IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

TONY PARKER,	§	
	§	
Plaintiff,	§	
	§	**CIVIL ACTION NO. 9:18-CV-225**
v.	§	
	§	
SHELBY COUNTY, TEXAS, WILLIS BLACKWELL, and KOREY MCCLURE,	§	
	§	
	§	
Defendants.	§	

DEFENDANT WILLIS BLACKWELL'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT AND BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant Willis Blackwell ("Defendant" or "Blackwell"), the Shelby County Sheriff, and, pursuant to Fed. R. Civ. P. 12(b)(6), files this, his Motion to Dismiss Plaintiff's First Amended Complaint and Brief,[1] seeking dismissal of the claims brought in Plaintiff Tony Parker's First Amended Complaint.[2] In support thereof, Defendant respectfully shows as follows:

SUMMARY

Sheriff Blackwell's Motion to Dismiss should be granted for several reasons.

First, despite being allowed the opportunity to amend his complaint to cure his defective pleadings, Plaintiff failed to adequately plead a plausible claim upon which relief can be granted

[1] Plaintiff abandoned his Eighth Amendment claim, his failure to train claim, his official capacity claims, and his request for punitive damages in his official capacity against Sheriff Blackwell. *See* Dkt. 15, p. 2; Dkt. 14.

[2] Pursuant to Federal Rule of Civil Procedure 12(a)(4), defendants are not required to file an answer until fourteen (14) days after the Court rules on a motion filed pursuant to Rule 12. This extension applies regardless of whether the motion relates to some or all of the claims alleged in plaintiff's complaint. *See* Charles Alan Wright & Arthur R. Miller, 5B Fed. Prac. & Proc. Civ. 3d § 1346 (West 2006); *see also Morgan v. Gandalf, Ltd.*, 165 Fed. Appx. 425, 428 (6th Cir. 2006).

under the Due Process Clause of Fourteenth Amendment—Plaintiff's only basis for bringing a claim against Blackwell.

Second, Plaintiff's claims against Blackwell, in his individual capacity, should be dismissed because Blackwell is entitled to qualified immunity and because Plaintiff failed to allege facts sufficient to state a claim upon which relief can be granted.

Third, Plaintiff's claims for failure to properly hire, discipline, train, and/or supervise against Blackwell should be dismissed because Plaintiff failed to allege facts sufficient to state a claim upon which relief can be granted.

Fourth, Plaintiff's claim for punitive damages against Blackwell, in his individual capacity, should be dismissed because he is entitled to qualified immunity and because Plaintiff did not allege facts sufficient to state a plausible claim for punitive damages against Blackwell.

The Court should dismiss all of Plaintiff's claims brought against Blackwell with prejudice.

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ISSUES PRESENTED

1. Whether Plaintiff has failed to state a claim upon which relief can be granted against Sheriff Blackwell.

2. Whether Sheriff Blackwell is entitled to qualified immunity.

3. Whether Plaintiff's request for punitive damages against Sheriff Blackwell should be dismissed.

BACKGROUND

A. Plaintiff's Causes of Action

Plaintiff asserts claims against Sheriff Blackwell, in his individual capacity, relating to alleged instances of sexual misconduct by Defendant McClure. Dkt. 14, ¶35. Plaintiff alleges that Blackwell violated his substantive and procedural due process rights under the Fourteenth Amendment. *Id.* at ¶¶37-38. As part of his Fourteenth Amendment claims, Plaintiff includes claims for deliberate indifference and failure to hire, train, discipline, and/or supervise. *Id.* at p. 3-8.

B. Plaintiff's Allegations Against Blackwell

Plaintiff alleges that Blackwell's failure to discipline, train, and supervise Defendant McClure resulted in violation of his substantive and procedural due process rights under the Fourteenth Amendment. Plaintiff alleges that Blackwell gives jailers "too broad discretion to act in conscious disregard of and with deliberate indifference to the rights of inmates." Dkt. 14, ¶24. Plaintiff further alleges that he is one of several inmates who were abused by McClure in the Shelby County Jail and that Blackwell, by failing to act, was deliberately indifferent to the "pervasive" abuse of him and other inmates. *Id.* at ¶25. Plaintiff alleges that Blackwell hired McClure despite allegedly having knowledge of a history of abuse towards inmates by McClure and hired McClure after Shelby County fired him for "abusing one or more inmates."[3] *Id.* at ¶26.

