IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 19-cv-00901-WJM-NRN

MICHAELLA LYNN SURAT,

Plaintiff,

v.

RANDALL KLAMSER in his individual capacity, and
CITY OF FORT COLLINS, a municipality,

Defendants.

DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT [ECF 107]
PURSUANT TO FED. R. CIV. P. 12(b)(6)

Defendants RANDALL KLAMSER, in his individual capacity, and CITY OF FORT COLLINS, a municipality, by and through their attorneys, Hall & Evans, L.L.C., and John Duval, City of Fort Collins, City Attorney's Office, submit the following as their Motion to Dismiss Plaintiff's First Amended Complaint [ECF 107] pursuant to Fed. R .Civ. P. 12(b)(6), as follows:

CERTIFICATE OF CONFERRAL

Pursuant to this Court's Practice Standard (WJM Practice Standard III.D.1), the undersigned counsel conferred with counsel for Plaintiff via telephone, by identifying the grounds for dismissal argued herein. Plaintiff does not agree with the underlying legal arguments below and objects to the request for dismissal.

I. STANDARD OF REVIEW

To state a claim for relief, a Federal complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. ***Robbins v. Okla. Ex rel. Dep't of Human Servs.,*** 519 F.3d 1242 (10th Cir. 2008). A FED R. CIV. P. 12(b)(6) motion to dismiss is properly granted when a complaint provides no "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action. … Factual allegations must be enough to raise a right to relief above the speculative level." ***Bell Atl. Corp. v. Twombly***, 550 U.S. 544, 545, (2007). A complaint must be dismissed pursuant to Rule 12(b)(6) for failure to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." ***Id.*** at 570. "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." ***Id.***

At the pleading stage, it is not the defendant's or the Court's responsibility to guess at plaintiff's claims. ***Id***. The court may not assume that a plaintiff can prove facts the plaintiff has not alleged or that the defendants have violated the laws in ways the plaintiff has not alleged. Plaintiff must explain what each defendant did to him, when the defendant did it, how the defendant's action harmed him, and what specific legal right the defendant violated. ***Nasious v. Two Unknown B.I.C.E. Agents***, 492 F.3d 1158, 1163 (10th Cir. 2007).

Moreover, the Tenth Circuit has held that request for dismissal brought under ***Heck v. Humphry***, 512 U.S. 477, 486-87 (1994) should be raised as a failure to state a claim pursuant to FED. R. CIV. P. 12(b)(6), as opposed to a lack of subject matter jurisdiction under Rule 12(b)(1). ***Mendia v. City of Wellington***, 432 Fed. Appx. 796, n.1 (10th Cir. 2011).

II. INTRODUCTION[1]

Plaintiff filed her initial Complaint [ECF 1] ("Initial Complaint") against the City of Fort Collins ("City") and Fort Collins Police Officer Randall Klamser, generally alleging a violation of her Fourth Amendment rights arising out of her arrest by Officer Klamser. As set forth in more detail below, the Plaintiff alleges Officer Klamser used excessive force during her arrest by using a takedown maneuver, and the City of Fort Collins had unconstitutional policies which proximately caused the use of the alleged excessive force. Both the City and Officer Klamser filed a Motion seeking dismissal of the Initial Complaint in its entirety ("First Motion to Dismiss") [ECF 23]. This Court partially granted and partially denied the requested relief. In particular, the Court dismissed with prejudice "any claim Defendant Klamser used excessive force prior to the takedown maneuver that ended Plaintiff's resistance to arrest," based on the reasoning in *Heck*, 512 U.S. at 486-87 (1994) [ECF 84 at 10 ("In this light, the Court deems Surat to confess Defendants' *Heck* argument as to everything before the takedown, and Defendants' motion will be granted with prejudice as to any claim of excessive force based on Klamser's alleged pre-takedown actions")] and dismissed without prejudice "Plaintiff's *Monell* claim against Defendant Fort Collins…" [ECF 84 at 17]. The remaining portions of the First Motion to Dismiss and Defendants' Motion for Leave to Supplement, were denied [ECF 84 at 17].[2]

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[1] For this motion only, Plaintiff's allegations are accepted as true. Defendants reserve the right to dispute each factual allegation contained in the Complaint in any future proceedings.

