established law, courts determine when qualified immunity attaches by focusing on whether the officer had "fair notice that [their] conduct was unlawful." *Kisela*, 584 U.S. at 104. Fair notice exists when the officer's conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* Accord. *White v. Pauly*, 580 U.S. 73, 78–79 (2017). Clearly established law "does not require a case directly on point," but the "existing precedent must have placed the statutory or constitutional question beyond debate." *Kisela*, 584 U.S. at 104.

A "district court[] may grant motions to dismiss on the basis of qualified immunity." *Blackmore*, 574 F. Supp. 3d at 1023. "[When] evaluating a Rule 12(b)(6) motion to dismiss, courts may consider not only the complaint itself, but also attached exhibits ... and documents incorporated into the complaint by reference." *Id.* at 1024. "[I]f a defendant attaches to a [Rule] 12(b)(6) motion materials referred to by the plaintiff and central to [the plaintiff's] claim, the court has discretion to consider such materials." *Id.* at 1025. For qualified immunity, the officer's actions are judged not only by the complaint and any incorporated documents and materials, but will also be "judged against the backdrop of the law at the time of the conduct." *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004).

III. Plaintiff Fails To Alleges Facts Showing Any Constitutional Violation.

The Fourth Amendment permits intrusions when justified by "reasonable and articulable suspicion." *State v. Worwood*, 2007 UT 47, ¶ 24, 164 P.3d 397, 406; *Smith v. Kenny*, 678 F. Supp. 2d 1124, 1153 (D.N.M. 2009). Federal courts evaluate Fourth Amendment constitutional violation

claims under an "objective reasonableness standard" determined by the totality of circumstances as though "from the perspective of a reasonable officer on the scene." *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). "Even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual [and] ask to examine the individual's identification…" *Muehler v. Mena*, 544 U.S. 93, 101 (2005). Accord, *United States v. Gates*, 611 F. Supp. 3d 1260, 1267 (D. Utah 2020), aff'd, No. 20-4106, 2021 WL 6060974 (10th Cir. Dec. 20, 2021).

Here, Plaintiff's own allegations support Officer Fratto's efforts to make a stop and inquiry permitted under *Terry v. Ohio*, 392 U.S. 1 (1968). "An officer can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot, even if the officer lacks probable cause." *Cortez v. McCauley*, 478 F.3d 1108, 1115 (10th Cir. 2007). In determining reasonable suspicion, courts have consistently held that factors such as the time of day, location, and an individual's behavior—including flight—are pertinent considerations. *Gates*, 611 F. Supp. 3d at 1271. Indeed, the undisputed, objective factors Plaintiff admits all support the constitutionality of Officer Fratto's effort to make a *Terry* stop.

First, as the Tenth Circuit has explained, late night stops, like the one presented here, "add[] weight to the reasonableness of the officer[']s suspicions." *United States v. Conner*, 699 F.3d 1225, 1231 (10th Cir. 2012). Equally consistent with Tenth Circuit precedent is the fact that Plaintiff's "flight from police compounded [the officer's] reasonable suspicion that [Plaintiff] was engaged in some type of criminal activity" *United States v. Guardado*, 699 F.3d 1220, 1224 (10th

Cir. 2012). As the Court explained in *Gates*, "flight is a pertinent factor in determining reasonable suspicion." *Id.* at 1272.

When an arrest is made, it "is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer's presence. *D.C. v. Wesby*, 583 U.S. 48, 56 (2018); *see also Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001). The "reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham*, 490 U.S. at 396; *see also Terry*, 392 U.S. at 20-22. Courts do not focus on the "officers' particular motivations," nor the "arrestee's perception," but on "whether the officers' actions were objectively reasonable in light of the facts and circumstances confronting them." *Fisher v. City of Las Cruces*, 584 F.3d 888, 894 (10th Cir. 2009) (internal citation omitted). Reasonableness is determined by the totality of circumstances looking to "(1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the officers or others; and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396.

