

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Chad Lancaster v. City of Phoenix, et al.

Lancaster · No. CV-25-03200-PHX-DWL · Decided March 9, 2026

SUMMARY

The United States District Court for the District of Arizona considers Defendants’ motion to dismiss claims brought by Phoenix firefighter-paramedic Chad Lancaster alleging race and sex discrimination, retaliation, and intentional infliction of emotional distress. The order addresses the timeliness of allegations and whether untimely conduct may be used as background evidence in support of timely claims. The motion is granted in part and denied in part.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Dominic W. Lanza
JURISDICTION	United States District Court for the District of Arizona
DECIDED	March 9, 2026
DOCKET	CV-25-03200-PHX-DWL
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss claims arising from alleged employment discrimination, retaliation, municipal liability, and intentional infliction of emotional distress, and to strike allegedly time-barred allegations and dismiss a punitive-damages request.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes them in the light most favorable to the nonmoving party, but need not accept legal conclusions couched as factual allegations. The complaint must contain sufficient factual matter to state a facially plausible claim.
PRECEDENTIAL VALUE	unpublished

TOPICS

- motions to dismiss
- employment discrimination
- racial discrimination
- retaliation
- statute of limitations

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether time-barred allegations could be included and used as background evidence in support of timely discrimination and retaliation claims.
2. Whether a Monell claim could be asserted solely against a municipal employee in his individual capacity.
3. Whether the allegations stated an Arizona claim for intentional infliction of emotional distress.
4. Whether punitive damages were available against the City for the § 1981 and Title VII claims.
5. Whether Plaintiff should receive leave to amend the dismissed claims.

HOLDINGS

1. Time-barred discriminatory acts may remain in the complaint and may be used as background evidence supporting timely claims, although they do not independently state actionable claims.
2. A Monell claim cannot be asserted solely against a municipal employee sued in his individual capacity; Monell provides a basis for municipal liability, not individual liability.
3. The complaint failed to allege conduct sufficiently extreme and outrageous to support an Arizona IIED claim.
4. Punitive damages were unavailable against the City on Plaintiff's § 1981 and Title VII claims.
5. Leave to amend was denied as futile for the Monell claim against Rideout but granted as to the IIED and punitive-damages claims.

KEY QUOTATIONS

“Plaintiff is permitted to plead time-barred discriminatory acts as background evidence.” (at 5)

“But such a claim is different from a Monell claim, which is a mechanism for suing a municipal defendant.”
(at 10-11)

“The Court agrees with Defendants that the complaint fails to allege the sort of “extreme and outrageous” conduct necessary to support an IIED claim under Arizona law.” (at 17)

FACTUAL BACKGROUND

Plaintiff, a white male firefighter-paramedic employed by the City of Phoenix, alleged that City personnel manipulated firefighter captain promotion processes and used race- and gender-related factors, causing him to receive lower rankings and lose promotion opportunities. He also alleged that he reported discriminatory practices and thereafter experienced various retaliatory and hostile workplace actions. The complaint asserted claims under 42 U.S.C. § 1981, Title VII, a Monell theory against former Fire Chief Jason Rideout, and Arizona-law IIED, and sought punitive damages.

PROCEDURAL HISTORY

Plaintiff filed suit in Maricopa County Superior Court on July 28, 2025. Defendants removed the action to the United States District Court for the District of Arizona on September 2, 2025, and filed the motion to dismiss on September 23, 2025. The court granted the motion in part and denied it in part, dismissing the Monell claim, the IIED claim, and the punitive-damages request, while permitting amendment of the IIED and punitive-damages claims.

DISPOSITION

other

CASES CITED

- In re Fitness Holdings International, Inc., 714 F.3d 1141, 1144-45 (9th Cir. 2013)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-80 (2009)
- Mollett v. Netflix, Inc., 795 F.3d 1062, 1065 (9th Cir. 2015)
- Lyons v. England, 307 F.3d 1092, 1110, 1112 (9th Cir. 2002)
- Bond v. Wells Fargo Bank NA, 782 F. Supp. 3d 743, 753-55 (D. Ariz. 2025)
- Walsh v. J.B. Hunt Transportation, Inc., 2023 WL 1800962, at *4 (D. Ariz. 2023)
- Brodus v. Marine Inn & Air Force Services Agency, 2022 WL 2286476, at *11 (C.D. Cal. 2022)
- Griggs v. Sacramento City Unified School District, 2021 WL 1614405, at *6 (E.D. Cal. 2021)
- Martinez Patterson v. AT&T Services, Inc., 2019 WL 5294532, at *4 (W.D. Wash. 2019)
- Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 974 (9th Cir. 2010)
- De Markoff v. Superior Court of California, 2013 WL 1896259, at *5 (E.D. Cal. 2013)
- Wright & Miller, 5C Federal Practice and Procedure § 1380
- XY Skin Care & Cosmetics, LLC v. Hugo Boss USA, Inc., 2009 WL 2382998, at *1 (D. Ariz. 2009)
- Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011)
- Lockett v. County of Los Angeles, 977 F.3d 737, 741 (9th Cir. 2020)
- Pembaur v. City of Cincinnati, 475 U.S. 469 (1986)
- Guillory v. Orange County, 731 F.2d 1379, 1382 (9th Cir. 1984)
- Reason v. City of Richmond, 2021 WL 107225, at *5 (E.D. Cal. 2021)
- Tingirides v. California Department of Corrections & Rehabilitation, 2020 WL 4904661, at *10 (C.D. Cal. 2020)
- Mendez v. Becher, 2012 WL 12920630, at *1 (N.D. Cal. 2012)
- Citizen Publishing Co. v. Miller, 115 P.3d 107, 110 (Ariz. 2005)
- Morgan v. Freightliner of Arizona, LLC, 2017 WL 2423491, at *8 (D. Ariz. 2017)
- Reel Precision, Inc. v. FedEx Ground Package System, Inc., 2016 WL 4194533, at *2-3 (D. Ariz. 2016)
- Mintz v. Bell Atlantic Systems Leasing International, Inc., 905 P.2d 559, 563-64 (Ariz. Ct. App. 1995)
- Pankratz v. Willis, 744 P.2d 1182, 1189 (Ariz. Ct. App. 1987)
- Watts v. Golden Age Nursing Home, 619 P.2d 1032, 1035 (Ariz. 1980)

- Nelson v. Phoenix Resort Corp., 888 P.2d 1375, 1386 (Ariz. Ct. App. 1994)
- Pontikis v. Lucid USA Inc., 2023 WL 6127693, at *3 (D. Ariz. 2023)
- Henson v. Air National Guard Air Force Reserve Command Test Center, 2007 WL 2903993, at *12 (D. Ariz. 2007)
- White v. Washington Public Power Supply System, 692 F.2d 1286, 1290 (9th Cir. 1982)
- Reed v. City of Culver City, 2020 WL 7315016, at *4 (C.D. Cal. 2020)
- Ebner v. Fresh, Inc., 838 F.3d 958, 963 (9th Cir. 2016)
- Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003)
- AmerisourceBergen Corp. v. Dialysist West, Inc., 465 F.3d 946, 951 (9th Cir. 2006)

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF ARIZONA 8 9 Chad Lancaster, No. CV-25-03200-PHX-DWL 10 Plaintiff, ORDER 11 v. 12 City of Phoenix, et al., 13 Defendants. 14 15 Chad Lancaster (“Plaintiff”), a firefighter-paramedic employed by the City of 16 Phoenix, alleges that he has been subjected to unlawful discrimination based on his race 17 (white) and gender (male), as well as to unlawful retaliation, in violation of 42 U.S.C. 18 § 1981 and Title VII of the Civil Rights Act of 1964.

