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

JOHN MARTINEZ,	)	
	)	
Plaintiff,	)	No. 23 CV 1741
	)	
v.	)	Hon. Georgina N. Alexakis
	)	District Judge
REYNALDO GUEVARA, *et al.*,	)	
	)	
Defendants.	)	

THOMAS KELLY,	)	
	)	
Plaintiff,	)	No. 23 CV 5354
	)	
v.	)	Hon. Georgina N. Alexakis
	)	District Judge
REYNALDO GUEVARA, *et al.*,	)	
	)	
Defendants.	)	

CITY DEFENDANTS' RESPONSE IN OPPOSITION
TO PLAINTIFF'S AND COUNTY DEFENDANTS' JOINT
MOTION FOR FINDING OF GOOD FAITH SETTLEMENT

Defendants, CITY OF CHICAGO (the "City"), GERI LYNN YANOW, as Special Representative for ERNEST HALVORSEN, deceased, HECTOR VERGARA, GERI LYNN YANOW, as Special Representative for JOSEPH MOHAN, deceased, RANDY TROCHE, KEVIN ROGERS, as Special Representative for FRANCIS CAPPITELLI, deceased, EDWARD MINGEY (the "Officer Defendants"), and REYNALDO GUEVARA (collectively, the "City Defendants"), by their undersigned attorneys, respectfully submit the following Response in Opposition to the Joint Motion for Finding of Good Faith Settlement filed by Plaintiffs, JOHN MARTINEZ and THOMAS KELLY, and Defendants, JAKE RUBINSTEIN and COOK COUNTY (collectively, the "Settling Parties") (*Martinez*, Dkt. 198; *Kelly*, Dkt. 74). In support thereof, the City Defendants state:

INTRODUCTION

In September 2024, Plaintiffs and the County Defendants agreed to settle all claims against the County Defendants pursuant to the terms of the Settlement Agreement. (*Martinez*, Dkt. 198-1; *Kelly*, Dkt. 74-1). In consideration for Plaintiffs dismissing and releasing all pending claims against the County Defendants with prejudice, Plaintiffs will receive payments of $3,100,000. (*Martinez*, Dkt. 198-1 at ¶¶ 3, 4.1; *Kelly*, Dkt. 74-1 at ¶¶ 3, 4.1). Paragraph 4.3 of the Settlement Agreement contains an allocation clause that earmarks the settlement payment to Plaintiffs shall be allocated as follows:

> First, $3,000,000 (three million dollars) shall be allocated toward Plaintiff's injury of pretrial incarceration flowing from his Fourth Amendment malicious prosecution claim (damages suffered as a result of pretrial incarceration from the time of a judicial finding of probable cause to the start of the Plaintiff's criminal trial). Second, $100,000 (one-hundred thousand dollars) shall be allocated to 42 U.S.C. 1988 fees and costs incurred by the Plaintiff and his attorneys, Loevy & Loevy, solely in pursuit of claims against the County Defendants and which did not advance the claims against the City Defendants.

(*Martinez*, Dkt. 198-1 at ¶ 4.3; *Kelly*, Dkt. 74-1 at ¶ 4.3).

Plaintiffs are moving this Court to approve that none of the settlement proceeds go toward paying Plaintiffs' compensatory damages for any of the other five claims brought against the Prosecutor Defendants, including Plaintiffs' Fifth and Fourteenth Amendment coerced confession claim (Count II)—where ASA Rubinstein is alleged to have personally participated in the interrogation and fabricating of Plaintiffs' statements. ASA Rubenstein was the Felony Review Assistant Cook County State's Attorney who approved the murder charge against Plaintiffs after interviewing Plaintiffs and memorializing their statements in individual handwritten statements, each signed by the respective Plaintiff. Plaintiffs' confessions were used against Plaintiffs in their criminal cases. ASA Rubinstein also approved charges for co-offender Jose Tinajero but was replaced by ASA Melissa Durkin and ASA Brian Suth, both Felony Review Assistant Cook County State's Attorneys, who conducted an interview of Tinajero for purposes of taking Tinajero's court reported statement. ASA Rubinstein also took the handwritten statement of eyewitness Melloney Parker, which was

signed by Parker. Additionally, the settlement proceeds do not go toward Plaintiffs' other claims against ASA Rubinstein – *i.e.*, failure to intervene (Count IV), malicious prosecution (Counts III and VII), intentional infliction of emotional distress (Count VIII) and willful and wanton conduct (Count IX).

