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

BEN BAKER and CLARISSA GLENN, Plaintiffs, 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)

DEFENDANT CITY OF CHICAGO'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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Defendant City of Chicago, in support of its motion for summary judgment on Plaintiffs' §1983 municipal liability claims against the City, submits the following memorandum of law.

INTRODUCTION

In evaluating the Second Amended Complaint ("SAC") (Dkt. #238) to identify the specific theory underlying Plaintiffs' *Monell* claim, the reader is left with one overarching question: What exactly *is* Plaintiffs' *Monell* claim? The scattershot allegations cover the waterfront of potential *Monell* theories, and neither discovery nor subsequent conferrals with Plaintiffs' counsel has narrowed the breadth of those theories or focused the specific *Monell* claims that will be asserted at trial. For that reason, this Motion necessarily will need to address each of the wide-ranging theories referenced in the SAC. At the end of the day, however, application of fundamental *Monell* principles reveals Plaintiffs' *Monell* claim to be nothing more than an attempt to improperly impose *respondeat superior* liability under § 1983 on the City for the criminal misconduct of individual defendants Watts and Mohammed.

As established below, the City is entitled to summary judgment on Plaintiffs' *Monell* claims, no matter the theory. Plaintiffs have failed to adduce evidence establishing the existence of a widespread practice for the purpose of establishing *Monell* liability. As an additional and independent basis for summary judgment, the evidence establishes the City was *not* deliberately indifferent to the alleged misconduct of the Defendant Officers. Plaintiffs similarly have failed to prove that a City practice or policy was the moving force behind the constitutional injuries alleged by Plaintiffs. Plaintiffs' failure to develop sufficient evidence to prove any of the three elements necessary to prevail on a "widespread practice" *Monell* claim renders appropriate summary judgment in favor of the City.

STATEMENT OF FACTS

Background

In and around 2005, Plaintiffs Ben Baker and Clarissa Glenn lived at the Ida B. Wells housing complex, which was located in the Second District of the Chicago Police Department ("CPD").

(DOSOF ¶ 1; City's Answer to SAC (Dkt. #282), ¶ 12).[1] Defendant Ronald Watts was a CPD sergeant who supervised a Tactical Team that patrolled in the Second District. (CSOF ¶ 2; City Answer ¶ 12). On March 23, 2005, Baker was arrested on the grounds of Ida B. Wells by Defendants Doug Nichols and Manuel Leano for possession of a controlled substance. (DOSOF ¶ 18, 20, 31; City Answer ¶ 46). Baker, represented by Attorney Matthew Mahoney, proceeded to a bench trial before Judge Michael Toomin in May 2006. (DOSOF ¶ 43; CSOF ¶ 41). Baker was found guilty on June 9, 2006. (CSOF ¶¶ 41; 56).

On December 11, 2005, Plaintiffs Baker and Glenn were arrested. (CSOF ¶ 37). At the time, Baker was on bond awaiting trial related to the March 2005 arrest. (City Answer ¶ 70). Baker and Glenn were charged with felony drug offenses as a result of the December 2005 arrest. (City Answer ¶ 83). Baker and Glenn each pleaded guilty to the charges in a hearing before Judge Toomin in September 2006. (CSOF ¶¶ 5; 42).

The Joint Investigation

In September 2004, CPD's Internal Affairs Division ("IAD") initiated a confidential investigation of Watts in which IAD investigator Cal Holliday referenced allegations that Public Housing officers were taking money from drug dealers to allow them to continue selling narcotics. (CSOF ¶ 6). Holliday and other IAD personnel, including then-IAD Lieutenant (and later Chief) Juan Rivera, met with representatives from the United States Attorneys' Office ("USAO"), the Federal Bureau of Investigation ("FBI"), the United States Drug Enforcement Agency ("DEA"), the Bureau of Alcohol, Tobacco, and Firearms ("ATF"), and a federal program known as "High Intensity Drug Trafficking Areas" ("HIDTA"). (CSOF ¶ 9). Following that September 2004 meeting, it was determined by the USAO a joint investigation with CPD's IAD would be conducted that would be

[1] References to the Defendant Officers' Rule 56.1 Statement of Facts will be designated as "DOSOF;" references to the City's Rule 56.1 Statement of Facts will be designated as "CSOF."

federally prosecuted and that the USAO would control everything that resulted from the investigation. (*Id.*).

An FBI report from September 2004 referenced information from an ATF source who was a drug dealer alleging Watts would extort bribe payments from him in order to allow the source to continue drug trafficking activity at the Ida B. Wells housing complex. (CSOF ¶¶ 8; 11). Two other drug dealers began cooperating in the first year of the joint investigation, one of whom was Plaintiff Ben Baker. (CSOF ¶¶ 22; 28-29; 32). Baker began cooperating after he was arrested on March 23, 2005 by Officers Nichols and Leano. (CSOF ¶ 29; DOSOF ¶ 18).

In May 2005, Assistant State's Attorney ("ASA") David Navarro of the Cook County State's Attorney's Office ("CCSAO") met with Baker, Glenn, their attorney Matthew Mahoney, and two IAD police officers, during which they discussed Baker's claim that Watts wanted a payoff to allow Baker to continue his drug dealing at Ida B. Wells. (CSOF ¶¶ 29-31). Baker also alleged Watts was putting a false criminal case on him because he (Baker) refused to pay off Watts. (CSOF ¶ 31). Baker agreed at that time to work as a Confidential Informant ("CI"). (CSOF ¶ 32). However, nothing came of Baker's agreement to work as a CI after Baker and his attorney failed to cooperate with investigators. (*Id.*).

At that time, the CCSAO chose to go forward with the criminal prosecution of Baker rather than prosecute Watts. (CSOF ¶ 36). In response to a subpoena in the criminal proceedings, documents related to the joint investigation that included IAD reports were provided to ASA Navarro and Judge Toomin. (CSOF ¶¶ 34-35). After an *in-camera* inspection, and prior to Baker's 2006 bench trial, Judge Toomin released the documents to Attorney Mahoney. (CSOF ¶¶ 35; 41). Mahoney chose not to use the information contained in the IAD documents in Baker's 2006 bench trial. (CSOF ¶ 41).

As of February 2006, the FBI reported the joint investigation of Watts was unable to substantiate or corroborate the allegations against Watts. (CSOF ¶ 38). AUSA [redacted] advised at that time the USAO would decline prosecution because of "the parallel SAO prosecution and

because the case lacked federal prosecutive merit." (CSOF ¶ 39). The federal government closed its investigation at that time. (CSOF ¶¶ 39; 47). Notwithstanding this development, IAD did not stop investigating. (CSOF ¶¶ 43-44). Despite Baker's 2006 conviction before Judge Toomin and the guilty pleas of Baker and Glenn related to their December 11, 2005 arrests, IAD Chief Debra Kirby reopened the IAD investigation of Plaintiffs' allegations of misconduct against Watts. (*Id.*). Kirby further instructed IAD Sgt. Joe Barnes to bring the additional information to the FBI, which he did in or about November 2006. (CSOF ¶¶ 44-45). In December 2006, the USAO determined the case against Watts was prosecutable "if additional evidence could be developed," and formally reopened the federal government's joint investigation with IAD on January 18, 2007. (CSOF ¶¶ 47-48).

The reopened investigation included significant investigatory resources and techniques including Title III wiretaps, consensual overhears, use of confidential human sources, pen registers, covert surveillance, and money rips, among other tactics. (CSOF ¶ 52). In late 2007 into early 2008, the joint FBI/IAD investigation developed evidence that Mohammed accepted bribes from federal CIs to allow drug operations to continue. (*Id.*). The evidence was presented to the USAO, but it declined to prosecute at that time because there was insufficient evidence to convict Watts. (CSOF ¶ 53). Other operations and scenarios were conducted in an attempt to develop evidence for the USAO to bring charges, but they were deemed unsuccessful by the USAO to support charges against Watts. (CSOF ¶¶ 54-55).

On November 21, 2011, an operation successfully recorded Watts and Mohammed stealing suspected drug proceeds (really, government funds) from an FBI CI. (CSOF ¶ 56). Additional operations and interviews were conducted to further investigate whether other members of the tactical team were corrupt, with negative results. (CSOF ¶¶ 57-58; 61-66). As a result of the joint FBI/IAD criminal investigation, Watts and Mohammed resigned from CPD and were criminally charged, prosecuted, and convicted. (CSOF ¶¶ 59-60; City Answer ¶¶ 2; 5).

