

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DOMINIQUE TURNER, individually and as next
friend of her minor children, TJ1, TJ2, TJ3 and
TJ4,

Plaintiff,

v.

CITY OF CHICAGO, DAVID ALVAREZ, JR.,
#16131, BRADLEY ANDERSON, #15660,
SAMUEL ANGEL, #16501, LUCAS BOYLE,
#12059, CORNELIUS BROWN, #2235,
ANTHONY BRUNO, #1123, BRANDON
CAMPBELL, #6278, YVETTE CARRANZA,
#13435, DANIELLE CUSIMANO, #16619,
EMILIO DE LEON, #16360, DERVIS
DEMIROVIC, #15664, DANIELLE DUNN,
#9615, DAMIEN ENOCH, #12694, DOMINIC
FERRO, #17503, VICTOR GUEBARA, #17147,
STEVEN HOLDEN, #8149, ANDREW
KHALIFEH, #9557, CHARLES MCCLAY,
#4735, AARON MCCLELLAND, #9164,
MARCO MENDOZA, #1362, ANTONIO
MIRANDA, #8264, SEAN RYAN, #13198,
HUGO SANCHEZ, #14269, CARLOS
SANTAMARIA, #9919, DIMAR VASQUEZ,
#17910, BRYAN VIELMAN, #18705, CURTIS
WEATHERBY, #7866, SCOTT WESTMAN,
#18472, and RUSSEL WILLINGHAM, #511,

Defendants.

No. 21-cv-00704

**CHICAGO POLICE DEPARTMENT OFFICERS' MEMORANDUM
IN SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO 12(b)(6)**

NOW COMES Defendants Chicago Police Officers David Alvarez, Jr., Bradley
Anderson, Samuel Angel, Lucas Boyle, Cornelius Brown, Anthony Bruno, Brandon Campbell,
Yvette Carranza, Danielle Cusimano, Emilio de Leon, Dervis Demirovic, Danielle Dunn,
Damien Enoch, Dominic Ferro, Victor Guebara, Steven Holden, Andrew Khalifeh, Charles
McClay, Aaron McClelland, Marco Mendoza, Antonio Miranda, Sean Ryan, Hugo Sanchez,

Carlos Santamaria, Dimar Vasquez, Brian Vielman, Curtis Weathersby, Scott Westman, and Russell Willingham (“Officer Defendants”), by and through their attorneys, TRIBLER, ORPETT & MEYER, P.C., and for their Memorandum of Law in support of their Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), state as follows:

INTRODUCTION

Plaintiff Dominique Turner alleges that twenty-nine Chicago Police Officers unlawfully entered the second-floor unit apartment she lived at with her children on February 8, 2019 and April 25, 2019. Plaintiff files this suit individually and on behalf of her four minor children. Counts I and III are directed at the Officer Defendants. Count II is directed to the City of Chicago.

Count I alleges violations of the Fourth and Fourteenth Amendments pursuant to 42 U.S.C. §1983. Plaintiff alleges that the Officer Defendants lacked probable cause to obtain a search warrant for her residence on February 8, 2019. However, Plaintiff fails to allege she was the lawful owner and/or tenant of the second-floor unit on the date of the search. Plaintiff does not deny that the Officer Defendants had a search warrant. Rather, the Complaint simply states “only an incompetent police officer could have believed there was probable cause to obtain the warrant.” Plaintiff does not allege any facts to put the Officer Defendants on notice as to why there was no probable cause for the warrant, or why it was otherwise invalid. Each involved a warrant to search a suspected drug dealer. Not surprisingly, absent from Plaintiff’s allegations in the Complaint is that on February 8, 2019, during the search, narcotics were, in fact, found in the residence. Perhaps that is why Plaintiff’s Complaint allegations fail to allege she was the lawful owner or tenant of the residence.

