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

Tyerie Johnson, Plaintiff, v. City of Chicago, Bradley Anderson, #15660, Cornelius Brown, #2235, Yvette Carranza, #13435, Anthony Bruno, #1123, Steven Holden, #8149, Scott Westman, #18472, and Russell Willingham, #511, Defendants.	)	Case No. 20-cv-07222 Honorable Sara L. Ellis Magistrate Hon. Maria Valdez

DEFENDANT CITY OF CHICAGO'S REPLY IN SUPPORT OF ITS AMENDED RULE 12(b)(6) MOTION TO DISMISS

Defendant City of Chicago ("City"), by and through its attorneys, Hinshaw and Culbertson, LLP, Special Assistant Corporation Counsels for the City, and for its reply in support of its Amended Rule 12(b)(6) Motion to Dismiss, hereby states as follows:

ARGUMENT

I. *Plaintiff's Malicious Prosecution Claim Should Be Dismissed As He Fails To Sufficiently Plead The Absence Of Probable Cause.*

Plaintiff misses the mark when addressing the issue of whether he plausibly alleges the absence of probable cause.[1] *Kies v. City of Aurora*, 156 F. Supp. 2d 970, 981

[1] In his response, Plaintiff states that Defendant City argues only that Plaintiff fails to allege a malicious prosecution claim because he fails to allege (1) Defendant officers caused the criminal proceedings, and (2) malice. In its motion, Defendant City though unequivocally argues that Plaintiff fails to plead sufficient facts in his complaint to establish the absence of probable cause and does not therefore plausibly allege a malicious prosecution claim. *See* City's Memorandum in Support of Its Amended Motion to Dismiss, Dkt. No. 36, at 5-8. Although addressing the absence of probable cause as it relates to his Fourth Amendment claim against Defendant officers, he does not address or even acknowledge that same argument as it relates to his malicious prosecution claim against Defendant City. *See* Plaintiff's Response, Dkt. No. 38, at 9.

(N.D. Ill., 2001) (finding that the existence of probable cause is an absolute bar to a claim of malicious prosecution); *Penn v. Chicago State Univ.*, 162 F. Supp. 2d 968, 975 (N.D. Ill., 2001). Specifically, Plaintiff relies entirely on a misreading or misinterpretation of the cases of *Roldan* and *Neitz*. He cites to no other cases in support. As such, Plaintiff has failed to meet his initial burden of alleging facts sufficient to show that Defendant officers lacked probable cause to pursue criminal charges and his malicious prosecution claim should be dismissed.

Preliminarily, Plaintiff's misunderstanding is underscored by his argument that Defendants "rely on extrinsic evidence to find that there was probable cause to arrest and prosecute Plaintiff." *See* Plaintiff's Response to City's Amended Motion to Dismiss (hereinafter "Plaintiff's Response"), Dkt. No. 38, at 7-8. Although citing to the transcript of Plaintiff's criminal trial[2], Defendant City did not ask this Court to rely on it to find probable cause. On the contrary, at this time, Defendant City does not even ask this Court to find the existence of probable cause. Instead, Plaintiff fails to meet his burden of alleging the *absence* of probable cause. Further, Defendant City specifically noted that

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As such, any argument related to the malicious prosecution claim is waived and Plaintiff's malicious prosecution claim should be dismissed on this ground alone. However, for the record, Defendant City responds to Plaintiff's response related to the Fourth Amendment claim in support of its argument that Plaintiff's malicious prosecution claim should be dismissed for failure to allege the absence of probable cause.

