UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAGHRIB SHAHEED,

Plaintiff,

-v-

THE CITY OF NEW YORK, NEW YORK CITY POLICE OFFICER STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER PAUL BLISS, NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ, NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA, NEW YORK CITY POLICE LIEUTENANT KISHON HICKMAN, NEW YORK CITY POLICE OFFICER CHRISTOPHER MITCHELL, NEW YORK CITY POLICE OFFICER ALEX PEREZ, NEW YORK CITY POLICE CHIEF WILLIAM MORRIS, NEW YORK CITY POLICE COMMISSIONER JAMES P. O'NEIL, NEW YORK CITY DEPUTY POLICE CHIEF JOHN ESSIG, NEW YORK CITY ASSISTANT CHIEF RODNEY HARRISON, NEW YORK CITY DEPUTY CHIEF ANDREW CAPUL, NEW YORK CITY POLICE INSPECTOR ROBERT LUKACH, NEW YORK CITY POLICE DEPUTY INSPECTOR WILSON ARAMBOLES, NEW YORK CITY POLICE INSPECTOR FAUSTO PICHARDO, NEW YORK CITY POLICE CAPTAIN TIMOTHY WILSON, NEW YORK CITY DEPUTY INSPECTOR MARLON LARIN, NEW YORK CITY POLICE CAPTAIN BRIAN FRANKLIN, NEW YORK CITY POLICE INSPECTOR ERIC PAGAN, NEW YORK CITY POLICE LIEUTENANT HUGH MACKENZIE, NEW YORK CITY POLICE SERGEANT CHARLES EWINGS, NEW YORK CITY POLICE SERGEANT MEDINA, NEW YORK CITY POLICE OFFICER EDWARD SALTMAN, NEW YORK CITY POLICE OFFICER DANIEL TROYER, NEW YORK CITY POLICE OFFICER AWILDA MELHADO, NEW YORK CITY POLICE DETECTIVE DARREN MCNAMARA, NEW YORK CITY POLICE DETECTIVE ANTHONY SELVAGGI, NEW YORK CITY POLICE DETECTIVE ETHAN ERLICH, NEW YORK CITY POLICE DETECTIVE HENRY MEDINA, NEW YORK CITY POLICE DETECTIVE EDWARD BIRMINGHAM,

14 Civ. 7424 (PAE);
15 Civ. 3480 (PAE)

OPINION & ORDER

NEW YORK CITY POLICE DETECTIVE CLIFFORD PARKS, NEW YORK CITY POLICE DETECTIVE ANTONIO RIVERA, NEW YORK CITY POLICE OFFICER JAMES DOE (fictitious name),

Defendants.

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WAHEEDA SHAHEED,

Plaintiff,

-v-

THE CITY OF NEW YORK, POLICE OFFICER STEPHAN KROSKI, NEW YORK CITY POLICE OFFICER PAUL BLISS, NEW YORK CITY POLICE OFFICER JONATHAN RODRIGUEZ, NEW YORK CITY POLICE OFFICER LYDIA FIGUEROA, NEW YORK CITY POLICE LIEUTENANT KISHON HICKMAN, NEW YORK CITY POLICE OFFICER CHRISTOPHER MITCHELL, NEW YORK CITY POLICE OFFICER ALEX PEREZ, NEW YORK CITY POLICE CHIEF WILLIAM MORRIS, NEW YORK CITY POLICE COMMISSIONER JAMES P. O'NEIL, NEW YORK CITY DEPUTY POLICE CHIEF JOHN ESSIG, NEW YORK CITY ASSISTANT CHIEF RODNEY HARRISON, NEW YORK CITY DEPUTY CHIEF ANDREW CAPUL, NEW YORK CITY POLICE INSPECTOR ROBERT LUKACH, NEW YORK CITY POLICE DEPUTY INSPECTOR WILSON ARAMBOLES, NEW YORK CITY POLICE INSPECTOR FAUSTO PICHARDO, NEW YORK CITY POLICE CAPTAIN TIMOTHY WILSON, NEW YORK CITY DEPUTY INSPECTOR MARLON LARIN, NEW YORK CITY POLICE CAPTAIN BRIAN FRANKLIN, NEW YORK CITY POLICE INSPECTOR ERIC PAGAN, NEW YORK CITY POLICE LIEUTENANT HUGH MACKENZIE, NEW YORK CITY POLICE SERGEANT CHARLES EWINGS, NEW YORK CITY POLICE SERGEANT MEDINA, NEW YORK CITY POLICE OFFICER EDWARD SALTMAN, NEW YORK CITY POLICE OFFICER DANIEL TROYER, NEW YORK CITY POLICE OFFICER AWILDA MELHADO, NEW YORK CITY POLICE DETECTIVE DARREN

