IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JERMAINE WILSON and DAMEON SANDERS, individually and for a class,	)	
Plaintiffs,	)	
v.	)	No. 14-cv-08347
CITY OF EVANSTON, ILLINOIS,	)	Honorable John Z. Lee
Defendant.	)	

CITY OF EVANSTON'S RESPONSE
TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Defendant, City of Evanston ("the City"), by and through its attorneys, Tribler, Orpett & Meyer, P.C., states the following for its Response to Plaintiffs' Motion for Summary Judgment.

INTRODUCTION

Plaintiffs contend the application of the City's arrestee property policy violated their rights secured by the Fifth and Fourteenth Amendments to the Constitution of the United States and assert three primary theories: (1) Fifth Amendment Takings Claim; (2) Fourteenth Amendment-Substantive Due Process Claim and (3) Fourteenth Amendment-Procedural Due Process Claim. The only operative complaint for which Plaintiffs can seek judgment is the Second Amended Complaint. Plaintiffs' Memorandum is flawed, as it is premised upon allegations that are not pled in their Second Amended Complaint. Their Memorandum also fails to the extent they attempt to relitigate issues already ruled upon by this Court. Plaintiffs' interpretation of statutes and terms contained therein is also unsound, and directly contrary to the plain language of the statutes. Finally, Plaintiffs provide no authority to support their contention that they have adequately pled

and offered evidence sufficient to meet their burden that they are entitled to judgment on their claims. Therefore, Plaintiffs' motion should be denied.

ARGUMENT

I. Plaintiff's Fifth Amendment claim fails because it is barred, has already been ruled upon in *Conyers*, is based upon underlying arguments in which this Court has already decided, and based upon inapplicable statutes and incorrect interpretation of statutory authority and terms contained therein.

Plaintiffs' Memorandum argues that the application of the City's policy resulted in an unlawful taking of their personal property without just compensation in violation of the Fifth Amendment; however, this allegation is not pled in their Second Amended Complaint (Dkt. #56). Plaintiffs are barred from asserting a Fifth Amendment claim because no statements within their Second Amendment Complaint assert or reference such a claim seeking relief. *Id.* Plaintiffs apparent attempt to remedy their complaint in briefing fails, as it is axiomatic that argument in briefs is no substitute for allegations in pleadings. *Gandhi v. Sitara Capital Management LLC,* 689 F. Supp. 2d 1004 (N.D. Ill. Feb. 9, 2010). Furthermore, this Court certified only two classes/claims under the Fourteenth Amendment. (Plaintiffs' SoF ¶1, Dkt. #75, p. 30.)

Although Plaintiffs are not required to plead facts with particularity, they must at minimum allege a short and plain statement of the claim showing that they are entitled to relief. Fed. R. Civ. P. 8(a)(2). A complaint must allege "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v Iqbal,* 556 U.S. 662, 678 (2009)(citing *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). See also, *McReynolds v. Merrill Lynch & Co.,* 694 F.3d 873, 885 (7th Cir. 2012)(where the Seventh Circuit held that plaintiff had not alleged sufficient facts related to a specific element of the claim at issue); *W.Bend Mut. Ins. Co., v. Schumacher,* 844 F. 3d 670, 675 (7th Cir. 2016)("We have interpreted the standard announced by the Supreme Court as requiring that the plaintiff give enough details about the subject-matter of the case to present a

story that holds together").

Plaintiffs have had ample opportunities to cure the deficiencies in their Second Amended Complaint, but failed to do so even after this very issue was raised in the City's Response to Plaintiffs' Motion to Reconsider. (Dkt. #129, p.2). [1] This Court previously held, it cannot consider allegations made in briefs where the operative complaint makes no reference to these allegations. *Wilson v. City of Evanston*, 2016 WL 344533 (2016) citing, *Car Carriers Inc. v. Ford Motor Co.*, 745 F. 2d 1101, 1107 (7th Cir. 1984). Plaintiffs are barred from seeking judgment on a claim that is not pled in their Second Amended Complaint and which has never been certified by this Court.

