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

Germin Sims and Robert Lindsey,	)	
	)	No. 19-cv-2347
Plaintiffs,	)	
	)	*(Judge Pallmeyer)*
-vs-	)	
	)	
City of Chicago, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT OF CITY OF CHICAGO (ECF No. 118)

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Plaintiffs Germain Sims and Robert Lindsey are two of more than 175 victims of "widespread corrupt policing" *In re T.C.*, 2024 IL App (1st) 221880, ¶ 3, 259 N.E.3d 164, 167 (2024), in which Chicago police officers "framed numerous innocent people … resulting in over 200 overturned convictions in what amounted to one of the most momentous examples of police corruption in Chicago history." *People v. Dobbins*, 2024 IL App. (1st) 230566, ¶ 5, 253 N.E.3d 506, 508 (2024).

Plaintiffs seek damages from the officers and their employer, the City of Chicago. All defendants have moved for summary judgment. Plaintiffs respond in this memorandum to the motion filed by defendant City of Chicago. (ECF No. 118, 130.)

I. The Frivolous "Scope of Employment" Argument on Plaintiffs' State Law Malicious Prosecution Claims

The Court should reject the City's scope of employment argument on plaintiffs' state law malicious prosecution claims.[1] (ECF No. 130 at 29-33.)

[1] This is the only argument properly raised on these claims. The City also briefly asserts that plaintiffs' vacated guilty pleas bar their state law malicious prosecution claims. (ECF No. 130 at 1) The City makes this argument only in a cursory footnote offered without legal support. (*Id.* at 29 n.13.) The Court should decline to consider this undeveloped argument. *United States v. Useni*, 516 F.3d 634, 658 (7th Cir. 2008).

The individual defendants raise the "vacated guilty plea" argument in response to plaintiffs' federal claims. (ECF No. 128 at 6-10.) Plaintiffs show in their response to the individual defendants' submission why the Court should reject this argument.

The Seventh Circuit rejected defendant's scope of employment argument in *Argento v. Village of Melrose Park*, 838 F.2d 1483 (7th Cir. 1988), *Wilson v. City of Chicago*, 120 F.3d 681 (7th Cir. 1997), and *Yang v. City of Chicago*, 137 F.3d 522 (7th Cir. 1998). These cases applied the settled law that police officers act within the "scope of employment" when, while on duty and making an arrest, the officers misuse their office to deprive someone of federal rights.

This rule applies whether the misconduct involves the use of excessive force, as in *Argento* and *Yang*, or torturing an arrestee to coerce a confession, as in *Wilson*. The rule consistently applied in this circuit is that a police officer whose acts "were designed to further the objectives of his employment … but used quite improper methods of carrying out those duties," is acting within the scope of employment. *Hibma v. Odegaard*, 769 F.2d 1147, 1153 (7th Cir. 1985) (cleaned up).

The City fails to offer any reason why the Court should depart from the law of the circuit and hold for the first time that police officers making arrests and initiating prosecutions are acting outside the scope of their employment.

The cases relied on by the City, *Rivera v. City of Chicago*, No. 03 C 1863, 2005 WL 2739180 (N.D. Ill. Oct. 24, 2005); and *Garcia v. City of*

Chicago, No. 01 C 8945, 2003 WL 1715621 (N.D. Ill. Mar. 20, 2003), are readily distinguishable. The misconduct in *Rivera* was stealing drugs and money, wrongdoing that did not further the objectives of the police department. *Rivera*, 2005 WL 2739180, at *5. In addition, as one court explained when it distinguished *Rivera*, the officer there was "employed in non-emergency call center with no patrol." *Fuery v. City of Chicago*, No. 07 C 5428, 2014 WL 1228718, at *6 n.13 (N.D. Ill. Mar. 25, 2014), *subsequent post-trial ruling on sanction affirmed*, 900 F.3d 450. The officers here, like the defendant who allegedly used excessive force in *Fuery*, had patrol duties. They committed the alleged misconduct while working in the field.

The misconduct in *Garcia* was an assault committed by an off-duty officer that was not "committed for any reason other than his pure personal benefit." *Garcia*, 2003 WL 1715621, at *11-*12. The same cannot be said about on-duty officers making arrests and initiating prosecutions.