MCNAMARA, NEW YORK CITY POLICE DETECTIVE ANTHONY SELVAGGI, NEW YORK CITY POLICE DETECTIVE ETHAN ERLICH, NEW YORK CITY POLICE DETECTIVE HENRY MEDINA, NEW YORK CITY POLICE DETECTIVE EDWARD BIRMINGHAM, NEW YORK CITY POLICE DETECTIVE CLIFFORD PARKS, NEW YORK CITY POLICE DETECTIVE ANTONIO RIVERA, NEW YORK CITY POLICE OFFICER JAMES DOE (fictitious name),

Defendants.

PAUL A. ENGELMAYER, District Judge:

Plaintiffs Daghrib Shaheed and Waheedah Shaheed bring these consolidated actions under 42 U.S.C. § 1983 and state law against the City of New York (the "City") and numerous New York Police Department ("NYPD") officers. Plaintiffs bring claims of false arrest, false imprisonment, excessive force, deprivation of due process, intentional infliction of emotional distress, assault, battery, and malicious prosecution. They further allege that the City failed to properly train and supervise its officers.

Pending now is defendants' motion to dismiss Plaintiffs' First Amended Complaint ("FAC")[1] as to: (1) all claims against Lieutenant Kishon Hickman, Police Officer Christopher Mitchell, Police Officer Alex Perez, Police Chief William Morris, Police Commissioner James P. O'Neil, Deputy Police Chief John Essig, Chief Rodney Harrison, Deputy Chief Andrew Capul, Police Inspector Robert Lukach, Deputy Inspector Wilson Aramboles, Police Inspector Fausto

[1] This case began as two separate cases, which were later consolidated. Plaintiffs filed two non-identical versions of their amended complaint on separate dockets. No. 14 Civ. 7424, Dkt. 65; No. 15 Civ. 3480, Dkt. 56. The two versions allege the same essential facts but are told from the perspective of the respective plaintiffs. The Court consolidated the two cases by an order dated December 28, 2016. No. 14 Civ. 7424, Dkt. 57; No. 15 Civ. 3480, Dkt. 48. Defendants move to dismiss both complaints. The Court here refers to the two versions of the amended complaint collectively as the FAC.

Pichardo, Captain Timothy Wilson, Deputy Inspector Marlon Larin, Police Captain Brian Franklin, Police Inspector Eric Pagan, Lieutenant Hugh MacKenzie, Sergeant Charles Ewings, Sergeant Medina, Police Officer Edward Saltman, Police Officer Daniel Troyer, Police Officer Awilda Melhado, Detective Anthony Selvaggi, Detective Ethan Erlich, Detective Henry Medina, Detective Edward Birmingham, Detective Clifford Parks, and Detective Antonio Rivera (collectively, the "Newly Added Defendants");[2] and (2) all claims of municipal liability.

For the reasons that follow, the Court grants both motions.

I. Background

A. Factual Background[3]

Plaintiffs' claims arise from incidents on June 6, 2012; June 29, 2012, and June 30, 2012. The Court sets out the facts alleged as to each.

1. June 6, 2012

a. Entry into the Apartment

On June 6, 2012, at approximately 6:30 p.m., officers of the NYPD, led by Officer Stephan Kroski, knocked on the door of the home of Waheedah Shaheed and her daughter Daghrib Shaheed. No. 14 Civ. 7424, Dkt. 65 ¶ 49; No. 15 Civ. 3480, Dkt. 56 ¶ 50. Officers accompanying Kroski included Police Officer Paul Bliss, Police Officer Jonathan Rodriguez,

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[2] In listing the names of the Newly Added Defendants in the motion to dismiss, defendants omit the name of newly added defendant Detective Darren McNamara. *See* No. 14 Civ. 7424, Dkt. 72 at 7. The Court, however, will *sua sponte* treat the motion to dismiss to applying to McNamara, as defendants' arguments about the lack of allegations of personal involvement apply equally to him.

[3] The Court draws these facts principally from the FAC, No. 14 Civ. 7424, Dkt. 65; No. 15 Civ. 3480, Dkt. 56. *See DiFolco v. MSNBC Cable LLC*, 622 F.3d 104, 111 (2d Cir. 2010) ("In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint."). The Court accepts all factual allegations in the FAC as true, drawing all reasonable inferences in Plaintiffs' favor. *See Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012).