A. Plaintiff's conduct warranted the *Terry* stop.

Officer Fratto did not violate Plaintiff's constitutional rights when he conducted a *Terry* stop and investigative detention of Plaintiff in the early morning hours of July 25, 2024. As established through various Tenth Circuit case law, discussed in detail *infra*, the time of night, Plaintiff's presence in an unexpected location, and Plaintiff's flight from police are pertinent and compounding factors, among others, that establish reasonable suspicion that an individual may be engaged in some form of criminal activity, which is all that is necessary for an officer to make an investigative stop and inquiry.

The reasonableness of a *Terry* stop is an objective standard and depends on whether the challenged action was justified under the circumstances. *al-Kidd*, 563 U.S. at 736. In determining whether a *Terry* stop is reasonable, courts first look to "whether the officer's action was justified at its inception," and second "whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20.

Plaintiff admits that Officer Fratto witnessed Plaintiff "**emerging from the shadows** at the Legend Hills shopping complex" at approximately 3:00 a.m. on July 25, 2024. Ex. D; Ex. E; DKT 1 at ¶¶ 7 & 12 (emphasis on Plaintiff's own description added). After following Plaintiff through the empty parking lot in his cruiser, Officer Fratto attempted to approach Plaintiff on foot, but Plaintiff began running away requiring Officer Fratto to pursue Plaintiff in his squad car. Ex. E at 0:31-0:40; DKT 1 at ¶¶ 17-18. Considering these relevant facts taken together, Officer Fratto had reasonable suspicions that Plaintiff may have committed, or was in the process of committing a crime.

The initial encounter between Plaintiff and Officer Fratto took place when Officer Fratto, speaking through the passenger window of his patrol car, asked Plaintiff "why you running?" Plaintiff was belligerent in his response stating, "No. Quit following me. Go away." Officer Fratto was unable to ascertain Plaintiff's purpose for being out at 3:00 a.m. and walking through a mall parking lot. Plaintiff crossing behind the squad car after it had passed and entering yet another parking lot on the opposite side of the street only fueled further suspicion. That's when Officer Fratto entered the parking lot of Pepper Ridge Apartments, exited his patrol car and told Plaintiff, "K—you have to stop now." *Id.* at 3:23-4:05.

Once Officer Fratto had Plaintiff stop, an investigative detention and related seizure, but not an arrest, occurred consistent with the Fourth Amendment and *Terry*. Nonetheless, Officer Fratto did not infringe Plaintiff's rights because Officer Fratto possessed sufficient reasonable suspicion given Plaintiff's belligerent and curt responses to questions, combined with his demeanor and actions of being out at that time of night, along with Plaintiff's flight to evade Officer Fratto, all of which only raised suspicions of possible nefarious activities on the part of Plaintiff. Because the facts establish the reasonableness of Plaintiff's *Terry* stop, Officer Fratto did not violate the Fourth Amendment by attempting to stop, stopping, and questioning Plaintiff.

B. Handcuffing and use of force during a *Terry* stop do not equate to an arrest.

Neither handcuffing nor placing a suspect on the ground during a *Terry* stop "necessarily turn[s] a lawful *Terry* stop into an arrest under the Fourth Amendment." *United States v. Perdue*, 8 F.3d 1455, 1463 (10th Cir.1993). To the contrary, "[o]fficers may restrain an individual to maintain the status quo during the course of a *Terry* stop." *United States v. Salas-Garcia*, 698 F.3d 1242, 1249 (10th Cir. 2012). Simply put, "a *Terry* stop does not automatically elevate into an arrest where police officers use handcuffs on a suspect or place him on the ground." *Gallegos v. City of Colorado Springs*, 114 F.3d 1024, 1030 (10th Cir. 1997).

Plaintiff's own allegations and the video show that, prior to handcuffing Plaintiff, Officer Fratto requested Plaintiff's identification twelve times within four minutes. *See* Ex. E at 4:33-8:27. Each time Plaintiff refused. *Id.* During that same time frame, Officer Fratto observed Plaintiff staggering and attempting to walk away multiple times. *Id.* Plaintiff also threatened to have Officer Fratto fired at least five times. *Id.* During this conversation with Plaintiff, Officer Fratto learned that Plaintiff had been at a bar. So, not only did Officer Fratto not know with whom

he was dealing, Officer Fratto also had no way to know what substances—alcohol or other—Plaintiff may have consumed because Plaintiff was belligerent and argumentative from the very outset.

