PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2302

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*THE ESTATE OF ADRIANO ROMAN, JR.,
Appellant,

v.

CITY OF NEWARK;
CITY OF NEWARK POLICE DEPARTMENT;
ANTHONY CAMPOS, Chief of Police;
RODGER C. MENDES;
ALBANO FERREIRA; ONOFRE H. CABEZAS;
JOSEPH CUETO;
FNU RESSUREICAO; FNU GOLPE; JOYCE HILL,
Individually and in their capacity as police officers;
JOHN DOES 1-20, as fictitious names for presently
unknown agents member commissioners and chiefs.

*(Amended pursuant to Clerk's Order dated 1/25/18)

Appeal from the United States District Court
for the District of New Jersey,
(D.C. Civil Action No. 2-16-cv-01110),
District Judge: Honorable Susan D. Wigenton.

Argued June 12, 2018

Before: AMBRO, JORDAN, and
HARDIMAN, *Circuit Judges*

(Opinion filed: January 29, 2019)

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OPINION OF THE COURT

AMBRO, *Circuit Judge*

Newark police officers forcibly entered and searched the apartment of Adriano Roman's girlfriend. App. at 386, 391, 459, 486. They arrested Roman, who was present in the apartment, after they found drugs in a common area that was shared by multiple tenants. *Id.* at 399, 479. Though he was imprisoned for over six months and indicted for various drug offenses, the New Jersey Superior Court found the search to be unlawful and the charges were dropped.

Roman now brings claims against the City of Newark (which includes its Police Department) and various police officers under 42 U.S.C. § 1983 (which gives a federal remedy against state officials who,

acting under color of state law, deprive "any citizen of the United States . . . of any rights, privileges, or immunities secured by the [U.S.] Constitution and laws") and New Jersey tort law. He alleges the City had a pattern or practice of constitutional violations and failed to train, supervise, and discipline its officers. He also pleads an unlawful search claim against the officers and contends they are liable for false imprisonment and malicious prosecution. The District Court dismissed all of the claims because they were inadequately pled. It also held the City did not have an ongoing practice of unconstitutional searches and arrests.

While most of Roman's claims do not withstand dismissal, his § 1983 claims against the City do. He has adequately alleged that its Police Department had a custom of warrantless searches and false arrests. He also sufficiently pled that the Department failed to train, supervise, and discipline its officers, specifically with respect to "the requirements of [the] Fourth Amendment and related law." App. at 160. Because Roman has stated a plausible claim against the City, we vacate and remand the District Court's holding on municipal liability. We affirm in all other respects.

I. Background[1]

On May 2, 2014, Roman and his girlfriend Tiffany Reyes were watching a movie in her apartment's bedroom. App. at 386, 389, 395. Unbeknownst to them, four Newark police officers had set up surveillance outside of her building because of complaints about narcotics activity. *Id.* at 338. The officers heard an argument between a man and a woman, *id.* at 340-42, and decided to enter Reyes' apartment without a warrant, *id.* at 491.

After they stepped inside the building, they discovered that the front door of the apartment was locked. They also noticed Melissa Isaksem, Reyes' friend, walking inside the building. *Id.* at 417-20. They stopped and questioned her. *Id.* at 417, 419. When she told them she was visiting Reyes, *id.* at 419, they

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[1] As noted below, we must, while reviewing a ruling on a motion to dismiss, view the facts in the light most favorable to the plaintiff. Accordingly, without judging the facts, we recount them as set out in the amended complaint and the transcript of the suppression hearing referred to below. Although Roman did not attach the transcript to the amended complaint, the Defendants included it in their motion to dismiss and told the District Court it was "capable of judicial notice" and "integral to the [c]omplaint." App. at 130. Thus we consider it at this stage.

In any event, both the amended complaint and transcript note that the officers forcibly entered the apartment, assaulted Roman, and falsely charged him with possession of a controlled substance. *See* Am. Compl. ¶¶ 17, 22, 28. Any minor differences in the two documents do not affect our analysis of his municipal liability claim. *See infra* Section III.A (explaining that the events leading up to Roman's search and arrest are not relevant to the merits of his municipal liability claim).

ordered her to knock on the apartment door for them and threatened to arrest her if she did not comply, *id.* at 419-20. Isaksem led them to the apartment and stood directly in front of the peephole. *Id.* at 421. The police stood to her left, presumably out of the peephole's range. *Id.* An officer knocked on her behalf. *Id.* Reyes asked who was at the door, and Isaksem announced her presence. *Id.*

Reyes opened the door, expecting to see only Isaksem. *Id.* at 386, 400, 501. Instead, several officers rushed inside. *Id.* at 387, 400, 501. They handcuffed Roman, Reyes, and Isaksem, then demanded Roman "call someone to bring drugs to the [apartment]." Am. Compl. ¶ 30 (internal quotation marks omitted). If he did, they assured him they would "'make a deal' and 'let him go.'" *Id.* Roman refused the officers' demands, *id.* ¶ 33, and the police searched the apartment. Eventually they found drugs in a common-area space that was shared by multiple tenants and located in the back of the apartment. App. at 399, 479. After seizing the contraband, they yelled, "[W]e got you, motherfucker[;] . . . you're fucked now." *Id.* at 427. Officer Rodger Mendes walked back to Roman, "flipped him . . . on[ ]to his stomach . . . , put his knee in his neck[,] and . . . said he was going to get raped [in prison]." *Id.* at 428. Another officer informed Roman's father, who lived next door and observed parts of the search, that his son "would go away for a long time." *Id.* at 454.

Roman was arrested and imprisoned on the same night. The officers filed a criminal complaint against him for possession of, as well as intent to distribute,

heroin and cocaine. A New Jersey grand jury returned a six-count indictment against him for the same offenses.

In response, Roman moved to suppress the evidence seized from the apartment. He argued the search was invalid under the Fourth Amendment because the contraband was not in plain view and thus a warrant was needed. The New Jersey Superior Court agreed. It concluded the plain-view exception did not apply and suppressed the contraband.

The State of New Jersey did not appeal the ruling and instead moved to dismiss the case. The Superior Court granted its motion in December 2014 and issued a final judgment of dismissal. Roman was released from prison during the same month.

Approximately a year later, Roman brought § 1983 and state-law tort claims against the City of Newark and various police officers (for simplicity, the City and the officers are jointly referred to as the "Defendants"). Among other things, he alleged the City had a custom or policy of unconstitutional searches, inadequate training, and poor supervision and discipline.[2] He also claimed the officers unlawfully searched his apartment

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[2] Roman's amended complaint also included allegations of discrimination of national origin in violation of 42 U.S.C. § 1983, civil conspiracy in violation of 42 U.S.C. § 1985, conspiracy to commit an unlawful search in violation of the New Jersey Constitution and 42 U.S.C. § 1985, and conspiracy to commit unlawful imprisonment in violation of 42 U.S.C. § 1985. We do not address these claims, as Roman does not press them on appeal.

and were liable for the torts of unlawful imprisonment and malicious prosecution.[3]

The Defendants responded with a motion to dismiss. The District Court sided with them, dismissing the complaint in its entirety. It first addressed Roman's claim against the City and concluded the complaint "fail[ed] to plead . . . a custom or policy" of unlawful searches and a failure to train or supervise officers. *Roman v. City of Newark*, Civil Action No. 16-1110-SDW-LDW, 2017 WL 436251, at *4 (D.N.J. Jan. 30, 2017). Although the complaint alleged "a pattern or practice of constitutional violations in areas including stop[] and arrest practices, use of force, and theft by officers," the Court did not consider that sufficient to state a claim. *Id.* (internal quotation marks omitted) (quoting Compl. ¶ 59). Instead, it viewed those practices as predating Roman's arrest and observed that "the imposition of a [f]ederal [m]onitor indicate[d] [the City's] attempts to change any wrongful policies or practices." *Id.*

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[3] We construe Roman's claim for unlawful imprisonment as a claim for false imprisonment. Although New Jersey lacks a cause of action for "unlawful imprisonment," it has codified the elements of a false imprisonment claim. *See* N.J. Stat. Ann. § 2C:13-3; *Mallery v. Erie R. Co.*, 92 A. 371, 371 (N.J. 1914) ("This appeal brings up a judgment recovered by the respondent in an action for false imprisonment. The declaration described the unlawful imprisonment. . . ."); *see also* 8 American Law of Torts § 27:1 ("False imprisonment, sometimes called criminal restraint or unlawful imprisonment, is committed when a defendant so restrains another person as to interfere substantially with his liberty.").

The Court also held the unlawful search claim was inadequately pled, as Roman did not "explain which [Defendant(s)] committed the allegedly wrongful acts" during the search and arrest. *Id.* Turning to the false imprisonment and malicious prosecution claims, it construed them as state-law claims and noted that plaintiffs must comply with the New Jersey Tort Claims Act before bringing them against public entities. *See* N.J. Stat. Ann. § 59:8-1 *et seq.* Because the "[c]omplaint nowhere allege[d]" Roman complied with the Act's procedures, the Court dismissed those claims as well. *Roman*, 2017 WL 436251, at *6.

The Court's dismissal was without prejudice, and it granted Roman leave to amend. He did so by omitting his tort claims and retaining his other allegations in almost identical form. The Court dismissed his amended complaint and reaffirmed its ruling on reconsideration. This appeal followed.[4]

II. Jurisdiction and Standard of Review

The District Court had federal-question and supplemental jurisdiction per 28 U.S.C. §§ 1331 and 1367(a), respectively, and we have jurisdiction over its final orders under 28 U.S.C. § 1291.

We review *de novo* its dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6). *See*

[4] Roman passed away while this appeal was pending, and his estate brings the claims on his behalf. We do not distinguish between Roman and his estate in this opinion.

Phillips v. County of Allegheny, 515 F.3d 224, 230 (3d Cir. 2008). When conducting our review, "we accept all factual allegations as true [and] construe the complaint in the light most favorable to the plaintiff." *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir. 2011) (internal quotation marks omitted). However, "we are not compelled to accept unsupported conclusions and unwarranted inferences . . . or a legal conclusion couched as a factual allegation[.]" *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007) (internal quotation marks omitted) (internal citation omitted).

