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3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**  
5 **SAN JOSE DIVISION**

6  
7 ANTHONY LUIS PAREDES,

8 Plaintiff,

9 v.

10 CITY OF SAN JOSE, et al.,

11 Defendants.

Case No. 22-cv-00758-BLF

**ORDER GRANTING IN PART WITH  
LEAVE TO AMEND AND DENYING IN  
PART MOTION TO DISMISS SECOND  
AMENDED COMPLAINT**

[Re: ECF No. 54]

United States District Court  
Northern District of California

12  
13 This case concerns allegations of excessive force in the deployment of a police canine by  
14 officers in the San Jose Police Department, and the City of San Jose's alleged policies regarding  
15 such uses of force. Before the Court is the officers and City's "Partial Motion to Dismiss  
16 Plaintiff's Second Amended Complaint." Mot., ECF No. 54; Reply, ECF No. 64. Defendants  
17 move to dismiss Plaintiff Anthony Paredes's claims against the City. They do not challenge his  
18 claims against the individual officers. Mr. Paredes opposes the motion. Opp'n, ECF No. 60.

19 The Court held a hearing on Defendants' motion on June 8, 2023. For the reasons  
20 discussed at the hearing and provided below, Defendants' motion to dismiss is GRANTED IN  
21 PART WITH LEAVE TO AMEND AND DENIED IN PART.

22 **I. BACKGROUND**

23 This case arises from injuries Plaintiff Anthony Paredes sustained when a police dog  
24 clamped down on his neck during his arrest. On February 7, 2022, Mr. Paredes's girlfriend stole  
25 two bottles of tequila from a grocery store in San Jose. Second Amd. Compl. ¶ 10 ("SAC"), ECF  
26 No. 47. A store employee attempted to detain Mr. Paredes's girlfriend as she was leaving the  
27 store. *Id.* Observing the interaction from the parking lot, Mr. Paredes ran to his girlfriend's aid  
28 and allegedly threatened the store employee. *Id.* The employee released Mr. Paredes's girlfriend,

1 and Mr. Paredes and his girlfriend fled on foot. *Id.*

2 The store employee reported the incident to the police. *Id.* ¶ 11. A nearby police  
3 helicopter responded to the scene and identified Mr. Paredes running through a residential  
4 neighborhood. *Id.* The air officers informed K-9 Officer Michael Jeffrey, K-9 Sergeant Bret  
5 Hatzenbuhler, Officer Kyle Alleman, Officer Anthony Ledwith, Officer Shayna Nail, and several  
6 other unidentified San Jose police officers that Mr. Paredes was hiding underneath a tree in the  
7 backyard of a private residence. *Id.* ¶ 12. The helicopter unit announced over a loudspeaker that  
8 Mr. Paredes had one minute to surrender before the police deployed the police dog to find him.  
9 *Id.*

10 Air officers informed the officers on the ground that Mr. Paredes had left his position  
11 under the tree and climbed inside a plastic yard waste bin on the side of the house. *Id.* ¶ 13.  
12 Officer Jeffrey, Sergeant Hatzenbuhler, Officer Alleman, Officer Ledwith, Officer Nail, and the  
13 police dog entered the house's backyard. *Id.* ¶ 14. Other officers surrounded the property. *Id.*

14 Officer Jeffrey released the police dog, and the dog quickly found Mr. Paredes. *Id.* at 14.  
15 The dog barked and pawed at the bin in which Mr. Paredes was hiding for nearly a minute as  
16 police approached with their firearms drawn. *Id.* None of the officers announced their presence.  
17 *Id.* Sergeant Hatzenbuhler attempted to topple the waste bin with a broom he found beside the  
18 house but was unsuccessful. *Id.* Officer Alleman shoved the bin over with his hands, but the lid  
19 of the bin remained closed. *Id.* Mr. Paredes called out, "Alright! Alright!" *Id.* Officer Alleman  
20 pulled on the base of the bin, but the lid still remained closed. *Id.* ¶ 15. Mr. Paredes again called  
21 out, "Alright! Alright!" *Id.* Officer Alleman again pulled on the base of the bin, this time causing  
22 the lid to open and exposing Mr. Paredes. *Id.*