The CPD's Rules, Regulations, and Policies

CPD had Rules and Regulations that mandated the reporting of misconduct during the 2001 to 2006 timeframe. (CSOF ¶ 82). These rules include CPD Rule 14, which prohibited members from making a false report, written or oral; CPD Rule 21, which required officers to report promptly to the Department any information concerning any crime or other unlawful action; and CPD Rule 22, which prohibited the failure to report any violation of its Rules and Regulations or any other improper conduct which is contrary to the policy, orders, or directives of the Department. (*Id.*). As to CPD policies, the City produced CPD G.O. 93-03, which defines the responsibilities of Department members when allegations of misconduct come to their attention. (CSOF ¶¶ 83-87).

As to training, the City produced the CPD's Basic Recruit Training Program Curriculum 1996. (CSOF ¶ 95). All of the Defendant Officers in this case were required to complete basic training. (*Id.*). All CPD recruits, including the Defendant Officers in this case, received hundreds of hours of contact between instructor and trainee, ranging from lecture to discussion periods, and involving practical exercises. (*Id.*). Rule 30(b)(6) witness Lieutenant Michael Fitzgerald testified CPD police officers are trained that police reports are to be accurate, and that CPD officers are trained not to frame people, and if they do, they may go to prison. (CSOF ¶¶ 91-92).

Regarding discipline, the City produced General Order 93-03, which provides that the Superintendent is charged with the responsibility for, and has the authority to maintain, discipline within the Department. (CSOF ¶ 84). The City also produced evidence regarding the complaint investigation process following the initiation of a Complaint Register ("CR"); SPARs (Summary Punishment Action Requests), which are mechanisms for supervisory officers to identify and punish less serious violations that they observe and do not require; and, Command Channel Review, through which supervisors are informed of and review the nature of allegations of misconduct against an individual. (CSOF ¶¶ 84-89; 96). Lt. Fitzgerald testified that when officers in the department were

disciplined or stripped of their police powers, supervisors would notify their subordinates that discipline had been imposed and remind them to obey the rules and the law. (CSOF ¶ 98). The City also produced evidence showing the imposition of discipline of its officers, including reports for 2001 to 2005, which set forth the amount of CRs that were opened, the amount of CRs that were sustained, and the numbers of officers who were separated or resigned under investigation. (CSOF ¶ 98).

LEGAL STANDARD

Summary judgment is appropriate when there remains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.*, 40 F.3d 146, 150 (7th Cir. 1994); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Though the movant bears the burden of showing that summary judgment is appropriate, the non-moving party 'may not rest upon mere allegations in the pleadings nor upon conclusory statements in affidavits; it must go beyond the pleadings and support its contentions with proper documentary evidence.'" *Beardsall v. CVS Pharmacy, Inc.*, 953 F.3d 969, 972 (7th Cir. 2020) (internal citation omitted). Therefore, unless plaintiffs "can point to sufficient evidence regarding such issues of judgment to allow [them] to prevail on the merits, [they] cannot prevail at the summary judgment stage." *Singer v. Raemisch*, 593 F.3d 529, 534–35 (7th Cir. 2010) (internal citations omitted). All facts, and any inferences to be drawn from them, must be viewed in the light most favorable to the nonmoving party. *Scott v. Harris,* 550 U.S. 372, 378 (2007). However, "that duty does not extend to drawing inferences that are supported only by speculation or conjecture." *Swetlik v. Crawford,* 738 F.3d 818, 829 (7th Cir. 2013) (internal quotations omitted). The nonmoving party also must produce "more than a scintilla of evidence to support his position" that a genuine issue of material fact exists. *Pugh v. City of Attica,* 259 F.3d 619, 625 (7th Cir. 2001). Expert evidence offered by the nonmovant to defeat summary judgment must be admissible. *Lewis v. CITGO Petroleum Corp.,* 561 F.3d 698, 704 (7th Cir. 2009).

Monell v. New York City Dept. of Social Servs., 436 U.S. 658 (1978), and its progeny set out the requirements for municipal liability under § 1983. Fundamentally, local governments can be held liable for constitutional violations only when they themselves cause the injury. 436 U.S. at 694 ("it is when execution of a government's policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983"); *Bd. of Cnty. Comm. of Bryan County, Okla. v. Brown,* 520 U.S. 397, 403–404 (1997) ("*Bryan County*"); *First Midwest Bank v. City of Chicago,* 988 F.3d 978, 986 (7th Cir. 2021). "A municipality may not be held liable under § 1983 based on a theory of respondeat superior or vicarious liability." *Jenkins v. Bartlett,* 487 F.3d 482, 492 (7th Cir. 2007) (citing *Monell,* 436 U.S. at 694). Moreover, a municipality cannot be found liable under § 1983 simply because it employs an individual. *Monell,* 436 U.S. at 691; *Bryan County,* 520 U.S. at 403. To succeed on a § 1983 claim against the municipality itself, a plaintiff must establish conduct "that is properly attributable to the municipality" itself. *Bryan County,* 520 U.S. at 403-04.

A constitutional injury is a threshold requirement for § 1983 municipal liability. *See City of Los Angeles v. Heller,* 475 U.S. 796, 799 (1986). "That's the first step in every § 1983 claim, including a claim against a municipality under *Monell*." *First Midwest Bank,* 988 F.3d at 987. If a plaintiff proves a constitutional violation, three types of action can support § 1983 municipal liability: (1) an express policy; (2) a widespread practice that is so permanent and well-settled as to constitute a custom or usage within the force of law; or (3) a decision by a person with final policymaking authority. *McCormick v. City of Chicago*, 230 F.3d 319, 324 (7th Cir. 2000).

If a plaintiff claims that his constitutional injury was caused by a widespread practice, he also must show the municipality acted with deliberate indifference and demonstrate a direct causal link between the municipal action and the alleged deprivation of federal rights. *J.K.J. v. Polk County,* 960 F.3d 367, 377 (7th Cir. 2020); *First Midwest Bank,* 988 F.3d at 987. Deliberate indifference "is a high bar. Negligence or even gross negligence on the part of the municipality is not enough." *First Midwest*

Bank, 988 F.3d at 987. "A plaintiff must prove that it was obvious that the municipality's action would lead to constitutional violations and that the municipality consciously disregarded those consequences." *Id.* Municipal liability attaches only where the final policymaker acts with deliberate indifference as to the known or obvious consequences of that action. *Bryan County,* 520 U.S. at 407.

Finally, a *Monell* plaintiff must prove the municipality's action was the "moving force" behind the constitutional violation. *First Midwest Bank*, 988 F.3d at 987. To satisfy this rigorous causation standard, the plaintiff must show a "direct causal link" between the challenged municipal action and the violation of his constitutional rights. *Id.* "These requirements—policy or custom, municipal fault, and 'moving force' causation—must be scrupulously applied in every case alleging municipal liability." *Id.* The Supreme Court has warned:

> Where a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into *respondeat superior* liability. As we recognized in *Monell* and have repeatedly reaffirmed, Congress did not intend municipalities to be held liable unless *deliberate* action attributable to the municipality directly caused a deprivation of federal rights.

Id. (citing *Bryan County*, 520 U.S. at 415).

DISCUSSION[2]

Plaintiffs in this case do not identify an express policy of the City they claim violated their constitutional rights. Instead, they appear to be asserting a "widespread practice" type of *Monell* claim. Where a plaintiff claims that his constitutional injury was caused by a widespread practice, he also must show the municipality acted with deliberate indifference and demonstrate a direct causal link between the municipal action and the deprivation of federal rights. *J.K.J.,* 960 F.3d at 377; *First Midwest Bank,* 988 F.3d at 987. As explained below, Plaintiffs have failed to develop sufficient evidence to

[2] Should this Court grant summary judgment in favor of the Defendant Officers on any of Plaintiffs' federal claims, the Court should likewise grant summary judgment in favor of the City because absent a constitutional violation, there can be no claim under *Monell. Petty v. City of Chicago*, 754 F.3d 416, 424 (7th Cir. 2014).

prevail on any of these three required elements for *Monell* liability on a "widespread practice" claim. This Court should enter summary judgment in favor of the City and against Plaintiffs.

I. The City is entitled to summary judgment on Plaintiffs' *Monell* claim because Plaintiffs have failed to adduce evidence establishing the existence of a widespread practice.

A. Plaintiffs Have Failed to Develop Evidence of a Citywide Practice of Misconduct.

The gravamen of a widespread practice *Monell* claim "is not individual misconduct by police officers (that is covered elsewhere under § 1983), but a *widespread* practice that permeates a critical mass of an institutional body." *Rossi v. Chicago,* 790 F.3d 729, 737 (7th Cir. 2015) (original emphasis). "[M]isbehavior by one or a group of officials is only relevant where it can be tied to the policy, customs, or practices of the institution as a whole." *Id.* To be "widespread," a practice must be "so permanent and well-settled that it constitutes a custom and practice with the force of law even though it was not authorized by written law or express policy." *Id.*; *see also Monell*, 436 U.S. at 691 (a widespread practice is "persistent," "permanent," and "well settled").

