

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

Jevarreo Kelley-Lomax, individually and
for a class,

Plaintiff,

v.

City of Chicago,

Defendant.

Case No.: 20-cv-4638

Judge John Z. Lee

Magistrate Judge Jeffrey Cole

**CITY OF CHICAGO'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO
DISMISS PLAINTIFF'S AMENDED COMPLAINT**

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Defendant, the City of Chicago (“City”), by and through its undersigned counsel, hereby moves to dismiss the Amended Complaint (Dkt. 6) filed by Plaintiff Jevareo Kelley-Lomax pursuant to Federal Rule of Civil Procedure 12(b)(6). In support thereof, the City states as follows:

FACTUAL BACKGROUND

When individuals are arrested by the Chicago Police Department (“CPD”) and taken into custody, they are required to surrender personal property that is “neither evidence nor contraband, including but not limited to jewelry, cell phones, and other electronic devices,” which are referred to as “Property Available for Return to Owner.” *Id.* ¶¶ 4-5. CPD issues a Property Inventory form (“Inventory Form”) to each arrestee identifying the personal property collected. A true and accurate copy of the Inventory Form used by CPD at the time of Plaintiff’s arrest is attached hereto as **Exhibit A**.¹ Each Inventory Form has a unique serial number, which acts as a tracking or identification number for property seized at the time of arrest. *See Ex. A*. The Inventory Form provides arrestees with information regarding the procedures for reclaiming property, including the contact information for CPD’s Evidence and Recovered Property Section (“ERPS”). *Id.*

Arrestees also receive a Notice to Property Owner (“Notice”), detailing how arrestees may reclaim their personal property. A true and accurate copy of the Notice form in effect at the time of Plaintiff’s arrest is attached hereto as **Exhibit B**. In relevant part, the Notice provides:

Property Available for Return to Owner:

The property inventory form you received is your receipt for property inventoried by the Chicago Police Department (CPD). Keep it in a safe place and have it available when contacting the CPD about your property. You may obtain inventoried property by following the procedures detailed below. If you

¹ The Court may consider the Exhibits attached to the motion to dismiss without converting the motion into a motion for summary judgment under Rule 12(d). In deciding a motion under Rule 12(b)(6), a court may consider documents attached by the defendant “if they are referred to in the plaintiff’s complaint and are central to his claim.” *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012) (quoting *Wright v. Associated Ins.*, 29 F.3d 1244, 1248 (7th Cir. 1994)).

have any questions, please contact the CPD's Evidence and Recovered Property Section ("ERPS") at **(312) 746-6777**

If your receipt is marked "**Property Available for Return to Owner**" and the property is not subject to any federal, state, or local forfeiture laws, you may obtain your property by presenting the receipt and a photo ID at ERPS. If you do not contact the CPD to obtain your property within 30 days of the date on the receipt, it will be considered abandoned under Chicago Municipal Code Section 2-84-160 and destroyed, confiscated, or sold at public auction at the CPD's discretion.

*If you are in jail or incarcerated, and your receipt is marked "**Property Available for Return to Owner**," and the property is not subject to any federal, state, or local forfeiture laws you may get property returned to you by sending a letter instructing ERPS to whom the property should be released, identifying the name of the facility where you are jailed or incarcerated, and providing a copy of your receipt and your photo ID to: Chicago Police Department, [ERPS]*

Ex. B (bolded emphasis in original, italicized emphasis added).

Both the Inventory Form and the Notice also direct arrestees to CPD's official website, www.ChicagoPolice.org, which provides further information on reclaiming personal property seized upon arrest, consistent with the procedures provided in the Notice. See **Exs. A-B**.

On April 18, 2019, CPD arrested Plaintiff and seized a cellphone, a charger, earbuds, and two earrings, which Plaintiff claims was designated as "Property Available for Return to Owner." Am. Compl. ¶ 12. After his arrest, Plaintiff was transferred to the Cook County Jail where he was detained until October 17, 2019. *Id.* ¶ 13. According to Plaintiff, his personal property remained in the City's custody when he was transferred to the Cook County Jail. *Id.* ¶ 14. While in custody, Plaintiff claims he was unable to secure a designee to retrieve his personal property from ERPS. *Id.* ¶ 15. When Plaintiff failed to recover his personal property within 30 days from the date of seizure, the City allegedly "destroyed, confiscated, or sold" his property. *Id.* ¶ 16.

