UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 3:26-CV-00605

ANTHONY LEE Plaintiff, v. CITY OF CHARLOTTE, KENNETH KLUDY, in his individual and official capacities, and DEVAN WILSON, in his individual and official capacities Defendants.	**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF PARTIAL MOTION TO DISMISS**

Defendants City of Charlotte, Kenneth Kludy, and Devan Wilson, by and through undersigned counsel, hereby submit their memorandum of law in support of their partial motion to dismiss Plaintiff's Complaint. Defendants move to dismiss under Federal Rule of Civil Procedure 12(b)(6) because the federal municipal liability claims fail to state a plausible custom or policy, and the official-capacity claims against the individual officers are redundant as a matter of law. Defendants appear for the purpose of seeking partial dismissal and expressly preserve all affirmative defenses and objections, including those relating to qualified immunity and public official immunity.

I. STATEMENT OF THE CASE

Plaintiff initiated the instant action by filing his Complaint on or about July 27, 2026. Plaintiff asserts claims pursuant to 42 U.S.C. § 1983 arising from his arrest by officers of the Charlotte-Mecklenburg Police Department.

According to the Complaint, on November 13, 2023, Plaintiff was arrested at a bus stop by officers with the Charlotte-Mecklenburg Police Department, including Officer Devan Wilson and

Officer Kenneth Kludy. Plaintiff alleges that the officers arrested him without probable cause and that their sole justification for the arrest relied on the odor or sight of legalized hemp. Plaintiff further alleges that the officers initiated criminal proceedings against him following a physical altercation during the arrest sequence. As a result of the arrest, Plaintiff was charged with misdemeanor possession of marijuana, resisting a public officer, and carrying a concealed gun.

Plaintiff contends that the accusations underlying those charges were false and that he was in lawful possession of and had consumed a commercially purchased hemp product. Plaintiff alleges that the criminal proceedings against him remained pending until November 27, 2023, when all charges were voluntarily dismissed by the Mecklenburg County District Attorney's Office. According to the instant Complaint, Plaintiff was subsequently rearrested in July 2024 on related charges initiated by Defendants for possession of a stolen firearm, which were also voluntarily dismissed on August 13, 2024.

Plaintiff alleges that the Defendants' actions violated his constitutional rights and seeks recovery of compensatory damages against the individual officers in their individual capacities for the federal claims and both individual and official capacities for the state law claims, as well as compensatory damages against the City of Charlotte.

II. LEGAL ARGUMENT

A. Rule 12(b)(6) Standard

To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead facts sufficient to "state a claim of relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007)). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing *Twombly*, 550 U.S. at 556).

B. Plaintiff's Official-Capacity Claims Against Defendant Officers Are Redundant and Must Be Dismissed.

Plaintiff's claims against Officer Wilson and Officer Kludy in their official capacities should be dismissed because they are entirely redundant to the claims asserted against the City of Charlotte. It is well-settled law within the Fourth Circuit that an official-capacity suit against a municipal officer is simply another way of pleading an action against the governmental entity itself. See *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985); *Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004) (holding that an official-capacity claim is essentially a claim against the governmental entity).

Because the City of Charlotte is a named Defendant in this action, the official-capacity claims against the individual officers serve no independent legal purpose and are duplicative as a matter of law. Accordingly, all claims against Defendant Officers in their official capacities fail to state a distinct claim upon which relief can be granted and must be dismissed under Rule 12(b)(6).

C. Plaintiff Fails to Allege Plausible Municipal Liability Under Section 1983 Against the City of Charlotte.

To state a claim for municipal liability under 42 U.S.C. § 1983, a plaintiff cannot rely on the doctrine of *respondeat superior*. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Instead, a municipality can only be held liable if the constitutional deprivation was caused by an official policy, custom, or practice of the city. *Id.* Under the pleading standards set forth in *Twombly* and *Iqbal*, Plaintiff's assertions regarding a failure to train, a widespread custom, and ratification fail to clear the plausibility threshold.

i. Plaintiff's Own Factual Allegations Fatal to His "Failure to Train" Claim.