Plaintiff alleges that Blackwell breached his duty to provide adequate supervision and provided grossly inadequate supervision, which produced and proximately caused Plaintiff's injuries. *Id.* at ¶¶29-30. Plaintiff further alleges that Blackwell breached his duty to provide McClure with adequate training on the treatment of inmates and provided grossly inadequate

[3] Blackwell denies this allegation.

training, which produced and proximately caused Plaintiff's injuries. *Id.* at ¶¶31-32. For the reasons explained below, these allegations are insufficient to plead a claim upon which relief can be granted against Blackwell.

ARGUMENT AND AUTHORITIES

A. The Standard for a Motion to Dismiss

To survive a motion to dismiss, a plaintiff must plead sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic 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. *Iqbal*, 556 U.S. at 678. Determining plausibility is a context-specific task and must be performed in light of a court's judicial experience and common sense. *Id.*

A plaintiff's obligation in response to a motion to dismiss is to provide the grounds for his entitlement to relief which requires more than labels and conclusions; a formulaic recitation of the elements of a cause of action will not suffice. *Twombly*, 550 U.S. at 570; *Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice."). A plaintiff must allege sufficient facts to create more than a mere possibility that a defendant has acted unlawfully. *Iqbal*, 556 U.S. at 678. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. *Id.*; *Twombly*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level."). The court should dismiss a complaint if it lacks an allegation regarding one of the required elements of a cause of action. *See Keane v. Fox TV Stations, Inc.*, 297 F. Supp. 2d 921, 925 (S.D. Tex.

2004) (citing *Blackburn v. City of Marshall*, 42 F.3d 925, 931 (5th Cir. 1995)).

A court should begin its analysis by identifying the allegations in the complaint that are not entitled to the assumption of truth. *Iqbal*, 556 U.S. at 679. A court is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Gentilello v. Rege*, 623 F.3d 540, 544 (5th Cir. 2010) ("We do not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions."). The Court need only accept as true the "well-pleaded" facts in a Plaintiff's complaint. *Papasan*, 478 U.S. at 283; *Greene v. Greenwood Pub. Sch. Dist.*, 890 F.3d 240, 242 (5th Cir. 2018). To be "well pleaded," a complaint must state specific facts to support the claim, not merely conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 679; *Tuchman v. DSC Comm. Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994) (Plaintiff must plead "specific facts, not merely conclusory allegations."); *Lormand v. US Unwired, Inc*., 565 F.3d 228, 244 (5th Cir. 2009). In deciding a motion to dismiss, courts may consider the complaint, as well as other sources such as documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.[4] *Tellabs, Inc. v. Makor Issues & Rights, Ltd*, 551 U.S. 308, 322 (2007). In ruling on a Rule 12(b)(6) motion, a court generally limits its review to the face of the pleadings. *Rome v. HCC Life Ins. Co.*, 323 F.Supp.3d 862, 866 (N.D. Tex. 2018) (citing *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999)). However, a court may also consider documents outside the pleadings if they fall within certain limited categories. First, a court is permitted to rely on documents incorporated into the complaint by reference, and matters of which a court may take judicial notice. *Id.* (citing *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008))

[4] In deciding a Rule 12(b)(6) motion to dismiss, a court can rely on matters of public record without converting the motion into a motion for summary judgment. *Norris v. Hearst Trust*, 500 F.3d 457, 461, n.9 (5th Cir. 2007); *Davis v. Bayless, Bayless & Stokes*, 70 F.3d 367, 372, n.3 (5th Cir. 1995); *Cinel v. Connick*, 15 F.3d 1338, 1343, n. 6 (5th

(quoting *Tellabs, Inc.*, 551 U.S. at 322). Second, "a written document that is attached to a complaint as an exhibit is considered part of the complaint and may be considered in a 12(b)(6) dismissal proceeding." *Id.* (citing *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007)). Third, a "court may consider documents attached to a motion to dismiss that are referred to in the plaintiff's complaint and are central to the plaintiff's claim." *Id.* (citing *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010)). Finally, in decided a Rule 12(b)(6) motion to dismiss, "a court may permissibly refer to matters of public record." *Id.* at 866 (citing *Cinel*, 15 F.3d at 1343, n. 6); *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (stating, in upholding the district court's dismissal pursuant to Rule 12(b)(6), that "the district court took appropriate judicial notice of publicly-available documents and transcripts…which were matters of public record directly relevant to the issue at hand").

