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

DERRICK SCHAEFFER, Plaintiff, v. CITY OF CHICAGO, OFFICER JAMES A. BRANDON #7634, OFFICER MARIO PEREZ #18936, OFFICER JAMES KINSEY # 16189, and DET. JOCELYN GREGOIRE-WATKINS, #20974, Defendants.	)	19 C 7711 Judge Robert M. Dow Jr. Magistrate Judge Jeffrey T. Gilbert

DEFENDANTS' JOINT PARTIAL MOTION TO DISMISS PLAINTIFF'S *MONELL* CLAIM

Defendants City of Chicago ("the City"), by and through its attorney, Celia Meza, Acting Corporation Counsel for the City of Chicago, and Officer James A. Brandon # 7634, Officer Mario Perez # 18936, Officer James Kinsey # 16189 and Detective Jocelyn Gregoire-Watkins # 20974, by one of their attorneys, Evan K. Scott, Assistant Corporation Counsel, (collectively, "Defendants") for their joint partial motion to dismiss Plaintiff's *Monell* claim, state as follows:

INTRODUCTION

Plaintiff's Amended Complaint (Dkt. X) includes what Defendants construe as an attempt at a *Monell* claim based on an alleged widespread City policy of failing to manage, preserve and produce records in criminal cases. Plaintiff alleges in his amended complaint that aspects of his February 1, 2017 arrest for burglary by three of the Defendants was recorded on an in-car camera. Amended Complaint at ¶¶ 5-6. Plaintiff further alleges that

this video "contradicted the story fabricated by the arresting officers and showed that plaintiff was framed." *Id*. at ¶ 15. Plaintiff further alleges that the video was "withheld from plaintiff during his criminal case as a result of the deliberate indifference of defendant City of Chicago to its constitutional duty to preserve exculpatory evidence in criminal cases: At all relevant times, defendant City of Chicago has known that its processes for managing and producing records of the Chicago Police Department in criminal prosecutions did not comply with the City's constitutional, statutory, and other legal obligations." *Id*. at ¶ 16.

However, Plaintiff fails to state a *Monell* claim because Plaintiff does not provide well-pled allegations that support each of the three elements of such a claim. Plaintiff fails to provide well-pled facts to suggest any failure to manage, preserve and produce records in criminal cases during the relevant time frame existed. Plaintiff fails to provide any well-pled allegations that suggest deliberate indifference by the City. Plaintiff fails to plead any facts in support of the notion that the alleged policy was the moving force behind any constitutional violation. Therefore, Defendants respectfully request this Honorable Court dismiss Plaintiff's *Monell* claim.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) allows a party to move to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion challenges the "sufficiency of the complaint." *Berger v. Nat. Collegiate Athletic Assoc.*, 843 F.3d 285, 289 (7th Cir. 2016). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "A claim has facial plausibility when

the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A plaintiff's statement of claims requires more than labels, conclusions, or a recitation of the elements of a cause of action. *Twombly*, 550 U.S. at 555. This standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. While "detailed factual allegations" are not required, "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. The complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "'A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Boucher v. Fin. Sys. of Green Bay, Inc.*, 880 F.3d 362, 366 (7th Cir. 2018) (quoting *Iqbal*, 556 U.S. at 678).

To state a *Monell* claim post-*Iqbal*, a plaintiff must plead factual content allowing the court to draw the reasonable inference that the municipality maintains the problematic policy or practice in question. *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011). This entails "provid[ing] some specific facts to support the legal claims asserted in the complaint" and must provide "enough detail about the subject matter of the case to present a story that holds together." *Id.*; *see also Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009). This standard is a sliding scale that requires more factual specificity for more serious levels of claims. *McCauley*, 671 F.3d at 616; *Swanson v. Citibank*, N.A., 614 F.3d 400, 404-05 (7th Cir. 2010). To that end, the plaintiff's facts should be relevant to the story they assert and not merely asserted to cast the municipality in a bad light in an attempt to get to

discovery. A threadbare recital of the elements supported by conclusory statements is disregarded. *Brooks* at 581. Additionally, only factual allegations can form the basis of this liability; conclusory statements and regurgitated legal elements are disregarded. *McCauley*, 671 F.3d at 618; *Iqbal*, 556 U.S. at 678–79.