Plaintiffs have alleged an extremely broad "widespread practice" *Monell* claim (*e.g.*, depriving criminal suspects of exculpatory evidence, subjecting suspects to criminal proceedings based on false evidence, and depriving suspects of liberty without probable cause, among other allegations), but they have failed to adduce evidence of a *citywide* practice that meets the rigorous standards for holding the City liable for Plaintiffs' alleged constitutional injuries. Instead, Plaintiffs tie their "widespread practice" claim almost exclusively to "Defendant Watts and his crew" at Ida B. Wells, ignoring the department as a whole as well as other geographical areas of the City. Restated in terms that correspond to allegations in the SAC, Plaintiffs have not proven a *citywide* practice of depriving criminal suspects of exculpatory evidence, subjecting them to criminal proceedings based on false evidence, or depriving them of liberty without probable cause. Such evidence is necessary for a *Monell* claim because "a municipality cannot be held liable solely because it employs a tortfeasor." *Monell,* 436 U.S. at 691.

Rephrasing this conclusion in the context of a different allegation by Plaintiffs, the City is entitled to summary judgment on the *Monell* claim because Plaintiffs have presented no evidence of a *citywide* practice of implicating individuals "in crimes to which they had no connection and for which there was scant evidence to suggest that they were involved." (SAC, ¶163). "*Monell* liability is rare and difficult to establish." *Stockton v. Milwaukee Cnty.*, 44 F.4th 605, 617 (7th Cir. 2022). Plaintiffs have not established—nor have they even attempted to demonstrate—a *citywide* practice that constitutes a City custom and practice with the "force of law." Plaintiffs' narrow focus on Defendant Watts and his "crew" at the Ida B. Wells homes has resulted in their failure to demonstrate a genuine issue of material fact on the "widespread practice" element of their *Monell* claim. Plaintiffs' failure of proof on this requirement dooms their claim because "*Monell* does not subject municipalities to liability for the actions of misfit employees." *Ruiz-Cortez v. City of Chicago*, 931 F.3d 592, 599 (7th Cir. 2019).

Although Plaintiffs allege former Chicago police officer Jerome Finnigan and officers working with him "engaged in their misconduct at around the same time that Mr. Baker and Ms. Glenn were targeted by Defendant Watts and his crew" (SAC ¶181), it does not aid their widespread practice claim. Plaintiffs cannot avoid summary judgment by simply relying on allegations in the SAC. *Beardsall*, 953 F.3d at 972. The only putative evidence related to Finnigan is a reference in the report from Plaintiffs' expert, Jon Shane. However, Shane's only reference to Finnigan is found in a block quotation taken from two pages of the 2016 Police Accountability Task Force ("PATF") report that mentions allegations against miscellaneous officers who were indicted over the years, including Finnigan. (CSOF ¶ 79). Critically for purposes of summary judgment, Shane admitted at deposition he does not know anything about Finnigan's case and did not review the reasonableness of the IAD investigation of Finnigan that led to his indictment and conviction. (*Id.*). Because Shane is simply copying the PATF report without any knowledge of Finnigan's case or the reasonableness of the IAD investigations

mentioned in that report, any related testimony on the subject of Finnigan lacks foundation and is inadmissible.[3]

In sum, Plaintiffs have not presented evidence and have not otherwise explained how the alleged criminal enterprise operated by a few "misfit employees" at Ida B. Wells equates to a citywide practice. Critical for purposes of *Monell* liability, Plaintiffs have not established a "*widespread* practice that permeates a critical mass of an institutional body." *Rossi,* 790 F.3d at 737 (emphasis in original). Accordingly, the City is entitled to summary judgment on the *Monell* claim because Plaintiffs have failed to establish a citywide practice actionable under *Monell*.

B. Plaintiffs Have Not Demonstrated a *Brady*-Based *Monell* Claim.

Plaintiffs next allege "City officials withheld information they had about the officers' pattern of misdeeds, information that citizens like Mr. Baker and Ms. Glenn could have used to impeach the corrupt officers and defend against the bogus criminal charges placed upon them." (SAC ¶139). According to Plaintiffs, the City "maintained a system that violated the due process rights of criminal defendants like Mr. Baker and Ms. Glenn by concealing exculpatory evidence of officers' patterns of misconduct." (*Id.* ¶162). Notwithstanding these allegations, the evidence does not support the *Brady*-based *Monell* claim attempted by Plaintiffs. Contrary to their allegations, Plaintiffs *did* have the information about Watts and his alleged pattern of misconduct that they could have used to defend against the criminal charges placed against them.

For purposes of *Brady*, a police officer satisfies his *Brady* obligations by disclosing exculpatory evidence to the prosecutor. See *Carvajal v. Dominguez,* 542 F. 3d 561, 566 (7th Cir. 2008). Evidence is not suppressed in violation of *Brady* if it is known to the criminal defendant. *Gauger v. Hendle*, 349 F.3d 354, 360 (7th Cir. 2003), *overruled in part on other grounds Wallace v. City of Chicago*, 440 F.3d 421 (7th Cir.

[3] Moreover, the fact that Finnigan was criminally indicted and convicted demonstrates the CPD through its IAD did not condone criminal misconduct by its officers and that CPD officers should not believe they could "act with impunity."

2006). Assuming, *arguendo*, there was a pattern and practice of misconduct by Watts that was known to the City, there can be no genuine dispute Plaintiffs and prosecutors were aware of this alleged pattern and practice prior to Baker's 2006 criminal trial and before Plaintiffs' 2006 guilty pleas. Specifically, in May 2005, ASA Navarro of the CCSAO met with both Plaintiffs, their attorney Mahoney, and two IAD police officers, when they discussed Baker's claim that Watts wanted a payoff to allow Baker to continue his drug dealing. (CSOF ¶¶ 29-31). Mahoney has acknowledged he received IAD documents, as well as documents from the ATF, that pertained to officers subsequently involved in Baker's arrest and that alleged Watts arrested drug dealers who refused to pay him off, and that he received these documents prior to Baker's 2006 trial, but chose not to use that information. (CSOF ¶¶ 35; 41). Mahoney thus was aware of other individuals in the area of the Ida B. Wells homes who claimed to be victims of Watts's criminal enterprise.

Both Plaintiffs, Plaintiffs' attorney, and the SAO prosecutors possessed this purportedly exculpatory information regarding Watts's alleged pattern of misconduct prior to Baker's criminal trial and before Plaintiffs' guilty pleas. Plaintiffs therefore cannot maintain a *Brady*-based *Monell* claim under the circumstances.

C. Plaintiffs Have Not Put Forth Evidence Demonstrating a Code-of-Silence *Monell* Theory.

In conclusory fashion, Plaintiffs allege that "pursuant to [a] 'code of silence' each of the Defendant Officers concealed from Baker and Glenn information that Watts and his teammates were in fact engaged in a wide-ranging pattern of misconduct." (SAC ¶118). As a fundamental matter, as discussed in the preceding section, the actual evidence refutes the notion Plaintiffs were unaware of Watts's misconduct in the relevant time frame. For this reason alone, Plaintiffs' "code of silence" theory fails to survive summary judgment. Moreover, as explained below, Plaintiffs have not demonstrated how the alleged "code of silence" specifically applies to *this* case or, critically, how it was

the "moving force" that caused the alleged constitutional violations of which they complain. As with their other claims, Plaintiffs' "code of silence" *Monell* theory fails for lack of supporting evidence.

And what exactly *is* the "code of silence" as contemplated by Plaintiffs? Like the *Monell* claim itself, the "code of silence" referenced in the SAC is rather nebulous. Is it that Watts shielded his criminal activity from law enforcement? (SAC, ¶110). Is it that each Defendant Officer concealed his criminal activity from Plaintiffs? (*Id.*, ¶118). An agreement by criminal co-conspirators not to reveal their criminal misconduct to others cannot reasonably be considered a department-wide "code of silence" attributable to CPD. Or, is it the broader (and vaguer) concept that police officers are expected to conceal each other's misconduct? (*Id.*, ¶116). If so, this broader definition seemingly would not apply to individuals engaged in a criminal enterprise like Watts and Mohammed, who presumably would be concealing each other's misconduct because of the mutual benefit to each other (*i.e.*, they did not want to be caught), rather than because of some vague "code of silence" within the CPD. Under Plaintiffs' amorphous definition, every single claim of police misconduct seemingly would qualify as a "code of silence" case simply by using those magic words. The law cannot be so easily manipulated. *Khan v. Midwestern Univ.*, 879 F.3d 838, 846 (7th Cir. 2018) ("A party cannot create a dispute of material fact simply by spewing 'unsupported ipse dixit [that] is flatly refuted by the hard evidence proffered by' the opposing party." (citing *Turner v. The Saloon, Ltd.*, 595 F.3d 679, 690-92 (7th Cir. 2010)).