Police Officer Christopher Mitchell, Police Lieutenant Kishon Hickman, and several unnamed "John Doe" officers. No. 14 Civ. 7424, Dkt. 65 ¶ 49.

Noah Shaheed—son of Waheedah and brother to Daghrib—asked Kroski if he had a warrant. Kroski responded that he did not need one. *Id.*; No. 15 Civ. 3480, Dkt. 56 ¶ 51. The defendant officers then forced their way into plaintiffs' apartment "without the authority of either a search or arrest warrant." No. 15 Civ. 3480, Dkt. 56 ¶ 52.

Once inside the apartment, Kroski informed Daghrib that the officers had come to the apartment to see Daghrib's "babies." No. 14 Civ. 7424, Dkt. 65 ¶ 52. Daghrib did not have any children and told this to Kroski. *Id.* ¶¶ 49, 52. Daghrib then asked the officers to leave if they did not have a warrant. Kroski again asserted that he did not need one. No. 15 Civ. 3480, Dkt. 56 ¶ 53.

b. Detention of Daghrib Shaheed

An officer identified only as "John Doe" in the FAC grabbed Daghrib and dragged her into the kitchen of her apartment. No. 14 Civ. 7424, Dkt. 65 ¶ 53. Daghrib asked Doe if she was under arrest; he said no but then put handcuffs on Daghrib. *Id.* ¶¶ 54–55. During this time, officers searched Daghrib's bedroom and damaged her bed. *Id.* ¶ 56.

Bliss then entered the kitchen and asked Daghrib where her children were. *Id.* ¶ 57. Daghrib again stated that she did not have any children. *Id.* Bliss grabbed her arm and forcefully pulled her out of the apartment, refusing her request for time to put on her shoes. *Id.* Officer Bliss stated, "You don't need shoes savage." *Id.* Bliss also told fellow officers, "Let's take this savage in," and "This monkey needs to shut up." *Id.* ¶ 58. While transporting Daghrib to the 25th Precinct, he also said to her, "You know what you savage bitch, you can't even take

care of the babies that you have." *Id.* When the vehicle arrived at the 25th Precinct, Officer Bliss "yanked" Daghrib out of the vehicle, causing her to hit her head against the car. *Id.* ¶ 59.

Doe then searched Daghrib and took her cell phone, which contained video footage of the events of June 6, 2012. *Id.* ¶ 60. The cell phone was never returned to Daghrib. *Id.*

After Daghrib asked to be taken to the hospital, Rodriguez escorted her to Mount Sinai Hospital, where she was handcuffed to a bed. *Id.* ¶ 61. Daghrib was suffering from pain in her left arm and had injuries including "a bone bruise, a shoulder joint tear, substantial pain and suffering and mental distress." *Id.* She was then brought back to the 25th Precinct and placed in a cell, still without shoes. *Id.* ¶ 62.

After two days, she was arraigned and charged with (1) resisting arrest in violation of New York Penal Law § 205.30; and (2) obstruction of governmental administration in the second degree in violation of New York Penal Law § 195.05. *Id.* ¶ 64. After the events of June 6, 2012, Kroski would "from time to time . . . follow [Daghrib] in his police car when he would see [her] in public." *Id.* ¶ 66. On September 18, 2013, the case against Daghrib was dismissed on the merits. *Id.* ¶ 65.

c. Detention of Waheedah Shaheed

At the time of the officers' entry into the apartment, Waheedah was in her bedroom. No. 15 Civ. 3480, Dkt. 56 ¶ 54. Waheedah suffers from health conditions, including a terminal cancer (end stage multiple myeloma) and a heart condition (severe mitral regurgitation). *Id.* ¶ 49. She also requires a rollator to walk. *Id.*

Kroski went to Waheedah's bedroom door and twice stated, "Get up you're coming with me." *Id.* ¶ 54. When Waheedah asked Kroski if he had a warrant, Kroski stated, "Well no." *Id.*

Waheedah refused to go with Kroski, got out of bed, and told him to leave her home. *Id.* ¶¶ 54, 56.