Plaintiff alleges that the City knows that "many arrestees are held in custody for more than 30 days following arrest" and that these individuals "are unable to secure a designee to retrieve their 'Property Available for Return to Owner.'" *Id.* ¶ 10. He also asserts the City "has refused to

establish a procedure for the return of property to arrestees who are held in custody for more than 30 days” after arrest and “who are unable to secure a designee to retrieve their ‘Property Available for Return to Owner.’” *Id.* ¶ 11. As a result, Plaintiff claims the City violated his Fourth, Fifth, and Fourteenth Amendment rights by permanently depriving him of his personal property after he failed to take any steps to recover it within 30 days of seizure. *Id.* ¶ 17. Plaintiff filed his Amended Complaint on behalf of himself, and for a class of similarly situated individuals. *Id.* ¶ 18.

LEGAL STANDARD

A motion to dismiss pursuant to Rule 12(b)(6) tests the sufficiency of the complaint. *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 879 n.4 (7th Cir. 2012). To survive a Rule 12(b)(6) motion, the claim must comply with Federal Rule of Civil Procedure 8(a) by providing “a short and plain statement of the claim showing that the pleader is entitled to relief,” such that the defendant is given “fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). The factual allegations in the claim must be sufficient to raise the possibility of relief above the “speculative level.” *Id.* “A pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). Moreover, 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.

ARGUMENT

I. The Court Should Dismiss Plaintiff’s Fourth Amendment Claim Because the Destruction of Plaintiff’s Personal Property Does Not Constitute a Seizure.

“The Fourth Amendment protects the ‘right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.’” *Lee v. City of Chicago*,

330 F.3d 456, 460 (7th Cir. 2003) (quoting U.S. Const. amend. IV). In essence, a “seizure” is “some meaningful interference with an individual’s possessory interests in [his] property.” *Id.* (quoting *Soldal v. Cook Cty.*, 506 U.S. 56, 61 (1992)).

There is not a single allegation in the Amended Complaint regarding an “unreasonable search and seizure,” or that CPD did not have probable cause to arrest Plaintiff on April 18, 2019. The Amended Complaint also fails to allege the seizure of Plaintiff’s personal property incident to his arrest was somehow a violation of the Fourth Amendment, nor could it, given the Supreme Court’s ruling in *Illinois v. Lafayette*, where the Court stated, “it is entirely proper for police to remove and list or inventory property found on the person or in the possession of an arrested person who is to be jailed.” 462 U.S. 640, 646 (1983).

Plaintiff’s personal property was lawfully seized incident to his arrest, and consequently, there cannot be a Fourth Amendment violation with respect to the initial seizure of his property. *See id.* As the Seventh Circuit has observed, an action for recovery or restitution of property “is not, and never has been, a concern of the Fourth Amendment.” *Lee*, 330 F.3d at 465. Moreover, the destruction of Plaintiff’s personal property after he failed to recover it within 30 days does not continue the initial seizure nor does it initiate a new seizure that would trigger a subsequent Fourth Amendment violation. *Id.* at 466; *Bello v. Rockland Cty. N.Y.*, 19 CV 3514 (VB), 2020 WL 2319115, at *5 (S.D.N.Y. May 11, 2020) (stating “the government’s continued retention of property does not constitute an additional seizure or transform a lawful seizure into an unlawful one.”). In fact, the destruction of Plaintiff’s personal property does not constitute a “seizure” of his personal property at all. *See Tate v. District of Columbia*, 627 F.3d 904, 912 (D.C. Cir. 2010) (“The sale itself was not a ‘seizure’ of Tate’s vehicle which was already in the District’s lawful possession and control.”).