23 Officer Jeffrey ordered the police dog to bite. *Id.* The dog clamped down on Mr.  
24 Paredes's neck. *Id.* Officers yelled to Mr. Paredes not to fight the dog and to let go of it. *Id.*  
25 Sergeant Hatzenbuhler and Officer Alleman pulled Mr. Paredes from the bin while the dog  
26 remained clamped on his throat. *Id.* at 16. Mr. Paredes was not resisting. *Id.*

27 Officer Ledwith called to Officer Jeffrey to get the dog off Mr. Paredes. *Id.* ¶ 17. Officer  
28 Jeffrey pulled back on the dog's harness. *Id.* Officer Jeffrey had been trained, as all K-9 officers

1 are trained, not to pull back on a police dog’s harness when removing a bite. *Id.* The dog  
2 remained clamped down on Mr. Paredes’s neck, and Officer Jeffrey pulled on the harness with  
3 enough force to lift Mr. Paredes’s torso from the ground. *Id.*

4 Sergeant Hatzenbuhler and Officer Alleman grabbed Mr. Paredes’s arms and as Officer  
5 Jeffrey continued to pull against the harness. *Id.* ¶ 18. Sergeant Hatzenbuhler put Mr. Paredes’s  
6 left arm in an armbar control hold and stepped on Mr. Paredes’s head as the dog continued to  
7 attack. *Id.* Sergeant Hatzenbuhler removed his foot from Mr. Paredes’s head and once more  
8 Officer Jeffrey pulled on the dog’s harness, lifting the dog from the ground and Mr. Paredes with  
9 him. *Id.* The officers yelled at Mr. Paredes to stop fighting, but he was not fighting. *Id.*  
10 Eventually, Officer Jeffrey ordered the dog to release. *Id.* After two unsuccessful commands, the  
11 dog released—sixty seconds after its initial bite. *Id.*

12 Mr. Paredes suffered multiple injuries to his neck: his hyoid bone and thyroid cartilage  
13 were broken; one of his vertebra was partially crushed; his larynx suffered trauma; he suffered  
14 damage to his nerves and cartilage; his neck remains disfigured; and he suffers shoulder pain. *Id.*  
15 ¶ 21.

16 Mr. Paredes’s complaint asserts five claims: (1) excessive force in violation of the Fourth  
17 Amendment against Officer Jeffrey, Sergeant Hatzenbuhler, and Officer Alleman; (2) failure to  
18 intervene against Sergeant Hatzenbuhler, Officer Alleman, and Officer Nail; (3) municipal  
19 liability for unconstitutional customs and practices against the City of San Jose; (4) municipal  
20 liability for ratification against the City of San Jose; and (5) municipal liability for inadequate  
21 training against the City of San Jose. SAC ¶¶ 25-57.

## 22 **II. LEGAL STANDARD**

23 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a  
24 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*  
25 *Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d  
26 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts  
27 as true all well-pled factual allegations and construes them in the light most favorable to the  
28 plaintiff. *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court

1 need not “accept as true allegations that contradict matters properly subject to judicial notice” or  
2 “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
3 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation  
4 marks and citations omitted).

5 While a complaint need not contain detailed factual allegations, it “must contain sufficient  
6 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*  
7 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).  
8 A claim is facially plausible when it “allows the court to draw the reasonable inference that the  
9 defendant is liable for the misconduct alleged.” *Id.*

10 On a motion to dismiss, the Court’s review is limited to the face of the complaint and  
11 matters judicially noticeable. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986);  
12 *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983).

