

**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 PLAINTIFF'S FIRST AMENDED
COMPLAINT 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 undersigned attorneys, and for their Memorandum of Law in support of their Motion to Dismiss Plaintiff’s First Amended Complaint 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. Count I is directed at the Officer Defendants. Count II is directed to the City of Chicago. It is unclear whether Count III is directed at the individual Officer Defendants, as the allegations are generally limited to the City’s policies.

Count I alleges violations of the Fourth and Fourteenth Amendments pursuant to 42 U.S.C. §1983. Plaintiff alleges that the Officers Anderson and Westman lacked probable cause to obtain a search warrant for her residence on February 8, 2019, because, according to Plaintiff, it was unreasonable for them to believe that the person selling narcotics on her back porch had been inside of her apartment. Plaintiff alleges that the Officer Defendants violated her Fourth and Fourteenth Amendment rights by (a) detaining Plaintiffs; (b) pointing a gun at Plaintiff T1; (c) entering and (d) searching her home while executing the warrant.

Count III alleges violations of Plaintiff’s rights under the Fair Housing Act pursuant to 42 U.S.C. §3617 yet fails to sufficiently allege how these individual Officers were personally involved in the alleged misconduct and similarly fails to allege more than conclusory allegations that their actions were unreasonable.

Plaintiff's claims fail because they do not allege sufficient facts to state a claim upon which relief can be granted. For these reasons, and as more fully explained below, the Officer Defendants request that Plaintiff's Amended 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 Amended Complaint alleges that Officers Anderson and Westman obtained the

warrant for the February 8, 2019 search (ECF. No. 26, ¶10). The search warrant was supported by an affidavit from an informant that had purchased narcotics from a man on the back porch of Plaintiff's building (ECF No. 26, ¶12). The Amended Complaint further alleges that "the warrant affidavit did not contain any information that would support a reasonable belief that the person described by the informant as selling narcotics had been inside of plaintiff's apartment" (ECF No. 26, ¶13).

The Complaint does not allege that any Officer Defendant who executed the warrant obtained by Anderson and Westman knew of any fact that would lead them to suspect that the search warrant itself was invalid. Plaintiff's legal conclusion that "there was no probable cause" for the warrant could only apply to Anderson and Westman who obtained the warrant. There is no conclusion that any other Officer Defendant knew there was no probable cause for the warrant and it was invalid as Plaintiff claims. 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). Plaintiff fails to allege facts to support her claim that it was unreasonable for the Officer Defendants who executed the warrant to believe that the warrant was valid. *Junkert v. Massey*, 610 F. 3d 364, 369 (7th Cir. 2010)(An "officer who relies on a subsequently invalidated warrant may be liable for 1983 damages only if the warrant application was 'so lacking in indica of probable cause as to render official belief in its existence unreasonable.'"), quoting *Malley v. Briggs*, 475 U.S. 335, 345 (1986).

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 ¶20 and ¶21.

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 who executed the warrant, with no knowledge of how it was obtained or otherwise invalid, violated their constitutional rights or were unreasonable. There are also no facts provided as to any unreasonable conducted directed to TJ2, TJ3 and TJ4 by the Officer Defendants who executed the warrant. Because the Complaint 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 with any specificity which Officer or Officers allegedly pointed a gun at T1, thereby failing to plead each officer was personally involved in violating T1’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 which Officer Defendant allegedly pointed a gun at T1. Plaintiff alleges 20 officers executed the warrant obtained by Anderson and Westman. Plaintiff fails to even describe the subject officers who allegedly pointed a gun at T1 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 videos of the search and can identify by clothes, gender, physical descriptor or simply at what time in the video said officers allegedly pointed a gun at T1. Naming 20 Defendant Officers as “one or more Officers” who pointed a gun at T1 is unreasonable.

This Court should dismiss Count I against all Officer Defendants other than Anderson and Westman because they were executing a warrant they believed to be valid and were permitted under the law to enter the residence, search the residence, and detain occupants pursuant to said searches. This Court should further dismiss T1’s claim against 22 officers, one or more of whom

allegedly pointed a gun at him and require Plaintiff to state with more specificity the officers based upon copies of videos in Plaintiff's possession.

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. She does not plead any factual allegations that any of the Officers who searched the residence destroyed any of her property. Therefore, as stated *supra*, Plaintiff's Amended Complaint as to Count III 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.

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).

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 twenty-two 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. 26, ¶20). 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. 26, ¶20). 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. 26, ¶20, ¶21). The Amended 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 Amended 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 Plaintiff's First Amended Complaint 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 30th day of July, 2021, with proper postage prepaid.

s/William B. Oberts
an Attorney