“Once an individual has been meaningfully dispossessed, the seizure of the property is complete, and once justified by probable cause, that seizure is reasonable.” *Lee*, 330 F.3d at 466; *Conyers v. City of Chicago*, 2015 WL 1396177, at *3 (N.D. Ill. Mar. 24, 2015). Plaintiff cannot now invoke the Fourth Amendment in an attempt “to regain his property.” *Lee*, 330 F.3d at 466. Thus, because the initial seizure of Plaintiff’s personal property was lawful, no Fourth Amendment claim can be asserted here because the subsequent destruction of Plaintiff’s property does not amount to an additional seizure. The Court should therefore dismiss Plaintiff’s Fourth Amendment claim with prejudice.

II. The Court Should Dismiss Plaintiff’s Fifth Amendment Takings Claim Because Plaintiff’s Property Was Not Taken for Public Use and Because His Property Was Taken Pursuant to CPD’s Lawful Police Powers.

Pursuant to the Takings Clause of the Fifth Amendment, “private property [shall not] be taken for public use, without just compensation.” *Knick v. Twp. of Scott, Pa.*, 139 S. Ct. 2162, 2167 (2019) (citation omitted). Plaintiff cannot assert a Fifth Amendment Takings claim for two reasons: (1) there are no allegations, nor could there be, that CPD took Plaintiff’s cellphone, charger, earbuds, and earrings for some public use; and (2) CPD took Plaintiff’s personal property through its lawful police powers.

A. Plaintiff does not allege that his property was taken for some public use.

“A taking for public use is, as construed by the Supreme Court, a taking that serves a ‘public purpose.’” *Conyers v. City of Chicago*, 2020 WL 2528534, at *11 (N.D. Ill. May 18, 2020) (citing *Kelo v. City of New London, Conn.*, 545 U.S. 469, 480 (2005)). For Plaintiff to assert a valid Fifth Amendment Takings claim, he must plead, and eventually prove, that the government took his property and that there was some public purpose associated with its destruction. *Id.*; see also, *Kam-Almaz v. United States*, 682 F.3d 1364, 1366 (Fed. Cir. 2012) (concluding that the

United States Immigration and Customs Enforcement’s (“ICE”) seizure of the plaintiff’s laptop, because he was a person of interest to ICE, did not amount to a taking for public use).

In *Conyers v. City of Chicago*, a case strikingly similar to the instant matter, the plaintiffs (represented by Plaintiff’s counsel here) argued that the court should reconsider its earlier ruling granting the City’s motion to dismiss their Fifth Amendment Takings claim pursuant to Rule 12(b)(6) following the United States Supreme Court’s ruling in *Knick v. Township of Scott, Pennsylvania*. 2020 WL 2528534, at *9. In dismissing the plaintiffs’ Fifth Amendment Takings claim, the *Conyers* court relied on *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, which held that “if a State provides an adequate procedure for seeking just compensation, the property owner cannot” assert a Takings claim “until it has used the procedure and been denied just compensation.” *Id.* (quoting *Williamson Cty. Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 (1985)). However, *Knick*, which was decided after the *Conyers* court’s ruling dismissing plaintiff’s Fifth Amendment Takings claim, overruled *Williamson County*, holding that a plaintiff can assert a Takings claim “as soon as a government takes” his or her property “without paying for it.” *Knick*, 139 S. Ct. at 2170.

While acknowledging the Supreme Court’s ruling in *Knick*, the *Conyers* court concluded that the plaintiffs still failed to establish a Fifth Amendment Takings claim and denied their motion to reconsider. *Conyers*, 2020 WL 2528534, at *11. While the court rejected the argument that the plaintiffs’ personal property had been seized pursuant to CPD’s lawful police powers, and thus, no compensable Takings claim could be asserted under the Fifth Amendment, it ultimately found that the plaintiffs failed to “establish whether the destruction of arrestee personal property constitutes a taking for ‘public use.’” *Id.* In support of this conclusion the *Conyers* court explained, “[t]he plaintiffs suggest no public purpose for the second taking (*i.e.*, the destruction) of their personal

property in their filings nor do they allege any in the operative complaint” *Id.* Thus, plaintiffs failed to show that the City’s policy of destroying arrestees’ personal property after it has gone unclaimed for 30 days violated the Takings Clause. *Id.*

Like the *Conyers* plaintiffs, Plaintiff here cannot plausibly suggest that the destruction of his personal property amounts to a taking for “public use.” Because the Amended Complaint lacks a single factual allegation that the personal property at issue was taken for some public use, and because it is unlikely that such allegations could be made in good-faith given the nature of the property at issue, the Fifth Amendment Takings claim should be dismissed with prejudice.

