

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

Dennis Jackson, )  
 ) 22 C 4337  
 Plaintiff, )  
 ) Judge Alonso  
 v. )  
 ) Magistrate Weisman  
 City of Chicago, Patrick Boyle, )  
 Jennifer Burmistrz, Efrain Carreno, )  
 Matthew Evans, John Foertsch, )  
 Edward Garcia, Michael Higgins, )  
 Gerald Lau, and Jeffrey Lawson )  
 )  
 Defendants. )

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**

Defendants, City of Chicago, Patrick Boyle, Jennifer Burmistrz, Efrain Carreno, Matthew Evans, John Foertsch, Edward Garcia, Michael Higgins, Gerald Lau, and Jeffrey Lawson, by and through one of their attorneys, Nicholas J. Perrone, Assistant Corporation Counsel, submit the following Answer to Plaintiff's Complaint:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343 and § 1337.

**ANSWER: Defendants admit the allegations contained in this paragraph.**

2. Plaintiff Dennis Jackson is a resident of the Northern District of Illinois.

**ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph.**

3. Defendants Patrick Boyle, Jennifer Burmistrz, Efrain Carreno, Matthew Evans, John Foertsch, Edward Garcia, Michael Higgins, Gerald Lau Jr., and Jeffrey Lawson ("officer defendants") are each sued in their individual capacity and were at all relevant times acting under color of their offices as Chicago police officers.

**ANSWER: Defendants admit the allegations contained in this paragraph.**

4. Defendant City of Chicago is an Illinois municipal corporation. Plaintiff asserts only state law claims against the City.

**ANSWER: Defendants admit the allegations contained in this paragraph.**

5. On November 6, 2017, the officer defendants arrested plaintiff on the 300 block of East 120th Place in Chicago.

**ANSWER:** Defendant Higgins denies this allegation as it pertains to him and admits, upon information and belief, as to the other Defendants. Defendant Foertsch lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph. Remaining Defendants admit the allegations contained in this paragraph.

6. At the time of plaintiff's arrest:
  - a. None of the officer defendants had a warrant authorizing the arrest of plaintiff;

**ANSWER:** Defendants admit the allegations contained in this sub-paragraph.

- b. None of the officer defendants believed that a warrant had been issued authorizing the arrest of plaintiff;

**ANSWER:** Defendants admit the allegations contained in this sub-paragraph.

- c. None of the officer defendants had observed plaintiff commit any offense; and

**ANSWER:** Defendants deny the allegations contained in this sub-paragraph.

- d. None of the officer defendants had received information from any source that plaintiff had committed an offense or was otherwise subject to arrest.

**ANSWER:** Defendants deny the allegations contained in this sub-paragraph.

7. Plaintiff does not raise any claim about this wrongful arrest.

**ANSWER:** Defendants deny the characterization of Plaintiff's arrest as "wrongful" and admit Plaintiff is not raising this claim.

8. As a result of the officer defendants' conduct, plaintiff was wrongfully detained and prosecuted for drug offenses:

**ANSWER:** Defendants deny the allegations contained in this sub-paragraph.

- a. One or more of the officer defendants prepared official police reports falsely asserting that officers had seen plaintiff selling a controlled substance;

**ANSWER:** Defendants deny the allegations contained in this sub-paragraph.

- b. One or more of the officer defendants attested to the false official police reports, and each of the other officer defendants failed to intervene to prevent the violation of plaintiff's rights; and

**ANSWER: Defendants deny the allegations contained in this sub-paragraph.**

- c. One or more of the officer defendants communicated the fabricated evidence to prosecutors, and each of the other officer defendants failed to intervene to prevent the violation of plaintiff's rights.

**ANSWER: Defendants deny the allegations contained in this sub-paragraph.**

- d. Based on the fabricated evidence, a prosecutor caused plaintiff to be charged and prosecuted for a felony offense.

**ANSWER: Defendants deny the allegations contained in this sub-paragraph.**

9. As a result of the above-described wrongful acts, plaintiff was deprived of liberty while a pre-trial detainee and suffered other injuries from being wrongfully prosecuted.