[2] This Court may take notice of the transcript of the proceedings of Plaintiff's criminal prosecution. *O'Hara v. O'Donnell*, No. 98 C 0979, 2001 U.S. Dist. LEXIS 3535, at *10 (N.D. Ill. Mar. 20, 2001); *City of Joliet v. Mid-City Nat, Bank of Chicago*, No. 05 C 6746, 2012 U.S. Dist. LEXIS 24941, 2012 WL 638735, *1 (N.D. Ill. Feb. 22, 2012); *Taitts v. Verpill,* No. 11 C 3004, 2012 U.S. Dist. LEXIS 44290, at *22 (N.D. Ill. Mar. 29, 2012); *Brisco v. Stinar*, No. 19-cv-7233, 2020 U.S. Dist. LEXIS 223084, at *9 (N.D. Ill. Nov. 30, 2020); *Blake v. Regan*, No. 20 CV 4065, 2021 U.S. Dist. LEXIS 33447, at *9 (N.D. Ill. Feb. 23, 2021).

it "does not ask this court to credit any of the testimony as true," and only referred to it in support of its argument that statements by Defendant officers about the "target" was not "key evidence" and therefore could not have "instituted or continued the proceedings maliciously." *See* City's Memorandum in Support of Its Amended Motion to Dismiss, Dkt. No. 36, at 2 n. 2; 8-9.

Likewise, Plaintiff's argument that he "need not anticipate or meet potential affirmative defenses" is inapplicable here. Plaintiff cites to the case of *Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012) and *Craftwood II, Inc. v. Generac Power Sys*., 920 F.3d 479, 483 (7th Cir. 2019). Unlike this case, both instead involved affirmative defenses. Defendant City does not raise an affirmative defense pursuant to Federal Rule of Civil Procedures 8(c) in its amended motion to dismiss. Defendant City raises pleading deficiencies under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *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."). Plaintiff cannot avoid such pleading requirements by equating such a requirement to an affirmative defense.

Besides, Plaintiff agrees that this district in the case of *Roldan* dismissed plaintiff Roldan's complaint because he "did not allege what facts were known to Defendants at the time of his arrest or at other relevant times." *See* Plaintiff's Response, at 5; *Roldan v. Town of Cicero,* No. 17-cv-3707, 2018 U.S. Dist. LEXIS 49122, 12-14 (N.D. Ill. Mar. 26, 2018). The court's decision relied on its holding that plaintiff has an "initial burden of alleging facts sufficient to show that [the] [d]efendants lacked probable cause." *Id.*

Plaintiff does not dispute he has a requisite initial burden and instead incorrectly argues that he meets his burden.

Plaintiff though does not meet his initial burden. First, Plaintiff's thirty-one (31) allegations do not "mirror" the one hundred and twenty eight (128) allegations of the amended complaint filed in the *Roland* case. In support, Plaintiff highlights only a portion of the allegations made by plaintiff Roland in his amended complaint and omits the other additional allegations that were relied on by the court when it denied dismissal. In his amended complaint, unlike Plaintiff in this case, plaintiff Roland also alleged significant facts that were known to defendant officers at the time of his arrest and at other relevant times, including the following:

> **Cicero Fire Department Contact with J.T.**
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> 16. The members of the Cicero Fire Department arrived at the house at approximately 11:24 P.M. on March 6, 2011 in response to a call of an intoxicated female.
> 17. The Cicero paramedics found J.T. lying in bed, and was told by J.T.'s family members that she had been drinking alcohol earlier that day with friends.
> 18. No allegations of any sexual assault were made to the Cicero Fire Department personnel.
> 19. J.T. told the paramedics that she "drank Vodka."
> 20. The paramedics noted the absence of any signs of trauma, breathing difficulty nor vomiting.
> 21. J.T. also denied using any drugs.
> 22. J.T. was belligerent and swearing at her parents as she was eventually taken away by the paramedics.
> 23. Upon arriving at MacNeal Hospital, J.T. told the hospital personnel that she could not recall what happened.
> 24. Specifically, J.T. could not recall if she had had sexual intercourse. J.T. denied ever being sexually active.
> 25. J.T., however, remembered that she had been with friends and had been drinking.

26. J.T. told the hospital personnel, while crying, that she was scared to go home and stated, "My mom's going to yell at me."
27. J.T.'s mother requested sexual assault kit be performed on J.T.
28. No defense wounds were noted on J.T. during exam. J.T. was given medications to treat vomiting only until the next morning.