B. Plaintiff’s personal property was lawfully taken pursuant to CPD’s police powers.

The Fifth Amendment distinguishes between “government action that constitutes an exercise of the police power and action that constitutes a compensable taking” through the exercise of eminent domain. *See Alde, S.A. v. United States*, 28 Fed. Cl. 26, 34 (Fed. Cl. 1993). Eminent domain involves the government’s right to take private property for public uses, *Miss. & Rum River Boom Co. v. Patterson*, 98 U.S. 403, 406 (1878), which results in a compensable Taking under the Fifth Amendment and requires payment of just compensation to the property’s owner. *Alde, S.A.*, 28 Fed. Cl. at 34. Conversely, when property is “seized pursuant to the criminal laws . . . such deprivations are not ‘takings’ for which the owner is entitled to compensation.” *Acadia Tech., Inc. v. United States*, 458 F.3d 1327, 1331 (Fed. Cir. 2006).

In *Bennis v. Michigan*, the United States Supreme Court addressed whether the government is required to compensate an owner when property was “lawfully acquired under the exercise of governmental authority,” rather than by eminent domain. 516 U.S. 442, 452 (1996). The petitioner’s family car was taken by the state police as a result of the petitioner’s husband engaging in sexual activity with a prostitute in the car in violation of Michigan’s decency law, and the

petitioner's interest in the car was forfeited as a result. *Id.* at 442-44. The trial court rejected the petitioner's argument that her interest in the car should not be forfeited, because she did not know that her husband would use the car in a manner that violated Michigan law. *Id.* at 444-45. In so holding, the trial court concluded that the car was a public nuisance, and ordered that the car be auctioned. *Id.* at 444. The Michigan Supreme Court affirmed. *Id.* at 445.

The United States Supreme Court granted certiorari and rejected the petitioner's argument that the forfeiture "was a taking of private property for public use in violation of the Takings Clause" *Id.* at 446, 452. The Court explained that because the forfeiture proceeding did not violate the petitioner's due process rights, her property interest in the car "was transferred by virtue of that proceeding from petitioner to the State." *Id.* at 452. As a result, "[t]he government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain." *Id.*

The reasoning of the D.C. circuit court in *Tate* (relying on *Bennis*) is also applicable. The *Tate* court concluded that the impoundment of the plaintiff's car was not an unlawful taking, and thus, no compensation was due to the plaintiff. *Tate*, 627 F.3d at 909. In *Tate*, the plaintiff's vehicle was booted, impounded and sold at auction by the city after she failed to pay several parking tickets. *Id.* at 906-08. She filed suit alleging, among other things, that the booting, impoundment, and sale of her car deprived her of her rights under the Fifth Amendment's Takings Clause. *Id.* The court concluded that the impoundment and sale of the plaintiff's car did not constitute "a taking for a public use for which [the plaintiff] was entitled to compensation under the Fifth Amendment's Takings Clause." *Id.* at 909. Although the plaintiff's car was sold at auction, she could not establish a Fifth Amendment Takings claim because the seizure of the vehicle occurred "through 'the exercise of governmental authority other than the power of eminent domain.'" *Id.*

(quoting *Bennis*, 516 U.S. at 452). Because the seizure of the car was lawful, the subsequent sale of the car did not amount to a “taking without compensation violative of the Fifth Amendment.” *Id.* at 909-10.