The Court should reject the City's "scope of employment" argument.

II. Plaintiffs Will Present Evidence to Warrant Trial on Their *Monell* Claim

The City has moved for summary judgment on plaintiffs' *Monell* claim, asserting that plaintiffs "have failed to produce evidence." (ECF No. 118 at 2, ¶ 3.) Trial, of course, has not yet begun and this memorandum is plaintiffs' first opportunity to "produce evidence."

The City's argument appears to be that plaintiffs will be unable to produce enough evidence at trial to withstand a motion for judgment as a matter of law. This is a *Celotex*-type summary judgment motion, where the movant asserts that the opposing party is unable to "make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Plaintiffs set out below the necessary showing to overcome defendant's motion.

A. The Court should reject the City's attempt to reframe plaintiffs' *Monell* claim

The dominant theme of the City's summary judgment motion is that the Court should analyze plaintiffs' *Monell* claim as three separate causes of action: A "citywide unconstitutional practice" (ECF No. 130 at 8-11), a "code of silence" (ECF No. 130 at 11-16), and a failure to discipline.[2] (ECF No. 130 at 26-29.) The Court should reject this attempt to reframe plaintiffs' *Monell* claim because "plaintiff is the master of his own complaint." *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 986 (7th Cir. 2000).

Plaintiffs present a single claim of *Monell* liability, which starts in the "usual way" with evidence of "a series of bad acts," *Jackson v. Marion*

[2] As to each of the reframed claims, the City asserts that plaintiffs are unable to show deliberate indifference (ECF No. 130 at 16-21) and that the wrongdoing was not the "moving force" of plaintiffs' constitutional injuries. (ECF No. 130 at 21-24.) Plaintiffs respond to these objections below at 20-23.

County, 66 F.3d 151, 152 (7th Cir. 1995), specifically the criminal enterprise at the Ida B. Wells housing project. The City borrows language from plaintiffs' complaint, explaining that the criminal enterprise involved a "practice of robbery and extortion, planting or fabricating evidence, or manufacturing false charges against innocent persons." (ECF No. 130 at 9.) As set out more fully below, plaintiffs also rely on an expert analysis of the Chicago Police Department's defective disciplinary system.

B. The Watts criminal enterprise involved repeated acts of police wrongdoing

178 separate lawsuits have been filed in this district for persons arrested by the police officer defendants, convicted of offenses in the Circuit Court of Cook County, and subsequently exonerated because of the wrongdoing of the police officer defendants (Additional Facts in Response to City's Motion ¶ 3.)

The City does not argue that plaintiffs' evidence of 178 victims of the Watts criminal enterprise fails to "permit the reasonable inference that the practice is so widespread so as to constitute a governmental custom." *Gill v. City of Milwaukee*, 850 F.3d 335, 344 (7th Cir. 2017). Plaintiffs will therefore not discuss that evidence further: As the Seventh Circuit made plain in *Lesiv v. Illinois Central Railroad Company*, 39 F.4th 903 (7th Cir. 2022), "a party opposing a motion for summary judgment needs to respond only to

arguments the moving party actually made, not others that the moving party might have made but did not." *Id.* at 914-15.

Rather than argue that 178 victims are not enough to show a widespread policy, the City asserts that plaintiffs must prove that this policy was of "city-wide" application. Plaintiffs show below that this argument is without merit.

C. A municipality can be liable under 42 U.S.C. § 1983 for a widespread practice limited to a single public housing project

Defendant challenges plaintiffs' evidence of a widespread practice by asserting that evidence of the Watts criminal enterprise fails because it was not a "citywide practice," that is, the wrongdoing was limited to the Ida B. Wells housing project. (ECF 130 at 9.) The Court should reject this novel theory.

The City contends that an actionable *Monell* claim must extend to the Chicago police department "as a whole." (ECF No. 130 at 9.) Defendant does not assert that plaintiffs are unable to prove that the defendant officers framed plaintiffs and more than 175 other persons at the Ida B. Wells public housing project. Nor does the City argue that plaintiffs' evidence falls short of establishing a widespread practice. The City challenges plaintiffs' evidence of a widespread "practice of robbery and extortion, planting or fabricating evidence, or manufacturing false charges against innocent persons"

(ECF No. 130 at 9) solely on the ground that the widespread practice was limited to a single public housing project.

