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

In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	)	Master Docket Case No. 19-cv-1717
	)	Judge Valderrama
	)	Magistrate Judge Finnegan
	)	JURY DEMANDED

This Document Relates to *Lionel White v. City of Chicago*, No. 17-CV-2877

DEFENDANT KALLATT MOHAMMED'S MOTION FOR LEAVE TO FILE AMENDED ANSWER TO PLAINTIFF'S COMPLAINT (OPPOSED)

Defendant, Kallatt Mohammed ("Mohammed"), by and through one of his attorneys, Special Assistant Corporation Counsel Eric S. Palles of Mohan Groble Scolaro, P.C., and pursuant to Federal Rule of Civil Procedure 15, moves this Court for leave to file his Amended Answer to Plaintiff's Complaint (attached hereto as Exhibit 1). In support, Mohammed states as follows:

1. Plaintiff filed his Complaint on April 17, 2017, alleging that he suffered injuries and damages as a result of the Defendant Officers' and City of Chicago's acts and omissions. (Dkt. 1).

2. Defendant Mohammed filed his Answer to Plaintiff's Complaint on April 21, 2018. (Dkt. 84). In response to certain of the allegations contained in the Complaint, Mohammed asserted his Fifth Amendment privilege against self-incrimination.

3. Subsequent investigation of Plaintiff's allegations revealed information that resulted in the undersigned counsel's determination that the privilege could, and should, be withdrawn. Accordingly, in November 2023, the undersigned advised Plaintiffs' counsel that

Mohammed would be waiving his Fifth Amendment privilege regarding all test cases about which he had not been deposed. The *White* case was explicitly included among the cases for which the privilege was waived. (See Exhibit 2).

4. On November 15, 2023, Defendant Mohammed fully testified about the incident alleged by Plaintiff in his Complaint, as well as events that occurred contemporaneously to White's arrest. (See Mohammed November 15, 2023 Deposition (Exhibit 3) at 69-79). Consequently, Mohammed seeks to amend his Answer, withdrawing his Fifth Amendment invocation, to conform to the evidence.

5. On May 6, 2024, Mohammed's counsel asked Plaintiff's counsel whether, pursuant to FRCP 15(a)(2), he would file a written consent to the amendment or oppose this motion. Plaintiff's counsel responded that this motion is opposed. (See Exhibit 4).

6. Under Federal Rule of Civil Procedure 15, the court should freely grant leave to amend "when justice so requires." While leave to amend is not as a matter of course, the permissive policy of the Rule is both explicit and consistent with the animating purpose to ensure that cases be decided on their merits. Accordingly, a motion for leave to amend should be granted "in the absence of undue delay, undue prejudice to the party opposing the motion, or futility of the amendment." *Eastern Natural Gas Corp. v. ALCOA*, 126 F.3d 996, 999 (7th Cir. 1997). The most significant factor is the potential prejudice to plaintiff if the amendment is allowed. *Am. Hardware Mfrs. Ass'n v. Reed Elsevier, Inc.*, No. 03 C 9241, 2006 U.S. Dist. LEXIS 49220, *6 (N.D.Ill., July 6, 2006). In the instant case, there is none.

7. Plaintiff will not be prejudiced if this Court grants Defendant Mohammed leave to file his Amended Answer. He surrendered his Fifth Amendment privilege six months ago and testified fully concerning his knowledge of the *Lionel White* case. Clearly, he will not be asserting

his privilege at trial; he has waived his ability to do so. Plaintiff certainly has the ability to prepare to examine Mohammed. The trial in this matter is set for July 7, 2025.

8. To the contrary, Mohammed will be unfairly prejudiced if not granted leave to file his amendment. The only ostensible purpose for opposing the amendment is that Plaintiff will not be able to argue that Mohammed is asserting, or previously asserted, his Fifth Amendment privilege. Indeed, in light of the apparent lack of prejudice, evidence of Mohammed's prior silence is unwarranted. *Evans v. City of Chicago*, 513 F.3d 735, 745 (7th Cir. 2008).

9. The fact that the proposed amendments are required because Mohammed has withdrawn his Fifth Amendment assertions further reinforces the purposes of Rule 15. "The district court should, in general, take a liberal view towards such applications, for withdrawal of the privilege allows adjudication based on consideration of all the material facts to occur. The court should be especially inclined to permit withdrawal of the privilege if there are no grounds for believing that opposing parties suffered undue prejudice from a litigant's later-regretted decision to invoke the Fifth Amendment." *United States v. 4003-4005 5th Ave*., 55 F.3d 78, 84 (2d. Cir. 1995)

10. Defendant Mohammed's proposed Amended Answer are attached hereto as Exhibit 1.

WHEREFORE, Defendant, Kallatt Mohammed, moves this Court for leave to file his Amended Answer to Plaintiff's Complaint.

Respectfully submitted,

/s/ Eric S. Palles #2136473
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CERTIFICATE OF SERVICE

I, Eric S. Palles, an attorney, hereby certify that on June 3, 2024, I caused the foregoing Motion to be served upon all counsel of record via e-mail and or the court's e-filing system.

By: */s/ Eric S. Palles*

Eric S. Palles