Like the *Tate* plaintiff, Plaintiff appears to allege that the destruction of his property, after he failed to recover it within 30 days, amounts to a taking under the Fifth Amendment. Such a claim is not supported by the law. Since Plaintiff’s property was seized pursuant to CPD’s lawful exercise of its police powers, rather than through the power of eminent domain, Plaintiff cannot assert a viable Fifth Amendment Takings claim. *See Tate*, 627 F.3d at 909-10; *Bennis*, 516 U.S. at 452; *Kam-Almaz*, 682 F.3d at 1371 (“Property seized and retained pursuant to the police power is not taken for a ‘public use’ in the context of the Takings Clause.”) (citation omitted); *see also Seay v. United States*, 61 Fed. Cl. 32, 35 (Fed. Cl. 2004) (“The reason that these claims do not amount to a taking is because items properly seized by the government under its police power are not seized for ‘public use’ within the meaning of the Fifth Amendment.”).

The City acknowledges that there is disagreement within the Northern District of Illinois regarding whether a Takings claim may be predicated upon the sale, destruction, or disposal of seized property pursuant to CPD’s police powers. *Compare Conyers*, 2020 WL 2528534, at *10-11, with *Singer v. City of Chicago*, 435 F. Supp. 3d 875, 877-78 (N.D. Ill. 2020) (12(b)(6) dismissal of Takings claim where plaintiff’s property was seized pursuant to a search warrant, and subsequently destroyed, lost, or sold through CPD’s police powers, as opposed to the exercise of eminent domain). However, the City submits that the holding in *Singer* is correct, as it follows the Supreme Court’s decision in *Bennis*, as well as the Seventh Circuit’s opinion in *Johnson v. Maintowoc County*, 635 F.3d 331, 336 (7th Cir. 2011) (Fifth Amendment Takings clause “does not apply when property is retained or damaged as the result of the government’s exercise of its

authority pursuant to some power other than the power of eminent domain”), both of which are controlling here. The Court should thus dismiss Plaintiff’s Fifth Amendment Takings claim with prejudice.

III. The Court Should Dismiss Plaintiff’s Fourteenth Amendment Due Process Claim Because He Cannot Establish a Substantive Due Process Claim or a Procedural Due Process Claim.

It is unclear from the face of the Amended Complaint whether Plaintiff asserts a substantive due process claim, a procedural due process claim, or both. Nevertheless, the Amended Complaint should be dismissed because Plaintiff cannot establish either claim.

A. Plaintiff cannot establish a substantive due process claim because he has not alleged that the state-law remedies available to him are inadequate, nor has he alleged that an independent constitutional right has been violated.

Substantive due process is not “a blanket protection against unjustifiable interferences with property.” *Lee*, 330 F.3d at 467 (quoting *Schroeder v. City of Chicago*, 927 F.2d 957, 961 (7th Cir. 1991)). Rather, the scope of substantive due process is “very limited” and “protects against only the most egregious and outrageous government action.” *Campos v. Cook Cty.*, 932 F.3d 972, 975 (7th Cir. 2019). Unless a fundamental right, such as freedom of speech, freedom of religion, the right to vote, or the right to interstate travel, is implicated, “substantive due process requires only that the practice be rationally related to a legitimate government interest, or alternatively phrased, that the practice be neither arbitrary nor irrational.” *Lee*, 330 F.3d at 467. Moreover, when a plaintiff asserts a substantive due process claim that only involves “the deprivation of a property interest, a plaintiff must show ‘either the inadequacy of state law remedies or an independent constitutional violation’” before the court engages in “this deferential rational-basis review.” *Id.*

Lee v. City of Chicago is instructive. In *Lee*, the plaintiff asserted a Section 1983 claim, alleging that his Fourteenth Amendment rights were violated when CPD impounded his car for evidentiary purposes related to a shooting. *Id.* at 458-59. After CPD concluded its investigation, it

informed the plaintiff that he should retrieve his vehicle by paying certain towing and storage fees, or that he could request a hearing to contest the fees. *Id.* at 459. If he did not pay the fees or pursue a hearing within 30 days of when his vehicle was seized, it would be destroyed or sold. *Id.*