Nevertheless, even if a Fifth Amendment claim was at issue under the operative complaint, there is no Fifth Amendment violation for similar reasons Judge Tharp denied the plaintiffs' motion to reconsider the previous denial of their Fifth Amendment claim in *Conyers, et al. v. City of Chicago, et al.*, 2020 WL 2528534. The plaintiffs in *Conyers* alleged that an unlawful taking occurred when the city destroyed their personal property rather than return it. *Id.* at *10. Judge Tharp determined that "for the plaintiffs to succeed on their motion, they must demonstrate a public purpose for the destruction of their property. *Id.* at *11, citing *Kelo v. City of New London, Conn.*, 545 U.S. 469, 480 (2005). The plaintiffs suggest no public purpose for the second taking (i.e. the destruction) of their personal property in their filings nor do they allege any in the operative complaint." *Id*. The court further determined the plaintiffs "have adduced no evidence and made no argument to show that their property was taken for a public purpose." *Id*. The court denied

[1] Wilson's initial Complaint contained a statement contending that Plaintiff and other arrestees had been deprived of their rights secured by the Fifth Amendment (Dkt. #1, ¶ 7). Wilson's Amended Complaint contained a more specific statement alleging that he and others have been deprived of property without just compensation in violation of the Fifth Amendment" (Dkt. # 26, ¶ 32). On January 28, 2016, this Court granted the City's motion to dismiss the Fifth Amendment Takings Claim, and not surprisingly, the Second Amended Complaint omits a Fifth Amendment claim. This Court later granted Plaintiffs' motion to reconsider based on subsequent Supreme Court precedent (Dkt. #140). Nevertheless, Plaintiffs never sought to file an amended complaint after the motion to reconsider was granted, and Plaintiffs cannot deny that the Second Amended Complaint, which is the only operative complaint, omits any allegations to state a claim under the Takings Clause.

plaintiffs motion to reconsider because "they have not adequately shown that the City's policy violates the Taking Clause of the Fifth Amendment…" *Id.*

Similarly, in the instant case, Plaintiffs' Second Amended Complaint makes no reference to an unlawful taking for public use without just compensation. Plaintiffs cite nothing from the record that proves the City took property for "public use." Plaintiffs cite no testimony or evidence whatsoever in support of their Fifth Amendment Takings claim. In *Knick v. Township of Scott, Pennsylvania,* the Supreme Court held that a takings claim is ripe "as soon as a government takes one's property for public use without paying for it. 139 S. Ct. 2162, 2170 (2019). In order to state a Takings claim, Plaintiffs must prove the City took their property for public use without just compensation. Plaintiffs make no such allegation in their Second Amended Complaint nor provide any such evidence in their Memorandum.

Plaintiffs' reliance on *Daniels v. Area Plan Comm'n of Allen City,* 306 F. 3d 445, 460 (7th Cir. 2002), and *Hawaii Housing Authority v. Midkiff,* 467 U.S. 229, 245 (1984) is misplaced. Both of those cases are distinguishable as they involved the government's eminent domain powers. In those cases, the plaintiffs' complaints set forth allegations that their real property was taken without just compensation, and without a public purpose, in violation of the Fifth Amendment. In *Daniels,* the plaintiffs were owners of a subdivision that was subject to a restrictive covenant designed to preserve the residential character of the surrounding neighborhood. *Id.* at 450. They sued their county planning commission when the commission vacated lots from the plat and authorized commercial development. *Id.* The plaintiffs alleged the commission violated the Fifth Amendment by vacating the restrictive covenant without a public purpose. *Id.* Similarly, in *Hawaii Housing Authority,* the plaintiffs were lessors who alleged that a takings violation occurred when the State took title in their real property and transferred it to lessors without just compensation and

without a public use. *Hawaii Housing Authority* at 232.

Unlike the plaintiffs in *Daniels* and *Hawaii Housing Authority,* Plaintiffs in this case do not allege the City took their property for public use without just compensation anywhere in their Second Amended Complaint. To the contrary, they allege that their property was destroyed. It defies common sense that Evanston destroyed the property to serve a public benefit or public use. Simply put, Plaintiffs fail to allege and prove the prima facie elements of a Fifth Amendment Takings claim with evidence from the record.

