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

	)	
	)	Master Docket Case No. 19-cv-01717
In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	)	
	)	Judge Franklin U. Valderrama
	)	
	)	Magistrate Judge Sheila M. Finnegan
	)	

THIS DOCUMENT RELATES TO CASE NO. 16-CV-8940

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO EXCLUDE THE OPINIONS OF JEFFREY NOBLE (DKT. 326, 363)

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INTRODUCTION

From 1999 to 2011, nearly two hundred Chicagoans were wrongfully convicted by a corrupt squad of police officers led by Defendant Ronald Watts. Their convictions have been overturned, and they have received certificates of innocence. This mass wrongful conviction was not a coincidence, but instead the predictable result of Defendant City of Chicago's broken disciplinary and supervisory system.

Defendants retained Mr. Jeffrey Noble to defend the City's police discipline and supervision systems. But Mr. Noble did not base his opinion on any standards or generally accepted practices in policing, which is a prerequisite to forming a reliable and admissible opinion. Plaintiffs identified this flaw in their initial motion to exclude his opinions (Dkt. 325).

Defendants' response brief fails to save Mr. Noble's testimony. They first argue that the Court should defer to Mr. Noble's say-so, but Mr. Noble's say-so is not a reliable methodology under *Daubert*. Defendants also argue that the Seventh Circuit endorsed the standards Mr. Noble applies (it has not) and that a single report by the Department of Justice endorses Mr. Noble's standards (it does not). Without a reliable foundation, all of Mr. Noble's opinions fail and should be excluded.

Although his failure to rely on any standards is reason enough to bar Mr. Noble's opinions, his opinions are also unreliable because he did not review enough records to form a representative opinion (i.e., there is no rational connection between the data he reviewed and the opinion he formed), he used unreliable methodologies, he uncritically adopted summaries written by the City, and he relied on unsupported assumptions. Mr. Noble also disclaimed numerous opinions that he should not be allowed to resurrect, and attempted to give testimony that is the exact opposite of his prior opinions. In addition, Mr. Noble attempts to challenge Dr. Shane's

social science methodology, but he has no valid basis to do so. For these reasons, and others discussed below, Mr. Noble's opinions should be barred.[1]

ARGUMENT

I. Mr. Noble has no basis to conclude that "reasonableness" is the standard for police misconduct investigations or police discipline and supervision systems.

Police-practices experts in constitutional tort cases may testify regarding a party's deviations or compliance with "sound" and "relevant" professional standards. *Jimenez v. City of Chicago*, 732 F.3d 710 (7th Cir. 2013). A party offering such testimony has the burden to establish that such testimony is the product of "reliable principles and methods" and that such principles and methods were "reliabl[y] appli[ed]" by the expert. Fed. R. Evid. 702. An expert's say-so is not enough: the expert must identify the generally accepted standards he applies or otherwise establish a basis for finding them to be generally accepted. *See Est. of Loury by Hudson v. City of Chicago*, No. 16-CV-4452, 2021 WL 1020990, at *1 (N.D. Ill. Mar. 17, 2021) (excluding Mr. Noble's police practices opinions for failing to identify and apply standards); *Andersen v. City of Chicago*, 454 F. Supp. 3d 808, 817 (N.D. Ill. 2020) (excluding police practices expert's opinion that photographing evidence before collecting it was a nationally accepted standard, because expert provided no support for that statement); *Andersen v. City of Chicago*, 454 F. Supp. 3d 740, 745 (N.D. Ill. 2020) (barring opinion of police practices expert who did not discuss nationally accepted standards; because of failing to do so, "the Court does not know whether the standards . . . are 'sound professional standards.'"); *Niebur v. Town of Cicero*, 136 F. Supp. 2d 915, 920 (N.D. Ill. 2001) (holding police practices experts must rely on "objective standards and professional norms.").

[1] Defendants' brief is also peppered with irrelevant attacks on Plaintiff's expert Dr. Jon Shane (whose opinions are not at issue in this briefing) and *ad hominem* criticisms of Plaintiffs' counsel. That rhetoric is irrelevant to whether Defendants have met their burden to show Mr. Noble's opinion is reliable.

Mr. Noble has identified no authority supporting his assertion that "reasonableness" is an accepted or applicable standard for investigating complaints about police officers. He nonetheless states that all, or nearly all, of the City's investigations of police misconduct were "reasonable." Dkt. 325-3 (Noble Report) at, *e.g.*, ¶¶ 19-24; 86-100. Further, he states that the City's discipline and supervision systems were "reasonable." *Id.* at, *e.g.*, ¶¶ 16-18; 58-61. But he has never explained why he believes "reasonableness" is the standard.

In its gatekeeping function, the Court must "make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). As Plaintiffs noted in their opening brief, Mr. Noble's "reasonableness" standard fails several factors that courts consider in determining whether an expert's methodology is reliable: the standard has not been subjected to peer review, it is not accepted in the relevant community, and it was developed expressly (by Mr. Noble) for purposes of testifying. *Fuesting v. Zimmer, Inc.*, 421 F.3d 528, 534–35 (7th Cir. 2005), *vacated in part on other grounds*, 448 F.3d 936 (7th Cir. 2006) (discussing factors established by the Supreme Court in *Daubert* and the 2000 Advisory Committee's Notes to Rule 702).

Defendants complain that the City will not receive a "fair trial" if Mr. Noble is barred from providing his "reasonableness" opinions. Dkt. 363 at 13. But that argument does not move the ball: the Court must assess each expert's opinions and determine whether the proponent of that expert's testimony has met their burden to show the opinion was reliably formed and is otherwise admissible. That is the test of whether Mr. Noble's opinions should be admitted.

A. Mr. Noble cannot form a reliable opinion on his say-so alone.

In response to the dilemma Plaintiffs presented—did Mr. Noble rely on any generally accepted standards?—Defendants first argue that Mr. Noble's say-so is good enough. They write:

> Mr. Noble explained his methodology in detail in his report. Mr. Noble explains that the CPD has an open complaint process, all complaints are accepted, all complaints are investigated, and all complaints are given tracking numbers to ensure they are investigated and attributed to the officer against whom the complaint was made. . . . [Defendants then list a number of determinations Mr. Noble made about the City's disciplinary systems]. Considering all of these circumstances, including the procedures utilized by the CPD's investigatory agencies, Mr. Noble concludes that the CPD's processes for investigations of police misconduct are reasonable.