In contrast to the allegations in the SAC, the evidence that has been produced in this case demonstrates the City did not condone a code of silence in the relevant time period. CPD had Rules and Regulations that mandated the reporting of misconduct during the *Monell* timeframe. (CSOF ¶¶ 80-81). CPD Rule 14 prohibited members from making a false report, written or oral. (CSOF ¶ 82). CPD Rule 21 required officers to report promptly to the Department any information concerning any crime or other unlawful action. (*Id.*). CPD Rule 22 prohibited the failure to report to CPD any violation

of its Rules and Regulations or any other improper conduct which is contrary to the policy, orders, or directives of the Department. (*Id.*). In addition, CPD G.O. 93-03 "defines the responsibilities of Department members when allegations of misconduct come to their attention," and mandates that "Members who have knowledge of circumstances relating to a complaint will submit an individual written report to a supervisor before reporting off duty on the day the member becomes aware of the investigation." (CSOF ¶ 85). Moreover, "When misconduct is observed or complaints/information relative to misconduct are received by a non-supervisory member, such member will immediately notify a supervisory officer and prepare a written report to his commanding officer containing the information received, observations and/or action taken." (CSOF ¶86). The evidence thus establishes the City had a robust express policy prohibiting a "code of silence" as described in the SAC.

Pertinent to this issue, Plaintiffs allege former Chicago Mayor Rahm Emanuel in December 2015 "acknowledged that a 'code of silence' exists within the Chicago Police Department" and the City was found liable in 1994 in the case of *Klipfel v. Bentsen*. (SAC ¶¶ 184-86; 190). These examples are insufficient to demonstrate a genuine issue of material fact supporting Plaintiffs' *Monell* claim. *Thomas v. City of Markham*, No. 16 C 8107, 2017 WL 4340182, at *4 (N.D. Ill. Sept. 29, 2017) ("allegations of general past misconduct or allegations of dissimilar incidents are not sufficient to allege a pervasive practice and a defendant's deliberate indifference to its consequences.") (cleaned up). Mayor Emanuel's 2015 comments were made years after the events giving rise to Plaintiffs' lawsuit, and the *Klipfel* case (1994) allegedly involving former CPD officer Joseph Miedzianowski's misconduct occurred years before Plaintiffs' arrests. Accordingly, those allegations are too remote and not relevant to an alleged code of silence in 2005. See *Velez v. City of Chicago*, No. 18 C 8144, 2023 WL 6388231, at *25 (N.D. Ill. Sept. 30, 2023) (rejecting Mayor Emanuel's 2015 speech as relevant to a code of silence theory and recognizing Mayor Emanuel's comments and other evidence "substantially pre-dates and post-dates the alleged misconduct against Velez in 2001, so the evidence is not relevant").

Moreover, "Mayor Emanuel's statement was made in the context of an excessive force case involving a police shooting," which is not relevant here. *Page v. City of Chicago*, No. 19 7431, 2021 WL 365610, at *3 (N.D. Ill. Feb. 3, 2021). Plaintiffs have offered no evidence to establish the relevance of Mayor Emanuel's comments to their claims and cannot, as a matter of law, link comments from a speech made in 2015 to the 2005-2006 criminal proceedings against them.

Nor do the allegations in the SAC regarding police officers Daniel Echeverria and Shannon Spalding, or the case of *Obrycka v. City of Chicago*, No. 07-CV-2372 (N.D. Ill.), establish relevant evidence of an applicable "code of silence." Specifically, Plaintiffs allege Echeverria and Spalding began cooperating with the FBI in the investigation of "Watts and his crew," and when that involvement became known to officers, Echeverria and Spalding "were labeled 'rats' with the Department" and "endured all manner of professional retaliation by members of CPD." (SAC ¶¶121–123). But Plaintiffs fail to show *how* these purported "code of silence" allegations involving Echeverria and Spalding led to the constitutional injuries Plaintiffs allegedly suffered. In other words, Plaintiffs have not shown how any alleged "retaliation" against Spalding and Echeverria is causally related to the alleged misconduct perpetrated by Defendant Officers that Plaintiffs contend violated their constitutional rights. The City cannot be held liable to Plaintiffs for violating the constitutional rights of Spalding and Echeverria. Constitutional rights are personal in nature and cannot be asserted vicariously. *Daniels v. Southfort*, 6 F.3d 482, 484 (7th Cir. 1993).

With respect to *Obrycka*, Plaintiffs allege a federal jury in that case returned a verdict that the City "had a widespread custom and/or practice of failing to investigate and/or discipline its officers and/or code of silence." However, Plaintiffs have offered no evidence to support that allegation. Further undermining this allegation, the District Court in *Obrycka* subsequently noted the basis for the jury's verdict was "unclear" and was "based on the unique facts of [that] case." Case No. 07-CV-2372,

Mem. Op. & Order, Dkt. #712, at 10.[4] For purposes of a *Monell* claim, Plaintiffs have developed no evidence connecting the "unclear" findings in *Obrycka* to their alleged constitutional injuries here.

The only relevant, competent evidence in this case demonstrates that the City is entitled to summary judgment on Plaintiffs' "code of silence" claim.

D. Any *Monell* Claim Based Upon a Failure to Train is Unsupported by Evidence.

Plaintiffs' broad *Monell* claim also includes a theory that the City had a policy of failing to train its police officers. (SAC ¶ 164). Plaintiffs allege "[t]hese widespread practices were allowed to flourish because the City and the CPD declined to implement sufficient policies or training, even though the need for such policies and training was obvious." (SAC ¶165). Plaintiffs also allege that in 1999, former Superintendent Terry Hillard "noted the need for better in-service training on the use of force, early detection of potential problem officers, and officer accountability for the use of force,"[5] and the City "failed to modify its officer training programs to reduce misconduct against Chicago residents or to implement a system to identify and track repeat offenders, districts, or units." (*Id.* ¶¶ 168, 194). The only competent evidence produced in this case establishes summary judgment is warranted on any claim based upon an alleged failure to train.

In this case, the City has produced training documents and policy directives related to, among other things, ethics, civil rights, the Rules and Regulations of the police department, and discipline. (CSOF ¶¶ 81-87; 95-96). The City produced the CPD's Basic Recruit Training Program Curriculum 1996, which all of the individual defendant police officers in this case completed. (CSOF ¶95). All CPD recruits, including the Defendant Officers, received hundreds of hours of contact between instructor and trainee, ranging from lecture to discussion periods, and involving practical exercises.

[4] It also is unclear whether *Obrycka* remains good law in light of the Seventh Circuit's decision in *First Midwest Bank*, 988 F.3d at 990 (abrogating *Obrycka,* 2012 WL 601810 (N.D. Ill. Feb. 23, 2012)).

[5] Plaintiffs do not make any allegations that they were subjected to an unreasonable use of force with respect to their claims in their lawsuit. Therefore, Superintendent Hillard's statement is not relevant because it bears no causal connection to the underlying constitutional violations alleged in this case.

(*Id.*) Among other courses, CPD recruits were taught the following: civil rights; laws of arrest, search, & seizure; rights of the accused; police morality; fundamentals of report writing (field case reporting); information sources; patrol procedures; and custody, arrest, & booking procedures. (*Id.*).

In stark contrast to the evidence of CPD training produced by the City in this case, Plaintiffs have wholly failed to provide evidence to support their failure to train claim. Plaintiffs have not identified any fact witness or documents to support their failure to train claim. Plaintiffs' experts do not identify any CPD training that was deficient or any national training standard that was not met. Plaintiffs have offered no evidence indicating how CPD officers should have been trained differently. Like many of their wide-ranging *Monell* allegations, it is unclear why Plaintiffs have continued to pursue a failure to train theory, particularly since they have made no apparent effort to prove it.

"A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on failure to train * * * [A] municipality's failure to train its employees in a relevant respect must amount to 'deliberate indifference to the rights of persons with whom the [untrained employees] come into contact.'" *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)). Plaintiffs have fallen well short of establishing deliberate indifference or any evidence of a failure to train. There is no genuine issue of fact and the City is entitled to summary judgment on Plaintiffs' claim that the City has a constitutionally deficient policy of failing to train its officers.

* * * *

Summary judgment is the "put up or shut up" moment in a lawsuit. *Siegel v. Shell Oil Co.*, 612 F.3d 932, 937 (7th Cir. 2010). Plaintiffs' failure to present sufficient admissible evidence establishing a "widespread practice" warrants summary judgment in favor of the City on the *Monell* claim.

II. The City is entitled to summary judgment on Plaintiffs' *Monell* claim because the City was not deliberately indifferent to the alleged misconduct of Watts and Mohammed.

