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.,	)	**Case No. 17-cv-2877**
Plaintiff,	)	**Hon. Sara L. Ellis**
v.	)	**JURY TRIAL DEMANDED**
CITY OF CHICAGO, et al,	)	
Defendants.	)	

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF HER MOTION
TO EXCLUDE THE OPINIONS OF JEFFREY NOBLE

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INTRODUCTION

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

Defendants retained Mr. Jeffrey Noble to defend the City's police discipline and supervision systems. But Mr. Noble did not base his opinion on any standards or generally accepted practices in policing, which is a prerequisite to forming a reliable and admissible opinion. Plaintiff identified this flaw in his initial motion to exclude Noble's opinions (Dkt. 227).

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

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

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

ARGUMENT

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

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

Mr. Noble asserts that "reasonableness" is the standard by which the City's investigations into complaints about police officers should be judged, but he has not identified any authority supporting that assertion. He nonetheless states that all, or nearly all, of the City's investigations

of police misconduct were "reasonable." Dkt. 227-3 (Noble Report) at, *e.g.*, ¶¶ 19-24; 86-100. Further, he states that the City's discipline and supervision systems were "reasonable." *Id.* at, *e.g.*, ¶¶ 16-18; 58-61. He should not be permitted to give that testimony.

Defendants rely heavily on a recent decision that Judge Valderrama issued about Mr. Noble in a non-*Watts* case. Dkt. 273 at 7-8, 11-2 (citing *Mendez v. City of Chicago*, 18-cv-5560, dtk. 270 at 4-5 (N.D. Ill. April. 18, 2025)). In that case, Judge Valderrama ruled that Noble could testify about a reasonableness standard but, as Defendants also acknowledge, Judge Valderama also noted in distinguishing the *Estate of Loury* decision, rulings regarding expert testimony must be "made on a case-by-case basis." *Id*. at 8. Despite that language, Defendants offer no explanation as to why they believe that the *Mendez* decision is more persuasive than decisions such as *Estate of Loury* that barred Noble's opinions. And as Plaintiff pointed out in her opening brief, the opinions that Noble seeks to offer here are the same ones that Judge Coleman barred in *Estate of Loury*. Dkt. 227 at 10. Defendants do not, and could not, disagree with that conclusion. This Court should bar Noble's opinions for the same reasons that Judge Coleman barred the identical opinions in *Estate of Loury*.

In its gatekeeping function, the Court must "make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). As Plaintiff noted in his opening brief, Mr. Noble's "reasonableness" standard is unreliable because the standard has not been subjected to peer review, and it is not accepted in the relevant community. *Fuesting v. Zimmer, Inc.*, 421 F.3d 528, 534–35 (7th Cir. 2005), *vacated in part on other grounds*, 448 F.3d 936 (7th Cir. 2006)

(discussing factors established by the Supreme Court in *Daubert* and the 2000 Advisory Committee's Notes to Rule 702).

Defendants complain that the City will not receive a "fair trial" if Mr. Noble is barred from providing his "reasonableness" opinions. Dkt. 273 at 13. But that argument does not move the ball: the Court must assess each expert's opinions and determine whether the proponent of that expert's testimony has met their burden to show the opinion was reliably formed and is otherwise admissible. That is the test of whether Mr. Noble's opinions should be admitted.

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

In response to Plaintiff's argument that Mr. Noble failed to rely on generally accepted standards, Defendants first argue that Mr. Noble's say-so is good enough. They write:

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

Dkt. 273 at 5-6. That is a non-answer. It merely describes what Mr. Noble believes the Chicago Police Department ("CPD") did and concludes that the steps were "reasonable." It does not describe what standards Mr. Noble applied or even why the factors he listed are good enough to make the CPD disciplinary and supervision systems "reasonable." Instead, Mr. Noble listed a number of conclusions he drew and said that, in sum, they form a "reasonable" system. This is exactly the kind of under-reasoned police practices opinion that courts regularly reject. *Est. of Loury*, 2021 WL 1020990 at *1 (excluding Mr. Noble's opinion for "jump[ing] to the conclusion that [CPD's policies] are reasonable"); *Andersen*, 454 F. Supp. 3d at 745 (barring police

practices opinion from expert who failed to elaborate on whether he applied "sound professional standards" because he "essentially asks the Court . . . to take him at his word that his opinions are correct, without supporting them."). Noble's say-so is simply not enough to make his testimony admissible.

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

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

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

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

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

Dkt. 227-4 (Noble Baker Dep.) at 142:15-143:2 (cleaned up). Although Mr. Noble initially said that he did not know whether he came up with the term or got it from someone else, he was unable to identify anyone other than him and his co-author who use the phrase in this context. If "reasonableness" is a real standard for internal investigations, Mr. Noble should be able to

identify someone else who has used it. Otherwise, it is not a professional standard, but merely his own say-so. *See, e.g.*, *Andersen*, 454 F. Supp. 3d at 808.

