

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAI TRANG THI NGUYEN,
Plaintiff,
v.
CITY OF SAN JOSE, et al.,
Defendants.

Case No. 5:21-cv-00092-EJD

**ORDER DENYING MOTIONS TO
EXCLUDE EXPERT OPINIONS;
GRANTING IN PART AND DENYING
IN PART MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. No. 134, 137, 138

Plaintiff Dai Trang Thi Nguyen (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 1983 against Defendant City of San Jose (“City”) and individual Supervisor Defendants Joseph Hatfield (“Hatfield”) and Rachel Roberts (“Roberts”) (collectively, “Supervisor Defendants”) (all together with the City, “Defendants”), alleging that a former City Code Inspector William Gerry (“Gerry”) sexually assaulted and extorted Plaintiff during his code enforcement inspections of her massage business, and Defendants allowed Gerry’s conduct to occur in deliberate indifference to her rights to due process and equal protection. *See* Second Am. Compl. (“SAC”), ECF No. 93; Order Den. Third Mot. to Dismiss (“Third MTD Order”), ECF No. 103.¹

Before the Court are three motions: (1) Defendants' motion to exclude expert testimony of Officer Anthony Flores ("Flores") and Leonard Powell ("Powell") pursuant to Federal Rule of Evidence 702; (2) Plaintiff's motion to exclude the expert testimony of Dr. John Greene ("Greene") under Federal Rule of Civil Procedure 26; and (3) Defendants' motion for summary

¹ Plaintiff has stipulated to the dismissal of individual Defendants William Gerry and Edgardo Garcia. Opp'n to MSJ 1.

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1 judgment. Pl.’s Mot. to Strike, ECF No. 134; Defs.’ Mot. to Strike, ECF No. 137; Mot. for Summ.
2 J. (“MSJ”), ECF No. 138. All motions are fully briefed. Opp’n to Defs.’ Mot. to Strike, ECF No.
3 140; Reply ISO Defs.’ Mot. to Strike, ECF No. 141; Opp’n to Pl.’s Mot. to Strike, ECF No. 135;
4 Reply ISO Pl.’s Mot. to Strike, ECF No. 136; Opp’n to MSJ, ECF No. 139; Reply ISO MSJ, ECF
5 No. 142.

6 The Court held a hearing on January 15, 2026, and heard oral arguments from both parties.
7 ECF No. 144. For the reasons stated below, the Court **DENIES** both motions to exclude expert
8 testimony; **GRANTS** Defendants’ motion for summary judgment as to Supervisor Defendants;
9 and **DENIES** Defendants’ motion for summary judgment as to the City.

10 **I. BACKGROUND**

11 It is undisputed that former City Code Inspector Gerry repeatedly raped and extorted
12 Plaintiff while inspecting her massage business in 2019.² The Court will discuss in turn facts
13 relevant to Plaintiff’s claims against the City and Supervisor Defendants.

14 **A. The City**

15 Plaintiff alleges the City acted with deliberate indifference to Plaintiff’s rights to due
16 process and equal protection by implementing a practice of sending male code inspectors into
17 massage establishments alone and unsupervised, despite the obvious risk that such a practice is
18 likely to lead to exploitation and injuries such as Plaintiff’s, and despite the several prior
19 complaints received specifically about Gerry’s misconduct. Plaintiff also alleges the City’s
20 fragmented reporting and supervision policy allowed Gerry’s conduct to continue despite the
21 several prior complaints.

22 **1. Code Enforcement Practices and Industry Knowledge of Risks**

23 The City has an undisputed practice of sending solo male code inspectors into massage
24 businesses unsupervised. To prove that this practice was adhered to with deliberate indifference to
25 Plaintiff’s rights, Plaintiff plans to introduce two industry experts, Powell and Flores. Both

26
27 ² Gerry is currently serving a thirty-four-year prison sentence for these and other crimes.
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1 experts have submitted reports and deposition testimony opining that the City’s practice presented
2 obvious risks of harm, and against this backdrop, Gerry especially should have been removed
3 from the field following the complaints of serious misconduct. Powell Report, ECF No. 137-2;
4 Flores Report, ECF No. 137-4. The Court will discuss these opinions in greater detail in its
5 discussion of Defendants’ motion to strike below.

6 Plaintiff also highlighted during oral arguments that Roberts and Hatfield agreed in their
7 depositions that Gerry required a particularly high degree of supervision given his considerable
8 authority as the only massage business code inspector in the City. *See* Hatfield Dep. 76:14–77:8,
9 ECF No. 139-1; Roberts Dep. 52:5–15, ECF No. 139-1.

10 **2. Complaints**

11 Considering this context, Plaintiff presents evidence of five complaints they argue should
12 have made the risk of harm in the City’s code enforcement practices even more obvious.

13 First, at some point in 2015 prior to his work in the Code Enforcement Office, a female
14 City employee reported to the City that Gerry hugged her from behind, touched her breasts, put
15 her in a headlock, and touched her knee. Additional Fact No. 14, ECF No. 142-2.³ This
16 complaint was never disclosed to Hatfield and Roberts when they became his supervisors two
17 years later. *Id.* The City provides that the incident was investigated, and the City found no
18 wrongdoing. *Id.*

19 Second, on September 18, 2018, the husband of a massage worker contacted the City to
20 report Gerry’s conduct toward his wife, Anh Moore. Additional Fact No. 15. The complaint was
21 assigned to the Office of Employee Relations (“OER”) and investigated by OER Senior Executive
22 Analyst Cheryl Parkman. Additional Fact No. 16. Moore reported to Parkman that Gerry told her
23 she was “his lady,” touched her shoulder when she tried to walk away, pressured businesses not to
24 hire her, and boasted that he has “lots of girlfriends” and that “people wanted to sleep with [him].”
25 *Id.* She also reported other workers feared complaining about Gerry because of his status as a City
26

27 ³ The Court incorporates the parties’ citations to the record in their Separate Statements.
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1 employee. *Id.* Parkman discounted Moore’s report for various reasons, including Moore having
2 been previously cited for prostitution. Additional Fact No. 17. Parkman did not notify anyone in
3 the Code Enforcement Office about the complaint. Additional Fact No. 19. Hatfield and Roberts
4 learned of this report for the first time during their deposition and both expressed shock. *Id.*
5 Roberts stated that she felt “gobsmacked” and testified that she would have expected to be
6 informed of this complaint. *Id.*

7 Third, on September 27, 2018, the City received a report to the Code Enforcement Office
8 that Gerry’s City vehicle was parked outside a massage establishment for an extended period of
9 time. Additional Fact No. 20. Roberts questioned Gerry and relied on his explanation that he was
10 there on official business without further investigation. *Id.*

