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

BEN BAKER and CLARISSA GLENN, Plaintiff, v. CITY OF CHICAGO, Former CHICAGO POLICE SERGEANT RONALD WATTS, OFFICER KALLATT MOHAMMED, SERGEANT ALVIN JONES, OFFICER ROBERT GONZALEZ, OFFICER CABRALES, OFFICER DOUGLAS NICHOLS, JR., OFFICER MANUEL S. LEANO, OFFICER BRIAN BOLTON, OFFICER KENNETH YOUNG, JR., OFFICER ELSWORTH J. SMITH, JR., PHILIP J. CLINE, KAREN ROWAN, DEBRA KIRBY, and as-yet-unidentified officers of the Chicago Police Department., Defendants.	)	Case No. 16 C 8940 Judge Franklin U. Valderrama Magistrate Judge Sheila M. Finnegan (This case is part of *In re: Watts Coordinated Pretrial Proceedings*, Master Docket Case No. 19 C 1717)

CERTAIN DEFENDANTS' REPLY IN SUPPORT OF THEIR JOINT MOTION TO ALLOW FORENSIC EXAMINATION AND TESTING OF INVENTORY NUMBER 10503356 RECOVERED IN CONNECTION WITH PLAINTIFF BAKER'S MARCH 23, 2005 ARREST

Defendants City of Chicago, Philip Cline, Debra Kirby, Karen Rowan, Alvin Jones, Robert Gonzalez, Miguel Cabrales, Douglas Nichols, Jr., Manuel Leano, Brian Bolton, Kenneth Young, Jr., and Elsworth Smith, Jr., respectfully submit this reply in support of their motion for an order allowing forensic examination and testing of inventory number 10503356 recovered in connection with plaintiff Baker's March 23, 2005 arrest. In support of thereof, Certain Defendants ("defendants") state as follows:

INTRODUCTION

Noticeably absent from plaintiffs' "kitchen-sink" response to defendants' motion is any

contention that the forensic testing requested by defendants is irrelevant. (Dkt. 285). Plaintiffs accordingly concede the most important aspect of defendants' motion: that fingerprint and DNA testing of the narcotics Officer Nichols recovered from Baker on March 23, 2005 is relevant to Baker's claim that the defendant officers fabricated their reports that he possessed those narcotics. Based on the allegations of their second amended complaint, it is surprising plaintiffs oppose defendants' motion. Rather than contest defendants' motion on the merits, plaintiffs instead raise a multitude of baseless procedural and technical objections in a misguided attempt to block forensic testing at all costs. As explained below, none of plaintiffs' arguments have merit.

First, as stated, the testing is relevant. Second, defendants' motion is timely. This is expert discovery and now is the time to conduct forensic testing. *Smith v. City*, 21 C 1159, Dkt. 152 (Weisman, M.J.); Dkt. 192, 2022 WL 458729 (N.D. Ill February 15, 2022)(Guzman, J.)(overruling plaintiff's Rule 72 Objections to Dkt. 152)(attached as Group Exhibit A along with Magistrate Judge Weisman's additional order on the subject of forensic testing, Dkt. 214). But for plaintiffs' objection, defendants would have conducted their testing within the expert discovery schedule. Third, plaintiffs knew the evidence exists and is relevant to this case. Defendants produced the inventory reports for this evidence, the chain of custody report for that inventory, and responded to plaintiffs' request to inspect the evidence by inviting plaintiffs to do so: all they needed to do was contact defendants. (Ex. B, inventory report; Ex. C, Chain of Custody Report; Group Ex. D, City response to plaintiff's first request to produce at para. 37). Fourth, on April 1, 2024, plaintiffs disclosed two experts who criticized defendants for not conducting forensic testing on this evidence: Dr. Alicia McCarthy and Dr. Jon Shane. (Exhibit 3 to Motion, McCarthy report at p. 4-6; excerpt of Shane report at 96, n. 75, Exhibit E). It is disingenuous for plaintiffs to now attempt to thwart defendants from conducting the very testing they say defendants should