Plaintiffs also erroneously base their Fifth Amendment claim upon application of the Illinois Law Enforcement Disposition of Property Act (hereinafter "Illinois Act"), using Plaintiffs' own interpretation of the Act and terms contained therein. Plaintiffs argue the City's arrestee property policy fails to provide sufficient notice pursuant to the Illinois Act, yet this Court has repeatedly ruled Plaintiffs are precluded from arguing lack of notice.

On January 26, 2016, this Court determined that the Prisoner Property Receipt that described the City's policy and procedure by which detainees could recover their property was constitutionally adequate and dismissed Wilson's claim based upon inadequate notice. 2016 WL 344533 *4. On August 30, 2017, this Court reiterated that:

> Insofar as Plaintiffs seek to certify a class based on challenging the notice provided in the Prisoner Property Receipt, such an attempt would be precluded by the Court's prior order granting Defendant's motion to dismiss in part. *Wilson,* 2016 WL 344533, at *4.
>
> The Court acknowledge that Plaintiffs' second amended complaint and motion for class certification at times repeat allegations that appear to do no more than restate their prior theory that notice in the Prisoner Property Receipt is insufficient. [Citations Omitted.] ("Plaintiffs also contend that Evanston fails to provide adequate notice to persons who are in custody about how to retrieve their property."). Of course, proceeding on any such theory is precluded by the Court's previous opinion as discussed above. *Wilson*, 2016 WL 344533, at *4."

(Dkt. # 75, p. 5, fn. 3 and p. 9, fn. 4).

Plaintiffs' contend the Illinois Act requires "that after the police department has determined that the property has been abandoned, it must then "make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof." Evanston does not follow this procedure; it does not provide *any* notice after it deems the property to be abandoned." (Dkt. #151, p. 5). This Court has repeatedly ruled that the notice provided in the Prisoner Property Receipt was constitutionally adequate. Plaintiffs' Fifth Amendment claim fails because it is premised upon a lack of notice. Moreover, there is no class certification related to a takings claim, and this Court has previously noted that Plaintiff's Fourteenth Amendment claim is separate and apart from a takings claim (Dkt. #40, p.4, *4).

Plaintiffs' reliance on the Illinois Act and the City's Lost, Stolen Property Ordinance ("Evanston Ordinance") is equally unsound. In interpreting both the Illinois Act and the Evanston Ordinance "[t]he primary rule of statutory construction involves ascertaining the legislature's intent. The legislature's intent can be determined by looking at the language of the statute and construing each section of the statute as a whole. *People v. Patterson*, 308 Ill.App.3d 943, 947 (2nd Dist. 1999). Plaintiffs cite *Patterson*, which analyzed the Illinois Act, but fail to cite the full authority the court relied upon for interpreting statutes and further fail to properly apply the court's analysis.

Illinois Act

The pertinent parts of the Illinois Act are as follows:

> This Act is applicable to all personal property of which possession is transferred to a police department *** ***under circumstances supporting a reasonable belief that such property was abandoned, lost or stolen or otherwise illegally possessed***. 765 ILCS 1030/1 (West 1998). (Emphasis Added.)
>
> Such property believed to be abandoned, lost or stolen or otherwise illegally possessed shall be retained in custody by the sheriff *** which shall make reasonable inquiry and efforts to identify and notify the owner or other person

> entitled to possession thereof, and shall return the property after such person provides reasonable and satisfactory proof of his ownership or right to possession[.] 765 ILCS 1030/2(a) (West 1998).
>
> If the identity or location of the owner or other person entitled to possession of the property has not been ascertained within 6 months after the police department or other law enforcement agency obtains such possession, the sheriff *** shall effectuate the sale of the property *** notice of which *** shall be published at least once in a newspaper of general circulation in the county wherein such official has authority at least 10 days prior to such auction. 765 ILCS 1030/3 (West 1998).