Kroski then grabbed Waheedah by both arms and threw her to the floor of her apartment. *Id.* ¶ 57. As Waheedah attempted to get back on her feet, Kroski punched Waheedah in the eye, causing Waheedah to fall once more to the floor of her apartment. *Id.* Kroski then began to choke Waheedah. *Id.* Fearing that Kroski would kill her, Waheedah squeezed Kroski's testicles in an act of self-defense. *Id.* An unnamed officer in the room removed Kroski from atop Waheedah and was forced to restrain Kroski, who again attempted to attack Waheedah. *Id.* ¶ 58. Kroski then smashed Waheedah's rollator. *Id.*

Officer Aguilar, who was also in the room at this time, handcuffed Waheedah. *Id.* ¶ 59. When Waheedah asked if she was under arrest, Aguilar responded that she was not. *Id.* Aguilar simply stated that "they" had instructed the officers to detain her. *Id.* Waheedah asked who "they" were. Aguilar said he did not know. *Id.*

Bleeding from the mouth and having difficulty breathing, Waheedah asked to be taken to the hospital. *Id.* ¶ 60. She made her previous health conditions known to one of the officers. *Id.* Notwithstanding her request, the officers removed Waheedah from her apartment and took her to the precinct, where she was detained in a jail cell. *Id.* ¶ 61.

As the officers escorted Waheedah out of her apartment unit, she noticed more NYPD officers lining the hallway. *Id.* When she was escorted out of her apartment building, Waheedah observed at least ten police cars parked in the vicinity. *Id.*

Waheedah again asked to be taken to a hospital. *Id.* Her request again was ignored. *Id.* It was not until the following morning, June 7, 2012, that Waheedah was removed from her cell and transported to a hospital. *Id.* ¶ 62. Waheedah remained in the hospital until June 16, 2012.

Id. ¶ 63. Waheedah was handcuffed, shackled at the ankles, and watched by an NYPD officer during the entire hospital stay. *Id.* At no time before or during her time at the hospital was Shaheed brought before a judge. *Id.*

On June 16, 2012, Waheedah was given a Desk Appearance Ticket that charged her with Assault in the Second Degree, a Class D felony, for her alleged attack on Kroski. The ticket instructed her to appear in court on July 26, 2012. *Id.* ¶ 64. On September 18, 2013, the case against Waheedah was dismissed on the merits. *Id.* ¶ 65.

2. June 29, 2012

On June 29, 2012, at around 6:30 PM, Detective Darren McNamara knocked on the Shaheeds' apartment door. *Id.* ¶ 66. Before opening the door, Noah Shaheed asked McNamara if he had a warrant. *Id.* McNamara responded in the affirmative, but failed to produce any document authorizing entry. *Id.* When Waheedah refused to open the door, McNamara said something to the effect of, "open the door and we can do this the easy way, or we can do this the hard way, and it'll be wors[e] than June 6th." *Id* ¶ 67. After entry was refused, McNamara and the unnamed officers who accompanied him continued banging on the door for two hours, at which point Shaheed's apartment's electricity and air conditioning were terminated. *Id.* ¶ 68; *see also* No. 14 Civ. 7424, Dkt. 65 ¶¶ 68–70.

3. June 30, 2012

On June 30, 2012, an emergency services unit forced its way into the apartment. No. 15 Civ. 3480, Dkt. 56 ¶ 69. Upon entry, the officers pointed assault rifles at the apartment's occupants and demanded they get on the floor. *Id.* The officers damaged property inside the residence and killed the family's pet hamster. *Id.* ¶ 70. One officer stated that they planned "to tear the walls down to find your brother." Dkt. No. 7424, No. 65 ¶ 71.

Both Waheedah and Daghrib were searched and handcuffed inside the apartment. *Id.* ¶ 72; No. 15 Civ. 3480, Dkt. 56 ¶ 70. They were both physically removed from her building, where again they noticed several police officers in the vicinity of the building's parking lot. Dkt. No. 7424, No. 65 ¶ 72; No. 15 Civ. 3480, Dkt. 56 ¶ 70.

Daghrib was placed into an ambulance and taken to Harlem Hospital, where she was later released from custody. Dkt. No. 7424, No. 65 ¶¶ 73–74.