Nothing in *Monell* nor its progeny requires a "citywide practice." A litigant seeking to impose liability under § 1983 on a municipality for an unwritten practice must show that that it is so "persistent and widespread," *Connick v. Thompson*, 563 U.S. 51, 61 (2011), to provide "actual or constructive notice" that the practice is causing constitutional violations. *Id.* at 61-62. To be actionable, the widespread practice must be "so pervasive that acquiescence on the part of policymakers was apparent and amounted to a policy decision." *Dixon v. County of Cook*, 819 F.3d 343, 348 (7th Cir. 2016).

That this rule does not require showing that the practice pervades the entire entity is shown by *Whitney v. Khan*, No. 18 C 4475, 2021 WL 105803 (N.D. Ill. Jan. 12, 2021) where the district court upheld *Monell* liability for a case challenging dental care limited to one housing unit at the Cook County Jail.

The City is unable to cite any authority for its claim that plaintiffs must prove that the wrongdoing was "a citywide practice." (ECF No. 130 at 9.) While the City relies (ECF No. 130 at 11) on language from *Rossi v. City of Chicago*, 790 F.3d 729 (7th Cir. 2015), that case is not on point.

The plaintiff in *Rossi* sought to prove a "code of silence" *Monell* claim.[3] *Id.* at 737. The Seventh Circuit recognized that this claim "raise[s] serious questions about accountability among police officers," *id.*, but held that plaintiff could not defeat summary judgment with "judicial comments [that] do not qualify as evidence." *Id.* at 738. Nothing in *Rossi* forecloses *Monell* liability for "widespread practices on the part of a large and diverse institution such as [the] Chicago Police Department" *id.*, when, as in this case, the widespread practice is limited to a single public housing project and resulted in the wrongful conviction of nearly 200 persons.

In addition to evidence about the impact of the criminal enterprise on nearly 200 persons, plaintiffs rely on reports by the City's "Civilian Office of Police Accountability" ("COPA"), by two "Blue Ribbon Commissions" of the City of Chicago, and a 2017 report by the United States Department of Justice. (Additional Facts in Response to City's Motion ¶¶ 4-7, 9-16, 18-21.) Plaintiffs show below that the Court should reject the City's objections to these materials.

[3] Plaintiffs in this case also raise a "code of silence" *Monell* claim and support it with expert testimony that was lacking in *Rossi*. *See below* at 11-17.

D. Reports by COPA and by the Department of Justice are admissible under Fed. R. Evid. 803(8)(A)(iii)

Plaintiffs rely on investigative reports by COPA to provide evidence of the criminal enterprise. Plaintiffs also rely on the 2017 Report by the United States Department of Justice to provide evidence of the City's failure to discipline police officers, as well as its deliberate indifference to reports of the Watts criminal enterprise at Ida B. Wells. Defendant asserts that the DOJ report is "inadmissible hearsay." (ECF No. 130 at 15 n.7.) The City would likely make the same objection to the COPA reports. Each objection is without merit.

The 2017 DOJ Report (Plaintiffs' Exhibit 17) is admissible under FED. R. EVID. 803(8)(A)(iii) which provides that "in a civil case … factual findings from a legally authorized investigation" are not hearsay.

The DOJ wrote its 2017 Report pursuant to 42 U.S.C. § 14141, which authorizes the Attorney General to bring a civil action for declaratory and equitable relief in response to "a pattern or practice of conduct by law enforcement officers … that deprives persons of rights, privileges, or immunities secured or protected by the Constitution of the United States." (Additional Facts in Response to City's Motion ¶ 4.) The Report therefore followed "a legally authorized investigation" and its factual findings are not hearsay. *Daniel v. Cook County*, 833 F.3d 728, 740-42 (7th Cir. 2016).