Plaintiffs conveniently chose to omit the above emphasized portion of Section 1030/1 within their Memorandum. The Illinois Act does not apply to Plaintiffs' personal property because said property was not transferred to the Evanston Police Department ("EPD") ***"under circumstances supporting a reasonable belief that such property was abandoned, lost or stolen or otherwise illegally possessed."*** Plaintiffs did not abandon their property when they transferred it to the EPD. (Defendant's SoF ¶25, ¶26, ¶54, ¶55, ¶60, ¶61). It was arrestee property being held for safekeeping pursuant to the terms of the Prisoner Property Receipt. *Id.* Plaintiffs' Second Amended Complaint and testimony further prove that said property was not abandoned because Plaintiffs made efforts to retrieve their property more than 30 days from the date of their arrest. Dkt. 56, ¶ 27 (Defendant's SoF ¶72,¶73, ¶78). There is also no dispute that Plaintiffs' property was not lost, stolen or illegally possessed because they testified that they were the rightful owners of the property and knew where it was located upon transferring it to the EPD. (Defendant's SoF ¶25, ¶26).

Plaintiffs misinterpret the Illinois Act contending that the above sections, when read together, "means that after the police department has determined the property has been abandoned, it must then "make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof." (Dkt. # 151, p. 5). This argument fails for several reasons. Plaintiffs' never abandoned their property nor is there anything in the record to support a

conclusion that the EPD considered Plaintiffs' property to be abandoned. There is also no reason for the City to make efforts to inquire who owns the property – the City knows the property is owned by Plaintiffs per the Prisoner Property Receipt. Plaintiffs' personal property was also not transferred to the EPD under circumstances supporting a reasonable belief that their property was abandoned. The property was transferred upon their arrest. Plaintiffs still owned the property upon transfer. Plaintiffs' reliance upon the Illinois Act to support their Fifth Amendment claim fails.

Evanston Ordinance

Plaintiffs also rely on the City's ordinance contained in Chapter 7 entitled "Lost, Stolen Property" in support of their Fifth Amendment claim. Plaintiffs' contend the ordinance requires that "any property "seized or taken" by Evanston police officers shall be held by Evanston's "custodian of lost or stolen property." (Dkt. #151, p. 7). Plaintiffs then conclude, with no supporting authority or record citation, that "this plain language applies to property that is seized from arrestees." Plaintiffs attempted method of statutory interpretation is contrary to *Patterson*, cited by Plaintiffs, which provides that "The legislature's intent can be determined by looking at the language of the statute and construing each section of the statute as a whole." *Patterson*, 308 Ill.App.3d at 947. Moreover, the City's website advises how each type of property will be handled, and distinguishes between "Lost/Recovered Property" and "Arrestee Property" as well as the different time frames applicable depending on whether it is an arrestee notified prior to transfer; an identified owner notified by phone or mail; and unidentified owner, and identified owner/unable to locate or notify (Plaintiffs' SoF, Ex. 16-18).

Plaintiffs concede their property was not lost or stolen, yet disingenuously try to apply the "Lost, Stolen Property" Ordinance to their property. Plaintiffs cite to a partial section of 9-7-1(A)

contending the "ordinance requires that any property "seized or taken" by Evanston police officers shall be held by Evanston's "custodian of lost or stolen property." Yet, the title of Section 9-7-1 in which paragraph (A) is contained is labeled "POSSESSION AND DISPOSITION OF LOST OR STOLEN PROPERTY." Evanston Code of Ordinances, Chapter 7, Section 9-7-1(Defendant's SoF ¶ 8,9,10). Therefore, Plaintiffs' contention that said sentence refers to "any" property is certainly disingenuous. It is clear from the plain meaning of the ordinance, when construing each section as a whole, that Section 9-7-1 only applies to ***lost or stolen property***.

Plaintiffs' reliance upon Section 9-7-3 of Chapter 7 is similarly flawed. Section 9-7-3 provides "If property seized or taken possession of under the provisions of Chapter [Lost, Stolen Property] shall not be claimed by the rightful owner …" Evanston Code of Ordinances, Chapter 7, Section 9-7-3. Plaintiffs' property was not lost or stolen and could not have been taken possession of by the EPD under Chapter 7 entitled Lost, Stolen Property. The 60-day time period referenced in Section 9-7-3 does not apply to arrestee property – it applies to lost or stolen property as that is the chapter in which it is contained. There is no reason for the City to publish the auction of property in its newspaper to ascertain the owner and give him or her notice that said property will be sold at auction within 10 days. The City knows the owner of the property and Plaintiffs know who possesses their property and the terms in which their property will be held per the Prisoner Property Receipt. Evanston's Lost, Stolen Property Ordinance does not apply to the facts of this case and cannot be used as a basis to support Plaintiff's Fifth Amendment claim.