### 13 **III. DISCUSSION**

14 Mr. Paredes asserts three municipal liability claims against the City of San Jose under 42  
15 U.S.C. § 1983. “The Supreme Court in [*Monell v. Department of Social Services of City of New*  
16 *York*, 436 U.S. 658 (1978)], held that municipalities may only be held liable under section  
17 1983 for constitutional violations resulting from official [municipal] policy or custom.” *Benavidez*  
18 *v. Cnty. of San Diego*, 993 F.3d 1134, 1153 (9th Cir. 2021). “[P]olicies can include written  
19 policies, unwritten customs and practices, failure to train municipal employees on avoiding certain  
20 obvious constitutional violations, and, in rare instances, single constitutional violations [that] are  
21 so inconsistent with constitutional rights that even such a single instance indicates at least  
22 deliberate indifference of the municipality.” *Id.* (internal citations omitted). “A municipality may  
23 [also] be held liable for a constitutional violation if a final policymaker ratifies a subordinate’s  
24 actions.” *Lytle v. Carl*, 382 F.3d 978, 987 (9th Cir. 2004). “In order to establish liability for  
25 governmental entities under *Monell*, a plaintiff must prove ‘(1) that [the plaintiff] possessed a  
26 constitutional right of which [s]he was deprived; (2) that the municipality had a policy; (3) that  
27 this policy amounts to deliberate indifference to the plaintiff’s constitutional right; and, (4) that the  
28 policy is the moving force behind the constitutional violation.’” *Dougherty v. City of Covina*, 654

1 F.3d 892, 900 (9th Cir. 2011) (alterations in original) (quoting *Plumeau v. Sch. Dist. No. 40 Cnty.*  
2 *of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997)).

3 Mr. Paredes’s three claims against the City are based on an alleged unconstitutional  
4 custom or practice (Claim 3); ratification (Claim 4); and failure to train (Claim 5). SAC ¶¶ 39-57.  
5 Defendants move to dismiss each of these claims. Notice of Mot. 1, ECF No. 54.

6 **A. Claim 3: Unconstitutional Customs and Practices**

7 A municipality may be held liable for its use of an unconstitutional policy if a plaintiff can  
8 “prove the existence of a widespread practice that, although not authorized by written law or  
9 express municipal policy, is ‘so permanent and well settled as to constitute a custom or usage with  
10 the force of law.’” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988) (quoting *Adickes v.*  
11 *S.H. Kress & Co.*, 398 U.S. 144, 167-68 (1970)). “Liability for improper custom may not be  
12 predicated on isolated or sporadic incidents”; rather, “[t]he custom must be so persistent and  
13 widespread that it constitutes a permanent and well settled city policy.” *Trevino v. Gates*, 99 F.3d  
14 911, 918 (9th Cir. 1996) (internal quotation marks and citations omitted). To withstand a motion  
15 to dismiss for failure to state a claim, a *Monell* claim must consist of more than mere “formulaic  
16 recitations of the existence of unlawful policies, customs, or habits.” *Warner v. Cnty. of San*  
17 *Diego*, No. 10-cv-1057 BTM (BLM), 2011 WL 662993, at \*4 (S.D. Cal. Feb. 14, 2011).

18 Defendants argue that Mr. Paredes’s claim fails because Mr. Paredes has not articulated a  
19 specific unconstitutional custom or practice that the City has implemented. Mot. 8. Defendants  
20 further argue that Mr. Paredes has not alleged an unconstitutional custom or practice because the  
21 alleged bad acts are limited to those of a single officer. Mot. 7. Mr. Paredes responds that his  
22 custom or policy claim is supported by reference to other lawsuits and instances of excessive  
23 force. Opp’n 18-19. Mr. Paredes also argues that his allegations that the Chief of Police  
24 “reviewed the events surrounding Mr. Paredes’ injuries and deemed the actions of these  
25 defendants . . . ‘within policy,’” establish that that there must be an unconstitutional policy. *Id.* at  
26 20-21.

27 The Court agrees with Defendants that Mr. Paredes has not sufficiently identified an  
28 unconstitutional custom or practice. Mr. Paredes’s complaint purports to list multiple

1 unconstitutional “customs and practices.” *See* SAC ¶¶ 40(a)-(o). A review of the list reveals that  
2 the alleged customs and practices fall into two groups, neither of which contains a plausibly  
3 alleged custom or practice that supports a *Monell* claim.