The same rule applies to findings made by COPA, which was created by the City of Chicago to investigate misconduct complaints against Chicago police officers. Chicago Municipal Code, Chapter 2-78. (Additional Facts in Response to City's Motion ¶ 8.) Plaintiffs rely on factual findings COPA made after its investigation of four complaints about the Watts criminal enterprise. (Plaintiffs' Exhibits 18-21.) As with the DOJ Report, the COPA reports are not hearsay under FED. R. EVID. 803(8)(A)(iii). In addition, because COPA is an arm of the City, its reports are statement of a party and are not hearsay under FED. R. EVID. 801(d)(2), discussed below.

E. The reports of the "Commission on Police Integrity" and the "Police Accountability Task Force" report are not hearsay

On February 7, 1997, the Mayor of the Chicago appointed a "Commission on Police Integrity" to "examine the root causes of police corruption." (Additional Facts in Response to City's Motion ¶ 9.) One of the recommendations of the Commission was that "the Chicago Police Department look ... at units within the Department … to identify specific units which have a higher than usual rate of allegations of misconduct." (*Id.* ¶ 10.)

The City appointed another commission in 2016, the "Police Accountability Task Force." (Plaintiffs' Exhibit 20.) One of the findings of the Task Force was that "Chicago's police accountability system is broken." (Additional Facts in Response to City's Motion ¶ 12.)

Defendant asserts that the Task Force Report is inadmissible hearsay (ECF No. 130 at 15 n.7) and would likely offer the same objection to the report of the Commission on Police Integrity. Each report, however, is admissible under FED. R. EVID. 801(d)(2) as a statement of an opposing party. *E.g.*, *Estate of McIntosh by Lane v. City of Chicago*, No. 15-CV-01920, 2022 WL 4448737, at *12 (N.D. Ill. Sept. 23, 2022). The same is true for the COPA reports discussed above.

F. The "Code of Silence" facilitated the Watts criminal enterprise

A "code of silence" discourages "employees from reporting fraudulent behavior." *Murray v. UBS Securities, LLC*, 601 U.S. 23, 27 (2024) (cleaned up). In a street gang, the code "includes a pledge not to cooperate with law enforcement" and promises punishment to those who flout the rule. *United States v. Nieves*, 58 F.4th 623, 627 (7th Cir. 2023). In a police department, the code is "induced by peer pressure among the rank-and-file officers and among some police supervisors." *Brandon v. Holt*, 469 U.S. 464, 467 n.6 (1985).

The Seventh Circuit has "recognized that a defendant's 'code of silence' can give rise to a valid *Monell* claim." *Giese v. City of Kankakee*, 71 F.4th 582, 589 (7th Cir. 2023). This is because one result of a code of silence

is "making the officers believe their actions would never be scrutinized." *Sledd v. Lindsay*, 102 F.3d 282, 289 (7th Cir. 1996)

The City does not dispute this rule but challenges plaintiffs' evidence as only relevant to excessive force claims. (ECF No. 130 at 15.) The City is unable to support this argument with facts or law.

1. Plaintiffs' code of silence evidence is not limited to excessive force cases

The Police Accountability Task Force found that "[t]he code of silence is institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City." (Additional Facts in Response to City's Motion ¶ 13.) Nothing in the Task Force report suggests that the code of silence is limited to excessive force cases. (*Id.* ¶ 14.) On the contrary, the Task Force acknowledged that "false arrests, coerced confessions, and wrongful convictions are also a part of this history [of police misconduct in Chicago]." (*Id.* ¶ 15.)

The Department of Justice found in its 2017 Report that "a code of silence among Chicago police officers exists, extending to lying and affirmative effort to conceal evidence." (Additional Facts in Response to City's Motion ¶ 5.) The DOJ did not make any finding that the code of silence was limited to excessive force cases but found that the code of silence "exists and officers and community members know it" and that the code of silence

"constitutes a deliberate, fundamental, and corrosive violation of CPD policy." (*Id.* ¶ 6.) The City is simply wrong in characterizing the DOJ report as limited to "allegations of excessive force and officer-involved shootings." (ECF 200 at 21.)