Dkt. 363 at 6-7. Notably lacking is any description of what standards Mr. Noble applied or his reasoning process—i.e., why the factors he listed are good enough to make the Chicago Police Department ("CPD") disciplinary and supervision systems "reasonable." Instead, Mr. Noble listed a number of conclusions he drew and said that, in sum, they form a "reasonable" system. This is exactly the kind of under-reasoned police practices opinion that courts regularly reject. *Est. of Loury*, 2021 WL 1020990 at *1 (excluding Mr. Noble's opinion for "jump[ing] to the conclusion that [CPD's policies] are reasonable"); *Andersen*, 454 F. Supp. 3d at 745 (barring police practices opinion from expert who failed to elaborate on whether he applied "sound professional standards" because he "essentially asks the Court . . . to take him at his word that his opinions are correct, without supporting them.") Defendants do not identify a single case supporting their position that Mr. Noble's say-so allows him to reach his conclusions absent support from generally accepted standards and practices. Dkt. 363 at 6-7. By failing to identify any authority supporting their position that Mr. Noble's say-so can serve as the foundation for his "reasonableness" opinions, Defendants have forfeited the point.

B. Defendants identify no support for Mr. Noble's "reasonableness" standard.

To succeed on the other horn of the dilemma, Defendants must establish that Mr. Noble has an adequate basis or foundation for his "reasonableness standard." *See, e.g.*, *Andersen*, 454 F. Supp. 3d at 745 (noting expert must provide basis to conclude that he applies "sound professional standards.") Defendants cannot meet their burden to do so.

1. Mr. Noble does not know of any supporting authority.

During his deposition, Mr. Noble explicitly denied knowing **any other** authority that supported his "reasonableness" standard, and admitted he might have been the first one to come up with it. The transcript of his testimony speaks for itself:

> Q: Did you come up with [the reasonableness standard] or did you get it from someone else?
> A: I don't know. I mean, I can't think of another standard. I've written about it, I've used that. I can't think of any other standard to use. I can't tell you. I – I've seen that somewhere, you know, published somewhere else. Just because there's not a lot written on this.
> Q. Is there any author you can name other than you and your co-author, I think Geoffrey Alpert, who has published work that identifies the same standard for investigations, meaning reasonableness?
> A. No, I can't point to anybody else.

Dkt. 325-4 (Noble Dep.) at 142:15-143:2 (cleaned up). Although Mr. Noble initially said that he did not know whether he came up with the term or got it from someone else, he was unable to identify anyone other than him and his co-author who use the phrase in this context. If "reasonableness" is a real standard for internal investigations, Mr. Noble should be able to identify someone else who has used it. Otherwise, it is not a professional standard, but merely his own say-so. *See, e.g.*, *Andersen v. City of Chicago*, 454 F. Supp. 3d at 808.

In response, Defendants offer only an errata sheet executed by Mr. Noble on the day they submitted their response brief, which contradicts his under-oath testimony. That document

purports to "add" testimony to his deposition: specifically, that Mr. Noble now "recall[s]" cases that "approved the reasonableness standard" and also knows of "multiple other authors and contributors" (none of whom Mr. Noble identifies by name) who "identify, use, and approve a reasonableness standard consistent with my report." Dkt. 363-5 (Noble errata) at 1. This kind of document is recognized by courts as a "sham affidavit" and is properly disregarded at this stage.

"In this circuit the sham-affidavit rule prohibits a party from submitting an affidavit that contradicts the party's prior deposition or other sworn testimony." *James v. Hale*, 959 F.3d 307, 316 (7th Cir. 2020). This rule has been applied to deposition errata by the Seventh Circuit, which has held that "a change of substance which actually contradicts the transcript is impermissible unless it can plausibly be represented as the correction of an error in transcription, such as dropping a 'not.'" *Thorn v. Sundstrand Aerospace Corp.*, 207 F.3d 383, 389 (7th Cir. 2000). A party is simply not allowed to change a witness's testimony after the fact; doing so is a "foolish tactic" because it "[doesn't] help" a party to circumvent under-oath deposition testimony. *Id.* at 388-89. Mr. Noble directly contradicted himself by claiming, after the fact, that he was aware of caselaw and unnamed "multiple other authors and contributors" who supported his standard. At this stage, Defendants are bound by his deposition testimony. *See Zander v. Groh Prods.*, Inc., No. 10 C 0944, 2011 WL 13555677, at *3 (N.D. Ill. Aug. 2, 2011) (striking attempt to substantively contradict testimony via deposition errata); *Treat v. Tom Kelley Buick Pontiac GMC, Inc.*, 710 F. Supp. 2d 777, 791 (N.D. Ind. 2010), *aff'd*, 646 F.3d 487 (7th Cir. 2011) (describing exclusion of errata sheet sham affidavit as "fully supported by the case law"); *Eckert v. Kemper Fin. Servs., Inc.*, No. 95 C 6831, 1998 WL 699656, at *5 (N.D. Ill. Sept. 30, 1998) (holding plaintiff could not change "no" to "yes" in deposition transcript to defeat summary judgment); *cf. Garcia v. Pueblo Country Club*, 299 F.3d 1233, 1242 n. 5 (10th Cir. 2002) ("A

deposition is not a take home examination."). Whatever authorities Defendants may believe they have identified are irrelevant because Mr. Noble was not aware of them and did not apply them at the time he formed his opinions, and his sham affidavit is no help to Defendants. But even if the Court is inclined to consider Mr. Noble's supplemental testimony from his errata sheet, it actually provides further support for Plaintiffs' argument. With unlimited time to identify anyone else in his field using the "reasonableness" standard, Mr. Noble once again failed to do so.

2. Defendants identify no source supporting Mr. Noble's "reasonableness" standard.

Defendants assert that Mr. Noble's reasonableness standard is supported by (1) caselaw, (2) a single report by the Department of justice, and (3) most improbably, Plaintiffs' expert Dr. Shane. Dkt. 363 at 7-10. Those arguments fail under examination. Notably, Defendants do not contest that, as Plaintiffs argued, none of Mr. Noble's articles discussing the "reasonableness" standard were peer-reviewed. Dkt. 325 at 6-7. They also do not identify any model policies or national standard that Mr. Noble compared CPD's policies against, as Plaintiffs noted that Mr. Noble failed to do. *Id.* at 10-11.

a) Caselaw does not support Mr. Noble's standard.

