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

In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	**Master Docket Case No. 19 CV 1717** **Judge Frank U. Valderrama** **Magistrate Judge Sheila M. Finnegan**
LEONARD GIPSON, **Plaintiff,** **vs.** **CITY OF CHICAGO, et al.,** **Defendants.**	**No.: 2018 CV 05120** **Judge Steven C. Seeger**
BOBBY COLEMAN, **Plaintiff,** **vs.** **CITY OF CHICAGO, et al.,** **Defendants.**	**No.: 2019 CV 01094** **Judge Edmond E. Chang**
MARC GILES, **Plaintiff,** **vs.** **CITY OF CHICAGO, et al.,** **Defendants.**	**No.: 2021 CV 04798** **Judge John Robert Blakey**
LARRY LOMAX, **Plaintiff,** **vs.** **CITY OF CHICAGO, et al.,** **Defendants.**	**No.: 2019 CV 01095** **Judge Jorge L. Alonso**
GEORGE OLLIE, **Plaintiff,** **vs.** **CITY OF CHICAGO, et al.,** **Defendants.**	**No.: 2019 CV 00131** **Judge Rebecca R. Pallmeyer**
CLIFFORD ROBERTS, **Plaintiff,** **vs.**	**No.: 22 CV 00674**

CITY OF CHCAGO, et al.,)
Defendants.)

Judge John F. Kness

DEFENDANTS' JOINT MOTION TO REASSIGN AND CONSOLIDATE TRIALS AND PRETRIAL PROCEEDINGS IN *GIPSON V. CITY, ET AL.*, 18 CV 5120, *COLEMAN V CITY, ET AL.*, 19 CV 1094, *GILES V CITY, ET AL*, 21 CV 4798, *LOMAX V. CITY, ET AL.*, 19 CV 1095, *OLLIE V CITY, ET AL.*, 19 CV 131, AND *ROBERTS V CITY, ET AL.*, 22 CV 674

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NOW COME Defendants, by and through their undersigned attorneys, and pursuant to Fed. R. Civ. P. 42 and Local Rule 40.4(c), move to have the above-referenced cases consolidated for the purposes of trial and all remaining pretrial proceedings and reassigned from their current judges to Judge Steven Seeger for such purposes. In support thereof, Defendants state as follows:

INTRODUCTION

The trial of *Gipson v. City, et al.*, 18 CV 5120 is currently set to proceed on April 21, 2025 before District Court Judge Steven Seeger. *See Gipson v. City, et al,* 18 CV 5120, Dckt. No. 117. Judge Seeger has currently reserved four (4) weeks for this trial. *Id.* Pursuant to Fed. R. Civ. 42, this trial should be consolidated with the trials of co-plaintiffs Bobby Coleman (19-CV-01094)(pending before Judge Chang), Mark Giles (21-CV-4798)(pending before Judge Blakey), Larry Lomax (19-CV-01095)(pending before Judge Alonso), George Ollie (19-CV-00131)(pending before Judge Pallmeyer), and Clifford Roberts (22-cv-0674)(pending before Judge Kness) and all future proceedings for these cases should be re-assigned to Judge Seeger through trial pursuant to Local Rule 40.4(c).[1]

[1] Defendants have filed and noticed this Motion before Judge Valderrama as the district court judge currently assigned to oversee the Watts Coordinated Pretrial Proceedings, Master Docket Case No. 19 CV 1717. This has been done pursuant to the direction of Judge Seeger, the judge currently assigned to the case *Gipson v. City, et al.*, 18 CV 5120, as a result of this Judge Valderrama's previous Order relating to these issues on February 11, 2024. *See* Ex. A at 31:20-31:23, 32:2-32:8 . However, Defendants believe that, pursuant to the Local Rules, this Motion is likely properly noticed before and to be adjudicated by Judge Seeger in the first instance under the Local Rules. *See* L.R. 40.4(c). Pursuant to LR 40.4(c), any motion to reassign "shall be filed in the lowest-numbered case of the claimed related set and noticed before the judge assigned to that case." LR 40.4(c). In this instance, the judge with the lowest numbered case in the set sought to be reassigned is Judge Seeger. *See Gipson v. City, et al,* 18 CV 5120, *Coleman v. City, et al.*, 19 CV 1094, *Giles v. City, et al*, 21 CV 4798, *Lomax v. City, et al.*, 19 CV 1095, *Ollie v. City, et al.*, 19 CV 131, and *Roberts v. City, et al.*, 22 CV 674. Moreover, pursuant to Internal Operating Procedure 13(e), notwithstanding the designation of a judge to preside over coordinated proceedings, all individual cases within such proceeding "shall remain on the calendars of the judges to whom they were assigned at the start of the coordinated proceeding and only matters specified in the order of coordination shall be brought before the designated judge." *See* N.D. Ill. Int. Op. P. 13(e). To this end, the Order of the Executive Committee does not appear to have designated Judge Valderrama to adjudicate matters regarding consolidation for trial but, rather, only pretrial matters. *See* 16 CV 8940, Dckt. No. 172; *see also* 19 CV 1717, Dckt. No. 1 (original case management order for coordinated proceedings) at ¶¶ 2, 4. This Order and the Original Case Management Order provides that the individual cases shall remain on the calendars of the judges to whom they were assigned at the start of the coordinated proceeding *and only matters specified in the order of coordination shall be brought before the designated judge*." Dckt. 1 at ¶ 2. The Order further provides that "[t]he

As set forth below, the circumstances of these cases satisfy the standards for consolidation and reassignment under governing law. These cases all contain claims arising from essentially the exact same factual occurrence on January 4, 2003, involve almost entirely the same witnesses and exhibits, and pursue almost the exact same legal claims. Indeed, these cases not only share a common nexus of facts but the claims of each Plaintiff are factually intertwined and interdependent on the claims of the other Plaintiffs. Specifically, all these Plaintiffs were alleged to have been involved in different roles on the same day at the same time in possessing and distributing drugs amongst each other as part of a single drug operation. In other words, in order to determine whether one Plaintiff committed a crime, it will be necessary to determine whether the others did so as well. The lawyers for Defendants are also all the same and Plaintiffs are represented by the same two sets of attorneys.

