

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

Lionetta White, Special Administrator of the)	
Estate of LIONEL WHITE, SR.,)	
)	
Plaintiff,)	
)	Case No. 17 C 2877
v.)	
)	Judge Sara L. Ellis
CITY OF CHICAGO, RONALD WATTS,)	
ALVIN JONES, ELSWORTH SMITH JR.,)	Magistrate Judge Laura K. McNally
KALLATT MOHAMED, MANUEL)	
LEANO, BRIAN BOLTON, ROBERT)	
GONZALEZ, and DOUGLAS NICHOLS,)	
)	
Defendants.)	

JOINT MOTION TO CLARIFY AND FOR EXTENSION OF TIME

Plaintiff, Lionetta White, Special Administrator of the Estate of Lionel White, Sr., by her attorneys, and Defendants City of Chicago (“City”), Brian Bolton, Robert Gonzalez, Alvin Jones, Manuel Leano, Douglas Nichols, Elsworth Smith, Jr., Ronald Watts, and Kallatt Mohammed, by their attorneys, submit the following joint motion to clarify:

1. The parties are currently working on their Joint Statement of Undisputed Material Facts (“JSUMF”) relative to the forthcoming summary judgment briefing, one between the City and Plaintiff relative to the *Monell* claim and one between defendant officers and Plaintiff regarding the underlying claims arising from Mr White, Sr.’s April 24, 2006 arrest and subsequent prosecution. Two issues have arisen during the parties’ discussions for which clarification from the Court as to its Standing Order for Summary Judgment Practice would be helpful: the first relates to the *Monell* claim and the second relates to the underlying claims. Prior to bringing this motion, the parties held numerous telephonic meet and confers, reviewed the standing order, case law addressing the Court’s procedure, and transcripts from hearings addressing the standing order

in *Johnson v. Guevarra*, Case No. 20-cv-4196. The parties are not asking for substantive rulings on the admissibility of any proposed statements of fact at this point, but instead are asking for clarification and guidance on the Court's preferred procedural approach for addressing the potential substantive disputes.

2. **Monell Claim Issue:** the parties have either fully briefed or partially briefed three motions for summary judgment arising from the Watts Coordinated Pretrial Proceedings, in *Baker/Glenn v. City*, 16 C 8940, *Gipson v. City*, 18 C 5120, and *Carter v. City*, 17 C 7241. In response to the City's motions for summary judgment in those three cases, the plaintiffs through their undersigned counsel have included dozens of paragraphs in their Statements of Additional Facts relying on their two disclosed *Monell* experts, Dr. Jon Shane and Jeffrey Danik. *Baker/Glenn*, 16 C 8940, Dkt. 428, *Gipson*, 18 C 5120, Dkt. 193, and *Carter*, 17 C 7241, Dkt. 229. In this case, Plaintiff intends on similarly relying on those two experts in response to the City's motion for summary judgment.

3. The issue for which clarification is sought is whether Dr. Shane's and Danik's assertions should be included in the parties' JSUMF or if Plaintiff should include those assertions and additional statements of facts filed with his response brief. After reviewing the *Johnson* docket, Plaintiff believes that the Court's procedure may call for the expert opinion to be included in the joint statement of facts and presented in the following manner or using similar language: "Plaintiff's expert says X." The parties would then be free to argue in *Daubert* briefing and summary judgment briefing that the Court should not (or should) consider the expert's testimony. Because the City contests these experts' opinions in total and will be simultaneously moving to bar them, and because in its view it may be difficult for the parties to reach consensus on what to say about these experts in a JSUMF, the City would prefer that Plaintiff rely upon his experts in

his response to the motion for summary judgment (including in a statement of additional facts if the Court prefers) rather than in the JSUMF. By way of example, while some of Plaintiff's suggested paragraphs simply state what her experts opined, others include characterizations of the record the City disagrees with that would require significant rewording and additional facts to clarify the paragraph. Plaintiff has indicated during the meet and confer process that she is prepared to work with Defendants to modify paragraphs that do not currently follow the format discussed in this draft and would expect the Defendants to do the same with their paragraphs. Plaintiff views the City's current draft similarly to how the City views Plaintiff's draft and has suggested edits to many of the City's proposed paragraphs. To be sure, the City recognizes that Plaintiff is entitled to rely on Dr. Shane and Danik in opposition to summary judgment just as they did in *Baker/Glenn*, *Gipson*, and *Carter*, but the City believes it would be more appropriate and efficient to include that information in Plaintiff's response brief and/or statement of additional facts, including because of the sheer volume of such examples (the City proposed 98 paragraphs and Plaintiff has thus far added 214 paragraphs, with around 100 of them based on her experts). Plaintiff has indicated that she may be able to reduce the number of proposed paragraphs and has asked the City to consider doing the same for its paragraphs. From Plaintiff's perspective, Plaintiff does not want to suffer any prejudice from not including her experts' information in the JSUMF. If it is acceptable to this Court for Plaintiff to raise her experts' assertions in her response brief and not in the JSUMF, then it is acceptable to Plaintiff.