III. Discussion

A. Roman sufficiently pled a municipal liability claim against Newark.

As noted, Roman alleges the City is liable under § 1983 because it "engaged in a pattern or practice of constitutional violations," "failed to properly train and/or supervise" its police force, and "failed to properly and adequately control and discipline" its police officers.[5] Am. Compl. ¶¶ 68, 73-74. Before discussing the merits of his claims, Roman directs our attention to the types of documents we may consider on a motion to dismiss. He contends we may review three sources that were provided to the District Court: an article

[5] Roman brings his municipal liability claims under § 1983 and the New Jersey Civil Rights Act, N.J. Stat. Ann. § 10:6-1 *et seq.* Because the latter "is interpreted analogously to . . . § 1983," we consider his New Jersey Civil Rights Act claims along with his § 1983 claim. *Coles v. Carlini*, 162 F. Supp. 3d 380, 404 (D.N.J. 2015).

published in the Newark *Star Ledger* (the "*Star Ledger* article"), a press release issued by the U.S. Attorney's Office (the "press release"), and a consent decree between the United States and the City of Newark (the "consent decree"). The *Star Ledger* article and press release were referenced in the amended complaint, *see id.* ¶¶ 68-69 (including hyperlinks to both), but the consent decree was attached to the Defendants' motion to dismiss, *see* App. at 129. Roman also asks us to look at one other document: the Department of Justice's Report on the investigation of the Newark Police Department (the "DOJ Report"). Although he acknowledges the DOJ Report was never provided to the District Court, he now claims it is integral to the pleadings.

Though the Defendants dispute that we may consider the DOJ Report, they add that we also cannot consider the consent decree because "no relevant provisions of [it] . . . were ever cited . . . to the District Court" and it is inadmissible settlement material. Defendants' Br. at 42. They assert as well, without any citation to the record, that Roman may not rely on the decree because he asked the District Court to confine its analysis to the pleadings.

We disagree with the Defendants' view of the consent decree. Although we examine the "complaint, exhibits attached to the complaint, [and] matters of public record," *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010), we can also consider documents "that a defendant attaches as an exhibit to a motion to dismiss," *Pension Benefits Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993), if they are

"undisputedly authentic" and "the [plaintiff's] claims are based [on them]," *Mayer*, 605 F.3d at 230. That holding extends to settlement material because plaintiffs "need not provide admissible proof at th[e] [motion-to-dismiss] stage." *In re OSG Sec. Litig.*, 12 F. Supp. 3d 619, 622 (S.D.N.Y. 2014); *see also In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 961 n.5 (N.D. Cal. 2014) (same). Moreover, the Supreme Court has been clear about the scope of our review, stating we "*must* consider the complaint in its entirety, as well as other sources [we] ordinarily examine when ruling on . . . motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (emphasis added).

Here, although the consent decree was not attached to Roman's amended complaint, we are free to review its contents for three reasons.[6] First, the Defendants attached the decree to their motion to dismiss and affirmed that it is "capable of judicial notice" as an indisputably authentic government document. App. at 129. Second, contrary to the dissent's assertion, the Defendants themselves argued (and correctly) before the

[6] Though the Defendants and our dissenting colleague do not challenge the *Star Ledger* article or the press release, we note that we consider them because they are referenced in the amended complaint. *See Tellabs*, 551 U.S. at 322. As Judge Jordan explains in his concurrence, however, Roman does not need either document or the suppression hearing transcript to state a municipal liability claim; the consent decree gives his allegations enough plausibility to survive dismissal.

District Court that Roman's claims were based on the consent decree. *Compare* Dissenting Op. at 5 ("What is crucial is whether Roman's complaint was 'based' on the consent decree."), *with* App. at 129 (filing from Defendants characterizing the consent decree as "integral to the Complaint"). Third, the amended complaint cited, and the District Court discussed, the DOJ investigation and federal monitor that eventually led to the consent decree. *See Roman*, 2017 WL 436251, at *4; *see also* Am. Compl. ¶¶ 68-71. Thus it was especially important for the Court to have considered the decree as well, given that it provides essential context to Roman's claims. That it did not was an abuse of discretion.

That said, we may not consider the DOJ Report at this stage because it was not provided to the District Court in the first instance by any party. Nor is it apparent that the Court considered it *sua sponte. See United States ex rel. Wilkins v. United Health Grp., Inc.*, 659 F.3d 295, 302 (3d Cir. 2011) ("Though we do not doubt the authenticity of these documents, nevertheless we will not consider them because the parties did not present them to the District Court and we do not find any indication in the record that the Court considered them on its own initiative."). Hence it cannot carry any weight in our analysis.

Turning to the amended complaint, Roman claims the City is liable for his unlawful search because it "failed to train its officers in the use of search and seizure techniques, probable cause, and/or methods to properly obtain a search warrant." Am. Compl. ¶ 95.

He alleges the Newark Police Department "engaged in a pattern or practice of constitutional violations" and asserts the Department of Justice appointed a federal monitor to oversee the reforms to which the City consented. *Id.* ¶ 68. His allegations also touch on the City's failure to "control and discipline" its police force, *id.* ¶ 74, and failure to "investigate . . . instances of . . . police misconduct," *id.* ¶ 81. He characterizes the City's practices in these areas as "tantamount to a[n] [unconstitutional] custom and/or policy," *id.* ¶ 82, thus indicating its "deliberate indifference to [its citizens' constitutional] rights," *id.* ¶ 83.

The Defendants respond that Roman has failed to allege a municipal liability claim, as no part of the *Star Ledger* article, press release, or consent decree references the types of constitutional violations pled in the amended complaint. They also contend the City had no notice "of any pattern of constitutional violations with respect to forced entry and searches of homes." Defendants' Br. at 50.

To plead a municipal liability claim, a plaintiff must allege that "a [local] government's policy or custom . . . inflict[ed] the injury" in question. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). "Policy is made when a decisionmaker possess[ing] final authority to establish municipal policy with respect to the action issues an official proclamation, policy, or edict." *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990) (alteration in original) (internal quotation marks omitted). "Custom, on the other hand, can be proven by showing that a given course of conduct,

although not specifically endorsed or authorized by law, is so well-settled and permanent as virtually to constitute law." *Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir. 1990) (Becker, J.); *see also Brown v. Muhlenberg Twp.*, 269 F.3d 205, 215 (3d Cir. 2001) ("A custom . . . must have the force of law by virtue of the persistent practices of state [or municipal] officials." (internal quotation marks omitted)).

Although a policy or custom is necessary to plead a municipal claim, it is not sufficient to survive a motion to dismiss. A plaintiff must also allege that the policy or custom was the "proximate cause" of his injuries. *See Kneipp v. Tedder*, 95 F.3d 1199, 1213 (3d Cir. 1996). He may do so by demonstrating an "affirmative link" between the policy or custom and the particular constitutional violation he alleges. *Bielevicz*, 915 F.2d at 850 (internal quotation marks omitted). This is done for a custom if Roman demonstrates that Newark had knowledge of "similar unlawful conduct in the past, . . . failed to take precautions against future violations, and that [its] failure, at least in part, led to [his] injury." *Id.* at 851. Despite these requirements, Roman does not need to identify a responsible decisionmaker in his pleadings. *See id.* at 850. Nor is he required to prove that the custom had the City's formal approval. *See Anela v. City of Wildwood*, 790 F.2d 1063, 1067 (3d Cir. 1986).

The pleading requirements are different for failure-to-train claims because a plaintiff need not allege an unconstitutional policy. *See Reitz v. County of Bucks*, 125 F.3d 139, 145 (3d Cir. 1997) ("[I]n the

absence of an unconstitutional policy, a municipality's failure to properly train its employees and officers can create an actionable violation . . . under § 1983."). Instead, he must demonstrate that a city's failure to train its employees "reflects a deliberate or conscious choice." *Brown*, 269 F.3d at 215 (internal quotation marks omitted). For claims involving police officers, the Supreme Court has held that the failure to train "serve[s] as [a] basis for § 1983 liability only where [it] . . . amounts to deliberate indifference to the rights of persons with whom the police come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (footnote omitted). A plaintiff sufficiently pleads deliberate indifference by showing that "(1) municipal policymakers know that employees will confront a particular situation[,] (2) the situation involves a difficult choice or a history of employees mishandling[,] and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights." *Doe v. Luzerne County*, 660 F.3d 169, 180 (3d Cir. 2011) (internal quotation marks omitted) (quoting *Carter v. City of Philadelphia*, 181 F.3d 339, 357 (3d Cir. 1999)).

In view of this case law, Roman has not pled a municipal policy, as his amended complaint fails to refer to "an official proclamation, policy, or [an] edict." *Andrews*, 895 F.2d at 1480. However, he has sufficiently alleged a custom of warrantless or nonconsensual searches. He has also adequately pled that the City

failed to train, supervise, and discipline its police officers.[7]

We start with Roman's allegations on municipal custom. He asserts the City had "a pattern or practice of constitutional violations in areas including . . . arrest practices." App. at 137. He further contends it had notice of this practice, as it received "complaints against officers accused of . . . conducting improper searches and false arrests." *Id.* at 134. The amended complaint, along with the press release and *Star Ledger* article, note that Newark was under the supervision of a federal monitor after Roman's arrest. Am. Compl. ¶ 68; App. at 133, 137. According to the press release, the monitor would oversee reforms in several areas, including searches, arrests, and the intake and investigation of misconduct complaints. App. at 137.

The consent decree echoes these points. It covers the same type of conduct Roman alleges, as it "prohibit[s] officers from relying on information known to be materially false or incorrect to justify a warrantless search . . . [or to] effect[ ] an arrest." *Id.* at 158; *see also id.* at 163 (mandating officers to collect data on consent, the type of search, and "a brief description of the facts creating probable cause"). The decree also requires the Police Department to investigate police

[7] We consider allegations of failure to train, supervise, and discipline together because they fall under the same species of municipal liability. *See* Rosalie Berger Levinson, *Who Will Supervise the Supervisors? Establishing Liability for Failure to Train, Supervise, or Discipline in a Post-Iqbal/Connick World*, 47 Harv. C.R.-C.L. L. Rev. 273, 280 (2012).

misconduct, *see generally id.* at 184-92, with special emphasis on allegations of criminal misconduct, false arrest, planting evidence, and unlawful searches, *see id.* at 150, 186.