Perhaps most importantly of all, however, the extreme taxation on the judicial system and the community at large that would result from conducting six separate trials instead of one single consolidated trial is simply not tenable. The result of *not* consolidating these cases would be six different judges adjudicating six different sets of pretrial filings and ultimately each judge conducting a separate month-long trial involving almost identical witnesses testifying six different times before six different juries made up of members of the community taking a month out of all their lives.

On this point, Judge Seeger recently indicated his willingness and availability to preside over a consolidated trial of all six cases if Judge Valderrama so agrees to order this relief. Ex. A at 38:15-38:23 ("So here's what I would say: I'm in the business of trying to help other people, especially other judges, and sort of salute and march forward with whatever task is assigned to me. So if Judge Valderrama thinks that it makes sense to consolidate them, I'll do it. He's already said he doesn't think it makes sense. So you'd have to do some lawyering to turn that around if you think that there's a

originally-assigned judge will preside over the trial of the individual case as well as any other proceedings not deemed inappropriate for coordinated pretrial proceedings." *Id.* at ¶ 4.

better way of doing it. Okay? If you convince Judge Valderrama that it's the right thing to do, I'll do it."). Accordingly, Defendants believe that the "manageability" concerns articulated in Judge Valderrama's prior order relating to consolidation have been, to a large extent, assuaged by Judge Seeger's willingness and ability to try all these cases together.

Moreover, consolidating these cases will cause no delay at all. Indeed, insofar as there is a trial date already set and a District Court Judge who has already articulated his willingness to try all these cases together, this will expedite trial on these cases, not delay them. There is also no prejudice whatsoever to Plaintiffs in proceeding in this fashion. Indeed, as recognized by judges in other like circumstances as explained below, the opposite is true.

Finally, to the extent Plaintiffs' reservation about conducting a joint consolidated trial were driven by Defendants' prior concerns that including Plaintiff Gipson's claims arising from two other arrests at the same time as the joint trial, Defendants are willing to proceed at trial in whatever fashion the Court deems most appropriate on this issue. If the Court believes that trying these claims at the same time as the consolidated trial, Defendants will not object to that. If the Court feels the "non-January 4 arrest" claims of Plaintiff Gipson should be severed from the other claims, Defendants will proceed in this fashion as well. However, Defendants believe that, under all circumstances, the trial of the six Plaintiffs on the claims relating to the January 4, 2003 arrests should proceed as one consolidated trial.

PROCEDURAL AND FACTUAL HISTORY

The cases that Defendants seek to consolidate – *Gipson v. City, et al,* 18 CV 5120, *Coleman v. City, et al.*, 19 CV 1094, *Giles v. City, et al*, 21 CV 4798, *Lomax v. City, et al.*, 19 CV 1095, *Ollie v. City, et al.*, 19 CV 131, and *Roberts v. City, et al.*, 22 CV 674 – were filed between 2018 and 2022.

All these Plaintiffs allege claims arising from their arrests on January 4, 2003 and their subsequent prosecution for narcotics-based offenses. *See* Ex. B-G (Complaints in *Gipson v. City, et al,*

18 CV 5120, *Coleman v. City, et al.*, 19 CV 1094, *Giles v. City, et al*, 21 CV 4798, *Lomax v. City, et al.*, 19 CV 1095, *Ollie v. City, et al.*, 19 CV 131, and *Roberts v. City, et al.*, 22 CV 674).

The incident leading to these arrests is summarized in the joint Vice Case Report detailing the circumstances of these arrests. *See* Ex. H. On or before January 4, 2003, the Defendant Officers obtained information from a confidential source that Plaintiff Coleman and Plaintiff Gipson would be delivering drugs to a building within the Ida B. Wells Housing Projects located at 527 E. Browning to distribute in their joint narcotics business. *Id.* Based on this information, the Defendant Officers set up surveillance both within the building itself as well as around the perimeter. *Id.* As the source said, Plaintiff Coleman and Plaintiff Gipson arrived in the area in two separate vehicles meeting the descriptions given by the source. *Id.*

Plaintiff Gipson parked his vehicle and approached Plaintiffs Ollie, Giles, Lomax, Roberts, and a fifth man, George Scroggins.[2] *Id.* Plaintiff Gipson stated to Plaintiff Roberts and Plaintiff Giles that they would be working security for the drug operation that day. *Id.* Plaintiff Gipson then waved down Plaintiff Coleman (who was in his vehicle) to the location. *Id.* Plaintiff Coleman exited his vehicle and approached Plaintiff Gipson. *Id.* Plaintiff Coleman then gave Plaintiff Gipson a bag of narcotics from his (Plaintiff Coleman's) pocket. *Id.* Now having physical possession of the drugs, Plaintiff Gipson then re-approached Roberts, Giles, Ollie, Lomax and Scroggins and handed Roberts and Giles a bundle of narcotics each. *Id.* Plaintiff Gipson then directed Roberts to give Ollie, Lomax, and Scroggins their "wake up" which is a commonly used narcotics term for giving individuals bags of narcotics as compensation for acting as security for a narcotics operation. *Id.*

After witnessing these events, the Defendant Officers broke surveillance and apprehended these individuals. *Id.* All seven men were charged with various narcotics-based offenses including possession. *Id.* All seven men thereafter pleaded guilty to narcotics-based offenses arising from their

[2] Mr. Scroggins is deceased and has no lawsuit pending.

arrests on January 4, 2003. *See* Ex. B (Gipson Compl.) at ¶ 8, Ex. C (Coleman Compl.) at ¶¶ 6, 52; Ex. D (Giles Compl.) at ¶¶ 7-15, 28-30 8, 55; Ex. E (Lomax Compl.) at ¶¶ 7-15, 28-30 7, 57, Ex. F (Ollie Compl.) at ¶¶ 7-15, 28-30 24-25; Ex. G (Roberts Compl.) ¶¶ 7-15, 28-307, 44.