11 Fourth, in October and November 2018, the City received four handwritten letters accusing
12 Gerry of misconduct. Additional Fact No. 21. The letters were routed to Roberts, Hatfield, and
13 Parkman, as well as Lieutenant Paul Messier at the San Jose Police Department (“SJPD”). *Id.*
14 The letters stated that Gerry was “having sex with a girl massage,” that he “protect[ed]” illicit
15 spas, and that Gerry showed favoritism to one spa that employed “underage girl” masseuses while
16 providing illegal “extra” services. *Id.* Photos enclosed with the letters showed Gerry embracing a
17 young Asian woman and another image of him with his face pressed to hers. *Id.* Roberts
18 forwarded the letters to SJPD out of concern that Gerry was being blackmailed. Additional Fact
19 No. 22. Messier testified the photographs were immediately concerning because they suggested
20 an inappropriate relationship with a woman in a regulated establishment, but he had no authority
21 over Gerry’s supervision as a code inspector. *Id.*

22 Finally, on December 16, 2018, approximately three weeks before Gerry met with Plaintiff
23 for the first time, the City received another complaint through the OER Whistleblower Hotline.
24 Additional Fact No. 24. The anonymous caller informed the City that Gerry was “taking
25 advantage of the Asian community,” including by improperly touching Asian women working in
26 massage parlors, “rubbing and squeezing” their shoulders and backs, and taking women into back
27 rooms and insisting that they massage him. *Id.* The caller further reported that Gerry allowed
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1 “bad kind of massage stores” to remain open, received “envelopes of money,” and that photos and
2 video documented his conduct. *Id.* Parkman was also assigned to investigate this complaint and
3 referred it to the SJPD. Additional Fact No. 25. Parkman did not disclose the complaint to the
4 Code Enforcement Office. *Id.* Messier received the complaint and was “very concerned,” even
5 “jumping out of [his] chair,” because the whistleblower allegations were detailed and credible.
6 Additional Fact No. 27. But Messier had no authority to restrict Gerry’s duties. *Id.*
7 Hatfield and Roberts learned of this complaint for the first time at their deposition as well and
8 expressed similar shock. Additional Fact No. 26. Hatfield testified that he “wish[ed] [he] knew”
9 of the complaint at the time, and he could have supervised Gerry differently or removed him from
10 the field. *Id.*

11 **3. The City’s Reporting System**

12 As referenced above, Plaintiff recently discovered that complaints about Gerry were
13 handled either by the Code Enforcement Office, the OER, or the SJPD. The Code Enforcement
14 Office had day-to-day supervisory authority over Gerry and could reassign him, require
15 accompaniment, or limit access to massage businesses. Additional Fact No. 12. The OER had the
16 authority to investigate misconduct, recommend duty restrictions, place employees on leave, or
17 recommend discipline. *Id.* The SJPD had no supervisory authority over Gerry. Additional Fact
18 No. 13.

19 Shortly after Gerry’s arrest, then City Mayor Sam Licardo issued a public statement on the
20 City’s failed reporting systems. Additional Fact No. 28. The Mayor acknowledged that the City
21 lacked defined procedures for ensuring that complaints were routed to the appropriate supervisory
22 officials and indicated that the City would implement new protocols to ensure similar allegations
23 were handled properly in the future. *Id.*

24 **B. Supervisor Defendants**

25 Roberts and Hatfield were Gerry’s supervisors in the Code Enforcement Office during this
26 time. Plaintiff originally alleged that they were aware of all complaints lodged against Gerry, but
27 as discussed above, Plaintiff now knows this was not the case—it is undisputed that Supervisor
28

1 Defendants discovered the Moore report and the OER Whistleblower Hotline complaint for the
2 first time during their depositions. Instead, the Code Enforcement Office received only two
3 complaints: (1) the September 2018 suspicious vehicle report; and (2) the October and November
4 2018 handwritten letters. Fact Nos. 30, 35. Roberts knew of both, but Hatfield was never made
5 aware of the vehicle report. Fact No. 37. Roberts discussed the vehicle report with Gerry and was
6 satisfied by his explanation that he was present at that facility on official business. Fact No. 36.
7 Roberts also questioned Gerry about the handwritten letters, instructed him to not to return to the
8 businesses implicated in the letters, informed Hatfield of the issue, and sent the letters to the SJPD
9 to investigate, believing they were evidence that Gerry was being extorted. Fact Nos. 31, 32, 33,
10 34.

11 **II. LEGAL STANDARD**

12 **A. Motion to Strike Expert Testimony**

13 Courts act as the gatekeeper of expert testimony to ensure that such testimony is reliable
14 and relevant under Federal Rule of Evidence 702. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137,
15 147 (1999); *see also Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). The proponent
16 of expert testimony has the burden of proving admissibility. *In re Korean Ramen Antitrust Litig.*,
17 281 F. Supp. 3d 892, 931 (N.D. Cal. 2017) (citations omitted). Before an expert can offer her
18 opinions, she must be qualified by “knowledge, skill, experience, training, or education.” Fed. R.
19 Evid. 702. Once she is qualified, Rule 702 permits her to testify as long as “(a) the expert's
20 scientific, technical, or other specialized knowledge will help the trier of fact to understand the
21 evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c)
22 the testimony is the product of reliable principles and methods; and (d) the expert's opinion
23 reflects a reliable application of the principles and methods to the facts of the case.” *Id.* This
24 multifactor inquiry is flexible, and “Rule 702 should be applied with a ‘liberal thrust’ favoring
25 admission.” *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1232 (9th Cir. 2017) (citations
26 omitted). But “there is no presumption in favor of admission.” *Engilis v. Monsanto Co.*, 151
27 F.4th 1040, 1049 (9th Cir. 2025).

The district court enjoys “broad latitude” with regard to how to determine reliability. *Kumho Tire Co.*, 526 U.S. at 142. A district court must distinguish an expert’s qualifications from the reliability of the expert’s principles and methods. *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1315–16 (9th Cir. 1995). What courts assess “is not the correctness of the expert’s conclusions but the soundness of his methodology.” *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1044 (9th Cir. 2014) (quoting *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010), as amended (Apr. 27, 2010)). “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” *Daubert*, 509 U.S. at 596.

B. Motion for Summary Judgment

Courts may grant summary judgment on a claim or defense only if the moving party shows “there is no genuine dispute as to any material fact and [that it] is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). There is a genuine dispute when enough evidence exists in the record for a reasonable fact finder to decide in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a fact is material when it might affect the outcome of the case. *Id.* When evaluating whether a moving party has satisfied this standard, courts view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor. *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011). This moving party bears the initial burden of showing that there is no genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party meets that burden, the opposing party must produce affirmative evidence “from which a jury could find in [its] favor” in order to defeat summary judgment. *F. T. C. v. Stefanchik*, 559 F.3d 924, 929 (9th Cir. 2009).

III. DISCUSSION

The Court will begin with the parties' motions to strike expert testimony before moving to Defendants' motion for summary judgment.

A. Motions to Strike

The Court finds Powell and Flores meet Federal Rule of Evidence 702's criteria to testify
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1 as expert witnesses, and Greene may be introduced as a rebuttal expert under Federal Rule of Civil
2 Procedure 26. The parties may still raise objections regarding the admissibility of specific
3 opinions in motions in limine or during trial.

