UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOMINIQUE TURNER, et al,	)	
	)	
Plaintiffs,	)	Case No. 21-cv-704
	)	
vs.	)	Honorable Thomas M. Durkin
	)	
CITY OF CHICAGO, et al,	)	Magistrate Judge Jeffrey Cummings
	)	
Defendants.	)	

DEFENDANT CITY OF CHICAGO'S MOTION
TO DISMISS COUNT II OF PLAINTIFF'S COMPLAINT

Defendant City of Chicago ("Defendant City"), by and through its attorney, Celia Meza, Corporation Counsel of the City of Chicago, pursuant to Federal Rules of Civil Procedure 12(b)(6), respectfully moves this Court to dismiss Count II of Plaintiffs' Complaint, for failure to state a claim.

Introduction[1]

Two separate search warrants were executed at an address occupied by Plaintiff Dominique Turner and her four minor children in the 6800 block of South Dorchester Avenue in Chicago. [ECF 1 ¶ 5]. The first warrant was executed on February 8, 2019. *Id.* ¶ 10. The second warrant was executed on April 25, 2019. *Id.* ¶ 17.

Plaintiffs' Complaint contains three counts: Count I – "Constitutional Claims Against Individual Defendants;" Count II – "Constitutional Claims Against Defendant City of Chicago;" Count III – "Claim under Federal Fair Housing Act." [ECF 1]. As to Count II, Plaintiff purports to allege a *Monell* claim, alleging that: "The above-described conduct of the individual defendants

[1] All facts are taken in the light most favorable to Plaintiff for the purposes of this motion only. Defendant City reserves the right to contest Plaintiffs' allegations for all other purposes.

was carried out as a result of policies and widespread practices of defendant City of Chicago." *Id.* ¶ 24. Specifically, Plaintiff alleges defendant City of Chicago has the following widespread practices and/or policies:

A. "Code of Silence" – "At all relevant times, the City of Chicago has known of and has encouraged a 'code of silence' among its police officers." [ECF 1 ¶ 25]

B. "Excessive Force Against Children of Color" – "At all relevant times, the City of Chicago has known of and has failed to end the widespread use by Chicago police officers of excessive force against children of color, which often includes pointing guns at children." [ECF 1 ¶ 29].

C. "Defective Official Directive" – "At all relevant times, the City of Chicago's directive on search warrants, Special Order S04-19, encourages police officers to avoid verifying and corroborating information upon which they rely in seeking a search warrant. [ECF 1 ¶ 34].

D. "Lack of Discipline After Unconstitutional Raids" – "At all relevant times, the City of Chicago has maintained a discipline system that is designed to sweep under the rug unconstitutional conduct that occurs during execution of search warrants." [ECF 1 ¶ 36].

[ECF 1].

Defendant City now moves to dismiss Count II of Plaintiffs' complaint. Plaintiffs fail in their attempt to allege a legally cognizable *Monell* claim against the City based on the search warrant incidents for several reasons. To plead a legally sufficient *Monell* "custom" or "usage" claim, the Plaintiffs must allege, a pattern of incidents occurring under similar circumstances so common that it amounted to a *de facto* City policy *and* that the City policymakers had sufficient notice of that unconstitutional custom or usage such that it required a municipal response. Without such allegations, Plaintiffs cannot establish, for purposes of the motion to dismiss, that the City was deliberately indifference to the likelihood that the custom or usage at issue would result in further constitutional deprivations to Plaintiffs without its intervention. The Plaintiffs' allegations also must allow the Court to reasonably infer that the custom or usage, the *de facto policy*, at issue

was the moving force or catalyst for the individual CPD Defendants' purported violation of the Plaintiffs' constitutional rights during the search warrant incidents. Plaintiffs fail to do so. For these reasons, Count II should be dismissed with prejudice pursuant to Rule 12(b) (6).[2]