As in all lawsuits, Plaintiffs have different versions of the events, which do not involve them engaged in drug dealing/possession/distribution on the date and time in question. Ex. B at ¶¶ 32-41, Ex. C at 29-46; Ex. D at ¶¶ 37-48, Ex. E at ¶¶ 30-58, Ex. F at 17-27, Ex. G at 34-41. However, there is no dispute whatsoever that all these individuals were arrested in the same approximate location at the same approximate times during the same police encounter involving the same police officers and based on allegations that all were working in concert in committing narcotics activity. *Id.* The lawsuits at issue name essentially the same set of Defendants. *Id.* The only exceptions are that Gipson names Officer Leano as a defendant for his January 4, 2003 arrest, while the other five plaintiffs do not, and Roberts does not name Officer Edwards as a defendant, while the other five plaintiffs do. *Id.*

All Plaintiffs allege that their convictions were vacated as a result of the same alleged revelations regarding criminal conduct of Defendants Watts and Mohammed. Ex. B at ¶¶ 9-13, 79-94, 118-124; Ex. C at 7-13, 57-72, 94-107; Ex. D at ¶¶ 57-72, 99-115; Ex. E at ¶¶ 8-18, 62-77; Ex. F at ¶¶ 28-30; Ex. G at ¶¶ 8-19, 48-63, 90-107.

All Plaintiffs allege that they were awarded Certificates of Innocence at or around the same basic time period and as part of a mass exoneration. Ex. B at ¶¶ 123-24; Ex. C at ¶¶ 94-107; Ex. D at ¶¶ 99-115; Ex. E at ¶¶ 99-111; Ex. F at ¶¶ 7-15, 28-30; Ex. G at ¶¶ 90-107.

The substantive legal claims asserted by each of the Plaintiffs are also virtually identical as well with very few deviations. *See* Ex. B (alleging claims for Due Process (Ct. I), Malicious Prosecution and Pretrial Detention (Ct. II), First Amendment (Ct. III), Failure To Intervene (Ct. IV), Federal Conspiracy (Ct.5), Il Malicious Prosecution (Ct.VI), IIED (Ct. VII), State Law Conspiracy (Ct. VIII), Respondeat Superior (Ct. IX), Indemnification (Ct. X)); Ex. C (alleging claims for Due Process (Ct. I), Fourth Amendment (Ct. II), Failure To Intervene (Ct. III), Federal Conspiracy (Ct. IV), Malicious

Prosecution (Ct. V), IIED (Ct.VI), State Law Conspiracy (Ct. VII), Respondeat Superior (Ct. VIII), Indemnification (Ct. IX)); Ex. D (alleging claims for Due Process (Ct. I), Malicious Prosecution and Detention (Ct. II), Failure Intervene (Ct. III), Conspiracy (Ct. IV), Malicious Prosecution (Ct. V), IIED (Ct.VI), Civil Conspiracy (Ct. VII), Respondeat Superior (Ct. VIII), Indemnification (Ct. IX)); Ex. E (alleging claims for Due Process (Ct. I), Fourth Amendment (Ct. II), Failure Intervene (Ct. III), Conspiracy (Ct. IV), Malicious Prosecution (Ct. V), IIED (Ct.VI), Civil Conspiracy (Ct. VII), Respondeat Superior (Ct. VIII), Indemnification (Ct. IX)); Ex. F (alleging claims for Due Process (Ct. I), Malicious Prosecution and Unlawful Detention (Ct. II), Failure Intervene (Ct. III), Conspiracy (Ct. IV), Malicious Prosecution (Ct. V), IIED (Ct. VI), Civil Conspiracy (Ct. VII), Respondeat Superior (Ct. VIII), Indemnification (Ct. IX)); Ex. G (alleging claims for Fourth and 14th Am and Malicious Prosecution).

Moreover, with respect to these arrests, these Plaintiffs also allege essentially the same exact *Monell* claims. Ex. B at ¶¶ 79-117, Ex. C at ¶¶ 57-93, Ex. D at ¶¶ 57-98, Ex. E at ¶¶ 62-98, Ex. F at ¶¶ 31-63, Ex. G at ¶¶ 48-89.

As alluded to above, Plaintiff Gipson has also raised claims relating to two other arrests by some of the same named Defendants for the January 4, 2003 arrest. *See* Ex. B at ¶¶ 45-50, 66-71. However, despite these claims taking place on different dates and not involving the other Plaintiffs, the allegations in these claims are alleged by Plaintiff Gipson to be related to the January 4, 2003 arrest, at least according to Plaintiff Gipson, insofar as he alleges that his subsequent arrests were retaliation for him complaining about the January 2003 arrest. *See* Ex. B at ¶¶ 45, 181. However, even these allegations are not totally divorced from general theories pursued by other Plaintiffs who have also alleged similar such retaliation or a general failure on behalf to take complaints about the so-called "Watts Team" seriously or adequately investigate allegations against them. Ex. C at ¶¶ 47-49, 83-86, Ex. D at ¶¶ 88-91; Ex. E at ¶¶ 88-91, Ex. G at ¶¶ 79-82.

On November 6, 2023, via a joint status report, Plaintiff unilaterally proposed that this Court begin setting various "test cases" for trial in 2025. *See* Dckt. No. 606 at 2. Under this proposal, Plaintiffs proposed that "[c]ases involving co-arrestees would be consolidated for trial." *Id.* Defendants did not express any view on the matter at that time. *Id.*

Thereafter, on December 29, 2023, this Court ordered that the parties address, via a joint status report, their respective positions on consolidation of cases for trial for co-arrestees in general and specifically address these matters as they pertained to the *Gipson*, *Coleman*, *Giles*, *Lomax*, *Ollie*, and *Roberts* cases. *See* Dckt. No. 648. The parties complied with this Order. *See* Dckt. No. 664.

In that report, while Plaintiffs indicated that they did not "oppose" a single trial for Plaintiff Gipson, Plaintiff did not appear to necessarily have been advocating for trying the *Gipson* case on its own apart from the other five arrestees under all circumstances; rather, Plaintiffs' main contention appeared to be an opposition to having the claims from Plaintiff Gipson's *other arrests* be severed from each other and not tried as part of a consolidated trial. *See* Dckt. No. 664 at 1-3.