The Supreme Court has emphasized that a municipality's culpability is not supported by a claim which rests solely on failure to train, and Section 1983 does not provide allow the second-

guessing of local training programs (*Connick v. Thompson*, 563 U.S. 51 (2011)). A failure to train claim requires a plaintiff to identify a specific deficiency in the training program itself, not merely allege that an individual officer acted improperly despite being trained (*Johnson v. Baltimore Police Dep't*, 452 F. Supp. 3d 283 (2020). The plaintiff must plausibly demonstrate that the training program was insufficient in some particularized manner (*Palma v. Montgomery County*, 598 F. Supp. 3d 288 (2022)).

When a plaintiff's own complaint reveals that proper training policies existed, the claim becomes implausible on its face. Plaintiffs cannot merely claim that officers' understanding of policies was ineffective when the underlying policies themselves were constitutionally adequate (*Moore v. Barnes*, 802 F. Supp. 3d 792 (2025); *Hicks v. City of Lynchburg*, 696 F. Supp. 3d 211 (2023)).

Here, Plaintiff's Complaint explicitly incorporates and quotes the CMPD Police Law Bulletin distributed to all personnel, which instructs officers that: **"Officers will need additional evidence beyond the sight or smell of marijuana to establish probable cause (PC)."** Any alleged constitutional violation stems from an individual officer's alleged failure to *follow* proper training, rather than from an inadequate training program by the City of Charlotte.

ii. <u>Generalized Regional Statistics and Post-Incident Conduct Cannot Establish an Unofficial Custom.</u>

Plaintiff's remaining *Monell* theories are similarly deficient. The Fourth Circuit has consistently held that a *Monell* custom claim requires specific factual matter from which a widespread practice can be reasonably inferred (*Misjuns v. City of Lynchburg*, 139 F.4th 378 (2025); *Moody v. City of Newport News*, 93 F. Supp. 3d 516 (2015)).

Plaintiff attempts to construct an unofficial custom by pointing to generalized regional arrest statistics showing racial disparities in misdemeanor marijuana arrests. While statistical data may

describe outcomes, it is no substitute for factual allegations showing that the municipality adopted or tolerated an unconstitutional practice. Plaintiff's reliance on the police chief's post-incident media defenses and op-eds fails as a matter of law. To sustain a *Monell* claim, the municipality's custom or policy must *cause* the constitutional deprivation (*Brown v. Mitchell*, 308 F. Supp. 2d 682 (2004)). Post-incident public relations statements cannot serve as the moving force behind a past, completed physical arrest. Because the Complaint fails to satisfy the threshold requirement of identifying a specific municipal training deficiency or an authorized custom, the Seventh, Eighth, and Ninth Claims against the City of Charlotte must be dismissed under Rule 12(b)(6).

III. CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court dismiss Plaintiff's Complaint in part.

RESPECTFULLY SUBMITTED this 26th day of October 2026.

OFFICE OF THE CITY ATTORNEY

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WORD COUNT CERTIFICATION

The undersigned hereby certifies in accordance with Local Rule 7.1(d) this Memorandum does not exceed 25 pages.

CERTIFICATION OF COMPLIANCE WITH STANDING ORDER IN RE: USE OF ARTIFICIAL INTELLIGENCE

I hereby certify that MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS is in compliance with the requirements set forth in this Court's Standing Order In Re: Use of Artificial Intelligence (3:24-mc-104).

No artificial intelligence was employed in doing the research for the preparation of said Memorandum, with the exception of such artificial intelligence embedded in the standard on-line legal research sources Westlaw, Lexis, FastCase, and Bloomberg.

Every statement and every citation to an authority contained in this document has been verified by an attorney in this case and/or a paralegal working at his/her direction as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

This the 26th day of October 2026.

OFFICE OF THE CITY ATTORNEY

s/Norlan Graves
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing Defendant's Memorandum of Law in Support of Motion to Dismiss was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to the below listed counsel. For parties not yet attached to this case in the CM/ECF system, copies will be sent by regular U.S. mail to the below-listed addresses.

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DATED the 26th day of October 2026

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