Waheedah was taken first to Harlem Hospital and then to the precinct. No. 15 Civ. 3480, Dkt. 56 ¶ 71. Later in the afternoon, Waheedah was taken from the hospital to the precinct, where she was again incarcerated. *Id.* ¶ 72. In her jail cell, Waheedah experienced pain and difficulty breathing, but was given neither her pain nor her heart medications. *Id.*

The next day, July 1, 2012, Waheedah was transported to 100 Centre Street in New York County to be arraigned. *Id.* ¶ 73. Before she could be arraigned, the severity of Shaheed's pain required her to be transferred to the Bellevue Hospital emergency room. *Id.* There, Troyer read aloud her medical assessment to other NYPD officers in the precinct. *Id.* ¶ 74. The assessment made clear that Waheedah was suffering from stage four cancer and congestive heart failure. *Id.*

Kroski arrived at Bellevue Hospital to transport Waheedah back to the precinct and said to her, "Don't look at me cause it might set me off, and I don't know what I'll do to you." *Id.* ¶ 73. Waheedah spent another night in the precinct. *Id.*

The next day, July 2, 2012, Waheedah was arraigned on a charge of obstruction of governmental administration in the second degree in violation of New York Penal Law § 195.05 for failing to provide entry to McNamara and the unnamed officers who accompanied him during the June 29, 2012 arrest. *Id.* ¶¶ 74–75. On April 2, 2014, this case against Waheedah was dismissed on the merits and sealed. *Id.* ¶ 77.

B. Procedural History

On September 12, 2014, Daghrib filed her initial complaint in this action, bringing claims against the City as well as Kroski, Bliss, Rodriguez, Officer Lydia Figueroa, and several "Doe" officers. No. 14 Civ. 7424, Dkt. 1. On March 4, 2015, defendants filed an answer. No. 14 Civ. 7424, Dkt. 15.

Also on March 4, 2015, the case was selected for mediation. On March 15, 2015, a final report of the mediator stated that mediation had been unsuccessful. No. 14 Civ. 7424, Dkt. 18.

On May 4, 2015, Waheedah filed her initial complaint in this action, also bringing claims against the City as well as Kroski, Bliss, Rodriguez, Figueroa, and several "Doe" officers. No. 15 Civ. 3480, Dkt. 1.

On December 28, 2016, this Court consolidated the two cases and set a deadline for the filing of an amended complaint. No. 14 Civ. 7424, Dkt. 57; No. 15 Civ. 3480, Dkt. 48.

On January 9, 2017, Daghrib filed her version of the amended complaint. No. 14 Civ. 7424, Dkt. 60. On January 20, 2017, Waheedah filed her version of the amended complaint, No. 15 Civ. 3480, Dkt. 56. As noted, the Court treats these two filings, collectively, as the FAC. The FAC added claims against the Newly Added Defendants.

On January 24, 2017, defendants filed a partial motion to dismiss, No. 14 Civ. 7424, Dkt. 70; No. 15 Civ. 3480, Dkt. 61, as well as a supporting memorandum of law, No. 14 Civ. 7424, Dkt. 72; No. 15 Civ. 3480, Dkt. 60, and declaration, No. 14 Civ. 7424, Dkt. 71; No. 15 Civ. 3480, Dkt. 62. On February 7, 2017, plaintiffs filed a memorandum of law in opposition to the partial motion to dismiss. No. 14 Civ. 7424, Dkt. 75; No. 15 Civ. 3480, Dkt. 65.

II. Applicable Legal Standards

To survive a motion to dismiss under Rule 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S.

544, 570 (2007). A claim has "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). A complaint is properly dismissed where, as a matter of law, "the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Twombly,* 550 U.S. at 558.

In considering a motion to dismiss, a district court must "accept[ ] all factual claims in the complaint as true, and draw[ ] all reasonable inferences in the plaintiff's favor." *Lotes Co., Ltd. v. Hon Hai Precision Indus. Co.,* 753 F.3d 395, 403 (2d Cir. 2014) (quoting *Famous Horse Inc. v. 5th Ave. Photo Inc.,* 624 F.3d 106, 108 (2d Cir. 2010)). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal,* 556 U.S. at 678. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "[R]ather, the complaint's *factual* allegations must be enough to raise a right to relief above the speculative level, *i.e.*, enough to make the claim plausible." *Arista Records, LLC v. Doe 3,* 604 F.3d 110, 120 (2d Cir. 2010) (quoting *Twombly,* 550 U.S. at 555, 570) (internal quotation marks omitted) (emphasis in *Arista Records*).

III. Discussion

Defendants seek dismissal of (1) all claims against the Newly Added Defendants, on the ground that the FAC fails to allege the personal involvement of these defendants in the alleged misconduct; and (2) the municipal liability claim against the City, on the ground that the FAC fails to state a claim under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). The Court addresses these issues in turn.