For their part, consistent with Plaintiffs' original position on the matter, Defendants advised the Court that they believed consolidation of the *Gipson* case with the other five arrestees "is the most efficient and economical way to proceed for the parties, the court, and prospective jurors" as a result of the same operative facts being at issue, the same set of defendants, and substantial overlap of both fact and expert witnesses. Dckt. No. 664 at 3-4. Defendants also indicated their position that "[i]t would be inefficient and a waste of resources to try these cases arising on the same day from the same investigation and reported in the same Vice Case Report six separate times before six separate juries when they could be tried before one jury in one case together" and that "[i]f the six cases are not consolidated, then the same people will have to testify six separate times in six separate cases before six separate juries, an obviously impractical procedure that could and should be avoided." *Id.* Defendants also expressed reservation about whether Plaintiff Gipson's arrests other than the one

occurring with the other five arrestees on January 4, 2003, should be consolidated but indicated that no final position on this had been made by Defendants. *Id.*

On February 9, 2024, this Court entered an Order "that 18-cv-05120, Gipson v. City of Chicago et al will not be consolidated for trial with the five co-arrestee cases." Dckt. No. 681. This Court noted that "the facts underlying each arrest, and the facts for each case after the arrests themselves are disparate (e.g., Lomax alleges he was beaten by Defendants and they stole his cash, but no other co-arrestee alleges being physically harmed or having property stolen in the same way; Gipson and Coleman were arrested in their cars outside the Ida B. Wells complex, whereas the other four co-arrestees were arrested in or around the Ida B. Wells apartment; Gipson filed a motion to suppress evidence related to his January 2003 arrest whereas no other co-arrestee filed a motion to suppress)." *Id.* This Court also that while "[t]he Court acknowledges that trying the six cases together would serve some economies" that the Court had not "change[d] its initial impression that trying the six-arrestee cases would be unmanageable." *Id.*

On February 22, 2024, the parties appeared before Judge Seeger for the purposes of discussing trial dates and other matters relating to the *Gipson* trial. The *Gipson* trial was thereafter set for April 21, 2025, and Judge Seeger reserved four (4) weeks for this to proceed. During this Court hearing, the issue of consolidation of the other five (5) cases was discussed with Judge Seeger. *See* Ex. A at 22:20-44:25. For their part, Defendants articulated their views expressed herein about the benefits of a joint trial and the extreme burden that proceeding in a different fashion would entail. *Id.* at 23:6-30:19. Plaintiff did not even advance a position on consolidation of the trials for the January 4, 2003 arrestee claims other than saying there were benefits and drawbacks to this and re-affirming their view that Plaintiff Gipson's other arrests should all be tried together. Ex. A at 30:21-31:9, 38:4-38:14.

Ultimately, as noted above, Judge Seeger indicated that he would be willing to try all six (6) cases of all six (6) Plaintiffs together if so agreed by Judge Valderrama but indicated that this issue should involve Judge Valderrama given the prior order on this matter. Ex. A at 27:21-27:22, 31:20-

31:23, 32:2-32:8, 38:15-38:23. Accordingly, Defendants now file this Motion seeking consolidation and reassignment of these six cases for all remaining matters through trial before Judge Seeger.

ARGUMENT

The Trials Of Gipson, Coleman, Giles, Lomax, Ollie, and Roberts And All Other Remaining Pretrial Matters Should Be Consolidated And Reassigned To Judge Seeger.

The trials of *Gipson v. City, et al.*, 18 CVv 5120, *Coleman v. City, et al.*, 19 CV 1094, *Giles v. City, et al.*, 21 CV 4798, *Lomax v. City, et al.*, 19 CV 1095, *Ollie v. City, et al.*, 19 CV 131, and *Roberts v. City, et al.*, 22 CV 674 should be consolidated and reassigned to Judge Seeger for a joint trial and reassignment for all applicable future pretrial proceedings.

The circumstances of this case easily meet all the relevant factors for such relief under Rule 42 and Local Rule 40.4. The defendants, allegations, evidence, and witnesses significantly overlap. To the extent there are slight differences in the claims and allegations between Plaintiffs, these are not sufficient bases to hold separate trials under the case law described below. To the extent Plaintiffs had concerns about the possible severance of Mr. Gipson's claims related to two other instances of alleged police misconduct other than those arising from January 4, 2003, Defendants are willing to proceed on those claims in whichever manner this Court decides is appropriate, either consolidated at trial with the other claims or tried separately.

More importantly, the consequences of holding six separate trials for these six cases would be incredibly dire. This result would require: (1) six separate judges to each reserve an entire month of continuous judicial resources to try these cases to the exclusion of any other cases including criminal cases; (2) six separate judges would be required to each weed through briefing and ruling upon numerous motions in limine and other pretrial submissions; (3) near identical sets of witnesses would need to testify six times each; (4) six separate venires of jurors from the community would need to dedicate an entire month of their lives to adjudicate these cases; (5) the same set of attorneys would need to dedicate the better part of an entire year to preparing pretrial submissions, preparing for trial, and conducting six separate trials on the same issues; and (6) the same set of Defendants would need

to spend six months out of their lives sitting through six trials instead of one. Finally, as noted above, Judge Seeger has agreed to preside over a joint trial of all six cases if such relief is deemed appropriate. Thus, the manageability concerns articulated by Judge Valderrama should hopefully be largely assuaged.

Federal Rule of Civil Procedure 1 makes clear that the rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." *See* Fed. R. Civ. P. 1. Consistent with this, Federal Rule of Civil Procedure 42(a) provides that "[i]f actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." Fed. R. Civ. P. 42(a). "This Rule is designed to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." *Palomares v. Second Fed. Sav. & Loan Ass'n of Chicago*, No. 10-cv-6124, 2010 WL 4672295, *2 (N.D. Ill. 2010) (Coleman, J.).

Relatedly, reassignment of separately filed cases to another judge is governed by Local Rule 40.4. A case is related under LR 40.4, in pertinent part, if "one or more of the following conditions are met:...the cases involve some of the same issues of fact or law;...[or]...the cases grow out of the same transaction or occurrence." L.R. 40.4(a). If the cases are so related under Rule 40.4(a), reassignment for purposes of trial may be ordered before the judge with earliest numbered case if "(1) both cases are pending in this Court; (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases are susceptible of disposition in a single proceeding." *Id.* Cases are "susceptible to disposition [in] a single proceeding" where there is "substantial overlap" between them, including where the "witnesses, counsel, and many of the facts are the same or

substantially similar." *Urban 8 Fox Lake Corporation v. Nationwide Affordable Housing Fund 4, LLC*, 2019 WL 2515984, at *4 (N.D. Ill., 2019).