Police Investigation and Arrest of Roldan

29. On March 6, 2011, at approximately 10:59 P.M., Officers Savaglio and Ellison of the Cicero Police Department were dispatched to 1833 S. 59th Street, in Cicero, Illinois to respond to a call of a juvenile female under the influence of alcohol.
30. Officer Savaglio spoke to Isamar Baez who lives at 1833 S. 59th Street that a person named "Luis" was involved in an incident who lived down the block who drive a gray Nissan.
31. Officer Savaglio canvassed the area and located a gray Nissan Altima that was registered to Luis Roldan of 1819 S. 59th Street.
32. Officer Savaglio relocated to 1819 S. 59th Street and spoke with Luis Roldan.
33. When Savaglio asked ROLDAN if he knew what happened at this friend's house down the block, ROLDAN allegedly said, "yeah, those girls who got drunk?"
34. When Savaglio asked if he was present at the "original location," ROLDAN allegedly said, "yeah[,]I was there too but I didn't buy the alcohol."
35. At that point, on March 6, 2011, ROLDAN was arrested and transported to the Cicero Police Department by Officer Savaglio.
36. On March 7, 2011, at 1:30 A.M., Defendants ZAMORA and AURIEMMA spoke to J.T. who told them that she could not remember anything after she left the movies with her friends.

See Plaintiff's Response, Dkt. No. 38, Exhibit 1, at ¶¶ 16-36. None of these additional allegations were contained in plaintiff Roland's initial complaint, which, as noted above, resulted in its dismissal. *See* Roldan's Initial Complaint, attached as Exhibit 1.

It was only because of these additional allegations about defendant officers' knowledge at the time of the arrest that the court did not dismiss the amended complaint. *See generally Roldan v. Town of Cicero*, No. 17-cv-3707, 2019 U.S. Dist. LEXIS

51013 (N.D. Ill. Mar. 27, 2019). These are the exact type of allegations missing from Plaintiff's complaint. As such, Plaintiff's complaint mirrors the initial complaint filed by plaintiff Roland, which was dismissed by this district for failure to "allege what facts were known to Defendants at the time of his arrest or at other relevant times." *Roldan v. Town of Cicero,* No. 17-cv-3707, 2018 U.S. Dist. LEXIS 49122, at *12-14 (N.D. Ill. Mar. 26, 2018).

Further, the case of *Neita* is also not helpful to Plaintiff. In *Neita,* the Seventh Circuit found that because a false-arrest claim requires a plaintiff to show that there was no probable cause for his arrest, Plaintiff "must adequately plead[] a lack of probable cause." *Neita v. City of Chi*., 830 F.3d 494, 497 (7th Cir. 2016). In its analysis, the court found that "Neita alleges that he showed up at Animal Control to surrender two dogs, neither of which showed signs of abuse or neglect, and was arrested without any evidence that he had mistreated either dog." *Id.* It further held that the plaintiff adequately alleged a false arrest claim only because it found that "[if] these allegations are true, no reasonable person would have cause to believe that Neita had abused or neglected an animal." *Id.* This case therefore does not allow for a meaningful comparison.

Unlike the allegations in *Neita*, even if Plaintiff's allegations are true, a reasonable person could have cause to believe that Plaintiff possessed drugs. Plaintiff completely disregards the City's point that Plaintiff's sole allegation that he was not the "target" of the search warrant insufficiently pleads the absence of probable cause. Even if Plaintiff was not the individual identified in the warrant, Defendant officers could pursue

criminal charges against him if there was probable cause to believe that he was guilty of the drugs charges. Plaintiff neither alleges that illegal drugs were not found during the execution of the search warrant nor that he did not reside in the residence or the room where the illegal drugs were found. Plaintiff's complaint is silent as to what, exactly, Plaintiff was doing during the search As such, Plaintiff's allegations do not allow this court to "infer more than the mere possibility of misconduct," and should result in the dismissal of Plaintiff's malicious prosecution claim. *McCauley v. City of Chicag*o, 671 F.3d 611, 616 (7th Cir. 2011).

