IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE 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.*	PLAINTIFF'S OPPOSITION TO PARTIAL MOTION TO DISMISS

Plaintiff Anthony Lee ("Plaintiff Lee" or "Mr. Lee") respectfully submits this opposition to Defendants' Partial Motion to Dismiss, D.E. 10, and corresponding Memorandum of Law, D.E. 11, filed by Defendants City of Charlotte, Officer Kenneth Kludy ("Officer Kludy"), and Officer Devan Wilson ("Officer Wilson").

INTRODUCTION

This case arises out of the unlawful arrest, search, and prosecution of Mr. Lee by Officers Wilson and Kludy on November 13, 2023, in Charlotte. Mr. Lee had just finished a shift at Bojangles and was waiting for the bus, sharing a legally purchased hemp cigarette with his then-partner, when Officer Wilson and Officer Kludy drove by, claimed to smell marijuana, and approached on foot. Mr. Lee told them, plainly and more than once, that he was smoking lawful hemp from a store. The officers did not ask a single follow-up question. Instead, within seconds, Officer Wilson seized Mr. Lee's arm and placed him under arrest.

The officers' only asserted justification for the arrest was the alleged smell of marijuana. For years, however, the City of Charlotte had been told that this smell cannot tell legal hemp apart from illegal marijuana, so it cannot, without more, constitute probable cause. Beginning in 2019, the State Bureau of Investigation warned North Carolina law enforcement that hemp and marijuana look and smell the same, and that odor alone could no longer support probable cause. By 2021, CMPD's own attorneys had relayed the same message to its officers: they would need odor "plus" something to establish probable cause. Yet the City of Charlotte did not train its officers accordingly, did not correct the practice even as it was challenged in Mecklenburg County courtrooms, and, after Mr. Lee's arrest, publicly defended it. Mr. Lee's arrest was not an aberration. It was the foreseeable product of those choices—and it was one of many like it.

Mr. Lee's Complaint tells that story with particularity, drawing on the City of Charlotte's own legal bulletin, its own directives, its own arrest data, and its officers' (and police chief's) own words. Defendants respond with sweeping but unsupported assertions about Mr. Lee's municipal liability claims, but little else. Overall, their brief declares that the *Monell* claims fall short of plausibility without engaging the facts that support them.

Plaintiff agrees that the official-capacity claims against Officer Wilson and Officer Kludy on the state law claims duplicate the claims against the City of Charlotte and does not oppose their dismissal. But the Complaint plausibly alleges that the City of Charlotte is liable under *Monell* for its policies and customs that deprived Mr. Lee of his constitutional rights, and the Partial Motion to Dismiss should be denied as to those claims.

STATEMENT OF RELEVANT FACTS

The following facts are taken from the Complaint, D.E. 1, and must be accepted as true at this stage.

A. The Arrest of Mr. Lee

On the afternoon of November 13, 2023, Anthony Lee and his companion Christina Pierre had just finished their shifts at a Bojangles restaurant in Charlotte and were waiting for the bus. D.E. 1 ¶¶ 64-65. As they sat on a bench at the bus stop, they shared a hemp cigarette they had bought at a store that sells legal hemp products. *Id.* ¶ 66. Both Mr. Lee and Ms. Pierre are Black. *Id.* ¶ 3.

Officer Wilson and Officer Kludy were driving past in a marked CMPD patrol car when, they later said, they smelled what they believed to be marijuana near the bus stop. *Id.* ¶¶ 67-68. They parked and approached on foot. *Id.* ¶¶ 70-71. When Ms. Pierre asked what they had done wrong, Officer Wilson said, "It smelled like you're smoking weed." *Id.* ¶¶ 75-76. Mr. Lee and Ms. Pierre repeatedly explained that they were smoking lawful hemp from a local store. "This is stuff from the store. It's sold in the store. It's THCA," Mr. Lee said. *Id.* ¶¶ 77, 79, 81.

Neither officer asked a single follow-up question. *Id.* ¶ 85. Officer Wilson said he could smell the odor coming from the hemp cigarette, grabbed Mr. Lee's arm, and put him in handcuffs. *Id.* ¶¶ 80, 82-83. Less than thirty seconds had passed since the officers first spoke to Mr. Lee. *Id.* ¶ 84. When Mr. Lee asked why he was being detained, Officer Wilson threatened to tase him and pulled him from the bench to the ground. *Id.* ¶¶ 87-90. Nearby, Officer Kludy slammed Ms. Pierre to the ground, and when more officers arrived, one struck her repeatedly as Mr. Lee, restrained, was forced to watch. *Id.* ¶¶ 86, 91-96.