Defendants assert that "the Seventh Circuit approved of the reasonableness standard in *Jimenez v. Chicago*, 732 F.3d 710 (7th Cir. 2013)" and accuse Plaintiffs of failing to cite the case. Dkt. 363 at 7. Plaintiffs did cite the case, but not for the proposition that the standard for police misconduct investigations (or discipline/supervision systems) is reasonableness, because *Jimenez* does not say that.

The *Jimenez* panel concluded, following a jury verdict in the plaintiffs' favor, that the district court committed no reversible error in admitting testimony from the plaintiffs' police practices expert. *Jimenez*, 732 F.3d at 720. The panel explained that the expert properly (1)

described sound professional standards and (2) identified departures from them, and that such testimony was relevant. *Id.* at 721-22. The panel further noted that the expert "testified about the steps a reasonable police investigator would have taken," as well as "the information that a reasonable police investigator would have taken into account," and ultimately helped the jury decide whether the police defendants committed "departures from reasonable police practices." *Id.* at 722. Defendants argue that *Jimenez* stands for the proposition that any expert testimony "as to the reasonableness of certain police investigatory practices . . . is admissible." Dkt. 363 at 8.

Under Defendants' view of *Jimenez*, experts such as Mr. Noble would be permitted to testify that reasonable internal affairs investigators comply with generally accepted standards by conducting "reasonable" internal affairs investigators. But *Jimenez* did not absolve parties of the burden to show their expert's opinion is reliable. Thus, Defendants must offer some basis to conclude that "reasonableness" is the standard for police misconduct investigations and police discipline and supervision systems. Otherwise, they are left just with Mr. Noble's unreliable say-so. *See Andersen*, 454 F. Supp. 3d at 817. *Jimenez* did not turn "reasonableness" into a talisman that police practices experts can wield to admit any opinion they may form, however ill-founded.

To put a finer point on it, there is a logical error in Defendants' argument. A court, in assessing whether a police practices expert has reliably applied an accepted standard, can consider three logically distinct questions. First: what is the standard of performance? Second, is that standard accepted? And third, what would a reasonable investigator do in applying that standard? Mr. Noble and Dr. Shane have different answers to each of those three distinct questions:

Expert	(1) What is the standard of performance?	(2) Is the standard generally accepted/ reasonable?	(3) Under the standard, what would a reasonable investigator do?
Defendants' Expert Mr. Noble	Police misconduct investigations must be **reasonable**.	-Mr. Noble denied knowing anyone else who used it other than his co-author. -Defendants now offer *Jimenez* and DOJ IA Report.	Make "meaningful efforts" and "it depends." Dkt. 325-4 (Noble Dep.) at, *e.g.*, 115:5-116:6, 165:7-19, 185:5-186:12, 197:7-21.
Plaintiffs' Expert Dr. Shane	Police misconduct investigations must be **thorough and complete**.	Yes – International Association of Chiefs of Police, State of New Jersey, DOJ IA Report, Chicago Police Department (on paper but not in practice)	Take all necessary investigative steps.

Jimenez addressed the propriety of a police practices opinion in regard to questions number two and three—whether it was proper to compare an investigator's actions against "reasonable" police practices and standards. But *Jimenez* is silent about what the standard of performance as to the standard or practice being applied, which makes sense because the standard might vary based on the issues being addressed. *Jimenez* certainly didn't say that the national standard for internal investigations is that they are conducted to a standard of "reasonableness" (as opposed to "thorough and complete," or something else). And *Jimenez* had nothing to do with standards for police misconduct investigations or police discipline and supervision systems. This is why caselaw requires proponents of police practices testimony to explain the basis for the standards they apply, just like any other expert. And the standard may be something quite different than "reasonableness"; the expert must explain what the standard is and why it applies. *See, e.g.*, *Harms v. Lab'y Corp. of Am.*, 155 F. Supp. 2d 891, 907 (N.D. Ill. 2001) (admitting expert opinion that industry standard for blood testing was "100 percent accuracy"). Thus, Defendants conflate (1) the standard of performance (*e.g.*, "reasonable" versus

"thorough and complete" versus "one hundred percent accurate") with (2) whether a standard is accepted or would be reasonable for a police department to adopt.

The other cases cited by Defendants similarly offer no support for Mr. Noble's opinions. *See Abdullahi v. City of Madison*, 423 F.3d 763 (7th Cir. 2005) (discussing deviations from "reasonable police practices," but not concluding that the standard for all police practices was "reasonableness"); *Sanders v. City of Chicago*, 2016 WL 1730608 (N.D. Ill. May 2, 2016) (same); *Hopkins v. City of Huntsville*, 2014 WL 5488403 (N.D. Ala. Oct. 29, 2014) (same). Further, none of these cases involved police misconduct investigations or police discipline or supervision systems, which is the topic of Mr. Noble's opinions. Caselaw simply does not support Mr. Noble's "reasonableness" standard.

b) The Department of Justice has not endorsed Mr. Noble's standard.

Both parties discuss a report by the Department of Justice that sets out standards and guidelines for internal affairs. That report simply and directly defined the standard for police misconduct investigations: "[a] complete investigation should take place where the allegations, if true, would likely result in formal discipline." Dkt. 325-6 (DOJ IA Report) at 29. The report describes on several occasions that a complete investigation and its documentation must also be "thorough." *Id.* at 27, 36, 55. The report acknowledges that "[s]ome small number" of complaints may be "capable of resolution after a cursory or truncated investigation," while specifying that the documentation of all misconduct investigations must be "thorough, complete, and as comprehensive as reasonably necessary." *Id.* at 27-28, 36. The report acknowledges that a "complete investigation is not necessarily exhaustive." *Id.* at 29. Defendants nevertheless contend that the report "embraces a reasonableness standard," (Dkt. 363 at 8-10) but they never

explain why. Requiring that an investigation be "thorough and complete" is different from requiring that it be "reasonable," as discussed above.