Plaintiff claims he was shocked and did not understand why Officer Fratto was placing him in handcuffs. DKT 1 at ¶¶ 71-72. However, the video shows Officer Fratto calmly explained to Plaintiff at least three times within two minutes that if Plaintiff did not produce his identification then Officer Fratto would need to place Plaintiff in handcuffs in order to identify him. *See* Ex. E at 6:36-8:23. Indeed, Plaintiff understood what was happening enough to repeatedly threaten to have Officer Fratto fired. *Id.* at 5:07-8:15. Contrary to Plaintiff's allegations, the video shows Officer Fratto did not lunge at Plaintiff in his efforts to handcuff Plaintiff but, rather, Officer Fratto moved quickly toward Plaintiff to avoid any potential fight from Plaintiff. *Id.* at 8:34. Plaintiff fought and resisted, attempting to pull his right arm away, and would not place either hand behind his back as told to do by Officer Fratto. *Id.* at 8:34- 8:42. Plaintiff's demonstrated resistance necessitated Officer Fratto's use of the leg sweep tactic in order to subdue and handcuff Plaintiff.

Consistent with Supreme Court and Circuit precedent, Officer Fratto's actions were reasonable under the circumstances created by Plaintiff to restrain Plaintiff so Officer Fratto could identify Plaintiff, in order to maintain safety and the status quo during the course of the *Terry* stop. Handcuffing Plaintiff was part of the investigative detention, it was not an arrest.

C. Officer Fratto had probable cause to arrest Plaintiff.

Even if the court finds Officer Fratto's investigative detention crossed the threshold and amounted to an arrest, Officer Fratto still did not violate Plaintiff's constitutional rights because there was probable cause for Plaintiff's arrest.

Probable cause exists "where an officer has *reasonable grounds* to believe that a crime has been or is being committed." *Terry*, 392 U.S. at 35 *(emphasis added)*. While probable cause "applie[s] to all arrests," it does so "without the need to 'balance' the interests and circumstances involved in particular situations." *Atwater*, 532 U.S. at 354. Accord. *Dunaway v. New York*, 442 U.S. 200, 208 (1979). "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater*, 532 U.S. at 354. Moreover, the officer's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause" so long as "the circumstances, viewed objectively, justify the action" of making an arrest for any offense. *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004).

Here, Officer Fratto believed—albeit mistakenly—that when Plaintiff crossed the street behind Officer Fratto's cruiser and outside of a designated crosswalk, that Plaintiff had committed a misdemeanor crime of jaywalking, leading to probable cause for an arrest. Even though Officer Fratto's belief was a mistake of law as to the jaywalking reasoning to stop Plaintiff, probable cause existed to arrest or cite Plaintiff for several other criminal acts. Plaintiff's own pleading admissions, the video, and the other records Plaintiff incorporates in his complaint establish that probable cause existed to arrest Plaintiff for (1) his refusal to disclose his identity when asked by Officer Fratto, as required by Utah Code Ann. § 76-8-301.5 (West); (2) interfering with a public servant in violation of Utah Code Ann. § 76-3-301(2)(a) (West) when Plaintiff *repeatedly* attempted to intimidate Officer Fratto by threatening Officer Fratto's employment; and (3) interfering with a peace officer by resisting arrest or detention as prohibited by Utah Code Ann. § 76-8-305(2) (West). Accordingly, even if, purely *arguendo,* Plaintiff's *Terry* stop evolved into an

arrest, Plaintiff's purported arrest was supported by probable cause for several offenses and, under *Atwater*, even if Plaintiff's stop became an arrest, it was not an arrest unsupported by probable cause and, therefore, not a violation of the Fourth Amendment.