At the Mecklenburg County Detention Center following his arrest, Mr. Lee observed that "[i]t all smells the same," referencing both legal hemp and illegal marijuana. *Id.* ¶ 103. According to their own body-worn camera footage, Defendants conceded that "CBD's legal down here," but asserted that it was "not our burden to figure out if it's CBD, it's yours in court." *Id.* ¶¶ 102-103. Mr. Lee was charged with three misdemeanors, including possession of marijuana. *Id.* ¶ 104. Two weeks later, after reviewing the body-worn camera evidence, the Mecklenburg County District Attorney's Office dismissed all charges. *Id.* ¶ 106. In the aftermath of the November 13, 2023, events, Mr. Lee's name, image, and his harrowing, upsetting, and humiliating experience were covered on a regular basis by local news, as well as on national media platforms (*e.g.*, CNN, Fox News). *Id.* ¶ 109. To this day, Mr. Lee continues to experience intense emotional and mental harm stemming from the traumatic events of his arrest. *Id.* ¶ 135.

B. Hemp Legalization and the City of Charlotte's Notice That Odor Alone Is Not Enough

Defendants knew or should have known that their sole justification for arresting Mr. Lee—their only stated basis for probable cause—was well-established "junk science," something that their own department and legal counsel had previously advised was not a sufficient legal basis to arrest someone and deprive them of their liberty. *Id.* ¶ 2. Defendants' notice, and unlawful failure to train accordingly, is thoroughly detailed throughout the Complaint.

Hemp and marijuana are the same plant species. *Id.* ¶ 20. They are separated by the concentration of delta-9 THC, and hemp is lawful so long as it contains no more than 0.3% of delta-9 THC. *Id.* ¶¶ 21-22. North Carolina decriminalized industrial hemp in 2015, Congress removed hemp from the federal schedule of controlled substances in 2018, and in 2022, North Carolina excluded hemp from its Controlled Substances Act and its definition of marijuana. *Id.*

¶¶ 24-25, 41-42. Well before and on the day of Mr. Lee's arrest, North Carolinians could legally purchase, possess, and smoke hemp. *Id.* ¶ 43.

The consequences for policing were apparent early. In 2019, the North Carolina State Bureau of Investigation ("NC SBI") published a memorandum warning that there is no field test to distinguish hemp from marijuana, that the two "look the same and have the same odor," and that it was therefore "impossible" for officers to use appearance or odor to develop probable cause for an arrest, seizure, or search warrant. *Id.* ¶¶ 26-30.

In the summer of 2021, the City of Charlotte, through CMPD's Police Attorney's Office, published a Police Law Bulletin (the "2021 CMPD Police Law Bulletin") that is distributed to CMPD personnel, who are responsible for reading it. *Id.* ¶¶ 32-34. The 2021 CMPD Police Law Bulletin told officers that, because hemp, CBD, and marijuana "cannot be distinguished from one another without chemical analysis," they "will need additional evidence beyond the sight or smell of marijuana to establish probable cause." *Id.* ¶ 38. Its rule was simple: "PC for Marijuana = Odor/Sight 'Plus,'" followed by examples of the necessary "plus," such as a suspect's admissions or behavior. *Id.* ¶ 39. It added that CMPD's testing detected only the presence of THC, not its amount. *Id.* ¶¶ 38, 40.

As the Complaint alleges, nothing meaningfully changed. Through at least November 13, 2023, CMPD continued to use the mere odor or sight of something that resembled cannabis as the only justification to stop, seize, search, and arrest people in Charlotte. *Id.* ¶¶ 48-49. Officer Wilson and Officer Kludy, like their colleagues, knew or should have known that they could not tell hemp from marijuana by odor or sight, and that CMPD had no field test or instrument that could. *Id.* ¶¶ 50-52. From 2019 on, "odor only" arrests were challenged in motions to suppress in Mecklenburg County District and Superior Courts where CMPD officers acknowledged that they

could not tell the difference by odor and that they knew of the NC SBI memorandum and the 2021 CMPD Police Law Bulletin. *Id.* ¶¶ 54-56. The City of Charlotte knew of those challenges. *Id.* ¶ 53. Further, CMPD's own data show that from 2016 through 2023 it arrested roughly 332 people where misdemeanor marijuana possession was the only charge, more than 81% of them Black. *Id.* ¶ 62(c). Still, the City of Charlotte did not train its officers in accordance with the new legal landscape. *Id.* ¶¶ 57, 215-217.