Finally, Plaintiffs erroneously contend that Illinois law does not authorize the City to retain arrestee property, other than contraband or evidence. Plaintiffs cite to 720.25(h) of the Illinois Administrative Code which provides in pertinent part that "Personal property, except for items confiscated as evidence shall be returned to the detainee or his or her designee upon release and

such return shall be documented." 20 Ill. Administrative Code 720.25(h).

At issue are the words "upon release." Plaintiffs contend that their release occurs when they are transferred from the police lockup to the custody of the Sheriff of Cook County. Under this reading, Plaintiffs argue, their property should be returned to them once they are transferred from the police lockup to the custody of the Sheriff of Cook County. Plaintiffs' position is contrary to this district's holding in *Conyers v. City of Chicago,* 12-CV-06144, 2020 WL 2528534 (N.D. Ill. May 18, 2020), runs afoul of common sense, and should be rejected. Moreover, Section 720.25 of the Illinois Administrative Code reinforces the City's practice of disposing of unclaimed property upon release. Plaintiffs fail to acknowledge that Section 535.140 of Title 20 of the Illinois Administrative Code empowers the Illinois Department of Corrections to dispose of personal property "which has not been claimed by the committed person or his legal representative." Ill. Admin. Code, Title 20 § 535.140. Certain items (such as clothing) may be destroyed if not claimed within 30 days. *See Id.,* § 535.140(b). Accordingly, the Illinois Administrative Code reinforces the City's practice of disposing of unclaimed property after a limited time of 30 days.

II. Plaintiffs have no property interest in Evanston's Lost, Stolen Property Ordinance because it does not apply to arrestee property.

Plaintiff's substantive due process claim is based upon their application of an "Evanston ordinance" which they contend creates a property interest for arrestees to not have their property destroyed until 60 days after the final disposition of court proceedings in connection with which the property was taken. Plaintiffs contend the City's policy to sell or destroy arrestee property thirty days after arrest violates that claimed property right derived by the "Evanston ordinance." Throughout Plaintiffs' substantive due process argument, they fail to even state the name of the "Evanston ordinance" in which their alleged property interest is derived. The section of the "Evanston ordinance" (in which Plaintiffs disingenuously claim a property right) is entitled

"Possession and Disposition of Lost, Stolen Property." (Plaintiffs' SoF, Ex. 19). Plaintiffs concede their property was not lost or stolen. (Plaintiffs' SoF ¶11, ¶16). Plaintiffs extract language from Section 9-7-1 and contend the ordinance "creates a "duty of all officers and members of the Police Department." Section 9-7-1 is entitled "POSSESSION AND DISPOSITION OF LOST OR STOLEN PROPERTY." (Plaintiffs' SoF, Ex. 19). The plain language of the Evanston Ordinance applies to lost and stolen property. The ordinance makes no reference to arrestee property. Plaintiffs then refer to the 60-day provision in Section 9-7-3 entitled Failure of Owner to Claim Property, Sale. *Id.* The first sentence of that section states "If property seized or taken possession of under the provisions of this Chapter shall not be claimed by the rightful owner …" *Id.* Plaintiffs' property was not "seized or taken possession of" under the provisions of Evanston Ordinance Chapter 7 Lost, Stolen Property. The legislature's intent is determined by looking at the language of the statute and construing each section of the statute as a whole. *Patterson*, 308 Ill.App.3d at 94. Plaintiffs have no property interest in Evanston's Lost, Stolen Property Ordinance when construing each section of the ordinance as a whole.