In response, Defendants offer only an errata sheet executed by Mr. Noble on the day they submitted their response brief, which contradicts his under-oath testimony. Dkt. 273 at 8. That document purports to "add" testimony to his deposition: specifically, that Mr. Noble now "recall[s]" cases that "approved the reasonableness standard" and also knows of "multiple other authors and contributors" (none of whom Mr. Noble identifies by name) who "identify, use, and approve a reasonableness standard consistent with my report." Dkt. 273-3 (Noble errata) at 1. This errata sheet is a "sham affidavit" that the Court should disregard.

"In this circuit the sham-affidavit rule prohibits a party from submitting an affidavit that contradicts the party's prior deposition or other sworn testimony." *James v. Hale*, 959 F.3d 307, 316 (7th Cir. 2020). The Seventh Circuit has applied this rule to deposition errata, holding that "a change of substance which actually contradicts the transcript is impermissible unless it can plausibly be represented as the correction of an error in transcription, such as dropping a 'not.'" *Thorn v. Sundstrand Aerospace Corp.*, 207 F.3d 383, 389 (7th Cir. 2000). Mr. Noble directly contradicted himself by claiming, after the fact, that he was aware of caselaw and unnamed "multiple other authors and contributors" who supported his standard. At this stage, Defendants are bound by his deposition testimony. *See Zander v. Groh Prods.*, Inc., No. 10 C 0944, 2011 WL 13555677, at *3 (N.D. Ill. Aug. 2, 2011) (striking attempt to substantively contradict testimony via deposition errata); *Treat v. Tom Kelley Buick Pontiac GMC, Inc.*, 710 F. Supp. 2d 777, 791 (N.D. Ind. 2010), *aff'd*, 646 F.3d 487 (7th Cir. 2011) (describing exclusion of errata sheet sham affidavit as "fully supported by the case law"); *cf. Garcia v. Pueblo Country Club*, 299 F.3d 1233, 1242 n. 5 (10th Cir. 2002) ("A deposition is not a take home examination."). And

even if the Court is inclined to consider Mr. Noble's supplemental (and contradictory) testimony from his errata sheet, it actually provides further support for Plaintiff's argument. With unlimited time to identify anyone else in his field using the "reasonableness" standard, Mr. Noble once again failed to do so. The Seventh Circuit has rejected similarly novel standards as unreliable. *See Am. Honda Motor Co. v. Allen*, 600 F.3d 813, 818 (7th Cir. 2010) (finding expert opinion unreliable where "there is no indication that [the expert's] standard has been generally accepted by anyone other than [the expert].").

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

Defendants assert that Mr. Noble's "reasonableness" standard is supported by (1) caselaw, (2) a single report by the Department of Justice, (3) most improbably, Plaintiff's expert Jon Shane. Dkt. 273 at 7-10. Those arguments fail.[1]

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

Defendants assert that "the Seventh Circuit approved of the reasonableness standard in *Jimenez v. Chicago*, 732 F.3d 710 (7th Cir. 2013)." Dkt. 273 at 7. *Jimenez* does not say that. Instead, the *Jimenez* panel concluded, following a jury verdict in the plaintiffs' favor, that the district court committed no reversible error in admitting testimony from the plaintiffs' police practices expert. *Jimenez*, 732 F.3d at 720. The panel explained that the expert properly (1) described sound professional standards and (2) identified departures from them, and that such testimony was relevant. *Id.* at 721-22. The panel further noted that the expert "testified about the

[1] Mr. Noble did opine that the CPD has policies "regarding officer conduct" and listed several model policies of the International Association of Chiefs of Police on those same topics. Dkt. 227-3 at 14-15. However, he never opined that CPD's policies were consistent with the model policies. Nor have Defendants produced those model policies for Plaintiff's review. Thus, although Defendants are technically correct that Noble "reference[d]" model policies, Dkt. 273 at 14, that argument is no help to Noble, because Noble conducted no analysis or comparison in support of his opinion and did not even offer the opinion that CPD's policies were consistent with the model policies he referenced.

steps a reasonable police investigator would have taken," as well as "the information that a reasonable police investigator would have taken into account," and ultimately helped the jury decide whether the police defendants committed "departures from reasonable police practices." *Id.* at 722. Defendants argue that *Jimenez* stands for the proposition that any expert testimony "as to the reasonableness of certain police investigatory practices . . . is admissible." Dkt. 273 at 7.

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

Defendants have committed a logical error. A court, in assessing whether a police practices expert has reliably applied an accepted standard, can consider three analytically distinct questions. First: what is the standard of performance? Second, is that standard generally accepted? And third, what would a reasonable investigator do in applying that standard? Mr. Noble and Dr. Shane have different answers to each of those three distinct questions with respect to police department investigations into alleged misconduct by officers:

Expert	(1) What is the standard of performance?	(2) Is the standard generally accepted/ reasonable?	(3) Under the standard, what would a reasonable investigator do?
Defendants' Expert Jeffrey Noble	Police misconduct investigations must be **reasonable**.	-Mr. Noble denied knowing anyone else who used it other than his co-author. -Defendants now offer *Jimenez* and DOJ IA Report, as well as *Mendez*.	Make "meaningful efforts" and "it depends." Dkt. 227-4 (Noble Baker Dep.) at, *e.g.*, 115:5-116:6, 165:7-19, 185:5-186:12, 197:7-21.
Plaintiff's Expert Jon Shane	Police misconduct investigations must be **thorough and complete**.	Yes – International Association of Chiefs of Police, State of New Jersey, DOJ IA Report, Chicago Police Department (on paper but not in practice).	Take all necessary investigative steps.