C. The City of Charlotte's Response

After Mr. Lee's arrest, CMPD defended it. In December 2023, CMPD released a video briefing, and then-Chief Jennings published an op-ed falsely asserting that the officers "had probable cause" and that the substances "tested positive for marijuana." *Id.* ¶¶ 111-112. But CMPD's testing showed only the presence of THC, not the delta-9 concentration that separates marijuana from hemp. *Id.* ¶¶ 111(d), 114-115.

The City Council reviewed the body-worn camera footage in a closed session on December 11, 2023. *Id.* ¶ 116. One member passed around a legal THCA cigarette and a bag of hemp flower to show that they are indistinguishable from marijuana, and another called it "practically impossible for officers to discern the molecular structures of what someone is smoking." *Id.* ¶¶ 117-118. The Council adopted no resolution, directive, or ordinance addressing officers' reliance on the odor or appearance of cannabis. *Id.* ¶ 120. Mr. Lee, meanwhile, endured national media coverage, interrupted employment, and lasting emotional harm. *Id.* ¶¶ 109, 133-135.

For years before Mr. Lee's arrest, the NC SBI, the City of Charlotte's own attorneys, and the courts had put the City on notice that odor alone could not support probable cause for marijuana. *Id.* ¶¶ 26-30, 38, 53-57. The City of Charlotte nevertheless neither trained its officers

accordingly nor corrected their practice, and after Mr. Lee's arrest it defended the arrest and made no corrective policy changes. *Id.* ¶¶ 48-49, 57, 120-121, 215-217.

STANDARD OF REVIEW

In reviewing a motion to dismiss under Rule 12(b)(6), the Court must "accept the well-pled allegations of the complaint as true," and "construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff." *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). Dismissal is not appropriate where the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "Asking for plausible grounds … does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of [the claim]." *Id*. at 556.

ARGUMENT

I. Official Capacity Claims Against Officer Wilson and Officer Kludy in Claims Two, Four, and Six

Officer Wilson and Officer Kludy ("Defendant Officers") are sued in their individual and official capacities in Claim Two (False Arrest), Claim Four (Assault and Battery), and Claim Six (Malicious Prosecution). Defendants assert that Plaintiff's official capacity claims against the Defendant Officers are "redundant" because Plaintiff also names the City of Charlotte as a defendant in those state tort claims. D.E. 11 at 3.

Because the City of Charlotte is sued under state law claims for the conduct of its employees for which the city is liable under *respondeat superior*, Plaintiff agrees that suing the Defendant Officers in their official capacities in Claims Two, Four, and Six is unnecessary. Thus, Plaintiff agrees with the dismissal of the *official* capacity claims against the Defendant Officers

in Claims Two, Four, and Six; those state tort claims should proceed against the Defendant Officers in their individual capacities, as well as against the City of Charlotte.

II. Defendant City of Charlotte's Motion to Dismiss Plaintiff's *Monell* Claims Should Be Denied

To hold a municipality liable for a constitutional violation pursuant to *Monell*, a plaintiff must establish "the existence of an official policy or custom that is fairly attributable to the municipality and that proximately caused the deprivation of their rights." *Howard v. City of Durham*, 68 F.4th 934, 952 (4th Cir. 2023) (citing *Jordan ex rel. Jordan v. Jackson*, 15 F.3d 333, 338 (4th Cir. 1994)). An official policy or custom may be expressed in four ways:

> (1) [T]hrough an express policy, such as a written ordinance or regulation; (2) through the decisions of a person with final policymaking authority; (3) through an omission, such as a failure to properly train officers, that "manifest [s] deliberate indifference to the rights of citizens"; or (4) through a practice that is so "persistent and widespread" as to constitute a "custom or usage with the force of law."

Lytle v. Doyle, 326 F.3d 463, 471 (4th Cir. 2003) (quoting *Carter v. Morris*, 164 F.3d 215, 217 (4th Cir. 1999)).

