IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

SOCRATES SHAWN	§	
Plaintiff,	§	CIVIL ACTION NO.
v.	§	
	§	
CITY OF PROGRESSO, TEXAS;	§	
CESAR SOLIS, in his individual and official	§	
Capacity; and ERNESTO LOZANO, in his	§	M – 22 – 116
Individual and official capacity	§	
Defendants.	§	**JURY REQUESTED**

DEFENDANTS' MOTION FOR PARTIAL DISMISSAL

TO THE HONORABLE U.S. DISTRICT COURT:

Defendants **CITY OF PROGRESSO, TEXAS** and **ERNESTO LOZANO** submit this Motion for Partial Dismissal of Plaintiff Socrates Shawn's Verified Original Complaint.

I.

SUMMARY OF THE ARGUMENT

Plaintiff alleges claims against these Defendants for his detention and arrest on April 8, 2020, allegedly in violation of the Fourth and Fourteenth Amendments, during a time when the County of Hidalgo, Texas had a COVID-19 Shelter-at-Home Order in effect. Although the Fourth Amendment prohibits unlawful stops and seizures, Plaintiff may not invoke the Fourteenth Amendment, rather than the Fourth, for either of those claims. His Fourteenth Amendment claims should therefore be dismissed.

II.

STANDARD OF REVIEW FOR RULE 12(b)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Before an Answer has been filed, the proper mechanism for challenging the claims made is through Federal Rule of Civil Procedure 12(b)(6). At this stage, the Court must limit its inquiry "to the facts stated in the complaint and the documents either attached to or incorporated in the complaint." *Wilson v. Birnberg,* 667 F.3d 591, 600 (5th Cir. 2012). "To survive a [Rule 12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 US 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009), *quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007).

The Court need not accept at face value any factually unsupported legal conclusions, however. *Fernandez-Montez v. Allied Pilots Ass'n,* 987 F.2d 278, 284 (5th Cir. 1993) ("conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss"). The Court is not required to accept ultimate conclusions that do not flow from the factual description of the case. *Vulcan Materials Co. v. City of Tehuacana,* 238 F.3d 382, 388 (5th Cir. 2001), *citing* 5A C. WRIGHT & A. MILLER, FED. PRAC. & PROC.: CIVIL 2d §1357, at 319-20 (1990).

"Factual allegations must be enough to raise a right to relief above the speculative level, … [and not simply] create[] a suspicion [of] a legally cognizable right of action, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 127 S. Ct. at 1965. "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 679, 129 S. Ct. at 1949. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id*. "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*., *quoting Twombly*, 127 S. Ct. at 1955.

In evaluating a Complaint, Courts must undertake the "context-specific" task of evaluating whether the well pleaded allegations give rise to an entitlement to relief that is plausible, rather than merely possible or conceivable, with "enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary claims or elements." *In re So. Scrap Material Co*., 541 F.3d 584, 587 (5th Cir. 2008), *quoting Twombly*, 550 U.S. at 556.

> "Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we "are not bound to accept as true a legal conclusion couched as a factual allegation" (internal quotation marks omitted)). Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will … be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged — but it has not "show[n]" — "that the pleader is entitled to relief."

Iqbal, 556 U.S. at 678-79, 129 S. Ct. at 1950, *quoting Twombly*, 550 U.S. at 555 & FED. R. CIV. P. 8(a)(2).

The plausibility standard concerns the factual allegations of a complaint. "[T]he complaint must contain either direct allegations on every material point necessary to sustain a recovery ... or contain allegations from which an inference fairly may be drawn under the relevant legal theory." *Campbell v. City of San Antonio,* 43 F.3d 973, 975 (5th Cir. 1995), *quoting* 3 C. WRIGHT & A. MILLER, FED. PRAC. & PROC.: CIVIL 2d § 1216, at 156-59). Thus, dismissal is proper if the complaint "lacks an allegation regarding a required element necessary to obtain relief." *Id., quoting* 2A MOORE'S FEDERAL PRACTICE ¶ 1207, at 12-91.

III.

FACTUAL ALLEGATIONS

Plaintiff's Original Complaint alleges that the City had a deliberately indifferent custom or policy of enforcing the County of Hidalgo's COVID-19 Shelter-at-Home Order (SAH Order) by stopping and arresting anyone driving through the City without reasonable suspicion or probable cause. Plntf's Orig. Cmplt, Dkt No. 1, ¶¶ 1, 14, 16, 17, 22-24, 61-63. Pursuant to that policy, he contends he was stopped and arrested in the City on April 8, 2020, though Defendant Lozano had no reasonably articulable basis to believe he was violating the SAH Order or probable cause to believe he committed a criminal offense. *Id.*, at ¶¶ 2, 25, 29-32, 38, 43, 44. He was later released, about two hours after being arrested. *Id.*, at ¶ 41.

