UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ALEXANDER CLARK

VERSUS

JEAN HOTARD, ET AL

CIVIL ACTION

NO. 22-326-JWD-RLB

RULING AND ORDER

This matter comes before Court on *Motion to Dismiss Pursuant to Rule 12(c)* ("*Motion to Dismiss*") filed by Defendants Jason Ard, Sheriff of Livingston Parish ("Defendant Ard"), Calvin Taylor Bowden ("Defendant Bowden"), and Sergeant Jean Hotard ("Defendant Hotard"). (Doc. 100). Plaintiff Alexander Clark ("Plaintiff") has filed a *Plaintiff's Response in Opposition to Defendants' Motion to Dismiss Pursuant to Rule 12(c) (ECF No. 100)* ("*Plaintiff's Opposition*"). (Doc. 104.) Defendants Ard, Bowden, and Hotard argue that the majority of Plaintiff's claims are either *Heck*-barred or fail under Rule 12(b)(6). (Doc. 100-1 at 4.) Plaintiff, on the other hand, argues that *Heck* is not inconsistent with his criminal conviction for obstruction of justice and that he has pled facts sufficient to state a claim. (Doc. 104 at 6.)

Specifically, Defendants Ard, Bowden, and Hotard argue that the following counts are *Heck*-barred: Count One, a § 1983 claim under the Fourth Amendment for false arrest against Defendants Bowden and Hotard; Count Two, a state tort claim under La. Civ. Code Art. 2315 for false imprisonment against Defendants Ard and Hotard; Count Six, alleging unreasonable search of person and invasion of privacy in violation of the Fourth Amendment pursuant to § 1983, in violation of La. Const. Art. I § 5, and in violation of La. Civ. Code Art. 2315 against Defendants Ard, Bowden, and Hotard; Count Eleven, alleging denial of equal protection in violation of the Fourteenth Amendment pursuant to § 1983 and La. Const. Art. I § 3 against Defendants Ard and Hotard; Count Twelve, an intentional race discrimination claim under 42 U.S.C. § 2000d against

Defendant Ard; and Count Thirteen, a conspiracy to violate equal protection claim in violation of the Fourteenth Amendment pursuant to §§ 1983 and 1985(3). (Doc. 100-1 at 2–4.)

Plaintiff counters that a criminal conviction may co-exist with some § 1983 claims if the claims do not call into question the validity of the underlying conviction. (Doc. 104 at 10.) As a result, he argues that *Heck* is not a bar to his § 1983 claims. (*Id.* at 14–20.)

Defendants Ard, Bowden, and Hotard argue that Plaintiff has failed to plead facts sufficient to state a claim on the following counts: Count Eight, a *Monell* claim for excessive force in violation of the Fourth Amendment pursuant to § 1983 against Defendant Ard; and Count Nine, a *Monell* claim for failure to investigate excessive force in violation of the Fourth Amendment pursuant to § 1983 against Defendant Ard. (Doc. 100-1 at 17–21.) While these two claims are both listed as against Defendant Ard only, they are also listed as *Monell* claims and set forth the elements of *Monell* claims in addition to allegations against Defendant Ard in his role as Sheriff. (Doc. 89 at ¶¶ 288–298; Doc. 100-1 at 3.) The Court will therefore analyze them as both claims against Defendant Ard and *Monell* claims.

Plaintiff counters that at the motion to dismiss stage, he need only plead facts sufficient to state a claim. (Doc. 104 at 11–12.) He argues that he has in fact pled sufficient facts to state a *Monell* claim for excessive force and failure to investigate excessive force. (*Id.* at 20–28.)

Defendants Ard, Bowden, and Hotard do not address Counts Three, Four, Five, Seven, and Ten in this *Motion to Dismiss*.

For the reasons stated below, Defendants' *Motion to Dismiss* is GRANTED in part and DENIED in part.

Background

Plaintiff alleges in his First Amended Complaint that on May 24, 2021, he was "stopped, searched, detained, harassed, and brutalized" by "law-enforcement officers from Livingston Parish and Denham Springs." (Doc. 89 at ¶ 2, 32.) Plaintiff alleges that he was stopped by Defendant Hotard without cause while driving with a passenger at 11:38 p.m., and was soon joined by Defendant Bowden. (*Id.* at ¶ 5, 36, 39.) Plaintiff alleges that the two Livingston Parish Sheriff's deputies searched his truck and his person without a warrant or consent, repeatedly insinuating that he was in possession of crack cocaine. (*Id.* at ¶¶ 5–6, 42, 47, 53, 59, 66–67.)