[2] The Defendants incorporate by reference the briefing of the First Motion to Dismiss and the Court's Order [ECF 84] to the extent the same arguments and rulings are applicable here.

In ruling on the First Motion to Dismiss, the Court concluded it was "skeptical that Surat could amend to state a viable claim [against the City], but the Court cannot say with certainty that Surat could never allege additional facts which would plausibly suggest *Monell* liability. Accordingly, the Court will dismiss without prejudice." [ECF 84 at 17]. On March 12, 2020, Plaintiff filed an opposed Motion for Leave to Amend the Complaint, which sought to add the City back into the lawsuit [ECF 96]. After consideration of the standards applicable to a request for leave to amend (as opposed to a dismissal of the allegations pursuant to Fed. R. Civ. P. 12(b)(6)), the Defendants filed a "Notice of No Objection" to Plaintiff's request [*See* ECF 97].[3] The Court granted leave [ECF 106] and Plaintiff filed the amended pleading on August 24, 2020 [ECF 107].

Both the City and Officer Klamser seek dismissal, with prejudice, of all claims against them pursuant to Fed. R. Civ. P. 12(b)(6). In addition, Officer Randall Klamser seeks application of qualified immunity.

[3] By the filing of a "Notice of No Objection," the Defendants did not intend to acquiesce to the notion the First Amended Complaint somehow overcame the deficiencies in the Initial Complaint, or that Plaintiff properly addressed the Court's concerns in its Order on the First Motion to Dismiss. The Defendants acknowledged, however, that the standards seeking leave to amend are "less stringent" then the standards for properly setting forth claims against the City and Officer Klamser. This Motion to Dismiss is meant to address the failure of Plaintiff to properly plead any claims against the City, and the notion Officer Klamser is entitled to qualified immunity, which was not an argument set forth in the First Motion to Dismiss.

III. FACTUAL ALLEGATIONS[4]

Plaintiff alleges police were called to a bar in downtown Fort Collins, after her boyfriend was asked by staff to leave following an altercation. [ECF 107, ¶ ¶15-16.] Plaintiff grabbed her boyfriend's arm and attempted to pull him away as he was speaking with Fort Collins Police Officer Garrett Pastor. Plaintiff alleges Fort Collins Police Officer Randall Klamser stated her boyfriend was not free to go, but she "can keep walking." [***Id***., ¶ 18; *See also* ECF 84 at 3.] Plaintiff alleges Officer Klamser told her to "back off" while pushing her shoulder backwards with his hand, and then grabbed her wrist. [***Id.,*** ¶ ¶ 19 & 21.] Surat told Klamser, " 'you don't need to fucking touch me,' and attempted to free herself from his grasp[,]" and he pulled her arm behind her back and advised that she was under arrest [***Id.***, ¶ 23.] Plaintiff alleges Officer Klamser held her arm in a rear wristlock hold as Plaintiff alleges the two continued "speaking over one another," and that Officer Klamser then pulled her arm and "forcefully threw her face-down to the ground," causing her injury. [***Id***., ¶ ¶ 22-24, 26-27.] According to the Complaint, "[t]he entire encounter between Ms. Surat and Defendant Klamser happened in thirty-two seconds." [***Id.,*** ¶ 29.] A cell-phone video was taken of the incident which "went viral" [ECF 107 at ¶ 46].