While the consent decree was not in place during Roman's search and arrest, we may fairly infer that the problems that led to it were occurring during the time of his allegations and for some time before that. *See id.* at 133-34 (noting the investigation that resulted in the consent decree and federal supervision began in May 2011 and ended in July 2014). With this mind, the decree fortifies Roman's allegations of unlawful custom because it acknowledges "a pattern or practice of conduct by the Newark Police [Department] that deprives individuals of rights, privileges, and immunities secured by the Constitution." *Id.* at 144. When viewed in conjunction with the *Star Ledger* article, it references the types of constitutional violations mentioned in the amended complaint: warrantless searches, *id.* at 134, and false arrests, *id.* at 158. These violations were widespread and causally linked to Roman's alleged injury, as the Police Department was aware of them but "rare[ly] . . . acted" on citizen complaints. *Id.* at 134 (discussing complaints of "improper searches and false arrests"); *see also Beck v. City of Pittsburgh*, 89 F.3d 966, 974 (3d Cir. 1996) (noting the police department's failure to act on complaints "perpetuate[d] the City's custom of acquiescing in the excessive use of force by its police officers"). In light of these allegations, "it is logical to assume that [the City's] continued official tolerance of repeated

misconduct facilitate[d] similar unlawful actions in the future," including the search and arrest of Roman. *Bielevicz*, 915 F.2d at 851. It follows that he has adequately pled a municipal custom and proximate causation under § 1983.

We reach the same conclusion with respect to Roman's failure-to-train, failure-to-supervise, and failure-to-discipline claims. To start, the *Star Ledger* article includes a statement on police training from James Stewart, Jr., the head of Newark's police union. He conceded the "last training [he] received" was in 1995, when he first joined the Newark Police Department. App. at 134 (internal quotation marks omitted). Moreover, Stewart is not some unreliable, rogue officer—he is the head of the police union. Nor is his experience isolated: the consent decree indicates Newark police officers in general were not trained on "the requirements of [the] Fourth Amendment and related law." *Id.* at 160 (discussing various Fourth Amendment doctrines that should be included in police training, including "the difference[ ] . . . between voluntary consent and mere acquiescence to police authority"). The consent decree also touches on supervisory review of unlawful searches and arrests, requiring desk lieutenants and unit commanders to review "searches that appear to be without legal justification" and "arrests that are unsupported by probable cause." *Id.* at 161. Finally, it provides disciplinary measures for police officers who engage in "unlawful . . . searches" and "false arrests." *Id.* at 192. At the pleadings stage, a fair inference is that the consent decree was necessary because

of Department-wide failures, not because one officer was last trained in 1995.

This is enough to prove municipal liability because the City "[knew] to a moral certainty" that its officers would need to conduct searches. *Harris*, 489 U.S. at 390 n.10. Yet in at least one instance it failed to provide training since 1995, *see* App. at 134, and per the decree its training did not cover the basics of the Fourth Amendment, *see id.* at 158-61. The City also did not discipline officers for "sustained allegations of misconduct," including "prior violations" and other "aggravating factors." *Id.* at 192-93. In view of these deficiencies, one could reasonably infer that the City's inaction "reflected [its] 'deliberate indifference'" to Roman's Fourth Amendment rights. *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 409 (1997); *cf. Harris*, 489 U.S. at 390 n.10 ("[C]ity policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons. . . . Thus, the need to train officers in the constitutional limitations on the use of deadly force . . . can be said to be 'so obvious' . . . that failure to do so could properly be characterized as 'deliberate indifference' to constitutional rights." (internal citation omitted)). One could also infer that the City's failure to establish an adequate training program contributed to the specific constitutional violations alleged in the amended complaint. *See Brown*, 520 U.S. at 409-10 ("The likelihood that the situation will recur and the predictability that an officer lacking specific tools to handle that situation will violate citizens' rights . . . may also support an inference of causation."); *cf. A.M.*

ex rel. J.M.K. v. Luzerne Cty. Juvenile Detention Ctr., 372 F.3d 572, 582 (3d Cir. 2004) (reversing the District Court's grant of summary judgment in favor of a municipality because of "unrebutted testimony" that its juvenile detention center "did not have an adequate training program").

We conclude that the allegations regarding Newark's failure to train, supervise, and discipline are strong enough to survive a motion to dismiss. *See* Am. Compl. ¶¶ 63-98. Among them are: a failure to train officers on obtaining a search warrant, *id.* ¶ 67, and on "issuing truthful investigative reports," *id.* ¶ 77; a failure to supervise and manage officers, *id.* ¶¶ 67-68; and a failure to discipline officers, *id.* ¶ 74, first by "refus[ing]" to create a well-run Internal Affairs Department, *id.* ¶ 81, and second by "inadequately investigating, if investigating at all, citizens' complaints regarding illegal search and seizure, *id.* ¶ 84. The result was a "complete lack of accountability" and of "record keeping," *id.* ¶ 92, leading to a culture in which officers "knew there would be no professional consequences for their action[s]," *id.* ¶ 94. As the amended complaint alleges, it should come as no surprise that these conditions led to a federal investigation. *See id.* ¶ 89.

The dissent's attempt to distinguish the consent decree is unpersuasive. First, it misperceives the decree as concerning only police interactions with "pedestrians or the occupants of vehicles," not home searches. Dissenting Op. at 7 ("The consent decree says nothing about arrests and searches without consent that occur

at residences . . . "). In fact, one concern of the decree was false arrests, *see* App. at 158, which can occur both at home and on the street. And the decree does concern home searches: it sets parameters officers must follow before searching "a home based upon consent." *Id.* Although Reyes by no means consented to the search here, she willingly opened her apartment door only because the police had used her friend Isaksem as a Trojan horse to gain entry.

Second, the dissent believes that the consent decree cannot help Roman's case because Roman was Hispanic. *See* Dissenting Op. at 7 ("[T]he decree addressed police practices that disparately impacted the black community. But that racial disparity did not apply to Roman, who was Hispanic."). To the contrary, the consent decree includes an entire section entitled "Bias-Free Policing," *see* App. at 165-67, that never restricts itself to bias against the black community. Instead, it provides that police officers must "operate without bias based on *any* demographic category," *id.* at 166 (emphasis added), and specifically forbids officers from discriminating based on "proxies for demographic category" such as "language ability," *id.* at 167. Plainly, the consent decree was meant to protect *all* Newark residents, including Hispanic residents.

Further, we find it difficult to square the dissent's reasoning with the record evidence discussing the City's troubling practices around the time of Roman's search and arrest. *See*, *e.g.*, *id.* at 134 (stating only one complaint out of 261 filed was sustained by department investigators); *id.* at 158 (prohibiting officers

from relying on materially false information to justify a warrantless search); *id.* at 160 (requiring police officers to be trained on "the requirements of [the] Fourth Amendment and related law"); *id.* at 161 (mandating supervisory review of "searches that appear to be without legal justification" and "arrests that are unsupported by probable cause").

Unable to distinguish the consent decree outright, the dissent offers two narrow readings of the decree. First, it maintains that the decree can speak only to the Police Department's obligations going forward rather than shed any light whatsoever on the "status quo" within the Department before federal intervention. *See* Dissenting Op. at 10 (stating that the decree does not provide "any detail as to the status quo it addressed"). The dissent concedes that the DOJ probably did not enter into the consent decree because it was impressed with Newark's policing practices and wanted to encourage the City to keep up the good work. *Id.* At this stage, we must draw not only such obvious inferences, but also all reasonable ones, in favor of Roman. Thus we agree with the dissent on the "clear" difference between "agreeing to train more" (the consent decree on its face) and "agreeing that prior training was constitutionally inadequate" (the way in which the decree supports Roman's claims). *Id.* We simply believe that a reasonable inference bridges the gap in this case. Indeed, no inference is needed because Roman made the link explicit in the amended complaint. *See* Am. Compl. ¶ 89 (stating that the Police Department's "deliberate indifference to citizens' rights is what

led to the imposition of a [f]ederal [m]onitor program. . . . ").

Second, the dissent believes that the consent decree's training requirements, from which we can reasonably infer inadequate training before the decree, simply amount to "*additional* training" in, for instance, the requirements of the Fourth Amendment. Dissenting Op. at 10. To the contrary, the consent decree was meant to take the Newark Police Department back to basics: Do not lie on a warrant application or to justify a warrantless search, App. at 158; investigate police activities that appear to have lacked legal justification, *id.* at 161; and at all times follow the requirements of the Fourth Amendment, *id.* at 160.

The theme of the dissent appears to be that we are refashioning the amended complaint. It claims we are vacating the District Court's decision based on facts and arguments that were not presented to it. But as discussed above, we are engaged in *de novo* review of the adequacy of the amended complaint in light of documents that were before the District Court and that informed its allegations. *See supra* pp. 8-10. Additionally, and to repeat, the specific events leading up to Roman's search and arrest are not relevant to the merits of his municipal liability claim. Thus we are not vacating the Court's decision for excluding these facts from its analysis.

Rather, our focus is directed to Newark's practice at the time of Roman's search and arrest. The Court had notice of them, as it acknowledged that Roman

alleged "a 'pattern or practice of constitutional violations in areas including stop[ ] and arrest practices, use of force, and theft by officers.'" *Roman*, 2017 WL 436251, at *4 (quoting Compl. ¶ 59). Nonetheless it dismissed the complaint and amended complaint because it viewed the City as attempting to change its practices. Even if the record can be read that way—and we doubt that[8]—the District Court's rationale has the wrong focus. The question is not whether some evidence can be viewed as supporting the City. It is whether, viewing the pleadings and properly associated documents in the light most favorable to Roman, there are claims plausible enough to withstand a motion to dismiss. We think there is one—the municipal liability claim. And the Court did not have to look beyond the amended complaint and supporting documents to glean these facts.