B. Plaintiff Fails to Plead a Viable Claim Under the Fourteenth Amendment against Sheriff Blackwell.

Constitutional rights of pre-trial detainees, as opposed to convicted prisoners, are provided by the due process guarantees of the Fourteenth Amendment. *Hare v. City of Corinth*, 74 F.3d 633, 639 (5th Cir. 1996) (en banc); *Bell v. Wolfish*, 441 U.S. 520, 535-37, n. 16 (1979); *Partridge v. Two Unknown Police Officers*, 791 F.2d 1182, 1186 (5th Cir. 1986).

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that no state may "deprive any person of life, liberty, or property, without due process of law." U.S. Const., Amend XIV. The Due Process Clause contains both a procedural and a substantive component. *United States v. Salerno*, 481 U.S. 739 at 746 (1987). Substantive due process "prevents the government from engaging in conduct that shocks the conscience...or interferes with rights implicit in the concept of ordered liberty..." *Id.* Procedural due process requires that

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Cir. 1994).

the government's deprivation of life, liberty, or property, even if consistent with substantive due process, "be implemented in a fair manner." *Id.* Procedural due process requires that the government must first give its citizen notice and an opportunity to be heard before it can deny that citizen of a life, liberty, or property interest. *Matthews v. Eldridge*, 424 U.S. 319, 331 (1976). Plaintiff fails to adequately plead either a substantive or procedural violation under the Fourteenth Amendment.

1. Plaintiff Fails to Adequately Plead a Substantive Due Process Claim Against Blackwell.

Plaintiff fails to adequately plead a substantive due process claim against Blackwell.

Substantive due process "prevents the government from engaging in conduct that shocks the conscience...or interferes with rights implicit in the concept of ordered liberty..." *Salerno*, 481 U.S. at 746. The Supreme Court has been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). The Supreme Court ruled that where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims. *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998).

Plaintiff only offers conclusory allegations against Blackwell and fails to plead any allegation against Blackwell that "shocks the conscience." *See* Dkt. 14. As such, Plaintiff should not be permitted to pursue a disfavored, substantive due process claim against Blackwell. Should the Court find that Plaintiff pleads any alleged conduct by Blackwell that shocks the conscience, the applicable standard for review is deliberate indifference.

To be actionable, an officer's conduct must demonstrate subjective awareness of a

substantial risk of serious harm and a failure to take reasonable measures to abate this risk. *Domino v. Tex. Dep't of Crim. Justice,* 239 F.3d 752, 756 (5th Cir. 2001). When the alleged unconstitutional conduct involves an episodic act or omission, the question is whether the state official acted with deliberate indifference to the person's constitutional rights. *Gibbs v. Grimmette*, 254 F.3d 545, 548 (5th Cir. 2001). Furthermore, "[o]nly the direct acts or omissions of governmental officials, not the acts of subordinates, will give rise to individual liability under § 1983." *Coleman v. Houston Ind. School Dist.*, 113 F.3d 528, 534 (5th Cir. 1997).

To establish deliberate indifference, a plaintiff must show that an official: (1) was aware of facts from which an inference of substantial risk of serious harm could be drawn; (2) actually drew the inference; and (3) the response indicates the policymaker consciously disregard the danger. *E.A.F.F. v. Gonzalez*, 600 F. App'x 205, 210-11 (5th Cir. 2015) (quoting to *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)); *Thompson v. Upshur County, Texas,* 245 F.3d 447, 458-59 (5th Cir. 2001); *Hare*, 74 F.3d at 649-50. "To act with deliberate indifference, a state actor must know of and disregarded an excessive risk to the victim's health or safety." *McClendon v. City of Columbia*, 305 F.3d 314, 326 (5th Cir. 2002). "The state actor's actual knowledge is critical to the inquiry"—a "failure to alleviate 'a significant risk that he should have perceived but did not,' while 'no cause for commendation,' does not rise to the level of deliberate indifference." *Id.*

"Deliberate indifference" describes a state of mind more blameworthy than negligence. *Farmer,* 511 U.S. at 835. The "deliberate indifference" standard is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action. *Board of the County Commissioners of Bryan County, OK v. Brown*, 117 S. Ct. 1382, 1391 (1997). A defendant must have been aware of a risk of harm and disregarded that risk by failing

to take reasonable steps to prevent it. *Hare*, 74 F.3d at 648-49.