Jimenez analyzed the second and third columns of the above table: whether a police practices expert could appropriately compare an investigator's actions against "reasonable" practices and standards. But *Jimenez* is silent on the first column—what those practices and standards actually require. *Jimenez* certainly didn't say that the national standard for internal investigations is that they must be merely "reasonable" (as opposed to "thorough and complete," or some other standard). In fact, the expert opinion in *Jimenez* had nothing to do with standards for police misconduct investigations or police discipline and supervision systems. This is why caselaw requires proponents of police practices testimony to explain the basis for the standards they apply, just like any other expert. And the standard may be something quite different than "reasonableness"; in each case and for each subject matter, the expert must explain what the standard is and why it applies. *See, e.g.*, *Harms v. Lab'y Corp. of Am.*, 155 F. Supp. 2d 891, 907 (N.D. Ill. 2001) (admitting expert opinion that industry standard for blood testing was "100 percent accuracy"). Thus, Defendants conflate (1) the standard of performance (*e.g.*,

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

The other cases cited by Defendants similarly offer no support for Mr. Noble's opinions. *See Abdullahi v. City of Madison*, 423 F.3d 763 (7th Cir. 2005) (discussing deviations from "reasonable police practices," but not concluding that the standard for all police practices was "reasonableness"); *Sanders v. City of Chicago*, 2016 WL 1730608 (N.D. Ill. May 2, 2016) (same); *Hopkins v. City of Huntsville*, 2014 WL 5488403 (N.D. Ala. Oct. 29, 2014) (same). Further, none of these cases involved police misconduct investigations or police discipline or supervision systems, which is the topic of Mr. Noble's opinions. To the extent that the *Mendez* decision reached a different conclusion, Plaintiff respectfully submits that the conclusion was erroneous. Dr. Shane explains that a reasonable investigation should be thorough and complete. Noble would like to tell the jury that a reasonable investigation is "reasonable." But the caselaw simply does not support Mr. Noble's "reasonableness" standard. For the reasons explained above, the fact experts may testify about how a reasonable investigation should be conducted does not mean that those experts may testify that the generally accepted standard for how to conduct an investigation is: "be reasonable."

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

Both parties discuss a report by the Department of Justice that sets out standards and guidelines for internal affairs. That report simply and directly defined the standard for police misconduct investigations: "[a] complete investigation should take place where the allegations, if true, would likely result in formal discipline." Dkt. 227-6 (DOJ IA Report) at 29. The report describes on several occasions that a complete investigation and its documentation must also be "thorough." *Id.* at 27, 36, 55. The report acknowledges that "[s]ome small number" of

complaints may be "capable of resolution after a cursory or truncated investigation," but specifies that the documentation of all misconduct investigations must be "thorough, complete, and as comprehensive as reasonably necessary." *Id.* at 27-28, 36. The report acknowledges that a "complete investigation is not necessarily exhaustive." *Id.* at 29. Defendants nevertheless contend that the report "embraces a reasonableness standard," Dkt. 273 at 9-10, but they never explain how they reached that conclusion. Requiring that an investigation be "thorough and complete" is different from requiring that it be "reasonable," as discussed above.

One sign that Mr. Noble did not use the standard from the DOJ IA Report is that he struggled to describe any steps that should be taken in a police misconduct investigation. A common answer he gave was "it depends." He answered vaguely that although he considered whether the investigation was "reasonable," he did not analyze whether the investigators had taken enough steps in their investigation. Dkt. 227-4 at 90:14-22. He could not define a single step that must be taken in response to non-frivolous allegations of police misconduct other than documenting the allegation. *Id.* at 197:7-21. The Department of Justice IA Report says something very different. It provides that an investigator must obtain "all relevant information required to achieve the purpose of the inquiry," including "sufficient relevant evidence of all points of view," and stopping only where "collecting more information merely would be cumulative." Dkt. 227-6 at 29. That simply is not what Mr. Noble said. In fact, Mr. Noble refused to endorse that an investigation should be "thorough" or even "reasonably thorough." He was asked "do you agree that investigations of police misconduct should be thorough?" and answered "to a – to a reasonable amount. You know . . . thorough means different things to different people." Dkt. 227-4 at 176:14-22; *see also id.* at 176:14-177:12 (declining to endorse that investigations should be "thorough" or even "reasonably thorough"). Ultimately, the DOJ IA

Report did not define the applicable standard as "reasonableness," and Defendants identify no portion of the report supporting that standard.