As the Fourth Circuit has explained, "Such a policy or custom may be found in edicts of the city's formal decisionmaking body," in the "persistent practices of municipal officials having the de facto force of law[,]" or may be "inferred from continued inaction in the face of a known history of widespread constitutional deprivations[.]" *Milligan v. City of Newport News*, 743 F.2d 227, 229-30 (4th Cir. 1984) (internal citations omitted). "Although prevailing on the merits of a *Monell* claim is difficult, simply alleging such a claim is, by definition, easier." *Owens v. Balt. City State's Attys. Office*, 767 F.3d 379, 403 (4th Cir. 2014). Moreover, in the context of a civil rights complaint, the Fourth Circuit has stressed that courts "must be especially solicitous of the wrongs alleged and must not dismiss the complaint unless it appears *to a certainty* that the plaintiff would not be entitled to relief under any legal theory which might plausibly be

suggested by the facts alleged." *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002) (emphasis added) (quoting *Harrison v. United States Postal Serv.*, 840 F.2d 1149, 1152 (4th Cir. 1988)).

Here, Plaintiff's Complaint alleges that the City of Charlotte is liable under *Monell* for its failure to train (Claim Seven), ratification (Claim Eight), and unofficial custom, policy, or practice (Claim Nine) related to its officers using only the odor of cannabis to assert the existence of probable cause. The Complaint further describes how these policies have a clear causal link to the violation of Mr. Lee's constitutional rights and injuries. *See Spell v. McDaniel*, 824 F.2d 1380, 1391 (4th Cir. 1987).

In the face of Plaintiff's detailed Complaint, Defendants simply argue that Plaintiff's *Monell* claims "fail to clear the plausibility threshold." D.E. 11 at 3. Defendants' arguments, however, fail to engage with the fact-intensive, non-conclusory allegations contained in the Complaint.

A. Plaintiff Lee Has Plausibly Pled Failure to Train (Claim Seven)

As alleged in the Complaint, the City of Charlotte failed to adequately train its officers about how to respond to legislative changes to the hemp laws, which the City of Charlotte understood would require its officers to "need additional evidence beyond the mere sight or smell of marijuana to establish probable cause." D.E. 1 ¶ 215. Years before Plaintiff's arrest in this matter, changes in state and federal law, *id.* ¶ 24-25, led to explicit warnings by the NC SBI, *id.* ¶¶ 26-30, and the City of Charlotte's own legal counsel that "[o]fficers will need additional evidence beyond the sight or smell of marijuana to establish probable cause," *id.* ¶ 38. Despite these legislative developments and warnings, the City of Charlotte, through CMPD, failed to train its officers accordingly. *Id.* ¶¶ 213-218. The Complaint further alleges that this municipal

policy "proximate[ly] cause[d]" the deprivation of Mr. Lee's Fourth and Fourteenth Amendment rights on November 13, 2023. *Id.* ¶ 218.

A municipality's failure to train is a well-established form of *Monell* liability. *See City of Canton v. Harris*, 489 U.S. 378, 388 (1989). "In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983." *Connick v. Thompson*, 563 U.S. 51, 61 (2011). "To satisfy [Section 1983], a municipality's failure to train its employees in a relevant respect must amount to 'deliberate indifference to the rights of persons with whom the [untrained employees] come into contact.'" *Id*. at 61 (quoting *City of Canton*, 489 U.S. at 388); *see also Jones v. Wellham*, 104 F.3d 620, 626 (4th Cir. 1997).

A municipality is deliberately indifferent "when city policymakers are on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights[.]" *Connick*, 563 U.S. at 61. Deliberate indifference "requires proof that municipal policymakers (1) knew or should have known that their failure to act was likely to result in constitutional injury, and (2) disregarded that risk." *Mullen v. Town of Sunset Beach*, 175 F.4th 466, 472 (4th Cir. 2026) (citing *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994)). "A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." *Connick*, 563 U.S. at 62 (citing *Bd. of Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 409 (1997)). In cases involving the deprivation of more obvious rights, however, the city can be said to be deliberately indifferent when, "in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights[.]" *City of Canton*, 489 U.S. at 390.