4. Accordingly, the parties seek clarification from the Court whether they should include the opinions and statements from Plaintiff's experts Dr. Shane and Danik in the JSUMF or whether they should be raised by Plaintiff in her response to the City's motion for summary judgment. Clarification from the Court now is likely to save the parties and the Court substantial

time and effort as there would be many paragraphs of the JSUMF that could be avoided if Plaintiff is allowed to rely on her experts' assertions in her response brief/statement of additional facts.

5. **Underlying Claim Issue:** The second issue for which clarification is sought relates to whether the parties waive objections to the use of a particular statement of fact in summary judgment briefing by including the statement in the joint statement of facts. Put differently, if the parties agree that a witness said "X" or a document that was produced in discovery says "Y," should the JSUMF say "witness A said X" or the document says "Y" even if the parties intend to argue in their summary judgment briefing that the statement or document should not be considered at summary judgment for a particular use?

6. As an example for the Court, Plaintiff's decedent, Lionel White, Sr. (the original plaintiff in this case), did not sit for a deposition before he passed away. Mr. White, Sr. did make certain statements (such as in an affidavit and in statements to the City's disciplinary investigators before his death) as to facts related to this case. Defendants contend those statements are inadmissible hearsay and Plaintiff contends they are admissible. Again, the parties are not asking for a substantive decision as to whether any of Plaintiff's statements (or any other statements) are admissible without complete briefing on that issue. They are asking for guidance on whether the Court's standing order contemplates such statements to be included in the JSUMF notwithstanding defendants' position that they are inadmissible or whether the parties should present admissibility issues like hearsay to the Court prior to filing the JSUMF through the procedure set forth in this Court's Standing Order on Summary Judgment Practice.¹

¹ The parties note that there may be other similar issues with hearsay, but the parties would expect that those issues would be resolved in the same manner as the specific issues discussed here. For example, the parties may have a dispute on the admissibility of certain FBI reports. If the parties do not waive objections (such as hearsay) to the use of statements by including those statement in the JSUMF, they expect that they would be include the statements using the same format discussed in this document (e.g., "The FBI report says X.").

7. **Extension of Time:** with the current schedule requiring summary judgment motions to be filed on February 14, 2025, Defendants request that this Court vacate that schedule (Dkt. 196) and enter a new schedule for summary judgment and for the *Daubert* motions addressing experts who are relevant for summary judgment after addressing this motion to clarify. Plaintiffs do not object to the request for an extension as long as it does not jeopardize the trial date.

8. The parties thank this Court in advance for any clarification it can provide on the above issues now and request a hearing before the Court to discuss them.

WHEREFORE, the parties respectfully seek clarification from this Court as outlined above, and further, the parties request that this Court vacate the current summary judgment/*Daubert* schedule (Dkt. 196) and set a new schedule after the hearing on this motion, and for any other relief this Courts deems appropriate.

Dated: February 13, 2025

Respectfully submitted,

/s/ Scott Rauscher

Jon Loevy
Scott Rauscher
Tess Kleinhaus
Joshua A. Tepfer
Sean Starr
Wally Hilke
Loevy & Loevy
311 N. Aberdeen, 3rd Floor
Chicago, IL 60607

Joel A. Flaxman
Kenneth Flaxman
Kenneth N. Flaxman P.C.
200 S Michigan Ave., Suite 201
Chicago , IL 60604

Attorneys for Plaintiff

/s/ Daniel M. Noland

Special Assistant Corporation Counsel

Terrence M. Burns
Paul A. Michalik
Daniel M. Noland
Elizabeth A. Ekl
Katherine C. Morrison
Dhaviella N. Harris
Burns Noland LLP
311 S. Wacker Dr., Suite 5200
Chicago, IL 60606
Attorneys for Defendant City of Chicago

/s/ Amy Hijjawi
Special Assistant Corporation Counsel

Andrew M. Hale
Amy Hijjawi
Jennifer Bitoy
William Bazarek
Kelly M. Olivier
Anthony Zecchin
Jason Marx
Hannah Beswick-Hale
Hale & Monico LLC
53 W. Jackson Blvd., Suite 334
Chicago, IL 60604
*Attorneys for Defendants Brian Bolton,
Robert Gonzalez, Alvin Jones, Manuel
Leano, Douglas Nichols, Elsworth Smith, Jr.*

/s/ Brian P. Gainer
Special Assistant Corporation Counsel

Brian P. Gainer
Monica Gutowski
Lisa M. McElroy
Jack A. Gainer
Aleeza Mian
Nelson A. Aydelotte
Johnson & Bell
33 W. Monroe St., Suite 2700
Chicago, IL 60603
Attorneys for Defendant Ronald Watts

/s/ Eric S. Palles
Special Assistant Corporation Counsel

Eric S. Palles
Sean M. Sullivan
Raymond Groble
Mohan Groble Scolaro, P.C.
55 W. Monroe St.
Suite 1600
Chicago, IL 60954
Attorneys for Defendant Kallatt Mohammed