4 The alleged customs and practices in the first group do not support a *Monell* claim because  
5 they “consist[] of formulaic recitations of the existence of unlawful policies, customs, or habits”  
6 unsupported by any factual allegations. *Warner*, 2011 WL 662993, at \*4. For example, Mr.  
7 Paredes alleges that the City has a custom and practice of “encouraging, accommodating, or  
8 ratifying the use of excessive, unreasonable, and potentially deadly force by its officers.” SAC ¶  
9 40(a); *see also* SAC ¶¶ 40(b)-(g), (o)-(p). Boilerplate conclusions of customs and practices  
10 unsupported by factual allegations, like those alleged by Mr. Paredes, are routinely found to be  
11 insufficient to state a plausible *Monell* claim. *See Leshner v. City of Anderson*, No. 2:21-CV-  
12 00386-WBS-DMC, 2021 WL 2682161, at \*4 (E.D. Cal. June 30, 2021); *Warner*, 2011 WL  
13 662993, at \*4; *see also Duenas v. Cty. of Imperial*, 2015 WL 12656291, at \*4 (S.D. Cal. Mar. 9,  
14 2015) (holding that a complaint “falls short of the requirements for pleading a *Monell* claim”  
15 because plaintiffs set forth a speculative list of various policies but no “allegations of underlying  
16 facts”).

17 The other alleged “customs and practices” comprise acts of a single officer—Officer  
18 Jeffrey. *See* SAC ¶¶ 40(h)-(m). “Liability for improper custom may not be predicated on isolated  
19 or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and  
20 consistency that the conduct has become a traditional method of carrying out policy.” *Trevino* 99  
21 F.3d at 918. Thus, “[t]here is a distinction between multiple bad acts by one employee versus bad  
22 acts by multiple employees—*Monell* covers the latter, not the former.” *Nguyen v. City of San*  
23 *Jose*, No. 5:21-CV-00092-EJD, 2022 WL 912891, at \*7 (N.D. Cal. Mar. 29, 2022) (citing *City of*  
24 *Okla. City v. Tuttle*, 471 U.S. 808, 831 (1985) (Brennan J., concurring)). Here, Mr. Paredes’s  
25 complaint relies on six alleged canine deployments involving Officer Jeffrey occurring between  
26 September 14, 2018, and September 23, 2019. SAC ¶¶ 40(h)-(m). These allegations are  
27 insufficient to state a claim because one officer’s acts over the course of a year do not create a  
28 plausible inference of that the City has adopted a custom or practice within the meaning of *Monell*.

1 See *Nguyen*, 2022 WL 912891, at \*4 (“While [the employee’s] inspections may have been prolific  
2 during his two years enforcing [the ordinance], the Court cannot plausibly infer a custom or  
3 practice from one employee’s activities for two years.”).

4 Mr. Paredes’s citation to two other lawsuits concerning SJPD canine officers does not save  
5 his claim. One of the cases, *Huipio v. City of San Jose*, concerns one of the six canine  
6 deployments by Officer Jeffrey mentioned in the SAC. Compare First Am. Compl. ¶¶ 1-25,  
7 *Huipio v. City of San Jose*, No. 5:21-cv-7838-SVK (N.D. Cal. Feb. 2, 2022), ECF No. 23, with  
8 SAC ¶ 40(3). Thus, *Huipio* adds nothing to Mr. Paredes’s otherwise deficient allegations. The  
9 other case, *Rosenbaum v. Dunn*, concerns a canine deployment by another SJPD officer. Third  
10 Am. Compl., *Rosenbaum v. Dunn*, No. 5:20-cv-4777-NC (N.D. Cal. Apr. 20, 2021), ECF No. 40.  
11 But *Rosenbaum* too adds nothing to Mr. Paredes’s allegations because Mr. Paredes does not  
12 explain what custom or practice is demonstrated by the alleged conduct in *Rosenbaum*. See *Vera*  
13 *v. Pfiffer*, No. 2:19-06846 JAK (ADS), 2022 WL 4238099, at \*4 (C.D. Cal. Aug. 8, 2022)  
14 (“Plaintiff must identify a policy, practice, or custom that was the moving force behind these  
15 alleged constitutional violations.”). Furthermore, one alleged incident involving an officer other  
16 than Officer Jeffrey does not plausibly suggest that any challenged conduct was “so persistent and  
17 widespread” that it “practically [had] the force of law” or had “become a traditional method of  
18 carrying out policy.” See *Trevino*, 99 F.3d at 918.