Plaintiff also asserts a state-law claim 19 for intentional infliction of emotional distress (“IIED”). 20 Now pending before the Court is Defendants’ motion to dismiss. (Doc. 8.) For the 21 reasons that follow, the motion is granted in part and denied in part. 22 BACKGROUND 23 I. Factual Allegations 24 A. The Parties 25 Plaintiff is a “firefighter-paramedic who has served the City of Phoenix Fire 26 Department with distinction for nearly twelve years, earning numerous awards and 27 commendations for his service.” (Doc.

1-1 at 2.) Plaintiff is “white” and “male.” (Id. 28 ¶¶ 89, 111.) 1 The complaint names two defendants. The first, the City of Phoenix (“the City”), 2 “operates through its employees, agents, and representatives, including the Phoenix Fire 3 Department.” (Id. ¶ 3.)

The second, Jason Rideout (“Rideout”), was the Chief of the 4 Phoenix Fire Department. (Id. ¶¶ 5, 6.) 5 B. Plaintiff’s Employment History 6 On January 7, 2013, “Plaintiff was hired by the Phoenix Fire Department.” (Id. 7 ¶ 10.) Plaintiff “served as a move-up Captain for approximately 10 years and worked as a 8 rover for 11 years.” (Id. ¶ 12.) Plaintiff “currently holds the position of Firefighter 9 Paramedic, ARFF.” (Id. ¶ 11.)

Throughout his career with the Phoenix Fire Department, 10 “Plaintiff has never received any disciplinary actions, write-ups, or customer complaints” 11 and has received numerous awards and distinctions. (Id. ¶¶ 13-15.) Additionally, Plaintiff 12 “was elected Fire Board Chairman from 2015-2020.” (Id. ¶ 18.) 13 C. The Challenged Conduct 14 1. 2021 Captain Promotion Process 15

In 2021, Plaintiff participated in the City's captain promotion process ("2021 16 Captain Promotion Process").

(Id. ¶¶ 20-28.) 17 "In preparation" for that process, "Plaintiff dedicated 18 months to studying and 18 preparing for the examination." (Id. ¶ 20.) "Plaintiff scored exceptionally well on the 19 written examination (94%) and the tactical examination (92%)." (Id. ¶ 21.) "Despite his 20 strong performance on the written and tactical portions, Plaintiff was given only 70% on 21 the oral interview portion." (Id. ¶ 22.)

22 "Plaintiff believes that he performed better than scored" and alleges that the City's 23 "agents purposely lowered his score to place non-White, non-male, and insider candidates 24 ahead of him." (Id. ¶¶ 23-24.) 25 Plaintiff alleges that, "[a]s a result of the artificially low interview score, [he] was 26 placed at #99 on the 2021 Captain's List." (Id. ¶ 25.)

27 "Many of Plaintiff's colleagues, including Fire Chief Mike Duran, called the 28 interview board on Plaintiff's behalf to place their support behind the Plaintiff." (Id. ¶ 26.) 1 Plaintiff alleges that his "interview board was changed at the last minute due to an 2 alleged 'conflict of interest,' resulting in Chiefs Mike Molitor and [Rideout] being placed 3 on the board" and that "[d]espite the alleged conflict of interest concern, Chief Mike 4 Molitor had no conflict interviewing his friend and former subordinate Creston Ludlow, 5 who scored third on the promotional list." (Id. ¶¶ 27-28.)

6 In July 2021, "Assistant Chief Duran... contacted Plaintiff stating that he could 7 not get a straight answer from the interview board regarding Plaintiff's low placement, and 8 recommended that Plaintiff meet with [Rideout]." (Id. ¶ 29.) 9 On July 6, 2021, Rideout "made several statements to Plaintiff about his low 10 placement." (Id. ¶ 30.) Specifically, Rideout "told Plaintiff that 'the reason you're not 11 being promoted is because no one had heard your name before,' despite the fact 'that 12 Plaintiff had more Chiefs and Captains call on his behalf than all other candidates 13 combined.'" (Id. ¶ 31.)

Rideout "expressed 'doubts' about Plaintiff's resume because it 14 was 'hands down the best they had seen.'" (Id. ¶ 32.) 15 2. 2023 Captain Promotion Process 16 In 2023, Plaintiff again participated in the City's captain promotion process ("2023 17 Captain Promotion Process"). (Id. ¶¶ 33-38.) 18 In March 2023, "Plaintiff was forced for a second time onto Chief Molitor[s] and 19 [Rideout]'s interview board, moments before his interview with another board." (Id. ¶ 33.)

20 Plaintiff alleges that "[t]his was highly irregular and intentional." (Id. ¶ 34.) 21 "On the 2023 promotional process, Plaintiff scored: Written 86%, Tactical 78%, and 22 Interview 80%." (Id. ¶ 35.) Plaintiff believes his "Tactical and interview scores were 23 altered." (Id.) 24 In July 2023, "Plaintiff's placement on the certified Captain's List was changed 25 twice, in one week, after the list has been published and certified by City HR." (Id. ¶ 36.)

26 The list was changed “[f]irst from 63 to 65; and then from 65 to 67.” (Id. ¶ 37.) “Although 27 the captain promotional process ended in the first few days of May 2023, the ‘certified’ list 28 was not released until July 2023. City HR was still making changes to score for the written 1 exam (held in March) after the list was certified in July.” (Id. ¶ 38.)

2 3. Recorded Admissions 3 On July 18, 2023, “Plaintiff recorded a conversation with [Rideout] in which 4 Rideout made explicit admissions regarding the use of racial factors in promotional 5 processes.” (Id. ¶ 39.) “When asked about DEI, gender and race as factors being used in 6 the promotional process, [Rideout] confirmed: ‘Yes, [i]t’s not a rumor.’” (Id. ¶ 40.)

7 Rideout “explained that minorities and women get extra points, but HR/City does that, not 8 the department. ‘I forgot, they have a term for it, that would say how many white males 9 took the test, how many females took the test, how many black dudes took the test, how 10 many Asians, how many Mexicans, all that kind of stuff. And they have a factor (The City) 11 that goes, that ties it into that.’” (Id. ¶ 41.)

12 Rideout also “confirmed that racial adjustments were made to scores” and “revealed 13 that five factors were used in final scoring: written score, tactical score, oral score, 14 seniority, and racial/gender factors.” (Id. ¶¶ 42-43.) Rideout additionally “told another 15 firefighter, Joe Nonno, ‘the reason you are not being promoted is because you are a white 16 guy.’” (Id. ¶ 44.)

17 4. List Manipulation 18 On July 18, 2023, Rideout showed Plaintiff two pieces of paper. (Id. ¶ 45.) Rideout 19 “point[ed] to the middle of the first page and stat[ed] that Plaintiff was ‘right there on the 20 list, surrounded by guys that will be promoted,’ and claimed he had no control over where 21 Plaintiff was moved after the list left their hands.” (Id.)

22 On July 20, 2023, “Chief Russ Kirk showed Plaintiff a different list that he stated 23 he ‘was not supposed to be sent’ and that Plaintiff was ‘sure not supposed to ever see it.’” 24 (Id. ¶ 46.) “This second list showed the Plaintiff was moved to third from the bottom of 25 all interview scores (3rd worst out of all candidates), directly contradicting [Rideout]’s 26 claim that Plaintiff was in the middle of the first page.” (Id. ¶ 47.)