Regarding the April 25, 2019 search, Plaintiff does not allege that the search warrant was invalid at all. Rather, Plaintiff alleges that the Officer Defendants’ actions during the search were

unreasonable. However, other than an allegation that the Officer Defendants pointed a gun at TJ1 (a 15-year-old), there are no other factual allegations alleged. Plaintiff also fails to allege she was the lawful owner and/or tenant on the date of this search.

Count III alleges the Officer Defendants violated Plaintiff's rights under the Fair Housing Act pursuant to 42 U.S.C. §3617, yet fails to sufficiently allege that all of the Officer Defendants were personally involved in the alleged misconduct and similarly fails to allege she was the lawful owner/tenant of the residence.

Plaintiff's claims fail because they do not allege sufficient facts to state a claim upon which relief can be granted. The Complaint fails to meet the minimum pleading requirements to place each Officer Defendant on adequate notice of Plaintiff's claims and to support the causes of action alleged. The Complaint also fails to sufficiently allege that all the Officer Defendants were personally involved in the alleged misconduct. For these reasons, and as more fully explained below, the Officer Defendants request that Plaintiff's Complaint be dismissed.

ARGUMENT

Standard of Review

When ruling on a motion to dismiss pursuant to Rule 12(b)(6), courts accept as true the well-pled facts of a complaint and draw all reasonable inferences in favor of the plaintiff. *Perkins v. Silverstein*, 939 F.2d 463, 466 (7th Cir. 1991). A court is not required, however, to accept as true a legal conclusion couched as a factual allegation or unsupported conclusions of fact. *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Hickey v. O'Bannon*, 287 F.3d 656, 658 (7th Cir. 2002). The purpose of a Rule 12(b)(6) motion is to test the sufficiency of the complaint, and not its merits. *Gibson v. City of Chi.*, 910 F.2d 1510, 1520 (7th Cir. 1990). In order to withstand a motion to dismiss, Plaintiff's Complaint must describe the claim in sufficient detail to give the

Defendants fair notice of the claim and the grounds upon which the claim is based. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). If the Complaint merely offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action,” it fails to satisfy the pleading requirements and dismissal is appropriate. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). Additionally, the Complaint must plausibly suggest Plaintiff’s right to relief beyond a speculative level. *See Brooks v. Ross*, 578 F.3d 574 (7th Cir. 2009); *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1950 (2009); *Twombly*, 550 U.S. at 555.

I. The Complaint should be dismissed because it fails to state a claim upon which relief may be granted.

A. The February 8, 2019 Search Warrant

The Complaint alleges that Officers Anderson and Westman obtained the warrant for the February 8, 2019 search (ECF. No. 1, ¶10). The Complaint alleges that “only an incompetent police officer could have believed that there was probable cause to obtain the warrant.” *Id.* ¶11. Plaintiff does not allege why a competent police officer would not believe there was probable cause. The Complaint does not allege that any Officer Defendant knew of any fact that would lead them to suspect that the search warrant itself was invalid. Plaintiff’s allegation is no more than a legal conclusion stating that “there was no probable cause”. Because her Fourth Amendment claim is based on conclusory, threadbare allegations that the officers lacked probable cause, it is insufficient to survive a motion to dismiss. *Roldan v. Town of Cicero*, 2018 U.S. Dist. LEXIS 49122 (N.D. Ill. Mar. 26, 2018)(dismissing Fourth Amendment claim where plaintiff failed to allege what facts were known to Defendants at the time of his arrest that would establish they lacked probable cause).

The Fourth Amendment authorizes police officers who are executing a search warrant “to ‘take reasonable action to secure the premises and to ensure their own safety and the efficacy of