Plaintiff claims that Defendants took a twenty-dollar bill from his pocket and implied that it had drug residue on it, preventing Plaintiff from explaining where he had obtained the bill. (*Id.* at ¶¶ 68–71.) Plaintiff attempted to take the bill back from Defendants, at which point he claims he was forcibly restrained and handcuffed by both Defendants Hotard and Bowden with his arms wrenched behind his back forcefully enough to cause lasting injury. (*Id.* at ¶¶ 7, 75–79, 114–127.) Plaintiff claims that at this point, Denham Springs Officer Defendant McCullough arrived on the scene, "called in a code '108' over dispatch" to indicate an officer down or in danger, and also "engaged in the forceful arrest" of Plaintiff. (*Id.* at ¶¶ 77–79.) Plaintiff asserts that at no point did he resist arrest and at no point was any officer in danger. (*Id.* at ¶¶ 76, 78, 84–85.) Plaintiff also states that he asked Defendants "to loosen their hold since he was in severe pain. They did not." (*Id.* at ¶ 82.) He contends that the officers did not tell him that he was under arrest, why he was being arrested, or why force was being used. (*Id.* at ¶¶ 73, 79, 130.)

Plaintiff states that after he was handcuffed, he was again searched by Defendants Bowden and Hotard, who continued to imply that Plaintiff was a user of or in possession of crack cocaine. (*Id.* at ¶¶ 88–93.) Defendants allegedly refused to loosen the handcuffs when Plaintiff informed

them that he was in pain, and instead placed him in Defendant Hotard's police car. (*Id.* at ¶¶ 95–96.) At this point, Plaintiff claims that Defendants continued to search his vehicle and question his passenger. (*Id.* at ¶¶ 98–103.) Throughout all of these searches and questionings, Plaintiff claims that Defendants found no evidence of drugs and "took no evidence from the scene except [a] Quick Connect compressor attachment piece" used in drywalling and painting. (*Id.* at ¶ 104.)

Plaintiff states that forty-one minutes after he was initially stopped, Defendant Hotard drove him to the Livingston Parish Detention Center. (*Id.* at ¶ 105.) Plaintiff claims that he was first informed of his *Miranda* rights on the drive, and only partially. (*Id.* at ¶ 106.) Plaintiff claims that at the Livingston Parish Detention Center, he was charged with failure to use a turn signal in violation of La. R.S. 32:104, which was later dropped, and resisting an officer in violation of La. R.S. 14:108. (*Id.* at ¶¶ 110–112). In March 2023, a charge of misdemeanor obstruction of justice in violation of La. R.S. 14:130.1 was added. (*Id.* at ¶ 112.) At a bench trial on May 4, 2023, Plaintiff was found guilty of the obstruction of justice charge and not guilty of the resisting an officer charge. (*Id.*)

Plaintiff alleges that as a result of Defendant officers' use of force on May 24, 2021, he experienced fractured bones and torn ligaments in his right arm and right hand, which required surgery, a cast, and physical therapy. (*Id.* at ¶¶ 114–18.) Plaintiff also maintains that Defendant officers' use of force exacerbated existing pain in his hip and back, which resulted in difficulty sleeping, sitting, and moving due to pain for six weeks following his arrest. (*Id.* at ¶¶ 119–122.) As a result, Plaintiff claims that he had hip replacement surgery in September of 2021, approximately four months after his encounter with Defendant officers. (*Id.* at ¶ 123.) Plaintiff claims that these injuries negatively impacted his ability to work and to enjoy his hobbies of golfing and fishing. (*Id.* at ¶¶ 124-25.)

Plaintiff alleges that after his encounter with Defendant officers, he attempted to file a complaint with the Livingston Parish Sheriff's Office but received no follow-up. (*Id.* at ¶¶ 128-131.) Plaintiff also alleges that the Denham Springs Sheriff's Department informed him that Defendant McCullough "neither filed an incident report nor maintained any body-camera footage from the evening." (*Id.* at ¶ 132.)