Plaintiffs attempted application of *Quick v. Illinois Dep't of Fin. & Prof'l Regulation*, 202 WL 3429772 (N.D. Ill. June 23, 2020) is misguided. In *Quick*, the plaintiffs applied for a dispensary license under the Illinois Compassionate Use of Medical Cannabis Act. The plaintiffs argued that they were qualified and that the Act obligated IDFPR to issue as many licenses as there were qualified applicants. *Id*. at *1. The court determined the plaintiffs stated a claim and that the defendants' arguments were better suited for summary judgment. *Id*. at *4.

In *Quick*, the plaintiffs claimed a property right under the very statute in which they applied for their license. In the instant case, Plaintiffs never claimed to have transferred their property pursuant to the terms of Evanston's Lost, Stolen Property Ordinance. In fact, Plaintiffs were not

even aware of said ordinance. (Plaintiffs' SoF, Ex. 6, p. 76-77). Plaintiffs transferred their property to the EPD under the terms of the Property Receipt which they both acknowledged completing upon their arrest. (Defendant's SoF ¶25, ¶26). They never claimed that their property was lost, stolen or abandoned upon transfer of their property at the time of their arrest. *Id.*

Plaintiffs' attempt to rely on Evanston's Lost, Stolen Property Ordinance to create a property right in support of their substantive due process claim fails for the same reason as explained *supra*: the Evanston Ordinance does not apply to facts of this case. As the plain language of its name suggests, this ordinance applies to Lost or Stolen Property, whereas Wilson and Sanders property was identified by them at the outset. (Defendant's SoF ¶25, ¶26). Because the property at issue was not lost or stolen, this ordinance does not apply, and its requirements are irrelevant to the case at bar.

III. Plaintiffs' fail to prove the City's procedure for retrieving arrestee property is constitutionally inadequate to support their procedural due process claim.

This Court determined that the salient issue for Plaintiffs' procedural due process claim is "whether the notice requiring an in-custody arrestee to find a designee to retrieve his (or her) property provides a constitutionally adequate procedure … or whether the City must instead hold arrestees' property until their release." (Dkt. #75, p. 26). While Plaintiffs contend the Constitution demands holding property until the arrestees' release, they never address what happens if the arrestee is never released. Regardless, there is no question the City's policy is constitutionally adequate because both Plaintiffs had the ability to have an authorized representative retrieve their property or take other actions to retrieve their property, yet simply failed to do so before their property was destroyed.

As the Supreme Court explained in *Mathews v. Eldridge,* 424 U.S. 319 (1976), the test for procedural adequacy requires consideration of three distinct factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldgridge, 424 U.S. at 335.

Applying the *Mathews* test to the case at bar, Plaintiffs offer no facts to support an argument that the City's procedure carries a high risk of erroneous deprivation. Plaintiffs present no evidence to suggest the City's procedure resulted in a high number of arrestees being deprived of their personal property. To the contrary, the evidence shows that Plaintiffs themselves had successfully retrieved their personal property in their prior arrests. (Defendant's SoF ¶55, ¶, 88). Sanders' mother retrieved his personal property for him when he was arrested by the EPD on July 31, 2010 and May 7, 2011 (Defendant's SoF ¶ 89). Sanders' brother retrieved his personal property for him when he was arrested by the EPD on July 21, 2014 (Defendant's SoF ¶ 90). For the arrest that is the subject of this litigation, Sanders designated "Jessica Mosley" (his girlfriend) on his Property Receipt as the individual he authorized to retrieve his property (Defendant's SoF ¶ 76). Jessica went to the EPD to retrieve the property, but did not do so until well after the property had already been destroyed. (Plaintiffs' SoF, Ex. 10, pp. 52-53). The City still has Sanders' cell phones. (Plaintiffs' SoF, Ex. 10, pp. 45-48). Sanders also contacted his grandfather who went to the EPD to retrieve his property. (Plaintiffs' SoF, Ex. 10, pp. 34-37, 55-56.)