Aside from showing a widespread practice of constitutional violations, which Plaintiffs have failed to do here, a *Monell* plaintiff must also satisfy a "rigorous standard of culpability," *i.e.*, that the

municipality's action was taken with deliberate indifference to the plaintiff's constitutional rights. *First Midwest Bank*, 988 F.3d at 986–87 (cleaned up). "This is a high bar. Negligence or even gross negligence on the part of the municipality is not enough." *Id.* at 987. Rather, "[a] plaintiff must prove that it was obvious that the municipality's action would lead to constitutional violations and that the municipality consciously disregarded those consequences." *Id.* To reiterate a principle particularly relevant here, a plaintiff must establish conduct that is "properly attributable to the municipality" itself in order to succeed on a § 1983 claim against that municipality. *Bryan County,* 520 U.S. at 403–04. This rigorous standard of municipal fault must be "scrupulously applied" in every *Monell* case to avoid municipal liability from "collaps[ing] into *respondeat superior* liability." *First Midwest Bank*, 988 F.3d at 987, citing *Bryan County*, 520 U.S. at 415. Plaintiffs cannot meet this demanding standard for municipal fault under the undisputed facts of this case.

Regarding the element of deliberate indifference, Plaintiffs' SAC variously alleges (1) the City and its supervisors "turned a blind eye" to the alleged misconduct of "Watts and his crew," (2) the City never undertook its own investigation, and (3) the City "completely abdicated" its responsibility to supervise, discipline, and control its officers. (SAC at ¶¶ 133-37; 156). According to Plaintiffs, the City "took no steps to prevent" the alleged abuses from occurring (*id.* at ¶137), and City officials knew of the misconduct and allowed it to continue, thereby condoning it (*id.* at ¶155). Each of these allegations is conclusively refuted by the actual evidence as explained below. The City did not turn a blind eye to Watts's criminal enterprise, nor did it "abdicate its responsibility" with respect to the allegations against Watts and Mohammed. To the contrary, the CPD took significant steps to address the allegations of criminal misconduct through its initiation of a confidential investigation and ongoing participation in the joint FBI/IAD investigation, which ultimately resulted in the criminal convictions of Watts and Mohammed. Because the City did not "condone" or "approve" of Watts's or

Mohammed's criminal misconduct, Plaintiffs cannot survive summary judgment on the element of deliberate indifference.

In refutation of the allegations in the SAC, the evidence demonstrates CPD's ongoing and ultimately successful efforts to bring to an end Watts's criminal enterprise. In September 2004, CPD's IAD initiated a confidential investigation of Watts. (CSOF ¶ 6). Investigator Holliday and other IAD personnel met with representatives from the USAO, FBI, DEA, ATF, and HIDTA in September 2004, after which a federally-led joint investigation between FBI and IAD commenced. (CSOF ¶¶ 8-9). In addition to bringing the allegations to the attention of the federal government, IAD representatives also met in May 2005 with ASA Navarro of the CCSAO, both Plaintiffs, and Baker's attorney to discuss Baker's claim that Watts wanted a payoff to allow Baker to continue his drug dealing. (CSOF ¶¶ 29-31).

Even after the federal government closed the joint investigation in February 2006 (CSOF ¶¶ 38-39; 47), IAD did not stop investigating. IAD Chief Kirby reopened the investigation of Plaintiffs' allegations of misconduct against Watts and instructed IAD Sgt. Barnes to bring the additional information to the FBI, which he did in November 2006. (CSOF ¶¶ 43-45). In December 2006, the USAO reopened the joint investigation with IAD on January 18, 2007 (CSOF ¶¶ 47-48), which resulted in the use of significant investigatory resources and techniques. (CSOF ¶ 52). In late 2007 into early 2008, when the joint FBI/IAD investigation developed evidence that Mohammed accepted bribes to allow drug operations to continue (*id.*), the USAO declined to prosecute because there was insufficient evidence to convict Watts. (CSOF ¶ 53). The joint investigation nevertheless continued, and investigators conducted additional operations and scenarios in an attempt to develop sufficient evidence for the USAO to bring charges against Watts. (CSOF ¶ 54-55). Ultimately, on November 21, 2011, an operation successfully recorded Watts and Mohammed stealing suspected drug proceeds (really, government funds) from an FBI informant. (CSOF ¶ 56). Additional operations and interviews

were conducted to investigate whether other members of the tactical team were corrupt, with negative results. (CSOF ¶ 57-58; 61-66). As a result of the joint FBI/IAD criminal investigation, Watts and Mohammed resigned from CPD and were criminally charged, prosecuted, and convicted. (CSOF ¶¶ 59-60; City Answer ¶¶ 2; 5).

As the above emphatically demonstrates, the City was anything but deliberately indifferent to Watts's alleged criminal enterprise. CPD's IAD initially brought the allegations to the attention of the FBI, worked with the FBI in a joint confidential criminal investigation, also worked with the CCSAO concerning Baker's allegations against Watts, persisted in its investigation of Watts even after the USAO closed its investigation in early 2006, brought additional information to the FBI that led to the USAO reopening the investigation in late 2006, and participated in the reopened joint investigation, which involved expenditures of significant resources and the use of additional investigative techniques that ultimately resulted in a successful criminal prosecution of Watts and Mohammed. The CPD was not indifferent to the criminal misconduct of Watts and Mohammed. To the contrary, IAD's ongoing participation in the joint FBI/IAD investigation demonstrates CPD's lack of approval and condemnation of such criminal misconduct, as well as CPD's commitment to investigating, eliminating, and punishing such conduct.

The case of *Wilson v. City of Chicago*, 6 F.3d 1233 (7th Cir. 1993), is instructive on the issue of deliberate indifference for purposes of *Monell*. In *Wilson*, the Seventh Circuit held that then-Superintendent of Police Richard Brzeczek, the City's designated policymaker, was not deliberately indifferent to police officers' torture of persons suspected of killing or wounding officers despite evidence that efforts to eliminate the alleged practice were ineffective, inefficient, and delinquent. *Id.* at 1240–41. The Seventh Circuit stated the determinative issue for deliberate indifference was whether Brzeczek had approved the practice. The Court of Appeals noted that Brzeczek had referred torture complaints to OPS, the CPD unit responsible for investigating police abuse. "It was the

plaintiff's responsibility to show that in so doing this Brzeczek was not acting in good faith to extirpate the practice. That was not shown." *Id.* at 1240. "At worst," according to the Seventh Circuit, "the evidence suggests that Brzeczek did not respond quickly or effectively, as he should have done, that he was careless, maybe even grossly so given the volume of complaints." *Id.* However, "[m]ore was needed to show that he *approved* the practice. *Failing to eliminate a practice cannot be equated to approving it*." *Id.* (added emphasis). As the Seventh Circuit further explained:

> A rational jury could have inferred from the frequency of the abuse, the number of officers involved in the torture of Wilson, and the number of complaints from the black community, that Brzeczek knew that officers in Area 2 were prone to beat up suspected cop killers. *Even so, if he took steps to eliminate the practice, the fact that the steps were not effective would not establish that he had acquiesced in it and by doing so adopted it as a policy of the city. * * * Deliberate or reckless indifference to complaints must be proved in order to establish that an abuse practice has actually been condoned and therefore can be said to have been adopted by those responsible for making municipal policy.* If Brzeczek had thrown the complaints into his wastepaper basket or had told the office of investigations to pay no attention to them, an inference would arise that he wanted the practice of physically abusing cop killers to continue. There is no evidence in this case from which the requisite inference could be drawn by a rational jury.

Id. (added emphasis).

In accordance with *Wilson*, the determinative issue is whether the CPD approved the criminal enterprise allegedly operated by Watts. The CPD, through IAD, did *not* approve of the criminal enterprise; instead, it took affirmative steps to eliminate the misconduct by actively participating in the joint investigation. Paraphrasing *Wilson*, the fact that the steps taken in the joint investigation were not successful sooner does not establish CPD "acquiesced in [Watts's criminal enterprise] and by doing so adopted it as a policy of the City." In sum, IAD's ongoing participation in the joint FBI/IAD investigation demonstrates CPD's lack of approval of Watts's criminal misconduct and its commitment to eliminating such conduct.