19 Finally, Mr. Paredes’s allegation that the Acting SJPD Police Chief “reviewed [the] events  
20 and found that . . . the use of force was ‘within policy’” does not render Mr. Paredes’s custom or  
21 practice claim plausible because, again, Mr. Paredes does not identify the challenged policy. See  
22 *Rodelo v. City of Tulare*, No. 1:15-CV-01675-KJM-BAM, 2016 WL 561520, at \*1, 4 (E.D. Cal.  
23 Feb. 12, 2016) (granting motion to dismiss custom or practice claim despite allegation that final  
24 policymaker approved acts as being “within policy” because plaintiff “d[id] not identify any  
25 specific policies or customs, explain how those policies or customs were deficient, or explain how  
26 they specifically caused plaintiff harm”).

27 Defendants’ motion to dismiss Mr. Paredes’s claim against the City for unconstitutional  
28 customs or practices is GRANTED WITH LEAVE TO AMEND.

**B. Claim 4: Ratification**

1 “A municipality may be held liable for a constitutional violation if a final policymaker  
 2 ratifies a subordinate’s actions.” *Lyle v. Carl*, 382 F.3d 978, 987 (9th Cir. 2004). “To show  
 3 ratification, a plaintiff must show that the authorized policymakers approve a subordinate’s  
 4 decision and the basis for it.” *Id.* (internal quotation marks and citation omitted). The  
 5 policymaker must have knowledge of the constitutional violation and actually approve of it—a  
 6 failure to overrule a subordinate's actions, without more, is insufficient to support a § 1983 claim.  
 7 *Id.* In other words, ratification requires an authorized policymaker to make a “conscious,  
 8 affirmative choice” to endorse a subordinate’s actions. *Gillette v. Delmore*, 979 F.2d 1342, 1347  
 9 (9th Cir. 1992).

10 Mr. Paredes alleges that Dave Tindall, the City’s then Acting Chief of Police, ratified the  
 11 alleged unconstitutional conduct of the defendant officers when he deemed their actions  
 12 “objectively reasonable” and “within policy.” SAC ¶ 47. Defendants argue that these allegations  
 13 fail to state a ratification claim because the Chief of Police is not a final policymaker under the  
 14 San Jose City Charter. Mot. 8-9. Mr. Paredes concedes that the San Jose City Charter does not  
 15 expressly vest the relevant policymaking authority in the Chief of Police but argues that the City  
 16 has delegated that authority. Opp’n 21.

17 Both parties rely on documents outside of the pleadings to support their arguments.  
 18 Defendants rely on the San Jose City Charter. *See* Mot. 8-9 (citing San Jose, Cal., City Charter  
 19 §§ 701, 801). Mr. Paredes relies on the SJPD Duty Manual. *See* Opp’n 21 (citing of the SJPD  
 20 Duty Manual, Procedure A 2801). Neither party disputes the authenticity or accuracy of the  
 21 documents, and both documents are publicly available on government webpages.<sup>1</sup> The Court  
 22 therefore takes judicial notice of both documents. *See Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d  
 23 992, 999-1000 (9th Cir. 2010) (noting that it is appropriate to take judicial notice of information  
 24

25  
 26  
 27 <sup>1</sup> The San Jose City Charter is available at <https://www.sanjoseca.gov/your-government/appointees/city-clerk/city-charter>. The SJPD Duty Manual is available as a link from  
 28 <https://www.sjpd.org/records/documents-policies> and is specifically located at  
<https://www.sjpd.org/home/showpublisheddocument/314/638161981357100000>.