The Court must accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff. *Chancey v. Suburban Bus Div. of Regional Transp. Authority*, 52 F.3d 623, 626–27 (7th Cir. 1995). Dismissal for failure to state a claim under Rule 12(b)(6) is proper "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Twombly*, 550 U.S. at 558. The Court need not strain to find favorable inferences that are not apparent on the face of the complaint. *Coates v. Illinois State Board of Ed.*, 559 F.2d 445, 447 (7th Cir. 1977).

ARGUMENT

To state a *Monell* claim, a plaintiff must show "(1) an action pursuant to a municipal policy, (2) culpability, meaning that policymakers were deliberately indifferent to a known risk that the policy would lead to constitutional violations, and (3) causation, meaning that the municipal action was the 'moving force' behind the constitutional injury." *Hall v. City of Chicago*, 95 F.3d 945, 950 (7th Cir. 2020). Failure to establish any one element dooms a *Monell* claim. Here, Plaintiff fails to establish each of the three.

As a preliminary matter, Plaintiff must first state a constitutional violation. It is not entirely clear to Defendants what constitutional violation Plaintiff is alleging. He expressly states he is not alleging false arrest. Amended Complaint at ¶ 9. Moreover, Defendants contend Plaintiff has not sufficiently pled facts to support the notion that the contents of the recording were exculpatory. Whether something is exculpatory or not is a legal conclusion,

and as such Plaintiff needs to plead details sufficient to support the claim that it was exculpatory. It is also unclear what basis Plaintiff could have for alleging that the video that he claims was never presented and was destroyed contained exculpatory information. Nevertheless, for the purposes of this motion, Defendants assume that some underlying constitutional violation exists.

I. Plaintiff Fails to Demonstrate "Widespread Practice" Element

"To survive a motion to dismiss a *Monell* claim, a plaintiff must 'plead facts that show that there is a true municipal policy at issue, not a random event.'" *Barrios v. City of Chicago*, No. 15 C 2648, 2016 WL 164414, at *13 (N.D. Ill. Jan. 14, 2016) (citing *Liska v. Dart*, No. 13 C 1991, 2014 WL 3704635, at *10 (N.D. Ill. July 23, 2014)); *Calhoun*, 408 F.3d at 380. Although there is no bright-line rule for determining when conduct rises to the level of a policy, custom, or practice, *see Wilson v. Cook Cnty.*, 742 F3d 775, 780 (7th Cir. 2014), "isolated incidents of allegedly unconstitutional conduct are insufficient to establish a widespread practice." *Nettles-Bey v. Burke*, 2015 WL 4638068, at *12 (N.D. Ill. Aug. 4, 2015). In determining whether a plaintiff has sufficiently pled a widespread practice in a *Monell* claim, a court examines "the instances of misconduct alleged, the circumstances surrounding the alleged constitutional injury, and additional facts probative of a widespread practice or custom." *Williams v. City of Chicago*, 315 F. Supp.3d 1060, 1079 (N.D.Ill. June 1, 2018)

Here, Plaintiff has failed to plead sufficient facts to demonstrate there is a true municipal policy at issue. Plaintiff supports his allegation with a mere two examples of isolated instances of allegedly unconstitutional conduct. The Seventh Circuit has not issued any bright-line rules for what is necessary to show a widespread practice. It has, however,

stated even three instances can be insufficient to "demonstrate that there is a policy at issue rather than a random event." *Thomas v. Cook Cnty. Sheriff's Office*, 604 F.3d 293, 303 (7th Cir. 2010). Moreover, the particulars of the cases Plaintiff has cited argue against their illustration of any widespread practice that is relevant to the case at bar.