The City is mistaken in relying on *Page v. City of Chicago*, No. 19-CV-07431, 2021 WL 365610, at *3 (N.D. Ill. Feb. 3, 2021). (ECF No. 130 at 13.) An express finding in *Page* is that the admission by then Mayor Emmanuel about the existence of a code of silence within the Chicago Police Department "sufficiently supports the allegation that the CPD maintained a 'code of silence.'" *Id.* at *3. The Court found against the plaintiff in *Page* because he had "failed to adequately allege facts showing the requisite causal connection to allow the Court to plausibly infer that the 'code of silence' was the moving force behind his injury." *Id.* The same is not true here.

2. Plaintiffs' code of silence evidence is temporally relevant

Then-Mayor of Chicago Rahm Emanuel told the Chicago City Council on December 9, 2015 that there was a "code of silence" in the Chicago Police Department. (Additional Facts in Response to City's Motion ¶ 16) The City does not disagree that this statement is admissible as a statement of a party under Rule 801(d)(3)(D) but asserts that it is not relevant because it was made "years after the events giving rise to Plaintiffs' lawsuit." (ECF No.

130 at 13.) But plaintiffs' evidence shows that the code of silence was the standard operating procedure of the Chicago Police Department as long ago as 1994.

In May of 1994, new police officers were taught at the Police Academy not to "break the code of silence. Blue is blue. You stick together. If something occurs on the street that you don't think is proper, you go with the flow …[Y]ou never break the code of silence." (Additional Facts in Response to City's Motion ¶ 17.)

The COPA reports provide evidence that the code of silence was the standard operating procedure when plaintiffs were arrested. COPA made the following findings that support the existence of the code of silence:

Officers Summers and Ridgell, members of the Watts tactical team, arrested Jamar Lewis (plaintiff in 19-cv-7552) without lawful justification, made reports documenting the arrest containing information that they knew to be false, and provided false testimony to secure Lewis's conviction. (Additional Facts in Response to City's Motion ¶ 18.)

On April 24, 2006, after defendants Watts and Jones had arrested Lionel White (plaintiff in 17-cv-2877) without any lawful basis, defendants Mohammed, Smith, Gonzalez, Bolton, Manuel Leano, and Nichols unlawfully arrested 11 persons at the Ida B. Wells projects and prepared false police

reports incorporating the made-up story that each arrestee had approached an officer, asked for narcotics and tendered cash. (Additional Facts in Response to City's Motion ¶ 19.)

On December 11, 2005, police defendants Watts and Jones falsely arrested Ben Baker and Clarissa Glenn (plaintiffs in 16-cv-8940) because they had resisted demands from the officers to pay for protection. (Additional Facts in Response to City's Motion ¶ 20.) After making the unlawful arrests, Watts and Jones submitted false police reports, and Jones then testified falsely under oath at court proceedings. (*Id.*)

On March 3, 2008, defendants Nichols and Leano sought to conceal the unlawful arrest of Angelo Shenault Jr. by preparing false police reports and presenting perjured testimony at court proceedings. (Additional Facts in Response to City's Motion ¶ 21.) Defendant Jones knew that Shenault, Jr. had been unlawfully arrested but did not take any action to correct the wrongdoing. (*Id.*)

In 2016, the City of Chicago, through its "Police Task Force," described the code of silence as "deeply entrenched" in the Chicago Police department. (Additional Facts in Response to City's Motion ¶ 13.) The Task Force concluded that "[t]he code of silence is institutionalized and reinforced

by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City." (*Id.*)

The City is in error in describing as "too remote" the 2008 coverup of the unlawful arrest of Shenault, as well as the 2016 finding of defendant's Police Accountability Task Force that the code of silence was "deeply entrenched" in the Chicago police department. (ECF No. 130 at 13.) This case involves police misconduct that began as early as June 25, 2002, when Rickey Henderson, the plaintiff in 19-cv-129, was framed by members of the Watts team. (Additional Facts in Response to City's Motion ¶¶ 22-23.) It continued into 2009 when Angelo Shenault Jr. was again framed by members of the Watts team. (Additional Facts in Response to City's Motion ¶¶ 24-25.) Assuming the truth of plaintiffs' allegations, as the Court must, this misconduct continued at least through October 15, 2009, when plaintiffs were framed by members of the Watts team.