As thoroughly and plausibly alleged in the Complaint, the City of Charlotte was on actual or constructive notice "that, in light of the legalization of hemp, CMPD needed to train its officers accordingly." D.E. 1 ¶ 215. Despite subsequent and ongoing unconstitutional conduct that was occurring and violating the rights of others, the City of Charlotte remained deliberately indifferent to the need for more or different training on this specific policing issue. D.E. 1 ¶¶ 216-217. Indeed, as plausibly pled, the City of Charlotte's failure to train its officers about the need for something more than mere sight or odor of cannabis was resulting in the violation of citizens' constitutional rights. For example, between approximately 2019 and at least November 13, 2023, the City of Charlotte was aware that legal challenges were being brought against the policing practices of CMPD officers in the Mecklenburg County District and Superior Courts, in connection with their continued attempts to use "odor only" as the basis for probable cause to arrest. D.E. 1 ¶¶ 53-57.

While Defendants argue that a plaintiff must "identify a specific deficiency in the training program itself," D.E. 11 at 4, the Complaint plausibly does so by asserting that CMPD officers were not adequately trained on what was required to establish probable cause for marijuana-related stops, seizures, searches, and/or arrests in the wake of the legalization of hemp in 2019. D.E. 1 ¶¶ 44-57, 63, 215. *See Alkhulaqi v. Madison Cty.*, No. 3:25-CV-02054-NJR, 2026 U.S. Dist. LEXIS 187926, at *11 (S.D. Ill. Aug. 20, 2026) (denying motion to dismiss a *Monell* failure to train claim where plaintiff alleged that the municipality "failed to train its officers to differentiate between legal hemp and illegal marijuana").

Defendants' argument inappropriately seeks to construe key facts in their favor. For example, Defendants suggest that the Complaint's reference to the 2021 CMPD Police Law Bulletin, which placed the City of Charlotte on clear notice of the need for training, instead

"reveals that proper training policies existed." D.E. 11 at 4. Far from establishing the existence of "proper training," as Defendants inappropriately suggest, the 2021 CMPD Police Law Bulletin plausibly shows the City of Charlotte had knowledge—from its own counsel—that CMPD officers needed more and/or different training years before Mr. Lee suffered harm, training that the Complaint plausibly alleges did not happen.

Defendants similarly suggest that the warnings from its own counsel and the NC SBI should be construed by this Court as an admission within the Complaint "that proper training policies existed." D.E. 11 at 4. Defendants' arguments, if accepted, would obliterate the well-established rule that courts must "construe the factual allegations in the light most favorable to the plaintiff." *Smith v. Smith*, 589 F.3d 736, 738 (4th Cir. 2009) (internal citation omitted). Indeed, Mr. Lee's only burden is to plead sufficient "factual content that allows the court to draw the reasonable inference that the defendant is liable[.]" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Owens*, 767 F.3d at 403 ("[t]he recitation of facts need not be particularly detailed"). "[T]he issue is not whether the plaintiff will ultimately prevail … but whether he is entitled to offer evidence to support the claim." *Est. of Williams-Moore v. Alliance One Receivables Mgmt., Inc*., 335 F. Supp. 2d 636, 646 (M.D.N.C. 2004).

As to the element of deliberate indifference, the Complaint plausibly asserts that the City of Charlotte "knew or reasonably should have known" that different training was necessary and failed to act accordingly. D.E. 1 ¶¶ 57, 213-215. The Complaint supports this with facts that, when accepted as true, show that the City of Charlotte had "actual or constructive knowledge" that, among other things:

- In 2019, the NC SBI warned that the legalization of hemp "makes it impossible for law enforcement to use the appearance of marijuana or the odor of marijuana to develop

probable cause for arrest, seizure of the item, or probable cause for a search warrant." *Id.* ¶¶ 26-30, 45, 57.

- In 2021, CMPD's Police Attorney's Office warned that "[o]fficers will need additional evidence beyond the sight or smell of marijuana to establish probable cause (PC)." *Id.* ¶ 38.
- Between approximately 2019 and at least November 13, 2023, CMPD officers' lack of training on this specific issue resulted in (and was likely to result in further) similar constitutional violations. *Id.* ¶ 63.
- Between approximately 2019 and at least November 13, 2023, CMPD "officers' assertions that the mere odor or sight of supposed marijuana, without additional factors or indicia, constituted probable cause" were being routinely challenged in Mecklenburg County District and Superior Courts as lacking probable cause. *Id.* ¶¶ 53-56.