D. Officer Fratto's use of force was reasonable.

Officer Fratto's use of the takedown maneuver was "objectively reasonable in light of the facts and circumstances confronting [him]" and therefore, did not violate Plaintiff's Fourth Amendment rights. *Fisher*, 584 F.3d 888, 894 (10th Cir. 2009). Objective reasonableness is determined by the court based upon "whether the totality of the circumstances justified the use of force…but also "pay[ing] careful attention to the facts and circumstances of the particular case." *Est. of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1259-60 (10th Cir. 2008). An officer's belief "'as to the appropriate level of force' is judged from the officer's 'on-scene perspective' because officers must make 'split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving.'" *Mercado v. Ogden City*, No. 120CV00090RJSDAO, 2024 WL 757265, at *10 (D. Utah Feb. 23, 2024); *see also Est. of Larsen ex rel. Sturdivan*, 511 F.3d at 1260 (10th Cir. 2008).

"The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham* 490 U.S. at 396-97.

The Tenth Circuit has held that, when an officer reasonably believes a suspect poses a threat and resists being detained, "a forceful takedown [such as a leg sweep] is objectively reasonable when a suspect struggles with police." *Huntley v. City of Owasso*, 497 F. App'x 826,

832 (10th Cir. 2012). The court further emphasized that a leg sweep, if performed, should be done in accordance with training and not involve excessive force beyond what is necessary to control the suspect. *Id.* A requirement to use minimal force does not eliminate the use of a leg sweep as a law enforcement tactic to obtain control of a resisting suspect. Rather, as the Court has held, a leg sweep is allowed for a minor offense so long as the "amount of force [does not go] beyond that which is commonly used when performing that maneuver" to control a suspect. Huntley, 497 F. App'x at 832.

Here, the video shows Officer Fratto asked Plaintiff twelve times to provide his identification and warned Plaintiff at least three times that, if Plaintiff did not provide his identification, Officer Fratto would place Plaintiff in handcuffs and investigate further to ascertain the requested information. Ex. E at 4:33-8:27. When Plaintiff again refused to provide identification, Officer Fratto told Plaintiff to put his hands behind his head and Officer Fratto quickly moved to restrain Plaintiff. Meanwhile, Plaintiff was fighting and resisting Officer Fratto's attempts to quickly and safely detain him. *Id.* at 8:34-8:40. Because of Plaintiff's resistance, Officer Fratto made a split-second judgment under a tense, uncertain, and rapidly evolving situation, performing a leg sweep to take Plaintiff to the ground to handcuff and restrain Plaintiff in a safe manner. *Id.* at 8:40-8:48. Due to the rapidly evolving situation, it is not exactly clear on the body-worn video what maneuver he employed. *Id.* What is clear, is that Plaintiff continued to fight and resist even when he was on the ground, prompting Officer Fratto to radio for backup to "step it up" because they were fighting. *Id.* at 8:48-10:55.

Officer Fratto's use of this takedown maneuver resulted in Plaintiff suffering no more than alleged "road-rash" on his left elbow. However, the injuries to his elbow are likely due to

Plaintiff's continued fighting and resistance, refusing to produce his left arm which was underneath him. Plaintiff did not hit his head, nor did he suffer any other injuries as a result of this maneuver. The amount of force used in the takedown was minimal and appropriate for the minor offense in light of Plaintiff's continued and physical resistance.

Looking at the totality of the circumstances, and the fact that Plaintiff was actively resisting and fighting against Officer Fratto, the use of force was reasonable and not excessive. Thus, Officer Fratto did not infringe Plaintiff's constitutional right to be free from excessive force.

IV. QUALIFIED IMMUNITY

Plaintiff's claims against Officer Fratto further fail due to Plaintiff's failure to disprove the presumption of Officer Fratto's immunity. Officer Fratto is entitled to qualified immunity unless Plaintiff establishes Officer Fratto "(1) violated a constitutional or statutory right which (2) was clearly established at the time of the official's conduct. *Salgado v. Smith*, No. 24-2068, 2025 WL 1879232, at *3 (10th Cir. July 8, 2025). "The protection of qualified immunity applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Accord. *Blackmore*, 574 F. Supp. 3d at 1035.