Shawn claims Defendant Lozano violated his rights under the Fourth and Fourteenth Amendments by stopping him without reasonable suspicion and by arresting him without probable cause. *Id.*, at¶¶ 49-52, 55, 56. He also claims the City and Solis violated the Fourth and Fourteenth Amendments by adopting a deliberately indifferent custom or policy of stopping and arresting anyone in a vehicle in the City while County pandemic emergency orders were in effect and that such custom or policy was the moving force of Lozano's alleged violation of Shawn's Fourth and Fourteenth Amendment rights. *Id.*, at ¶¶ 62-63.

IV.

ARGUMENT AND AUTHORITIES

The Fourth Amendment protects against the unconstitutional search and seizure of evidence, arrest of persons, and use of force in any search or arrest. U.S. CONST. amend. IV. The Fourteenth Amendment, on the other hand, prohibits states from depriving persons of life, liberty or property without due process. *Id.*, amend. XIV. The standards of review for each of those claims are distinct, however, and Shawn cannot rely on the standards for the Fourth Amendment to establish an alleged violation of the Fourteenth.

A. The standards for a wrongful detention and arrest claim are defined by the Fourth Amendment.

The Fourth Amendment authorizes suspects to be temporarily detained for investigative purposes, which does not constitute an actual arrest. "[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the

officer lacks probable cause." *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585 (1989). *See Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968). "The Fourth Amendment [only] requires 'some minimal level of objective justification' for making the stop. *Sokolow*, 490 U.S. at 7, 109 S. Ct. at 1585. "[T]he level of suspicion required for a *Terry* stop is obviously less demanding than for probable cause." *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990).

Furthermore, detaining a suspect because of safety concerns of the officer is a "legitimate exercise of valid routine police procedure." *United States v. Bradshaw*, 102 F.3d 204, 212 (6th Cir. 1996). "Seizure remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop." *Rodriguez v. United States*, 575 U.S. 348, 355, 135 S. Ct. 1609, 1615 (2015) (cleaned up). "The Fourth Amendment standard is reasonableness, and it is reasonable for police to move quickly if delay 'would gravely endanger their lives or the lives of others.' This is true even when, judged with the benefit of hindsight, the officers may have made 'some mistakes.'" *City & Cnty. of S.F. v. Sheehan*, 135 S. Ct. 1765, 1775, 191 L. Ed. 2d 856, 868 (2015), *quoting Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 298-299, 87 S. Ct. 1642, 18 L. Ed. 2d 782 (1967) & *Heien* v. *North Carolina*, 135 S. Ct. 530, 536, 190 L. Ed. 2d 475, 482 (2014).

On the other hand, the Fourth Amendment "constitutional claim of false arrest requires a showing of no probable cause." *Club Retro LLC v. Hilton*, 568 F.3d 181, 204 (5th Cir. 2009). Probable cause exists when the totality of the facts and circumstances

within a police officer's knowledge at the moment of arrest are sufficient to cause a reasonable person to conclude that the suspect committed the offense. *United States v. Levine*, 80 F.3d 129, 132 (5th Cir. 1996). "[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

B. Shawn may not pursue a Fourteenth Amendment claim arising out of his allegedly unlawful detention or arrest.

It is the *Fourth* Amendment that provides the standard for evaluation of a wrongful search, seizure or detention claim, not the Fourteenth. *Baker v. McCollan*, 443 U.S. 137, 144, 99 S. Ct. 2689, 2694 (1979). Plaintiff cannot repackage a Fourth Amendment claim to establish a Fourteenth Amendment violation. "The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it." *Albright v. Oliver*, 510 U.S. 266, 274, 114 S. Ct. 807, 813 (1994). "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.'" *Id.,* 510 U.S. at 273, 114 S. Ct. at 813, *quoting Graham* v. *Connor,* 490 U.S. 386, 395, 109 S. Ct. 1865, 1871, 104 L. Ed. 2d 443 (1989). *See also Manuel v. City of Joliet*, 137 S. Ct. 911, 918 (2017); *County of Sacramento v. Lewis*, 523 U.S. 833, 842-43, 118 S. Ct. 1708, 1714-16, 140 L. Ed. 2d 1043 (1998). "[R]esort to a generalized remedy under the Due Process Clause is inappropriate where a more specific constitutional provision provides the rights at issue." *Arnold v. Williams*, 979 F.3d 262, 270 (5th Cir. 2020).

V.

CONCLUSION AND PRAYER

Because Plaintiff has not identified facts or authority to support a Fourteenth Amendment claim arising out of his allegedly unlawful detention or arrest, those claims must be dismissed.

WHEREFORE, PREMISES CONSIDERED, Defendants **CITY OF PROGRESSO, TEXAS** and **ERNESTO LOZANO** would respectfully request that Plaintiff's Fourteenth Amendment claims be dismissed for failure to state a claim upon which relief can be granted, and that Defendants be granted such other and further relief to which they may show themselves to be justly entitled, whether general or special, at law and in equity.

Respectfully submitted,

/ s / J. Arnold Aguilar
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **DEFENDANTS' MOTION FOR PARTIAL DISMISSAL** will on this the 24th day of May, 2022, be automatically accomplished through the Notice of Electronic Filing upon the following:

Erin D. Thorn
TEXAS CIVIL RIGHTS PROJECT
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/ s / J. Arnold Aguilar
J. Arnold Aguilar