have conducted in the first place. Fifth, defendants produced the chain of custody report for the evidence that sets forth how the evidence was handled and questioned the defendant officers how they inventoried evidence. (Ex. F, Manuel Leano dep at 248-251). What's more, plaintiffs requested and the City produced a Rule 30(b)(6) witness to specifically discuss "[t]he collection, inventory, and testing of suspected narcotics (Group Ex. G, Lt. Mike Fitzgerald dep at 164-194 and plaintiffs' rule 30(b)(6) notice, exhibit 1 to Fitzgerald's deposition). Plaintiffs therefore know or should know of the chain of custody of narcotics evidence in general and in this case; indeed, plaintiff Baker stipulated to it at his 2006 criminal trial. Sixth, to the extent it was required, defendants' motion establishes good cause and meets all of the technical requirements identified by plaintiffs to request fingerprint and DNA testing of the evidence and to request Baker's prints and DNA.

Accordingly, for all the reasons stated in defendants' motion and below, defendants respectfully request that this Court allow forensic testing of inventory number 10503356 recovered in connection with plaintiff Baker's March 23, 2005 arrest.

I. The Requested DNA Testing is Relevant, Reasonable, and Does Not Unduly Affect Baker's Privacy Rights.

The forensic testing defendants seek to conduct is unquestionably relevant to both liability and damages. Fed.R.Evid. 401; Fed.R.Civ.Pro. 26(b)(1)("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any parties claim or defense and proportional to the needs of the case….. Information within this scope of discovery need not be admissible in evidence to be discoverable.") Notwithstanding a 14-page brief raising a host of "form over function" arguments, plaintiffs never contend that fingerprint and DNA testing of the evidence is irrelevant. As explained in defendants' motion, any such contention would lack merit because Baker contends defendants fabricated their reports to state they recovered the narcotics from him.

The presence of Baker's prints and/or DNA on one or more of the bags would therefore provide further support that the defendant officers did not fabricate the reports stating Officer Nichols recovered the narcotics contained in Inventory Number 10503356 from Baker on March 23, 2005. This evidence is relevant to plaintiffs' fabrication of evidence due process claim, malicious prosecution claim, intentional infliction of emotional distress claim, and ultimately to whether he was wrongfully convicted for the charges arising form his March 23, 2005 arrest. Contrary to plaintiffs' assertion (at 7), Baker's DNA and/or prints on the evidence would also qualify as impeachment if Baker claims at trial that he did not possess the drugs. And, of course, Baker's possession of the drugs (*i.e,* his guilt) is relevant to damages. *See*, *e.g.*, *Parish v. City of Elkhart*, 702 F.3d 997, 999-1003 (2012).

Instead of addressing Rule 26(b)(1), plaintiffs' response contends defendants' motion must meet a variety of factors discussed by one Northern District decision and several out of state cases under Rule 26(c) for destructive testing and Rule 35. (Response at 4).[1] Yet, plaintiffs do not appear to seriously contend that the cited factors are absent here. For instance, the general Rule 35 standard is good cause (Fed. R. Civ. P. 35(a)(2)(A)) and plaintiffs contend that the following must be present to require Baker to provide his DNA and fingerprints: relevance; "a reasonable possibility that testing will yield a match"; and "the privacy rights of the individual being tested will not be unduly affected." (Response at 5, citing *Davis v. City of New York*, 13 C 6260, 2019 WL 3252747, at *2 (E.D.N.Y. July 18, 2019).

Relevance and good cause are established as discussed above and in defendants' motion.

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[1] Relative to Rule 35, plaintiffs cite *Tate v. City of New York*, 2019 WL 3252747, *2 (E.D.N.Y. July 18, 2019) and *Davis v. City of New York*, 2019 WL 3252747, at *2 (E.D.N.Y. July 18, 2019). Relative to destructive testing, plaintiffs cite *Rivera v. Lake County*, 2015 WL 14071796 (N.D. Ill Jan. 29, 2015)(Leinenweber, J.) and *Mirchandani v. Home Depot, U.S.A., Inc.*, 235 F.R.D. 611, 613 (D.MD. 2006).