The plaintiff did not pay the fees or pursue a hearing. *Id.* When he went to recover his vehicle on the thirty-first day, there were inventory numbers spray-painted on the car. *Id.* The plaintiff filed suit against the City, arguing his substantive due process rights were violated: (1) when he was required to pay towing and storage fees, although he was the owner of the vehicle and it had been impounded for evidentiary purposes; and (2) when CPD spray painted “inventory numbers on his car without consent and without compensation.” *Id.*

The Seventh Circuit, rejected the plaintiff’s Fourteenth Amendment claim, noting his “substantive-due-process claim [did] not implicate a fundamental right and involve[d] only the deprivation of a property interest” *Id.* at 467 (affirming on other grounds the district court’s ruling granting the City’s 12(b)(6) motion to dismiss). Accordingly, the plaintiff was required to “show as an initial matter either that state-law remedies [were] inadequate or that an independent constitutional right ha[d] been violated.” *Id.* The plaintiff failed to establish either requirement, and therefore, he could not bring a substantive due process claim. *Id.*

In this case, Plaintiff has not provided any allegations that would support his substantive due process claim. There are no allegations that state law remedies are inadequate to redress the alleged harm, and as discussed in detail above, Plaintiff cannot establish a Fourth or Fifth Amendment claim, such that some “independent constitutional right has been violated.” For these reasons, the Court should dismiss Plaintiff’s substantive due process claim with prejudice.

B. Plaintiff cannot establish a procedural due process claim because the City provided adequate notice and procedures to reclaim his property.

When property is seized from an individual, the Fourteenth Amendment’s due process clause requires: (1) adequate procedures for reclaiming the property; and (2) adequate notice of those procedures. *See Gates v. City of Chicago*, 623 F.3d 389, 394; 405 (7th Cir. 2010). Adequate notice ensures that the property owner can pursue available remedies for its return. *See id.* at 398 (citing *City of W. Covina v. Perkins*, 525 U.S. 234 (1999)). When the procedures for retrieving seized property “are established by published, generally available state statutes and case law, no individualized notice of those procedures is required.” *Id.* (citing *W. Covina*, 525 U.S. at 241). Alternatively, where the procedures “are not available in documents that are published and generally available,” individualized notice of the procedures is necessary and cannot be misleading. *Id.* at 400-01. The City provided both adequate notice and adequate procedures, requiring dismissal of Plaintiff’s procedural due process claim.

1. The City provided adequate notice to Plaintiff.

Regardless if the City’s procedures for reclaiming property seized incident to arrest are considered “published, generally available state statutes and case law,” (which they are), or are in documents that are not published and generally available, Plaintiff’s procedural due process claim must fail because he received individualized notice of the proper procedures for reclaiming his property. The facts underlying the instant case are nearly identical to those in *Conyers v. City of Chicago* (“*Conyers II*”), 162 F. Supp. 3d 737 (N.D. Ill. 2016), which supports dismissal. In *Conyers II*,² the plaintiffs-arrestees challenged the adequacy of CPD’s notice provisions in relation to retrieving non-monetary property within 30 days, which was seized incident to arrest and later destroyed, confiscated, or sold at auction. *Id.* at 738-39. The plaintiffs in *Conyers II* challenged the

² The plaintiffs in *Conyers II* were represented by Plaintiff’s counsel here.

pre-2015 notice for failing to include instructions regarding how an individual who is incarcerated for more than 30 days can recover their *non-monetary property*. *Id.* The notice was amended in 2015 to address this issue, and thus, the notice at issue in this case is different from the notice at issue in *Conyers II*. See **Ex. B**. Although the *Conyers II* court found the plaintiffs could proceed on their Fourteenth Amendment procedural due process claim, the discrete issue there centered around whether the procedures published on CPD's website for reclaiming non-monetary property were widely available. *Id.* at 746. Further, the court based its opinion on the fact that "the notice provided to incarcerated individuals did not explain how to obtain the return of non-monetary personal property so, standing alone, it [was] insufficient." *Id.*³