the search.” *United States v. Clifton Banks*, 628 F. Supp. 2d 811, 815 (N.D. Ill. 2009)(quoting *United States v. Jennings*, 544 F. 3d 815, 819 (7th Cir. 2008). Officers, therefore, have the authority “to detain the occupants of the premises while a proper search is conducted.” *Muehler v. Mena*, 544 U.S. 93, 98 (2005)(quoting *Michigan v. Summers*, 452 U.S. 692, 705 (1981)). *See also United States v. Burns*, 37 F.3d 276, 280 (7th Cir. 1994)(finding detention during the execution of the search warrant under the Fourth Amendment); *People v. Edwards*, 144 Ill. 2d 108, 126 (1991)(explaining that “a warrant to search for contraband, founded on probable cause, implicitly carries with it the authority to detain occupants of the premises while the search is being conducted”). Police officers’ authority to detain occupants incident to a search is categorical. *Muehler*, 544 U.S. at 98 (Fourth Amendment allows officers to detain occupants when executing a search warrant). Plaintiff’s allegations that the officers “unreasonably detained,” “illegally entered,” “illegally searched,” and “searched in an unreasonable manner” are also legal conclusions couched as factual allegations. *Id.* at ¶15 and ¶16.

Aside from one allegation that one of the officers allegedly pointed a weapon at TJ1(a 15-year-old), Plaintiff fails to provide sufficient detail to allege why the Officer Defendant’s actions were unreasonable. There are no facts provided as to any unreasonable conducted directed to TJ2, TJ3 and TJ4. Because the Compliant fails to offer the grounds upon which the claim is made, it fails to satisfy the pleading requirements and dismissal is proper.

In addition, Plaintiff fails to allege that any other officers were personally involved in violating plaintiff’s constitutional rights. *Palmer v. Marion County*, 327 F. 3d 588, 594 (7th Cir. 2003). When bringing their 1983 claim, Plaintiff must plead allegations establishing that each Officer Defendant was personally involved in the alleged constitutional violation in order to impose Section 1983 liability. *Colbert v. City of Chi.*, 851 F. 3d 649, 657 (7th Cir. 2017). *See also*

Schulz v. Baumgart, 738 F.2d 231, 238 (7th Cir. 1984) (“individual liability for damages under 1983 is predicated upon personal responsibility”). “Section 1983 creates a cause of action based on personal liability and predicated upon fault. An *individual* cannot be held liable in a § 1983 action unless he caused or participated in an alleged constitutional deprivation.” *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) (emphasis in original); *Brooks v. Ross*, No. 08 CV 2417, 2008 U.S. Dist. LEXIS 96117, at *22 (Nov. 25, 2008) (quoting *Rascon v. Hardiman*, 803 F.2d 269, 273 (7th Cir. 1986) (citation omitted) (granting motion to dismiss as plaintiff failed to plead the required element of personal responsibility).

Plaintiff’s Complaint provides no factual allegations as to how each officer caused or participated in Plaintiff’s alleged constitutional rights. For example, each allegation states that “One or more” of the officers illegally searched her residence, searched the apartment in an unreasonable manner and unreasonably detained TJ1, TJ3 and TJ4, but does not identify which Officer participated or in what way any of these actions were unreasonable (ECF No. 1, ¶15, ¶16, ¶21). Plaintiff further fails to even describe the subject officers who performed the alleged acts with any descriptors whatsoever such as gender, race, height, weight, etc. Surely, Plaintiff is not prevented from providing this information as she admittedly has the video of the search (ECF No. 1, ¶15, ¶16). The court should also dismiss Count I against all defendants other than Anderson and Westman for the additional reason that Plaintiff does not allege that any other defendants were involved in submitting the applications supporting the search warrant for the February and April 2019 searches (ECF No. 1, ¶10, 17).

B. The April 25, 2019 Search

Plaintiff does not allege that the Officer Defendants entered her home without a valid search warrant. According to the Complaint, the only individuals present during this search were

her 15-year-old (TJ1) and her one-year-old twins (TJ3 and TJ4). The Complaint alleges that “one or more” of the Officers pointed a gun at TJ1. *Id.* at ¶21. Aside from this one factual allegation, the Complaint does not specify any facts as to how the Officer Defendants “illegally entered, illegally searched, or searched the apartment in an unreasonable manner.” *Id.* at ¶21. As explained *supra*, Plaintiff fails to allege sufficient fact to state a claim as to how the April 25, 2019 search violated her constitutional rights. Plaintiff further fails to provide any identifying characteristics of the subject officers to place them on notice of their alleged actions.