Now, the Settling Parties move this Court for a finding that the Settlement Agreement, artificially limiting the Prosecutor Defendant's role to avoid a setoff, was reached in good faith. The Court must deny this motion. The allocation crafted in paragraph 4.3 is not in good faith and is plainly a purposeful attempt by Plaintiffs, with the acquiescence of the County Defendants to prevent the City Defendants from rightfully setting off this settlement from any compensatory damages a jury might award on any claims – most particularly, the coerced/false confession and due process claims – left unresolved by the Settlement Agreement.

FACTUAL BACKGROUND

On March 21, 2023, Plaintiff Martinez filed a multi-count civil rights lawsuit against the City Defendants and County Defendants. (*Martinez*, Dkt. 1). Plaintiff Martinez's claims stem from his arrest, prosecution and conviction for the 1998 murder of Daniel Garcia. Specifically, Plaintiff Martinez was arrested on February 7, 1999, and was convicted on August 7, 2001, for a total of 912 days in pretrial detention ("Martinez pretrial detention"). He spent 21.5 years, or 7,856 days, in post-trial detention until he was released on February 9, 2023 ("Martinez postconviction detention"). He was incarcerated for a total of 24 years, or 8,768 days, 10.4% of which was spent in pretrial detention and 89.6% of which was spent in post-trial detention. On June 26, 2024, Plaintiff Kelly filed a multi-count civil rights lawsuit against the same Defendants, stemming from his arrest, prosecution and conviction for the same 1998 murder of Daniel Garcia. (*Kelly*, Dkt. 1). Specifically, Plaintiff Kelly was arrested on February 7, 1999, and was convicted on August 7, 2001, for a total of 912 days in pretrial detention ("Kelly posttrial detention"). He spent 22.5 years, or 8,198 days, in post-trial detention until he was released on January 17, 2024 ("Kelly postconviction detention"). He

was incarcerated for a total of nearly 25 years, or 9,110 days, 10.0% of which was spent in pretrial detention and 90.0% of which was spent in post-trial detention. On July 9, 2024, the Court granted Plaintiff's Motion for a Finding of Relatedness and for Reassignment and consolidated the *Martinez* and *Kelly* matters for all pretrial proceedings. (*Martinez*, Dkt. 173).

Plaintiff Martinez's operative Amended Complaint ("AC"), filed on August 3, 2023, and Plaintiff Kelly's operative First Amended Complaint ("FAC), filed on August 7, 2023, allege that Officer Defendants violated Plaintiffs' due process rights under the Fourteenth Amendment (Count I); that Officer Defendants and ASA Rubinstein violated Plaintiffs' rights under the Fifth and Fourteenth Amendments by coercing false confessions from them (Count II); that Officer Defendants and ASA Rubinstein maliciously prosecuted Plaintiffs and unlawfully detained them in violation of federal and state law (Counts III and VII); that Officer Defendants and ASA Rubinstein failed to intervene in the violation of Plaintiffs' rights (Count IV); that Officer Defendants conspired to violate Plaintiffs' rights in violation of federal and state law (Counts V and X); that Officer Defendants and ASA Rubinstein intentionally inflicted emotional distress in violation of state law (Count VIII); and that Officer Defendants and ASA Rubinstein engaged in willful and wanton conduct in violation of state law (Count IX). (*Martinez*, Dkt. 70; Kelly, Dkt. 47). The AC and FAC also allege a policy and practice claim (Count VI) and *respondeat superior* (Count XI) against the City of Chicago; and an indemnification claim (Count XII) against the City of Chicago and Cook County. (*Id.*).

As it pertains to the Prosecutor Defendant Rubinstein's role in Plaintiffs Martinez's and Kelly's alleged wrongful arrests and convictions, Plaintiffs allege that Parker signed a handwritten statement provided to her by Rubinstein that described Parker seeing Martinez and Tinajero in the alley, as part of the group beating up on the victim. (*Martinez*, Dkt. 70, at ¶ 55; *Kelly*, Dkt. 47, at ¶ 56). The statement said that Martinez "was punching the victim, and that Tinajero returned to the victim to prod him with his foot." (*Id.*). Plaintiff Martinez further alleges that "[a]fter more than 34 hours in an 'extended investigative hold,' Defendant

Rubinstein questioned [Martinez] in the early morning hours of February 9th, without writing anything down." (*Martinez*, Dkt. 70, at ¶ 72). Both Plaintiffs Martinez and Kelly allege that Rubinstein was present while their interrogations were ongoing and participated personally in fabricating the false incriminating statements that Plaintiffs were forced to sign. (*Martinez*, Dkt. 70, at ¶ 71; *Kelly*, Dkt. 47, at ¶ 74). Plaintiffs also that Rubinstein wrote the statements and presented them to Plaintiffs. (*Martinez*, Dkt. 70, at ¶ 73; *Kelly*, Dkt. 47, at ¶ 75).

