

1 Troy Patrick Owens, Jr. (SBN 298649)  
Law Office of Troy P. Owens, Jr.  
2 333 H Street, Suite 5000  
Chula Vista, California 91910  
3 Tel.: (619) 551-7013, Fax: (619) 599-8181

4 Douglas S. Gilliland, Esq. (SBN 157427)  
THE GILLILAND FIRM  
5 402 West Broadway, Suite 1760  
San Diego, California 92101  
6 Tel.: (619) 878-1580, E-fax: (619) 878-6630

7 Attorneys for Plaintiff BRIANNA BELL

8 UNITED STATES DISTRICT COURT  
9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 BRIANNA BELL, an individual,  
11 plaintiff,  
12 v.  
13 CITY OF LA MESA, a municipal  
entity, SCOTT WULFING, an  
14 individual, and DOES 1-10, inclusive,  
15 defendants.

Case No.: '18CV2455 BEN BLM

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANT CITY OF LA MESA  
AND SCOTT WULFING'S MOTION  
TO DISMISS**

Date: December 17, 2018  
Time: 10:30 a.m.  
Ctrm: 5A  
Judge: Hon. Roger T. Benitez

THE LAW OFFICE OF TROY P. OWENS, JR.

333 H Street, Suite 5000  
Chula Vista, California 91910  
TEL (619) 551-7013 FAX (619) 599-8181

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THE LAW OFFICE OF TROY P. OWENS, JR.

333 H Street, Suite 5000  
Chula Vista, California 91910  
TEL (619) 551-7013 FAX (619) 599-8181

1 COMES NOW, plaintiff BRIANNA BELL, an individual, by and through  
2 her attorneys of record, The Law Office of Troy P. Owens, Jr., by Troy Patrick  
3 Owens, Jr., and THE GILLILAND FIRM, by Douglas S. Gilliland, Esq., and submits  
4 this opposition to defendant CITY OF LA MESA and SCOTT WULFING’s  
5 motion to dismiss pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6).

6 I.  
7 **FACTUAL ALLEGATIONS**

8 “On January 18, 2018, plaintiff BRIANNA BELL was a seventeen-year-old  
9 senior at Helix High School, located at 7323 University Avenue, La Mesa,  
10 California 91942. She was not feeling well and went to the school nurse. Ms.  
11 BELL was examined for being under the influence of drugs and her purse was  
12 searched drugs. The results were negative. However, the Grade Level Principal  
13 Paula Ann Trevino found a cannister of pepper-spray in Ms. BELL’s purse. Ms.  
14 BELL carried pepper-spray for her own protection travelling to and from school.  
15 Ms. Trevino then ordered Ms. BELL to leave school for having pepper-spray on  
16 campus and suspended her from school.” (Complaint, ¶ 6).

17 “The following day, Ms. BELL went to Helix High School to meet with Ms.  
18 Trevino. The meeting was previously scheduled. Ms. BELL arrived for the  
19 meeting at the specified time. After a short period of time, Ms. Trevino ordered  
20 her to leave school grounds. Ms. BELL wanted to talk with one of her teachers  
21 before leaving the school grounds. Ms. Trevino called the La Mesa Police  
22 Department to remove Ms. BELL from campus.” (Complaint, ¶ 7).

23 “CITY OF LA MESA police officer SCOTT WULFING responded to Helix  
24 High School. He confronted Ms. BELL and told her she could leave campus  
25 voluntarily or he would arrest her. Ms. BELL handed officer WULFING her  
26 cellular phone and held out both of her wrists so he could handcuff her.  
27 (Complaint, ¶ 8).”

28 ///



1 is and the grounds upon which it rests.” *Bell Atlantic Corporation v. Twombly*,  
 2 550 U.S. 544, 555 (2007), quoting, *Conley v. Gibson*, 355 U.S. 41, 47 (1957).  
 3 Rule 8 does not require “‘detailed factual allegations,’ but it demands more than an  
 4 unadorned “the-defendant-unlawfully-harmed-me” accusation. *Ashcroft v. Iqbal*,  
 5 556 U.S. 662, 677-78 (2009), quoting, *Twombly*, 550 U.S. at 555.