Contrary to Plaintiff's argument, it was not necessary for the Defendant officers to observe him actually commit an offense or know that he had committed an offense for them to have probable cause. Plaintiff actually contends his claim of arrest without probable cause is plausible because his Complaint alleges that "Anderson and Westman did not observe Plaintiff commit any offense and Anderson and Westman had not received any information that plaintiff had committed an offense." *See* Plaintiff's Response, Dkt. No. 38, at 3. The U.S. Supreme Court though has explained: "Because probable cause deals with probabilities and depends on the totality of the circumstances, it is a fluid concept that is not readily or even usefully reduced to a neat set of legal rules. It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *District of Columbia v. Theodore Wesby, et al.*, 138 S. Ct. 577 (2018)(internal citations omitted). Probable cause to justify an arrest exists if the totality of the facts and circumstances known to the officer at the time of the arrest would warrant a reasonable, prudent person in believing that the arrestee had

committed, was committing or was about to commit a crime. *Thayer v. Chiczewski*, 705 F.3d 237, 246 (7th Cir. 2012).

For these reasons, Plaintiff fails to meet his initial burden of alleging facts sufficient to show that Defendant officers lacked probable cause to pursue criminal charges. Even assuming Plaintiff was misidentified as the "target" of the search warrant, Defendant officers could arrest Plaintiff and pursue criminal charges if there was probable cause to believe Plaintiff was in possession or control of illegal drugs. Accordingly, Plaintiff fails to plausibly establish a malicious prosecution claim and Plaintiff's malicious prosecution claim should be dismissed.

II. *Plaintiff's Malicious Prosecution Claim Also Fails As The Defendant Officers Did Not Commence Or Continue A Criminal Proceeding Against Plaintiff.*

Plaintiff fails to substantively address Defendant City's argument that Defendant officers' actions were not "the but-for and proximate cause of" Plaintiff's prosecution as the alleged "manipulated or falsified" evidence did not constitute "key evidence." *See* City's Memorandum in Support of Its Motion to Dismiss, Dkt. No. 36, at 8-9. Plaintiff therefore waived any argument. As discussed further in Defendant City's memorandum in support of its amended motion to dismiss, allegations that Defendant officers falsely stated in official police reports that Plaintiff was the target of the search cannot amount to "key evidence" and cannot therefore have been the "but-for" or "proximate cause" of Plaintiff's prosecution. *Id.* The prosecution was based on evidence that Plaintiff was in possession or control of the illegal drugs, irrespective of whether he

was "target" of the warrant. *Id.* At the bench trial, the State did not even present evidence or otherwise argue that Plaintiff was the "target" of a warrant. *Id.*

Therefore, even taking Plaintiff's allegations as true, Defendant officers did not manipulate or fabricate any "key evidence" and could not have proximately caused Plaintiff's prosecution. As such, Plaintiff's malicious prosecution claim should be dismissed.

III. *Plaintiff's Malicious Prosecution Claim Additionally Fails As Defendant Officers Did Not Act With Malice.*

In the same fashion, Plaintiff fails to substantively respond to Defendant City's argument that Plaintiff fails to allege that the Defendant officers acted with malice. *Id*. at 9-10. The most Plaintiff says is that malice can be inferred because of his arguments that he plausibly alleges the absence of probable cause. This is incorrect for two reasons.

First, as noted above, Plaintiff fails to even allege the absence of probable cause and certainly has not alleged the requisite malice. Second, in a recent decision by the Seventh Circuit, although nonprecedential, it explicitly found that malice may not be inferred from the lack of probable cause. *Dewar v. Felmon*, No. 20-1007, 2021 U.S. App. LEXIS 14375, at *3 (7th Cir. May 14, 2021). **"**When a federal judge holds that an arrest was unsupported by probable cause, this implies nothing about the officers' state of mind . . . . [and] [p]roof of malice must come from the plaintiff, who in civil litigation has the burden of persuasion." *Id.* Therefore, contrary to Plaintiff's unsupported argument, malice cannot be inferred "because of his arguments that he plausibly alleges the absence of probable cause."

As such, because Plaintiff does not allege malice, his malicious prosecution claim should be dismissed.