27 5. Meeting With City HR 28 On October 6, 2023, Plaintiff met with City HR representative Megan Avalos 1 (“Avalos”). (Id. ¶ 49.) 2 During the meeting, Avalos “admitted that fire administration held onto the list for 3 four plus weeks after the last interview was completed, even though City/HR repeatedly 4 contacted fire administration and requested the list.” (Id.)

Avalos “stated that she 5 suspected that scores were being changed and people being moved on the list during this 6 time” and that “she and City HR were aware the interview questions were leaked.” (Id. 7 ¶ 51.) Avalos further “acknowledged the existence of discriminatory and retaliatory 8 cultures in both the Phoenix Police and Fire departments.” (Id. ¶ 52.)

Plaintiff made 9 Avalos aware that “there was a fear of being assaulted at work or violence towards him on 10 the fire ground, if it was made aware he came forward to City HR.” (Id. ¶ 55.) 11 Avalos requested Plaintiff “send her an email with both Captains’ Lists from 2021 12 and 2023.” (Id. ¶ 54.) That same day, Plaintiff sent Avalos the requested lists. (Id.)

It 13 took Avalos “almost 3 weeks to return correspondence,” and she stated “she had been busy 14 ‘but would dig into this later this week.’” (Id. ¶ 56.) Avalos, however, “never contacted 15 the Plaintiff again.” (Id. ¶ 57.) 16 6. Union Obfuscation 17 On July 7, 2023, “Union President Bryan Willingham refused to allow Plaintiff to 18 grieve his scoring issues, stating ‘what am I supposed to do, go to the city and say one of 19 my guy’s feelings are hurt?’” (Id. ¶ 58.) “Mr.

Willingham threatened Plaintiff, stating that 20 ‘if you have a list scrapped, good luck with that out there.’” (Id. ¶ 59.) 21 On October 27, 2023, “Willingham called Plaintiff and berated him, stating he 22 would never promote Plaintiff if he was on his board because Plaintiff was uneducated, did 23 not know how to speak and rambled.” (Id. ¶ 60.) “Mr. Willingham is the President of 24 Local 493, and this organization is a non-punitive organization against its members, even 25 though he went to the Fire Chief and HR Chief Paul Moore and attempted to get 26 management to interfere in a union election and get the Plaintiff disciplined.” (Id.)

27 On June 21, 2024, “Union Trustees Chris Murphy and Keith Rogers conducted a 28 ‘Union Blitz’ in front of sixteen plus co-workers at Station 19, calling Plaintiff a ‘fucking 1 asshole’ and falsely stating he was offered and declined a union position.” (Id. ¶ 61.) 2 On December 10 and 11, 2024, “Chris Murphy was calling fire stations in Phoenix 3 and telling the crews to watch the Senate Hearing featuring the Plaintiff and other 4 witnesses.

Chris Murphy gave out the link to watch the hearing remotely. Chris Murphy 5 was sent by the Union to disparage Plaintiff publicly at the Arizona State Capitol 6 Committee Hearing in a call to the public.” (Id. ¶ 62.) Plaintiff further alleges that 7 “Arizona State Senator Jake Hoffman informed Plaintiff that his Union had sent questions 8 and information to other Senate staff to humiliate and discredit Plaintiff and other 9 firefighters that were scheduled to speak on the discriminatory practices at the Phoenix Fire 10 Department.” (Id. ¶ 63.)

11 7. Hostile Work Environment 12 On July 21, 2024, Captain Chris Murphy “told Plaintiff he was ‘The Station 13 Captain’ and could have Plaintiff removed from the airport at any time, threatened Plaintiff, 14 and told him he will not stop using Plaintiff’s name in public union meetings, because if 15 he says what he says to the Plaintiffs face, he can say statements publicly.” (Id. ¶ 65.)

16 On August 16, 2024, “Battalion Chief Rustin Eikleberry made derogatory and false 17 statements about the Plaintiff’s discrimination claim and his intentions at Station 41 in front 18 of ten co-workers at dinner.” (Id. ¶ 66.) 19 On December 27, 2024, Captain Murphy “used his access

to Telestaff scheduling 20 software to move firefighters around, moving his ‘buddies’ into better positions while 21 disadvantaging Plaintiff.” (Id. ¶ 67.)

22 “From 2023 through 2025, Plaintiff repeatedly contacted South Deputy, Battalion 23 Chief Teddy Furlis, requesting not to be sent to the airport due to the hostile work 24 environment created by Mr. Murphy and others.” (Id. ¶ 68.) 25 8. Retaliatory Conduct 26 On March 3, 2024, “Captain Mike Maciel asked Plaintiff if he was going to bring 27 the department down with a lawsuit because a Chief had confided in him about Plaintiff’s 28 Attorney General complaint, which had not been made public.” (Id. ¶ 69.)

1 On April 14 and 17, 2024, “Plaintiff was denied water tanker/tender qualification 2 despite completing and passing the training on his off-duty days, unpaid, and in uniform, 3 while all other firefighters present received their qualifications.” (Id. ¶ 70.) 4 On May 3, 2024, “Plaintiff was forced out of his position at Station 19 (ARFF 5 program) through the abnormal listing of his position as a temporary vacancy, but allowing 6 a captain to move shifts to displace Plaintiff.” (Id. ¶ 71.)

7 On July 23, 2024, “Plaintiff was offered a Firefighter Paramedic B Shift position 8 for which he had seniority, but the offer was rescinded in the same phone call due to a 9 ‘personal interpretation of policy.’” (Id. ¶ 72.) 10 On September 28, 2024, “Chief Molitor slammed the phone down and hung up on 11 Plaintiff who had called South Deputy to get his assignment for the day.

Chief Molitor 12 saw the Plaintiff’s supervisor, Captain Phil Johnson, and told him... he did not get hung 13 up on, ‘that they are just too busy to say goodbye at South Deputy.’” (Id. ¶ 75.) 14 II. Procedural History 15 On February 12, 2024, “Plaintiff filed a complaint with the Arizona Attorney 16 General’s Office for discrimination and retaliation.”¹ (Doc.

10 at 4.) “The Arizona Civil 17 Rights Division dismissed Plaintiff’s complaint.” (Doc. 1-1 ¶ 79.) 18 On September 3, 2024, Plaintiff filed an EEOC charge. (Id. ¶ 78.) On April 30, 19 2025, Plaintiff received a right-to-sue letter. (Id. ¶ 80.) 20 On July 28, 2025, Plaintiff filed suit in Maricopa County Superior Court. (Doc. 1- 21 1 at 2.)

The complaint asserts six claims: (1) race discrimination in violation of 42 U.S.C. 22 § 1981; (2) liability under Monell based on race discrimination (against Rideout only); (3) 23 race discrimination in violation of Title VII; (4) sex discrimination in violation of Title VII; 24 (5) retaliation in violation of Title VII; and (6) IIED.² 25 1 In his response brief, Plaintiff clarifies that although he “inadvertently alleged he 26 filed his complaint in January 2024 in the Complaint,” he actually filed his complaint with the Arizona Attorney General’s Office on February 12, 2024.