A. Plaintiff fails to establishes any constitutional violation.

Plaintiff cannot meet his burden on the first prong for qualified immunity because Officer Fratto conducted a *Terry* stop with an investigative detention that amounted to Plaintiff's detention for roughly forty-eight minutes. During that time, Plaintiff was temporarily handcuffed and put in the back of the police car, with air conditioning, while Plaintiff and Officer Fratto waited for

paramedics to evaluate Plaintiff's scrapped elbow. Plaintiff was issued a citation for interfering with a police officer and released. Plaintiff was never questioned nor taken to the police station.

As discussed above, and therefore not repeated here, Officer Fratto had reasonable suspicion for an investigative detention when Plaintiff ran from Officer Fratto at 3 a.m. in a mall parking lot, where all the businesses were closed, and after Plaintiff became belligerent and evasive in his answers, refusing to identify himself and ultimately telling Officer Fratto to "quit following me" and "go away." Plaintiff's allegations fail to show no reasonable police officer could not have believed that Plaintiff was properly subjected to a *Terry* stop, and indeed even arrest, as well as the use of minimal, open–hand force to overcome Plaintiff's resistance.

Furthermore, when Plaintiff crossed the street behind Officer Fratto's cruiser and outside of a designated crosswalk, Officer Fratto believed—although he later learned his was a mistake of law—that Plaintiff had committed a misdemeanor crime, leading to probable cause for an arrest. Under *Saucier*, even in such a case as a mistake of law, probable cause existed under *Atwater* for other offenses and Officer Fratto is entitled to the protection of qualified immunity. Even if the court finds Plaintiff's detention went beyond an investigative detention to an arrest.

B. Officer Fratto is Entitled to Immunity on Plaintiff's Claim of Excessive Force.

During the process of attempting to identify Plaintiff, as permitted under *Terry*, Plaintiff was hostile and he threatened Officer Fratto. *See* Ex. E at 5:07-8:15. Since Officer Fratto still did not know Plaintiff's name, Officer Fratto told Plaintiff he was going to put Plaintiff in handcuffs to obtain Plaintiff's identification, which Plaintiff repeatedly refused to provide following numerous, calm requests by Officer Fratto. Officer Fratto then told Plaintiff to put his hands behind

his back. Instead of doing as he was told, Plaintiff raised both hands up and out in front of him to impede handcuffing. *Id.* at 8:34.

Plaintiff presented one of those circumstances, as referenced in *Mercado* and *Est. of Larsen ex rel. Sturdivan*, that is "tense, uncertain, and rapidly evolving." Alone, and faced with Plaintiff's resistance, Officer Fratto conducted a takedown maneuver in as safe a manner as possible, with Plaintiff suffering only road-rash on his left elbow. Plaintiff did not hit his head, nor did he suffer any other injuries as a result of this maneuver. Plaintiff did, however, continue to fight and resist being placed in handcuffs; refusing to produce his left arm which was underneath him. The injuries to his elbow were likely from his own fighting and resistance and not the takedown.

The Tenth Circuit's opinions in *Gallegos*, *supra* and *Hinton*, *supra* would have told a reasonable officer that the leg sweep and use of handcuffs were constitutionally permissible to subdue Plaintiff *under circumstances Plaintiff created.* Accordingly, Plaintiff's citation to *Surat v. Klamser*, 52 F.4th 1261 (10th Cir. 2022) falls far short of Plaintiff's burden to identify "clearly established" law that would have put all reasonable officers on notice that Officer Fratto's actions were unconstitutional.[6] Rather, as the Supreme Court explained in *Kisela*, existing precedent must squarely govern the *specific facts* at issue, and the specific facts of *Surat*, do not meet the facts presented here.