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

Defendants say that Plaintiff's expert Dr. Shane also "embraced" Mr. Noble's reasonableness standard. Dkt. 273 at 10. He did not. Defendants offer an excerpt of Dr. Shane's deposition testimony; the full context shows he was testifying about the long delays characteristic of CPD's police misconduct investigations. Dkt. 267-3 (Shane Baker Dep.) at 196:23-212:22. In context, Dr. Shane testified that he would consider what steps would be reasonably taken, which would vary based on the type of investigation. *Id.* at 212:15-22.[2] This is perfectly consistent with Dr. Shane's opinion that national standards establish that investigations should be "thorough" and "complete." *E.g.*, *id.* at 186:2-14; Dkt. 227-1 (Shane Report) at 19, 59-60, 102. A reasonable investigator would take the necessary steps to ensure a thorough and complete investigation; as discussed at length in Section I(B)(2)(a) above, just because an expert opines on what a reasonable investigator would do does not mean that the expert believes that the generally accepted practice or standard at issue is "reasonableness."

3. Mr. Noble's "reasonableness" standard is not the same as "thorough and complete."

Defendants next argue that the "thorough and complete" standard is not contradictory with Mr. Noble's "reasonableness" standard. Dkt. 273 at 10-11. But Mr. Noble refused to adopt the "thorough and complete" standard, so whether it is "contradictory" with his proposed "reasonableness" standard is irrelevant. At his deposition, Mr. Noble would not endorse that investigations should be thorough, or even "reasonably thorough." Dkt. 227-4 at 176:14-177:12.

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

He was asked explicitly if there was any standard other than "reasonableness" he would see fit to apply, and he said there was not, and he further said he "can't think of another standard." *Id.* at 90:14-92:10; 142:15-22. Mr. Noble testified that a "reasonable investigation" is one where an investigator "may" interview witnesses, complainants, victims, and officers, "may" collect different kinds of evidence, and then writes a written report, makes "reasonable" conclusions, and recommends "reasonable" discipline. *Id.* at 195:10-196:1. This is consistent with the vague description in Mr. Noble's report that reasonableness is determined by "look[ing] at the totality of circumstances to assess if the investigation was reasonably thorough, fair and timely" and that investigators "should [not] be held to such a high standard." Dkt. 227-3 (Noble Report) ¶ 44.

Mr. Noble never once in his report said that investigations need to be "complete," and he was clear throughout his report and his deposition that he instead deployed a murky, "I know it when I see it," reasonableness standard. Dkt. 227-3 (Noble Report). In fact, Mr. Noble's report states vaguely that the City's police misconduct investigations "met with reasonably objective standards for the conduct of such investigations"—but does not identify or provide support for those standards. *Id.* ¶ 19(b). In sum, Mr. Noble admitted several times that he was applying a "reasonableness" standard, that he didn't know anyone other than himself or his coauthor who had recognized that standard, and that he did not apply any other standard, including the standards of thorough, "reasonably thorough," or even "good." Dkt. 227-4 at 88:21-89:16; 109:16-21; 142:23-143:2; 144:22-146:13; 176:14-177:12.

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

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

Defendants argue that Judge Coleman did not consider that *Jimenez* upholds what they describe as "the reasonableness standard for police practices experts," and they argue that *Mendez* supports admission of Noble's testimony in this case. Dkt. 273 at 11. But as discussed above, *Jimenez* does not support Defendants' position, and Defendants do not explain why *Mendez* warrants admitting Noble's testimony in this case. To the extent that *Mendez* adopts a reasonableness standard based on the *Jimenez* case, Plaintiff respectfully submits that the court erred for the reasons explained above.

Defendants then attempt to defend Mr. Noble's opinion by suggesting that Mr. Noble conducted a more detailed analysis of CR files here than he did in *Loury*. That is not so. In *Loury*, Mr. Noble claimed to rely on his review of "over 2,000" CRs from other cases and "over 150" investigations relevant to *Loury*, and he discussed all of those 150+ investigations individually, just as he adopted the City's summary of around 150 CRs in this case. Dkt. 227-11 (Noble Loury Report) ¶¶ 14, 61-253. And in fact, a comparison shows that the relevant portions of Noble's report in this case are essentially identical to the opinions that were rejected in *Loury*. *Compare id.* ¶¶ 12-33 *with* Dkt. 227-3 (Noble Report) ¶¶ 16-36, 43-44. The differences between the reports are cosmetic and any new discussion by Noble of the "reasonableness" of CPD's investigations or discipline and supervision systems is duplicative. Ultimately here, just as in *Loury*, Mr. Noble never explains why the list of qualities he claims to have observed in the CPD is sufficient to make the system "reasonable," nor does he explain why the specific investigations he reviewed were "reasonable." Here again, as in *Loury*, "[i]nstead of identifying the generally accepted police practices standards and then explaining how the CPD's policies are reasonable under these standards, Noble jumps to the conclusion that they are reasonable." *Est. of Loury*, 2021 WL 1020990 at *3. And here, as before, "Noble fails to make a connection between the

applicable professional standards and the CPD's policies and investigations." *Id.* Mr. Noble failed to "sufficiently explain the professional standards [he] purportedly applied," and therefore lacks reliability. *Id.* His "reasonableness" opinions should be barred.