(Doc. 10 at 4 & n.1.) 27 2 The complaint mistakenly labels both the second and third claim as “Count Two.” 28 (Doc. 1-1 at 12-13.) For purposes of this order, the Court will refer to the second claim as “Count Two-Monell” and the third claim as “Count Two-Title VII.” 1 On September 2,

2025, Defendants removed this action to federal court. (Doc. 1.) 2 On September 23, 2025, Defendants filed the pending motion to dismiss.

(Doc. 8.) 3 That motion is now fully briefed. (Docs. 10, 11.)3 4 DISCUSSION 5 I. Legal Standard 6 Under Rule 12(b)(6), “to survive a motion to dismiss, a party must allege sufficient 7 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” In re 8 Fitness Holdings Int’l, Inc., 714 F.3d 1141, 1144 (9th Cir. 2013) (cleaned up). “A claim 9 has facial plausibility when the plaintiff pleads factual content that allows the court to draw 10 the reasonable inference that the defendant is liable for the misconduct alleged.” Id. 11 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “[A]ll well-pleaded allegations of 12 material fact in the complaint are accepted as true and are construed in the light most 13 favorable to the non-moving party.” Id. at 1444-45 (citation omitted).

However, the court 14 need not accept legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678- 15 80. Moreover, “[t]hreadbare recitals of the elements of a cause of action, supported by 16 mere conclusory statements, do not suffice.” Id. at 678.

The court also may dismiss due 17 to “a lack of a cognizable legal theory.” *Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1065 (9th Cir. 2015) (citation omitted). 19 II. Time-Barred Allegations 20 A. The Parties’ Arguments 21 Defendants argue that “[v]arious allegations in the Complaint must be stricken 22 because they are barred by the statutes of limitations.” (Doc.

8 at 5.) As for Count One, 23 Defendants argue that Plaintiff “cannot rely on allegations from the 2021 Captain 24 Promotion Process” because “[a] claim filed pursuant to 42 U.S.C. § 1981 is subject to a 25 four-year statute of limitations” and “Plaintiff filed his Complaint on July 28, 2025, so the 26 allegations regarding the 2021 Captain Promotion Process (which occurred prior to July 27 28 3 Defendants’ request for oral argument is denied because the issues are fully briefed and oral argument will not aid the decisional process.

See LRCiv 7.2(f). 1 2021) must be stricken from Count One.” (Id.) As for Count Two-Monell, Defendants 2 argue that it “is subject to the two-year statute of limitations set forth in the state’s personal 3 injury statute of limitations,” so “[a]ny allegations... in Count Two-Monell regarding 4 events prior to July 28, 2023 are barred.

Thus, Plaintiff cannot allege facts regarding the 5 2021 Captain Promotion Process, communications in 2021, and the 2023 Captain 6 Promotion Process (including Plaintiff’s ‘evidence of list manipulation’) to support his 7 Monell claim because all of these events occurred prior to July 28, 2023.” (Id. at 6.)

As 8 for Count Two-Title VII, Count Three, and Count Four, which are all brought under Title 9 VII, Defendants argue that such claims “must be filed with either the Equal Employment 10 Opportunity Commission (‘EEOC’) within 180 days, or with the Arizona Civil Rights 11 Division

(‘ARCD’) within 300 days of the alleged unlawful employment practice” and 12 because “Plaintiff first filed a complaint with the Arizona Attorney General’s Office in 13 January 2024... to be timely, Plaintiff’s Title VII claims... must have accrued within 14 300 days prior to January 2024, which bars any allegations prior to March 2023.” (Id.)

15 Thus, “Plaintiff’s Title VII claims regarding the 2021 Captain Promotion Process and all 16 subsequent communications regarding that process are barred by the statute of limitations.” 17 (Id.) As for Count Five, Defendants argue that an IIED clam “brought against a public 18 entity in Arizona must be filed within one year,” so “any allegations in Count Five 19 encompassing events that occurred prior to July 28, 2024 must be stricken.” (Id. at 7.)

In 20 sum, Defendants argue that “[e]ach count is subject to the following limitations periods: 21 Count One cannot be supported by allegations prior to July 28, 2021; Count Two-Monell 22 cannot be supported by allegations prior to July 28, 2023; Counts Two-Title VII, Three, 23 and Four cannot be supported by allegations prior to March 2023; and Count Five cannot 24 be supported by allegations prior to July 28, 2024.” (Id.)

25 In response, Plaintiff does not dispute that the allegations outlined by Defendants 26 are untimely but argues the Court should still deny Defendants’ request to strike “‘all 27 factual allegations from 2021... from the Complaint,’ for several reasons: (i) the Motion 28 does not identify any statute or rule that authorizes the requested strike, as required by 1 LR[C]iv 7.2(m) (1); (ii) the untimely allegations provide relevant background evidence in 2 support of Plaintiff’s timely discrimination claims and are directly related to Plaintiff’s 3 retaliation claim; and (iii) Defendants have not shown that the untimely allegations 4 constitute prejudice.” (Doc.

10 at 7-8, citation omitted.) Citing *Lyons v. England*, 307 5 F.3d 1092 (9th Cir. 2002), Plaintiff argues that “untimely evidence of the employer’s 6 discriminatory acts may constitute relevant background evidence in a proceeding in which 7 the status of a current practice is at issue.” (Id., cleaned up.) Plaintiff argues that “[h]ere, 8 all of the untimely allegations that Defendants seek to have stricken give rise to an 9 inference of unlawful discrimination when combined with the timely allegations.

10 Plaintiff’s allegations regarding the 2021 Captain Promotion Process clearly relate to the 11 allegations regarding the 2023 Captain Promotion Process insofar as both processes 12 involved alleged list manipulation and the alleged use of racial/gender factors in 13 determining promotions. Plaintiff is thus allowed to use the untimely allegations as indirect 14 proof of the City’s intent to discriminate.” (Id.)

Plaintiff additionally argues that his 15 “protected activity in October 2023 involved a complaint to HR regarding both the 2021 16 and 2023 Captain Promotion Process. Thus, the allegations regarding the 2021 Captain 17 Promotion Process are directly related to Plaintiff’s retaliation

claim.” (Id.) 18 In reply, Defendants argue that “Plaintiff admits that the allegations regarding the 19 2021 Captain Promotion Process are in fact untimely.” (Doc.

11 at 3.) Defendants argue 20 that “Plaintiff does not oppose, and so must agree, that each remaining count is subject to 21 the following limitations periods: Count One cannot be supported by allegations prior to 22 July 28, 2021, and Counts Two[-]Title VII, Three, and Four cannot be supported by 23 allegations prior to March 2023.” (Id.) Defendants exclude Count Two-Monell and Count 24 Five from this calculus because, as detailed below, Defendants argue that “Plaintiff has 25 abandoned these claims.” (Id. at 3 n.2.)

As for Plaintiff’s argument regarding LRCiv 26 7.2(m)(1), Defendants argue that Fed. R. Civ. P. 12(f) “authorizes the Court to strike from 27 a pleading ‘any redundant, immaterial, impertinent, or scandalous matter.’” (Id. at 4.) 28 Defendants argue that “[u]ntimely allegations are both impertinent and immaterial because 1 they cannot be relied upon to support Plaintiff’s claims.” (Id.)

Defendants also argue that 2 “the untimely allegations must be stricken because they are prohibited by the respective 3 statutes of limitations for each claim.” (Id.) As for Plaintiff’s argument that untimely 4 allegations may serve as background evidence, Defendants argue that “[l]ike in Lyons, 5 Plaintiff also cannot ‘sustain a cause of action for relief from present injury caused by time- 6 barred acts of discrimination.’” (Id. at 4-5, citing Lyons, 307 F.3d at 1112.)