A. Claims Against the Newly Added Defendants

The FAC fails to state a claim against the Newly Added Defendants.

Section 1983 provides redress for a deprivation of federally protected rights by persons acting under color of state law. 42 U.S.C. § 1983. To prevail on a § 1983 claim, a plaintiff must establish (1) the violation of a right, privilege, or immunity secured by the Constitution or laws of the United States (2) by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155–57 (1978).

To establish personal liability under § 1983, a plaintiff must show that the defendant was "personally or directly involved in the violation, that is, that there was 'personal participation by one who ha[d] knowledge of the facts that rendered the conduct illegal.'" *Harris v. Westchester Cty. Dep't of Corr.*, No. 06 Civ. 2011 (RJS), 2008 WL 953616, at *9 (S.D.N.Y. Apr. 3, 2008) (quoting *Provost v. City of Newburgh*, 262 F.3d 146, 155 (2d Cir. 2001)); *accord Farrell v. Burke*, 449 F.3d 470, 484 (2d Cir. 2006) ("It is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983." (internal quotation marks and citation omitted)).

Personal involvement in a § 1983 violation may be shown by evidence that the defendant: (1) directly participated in the alleged violation; (2) failed to remedy the violation after learning about it; (3) created a policy or custom under which the violation occurred; (4) was grossly negligent in supervising subordinates who caused the unlawful condition or event; or (5) exhibited deliberate indifference by failing to act on information indicating that the violation was occurring. *Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995); *Washington v. Kelly*, No. 03 Civ. 4638 (SAS), 2004 WL 830084, at *3 (S.D.N.Y. Apr. 13, 2004).

Here, plaintiffs' § 1983 claims against the individual defendants sound in false arrest and imprisonment, excessive force, deprivation of due process, and malicious prosecution. Yet the

FAC does not allege any facts indicating the personal involvement of the Newly Added Defendants in any of the claimed constitutional violations.

In fact, of the entire aforementioned list of Newly Added Defendants, the FAC only mentions actions of Troyer, Hickman, Mitchell, and McNamara. And there is no allegation that any of these officers played any part in any of the alleged violations. None are alleged to have ever entered plaintiffs' apartment, detained or had any physical contact with either plaintiff, or had any role in their prosecutions. As to Troyer, he is alleged only to have informed other police officers of Waheedah's heart condition and cancer on July 1, 2012 (after Waheedah disclosed these conditions to officers on June 6, 2012). No. 15 Civ. 3480, Dkt. 56 ¶¶ 60, 74. As to McNamara, he is alleged only to have knocked on plaintiffs' door on June 29, 2012, and demanded entry unsuccessfully. No. 14 Civ. 7424, Dkt. 65 ¶¶ 68–70; No. 15 Civ. 3480, Dkt. 56 ¶¶ 66–68. And as to Hickman and Mitchell, these officers are alleged only to have "accompanied" Kroski to the door of plaintiffs' apartment when Kroski began "banging on the door" and "demanding entry." No. 14 Civ. 7424, Dkt. 65 ¶ 49. The FAC contains no allegations that Hickman and Mitchell took any action after the officers entered the apartment. The FAC does not even clearly allege that Hickman and Mitchell ever entered the apartment; it describes a general group of officers identified only as "Defendant Police Officers" entering, *id.*, but it also notes that, when Waheedah was removed from the apartment, she observed that "several police officers" were still outside, "lin[ing] the hallway outside of her apartment," No. 15 Civ. 3480, Dkt. 56 ¶ 61.

These allegations are insufficient to establish personal liability under § 1983 as to any of the Newly Added Defendants. And with respect to the claims brought under state law—which include false arrest, false imprisonment, intentional infliction of emotional distress, malicious

prosecution, assault, and battery—the FAC fails too to state these claims, which derive from acts allegedly committed in the course of plaintiffs' arrests and prosecutions and, as discussed above, the FAC does not allege that any of the Newly Added Defendants personally participated in plaintiffs' arrests and prosecutions. *See Hardee v. City of N.Y.*, No. 10 Civ. 7743 (PAE), 2014 WL 4058065, at *8 n. 4 (S.D.N.Y. Aug. 14, 2014) (dismissing assault and battery claim against an individual officer where it was "undisputed that [the officer] did not take part in [the plaintiff's] arrest" and the plaintiff's "assault and battery claim stem[med] from acts allegedly committed during his arrest").

Accordingly, the Court grants defendants' motion to dismiss all claims brought against the Newly Added Defendants.