C. Plaintiff fails to allege she was the lawful owner and/or tenant of the second-floor unit.

Plaintiff claims that she lived in the 2nd floor unit and/or identifies the unit as her Turner’s apartment (ECF No. 1, ¶6, ¶21). However, Plaintiff fails to allege that she was the lawful owner or tenant of the unit other than simply residing in that unit. If there was a warrant for the 2nd floor unit search, she must allege she owned the unit or she was the lawful tenant who signed the lease to occupy the unit. Otherwise, she has no possessory interest to assert a Fourth Amendment claim for search of the unit.

II. Count III of Plaintiff’s Complaint should be dismissed for failure to state a claim.

Plaintiff alleges the Officer Defendants violated the Federal Fair Housing Act by engaging in a “negative raid”, which Plaintiff defines as those that fail to result in an arrest. However, the February 8, 2019 search did result in an arrest. *See Tyerie Johnson v. City of Chicago, et al.*, 20-cv-07222, (ECF No. 1)(Plaintiff alleges that he was arrested on February 8, 2019 as a result of the search at issue in this case)¹. Given there was an arrest two months prior to the April 25, 2019

¹ This Court may take notice of the complaint filed in *Johnson* as it is a source “whose accuracy cannot be reasonably questioned,” in the sense that the document filed can be reliably assumed to be irrefutable proof that a complaint was filed. *ABN Amro, Inc. v. Capital Int’l Ltd.*, 2007 U.S. Dist. LEXIS 19601,*38 (N.D. Ill March 16, 2007).

search, the fact that there was not an arrest arising out of that search does not mean it was an unreasonable one. The Complaint does not allege that the search warrant for the April 25, 2019 search was invalid. There are no facts indicating why the April 25, 2019 search was illegal or in violation of the Fair Housing Act. She does not plead any factual allegations that any of the Officers who searched the residence destroyed any of her property. Plaintiff further fails to allege she was the lawful owner or tenant of the unit. Therefore, as stated *supra*, Plaintiff's Complaint should be dismissed for failure to state a claim.

III. Plaintiff's Complaint is deficient pursuant to Rule 8.

Plaintiff's claims against the Officer Defendants in Counts I and III fail to adequately allege each Officer Defendant's alleged personal involvement. Although Plaintiff does identify a few Officers against whom they allege certain allegations (securing the warrants), Plaintiff pleads all other claims against all Officer Defendants. This improper use of "group pleading" is insufficient because it fails to put each Officer Defendant on notice as to which claims and alleged actions they must defend themselves against.

Although group pleading does not automatically violate Rule 8, it does violate Rule 8 if it fails to provide sufficient detail to put Defendant Officers on notice of the claims against them. *Lattimore v. Vill. of Streamwood*, 17 CV 8683, 2018 U.S. Dist. LEXIS 79706, at *10 (N.D. Ill. May 11, 2018) (citing *Marposs Societa Per Azioni v. Jenoptik Auto. N. Am., LLC*, 262 F. Supp. 3d 611, 618 (N.D. Ill. 2017)). In other words, group pleading is inappropriate when a plaintiff fails to set forth any allegations as to whether or not each defendant actually engaged in the alleged conduct. "Details about who did what are not merely nice-to-have features of an otherwise-valid complaint; to pass muster under Rule 8 of the Federal Rules of Civil Procedure, a claim to relief *must* include such particulars." *Atkins v. Hasan*, No. 15 CV 203, 2015 U.S. Dist.

LEXIS 80176, at *7 (N.D. Ill. June 22, 2015) (Shah, J.) (citing *Bank of Am., N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013)) (emphasis in original). *See also Choyce v. Friar*, No. 08 CV 202, 2008 U.S. Dist. LEXIS 48343, at *10 (N.D. Ill. June 24, 2008) (Der-Yeghiayan, J.) (granting motion to dismiss because “the identities of the actual officers that were plausibly involved in [the plaintiff’s] claims is a necessary fact that must be pled in order to properly put these individual Defendants on notice of the claims brought against them”).