LEGAL STANDARD

A motion to dismiss pursuant to Federal Rule 12(b) (6) must be granted if the challenged pleading fails to state a claim upon which relief can be granted. *Corcoran v. Chicago Park District*, 875 F.2d 609, 611 (7th Cir. 1989). A motion to dismiss tests the sufficiency of the complaint, not the merits of the suit. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). When considering a motion to dismiss, the court accepts as true all well-pleaded facts alleged by the plaintiff and all reasonable inferences to be drawn therefrom. *See Barnes v. Briley*, 420 F.3d 673, 677 (7th Cir. 2005). However, the court is not obligated to accept a complaint that simply raises the possibility of relief. *E.E.O.C. v. Concentra Health Servs., Inc*., 496 F.3d 773, 776 (7th Cir. 2007). Rather, a complaint must "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Additionally, the court should not strain to find inferences that are not plainly apparent from the face of the complaint.

In order to survive a motion to dismiss under Rule 12(b) (6), a complaint must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." (*See* Fed. R. Civ. P. 8(a) (2)). A complaint satisfies this standard when its allegations "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555–56. Therefore, the complaint still needs to set forth enough factual specificity to causally connect Plaintiffs' claim to their alleged injury. *McTigue v. City of Chicago*, 60 F.3d 381, 382 (7th Cir. 1995); *see also Lowery v. Cook County*,

[2] The City joins the motion to dismiss Counts I and III of the Complaint filed by the individual defendant officers. [ECF 17].

No. 00-cv-5487, 2011 WL 185024, at *3 (N.D. Ill. Feb. 22, 2011) (Kocoras, J.). A plaintiff cannot "unlock the doors of discovery" when "armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 678–79. Plaintiff "must do more than merely parrot the language of *Monell* to state a claim." *Johnson v. Johnnie*, 2011 WL 2020686, at * 3 (S.D. Ill. May 24, 2011) (*citing Hamrick v. Lewis*, 515 F. Supp. 983, 986 (N.D. Ill.1981)); *see also Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009).

ARGUMENT

The complaint does not plead a plausible municipal liability claim under *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978). Under *Monell*, a municipality cannot be held liable under § 1983 for the constitutional violations of its officers and agents on a theory of respondeat superior. *Monell*, 436 U.S. at 690–91. Rather, the plaintiff must plead and later prove "that the constitutional violation was caused by a governmental 'policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.'" *First Midwest Bank ex rel. LaPorta v. City of Chicago*, 988 F.3d 978, 986 (7th Cir. 2021) (quoting *Monell*, 436 U.S. at 694). Official custom and practice can take at least three forms: (1) an "express policy;" (2) "a widespread practice that is so permanent and well-settled that it constitutes a custom or practice;" or (3) a constitutional violation "caused by a person with final policymaking authority." *Id.* (citing *Spiegel v. McClintic*, 916 F.3d 611, 617 (7th Cir. 2019)). The *Monell* claim in this case should be dismissed because the complaint is devoid of any factual allegations that would support any deprivation of Plaintiffs' civil rights as discussed in the motion to dismiss filed by individual officer defendants, but also because Plaintiffs fail to assert any unconstitutional policy and causation elements of a municipal liability claim.

Plaintiffs' *Monell* factual allegations are so bare and lacking in detail that they do not even

meet the basic pleading requirements of *Iqbal*.

> [T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it **demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation**. . . . A pleading that offers labels and conclusions or a **formulaic recitation of the elements of a cause of action will not do**. . . . . Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

Iqbal, 556 U.S. at 678 (emphasis added) (internal quotations omitted) (citing *Twombly*, 550 U.S. at 555. Because Plaintiffs have done nothing more than plead formulaic "the-defendant-unlawfully-harmed-me" allegations against Defendant City of Chicago, their *Monell* claim should be dismissed.