6 “To survive a motion to dismiss, a complaint must contain sufficient factual  
 7 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”  
 8 *Iqbal*, 556 U.S. at 678, quoting, *Twombly*, 550 U.S. at 570. “A claim has facial  
 9 plausibility when the plaintiff pleads factual content that allows the court to draw  
 10 the reasonable inferences that the defendant is liable for the misconduct alleged.”  
 11 *Iqbal*, 556 U.S. at 678, citing, *Twombly*, 550 U.S. at 556. “The plausibility  
 12 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer  
 13 possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. A  
 14 complaint should not be dismissed “unless it appears beyond doubt that plaintiff  
 15 can prove no set of facts in support of his claim which would entitle him to relief.”  
 16 *McRorie v. Shimoda*, 795 F.2d 780, 783, citing *Franklin v. Oregon State Welfare*  
 17 *Division*, 662 F.2d 1337, 1343.

#### 18 **B. Plaintiff’s Factual Recitation States a Cause of Action**

19 In *Monell v. Department of Social Services*, the Supreme Court held that  
 20 municipalities cannot be held liable for the unconstitutional acts of its employees  
 21 under 42 U.S.C. section 1983 solely on the theory of respondeat superior. *Monell*  
 22 *v. Department of Social Services of City of New York*, 436 U.S. 658, 691. Rather,  
 23 the Supreme Court has required a plaintiff seeking to impose liability on a  
 24 municipality to identify a municipal “policy or custom” that caused plaintiff’s  
 25 injury. *Hunter v. County of Sacramento*, 652 F.3d 1225, 1232-33, quoting *Monell*,  
 26 436 U.S. at 694.

27 A policy or custom under *Monell* can be shown in three ways: (1) by a  
 28 longstanding practice or custom which constitutes the standard operation procedure

1 of the municipal entity, (2) showing a decision by a decision-making municipal  
2 official whose edicts may fairly be said to represent official policy, or (3) showing  
3 that an official with final policy making authority ratified the decision of its  
4 officer(s). *Gillette v. Delmore*, 979 F.2d 1342, 1346-47. Liability under *Monell*  
5 can be based on an unwritten policy or custom, even if it has not been formally  
6 approved by the municipality, if it is so “persistent and widespread” that it  
7 constitutes a “permanent and well settled” practice. *Monell*, 436 U.S. at 691.

8 Paragraph 13 of plaintiff’s complaint alleges that the CITY OF LA MESA  
9 “created a *de facto* policy of lawlessness by failing to supervise its officers’ actions  
10 against citizens.” (Complaint, page 5, lines 4-5). Specifically, the complaint  
11 alleges that this *de facto* policy of lawlessness was caused by the CITY OF LA  
12 MESA’s failure to “meaningfully investigate and discipline its officers . . . .”  
13 (Complaint, page 5, line 8). The complaint further alleges that the CITY OF LA  
14 MESA *fails to take any action on the governmental claim forms* that plaintiff are  
15 required to file pursuant to Government Code section 910, *et seq.* (Complaint,  
16 page 5, lines 9-10). This encourages officers’ use of excessive force because the  
17 officers know they will not be disciplined for using such force. “This failure to  
18 supervise, investigate, and discipline has created lawlessness with their police  
19 force and its longstanding practice has made the conduct of defendant WULFING  
20 standard operation procedure . . . .” (Complaint, page 5, lines 10-13).

21 This theory of liability is not new. In *Hunter v. County of Sacramento*,  
22 plaintiff based its *Monell* claim on “officials in the Main Jail repeatedly failed to  
23 investigate incidents of excessive force and to take disciplinary action against  
24 guards who used such force, despite the existence of an official policy prohibiting  
25 the use of excessive force.” *Hunter*, 652 F.3d at 1234. The *Hunter* court held that  
26 the District Court prejudicially erred in refusing to instruct the jury under *Monell*  
27 that “a custom or practice can be supported by evidence of repeated constitutional  
28 violations which went uninvestigated and for which the errant municipal officers