Defendants 7 argue that “[t]he key difference between the evidence that the Ninth Circuit identified in 8 Lyons and the allegations offered by Plaintiff here is that the allowed ‘background’ 9 evidence in Lyons was limited to policy and statistical evidence, while Plaintiff’s 10 allegations here relate to discrete acts of alleged discrimination.” (Id. at 5.)

Defendants 11 further argue that “[n]ot only are Plaintiff’s untimely allegations unrelated to any policy or 12 statistical evidence, but Plaintiff’s claims are also based on discrete acts of alleged 13 discrimination”—the 2021 Captain Promotion Process and the 2023 Captain Promotion 14 Process—yet “Plaintiff alleges absolutely no discrimination occurring in the year 2022 15 between these discrete Promotion Processes.

Thus, these two occurrences are distinct, and 16 untimely allegations occurring prior to the limitations period... should not be relied upon 17 even as ‘background evidence.’” (Id. at 6.) Finally, Defendants argue that they “are not 18 required to make a showing of prejudice to strike untimely allegations either under Fed. R. 19 Civ. P. 12(f) or Local Rule 7.2....

However, Defendants do face significant prejudice if 20 these allegations are not stricken, including increased discovery costs, confusion of the 21 issues to be actually litigated, and substantial increased use of this Court’s time and 22 resources for facts that cannot support Plaintiff’s claims.” (Id.) 23 B. Analysis 24 The parties agree, based on their shared understanding

of the applicable statutes of 25 limitations, that any claim premised on conduct occurring before the following dates is 26 time-barred: Count One—July 28, 2021; Count Two—Monell—July 28, 2023; Counts Two- 27 Title VII, Three, and Four—April 18, 2023;4 and Count Five—July 28, 2024.

The dispute 28 4 Although Defendants argue that “Counts Two—Title VII, Three, and Four cannot be supported by allegations prior to March 2023” (Doc. 8 at 7), Defendants’ calculation is 1 turns on whether Plaintiff may nevertheless rely on such untimely conduct to provide 2 background evidence in support of his remaining, timely allegations. 3 Plaintiff is correct that he may rely on the untimely allegations for background 4 purposes. “So long as those allegations can be construed as ‘background evidence,’ and 5 that construction is favorable to Plaintiff, their presence may assist Plaintiff in staving off 6 a Rule 12(b)(6)-based dismissal attempt.” *Bond v. Wells Fargo Bank NA*, 782 F. Supp. 3d 7 743, 755 (D.

Ariz. 2025). Moreover, “any potential for mischief posed by the presence of 8 those allegations is mitigated by Plaintiff’s concession in [his] response brief that [his] 9 complaint is only intended to state a claim for discrimination based on discrete acts of 10 discrimination that were timely included in [the complaint].” *Id.* Thus, Plaintiff is 11 permitted to plead time-barred discriminatory acts as background evidence.

12 There is no merit to Defendants’ argument that the untimely allegations must be 13 stricken because “the allowed ‘background’ evidence in *Lyons* was limited to policy and 14 statistical evidence, while Plaintiff’s allegations here relate to discrete acts of alleged 15 discrimination.” (Doc. 11 at 5.)

Although Defendants are correct that the background 16 evidence in *Lyons* related to policy and statistical evidence, *Lyons* does not hold or suggest 17 that those are the only permissible categories of background evidence. *Lyons* holds that 18 “‘relevant evidence’ is defined by Rule 401 of the Federal Rules of Evidence as evidence 19 having any tendency to make the existence of any fact that is of consequence to the 20 determination of the action more probable or less probable than it would be without the 21 evidence.

In the context of a racial disparate treatment claim, admissible background 22 evidence must be relevant to determine the ultimate question: whether... the defendant 23 intentionally discriminated against the plaintiff because of his race.” *Lyons*, 307 F.3d at 24 1110 (cleaned up).

As a result, courts in the Ninth Circuit allow plaintiffs to include 25 “background evidence” that goes beyond policy and statistical evidence. See, e.g., *Bond*, 26 based on the allegation in the complaint that Plaintiff’s charge with the Arizona Attorney 27 General’s Office was filed in January 2024. (Doc. 1-1 ¶ 76.) But as noted above, Plaintiff’s opposition brief clarifies that the charge was filed on February 12, 2024.

(Doc. 10 at 4.) 28 Thus, the relevant cutoff date (after subtracting 300 days) is April 18, 2023 rather than March 2023. 1 782 F. Supp. 3d at 753-55 (permitting “other discrete discriminatory acts that occurred 2 more than 300 days before Plaintiff filed the Final Charge” to “serve as background 3 evidence”); *Walsh v. J.B. Hunt Transp. Inc.*, 2023 WL 1800962, *4 (D.

Ariz. 2023) 4 (“Plaintiff’s allegations related to the August 2019 corporate training session, Defendant 5 Adams’ unannounced visit to Plaintiff’s house in November 2020, Plaintiff’s recovery 6 from COVID-19 in December 2020, or any other allegations that occurred prior to June 7 29, 2021... may still be included in the Complaint to the extent they serve as ‘background 8 evidence’ in support of a timely claim for actionable discrimination.”); *Brodus v. Mar.*

Inn 9 & Air Force Servs. Agency, 2022 WL 2286476, *11 (C.D. Cal. 2022) (“Even assuming 10 that certain of the allegations in the TAC concern matters that could not be advanced 11 because the claims are not timely, the allegations could still constitute prior acts of 12 discrimination that can be used ‘as background evidence to support a timely claim.’”) 13 (citation omitted); *Griggs v. Sacramento City Unified Sch.*

Dist., 2021 WL 1614405, *6 14 (E.D. Cal. 2021) (“[Plaintiff]’s allegations about Caucasian male comparators provide 15 relevant background and may have a ‘possible bearing on the subject matter of the 16 litigation.’ The motion to strike paragraph eight is denied.”) (citation omitted); *Martinez 17 Patterson v. AT&T Servs. Inc.*, 2019 WL 5294532, *4 (W.D. Wash. 2019) (“[E]ven though 18 Uday Shah’s failure to promote Plaintiff occurred outside the statute of limitations period, 19 a plaintiff may still use an employer’s time-barred discriminatory act as background 20 evidence in support of her timely claims.”).

The Court will thus permit Plaintiff to use the 21 untimely allegations as background evidence, “but will proceed with the understanding that 22 they do not purport to set forth claims.” *Bond*, 782 F. Supp. 3d at 755. 23 Defendants’ references to Rule 12(f) do not compel a different conclusion. True, 24 under Rule 12(f), “[t]he court may strike from a pleading an insufficient defense or any 25 redundant, immaterial, impertinent, or scandalous matter.” But the challenged allegations 26 here are not redundant, immaterial, impertinent, or scandalous—instead, they provide 27 background evidence that may support Plaintiff’s timely claims.

Whittlestone, Inc. v. 28 Handi-Craft Co., 618 F.3d 970, 974 (9th Cir. 2010) (an allegation is “not immaterial” if it 1 “relates directly to the plaintiff’s underlying claim for relief” and is “not impertinent” if it 2 “pertains directly to the harm being alleged”). See also *De Markoff v. Superior Ct. of Cal.*, 3 2013 WL 1896259, *5 (E.D. Cal. 2013) (“While it is true that the injuries occurring beyond 4 the limitations period are not actionable,... the statute of limitations does not bar an 5 employee from using prior acts as background evidence in support of a timely claim.