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

Although Plaintiff has primarily discussed Mr. Noble's opinions on the City's investigations of police misconduct up to this point, Mr. Noble's opinions that the entire CPD disciplinary system was "reasonable" are equally unreliable because Mr. Noble provided no analysis in support of his opinion. In response, Defendants argue that Mr. Noble considered "the totality of the circumstances." Dkt. 273 at 14. But as discussed, Mr. Noble did not present an opinion comparing CPD's policies to model policies or other standards. Instead, the only sentence in Mr. Noble's report containing analysis of that sort is that the CPD policies "include the Law Enforcement Code of Ethics which is cited by police departments across the country as guiding principles for officer ethics and behavior." *Id.* at 15. But that is too slender a reed to support an opinion that CPD's entire disciplinary system is "reasonable." Absent some further analysis, Mr. Noble's "reasonableness" opinion is just his own say-so; "merely declaring" whether an action comported with standard protocol is just "*ipse dixit*" absent comparison to an applicable standard. *Pursley v. City of Rockford*, No. 3:18-CV-50040, 2024 WL 1050242, at *6 (N.D. Ill. Mar. 11, 2024). Same for Mr. Noble's opinions on the City's early identification systems and whether the CPD's response to the Webb Commission recommendations were reasonable: absent some analysis comparing the City's actions against a standard or baseline, Mr. Noble may not opine they are "reasonable." Dkt. 273 at 4, 15.

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

Plaintiff's motion to bar identified further disqualifying flaws in Mr. Noble's opinions which Defendants have failed to effectively rebut.

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

Between 1999 and 2011, the City of Chicago received at least 112,000 complaints of police misconduct. Dkt. 227-1 (Shane Report) at 14, 17 n.12. According to Defendants, Mr. Noble studied "over 150 CRs" in this case. Dkt. 273 at 12. That represents 0.13% of the entire population of CRs, or about one out of every seven hundred and fifty CRs.[3] Based on this limited review, Mr. Noble makes a sweeping claim about the quality of CPD's disciplinary system: specifically, that the City, writ large, conducted "reasonable" investigations from 1999-2011. But as Plaintiff argued in his initial motion, Mr. Noble's small sample size leaves too big of a gap between the data Mr. Noble reviewed and his ultimate opinion to be reliable. *See, e.g.*, *Wasson v. Peabody Coal Co.*, 542 F.3d 1172, 1176 (7th Cir. 2008). At the very least, Mr. Noble should be able to explain why he believes he can draw conclusions about CPD's entire system based on this tiny sample, but he cannot and he disclaimed any belief that the CRs he reviewed are representative of the CPD as a whole. Dkt. 227-4 at 138:19-139:16. Mr. Noble specifically acknowledged that the only CRs he reviewed for his opinion in this case were the "127 plus" CRs listed specifically in his materials reviewed. *Id.* at 74:9-19. Those do not include the 2,000-plus CRs he claims to have reviewed in other cases, and Defendants do not develop an argument that those undisclosed materials somehow buttress his opinion.

Defendants assert that Mr. Noble's opinion is reliable because he looked at the same CR files that Dr. Shane audited and that Mr. Noble's opinion is based on the "totality of the circumstances." Dkt. 273 at 14. But that argument fails for several reasons. First, Dr. Shane relied on his own review of nearly 1,300 CR files as well as the data he gathered from those files.

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

Second, Mr. Noble does not believe that Dr. Shane's methodology was valid, so he must demonstrate some methodology of his own to form reliable opinions (he cannot both reject Shane's methodology and rely on it simultaneously). *See In re Paraquat Prods. Liab. Litig.*, 730 F. Supp. 3d 793, 838 n.47 (S.D. Ill. 2024) ("*Daubert* requires each expert's proffered opinion to be judged on its own merits."). Third, Mr. Noble admitted that his conclusion that the City conducted reasonable investigations from 1999-2011 was based on his review of the about 150 CRs he looked at in this case. Dkt. 227-4 at 110:17-111:15. And he cannot say that those CRs were representative of the rest of the CRs from that time period, so he has no basis to offer an overall opinion on the health of the City's police misconduct **investigations** during this time period. Noble simply has not explained why the limited data he reviewed allows him to form his opinions. *See Espenscheid v. DirectSat USA, LLC*, 705 F.3d 770, 774 (7th Cir. 2013) (rejecting expert's extrapolation from 42 non-random class members to population of 2,341 individuals where expert could not establish representativeness); *Farmer v. DirectSat USA, LLC*, No. 08 CV 3962, 2013 WL 1195651, at *5-6 (N.D. Ill. Mar. 22, 2013) (holding unreliable expert methodology unreliable where expert extrapolated results from 30 technicians to population of 500, and where expert "conduct[ed] no analysis to test the reliability of the data he uses or to demonstrate the appropriateness of extrapolating results from this data to all plaintiffs for the entire class period). Further, Defendants offer no reason why Mr. Noble can rely, as he attempts, on "thousands" of other unspecified CRs which he did not discuss, does not recall, and were not produced in this case.

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

Mr. Noble used an improper methodology to attack Dr. Shane's review of nearly 1,300 CRs and his statistical analysis of those police misconduct investigations. Specifically, Mr.

Noble made up new and original definitions of police terminology, then accused Dr. Shane of failing to use these novel definitions. Defendants have not defended Mr. Noble's methodology or definitions (including defining "taking a statement" as talking to someone without writing it down, and defining "conducting an interview" as getting a written response to a written question). Instead of defending Mr. Noble's methodology or responding substantively to Plaintiff's arguments, Defendants write, "from these arguments it becomes clear that Plaintiff simply does not like Mr. Noble's opinions." Dkt. 273 at 6-7. That isn't a counterargument and it does not help Defendants save Mr. Noble's testimony. Defendants have not met their burden to show that it is reliable for Mr. Noble to make up his own terminology and then accuse Dr. Shane of improperly failing to use his invented definitions.

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

Mr. Noble was given a 127-page "summary" of the approximately 150 CRs he was given to review in this case. *See* Dkt. 273 at 2. Mr. Noble admitted that this "summary" incorporated not just factual details about each CR but also Mr. Noble's purported opinions about the "errors" in Dr. Shane's analysis. Dkt. 273 at 17-18. Defendants do not dispute that point, but instead argue that Plaintiff identified "no flaws in Noble's analysis." *Id*. at 18. But the point is that it isn't Mr. Noble's analysis; Mr. Noble uncritically adopted what the City wrote for him to conclude. It is Defendants' burden to show that Mr. Noble could reliably base his opinion on that summary, yet Defendants have described no methodology that Mr. Noble used to confirm the summary's accuracy. The summary is apt to be incomplete in important ways based on the lawyers' loyalty to their client. *See Sommerfield v. City of Chicago*, 254 F.R.D. 317, 322 (N.D. Ill. 2008) (explaining risks of relying on lawyer-prepared summaries). Defendants could have tried to salvage Mr. Noble's reliance on these summaries by arguing that "experts in [his] field of expertise reasonably rely on such summaries" or that they were prepared in some way that would

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

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

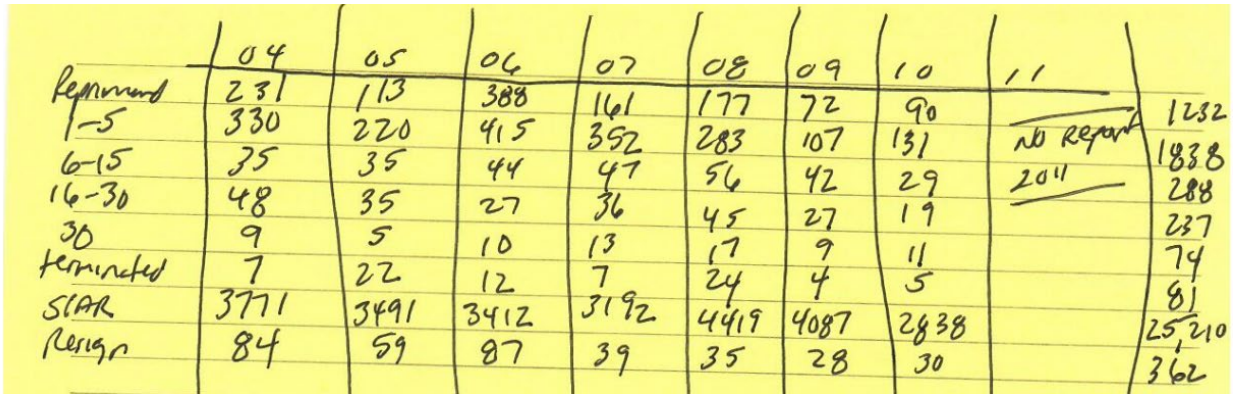
Defendants accuse Dr. Shane of using a novel and untested methodology to evaluate the quality of the City's police misconduct investigations. Defendants are wrong, but more to the point, Mr. Noble admitted he has no background in social science or statistics. He is not qualified to evaluate how Dr. Shane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

As he described in his report, Dr. Shane applied a social science methodology to form his opinions. Specifically, he developed criteria to identify relevant data points from a sample of CPD police misconduct investigations and trained coders to pull out those data elements from the CRs, and then statistically analyzed those data. Dkt. 227-1 (Shane Report) at 17-19; Dkt. 267-3 at 238:5-239:15 (describing social science methodologies he deployed).

As Plaintiff explained in her opening brief, Mr. Noble—as he said at his deposition—had "no idea" whether Dr. Shane's tables compiling data he collected were accurate, and Mr. Noble did not disagree with any of Dr. Shane's math or statistical analysis. Dkt. 227 at 13-14. Defendants do not deny either point in their response brief. Mr. Noble also admitted he has no foundation to opine on how social scientists make comparisons using data—exactly what Dr. Shane did here. *Id.* And further, Mr. Noble did not compare the data Dr. Shane collected to the definitions in his codebook, which was in essence an instruction manual for gathering the data.

Id. at 13. Instead, Mr. Noble faulted Dr. Shane for failing to apply Mr. Noble's idiosyncratic definitions, as discussed above.

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



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

Dkt. 227-14 (Noble notes). Mr. Noble testified that he "can't think of" any example of a "database" he has created larger than the above handwritten example, which has 64 data points (72 if counting the blank fields in the "11" column). Dkt. 227-4 at 62:10-13. Again, Defendants have the burden of showing that Mr. Noble can form a reliable critique of Dr. Shane's social science methodology, and they haven't done so.

Defendants' response is to accuse Plaintiff of "miss[ing] the point." Dkt. 273 at 17. But since Defendants have not argued that Mr. Noble has a basis for making any of the above

criticisms of Dr. Shane's social science methodology (which, indeed, Mr. Noble disclaimed at his deposition), the Court should bar Mr. Noble from offering any of those opinions.

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

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

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

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

Defendants ignore Mr. Noble's repeated disclaimers of any opinions about the eight-year criminal investigation into Watts's corruption. Dkt. 273 at 23-25. Mr. Noble was asked numerous questions about the eight-year investigation into Ronald Watts and Kallatt Mohammed's misconduct at his deposition, and he denied that he formed any opinion on that

topic. Mr. Noble acknowledged that CPD investigated Watts for corruption between 2004 and "2012 or 2013." Dkt. 227-4 at 21:9-13. Mr. Noble was asked a question about integrity checks, and he volunteered, "I did not do a analysis of the criminal investigation." *Id.* at 23:10-15. When asked whether the CPD, the FBI, or any investigative agency did a good job with integrity checks, he answered, "I didn't do a review of the criminal investigation. I don't know." *Id.* at 24:1-6. Mr. Noble was then asked if he had "any opinion on the adequacy of the eight-year investigation into Ronald Watts's corruption," and he answered that although his report "I discussed . . . some of the steps of the investigation. **I did not conduct an analysis of the criminal investigation. I don't have an opinion one way or the other.**" *Id.* at 24:7-25. He was also asked if he had "any opinion" about whether eight years was too long for that investigation, and he answered, "I don't have an opinion." *Id.* at 25:10-13. And he clarified that he was specifically referring to the FBI/CPD investigation—i.e., the so-called "joint investigation—when describing the "criminal investigation" regarding which he had formed no opinions. *Id.* at 86:9-16. Thus, Mr. Noble plainly and repeatedly testified that he had not formed any opinions on the "criminal investigation" into Sergeant Watts's misconduct. Where, as here, an expert "unambiguously abandons" an opinion, there is "no way" that such an opinion "can provide the degree of reliability" that the Federal Rules of Evidence and *Daubert* require. *Monje v. Spin Master Inc.*, No. CV-09-01713-PHX-JJT, 2015 WL 11117070, at *1 (D. Ariz. May 6, 2015), *aff'd*, 679 F. App'x 535 (9th Cir. 2017) (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595-597 (1993)).

Defendants also fail to acknowledge that that Mr. Noble testified that he was not aware of any parallel administrative misconduct complaint investigations against Ronald Watts from 2004-2012. Dkt. 223 at 23-24. Noble was asked if CPD pursued administrative allegations

during that time, and he answered, "no." Dkt. 227-4 at 55:19-25. He then acknowledged that the CPD knew of some allegations against Watts but the investigation and associated materials were controlled by the FBI (according to him) and thus CPD could not continue with an investigation during that time, he said. *Id.* at 56:1-11. Noble denied knowing anything about any allegations against Watts arising separate from the criminal (FBI) investigation. *Id.* at 56:12-57:14. In fact, Watts was the subject of literally dozens of citizen complaints from 2004 to 2012, but Noble was unaware of them. Dkt. 227-1 (Shane Report) at 135-139. Mr. Noble may not provide opinions on allegations of which he was unaware and as to which he formed no opinions.

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

Plaintiff's motion pointed out that Mr. Noble denied forming any opinions on whether CPD did enough to investigate the leak of a confidential informant to Defendant Watts. Mr. Noble testified unambiguously that the only information in his report was that such a leak occurred and he was not prepared to give any opinion relative to the leak. Dkt. 227-4 at 279:17-280:5. Defendants do not rebut that point. Dkt. 273 at 24-25. The Court should hold Mr. Noble to this concession.

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

Defendants fail to acknowledge certain clear and direct contradictions Mr. Noble has made against his own opinions in this case. Dkt. 273 at 19-23.

One issue in this litigation is whether the City is liable for allowing Defendants Watts and the officers he supervised to remain as active tactical team officers—where they wrongfully convicted nearly 200 Chicagoans—despite mounting evidence of their misconduct. The City takes the position that it was appropriate to do so (rather than take administrative action against the officers) because of a pending criminal investigation against Defendants Watts and

Mohammed. To support the City's position, Mr. Noble opined in this case that when there is a criminal investigation against an officer, "[a]n administrative charge, which may or may not succeed, is secondary in this instance." Dkt. 227-3 ¶ 103. He further opined that "the CPD should not have moved administratively until the criminal investigation concluded." *Id.* at ¶ 104.

Mr. Noble's testimony in this case is the direct opposite opinion he has previously offered. In a separate, earlier lawsuit, Mr. Noble testified under oath that he had literally "never seen" a department stop an internal affairs investigation pending a criminal investigation, that "all the information is just the opposite," and that it would be totally inappropriate to fail to take swift administrative action against an officer who endangered the community, whether or not a criminal investigation was pending. Dkt. 227 at 18-19.

Defendants do not explain how Mr. Noble can now reliably conclude that it was reasonable for CPD to pause administrative investigations against Defendant Watts—who was accused of planting evidence on suspects, consorting with drug dealers, and even shooting at residents who refused to pay him bribes—for a whopping **eight years** while a criminal investigation proceeded. Dkt. 273 at 19-21. Although Defendants describe these contradictions as "just fodder for cross-examination," the fact is that Defendants must demonstrate that Mr. Noble utilized a reliable methodology, and his directly opposite testimony in other cases is evidence that he is relying merely on his own say-so.

Likewise, Mr. Noble previously testified under oath that it is essential to investigate allegations against police officers, with or without a victim statement, and that it would be "absolutely wrong" to refuse to do so. Dkt. 227 at 20. But in this case, Mr. Noble testified that it was okay to close the investigation once a complainant fails to cooperate, i.e., if the victim does not agree to provide a statement. Dkt. 227-4 at 166:13-15. Put differently, Mr. Noble testified in

a prior case that it was necessary to conduct more investigation even without cooperation from a victim or complainant, and now he says that it is not necessary to do so. Again, Mr. Noble cannot demonstrate a reliable methodology when he takes diametrically opposite positions in different cases.

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

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

Mr. Noble intends to tell the jury that the City's hands were tied in investigating police misconduct complaints because state law did not allow the City to investigate complaints without an affidavit. Dkt. 273 at 28. That is not reliable because there is no basis for it—indeed, the City testified otherwise in its 30(b)(6) deposition. Dkt. 227-15 (Moore Dep.) at 110:6-12. But in any case, Mr. Noble cannot properly give a legal opinion on the impact of state law on CPD. The Court should handle the issue (if Mr. Noble is allowed to testify) the same way Judge Kennelly did: with an instruction from the Court on the law, stipulated or otherwise. *Simmons v. City of Chicago*, No. 14 C 9042, 2017 WL 3704844, at *11 (N.D. Ill. Aug. 28, 2017)

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

Defendants fail to rebut Plaintiff's authority that Mr. Noble's "no evidence" and "no reasonable officer" opinions are inadmissible. Dkt. 273 at 28-29.

To start, Mr. Noble cannot testify in the form of an opinion that there is "no evidence" of certain flaws or policy failures by CPD. He has failed to connect the dots and demonstrate a reliable methodology, just as Judge Coleman held in *Estate of Loury.* Dkt. 227 at 22-23.

Likewise, Mr. Noble's "no reasonable officer" opinion impermissibly infringes on the jury's prerogative to decide what the Defendant officers actually thought and intended. *Id.* at 24. An opinion that "all people in the defendant's shoes" have a certain mental state is inadmissible under Rule 704(b). *Diaz v. United States*, 144 S. Ct. 1727, 1734 (2024). It follows that an opinion that **no person** in a party's shoes could have a certain mental state—like Mr. Noble's opinion that "no reasonable CPD officer could believe they could act inappropriately with impunity and that nothing would happen"—is equally inadmissible.[4]

VIII. Mr. Noble may not offer opinions for which he lacks foundation.

Defendants seek to have Mr. Noble opine on the meaning of the term "resigned under investigation" by the CPD, but they still have not identified any basis for his understanding of that term other than a vague recollection that he heard it in another case. Dkt. 273 at 19. But Mr. Noble needs a foundation to form a reliable opinion; he has not offered one, and he thus should not be allowed to tell the jury what that term means.

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

CONCLUSION

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

Respectfully submitted,

/s/ Scott Rauscher
Attorney for Plaintiff

Jonathan Loevy
Scott Rauscher
Joshua Tepfer
Theresa H. Kleinhaus
Sean Starr
Gianna Gizzi
Loevy & Loevy
311 N. Aberdeen
3rd Floor
Chicago, IL 60607
scott@loevy.com

Joel A. Flaxman
Kenneth N. Flaxman
LAW OFFICES OF KENNETH N. FLAXMAN P.C.
200 S Michigan Ave, Ste 201
Chicago, IL 60604
p. (312) 427-3200