In Count II (Coerced and False Confession), Plaintiffs Martinez and Kelly allege that Rubinstein "forced Plaintiff[s] to make false statements involuntarily and against [their] will, which incriminated [them] and which were used against [them] in criminal proceedings, in violation of [their] rights secured by the Fifth and Fourteenth Amendments." (*Martinez*, Dkt. 70, at ¶ 140; *Kelly*, Dkt. 47, at ¶ 144). In Count II, Plaintiffs further allege that the ASA Rubinstein "individually, jointly, and in conspiracy with" others "used physical violence and extreme psychological coercion in order to force Plaintiff[s] to incriminate [themselves] falsely and against [their] will in a crime [they] had not committed, in violation of [their] right to due process secured by the Fourteenth Amendment." (*Martinez*, Dkt. 70, at ¶ 141; *Kelly*, Dkt. 47, at ¶ 145). They also allege that Rubinstein "fabricated false confession[s], which [were] attributed to Plaintiff[s] and used against Plaintiff[s] in [their] criminal proceedings, in violation of Plaintiffs' right to a fair trial protected by the Fourteenth Amendment." (Martinez, Dkt. 70, at ¶ 142; Kelly, Dkt. 47, at ¶ 146). In Count IV (Failure to Intervene), Plaintiffs allege that the ASA Rubinstein "stood by without intervening to prevent the violation of Plaintiffs' constitutional rights, even though [he] had the duty and the opportunity to do so." *Martinez*, Dkt. 70, at ¶ 155; *Kelly*, Dkt. 47, at ¶ 159). In Count VIII (Intentional Infliction of Emotional Distress), Plaintiffs allege that ASA Rubinstein's actions, omissions, and conduct "were extreme and outrageous," "rooted in an abuse of power and authority," and "undertaken with the intent to cause, or were in reckless disregard of the probability that [his] conduct would cause, severe emotional distress to Plaintiff[s]." (*Martinez*, Dkt. 70, at ¶ 186; *Kelly*,

Dkt. 47, at ¶ 190). In Count IX (Willful and Wanton Conduct), Plaintiffs allege that ASA Rubinstein "had a duty to refrain from willful and wanton conduct" and notwithstanding that duty, "acted willfully and wantonly through a course of conduct that showed an utter indifference to, or conscious disregard of, Plaintiff's rights." (*Martinez*, Dkt. 70, at ¶¶ 189-90; *Kelly*, Dkt. 47, at ¶¶ 193, 195). Plaintiff Kelly further alleges that it was foreseeable to Rubinstein that "fabricating evidence, coercing a false confession, and suppressing exculpatory evidence … in order to frame Plaintiff, would inevitably result in extreme harm to him." (*Kelly*, Dkt. 47, at ¶ 194).

Lastly, there are two malicious prosecution claims, one federal and one state law claim. In Count III, the federal malicious prosecution claim, Plaintiffs allege that ASA Rubinstein "individually, jointly, and in conspiracy with" others,

> accused Plaintiff[s] of criminal activity and exerted influence to initiate, continue, and perpetuate judicial proceedings against Plaintiff[s] without any probable cause for doing so and in spite of the fact that they knew Plaintiff[s] [were] innocent, in violation of [their] rights secured by the Fourth and Fourteenth Amendments.
>
> In so doing, these Defendants maliciously prosecuted Plaintiff[s] and caused Plaintiff[s] to be deprived of [their] liberty without probable cause and to be subjected improperly to judicial proceedings for which there was no probable cause. These judicial proceedings were instituted and continued maliciously, resulting in injury.

(*Martinez*, Dkt. 70, at ¶ 149-50; *Kelly*, Dkt. 47, at ¶ 153-54).