Unable to prove the allegations in the SAC that the City "took no steps" and "did nothing" regarding the alleged criminal misconduct of Watts and Mohammed, Plaintiffs offer two experts (Jon Shane and Jeffrey Danik) to challenge various aspects of the joint FBI/IAD criminal investigation of

Watts and Mohammed. For the reasons set forth in Defendants' previously filed *Daubert* motions (Dkt. ## 307, 326, 350, 368), Shane and Danik should be barred from offering their opinions and criticisms of CPD in this case. Even if considered, Shane's and Danik's criticisms are insufficient to overcome the rigorous standard of culpability required to establish deliberate indifference. Danik criticized the joint FBI/IAD investigation while suggesting additional investigatory steps that could have been taken or should have been done sooner. (CSOF ¶ 79). Shane similarly offers criticisms that CPD's disciplinary investigative process was deficient. (*Id.*). But neither Danik nor Shane can opine the CPD declined to investigate the allegations against Watts and Mohammed. That the investigation of Watts and Mohammed could have been done differently or completed sooner (in the experts' opinions) does not establish deliberate indifference. See *Sims v. Mulcahy,* 902 F.2d 524, 544 (7th Cir.1990) (finding a city investigation of alleged misconduct did not constitute deliberate indifference or tacit authorization even if the investigation could have been more thorough); *Frake v. City of Chicago*, 210 F.3d 779, 782 (7th Cir. 2000) ("[t]he existence or possibility of other better policies which might have been used does not necessarily mean that the defendant was being deliberatively indifferent").

Again paraphrasing the Seventh Circuit in *Wilson*, if IAD had thrown the allegations of Watts's criminal misconduct into a wastebasket, or if IAD supervisors had told Holliday and other IAD investigators to pay no attention to them, an inference could arise that CPD, through IAD, wanted Watts's criminal enterprise to continue. That did not happen. Instead, IAD took significant steps to continue the investigation even after Baker was convicted and after the USAO closed the initial investigation. Deliberate indifference "is a high bar. Negligence or even gross negligence on the part of the municipality is not enough." *First Midwest Bank,* 988 F.3d at 987. There is no evidence in this case from which an inference of deliberate indifference can be drawn by the jury.[6]

[6] Shane and Danik also suggest the CPD should have moved administratively against Watts and Mohammed notwithstanding the ongoing confidential joint FBI/IAD criminal investigation. (CSOF ¶ 79). For CPD to move administratively before the criminal investigation was concluded, it would have had to reveal to Watts

Plaintiffs also allege City officials "downplayed the magnitude" of Watts's criminal enterprise, suggesting former CPD Superintendent Garry McCarthy was less than candid when he publicly stated the joint FBI/IAD investigation found nobody other than Watts and Mohammed were involved. (SAC ¶¶ 113-14). To the extent this allegation pertains to the element of deliberate indifference, it finds no support in the evidence. Indeed, McCarthy's comments indicate the CPD was *not* being deliberately indifferent to the scope of the criminal enterprise. McCarthy's comment was made after he consulted with the FBI to ask if there was evidence that any other officers on the tactical team were involved in the criminal misconduct. (CSOF ¶ 63). Like McCarthy, Chief Rivera and former Supt. Eddie Johnson also inquired of the FBI and USAO whether any other officers were involved, with negative results. (CSOF ¶¶ 62, 64). Rather than "downplay the magnitude" of the criminal enterprise, the actions of McCarthy, Rivera, and Johnson to determine if any other officers were involved reflect CPD's continued commitment to eliminating the criminal misconduct, rather than condoning it. Such actions are "more consistent with vigilance than with gross negligence – let alone deliberate indifference, an even higher bar." *Brown v. City of Chicago*, 633 F. Supp. 3d 1122, 1177 (N.D. Ill. 2022).

III. The City is entitled to summary judgment on Plaintiffs' *Monell* claim because Plaintiffs have failed to prove a City policy or practice was the "moving force" behind the alleged constitutional injuries.

Yet another independent basis for this Court to grant summary judgment on the *Monell* claim is that Plaintiffs have not developed evidence it was a City policy, as opposed to individual actions by Defendant Officers, that was the moving force behind any constitutional injury. This conclusion is valid irrespective of any *Monell* theory under which Plaintiffs may attempt to proceed. As noted above, a municipality cannot be held liable under the common-law doctrine of *respondeat superior* for

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and Mohammed the evidence developed with and controlled by the federal government, thus compromising the integrity of the joint criminal investigation. (CSOF ¶ 78). For purposes of the deliberate indifference analysis, however, this fundamental flaw in Plaintiffs' experts' reasoning does not matter. That a different or better investigation could have been conducted does not establish deliberate indifference. *Frake*, 210 F.3d at 782; *Sims*, 902 F.2d at 544.

constitutional violations committed by its employees and agents. *First Midwest Bank*, 988 F.3d at 986. A plaintiff asserting a *Monell* claim must prove the municipality's action was the "moving force" behind the alleged constitutional violation. *Id.* at 987; *Bohanon v. City of Indianapolis*, 46 F.4th 669, 675 (7th Cir. 2022). As *First Midwest Bank* explained about the "moving force" requirement:

> [T]his rigorous causation standard guards against backsliding into respondeat superior liability. To satisfy the standard, the plaintiff must show a "direct causal link" between the challenged municipal action and the violation of his constitutional rights.

988 F.3d at 987. Indeed, "it is not enough to show that a widespread practice or policy was a *factor* in the constitutional violation; it must have been the *moving force*." *Johnson v. Cook County*, 526 Fed. Appx. 692, 696 (7th Cir. 2013) (emphasis in original).

Frankly, this Court should not even reach the question of whether Plaintiffs have developed evidence that a City policy or practice was the moving force behind the criminal enterprise allegedly causing the constitutional violations claimed in this case. As explained above, Plaintiffs have failed to present evidence sufficient to establish a widespread practice that existed at the time of Plaintiffs' arrests and prosecutions, let alone one that was the "moving force" behind Watts's criminal enterprise. Plaintiffs similarly have failed to meet the rigorous standards of municipal fault that would establish CPD was deliberately indifferent to Watts's criminal enterprise (the indisputable evidence proves CPD was *not* deliberately indifferent). After failing to present sufficient evidence to survive summary judgment on the first two elements of a *Monell* claim based on custom or practice, Plaintiffs also strike out on the third element, causation.

The difficulty in identifying Plaintiffs' actual *Monell* claim after years of litigation is particularly acute on the causation issue. Plaintiffs broadly allege the City was the moving force behind "the very type of misconduct at issue here by failing to adequately train, supervise, control, and discipline its police officers." (SAC ¶164). Despite its vague description in the SAC, the "very type of misconduct at issue here" is the operation of a criminal enterprise by Watts and Mohammed targeting drug dealers

at the Ida B. Wells housing complex. To successfully establish the "causation" element, Plaintiffs needed to develop evidence that something in CPD's training, supervision, control, and/or discipline of its police officers was the moving force behind the alleged criminal misconduct that violated Plaintiffs' constitutional rights. Notwithstanding the broad framing of the causation allegation in the SAC, Plaintiffs present no evidence to support any of these alleged "failures" of CPD.

Plaintiffs attempt to offer the opinion[7] of their expert, Shane, who suggests that CPD's failure to properly conduct investigations "would be expected to cause officers involved in narcotics enforcement, like the Defendants in this case, to engage in corruption and extortion and to fabricate and suppress evidence." (CSOF, ¶ 79). Although Shane offers multiple criticisms of the CPD's practices for investigating complaints of police misconduct, he does not attempt to causally connect the alleged investigatory deficiencies with the specific officer misconduct alleged in this case. Shane discusses investigations involving general police misconduct and allegations of excessive force, but other than his say-so, he provides no discussion or analysis of how those types of investigations can be reliably compared to a confidential investigation of alleged criminal behavior involving corruption and/or extortion, as was involved in this case. Even if Shane's criticisms of CPD's administrative investigation processes are considered valid, which the City disputes, Shane does not explain how those deficiencies caused Watts and Mohammed to act in the way alleged, *i.e.*, operating a criminal enterprise targeting drug dealers. *Bryan County*, 520 U.S. at 405 ("Where a plaintiff claims that the municipality has not directly inflicted an injury, but nonetheless has caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee").

[7] Shane's causation opinion does not create a genuine issue of fact and should not be considered in ruling upon the City's motion for summary judgment. Shane has no basis for his opinion suggesting the City's failure to conduct adequate investigations of police misconduct was the moving force behind the alleged criminal misconduct in this case. (Dkt. #326, at 20-21). Expert evidence offered by the nonmovant to defeat summary judgment must be admissible. *Lewis,* 561 F.3d at 704.

Restated in the circumstances of this case, Plaintiffs would have to show that it was the CPD's claimed disciplinary deficiencies, rather than the criminal conduct and motivations of Watts and Mohammed, that were the moving force behind the violations of Plaintiffs' constitutional rights. It is not enough to suggest CPD's alleged failure to conduct adequate investigations of police misconduct was *a factor* in the constitutional violations alleged by Plaintiffs; it must have been the *moving force*. *Johnson v. Cook County*, *supra*. In other words, even if an allegedly deficient disciplinary process was a factor in Watts's and Mohammed's belief they could "get away" with misconduct, it was not the "moving force" behind the alleged misconduct perpetrated on Plaintiffs. Plaintiffs' own allegations acknowledge they were arrested because Baker refused to pay Watts a "street tax" that would allow Baker to continue to sell narcotics. The moving force behind the alleged constitutional violations was criminal misconduct committed by criminals pursuant to a criminal enterprise.

