

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 22-21397-CV-WILLIAMS**

JAFET CASTRO-REYES,

Plaintiff,

v.

CITY OF OPA LOCKA, *et al.*,

Defendants.

OMNIBUS ORDER

THIS MATTER is before the Court on Defendant City of Opa-Locka's Motion to Dismiss Plaintiff's First Amended Complaint and to Strike Request for Punitive Damages and Pre-Judgment Interest (DE 52); Defendants Sergio Perez's, German Bosque's, and Louis Serrano's Joint Motion to Dismiss Plaintiff's First Amended Complaint (DE 53); and Defendant Daniel Kelly's Motion to Dismiss Plaintiff's First Amended Complaint (DE 82). Plaintiff filed a Combined Response in Opposition to Defendants' Motions to Dismiss (DE 55), to which Defendants filed Replies in support of their respective Motions to Dismiss (DE 66; DE 67).¹

¹ Defendant Daniel Kelly was added as a Defendant and served in this matter later than the other Defendants. Accordingly, he timely filed his Motion to Dismiss about two months after the other Defendants filed their Motions to Dismiss. His Motion to Dismiss largely mirrors the other officers' Joint Motion to Dismiss and expressly "adopts and incorporates all arguments within the other named officers' motion to dismiss to the extent applicable to him." Plaintiff's Combined Response in Opposition to the Motions to Dismiss predates Defendant Kelly's Motion to Dismiss, and Plaintiff did not file a separate response in opposition to Defendant Kelly's Motion to Dismiss. Therefore, Defendant Kelly never filed a reply in support of his Motion to Dismiss. Recognizing that Defendant Kelly raises near identical arguments to the other officers in his Motion to Dismiss, the Court construes Plaintiff's Combined Response to also respond to Defendant Kelly's Motion to Dismiss.

I. BACKGROUND

This civil rights action arises from the September 21, 2020 arrest of Plaintiff Jafet Emmanuel Castro-Reyes (“**Plaintiff**”) by Officers Sergio Perez, German Bosque, Louis Serrano, and Daniel Kelly and other unknown City of Opa-Locka Police Officers² (together, “**Individual Officers**”). (DE 48 at 1.) On the day of the arrest, the Individual Officers arrived at Plaintiff’s home responding to a dispatch concerning a domestic issue. (*Id.* at 5.) Upon entering Plaintiff’s home, Officer Bosque and the other Individual Officers observed Castro, who is a teenager suffering from mental illness, lying on the ground tied up and completely subdued. (*Id.*) The Individual Officers did not untie Plaintiff, but rather handcuffed, tased, stun-gunned, punched, and dragged him. (*Id.* at 5–7.) “Officers finally restrain[ed] [Plaintiff] and place[d] him in the back of a police car and arrest[ed] him[.]” (*Id.* at 7–8.)

Subsequently, Plaintiff instituted this action alleging eight claims: (1) illegal entry into the home pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments against the Individual Officers; (2) false arrest pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments against the Individual Officers; (3) excessive force pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments against the Individual Officers; (4) assault and battery against the Individual Officers; (5) false imprisonment against the Individual Officers; (6) federal civil rights violations under the

² Fictitious pleading is not generally permitted in federal court. See *Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010). However, given that none of the Defendants raised such argument in their Motions to Dismiss, the Court will allow Plaintiff to proceed on the First Amended Complaint, including against the “unknown officers.” See *Meglodon, Inc. v. Vill. of Pinecrest*, 2023 WL 2324344, at *11 (S.D. Fla. Mar. 2, 2023) (determining that an issue not raised in defendant’s motion to dismiss has been “forfeited (at least for now)”).

Fourth Amendment against the City of Opa-Locka; (7) assault and battery against the City of Opa-Locka; (8) false imprisonment against the City of Opa-Locka; and (9) negligent training and/or supervision against the City of Opa-Locka. Defendants filed Motions to Dismiss the First Amended Complaint.

II. LEGAL STANDARD

To survive a motion to dismiss, a complaint must plead sufficient facts to state a claim that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court must accept factual allegations as true and draw reasonable inferences in the plaintiff’s favor. See *Speaker v. U.S. Dept. of Health and Human Servs. Ctrs. for Disease Control and Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010). While Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief,” the complaint must include “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). “[A] formulaic recitation of the elements of a cause of action will not do.” *Id.* Rule 12(b)(6) does not allow dismissal of a claim because the court anticipates “actual proof of those facts is impossible”; however, the “[f]actual allegations must be enough to raise a right of relief above the speculative level.” *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 545).

III. MOTIONS TO DISMISS

In its Motion to Dismiss, the City of Opa-Locka argues that three of the four claims against it, specifically for (1) federal civil rights violation (Count VI); (2) assault and battery (Count VII); and negligent training and/or supervision (Count IX), should be dismissed.