In sum, Roman's municipal liability claim survives dismissal based on the record that was before the District Court. Because the Court reached the opposite

[8] The record does not support the Court's inferences, as it tells us the DOJ's investigation was not completed until July 2014, *see* App. at 137; the Government did not solicit applications for a federal monitor until February 2015, *see id.*; and the consent decree was not final until May 2016, *see id.* at 215. By contrast, Roman was arrested in May 2014 and imprisoned until December of that year. As such, it is plausible that Newark's practices were ongoing when police officers searched and arrested him. It is also reasonable to infer that the City's corrective measures postdated the arrest. Hence we do not consider the City's corrective measures to be enough to defeat Roman's allegations.

conclusion, we part with its holding. Thus we vacate and remand this portion of its decision.

B. The District Court correctly dismissed the false imprisonment and malicious prosecution claims because they were not pled under § 1983.

Roman alleges the Defendants are also liable for false imprisonment and malicious prosecution. As noted, the District Court construed these claims as state-law claims. It dismissed them because Roman did not comply with the New Jersey Tort Claims Act's procedural requirements for bringing claims against public entities and public employees. *See* N.J. Stat. Ann. § 59:8-1 *et seq*.

On appeal, Roman contends the Court erred in dismissing his claims because they were pled under § 1983. The Defendants counter that both claims were presented as state-law tort claims. They also point out that Roman omitted them from his amended complaint.[9]

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[9] At oral argument, Roman's counsel stated the false imprisonment claim was repled in Count 13 of the amended complaint even though that count alleges "*conspiracy* to commit unlawful imprisonment . . . [in violation of] 42 U.S.C. § 1985." App. at 278 (emphasis added); *see* Audio Recording of Oral Argument held June 12, 2018 at 11:39 to 12:06 (http://www2.ca3.uscourts.gov/oralargument/audio/17-2302 TheEstateofAdrianoRomanJrvCityofNewarketal.mp3). We do not consider this contention, as it was raised for the first time at oral argument and thus is waived. *See In re Grand Jury*, 635 F.3d 101, 105 n.4 (3d Cir. 2011).

As a preliminary matter, the Defendants correctly observe that false imprisonment and malicious prosecution are not in the amended complaint. Hence we must first decide if Roman has waived his right to challenge their dismissal on appeal. If we conclude that waiver does not apply, we then determine if the District Court correctly construed them as state-law tort claims.

We have not applied a strict rule in favor of waiver in this context. Instead, we have allowed "plaintiffs to appeal dismissals despite amended pleadings that omit the dismissed claim[,] *provided* repleading the particular cause of action would have been futile." *United States ex rel. Atkinson v. Pa. Shipbuilding Co.*, 473 F.3d 506, 516 (3d Cir. 2007) (emphasis in original) (footnote omitted). "Repleading is futile when the dismissal was 'on the merits.' A dismissal is on the merits when it is with prejudice or based on some legal barrier other than want of specificity or particularity." *Id.* If a court is uncertain, "doubt[] should be resolved *against* the party asserting waiver." *Id.* at 517 (emphasis in original).

Here the District Court analyzed both claims on legal grounds. It observed that they were based on the New Jersey Tort Claims Act, which allows individuals to bring tort claims against public entities and employees after complying with certain procedural and notice requirements, *see Tripo v. Robert Wood Johnson Med. Ctr.*, 845 F. Supp. 2d 621, 626-27 (D.N.J. 2012) (summarizing the Act's procedures for suing a public entity or

employee). It concluded Roman did not follow these requirements and thus dismissed the claims.

Although the Court was guided by procedural concerns, its dismissal was on the merits. The Tort Claims Act bars claims against public entities and employees if a plaintiff waits more than two years to file a "notice of claim." *See* N.J. Stat. Ann. § 59:8-8(b). The two-year mark is measured from the day the claim accrues (*i.e.*, the day on which the public entity or employee allegedly harmed the plaintiff). In our case, because Roman's claims accrued in May 2014, he had until May 2016 to file a notice of claim. As the Court noted, however, he did not file any type of notice during the two-year period. *See Roman*, 2017 WL 436251, at *6 (observing that, as of January 31, 2017, the date on which the Court dismissed the complaint, Roman had not filed a notice). Thus Roman's procedural error morphed into a dismissal on the merits, *see* N.J. Stat. Ann. § 59:8-8(b) ("The claimant shall be forever barred from recovering against a public entity or public employee if . . . [t]wo years have elapsed since the accrual of the claim."), and he may appeal the District Court's decision on his false imprisonment and malicious prosecution claims, *see Atkinson*, 473 F.3d at 516-17.

In light of this conclusion, we must focus on the pleadings and decide if Roman's claims are based on § 1983. If we look to the complaint, it suggests both false imprisonment and malicious prosecution are state-law tort claims. It never identifies them as § 1983 or federal claims. Rather, it presents them generically, following a series of other state-law tort claims. *See*,

e.g., App. at 44 ("intentional infliction of emotional distress"); *id.* at 46 ("negligent infliction of emotional distress"); *id.* at 47 ("assault and battery"); *id.* at 49 ("unlawful imprisonment"); *id.* at 51 ("malicious prosecution"). This indicates to us that Roman pled both claims as state-law claims, not federal claims. While the unlawful (*i.e.*, false) imprisonment claim does note that the Defendants "restrict[ed] [Roman's] constitutionally guaranteed rights of liberty and freedom of movement," it is silent as to whether it refers to the United States or New Jersey Constitution. Compl. ¶ 114. This is too facile to imply the former when but a few identifying words would do. The default is New Jersey law, which defines false imprisonment as "an[y] unlawful restraint that interferes with a victim's liberty" and requires "[n]o further wrongful purpose" for a *prima facie* showing. *State v. Savage*, 799 A.2d 477, 494 (N.J. 2009).

Accordingly, the District Court correctly construed the false imprisonment and malicious prosecution claims as state-law tort claims, and we affirm this portion of its holding.[10]

[10] We also affirm the dismissal of Roman's unlawful-search claims because they were not adequately pled. We do not opine on whether a plaintiff may allege joint and several liability in connection with an unlawful-search claim.

C. The doctrines of *res judicata*, collateral estoppel, and judicial estoppel do not require us to dismiss Roman's § 1983 claims.

Finally, the Defendants invoke the doctrines of *res judicata*, collateral estoppel, and judicial estoppel. According to them, each doctrine compels us to dismiss Roman's § 1983 claims.

We start with *res judicata*. The Defendants contend it bars Roman's claims because "the criminal matter and the suppression hearing were based on the exact same facts" as those alleged in Roman's pleadings. Defendants' Br. at 64. In their view, criminal proceedings are enough to preclude a *civil* suit seeking damages under § 1983.

We disagree. "A party seeking to invoke *res judicata* must establish three elements: (1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." *Duhaney v. Att'y Gen.*, 621 F.3d 340, 347 (3d Cir. 2010) (internal quotation marks omitted). Roman's suit is not based on the same cause of action as the criminal complaint and suppression hearing. Nor are his current claims of the type "that could have been brought" in the earlier criminal proceeding. *Id.* (internal quotation marks omitted); *see also Helvering v. Mitchell*, 303 U.S. 391, 397 (1938) ("The difference in degree of the burden of proof in criminal and civil cases precludes application of the doctrine of *res judicata.*"). New Jersey initiated the

criminal case. Roman was not at liberty to assert any claims except for defenses against the prosecution's case-in-chief. *See Leather v. Eyck*, 180 F.3d 420, 425 (2d Cir. 1999) ("[B]ecause the nature of the prior state[-] court proceeding was such that [the Appellant] could not have sought damages for his alleged constitutional injuries (while defending himself on [a criminal] charge . . .), *res judicata* does not bar his federal § 1983 suit for damages."). Moreover, he was not free to raise his § 1983 claims in the same criminal case; indeed, he could not bring them until the criminal proceeding concluded. *See Heck v. Humphrey*, 512 U.S. 477, 486 (1994) ("[T]he . . . principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement. . . ."). Accordingly, *res judicata* does not bar Roman's claims.

Moving on to collateral estoppel, the Defendants argue it (1) absolves Officer Mendes of liability because the Superior Court made a factual finding that Roman possessed the contraband that was seized from the apartment, (2) absolves Sergeant Joyce Hill because nothing in the Superior Court's transcript indicates she was present for the search and arrest, and (3) absolves the other named defendants because the Superior Court's transcript suggests they only handled the contraband. According to the Defendants, the Superior Court decided all of these issues in their favor during the suppression hearing. *See Bd. of Trs. of Trucking*

Emps. of N. Jersey Welfare Fund, Inc. v. Centra, 983 F.2d 495, 505 (3d Cir. 1992) (stating a party is collaterally estopped from litigating a specific issue if, among other things, "[an] identical issue was decided in a prior adjudication"). Again we disagree. Contrary to the Defendants' assertions, the Superior Court never decided any of these issues during the suppression hearing. While it did find that Roman had a possessory interest in the apartment, that is not enough for us to conclude that he had actual or constructive possession over the contraband. Collateral estoppel is not appropriate in this context.

Last, the Defendants assert that judicial estoppel precludes Roman's claims because he admitted that (1) drugs were found in the apartment, (2) he had a possessory interest in the apartment, (3) Officer Mendes was the only officer who initiated the prosecution, and (4) the remaining officers only handled the contraband and had no other roles. They insist these concessions "are sufficient to establish that [Roman's] arrest and prosecution arise out of his possession of incriminating evidence[.]" Defendants' Br. at 65. As noted, "[j]udicial estoppel, sometimes called the 'doctrine against the assertion of inconsistent positions,' is a judge-made doctrine that . . . prevent[s] a litigant from asserting a position inconsistent with one that [ ]he has previously asserted . . . in a previous proceeding." *Ryan Operations G.P.*, 81 F.3d at 358. This doctrine is not in play here, as Roman never stipulated that Officer Mendes was the only officer to bring the prosecution or that the remaining officers only handled the contraband. While

the Court found that Roman had a possessory interest in the apartment, that interest (we repeat) is not enough to establish that he possessed the contraband. Accordingly, judicial estoppel does not require us to dismiss Roman's claims.

