

2 between his conduct and the alleged violations. See generally Docket # 9. He requests that the
3 local-law claims against him be dismissed without prejudice. Id. Plaintiffs failed to oppose. So
4 Pesquera-López’s motion to dismiss was “deemed unopposed under Local Rule 7(b)”
5 Docket # 14.¹

6 **Standard of Review**

7 Federal Rule of Civil Procedure 12(b)(6) authorizes the dismissal of a complaint that
8 fails to state a claim upon which relief could be granted. To avoid dismissal, a complaint must
9 provide “a short and plain statement of the claim showing that the pleader is entitled to relief.”
10 Fed. R. Civ. P. 8(a)(2). At the pleading stage, the plaintiffs need not demonstrate likelihood of
11 success, yet their claims ““must suggest more than a sheer possibility that a defendant has acted
12 unlawfully.”” García-Catalán v. United States, 734 F.3d 100, 102-03 (1st Cir. 2013) (quoting
13 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). A plaintiff, the Supreme Court has held, must
14 allege “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp.
15 v. Twombly, 550 U.S. 544, 570 (2007). A claim has facial plausibility when a “complaint’s
16 non-conclusory factual content . . . [permits] the court to draw the reasonable inference that
17 [each] defendant is liable for the misconduct alleged.” Gianfrancesco v. Town of Wrentham,
18 712 F.3d 634, 639 (1st Cir. 2013) (quoting Iqbal, 556 U.S. at 663). A complaint “must contain
19 more than a rote recital of the elements of a cause of action,” but it need not include “detailed
20 factual allegations.” Rodríguez-Reyes v. Molina-Rodríguez, 711 F.3d 49, 53 (1st Cir. 2013).
21 Cognizant of the First Circuit’s recent admonition that the plausibility standard is sometimes
22 applied “too mechanically,” district courts must “read [the] complaint[] as a whole.”
23 Rodríguez-Vives v. Puerto Rico Firefighters Corps of Puerto Rico, 743 F.3d 278, 283 (1st Cir.
24 2014) (citation and internal quotation marks omitted).

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¹Local Rule 7(b) provides in pertinent part:“Unless within fourteen (14) days after the service of a motion the opposing party files a written objection to the motion, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection.” D.P.R. Civ. R. 7(b).

Applicable Law and Analysis

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3 The analysis begins with a threshold determination: The consequences of failing to
4 oppose a motion to dismiss. The short of it is that Plaintiffs' unexcused failure to respond to a
5 motion to dismiss "authorizes the presiding district judge to summarily grant the unopposed
6 motion, 'at least when the result does not clearly offend equity.'" Rodríguez-Salgado v.
7 Somoza-Colombani, 937 F. Supp. 2d 206, 211 (D.P.R. 2013) (quoting NEPSK, Inc. v. Town
8 of Houlton, 283 F.3d 1, 7 (1st Cir.2002)); see, e.g., Rivera-Quiñones v. US Sec. Associates, No.
9 12-1598, 2013 WL 5636898, *4 (D.P.R. Oct. 16, 2013) (collecting cases on this point). For the
10 reasons discussed below, granting Pesquera-López's motion as unopposed would not offend
equity. This motion is thus **GRANTED** as unopposed.

11 But even if that dereliction were put aside (something the Court refuses to do), the same
12 conclusion would follow. The allegations against Pesquera-López fall miles short of meeting
13 the plausibility standard.

14 It is common ground that 42 U.S.C. § 1983 is the statutory predicate for the vindication
15 of federal rights elsewhere conferred. E.g., Graham v. Connor, 490 U.S. 386, 393-94 (1989).
16 To succeed under § 1983, a "plaintiff[] must show by a preponderance of the evidence that (1)
17 the challenged conduct was attributable to a person acting under color of state law; and (2) the
18 conduct deprived the plaintiff of rights secured by the Constitution or laws of the United
19 States." Vélez-Rivera v. Agosto-Alicea, 437 F.3d 145, 151-52 (1st Cir. 2006). Under § 1983,
20 however, government officials may only "be held liable if the plaintiff can establish [a]
21 constitutional injury result[ing] from the direct acts or omissions of the official, or from indirect
22 conduct that amounts to condonation or tacit authorization." Rodríguez-García v. Municipality
23 of Caguas, 495 F.3d 1, 10 (1st Cir.2007) (internal quotation marks omitted). But there is no
24 liability on the basis of respondeat superior, e.g., Febus-Rodríguez v. Betancourt-Lebrón, 14
25 F.3d 87, 91-92 (1st Cir. 1994), so a plaintiff must allege "that the supervisor's conduct (whether
action or inaction) constitutes supervisory encouragement, condonation or acquiescence, or

2 gross negligence of the supervisor amounting to deliberate indifference.” Grajales v. P.R. Ports
3 Auth., 682 F.3d 40, 47 (1st Cir. 2012) (citation and internal quotation marks omitted).