1 “made publicly available by government entities” when “neither party disputes the authenticity of  
2 the web sites or the accuracy of the information displayed therein”).

3 “[T]he identification of policymaking officials is a question of state law.” *Hyland v.*  
4 *Wonder*, 117 F.3d 405, 414 (9th Cir. 1997) (quoting *Praprotnik*, 485 U.S. at 124). To determine  
5 who has final policymaking authority, the Court looks to the City’s charter and the ordinances  
6 enacted pursuant to it. *Nguyen*, 2022 WL 912891, at \*11 (citing *Praprotnik*, 485 U.S. at 123-26);  
7 *cf. also Ulrich v. City & Cnty. of San Francisco*, 308 F.3d 968, 985 (9th Cir. 2002) (“[U]nder  
8 California law, a city’s Charter determines municipal affairs such as personnel matters.” (quoting  
9 *Hyland*, 117 F.3d at 414)). However, “[a]uthority to make municipal policy may be . . . delegated  
10 by an official who possesses such authority.” *Christie v. Iopa*, 176 F.3d 1231, 1236 (9th Cir.  
11 1999) (quoting *Praprotnik*, 485 U.S. at 127). Although “the identification of those officials whose  
12 decisions represent the official policy of the local governmental unit is itself a legal question,” *Jett*  
13 *v. Dall. Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989), the question of whether policymaking  
14 authority has been delegated may be informed by underlying facts, *see Bouman v. Block*, 940 F.2d  
15 1211, 1231 (9th Cir. 1991). “In deciding whether the official in question possess[es] final  
16 authority to establish municipal policy with respect to the challenged action, ‘courts consider  
17 whether the official's discretionary decision is constrained by policies not of that official's making  
18 and whether the official's decision is subject to review by the municipality's authorized  
19 policymakers.’” *Weimer v. City of Sequim*, No. 3:14-CV-05713-RJB, 2015 WL 4759106 (W.D.  
20 Wash. Aug. 12, 2015) (quoting *Christie*, 176 F.3d at 1236-37).

21 The Court finds that Mr. Paredes has plausibly alleged that Chief Tindall, as Acting Police  
22 Chief, had been delegated the relevant final policymaking authority. As Defendants note, the City  
23 Charter states that the City Manager “shall direct and supervise the administration of all  
24 departments” and department heads are “subject to the direction and supervision of the City  
25 Manager.” San Jose City Charter §§ 701, 801. However, Procedure A 2801 of the SJPD Duty  
26 Manual states that “[t]he Chief of Police is the chief executive officer of the Department and the  
27 final authority regarding all matters of policy, operations and discipline.” This statement renders  
28 plausible that the City has delegated final policymaking authority over “all matters of policy,

1 operations and discipline” concerning SJPD to the Chief of Police and thus renders plausible Mr.  
 2 Paredes’s allegation that Chief Tindall “had final policymaking authority for the City of San Jose  
 3 concerning the acts and omissions of police officers within his chain of command.” *See* SAC ¶  
 4 46. Accordingly, the Court disagrees with Defendants that Mr. Paredes has failed to plausibly  
 5 allege ratification by a final policymaker.

6 Defendants’ motion to dismiss Mr. Paredes’s ratification claim is DENIED.

7 **C. Claim 5: Inadequate Training**

8 “[F]ailure to train an employee who has caused a constitutional violation can be the basis  
 9 for § 1983 liability where the failure to train amounts to deliberate indifference to the rights of  
 10 persons with whom the employee comes into contact.” *Long v. Cnty. of Los Angeles*, 442 F.3d  
 11 1178, 1186 (9th Cir. 2006) (citing *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)). This  
 12 standard is met when “the need for more or different training is so obvious, and the inadequacy so  
 13 likely to result in the violation of constitutional rights, that the policymakers of the city can  
 14 reasonably be said to have been deliberately indifferent to the need.” *Canton*, 489 U.S. at 390.  
 15 “Only where a failure to train reflects a ‘deliberate’ or ‘conscious’ choice by a municipality—a  
 16 ‘policy’ as defined by our prior cases—can a city be liable for such a failure under § 1983.” *Id.* at  
 17 389. “A municipality’s culpability for a deprivation of rights is at its most tenuous where a claim  
 18 turns on a failure to train.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011).