One sign that Mr. Noble did not use the standard from the DOJ IA Report is that he struggled to describe any steps that should take place in a police misconduct investigation. A common answer he gave was "it depends." He answered vaguely that although he considered whether the investigation was "reasonable," he did not analyze whether the investigators had taken enough steps in their investigation. Dkt. 325-4 (Noble Dep.) at 90:14-22. He could not define a single step that must be taken in response to non-frivolous allegations of police misconduct other than documenting the allegation. *Id.* at 197:7-21. The Department of Justice IA Report says something very different. It provides that an investigator must obtain "all relevant information required to achieve the purpose of the inquiry," including "sufficient relevant evidence of all points of view," and stopping only where "collecting more information merely would be cumulative." Dkt. 325-6 (DOJ IA Report) at 29. That simply is not what Mr. Noble said. In fact, Mr. Noble explicitly refused to endorse that an investigation should be "thorough" or even "reasonably thorough." He was asked "do you agree that investigations of police misconduct should be thorough?" and answered "to a – to a reasonable amount. You know . . . thorough means different things to different people." Dkt. 325-4 (Noble Dep.) at 176:14-22; *see also id.* at 176:14-177:12 (declining to endorse that investigations should be "thorough" or even "reasonably thorough"). Ultimately, the DOJ IA Report did not define the applicable standard as "reasonableness," and Defendants identify no portion of the report supporting that standard.

c) Dr. Shane has not endorsed Mr. Noble's standard.

Defendants say that Plaintiffs' expert Dr. Shane also "embraced" Mr. Noble's reasonableness standard. He did not. Defendants offer an excerpt of Dr. Shane's deposition testimony; the full context shows he was testifying about the long delays characteristic of CPD's

police misconduct investigations. Dkt. 304-5 (Shane Dep.) at 196:23-212:22. In context, Dr. Shane testified that he would consider what steps would be reasonably taken, which would vary based on the type of investigation. *Id.* at 212:15-22.[2] This is perfectly consistent with Dr. Shane's opinion that national standards establish that investigations should be "thorough" and "complete." *E.g.*, *id.* at 186:2-14; Dkt. 325-1 (Shane Report) at 19, 59-60, 102. A reasonable investigator would take the necessary steps to ensure a thorough and complete investigation; as discussed at length in Section I(B)(2)(a) above, just because an expert opines on what a reasonable investigator would do does not mean that the expert believes that the generally accepted practice or standard at issue is "reasonableness."

3. Mr. Noble's "reasonableness" standard does not encompass "thorough and complete."

Defendants next argue that the "thorough and complete" standard is "not contradictory" with Mr. Noble's "reasonableness" standard. That is not what Mr. Noble said at his deposition. As discussed, Mr. Noble would not endorse that investigations should be thorough, or even "reasonably thorough." Dkt. 325-4 (Noble Dep.) at 176:14-177:12. He was asked explicitly if there was any standard other than "reasonableness" he would see fit to apply, and he said there was not, and he further said he "can't think of another standard." *Id.* at 90:14-92:10; 142:15-22. Mr. Noble testified that a "reasonable investigation" is one where an investigator "may" interview witnesses, complainants, victims, and officers, "may" collect different kinds of evidence, and then writes a written report, makes "reasonable" conclusions, and recommends "reasonable" discipline. *Id.* (Noble Dep.) at 195:10-196:1. This is consistent with the vague description in Mr. Noble's report that reasonableness is determined by "look[ing] at the totality

[2] Defendants rely heavily on a single use of the word "reasonable" by Dr. Shane in his 364-page deposition transcript, which is the only instance where he used the word in relation to police misconduct investigations.

of circumstances to assess if the investigation was reasonably thorough, fair and timely" and that investigators "should [not] be held to such a high standard." Dkt. 325-3 (Noble Report) ¶ 44.

Mr. Noble never once in his report said that investigations need to be "complete," and he was clear throughout his report and his deposition that he instead deployed a murky, "I know it when I see it," reasonableness standard. Dkt. 325-3 (Noble Report). In fact, Mr. Noble's report states vaguely that the City's police misconduct investigations "met with reasonably objective standards for the conduct of such investigations"—but fails, as he has still failed to do, to identify or provide support for those standards. *Id.* ¶ 19(b). In sum, Mr. Noble admitted several times that he was applying a "reasonableness" standard, that he didn't know anyone other than himself or his coauthor who had recognized that standard, and that he did not apply any other standard, including the standards of thorough, "reasonably thorough," or even "good." Dkt. 325-4 (Noble Dep.) at 88:21-89:16; 109:16-21; 142:23-143:2; 144:22-146:13; 176:14-177:12.

4. This Court should follow *Loury* and exclude Noble's opinions.

The City previously tried to admit identical opinions from Mr. Noble in the *Loury* case, and Judge Coleman rejected those opinions. Judge Coleman's reasoning was sound and Mr. Noble's opinions are equally inadmissible here.

Defendants argue that Judge Coleman did not consider that *Jimenez* upholds what they describe as "the reasonableness standard for police practices experts." Dkt. 363 at 12. But as discussed above, *Jimenez* does not support Defendants' position.

Defendants then attempt to defend Mr. Noble's opinion by arguing that Mr. Noble conducted a more detailed analysis of CR files here than he did in *Loury*. That is not so. In *Loury*, Mr. Noble claimed to rely on his review of "over 2,000" CRs from other cases and "over 150" investigations relevant to *Loury*, and he discussed all of those 150+ investigations individually, just as he adopted the City's summary of around 150 CRs in this case. Dkt. 325-11

(Noble Loury Report) ¶¶ 14, 61-253. And in fact, a simple comparison shows that the relevant portions of Noble's report in this case are essentially identical to the opinions that were rejected in *Loury*. *Compare id.* ¶¶ 12-33 *with* Dkt. 325-3 (Noble Report) ¶¶ 16-36, 43-44. The differences between the reports are largely cosmetic and any new discussion by Noble of the "reasonableness" of CPD's investigations or discipline and supervision systems is duplicative. Ultimately here, as in the *Loury* case, Mr. Noble never explains why the list of qualities he claims to have observed in the CPD is sufficient to make the system "reasonable," nor does he explain why the specific investigations he reviewed were "reasonable." Here again, as in *Loury*, "[i]nstead of identifying the generally accepted police practices standards and then explaining how the CPD's policies are reasonable under these standards, Noble jumps to the conclusion that they are reasonable." *Est. of Loury*, 2021 WL 1020990 at *3. And here, as before, "Noble fails to make a connection between the applicable professional standards and the CPD's policies and investigations." *Id.* Mr. Noble failed to "sufficiently explain the professional standards [he] purportedly applied," and therefore lacks reliability. *Id.* His "reasonableness" opinions should be barred.