Plaintiffs similarly cannot establish that a failure to train was the "moving force" causing a constitutional violation. The facts do not establish that City "policymakers were aware of, and acquiesced in, a pattern of constitutional violations" sufficient to hold a municipality liable for failure to train. *City of Canton*, 489 U.S. at 397. Plaintiffs provide no evidence to indicate what specific "adequate training" the City failed to provide, nor how that failure led to their injuries. "Such a nexus is needed 'to permit an inference that the [City] has chosen an impermissible way of operating.'" *Milan v. Schulz*, No. 21 C 756, 2022 WL 1804157, at *6 (N.D. Ill. June 2, 2022), quoting *Calhoun v. Ramsey*, 408 F.3d 375, 381 (7th Cir. 2005). For these and the reasons noted above (*supra*, at 16-17), Plaintiffs have failed to develop evidence to support a failure to train *Monell* theory, rendering summary judgment appropriate.

Absent evidence of a "direct causal link," Plaintiffs have failed to establish sufficient evidence to satisfy the element of causation under any of the multiple *Monell* theories alleged. Without the requisite evidence of a direct causal link, Plaintiffs' attempt to hold the City responsible for

constitutional injuries allegedly arising from the criminal misconduct of Watts and Mohammed collapses into an improper claim based on *respondeat superior*. The City is entitled to summary judgment on the *Monell* claim.

IV. The Evidence Fails to Support Plaintiffs' Failure to Supervise and Failure to Discipline Theories.

For the reasons set forth above, this Court should grant summary judgment in favor of the City on Plaintiff's wide-ranging *Monell* claim on any number of valid grounds. Plaintiffs have failed to develop sufficient evidence of a widespread practice, deliberate indifference, or causation to move forward on their *Monell* claim, no matter the theory. For completeness, however, the City will separately offer additional argument on the failure to supervise and failure to discipline theories referenced in the SAC.

Failure to Supervise

Summary judgment should be granted in favor of the City on Plaintiffs' claim that the City had a policy of failing to supervise its police officers. The City produced evidence demonstrating that supervisors monitored and supervised their subordinates in several ways: the complaint process following the initiation of a CR investigation; SPARs, which are mechanisms for supervisors to identify and punish less serious violations they observe and do not require initiation of a CR investigation; and, Command Channel Review, through which supervisors are informed of and review the nature of allegations of misconduct against an individual. (CSOF ¶¶ 84-89; 96). Lt. Fitzgerald testified that when officers in the department were disciplined or stripped of their police powers, supervisors would notify their subordinates that discipline had been imposed and remind them to obey the rules and the law. (CSOF ¶ 98).

Notwithstanding this evidence, Plaintiffs offer an expert, Shane, who opines CPD failed to supervise officers through the internal affairs process. According to Shane, CPD should have taken supervisory measures to stop the criminal misconduct at issue here. (CSOF ¶ 79). But as explained

above, CPD supervisors affirmatively took steps to investigate and act upon the allegations against Watts and Mohammed. They did not turn a blind eye to the allegations and actively engaged CPD in the joint FBI/IAD criminal investigation. Using Shane's words, CPD did take supervisory measures to stop the criminal misconduct, which ultimately resulted in the successful criminal prosecution of Watts and Mohammed. Plaintiffs' complaint that the investigation took too long is simply an argument for an "other, better" policy, which as explained above, is insufficient to establish *Monell* liability. *Frake*, *supra*; see also *Wilson*, 6 F.3d at 1240 (If policymaker "took steps to eliminate the practice, the fact that the steps were not effective would not establish that he acquiesced in it and by doing so adopted it as a policy of the city"). For these additional reasons, the City is entitled to summary judgment on the "failure to supervise" claim.

Failure to Discipline

Plaintiffs similarly cannot prevail on their failure to discipline theory. The City has produced evidence establishing that it had robust procedures for disciplining officers who violated the CPD's Rules and Regulations and that it did impose discipline during the relevant time frame. The City's evidence included General Order 93-03, which provides that the Superintendent is charged with the responsibility and has the authority to maintain discipline within the Department. (CSOF ¶ 84). In addition, "[t]he Superintendent of Police will review recommendations for disciplinary action including those of a Complaint Review Panel which are advisory, and will take such action as he deems appropriate. Nothing in this order diminishes the authority of the Superintendent of Police to order suspensions, to separate provisional employees or probationary employees, or to file charges with the Police Board at his own discretion without regard to recommendations made by a Complaint Review Panel or subordinates." (*Id.*). The City also produced evidence reflecting the imposition of discipline of its officers, including reports for 2001 to 2006, which set forth the amount of CRs that were opened,

the amount of CRs that were sustained, and the numbers of officers who were separated or resigned under investigation. (CSOF ¶ 98).

To the extent Plaintiffs have attempted to support their failure to discipline theory with the opinion of their experts, it is to no avail. As noted above, Danik criticized the joint FBI/IAD investigation while suggesting additional investigatory steps that could have been taken or should have been done sooner, while Shane offered criticisms of CPD's disciplinary investigation process. But again, neither Danik nor Shane can opine the CPD declined to investigate the allegations against Watts and Mohammed. That the investigation and ultimate discipline of Watts and Mohammed could have been more efficient, done differently, or completed sooner does not establish deliberate indifference. *Sims,* 902 F.2d at 544 (city investigation of alleged misconduct did not constitute deliberate indifference or tacit authorization even if the investigation could have been more thorough); *Frake*, 210 F.3d at 782 ("[t]he existence or possibility of other better policies which might have been used does not necessarily mean that the defendant was being deliberatively indifferent"). And ultimately, Watts and Mohammed were successfully disciplined, as they were criminally charged and convicted.

With respect to CPD's disciplinary procedures, Shane also discussed the rate at which complaints of police officer misconduct are sustained. (CSOF ¶ 79). However, Plaintiffs cannot overcome summary judgment based solely on the rate at which complaints of police officer misconduct are sustained or not sustained. Mere statistics of the rates at which such complaints are sustained, without more, "fail to prove anything." *Bryant v. Whalen*, 759 F. Supp. 410, 423–24 (N.D. Ill. 1991), citing *Strauss v. City of Chicago*, 760 F.2d 765, 768-69 (7th Cir. 1985). This is because "[p]eople may file a complaint for many reasons, or for no reason at all." *Strauss*, 760 F.2d at 769. "Consequently, the Seventh Circuit requires evidence that complaints which were not sustained actually had merit." *Bryant*, 759 F. Supp. at 424. For that reason, mere statistics of unsustained complaints, without any evidence those complaints had merit, are insufficient to establish *Monell* liability against the City. *Id.*;

see also *Strauss*, 760 F.3d at 769 (dismissing *Monell* claim where the record lacked any evidence besides statistical summaries of complaints filed with the police department and noting that the number of complaints alone "does not indicate that the policies [the plaintiff] alleges exist do in fact exist and did contribute to his injury"); *Sigle v. City of Chicago*, 2013 WL 1787579, at *9 (N.D. Ill. Apr. 25, 2013) (granting summary judgment to the city on *Monell* claim and noting "[t]here is no basis to draw the contra-inference that the plaintiff urges, namely that the low number of misconduct allegations sustained by internal police investigations shows that the fix was in—at least absent evidence to impeach the integrity of the investigations, which Sigle has failed to provide").

Here, although Shane references sustained rates, he does not offer any evidence that any of the complaints that were not sustained had merit. His review of the Complaint Registers and resulting criticisms relate to his conclusion that CPD generally failed to conduct more robust administrative investigations of police officer misconduct. Although he criticized the manner in which investigations were conducted, he did not offer any opinion that the complaints underlying the "not sustained" CRs he reviewed had merit. Absent such evidence, Plaintiffs have failed to establish municipal liability based on the rates at which complaints are sustained or not sustained.

Plaintiffs, through Shane, also attempt to rely on sources from many years before and after the 2005 arrests in an effort to support their failure to discipline theory. For example, Shane begins with the so-called Metcalfe report arising from congressional hearings in 1972, then discusses a 1997 report from the Commission on Police Integrity ("CPI"), and ends with the 2016 report of the PATF and the 2017 Department of Justice ("DOJ") report. (CSOF ¶ 79). That material is irrelevant in time and scope to Plaintiffs' case arising from their arrests in 2005 (or 33 years after the Metcalfe report, 8 years after the CPI report, and 10 and 11 years before the PATF and DOJ reports, respectively).