Thus, the Complaint has plausibly pled that there was a "pattern of unconstitutional conduct," *id.* ¶ 217, and that the City of Charlotte was "deliberately indifferent to the need to train" its officers, *id.*, which is enough to survive the motion to dismiss stage. *See Thomas v. McFadden*, 810 F. Supp. 3d 732, 747 (W.D.N.C. 2025) (denying a motion to dismiss a failure to train claim where the plaintiff alleged that the Mecklenburg County Sherriff's Office "manifested deliberate indifference" in failing to train prison officials); *Ayala v. Wake Cty.*, No. 5:24-CV-524-BO-KS, 2025 U.S. Dist. LEXIS 101171, at *11-12 (E.D.N.C. May 28, 2025) (denying a motion to dismiss a failure to train claim where the plaintiff alleged that the county "had actual or constructive knowledge of [the officer]'s actions, that those actions took place over a period of years, and that the failure to provide [the officer] with training … amounted to tacit authorization or deliberate indifference.").

In addition, the Complaint adequately alleges the alternative "single incident" theory of deliberate indifference for failure to train, as outlined in *City of Canton.* D.E. 1 ¶ 216. *See Bryan Cty*., 520 U.S at 409 ("In *Canton,* we did not foreclose the possibility that evidence of a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such a violation, could trigger municipal liability."). The Complaint plausibly alleges that the "inadequacies of the training were so obvious and likely to result in the violation of constitutional rights," *City of Canton*, 489 U.S. at 390, given the notoriety of the state and federal legislative changes, D.E. 1 ¶¶ 24, 25, 28, 41-43, 44, 47, 57; the clarity and repetition of the warnings from the NC SBI and CMPD's own counsel, D.E.1 ¶¶ 26-30, 32-40, 45-46, 57; the ongoing litigation about CMPD officers' persistent failure to abide by the warnings, D.E. 1 ¶¶ 53-57; and CMPD's own data showing a significant number of people being arrested by CMPD officers solely for misdemeanor marijuana possession charges, D.E. 1 ¶¶ 62(c)-63. *See Spell*, 824 F.2d at 1390; *Moody v. City of Newport News*, 93 F. Supp. 3d 516, 539 (E.D. Va. 2015) (holding that Plaintiff sufficiently alleged that "'the need for specialized training . . . is so obvious' and the 'inadequacy of the training . . . is so likely to result in the violation of constitutional and federal rights . . . that the 'failure to provide such specialized training . . . is deliberately indifferent to those rights such as those described herein' because of the 'duties and responsibilities of those police officers that participate in arrests'").

Because the Complaint plausibly alleges that Mr. Lee was deprived of his constitutional rights, identifies a specific deficiency in the City of Charlotte's training program for CMPD officers, thoroughly details the City of Charlotte's deliberate indifference to the need for more training, and alleges that this municipal policy caused Mr. Lee's injuries, Defendants' motion to

dismiss the failure to train claim must be denied. *See Williams v. City of Raleigh*, No. 5:24-CV-173-D, 2025 U.S. Dist. LEXIS 36807, at *15-16 (E.D.N.C. Feb. 28, 2025) (denying a motion to dismiss a *Monell* claim premised on a failure to train theory where the plaintiff alleged "latent deficiencies in Raleigh's use of force policy," "that Raleigh knew of past accusations of excessive force against [an officer] and still allowed him to train other officers," "that [two defendant officers] lacked sufficient training hours regarding tasers," and that "Raleigh knew of training deficiencies but failed to remediate them").

B. Plaintiff Lee Has Plausibly Pled Ratification (Claim Eight)

Although Defendants' brief states that Plaintiff's ratification claim "fail[s] to clear the plausibility threshold," D.E. 11 at 3, there is a conspicuous absence of support for their own assertion, much less any analysis. Indeed, Defendants' argument is wholly perfunctory. *Cf. Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) (quoting *Brown v. Nucor Corp.*, 785 F.3d 895, 923 (4th Cir. 2015)) ("A party waives an argument […] by failing to develop its argument—even if its brief takes a passing shot at the issue.") (cleaned up)).