Here, no similar constitutional shortcomings arise. Plaintiff has not alleged that he failed to receive notice of the procedures for claiming his property, and in fact, the Amended Complaint recites the two options provided to him in the Notice: (1) picking up the property himself; or (2) providing the necessary information to ERPS so a designated third party could retrieve the property. Am. Compl. ¶¶ 6-7. Further, the Notice instructs arrestees who are incarcerated during the 30-day period how to retrieve their non-monetary property through a designee, see **Ex. B**, and explicitly alerts arrestees that, should they fail to arrange for the retrieval of their property, "it will be considered abandoned under Chicago Municipal Code Section 2-84-160 and destroyed, confiscated, or sold at public auction at the CPD's discretion." *Id.* The Notice, therefore, was adequate as it provided Plaintiff with clear and concise instructions regarding how to retrieve his property, and what would occur if he failed to reclaim it within 30 days. See *Pesce v. City of Des Moines*, 439 F. Supp. 3d 1101, 1123 (S.D. Iowa 2020) (holding no violation of procedural due

³ Since the *Conyers II* complaint was filed, the Notice form was subsequently revised to include instructions regarding how to retrieve non-monetary property. Compare *Conyers II*, 162 F. Supp. 3d at 739 (notice form only referred to return of money), with **Ex. B** (instructing arrestees how to reclaim both their monetary and non-monetary property).

process where the plaintiff was alerted her dog was seized, what she had to do to retrieve the dog, and that ownership of the dog would be transferred to animal control services if she failed to retrieve the dog within 24 hours after the quarantine ended).

2. The City provided adequate procedures for Plaintiff to retrieve his property.

Nor can Plaintiff challenge the adequacy of the City's procedures. While the Amended Complaint alleges "Plaintiff was unable to secure a designee to retrieve his personal property . . . while in custody at the Cook County Jail," Am. Compl. ¶ 15, he does not claim the City somehow prevented him from identifying a designee and having that designee retrieve the property.

Plaintiff's challenge to the adequacy of the procedures for reclaiming seized property is similar to that alleged in *Wilson v. City of Evanston*, 14 C 8347, 2016 WL 344533 (N.D. Ill. Jan. 28, 2015) (Lee, J.), another case involving Plaintiff's current counsel. There, the plaintiff was arrested and the police seized a wallet, cell phone, belt, and backpack, which was inventoried and retained by the defendant when the plaintiff was incarcerated. *Id.* at *1. To retrieve his property, the plaintiff could either pick it up himself, or designate a third party to reclaim the property, so long as they did so within 30 days after seizure, and the designee presented the prisoner property receipt to the police. *Id.* Relevant here, the plaintiff challenged the adequacy of the procedures for designating a third party to pick up the property. The plaintiff alleged his property receipt was taken from him upon transfer to the Cook County Jail, and he was therefore unable to provide it to his designee, who in turn could not retrieve the property. *Id.* The Court allowed the procedural due process claim to survive, based upon the fact that the plaintiff alleged the defendant "knows that Cook County Jail takes the Prisoner Property Receipt from detainees when they arrive and that it is not readily accessible to detainees while at the jail." *Id.* at *5. The procedure was not "reasonably calculated to allow prisoners who are detained for over thirty days to recover their property[.]" *Id.*

In this case, the Amended Complaint fails to allege that Plaintiff encountered similar difficulties as the *Wilson* plaintiff. Significantly, unlike the plaintiff in *Wilson*, Plaintiff does not claim his property receipt was taken from him upon transfer to the Cook County Jail, or that he was unable to provide the necessary materials to ERPS for the property's release to a designee. In fact, as is clearly stated in the Notice form, all Plaintiff had to do for his property to be released to a designee was: (1) send a letter to ERPS instructing it to whom the property should be released; (2) identify the name of the facility where Plaintiff was incarcerated; and (3) provide a copy of the property receipt and his photo ID to ERPS. See **Ex. B**. Unlike *Wilson*, Plaintiff has completely failed to allege any unreasonable obstacles to the release of his property. Therefore, the City's procedures are adequate, and Plaintiff's procedural due process claim must be dismissed.

CONCLUSION

For the reasons discussed above, Defendant, the City of Chicago, respectfully request this Court enter an order dismissing the Amended Complaint, and for such other and further relief that this Court deems necessary and just.

Dated: October 13, 2020

Respectfully submitted,

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