As to the second factor, the police reports and defendant officers' testimony that Baker possessed the narcotics at the time of his arrest (Ex. H, May 23, 2006 trial testimony of Officer Nichols at BAKER GLENN 019260 – 019264), indicate there is a reasonable possibility that Baker's DNA and/or prints will be on the evidence. Plaintiffs fail to make any persuasive argument to the contrary, and their disclosed expert in this case, Dr. Shane, clearly agrees at page 96, footnote 75 of his report:

> Knowing the complainants alleged that they had never handled the evidence, a reasonable investigative measure would have been to submit the evidence for forensic analysis (e.g., fingerprinting, DNA testing) to eliminate the complainant as an offender. **If a complainant had handled the evidence particularly over a longer period (such maintaining a "stash" and peeling off smaller quantities from larger quantities to serve customers), then forensic analysis may confirm or dispel the investigator's suspicions.** This did not occur. (Ex. E, excerpt of Dr. Shane report at 96, n. 75)(emphasis added).

Thus, as plaintiffs' expert acknowledges, there is "a reasonable possibility that Baker's DNA and/or prints will be on the evidence" if Baker possessed them.

Buried at page 14 of their response, plaintiffs make the following ambiguous statement about whether there is a reasonable possibility that forensic testing will yield a match to Baker: "even if there is such [fingerprint and/or DNA] material, it would not be unexpected to find such material on plastic baggies." (Response at 14). With this statement, plaintiffs are either admitting that there is a reasonable possibility that Baker's prints or DNA are on the plastic baggies if he possessed them, or admitting that Baker touched the baggies so it would "not be unexpected to find such material." *Id*. Either way, defendants have clearly met the element of whether forensic testing will yield a match. Indeed, if Baker admits that his prints and/or DNA are on the plastic baggies, then he should stipulate to that fact and this testing would be unnecessary.[2]

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[2] This was the result reached in *Smith*. After Judges Guzman and Weisman's orders allowing forensic testing and the evidence was sent to the City Defendants' DNA expert, the plaintiff in Smith ultimately stipulated

Plaintiffs next contend the Rule 35 standard is not met because defendants "have failed to explain in any detail what testing they will perform or how it will be performed." (Response at 13). Plaintiffs' assertion is incorrect. Defendants explained in their motion precisely what their experts intend to do:

> Defendants have now retained expert consultants (Speckin Forensics, LLC) to examine Inventory Number 10503356 to process the evidence in order to determine whether there are any latent print ridge impressions that can be obtained, and if so, to determine whether any such latent ridge impressions match plaintiff Baker's fingerprints. Defendants have also asked Speckin Forensics to examine Inventory Number 10503356 to determine appropriate sample areas for potential DNA material to swab, and if identified, to take appropriate swabs and send those to Sorenson Forensics. The DNA lab technicians at Sorenson Forensics would then be asked to examine the swabs for DNA, and if DNA is found, to determine whether it matches plaintiff Baker's DNA. (Motion at 3).

It is unclear what details plaintiffs believe are missing from this explanation, but their experts Dr. Shane and Dr. McCarthy do not appear to be confused.

As to the third Rule 35 element cited by plaintiffs, they do not appear to contend that Baker's "privacy rights" will be "unduly affected." If they did, any such contention would be without merit. Baker has filed a lawsuit contending he was wrongfully convicted of possessing the narcotics at issue and is seeking millions of dollars in compensation. As a result, Baker himself has made his possession of the narcotics a central issue in this case. Baker's privacy rights will not be unduly affected by requiring him to submit a DNA sample or his fingerprints, procedures that are minimally invasive.[3] And, of course, there is a confidentiality order in this matter that could protect any privacy concerns that he could raise.

Plaintiffs also submit case law dealing with destructive testing. (Response at 4-5 and fn.

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that the human blood found on Mr. Smith's skin, clothing, and certain cuttings from the clothing belonged to at least one of the victims. *Smith*, 21 C 1159, Dkt. 267.