"The Seventh Circuit has emphasized that related cases pending within the same court should be consolidated before a single judge to avoid wasteful overlap." *Blocker v. City of Chicago*, 2011 WL 1004137, *2 (N.D. Ill. 2011) (Coleman, J.); *Blair v. Equifax Check Servs.*, 181 F.3d 832, 839 (7th Cir. 1999); *see also Smith v. Check-N-Go of Ill., Inc.*, 200 F.3d 511, 513 (7th Cir. 1999) (criticizing district court for allowing numerous related lawsuits to proceed along different tracks before different judges). The primary purpose of consolidation is to promote convenience and judicial economy. *Estrada v. Aerovias de Mexico, S.A. de C.V.*, 2023 WL 8787794, at *2 (N.D. Ill., 2023); *Mabry v. Village Mgmt., Inc.*, 109 F.R.D. 76, 79 (N.D. Ill. 1985). "Efficiency interests provide the first, and strongest, basis for consolidation." *Washington v. Boudreau*, 2023 WL 184239, at *3 (N.D. Ill. 2023).

"Factors the court may consider to determine whether consolidation is appropriate are: (1) the common questions of law and fact; (2) convenience and judicial economy; (3) delay; and (4) undue prejudice to any party." *Estrada*, 2023 WL 8787794, at *2; *Eason v. Illinois DCFS*, 2009 WL 10740445, at *2 (N.D. Ill. 2009); *Sylverne v. Data Search N.Y., Inc.*, No. 08-cv-0031, 2008 WL 4686163, *1 (N.D. Ill. May 28, 2008).

Consolidation can also be ordered when there is a risk of inconsistent rulings or findings inherent in conducting separate trials that touch upon the same factual scenarios or legal issues. *Westfield Ins. Co. v. Indem. Ins. Co. of N. Am.*, 2017 WL 7803767, at *2 (C.D. Ill. 2017); *Marcure v. Lynn*, 2018 WL 11462265, at *1 (C.D. Ill. 2018) ("In exercising that discretion [under Rule 42], the Court considers various factors, including the similarity of the issues of law and fact, whether consolidation will advance the goals of judicial efficiency and avoid inconsistent verdicts..."); *In re Advocate Aurora Health Pixel Litigation*, 2023 WL 2787985, at *1–2 (E.D. Wis. 2023) ("In determining whether to consolidate, [the Court] consider[s] such factors as...avoiding inconsistent or conflicting results.").

With respect to whether there are "common questions of law and fact," the standards for Rule 42 essentially overlap with those for joinder under Rule 20 which refers to common questions generally as being same "transaction, occurrence, or series of transactions or occurrences" which includes "all logically related events entitling a person to institute a legal action against another generally are regarded as comprising a transaction or occurrence." *See Sims v. Schultz*, 2006 WL 8459640, at *5 (N.D. Ill. 2006). This includes an examination of "factors as the time period in which the events occurred, the people involved, the conduct alleged, and the pertinent geographical locations." *Id.*

The law does not require that all questions or law or fact are uniform among the cases or even require that such commonality predominate. *See Laboratories v. Teva Pharmaceuticals USA, Inc.*, 2008 WL 11399700, at *3 (N.D. Ill. 2008) ("Rule 42 provides that '[i]f actions before the court involve a common question of law or fact, the court may ... consolidate the actions.' As the language of the Rule suggests, the actions do not have be identical, nor must common issues predominate."); *Leitermann v. Forefront Dermatology, S.C.*, 2021 WL 11723794, at *1 (E.D. Wis. 2021) ("Common questions of law or fact need not predominate, but there must be at least one.") *citing Enter. Bank v. Saettele*, 21 F.3d 233, 236 (8th Cir. 1994); 9A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 2382 (3d ed. 2008); *Strauss v. Chubb Indemnity Insurance Company*, 2012 WL 13006010, at *1 (E.D. Wis. 2012) ("If multiple actions involve a "common question of law or fact," the court is permitted to consolidate them. Such common questions need not predominate."). Rather, there need only be a single commonality amongst the cases. *See Leitermann*, 2021 WL 11723794, at *1; *see also John v. Advocate Aurora Health, Inc.*, 2022 WL 17342395, at *1 (E.D. Wis. 2022) ("Common questions of law or fact need not predominate, but there must be at least one."). Moreover, similarity in allegations is an appropriate basis for finding commonality even if the underlying allegations are factually distinct in time or location. *See Brunner v. Jimmy John's, LLC*, 2016 WL 7232560, at *2 (N.D. Ill. Jan. 14, 2016) (finding

consolidation warranted in case involving FLSA claims for unpaid overtime "based on highly similar allegations").

Even where there are some factual or legal differences amongst the cases, consolidation is appropriate so long as the evidence supporting the claims has commonalities. *See U.S. v. City of Chicago*, 385 F. Supp. 540, 542–43 (N.D.. Ill. 1974) (consolidating three employment discrimination cases against same employer defendant by plaintiff alleging different legal causes of action; "The absence of Title VII allegations from the Robinson complaint is not fatal to consolidation. The substantive requirements and burden of proof under Title VII and § 1981 are the same. Thus, consolidation will not result in lengthening trial time or confusion of the issues. The evidence supporting Count 1 and discriminatory assignment and discipline claims of Count 2 of the Robinson complaint can readily be heard with the United States allegations of discriminatory discipline, assignments and sex discrimination."). "[C]ommon issues of law and fact…can be resolved in a single proceeding even if some additional facts also have to be determined as to each individual plaintiff." *Anderson v. Cornejo*, 199 F.R.D. 228, 262 (N.D. Ill. 2000) (granting motion for reassignment under LR 40.4); *Peery v. Chicago Housing Authority*, 2013 WL 5408860, at *2 (N.D. Ill. 2013) ("The fact that either case may require other issues, such as evaluating the individual damages of the plaintiffs, to be resolved separately does not negate the fact that the core issues here are virtually identical.").