The City changed its policy to model Skokie's police department's policy and allow an arrestee to designate a representative to make it easier for the arrestee to retrieve his or her property. (Plaintiffs' SoF, Ex. 15, pp. 12-15). An arrestee who is detained throughout the 30-day period can retrieve property in the following ways: designating a representative, contact a social worker at the jail to complete a form to designate someone, call the EPD and speak with a property officer

to designate a person, write the EPD a letter regarding release of their property and make a request through their attorney either in court or directly to the EPD. (Plaintiffs' SoF, Ex. 15, pp. 25-29.) The EPD simply requires a reasonable establishment that the property is being returned to someone authorized by the arrestee. (Plaintiffs' SoF, Ex. 15, pp. 27-28)

Moreover, the EPD successfully returned most personal property to arrestees. (Defendant's SoF ¶ 51). The EPD destroyed or otherwise disposed of property retained on behalf of thirty-nine arrestees, who, according to custody information Plaintiffs submitted, were in the Cook County Department of Corrections ("CCDOC") for more than thirty days. Mot. Class Cert., Ex. 5. According to Wasowicz, the EPD arrested approximately 480 individuals per year. (Defendant's SoF ¶ 49). That indicates that less than 10% of arrestees had property that was destroyed or otherwise disposed of. There is no evidence that these 10% of arrestee did not reclaim their property due to inadequate procedures by the City.

Additionally, Plaintiffs provide no evidence to support their allegation that the Constitution requires the City to hold arrestee property until their release, nor state what happens if the person is never released. Plaintiffs identify no police department that holds property until the arrestee's release from custody or any legal authority to support such a contention. The evidence and Plaintiffs' own testimony shows that Plaintiffs failed to utilize the various safeguards that were available to them. When Wilson appeared for his bond hearing, he was represented by an attorney. Wilson could have arranged for his attorney to contact the EPD to obtain the return of his personal property, but he failed to do so (Defendant's SoF ¶ 67). The entire time he was in custody, Wilson had access to a telephone (Defendant's SoF ¶ 69). For the duration of his custody, Wilson had access to correctional rehabilitation workers who could have connected him with his criminal defense attorney, and who could have made telephone calls on his behalf, including assisting him

in retrieving his inventoried personal property (Defendant's SoF ¶ 70, 71). February 2014, almost a year after his arrest, was the first time Wilson took any action to retrieve his property. (Plaintiffs' SoF, Ex. 6, p. 61, 72-73.)

Sanders was also represented by an attorney during his criminal case (Defendant's SoF ¶81). At no time did Sanders ask his criminal attorney to contact the EPD to obtain the return of his personal property (Defendant's SoF ¶82). Sanders was also familiar with the social workers at the CCDOC. Sanders could have had social workers arrange telephone calls for him to contact a designee to retrieve his property (Defendant's SoF ¶ 79). Simply put, Plaintiffs failed to utilize all of the procedures available to them to retrieve their property. Plaintiffs' testimony demonstrates that nothing about the procedure in allowing a designee to retrieve their property prevented them from securing their property. They simply waited too long and took no effort to retrieve their property until almost a year after their arrest. (Defendant's SoF ¶ 73, 77).

There is no evidence to support Plaintiffs' argument that the City's policies are procedurally inadequate. The record is devoid of any evidence or testimony indicating a high risk of erroneous deprivation. Plaintiffs' own testimony confirms that additional procedural safeguards would have had no probable value, since Plaintiffs' failed to utilize the procedural safeguards that were available. The City's procedural safeguards were not inadequate, it was Plaintiffs' efforts to utilize those procedures that was inadequate.

CONCLUSION

WHEREFORE, for all the reasons stated herein, and adopting its Response to Plaintiff's Rule 56.1 Statement of Facts, and Defendant's Statement of Facts and Motion and Memorandum in Support of its Motion, the City of Evanston hereby moves that Plaintiffs' Motion for Summary Judgment be denied, and that it recovers its costs.

Respectfully submitted,

s/ William B. Oberts
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant, City of Evanston's Response to Plaintiffs' Motion for Summary Judgment, was served upon:

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service was accomplished pursuant to ECF as to Filing Users and complies with LR 5.5 as to any party who is not a Filing User or represented by a Filing User by mailing a copy to the above-named attorney or party of record at the address listed above, from 225 W. Washington Street, Suite 2550, Chicago, IL 60606, on the 30th day of November, 2020, with proper postage prepaid.

s/ William B. Oberts
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