**ANSWER: Defendants deny the allegations contained in this paragraph.**

10. Plaintiff was exonerated at trial on September 2, 2021.

**ANSWER: Defendants deny Plaintiff was “exonerated” but admit he was found not guilty at trial on September 2, 2021.**

11. As a result of the foregoing, plaintiff was deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States.

**ANSWER: Defendants deny the allegations contained in this paragraph.**

12. As a supplemental state law claim against defendant City of Chicago only: as a result of the foregoing, plaintiff was subjected to a malicious prosecution under Illinois law.

**ANSWER: Defendants deny the allegations contained in this paragraph.**

### **AFFIRMATIVE DEFENSES**

1. Defendant Officers are government officials, namely police officers, who perform discretionary functions. At all times material to the events alleged in Plaintiff's Complaint, a reasonable police officer objectively viewing the facts and circumstances that confronted Defendant Officers could have believed their actions to be lawful in light of clearly established law and the information that Defendant Officers possessed. Defendant Officers, therefore, are entitled to qualified immunity as a matter of law.

2. To the extent Plaintiff failed to mitigate any of his claimed injuries or damages, any verdict or judgment obtained by Plaintiff must be reduced by application of the principle that Plaintiff had a duty to mitigate, commensurate with the degree of failure to mitigate attributed to Plaintiff by the jury in the case.

3. An individual cannot be held liable in a § 1983 action unless he personally caused or participated in an alleged constitutional deprivation.” *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (1983); *Jenkins v. Keating*, 147 F.3d 577, 583 (7th Cir. 1998); *Kuhn v. Goodlow*, 678 F.3d 552, 556 (7th Cir. 2012); *Pepper v. Vill. of Oak Park*, 430 F.3d 809, 810 (7th Cir. 2005).

4. Defendant Officers were working as police officers at the time of this incident. Therefore, under the Illinois Tort Immunity Act, Defendant Officers are not liable for any of the claims alleged, because a public employee is not liable for his acts or omissions in the execution or enforcement of any law, unless such acts or omissions constitute willful and wanton conduct. 752 ILCS 10/2-202.

5. Under the Illinois Tort Immunity Act, Defendant Officers are not liable for any of the claims alleged because the decisions and actions were based upon the information and circumstances known to Defendant Officers at the time and were discretionary decisions from which they are immune from liability. 745 ILCS 10/2-201.

6. Defendant Officers are not liable for Plaintiff’s claims because a public employee, as such and acting within the scope of his employment, is not liable for any injury caused by the act or omission of another person. 745 ILCS 10/2-204.

7. Defendant Officers are entitled to absolute immunity for any in-court testimony given during grand jury proceedings or at trial. *Rehberg v. Paulk*, 566 U.S. 356, 369 (2012); *Briscoe v. LaHue*, 460 U.S. 325, 330-31 (1983); *Jurgensen v. Haslinger*, 295 Ill.App.3d 139, 141-42 (3rd Dist. 1998).

8. To the extent any injuries or damages claimed by Plaintiff were proximately caused by the contributory fault chargeable to the Plaintiff, any verdict shall be diminished in the proportion to the amount of fault attributable to the Plaintiff, unless the jury finds that the contributory fault on the part of the Plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought, in which case the Plaintiff shall be barred from recovering damages. 735 ILCS 5/2-1116.

## **JURY DEMAND**

Defendants request a trial by jury.

Respectfully submitted,

/s/ Nicholas J. Perrone

Jordan Yurchich, Assistant Corporation Counsel Supervisor  
Nicholas J. Perrone, Assistant Corporation Counsel  
Alexander Michelini, Assistant Corporation Counsel  
City of Chicago, Department of Law  
2 North LaSalle Street, Suite 420  
Chicago, Illinois 60602  
(312) 744-1975  
(312) 744-6566 (FAX)  
Nicholas.perrone@cityofchicago.org

**CERTIFICATE OF SERVICE**

I certify that on October 21, 2022, I served the foregoing upon all counsel of record by filing it using the Clerk's CM/ECF System.

*/s/ Nicholas J. Perrone*