(DE 52.) Specifically, the City of Opa-Locka argues that Count VI fails to clearly delineate a federal civil rights violation; the two claims set forth in each Count VII and Count IX should each be separated into two separate counts; and the First Amended Complaint otherwise fails to state valid claims upon which relief can be granted. (*Id.*)

Additionally, Officers Sergio Perez, German Bosque, Louis Serrano and Daniel Kelly, in their Motions to Dismiss, argue that the five claims against them for (1) illegal entry into the home (Count I); (2) false arrest (Count II); (3) excessive force (Count III); (4) assault and battery (Count IV); and (5) false imprisonment (Count V) should be dismissed. (DE 53; DE 82.) Specifically, the Individual Officers argue that the First Amended Complaint constitutes an impermissible shotgun pleading; Count I should be dismissed because the officers had implied consent to enter the residence; the officers are entitled to qualified and/or statutory immunity on all counts; and all counts otherwise fail as a matter of law. (DE 53; DE 82.)

In its Combined Response in Opposition to the Motions to Dismiss, Plaintiff argues that he sets forth sufficient factual allegations to reasonably support the relief requested. (DE 55 at 4.) The Court agrees. For each of the nine claims, Plaintiff has adequately pled “a short and plain statement” of the facts. See Fed. R. Civ. P. 8(a)(2). And when viewing the facts in the light most favorable to Plaintiff, Plaintiff has stated claims that are plausible on their face. See *Iqbal*, 556 U.S. at 662 (citing *Twombly*, 550 U.S. at 570). To the extent that certain claims or Defendants are improperly grouped together, the Court determines that, notwithstanding such deficiencies, Plaintiff’s claims are articulated with “sufficient clarity” to give Defendants notice of the grounds upon which each claim rests and to allow them to frame a responsive pleading. See *Pouyeh v. Pub. Health Tr. of Jackson Health*

Sys., 832 F. App'x 616, 623 (11th Cir. 2020) (“[W]e do not think the complaint . . . fails to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests[.]”) (internal quotations and citation omitted). Finally, as to the Individual Defendants’ arguments regarding sovereign immunity, the Court agrees with Plaintiff that such determination is premature at this stage. (DE 55 at 29); *see also Archer v. Wal-Mart Stores E., LP*, 2019 WL 3254022, at *6 (M.D. Fla. July 19, 2019) (“Further analysis and inference as to whether the Defendant Officers are entitled to sovereign immunity is more appropriately addressed upon motions for summary judgment.”).

IV. MOTION TO STRIKE

The City of Opa-Locka contends that Plaintiff’s requests for punitive damages and pre-judgment interest against it should be stricken. (DE 52.) The City of Opa-Locka argues that, pursuant to Section 768.28(5)(a), Florida Statutes, punitive damages and pre-judgment interest are improper against the state and its agencies and subdivisions. (*Id.* at 14–15.) The Court agrees.³ *See Eddy v. City of Miami*, 715 F. Supp. 1553, 1557 (S.D. Fla. 1989) (“Punitive damages are unavailable under § 768.28.”); *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade Cnty., Fla.*, 333 F. Supp. 2d 1305, 1343 (S.D. Fla. 2004) (“Punitive damages are not available under § 1983 against a municipality.”).

V. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

³ Plaintiff fails to address this argument in his Response. Thus, the argument is conceded to by Plaintiff. *See Guzman v. City of Hialeah*, 2016 WL 3763055, at *3 (S.D. Fla. July 14, 2016) (“A plaintiff who, in her responsive brief, fails to address her obligation to object to a point raised by the defendant implicitly concedes that point.”) (citation omitted).

1. Defendant City of Opa-Locka's Motion to Dismiss Plaintiff's First Amended Complaint and to Strike Request for Punitive Damages and Pre-Judgment Interest (DE 52) is **GRANTED IN PART AND DENIED IN PART**.
 - a. The City of Opa-Locka's Motion to Dismiss is **DENIED**.
 - b. The City of Opa Locka's Motion to Strike is **GRANTED**.
2. Defendants Sergio Perez's, German Bosque's, and Louis Serrano's Joint Motion to Dismiss Plaintiff's First Amended Complaint (DE 53) is **DENIED**.
3. Defendant Daniel Kelly's Motion to Dismiss Plaintiff's First Amended Complaint (DE 82) is **DENIED**.
4. Defendants shall file their answers to the First Amended Complaint within **fourteen (14) days** of the date of this Order. See Fed. R. Civ. P. 12.
5. The deadline for the Parties to file any pretrial dispositive motions and any motions to strike or exclude expert testimony is **EXTENDED** to **August 18, 2023**.⁴

DONE AND ORDERED in Chambers in Miami, Florida, this 20th day of July, 2023.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

⁴ Additionally, Plaintiff's Unopposed Motion for Case Management Scheduling Order Amendment (DE 80) is **DENIED AS MOOT**.