[3] Even the case law cited by plaintiffs, *Davis v. City of New York*, 2019 WL 3252747, at *4, states that "the court finds the physical act of taking a DNA sample via buccal swab to be minimally invasive."

2). However, the question of whether destructive testing will be required is putting the "cart before the horse," as we don't know whether there will be DNA found on the baggies sufficient for testing purposes, and if so, how much.[4] Defendants ask that this Court grant defendants' motion and allow the evidence to be processed, and if there is destructive testing that becomes necessary, defendants' experts can refrain from conducting any such testing until a further court order.[5]

If the Court nevertheless wishes to address destructive testing now, defendants submit that the standard set forth in *Rivera v. Lake County*, 2015 WL 14071796 (N.D. Ill Jan. 29, 2015)(Leinenweber, J.), the case cited by plaintiffs, is met. The Court in *Rivera* stated as follows:

> There are four factors to consider when a parry seeks to perform destructive testing: (1) whether the testing is reasonably necessary, (2) whether the non-movant will be prejudiced, (3) whether there are less prejudicial alternatives, and (4) whether there are safeguards to minimize the prejudice to the non-movant. *Rivera,* 2015 WL 14071796, *1.

For the reasons set forth in defendants' motion and above, the testing is reasonably necessary because the presence of Baker's DNA or fingerprints on the evidence will support defendants' contention that he possessed the narcotics on March 23, 2005 and rebut plaintiffs' fabrication and other claims. Plaintiffs also will not suffer any prejudice if destructive testing becomes necessary, as they are free to engage their own experts to monitor the process. For the same reason, while it is too soon to tell whether there will be alternatives to the consumption of DNA material because we don't know the nature and extent of material that will be found, if the only way to conduct the testing is to consume it all, then this element will also be satisfied. And finally, the fourth element (safeguards) is met because no issue has been raised as to the competency of defendants' experts (Speckin Forensics and Sorenson Forensics), and also because

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[4] We do not understand plaintiffs to argue that destructive testing would be an issue for fingerprint analysis.
[5] Again, this was the court's resolution of this issue in *Smith* (before Mr. Smith entered into the DNA stipulation referenced above). *Smith*, 21 C 1159, Dkt. 152.

plaintiffs would be entitled to have their own expert monitor the process.

II. As both Judge Guzman and Magistrate Judge Weisman Held in *Smith*, the Forensic Testing Requested by Defendants Is Timely, Constitutes Expert Discovery, and Chain of Custody Does Not Impact Whether to Allow the Testing in the First Place.

In *Smith v. City of Chicago*, Magistrate Judge Weisman and Judge Guzman rejected the same arguments plaintiffs have raised before this Court. *Smith v. City*, 21 C 1159, Dkt. 152 (Weisman, M.J.); Dkt. 192, 2022 WL 458729 (N.D.Ill February 15, 2022)(Guzman, J.)(overruling plaintiff's Rule 72 Objections to Dkt. 152). In *Smith*, defendants sought DNA testing of items found at the crime scene of a double homicide. In response, the plaintiff argued that the request for forensic testing was untimely, should have been conducted before expert discovery, was not expert discovery, and should not be allowed based on various chain of custody allegations. Magistrate Judge Weisman rejected the *Smith* plaintiff's arguments, finding that defendants' motion to conduct the testing was "timely," that the testing "constitutes expert discovery," and that "Defendants need not establish the chain of custody or absence of contamination for purposes of testing the evidence identified in this motion as part of expert discovery, although Plaintiff is free to raise any such arguments … during pretrial and trial proceedings before this Court." (*Id.* at Dkt. 152). The plaintiff in *Smith* then filed a Rule 72 objection before Judge Guzman, who likewise rejected the plaintiff's arguments under the clear error standard. Specifically, Judge Guzman affirmed Magistrate Judge Weisman's finding that the testing was timely because it "falls under the rubric of expert discovery given that Defendants are requesting evidence for examination by their expert, and expert discovery is ongoing." (*Smith*, 2022 WL 458729, *2).[6]

[6] Plaintiffs points out (at 10) that defendants in *Smith* began the process of seeking expert discovery a few weeks before the discovery deadline, but that is a distinction without a difference: the motion was to allow the DNA testing to proceed during expert discovery, exactly as defendants request here.