In *Surat*, the court focused significant attention to the gross disparity in height and weight between the suspect and the officer who performed the takedown as well as the fact there were multiple officers at the stop location, both factors clearly not presented here. Equally significantly

[6] Moreover, as a lone case, the decision in *Surat* does not constitute "clearly established" law. See, *e.g.*, *York v Las Cruze*, 523 F.3d 1205, 1211-1212 (10th Cir. 2008).

different in *Surat*, the officer used so much force in the maneuver that Surat "sustained a concussion, cervical spine strain, contusions to her face, and bruising on her arms, wrists, knees, and legs." *Surat*, 52 F.4th at 1267. These significant injuries, suggesting a much greater extent of force in *Surat* are not even alleged here.

Simply put, while *Surat* is *a case* involving analysis of a use of force, *Surat* does not "clearly establish" the law of use of force so as to overcome the presumption of Officer Fratto's immunity in the case at bar.

V. PLAINTIFF FAILS TO STATE A CLAIM AGAINST CLEARFIELD CITY

"A municipality may not be held liable under § 1983 solely because its employees inflicted injury on the plaintiff." *Hinton v. City of Elwood, Kan.*, 997 F.2d 774, 782 (10th Cir. 1993). Rather, to establish a § 1983 municipal liability claim, "[p]laintiffs are required to plead in their Complaint a specific policy or custom that led to the [underlying constitutional] violation," *Mercado*, 2024 WL 757265, at *26, because municipalities will only "be held liable under 42 U.S.C. § 1983 [] for their own unlawful acts." *Pyle v. Woods*, 874 F.3d 1257, 1266 (10th Cir. 2017).

To determine the separate question of whether a plaintiff has alleged facts for the rare case of municipal liability, Courts look to a plaintiff's complaint which must show: "(1) an officer committed an underlying constitutional violation, (2) a municipal policy or custom exists, and (3) there is a direct causal link between the policy or custom and alleged injury." *Mercado*, 2024 WL 757265, at *26. In light of the fact that municipal liability in such cases is truly rare, particularly important to the a court's consideration is that "threadbare recitals of the elements of a cause of

action, supported by mere conclusory statements" are not sufficient to state a claim for relief. *Pyle*, 874 F.3d at 1266.

A. No Constitutional Violation Occurred.

As discussed *supra*, Officer Fratto's stop was warranted under *Terry* and its progeny. It did not become an arrest, but even if it did, there was probable cause to attest Plaintiff, and the force used was measured and appropriate to detain Plaintiff. Because Officer Fratto did not violate the constitution, as a matter of law, the City cannot be liable under 42 U.S.C. § 1983. "A municipality may not be held liable where there was no underlying constitutional violation by any of its officers." *Graves v. Thomas*, 450 F.3d 1215, 1218 (10th Cir. 2006). Even if a constitutional violation did occur, "a municipality is not liable for the constitutional violations of its employees simply because such a violation has occurred; a policy or custom must have actually caused that violation." *Cordova v. Aragon*, 569 F.3d 1183, 1193-94 (10th Cir. 2009) (internal citations omitted).

Thus, the facts alleged must show a constitutional violation first, not just an unconstitutional policy, for a municipality to be held liable. *See Trigalet v. City of Tulsa, Oklahoma*, 239 F.3d 1150, 1151 (10th Cir. 2001). Plaintiff cannot rely on conclusory statements to state a claim. To establish municipal liability, Plaintiff must identify (1) a "municipal policy or custom;" (2) a "direct causal link between the policy or custom and the injury alleged;" and (3) "that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences." *Porter v. Daggett Cnty., Utah*, 587 F. Supp. 3d 1105, 1119-20 (D. Utah 2022). Plaintiff fails on each element. Accordingly, Clearfield City did not, as a matter of law, fail to train

or supervise its officers, and therefore is not liable for any violation of Plaintiff's constitutional rights.

1. Plaintiff Fails To Identify A Municipal Policy or Custom.

The Tenth Circuit has routinely held a municipal policy or custom may take one of the following forms:

> (1) a formal regulation or policy statement; (2) an informal custom amounting to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law; (3) the decisions of employees with final policymaking authority; (4) the ratification by such final policymakers of the decisions—and the basis for them—of subordinates to whom authority was delegated subject to these policymakers' review and approval; or (5) the failure to adequately train or supervise employees, so long as that failure results from deliberate indifference to the injuries that may be caused.