In Count VII, the state law malicious prosecution claim, Plaintiffs allege, nearly verbatim, that ASA Rubinstein "individually, jointly, and in conspiracy with" others,

> accused Plaintiff[s] of criminal activity and exerted influence to initiate and to continue and perpetuate judicial proceedings against Plaintiff[s] without any probable cause for doing so.
>
> In so doing, the Defendants caused Plaintiff[s] to be subjected improperly to judicial proceedings for which there was no probable cause. These judicial proceedings were instituted and continued maliciously, resulting in injury.

(Martinez, Dkt. 70, at ¶ 180-81; Kelly, Dkt. 47, at ¶ 184-85).

LEGAL STANDARD

The Illinois Joint Tortfeasor Contribution Act (the "Act") provides the legal framework for determining whether the Amended Joint Motion for Finding of Good Faith Settlement should be granted. The Act creates a statutory right of contribution but extinguishes the right of contribution if the tortfeasor and the plaintiff have entered into a good-faith settlement. *Koh v. Village of Northbrook*, No. 11 C 02605, 2020 WL 6681352, at *5 (N.D. Ill. Nov. 12, 2020). The settling tortfeasor and the plaintiff may ask a court to make a finding of a good-faith settlement in order to confirm the end of the remaining defendant's right to contribution. *Id.* (citing *Fox v. Barnes*, No. 09 C 5453, 2013 WL 2111816, at *6-9 (N.D. Ill. May 15, 2013). The "good faith" of a settlement is the only limitation the Act places on the right to settle. *Johnson v. United Airlines*, 203 Ill.2d 121, 128 (2003). Illinois courts interpreting the "good faith" requirement have placed the initial burden to make a preliminary showing of good faith with the settling parties. *Id*. at 132. This burden can be satisfied by showing the existence of a legally valid settlement agreement supported by effective consideration. *Id.* A party challenging the good faith of a settlement agreement must show the lack of good faith by a preponderance of the evidence. *Id.*

Courts primarily consider four non-exclusive factors when making good faith determinations: (1) whether the amount paid by the settling tortfeasor was within a reasonable range of the settlor's fair share; (2) whether there was a close personal relationship between the settling parties; (3) whether the plaintiff sued the settler; and (4) whether a calculated effort was made to conceal information about the circumstances surrounding the settlement agreement. *Piercy v. Whiteside Cty., Illinois*, No. 14 CV 7398, 2016 WL 1719802, at *4 (N.D. Ill. Apr. 29, 2016); *LaJeunesse v. Ford Motor Co.*, 642 F.Supp.2d 835, 838 (N.D. Ill. 2009). A settlement is not in good faith if the agreement "conflicts with the terms of the Act or is inconsistent with the policies underlying the Act." *Id.*; *Johnson*, 203 Ill.2d at 133. The policies underlying the Act are "the encouragement of settlements" along with "*the equitable apportionment of damages among tortfeasors*."

Bulson v. Helmold, No. 16 C 50045, 2018 WL 5729752, at *2 (N.D. Ill. Nov. 2, 2018) (emphasis added); *Johnson*, 203 Ill.2d at 133. For this reason, a "settlement [that] shifts a disproportionally large and inequitable portion of the settling defendant's liability onto the shoulders of another" "cannot be construed as a good-faith settlement." *Associated Aviation Underwriters, Inc. v. Aon Corp.*, 344 Ill. App. 3d 163, 177 (1st Dist. 2003). In assessing whether a settlement agreement was made in good faith, no single factor is determinative; rather, "[w]hether a settlement was made in good faith is determined by considering all of the surrounding circumstances." *LaJeunesse*, 642 F.Supp.2d at 838.

ARGUMENT

I. The Settlement Agreement is not consistent with the policy of equitable apportionment of damages among tortfeasors.

The Settling Parties argue that this Court should find the Settlement Agreement was reached in good faith because it is supported by adequate and reasonable consideration and meets the four factors set forth above.[1] (*Martinez*, Dkt. 198, at ¶ 7; *Kelly*, Dkt. 74, at ¶ 7). The Settling Parties fail to mention the additional requirement that the Settlement Agreement be consistent with the policies underlying the Act, namely the equitable apportionment of damages among tortfeasors, which is a critical consideration in evaluating whether the Settlement Agreement was made in good faith.