C. Mr. Noble's policy opinions are unreliable because he applied no standards.

Although Plaintiffs have primarily discussed Mr. Noble's opinions on the City's investigations of police misconduct up to this point, Mr. Noble's opinions that the entire CPD disciplinary system was "reasonable" are equally unreliable because Mr. Noble again identifies no applicable standards or comparisons. In response, Defendants argue that Mr. Noble considered "the totality of the circumstances." Dkt. 363 at 14. But they failed to contest, and have thereby conceded, that Mr. Noble never identified any policy or standard that he compared CPD against. And absent some standard, Mr. Noble's "reasonableness" opinion is just his own say-so; "merely declaring" whether an action comported with standard protocol is just "*ipse*

dixit" absent comparison to an applicable standard. *Pursley v. City of Rockford*, No. 3:18-CV-50040, 2024 WL 1050242, at *6 (N.D. Ill. Mar. 11, 2024).

Plaintiffs did not "fail to develop" this argument, as Defendants assert; Plaintiffs argued in detail that Defendants needed to, but did not, identify a standard against which Mr. Noble could base his opinions. Same for his opinions on the City's early identification systems and whether the CPD's response to the Webb Commission recommendations were reasonable; absent some standard or baseline, Mr. Noble may not opine they are "reasonable." Dkt. 325 at 4, 11.

II. Mr. Noble's opinions are unreliable for other reasons.

Plaintiffs in their initial motion identified further disqualifying flaws in Mr. Noble's opinions which Defendants have failed to rebut.

A. Mr. Noble cannot reliably opine on the investigative quality of police misconduct investigations based on his review of eleven CRs per year from 1999-2011.

Between 1999 and 2011, the City of Chicago received at least 112,000 complaints of police misconduct. Dkt. 325-1 (Shane Report) at 14, 17 n.12. According to Defendants, Mr. Noble studied "over 150 CRs" in this case. Dkt. 363 at 12. That represents 0.13% of the entire population of CRs, or about one out of every seven hundred and fifty CRs.[3] Based on this limited review, Mr. Noble makes a sweeping claim about the quality of CPD's disciplinary system: specifically, that the City, writ large, conducted "reasonable" investigations from 1999-2011. But as Plaintiffs argued in their initial motion, Mr. Noble's small sample size leaves too big of a gap between the data Mr. Noble reviewed and his ultimate opinion to be reliable. *See, e.g.*, *Wasson v. Peabody Coal Co.*, 542 F.3d 1172, 1176 (7th Cir. 2008). At the very least, Mr. Noble should be able to explain why he believes he can draw conclusions about CPD's entire system based on

[3] 150/112,000=0.13%; 1/750=0.13%.

this tiny sample, but he cannot and he disclaimed any belief that the CRs he reviewed are representative of the CPD as a whole. Dkt. 325-4 (Noble Dep.) at 138:19-139:16. Mr. Noble specifically acknowledged that the only CRs he reviewed for his opinion in this case were the "127 plus" CRs listed specifically in his materials reviewed. *Id.* at 74:9-19. Those do not include the 2,000-plus CRs he claims to have reviewed in other cases, and Defendants do not develop an argument that those undisclosed materials somehow buttress his opinion.

Defendants assert that Mr. Noble's opinion is reliable because he looked at the same CR files that Dr. Shane audited and that Mr. Noble's opinion is based on the "totality of the circumstances." But that argument fails for several reasons. First, Dr. Shane relied on his own review of nearly 1,300 CR files as well as the data he gathered from those files. Second, Mr. Noble does not believe that Dr. Shane's methodology was valid, so he must demonstrate some methodology of his own to form reliable opinions (he cannot both reject Shane's methodology and rely on it simultaneously). Third, Mr. Noble admitted that his conclusion that the City conducted reasonable investigations from 1999-2011 was based on his review of the about 150 CRs he looked at in this case. *Id.* at 110:17-111:15. And he cannot say that those CRs were representative of the rest of the CRs from that time period, so he has no basis to offer an overall opinion on the health of the City's police misconduct **investigations** during this time period. (His opinions on CPD's policies and overall discipline and supervision systems fail for other reasons). Further, Defendants offer no reason why Mr. Noble can rely, as he attempts, on "thousands" of other unspecified CRs which he did not discuss, does not recall, and did not produce in this case.

B. It is not reliable for Mr. Noble to invent definitions of policing terminology and then criticize Dr. Shane for not using his invented definitions.

Mr. Noble used a methodology that he cannot possibly defend to attack Dr. Shane's review of nearly 1,300 CRs and his statistical analysis of those police misconduct investigations.

Specifically, Mr. Noble made up new and original definitions of police terminology, then accused Dr. Shane of failing to use these novel definitions. Defendants have not defended Mr. Noble's methodology or definitions (including defining "taking a statement" as talking to someone without writing it down, and defining "conducting an interview" as getting a written response to a written question). Dkt. 325 at 13. Instead of defending Mr. Noble's methodology or responding substantively to Plaintiffs' arguments, Defendants write, "from these arguments it becomes clear that Plaintiffs simply do not like Mr. Noble's opinions." Dkt. 363 at 7. That isn't a counterargument and it does not help Defendants save Mr. Noble's testimony. Defendants have not met their burden to show that it is reliable for Mr. Noble to make up his own terminology and then accuse Dr. Shane of improperly failing to use those invented definitions.

C. Mr. Noble uncritically, and unreliably, adopted the City's summaries.

Mr. Noble was given a 127-page "summary" of the approximately 150 CRs he was given to review in this case. Mr. Noble admitted, and Defendants do not dispute, that this "summary" incorporated not just factual details about each CR but also Mr. Noble's purported opinions about the "errors" in Dr. Shane's analysis. Dkt. 325 at 14-16. Defendants argue that Plaintiffs identify "no flaws in Mr. Noble's analysis." But the point is that it isn't Mr. Noble's analysis; Mr. Noble uncritically adopted what the City wrote for him to conclude. It is Defendants' burden to show that Mr. Noble could reliably base his opinion on that summary, yet Defendants have described no methodology that Mr. Noble used to confirm the summary's accuracy. The summary is apt to be incomplete in important ways based on the lawyers' loyalty to their client. *See Sommerfield v. City of Chicago*, 254 F.R.D. 317, 322 (N.D. Ill. 2008) (explaining risks of relying on lawyer-prepared summaries). Defendants could have tried to salvage Mr. Noble's reliance on these summaries by arguing that "experts in [his] field of expertise reasonably rely on such summaries" or that they were prepared in some way that would establish "that the

summaries are accurate." *Id.* at 321. Defendants have done neither and have identified no supporting authority. Mr. Noble could not reliably rely on the summaries and his opinions based on those summaries, including that the City conducted "reasonable investigations" from 1999-2011, should be barred.