* * *

Roman has sufficiently alleged a municipal liability claim against the City of Newark under § 1983. He cites various examples of inadequate police training, poor police discipline, and unheeded citizen complaints. He tells us certain police officers did not receive training for over 20 years, and their training did not cover the basic requirements of the Fourth Amendment. In his pleadings, he states the Newark Police Department did not discipline officers who engaged in police misconduct, Am. Compl. ¶¶ 84-86, including unlawful searches and false arrests, App. at 134. He also notes the public filed formal complaints about improper searches and false arrests that were disregarded almost wholesale. *Id.* These alleged practices were ongoing when Roman's search and arrest occurred, and the City had notice of them at that time. While the proof developed to support these allegations may or may not be persuasive to a finder of fact, they are enough to survive dismissal at this stage. Based on this conclusion, we part with the District Court's holding that Roman failed to state a § 1983 claim against the City. Though we affirm otherwise, we vacate and remand its decision on municipal liability.

JORDAN, *Circuit Judge*, *concurring*.

I join the majority opinion and write separately only to note that, even if we were to ignore the suppression hearing transcript and the press release and the *Star Ledger* article, there is still a sound basis to conclude that Roman has stated plausible claims for municipal liability. Our panel is united in understanding that we can properly consider the consent decree because it was provided to the District Court and was referenced and relied upon in Roman's amended complaint. Those two sources—the consent decree and the amended complaint—are sufficient to overcome the motion to dismiss the claims against the City of Newark.

The consent decree supports the allegations in the amended complaint in a number of respects. For example, it expressly prohibits Newark Police officers "from relying on information known to be materially false or incorrect to justify a warrantless search or to seek a search warrant[.]" (App. at 158). A fair inference from that prohibition is that it was needed precisely because the police were often relying on false information to justify warrantless searches. That inference bolsters Roman's allegation that "[n]o drugs were found in [his] possession" and yet the police "arrested [him] and falsely charged him with possession of a controlled dangerous substance[.]" (App. at 263 ¶¶ 28-29).

In another instance, the consent decree suggests that there has been a lack of training and supervision in the Newark Police Department. To remedy that

deficiency, the consent decree requires the Department to "provide all officers with at least 16 hours of training on stops, searches, arrests, . . . [and] training . . . in . . . Fourth Amendment issues" as well as mandating "desk lieutenant[s] or unit commander[s] [to] review each arrest report by officers under their command[.]" (App. at 159-61). The inference that there was inadequate training supports Roman's allegation that the Department's officers, "through their actions, inactions, course of conduct, poor or non-existent training and deficient supervision[,] caused . . . [the] illegal deprivation of [his] liberty[.]" (App. at 265 ¶ 48).

As a final example, the consent decree says that the Department must "conduct integrity audits and compliance reviews to identify and investigate all officers who have engaged in misconduct including unlawful . . . searches[ ] and seizures[.]" (App. at 192). The need for such audits and reviews lends plausibility to Roman's allegation that the "City had a custom and practice of inadequately investigating . . . citizens' complaints regarding illegal search and seizure[.]" (App. at 272 ¶ 84).

Thus, looking only at the amended complaint together with the consent decree, and giving Roman the benefit of all favorable inferences, as we must at this stage, there is a sufficient basis to say that Roman has stated plausible claims for municipal liability under 42 U.S.C. § 1983. Dismissal of those claims was therefore an error.

HARDIMAN, *Circuit Judge*, concurring in part and dissenting in part.

The District Court dismissed Roman's case after giving him two opportunities to state a claim upon which relief may be granted and after reconsidering its order of dismissal. Based on the record presented to it, the District Court's decision was correct and should be affirmed as to all but one of Roman's claims (the municipal liability claim for failure to train, supervise, or discipline).

The Majority vacates part of the District Court's judgment by reciting facts found nowhere in Roman's amended complaint and by adding facts of its own creation that were neither pleaded nor argued to the District Court with sufficient specificity. The Majority's deviation from standard civil practice and procedure compels this partial dissent.

I

This dissent results principally from a disagreement with my colleagues about which facts were properly before the District Court. First, the Majority proffers a narrative that Roman never gave the District Court and which has no relevance to the claims it revives. This Court need not (and should not) recite these "facts" and "background" as true. Second, Roman did not sufficiently plead a municipal liability claim based on Newark's alleged pattern or practice of Fourth Amendment violations. If the facts as pleaded (or subject to judicial notice) were as the Majority

recites them, I would agree that Roman stated a claim for relief. But since the actual facts before the District Court were quite different from those enunciated by the Majority, the District Court did not err by dismissing this claim.

Despite these disagreements with my colleagues, I agree with them that Roman's amended complaint sufficiently stated a municipal liability claim for failure to train, supervise, or discipline. Yet I cannot agree with their reasoning *in toto* because we should not extrapolate—and the District Court did not err by declining to extrapolate—from extraneous documents (like the consent decree Roman never provided nor cited to the District Court) to reach that conclusion. This single claim should be resuscitated, but only based on the face of the amended complaint.

A

The Majority purports to recount the facts of this case "as set out in the amended complaint and the transcript of the [state court] suppression hearing." Maj. Op. 4 n.1. Yet precious few of those facts were actually pleaded, primarily because the state court transcript was not proffered to the District Court by Roman. Moreover, the Majority's narrative of Roman's alleged mistreatment has effectively no bearing on the municipal liability claims it revives.

The lion's share of the troubling facts recited by the Majority were taken from sources other than Roman's amended complaint. Those sources—including

the state-court proceedings and subsequent briefs—paint a picture the District Court never observed while considering the motion to dismiss. In truth, the amended complaint says nothing about how the investigation began, or the surveillance of Roman's apartment, or the initial interaction between police and Melissa Isaksem, or the officers' use of Isaksem as a decoy to gain entry into the apartment, or the fact that drugs were seized from a common area, or the expletives and threats that specific officers yelled at both Roman and his father, or Officer Mendes's use of physical force. Unlike those graphic and specific facts the Majority extracts, the amended complaint is replete with conclusory and generalized assertions. *See* App. 261-63.

Here are some examples of the Majority's approach: Instead of averring that Officer Mendes flipped Roman on his stomach and put a knee in Roman's neck, Maj. Op. 5, the amended complaint merely states that "[t]he Defendant Officers and Defendant John Does 1-20 (fictitious names) illegally assaulted the Plaintiff, throwing him against a wall and handcuffing him," App. 262. And rather than recounting a detailed plan to initiate an illegal search that included using an unwitting friend as a decoy, Maj. Op. 5, the amended complaint states only that "'Defendant Officers' . . . and Defendant John Does 1-20 (fictitious names), after having the opportunity to observe that the Plaintiff was a person of Latino descent, initiated an illegal search and seizure of the Plaintiff's residence," App. 261.

Now on appeal, for the first time Roman cites facts establishing how the police gained entry into the apartment, the threatening words they spoke, and the actions of Officer Mendes. Roman Br. 10-12. We should not endorse this unpleaded narrative, nor suggest the District Court erred by failing to manufacture it in the first place.

B

The Majority concludes that Roman's amended complaint (supplemented by the consent decree, a news article, and a press release) contains enough facts to make plausible his claims that his injuries were proximately caused by Newark's: (1) pattern or practice of constitutional violations in the area of arrest practices; and (2) failure to adequately train, supervise, or discipline its officers. Maj. Op. 15-16. The first conclusion is unwarranted. And while the second conclusion is correct, the Majority still errs in its reliance on a document Roman never cited and inferential leaps that Roman's pleadings themselves do not admit.

1

On its face, the amended complaint contains very few facts related to Roman's arrest or Newark's alleged pattern or practice of rights violations, and what it does contain amount only to conclusory statements. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (noting that a court's duty to "accept as true all of the allegations contained in a complaint is inapplicable to legal

conclusions," and that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice"). When we excise from the Majority's narrative all facts that were neither pleaded nor presented to the District Court and the complaints' legal conclusions, it becomes clear that the District Court did not err by twice deeming Roman's complaint deficient regarding a pattern or practice of rights violations.

This Court should not fault the trial judge for failing to take cognizance of facts or arguments never presented to her, especially here, where Roman chose not to include in his amended pleading facts that could have been gleaned from Defendants' first motion to dismiss and the consent decree attached to it. *See Snyder v. Pascack Valley Hosp.*, 303 F.3d 271, 276 (3d Cir. 2002) (noting that "[a]n amended complaint supercedes the original version in providing the blueprint for the future course of a lawsuit").

The Majority primarily (and incorrectly) relies on that consent decree to buttress Roman's pattern-or-practice claim. Although the District Court could take notice of the consent decree's existence, it's quite another matter to hold it accountable for not accepting as true everything its contents could possibly imply—especially when Roman neither pleaded nor relied upon the decree's contents.

What is crucial is whether Roman's complaint was "based" on the consent decree.[1] *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). Only to the extent the Majority refashions Roman's pattern-or-practice claim such that it is *now* based on implausible inferences from the consent decree is it "based on" the consent decree. For Roman did not explicitly reference, quote, or rely on the document in his amended complaint—even after the City provided it. The amended complaint merely references the decree's announcement by the Department of Justice months after his arrest.[2] *See* App. 270 ¶ 68. The District Court, though it must draw all *reasonable* inferences in Roman's favor, had no obligation to abstract facts or inferences or claims Roman chose not to plead.[3] Instead, he was the master of his own complaint. *See Judon v.*

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[1] His appellate briefs' references to the document are not determinative, no matter how many times they cite the decree.

[2] This timing further complicates the Majority's reliance on the consent decree. The decree's announcement months after Roman's arrest requires yet another "infer[ence] that the problems that led to it were occurring during the time of his allegations and for some time before that." Maj. Op. 15. It also requires an inference that all of the City's "corrective measures postdated the arrest." *Id.* at 21 n.8.