Here, 6 Defendant seeks to have this court strike evidence of discrete acts beyond the limitation 7 period. The acts beyond the limitations period are not actionable but neither are they 8 redundant, immaterial, impertinent, or scandalous material warranting striking pursuant to 9 Fed. Rule Civ. Proc. 12(f).”). 10 In a related vein, there is no merit to Defendants’ request to strike “paragraphs 58 11 to 63 of the Complaint under the heading Union Obfuscation because these allegations are 12 immaterial to Plaintiff’s claim against defendants.” (Doc.

8 at 13 n.4.) Specifically, 13 Defendants argue that “conduct by the Union and its representatives cannot be imputed 14 onto the City” and that “[t]hese allegations have nothing to do with Plaintiff’s claims 15 against either Defendant because the Union does not act on behalf of the City.” (Id.) 16 To succeed on a Rule 12(f) motion to strike, the movant must generally show “that 17 the allegations being challenged are so unrelated to the plaintiff’s claims as to be unworthy 18 of any consideration as a defense and that their presence in the pleading throughout the 19 proceeding will be prejudicial to the moving party.” Wright & Miller, 5C Fed.

Prac. and 20 Proc. § 1380 (3d ed., updated Nov. 2025). See also XY Skin Care & Cosms., LLC v. Hugo 21 Boss USA, Inc., 2009 WL 2382998, *1 (D. Ariz. 2009) (“[A] Rule 12(f) movant not only 22 must demonstrate the allegedly offending material is redundant, immaterial, impertinent, 23 or scandalous, or constitutes an insufficient defense, but must also show how such material 24 will cause prejudice....

Any doubt concerning the redundancy, immateriality, 25 impertinence, scandalousness or insufficiency of all or part of a pleading must be resolved 26 in favor of the non-movant.”). Defendants have failed to demonstrate how they will suffer 27 prejudice if the challenged allegations—which, by their own account, relate to a non-party 28 that is not empowered to act on their behalf—remain in the complaint.

Moreover, at least 1 at this early stage of the proceedings, the Court is not convinced that the challenged 2 allegations have no possible bearing on the subject of the suit. 3 III. Count One (§ 1981 Claim Against The City) 4 The introductory paragraph of Defendants’ motion states that Count One should be 5 dismissed “in its entirety.” (Doc. 8 at 1.)

However, Defendants do not repeat this argument 6 (or make any attempt to develop it) in the body of their motion. 7 In response, Plaintiff argues that he “has sufficiently pled a timely § 1981 claim 8 because Plaintiff alleged discriminatory acts based on race within the four-year statute of 9 limitations.” (Doc. 10 at 6.) Plaintiff argues that “[a]s Defendants note, allegations of race 10 discrimination that occurred on or after July 28, 2021, are timely for purposes of Plaintiff’s 11 § 1981 claim.” (Id.)

Plaintiff further argues that Defendants’ “request completely ignores 12 the numerous remaining timely allegations supporting Plaintiff’s § 1981 claim.” (Id. at 7.) 13 In reply, Defendants only

argue that “Count One cannot be supported by allegations 14 prior to July 28, 2021, pursuant to the statute of limitations.

As such, Plaintiff’s Count One 15 must be dismissed where it relies on untimely allegations.” (Doc. 11 at 6-7.) 16 Defendants have failed to establish that Count One should be dismissed in its 17 entirety (and it is not clear, based on Defendants’ briefing, whether Defendants are even 18 requesting such an outright dismissal).

Moreover, as discussed above, Plaintiff may rely 19 on untimely allegations as background evidence in support of his § 1981 claim. Thus, 20 Defendants’ motion to dismiss Count One is denied. 21 IV. Count Two (Monell Claim Against Rideout) 22 A. The Parties’ Arguments 23 Defendants argue that Count Two-Monell should be dismissed because “(1) it is 24 asserted against an individual instead of a municipality, and (2) Plaintiff does not allege a 25 violation of a constitutional right.” (Doc.

8 at 7.) As for the first point, Defendants 26 elaborate that “[Rideout] cannot be held liable in his individual capacity as alleged in Count 27 Two-Monell because Monell claims only are asserted to hold municipalities liable for the 28 actions of individuals, not to hold individuals liable for municipalities’ actions.” (Id. at 8.) 1 Defendants argue that “Plaintiff alleges that [Rideout] was a policymaker who oversaw 2 promotions for the City of Phoenix Fire Department.

However, this is not a sufficient basis 3 to hold Mr. Rideout liable under Monell because he is not the municipality. Therefore, 4 Plaintiff’s Monell claim must fail and be dismissed with prejudice.” (Id., citation omitted.) 5 As for the second point, Defendants contend that “the statute of limitations for Monell 6 claims in this case is two years,” so “the allegations Plaintiff may use to support his Monell 7 claim do not include the 2021 or 2023 Captain Promotion Processes, since both occurred 8 prior to July 28, 2023.” (Id. at 9.)

Defendants argue that “[e]ven if the Court considers the 9 alleged events that occurred prior to the limitations period, Plaintiff still fails to allege any 10 underlying constitutional violation.... Plaintiff merely alleges that the promotion policies 11 disadvantaged him because he is white and male, and that consideration of race and gender 12 prevented him from being selected for a promotion.

Even taking these alleged facts at their 13 face value, they do not rise to the level of a constitutional violation.” (Id. at 9, citation 14 omitted.) Defendants also argue that “[i]f the Title VII claims in Count Two-Title VII, 15 Count Three and Count Four are asserted against [Rideout], they must be dismissed 16 because individual supervisors cannot be held liable for Title VII violations,” and “if the 17 IIED claim in Count Five is asserted against [Rideout], it should be dismissed for failure 18 to state a claim.” (Id. at 7-8.)

Defendants argue that “[a]lthough Plaintiff has only named 19 [Rideout] in the Monell claim, Plaintiff should be barred from amending the Complaint to 20 name [Rideout] as a defendant in any other claims.” (Id. at 10.) 21 Plaintiff makes no arguments in response. (See generally Doc. 10.) 22 In reply, Defendants argue that “the Court may construe the plaintiff’s failure to 23 respond as consent to granting the motion.” (Doc.

11 at 2.) Defendants argue that 24 Plaintiff’s response “makes no mention of his Count Two-Monell claim or any other theory 25 of liability against [Rideout] in his individual capacity. Plaintiff’s Count Two-Monell was 26 the only claim alleged against [Rideout], so dismissal of that claim also requires dismissal 27 of [Rideout] as a party.” (Id. at 2-3.) 28 ... 1 B. Analysis 2 Although Count Two-Monell could be dismissed for an array of reasons, the most 3 fundamental problem—which Plaintiff failed to address in his response—is that it is only 4 asserted against Rideout in his individual capacity and is not asserted against the City.

To 5 be clear, it is possible to assert a § 1983 claim against a supervisor in his individual 6 capacity. See generally *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (“A defendant 7 may be held liable as a supervisor under § 1983 if there exists either (1) his or her personal 8 involvement in the constitutional deprivation, or (2) a sufficient causal connection between 9 the supervisor’s wrongful conduct and the constitutional violation.

A plaintiff must show 10 the supervisor breached a duty to plaintiff which was the proximate cause of the injury. 11 The law clearly allows actions against supervisors under section 1983 as long as a sufficient 12 causal connection is present and the plaintiff was deprived under color of law of a federally 13 secured right.”) (cleaned up). But such a claim is different from a Monell claim, which is 14 a mechanism for suing a municipal defendant.