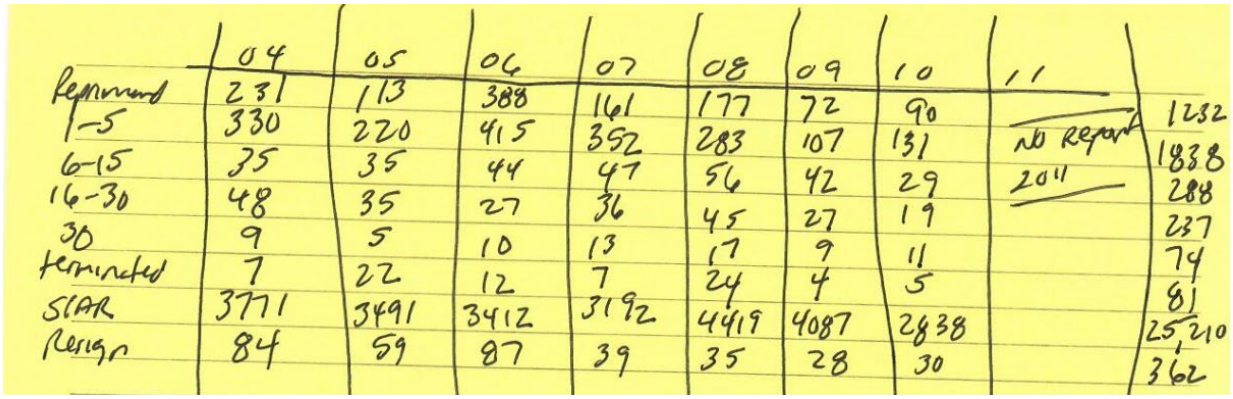
III. Mr. Noble has not established that he can reliably comment on Dr. Shane's social science methodology.

Defendants accuse Dr. Shane of using a novel and untested methodology to evaluate the quality of the City's police misconduct investigations. Defendants are wrong, but more to the point, Mr. Noble admitted he has no background in social science or statistics. He is not qualified to evaluate how Dr. Shane collected and used data to draw conclusions about the City's police discipline and supervision systems.

As he described in his report, Dr. Shane applied a social science methodology to form his opinions. Specifically, he developed criteria to identify relevant data points from a sample of CPD police misconduct investigations and trained coders to pull out those data elements from the CRs, and then statistically analyzed those data. Dkt. 325-1 (Shane Report) at 17-19; Dkt. 304-5 (Shane Dep.) at 238:5-239:15 (describing social science methodologies he deployed).

Defendants do not deny that Mr. Noble—as he said at his deposition—had "no idea" whether Dr. Shane's tables compiling data he collected were accurate, or that Mr. Noble did not disagree with any of Dr. Shane's math or statistical analysis. Dkt. 325 at 12-13. Mr. Noble also admitted he has no foundation to opine on how social scientists make comparisons using data—exactly what Dr. Shane did here. *Id.* And further, Mr. Noble did not compare the data Dr. Shane collected to the definitions in his codebook, which was in essence an instruction manual for gathering the data. *Id.* at 13. Instead, Mr. Noble faulted Dr. Shane for failing to apply Mr. Noble's idiosyncratic definitions, as discussed above.

Mr. Noble's testimony about the "proper" methodology for Dr. Shane to have used is absurd. He opined that instead of using coders to collect and tabulate data, Dr. Shane should have simply formed an "analysis" of each CR based on reading it. But Dr. Shane's detailed spreadsheet analyzing more than 1,200 CRs is nothing like Mr. Noble's handwritten page of notes. Mr. Noble's methodology might work fine for the eight-by-nine table Mr. Noble made to add data from seven annual reports—the "database" he relied on, presented in full below—but that is not how social scientists would statistically analyze hundreds or thousands of police misconduct investigations:



	04	05	06	07	08	09	10	11	
Reprimand	231	113	388	161	177	72	90		1232
1-5	330	220	415	352	283	107	131	No Report	1838
6-15	75	35	44	47	56	42	29	2011	288
16-30	48	35	27	36	45	27	19		237
30	9	5	10	13	17	9	11		74
terminated	7	22	12	7	24	4	5		81
SCAR	3771	3491	3412	3192	4419	4087	2838		25,210
Resign	84	59	87	39	35	28	30		362

Dkt. 325-14 (Noble notes). Mr. Noble testified that he "can't think of" any example of a "database" he has created larger than the above handwritten example, which has 64 data points (72 if counting the blank fields in the "11" column). Dkt. 325-4 (Noble Dep.) at 62:10-13. Again, Defendants have the burden of showing that Mr. Noble can form a reliable critique of Dr. Shane's social science methodology, and they haven't done so.

Defendants' response is to accuse Plaintiffs of "missing the point." But since Defendants have not argued that Mr. Noble has a basis for making any of the above criticisms of Dr. Shane's social science methodology (which, indeed, Mr. Noble disclaimed at his deposition), the Court should bar Mr. Noble from offering any of those opinions.

Ultimately, Defendants bet all their chips on Mr. Noble's "reasonableness" standard. Dkt. 363 at 17. If the Court finds that Mr. Noble has a reliable basis to offer that standard, then he could accurately observe that Dr. Shane applied a different standard ("thorough and complete"). But Mr. Noble has absolutely no basis to say that Dr. Shane should have collected and analyzed data differently. Courts routinely reject attempts by experts to offer opinions outside the scope of their expertise, including when non-social-scientists offer social science opinions (and even when the expert has related expertise). *See Moore v. P & G-Clairol, Inc.*, 781 F. Supp. 2d 694, 704 (N.D. Ill. 2011) (holding that, without experience in psychology or social science, expert chemist could not testify on likely impact of warnings to consumers); *Metro. St. Louis Equal Hous. Opportunity Council v. Gordon A. Gundaker Real Est. Co.*, 130 F. Supp. 2d 1074, 1085-86 (E.D. Mo. 2001) (holding that experienced fair housing executive could not offer opinion criticizing social science methodologies even though the subject of the opinions he criticized was fair housing).