First, Plaintiff incorrectly alleges that the Seventh Circuit's 1988 affirmation of a civil jury verdict in *Jones v. City of Chicago*, 856 F.2d 985 was an example of this policy at work. Amended Complaint at ¶ 17. *Jones* pertains to the investigation of a 1981 rape-murder in which investigators kept information in "street files" that could contain exculpatory information that was not turned over to prosecutors. *Jones*, 856 F.2d at 988-9. The first problem facing Plaintiff is that the criminal investigation underlying the *Jones* case is far too old to have any relevance. The City's actions in the 1980s cannot serve to meaningfully illuminate for the Court what its policy was immediately leading up to 2017, the year of the incident. The second problem is that keeping street files is too dissimilar from the facts alleged in this case, deliberately withholding video records. Third, *Jones* states that the practice of keeping street files had no formal ruling on its legality. *Id*. at 989. There is no evidence contained in *Jones* that includes a finding of a widespread practice of failing to provide exculpatory evidence. In short, *Jones* lends no evidence that the City had any alleged widespread practice of failing to maintain or produce exculpatory evidence in criminal cases at the time of Plaintiff's constitutional injury.

Plaintiff's second supposed example of the widespread policy is equally unavailing. Plaintiff refers to the fact that the City was sanctioned for failure to disclose records in *Colyer v. City of Chicago* No. 12 C 04855, 2016 WL 25710, at *2 (N.D. Ill. Jan. 4, 2016). Amended Complaint at ¶ 18. As a fundamental matter, *Colyer* was a civil case in which a

traffic stop led to a fatal shooting. By definition, the case provides no evidence as to whether the City has a widespread practice of failing to maintain or produce exculpatory material in criminal cases. Moreover, the information that was withheld in *Colyer* was not exculpatory material about the plaintiffs. Rather, the information the City's attorneys failed to turn over until mid-trial included a 911 recording that corroborated the defendant officers' explanation that a vehicle similar to that occupied by plaintiffs had been sought by other officers. *Id*. at *1-2. The *Colyer* court found willful misconduct by one City attorney and negligence by another. *Id*. at *14-21, *24-26. It found that the City should adopt additional practices to minimize risk of negligent mistakes. *Id*. at *28. But nowhere in its ruling did the *Colyer* court find anything in terms of bad-faith actors beyond the isolated instance of a single employee. There is no justification for attempting to use this case as an example of a widespread practice of withholding exculpatory information from criminal defendants.

Additionally, Plaintiff claims a June 10, 2020 report of the City's Inspector General, *Review of the Chicago Police Department's Management and Production of Records*, confirms the so-called widespread practice of withholding exculpatory evidence from criminal defendants. Amended Complaint at ¶ 19. A copy of this report is attached hereto as Ex. A. While the report is deeply critical of record-keeping practices at CPD, even a cursory read shows that it provides no support for the existence of the alleged widespread practice. First, it does not contain a single instance of intentional malfeasance. It cites to three specific case studies, none of which represent any City employee deliberately withholding exculpatory material within the relevant time frame. The first case cited in the report is *Fields v. City of Chicago*, 10 CV 1168, which involved the existence of street files from 2005 and earlier that contained undisclosed and potentially exculpatory material, Ex.

A at p. 9. This raises the same problems as *Jones* – the case at bar is too distant in time and involves a too different type of record for *Fields* to help establish a widespread practice. For its next example, the report cites *Cazares and Manzera v. Frugoli*, 13 CV 5626. Ex. A, p. 10. This case involves an off-duty officer who killed two people while driving drunk. Like *Colyer*, *Cazares* was a civil case in which the information at issue did not pertain to innocence of a criminal defendant. Rather, it was about an inadvertent failure to provide a sustained Complaint Register for the defendant officer because it did not come up in an original search for disciplinary records. *Id*. Once again, this is a far cry from the deliberate withholding of exculpatory information in a criminal case alleged in the Amended Complaint. The third case study in the report is *Young*, 13 C 5631. *Id*. at p. 11. It too pertained to civil discovery issues rather than criminal discovery ones. The report heavily criticizes the Chicago Police Department for various lax practices, but nowhere substantiates an allegation that CPD is intentionally failing to provide information.

Because Plaintiff has failed to demonstrate the existence of his claimed widespread policy, Plaintiff's *Monell* claim must be dismissed as insufficiently pled.

II. Plaintiff Fails to State "Deliberate Indifference" Element

Even assuming *arguendo* that Plaintiff had alleged enough to meet the widespread practice element, Plaintiff would next have to establish the municipality's final policymaker was deliberately indifferent to the practice. "A showing of simple or even heightened negligence will not suffice." *Board of County Com'rs of Bryan County, Okl. V. Brown*, 520 U.S. 397. 407 (1997). Rather, the municipality's final policymaker must show that they effectively approve of the practice by turning a blind eye toward it.