A. The Plaintiffs fail to sufficiently allege a widespread custom of a "code of silence"

To prevail on a *Monell* claim under a "widespread practice" theory, a plaintiff must establish that a pattern of similar deprivations is so "permanent, well-settled, and widespread as to constitute custom or usage." *Wragg v. Village of Thorton*, 604 F.3d 464, 468 (7th Cir. 2010). Put another way, a plaintiff must show that the municipality's unwritten practice is so widespread that the municipality is "deliberately indifferent as to [its] known or obvious consequences." *Thomas v. Cook County Sheriff's Dep't.*, 604 F.3d 293, 303 (7th Cir. 2010); *also City of Canton, OH v. Harris*, 489 U.S. 378, 388 (1989). To establish a municipality's deliberate indifference to such consequences, a plaintiff must present proof of a series of constitutional violations, as well as specific facts regarding the violations. *Palmer v. Marion County*, 327 F.3d 588, 596 (7th Cir. 2006). Isolated acts of misconduct by non-policymaking employees are insufficient to establish a widespread practice for purposes of *Monell* liability. *Id.* ("proof of isolated acts of misconduct will not suffice; a series of violations must be presented to lay the premise of deliberate indifference."

In addition to showing a deficient practice or custom that is widespread, a plaintiff seeking

to state a *Monell* claim in the absence of an expressly unconstitutional policy has two additional barriers. First, a plaintiff must establish the requisite degree of culpability on the municipality's part – namely, that the alleged municipal practices were carried out with "deliberate indifference" to their known or obvious consequences. *See City of Canton*, 489 U.S. at 388; *Bd. of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 404 (1997). A plaintiff must prove that the final policymaking authority both knew of and acquiesced in this practice. *See Cornfield by Lewis v. Consolidated High School Dist. No. 230*, 991 F.2d 1316, 1326 (7th Cir. 1993). Custom can be established through widespread, enduring practices that violate constitutional rights in a systematic manner. *See id*.; *see also McNabola v. Chicago Transit Authority*, 10 F.3d 501, 511 (7th Cir. 1993). Although evidence of a persistent and deeply-rooted practice permits the inference that policymakers must have known of its existence, the plaintiff must still prove that the policymaking authority acquiesced to it. *McNabola*, 10 F.3d at 511; *Cornfield* 991 F.2d at 1316. As the Court observed in *Canton*, to satisfy this culpability requirement, a plaintiff must demonstrate that the municipal action was taken with "deliberate indifference to its known or obvious consequences. A showing of simple or even heightened negligence will not suffice." *Canton*, 489 U.S. at 388.

Although Plaintiffs do not need to present evidence to prevail on their *Monell* claim at the pleading stage, they must still plead enough facts to put the Defendant City on notice of what the allegations against it are. Here, Plaintiff's pleadings fail to state a claim that the isolated acts alleged to have taken place by the individual defendant officers were part of a practice that was so widespread among the City's police force that the City must have been deliberately indifferent to it. The Complaint seeks to skip over this essential pleading requirement by alleging that the mayor of Chicago "has acknowledged that a 'code of silence' exists within CPD, and his opinion is shared by current officers and former high-level CPD officials interviewed during our investigation" and

that "in an interview made public in December 2016, the President of the police officer's union admitted to such a code of silence within CPD, saying 'there's a code of silence everywhere, everybody has it . . . so why would the [Chicago Police] be any different.'" [ECF 1 ¶ 26]. But these non-specific allegations are devoid of any meaning and fail to show any connection to Plaintiffs. Further, nothing in the Complaint suggests that the comments attributed to the DOJ report, the mayor of Chicago, and the President of the police officer's union were describing a widespread practice within CPD to permit or encourage officers to commit the same kind of conduct as alleged here.

Even if the Complaint did adequately allege the existence of an unconstitutional policy by the City and the requisite degree of municipal culpability, which it did not, the *Monell* claim still should be dismissed because it does not plausibly allege that any City policy is directly linked and caused the alleged Constitutional injury that Plaintiffs suffered. See *Bryan County*, 520 U.S. at 404; *Canton*, 489 U.S. at 390-91. In order to prevail on a *Monell* claim, a plaintiff "must satisfy a 'rigorous' standard of causation." *Connick v. Thompson*, 563 U.S. 51, 75 (2011) (Scalia, J. concurring) (*quoting Bryan County*, 520 U.S. at 405). This requires the plaintiff to "demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Id.* Put simply, a plaintiff must show the policy was the "direct cause" or "moving force" behind the constitutional violation. *See, e.g. Woodward v. Corr. Med. Servs. of Ill., Inc.*, 368 F.3d 917, 927 (7th Cir. 2004); *Ruiz-Cortez v. City of Chicago*, No. 11-cv-1420, 2016 WL 6270768, at *22 (N.D. Ill. Oct. 26, 2016) (Leinenweber, J.); *see also Thomas v. Cook County Sheriff's Dept.*, 604 F.3d 293, 306-07 (7th Cir. 2009) (policy must directly inflict an injury and not merely be a contributing factor).