Two analogous Northern District of Illinois opinions illustrate the inequity attendant to approval of the instant Settlement Agreement. In *Koh v. Village of Northbrook*, a man who was arrested and held in Cook County jail for nearly 4 years before his acquittal on murder charges, sued police officials from the Villages of Northbrook and Wheeling for unlawful detention under the Fourth Amendment, coerced confession under the Fifth Amendment, and malicious prosecution, and his wife sued for loss-of-consortium. 2020 WL 6681352, at *3-4. Prior to trial, the plaintiffs (represented by Loevy and Loevy) agreed to settle *all* of their

[1] As to the fourth factor, whether there was a calculated effort to conceal information about the circumstances surrounding the settlement agreement, the City Defendants note that while the settlement may not be a secret now, it was *negotiated* in secret.

claims against the Northbrook Defendants for $3,950,000 to be allocated as follows: $200,000 for Mr. and Mrs. Koh's Fourth Amendment claims, $450,000 for attorneys' fees and costs, and $3,300,000 for Mrs. Koh's loss of consortium claim. *Id.* at *4 (emphasis added). The plaintiffs and the Northbrook defendants then moved for a finding of good faith. *Id.*

The Court denied the motion, despite noting a *preliminary* showing of good faith, since the agreement provided for consideration on both sides, and that some of the remaining factors were satisfied.[2] *Id.* at *5. Nonetheless, the Court found that the settlement was not made in good faith based on the "grossly disproportionate and inequitable" allocation of responsibility on some of the claims. *Id.* at *1, 5-6. Emphasizing the dual policy considerations of promoting settlement *and* ensuring equitable apportionment, the Court explained that "the proposed good-faith finding is fatally undermined by the allocation of *zero* of the $3.95 million settlement toward Mr. Koh's Fifth Amendment claim for the coerced confession." *Id.* at *6. "The result of that zero allocation leaves the Wheeling Defendants on the hook—all by themselves—for the *entirety* of any damages that a jury might award on this claim at trial." *Id.* The Court further found that the settlement was not "*within the reasonable range of the settlor's fair share*" because the settlement agreement's allocation, much like the Settlement Agreement in the present matter, was "apparently designed to deny the Wheeling Defendants any set-off on the coerced-confession claim." *Id.* at *7.

Four years prior, in *Piercy v. Whiteside Cty., Illinois, et al.*, No. 14 CV 7398, 2016 WL 1719802 (N.D. Ill. April 29, 2016), the plaintiff, as administrator of decedent's estate (also represented by Loevy & Loevy), brought several § 1983 and state law claims – including deliberate indifference in the denial of medical care, conspiracy and failure to intervene – against County and State correctional institutions and individual employees. The plaintiff settled all claims against the County defendants for $50,000, but the entire payment

[2] As to the first factor, the Court stated that "broadly speaking, the settlement amounts are within a reasonable range for the claims to which the amounts are assigned—though [ ] *not* every claim has an assigned settlement amount. *Koh*, 2020 WL 6681352, at *5. The Court also recognized the presence of a true adversarial relationship amongst the settling parties and that the agreement was not concealed. *Id.*

was allocated to damages suffered prior to the time the non-settling defendants had any contact with the decedent. *Id.* at *4. In opposing plaintiff's motion for a good faith finding, the non-settling defendants argued that it "blatantly allocates the settlement proceeds in an effort to deprive the . . . [non-settling] Defendants of their right to a setoff" and "artificially" separated their liability from that of the settling defendants. *Id.* The District Court refused to find good faith, explaining that "[t]he ACH and Wexford Defendants have raised a valid concern that the settlement agreement between the Plaintiff and the Whiteside County Defendants was allocated in bad faith to preclude a setoff." *Id.* at *5. Such an allocation violated the policy of the Act to equitably apportion damages among tortfeasors, thereby constituting a bad faith settlement. *Id.*

As in *Koh* and *Piercy*, the Settling Parties specifically fashioned an agreement designed to deprive the City Defendants of any setoff from what far and away is the most significant exposure created by the litigation—the period of incarceration *following* the conviction, which accounts for 89.6% of Plaintiff Martinez's time in custody and 90% of Plaintiff Kelly's time in custody. Instead, the Settling Parties, without in any way tethering the proposed allocation to the facts in this case or supposed harms and losses, ask this Court to allocate all the settlement to Plaintiffs' pretrial detention damages caused by malicious prosecution, only under the Fourth Amendment, not state law.