A municipal employee’s conduct may 15 “constitute[] an element of a Monell claim,” but “Monell liability is limited to the ‘acts of 16 the municipality.’” *Lockett v. Cnty. of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020) 17 (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986)). See also *Guillory v. Orange* 18 Cnty., 731 F.2d 1379, 1382 (9th Cir. 1984) (“Monell does not concern liability of 19 individuals acting under color of state law.”).

Thus, Plaintiff’s attempt to assert a Monell 20 claim solely against Rideout in his individual capacity must fail. See, e.g., *Reason v. City* 21 of Richmond, 2021 WL 107225, *5 (E.D. Cal. 2021) (“Plaintiffs attempt to sue Chief 22 Williams and Chief French in their individual capacities under Monell, but a Monell claim 23 may be brought only against a municipality, not an individual.”); *Tingirides v. Cal. Dept. of Corr. & Rehab.*, 2020 WL 4904661, *10 (C.D.

Cal. 2020) (“Defendants are correct that 25 Defendant Borders cannot be liable under a Monell theory of liability.... The Monell 26 doctrine does not apply to Defendant Borders, a state official, sued in his individual 27 capacity.”); *Mendez v. Becher*, 2012 WL 12920630, *1 (N.D. Cal. 2012)

(“Plaintiff’s third 28 cause of action is predicated on liability established under Monell..., which provides for 1 municipal liability where there is a custom or policy causing the harm to plaintiffs.

It does 2 not establish individual liability such as that of Chief Becher in her individual capacity.”). 3 V. Count Five (IIED Claim Against The City) 4 A. The Parties’ Arguments 5 Defendants argue that Count Five “must be dismissed because Plaintiff cannot 6 satisfy the required elements of the claim.” (Doc. 8 at 11.) Defendants argue that “[t]o 7 state a cognizable claim of IIED under Arizona law, a plaintiff must prove three required 8 elements: first, the conduct by the defendant must be extreme and outrageous; second, the 9 defendant must either intend to cause emotional distress or recklessly disregard the near 10 certainty that such distress will result from his conduct; and third, severe emotional distress 11 must indeed occur as a result of the defendant’s conduct.” (Id., cleaned up.)

Defendants 12 argue that Count Five fails to satisfy the first and second elements because “(1) [Plaintiff] 13 has not alleged any extreme and outrageous conduct by the City, and (2) [Plaintiff] has not 14 alleged that [the City]’s actions purposely or recklessly caused his emotional distress.” 15 (Id.)

As for the first element, Defendants elaborate that the statute of limitations confines 16 Count Five “to facts occurring after July 28, 2024” and “there are almost no allegations in 17 the Complaint that support Plaintiff’s IIED claim against either Defendant.” (Id. at 11-12.) 18 Citing *Mintz v. Bell Atl. Sys. Leasing Int’l, Inc.*, 905 P.2d 559 (Ariz. Ct. App.

1995), 19 Defendants argue that a failure to give a work promotion ““does not go beyond all possible 20 bounds of decency, even if it was motivated by sex discrimination or retaliation” and that 21 ““it is extremely rare to find conduct in the employment context that will rise to the level 22 of outrageousness necessary to provide a basis for recovery for the tort of [IIED].” (Id. at 23 12.)

Defendants add that “Plaintiff’s claims of retaliation do not rise to the level of 24 outrageousness either.” (Id. at 12-13.) As for the second element, Defendants elaborate 25 that “Plaintiff has not alleged facts to show that the Defendants acted purposefully or 26 recklessly in supposedly causing his extreme emotion distress.” (Id. at 13.) 27 Plaintiff makes no arguments in response.

(See generally Doc. 10.) 28 In reply, Defendants argue that “[b]ecause Plaintiff has not opposed dismissal of 1 Count Five... he agrees to dismiss [it].” (Doc. 11 at 3.) 2 B. Analysis 3 Under Arizona law, an IIED claim has three elements: “First, the conduct by the 4 defendant must be extreme and outrageous; second, the defendant must either intend to 5 cause emotional distress or recklessly disregard the near certainty that such distress will 6 result from his conduct; and third, severe emotional distress must indeed occur as a result 7 of defendant’s conduct.” *Citizen Publ’g Co. v. Miller*, 115 P.3d 107, 110 (Ariz.

2005) 8 (cleaned up). 9 “A trial court is to act as a gatekeeper to determine whether the alleged actions are 10 ‘so outrageous in character and so extreme in degree, as to go beyond all possible bounds 11 of decency, and to be regarded as atrocious and utterly intolerable in a civilized 12 community.’” *Morgan v. Freightliner of Arizona, LLC*, 2017 WL 2423491, *8 (D.

Ariz. 13 2017) (quoting *Mintz*, 905 P.2d at 563). “[T]he Court need not determine whether 14 Defendants’ conduct was outrageous enough to create liability, only whether reasonable 15 persons could differ as to whether the conduct is ‘extreme and outrageous.’” *Id.* 16 “[C]onduct necessary to sustain an intentional infliction claim falls at the very extreme 17 edge of the spectrum of possible conduct.” *Reel Precision, Inc. v. FedEx Ground Package 18 Sys., Inc.*, 2016 WL 4194533, *2 (D.

Ariz. 2016) (quoting *Watts v. Golden Age Nursing 19 Home*, 619 P.2d 1032, 1035 (Ariz. 1980)). “It ‘must completely violate human dignity. 20 The conduct must strike to the very core of one’s being, threatening to shatter the frame 21 upon which one’s emotional fabric is hung.’” *Id.* (quoting *Pankratz v. Willis*, 744 P.2d 22 1182, 1189 (Ariz. Ct. App. 1987)). Additionally, Arizona courts have held that “[i]t is 23 extremely rare to find conduct in the employment context that will rise to the level of 24 outrageousness necessary to provide a basis for recovery for the tort of intentional infliction 25 of emotional distress.” *Mintz*, 905 P.2d at 563 (quoting *Cox v. Keystone Carbon Co.*, 861 26 F.2d 390, 395 (3d Cir.

1988)). See also *id.* (“We readily agree with the trial court that Bell 27 Atlantic’s failure to promote *Mintz* does not ‘go beyond all possible bounds of decency,’ 28 even if it was motivated by sex discrimination or retaliation.”). 1 The Court agrees with Defendants that the complaint fails to allege the sort of 2 “extreme and outrageous” conduct necessary to support an IIED claim under Arizona law.

3 As Defendants correctly note, the statute of limitations confines Plaintiff’s IIED claim to 4 acts occurring after July 28, 2024. Thus, the claim may only be premised on the allegations 5 that “[o]n August 16, 2024, Battalion Chief Rustin Eikleberry made derogatory and false 6 statements about the Plaintiff’s discrimination claim and his intentions at Station 41 in front 7 of ten co-workers at dinner” and that “[o]n December 27, 2024, [Chris Murphy] used his 8 access to Telestaff scheduling software to move firefighters around, moving his ‘buddies’ 9 into better positions while disadvantaging Plaintiff.” (Doc.

1-1 ¶¶ 66-67.) That conduct 10 does not qualify as the sort of “extremely rare,” “atrocious and utterly intolerable” conduct, 11 *Mintz*, 905 P.2d at 563, that “completely violate[s] human dignity... [and] strike[s] to the 12 very core of one’s being, threatening to shatter the frame upon which one’s emotional 13 fabric is hung.” *Pankratz*, 744 P.2d at 1189 (citation omitted).