Indeed, multiple other courts in this District have recently dismissed similarly insufficiently pled *Monell* claims. *Se,e.g, Brown v. City of Chicago*, 19-cv-8466, Docket No. 68 at

pp. 3 (N.D. Ill. November 20, 2020) (Bucklo, E.) (Conclusory allegations about the City's general failure to train, supervise, and discipline its officers do not rest on sufficient factual matter to raise their right to relief under *Monell* above the speculative level.)*; Jordan v. Klamenrus,* 15-cv-157, Docket No. 157 at pp. 10 (N.D. Ill. August 6, 2020) (Durkin, J.) ("Rather than citing similar instances of misconduct, Jordan merely recites the elements of a *Monell* claim in conclusory fashion. That is not enough to survive a motion to dismiss"); *Turner v. City of Chicago*, 2020 WL 1548957, 19-cv-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-cv-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-cv-6040 (N.D.Ill. Oct. 28, 2019) (Alonso, J.) (conclusory allegation of an isolated incident falls short of the *Twombly/Iqbal* standard); *Jordan, v. City of Chicago*, et al., 20-CV-4012, 2021 WL 1962385, at *5 (N.D. Ill. May 17, 2021) (Plaintiff "must plead enough facts to raise the inference that the code of silence was the moving force behind the constitutional violations he suffered above the speculative level) (Gottschall, J.).

Plaintiffs' *Monell* claim regarding a "code of silence" should be dismissed because Plaintiffs' failure to plead specific factual allegations does not meet the required level of plausibility and does not state a claim for which relief can be granted.

B. The Plaintiffs fail to sufficiently allege a widespread custom of CPD officers using excessive force against children of color.

As stated *supra*, to prevail on a *Monell* claim under a "widespread practice" theory, a plaintiff must establish that a pattern of similar deprivations is so "permanent, well-settled, and

widespread as to constitute custom or usage." *Wragg*, 604 F.3d at 468 (7th Cir. 2010). Further, "[t]hreadbare recitals" of causation "supported by mere conclusory statements, do not suffice" to plead a plausible claim. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

In this case, Plaintiffs merely allege that "The 2016 report of the official Chicago Police Accountability Task Force concluded that Chicago police officers are not adequately trained or equipped to interact with youth;" the Department of Justice "determined that the Chicago Police Department has a pattern and practice of using excessive force against children for non-criminal conduct;" "the City of Chicago turned a blind eye to the continued constitutional wrongdoing and refused to adopt policies or implement training to end the pattern and practice of using excessive force against children;" and "City of Chicago has consistently failed to discipline officers who used excessive force against children, thereby authorizing, encouraging, and emboldening officers to use excessive force against children." [ECF 1 ¶¶ 30-33]. Further, in response to the DOJ report, the City of Chicago entered into a consent decree to address the perceived issues raised by the report.[3] *See, e.g., Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir.1994) (a court can judicially notice documents filed in a lawsuit, which are public records). Plaintiffs have not plead enough to support a deliberate indifference claim against Defendant City.

Plaintiffs "must plead enough facts to raise the inference" that the findings of the PATF and DOJ reports "was the moving force behind the constitutional violations [Plaintiffs] suffered above the speculative level." *Jordan*, 20-CV-4012, 2021 WL 1962385, at *5. Plaintiffs have not done so. As such, their *Monell* claim regarding a widespread custom of CPD officers using excessive force against children of color must be dismissed.