The relevant inquiry is not the ultimate efficacy of the actions that were taken, nor the number of steps that were taken. *Doe v. Taylor ISD*, 15 F.3d 443, 458 (5th Cir. 1994); *Leffall v. Dallas ISD*, 28 F.3d 521, 531-32 (5th Cir. 1994). Instead, all that is required are good faith measures, any measures, designed to avert the anticipated harm. *Hare*, 74 F.3d at 649 (citing *Farmer* for the proposition that "[d]eliberate indifference, *i.e.*, the subjective intent to cause harm, cannot be inferred from a [state actor's] failure to act reasonably. If it could, the standard applied would be more akin to negligence than deliberate indifference."); *Lefall*, 28 F.3d at 531-32 (holding that single act of school official's hiring of security guards for school dance where student was fatally shot conclusively established that the school official did not act with deliberate indifference, even though school official had actual knowledge that violence was likely at dance); *Doe*, 15 F.3d at 458. However negligent, or grossly negligent, a response may subsequently seem, it is important for the Court to remember the "significant distinction between a tort and a *constitutional* wrong." *Lefall*, 28 F.3d at 532. Thus, a person is not deliberately indifferent if they take some reasonable steps to address a risk of harm. *Hare*, 74 F.3d at 648-49. It is irrelevant whether the steps that were taken to address a risk of harm were successful in averting the harm.

"Deliberate indifference is an extremely high standard to meet." *Domino*, 239 F.3d at 756. Deliberate indifference cannot be inferred from a negligent or grossly negligent response to a substantial risk of harm. *Hare*, 74 F.3d at 645, 649; *Thompson*, 245 F.3d at 459. Negligent conduct does not rise to the level of a constitutional violation. *Daniels v. Williams*, 474 U.S. 327, 333-34 (1986).

Here, Plaintiff failed to plead allegations to support the claim that Blackwell was aware

of facts from which an inference of substantial risk of serious harm—alleged sexual abuse of him by McClure—could be drawn or any of the required elements to state a claim upon which relief can be granted. Plaintiff only alleges that Blackwell hired McClure "despite Defendant McClure having a known history of abuse" and rehired McClure after Shelby County fired him for allegedly "abusing one or more inmates."[5] Dkt. 14, p. 5, ¶26. This allegation, even if presumed truthful, is insufficient to establish that Blackwell subjectively knew that McClure would harm Plaintiff, generally, or allegedly *sexually* abuse him, specifically. Plaintiff also fails to plead any allegations that establish that Blackwell actually drew the inference that Plaintiff would be allegedly sexually harmed by McClure or that Blackwell intended the sexual harm to occur or consciously disregarded the danger.

Most importantly, Plaintiff fails to allege that Blackwell had knowledge or notice of McClure's alleged sexually abusing him. Plaintiff's broad and general allegations do not establish that Blackwell knew or could have known about the alleged sexual abuse of Plaintiff by McClure.

Furthermore, Plaintiff does not allege facts to support that Blackwell failed to take some reasonable steps to address a risk of harm. In fact, Plaintiff pleads that McClure is a "former jailer" and "has been arrested and is awaiting trial on charges related to the sexual assault against Plaintiff…" Dkt. 1, p. 1, ¶2; Dkt. 14, p. 5, ¶22. Plaintiff's pleading establishes that McClure is no longer an employee of Shelby County and that he was arrested, charged, and is awaiting prosecution for alleged sexual abuse.

Finally, Plaintiff fails to adequately plead that Blackwell's actions caused his alleged injuries. Plaintiff only pleads conclusory statements that Blackwell's actions caused his injuries.

[5] Blackwell denies this allegation.

Plaintiff's allegations against Blackwell are insufficient to state a claim upon which relief can be granted and should be dismissed.

2. Plaintiff Fails to Adequately Plead a Procedural Due Process Claim Against Blackwell.

The Fourteenth Amendment prohibits the government from depriving individuals of life, liberty, or property without adequate procedural safeguards. *Matthews*, 424 U.S. at 331. In its analysis, first, the Court must determine whether the interest at stake is a protected life, liberty, or property right under the Fourteenth Amendment before the Court is allowed to consider whether the deprivation of that protected interest or property right violated the notions of due process. *Bd. of Regents of State College v. Roth*, 408 U.S. 564, 569 (1972). Second, procedural due process requires that the government must first give its citizens notice and an opportunity to be heard before it can deny that citizen of a life, liberty, or property interest. *Matthews*, 424 U.S. at 331.