Judge Guzman further overruled the plaintiff's chain of custody arguments, holding that defendants need not make a chain of custody showing before the testing took place: "The Court sees no basis on which to make this determination prior to any testing taking place, and indeed, any effort in that regard could significantly delay the progress of this case. If Plaintiff wants to challenge chain of custody, it (sic) may seek rebuttal expert testimony in that regard and present it either in some type of pretrial motion or at trial." (*Id*. at *3).[7]

As in *Smith*, defendants' request is timely because it constitutes expert discovery. Federal Rule of Evidence 702, states that "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of act to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." DNA and fingerprint testing and related testimony clearly qualifies as "scientific, technical, or other specialized knowledge" under Rule 702. *Smith v. City*, 21 C 1159, Dkt. 152, 192. Stated another way, a layperson does not have the ability to conduct or opine about DNA tests and fingerprint examination. Indeed, plaintiffs disclosed their own expert on the issue of fingerprint testing.

Plaintiffs fail to cite a case that supports their position that DNA testing by a DNA expert or fingerprint examination by a fingerprint examiner is somehow fact discovery. Moreover, it would be illogical and a potential waste of resources to require DNA testing or fingerprint analysis

[7] Magistrate Judge Weisman entered a subsequent order in *Smith* allowing testing of certain cuttings taken from Mr. Smith's clothing because plaintiff was aware of them and chain of custody did not prohibit testing but denying defendants from testing the victims' fingernail clippings taken at the morgue because the parties were not aware of them and they were not disclosed. (Group Ex. A, *Smith* Dkt. 214 at 3-5).

to proceed during fact discovery. Depending on the information learned during fact discovery, all or part of the forensic testing a party seeks may become unnecessary. For instance, had Baker admitted that he packaged the narcotics himself, or claimed the defendant officers made him touch the evidence, perhaps this testing would be unnecessary.

It would also improperly shift the burden of proof. Plaintiffs must prove that Baker did not possess the subject narcotics on March 23, 2005. His expert discovery deadline was April 1, 2024, and it was his obligation to decide first whether to conduct the forensic testing his experts say should have been done. Defendants were entitled to wait and see what plaintiffs intended to do before disclosing whether to rely on the physical evidence to conduct forensic testing. Plaintiffs' attempt to shift the burden with their assertion that defendants had an obligation to disclose their intent to rely on the physical evidence and conduct forensic testing before plaintiffs is without merit.

Moreover, there are factors here that further support this motion that were not present in *Smith*. Plaintiffs in this case, unlike *Smith*, have disclosed two experts who criticized defendants' failure to previously conduct this forensic testing. Plaintiffs' expert Dr. McCarthy opines that it was "common place in many agencies around the United States to process for latent prints those bags and baggies suspected of containing drugs; …" (Ex. 3 to Motion, McCarthy report at 5). Dr. Shane opines that "a reasonable investigative measure would have been to submit the evidence for forensic analysis (e.g., fingerprinting, DNA testing) to eliminate the complainant as an offender," yet "this did not occur." (Ex. E, excerpt of Dr. Shane report at 96, n. 75). Although plaintiffs indicate that they offered to withdraw Dr. McCarthy, they have not offered to withdraw Shane, and it is plaintiffs' disclosure of these witnesses during expert discovery that proves defendants' point that the requested forensic testing constitutes timely expert discovery.

Moreover, it would be fundamentally unfair to allow plaintiffs to argue that defendants should have conducted forensic testing while depriving defendants the opportunity to conduct forensic testing.