IV. To The Extent Plaintiff Brings A Monell Claim, It Should Be Dismissed As It Is Not Adequately Plead.[3]

As noted in Defendant City's memorandum in support of its amended motion to dismiss, Plaintiff's false arrest claim must also be dismissed as the presence of probable cause is also an absolute bar to a claim of false arrest. *See Mustafa v. City of Chicago*, 442 F.3d 544, 547 (7th Cir. 2006). For the same reasons as noted above, Plaintiff fails to allege the absence of probable cause as required to allege a false arrest claim. Absent an underlying Fourth Amendment false arrest claim, Plaintiff's *Monell* claim undisputedly must be dismissed. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Matthews v. City of East St. Louis*, 675 F.3d 703, 709 (7th Cir. 2012).

a. The Rulings In The Cases Of *Hallom, Spearman, And Obrycka* Are Inapplicable And Do Not Save Plaintiff's Case.

Although acknowledging the *Smith* decision rejected the exact code of silence allegations made in this case, Plaintiff asks this court to simply disregard it. Instead, Plaintiff refers this court to the cases of *Hallom, Spearman, and Obrycka*. However, these cases are easily distinguishable and do not provide support for Plaintiff's claim. *Hallom v. City of Chi.*, No. 1:18 C 4856, 2019 U.S. Dist. LEXIS 67659, at *10-11 (N.D. Ill. Apr. 22, 2019); *Spearman v. Elizondo*, 230 F. Supp. 3d 888, 892 (N.D. Ill. 2016); *Obrycka v.*

[3] The underlying constitutional violation is Plaintiff's Fourth Amendment false arrest claim against Defendant officers. Plaintiff erroneously contends that "the individual defendants do not challenge the sufficiency of the allegations of personal involvement, failure to intervene, fabrication of evidence or conspiracy. *See* Plaintiff's Response, Dkt. No. 38, at 3, fn. 3. However, Plaintiff brings no claims for failure to intervene, fabrication of evidence or conspiracy.

City of Chi., No. 07 C 2372, 2012 U.S. Dist. LEXIS 22818, at *24 (N.D. Ill. Feb. 23, 2012). Just like the *Smith* case, the holdings in these three cases require Plaintiff to plausibly allege that the "code of silence" caused his alleged false arrest and that the misconduct was pervasive. *Id.* Therefore, Plaintiff's attempt to avoid dismissal of his *Monell* claim by arguing that his general reference to the Department of Justice report is sufficient fails.

Notably, the three cases cited by Plaintiff do not support his *Monell* claim. None even involve a false arrest claim, which is the alleged underlying constitutional violation in this case. As to the case of *Hallom*, the court did not analyze the causation component of the plaintiff's *Monell* claim. *Hallom*, 2019 U.S. Dist. LEXIS at *10-11; *see also Jordan v. City of Chi.*, No. 20-cv-4012, 2021 U.S. Dist. LEXIS 93292, at *13 (N.D. Ill. May 17, 2021) ("*Hallom* did not analyze the causation component of the plaintiff's Monell claim"). Regarding the case of *Obrycka,* the court considered a motion for summary judgment and denied it because of expert testimony and other evidence that the defendant officers made dozens of telephone calls to each other and other Chicago police officers, including police detectives, after realizing the incident was videotaped. *Obrycka*, 2012 U.S. Dist. LEXIS at *24. These cases are therefore inapplicable here.

In *Spearman*, the court only denied dismissal because plaintiff Spearman's conclusory assertions were "buttressed by numerous factual allegations." *Spearman*, 230 F. Supp. at 892. Those allegations included that (1) the officer defendants together have over ninety complaint registers lodged against them, (2) the convictions or guilty pleas of nine Chicago police officers on allegations of official misconduct during traffic stops

and home searches between the years 2007 and 2012; and (3) the statement by one of the latter officers during a 2012 interview that the practice of stealing from citizens during searches was widespread, well-known, and condoned by commanding officers. *Id.* Further, the court based its decision on its holding that "the thrust of the complaint is that the CPD's code of silence, and the City's policy of refusing to discipline officers, positively encouraged or emboldened the officer defendants to carry out searches in the reckless manner alleged by Spearman." *Id.* at 895. Here, Plaintiff does not make such allegations about the Defendant officers, and warrants dismissal.