19 Defendants argue that Mr. Paredes fails to plead a plausible failure-to-train claim because  
 20 he does not allege a pattern of violations by multiple police officers. Mot. 11-14. According to  
 21 Defendants, Mr. Paredes’s allegations that a single officer, Officer Jeffrey, committed multiple  
 22 constitutional violations are insufficient to state a failure-to-train claim. *Id.* Mr. Paredes responds  
 23 that he has alleged that the City’s inadequate training extended to officers other than officer  
 24 Jeffrey. Opp’n 22. As an example, Mr. Paredes cites his allegation that “the City of San Jose,  
 25 acting with deliberate indifference to the rights of Mr. Paredes, and of the Public in general,  
 26 knowingly maintained, enforced, and applied customs and practices of . . . [i]nadequately  
 27 supervising, training, and disciplining officers who the City knew or in exercise of reasonable care  
 28 should have known were violent, abused their authority, and mistreated members of the public.”

1 *Id.* at 22-23. Mr. Paredes also notes that there has been a separate federal action filed against an  
2 SJPD police officer other than Officer Jeffrey concerning the City’s police canine deployment  
3 policies. *See id.* (citing Third Am. Compl., *Rosenbaum v. Dunn*, No. 5:20-cv-4777-NC (N.D. Cal.  
4 Apr. 20, 2021), ECF No. 40).

5 The Court finds that Mr. Paredes has not plausibly alleged a failure-to-train claim against  
6 the City. The Ninth Circuit has held that “evidence of the failure to train a single officer is  
7 insufficient to establish a municipality's deliberate policy.” *Blankenhorn v. City of Orange*, 485  
8 F.3d 463, 484 (9th Cir. 2007). Accordingly, Courts in this Circuit have granted motions to dismiss  
9 failure-to-train claims where the claims are based on allegations regarding the conduct of a single  
10 officer. *See, e.g., Hayes v. Riley*, 525 F. Supp. 3d 1118, 1120 (N.D. Cal. 2020) (granting motion  
11 to dismiss where “the complaint focuses almost entirely on the actions of [a single officer]”); *cf.*  
12 *also Cavanaugh v. Cnty. of San Diego*, No. 3:18-CV-02557-BEN-LL, 2020 WL 6703592, at \*37  
13 (S.D. Cal. Nov. 12, 2020) (granting motion to dismiss where “Plaintiffs rely only on evidence  
14 concerning two employees . . . which is not enough to constitute a program-wide policy of  
15 deliberate indifference.”) *aff’d*, No. 20-56311, 2021 WL 6103115 (9th Cir. Dec. 22, 2021). Here,  
16 the factual allegations underlying Mr. Paredes’s failure-to-train claim solely concern the conduct  
17 of a single officer—Officer Jeffrey. Such allegations are insufficient to enable the court to infer  
18 that the City has adopted “a program-wide policy of deliberate indifference” and are therefore  
19 insufficient to plausibly allege a failure-to-train claim. *See Cavanaugh*, 2020 WL 6703592, at  
20 \*37.