4 Here, there are no allegations that Pesquera-López, as police chief, was involved directly
5 or indirectly in the shooting. The complaint does not allege, for instance, that Pesquera-López
6 was “the officer in charge during the incident and that he participated in or directed the
7 constitutional violations alleged herein, or knew of the violations and failed to act to prevent
8 them.” Soto-Torres v. Fraticelli, 654 F.3d 153, 159 (1st Cir. 2011); see id. (dismissing
9 supervisory liability claim because there was no affirmative link between supervisor’s conduct
10 and alleged constitutional violation). “Liability under Section 1983,” the First Circuit has made
11 clear, “ ‘cannot rest solely on a defendant’s position of authority’” Rodríguez-Ramos v.
12 Hernández-Gregorat, 685 F.3d 34, 41 (1st Cir. 2012) (quoting Ocasio-Hernández v. Fortuño-
13 Burset, 640 F.3d 1, 16 (1st Cir. 2011)). But that is the most that Plaintiffs offer as to the role of
14 Pesquera-López in the incident. Because the complaint contains no allegations that Pesquera-
15 López “actually participated in or condoned the . . . decision at issue here, it fails to render [him]
16 [a] plausible defendant[].” Id.; but cf. Peña-Peña v. Figueroa-Sancha, 866 F. Supp. 2d 81, 91
17 (D.P.R. 2012) (denying police chief’s motion to dismiss where police chief expressly authorized
18 all actions taken by police on day in question); Molina v. Vidal-Olivo, 961 F. Supp. 2d 382, 386
(D.P.R. 2013) (similar).

19 Nor does the complaint state plausible allegations pointing to Pesquera-López’s
20 involvement (through acts or omissions) in the police officer’s conduct. See Soto-Torres, 654
21 F.3d at 159; but cf. Marrero-Rodríguez v. Municipality of San Juan, 677 F.3d 497, 502-03 (1st
22 Cir. 2012) (allegations that the police department supervisors had the direct responsibility for
23 structuring the training exercises supported a plausible substantive due process claim against
24 them); Sayan-Resto v. Berrios, 933 F. Supp. 2d 252, 268 (D.P.R. 2013) (denying motion to
25 dismiss where arrestee alleged that police chief received investigative report on sergeant’s
unlawful incarceration of arrestee but failed to take any corrective measures; the incident was
not isolated, and the police chief’s records held complaints that were similarly closed without

2 corrective measures). Other than a conclusory averment that Pesquera-López “was reckless or
3 callous in the training and retraining” of the officers, Docket # 1, ¶ 50, and threadbare recitals
4 that he “knew or should have known about the propensity for illegal acts” by these officers, *id.*
5 ¶ 47, Plaintiffs furnish no “surrounding context,” *Rodríguez-Vives*, 743 F.3d at 286, to provide
6 some heft to their otherwise bare and implausible claims of deliberate indifference. See also
7 *Peñalbert-Rosa v. Fortuño-Burset*, 631 F.3d 592, 595 (1st Cir. 2011)(“[S]ome allegations, while
8 not stating ultimate legal conclusions, are nevertheless so threadbare or speculative that they fail
9 to cross the line between the conclusory to the factual.”). In short, the collective weight of
10 Plaintiffs’ factual allegations fall short of nudging their federal claims against Pesquera-López
11 “across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570.

12 One loose end remains. As said, Pesquera-López also requests that the local claims
13 asserted against him be dismissed without prejudice. Having dismissed all the federal claims
14 against him, the Court declines to exercise jurisdiction over the pendent state-law claims.
15 Pesquera-López’s request — which, as noted earlier, stands unopposed — is therefore
16 **GRANTED.**

17 **Conclusion**

18 For the reasons stated, Pesquera-López’s motion to dismiss is **GRANTED**. The federal-
19 law claims asserted against him are, therefore, **DISMISSED with prejudice**; the state-law
20 claims are **DISMISSED without prejudice**.

21 **IT IS SO ORDERED.**

22 In San Juan, Puerto Rico, this 11th day of April, 2014.

23 *s/Salvador E. Casellas*
24 SALVADOR E. CASELLAS
25 U.S. Senior District Judge