Evidence that considerably predates or postdates the alleged misconduct is not relevant. *Velez*, 2023 WL 6388231, at *25. To be relevant to the elements of widespread practice, notice, deliberate

indifference, and causation, the evidence a court considers (and allows the jury to consider) in evaluating a *Monell* claim must include a reasonable time frame before the incident at issue. A five-year period has been generally accepted in this district. *See, e.g., Brown*, 633 F. Supp.3d at 1177 n.61 (N.D. Ill. 2022) (Pallmeyer, C.J.) (evaluating evidence five years before the plaintiff's arrest for purposes of *Monell* liability). As for the back end, post-event evidence is irrelevant under *Monell*. *Calusinski v. Kruger*, 24 F.3d 931, 936 (7th Cir. 1994) ("subsequent conduct is irrelevant to determining the Village of Carpentersville's liability for the conduct of its employees on February 23, 1988. Holding a municipality liable for its official policies or custom and usage is predicated on the theory that it knew or should have known about the alleged unconstitutional conduct on the day of the incident"). Reliance on data or information after 2005 is not a reliable or appropriate method of determining what caused the alleged harm to Plaintiffs here, or a reliable indicator of what notice the City had of the alleged unconstitutional practice prior to 2005.

The historical materials referenced by Shane are also irrelevant and inadmissible for other reasons and do not preclude summary judgment. The overwhelming focus of the PATF and DOJ reports relate to allegations of excessive force and officer involved shootings (such as the high-profile Laquon McDonald case resulting in Officer Van Dyke's murder conviction).[8] The 1972 Metcalfe report also relates to excessive force. Baker and Glenn do not contend they were physically mistreated, and this case does not involve excessive force or police shootings, so these materials are irrelevant

[8] The PATF and DOJ reports are inadmissible hearsay as well. In instances where these reports were deemed admissible, the cases did not involve the same relevancy hurdles present in this case. Those other cases involved officers' use of force in the same time frame considered in the DOJ and ATF reports. *See*, *e.g.*, *First Midwest Bank v. City of Chicago*, 337 F. Supp. 3d 749 (N.D. Ill. 2018), *rev'd and remanded First Midwest Bank*, 988 F.3d 978; *Godinez v. City of Chicago*, No. 16 C 7344, 2019 WL 5597190 (N.D. Ill. Oct. 30, 2019). As there are no allegations of use of force in this case, and the time frame at issue in this case (2005) is much earlier than the time periods covered in the PATF and DOJ reports, those materials are irrelevant here. Because they are irrelevant in terms of scope and time, any reliance on them would yield unreliable and untrustworthy conclusions in violation of Fed. R. Evid. 803(8)(B).

here. See *Milan*, 2022 WL 1804157, at *5 ("[T]he [DOJ] Report focused on police officer shootings and the City's oversight of officers' use of force, which are not at issue in this case.").

Without any independent analysis, Shane quotes a full two pages of the 2016 PATF report that mentions allegations against miscellaneous officers who were indicted over the years, including Officers Finnigan and Corey Flagg. (CSOF ¶ 79). At deposition, Shane admitted that he does not know anything about those cases and did not review the reasonableness of the IAD investigations of Finnigan and Flagg that led to their indictments and convictions. (*Id.*). Shane is simply parroting the PATF report without any knowledge of the reasonableness of the FBI/IAD investigations mentioned in that report (see *U.S. v. Brownlee*, 744 F.3d 479, 482 (7th Cir. 2014) ("[a]n expert who parrots [ ] out-of-court statement[s] is not giving expert testimony; he is a ventriloquist's dummy")). Accordingly, there is no admissible evidence pertaining to Finnigan or Flagg on the failure to discipline issue.[9]

V. Dismissal of the "as-yet-unidentified officers" is warranted at this time.

Plaintiffs' SAC referenced in its caption and opening paragraph "as-yet-unidentified officers" of the CPD. (Dkt. 238). However, Plaintiffs have never identified who those unidentified persons are or developed evidence of what any of those "unidentified employees" specifically did wrong. Any claims against unidentified employees should now be dismissed in their entirety pursuant to this motion. As the Seventh Circuit has explained, summary judgment "is the 'put up or shut up' moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Schacht v. Wisconsin Dep't of Corr.*, 175 F.3d 497, 504 (7th Cir. 1999); *see also Johnson v. Cambridge Industries, Inc.*, 325 F.3d 892, 901 (7th Cir. 2003). Inferences that are supported by only speculation or conjecture will not defeat a summary judgment motion. *McCoy v. Harrison*, 341 F.3d

[9] Indeed, the fact that Finnigan and Flagg were criminally indicted and convicted demonstrates the CPD and its IAD did not condone criminal misconduct by its officers and that IAD's investigatory practices were sufficient and effective in rooting out and punishing such misconduct. The cases of Finnigan and Flagg provide no motivation for other police officers to be "emboldened" by deficient investigatory practices.

600, 604 (7th Cir. 2003). Plaintiffs cannot maintain claims against unidentified individuals and cannot hold the City liable where they have failed to identify any individual alleged to be a City employee who committed the alleged wrongful acts.

Under Seventh Circuit precedent, dismissal of the so-called unidentified employees is warranted here because Plaintiffs have failed during the discovery period to identify those individuals and what they allegedly did. *See Williams v. Rodriguez*, 509 F.3d 392, 402 (7th Cir. 2007) (Discovery is a plaintiff's opportunity to identify unknown and unnamed defendants; the failure to do so before the close of discovery warranted dismissal of unknown and unnamed defendants from the case); *Strauss*, 760 F.2d at 770 n. 6 (dismissal of "John Doe" defendant proper where plaintiff did not identify that unknown defendant, because plaintiff has the responsibility of taking the steps necessary to identify the officer responsible for his injuries); *Wudtke v. Davel*, 128 F.3d 1057, 1060 (7th Cir. 1997) (pointless to include lists of anonymous defendants in federal court). Since Plaintiffs have failed to identify any unnamed officer or employee who caused them injury through wrongful conduct, Plaintiffs' claims against the "unidentified" City employees and vicariously against the City through those unidentified employees should be dismissed.

VI. Summary judgment should be granted in favor of the City on Plaintiffs' *respondeat superior* and indemnification claims where the Defendant Officers are not liable, and on any *Monell* claims for which the Defendant Officers prevail on the underlying claim.

The Supreme Court recognized that § 1983 liability cannot attach to a municipality in the absence of an actionable constitutional violation. *Heller*, 475 U.S. at 799 (If there is no violation of the plaintiff's constitutional rights by a police officer, "it is inconceivable" the municipality could be liable pursuant to a *Monell* claim). Municipal liability for a constitutional injury under *Monell* "requires a finding that the individual officer is liable on the underlying substantive claim." *Treece v. Hochstetler*, 213 F.3d 360, 364 (7th Cir. 2000), *quoting Tesch v. County of Green Lake*, 157 F.3d 465, 477 (7th Cir. 1998).

Where a plaintiff cannot establish a constitutional injury, he has no claim against the municipality. *Durkin v. City of Chicago*, 341 F.3d 606, 615 (7th Cir. 2003).

In addition, absent wrongdoing on the part of the Defendant Officers, the City cannot be held vicariously liable. *See* 745 ILCS 10/2-109 ("A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable."); 745 ILCS 10/9-102 (a public entity must pay a judgment or settlement for compensatory damages only if the employee himself is liable); *Carey v. K-Way, Inc.,* 312 Ill. App. 3d 666, 672 (1st Dist. 2000) (no *respondeat superior* liability in the absence of employee's liability for the underlying tort).

Defendant Officers have separately moved for summary judgment as to the federal and state law claims asserted against them in the SAC. Because Plaintiffs seek to recover vicariously against the City based on the liability of the Defendant Officers, the City herein joins and adopts the motion for summary judgment filed by the Defendant Officers to the extent applicable. To the extent summary judgment is granted to the Defendant Officers on any of Plaintiffs' constitutional or state law claims against them, Plaintiffs cannot succeed against the City on any *Monell* claim, *respondeat superior* claim, or indemnity claim arising out of that corresponding cause of action. If Defendant Officers are not liable on a claim, Plaintiffs' corresponding derivative claims against the City for *respondeat superior* and/or statutory indemnification necessarily fail.

CONCLUSION

Plaintiffs' attempt to blame the City for the criminal misconduct of Watts and Mohammed is nothing more than a claim for *respondeat superior* in the guise of a *Monell* claim. For that reason, Plaintiffs have been unable to develop evidence that creates a genuine issue of material fact on the requisite elements of a cognizable *Monell* claim against the City (widespread practice; deliberate indifference; moving force causation).. Accordingly, this Court should enter summary judgment in favor of the City and against Plaintiffs on their *Monell* claim. In addition, to the extent the Defendant Officers are

entitled to summary judgment on any claims of Plaintiffs' claims against them, the City is likewise entitled to summary judgment on the *Monell*, indemnification, and *respondeat superior* counts relating to those corresponding claims.

Respectfully submitted,

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