IV. Mr. Noble may not offer the numerous opinions he disclaimed.

Defendants attempt to resurrect several opinions that Mr. Noble denied holding or forming, but because Mr. Noble unambiguously disclaimed those opinions, he cannot reliably offer them at trial.

A. Mr. Noble denied forming any opinions on whether CPD's investigation into Watts was reasonable.

Mr. Noble was asked numerous questions about the eight-year investigation into Ronald Watts and Kallatt Mohammed's misconduct at his deposition, and he denied that he formed any opinion on that topic. Mr. Noble acknowledged that CPD investigated Watts for corruption between 2004 and "2012 or 2013." Dkt. 325-4 (Noble Dep.) at 21:9-13. Mr. Noble was asked a question about integrity checks, and he volunteered, "I did not do a analysis of the criminal

investigation." *Id.* at 23:10-15. When asked whether the CPD, the FBI, or any investigative agency did a good job with integrity checks, he answered, "I didn't do a review of the criminal investigation. I don't know." *Id.* at 24:1-6. Mr. Noble was then asked if he had "any opinion on the adequacy of the eight-year investigation into Ronald Watts's corruption," and he answered that although his report "I discussed . . . some of the steps of the investigation. **I did not conduct an analysis of the criminal investigation. I don't have an opinion one way or the other.**" *Id.* at 24:7-25. He was also asked if he had "any opinion" about whether eight years was too long for that investigation, and he answered, "I don't have an opinion." *Id.* at 25:10-13. And he clarified that he was specifically referring to the FBI/CPD investigation (as Defendants call it) when describing the "criminal investigation" regarding which he had formed no opinions. *Id.* at 86:9-16. Thus, Mr. Noble plainly and repeatedly testified that he had not formed any opinions on the "criminal investigation" into Sergeant Watts's misconduct. Where, as here, an expert "unambiguously abandons" an opinion, there is "no way" that such an opinion "can provide the degree of reliability" that the Federal Rules of Evidence and *Daubert* require. *Monje v. Spin Master Inc.*, No. CV-09-01713-PHX-JJT, 2015 WL 11117070, at *1 (D. Ariz. May 6, 2015), *aff'd*, 679 F. App'x 535 (9th Cir. 2017) (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595-597 (1993)).

Further, Mr. Noble did testify as to his knowledge of parallel administrative misconduct complaint investigations against Ronald Watts from 2004-2012—specifically, he was not aware of any. He was asked if CPD pursued administrative allegations during that time, and he answered, "no." Dkt. 325-4 (Noble Dep.) at 55:19-25. He then acknowledged that the CPD knew of some allegations but the investigation and associated materials were controlled by the FBI (according to him) and thus CPD could not continue with an investigation during that time, he

said. *Id.* at 56:1-11. He denied knowing anything about any allegations against Watts arising separate from the criminal (FBI) investigation. *Id.* at 56:12-57:14. In fact, Watts was the subject of literally dozens of citizen complaints from 2004 to 2012, but Noble was unaware of them. Dkt. 325-1 (Shane Report) at 135-139. The transcript speaks for itself: Mr. Noble claimed ignorance of any administrative allegations against Defendant Watts other than those in the criminal investigation, and he should not be allowed to provide opinions on any allegations that he was unaware of and as to which he formed no opinions.

B. Mr. Noble denied forming any opinions on whether CPD did enough to investigate the leak of a confidential informant to Defendant Watts.

Plaintiffs' motion pointed out that Mr. Noble denied forming any opinions on whether CPD did enough to investigate the leak of a confidential informant to Defendant Watts. Mr. Noble testified unambiguously that the only information in his report was that such a leak occurred and he was not prepared to give any opinion relative to the leak. Dkt. 325-4 (Noble Dep.) at 279:17-280:5. Defendants do not directly rebut that point. The Court should hold Mr. Noble to this concession.

C. Mr. Noble denied concluding that IPRA was an improvement because it was independent.

Although Mr. Noble offered several reasons why the Independent Police Review Agency ("IPRA") improved CPD's previous systems, he was very clear in his deposition: he is not testifying that independent (civilian-led or investigated) oversight is better than internal oversight (police-led or investigated). *Id.* at 123:10-124:6. Again, Defendants offer no reason why Mr. Noble should not be held to his testimony. Mr. Noble may not opine that IPRA was an improvement because it was "independent."

D. Mr. Noble repeatedly denied forming any opinions on the existence of a code of silence within CPD.

Although Mr. Noble was given multiple opportunities to offer any opinions he intended to give about whether there was a code of silence within CPD from 1999-2011, he repeatedly denied forming any such opinions. He was asked, "One of your opinions in this case is that there was not a systemic code of silence in place from 1999 to 2011, right?" and responded, "I don't believe that I wrote an opinion on code of silence in this report." *Id.* at 48:9-17. When asked if he would testify about the existence of a code of silence, he responded, "I don't know," and he acknowledged that "at this time" he had not disclosed any opinions on the topic. *Id.* at 48:18-49:6. Defendants' only excuse is to say that Mr. Noble "forgot at the moment" that he included those sections in his report and that it is Plaintiffs' fault for not reading his report to him. *Id.* at 28-29. But Defendants identify no authority supporting their position that an expert may reliably give an opinion he has disclaimed, and the Court should not find his disclaimed opinion on the topic reliable.

V. Mr. Noble's blatant contradictions show his opinions to be unreliable.

Defendants fail to acknowledge the clear and direct contradictions Mr. Noble has made against his own opinions in this case.

One issue in this litigation is whether the City is liable for leaving Defendants Watts and the officers he supervised on the street—where they wrongfully convicted nearly 200 Chicagoans—despite mounting evidence of their misconduct. The City's defense is that it was appropriate to take no administrative action because of a pending criminal investigation against Defendants Watts and Mohammed. On this topic, Mr. Noble has testified under oath in another matter that he had literally "never seen" a department stop an internal affairs investigation pending a criminal investigation, that "all the information is just the opposite," and that it would

be totally inappropriate to fail to take swift administrative action against an officer who endangered the community, whether or not a criminal investigation was pending. Dkt. 325 at 18-19. Defendants do not explain how Mr. Noble can now reliably conclude that it was reasonable for CPD to pause administrative investigations against Defendant Watts—who was accused of planting evidence on suspects, consorting with drug dealers, and even shooting at residents who refused to pay him bribes—for a whopping **eight years** while a criminal investigation proceeded. Dkt. 363 at 21-22. Instead, they argue (without citing any authority) that the testimony cited by Mr. Noble comes from an incomplete transcript and therefore may not be used. That is not the rule, Defendants identify no support for that rule, and Plaintiffs relied on publicly available filings which included only partial transcripts of testimony. In any case, Defendants do not explain how further testimony could contradict Mr. Noble's clear and direct testimony that internal police misconduct investigations should not be stopped for criminal investigations to proceed. And although Defendants describe these contradictions as "just fodder for cross-examination," the fact is that Defendants must demonstrate that Mr. Noble utilized a reliable methodology, and his directly opposite testimony in other cases is evidence that he is relying merely on his own say-so.