The Complaint states a five-day jury trial was held related to Plaintiff's criminal charges, following which Surat was convicted of C.R.S. § 18-8-103 (Resisting Arrest) and C.R.S. § 18-8-104(1)(a) (Obstructing a Peace Officer). [***Id.***, ¶ 38.] "Her conviction for obstructing a peace officer

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[4] A factual recitation was provided by this Court in the Order partially granting and partially denying the Motion to Dismiss Plaintiff's Initial Complaint. For purposes of this Motion to Dismiss only, the factual recitation is incorporated herein [*See* ECF 84 at 2-5.]

means she was convicted of 'using or threatening to use violence, force, physical interference, or an obstacle' to 'knowingly obstruct[], impair[], or hinder[] the enforcement of the penal law or the preservation of the peace by a peace officer, acting under color of his or her official authority'" [ECF 84 at 5, citing Colo. Rev. Stat. § 18-8-104(1)(a).] At her criminal trial, Surat "presented a 'defense of a person' defense" [ECF 84 at 6]. "' Defense of a person' is Colorado's generic name for the defense that encompasses both self-defense and defense of a third person" [ECF 84 at 6, ftnt. 2, referring to Colo. Rev. Stat. § 18-1-704; Colo Jury Instr., Criminal H:11 (June 2019 update).][5] Plaintiff appealed her criminal convictions for Resisting Arrest and Obstructing a Peace Officer [*See* eg. ECF 55 (Defendants' Motion for Leave to Supplement Motion to Dismiss).][6]

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[5] Generally, a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b) must be determined on the four-corners of the Complaint. ***SEC v. Goldstone***, 952 F.Supp.2d 1060, 1191 (N.M.Dist.2013) (citing ***Casanova v. Ulibarri***, 595 F.3d 1120, 1125 (10th Cir.2010)). Exceptions to this requirement include documents referred to in the complaint if the documents are central to the plaintiff's claim…and matters of which a court may take judicial notice, including public records. ***Goldstone***, 952 F.Supp.2d at 1191 (citing ***Tellabs, Inc. v. Makor Issues & Rights, Ltd.***, 551 U.S. 308, 322 (2007)). " '(F)acts subject to judicial notice may be considered in a Rule 12(b)(6) motion without converting the motion to dismiss into a motion for summary judgment.'" [ECF 84 at 7, (citing ***Tal v. Hogan***, 453 F.3d 1244, 1265 n. 24 (10th Cir. 2006)).]

[6] Defendants' Motion to Supplement to include the appellate court's order affirming the conviction, was denied by this Court [ECF 84].

IV. ARGUMENT

A. Plaintiff's Excessive Force Claim Against Officer Klamser is Barred by Qualified Immunity[7]

i. Standards for Fourth Amendment Excessive Force Claim

"Determining whether the force used to effect a particular seizure is objectively reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." ***Graham v. Connor***, 490 U.S. 386, 396 (1989) (citations and internal quotations omitted). The Supreme Court "has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." ***Id.*** (citing ***Terry v. Ohio***, 392 U.S. 1, 22-27 (1968)). "Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." ***Id.*** (citing ***Tennessee v. Garner***, 471 U.S. 1, 8-9 (1985)).

"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." ***Id.*** (citing ***Terry***,

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[7] Based on this Court's previous ruling that the Plaintiff confessed Defendants' *Heck* argument as to her excessive force claim related to everything before the takedown, and any such claim was dismissed with prejudice, Defendant Klamser seeks application of qualified immunity on his actions after the takedown of Ms. Surat [*See* ECF 84 at 10].