[3] http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf

C. The Plaintiffs fail to sufficiently allege a widespread custom of encouraging police officers to avoid verifying and corroborating information upon which they rely in seeking a search warrant.[4]

As stated *supra*, to prevail on a *Monell* claim under a "widespread practice" theory, a plaintiff must establish that a pattern of similar deprivations is so "permanent, well-settled, and widespread as to constitute custom or usage." *Wragg*, 604 F.3d at 468 (7th Cir. 2010). Further, "[t]hreadbare recitals" of causation "supported by mere conclusory statements, do not suffice" to plead a plausible claim. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

In this case, Plaintiffs merely allege that "the City of Chicago's directive on search warrants, Special Order S04-19, encourages police officers to avoid verifying and corroborating information upon which they rely in seeking a search warrant" and that the CPD Superintendent "acknowledged the gaps in the City's directive on search warrants, stating that defendant City of Chicago's policies "should be amended to require a CPD member investigate and verify the information used to substantiate a search warrant.'" [ECF 1 ¶¶ 34-35]. Plaintiffs do **not** allege that the policy explicitly encourages officers to avoid verifying and corroborating information. Instead, the allege that there is a gap in the existing policy. Therefore, this court should treat this claim the same as a widespread custom claim for the purposes of this motion. *Petropoulos v. City of Chicago*, 448 F. Supp. 3d 835, 840 (N.D. Ill. 2020) ("pleading requirements are the same" for gap in policy *Monell* claims and widespread custom *Monell* claims).

Plaintiffs "must plead enough facts to raise the inference" that the gap in the policy "was the moving force behind the constitutional violations [Plaintiffs] suffered above the speculative level."

[4] Although Plaintiffs reference a specific Chicago Police Special Order in their Complaint, Plaintiffs do not allege that it is an "express policy" of the City of Chicago to encourage police officers to avoid verifying and corroborating information upon which they rely in seeking a search warrant. *See, e.g., Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005) ("it is more confusing than useful to distinguish between claims about express policies that fail to address certain issues, and claims about widespread practices that are not tethered to a particular written policy").

Jordan, 20-CV-4012, 2021 WL 1962385, at *5. Plaintiffs have not done so. As such, their *Monell* claim regarding a widespread custom of CPD encouraging police officers to avoid verifying and corroborating information upon which they rely in seeking a search warrant must be dismissed.

D. The Plaintiffs fail to sufficiently allege a widespread custom of failing to discipline officers for misconduct.

As stated *supra*, to prevail on a *Monell* claim under a "widespread practice" theory, a plaintiff must establish that a pattern of similar deprivations is so "permanent, well-settled, and widespread as to constitute custom or usage." *Wragg*, 604 F.3d at 468 (7th Cir. 2010). Further, "[t]hreadbare recitals" of causation "supported by mere conclusory statements, do not suffice" to plead a plausible claim. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

In this case, Plaintiffs merely allege that "the City of Chicago has maintained a discipline system that is designed to sweep under the rug unconstitutional conduct that occurs during execution of search warrants" and that the Superintendent of CPD stated that CPD "intends to amend its order to expand the circumstances where officers are required to open a [misconduct] investigation." [ECF 1 ¶¶ 36-37]. Plaintiffs allege that the Superintendent says there are shortcomings with the disciplinary system, but Plaintiffs do not allege what these shortcomings are or how these alleged shortcomings are connected to Plaintiffs alleged injuries. There must be a "direct causal link between a municipal policy or custom and the alleged constitutional deprivation." *City of Canton*, 489 U.S. at 388.

Plaintiffs "must plead enough facts to raise the inference" that the findings of the PATF and DOJ reports "was the moving force behind the constitutional violations [Plaintiffs] suffered above the speculative level." *Jordan*, 20-CV-4012, 2021 WL 1962385, at *5. Plaintiffs have not done so. As such, their *Monell* claim regarding a widespread custom of CPD failing to discipline officers must be dismissed.

CONCLUSION

WHEREFORE, Plaintiffs failed to satisfy the factual specificity required under *Iqbal* by merely alleging legal conclusions and repeating boilerplate *Monell* allegations throughout their Complaint. Because their allegations are nothing more than mere conclusions and too attenuated to support their claim, the Court should dismiss Count II of Plaintiffs' Complaint with prejudice and provide any other relief this Court deems appropriate and just.

Dated: June 1, 2021

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