Likewise, Mr. Noble previously testified under oath that it is essential to investigate allegations against police officers, with or without a victim statement, and that it would be "absolutely wrong" to refuse to do so. Dkt. 325 at 19-20. As the City has admitted in this case through its own 30(b)(6) representative, the **only** investigative action that investigators could not take before getting an affidavit from 1999-2011 was interviewing the accused CPD member. Dkt. 325-15 (Moore Dep.) at 110:6-12.[4] But in this case, Mr. Noble testified that it was okay to

[4] The City attempted to cure this admission through another sham affidavit, but that is impotent at this stage for the same reasons discussed regarding Mr. Noble's sham affidavit.

close the investigation once a complainant fails to cooperate, i.e., that an investigator may properly cease to investigate a complaint in the absence of cooperation. Dkt. 325-4 (Noble Dep.) at 166:13-15. Mr. Noble testified in a prior case that it was necessary to conduct more investigation even without cooperation from a victim or complainant, and now he says that it is not necessary to do so, even though the City has testified that such investigation is allowed. Again, Mr. Noble cannot demonstrate a reliable methodology when he speaks out of both sides of his mouth.

Defendants also fail to acknowledge that the caselaw Plaintiffs cited applies directly to the circumstances here. The *In re Zoloft* court found it relevant, in barring the expert's proposed opinion, that it contradicted opinions the expert had given "to her peers, **and in other litigation.**" *In re Zoloft (Sertraline Hydrochloride) Prod. Liab. Litig.*, 26 F. Supp. 3d 449, 460 n.35 (E.D. Pa. 2014) (emphasis added). The Fifth Circuit concluded that an expert's contradictions were relevant to finding his opinions "fundamentally unsupported" and "offer[ing] no expert assistance to the jury." *Guile v. United States*, 422 F.3d 221, 227 (5th Cir. 2005). And the *Avendt* opinion specifically discussed that where an expert's "peer-reviewed articles **and opinions**" contradict a newly formed opinion, that contradiction "undermine[]s the reliability of such an opinion. *Avendt v. Covidien, Inc.*, 262 F. Supp. 3d. 493, 523 (E.D. Mich. 2017). Defendants identify no contrary authority and do not meaningfully distinguish these cases from the facts at hand.

VI. Mr. Noble cannot properly tell the jury what the law is.

Mr. Noble intends to tell the jury that the City's hands were tied in investigating police misconduct complaints because state law did not allow the City to investigate complaints without an affidavit. That is not reliable because it is not true, and the City testified otherwise in its 30(b)(6) deposition. Dkt. 325-15 (Moore Dep.) at 110:6-12. But in any case, Mr. Noble cannot

properly give a legal opinion on the impact of state law on CPD. The Court should handle the issue (if Mr. Noble is allowed to testify) the same way Judge Kennelly did: with an instruction from the Court on the law, stipulated or otherwise. *Simmons v. City of Chicago*, No. 14 C 9042, 2017 WL 3704844, at *11 (N.D. Ill. Aug. 28, 2017)

VII. Mr. Noble's "no evidence" and "no reasonable officer" opinions are inadmissible.

Defendants fail to rebut Plaintiffs' authority that Mr. Noble's "no evidence" and "no reasonable officer" opinions are inadmissible.

To start, Mr. Noble cannot testify in the form of an opinion that there is "no evidence" of certain flaws or policy failures by CPD. He has failed to connect the dots and demonstrate a reliable methodology, just as Judge Coleman held in *Estate of Loury.* Dkt. 325 at 22-23.

Likewise, Mr. Noble's "no reasonable officer" opinion impermissibly infringes on the jury's prerogative to decide what the Defendant officers actually thought and intended. *Id.* at 24-25. An opinion that "all people in the defendant's shoes" have a certain mental state is inadmissible under Rule 704(b). *Diaz v. United States*, 144 S. Ct. 1727, 1734 (2024). It follows that an opinion that **no person** in a party's shoes could have a certain mental state—like Mr. Noble's opinion that "no reasonable CPD officer could believe they could act inappropriately with impunity and that nothing would happen"—is equally inadmissible.[5]

VIII. Defendants forfeited other arguments.

Defendants admit Mr. Noble has no knowledge of the negotiations between the City and the Fraternal Order of Police; they offer that he will merely describe "what new provisions

[5] Dr. Shane's opinions, again, are not at issue here. But Defendants are nevertheless wrong when they say that Dr. Shane committed the same error. Dr. Shane drew conclusions in his report about what the City's conduct would generally lead reasonable officers to believe—i.e., the expected impact of the City's decisions, in the context of generally accepted police practices. Dr. Shane never opined that every reasonable officer would or would not necessarily form any belief based on the City's actions, which would be an impermissible mental state opinion and which is the opinion that Mr. Noble offers.

became a part of the contract" in 2003 and 2007. Dkt. 363 at 34. Plaintiffs have no issue with that narrowed opinion, but the Court should note the City's concession and bar Mr. Noble from offering any opinion about who asked for what, or why, in the negotiations, or what any party to those negotiations tried to accomplish. In other words, Mr. Noble may not testify that the City "made efforts" to achieve any particular result because he does not know anything about the City's goals or tactics in the negotiations.

Defendants seek to have Mr. Noble opine on the meaning of the term "resigned under investigation" by the CPD, but they still have not identified any basis for his understanding of that term other than a vague recollection that he heard it in another case. *Id.* 363 at 20. But Mr. Noble needs a foundation to form a reliable opinion; he has not offered one, and he thus should not be allowed to tell the jury what that term means.

CONCLUSION

For the above reasons, Plaintiffs respectfully request the Court enter an order barring Mr. Noble's opinions in this case, or grant such other relief as is just and appropriate.

Respectfully submitted,

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