21 Mr. Paredes argues that he includes allegations regarding other officers, but a review of  
22 those allegations reveals that they are “conclusory recitations of the elements of *Monell* liability,  
23 which [are] insufficient under *Twombly* and *Iqbal*.” *Ryan v. Santa Clara Valley Transportation*  
24 *Auth.*, No. 16-CV-04032-LHK, 2017 WL 1175596, at \*9 (N.D. Cal. Mar. 30, 2017). Specifically,  
25 Mr. Paredes cites his allegations that “the City of San Jose, acting with deliberate indifference to  
26 the rights of Mr. Paredes, and of the public in general, knowingly maintained, enforced, and  
27 applied customs and practices of . . . [i]nadequately supervising, training, and disciplining officers  
28 who the City knew or in the exercise of reasonable care should have known were violent, abused

1 their authority, and mistreated members of the public” and “[t]he City’s policies and practices  
2 were not adequate to train its police officers to handle these common and recurring situations  
3 which officers around the nation deal with on a daily basis, i.e., the appropriate use of a canine to  
4 apprehend a subject.” These allegations are insufficient to state a failure-to-train claim because  
5 they do not identify what the training was, how it was deficient, or how it led to Mr. Paredes’s  
6 harm. *See Ryan*, 2017 WL 1175596, at \*9; *see also Rodelo*, 2016 WL 561520, at \*3 (granting  
7 motion to dismiss because plaintiff failed to plead the specific inadequacies of City’s training  
8 practices).

9 Mr. Paredes’s citation in his Opposition to the complaint in *Rosenbaum*, a case concerning  
10 an SJPD K-9 officer other than Officer Jeffrey, also does not save his claim. As an initial matter,  
11 Mr. Paredes includes no allegations about *Rosenbaum* in his SAC. Furthermore, Mr. Paredes  
12 does not explain how the allegations in *Rosenbaum* support his failure-to-train claim. Mr. Paredes  
13 describes *Rosenbaum* as “[a]lleging in 2019 SJPD Officer Dunn deployed a police K-9 who bit  
14 Rosenbaum for over twenty seconds as a result of the ‘CITY OF SAN JOSE train[ing] its officers  
15 to utilize a “bite and hold” policy regarding the deployment of its K-9s, which results in persons  
16 being bit by San Jose Police Department K9s even when not evading arrest (and or surrendering)  
17 and also permits officers to use their K-9s for longer periods of time when effectuating arrest, even  
18 though such a policy/custom and practice has the effect of increasing injuries to the persons being  
19 detained through the use of a police K-9, even if such persons do not pose a threat to officers.’”  
20 Thus, by Mr. Paredes’s account, *Rosenbaum* appears to concern alleged affirmative training to  
21 utilize a “bite and hold” policy and deploy police canines for “longer periods of time.” By  
22 contrast, Mr. Paredes’s claim arises from the City’s alleged failure to provide adequate training.  
23 Given this difference, it is unclear how the allegations in *Rosenbaum* lend any plausibility to Mr.  
24 Paredes’s claim.

25 Defendants’ motion to dismiss Mr. Paredes’s failure-to-train claim is GRANTED WITH  
26 LEAVE TO AMEND.

#### 27 **IV. ORDER**

28 For the foregoing reasons, IT IS HEREBY ORDERED that:


United States District Court  
Northern District of California

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1. Defendants’ motion to dismiss Mr. Paredes’s claim against the City of San Jose for unconstitutional customs and practices (Claim 3) is GRANTED WITH LEAVE TO AMEND.
2. Defendants’ motion to dismiss Mr. Paredes’s claim against the City of San Jose for ratification (Claim 4) is DENIED.
3. Defendants’ motion to dismiss Mr. Paredes’s claim against the City of San Jose for failure to train (Claim 5) is GRANTED WITH LEAVE TO AMEND.

To the extent Mr. Paredes requests to proceed with his customs and practices and failure-to-train claims, he SHALL file a Third Amended Complaint by July 28, 2023. Amendment is limited to the scope permitted by this Order. If Mr. Paredes files a Third Amended Complaint, Defendants SHALL file a responsive pleading or motion within 30 days of service of the Third Amended Complaint. If Mr. Paredes does not file a Third Amended Complaint, Defendants SHALL file their responsive pleading to any surviving claims in Mr. Paredes’s Second Amended Complaint by August 11, 2023.

Dated: June 26, 2023

  
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BETH LABSON FREEMAN  
United States District Judge