Courts have not hesitated 14 to reject employment-related IIED claims under analogous circumstances. See, e.g., *Mintz*, 15 905 P.2d at 563-64 (employer failed to promote the plaintiff, forced her to return to work, 16 and informed her, via a letter delivered to her hospital bed where she was being treated for 17 severe emotional problems, that her job duties had been reassigned); *Nelson v. Phoenix 18 Resort Corp.*, 888 P.2d 1375, 1386 (Ariz.

Ct. App. 1994) (employer used an armed security 19 team to escort the plaintiff out of the premises in middle of night, allowed the plaintiff to 20 use the bathroom on the way out only if accompanied into the stall by armed escorts, and 21 fired the plaintiff in the lobby in front of coworkers and the media); *Pontikis v. Lucid USA 22 Inc.*, 2023 WL 6127693, *3 (D.

Ariz. 2023) (“Plaintiff sets forth the retaliatory acts which 23 he alleges resulted in intentional infliction of emotional distress. They include: being 24 passed up for a promotion, being publicly reprimanded, prohibiting one other Lucid 25 employee from speaking with Plaintiff, making negative comments about him to other 26 employees, expressing an intent to terminate Plaintiff to his co-employees, and ostracizing 27 him from work-related conversations.

To be sure, these allegations, which do amount to a 28 retaliation claim, do not amount to a claim for the intentional infliction of emotional 1 distress as a matter of law.”); *Reel Precision*, 2016 WL 4194533 at *3 (employer forced 2 employees to perform a public “walk of shame” after failing to correctly perform their job 3 responsibilities); *Henson v. Air Nat.*

Guard Air Force Rsrv. Command Test Ctr., 2007 WL 4 2903993, *12 (D. Ariz. 2007) (employer subjected plaintiff to an abusive five-hour long 5 meeting, created an unpleasant work environment in which plaintiff was threatened that 6 she would lose her job, and ignored several of plaintiff’s requests for assistance).5 7 VI. Punitive Damages 8 Defendants also move to dismiss Plaintiff’s request for punitive damages.

(Doc. 8 9 at 14-15.) Plaintiff does not respond. (See generally Doc. 10.) 10 Count Two-Monell, which has now been dismissed, is the only claim that included 11 an express demand for punitive damages. (Doc. 1-1 ¶ 103.)

However, Plaintiff’s prayer 12 for relief also appears to assert an undifferentiated claim for punitive damages. (Id. at 16.) 13 Regardless, to the extent Plaintiff is seeking punitive damages based on his remaining 14 claims against the City that have not been dismissed—Counts One, Two-Title VII, Three, 15 and Four—the Court agrees with Defendants that punitive damages are unavailable.

16 As for Count One, although the Ninth Circuit has left open the question “[w]hether 17 punitive damages are available at all under [§] 1981 where the defendant is a municipality,” 18 *White v. Washington Pub. Power Supply Sys.*, 692 F.2d 1286, 1290 (9th Cir. 1982), many 19 district courts within this circuit have held that punitive damages are not available in this 20 circumstance.

See, e.g., *Harvey v. City of San Diego*, 2009 WL 10671672, *3 (S.D. Cal. 21 2009) (“Nor are punitive damages available against municipalities under [§] 1981....”); 22 *Henry v. Portland Dev. Comm’n*, 2007 WL 3125309, *22 (D. Or. 2007) (“[T]he law does 23 not allow an assessment of punitive damages against a municipality in a [§] 1981 claim.”); 24 *Kaulia v. Cnty. of Maui*, 2006 WL 4660130, *6 (D.

Haw. 2006) (“As to the Plaintiff’s 25 claim for punitive damages pursuant to § 1981, the Supreme Court has held that a 26 municipality is immune from punitive damages under 42 U.S.C. § 1983,... and the Court’s 27 28 5 This conclusion makes it unnecessary to address Defendants’ arguments regarding the second IIED element. 1 rationale applies equally to § 1981 actions.”) (cleaned up).

See also *Walters v. City of 2 Atlanta*, 803 F.2d 1135, 1148 (11th Cir. 1986) (“[T]he district court correctly disposed of 3 Walters’ [§ 1981-based] punitive damages claims against the City.”); *Bell v. City of 4 Milwaukee*, 746 F.2d 1205, 1270 (7th Cir. 1984) (same); *Poolaw v. City of Anadarko, Okl.*, 5 738 F.2d 364, 367 (10th Cir. 1984) (same); *Heritage Homes of Attleboro, Inc. v. Seekonk 6 Water Dist.*, 670 F.2d 1, 3 (1st Cir.

1982) (same). The Court is persuaded by these 7 authorities and therefore concludes that Plaintiff may not seek punitive damages based on 8 his § 1981 claim. 9 Plaintiff is also barred from seeking punitive damages against the City based on his 10 remaining Title VII claims. “42 U.S.C. § 1981 a(b)(1) provides that a party may recover 11 punitive damages under Title VII against any defendant ‘other than a government, 12 government agency, or political subdivision.’” *Reed v. City of Culver City*, 2020 WL 13 7315016, *4 (C.D.

Cal. 2020). See also *Harvey*, 2009 WL 10671672 at *3 (“[P]unitive 14 damages are not available against municipalities in Title VII claims.”). 15 VII. Leave To Amend 16 Defendants contend that Plaintiff’s claims should be dismissed with prejudice and 17 without leave to amend. (Doc. 8 at 7, 8, 9, 10, 14.)

In his response, Plaintiff does not 18 request leave to amend. (Doc. 10.) Nevertheless, the rule in the Ninth Circuit is that “a 19 district court should grant leave to amend even if no request to amend the pleading was 20 made, unless it determines that the pleading could not possibly be cured by the allegation 21 of other facts.” *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir.

2016). 22 The decision whether to grant leave to amend is governed by Rule 15(a) of the 23 Federal Rules of Civil Procedure, which “advises the court that ‘leave [to amend] shall be 24 freely given when justice so requires.’” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 25 1048, 1051 (9th Cir. 2003). “This policy is ‘to be applied with extreme liberality.’” *Id.* 26 (citation omitted).

Thus, leave to amend should be granted unless “the amendment: 27 (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay 28 in litigation; or (4) is futile.”

AmerisourceBergen Corp. v. Dialysist W., Inc., 465 F.3d 946, 1 || 951 (9th Cir. 2006). Applying that standard, leave to amend Count Two-Monell against 2|| Rideout is denied on futility grounds, as a Monell claim cannot be brought against an || individual defendant.

The Court will, however, grant leave to amend as to Count Five and as to any punitive damage claim premised on Count Five. 5 Accordingly, 6 IT IS ORDERED that: 7 1. Defendants' motion to dismiss (Doc. 8) is granted in part and denied in 8 || part.

The only claims being dismissed are Count Two-Monell, Count Five, and || request for punitive damages. 10 2. Plaintiff may file a First Amended Complaint ("FAC") within 14 days of the 11 || issuance of this order. Any changes shall be limited to attempting to rectify the deficiencies 12 || identified in this order as to which leave to amend was granted.

Plaintiff shall, consistent 13 || with LRCiv 15.1, attach a redlined version of the pleading as an exhibit. 14 3. Rideout is dismissed as a defendant. 15 Dated this 9th day of March, 2026. 16 17 Lom ee" Dominic W. Lanza 19 United States District Judge 20 21 22 23 24 25 26 27 28 -23-