Plaintiff's Complaint does, in fact, plausibly allege municipal liability under a ratification theory. D.E. 1 ¶¶ 223-231. The City of Charlotte was aware that the odor of cannabis alone was insufficient to establish probable cause. *Id.* ¶¶ 45-46, 57. Further, "[t]he City of Charlotte knew, or had constructive knowledge, that its officers were continuing to violate the constitutional rights of people who were innocently possessing and/or consuming lawful hemp, and sanctioned that behavior. *Id.* ¶ 226; *see also id.* ¶¶ 53-57 (allegations that, between approximately 2019 and at least November 13, 2023, the City of Charlotte knew or reasonably should have known that its officers were continuing to act contrary to the guidance and direction from the NC SBI's 2019 memo and CMPD's Police Attorney's Office's 2021 legal guidance bulletin).

Despite its awareness of this ongoing conduct of its officers, the City of Charlotte nonetheless decided to uphold those actions, which ultimately caused Plaintiff's constitutional injuries here. *See Franklin v. City of Charlotte*, 64 F.4th 519, 535 (2023) (quoting *Monell*, 436 U.S. at 694) (explaining that "the constitutional violation must be brought about by a municipality's 'lawmakers or by those whose edicts or acts may fairly be said to represent official policy'"); *Starbuck v. Williamsburg James City Cnty. Sch. Bd.*, 28 F.4th 529, 534 (4th Cir. 2022) (explaining that ratification liability "holds the municipality liable for *its own decision* to uphold the actions of subordinates" (emphasis in original)). Accordingly, Defendants' motion to dismiss Mr. Lee's ratification claim should be denied, as well.

C. Plaintiff Lee Has Plausibly Pled Custom (Claim Nine)

Mr. Lee has plausibly pled sufficient facts that, when taken as true, evidence a widespread pattern of cannabis-related searches, seizures, and/or arrests made by CMPD officers without probable cause for years before Mr. Lee's arrest, leading to constitutional violations like those suffered by Mr. Lee. D.E. 1 ¶¶ 235-236. Further, the Complaint alleges that the City of Charlotte had actual or constructive knowledge of this custom and allowed it to continue. *Id.*

When unconstitutional practices by municipal employees become "sufficiently widespread," they "assume the quality of custom or usage, which, per § 1983, has the force of state law." *See Spell*, 824 F.2d at 1390 (quoting *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 167-68 (1970)). "Municipal fault for allowing such a developed 'custom or usage' to continue requires (1) actual or constructive knowledge of its existence by responsible policymakers, and (2) their failure, as a matter of specific intent or deliberate indifference, thereafter to correct or stop the practices." *Id.* at 1391. "Constructive knowledge may be inferred from the widespread

extent of the practices, general knowledge of their existence, manifest opportunities and official duty of responsible policymakers to be informed, or combinations of these." *Id*.

The Complaint alleges that Mr. Lee suffered a deprivation of his constitutional rights, D.E. 1 ¶ 234, that was "direct[ly] and proximate[ly]" caused by the City of Charlotte's condonation of a custom of unconstitutional searches and seizures, *id.* ¶ 238. Defendants mischaracterize the references in the Complaint to "the police chief's post-incident media defenses and op-eds," D.E. 11 at 5, as a causation theory. The Complaint does not allege that then-Chief Jennings's post-incident statements *caused* the deprivation of Mr. Lee's rights, but rather that the statements *corroborate* the other pre-incident factual allegations in the Complaint, discussed herein, that show, when accepted as true, a custom of unconstitutional marijuana-related searches and seizures by CMPD officers that was known to city policymakers, like Chief Jennings.

Defendants further argue that "a custom claim requires specific factual matter from which a widespread practice can be reasonably inferred." D.E. 11 at 4. To that end, the Complaint specifically asserts that, between 2019 and November 13, 2023, CMPD's practice of searching and seizing individuals for marijuana-related offenses based on "odor only," *i.e.*, without probable cause, was "widespread," *Spell*, 824 F.2d at 1390. *See* D.E. 1 ¶¶ 48-49, 53-57, 63. Contrary to Defendants' claim that Mr. Lee points only to "generalized regional arrest statistics showing racial disparities in misdemeanor marijuana arrests, D.E. 11 at 4-5, the Complaint specifically alleges that "CMPD officers used 'odor only' as justification to stop, seize, search, and/or arrest numerous individuals," D.E. 1 ¶ 63, and that this unconstitutional practice was regularly subject to legal challenges in the years leading up to Mr. Lee's arrest, *id.* ¶¶ 54-57. *See Simmons v. Justice*, 87 F. Supp. 2d 524, 533 (W.D.N.C. 2000) (holding that plaintiff stated a

viable *Monell* custom claim where the complaint alleged one similar prior incident and "numerous citizen complaints … prior to the attack").