[3] The document's undisputed authenticity as a government document says nothing about the reasonableness of the inferences the Majority abstracts from the consent decree. Nor does it speak to the contents' relevance to Roman's case. Such authenticity merely provides one reason for judicially noticing the decree's existence and eliminates one potential reason for *not* relying on it. It does not follow that it is "especially important" for district courts to rely on and extrapolate from such documents. Maj. Op. 11.

Travelers Prop. Cas. Co. of Am., 773 F.3d 495, 505 (3d Cir. 2014).

And even if we accept as true all the consent decree contains, Roman's arrest was not plausibly part of the pattern or practice of rights violations the decree addressed, except perhaps at the highest level of generality.[4] For starters, the decree addressed police stops and arrests of pedestrians or the occupants of vehicles. *See* App. 79 (detailing the pattern or practice investigated by the DOJ that led to the consent decree's adoption). The consent decree says nothing about arrests or searches without consent that occur at residences, which is what Roman complains of in this case.

Another problem that distinguishes Roman's complaint from the problems that led to the consent decree is the fact that the decree addressed police practices that disparately impacted the black community. *See* App. 93–98 (detailing same).[5] But that racial disparity

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[4] The consent decree itself admits no specific pattern or practice of rights violations. Although it followed a DOJ report that "revealed a pattern or practice of constitutional violations in areas including stop and arrest practices, use of force, and theft by officers," that report was never provided to the District Court. App. 137; *see* Maj. Op. 11–12. Instead, the consent decree only outlines measures Newark agreed to take—not any pattern or practice of rights violations, let alone one that plausibly caused Roman's injuries. In fact, that report actually demonstrates that even the pattern or practice that led to the consent decree could *not* plausibly have caused Roman's injuries.

[5] In his motion for reconsideration, Roman claimed his municipal liability argument was based on "the City's widespread and systemic misuse of police powers to treat members of a protected racial class different from those of white citizens." ECF

did not apply to Roman, who was Hispanic. *See* App. 261 ¶ 16. While the consent decree may have been "meant to protect *all* Newark residents," Maj. Op. 19, the point remains that the pattern or practice giving rise to it was not one that plausibly caused Roman's injuries.

Finally, the consent decree addressed erroneous narcotics arrest reports where "individuals often were purportedly seated in cars holding clear plastic baggies in front of them or on their laps and officers could 'immediately' see the contraband, even though the report indicated that the subject's back was to an officer, or that the officer had not yet approached the car." App. 92 (detailing the pattern or practice investigated by the DOJ that led to the consent decree's adoption). Wholly unrelated to those erroneous reports, Roman alleges that officers exhaustively searched the apartment without a warrant, and he is silent as to where and when the officers found the drugs. *See* App. 30–31, 262–63.

In sum, Roman's arrest was too dissimilar from the pattern or practice addressed by the consent decree to plausibly allege proximate causation for his injuries. While clear that the DOJ did not enter into the consent decree "because it was impressed with Newark's policing practices," Maj. Op. 20, it was not the District Court's duty to imagine all possible inferences from the

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43-3 at 8. Unlike the pattern or practice of Fourth Amendment violations the Majority now remands, he argued "racial profiling, racial discrimination, or other widespread discrimination of minorities" gave rise to his municipal liability cause of action. *Id.*

document. It was Roman's duty to plead them. *See Judon*, 773 F.3d at 505. For the Majority to conclude otherwise, it must derive that pattern or practice from sources not before the District Court and define it at the highest level of generality: Fourth Amendment violations writ large. In other words, my colleagues conclude that because Newark police allegedly engaged in a pattern or practice of Fourth Amendment violations of type *x*, it follows that they plausibly committed this violation of type *y*—all based on a document they cannot claim the District Court *must* have considered. The District Court did not err in failing to perform the Majority's inferential leaps to reach that conclusion based on a document it need not have considered in the first place. It properly dismissed this claim rather than indulge such speculation. *See Iqbal*, 556 U.S. at 679–80.

With or without these sources, the amended complaint's bare legal conclusions need not be accepted as true. *Id.* at 678. So Roman failed to state a pattern-or-practice claim on which relief could be granted.

2

Roman's failure-to-train, failure-to-supervise, and failure-to-discipline claim was sufficiently pleaded. But the Majority's method for arriving at this conclusion suffers from similar deficiencies to its pattern-or-practice reasoning. The Majority's reliance on the consent decree is again misplaced for the reasons

discussed above.[6] And even if such reliance were appropriate, the consent decree does not make Roman's claim plausible.

Roman's arrest was not plausibly caused by the failures to train, supervise, or discipline Newark officers the Majority cites in the consent decree because no such failures appear in the document. The Majority claims "the consent decree indicates Newark police officers were not trained on 'the requirements of [the] Fourth Amendment and related law.' " Maj. Op. 16. And "per the decree" the City's "training did not cover the basics of the Fourth Amendment." *Id.* at 17. It does no such thing. Rather, it indicates that Newark agreed to implement *additional* training on "the requirements of [the] Fourth Amendment and related law" without any detail as to the status quo it addressed. App. 160. While it's safe to say that the DOJ did not endorse that status quo, the difference between agreeing to train more and agreeing that prior training was constitutionally inadequate regarding the Fourth Amendment writ large should be clear. And, as discussed above, the consent

[6] The Majority's reliance on the news article and press release hyperlinked in Roman's complaints is likewise inappropriate. The news article's identification of one officer—who may or may not have been involved in Roman's arrest—who told a reporter he "*think[s]*" he did not receive training for 20 years is not enough to subject the City to liability for failure to adequately train its entire police force. App. 134 (emphasis added). This demonstrates no custom; nor does it plausibly demonstrate the police academy training all officers receive was constitutionally inadequate without more follow-up. Nor does the article address supervision or discipline. Similarly, the press release addresses none of the three.

decree arose from a host of policing practices unlike those Roman alleged (except at the highest level of generality). Newark could not plausibly have agreed to the extraordinary liability that would come from admitting that its police training violated the Fourth Amendment in every instance, or in every instance possibly connected to Roman's arrest. Indeed, the decree says no such thing about *any* instance.

The consent decree is even thinner as it relates to supervisory and disciplinary issues. From the City's agreement to adhere to certain review processes and disciplinary measures regarding unlawful searches and false arrests, the Majority perceives a "deliberate indifference to Roman's Fourth Amendment rights." Maj. Op. 17 (internal quotations and citation omitted). That does not follow. The decree does not describe or admit any processes or measures already in place or any existing pattern of unlawful searches or false arrests.

Instead, Roman's amended complaint directly alleged training, supervision, and discipline problems with adequate specificity to survive a motion to dismiss. *See*, *e.g.*, App. 270–72 ¶¶ 68, 70, 71, 78, 80, 82; *see also Doe v. Luzerne Cty.*, 660 F.3d 169, 179–80 (3d Cir. 2011) (quoting *Carter v. City of Phila.*, 181 F.3d 339, 357 (3d Cir.1999)) (detailing standard at summary judgment for failure-to-train claim). The Majority's improper reliance on the consent decree and inferential leaps from that and other sources outside the amended complaint are, in my view, erroneous and unnecessary.

* * *

As we have noted many times before, we are a court of review, not a court of first view. *See*, *e.g.*, *In Re: J & S Props., LLC*, 872 F.3d 138, 148 (3d Cir. 2017). Our review is based on the record as presented by counsel in our adversary system. We should not fault the District Court for failing to manufacture facts and craft arguments that Roman neglected to plead. By conjuring its own facts repackaged as if pleaded in the amended complaint, the Majority imposes a new duty upon district judges within the Third Circuit. It does so without citing precedent for the proposition that a district court *must* consider facts and arguments never pleaded or argued by the plaintiff. I cannot subscribe to this new rule.

This appeal implicates a fundamental legal principle: the plaintiff is the master of his complaint. Because of that time-honored principle, Roman's failure to state a policy-or-practice claim upon which relief may be granted requires the harsh sanction of dismissal. After his initial complaint was found inadequate, Roman failed to file an amended complaint that cured the deficiencies identified by the District Court. Even assuming Roman might have had a legitimate claim, it would have been improper for the District Court to try to make Roman's case for him. And it's especially inappropriate for us to overrule the decision of a district judge because of a failure to apprehend facts and arguments never presented to her. I respectfully dissent.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

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LETTER ORDER FILED WITH THE CLERK OF THE COURT

Re: Roman v. City of Newark, et al.
Civil Action No. 16-1110 (SDW) (LDW)

Counsel:

Before this Court is Defendant City of Newark, Roger Mendes, Albano Ferreira, Onofre Cabezas, Joseph Cueto, Miguel Ressurreicao, William Golpe, and

Joyce Hill's[1] (collectively, "Defendants") Motion to Dismiss Adriano Roman's ("Plaintiff") Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)). This Court having considered the parties' submissions, having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, for the reasons discussed below, **GRANTS** Defendants' motion.

DISCUSSION

A. Standard of Review

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). This Rule "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted); *see also Phillips v. Cty. of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (stating that Rule 8 "requires a 'showing,' rather than a blanket assertion, of an entitlement to relief"). In considering a Motion to Dismiss under Rule 12(b)(6), the Court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled

[1] Plaintiff also names "John Does 1-10" as defendants.

to relief." *Phillips*, 515 F.3d at 231 (external citation omitted). However, "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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Fowler v. UPMC Shadyside*, 578 F.3d 203 (3d Cir. 2009) (discussing the *Iqbal* standard).

B. Plaintiff's Amended Complaint Fails to Remedy the Deficiencies of his Original Complaint

The full factual history of this matter is set forth in this Court's January 30, 2017 Opinion, therefore, only facts necessary for this Opinion are included here. On February 26, 2016, Plaintiff filed a seventeen-count Complaint in this Court, including claims under 42 U.S.C. §§ 1983 and 1985(3), alleging that Defendants acted under color of law to deprive him of his federal and state constitutional, statutory, and common law rights during a warrantless search and arrest. Defendants moved to dismiss for failure to state a claim upon which relief could be granted pursuant to Rule 12(b)(6) and this Court granted their motion without prejudice on January 30, 2017, finding, among other things, that Plaintiff had made "global statements about Defendants' conduct, but fail[ed] to explain which individual(s) committed the allegedly wrongful acts," failed to "identify [himself] as a member of a protected class" or "allege any discriminatory animus," and did not show

the alleged conspiracy to deprive him of his rights "was racially motivated." (Dkt. No. 32 at 8-10.)