Defendant's reliance on *Calusinski v. Kruger*, 24 F.3d 931, 936 (7th Cir. 1994) is misplaced. (ECF No. 130 at 14.) *Calusinski* was an excessive force case; the plaintiff sought to establish a policy with evidence that more than three years after he had been arrested, the defendant officer had "allegedly used excessive force while making an arrest in a domestic violence incident." *Id.* at 36. *Calusinski* involved two isolated incidents of alleged

wrongdoing; this case involves a "criminal enterprise" that extended over more a seven-year period and involves more than 175 persons who were framed during the enterprise.

3. The Court should reject the City's attempt to redefine "code of silence"

The Court should reject the City's argument that when police officers are "engaged in a criminal enterprise" (like the officer defendants in this case) a police department's code of silence is irrelevant because the officers are "conceal[ing] each other's misconduct because of the mutual benefit to each other (i.e., they did not want to be caught), rather than because of some vague 'code of silence' within CPD that officers would not turn each other in." (ECF No. 130 at 11.) This factual argument could be presented to a jury, but there is no basis for the Court to find, as a matter of law, that the code of silence neither encouraged nor facilitated the officers' wrongdoing.

G. Expert evidence of failure to train, supervise, and discipline

In addition to the evidence discussed above, plaintiffs support their *Monell* claim with expert opinions from Dr. Jon M. Shane. Dr. Shane concluded that the City's police disciplinary system was ineffective when investigations were undertaken by the "Office of Professional Standards" and by the "Independent Police Authority," which replaced OPS in 2007. (Additional Facts in Response to City's Motion ¶ 26.) Professor Shane explains

his opinion in his report, and also explains the data on which it is based. (*Id.*, ¶ 32.)

Dr. Shane examined 586 allegations of misconduct against the Defendants. (Additional Facts in Response to City's Motion ¶ 27.) Only one of nearly 150 allegations that are similar to plaintiffs' allegations here, including allegations of dishonest conduct (i.e., lying, theft, and other integrity violations) and unlawful search, entry, or arrest, was sustained. (*Id.*) The CPD frequently failed to interview the accused officers or even conduct any investigation of complaints in these investigations. (*Id.* ¶ 28.)

Dr. Shane's primary opinions are as follows:

1. The Chicago Police Department did not follow accepted practices for conducting police misconduct investigations, and CPD's investigations did not meet nationally accepted standards.

2. The defendant officers accrued complaints at a rate that notified officials of a need for intervention and supervisory measures to stop adverse behavior and correct deficiencies, and the City's response to that notice did not comport with nationally accepted standards.

3. The Chicago Police Department's accountability systems from 1999-2011 did not meet nationally accepted standards and did not effectively respond to patterns of allegations against officers that emerged during that time.

(Additional Facts in Response to City's Motion ¶¶ 29-31.) Plaintiffs show in a contemporaneously filed memorandum that the Court should overrule defendant's motion to bar Dr. Shane's expert opinions.

Dr. Shane's opinions are consistent with the historical record. The 1972 Metcalfe Report found that internal affairs "… complaints from citizens of abusive conduct by police are almost universally rejected by the Police Department's self-investigation system" (Additional Facts in Response to City's Motion ¶ 33.)

This material is enough evidence for a jury to find that the City did not have an effective police disciplinary system when the Watts criminal enterprise was underway.

The City is mistaken in relying on its Rules (ECF No. 130 at 26) as eliminating any factual support for the code of silence. The Department of Justice found in 2017 that CPD's Rule 14, which prohibits making false statements, "is largely ignored." (Additional Facts in Response to City's Motion ¶ 7.)

Dr. Shane's expert opinions are no different from evidence that courts routinely find is enough to overcome summary judgment. For example, in *Sornberger v. City of Knoxville*, 434 F.3d 1006 (7th Cir. 2006), the Seventh Circuit reversed the grant of summary judgment by relying on the opinions of a criminologist who had reviewed complaints against Galesburg police officers and concluded that there was a pattern of misconduct. *Id.* at 1030.

Similarly, in *Velez v. City of Chicago*, No. 1:18-CV-08144, 2023 WL 6388231 (N.D. Ill. Sept. 30, 2023), the district court relied on the opinion of plaintiffs' expert "on the integrity of CPD misconduct investigations from 1996 to 2001" to deny summary judgment on a claim that failure to discipline. *Id.* at *24-*25.