B. Municipal Liability Claim Against the City of New York

The Court also holds that the FAC fails to state a municipal liability claim against the City.

Municipal liability in a § 1983 action may not be based on a theory of *respondeat superior* or vicarious liability. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Rather, to hold a municipality liable under § 1983 for the unconstitutional actions of its employees, the plaintiff must prove that there was a municipal policy or custom that directly caused her to be subjected to a constitutional violation. *Wray v. City of New York*, 490 F.3d 189, 195 (2d Cir. 2007); *see Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 125 (2d Cir. 2004) ("[C]onstitutional torts committed by city employees without official sanction or authority do not typically implicate the municipality in the deprivation of constitutional rights, and therefore the employer-employee relationship is in itself insufficient to establish the necessary causation." (internal quotation marks and citation omitted)).

A plaintiff can establish the existence of a policy or custom by demonstrating:

> (1) a formal policy officially endorsed by the municipality; (2) actions taken by government officials responsible for establishing the municipal policies that caused the particular deprivation in question; (3) a practice so consistent and widespread that, although not expressly authorized, constitutes a custom or usage of which a supervising policy-maker must have been aware; or (4) a failure by policymakers to provide adequate training or supervision to subordinates to such an extent that it amounts to deliberate indifference to the rights of those who come into contact with the municipal employees.

Brandon v. City of New York, 705 F. Supp. 2d 261, 276–77 (S.D.N.Y. 2010) (collecting cases) (internal citations omitted); *Calderon v. City of New York*, 138 F. Supp. 3d 593, 611–12, No. 14 Civ. 1082 (PAE), 2015 WL 5802843, at *14 (S.D.N.Y. Oct. 5, 2015), *reconsideration in part granted on other grounds*, 2015 WL 6143711 (S.D.N.Y. Oct. 19, 2015); *Spears v. City of New York*, No. 10 Civ. 3461 (JG), 2012 WL 4793541, at *11 (E.D.N.Y. Oct. 9, 2012). It is well established that an allegation of "a single incident, especially one involving only actors below the policy-making level," does not "'suffic[e] to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker.'" *Simpson v. Town of Warwick Police Dep't*, 159 F. Supp. 3d 419, 439 (S.D.N.Y. 2016) (quoting *Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985)); *accord Brogdon v. City of New Rochelle*, 200 F. Supp. 2d 411, 427 (S.D.N.Y. 2002) ("A single incident by itself is generally insufficient to establish the affirmative link between the municipal policy or custom and the alleged unconstitutional violation.").

Here, assuming *arguendo* that plaintiffs' can establish that any individual defendant officer violated plaintiffs' rights, the *Monell* claim still fails because the FAC does not allege that the alleged constitutional violations resulted from a municipal policy, custom, or practice. The FAC does not claim, for example, that New York City had an official or *de facto* policy of arresting individuals in their homes without warrants, or of using excessive force, or that repeated incidents of similar misconduct by New York City police officers reveal such a custom.

The FAC also does not allege that Kroski or any officer involved in the events of June and July 2012 were municipal policymakers.

To be sure, the FAC does contain conclusory allegations that "proper training or supervision would have enabled Defendant New York City Police Officers to understand that" they could not enter Plaintiffs' home without a warrant and use excessive force. *See, e.g.*, No. 15 Civ. 3480, Dkt. 56 ¶ 132–33. But plaintiffs "cannot, through conclusory allegations, merely assert the existence of a municipal policy or custom"; rather, they "'must allege facts tending to support, at least circumstantially, an inference that such a municipal policy or custom exists.'" *Masciotta v. Clarkstown Cent. Sch. Dist.*, 136 F. Supp. 3d 527, 546 (S.D.N.Y. 2015) (quoting *Santos v. New York City*, 847 F. Supp. 2d 573, 576 (S.D.N.Y. 2012)); *see also id.* ("[M]ere allegations of a municipal custom, a practice of tolerating official misconduct, or inadequate training and/or supervision are insufficient to demonstrate the existence of such a custom.").