Plaintiff alleges that **McClure's** alleged sexual assault of him violates his procedural due process rights under the Fourteenth Amendment. *See* Dkt. 14, ¶2, 36. In addition to failing to make any allegations against **Blackwell**, Plaintiff failed to identify what protected life, liberty, or property interest Blackwell allegedly deprived him of and what process was lacking. *Id.* Plaintiff's due process claim against Blackwell should be dismissed because Plaintiff failed to plead sufficient facts to state a claim upon which relief can be granted that is plausible on its face. *Twombly*, 550 U.S. at 570. Plaintiff's pleadings are conclusory and wholly fail to adequately plead how Blackwell deprived him of procedural due process. *See* Dkt. 14. As a result of Plaintiff's wholly inadequate pleading, Plaintiff failed to meet the pleading requirements for a due process claim, and the Court should dismiss Plaintiff's procedural due process claim against Blackwell. *See Twombly*, 550 U.S. at 570.

C. Plaintiff's Claims for Failure to Properly Hire, Train, Discipline, or Supervise Should be Dismissed With Prejudice.

1. Plaintiff Fails to Plead a Hiring Claim Against Blackwell.

Although unclear, Plaintiff appears to assert a claim against Blackwell based on McClure's hiring. Despite having the opportunity to amend his Complaint, Plaintiff still fails to plead a hiring claim against Blackwell.

For a claim that a hiring decision amounts to a constitutional violation on the part of the alleged decision maker, a plaintiff must show "deliberate indifference" to the "known or obvious consequences" of the decision. *Gros v. City of Grand Prairie*, 209 F.3d 431, 433–34 (5th Cir. 2000) (citing *Brown*, 520 U.S. at 407). A plaintiff must show that adequate scrutiny of an applicant's background would lead a reasonable supervisor to conclude that "the plainly obvious consequences of the decision to hire would be the deprivation of a third party's constitutional rights." *Id.* (citing *Snyder v. Trepagnier*, 142 F.3d 791, 797 (5th Cir. 1998)). However, plaintiffs cannot succeed merely by showing that there was a probability that an allegedly poorly-screened officer would violate their rights; rather, "they must show that the hired officer was highly likely to inflict the particular type of injury suffered by them." *Id.* (emphasis added). "There must be a strong connection between the background of the particular applicant and the specific violation alleged." *Id.* (emphasis added).

Plaintiff's deliberate indifference hiring claim should be dismissed because he fails to plead sufficient facts that McClure was highly likely to inflict the particular type of injury—in this case, the alleged sexual assault of Plaintiff. *See Gros*, 209 F.3d at 435.[6] The alleged facts in

[6] *Gros*, 209 F.3d at 435 (Police chief entitled to summary judgment on Plaintiffs' claim of deliberate indifference in hiring the officer that sexually assaulted them during traffic stop, even where pre-employment file showed that the officer was sometimes too aggressive, contained letters of reprimand for sustained complaints for being overbearing and abusive during traffic stops. Though possibly negligent, the hiring was not deliberately indifferent since the officer had never sexually assaulted, sexually harassed, falsely arrested, improperly searched or seized, or used

support of the hiring claim in Plaintiff's Amended Complaint are his vague assertions that McClure had a "known history of abuse towards inmates under his care" and that McClure was rehired after being fired for "abusing one or more inmates of the Shelby County Jail." [7] *See* Dkt. 14, ¶26. These vague allegations are insufficient to state a hiring claim against Blackwell. Plaintiff does not allege that McClure had a history of sexually abusing inmates or alleged with specificity what complaints or discipline McClure received in the past. That is, there are no facts that the alleged complaints against McClure and alleged discipline that he received were for conduct involving sexual abuse of inmates, or that was in any way similar in kind or severity to McClure's sexual abuse of Plaintiff—such that a reasonable person would conclude that such an alleged sexual assault was the plainly obvious consequence of hiring McClure. For these reasons, the Court should dismiss Plaintiff's hiring claim against Blackwell with prejudice.

2. Plaintiff Fails to Adequately Plead a Failure to Supervise, Discipline, or Train Claim against Blackwell.

Plaintiff alleges that Blackwell should be held individually liable for allegedly failing to supervise, discipline, or train[8] McClure. The Court should dismiss this claim against Defendant in his individual capacity because Defendant is entitled to qualified immunity (*infra* at 16-18) and because Plaintiff offers only vague and conclusory allegations in support of the claim and a formulaic recitation of the elements of a cause of action. Dkt. 14, ¶¶27-31; *Twombly*, 550 U.S. at 570; *Iqbal*, 556 U.S. at 678.