Even "[f]ingerpointing or mutually antagonistic litigation theories [amongst plaintiffs] do not justify separate trials in [civil] cases…" *See* Order in *Serrano v. Guevara, et al.*, 17-CV-2869 and *Montanez v. Guevara, et al.*, 17-CV-4560, at p. 2, June 23, 2021, attached as Exhibit F) (consolidating two reversed conviction cases for trial). "[T]o the extent the trial is intended to expose the truth, having a single jury sort out competing arguments that everyone admits center around the same core legal theories and facts is a feature not a bug." *Id.*

Applying the above standards, courts have routinely consolidated claims of co-plaintiffs for similar allegations of misconduct against a similar group of defendants even when there are some

factual differences, some differences in legal claims, and even some differences in the time and place where the alleged misconduct at issue may have occurred to some plaintiff. *See Gonzalez v. City of Chicago*, 2014 WL 8272288, at *1–2 (N.D. Ill. 2014) (consolidating claims of false arrest of co-plaintiffs who were arrested during same general incident in aftermath of shooting); *Brunner v. Jimmy John's*, LLC, 2016 WL 7232560, at *2 (N.D. Ill. 2016) (finding consolidation warranted in case involving FLSA claims for unpaid overtime "based on highly similar allegations"); *Freeman v. Bogusiewiz*, 2004 WL 1879045, at *1 (N.D. Ill. 2004) (reassigning cases to same judge involving six plaintiffs involved in arrests in same general vicinity of a parking lot by same group of officers despite that some claims implicated different officers and occurred on entirely different days); *Sims*, 2006 WL 8459640, at *5; *Serrano v. Guevara, et al.*, 17-CV-2869 and *Montanez v. Guevara, et al.*, 17-CV-4560, at p. 2, June 23, 2021 (attached as Exhibit I) (consolidating two reversed-conviction cases for trial); *Washington*, 2023 WL 184239 (same); *see also Lamon v. Stephens*, 2015 WL 1344371, *2 (S.D. Ill. Mar. 23, 2015) (granting motion for consolidation pursuant to Fed. R. Civ. P. 42 due to same allegations against same defendant based upon same time frame); *East v. Lake Cnty. Sheriff Dep't*, 2014 WL 1414902, at *2 (N.D. Ind. Apr. 14, 2014) (granting motion for consolidation pursuant to Fed. R. Civ. P. 42 in light of commonality of facts and issues of law); *Baker v. City of Atlanta*, 2022 WL 18777369, at *1–2 (N.D. Ga. 2022) (consolidating 18 lawsuits arising from same protest because they arose from same incident, alleged similar claims, were represented by same lawyers, and this would expedite matters and prevent inconsistent rulings); *Wiskur v. Short Term Loans*, 1999 U.S. Dist. LEXIS 16745, *1 (N.D. Ill. 1999) (granting a motion for reassignment under L.R. 40.4 because of "the very real possibility of inconsistent rulings"); *21 srl v. Enable Holdings, Inc.*, 2009 U.S. Dist. LEXIS 115530, *6, (N.D. Ill. 2009) (granting motion and noting that "it makes little sense to require two judges to invest the time and effort necessary to understand the technical and factual issues common to both cases" and that "reassignment would save judicial time and effort by avoiding potentially inconsistent rulings").

Several of these cases are illustrative and strongly militate in favor of consolidation. For example, in *Gonzalez v. City of Chicago*, 2014 WL 8272288, at *1–2 (N.D. Ill. 2014), the court consolidated two sets of plaintiffs' Section 1983 lawsuits comprising 8 different plaintiffs, alleging civil rights violations against the same defendants, for pretrial matters and trial. Defendants moved for consolidation, but plaintiffs objected, arguing that the criminal background of one plaintiff may taint the other by association. The Court was unpersuaded. *Id.* at *4. The *Gonzalez* court reasoned that "jury instructions will make clear that the jury is required to consider each claim separately, and the jury will be further instructed on the limitations on use of evidence of prior crimes . . ." *Id.* at *4. The Court further noted that the plaintiffs were represented by separate counsel, "which will aid in preventing any jury confusion about the separate nature of the related lawsuits." *Id.*

Despite some differences in the allegations at issue, as Judge Tharp explained that the benefits of a joint trial was "fairly obvious":

> [A] joint trial will prevent the unnecessary duplication of effort in related cases. The efficiency advantage to a joint trial is fairly obvious. The common witnesses—who predominate—would have to testify only once. Only one jury would be empaneled. The jury instructions and evidentiary rulings would be identical, and the trial conditions the same, so as to prevent any discrepancies in the trials. There will be no arguments regarding issue preclusion. These are but a few of the practical benefits of a joint trial. Accordingly, the Court concludes that joint trial is warranted.
>
> *Id.* at *1-2.

Moreover, the plaintiffs in those cases alleged some differences in the nature of their claims insofar as some plaintiffs alleged their residences were searched, differing kinds of force were allegedly used against some (or no force at all), some were prosecuted for the underlying incident and some were not, and the fact one of the plaintiffs alleged a familial relationship with the shooting victim as a basis for the search). *See Gonzalez v. City, et al*, 11 CV 5681, Dckt. No. 1, *Acosta v. City, et al*, 12 CV 4546, Dckt. No. 1; *see also Gonzalez*, 2014 WL 8272288, at *1 ("The plaintiffs allege, among other things, that they were falsely arrested, subjected to excessive force, and had their homes improperly

searched by Chicago police officers in the aftermath of the shooting—one victim of which was plaintiff Miguel Acosta's brother.").