Plaintiff fails to show deliberate indifference. Plaintiff does not even name the final policymaker or list facts that give plausibility to the notion that the final policymaker knew and approved of the alleged practice that the City was withholding exculpatory materials. Plaintiff simply asserts that the City was on notice of these issues in a conclusory fashion. But the Court is not required to take those allegations as true because they are merely recitations of the elements of the claim.

Indeed, Plaintiff has effectively pled himself out of court on this element by citing to the OIG report. The very existence of a City study of the issue of failure to produce documents shows that the City is not indifferent to the issue of failing to produce documents. Moreover, the report illustrates numerous steps that the Chicago Police Department has taken or is in the process of taking to improve its information management systems. Ex. A at p. 33-38.

III. Plaintiff Fails to State "Moving Force" Element

Even assuming *arguendo* that Plaintiff had managed to show the existence of a widespread policy and deliberate indifference by the municipality, Plaintiff would have still one more hurdle to overcome. Plaintiff cannot simply rely on the existence of a bad policy and a constitutional violation. "A 'moving force' must be pleaded with enough facts to allow the court to infer a 'direct causal link between the municipal action and the deprivation of federal rights'" or constitutional injury. *Anderson v. Allen*, 2020 WL 5891406 (N.D.Ill. Oct. 5, 2020) (citing *Bryan County*, 520 U.S. at 397).

Once again, Plaintiff fails to plausibly allege that the purported policy of failing to preserve and produce records in criminal cases was what motivated the Defendants to violate Plaintiff's rights. There is not a single fact in Plaintiff's 24-paragraph complaint

from which a court could derive that the Defendant Officers thought to themselves, "the City's poor record-keeping makes me want to violate Plaintiff's rights."

These conclusory and formulaic allegations are insufficient to state a claim against the City.

CONCLUSION

In the wake of *Iqbal* and *McCauley*, many courts within this district have dismissed similarly deficient *Monell* claims for failing to meet the minimum pleading requirements. *See, e.g., Turner v. City of Chicago*, 2020 WL 1548957, 19 C 272 (N.D.Ill. March 31, 2020)(Coleman, J.)("threadbare assertion that other instances similar to this have occurred in some manner, by some unspecified officers during an unspecified time period" does not raise claim to relief above speculation); *Jones v. Hunt*, 2020 WL 814912, 19 C 4118 (N.D. Ill. Feb. 19, 2020)(Ellis, J.)(Plaintiff's "broad allegations of misconduct" that were "not tailored to identify particular police training procedures or policies" insufficient to state a *Monell* claim) ; *Bishop v. White*, 2019 WL 5550576,16 C 6040 (N.D.Ill. Oct. 28, 2019)(Alonso, J.)(conclusory allegation of an isolated incident falls short of the *Twombly/Iqbal* standard); *Carmona v. City of Chicago*, 15 C 462, 2018 WL 1468995 at *3 (N.D.Ill. March 26, 2018)(St. Eve, J); *Brock v. City of Chicago Police Dept. et al.*, No. 17 C 3393 at Dkt. 38 (N.D.Ill. Nov. 29, 2017)(Feinerman, J.). *Hill v. City of Chicago*, 2014 WL 1978407 at *7 (N.D. Ill May 14, 2014) (Ellis, J.) ("Although *Monell* claims may proceed with conclusory allegations of a policy or practice, some facts must be pleaded to put the defendant of notice of the alleged wrongdoing"); *Foy v. City of Chicago*, No. 15 C 3720, 2016 WL 2770880, at *9 (N.D.Ill. May 12, 2016(Castillo, J.); *Maglaya v. Kumiga*, No. 14 C 3619, 2015 WL 4624884 at *5 (N.D.Ill. Aug. 3, 2015)(Dow, J.).

Because Plaintiff has failed to satisfy the factual specificity required under *Iqbal* by merely alleging conclusory *Monell* allegations in the Amended Complaint, his *Monell* claim should be dismissed.

Dated: January 19, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2021, I served the foregoing document upon all counsel of record by filing a copy with the Clerk of the Northern District of Illinois using the Court's electronic filing system.

/s/ Raoul Vertick Mowatt
Raoul Vertick Mowatt