In *Owens*, where the plaintiff alleged a custom of *Brady* violations, the Fourth Circuit held that "[plaintiff's] brief, but non-conclusory, allegations" of a widespread unconstitutional practice, like those allegations in Mr. Lee's Complaint, D.E. 1 ¶¶ 48-49, 53-57, 63, were enough to survive the motion to dismiss stage. 767 F.3d 379, 403 (4th Cir. 2014) (reasoning that plaintiff's "assertions as to 'reported and unreported cases' and numerous 'successful motions' are factual allegations, the veracity of which could plausibly support a *Monell* claim"). Other courts have interpreted the Fourth Circuit's holding in *Owens* to require denying motions to dismiss even where the factual allegations in a complaint concerning the "widespread pattern of practice that forms the basis of an impermissible custom claim" are "brief and imprecise." *See, e.g., Daniels v. City of S. Charleston*, Civil Action No. 2:20-cv-00779, 2021 U.S. Dist. LEXIS 153846, at *14 (S.D. W. Va. Aug. 16, 2021) ("The allegation that the unconstitutional excessive force the plaintiff claims he suffered 'has been employed against multiple West Virginia citizens on multiple occasions within the past 5 years,' is brief and fails to identify any of the underlying instances of excessive force. However, the courts in *Owens* … faced similarly brief and imprecise allegations and nonetheless determined they sufficed."); *McDowell v. Grimes*, Civil Action No. GLR-17-3200, 2018 U.S. Dist. LEXIS 133289, at *12, *15 (D. Md. Aug. 7, 2018) (denying a motion to dismiss a custom claim, relying on *Owens*, where the complaint alleged "excessive force, including but not limited to previous unrelated incidents involving Defendant Officer Grimes, was being used with sufficient regularity by Baltimore City police officers").

Additionally, the Complaint plausibly asserts that the City of Charlotte had actual or constructive knowledge of CMPD's unconstitutional practices with detailed allegations that

show, for years leading up to Mr. Lee's arrest, the City of Charlotte had at least "general knowledge," *Spell*, 824 F.2d at 1391, of the existence of the widespread practice of unconstitutional "odor only" searches and seizures by CMPD officers. D.E. 1 ¶¶ 48-49, 53, 57. It further asserts that the City of Charlotte had "manifest opportunities and official duty … to be informed," *Spell*, 824 F.2d at 1391, about CMPD's practice of unconstitutional marijuana-related searches and seizures based on "odor only" after guidance from the 2019 NC SBI memo, guidance from the 2021 legal bulletin from CMPD's Police Attorney's Office, and legal challenges to CMPD's "odor only" arrests in state court. D.E. 1 ¶¶ 44-57.

Finally, the Complaint alleges that, "[d]espite knowing that innocent people were being unlawfully stopped, detained, and arrested based on the possession and/or consumption of lawful hemp, the City of Charlotte, by and through CMPD, permitted this unofficial custom, policy, or practice to persist," *id.* ¶ 236, and, thus, that the City of Charlotte was deliberately indifferent to this constitutional custom. *Id.* ¶ 235. *See Smith v. Aita*, No. CCB-14-3487, 2016 U.S. Dist. LEXIS 90029, at *12 (D. Md. July 12, 2016) (denying motion to dismiss custom claim where plaintiff "asserts that [municipality] knew that its police officers, particularly [the defendant officer], had a pattern of using excessive force, and the city did nothing to stop the unconstitutional conduct"), *aff'd*, 711 F. App'x 163 (4th Cir. 2018). This assertion is further supported by the factual allegations regarding the City of Charlotte's deliberate indifference that are detailed above in the failure to train section, *supra*.

Because the Complaint alleges a widespread pattern of unconstitutional conduct by CMPD officers, like what Mr. Lee experienced, to which the City of Charlotte was deliberately indifferent, Mr. Lee has plausibly pled a custom claim.

CONCLUSION

Plaintiff respectfully asks the Court to deny Defendants' Partial Motion to Dismiss as to the *Monell* claims (Claims Seven, Eight, and Nine).

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