Beyond his specific experiences, Plaintiff cites to a number of studies and statistics to allege that the lone Black neighborhood in Livingston Parish, where he was stopped, is targeted by police for pretextual stops and citations. (*Id.* at ¶¶ 135–156.) Plaintiff alleges that Livingston Parish Sheriff's Office engages in intentional discrimination against the Black community to create a policy of over-policing, which led to Plaintiff's arrest. (*Id.* at ¶¶ 157–182.) Plaintiff also alleges intentional discriminatory over-policing on the part of Denham Springs Sheriff's Department. (*Id.* at ¶¶ 183–193.)

Applicable Standards

I. *Heck* Bar

"In *Heck*, the Supreme Court held that a plaintiff who has been convicted of a crime cannot bring a § 1983 claim challenging the constitutionality of his conviction unless that conviction has been reversed, expunged, declared invalid, or called into question by federal habeas corpus." *Arnold v. Town of Slaughter*, 100 F. App'x 321, 323 (5th Cir. 2004) (per curiam) (citing *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994)). "*Heck* teaches that in a § 1983 action, if 'a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.'" *Cano v. Bexar Cnty., Texas*, 280 F. App'x 404, 408 (5th Cir. 2008) (per curiam) (quoting *Heck*, 512 U.S. at 487, 114 S. Ct. 2364).

The Fifth Circuit has "applied *Heck* to bar claims for excessive force, false arrest, malicious prosecution, and other claims of unlawful seizure." *Cormier v. Lafayette City-Par. Consol. Gov't*, 493 F. App'x 578, 583 (5th Cir. 2012) (per curiam) (citing *Connors v. Graves*, 538 F.3d 373, 377–78 (5th Cir. 2008) (excessive force and unlawful seizure); *Wells v. Bonner*, 45 F.3d 90, 94–96 (5th Cir. 1995) (malicious prosecution and false arrest)).

II. 12(b)(6) Standard

"To survive a 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.'" *Hamilton v. Dall. Cnty.*, 79 F.4th 494, 499 (5th Cir. 2023) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *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." *Id.* (quoting *Iqbal*, 556 U.S. at 678).

"To be plausible, the complaint's '[f]actual allegations must be enough to raise a right to relief above the speculative level.'" *In re Great Lakes Dredge & Dock Co. LLC*, 624 F.3d 201, 210 (5th Cir. 2010) (quoting *Twombly*, 550 U.S. at 555). "In deciding whether the complaint states a valid claim for relief, we accept all well-pleaded facts as true and construe the complaint in the light most favorable to the plaintiff." *Id.* (citing *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008)). The Court does "not accept as true 'conclusory allegations, unwarranted factual inferences, or legal conclusions.'" *Id.* (quoting *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007)). "A claim for relief is implausible on its face when 'the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.'" *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 796 (5th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 679).

The Court's "task, then, is 'to determine whether the plaintiff has stated a legally cognizable claim that is plausible, not to evaluate the plaintiff's likelihood of success.'" *Doe ex rel. Magee v. Covington Cnty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 854 (5th Cir. 2012) (quoting *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) (citing *Iqbal*, 556 U.S. at 678)). "[A] claim is plausible if it is supported by 'enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of [the alleged misconduct].'" *Calhoun v. City of Houston Police Dep't*, 855 F. App'x 917, 919–20 (5th Cir. 2021) (per curiam) (quoting *Twombly*, 550 U.S. at 556).

Additionally, "[i]n determining whether a plaintiff's claims survive a Rule 12(b)(6) motion to dismiss, the factual information to which the court addresses its inquiry is limited to (1) the facts set forth in the complaint, (2) documents attached to the complaint, and (3) matters of which judicial notice may be taken under Federal Rule of Evidence 201." *Inclusive Cmtys. Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 900 (5th Cir. 2019) (citations omitted). "Although a 'court may also consider documents attached to either a motion to dismiss or an opposition to that motion when the documents are referred to in the pleadings and are central to a plaintiff's claims,' . . . the court need not do so." *Brackens v. Stericycle, Inc.*, 829 F. App'x 17, 23 (5th Cir. 2020) (per curiam) (quoting *Brand Coupon Network, L.L.C. v. Catalina Mktg. Corp.*, 748 F.3d 631, 635 (5th Cir. 2014)). *See also Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (using permissive language regarding a court's ability to rely on "documents incorporated into the complaint by reference" (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007)).