Plaintiff filed a nine-count Amended Complaint on February 22, 2017.[2] (Dkt. No. 34.) The Amended Complaint, however, fails to remedy the fatal deficiencies of the initial Complaint. For example, although Plaintiff's Amended Complaint alleges that he is "a person of Dominican and Puerto Rican descent" and a "member of a protected class" under federal and state law, he still does not plead racial animus, discrimination or disparate treatment by the Defendants. Nor has Plaintiff specified which Defendant committed which wrongful acts. Rather, he continues to allege that all Defendants committed all of the allegedly illegal activity. This is insufficient under Rule 12(b)(6).

Therefore, for the reasons set forth here and in this Court's January 30, 2017 Opinion, Defendants' Motion to Dismiss the Amended Complaint will be **GRANTED**.

CONCLUSION

For the reasons set forth above,

IT IS on this 7th day of April, 2017,

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[2] Plaintiff omitted his state common law claims from the Amended Complaint, which were dismissed for failure to file a Notice of Claim as required under New Jersey state law. (Dkt. No. 32 at 10-11.)

ORDERED that Defendants' Motion to Dismiss is **GRANTED**.

SO ORDERED.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J

Orig: Clerk
cc: Parties
Leda D. Wettre, U.S.M.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ADRIANO ROMAN,

Plaintiff,

v.

CITY OF NEWARK, RODGER C. MENDES, ALBANO FERREIRA, ONOFRE H. CABEZAS, JOSEPH CUETO, FNU RESSURREICAO, FNU GOLPE, JOYCE HILL individually and their capacity as police officers, JOHN DOES 1-20 as fictitious name for presently unknown agents, members, commissioners and chiefs,

Defendants.

Civil Action No.:
16-1110-SDW-LDW

FIRST AMENDED COMPLAINT
AND JURY DEMAND

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Attorneys for Plaintiff Adriano Roman

* * *

PARTIES

3. Plaintiff, Adrian Roman, (hereinafter "Plaintiff" was born May 9, 1989 and is a person of Dominican and Puerto Rican descent and was at all times mentioned herein a citizen of the United States of America who, at the time the events in this Complaint took place lived at 86 Napoleon Street, Newark, New Jersey, and now resides at 96 Clifford Street, Apt. 3, Newark, New Jersey 07105.

4. Plaintiff, at all times relevant hereto, is a member of a protected class, being a Dominican and Puerto Rican descent, and duly recognized as a protected class by the U.S. Constitution, the New Jersey Constitution and Section 42 U.S.C. §1983 and §1985.

5. Defendant City of Newark is a New Jersey municipal corporation, organized and existing under and by virtue of the Constitution and law of the State of New Jersey, and is located at 920 Broad Street, Newark, New Jersey 07102, (hereinafter referred to as the "City").

6. Defendant, Rodger C. Mendes, badge number 9438, is and at all times mentioned was duly appointed, employed and acting police officer of Defendant City, State of New Jersey (hereinafter referred to

as "Defendant Mendes"). Defendant Mendes is named in his personal and official capacity.

7. Defendant, Albano Ferreira, badge number 7120, was and is at all times mentioned a duly appointed, employed and acting police officer of Defendant City, State of New Jersey (hereinafter referred to as "Defendant Ferreira"). Defendant Ferreira is named in his personal and official capacity.

8. Defendant, Onofre H. Cabezas, is and at all times mentioned was duly appointed, employed and acting police officer of Defendant City, State of New Jersey (hereinafter referred to as "Defendant Cabezas"). Defendant Cabezas is named in his personal and official capacity.

9. Defendant, Joseph Cueto, is and was at all times mentioned a duly appointed, employed and acting police officer of Defendant City, State of New Jersey (hereinafter referred to as "Defendant Cueto"). Defendant Cueto is named in his personal and official capacity.

10. Defendant, FNU (First Name Unknown) Ressurreicao, is a municipal employee in the position of police officer for the Police Department (hereinafter referred to as "Defendant Ressurreicao"). Defendant Ressurreicao is named in his personal and official capacity.

11. Defendant, FNU (First Name Unknown) Golpe, is a municipal employee in the position of police officer for the Police Department (hereinafter referred

to as "Defendant Golpe"). Defendant Golpe is named in his personal and official capacity.

12. Defendant Sgt. Joyce Hill is a municipal employee in the position of Police Sergeant for the Police Department (hereinafter referred to as "Defendant Hill") who approved and supervised the aforementioned police officers in connection with their illegal arrest, seizure, malicious prosecution, assault, battery and civil rights violations of the Plaintiff. Defendant Hill is named in his [sic] personal and official capacity.

13. At all times mentioned, Defendant Police Officers were the employees, agents, and servants of Defendant City and the Newark Police Department and were at all times acting under color of law and in the course of their employment with the police department.

14. At all times relevant herein, Defendants, John Does 1-20 (fictitious names) were agents, servants, supervisors, employees, or representatives of the Defendant City and the Newark Police Department who were acting under the color of law and in the course of their employment and are unknown at this time to be later named during the discovery process.

CAUSE OF ACTION

15. On or about May 2, 2014, the Plaintiff, was in full compliance with all laws of the State of New Jersey while walking to his residence at 86 Napoleon Street, Newark, New Jersey 07105.

16. Defendant Police Officers Mendes, Cabezas, Cueto, Ressurreicao, Golpe, Ferriera, and along with other unknown officers (hereinafter collectively "Defendant Officers") and Defendant John Does 1-20 (fictitious names), after having the opportunity to observe that the Plaintiff was a person of Latino descent, initiated an illegal search and seizure of the Plaintiff's residence.

17. Defendant Officers and Defendant John Does 1-20 (fictitious names) unlawfully and without Plaintiff's consent, or probable cause, forcibly entered the Plaintiff's apartment located 86 Napoleon Street, Newark, New Jersey (the "Residence"), and handcuffed and arrested Plaintiff and then commenced an exhaustive search of the Residence for over an hour.

18. The Defendant Officers and Defendant John Does 1-20 (fictitious names) did not have a warrant to search the residence.

19. The Defendant Officers and Defendant John Does 1-20 (fictitious names) did not have a warrant for the Plaintiff's arrest.

20. The Defendant Officers and Defendant John Does 1-20 (fictitious names) failed to seek a warrant to search or seize.

21. The Defendant Officers and Defendant John Does 1-20 (fictitious names) failed to present a warrant to the Plaintiff or any of the occupants of the residence.

22. The Defendant Officers and Defendant John Does 1-20 (fictitious names) illegally assaulted the

Plaintiff; throwing him against a wall and handcuffing him.

23. All of the Defendant Officers and Defendant John Does 1-20 (fictitious names) were out of uniform but still acting under the color of law.

24. The Defendant Officers and Defendant John Does 1-20 (fictitious names) acted illegally by searching the Plaintiff's residence without a valid search warrant or probable cause.

25. The actions and inactions of the Defendant Officers and Defendant John Does 1-20 (fictitious names) were the proximate cause of Plaintiff's damages.

26. This search, seizure and arrest was made in violation of the Fourth and Fourteenth Amendments and the New Jersey Constitution and common law.

27. The Defendant Officers and Defendant John Does 1-20 (fictitious names) improperly, illegally and unconstitutionally, searched and seized the plaintiff, and falsely, illegally, improperly and unconstitutionally arrested and imprisoned him and otherwise deprived him of his civil rights.

28. After completing the illegal search, Defendant Officers Defendant and John Does 1-20 (fictitious names) arrested Plaintiff and falsely charged him with possession of a controlled dangerous substance and possession with the intent to distribute same.

29. No drugs were found in the possession of Plaintiff.

30. The Defendant Officers and Defendant John Does 1-20 (fictitious names) demanded that Plaintiff call someone to bring drugs to the residence and told him that if he did so they would "make a deal" and "let him go."

31. Plaintiff refused the unlawful demands of the Defendant Officers and Defendant John Does 1-20 (fictitious names).

32. The Defendant Officers and Defendant John Does 1-20 (fictitious names) made the same unlawful demands on other occupants of the apartment promising that they would let Plaintiff go if they got someone to bring drugs to the apartment.

33. These demands were similarly rejected.

34. The Defendant Officers and Defendant John Does 1-20 (fictitious names) took Plaintiff to the police department and subsequently transported him to the Essex County Jail and falsely imprisoned Plaintiff, in a locked jail cell from May 2, 2014 to late December 2014 when he was released after a judicial determination that the search was illegal.

35. A decision was made by the State of New Jersey not to file an appeal and the underlying criminal charges were dismissed.

36. During the period of false imprisonment, Plaintiff was subjected by Defendant Officers and

Defendant John Does 1-20 (fictitious names) to fingerprinting, photographing, and intermittent interrogation.

37. At no time was Plaintiff permitted to make bail, post bond, or be released on his own recognizance.

38. None of the Defendant Officers and Defendant John Does 1-20 (fictitious names), at the time of the above-mentioned illegal search or at any time during the subsequent detention of Plaintiff, had in their possession any warrant issued by any Judge, or Magistrate authorizing a search of the Residence, nor had any warrant in fact been issued by any Court, Judge, or Magistrate for such search and arrest.

39. There was no reasonable basis for the search, seizure and arrest.

40. There was no probable cause for Plaintiff's search, seizure and arrest.

41. The acts alleged above were committed either on the instruction of Defendant Officers and Defendant John Does 1-20 (fictitious names), by the Defendant Officers and Defendant John Does 1-20 (fictitious names) or with the knowledge and consent of these Defendant Officers and Defendant John Does 1-20 (fictitious names), or were thereafter approved and ratified by these Defendant Officers and Defendant John Does 1-20 (fictitious names) and their supervising Officers and the Newark Police Department.