Moreover, inadequate supervision may serve as the basis for § 1983 liability only "where a policymaking official exhibits deliberate indifference to constitutional deprivations caused by subordinates, such that the official's inaction constitutes a 'deliberate choice,' that acquiescence may 'be properly thought of as a city policy or custom that is actionable under § 1983.'" *Amnesty Am.*, 361 F.3d at 126 (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (internal quotation marks omitted)). Deliberate indifference "may be inferred where 'the need for more or better supervision to protect against constitutional violations was obvious,' but the policymaker 'fail[ed] to make meaningful efforts to address the risk of harm to plaintiffs.'" *Cash v. Cty. of Erie*, 654 F.3d 324, 334 (2d Cir. 2011) (quoting *Vann v. City of New York*, 72 F.3d 1040, 1049 (2d Cir. 1995); *Reynolds v. Giuliani*, 506 F.3d 183, 192 (2d Cir. 2007)); *accord Missel v. Cty. of*

Monroe, 351 F. App'x 543, 546 (2d Cir. 2009) (summary order). Here, the FAC makes no concrete allegations as to the deliberate indifference of any policymaking official.

In their opposition brief, plaintiffs cite *Turpin v. Mailet*, in which the Second Circuit suggested that "a single, unusually brutal or egregious beating administered by a group of municipal employees may be sufficiently out of the ordinary to warrant an inference that it was attributable to inadequate training or supervision amounting to deliberate indifference . . . on the part of officials in charge." 619 F.2d 196, 202 (2d Cir. 1980). The FAC, however, depicts a scenario in which an individual municipal employee—rather than the "group of municipal employees" contemplated in *Turpin*, *see id.*—administered a beating. In fact, the FAC makes clear that Kroski's attack on Waheedah was an individual effort, as it describes how another officer in the room restrained Kroski from continuing his attack. 15 Civ. 3480, Dkt. 56 ¶ 58. The other alleged uses of force in the FAC are primarily incidents in which a sole officer grabbed or dragged Plaintiffs roughly. *See, e.g.*, 14 Civ. 7424, Dkt. 65 ¶ 53 (Doe "grabbed" Daghrib and "dragged" her into the kitchen); *id.* ¶ 57 (Bliss "grabbed [Daghrib] by the arm, and forcefully removed [her] from [her] apartment"); *id* ¶ 59 (Bliss "yanked [Daghrib] out of the car causing [her] to hit her head against the car while being pulled out of the vehicle"). The fact that an individual officer "may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from favors other than a faulty training program." *City of Canton v. Harris*, 489 U.S. 378, 390–91 (1989). *Turpin* is thus inapposite: the allegations of force in the FAC, even if they held to be excessive force, are insufficient to establish the City's liability.

Plaintiffs also liken this case to *Bordanaro v. McLeod*, in which the First Circuit upheld a verdict against a municipality after its police force's night watch, without a warrant, shot down

the plaintiffs' motel room door and proceeded to brutally beat the plaintiffs inside the motel room. 871 F.2d 1151, 1154 (1st Cir. 1989). *Bordanaro* has yet to be adopted in this Circuit and thus is "not binding precedent on this Court." *Grays v. City of New Rochelle*, 354 F. Supp. 2d 323, 325 (S.D.N.Y. 2005). And *Bordanaro* is distinguishable. There, the "entire night watch," not a single officer as alleged here, participated in the beating the plaintiffs. 871 F.2d at 1156. In language relevant here, *Bordanaro* stated that "evidence of a single event alone cannot establish a municipal custom or policy" unless "other evidence of the policy has been presented and the 'single incident' in question involves the concerted action of a large contingent of individual municipal employees." *Id.* at 1156–57; *see Powell v. Murphy*, 972 F. Supp. 2d 335, 345 (E.D.N.Y. 2013), *aff'd*, 593 F. App'x 25 (2d Cir. 2014) ("Plaintiff . . . overlooks the point that *Bordanaro* also held that a plaintiff cannot establish a municipal policy or custom where, as here, he presents evidence concerning only a single event."). The plaintiffs in *Bordanaro* also adduced evidence permitting a factfinder to infer that the particular police force had developed a "widespread" and "flagrant" practice of breaking down people's doors and entering their homes without warrants. *See id.* at 1157. No such allegations have been made here.

Accordingly, the Court holds that the FAC fails to state a *Monell* claim against the City.

CONCLUSION

For the reasons above, the Court grants defendants' motion to dismiss all claims against the Newly Added Defendants, including Detective Darren McNamara, and to dismiss plaintiffs' municipal liability claim against the City.

The Clerk of the Court is respectfully directed to close the motions pending at No. 14 Civ. 7424, Dkt. 70; and No. 15 Civ. 3480, Dkt. 61.

SO ORDERED.

Paul A. Engelmayer
United States District Judge

Dated: July 17, 2017
New York, New York