Lucas v. Turn Key Health Clinics, LLC, 58 F.4th 1127, 1145 (10th Cir. 2023). Plaintiff narrows his *Monell* claim to a claim of failure to train or supervise arguing only conclusorily that Clearfield City failed to adequately train or supervise Officer Fratto. DKT 1 at ¶ 142.

It is well established that "[m]ere 'labels and conclusions,' and 'a formulaic recitation of the elements of a cause of action' will not suffice; a plaintiff must offer specific factual allegations to support each claim." *Dalcour v. City of Lakewood*, 492 F. App'x 924, 930 (10th Cir. 2012). Plaintiff's only supporting allegation is that "[a]t all times relevant hereto and in performance of the acts set forth herein, Defendant Fratto acted under color of state law." DKT 1 at ¶133. Yet, Plaintiff does not identify which specific policy or custom were the moving force behind Officer Fratto's actions. Indeed, Plaintiff merely provides conclusory statements that Clearfield City, through its *after-the-fact* use of force investigation, and issuance of a *subsequent* media statement regarding its findings, is proof that Clearfield City did not properly supervise or train its officers.

DKT. 1 at ¶¶ 116-19; *see also* Use of Force Investigation Report, attached as Exhibit B; Clearfield Police Department Media Statement, attached as Exhibit C.[7]

The mere fact one individual officer *may* have violated the Constitution does not allow the purely conclusory assertion that he was not properly trained or supervised. "That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty training program." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390–91 (1989). Accordingly, directly contrary to Plaintiff's *ipse dixit* assertion of lack of training. Indeed, to the very contrary, Judge Stewart writing for the Court explained "[a] pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train. *George v. Beaver Cnty.*, No. 2:16-CV-1076 TS, 2019 WL 3892940, at *3 (D. Utah Aug. 19, 2019), aff'd sub nom. *George , on behalf of Bradshaw v. Beaver Cnty., by & through Beaver Cnty. Bd. of Commissioners*, 32 F.4th 1246 (10th Cir. 2022).

2. Plaintiff Fails to Identify Any Municipal Policy That Is The Moving Force Behind A Violation of Plaintiff's Rights and Injuries.

Even if Plaintiff manages to establish the first element for municipal liability, Plaintiff's claim against Clearfield City still fails because he does not identify any municipal policy or custom which is the actual cause of a violation of Plaintiff's constitutional rights. When inadequate supervision or discipline is at issue, not only must the policy be "closely related to the violation of

[7] This bald assertion also fails because the documents Plaintiff describes do not identify a policy of Clearfield City's policymaker, its city council. See, *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988). Accord, *Milligan-Hitt v. Bd. of Trustees of Sheridan Cnty. Sch. Dist. No. 2*, 523 F.3d 1219, 1227 (10th Cir. 2008); *AH Aero Services, LLC v. Heber City*, 601 F. Supp. 3d 1157, 1197 (D. Utah 2022).

the plaintiff's federally protected right," but the "causation element is applied with especial rigor." *Porter*, 587 F. Supp. 3d at 1123.

"Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*..., unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker." *Castro v. Utah Cnty.*, No. 2:22-CV-00464-JCB, 2024 WL 4252940, at *7 (D. Utah Sept. 20, 2024). Here, Plaintiff alleges a single incident of unconstitutional activity by Officer Fratto under the direction of Clearfield City. Furthermore, Plaintiff claims that his constitutional deprivations arise from Clearfield City's failure to revise its policies. DKT 1 at ¶ 142. Yet, Plaintiff fails to identify, beyond his unsupported conclusion of inadequacy based on Plaintiff's mistaken view of what happened to him, any Clearfield City policy that is unconstitutional, let alone one that is the "moving force" of any constitutional deprivation.