Analysis

I. Counts One, Two, Six, Eleven, and Thirteen Are *Heck*-Barred

The Court finds that Counts One and Two are *Heck*-barred because a finding for Plaintiff would imply the invalidity of Plaintiff's conviction for obstruction of justice. Plaintiff alleges that he was arrested without probable cause. (Doc. 89 at ¶¶ 232, 235, 240, 243.) However, Plaintiff was later convicted for obstruction of justice arising out of this interaction with law enforcement, and the conviction has not been vacated or overturned. (Doc. 104 at 7.) The Fifth Circuit has stated that "[i]f there was probable cause for any of the charges made . . . then the *arrest* was supported by probable cause, and the claim for false arrest fails." *Wells v. Bonner*, 45 F.3d 90, 95 (5th Cir. 1995). Therefore, Plaintiff's "claim for false arrest is not cognizable in the absence of the invalidation of his conviction . . . ." *Id.*

With respect to the false imprisonment claim, which is a state law claim, this Court has previously found that where a plaintiff's "state law claims arise out of the same facts that resulted in his conviction, and the conviction has not been reversed or invalidated, Plaintiff's state law tort claims . . . are barred by *Heck*." *Martin v. Roy*, No. CV 20-339-JWD-EWD, 2021 U.S. Dist. LEXIS 50630 at *32, 2021 WL 1080933 at *13 (M.D. La. Mar. 18, 2021) (deGravelles, J.) (holding that state law claims for wrongful arrest, excessive force, and detention, among other state law claims, were barred by *Heck*) (citing *Lowell v. Ard*, No. CV 17-00187-BAJ-RLB, 2019 U.S. Dist. LEXIS 170771 at *3, 2019 WL 4855150 at *1 (M.D. La. Oct. 1, 2019) (Jackson, J.)). A finding against Defendants Hotard and Bowden for false arrest would invalidate Plaintiff's conviction, as would a finding against Defendants Ard and Hotard for false imprisonment. These claims are therefore *Heck*-barred.

Defendants Ard, Bowden, and Hotard also argue that Count Six, the unreasonable search of the person and invasion of privacy claim, is *Heck*-barred. (Doc. 100-1 at 13.) Plaintiff's conviction for obstruction of justice was premised on Plaintiff taking a twenty-dollar bill that had been seized from his person out of the hands of Defendant Hotard. (Doc. 104 at 18.) Any § 1983 holdings or corresponding state law holdings on the reasonableness of the search resulting in the seizure of the twenty-dollar bill could imply the invalidity of Plaintiff's conviction, since it could indicate that the results of the search should have been suppressed at the state trial and therefore imply that the conviction was invalid. *See Weems v. Conley*, 770 F. App'x 237, 238 (5th Cir. 2019) (per curiam); *Shipman v. Sowell*, 766 F. App'x 20, 28 (5th Cir. 2019); *Hudson v. Hughes*, 98 F.3d 868, 872 (5th Cir. 1996). The claim is therefore *Heck*-barred.

Defendants further argue that Count Eleven, a § 1983 claim for denial of equal protection under the Fourteenth Amendment and La. Const. Art. I § 3, and Count Thirteen, a §§ 1985(3) and 1983 claim for conspiracy to violate equal protection under the Fourteenth Amendment, are *Heck*-barred. (Doc. 100-1 at 3, 4, 7–13). The Fifth Circuit has indicated that such equal protection claims, where they implicate the invalidity of a plaintiff's conviction, are likewise barred by *Heck*. *Guerrero v. Travis Cnty.*, 507 F. App'x 329, 329 (5th Cir. 2013) (per curiam) (holding that a plaintiff's gender-discrimination equal protection challenge was in essence a challenge to the constitutionality of his conviction). *See Kimble v. Jefferson Par. Sheriff's Off.*, No. 22-30078, 2023 U.S. App. LEXIS 2991 at *8 n.6, 2023 WL 1793876 at *3 n.6 (5th Cir. Feb. 7, 2023) (citing *Heck*, 512 U.S. 477, 486–87 (1994); *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005)). Here, if Plaintiff succeeded in arguing that the stop, search, and force used during his arrest were all a result of intentional discrimination and "racial profiling" absent "any appropriate state interest", and that

Defendants had "insufficient suspicion" to stop or search him, it could imply the invalidity of his stop, search, and ultimate arrest. (Doc. 89 at ¶¶ 307–14.)