1 went unpunished.” *Hunter*, 652 F.3d at 1236. In so holding, the Ninth Circuit  
 2 cited their numerous opinions in which liability was predicated on the same theory  
 3 in plaintiff’s complaint; the Court cited *Trevino v. Gates*, 99 F.3d 911, 918 (9<sup>th</sup> Cir.  
 4 1996); *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 964 (9<sup>th</sup> Cir. 2008);  
 5 *Ulrich v. City & Cnty. of San Francisco*, 308 F.3d 98, 984-85 (9<sup>th</sup> Cir. 2002); *Webb*  
 6 *v. Sloan*, 330 F.3d 1158, 114 (9<sup>th</sup> Cir. 2003); *Nadell v. Las Vegas Metro. Police*  
 7 *Dep’t*, 268 F.3d 924, 929 (9<sup>th</sup> Cir. 2001); *Gillette*, 979 F.2d at 1349; *Beck v. City of*  
 8 *Upland*, 527 F.3d 853, 863 n. 8 (9<sup>th</sup> Cir. 2008); and *McRorie*, 795 F.2d at 784. See  
 9 *Hunter*, 652 F.3d at 1233-34.

10 As reiterated by the Supreme Court, Federal Rule of Civil Procedure 8(a)(2)  
 11 requires only “a short and plain statement of the claim showing that the pleader is  
 12 entitled to relief,” in order to “give the defendant fair notice of what the . . . claim  
 13 is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555. Plaintiff has  
 14 alleged that the CITY OF LA MESA has a “created a *de facto* policy of  
 15 lawlessness by failing to supervise its officers’ actions against citizens.”  
 16 (Complaint, page 5, lines 4-5). The complaint alleges that this *de facto* policy of  
 17 lawlessness was caused by the CITY OF LA MESA’s failure to “meaningfully  
 18 investigate and discipline its officers . . . .” (Complaint, page 5, line 8).  
 19 Specifically, the CITY OF LA MESA fails to take any action on the governmental  
 20 claim forms that plaintiff are required to file pursuant to Government Code section  
 21 910, *et seq.* (Complaint, page 5, lines 9-10). “This failure to supervise,  
 22 investigate, and discipline has created lawlessness with their police force and its  
 23 longstanding practice has made the conduct of defendant WULFING standard  
 24 operation procedure . . . .” (Complaint, page 5, lines 10-13). As such, plaintiff’s  
 25 pleading has provided the CITY OF LA MESA with “fair notice of what the . . .  
 26 claim is and the grounds upon which it rests.” And it is much more than “the-  
 27 defendant-unlawfully-harmed-me” accusation that *Iqbal* sought to preclude. *Iqbal*,  
 28 556 U.S. at 677-78, quoting, *Twombly*, 550 U.S. at 555. Therefore, the CITY OF

1 LA MESA’s motion to dismiss should be denied.

2 **III.**

3 **LEAVE TO AMEND**

4 If this Court believes that plaintiff’s complaint is deficient in any matter on  
5 this motion to dismiss, plaintiff requests leave to amend. A request for leave to  
6 amend “invokes Fed.R.Civ.P. 15(a), which requires that even where amendment is  
7 not a matter of right, leave to amend shall be ‘freely granted when justice so  
8 requires.’” *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 701 (9<sup>th</sup> Cir.  
9 1998). Under well established Ninth Circuit precedent construing Rule 15(a), it is  
10 an abuse of discretion to not grant leave to amend.

11 **IV.**

12 **CONCLUSION**

13 For the foregoing reasons, plaintiff requests that this Court deny the CITY  
14 OF LA MESA’s motion to dismiss.

15  
16 DATED: December 2, 2018

THE GILLILAND FIRM

17  
18 By: s/ Douglas S. Gilliland  
19 Douglas S. Gilliland, Esq., co-counsel  
20 for Plaintiff Brianna Bell  
21  
22  
23  
24  
25  
26  
27  
28

THE LAW OFFICE OF TROY P. OWENS, JR.

333 H Street, Suite 5000  
Chula Vista, California 91910  
TEL (619) 551-7013 FAX (619) 599-8181