The court reached the same result in *Washington v. Boudreau*, No. 16-CV-01893, 2022 WL 4599708 (N.D. Ill. Sept 30, 2022), relying on expert testimony based on the same type of data used here by Dr. Shane, to conclude that the City's police officer accountability system is "broken." *Id.* at *11.

As in *Velez*, *Washington*, and other cases, the expert testimony requires that the Court deny the City's motion for summary judgment.

H. The disputed facts of deliberate indifference and "moving force"

The City acknowledges that in 2004, it suspected former Sergeant Watts and his tactical team of wrongdoing, but it allowed the defendant officers to continue their corrupt policing until 2011. (ECF No. 130 at 16-22.) This conduct is the definition of "deliberate indifference." Here, the City knew that police officers at the Ida B. Wells housing project were engaged in serious wrongdoing; rather than preventing continued harm from the police misconduct, the City decided to look the other way, resulting in the

wrongful prosecution of more than 175 persons who would become victims of the criminal enterprise.

The City's decision to allow Watts and his team to continue to work at Ida B. Wells meets the Eighth Amendment standard of deliberate indifference the Supreme Court discussed in *Farmer v. Brennan*, 511 U.S. 825 (1994). Here, the City knew of and disregarded "an excessive risk" to the safety of persons who lived at the housing project; the City's policy makers were "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," and there is sufficient evidence of record from which a jury could find that the City's policy makers' drew the inference.

There is also enough evidence for a jury to find that the City's practices were a "moving force" of the police misconduct. When, as here, plaintiffs support their claim with expert evidence, summary judgment is routinely denied.

For example, in *Estate of Loury v. City of Chicago*, No. 16-cv-4452, 2019 WL 1112260, at *3 (N.D. Ill. Mar. 11, 2019), the district court denied summary judgment on a *Monell* claim for the use of excessive force that occurred in April 2016, finding that the expert reports created genuine issue of material fact about existence of code of silence:

> Viewing the evidence in the light most favorable to plaintiff, the Court concludes that a reasonable jury could find that Officer Hitz's decision to shoot Loury was caused by a belief that he was impervious to consequences due to CPD's willingness to tolerate a code of silence and failure to investigate.

Id. at *7.

The district court reached a similar conclusion based on statistical reports and public records in *Marcinczyk v. Plewa*, No. 09 C 1997, 2012 WL 1429448 (N.D. Ill. Apr. 25, 2012):

> Marcinczyk has presented sufficient evidence for a reasonable trier of fact to infer that the moving force underlying Plewa's alleged misconduct was a belief that his misconduct would not be discovered and that, even if discovered, he would not face any effective disciplinary action resulting from such misconduct. Marcinczyk has presented sufficient evidence to show that Plewa's belief was based upon the alleged City practice at issue in this case. Marcinczyk is not required at this juncture to establish causation by a preponderance of the evidence. It is sufficient that a reasonable trier of fact could find that causation exists.

Id. at *4.

In *Klipfel v. Gonzalex,* No. 94-cv-6415, 2006 WL 1697009 (N.D. Ill., June 8, 2006), the district court found that the lay opinion testimony of a prosecutor created a genuine issue of material fact about the existence of r a "blue wall of silence" to cover up misconduct:

> Viewing the facts and making all reasonable inferences in favor of the plaintiffs, the court finds that the evidence discussed above creates a genuine issue of material fact as to whether Miedzianowski believed that he could retaliate against the plaintiffs because other police officers would not turn him in for

> the retaliatory conduct and that any efforts by the City to investigate the plaintiffs' claims against him would be bogus-in other words, whether the City's policy of tolerating the code of silence and resulting failure to properly supervise, investigate, and discipline its officers requires that the City be held liable for Miedzianowski's alleged retaliation against the plaintiffs.

Id. at *13.

The City has not presented any reason for the Court to depart from these rulings.

III. Conclusion

For the reasons above stated, the Court should deny the motion for summary judgment filed by defendant City of Chicago.

Respectfully submitted,

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