II. Count Twelve Is Not *Heck*-Barred

However, Defendants' argument that Count Twelve, a Title VI claim against Sheriff Ard for intentional racial discrimination, is *Heck*-barred, fails. Defendants do not cite to any binding precedent applying a *Heck* bar to Title VI claims. (Doc. 100-1 at 7–10.) Nor is the Court aware of any Fifth Circuit precedent applying a *Heck* bar to Title VI claims. Defendants do not move to dismiss Count Twelve on other grounds. (*Id.* at 4.) Defendants' Motion to Dismiss is therefore denied with respect to Count Twelve.

III. Counts Eight and Nine Fail to State a § 1983 Claim

a. Count Eight Fails to State a § 1983 Claim

Defendants seek to dismiss Counts Eight and Nine under Rule 12(b)(6), arguing that Plaintiff does not plead facts sufficient to state a claim. (*Id.*) Count Eight is a § 1983 *Monell* claim for excessive force in violation of the Fourth Amendment, alleging "a custom or practice of over-policing and racial discrimination in issuing traffic citations . . . ." (Doc. 89 at ¶ 289.) Although it claims to be against Sheriff Ard, it is listed as a *Monell* claim and Plaintiff attempts to outline elements of a *Monell* claim. (*Id.* at ¶¶ 288–94.)

Under § 1983, municipal liability requires (1) "a policymaker"; (2) "an official policy"; and (3) "a violation of constitutional rights whose 'moving force' is the policy or custom." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001) (citing *Monell v. Dep't. of Social Servs.*, 436 U.S. 658, 694 (1978)).

The Fifth Circuit has affirmed that the sheriff is the final parish policymaker with respect to law enforcement. *Guillot v. Russell*, 59 F.4th 743, 750–51, 751 n.3 (5th Cir. 2023) (citing La.

Const. art. 5 § 27; La. R.S. § 13:5539; *Craig v. St. Martin Par. Sheriff*, 861 F. Supp. 1290, 1300 (W.D. La. 1994)). Plaintiff therefore alleges that Defendant Ard, as sheriff of Livingston Parish, is a policymaker for purposes of § 1983 municipal liability.

An official policy "may include 'duly promulgated policy statements, ordinances or regulations,' or 'a persistent, widespread practice of [municipal] officials or employees, which . . . is so common and well-settled as to constitute a custom that fairly represents municipal policy.'" *Ford v. Anderson Cnty. Tex.*, 102 F.4th 292, 322 (5th Cir. 2024) (quoting *Piotrowski v. City of Houston*, 237 F.3d at 579). Plaintiff does not allege any policy statements, ordinances, or regulations. (*Id.* at ¶¶ 289–93). Plaintiff relies solely on alleged custom, arguing that there is not only a custom "of over-policing and racial discrimination in issuing traffic citations" but also of "falsely reporting that an arrestee who was subjected to the use of excessive force was resisting arrest . . . ." (Doc. 89 at ¶¶ 289–90.) Plaintiff provides no further facts to support these allegations. Plaintiff likewise provides no further facts to support his allegations that "Defendants Hotard and/or Bowden, acting through Defendant Sheriff Ard's direction and/or ratification, carried out this practice or custom of racial targeting when they stopped, seized, and continually detained Plaintiff on the unfounded basis of failure to use a turn signal[,]" "us[ed] excessive force," and charged Plaintiff with resisting arrest. (*Id.* at ¶ 291.) Plaintiff alleges, with no further facts, that Defendant Ard "has actual or constructive knowledge of this practice and is deliberately indifferent." (*Id.* at ¶ 292.) Plaintiff references statistics showing higher rates of traffic stops, citations, and resisting arrest charges for Black drivers in Livingston Parish than for white drivers. (*Id.* at ¶¶ 144–55.) Plaintiff claims that this shows a policy of intentional discrimination against Black people in Livingston Parish. (*Id.* at ¶ 156.) However, Plaintiff fails to allege a widespread, settled practice or custom sufficient to establish an official policy.