4 **1. Powell**

5 Powell served as the Code Enforcement Manager, Zoning Administrator, and Deputy
6 Building Official for Dangerous Building Enforcement for the City of Fremont from 2001 to 2020,
7 where he supervised officers enforcing zoning, housing, sanitation, and building codes. Powell
8 Report 2. As part of this role, he developed processes and managed investigations in massage
9 business regulation and enforcement, trained and supervised officers, and implemented ethics and
10 accountability systems. *Id.* Prior to this role, Powell worked as Senior Code Enforcement Officer,
11 Transit Manager, and Airport Manager with the City of Tracy from 2000–2001. *Id.* He has also
12 served multiple terms as Director of the California Association of Code Enforcement Officers
13 (“CACEO”), where he authored the California Code Enforcement Officer Standards Act, authored
14 CACEO Administrative Regulations, published educational articles, and trained officers and
15 supervisors on code enforcement practices throughout the state. *Id.* at 3. The California Code
16 Enforcement Officer Standards Act and its regulations created recognition for code enforcement as
17 a public safety profession, established statewide training and ethical standards, and created a
18 certification program. *Id.* As a CACEO instructor, Powell taught at academies, conferences, and
19 trainings across California on topics including ethics and supervisory responsibility in high-risk
20 enforcement environments such as massage establishments. *Id.* In recognition of this work and
21 more, Powell received a Presidential Award of Achievement and Lifetime Achievement awards
22 from CACEO. *Id.* at 3–4.

23 Powell bases his opinions here on this experience, as well as several supplemental sources
24 including: the CACEO regulations; the Code Enforcement Officer Certification training
25 specifications; two Polaris articles regarding human trafficking in illicit massage businesses; and
26 the City’s municipal code. *Id.* at 6.

27 In considering all of the above, Powell formed seven overarching opinions in this case:
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1. “Municipal code enforcement inspectors have unique authority over the subjects of their enforcement activities that requires proper oversight.”
2. “The city of San José massively understaffed its code enforcement division tasked with investigating the massage industry.”
3. “It is well-known in the code enforcement community that massage businesses are majority owned and operated by immigrant women who are particularly vulnerable to abuse.”
4. “Solo male code inspections of massage businesses are improper.”
5. “Despite the well-known and foreseeable risks, it was San Jose’s policy to give Gerry an unreasonably immense amount of power over massage businesses as its solo male code inspector.”
6. “Because the city’s policy of solo male code enforcement gave so much power to Gerry, it was essential to have systems in place to detect and prevent him from abusing his power.”
7. “The supervision policies of San José were not adequate to prevent violations of law by Gerry.”

Id. at 7-22.

Plaintiff plans to use Powell’s testimony in part to prove deliberate indifference—i.e., that the City was on constructive notice that its failure to adhere to certain best practices, including using a partner system for inspections, would likely result in a constitutional violation.

Defendants argue Powell's testimony should be excluded because: (1) his opinions do not help the jury decide the case; (2) his opinions are unreliable; and (3) he bases his opinions on "common sense." The Court will address each argument in turn.

a. Helping the Jury Decide the Case

Rule 702 requires that “the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702(a).

Defendants argue Powell’s testimony will not help the jury decide whether the City was deliberately indifferent. Powell’s report identified several “best practices” in the code enforcement industry that San Jose was not implementing at the time of Plaintiff’s injury,

1 including: using partner systems for inspections; random supervisory audits; rotation of inspectors
2 across industries; direct supervisory contact with regulated businesses; and formal post-action
3 debriefs. Powell Report 18. However, during his deposition, Powell testified that he does not
4 believe code inspectors are “likely” to extort or sexually assault people absent those “best
5 practices.” Powell Dep. 40:1–10, ECF No. 137-3. Defendants argue this renders his testimony
6 irrelevant to the ultimate question—whether the city was on constructive notice that its policy of
7 solo male code enforcement would likely result in a constitutional violation.

8 The Court finds this does not disqualify Powell from testifying as an expert in this case.
9 Although Powell declined to use the word “likely” in his deposition, he also testified there is “a
10 high probability” that lone male enforcement officers would commit sexual assault and corruption,
11 and that lone code enforcement officers going into massage businesses is an outdated practice
12 because “there is a high probability” that something may go wrong. *Id.* at 53:18–20, 76:22–24.
13 While Defendants’ argument may present a question of witness credibility for the jury to weigh, it
14 does not render Powell’s opinion on this matter unhelpful to the jury. *See Alaska Rent-A-Car, Inc.*
15 *v. Avis Budget Grp., Inc.*, 738 F.3d 960, 969–70 (9th Cir. 2013) (“[T]he judge is supposed to
16 screen the jury from unreliable nonsense opinions, but not exclude opinions merely because they
17 are impeachable. The district court is not tasked with deciding whether the expert is right or
18 wrong, just whether his testimony has substance such that it would be helpful to a jury.”).

19 **b. Reliability**

20 Rule 702 also requires that an expert’s testimony “is based on sufficient facts or data,” “is
21 the product of reliable principles and methods,” and “reflects a reliable application of the
22 principles and methods to the facts of the case.” Fed. R. Evid. 702(b)–(d). Expert testimony is
23 generally deemed sufficiently reliable if the expert has “good grounds” for the testimony—i.e., if
24 the expert’s conclusions are based on the knowledge and experience of the expert’s discipline
25 rather than on “subjective belief or unsupported speculation.” *Daubert*, 509 U.S. at 590.

26 Defendants argue that Powell’s opinions are narrowly based on his experience in the City
27 of Fremont and the City of San Rafael, which is insufficient to opine on industry-wide practices.

1 To illustrate this point, Defendants point to Powell’s opinion that best practices for inspection of
2 massage businesses include “multi-inspector teams, strong female representation, and supervisory
3 presence,” Powell Report 12; yet during his deposition, he testified that the only jurisdiction other
4 than Fremont that implemented these practices was San Rafael. Powell Dep. 18:13–25.
5 Defendants also argue Powell’s opinions are unreliable because he could not identify any written
6 standard, guideline, or other documentation that addresses interactions between code enforcement
7 inspectors and women in the massage industry.

8 The Court finds Defendants’ arguments unpersuasive. Defendants’ assertion that Powell’s
9 experience is limited only to Fremont and San Rafael is taken out of context and contradicted by
10 his documented experience. As author of the California Code Enforcement Officer Standards Act
11 and CACEO guidelines, Powell drafted California legislation and regulations that established
12 statewide training and ethical standards for code enforcement officers, and he implemented these
13 standards in Fremont. When asked about which other jurisdictions have implemented these
14 standards, he listed San Rafael as one of the “other Bay Area cities” with similar practices.
15 Though he could not recount the other jurisdictions during his deposition, he maintained his belief
16 that other cities beyond San Rafael implemented these practices as well. Powell Dep. 18:13–25.
17 This presents an issue of fact for the jury; it does not reflect a failure to base his opinions on the
18 knowledge and experience of his discipline.