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excessive force against any third party, and had never committed a serious crime.); *see also Hardeman v. Kerr County Tex.*, 244 Fed. Appx. 593, 596 (5th Cir. 2007) (hiring claim failed because "it requires an enormous leap" to connect officer's previous "troubling" grounds for discharge that included "improper advances towards female students" to the sexual assault of the plaintiff inmate); *Davidson v. City of Fort Worth*, 2012 WL 3778831, at *5-6 (N.D. Tex. Aug. 30, 2012) (citing *Peterson v. City of Fort Worth. Tex.*, 588 F.3d 838, 850 (5th Cir.2009)).

[7] Defendant denies this allegation.

8 Although Plaintiff states that he abandoned his failure to train claim in his Response to Blackwell's First Motion to Dismiss [Dkt. 12, Dkt. 13], Plaintiff retains the allegation that Blackwell failed to train Shelby County Sheriff's Department jailers in his Amended Complaint. Dkt. 14, p. 2-3, ¶8-9. Out of an abundance of caution, Defendant will address this claim.

In a Section 1983 failure to train, supervise, and/or discipline claim, a plaintiff must prove that (1) the supervisor either failed to supervise, discipline, or train the subordinate officer, (2) a causal link exists between the failure to train, discipline, or supervise and the violation of the plaintiff's rights, and (3) the failure to train, discipline, or supervise amounts to deliberate indifference to the constitutional right allegedly violated. *Davidson v. City of Stafford*, 848 F.3d 384, 397 (5th Cir. 2017); *see also Walker v. Upshaw*, 515 Fed. Appx. 334, 339 (5th Cir. 2013) (per curiam); *Estate of Davis v. City of N. Richland Hills*, 406 F.3d 375, 381 (5th Cir. 2005); *Doe*, 15 F.3d at 452-53.

"Supervisory officials cannot be held liable for the unconstitutional actions of their subordinates based on any theory of vicarious or respondeat superior liability." *Lewis v. City of Waxahachie*, No. 3:10-CV-2578-N-BH, 2011 WL 7070991, at *4 (N.D. Tex. Dec. 21, 2011)[9] (citing *Estate of Davis*, 406 F.3d at 381).[10] "The acts of a subordinate 'trigger no individual § 1983 liability.'" *Id*. (*quoting Champagne v. Jefferson Parish Sheriff's Office*, 188 F.3d 312, 314 (5th Cir. 1999). Instead, "[t]here must be some showing of personal involvement by a particular individual defendant to prevail against such individual," and the plaintiff must show either that the supervisor's conduct directly caused the constitutional violation or that the supervisor was deliberately indifferent to such a violation. *Id*. A plaintiff cannot show this by means of generalized allegations. *Id*. (*citing Howard v. Fortenberry*, 723 F.2d 1206 (5th Cir. 1984)).

In order to state a claim under Section 1983 for failure to train, discipline, and/or supervise a police officer, a plaintiff must assert facts to support a finding that the failure to train, discipline, or supervise constituted deliberate indifference to the plaintiff's constitutional rights.

[9] Report and recommendation adopted, 2012 WL 176681 (N.D. Tex. Jan. 20, 2012).
[10] *See also Stern v. Hinds County, Miss*., 436 Fed. App'x 381, 382 (5th Cir. 2011) ("§ 1983 'does not create supervisory or respondeat superior liability'") (quoting *Oliver v. Scott*, 276 F.3d 736, 742 (5th Cir. 2002)).

Lewis v. Pugh, 289 F. App'x. 767, 775 (5th Cir. 2008) (citing *Thompson, Texas*, 245 F.3d at 459). Establishing deliberate indifference requires showing "a pattern of similar violations of constitutional rights arising from training[, discipline,] or supervision that is so clearly inadequate as to be obviously likely to result in a constitutional violation." *Id*. (citing *Brumfield v. Hollins*, 551 F.3d 322, 329 (5th Cir.2008) and *Thompson*, 245 F.3d at 459 (internal quotation marks omitted)); *see also Snyder*, 142 F.3d at 798-99. "[D]eliberate indifference is a stringent standard of fault," requiring proof that the supervisory officer "disregarded a known or obvious consequence of his action." *Walker*, 515 Fed. Appx. at 339 (quoting *Estate of Davis*, 406 F.3d at 381) (internal quotation marks omitted); *Piotrowski v. City of Houston*, 237 F.3d 567, 579 (5th Cir. 2001). Deliberate indifference is a lesser form of intent. *Id.*[11]

Plaintiff does not claim that Blackwell directly caused the constitutional violation. Instead, he claims that McClure directly caused the constitutional violation and only offers vague, generalized allegations regarding Blackwell.