Plaintiff also claims that Defendant Ard stated publicly "that classifying an area as 'high crime' can support pretextual traffic stops and searches within the area," and more specifically stated "that a particular geographic area with a high number of *arrests* (as opposed to convictions) can be classified as 'high crime.'" (*Id.* at ¶ 177.) However, Plaintiff fails to connect this statement to any policy applied to Plaintiff's neighborhood in Denham Springs. Plaintiff does not allege the existence of a specific policy in place classifying the neighborhood as "high crime", merely that there is "either a formal written or oral policy of Defendant Sheriff Ard and/or an ingrained and readily evident practice of over-policing and over-charging that Defendant Sheriff Ard has not acted to curtail." (*Id.* at ¶ 176.) Plaintiff therefore fails to plead a *Monell* claim for excessive force under § 1983.

Even if interpreted as a claim specifically against Defendant Ard in his personal capacity, Plaintiff fails to plead any specific facts sufficient to state a claim against Defendant Ard for excessive force under § 1983. *See* (*id.* at ¶¶ 288–94.) The Fifth Circuit has held that "'[a] supervisory official may be held liable… only if (1) he affirmatively participates in the acts that cause the constitutional deprivation, or (2) he implements unconstitutional policies that causally result in the constitutional injury.'" *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011) (quoting *Gates v. Tex. Dep't of Protective & Regul. Servs.*, 537 F.3d 404, 435 (5th Cir. 2008)); *see Skinner v. Ard*, 519 F. Supp. 3d 301, 317 (M.D. La. 2021) (deGravelles, J.). "'In order to establish supervisor liability for constitutional violations committed by subordinate employees, plaintiffs must show that the supervisor act[ed], or fail[ed] to act, with *deliberate indifference* to violations of others' constitutional rights committed by their subordinates.'" *Id.* at 317 (quoting *Gates*, 537 F.3d at 435 (internal quotation marks and citation omitted, alterations and emphasis in *Gates*)). *See Skinner*, 519 F. Supp at 317. Plaintiff has not alleged that Defendant Ard was present when Plaintiff

was arrested, much less that he participated in the use of force against Plaintiff. *See* (Doc. 89 at ¶¶ 75–83.) Furthermore, as analyzed above, Plaintiff has not adequately alleged that Defendant Ard put in place an official policy or established a practice or custom that led to excessive force.

b. Count Nine Fails to State a § 1983 Claim

Like Count Eight, Count Nine lists Defendant Ard but is pled as a § 1983 *Monell* claim. (*Id.* at ¶¶ 295–98.) It alleges a failure to investigate excessive force in violation of the Fourth Amendment, alleging that Defendant Ard "implemented inadequate policies regarding the investigation and discipline regarding officer misconduct." (*Id.* at ¶ 296.) Plaintiff then alleges further details about the discipline policy it claims caused the failure to investigate, stating that the policy "fails to adequately identify or punish deputies who commit excessive force violations," "fails to adequately identify or punish deputies who commit unreasonabl[e] seizure violations," and "fails to adequately identify or punish deputies who violated the rights of citizens to be free from racially-motivated law enforcement actions." (*Id.*)

As stated above, Plaintiff adequately alleges that Defendant Ard is a final policymaker as defined in Louisiana state law. *See Guillot*, 59 F.4th at 750-51. Plaintiff here alleges the existence of specific discipline policies put into place by Defendant Ard. (*Id.* at ¶ 207). Plaintiff alleges that Defendant Ard "discourag[es] or refus[es] to accept officer complaints in writing or anonymously" and that the Livingston Parish Sheriff Department (LPSO) will only accept officer complaints that are made orally. (*Id.* at ¶ 195.) "Only if an oral complaint is not resolved after meeting with the Chief of Operations is the complainant 'advised to file a formal written complaints [sic] on a form provided by the Chief of Operations,'" according to Plaintiff. (*Id.*) Plaintiff claims that individuals who have tried to file written or anonymous complaints have been turned away, "threatened with arrest and Mirandized by Livingston Parish Sheriff's deputies in an effort to discourage them from

asking for officer complaint forms." (*Id.* at ¶ 197.) Plaintiff claims that when oral complaints are made, Defendant Ard does not keep "accurate documentation of the substance of the complaint" and does not "utilize[e] and/or maintain[] proper audio and video footage of incidents." (*Id.* at ¶ 199.) Plaintiff claims that Defendant Ard has a policy that simultaneously "prohibits written complaints until after [an] oral complaint, and considers oral complaints made against LPSO deputies informal until they are investigated by his office." (*Id.* at ¶ 201.)