19 As for his reliance on external written documents, this is not necessary for Rule 702
20 purposes. So long as the witness “explain[s] how that experience leads to the conclusion reached,
21 why that experience is a sufficient basis for the opinion, and how that experience is reliably
22 applied to the facts,” than the witness may rely “solely or primarily on experience.” Fed. R. Evid.
23 702, advisory committee notes to 2000 amendments (citing *Daubert*, 43 F.3d at 1319). Powell
24 does so here. As detailed above, Powell has served as a code inspector supervisor for nearly two
25 decades and authored the California legislation and regulation that established statewide training

1 and ethical standards.⁴ In his report and his deposition, he has sufficiently explained how this
2 experience formed his opinions on best practices in this industry, and he relies on that experience
3 to opine on the facts of this case. Therefore, Defendants' arguments regarding the lack of written
4 documents go to weight rather than admissibility. *See Engilis*, 151 F.4th at 1049 ("[C]hallenges to
5 an expert's opinion go to the weight of the evidence only if a court first finds it more likely than
6 not that an expert has a sufficient basis to support an opinion."); *see also Elosu v. Middlefork
7 Ranch Inc.*, 26 F.4th 1017, 1025 (9th Cir. 2022) ("The judge is 'a gatekeeper, not a fact finder,'
8 and the 'gate could not be closed to this relevant opinion offered with sufficient foundation by one
9 qualified to give it.'").⁵

10 **c. Common Sense**

11 Finally, Defendants argue that Powell's opinions on code inspector supervision amount
12 only to "common sense," not the opinion of an expert. For example, Defendants contend that
13 Powell "pointed to a 'common sense supervisory assessment'" as support for the opinion that
14 Roberts and Hatfield should have been made aware of all complaints about Gerry. Def.'s Mot. to
15 Strike 8 (quoting Powell Dep. 109:14–16). Defendants also highlight Powell's testimony that his
16 re-assignment protocols are not specific to code enforcement, but rather, are "kind of everywhere
17 in life such as a consumer transaction. If one person has a conflict with somebody else in a
18 commercial setting, the general approach is, 'Can I talk to somebody else?'" *Id.* at 8–9 (quoting
19 Powell Dep. 71:11–21).

20 But, as Plaintiff highlights, Defendants' excerpts of Powell's deposition are taken out of
21 context. For example, the phrase "common sense supervisory assessment" was counsel's, not
22

23 ⁴ Though Defendants correctly highlight that the Code Enforcement Officer Standards Act itself
24 doesn't promulgate any inspection standards, the Act designates the California Association of
25 Code Enforcement Officers as the body to promulgate standards and certify examinees under such
26 standards. Powell Dep. 9:20–10:19. Powell served multiple terms as Director of CACEO, where
27 he wrote the CACEO Administrative Regulations he discusses in his deposition.

28 ⁵ The Court also notes that Powell's expertise differs significantly from the medical and scientific
experts in the cases Defendants reference. *See, e.g., Holbrook v. Lykes Bros. S.S. Co.*, 80 F.3d
777, 782–83 (3d Cir. 1996) (treating physician testimony admissible because diagnosis based on
lab results, the patient's symptoms, and his experience).

1 Powell's:

2 A. So my opinion is that it didn't include -- well, it was inadequate
3 that it didn't include notifying the department supervisors initially,
4 and it was silent prior to July 8, 2021, on how to treat the incidents of
5 a crime.

6 Q. Okay. Anything else?

7 A. Yeah. My concern is that based on the way the document is written,
8 it was inadequate in that it did not trigger the code enforcement
9 supervisors to be notified of the complaints automatically or initially,
10 or even be consulted or form a team. And the result was as was stated
11 in Hatfield's testimony or deposition that, "Had I known about certain
12 complaints, I would have acted on them." I think this policy would
13 default it to create that result. And that's -- that's my comment.

14 Q. Okay. Is there any industry standard or CACEO policy that you're
15 aware of that would inform that assessment on your part?

16 A. Not specifically. I think it's good supervisory practice that if an
17 employee is committed or committing a crime against a person that
18 the agency do all that they can to protect everybody involved
19 immediately and take swift action and not allow employees to say,
20 "Well" -- and create the opportunity for employees -- the supervisor
21 to say, "Well, I wasn't notified. I couldn't do anything," or to sit parked
22 in a -- in the office of an employee relations department who may not
23 -- may not see that report for some days.

24 Furthermore, I think the policy should have a timeline on how many
25 dates it can sit before the notifications are made to those who can take
26 immediate intervention, such as the code enforcement supervisor.

27 **Q: And that's sort of your common sense supervisory assessment?**

28 A. Yes."

15 Powell Dep. 108:6–109:16 (emphasis added). And before discussing his general observations of
16 re-assignments in commercial settings, Powell testified that his knowledge of re-assignment
17 practices for code enforcement inspectors was based on his experience in the code enforcement
18 field. The entire query reads as follows:

19 Q. Okay. In section 7.8. it's your opinion that – and take your time to
20 review it, but that Gerry wasn't re-assigned and that best practice
21 dictates that he should have been. Is that right?

22 A. I'm reading it. Yes. My opinion is what's stated in the first sentence,
23 remove them from the assignment pending investigation.

24 Q. Okay. And it's also your opinion that that's a best practice?

25 A. Yes.

26 **Q. Where is that identified as a best practice other than in your
27 report?**

28 **A. I don't know. I learned it through practice from city manager
on down.**

Q. At the City of Fremont?

A. Yes.

Q. Anywhere else?

A. Well, kind of everywhere in life such as a consumer transaction. If
one person has a conflict with somebody else in a commercial setting,

1 the general approach is, "Can I talk to somebody else?" So
2 substituting somebody to remove an immediate conflict is an efficient
3 use of resources, and that carries over into code enforcement where
4 removing the code inspector from a case where there seems to be a
dispute, or an allegation, is the easiest way to park it and the most
efficient way to carry on with business while preserving safety and
integrity.

5 **Q. Anything else specific to the code enforcement environment?**
6 **A. Yes. It's my entire experience has been that code enforcement**
officers tend to take that personally and say, "No, I don't want to
be removed," so a supervisor needs to have thick enough skin to
be able to explain and articulate why it's in everybody's best
interest on a temporary removal and assignment. And it should
go further than that. There should be regular rotation anyway so
that one does not decide on its own regulated community.

7
8 Powell Dep. 70:25–72:14 (emphasis added).
9

10 Upon reviewing the whole record, the Court finds Powell sufficiently uses his expertise in
11 the code enforcement industry, rather than common sense available to any lay person, to provide
12 his opinions.

13 Accordingly, the Court finds that Powell is qualified as an expert by his knowledge, skill,
14 experience, training, and education in the code enforcement industry. Plaintiff has also
15 sufficiently demonstrated it is more likely than not that Powell's expertise will help the jury
16 understand the evidence and determine the issue of deliberate indifference; that his testimony is
17 based on sufficient knowledge of the industry; that his testimony is the product of reliable
18 principles; and that his opinion reflects a reliable application of these principles to the facts of this
19 case.

20 The Court therefore **DENIES** Defendants' motion to exclude Powell's expert testimony.

21 **2. Flores**

22 Flores has been a police officer with the San Francisco Police Department ("SFPD") since
23 1982. Flores Report 1. He is currently acting Lieutenant in charge of the human trafficking unit.
24 *Id.* During his career, Flores has conducted and supervised "several hundred" massage business
25 inspections, often as many as fifty to sixty per year. *Id.* at 2. He describes these inspections as
26 always consisting of multiple people, including sworn police officers and, on occasion, non-sworn
27 enforcement personnel from other agencies such as the Department of Public Health. *Id.* During

1 his work in the SFPD Vice Unit, Flores worked extensively with municipal code inspectors as
2 well. *Id.* at 6. Flores also regularly teaches other law enforcement professionals how to conduct
3 investigations involving vulnerable community members, including massage workers, and he is an
4 instructor at the SFPD academy, where he teaches courses on Human Trafficking, Vice Crimes,
5 Domestic Violence, and Principled Policing. *Id.* at 2.