392 U.S. at 20-22. "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." ***Id.*** at 396-97; *see also* ***Phillips v. James***, 422 F.3d 1075, 1080 (10th Cir. 2005) (recognizing that officers have to make split-second judgments in uncertain and dangerous circumstances). The question is an objective one: "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." ***Graham***, 490 U.S. at 397 (citing ***Scott v. United States***, 436 U.S. 128, 137-39 (1978)).

ii. Officer Klamser's Use of Force Was Objectively Reasonable

In ruling on the First Motion to Dismiss, this Court considered Surat's criminal conviction and rejection by the jury of her "self-defense" defense and consideration of ***Heck***, *supra*. This Court noted that "***Heck*** nonetheless imposes a formidable burden on Surat, even before taking the jury's rejection of her self-defense argument into account." [ECF 84 at 14]. After describing the standard for an excessive force claim, the Court noted:

> In this light, it is highly significant that the jury convicted Surat of:
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> - '[u]sing or threatening to use physical force or violence against the peace officer or another; or *** [u]sing any other means which creates a substantial risk of causing bodily injury to the peace officer or another,' Colo. Rev. Stat. § 18-8-103(1); and
>
> - 'using or threatening to use violence, force, physical interference, or an obstacle' to 'knowingly obstruct[], impair[], or hinder[] the enforcement of the penal law or the preservation of the peace by a peace officer, acting under color of his or her official authority,' *id.* §18-8-104(1)(a).

> To avoid implying the invalidity of these convictions, Surat must prove that Klamser's takedown was objectively unreasonable under all the circumstances *while taking as given* that he was attempting to effect an arrest and, in the process, the arrestee's actions were subjecting him to, or threatening him with, physical force or violence, or putting him at substantial risk of bodily injury. *Cf. Martinez*, 184 F.3d at 1127 ('the [district] court [on remand] must instruct the jury that Martinez' state arrest was lawful per se').
>
> Moreover, if one accounts for the failure of the self-defense argument, Surat must prove that Klamser's takedown was objectively unreasonable while taking as given all of the foregoing *and* the fact that Klamser had first attempted to subdue Surat through *lawful lesser force*.

[ECF 84 at pp.14-15 (emphasis in original)].

Accepting as true that Plaintiff used or threatened to use physical force against Officer Klamser; that Plaintiff created a substantial risk of causing bodily injury to Officer Klamser; that Plaintiff used or threatened to use violence, force, physical interference or an obstacle to obstruct, impair, or hinder Officer Klamser's enforcement of the law or preservation of the peace; and that Officer Klamser first attempted to subdue Plaintiff through lawful lesser force, [ECF 84 at pp.14-15], Plaintiff cannot prove that Officer Klamser's decision to take Surat to the ground was objectively unreasonable. Put another way, Plaintiff cannot prove

iii. No Clearly Established Law Demonstrates That Officer Klamser's Actions Were Objectively Unreasonable

Qualified immunity is immunity from suit, as well as a defense to liability. ***Mitchell v. Forsyth***, 472 U.S. 511, 526 (1985). The doctrine permits the resolution of claims against government officials before subjecting them "'either to the costs of trial or to the burdens of broad-reaching discovery' in cases where the legal norms the officials are alleged to have violated were not clearly established at the time." ***Id.*** (quoting ***Harlow v. Fitzgerald***, 457 U.S. 800, 817-18 (1982)). A "heavy" two-part burden applies when a defendant asserts qualified immunity. ***Mick v.***

Brewer, 76 F.3d 1127, 1134 (10th Cir. 1996). First, a court assesses whether the state actor's conduct violated a constitutional right, with contours sufficient for a reasonable state actor to understand his conduct was unlawful. ***Saucier v. Katz***, 533 U.S. 194, 201-01 (2001). Second, even if a violation occurred, a court assesses whether the law was clearly established such that the state actor is not entitled to immunity. ***Id.*** at 207-09. The reviewing court may consider these prongs in any order. ***Pearson v. Callahan***, 555 U.S. 223, 226 (2009).

For the law to be "clearly established," generally there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains. ***Medina v. City & Cnty. of Denver***, 960 F.2d 1493, 1498 (10th Cir. 1992). "Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct." ***Brosseau v. Haugen***, 543 U. S. 194, 198, (2004) (per curiam). Although the Supreme Court does not require a case directly on point, existing precedent must have placed the constitutional question beyond debate. ***Ashcroft v. al-Kidd***, 563 U.S. 731, 741 (2011). "In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law." ***White v. Pauly***, 137 S. Ct. 548, 551 (2017) (citation and internal quotation marks omitted).