Plaintiff further alleges that the LPSO, with Defendant Ard as final policymaker, "prohibited reporters from contacting Defendant Sheriff Ard's spokesperson . . . directly, and instead were told to send messages in a group email to which the office would respond. After reporters followed this new protocol, the LPSO declined to provide further details about the deputy's discipline." (*Id.* at ¶ 207.) Likewise, Plaintiff alleges that "the department stopped accepting electronic public records requests, requiring all requests be sent by physical mail." (*Id.*)

Finally, Plaintiff alleges that the written record for his own complaint "does not include Mr. Clark's entire statement," but only "a partial written statement by Mr. Clark, a description of which deputies spoke to each other about Mr. Clark's complaint, and a statement that video footage, which itself was incomplete, was reviewed." (*Id.* at ¶ 200.) Plaintiff argues that the policies described above served to "embolden" LPSO officers and led them to believe that misconduct was acceptable in LPSO, which Plaintiff alleges led to excessive force in his encounter with LPSO. (Doc. 104 at 27–28.) To allege municipal liability, a plaintiff must allege that "through its *deliberate* conduct, the municipality was the 'moving force' behind the injury alleged" or, in other words, allege "a direct causal link between the municipal action and the deprivation of federal rights." *Bd. of the Cnty. Comm'rs v. Brown*, 520 U.S. 397, 404 (1997). To do this, a plaintiff "must demonstrate that a municipal decision reflects deliberate indifference to the risk that a violation of

a particular constitutional or statutory right will follow the decision." *Id.* at 411. "'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (internal quotation marks omitted, alteration in original) (quoting *Bd. of Cnty. Comm'rs*, 520 U.S. at 409). This generally requires alleging sufficiently numerous prior incidents of misconduct to support deliberate indifference for claims that a municipal authority has failed to act. *See Skinner*, 519 F. Supp. 3d at 314–15, 317–18 (citing *Connick*, 563 U.S. at 61–62; *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011)); *Bd. of Cnty. Comm'rs*, 520 U.S. at 404, 410).

Plaintiff here does not make a claim that the policy facially violated Plaintiff's rights. *See* (Doc. 89 at ¶¶ 205–17.) Instead, Plaintiff makes the more attenuated claim that these policies led LPSO officers to use excessive force against him. (Doc. 104 at 27–29.) Plaintiff argues that this claim is intertwined with Count Eight, tying the failure to investigate to the alleged policy or practice of excessive force. Plaintiff claims that 1) the policy of refusing to investigate or discipline excessive force complaints emboldened officers to continue to use excessive force, which 2) was the moving force of the deprivation of Plaintiff's rights when officers used excessive force against him, and 3) LPSO was deliberately indifferent to the risk of ongoing excessive force because they were aware of a pattern of prior excessive force complaints. (Doc. 104 at 26–27.) Plaintiff points to several prior lawsuits alleging excessive force. (Doc. 89 at ¶¶ 212–24.) One of these settled (*id.* at ¶ 214)[1]; another settled on the excessive force/battery claim (*id.* ¶ 212)[2]; a third was dismissed on procedural grounds (*id.* at ¶ 213)[3]. In none of these cases does Plaintiff allege that the plaintiffs

[1] *Causer v. Ard*, 2020, No. CV 18-779-SDD-RLB, U.S. Dist. LEXIS 178780, 2020 WL 5803449 (M.D. La. Sep. 29, 2020) (Dick, C.J.).
[2] *Aubin v. Columbia Cas. Co.*, 272 F. Supp. 3d 828 (M.D. La. 2017) (Jackson, J.).
[3] *Lowell v. Ard*, No.CV 17-00187-BAJ-RLB, 2019 U.S. Dist. LEXIS 170771, 2019 WL 4855150 (M.D. La. Sep. 30, 2019) (Jackson, J.).