As Magistrate Judge Weismann and Judge Guzman further held, chain of custody need not be established as a condition precedent to conduct forensic testing. Rather, chain of custody is an issue that can be raised during pretrial or trial proceedings if there is a basis to do so. (Group Ex. A, *Smith*, 2022 WL 458729 at *3: "The Court sees no basis on which to make this determination prior to any testing taking place." Rather, that type of argument could be made "in some type of pretrial motion or at trial.") This Court should reach the same result.

Plaintiffs raise a variety of additional irrelevant and/or inapposite arguments. For example, plaintiffs (at 8) invent an alleged issue that the Chain of Custody Report reflects that the evidence was destroyed. Plaintiffs also claim that defendants did not disclose the existence of the physical evidence or that they intended to conduct forensic testing on it. The Chain of Custody Report (attached as Exhibit C) does not indicate that the evidence was destroyed. While plaintiffs block quote (at 8) certain entries they interpret as showing the evidence was destroyed, plaintiffs neglect to include in their block quote the entries directly above reflecting that a "Hold Creator" was present on the inventory, which along with the "Disposition Returned By" entry indicates the evidence was held. (Ex. C, Chain of Custody Report at CITY-BG-062391).[8] Moreover, Plaintiffs

[8] Plaintiffs incorrectly state that the language in their cropped block quote for the chain of custody report for Baker's March 23, 2005 arrest is the same as a chain of custody report for plaintiff's July 2004 arrest. In addition to plaintiffs' omission of the "Hold Creator" entries from the March 23, 2005 arrest, the chain of custody report for the 2004 arrest states "Disposition Closed By" (Ex. 3 to plaintiffs' response at DO-JOINT 008593), while the chain of custody report for the March 23, 2005 arrest says "Disposition Returned By" (Ex. C hereto at CITY-BG-062391) before the "Hold Creator" entry. These entries on CITY-BG-062391 (Ex. C) mean that there were holds on the evidence (actually three holds), such that the "disposition" was "returned" and not "closed." Moreover, the chain of custody report for the July 2004 arrest clearly

also had the opportunity to question the City's Rule 30(b)(6) witness Lt. Mike Fitzgerald on the topic. Specifically, plaintiffs requested and the City produced a Rule 30(b)(6) witness to discuss "[t]he collection, inventory, and testing of suspected narcotics." (Group Ex. G). In addition, the City invited plaintiffs to identify the tangible items of evidence referenced in reports produced in this case (which would include the inventory reports and chain of custody report) that plaintiff wished to inspect in 2019 (Group Ex. D, City's Response to Coordinated Plaintiffs' First Request for Production, para. 37), but plaintiffs did not request to inspect this or any other inventory. Likewise, plaintiffs questioned the defendant officers about chain of custody in general, but not about the chain of custody of the evidence in this case.[9] (Ex. F, Leano Dep. at 248-251). It is also telling that Baker stipulated to the chain of custody of the subject evidence at his 2006 criminal trial (Ex. I at Baker Glenn 013330 – 013333). Plaintiffs unspecified insinuations about potential problems with the chain of custody appear to be pretextual to thwart the forensic testing of the evidence. In any event, as Judge Guzman and Magistrate Judge Weisman found, there is no reason to deny a request for forensic testing at this juncture based upon an opposing party's chain of custody concerns.

Plaintiffs incorrectly suggest (at 6) that defendants could not have completed the requested

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states that evidence was "Destroyed" under the status column of the report (Ex. 3 to plaintiffs' response at DO-JOINT 008593), while the chain of custody report for the subject March 23, 2005 arrest still reflects that this evidence is in a "Received" status, meaning it remains in the CPD's possession. (Ex. C hereto at CITY-BG-062391). Thus, relevant to this motion, and contrary to plaintiffs' speculation, the evidence was not destroyed but it still exists.