6 Flores bases his opinions here on this experience, as well as several supplemental sources
7 including: a United Nations article on human trafficking; an article regarding sexual violence
8 perpetrated by police; two Polaris articles regarding human trafficking in illicit massage
9 businesses; an article on law enforcement sexual misconduct prevention and accountability; and
10 the City's municipal code. *Id.* at 4–9.

11 In considering all of the above, Flores formed seven overarching opinions in this case:

12 1. “Allowing lone men (whether sworn or unsworn) to conduct
13 enforcement activities in massage parlors is an archaic and outdated
14 concept that is virtually unheard of in the twenty-first century. The
15 norm is to send multiple inspectors at a time into an establishment-
16 preferably including female inspectors-to reduce the risk of sexual
17 harassment or assault.”

18 2. “These precautions are necessary because there is a patently
19 obvious risk of sexual assault associated with sending men into a
20 space known to be staffed by indigent, immigrant women, who have
21 limited educational opportunities, speak little to no English, and in
22 some cases have been human trafficked.”

23 3. “Based on my knowledge of the industry, it is impossible that
24 those with supervisory authority over Mr. Gerry were unaware of this
25 obvious consequence of lone male enforcement. That is doubly true
26 once allegations of misconduct-complete with photographs-were
27 made public.”

28 4. “The thought that after credible complaints were received, the
29 City of San Jose and Gerry's Supervisors did not take affirmative steps
30 to immediately protect the public is outrageous.”

31 5. “Supervisors and investigators that I teach throughout the
32 State are well aware that municipal employees with enforcement
33 power over massage workers would be prone to violate their
34 constitutional rights-or at a minimum be put in compromising
35 positions-without strict supervision and accountability.”

36 6. “Massage businesses are particularly susceptible to corruption
37 as a consequence of the vulnerable immigrant women who run them,

1 therefore particularly strict supervision is required of enforcement
2 officers.”

3 7. “The City's failure to properly supervise William Gerry
4 endangered the public and led to the extortion and/or sexual assault
5 or harassment of multiple women, including Dai Nguyen.”

6 *Id.*

7 Defendants argue Flores's testimony should be excluded because: (1) he lacks the expertise
8 to provide opinions on code enforcement; (2) his opinions are unreliable; and (3) he bases his
9 opinions on “common sense.” The Court will address each argument in turn.

10 **a. Expertise**

11 Defendants first argue that Flores lacks the code enforcement expertise necessary to offer
12 opinions about the industry because he is a police officer, not a code enforcement inspector.
13 Defendants also contend that the articles he references are specific to police conduct; he testified
14 that he has never taught non-sworn personnel like code inspectors; and he testified that he has
15 never received instruction on supervision of code inspectors in massage businesses.

16 The Court finds that, despite his role as a police officer, Flores possesses the expertise
17 required under Rule 702 to testify on code enforcement practices in massage businesses. Though
18 Flores has never been a code inspector, Flores has worked extensively with code enforcement
19 inspectors in his “several hundred” massage business inspections. Flores also testified that he has
20 seen code inspectors operate with enforcement powers akin to those of police officers, particularly
21 in the eyes of certain vulnerable communities including illicit massage business employees, such
22 that the distinction between police officer and code enforcement investigator may be immaterial in
23 this context. Flores Dep. 88:14–90:20, ECF No. 137-5. This experience is sufficient to opine on
24 the City's policies regarding massage code enforcement of massage entities and to illustrate the
25 intricacies of code enforcement police powers. *See, e.g., Thomas v. Newton Int'l Enters.*, 42 F.3d
1266, 1269–1270 (9th Cir. 1994) (finding a longshoreman qualified to opine on unreasonably
dangerous work environment).

26 The Court also observes that Defendants' references to Flores's testimony are, again here,
27 taken out of context. For example, Defendants represent that Flores has never taught non-sworn
28

1 personnel like code inspectors, but this statement was made in response to counsel's question of
2 whether Flores has taught non-sworn personnel *outside* of San Francisco. In the page prior to
3 Defendants' citation, Flores testified that he has, indeed, taught non-sworn personnel like code
4 inspectors:

5 **Q. What about your classes on human trafficking investigations
6 at massage parlors to nonsworn personnel? Have you taught that
course?**

7 **A. Yeah . . .**

8 Q. Have you taught your human trafficking investigations in massage
9 parlors to nonsworn personnel **outside of San Francisco?**

10 A. Well, if you talk about -- well, no. Strike that. **No. But if I can just
11 add. So if we're at a conference, I really don't know if that person
is not they're not solely based not in San Francisco. There could
12 be other individuals like the Coalition to End Human Trafficking
from Santa Clara, the Santa Clara Coalition to End Human
Trafficking. So we could have other individuals that are inside the
audience. I just wouldn't know if they were all San Francisco
based or not.** Hopefully that makes sense.

13 Q. Okay. But as you sit here today you don't have knowledge of
14 anyone specifically that you have taught that is nonsworn that you've
taught your human trafficking massage parlor course to. Is that
correct?

15 A. No.

16 Flores Dep. 23:21–25:5. And Defendants' representation that Flores never received instruction on
17 supervision of code inspectors in massage businesses is also taken out of context. During this
18 portion of his deposition, counsel asked only about whether his "*Massage Therapy Council
19 training courses*" taught any methodologies for supervising code enforcement inspectors in
20 massage businesses. Flores Dep. 28:2–8. But Flores's report lists twelve other courses he has
21 taken, and he testified that some of these courses also involved code enforcement: "the vice
22 section from LAPD and also in the POST human trafficking course." Flores Dep. 16:2–24.

23 **b. Reliability**

24 Next, Defendants argue that Flores lacks reliable support for his opinion that sexual assault
25 or extortion is the likely outcome of a solo male code inspector working in massage businesses.
26 Defendants contend that Flores testified he was not aware of any other instance in his experience
27 in which a code enforcement inspector assaulted or extorted a massage business worker; he is not
28 aware of any standards applicable to supervising code inspectors; he is not aware of any

1 jurisdiction that actually supervises code enforcement inspectors the way he opines they should be
2 supervised; and he could not point to any written standards that suggest re-assigning an employee
3 about whom a complaint has been made.

4 Defendants' arguments here are similarly unpersuasive. First, whether similar conduct has
5 occurred in the past is not necessarily relevant to the theory of Plaintiff's case—that the risks of
6 exploitation were so obvious and well-known in the industry that the City did not need a pattern of
7 similar instances to be on constructive notice. *See Order Den. Third Mot. to Dismiss* 12–13.
8 Second, Flores's lack of experience in code enforcement supervision could foreseeably render
9 some opinions on code enforcement inadmissible, but it does not render his entire testimony
10 unreliable.⁶ Flores still sufficiently explains how he formed his opinions on code enforcement
11 best practices based on his observations, trainings, and teachings conducted over forty-three years
12 in the SFPD overseeing code enforcement inspections in massage businesses—including
13 observations of employees vulnerable to exploitation, power dynamics, intimate spaces, and code
14 enforcement investigators' use of police powers. Third, as the Court noted above, written
15 standards on re-assigning code inspectors after receiving complaints is unnecessary to forming a
16 reliable opinion. The Court finds Flores may rely “solely or primarily on experience” because he
17 has sufficiently explained how his experiences have led to his conclusions on code enforcement
18 best practices in massage businesses, why that experience is a sufficient basis for his opinions, and
19 how his experience is reliably applied to the facts of this case. Fed. R. Evid. 702, advisory
20 committee notes to 2000 amendments (citing *Daubert*, 43 F.3d at 1319).

21 **c. Common Sense**

22 Finally, Defendants also argue that Flores's opinions are no more than “common sense.”
23 But upon review of the cited portions of Flores's testimony, it appears Flores's use of “common
24 sense” referred to “common sense” among industry professionals:

25
26
27
28 ⁶ Defendants have not moved to strike specific portions of Flores's opinion, but rather, requests
exclusion of Flores entirely. Defendants may raise more specific objections in motions in limine
or during trial.

Q. And what law enforcement agencies do you have knowledge of that follow this practice for law enforcement?

A. I think from my 44 years of law enforcement working with other individuals that work human trafficking cases. I've talked to other colleagues about this particular case, and I get the same look. I get the same reaction from them. You know, "Are you serious? They're sending a lone man inside these places?" So just because it's not written, it literally comes down to **common sense**. And that individual going inside there by themselves, you're just -- there's problems. There's definitely problems when you're doing these type of operations.

Flores Dep. 77:16–78:4 (emphasis added). Upon reviewing Flores’s report and testimony in its entirety, the Court is satisfied that his opinions are based on his relevant experience, including experience conducting massage business inspections, rather than on the common sense available to any lay person.

Accordingly, the Court also finds that Flores is qualified as an expert by his knowledge, skill, experience, training, and education in the field of massage business inspections. Plaintiff has also sufficiently demonstrated it is more likely than not that Powell's expertise will help the jury understand the evidence and determine the issue of deliberate indifference; that his testimony is based on sufficient knowledge of the industry; that his testimony is the product of reliable principles; and that his opinion reflects a reliable application of these principles to the facts of this case.

The Court therefore **DENIES** Defendants' motion to exclude Flores's expert testimony.

3. Greene

Unlike Powell and Flores, Plaintiff does not challenge the admissibility of Greene's opinions under Rule 702. Instead, Plaintiff seeks to exclude Defendants' rebuttal expert on procedural grounds under Federal Rule of Civil Procedure 26.

Rule 26 generally outlines the rules for expert disclosures and defines a rebuttal expert as one who “is intended solely to contradict or rebut evidence on the same subject matter identified by another party.” Fed. R. Civ. P. 26(a)(2)(D)(ii). Plaintiff argues that Greene should be excluded because he was mischaracterized as a “rebuttal” expert—posturing that Defendants actually intended on using him as an initial expert, but they missed the deadline.

1 Defendants first disclosed Greene during fact discovery on August 19, 2025, as the person
2 who would conduct a psychiatric independent medical examination (“IME”) on Plaintiff. Greene
3 conducted his IME in August, but Plaintiff never saw his report. Weeks later, Plaintiff disclosed
4 her initial expert Dr. Ponton. And about one month later, after the deadline for initial expert
5 disclosures had past, Defendants disclosed Greene as a “rebuttal” psychiatric expert on September
6 30, 2025. They characterize Greene as rebutting Ponton’s opinions on damages—specifically,
7 Greene opines that Plaintiff’s psychiatric health injuries do not require the length and degree of
8 care opined by Ponton. But in support of his rebuttal, Greene uses findings from the IME he
9 conducted prior to Ponton’s report. Plaintiff argues Greene’s opinion must therefore be excluded
10 because Greene is not a “rebuttal” expert, but rather an initial expert, and he should have been
11 disclosed as such prior to the deadline for initial expert disclosure on September 22, 2025. In
12 other words, because he did not conduct his IME *in response* to Ponton’s report, his opinion was
13 never intended solely to contradict or rebut the evidence in that report.

14 The Court agrees with Plaintiff that the timing of the IME and Greene’s report is unusual.
15 However, Plaintiff has not provided any authority prohibiting the use of prior findings to rebut the
16 opinion of an initial expert during trial. So long as Greene’s testimony only uses his IME findings
17 to narrowly contradict or rebut Ponton’s opinions on the same subject matter, the Court sees no
18 reason for exclusion. Plaintiff may of course cross-examine Greene on the timing of his report
19 and raise additional objections regarding specific portions of Greene’s proffered testimony in
20 motions in limine or at trial.

21 The Court therefore **DENIES** Plaintiff’s motion to exclude Greene’s expert testimony.

22 **B. Motion for Summary Judgement**

23 The Court finds genuine issues of material fact preclude summary judgment in the City’s
24 favor, but claims against Supervisor Defendants are deficient as a matter of law.

25 **1. The City**

26 To succeed in her *Monell* claims against the City, Plaintiff must show that the City (1)
27 caused her injuries through a policy, custom, or practice (2) which was adhered to with deliberate
28

1 indifference to her constitutional rights. *See* Third MTD Order (describing Plaintiff's theory of
2 liability); *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). The City
3 raises arguments relevant to both requirements.

4 **a. Policy, Custom, or Practice that Caused Plaintiff's Injury**

5 There are two policies, customs, or practices that Plaintiff argues caused her injuries.
6 First, Plaintiff identifies the practice of sending solo male code enforcers to inspect massage
7 businesses unsupervised. Second, Plaintiff identifies the fragmented reporting and supervision
8 policy that allowed Gerry's conduct to continue despite the City receiving several complaints of
9 similar misconduct. The City does not dispute that the first is a "practice" and the second is a
10 "policy" for purposes of *Monell* liability. The City does, however, contend that there is no
11 evidence this practice or policy was the proximate or but-for cause of Plaintiff's injury.

12 The Court disagrees. Regarding proximate causation, the City cites to inapposite case law.
13 For example, the City relies on a case where a police officer committed a robbery and assault as a
14 civilian off duty. *Van Ort v. Est. of Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996). The Ninth
15 Circuit there held that, despite the officer's extensive disciplinary record at work, the county
16 "could not reasonably have foreseen that [the deputy] would become a free-lance criminal and
17 attack the Van Orts as he did," and his "unforeseeable private acts broke the chain of proximate
18 cause connecting the County." *Id.* But here, Gerry was not a "free-lance criminal" who could
19 have committed his crimes regardless of his position. Instead, the evidence shows Gerry abused
20 his power as a City employee while on duty, wearing a uniform and a badge, and driving a City
21 vehicle, and he used his position in the City to coerce Plaintiff to comply with his demands. There
22 are simply no breaks in the causal chain similar to those in *Van Ort*.⁷

23 Regarding but-for causation, the City summarily argues that even if Gerry were
24 supervised, there is no *guarantee* that he would not have returned to rape and extort Plaintiff while
25 off duty. But the City provides no support for its representation that Plaintiff must guarantee such

27 ⁷ The Court notes that the question of foreseeability is also discussed in the deliberate indifference
28 section below.

1 a hypothetical would not occur. The evidence here is that Gerry raped and extorted Plaintiff under
2 the color of law. A reasonable jury could find under these circumstances that Plaintiff's injuries
3 would not have occurred but for the City's practice and policy that provided Gerry with the
4 authority and lack of oversight necessary to abuse Plaintiff.

5 **b. Deliberate Indifference**

6 Next, to show deliberate indifference, Plaintiff must demonstrate the City "was on actual
7 or constructive notice" that its failure to prevent unsupervised solo male code enforcement
8 inspections, or its fragmented reporting and supervision policy, would likely result in the
9 constitutional violations alleged here. *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1145 (9th Cir.
10 2012). This is an objective inquiry. *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1076 (9th Cir.
11 2016).

12 The Court finds the City's arguments here similarly unpersuasive. First, the City appears
13 to re-raise legal arguments the Court disposed of in its Third MTD Order. Namely, the City
14 argues it cannot be held liable for failing to train Gerry to not rape and extort Plaintiff, and it cites
15 to failure-to-train cases holding as much. *See Schneider v. City of Grand Junction Police Dep't*,
16 717 F.3d 760 (10th Cir. 2013); *Barney v. Pulsipher*, 143 F.3d 1299, 1308 (10th Cir. 1998). While
17 this is correct under *Flores v. Cnty. of Los Angeles*, 758 F.3d 1154, 1156 (9th Cir. 2014), as the
18 Court noted in its Third MTD Order, this is not the theory of Plaintiff's case. Plaintiff alleges the
19 City failed to ensure proper *supervision* of code inspectors in an environment ripe for abuse, not
20 that the City failed to train inspectors to not break the law. As the Court previously noted:

21 Defendants argue that the conclusory opinions of experts about the
22 adequacy of San Jose's code enforcement practices are irrelevant
23 when the Ninth Circuit in *Flores v. Cnty. of Los Angeles*, 758 F.3d
24 1154, 1156 (9th Cir. 2014), has held that a municipality is not
25 deliberately indifferent for failing to train and supervise employees
26 not to do what criminal law forbids The plaintiff in *Flores* alleged
27 that the municipality was deliberately indifferent for failing to give
their deputies "specific instruction not to commit sexual assault," *id.*
at 1160; here, Plaintiff now alleges facts to show that the City was
deliberately indifferent for implementing a custom or practice that
allowed solo male code enforcers to inspect massage businesses
unsupervised and with unfettered power, where it was common
knowledge among law enforcement agencies that such policies would

1 likely result in constitutional violations, and where it received prior
2 complaints that should have specifically alerted them to Gerry's
3 constitutional violations. Despite the notion that everyone is
4 "presumed to know the law," and the City can in some degree rely on
the criminal justice system to deter criminal conduct, the City still has
the responsibility to ensure that its customs and practices are not
creating the optimal conditions under which unconstitutional conduct
is likely to occur.

5 Third MTD Order 14, 16. Plaintiff highlighted this misdirection, but the City did not address it in
6 their Reply and has provided the Court no reason to find otherwise here.

7 Next, the City focuses on the fact that there is no evidence of any similar prior incidents
8 involving other employees that would put the City on notice of the likelihood of harm, but also as
9 discussed in the Third MTD Order, that is not required, and it is not the theory of Plaintiff's case.
10 Although notice is ordinarily shown through demonstrating a pattern of similar constitutional
11 violations by employees, "evidence of a pattern of constitutional violations is not always required
12 to succeed on a *Monell* claim." *Kirkpatrick v. Cnty. of Washoe*, 843 F.3d 784, 794 (9th Cir. 2016);
13 *see also Connick v. Thompson*, 563 U.S. 51, 62 (2011). "[I]n a narrow range of circumstances" a
14 particular "showing of 'obviousness' can substitute for the pattern of violations ordinarily
15 necessary to establish" deliberate indifference. *Kirkpatrick*, 843 F.3d at 794 (citing *Connick*, 563
16 U.S. at 63). For example, the Ninth Circuit stated that "a single incident of excessive force,
17 coupled with evidence that a city had neglected to train its armed officers on the constitutional
18 limitations on using force against fleeing felons, might establish that the city manifested deliberate
19 indifference in training law enforcement." *Id.* (citing *City of Canton, Ohio v. Harris*, 489
20 U.S. 378, 390 n.10 (1989)). Here, as the Court previously found, despite there being "no facts
21 regarding a pattern of violations," Plaintiff's theory is that "the City's custom or practice of
22 sending unsupervised solo male code enforcement inspectors into massage businesses presents an
23 'obvious risk' of constitutional violations." Third MTD Order 13. The City's arguments
24 regarding a pattern of similar conduct are therefore irrelevant.

25 Finally, the City notes that the standards described by Plaintiff's experts were not
26 mandatory written procedures the City *had* to follow, but it failed to provide support for its theory
27 that only mandatory procedures can be used as evidence for deliberate indifference.

1 Accordingly, the Court finds the City has failed to show that undisputed facts establish no
2 deliberate indifference as a matter of law. Indeed, the Court identifies many disputed facts that a
3 jury might consider to find the City deliberately indifferent when viewed in the light most
4 favorable to Plaintiff. Plaintiff has introduced evidence that the City decided to enact a practice of
5 sending solo male code enforcers with substantial discretion and power into massage businesses
6 unsupervised, despite the well-known risk in the code enforcement industry that such a practice
7 creates an obvious opportunity for abuse. And while Gerry was in the field, he conducted roughly
8 700 code inspections of massage businesses in the span of eighteen months, only two of which he
9 was accompanied by a supervisor. Against this backdrop of obvious risk and a lack of
10 supervision, the City then received several reports of Gerry's serious misconduct. Though some
11 reports are subject to interpretation, when drawing all reasonable inferences in Plaintiff's favor, a
12 jury could find that they provided the City repeated notice that Gerry was committing sexual
13 misconduct and extortion during his inspections. And importantly, several of these reports were
14 never communicated to Gerry's supervisors, Hatfield and Roberts, who expressed shock during
15 their depositions and testified that they wish they had known sooner so they could have prevented
16 this from happening. Taken together, the evidence could show that the City implemented and
17 carried out its practice and policy in deliberate indifference to Plaintiff's constitutional rights. *See*
18 *Harris*, 489 U.S. at 389–99; *Jackson v. Barnes*, 749 F.3d 755, 763 (9th Cir. 2014); *Bode v. City of*
19 *Fullerton*, 815 F. Supp. 2d 1117 (C.D. Cal. 2011) (finding that when an officer is assigned to
20 interact with vulnerable women in settings that lend themselves to coercion, and when the
21 municipality receives warnings consistent with later misconduct yet leaves the officer in the same
22 public-facing role, a jury may find deliberate indifference).

23 It is true, as the City contends, that it has its own side to this story. It has explanations for
24 how each report was investigated and why they did not result in Gerry's removal from the field. It
25 also has arguments to impeach the opinions of Plaintiff's experts who opine on the obvious risk
26 inherent in sending solo male code inspectors into massage businesses unsupervised. But these
27 arguments merely highlight the inappropriateness of this issue for summary judgment. A jury, not

1 the Court, must weigh these facts, and despite the City's explanations and arguments, it remains
2 that a reasonable jury could interpret the evidence in Plaintiff's favor and find the City deliberately
3 indifferent.

4 **c. Due Process Clause**

5 Before moving to its discussion concerning Supervisor Defendants, the Court notes the
6 City's remaining arguments regarding Plaintiff's right to due process.⁸

7 The City generally contends that Plaintiff's due process claim fails because there is no
8 protected property interest in operating an unpermitted business. But Plaintiff explains in
9 response that the property interest alleged here is actually interest in the good will of her business
10 and the \$34,000 that Gerry extorted from her. As Plaintiff highlights, the Ninth Circuit has
11 recognized this property interest in good will under California law in *WMX Techs., Inc. v. Miller*,
12 providing:

13 The California Business & Professions Code, § 14100, provides the
14 good will of a business is the expectation of continued public
15 patronage Essentially, the goodwill of a business is its value as
16 a going concern and is made up of many factors, such as location,
17 patronage of customers, relations with suppliers, experience of
18 employees, effectiveness of management, and many other factors.

197 F.3d 367, 374 (9th Cir. 1999). Plaintiff also cites to a Seventh Circuit case finding that
monetary extortion could give rise to a due process claim against supervisors. *Roach v. City of
Evansville*, 111 F.3d 544, 550–51 (7th Cir. 1997) (“We agree with the district court that had the
extortion been completed, Roach might have a due process claim that he could bring against
Whitlow pursuant to Section 1983.”).

The City largely drops this argument in the reply, except to contend that there is no
evidence Gerry's actions impacted the good will of Plaintiff's business. But this is directly
contradicted by the evidence. Plaintiff represents that she made payments to Gerry totaling
\$34,000 under the belief that he would use that money to acquire a business permit; but when she

27 ⁸ Defendants also raise arguments regarding Plaintiff's equal protection claim that are relevant
only to Supervisor Defendants.

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1 reported Gerry to the City and discovered this was not the case, the City nevertheless responded
2 by shutting down her business for operating without a permit. A reasonable jury could find under
3 these circumstances that Gerry's conduct interfered with Plaintiff's expectation of continued
4 public patronage.

5 Accordingly, the Court **DENIES** Defendants' motion for summary judgment as to the
6 City.

7 **2. Supervisor Defendants**

8 Supervisors may generally be liable under Section 1983 if they are deliberately indifferent
9 in supervising their subordinates and deliberately indifferent to the consequences of their
10 subordinates' behavior. *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011); *L.W. v. Grubbs*, 92
11 F.3d 894 (9th Cir. 1996). Deliberate indifference is shown by (1) the supervisor's "actual
12 knowledge of, or willful[] ignore[ance] to" serious risk of harm and (2) the supervisor's failure to
13 "take obvious steps to address that known, serious risk." *Grubbs*, 92 F.3d at 900 (quoting
14 *Manarite By & Through Manarite v. City of Springfield*, 957 F.2d 953, 956 (1st Cir. 1992)); *see also Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991) (supervisors also liable where
15 they "refused to terminate a series of acts by others"). Liability under this standard is found where
16 supervisors acquiesce to the constitutional violations of their subordinates either following a
17 complaint or as a result of their own culpable inaction in the supervision or control of
18 subordinates—even in the absence of overt personal participation in the constitutional violation.
19 *Hyde v. City of Willcox*, 23 F.4th 863, 874 (9th Cir. 2022); *Hansen v. Black*, 885 F.2d 642, 646
20 (9th Cir. 1989); *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011). Such deliberate
21 indifference must also be causally related to the constitutional violation, which in turn may be
22 established through evidence that the supervisor knowingly refused to terminate a series of actions
23 which the supervisor knew or reasonably should have known would lead to a constitutional
24 violation. *Starr*, 652 F.3d at 1207–08.

25 Here, the relevant inquiry is whether Supervisor Defendants knew of the serious risk of
26 sexual assault and extortion posed by Gerry; and if so, whether they failed to take obvious steps to
27

1 address that risk in a way that constituted willful blindness.

2 The Court answers both questions in the negative. First, the Court finds the information
3 available to Supervisor Defendants was insufficient to put them on notice of Gerry's sexual
4 misconduct and extortion. As discussed above, the Code Enforcement Office received only two
5 reports regarding Gerry: (1) the vehicle report and (2) the handwritten letters. The vehicle report
6 does not reveal any sexual misconduct or extortion; the report merely indicates that Gerry's car
7 was parked outside of a massage business for a long period of time, which is an ordinary
8 occurrence in his occupation. And the Court already found in prior orders that the contents in the
9 anonymous letters "alluding to an improper intimate relationship between Gerry and a massage
10 business owner were not enough [on their own] to put Roberts on notice that Gerry would sexually
11 assault and bribe massage business owners." Third MTD Order 21. Accordingly, without the
12 benefit of also receiving the Moore report and OER Whistleblower Hotline complaint, the Court
13 finds Supervisor Defendants could not have known of the serious risk of sexual assault and
14 extortion posed by Gerry. *See Grubbs*, 92 F.3d at 900 (distinguishing deliberate indifference from
15 gross negligence and holding deliberate indifference requires that "the defendant knows that
16 something *is* going to happen but ignores the risk and exposes someone to it") (emphasis in
17 original).

18 Second, even if Supervisor Defendants knew about the risk of serious harm, they took
19 *some* action in response. Roberts questioned Gerry about the report of a suspicious vehicle and
20 the handwritten letters. Roberts also instructed Gerry to not return to the businesses implicated in
21 the letters and forwarded the letters to SJPD. It is true that Supervisor Defendants could have, and
22 perhaps should have, done more to supervise Gerry given the nature of these letters; but at a
23 minimum, these actions go beyond the willful blindness required to show deliberate indifference.
24 *See, e.g., Patel*, 648 F.3d at 974–75.

1 The Court therefore finds the evidence in the record, when viewed in the light most
2 favorable to Plaintiff, is insufficient to establish that Supervisor Defendants acted with deliberate
3 indifference. For that reason, the Court **GRANTS** Defendants' motion for summary judgment as
4 to Supervisor Defendants.⁹

5 **IV. CONCLUSION**

6 Based on the foregoing, the Court **DENIES** Defendants' motion to strike Powell and
7 Flores; **DENIES** Plaintiff's motion to strike Greene; **DENIES** Defendants' motion for summary
8 judgment as to the City; and **GRANTS** Defendants' motion for summary judgment as to
9 Supervisor Defendants.

10 **IT IS SO ORDERED.**

11 Dated: January 22, 2026

12 
13 EDWARD J. DAVILA
14 United States District Judge

27 ⁹ The Court need not reach the remaining arguments regarding qualified immunity and Plaintiff's
28 due process and equal protection claims.