had previously filed or attempted to file excessive force complaints with LPSO (*Id*. at ¶¶ 212–14.) "A blanket claim that each case contains allegations of excessive force" is insufficient even to establish a pattern for failure to train, let alone failure to investigate excessive force. *Kador v. Gautreaux*, No. CV 23-11-SDD-RLB, 2024 U.S. Dist. LEXIS 52264 at *52, 2024 WL 1261897 at *18 (M.D. La. Mar. 25, 2024) (Dick, C.J.). *See also Hoffpauir v. Columbia Cas. Co.*, No. CV 12-403-JJB-SCR, 2013 U.S. Dist. LEXIS 158026 at *37, 2013 WL 5934699 at *13 (M.D. La. Nov. 4, 2013) (Brady, J.) (finding that a series of lawsuits that "have either not resulted in a judgment or have ended in a judgment in favor of" the defendant did not constitute a pattern of improper conduct). Likewise, Plaintiff claims that an oral complaint of sexual misconduct against an officer was not formally investigated. (*Id.* at ¶ 203.) Plaintiff does not explain how this would embolden officers to use excessive force. *See* (*Id.* at ¶ 203–04.) As the Court has previously reiterated, "'a pattern requires similarity and specificity; prior indications cannot simply be for any and all bad or unwise acts, but rather must point to the specific violation in question.'" *Skinner*, 519 F. Supp. 3d at 315–16 (quoting *Peterson v. City of Fort Worth*, 588 F.3d 838, 851 (5th Cir. 2009)) (cleaned up).

Plaintiff's failure to investigate claim relies on the assertion that there were previous excessive force complaints, and that the policy of failing to adequately investigate those complaints reflected deliberate indifference to future excessive force. However, Plaintiff fails to allege prior excessive force complaints to LPSO that were not adequately investigated—merely lawsuits alleging excessive force, none of which resulted in a finding against Defendants. (*Id.* at ¶¶ 212–14.) Plaintiff has failed to allege that the policy he identifies was the moving force of the excessive force constitutional violation he alleges. As such, Plaintiff fails to adequately plead a *Monell* claim for failure to investigate excessive force.

Likewise, Plaintiff's failure to investigate claim against Defendant Ard is too attenuated to survive the 12(b)(6) inquiry. Plaintiff alleges that Defendant Ard is responsible for these policies, but again fails to adequately allege the connection between the policies and the harm he ultimately suffered. (*Id.* at ¶¶ 296–97.)

The Court recognizes that the allegations of the Complaint are serious and, if true, extremely troubling. However, the Court finds that Plaintiff has simply failed to sufficiently plead claims against Defendant Ard and the municipality at this time. However, the Court finds that Plaintiffs could cure the deficiencies in the Complaint, so the Court will grant leave to amend.

Conclusion

Accordingly,

IT IS ORDERED that Defendants Ard, Bowden, and Hotard's *Motion to Dismiss Pursuant to Rule 12(c)* (Doc. 100) is **GRANTED IN PART** and **DENIED IN PART**. The Court finds that Counts One, Two, Six, Eleven, and Thirteen are *Heck*-barred. Defendants' *Motion to Dismiss* is therefore **GRANTED** on these counts. The Court finds that Count Twelve is not *Heck*-barred, and Defendants' *Motion to Dismiss* is **DENIED** on this count. Finally, the Court finds that Plaintiff fails to plead facts sufficient to state a claim upon which relief may be granted with respect to Counts Eight and Nine. Defendants' *Motion to Dismiss* is **GRANTED** on these counts. Plaintiff's Counts One, Two, Six, Eleven, and Thirteen are **DISMISSED WITHOUT PREJUDICE**, with leave to refile if Plaintiff's conviction is reversed, expunged, or otherwise declared invalid or called into question by federal habeas corpus. *See Cook v. City of Tyler*, 974 F.3d 537, 539–40 (5th Cir. 2020) (per curiam). Claims Eight and Nine are **DISMISSED WITHOUT PREJUDICE**.

Plaintiff is given leave to amend his complaint with respect to all claims not dismissed with prejudice. Any amendments are due 28 days from order. Failure to amend will result in dismissal of claims with prejudice. Defendants are instructed to contact the Court if the 28-day period passes and Plaintiff has failed to file any amended complaint.

Signed in Baton Rouge, Louisiana, on October 1, 2024.

JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA