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-01717
	)	Judge Andrea R. Wood
	)	Magistrate Judge Sheila M. Finnegan

This document relates to all cases.

DEFENDANTS' JOINT RESPONSE TO PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER

Defendants request the Court deny the Loevy & Loevy Plaintiffs' motion for a protective order. Specifically, Plaintiffs seek to bar questions that relate to "whether the Plaintiffs have violated the law after their alleged wrongful arrest . . . and more specifically whether Plaintiffs have been involved in the drug trade (whether they bought or sold illegal drugs), regardless if there are any arrests or convictions for such acts on their records."[1] Dkt. 124, Plaintiffs' Motion for a Protective Order, p. 2. Plaintiffs also seek to bar questioning regarding their narcotics-related activity involving third parties that post-date the arrest at issue in their lawsuits. *Id.*

Questioning Plaintiffs regarding any subsequent criminal conduct[2] is proper and well within the scope of discovery. Such questioning is relevant to defend against Plaintiffs' claims that Defendants fabricated narcotics cases against them. This line of questioning is also relevant

[1] Plaintiffs later characterize the dispute as "whether Defendants may ask questions … about whether Plaintiffs have committed potentially illegal acts after the Ida B. Wells housing development was torn down if those acts did not lead to arrests or convictions." Dkt. 124, p. 6.

[2] Plaintiffs' belief that Defendants spent "more time than necessary" on certain arrests of Plaintiff Phillip Thomas, Dkt. 124, p. 1, is of no consequence to this motion. *See Flores v. Board of Trustees of Community College District No. 508*, 14 CV 7905, 2015 WL 7293510, at * 3 (N.D. Ill. Nov. 19, 2015) ("the court has no business micromanaging how many questions a lawyer should ask on a topic or how much time or energy should be expended on a certain aspect of a case, as long as the questions are designed to lead to discoverable information").

because it may reveal previously unknown connections and associations between and among Plaintiffs and the over 118 alleged Rule 404(b) witnesses. Furthermore, Plaintiffs' recent drug-related history, if any, is relevant to the issues of damages. Finally, Plaintiffs' post-Ida B. Wells narcotics history is relevant to each Plaintiffs' ability to recall the specifics of their arrests.

Moreover, Plaintiffs have failed to demonstrate good cause for the entry of the protective order. Although certain Plaintiffs may be uncomfortable testifying about their narcotics-related history, this line of questioning is not intended to and does not embarrass, harass, or annoy Plaintiffs. Plaintiffs' concern that truthful answers to these questions may incriminate them is not a basis for entry of a protective order. Rather, Plaintiffs, like any other witness, should analyze whether truthful answers to questions would incriminate them and then decide whether they should assert their rights under the Fifth Amendment. Whether or not Plaintiffs' answers are ultimately admissible should not be decided on a preemptive motion for a protective order, but after the Defendants have had the opportunity to conduct full and complete discovery. Finally, Plaintiffs have not articulated any specific reason why answering narcotic-related questions poses a safety risk to them.

Background

Plaintiffs take issue with the length of Thomas' deposition and that Thomas testified about prior criminal conduct which in Plaintiffs' view is irrelevant to the case.[3] At his deposition, Thomas was asked what his most serious felony conviction was. *See* Ex. A. Thomas Deposition Excerpts ("Thomas Dep."), Excerpt One. He responded he was convicted of robbing and raping an

[3] This position is curious in that Plaintiffs have questioned certain Defendant Officers over multiple days and have utilized their currently unlimited deposition time to question officers about topics such as *every* arrest that they have an independent recollection of and conduct at a bachelor party. In fact, it is common for Plaintiffs to spend an entire half a day questioning officers about other topics before Plaintiffs ask a single question about a specific Plaintiffs' complained of arrest.

individual whose name he could not remember when he was fourteen years old. *Id*. at Excerpt Two. The Defendant Officers' questioning of Thomas about this rape lasted approximately two pages. *Id*. at Excerpt Two. Similarly, questioning on Thomas's federal bank robbery conviction lasted approximately three pages. *Id*. at Excerpt Three. Regarding recent criminal conduct, Thomas admitted that in 2019 he was arrested and has a felony conviction stemming from an incident where he possessed cocaine in his car. *Id.* at Excerpt Four.

The current dispute arose when the Defendant Officers asked Thomas to identify drug dealers who operated out of the Ida B. Wells, whether Plaintiff Ben Baker was a drug dealer, and out of what building did Thomas purchase cocaine.[4] *See id.* at Excerpts Five, Six, and Seven. Through the meet-and-confer process, Plaintiffs have agreed that Thomas and all other Loevy and Loevy Plaintiffs will answer questions regarding criminal and drug-related activity that occurred in the Ida B. Wells, including the identities of drug dealers, whether certain Plaintiffs or other witnesses were involved in drug-related activity, and the details of any drug-related activity that they engaged in at the Ida B. Wells.[5] However, Plaintiffs maintain that they will not answer questions about criminal or drug-related activity after the Ida B. Wells were torn down that did not result in an arrest or conviction.

Legal Standard

The scope of discovery under Federal Rule of Civil Procedure 26 is broad and liberal. *Swierkiewicz v. Sorema N.A*., 534 U.S. 506, 512 (2002). Discovery, however, is not unlimited, Fed. R. Civ. P. 26(b)(2); *Swierkiewicz*, 534 U.S. at 512, and a court has broad discretion

4 The record belies Plaintiffs' assertion that Thomas did not refuse to answer questions because he believed them to be irrelevant. Dkt. 124, p. 6.

5 Defendants expect that any questioning of Plaintiffs whose underlying crimes occurred off of Ida B. Wells property (e.g., Anthony McDaniels or Bruce Powell) would not be subject to any such limitation. This would include any knowledge they may have had regarding any drug-related activity that Plaintiffs have agreed they could be questioned on.

to control discovery. *See* Fed. R. Civ. P. 26(c)(1)(D); *Cent. States, S.E. & S.W. Areas Pension Fund v. Waste Mgmt. of Mich., Inc.,* 674 F.3d 630, 636 (7th Cir. 2012).

The court may, for good cause, issue an order protecting a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Fed. R. Civ. P. 26(c)(1). A protective order limiting discovery, however, requires the moving party to show good cause by submitting "a particular and specific demonstration of fact." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981); *see Nieves v. OPA, Inc.,* 948 F.Supp.2d 887, 891 (N.D. Ill. Jun. 14, 2013). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning are insufficient" to show good cause for the entry of a protective order. *Flores*, 2015 WL 7293510, at * 3 (*citing Golf Oil Co.*, 452 U.S. at 102 n.16); *see Johnson v. Jung,* 242 F.R.D. 481, 483 (N.D. Ill. May 10, 2007) (conclusory statements are insufficient to show sufficient hardship to justify entry of a protective order). The burden to show good cause for a protective order is upon the party seeking the order. Fed. R. Civ. P. 26(c); *Jepson, Inc. v. Makita Elec. Works, Ltd.,* 30 F.3d 854, 858 (7th Cir. 1994); *Johnson*, 242 F.R.D. at 483.

Argument

I. Questioning Plaintiffs on Subsequent Criminal Activity is Proper.

Defendants are entitled to inquire into the criminal activity, if any, committed by Plaintiffs after their complained of arrest. Eliciting such testimony is relevant to: (1) Plaintiffs' request for damages for alleged mental/psychological distress, emotional harm, and reputational harm; (2) the claims and defenses asserted by the parties; (3) the bias, interest, and motive between Plaintiffs and alleged Rule 404(b) witnesses; and (4) Plaintiffs' credibility and their ability to recall details and information related to their arrests.

A. Testimony Regarding Subsequent Criminal Activity is Relevant to Damages.

In addition to alleging a claim for intentional infliction of emotional distress, Plaintiffs claim that they suffered "incalculable damage, including psychological damage, anguish, and humiliation, which were caused by their wrongful conviction, the *destruction of their reputations*, the disruption of their life and intimate relationships, and the suspension of their ability to pursue a career and raise a family." *See* Ex. B, Plaintiffs' Rule 26(a)(1) Disclosure, p. 32 ("Pls.' R. 26") (emphasis added).

A plaintiff's prior and subsequent criminal activity is relevant to any emotional damages he claims to have suffered. *Cobige v. City of Chicago*, 651 F.3d 780, 784 (7th Cir. 2011); *see also Flores* 2015 WL 7293510, at *2 (denying protective order relating to personal and intimate relationships because plaintiff sought damages for emotional and psychological injuries thus defendants were allowed to explore potential other stressors in plaintiff's life). In *Cobige*, the deceased plaintiff's son testified about his close mother-son relationship with the plaintiff. *Cobige*, 651 F.3d at 784. The district court excluded evidence at trial of the plaintiff's drug addiction and arrest record. *Id*. The Seventh Circuit reversed, finding that evidence of the plaintiff's drug history and arrest record was admissible to undermine the favorable picture of the plaintiff as testified to by her son. *Id*. The court further found that evidence the plaintiff's drug addiction when she was not imprisoned would have tended to rebut the claim that she provided wise advice and support to her son. *Id*. In *United States v. Mendoza-Prado,* 314 F.3d 1099 (9th Cir. 2002)*,* the defendant testified at trial "that he was a family man who was busy providing for his family and lacked the time, the inclination, and the courage to become involved in dealing cocaine," and a defense witness "implied that [the] [d]efendant] was law-abiding and hard-working" when he testified that the defendant "worked long hours in construction and took no significant time off." 314 F.3d at 1105. In affirming the defendant's conviction, the Ninth Circuit recognized that this character

evidence opened the door to evidence of prior bad acts to demonstrate bad character, and that exclusion of the negative character evidence would have been error because it could have "misled" the jury "into believing that Defendant was merely a hard-working, upstanding citizen who was bewildered by crime." *Id*.

Like in *Cobige* and *Mendoza-Prado*, the Plaintiffs in these coordinated proceedings maintain that they were not engaging in illegal activity at the time of their arrest and, as a result of their arrest, they have suffered emotional and mental harm. Thus, they have put their character and conduct at issue and the Defendants should be allowed to explore the actual impact of one arrest – out of many for the vast number of the Plaintiffs – on their emotional well-being and other damages. For example, the Plaintiffs are seeking damages, in part, based on the disruption of their "intimate relationships" and the "suspension of their ability to pursue a career and raise a family." *See* Ex. B, Pls.' R. 26(a)(1), p. 32. Seeking these types of damages opens to the door to the discovery of other factors that could have impacted Plaintiffs' "intimate relationships," pursuit of a career or ability to raise a family. Two factors that can impact those types of damages are criminal activity and drug use. As in *Cobige* and *Mendoza-Prado*, the Defendants should be allowed to pursue avenues which tend to rebut Plaintiffs' damages claim.

Plaintiffs also claim that their complained of convictions destroyed "their reputations." *See id*. Although it remains to be seen how a relatively small narcotics conviction impacts the reputation of Thomas, who, prior to his complained of conviction, had already been convicted of, among other things, rape and bank robbery, it is clear that the Defendants should be allowed to develop evidence that calls into question the reputations that Plaintiffs claim were destroyed. For example, Thomas seemingly claims that he was not involved in the drug trade that occurred daily at the Ida B. Wells, and thus being convicted of a narcotics crime negatively impacted his

reputation. Ignoring for a moment Thomas multiple criminal convictions ranging from crimes of violence, drug offenses, forgery, thefts, use of false names to deceive law enforcement, and willful violations of court orders, if Thomas is currently or recently engaging in the buying or selling narcotics, that evidence is relevant to whether his reputation suffered by being convicted of a narcotics offense.

Similarly, by seeking psychological and emotional distress damages, Plaintiffs have put other factors, like current or recent drug use, that may affect their mental health, at issue. *See Bovey v. Mitsubishi Motor Mfg. of Am., Inc*., No. 00 CV 1402, 2002 WL 820670, at * 1 (C.D. Ill. Apr. 3, 2002); *EEOC v. Kim and Ted, Inc.*, No. 95 CV 1151, 1996 WL 26871, at * 2 (N.D. Ill. Jan. 22, 1996) (noting that "some of the emotional suffering may be attributable to [the plaintiff's] drug use and alcohol abuse"); *see also Solis-Marrufo v. Bd. of Comm'rs*, No. 11-0107, 2013 WL 1658203 (D.N.M., March 28, 2013) (finding evidence of a plaintiff's drug use is relevant to issue of emotional damages); *Mitchell v. Iowa Interstate R.R., Ltd.*, No. 07 CV 1351, 2009 WL 2431590, at ** 1-2 (C.D. Ill. Aug. 5, 2009) (holding mental condition in controversy because plaintiff alleged more than mere embarrassment). Documents received in this litigation indicates that a number of the Plaintiffs have used narcotics for a number of years and the extent to which repeated, prolonged narcotics use has affected any facet of a Plaintiff's life is certainly fair game for inquiry at deposition. The Defendants have propounded interrogatories on this issue, but have been met with a litany of boilerplate objections, including "overly broad" and "an invasion of privacy."[6] *See, e.g.,* Ex. C, Lionel White, Sr.'s Response to Defendant Bolton's interrogatories, nos. 1-4. In fact, Plaintiffs have asserted the same or similar objections to virtually every interrogatory related to

[6] During Rule 37.2 conferences between counsel for the Loevy Plaintiffs and counsel for the individual defendants, Plaintiffs have decided to maintain their objections to these interrogatories not only as to White, Sr., but to all of the Loevy Plaintiffs.

narcotics, regardless of whether it asks about selling or use of narcotics. Putting aside the propriety of such objections, it is unfair to prevent the Defendants from learning how a particular Plaintiff's drug use may have impacted any claims of mental or emotional damages. This is especially true at this stage in the litigation and where Plaintiffs have not been entirely precise in identifying their damages.

Thomas's deposition and the interrogatory responses of White, Sr. illustrate why the Defendants should be allowed to inquire as to narcotics use and the impact it may have had on their damages. As to Thomas, he responded to an interrogatory asking him to identify his damages buy claiming that he "cannot presently quantify" his injuries but that his injuries would "manifest well into the future, and that his "investigation …continues…" Thomas did, however, testify at his deposition that "it's very likely" that he will become a millionaire as a result of this lawsuit. Ex. A, Thomas Dep., Excerpt 8. As to White, Sr., the Tactical Response Report from his April 24, 2006 arrest for possession of heroin indicates that he stated to the watch commander that he was using one hundred dollars' worth of heroin daily.[7] *See* Ex. D, Tactical Response Report. White Sr.'s criminal history report reveals numerous other drug-related arrests subsequent to his 2006 arrest. *See* Ex. E, White, Sr.s' Criminal History Report. A daily drug habit, regardless of amount, could certainly affect how one lives their life, including their interaction with family members or neighbors and getting and holding down a job, which are among the types of damages the Plaintiffs are seeking in this case. *See* Ex. B, Pls.' R. 26, p. 32. If Plaintiffs' motion is granted, it would unfairly hinder the Defendants' ability to conduct deposition discovery on these types of issues while leaving Plaintiffs free to seek unlimited - and still unspecified - damages.

7 White has denied the substance of this statement, so the Defendants should be allowed to question him on the facts and circumstances surrounding this statement and, even if it wasn't $100 a day, what amount of heroin he did use on a daily basis.

Because Plaintiffs are seeking damages for psychological and emotional harm, damages for the "destruction of their reputations," "disruption of their life and intimate relationships," and ability to pursue a career and raise a family, Defendants are entitled to inquire as to subsequent criminal activity and drug-related activity which may tend to negate the types of damages Plaintiffs claim to have suffered.

B. Questioning Plaintiffs About Uncharged Criminal Conduct is Relevant to the Parties' Claims and Defenses.

Federal Rule of Evidence 401 broadly defines relevant evidence, but relevance in the context of a discovery has an even broader meaning. *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130*, 657 F.2d 890, 903 (7th Cir. 1981). According to Plaintiffs, the subject matter of the Phillip Thomas litigation involves the allegation that he was framed on a drug charge by certain defendants; further, "Mr. Thomas' case is now one of approximately 60 [alleged frame-ups]." Dkt. 124, p. 3. Thomas' complaint, which is typical, alleges that he was convicted of a crime that simply never happened. *See* No. 18 CV 05132, Dkt. 1, ¶¶ 1-2. Indeed, Thomas alleges that he was merely selling food at 574 E. 36th Street when he was detained by the police and transported to a police station where officers fabricated police reports indicating that he possessed narcotics. *Id*. at ¶¶ 30, 31, 33, 38. Further, he alleges that his type of encounter with the police was "quite common." *Id*. at ¶ 4.

Now Plaintiffs seek to avoid being questioned about uncharged criminal conduct, including whether they bought or sold narcotics, the attendant circumstances, and the identities of any third parties involved in such transactions, asserting such "potentially illegal activity is *unconnected to the litigation*."[8] Dkt. 124, p. 4 (emphasis added). However, Plaintiffs' extremely narrow view of

[8] Plaintiffs apparently now concede that questions concerning uncharged criminal activity during the time the Ida B. Wells' Housing complex existed is connected to the litigation. *See* Dkt. 124, p. 3.

the issues in this litigation does not comport with Rule 26(b)(1) or with their broad pleadings that the defendants routinely fabricated drug cases against scores of individuals.

Defendants are not bound by Thomas' self-serving declaration that he was innocently in the wrong place at the wrong time. Thomas, like many Plaintiffs, did not reside in the building where his arrest took place, and evidence of his crack cocaine addiction could provide a motive that explains his presence on scene. Additionally, certain Defendants have testified that they knew certain Plaintiffs to be narcotics sellers or users. Thus, questioning Plaintiffs about current illegal narcotics activity could undermine the allegation that Plaintiffs were simply in the wrong place at the wrong time.

Moreover, questioning on this topic may tend to rebut any motive or opportunity that Plaintiffs claim the Defendants had for planting drugs on them. For example, Thomas' story is that Defendant Watts demanded that Thomas provide him with narcotics information. After Thomas declined because he had no information to provide, certain Defendants planted drugs on him. If the Defendants can show that Thomas regularly possesses narcotics, from before his arrest to the present, that evidence tends to rebut Plaintiff's story that he had no narcotics-related information and that the defendants had the opportunity to plant drugs on him. While Plaintiffs may claim that this is improper propensity evidence, such a determination should not be made before the Defendants have an opportunity to develop the evidence. In fact, this type of evidence is no different than Plaintiffs' over 118 alleged 404(b) witnesses. Courts do not determine whether a witness or question is improper propensity evidence or admissible evidence under Rule 404(b)[9] until the parties have developed the facts of the other incidents through discovery.

[9] During discovery, however, courts may engage in the analysis of whether the number of alleged Rule 404(b) witnesses is overly burdensome and proportional to the needs of the case. *See DeLeon-Reyes v. Guervara*, 18-cv-1028, Dkt. 313 (limiting proposed 404(b) witnesses to five individuals for purposes of discovery).

C. Questioning Plaintiffs About Uncharged Narcotics-Related Activity is Designed to Develop Evidence of the Bias, Interest, and Motive of Plaintiffs and Their Witnesses.

Questioning Plaintiffs about their recent drug-related activity allows the defense to develop evidence of connections between and among the over sixty Plaintiffs and the approximately 118 alleged Rule 404(b) witnesses in order to show bias, interest, and motive to falsely accuse Defendants of fabricating drug cases against them. *See* Ex. B, Pls.' R. 26. The relationship between Plaintiffs Ben Baker and Jamar Lewis is illustrative. In 2004, Baker identified Lewis as an alibi witness for Baker's July 11, 2004 arrest. *See* Ex. F, Baker's Answer to Discovery. [redacted][10]

Defendants believe that Baker and Lewis have engaged in a narcotics-related conspiracy. When Baker was asked in an interrogatory whether he ever engaged in narcotics-related activity, he responded he had sold cocaine and heroin at times between 1998 and 2004, but that such activity concluded in 2004. *See* Ex. G, Baker's Responses to Defendants Mohammed's interrogatories, no. 4 (which also references his response to no 1). Baker's verified interrogatory answer was demonstrably false as he was subsequently federally charged and pled guilty to selling narcotics

10 These records are subject to the amended privacy act order entered in this case and thus redacted in the electronic filing. An unredacted copy of this brief will be provided to counsel for the parties and the Court, unless the Court directs otherwise.

from the home he shared with Plaintiff Glenn in 2017. *See* Exs. H and I, Baker's Criminal Complaint and Plea Agreement.

The Defendants believe that Baker's supplier of heroin and fentanyl-laced heroin was Plaintiff Lewis, who was also federally charged and pled guilty to narcotics crimes. Ex. J, Transcript of Jamar Lewis' November 6, 2019 plea and sentencing. It appears that Plaintiff Lewis mixed the heroin at a property belonging to Plaintiff Baker, in which Baker's son, Gerard Baker[11], who Baker identified as a "damages" witness, resided.

The bias, interest, and motive of Plaintiff Baker and Lewis is particularly important because Baker identified Lewis as an alibi witness for Baker's July 11, 2004 arrest. The bias, interest, and motive for Lewis to testify as Baker's alibi witness is, at the very least, viewed differently with evidence that they recently engaged in narcotics-activity together.

Moreover, the investigation which led to the arrest of Plaintiff Baker, Plaintiff Lewis, and Gerard Baker was titled Operation Wheel of Fortune II. During a 2016 federal and state investigation titled Operation Wheel of Fortune, Plaintiff Bruce Powell was arrested, charged, and convicted. The Defendants intend to, and should be allowed to ask Plaintiffs Baker, Lewis, and Powell about any narcotics-related connections between them, including uncharged criminal conduct.

Defendants recognize that even under Plaintiffs' proposal, Baker would be required to answer questions about his recent drug sales because he was arrested and convicted. However, the mere fact that a Plaintiff was not arrested or convicted of recent narcotics-related activity should not bar Defendants from developing evidence of bias, interest, and motive of witnesses. The Baker/Lewis example shows why Plaintiffs' arrest/conviction rule is unreasonable: Lewis' bias,

11 Gerard Baker was arrested and charged with state crimes stemming from the same federal narcotics investigation. Like his father and Lewis, Gerard Baker pled guilty.

interest, and motive to testify for Baker changed when they decided to sell narcotics together, irrespective of them ultimately being charged and convicted. The more reasoned position is requiring Plaintiffs to, unlike Baker, truthfully answer questions about recent narcotics activity in order for the Defendants to develop bias, motive, and interest evidence.

D. Inquiry Into Prior Uncharged Criminal Conduct is Proper as it Relates to Plaintiffs' Ability to Recall.

As Plaintiffs have pointed out, the arrests at issue occurred between 8 and 20 years ago. With such a significant passage of time, whether or not Plaintiffs can credibly testify about what happened during their arrest and what other factors may be present in their lives that would affect their ability to accurately recall what happened. Therefore, Defendants are entitled to explore these areas, including any recent drug use, during Plaintiffs' depositions.

Evidence of a witness's drug use may be admitted to show the effect of the drug use on the witness's memory or recollection of events. *United States v. Cameron*, 814 F.2d 403 405 (7th Cir. 1987). A witness' ability to perceive the underlying events and testify lucidly at trial may be attacked through evidence of the witness' use of illicit substances. *See Jarrett v. United States,* 822 F.2d 1438, 1446 (7th Cir. 1987).

In their motion, Plaintiff asserts that "Thomas' cocaine addiction issues" are not relevant, but concedes that he "has struggled with drug addiction on and off for many years." Dkt. 124, p. 5. Thomas' drug use is relevant to his ability to accurately testify to the facts and circumstances surrounding his underlying arrest. *See Solis-Marrufo*, 2013 WL 1658203, at * 11 (*citing Jarrett,* 822 F.2d at 1446 (7th Cir. 1987)). The same holds true for White, Sr., discussed *supra.* Persistent drug use is an issue that may affect a plaintiff's memory or ability to accurately recall events from the distant past. If a plaintiff claims to have an independent recollection of such events, Defendants should have the opportunity to test their memory with questions regarding the frequency and

amount of their drug use prior and subsequent to their arrest and to explore just what effect years and years of drug use may have had on them.

II. Plaintiffs Have Failed to Show Good Cause for the Entry of a Protective Order.

The party seeking a protective order bears the burden of showing good cause for its entry. Fed. R. Civ. P. 26(c); *Jepson*, 30 F.3d at 858. Plaintiffs have failed to show there is good cause for limiting the questions posed to them; instead, their motion is based on broad generalizations and conclusions.

The cases cited by Plaintiffs are inapposite and fail to support their motion. None of those cases were decided in a motion for protective order, but at different stages of litigation. *Nelson v. City of Chicago*, 810 F.3d 1061 (7th Cir. 2016), *Barber v. City of Chicago*, 725 F.3d 702 (7th Cir. 2013), and *Cruz v. Safford*, 579 F.3d 840 (7th Cir. 2009) all involved post-trial motions and *Young v. Cook County*, 06 CV 552, 2009 WL 2231782 (N.D. Ill. Jan. 27, 2009) was a ruling on motions *in limine*. The rules and law governing the scope of permissible discovery differ significantly questions involving relevance, admissibility, or prejudice, an analysis better suited for pretrial motions and trial objections than a motion for protective order.

Further, Plaintiffs have failed to coherently explain why their deposition testimony should be limited. General assertions that questioning is not relevant and answers would not be admissible does not support the entry of a protective order. *Flores*, 2015 WL 7293510, * 3 (a plaintiff's "generalized argument based on relevance and impropriety is insufficient to warrant a protective order."). Nor does Plaintiffs' proclamation that Defendants' questioning will not lead to admissible evidence make it so. Instead of articulating why such questions are improper, Plaintiffs serve up platitudes about "fishing" expeditions. *Craftwood II, Inc. v. Generac Power Sys*., No. 17 CV 4105, 2018 WL 497282, at * 2 (N.D. Ill. Jan. 22, 2018) (rejecting the assertion that depositions sought

were part of a "fishing expedition that [would] yield nothing of value" as "judges are not clairvoyant. [citations omitted]. And neither are lawyers")). Spouting boilerplate and conclusory objections or speculating that Defendants will abuse depositions to "embarrass, harass" and "annoy" Plaintiffs does not warrant the granting of a protective order. *See Flores*, 2015 WL 7293510, at * 3 ("Merely asserting that answering questions about [the plaintiff's] private affairs will be embarrassing and humiliating is insufficient to warrant a protective order.").

Plaintiffs' bald and ominous assertion, without basis or elaboration, that answering questions about recent narcotics-related activity would create a "potential safety risk" does not qualify as good cause. Rather, it provides another example of why the questions are relevant to damages. If Plaintiffs are engaging in illicit activity that puts their safety at risk, such activity is relevant to and may contribute to any psychological or emotional issues Plaintiffs were or are dealing with.

A. Questions Concerning Plaintiff's Recent Drug-Related Activity Does not Annoy, Embarrass or Oppress Plaintiffs.

The claim that questioning Plaintiffs regarding any recent drug-related activity is annoying or oppressive is a non-starter. While understandably Plaintiffs may not be proud of any recent drug-related activity, Plaintiffs are surely aware that filing lawsuits alleging they were convicted of drug crimes that were fabricated out of whole cloth and claiming that the drug convictions destroyed their reputations would subject them to the rigors of discovery and require that they answer questions they may prefer not to answer. Plaintiffs have provided no authority and failed to advance a persuasive argument as to why questions about drug-related activity rises to the level of annoyance or oppression to justify the entry of a protective order. *See Flores*, 2015 WL 7293510, at * 3 (recognizing "that extensive intrusion into the affairs of both litigants and third parties is permissible and common in modern discovery").

Plaintiffs' claim that the questions at issue are designed solely to embarrass them fares no better. "Whether a discovery request imposes undue embarrassment or humiliation is a case– and fact specific question." *Id*. at * 3; *see also Hollinger Int'l Inc. v. Hollinger Inc.*, No. 04 CV 698, 2005 WL 3177880, at *3 (N.D. Ill. Jan. 19, 2005) ("generalized claims of embarrassment do not establish good cause"). In *Flores*, the plaintiff sought a protective order to limit a line of questioning about personal and intimate relationships and argued that such questions would embarrass or humiliate her. *Flores*, 2015 WL 7293510, at *3. The court rejected the plaintiff's argument, citing "a lack of concrete examples or support" for her position. Moreover, the court found her description of embarrassment and humiliation was "too general and lacking in specificity to warrant a protective order." *Id.*

It is not enough to simply assert, as Plaintiffs have done, that answering such questions would be embarrassing and humiliating. There has been no showing as to why such questioning should be limited by way of a protective order. Many of the Plaintiffs have lengthy criminal histories and it is difficult to believe they are not embarrassed when discussing uncharged criminal conduct which occurred at the Ida B. Wells, but so embarrassed when discussing recent drug-related activity that they need court intervention and a protective order.

B. Plaintiffs Having to Decide Whether to Invoke Their Fifth Amendment Rights is not a Reason to Enter a Protective Order.

Plaintiffs have raised the possibility that they may invoke their Fifth Amendment protections in response to questions about uncharged criminal conduct which they claim would be unfair to them. Dkt. 124, p. 7. The only case cited by Plaintiffs in support of this argument is *U.S. Election Corp. v. Microvote Corp*., 51 F.3d 276 (7th Cir. 1995). Like the other cases relied upon in Plaintiffs' motion, *Microvote* did not address the proper scope of discovery, but rather concerned whether the trial court's motion *in limine* order precluding the defense from commenting on a

witness's prior invocation of the Fifth Amendment was an abuse of discretion. Not only is *Microvote* distinguishable (and unpublished), it also diminishes any concerns that Plaintiffs will be forced to "unfairly" invoke the Fifth Amendment rights by providing a mechanism to bar evidence of the invocation at trial if the evidence is ultimately immaterial. Thus, the proper course would be for Plaintiffs, like all other witnesses, to evaluate whether truthful answers to questions potentially subject them to criminal liability, and if so, whether they wish to assert their Fifth Amendment rights. If Plaintiffs believe that any invocation is immaterial they can file a motion *in limine* prior to trial. There is nothing "unfair" about this procedure.

Date: May 8, 2020

Respectfully submitted,

/s/ Anthony E. Zecchin
One of the Attorneys for Defendant Officers

Andrew M. Hale
William Bazarek
Brian J. Stefanich
Allyson West
Anthony E. Zecchin
Hale & Monico LLC
53 W. Jackson, Suite 330
Chicago, IL 60604

/s/ Daniel M. Noland
One of the Attorneys for Defendants, City of Chicago, Phillip Cline, Debra Kirby, Karen Rowan, and J. Bosak

Terrence M. Burns
Paul A. Michalik
Daniel M. Noland
Katherine C. Morrison
Elizabeth A. Ekl
Reiter Burns, LLP
311 S. Wacker Dr., Suite 5200
Chicago, IL 60606

/s/ Ahmed A. Kosoko
One of the Attorneys for Defendant, Ronald Watts

Brian Gainer
Monica Gutowski
Ahmed A. Kosoko
Rebecca Milton
Johnson & Bell, Ltd.
33 W. Monroe St., Suite 2700
Chicago, IL 60603

/s/ Gary Ravitz
One of the Attorneys for Defendant, Kallatt Mohammed

Eric S. Palles
Gary Jay Ravitz
Laura S. Platt
Tyler E. Roland
Kerry M. Mohan
Sean M. Sullivan
Daley Mohan Groble
55 W Monroe, Suite 1600
Chicago, IL 60603

/s/ Michael J. Schalka
One of the Attorneys for Defendants, Mathew Cadman and Michael Spaargaren

James Vincent Daffada
Thomas More Leinenweber
Michael J. Schalka
Leinenweber Barone & Daffada LLC
120 N. LaSalle St., Suite 2000
Chicago, IL 60602

CERTIFICATE OF SERVICE

I, Anthony E. Zecchin, an attorney, hereby certify that, on May 8, 2020, I electronically filed the foregoing DEFENDANTS' JOINT RESPONSE TO PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to all Counsel of Record.

/s/ Anthony E. Zecchin