Additional Northern District decisions have found that “allegations against collective groups do not survive motions to dismiss because defendants are not put on notice of the claims against them.” *See Liera v. City of Chi.*, No. 13 CV 9032, 2014 WL 3921359, at *3 (N.D. Ill. Aug. 5, 2015) (Gettleman, J.) (dismissing complaint against 32 unspecified officers as plaintiff was only able to match allegations of specific conduct to 3 of 35 officers and, therefore, the unspecified officers were not put on notice as to which actions plaintiff alleged they committed); *Martinez v. City of Chi.*, No. 09 CV 5938, Dkt. 50 (N.D. Ill. Sept. 8, 2010) (Grady, J.) (dismissing complaint against 24 officers because it failed to provide notice to officers regarding which claims were plead against them as it did not provide any facts as to those officers’ involvement and “Section 1983 liability must be predicated on personal involvement”).

Notably, the Northern District case *Carter v. Dolan*, No. 08 CV 7464, 2009 U.S. Dist. LEXIS 53735, at *8-9 (N.D. Ill. June 25, 2009) (Zagel, J.), explained that a complaint does not provide sufficient notice of the alleged misconduct when it refers to multiple police officer defendants as “defendant officers,” in each factual allegation. *Id.* at *8-9. In *Carter*, the plaintiff’s amended complaint was dismissed because she had merely substituted the collective identifier “Defendant Officers” with the names of all nine defendant officers. *Id.* at *9. The *Carter* court explained that the substitution was “a distinction without a difference” because the

plaintiff failed to identify the individual conduct of each defendant officer despite being given the chance to do so. *Id. See also Polk v. Braun*, No. 19 CV 3756, Dkt. 34 (N.D. Ill. Oct. 22, 2019) (Seeger, J.) (ordering “Plaintiffs’ counsel to file a statement explaining the factual basis for naming each of the twenty-two individual police officer Defendants . . . [which] shall address each separate Defendant, one by one, and recite facts that support their inclusion”).

Like the above cases, Plaintiff merely pleads her claims generally against all Officer Defendants. For example, the Complaint alleges that “one or more” of the Officers unreasonably detained TJ1, TJ2, TJ3 and TJ4, and “one or more” of the Officers pointed a weapon at TJ1 on February 8, 2019 (ECF No. 1, ¶15). Plaintiff also alleges “one or more” of the Officers unreasonably detained TJ1, TJ2, TJ3 and TJ4 and “one or more” of the Officers pointed a weapon at TJ1 on April 25, 2019 (ECF No. 1, ¶21). Plaintiff names twenty-nine Officer Defendants. Plaintiff may not know the names of the officers who allegedly committed the aforesaid actions, but she could certainly provide general descriptors such as gender, race, height, weight or any other identifying features of the officers who are alleged to have unreasonably detained her children and point a gun at her child, especially given the fact that she possesses and reviewed the video based upon her repeated allegation that “as appears more fully in the video of the raid”) (ECF No. 1, ¶15, ¶21). The Complaint should be dismissed because it fails to provide sufficient notice of the alleged misconduct and fails to provide any identification of the subject officers, but instead refers to up to twenty-nine officers in each allegation.

WHEREFORE, the Officer Defendants respectfully request this Honorable Court grant their motion to dismiss and dismiss Plaintiff’s Complaint for the reasons stated herein.

Respectfully submitted,

/s/ William B. Oberts

One of the attorneys for the Officer
Defendants.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Chicago Police Department Officers' Memorandum in Support of Their Motion to Dismiss Pursuant to 12(b)(6) was served upon:

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service was accomplished pursuant to ECF as to Filing Users and complies with LR 5.5 as to any party who is not a Filing User or represented by a Filing User by mailing a copy to the above-named attorney or party of record at the address listed above, from 225 W. Washington Street, Suite 2550, Chicago, IL 60606, on the 1st day of June, with proper postage prepaid.

s/William B. Oberts
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