In *Serrano/Montanez,* the Court consolidated two reversed-conviction cases arising from the same criminal prosecution, despite plaintiffs' objections. (Ex. I at 1). There, the defendants moved for consolidation, but the plaintiffs objected based on prejudice. Montanez argued that sitting near Serrano may adversely affect his case because the jury may hear evidence of Serrano's efforts to conceal or destroy evidence, and Serrano was worried that their respective litigation strategies might set the two plaintiffs against each other. *Id.* at 2. However, the court explained that "[f]inger-pointing or mutually antagonistic litigation theories do not justify separate trials in criminal cases," nor do they justify it in civil cases. (Ex. A at 2)*Id.*. The court further reasoned that "[s]o long as evidence is properly admitted, and if necessary guided by limiting instructions, all parties will receive a fair trial." *Id.* Differences in legal or factual theories (even if antagonistic between plaintiffs) was not a basis to order a separate trial on cases with significantly overlapping witnesses and evidence. *Id.* As explained by the Court:

> [T]o the extent the trial is intended to expose the truth, having a single jury sort out competing arguments that everyone admits center around the same core legal theories and facts is a feature not a bug. Although plaintiffs say that limiting instructions cannot address their worries about prejudicial evidence in a combined trial, I don't see why not. Courts assume that the jury follows the instructions. And nothing about the worrisome evidence seems so inflammatory that a jury will not be able to apply it to the instructions given. Both plaintiffs' credibility will be at issue (whether in one or two trials) and the grisly common facts—murder, police and prosecutorial misconduct, imprisonment, recantations, and dismissal of charges—make it unlikely that the jury will be unfairly prejudiced by additional sordid tales at the margins...And Montanez's speculation that a properly instructed jury would not award the same amount of damages in a joint trial is just that—speculation—not unfair prejudice.
>
> *Id.*

And, as with almost all Courts ordering consolidation, the Court returned to the issue of efficiency and a drain on resources of the Court and witnesses and attorneys as being of paramount importance in determining whether consolidation was appropriate:

> Separate trials would be a significant drain on resources. Having witnesses testify twice and summoning two pools of jurors consumes time and effort from nonlitigants. Forcing one plaintiff and all defendants to wait for a second trial before receiving a result is an unnecessary delay. And scheduling two multi-week civil trials that must necessarily compete for time with criminal cases involving speedy-trial rights is an additional burden on court resources that risks unfair delay for the litigants. The efficiencies gained by a single trial greatly outweigh the plaintiffs' worries about how they will look if tried together.
>
> *Id.*.

In *Washington v. Boudreau*, 2023 WL 184239, *3 (N.D. Ill. 2023), the Court similarly held that consolidation for trial of two reversed-conviction cases arising from the same set of criminal prosecutions was appropriate despite the fact that one plaintiff successfully petitioned an Illinois state court for a Certificate of Innocence while the other had not. *Id.* at *3-4.

The Court held that the fact that both plaintiffs was arrested and prosecuted for the same crimes, were detained at the same police facilities, both alleged similar police misconduct by the same basic group of defendants, both had similar *Monell* claims against the City, and both had their convictions vacated around the same time was sufficient to show "common questions of both law and fact, rendering the actions eligible for consolidation under Rule 42." *Id.* at 4. The fact that one plaintiff had a different outcome to his criminal case in the form of being awarded a Certificate of Innocence was not, in the Court's estimation, sufficient enough of a basis to order a separate trial:

> It is true that Hood has received a COI and Washington has not, but given that their complaints are virtually identical and are brought against the same Defendants, jury instructions can effectively limit that potential prejudice. Accordingly, consolidating Hood and Washington for trial will not prejudice Hood to the point of outweighing the clear efficiency benefits that consolidation brings.
>
> *Id.*

Once again, the efficiency benefits of a joint trial was found to carry the day:

> Efficiency interests provide the first, and strongest, basis for consolidation and outweigh any possible prejudice to Hood. These efficiency benefits including "calling the common witnesses to testify only once; impaneling one jury; consistent jury instructions, evidentiary rulings, and trial conditions; [and] no arguments regarding issue preclusion[.]" Given the considerable

> overlap in facts between Hood and Washington, there are significant benefits to be gained by scheduling one trial to address Hood and Washington's claims against the Defendant Officers (who overlap both cases).
>
> *Id.*

In Sims v. Schultz, 2006 WL 8459640, (N.D.Ill. 2006), two plaintiffs alleged that they were terminated by defendants for speaking up about misconduct by the Willow Springs Police Department. Plaintiffs alleged they were terminated at different times several months apart. *Id.* at *2-3. The factual circumstances and justifications given by defendants for the termination of plaintiff were also different. *Id.* Additionally, one of the plaintiffs also alleged that, in addition to being terminated for exercising his First Amendment rights, that he was also discriminated against under the FMLA arising from his seeking leave for a medical condition. *Id.* at *2-3. Nonetheless, the Court found consolidation of the claims appropriate because they generally followed a similar factual theory of having been retaliated against for speaking up about misconduct. *Id.* First, the Court found that the cases were similar enough in their general thrust of the nature of defendants' alleged misconduct to justify consolidation even if there were factual differences in exactly how they were retaliated against by these defendants:

> [A]n examination of the nature and basis of the plaintiff's respective suits demonstrates that Sims and Wiseman seek relief from the same series of logically related events. Both men are former WSPD patrol officers who were employed by the WSPD during an overlapping time period and were terminated approximately two months apart. They also allege that they were terminated for the same reasons....Each plaintiff was interrogated multiple times by the same defendants regarding these incidents, and each plaintiff s letter of termination references his involvement with these incidents.... Finally, the plaintiffs have sued the exact same group of defendants, and for the most part have alleged that the same defendants took the same actions vis-a-vis the plaintiffs in each relevant circumstance. In sum, Sims' case overlaps with Wiseman's case to a substantial degree, and thus arises from the same series of events.
>
> *Id.* at *5.

The Court also explained that the savings of judicial resources by consolidation strongly favored consolidation despite some differences and held that any challenges could easily be addressed through trial advocacy and jury instructions:

> Separate trials would therefore be a tremendous waste of judicial resources, and the court will not sanction such a result absent an equally countervailing justification, such as exceptional prejudice to the defendants. There is no indication that such a factor is at play in this case; the defendants have not even argued that they would be prejudiced by a single trial. If anything, consolidating Sims' case with Wiseman's will result in a net savings of time, money, and effort for all of the parties given the extent to which the plaintiffs' cases are related. Likewise, the defendants' concern that trying the plaintiffs' cases together may be confusing to the jury is a concern that can be easily resolved with effective trial advocacy. In this case, the plaintiffs' story may actually be less confusing if it is told jointly. Accordingly, the court determines that Sims' case will be consolidated and tried with Wiseman's pursuant to Rule 42(a).
>
> *Id.* at *5-6.