With regards to his failure to train claim, Plaintiff fails to adequately plead a claim because he does not identify the training policy at issue, does not allege with specificity how Blackwell's training is defective, fails to allege facts sufficient to establish that the Blackwell was deliberately indifferent in adopting any training policy, and fails to allege facts showing that an inadequate training policy directly caused a constitutional violation to Plaintiff. Plaintiff offers no factual allegations to explain how Blackwell's training policies on constitutional rights were inadequate. Instead, Plaintiff merely offers the conclusory and vague assertions regarding Blackwell's training. Plaintiff's allegations are formulaic conclusions that are not sufficiently

[11] *See also, e.g., Leffall*, 28 F.3d at 531-32 (in affirming a judgment granting a Rule 12(b)(6) motion to dismiss on the basis of qualified immunity, Fifth Circuit held that the *single act* of a school official's hiring of security guards for school dance where student was fatally shot conclusively established that the school official did not act with

specific to implicate Blackwell's training concerning constitutional rights and, therefore, do not support a claim for failure to train jail officers on constitutional rights. Plaintiff offers no specific contentions with respect to the type of constitutional rights training Blackwell was providing to his jail officers at the time that Plaintiff was detained, nor regarding how this training allegedly was defective.

With regards to his failure to discipline claim, Plaintiff only states that Blackwell failed to adequately discipline his employees, that this was deliberately indifferent, and that the failure to discipline caused the violation of Plaintiff's rights. Dkt. 14 at ¶¶9, 31-32, 38. Plaintiff does not allege any continuing, widespread, persistent pattern of unconstitutional misconduct which Blackwell expressly approved of, or was deliberately indifferent to. *Id.* Plaintiff's Amended Complaint only specifically references the events that made the basis of this suit. *Id*. Plaintiff also failed to specifically plead any express, intentional, and unlawfully motivated failure of Blackwell to discipline obviously illegal conduct by McClure and failed to allege any facts establishing that the Blackwell's failure to discipline McClure caused the alleged sexual assault of Plaintiff. *Id*.

Likewise, Plaintiff fails to plead how Blackwell failed to supervise McClure, how Blackwell's alleged failure to supervise McClure is causally linked to the violation of Plaintiff's rights, and how Blackwell's actions establish deliberate indifference. Plaintiff only offers vague, conclusory allegations with respect to his failure to supervise claim. Plaintiff wholly fails to plead the elements of a failure to supervise claim.

Plaintiff did not properly plead any of the elements of his claims and fails to state a claim upon which relief can be granted as to any potential failure to supervise, discipline, or train claim

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deliberate indifference, even though school official had actual knowledge that firearm violence was likely at dance).

against Blackwell. *Twombly*, 550 U.S. at 570; *Iqbal*, 556 U.S. at 678. The Court should dismiss this claim with prejudice.

D. Blackwell is Entitled to Qualified Immunity from Plaintiff's Claims.

Plaintiff's individual capacity claims against Blackwell should be dismissed because he is entitled to qualified immunity all of Plaintiff's claims.

Governmental officials are protected from suit and liability by qualified immunity unless their alleged conduct: (1) violated a Constitutional or statutory right; and (2) the illegality of the alleged conduct was clearly established at the time. *Wesby*, 138 S.Ct. at 589. The phrase "clearly established" mean that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful. *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). In other words, existing law must have placed the constitutionality of the officer's conduct "beyond debate." *Id.*; *al-Kidd*, 563 U.S. at 741. This demanding standard means that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law. *Wesby*, 138 S.Ct. at 589 (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). To be clearly established, a legal principle must have a sufficiently clear foundation in then-existing precedent. *Id.* The rule must be "settled law" which means it is dictated by "controlling authority" or "a robust consensus of persuasive authority." *Id.* at 589-590; *al-Kidd*, 563 U.S. at 741. It is not enough that the rule is suggested by then-existing precedent. *Wesby*, 138 S.Ct. at 590. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply. *Id*; *see Reichle v. Howards*, 566 U.S. 658, 664 (2012). Otherwise, the rule is not one that "every reasonable official would know." *Wesby*, 138 S.Ct. at 590; *Reichle*, 566 U.S. at 666.

The "clearly established" standard also requires that the legal principle clearly prohibits

the officer's conduct in the particular circumstances before him. *Wesby*, 138 S.Ct. at 590. The rule's contours must be so well defined that it is "clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* (quoting *Saucier v. Katz*, 533 U.S. 194, 202 (2001)).

The Supreme Court has repeatedly stressed that courts must not "define clearly established law at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced." *Id.* (quoting *Plumhoff v. Rickard*, 572 U.S. 765, 779 (2014)). A rule is too general if the unlawfulness of the officer's conduct "does not follow immediately from the conclusion that [the rule] was firmly established." *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 641 (1987)).

Qualified immunity is overcome only if, at the time and under the circumstances of the challenged conduct, *all* reasonable officers would have realized the conduct was prohibited by the federal law on which the suit is founded. *Dudley v. Angel*, 209 F.3d 460, 462 (5th Cir. 2000). The question is whether a reasonable officer could have believed that the actions of the defendant officer were lawful in light of clearly established law and the information the officer possessed at the time. *Anderson*, 483 U.S. at 641. If reasonable officers could differ on the lawfulness of a defendant's actions, the defendant is entitled to qualified immunity. *Briggs*, 475 U.S. at 341. The legal principle in question must clearly prohibit the specific conduct of the official in the particular circumstances that were confronting the official. *Wesby*, 138 at 590.

To overcome qualified immunity, a claimant must identify a case holding that an official acting under similar circumstances violated the law. *Id.* (citing *White v. Pauly*, 137 S.Ct. 548, 552 (2017) (per curiam)). While the case may not need to be directly on point, nonetheless, "a body of relevant case law" must place the illegality of alleged conduct "beyond debate" in order

for it to be clearly established for qualified immunity purposes. *al-Kidd*, 563 U.S. at 741; *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004).

It is the plaintiff's burden to plead and prove specific facts overcoming qualified immunity. *Elliot v. Perez*, 751 F.2d 1472, 1479 (5th Cir. 1985). To do so, a claimant "must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity." *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012). Under the pleading standard required to overcome qualified immunity, Plaintiff's conclusory and speculative allegations fail to state a claim.

Plaintiff did not plead a plausible violation of any clearly established constitutional right under Fourteenth Amendment. Plaintiff's framing of the issues is far too general and broad and runs afoul of the Supreme Court's admonition that the alleged clearly established legal right must be defined with sufficient specificity to determine if conduct is reasonable in the particular circumstances faced by the defendant. *See Wesby*, 138 S.Ct. at 590; *Plumhoff*, 572 U.S. at 778. For these reasons, Plaintiff fails to overcome Blackwell's assertion and entitlement to qualified immunity, and all of Plaintiff's claims should be dismissed with prejudice.

E. Plaintiff's Claims for Punitive Damages Against Blackwell Should Be Dismissed.

The Court should dismiss Plaintiff's claims for punitive damages against Blackwell in his individual capacity with prejudice because he is entitled to qualified immunity with respect to such claims (*infra* at 16-18) and because Plaintiff has not offered well-pled facts sufficient to state a claim for punitive damages against Blackwell individually.

Punitive damages may be awarded in Section 1983 cases only if the individual Defendant's conduct "is shown to be motivated by evil motive or intent, or when it involves

reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983). This standard requires evidence that the individual possessed a subjective consciousness of a risk of injury or illegality and a "criminal indifference to civil obligations." *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 536 (1999) (citing *Smith*, 461 U.S. at 45-48).

Plaintiff did not plead facts sufficient to state a claim for punitive damages. His allegations amount to no more than conclusory assertions, legal conclusions, or formulaic recitations of the standard for recovery which is insufficient to defeat a motion to dismiss. As such, the Court should dismiss Plaintiff's request for punitive damages with prejudice.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court grant his motion to dismiss for failure to state claims upon which relief can be granted, and that all of Plaintiff's causes of action against Sheriff Blackwell be dismissed with prejudice to the refiling of same; Defendant further prays that Plaintiff take nothing by this suit; that all relief requested by Plaintiff be denied; and that Defendant recovers all costs of suit; as well as for such other and further relief, both general and special, at law or in equity, to which Defendant may show himself to be justly entitled.

Respectfully submitted,

/s/ Francisco J. Valenzuela
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ATTORNEYS FOR DEFENDANTS SHELBY COUNTY, TEXAS AND WILLIS BLACKWELL

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been delivered to all parties of record, in compliance with the Court's ECF/CM system and/or Rule 5 of the Federal Rules of Civil Procedure, on the 29th day of March, 2019.

/s/ Francisco J. Valenzuela
FRANCISCO J. VALENZUELA