[9] Plaintiffs also complain that defendants did not disclose witnesses to establish the chain of custody of the evidence. While irrelevant to this motion and unnecessary, plaintiffs' argument is also incorrect as the defendant officers will establish the chain of custody of this inventory. Furthermore, if defendants choose to introduce even more evidence about the chain of custody in response to some type of unknown assertion by plaintiffs, there is an abundant amount of evidence, including but not limited to the chain of custody report itself, Baker's 2006 trial stipulation that the chain of custody was proper, and the testimony of Lt. Fitzgerald.

forensic testing by May 13, 2024, the expert discovery deadline. To the contrary, defendants' counsel timely notified plaintiffs of their intent to conduct forensic testing on April 17, 2024 and their intent to complete the processing and testing of the evidence by May 13. Plaintiffs, however, opposed defendants' request to allow forensic testing, which has delayed the resolution of the issue past the expert discovery deadline. Defendants acknowledge that the completion of the testing is outside their control, but they were told by their experts the processing of the evidence and testing/analysis could have been done by May 13 had plaintiffs not objected.[10]

Plaintiffs also incorrectly claim (at 3) defendants somehow waived their right to test this evidence because of some omission from their motion. As outlined above, plaintiffs' technical and pretextual arguments are wholly without merit and there was no reason for defendants to anticipate them in their original motion. Defendants adequately set forth the relevance, reasonableness, and basis of their request in their motion, which establishes good cause; there has been no waiver.

III. Miscellaneous Issues

Plaintiffs chose not to conduct forensic testing of the evidence during their criminal proceedings or during these proceedings. Though their expert deadline was April 1, 2024, they now ask to "conduct their own forensic testing on the same materials that the Defendants seek to test, as well as on the materials allegedly recovered during the December 11, 2005 arrest of Ben Baker and Clarissa Glenn, and they further request an order requiring the Individual Defendants

[10] Plaintiffs' suggestions that defendants' counsel was asking for an expert discovery extension at the April 24, 2024 preliminary telephonic hearing is incorrect; he was saying that the intent was to complete the testing by May 13 (and he was told that could be done) but that it was theoretically possible that the experts may need to ask for more time if something unknown arose.

in this case to submit to the collection of their fingerprints and DNA." (Response at 3).[11]

Defendants have no opposition to plaintiffs having an expert present at the processing of the evidence at the Chicago Police Department, but it is unclear why plaintiffs would need to retest the evidence. Since we do not know what the processing, examination, and testing will develop, plaintiffs' request with respect to inventory number 10503356 appears premature and potentially unnecessary.

As for testing of the baggies of narcotics recovered in connection with the December 11, 2005 arrest, that evidence was provided to the Cook County State's Attorney in 2006 (Group Ex. J at CITY-BG-062867), was never impounded with the Clerk of the Circuit Court to our knowledge, was not returned to the CPD, and undersigned counsel does not believe it exists anymore. Had defendants been able to locate the narcotics recovered on December 11, 2005, they would have asked to conduct forensic testing on that evidence as well.

Finally, defendants recall that this Court asked defendants to include an estimate of how long the testing would take in the event this Court grants defendants' motion. As indicated at the preliminary telephonic hearing on this motion, defendants ask that this Court enter a scheduling hearing two or three days after ruling if the Court grants this motion, at which time defendants could report on that issue to the Court. Subject to that request for a scheduling hearing, and to the extent it may be helpful to the Court's ruling, it is estimated that defendants' experts could complete the processing and examination of the inventory within 30 days or less after the

[11] Defendant officers in this case do not object to submitting a DNA sample to defendants' experts nor do they object to the CPD providing their fingerprints on file to the defendants' expert. The only exception is defendant Young. Defendant Young had no involvement in plaintiff Baker's March 23, 2005 arrest and in fact was not present for duty in the 002 District that day so there would be no basis for him to submit a DNA sample/fingerprints.

scheduling conference.

CONCLUSION

For the reasons stated in defendants' motion and above, defendants respectfully request that this Court grant their motion to conduct forensic testing and allow the relief requested therein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **May 16, 2024**, I electronically filed **Certain Defendants' Joint Reply in support of Motion to Allow Forensic Examination and Testing of Inventory Number 1050336 Recovered in Connection with Plaintiff Baker's March 23, 2005 Arrest** with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to counsel of record.

s/ Daniel Noland