The Supreme Court has repeatedly told courts not to define clearly established law at a high level of generality. ***Kisela v. Hughes***, 138 S.Ct. 1148, 1152 (2018) (per curiam) (citations omitted). "The dispositive question is whether the violative nature of *particular* conduct is clearly established," in light of the specific context of the case, and not as a broad general proposition. ***Mullenix v. Luna***, 136 S. Ct. 305, 308 (2015) (per curiam) (citations and internal quotations omitted) (emphasis in original). "Such specificity is especially important in the Fourth Amendment

context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." ***Id.*** (citations and internal quotations omitted). "Use of excessive force is an area of the law 'in which the result depends very much on the facts of each case,' and thus police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue." ***Kisela***, 138 S.Ct. at 1153 (citing ***Mullenix***, 136 S. Ct. at 309). "Precedent involving similar facts can help move a case beyond the otherwise 'hazy border between excessive and acceptable force' and thereby provide an officer notice that a specific use of force is unlawful." ***Id.*** (quoting ***Mullenix***, 136 S. Ct. at 312).

Here, in order to overcome the doctrine of qualified immunity, and taking into account Surat's allegations and subsequent convictions, Surat must "prove that it was clearly established as of April 6, 2017, that a police officer attempting to effect an arrest and being subjected to or threatened with physical force or violence, or facing a substantial risk of bodily injury, and who has already tried lawful lesser force to subdue the arrestee, cannot use the takedown maneuver used in this case to eliminate that actual or threatened force or risk of injury." [ECF 84 at 15 referring to ***Ashcroft***, 563 U.S. at 735.] Plaintiff cannot overcome her burden as there is no clearly established Supreme Court or Tenth Circuit case on point identifying the particular conduct at issue in this matter (ie: the "takedown") as violative of Plaintiff's Fourth Amendment rights. As a result, Officer Klamser is protected by qualified immunity and the claim against him should be dismissed as a matter of law. Furthermore, under these particular facts, Plaintiff cannot show Officer Klamser violated her Constitutional rights.

B. The Claim Against the City of Fort Collins Must Be Dismissed as the Complaint Fails to Sufficiently Allege Municipal Liability.

To establish liability of a public entity under 42 U.S.C. §1983, "a plaintiff must show (1) the existence of a municipal custom or policy and (2) a direct and causal link between the custom or policy and the violation alleged." ***Jenkins v. Wood***, 81 F.3d 988, 993 (10th Cir. 1996), (citing ***City of Canton v. Harris***, 489 U.S. 378, 385 (1989)). The Supreme Court described the requirements a plaintiff must meet to impose public entity liability as follows: "It is not enough for a §1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." ***Bd. Of Cnty. Comm'rs of Bryan Cnty. v. Brown***, 520 U.S. 397, 404 (1998).

Under these standards, municipal liability may arise only out of official customs or policies, or for the actions of a final policymaker to any extent that such policies, customs, or policymakers can be shown to be responsible for a constitutional violation. *See* ***Brown***, 520 U.S. at 403-404. Municipal liability only attaches where "a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." ***Pembaur v. City of Cincinnati***, 475 U.S. 469, 483 (1986); ***Myers v. Oklahoma Cnty. Bd. Of Cnty. Comm'rs***, 151 F.3d 1313, 1319 (10th Cir. 1998).