Conversely, Clearfield City actually followed its proper procedures when it conducted the use of force investigation following the incident between Plaintiff and Officer Fratto. The results of that investigation found that Officer Fratto's use of force was "justified due to the fact [Plaintiff] was showing signs of suspicious activity when considering the totality of the circumstances," that Officer Fratto "misunderstood the 'jaywalking' code" and should receive "remedial training [in] regards to the 'jaywalking' code." Ex. B. Thus, without sufficient supporting facts identifying a specific unconstitutional policy or custom, Plaintiff cannot establish the second element for municipal liability.

3. Plaintiff Fails To Identify Any Clearfield City Policy Which Shows A Deliberate Indifference To Plaintiff's Constitutional Rights.

Plaintiff also fails to allege facts to show Clearfield City's training policies are deliberately indifferent to Plaintiff's constitutional rights. "It is not enough to allege 'general deficiencies' in a particular training program....Rather, a plaintiff 'must identify a specific deficiency in the [entity's] training program closely related to his ultimate injury, and must prove that the deficiency in training actually caused the [officer] to act with deliberate indifference to his safety.'" *Porter*, 587 F. Supp. 3d at 1120. "When the asserted policy consists of the failure to act, the plaintiff must demonstrate that the municipality's inaction was the result of 'deliberate indifference' to the rights of its inhabitants." *Hinton*, 997 F.2d at 782. Deliberate indifference "requires proof that city policymakers disregarded the "known or obvious consequence" that a particular omission in their training program would cause city employees to violate citizens' constitutional rights. *Connick v. Thompson*, 563 U.S. 51 (2011).

The Court can and should take judicial notice that all Utah police officer training is standardized and mandated by the State under the Peace Officer Training and Certification Act, Utah Code Ann. §§ 53–6–101 to 310. *Stidham v. Peace Officer Standards And Training*, 265 F.3d 1144, 1150 (10th Cir. 2001). Accordingly, Clearfield City employs only POST certified officers – Plaintiff does not allege otherwise—or a court declares Utah POST training constitutionally inadequate—which Plaintiff also does not allege—Clearfield City cannot be deliberately indifferent to a known need for additional training the State has not prescribed. Accordingly, as Judge Stewart held in *George*, *supra*, where a municipality has complied with state mandated minimum training it is difficult, if even possible, for a plaintiff to "show that the need for additional or different training was so obvious that a violation of constitutional rights was likely to occur by

not providing it." *George*, 2019 WL 3892940, at *3. Put another way, Clearfield City's reliance, as statutorily required, on state training standards of the city's officers through POST is inapposite, at least of the obvious "inadequacy of the training the officers received was so likely to result in a constitutional violation that the [City] can be said to have been deliberately indifferent." *Id.*

Accordingly, it is not surprising, but still fatal to Plaintiff's burden to state a claim against the city that Plaintiff fails to actually identify any "specific deficiency" in training that was "closely related to his ultimate injury" and that caused Officer Fratto to act with deliberate indifference to Plaintiff's safety. When Officer Fratto used the leg sweep tactic, he did so for both his and Plaintiff's safety because Officer Fratto was alone and because he was "trained to use" it in circumstances such as these. *See* Ex. C; Ex. E, at 8:34- 8:48. Plaintiff fails to establish the third element for municipal liability because Clearfield City cannot be deliberately indifferent because Officer Fratto's training was consistent with Utah law.

Not only was Plaintiff not subjected to any constitutional violation, as a matter of law Clearfield City cannot be liable under 42 U.S.C. § 1983 for Officer Fratto's actions.

CONCLUSION

Based upon the foregoing reasons, the Court should grant the Defendants' motion and dismiss Plaintiff's claims against all Defendants.

DATED: August 29, 2025 LEWIS BRISBOIS BISGAARD & SMITH LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2025, I caused a true and correct copy of the foregoing **DEFENDANTS ZACHARY C. FRATTO'S AND CLEARFIELD CITY'S 12(b)(6) MOTION TO DISMISS** to be electronically filed through the Court's CM/ECF system, which will send notification of such filing to the following:

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