In *Freeman*, the district court reassigned and consolidated two cases involving six different plaintiffs who claimed their rights were violated by numerous individual police defendants during an arrest near the same parking lot. *Freeman*, 2004 WL 1879045, at *1. The Court found this appropriate even though certain plaintiffs sued and accused some different defendants of violating their rights during the incidents. *Id.* at *2 ("The facts in both complaints are similar and grow out of an incident in a parking lot in Chicago on April 17, 2003 between several Chicago police officers and the plaintiffs. Essentially, both complaints allege that the plaintiffs were subjected to excessive force and other unlawful conduct by several Chicago police officers in a parking lot. Although the Parker complaint names three more defendants than the Freeman complaint, the court notes that all of the named defendants in *Freeman* are also named defendants in *Parker*. The court also notes that both *Freeman* and *Parker* involve some of the same issues of law. Specifically, each action seeks relief under 42 U.S.C. § 1983, as well as a list of similar, if not identical, claims under Illinois state law.").

Indeed, the claims of certain plaintiffs alleged that their rights were violated in this same vicinity on several different days over a period of several months (i.e. not all of the incidents at issues happened during the same day or even same month). *Id.* at *1 (alleging claims by various plaintiff for incidents occurring on April 17, 2003, April 26, 2003, and January 25, 2004). The Court found that

these differences did not render these cases incapable of being disposed of at a single proceeding. *Id.* To wit:

> Plaintiff Parker argues that Parker should not be reassigned. He contends that although the complaints in both Freeman and Parker allege the same misconduct at an incident that occurred on April 17, 2003, each complaint also contains a separate incident of misconduct by certain Chicago police officers. Further, Plaintiff Parker maintains that unlike the Freemen Plaintiffs, he has chosen to pursue three additional counts in his complaint. Plaintiff Parker's objection to reassignment is without merit. The fact that each complaint alleges a separate incident of misconduct or that the complaint in Parker contains additional counts, does not preclude the two cases from being disposed of in a single proceeding. The overwhelming factual and legal issues presented in both the Freeman and Parker complaints revolve around the incident that occurred on April 17, 2003. The facts and issues in both cases are similar in nature and can be handled more efficiently in one proceeding. Accordingly, this court finds that the cases are susceptible of disposition in a single proceeding.
>
> *Id.*

Applying the analysis of these courts, consolidation is clearly appropriate in this case. First, again, there can be no real dispute that these cases share many common issues of fact and law. All the plaintiffs were arrested in the same general area at the same time and by the same group of defendants. Their claims are virtually identical and their *Monell* claims are identical. All of their convictions were overturned on the same identical allegations of misconduct relating to Defendants Watts and Mohammed and all received Certificates of Innocence on the same identical allegations. More importantly, their arrests and prosecutions were all interdependent. Each plaintiff was accused of (and convicted of) acting in concert and connection with all the other plaintiffs in a singular drug operation with each plaintiff playing a role committing a connected series of criminal offenses. Some were accused of supplying drugs to others. Others agreed to serve as security for others' attempts to deliver or sell drugs. The fact that some persons were ultimately taken into custody in a car versus a lobby is not particularly material to whether each was, in fact, involved in criminal activity. And, even if it were, again, the law does not require that the factual or legal issues are identical or even predominate but, rather, requires only a single common issue of fact or law. This unquestionably exists here.

While there would arguably be a basis to consolidate these cases even if the plaintiff were simply all accused of being rounded up in the same general drug sale location, the fact that each plaintiff was accused (and convicted) working together makes their claims all inherently and intimately related. And a joint trial resolving all these issues will prevent any possible inconsistent outcomes at trial. Thus, there are clearly commonalities here to satisfy the requisite standards. Frankly, given the interconnected factual circumstances involved in all of Plaintiffs' arrests for the January 4, 2003 incident, the risk of inconsistent findings from six separate trials seems almost inevitable.

The fact that some Plaintiffs filed motions to suppress while other Plaintiffs did not is not particularly material to their claims nor does it stand in the way of consolidation. Each ultimately pleaded guilty to the offenses at issue. Each had their conviction overturned. And each received a Certificate of Innocence. As explained by Judge Kness in rejecting a far more consequential procedural difference (i.e. one plaintiff with a COI and the other not), such differences are simply not a sufficient basis to order separate trials and can be dealt with through trial advocacy and jury instructions. This similarly occurred in *Gonzalez* where some plaintiffs were prosecuted and others were not and some alleged physical abuse while others did not.

Most importantly, consolidation will mitigate an undue burden on the judicial system and witnesses, jurors, parties and attorneys. Again, as noted above, the alternative to consolidation is that six different judges will need to preside over six different trials which will include almost identical witnesses. This morass is made even more problematic by the fact that each of these trials would last several weeks. This would not only waste judicial resources and force different members of the community to serve as jurors, but this would also, by definition, prevent other litigants (both criminal and civil) from being able to use limited judicial resources of the other currently assigned judges.

Nor does the fact that Plaintiff Gipson makes claims related to two other overturned convictions override the benefits of consolidation. Again, given the fact that Rule 42 and Local Rule 40.54 do not require that all facts be common, consolidated trials contained separate claims for

separate plaintiffs in addition to common claims are not improper. Indeed, this is precisely what occurred in both *Freeman* and *Sims* discussed above.

CONCLUSION

WHEREFORE for the reasons stated above, pursuant to Fed. R. Civ. P. 42 and Local Rule 40.4, Defendants pray this Court consolidate *Gipson v. City, et al.*, 18 CV 5120, *Coleman v. City, et al.*, 19 CV 1094, *Giles v. City, et al.*, 21 CV 4798, *Lomax v. City, et al.*, 19 CV 1095, *Ollie v. City, et al.*, 19 CV 131, and *Roberts v. City, et al.*, 22 CV 674 before Judge Steven Seeger for the purposes of trial and for all remaining pretrial matters and for whatever other relief this Court deems fit.

Respectfully submitted,

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