42. Subsequent to the above-described warrantless search and seizure, on or about December 18,

2014, Bahir Kamil, Judge of the Superior Court of New Jersey, Essex County dismissed the criminal complaint filed against Plaintiff in its entirety.

43. This dismissal arose from a motion filed by the State of New Jersey confirming that the trial court had suppressed all evidence as illegally gathered, that there was no lawfully gathered evidence and no appeal filed. A copy of the dismissal is attached to the Complaint, as Exhibit "A".

44. As a result of Defendant Officers and Defendant John Does 1-20 (fictitious names) unlawful conduct Plaintiff suffered great humiliation, separation from his family, friends and loved ones, loss of employment and income, opportunities for employment, embarrassment and mental suffering, all to Plaintiff's damage.

45. Plaintiff is entitled to seek damages suffered as a result of the illegal and wrongful arrest.

46. Each of the Defendant Officers and Defendant John Does 1-20 (fictitious names), individually and in conspiracy with the others, acted under pretense and color of law and their official capacity, but such acts were beyond the scope of their authority, jurisdiction and without authorization of law.

47. Each Defendant Officers and Defendant John Does 1-20 (fictitious names), individually and in conspiracy with the others, acted maliciously, wantonly, unlawfully, willfully, knowingly, and with specific intent to deprive Plaintiff of his rights to freedom from illegal searches and seizure of their persons, papers,

and effects, and of their rights to freedom from unlawful arrest, detention, and imprisonment, all of which rights are secured to Plaintiff by the Fourth, Sixth and Fourteenth Amendments of the Constitution of the United States, and the laws of the State of New Jersey.

48. The Defendant Officers and Defendant John Does 1-20 (fictitious names), through their actions, inactions, course of conduct, poor or non-existent training and deficient supervision caused and/or permitted to be caused constitutional violations and illegal deprivation of Plaintiff's liberty.

* * *

COUNT SIX

UNLAWFUL SEARCH –
U.S. CONSTITUTION AMENDMENT IV

103. Plaintiff repeats and realleges each of the foregoing Paragraphs 1 to 102 of the Complaint as set forth at length herein.

104. The Defendants' actions constitute an illegal search in violation of the United States Constitution.

* * *

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
ESSEX COUNTY
INDICTMENT NO. 14-07-1782-I
A.D. NO. _____

STATE OF NEW JERSEY, vs. ADRIANO ROMAN, Defendant.	)))))	TRANSCRIPT OF MOTION TO SUPPRESS HEARING

Place: Essex Cty. Courthouse
50 West Market Street
Newark, NJ 07102

Date: December 2, 2014

BEFORE:

HONORABLE BAHIR KAMIL, J.S.C.

TRANSCRIPT ORDERED BY

WILSON D. ANTOINE, ESQ. (Assistant Corporation Counsel, City of Newark)

APPEARANCES:

SARAH E. CHAMBERS, ESQ. (Assistant Prosecutor) Attorney for the State of New Jersey

DANA M. SCARRILLO, ESQ. (Sole Practitioner) Attorney for the Defendant

* * *

[16] Q Okay, and when you say we, who actually exited the vehicle?

A Myself, Officer Ferreira and Officer Cueto.

Q Okay. So, tell me – so you exited the vehicle. Now, tell me what happens next.

A As we exit the vehicle we came upon the building of 86 Napoleon. As we were standing outside the building we just heard a large commotion, argument, coming from within the building.

* * *

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
ESSEX COUNTY
INDICTMENT NO. 14-07-1782-I
A.D. NO. _____

STATE OF NEW JERSEY, vs. ADRIANO ROMAN, Defendant.	)))))	TRANSCRIPT OF HEARING

Place: Essex Cty. Courthouse
50 West Market Street
Newark, NJ 07102

Date: September 19, 2014

BEFORE:

HONORABLE BAHIR KAMIL, J.S.C.

TRANSCRIPT ORDERED BY

WILSON D. ANTOINE, ESQ. (Assistant Corporation Counsel, City of Newark)

APPEARANCES:

SARAH E. CHAMBERS, ESQ. (Assistant Prosecutor) Attorney for the State of New Jersey

DANA M. SCARRILLO, ESQ. (Sole Practitioner) Attorney for the Defendant

* * *

[2] INDEX OF PROCEEDINGS

* * *

[16] This comes before me on a motion to suppress evidence as a result of a warrantless search. A warrantless search is presumed to be invalid unless it falls into one of the well recognized exceptions.

The exception being articulated here for the warrantless search to fall into the category of is plain view doctrine the material facts must be disputed in order to have an evidentiary hearing. I find that the – and the disputed facts must present a factual dispute in order that testimony be taken to the facts and that dispute must relate to a Fourth Amendment issue.

I find that the matter of the facts being disputed are based – the matter – I find as a matter of fact that the – the – there is clear and credible evidence that the material facts in this case clearly point to a factual dispute and concern the Fourth Amendment, no question about it.

* * *

[20] When he went to examine the building, as he said, he went to examine the building, remind, that was his testimony, went to examine the building and while outside he heard this commotion and he heard a noise escalating as he walked down the stairs and then he saw Mr. Roman allegedly – he testified he saw Mr. Roman in the hallway arguing with his girlfriend.

Now, he did not know what the argument was about, couldn't recall any of the words of the argument. He did testify that they didn't look happy, that was his testimony.

On cross-examination he testified that Miss Reyes was not handcuffed but he testified Miss Reyes was present. Also, when mentioned about Miss Isaksem, he didn't recall. He's the officer that initially made the arrest from the alleged testimony of the CDS dropping but Miss Isaksem was not mentioned in his [21] testimony, no references to her, as if she wasn't even there. I find that incredible that he has no – no real comments or testimony from the stand about Miss Isaksem. That's – I have to find it incredible in light of the testimony of Miss Isaksem, Miss Reyes and the father, and I'll get to that.

On cross-examination he said he started – startled both parties, and this is on cross, he startled both parties and saw Roman throw the CDS. That's on cross. He stayed consistent with that. Also, he talked about that he saw him from the hallway and that he saw on top of the bed the CDS with the purple tops and the other powder that was – powder inside the – that was

contained with the bag that included the purple top CDS and the other white powder and at that time, on cross-examination, he talked about back up units coming in and entering and that's when the protective sweep occurred and they entered from the other surveillance car that was out there surveilling the building.

There was also something interesting he said. He said he told the dad that his son was being incarcerated. That was his testimony. Why was it necessary for him to tell the dad that the son was being incarcerated? And when did the dad enter the picture?

* * *

[27] That was just a point that she made because she said that the drugs were found somewhere in the back and I found her to be credible in term – in those terms but in terms of – I find her to be credible in terms of the police officers coming there with Melissa and staying for an hour, which is – which contradicts, just on that alone, contradicts the five or ten minutes that Officer Mendes said that they were there. You're talking about accounting for additional 50 minutes, 50 minutes that can't be accounted for and Melissa Isaksem, she took the stand and said that she was coming back in. She had left the apartment to go home to get some shirts, I think it was a top tank, she testified to a tank top, and that a man was standing on the second floor and gave – said that he was a police officer and asked her what she was doing. She told the police officer she was bringing a tank top. The police officer

told her, are you about to buy drugs? I need you to knock on the door, that was her testimony, I need you to knock on the door. She testified she was scared, freaking out, [28] or I will arrest you. So, the cop knocked on the door and put her in front of the door and the cops knocked on the door, based upon her testimony, and then once the door opened the cop pushed their way in and said – and pushed their way in and sitting on the bed and I think – pushed their way in and they – she said he was sitting on the bed and they threw him against the wall and put them all in cuffs and then they started to search the apartment. That was her testimony. At that point they started to search the apartment and as an aside, there was Officer Golpe and gives her story more credibility because Officer Golpe, she testified, was texting her later on and calling her trying to set up a date. So, clearly, she was in the apartment with another officer based on that testimony because the officer got a phone number from her and was trying to date her and text her. I find that very credible. It makes sense to me. She said that – she did confirm that Mendes cuffed the defendant and when asked she said she did not go out with the police. She gave her full name and phone number and she said basically, because she was so scared, anything they asked and she would have told them. That's what her testimony was.

I find – I found her to have excellent recall.

* * *

[35] I find him credible. I find him credible. I find the father credible.

Now, the father says something, because he was on cross-examination, said, well, why did you tell us something different? The father said, well, the police officer that was in the building doing the search was in your office and he said something about I got to work with certain people but what I'm considering is the fact that I find his testimony credible that the police entered in his apartment that day. I find it credible that they looked around his apartment. I find it credible – I find it by credible and I find as a matter of fact that there was an officer that stood in front of him. I find it credible that he walked out of his apartment and saw his son with the other girls on the bed. That's what I find credible. If I find that credible, it causes me to question, once again, the story of Officer Mendes.

Now, the State has the burden of proving by a [36] preponderance of evidence that a warrantless search has been established, and we're talking about the plain view, plain view doctrine. I find, as a matter of fact, I find that the – Melissa Isaksem, I find her testimony to be very credible that she was there. I find – I find that she was there, she was a person that helped gain entry into that apartment, I find that, and if I find that, then I don't find that the evidence was dropped in the hallway. I don't find that. I don't find that. I don't find that in light of the evidence that goes to the contrary because the evidence that goes to the contrary calls into question that theory, that testimony, it calls into question because no one is explaining why they're

there so long. No one's explaining why all three of – why three people were handcuffed. No one is explaining, that story doesn't explain why they go into the father's house. That story that Mendes said doesn't explain why the father was necess – why it was necessary to bring the father into this situation and go into the father's house. His father wasn't accused of anything, they didn't see anything in the father's house.

I find in this case the State hasn't met its burden. The State hasn't met its burden. Because of the – because of the testimony of the other three [37] witnesses that call the State's version into question, I cannot find that the State has met its burden by credible evidence, by preponderance of the evidence and, unfortunately, I find that this is an invalid search for the reasons stated on the record and that the evidence has to be suppressed. You have 20 days to appeal my decision.

* * *