Here, Plaintiff attempts to set forth a claim against the City entitled "Excessive Force – Unconstitutional Policies, Customs, and Practices" [ECF 107 at 18-19, ¶ ¶ 92-99.] As with her Initial Complaint, Plaintiff attempts to support these allegations by reference to an internal affairs

investigation involving Officer Klamser, and other "allegedly similar use-of force incidents… in the timeframe between 2013 and 2018…" in an attempt to demonstrate an "excessive force pattern among Fort Collins police officers [ECF 84 at 16 referring to ECF 1 at ¶ ¶ 50-56; Cf. ECF 107 at ¶ 51 & ¶ ¶ 56-63.] The referenced "similar incidents" in the Amended Complaint, are not substantively different than those presented in the Initial Complaint. (***Id***.)

As previously discussed by this Court, based on Surat's convictions and in order to avoid violating *Heck*, "it must be taken as given that Klamser was attempting to effect Surat's arrest through a lawful use of lesser force, and that Surat's resistance amounted to physical force or violence against Klamser and/or threatened him with substantial bodily harm." [ECF 84 at 16-17.] It is within this framework that Surat must properly allege the existence of unconstitutional policies within the City of Fort Collins. The allegations set forth in this claim, however, do not rise to a level satisfying Federal pleading standards. None of the incidents or purported failure to train described in Plaintiff's Complaint are factual similar to the scenario involving Surat and Officer Klamser. ***Connick v. Thompson***, 563 U.S. 51, 62-63 (2011). Furthermore, the Plaintiff offers no allegations supporting any notion the City maintained any custom or policy relevant to the Plaintiff's 42 U.S.C. §1983 claim, or that anyone followed any specific custom or policy regarding the interaction between the Plaintiff and the City. Nothing in the Complaint suggests that any specific policy or custom was implicated, deliberately followed, or how any such custom, practice or policy harmed the Plaintiff. Rather, the Plaintiff sets forth only conclusory allegations, which are insufficient to overcome this Motion to Dismiss (*See eg*. ECF 107 at ¶ 93; Cf. ECF 1 at ¶ 68, ("Defendant Fort Collins established policies, customs and/or practices in violation of the Constitution"); ("Defendant Fort Collins developed and maintained law enforcement-related

policies, customs, and/or practices exhibiting or resulting in a deliberate indifference to the Fourth and Fourteenth Amendment protected constitutional rights…") (ECF 107 at ¶ 94; Cf. ECF 1 at ¶ 69); ("Defendant Fort Collins' policies, customs, or practices in failing to train and supervise its employees were the proximate cause of, and moving force behind, the violation of Ms. Surat's constitutional rights…") (ECF 107 at ¶ 99. Cf ECF 1, ¶ 74)). Because the Complaint is devoid of any mention of a specific municipal custom or policy, any effort to state a claim against the City here fails as a matter of law.

Further, the Complaint contains no hint that any deliberate choice to follow a specific course of action was made by anyone responsible for establishing any final policy with respect to the Plaintiff. ***Connick***, *supra.* Absent some basis for thinking the City undertook *deliberate conduct* that could be said to constitute the "moving force" behind any injury, or that there is any direct causal link between any action by the City claimed to have deprived the Plaintiff of her Federal rights, there could be no claim against the City.

Likewise, the Plaintiff fails to provide any specific allegations respecting a failure to train or supervise. Instead, the Complaint merely contains the generic allegation that "(t)he inadequate training and supervision provided by Defendant Fort Collins resulted from a conscious or deliberate choice…Defendant Fort Collins could have and should have pursued reasonable methods for the training and supervising of such employees, yet failed to do so. [ECF 107 at ¶ 98.] Such allegations are insufficient. ***Connick***, *supra*. Plaintiff's efforts do not establish a custom, practice or policy with respect to training, sufficient to overcome this Motion to Dismiss. Furthermore, Plaintiff cannot properly allege any custom, practice, or policy based on the factual scenario presented in this matter in a way which avoids application of *Heck*.

IV. CONCLUSION

For all of the foregoing reasons, Defendants respectfully request this Court dismiss Plaintiff's claims against them in their entirety with prejudice, and for all other and further relief as this Court deems proper.

Dated this 14th day of September 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 14th day of September 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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