For all these reasons, this court should follow this district's decision in *Smith. Smith v. City of Chi.,* No. 18 C 4918, 2019 U.S. Dist. LEXIS 601, at *21 (N.D. Ill. Jan. 3, 2019), *reh'g granted,*, 2019 U.S. Dist. LEXIS 151957, at *5 (N.D. Ill. Sep. 6, 2019). As noted in Defendant City's amended motion to dismiss, the plaintiff's complaint in *Smith* contains the exact same allegations for his *Monell* claim as in this case. The court dismissed the plaintiff's *Monell* claim, finding first that "these [general] allegations do not lead to an inference of pervasive or widespread misconduct, either in fabricating evidence or ignoring misconduct." *Id.* In addition to finding there was no alleged widespread policy or practice, the court found that "[w]ith regard to causation, his "code of silence" allegations are brief and circular: the "code of silence" caused Officers Mitchell and Otero to do what they did because they acted pursuant to the "code of silence." *Id.* Given the allegations in this case are the exact same, dismissal is equally warranted in this case.

Just as in *Smith*, other than generally referring to an alleged "code of silence," Plaintiff points to no other instances, only that the Defendant officers acted pursuant to an alleged "code of silence." These naked assertions do not "lead to an inference of pervasive or widespread misconduct," and have already been rejected by courts in this district. Further, in this case, Plaintiff alleges no connection between the wrong alleged (false arrest) and the "code of silence." Other than alleging that the "code of silence" was a "cause for the actions of the officer defendants to concoct a false story and fabricate evidence," Plaintiff cites no facts that support a connection. Unlike in *Spearman* and *Obrycka*, there are no allegations that Defendant officers felt protected by the "code of silence." Equally so, there are no allegations that Defendant officers were encouraged to commit a false arrest because they knew that fellow officers would not testify against them or that any specific individuals agreed to follow the "code of silence."

For these reasons, Plaintiff's *Monell* claim should be dismissed.

b. The Holding In *Jordan* Supports Dismissal Of Plaintiff's *Monell* Claim.

Finally, Plaintiff surprisingly refers to the case of *Jordan v. City of Chi.,* No. 20-cv-4012, 2021 U.S. Dist. LEXIS 93292, at *10 (N.D. Ill. May 17, 2021). Counsel in this case, Kenneth N. Fkaxman P.C., also represented the plaintiff in *Jordan*. *Id.* Just as in *Smith*, the plaintiff's initial complaint in *Jordan* contains the same exact allegations for his *Monell* claim as in this case. *Id.*; *see also* Jordan's Initial Complaint, attached as Exhibit 2. This district in *Jordan* dismissed the plaintiff's *Monell* claim because his allegations that "officer defendants fabricated and concealed evidence are at most *consistent* with causation by the code of silence." *Jordan,* No. 20-cv-4012, 2021 U.S. Dist. LEXIS at *10. In

finding this allegation was insufficient, the court relied on the pleading requirement pursuant to *Iqbal* that "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* Given the allegations in this case are the exact same, dismissal is equally warranted in this case.

Notably, almost admitting deficiencies, Plaintiff attempts to incorporate allegations made in the plaintiff's amended complaint in the *Jordan* case in this case. This is improper. The *Bausch v. Stryker Corp.* case, cited by Plaintiff, does not hold as such either. 630 F.3d 546, 559 (7th Cir. 2010). Also, the amended complaint was only just filed on June 1, 2021, and the district court has said nothing about the sufficiency of the allegations therein. *See* Jordan's Amended Complaint, attached as Exhibit 3. Defendants have yet to even respond to it. Further, the allegations contained in plaintiff Jordan's amended complaint are not consistent in anyway with the allegations in this case. *Id.*

For these reasons, Plaintiff fails to state a proper *Monell* claim and it should be dismissed.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendant City respectfully requests this Honorable Court dismiss Plaintiff's malicious prosecution claim, and to the extent one is being brought, any *Monell* claim against Defendant City, with prejudice.

Respectfully Submitted,

CITY OF CHICAGO

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2021, I electronically filed the foregoing Defendant City of Chicago's Reply in Support of its Amended Rule 12(b)(6) Motion to Dismiss with the Clerk of the Court for the United States District Court for the Northern District of Illinois by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Vincent M. Rizzo