The Settlement Agreement provides both Plaintiff Martinez and Kelly with $3 million for 912 days in pretrial detention while allocating ***nothing*** to the ensuing 21.5 years Plaintiff Martinez served in state prison after his conviction and the nearly 25 years Plaintiff Kelly served in state prison after his conviction. This allocation is made despite the fact that Plaintiffs' allegations against ASA Rubinstein that would make the County liable for pretrial detention damages, is the same misconduct that would also make the County liable for postconviction damages—coercion of the confession and malicious prosecution. The allegations center on ASA Rubinstein's alleged role in the coercion of Plaintiffs' confessions and witness statements. Thus, it is

illogical that ASA Rubinstein would be liable for pretrial detention because of those actions, but not postconviction incarceration.

Under Plaintiffs' theory, ASA Rubinstein is every bit as responsible for Plaintiffs' postconviction imprisonment as the City Defendants, yet the Settling Parties carve out the settlement payment from those damages. The Court, under comparable circumstances, has rejected a good faith finding where the settlement agreement artificially separated the non-settling defendants' liability in an attempt to deny them any setoff. *Koh*, 2020 WL 6681352, at *7; *see also Piercy*, 2016 WL 1719802, at *5.

Most tellingly, the Settling Parties ask this Court to allocate *all* $3,000,000 "to Plaintiff[s'] injury of *pretrial incarceration* resulting from [their] **Fourth Amendment** malicious prosecution claim," but not its state law counterpart. (Martinez, Dkt. 198, at ¶ 2; Kelly, Dkt. 74, at ¶ 2) (emphasis added). As shown above, the allegations are nearly identical. While state law malicious prosecution requires that Plaintiffs also show their prosecution ended in a manner indicative of innocence (*Swick v. Liautaud*, 169 Ill. 2d 504, 512 (1996)), that part of the favorable termination element, is independent of any conduct by a Defendant. In other words, if Plaintiffs prove that element, they have established it against all Defendants, not just the City Defendants. While the elements of both the federal and state law claims are essentially the same, the state law malicious prosecution damages run the entire length of incarceration, not only pretrial detention. *St. Paul Fire & Marine Insurance Co. v. City of Zion*, 2014 IL App (2d) 131312, ¶ 25 (favorable termination of a malicious prosecution marks the beginning of the judicial system's remediation of the wrong committed, not the commencement of the injury or damage). *See also* Restat 2d of Torts, § 671 ("when the essential elements of a cause of action as for malicious prosecution have been established, the plaintiff is entitled to recover for (a) the harm legally caused by any arrest or imprisonment suffered by him during the course of the proceedings"); 1 Jury Instructions on Damages in Tort Actions § 13.01 (2024) (in considering the question of damages for a finding of malicious prosecution, "you should have regard to any evidence tending to show that plaintiff lost

time as a result of the defendant's conduct, the value of such lost time, sums expended in defending the unfounded lawsuit, damage sustained as a result of plaintiff's deprivation of the use of his/her property, any loss of liberty, injury to fame, reputation, character, or social or business standing, injury to his/her credit rating." There is simply no rational way to distinguish the State and Federal malicious prosecution claims.

The Settling Parties' Agreement represents the same lack of good faith as the case in *Koh* where the Court concluded that the settlement was not "*within the reasonable range of the settlor's fair share*" because the settlement agreement's allocation was "apparently designed to deny the Wheeling Defendants any set-off on the coerced-confession claim." 2020 WL 6681352, at *7. The same result is required here.

Moreover, the Settling Parties plainly understand the allocation in paragraph 4.3 does not pass scrutiny. The Settling Parties build in a provision that specifically anticipated a finding that paragraph 4.3 is not in good faith. (Martinez, Dkt. 198-1, at ¶ 4.5; Kelly, Dkt. 74-1, at ¶ 4.5). Per paragraph 4.5 of the Settlement Agreement, the Settling Parties agreed that the settlement "shall not be affected … and remain valid and fully enforceable" should the Court reject the allocation in paragraph 4.3. In other words, the only purpose of the allocation is to avoid the setoff because the parties agree that the settlement stands without it. (Martinez, Dkt. 198-1, at ¶ 4.4; Kelly, Dkt. 74-1, at ¶ 4.4). Plaintiffs are willing to accept that $3 million to cover the entire period of incarceration, demonstrating how artificial it is to limit the settlement just to the 10.4% of Plaintiff Martinez's incarceration that was pretrial detention and the 10% of Plaintiff Kelly's incarceration that was pretrial detention. Thus, the Settling Parties are not prejudiced by this Court finding the allocation is not in good faith. There will be a settlement regardless of whether the Settling Parties' proposed allocation is approved.

II. The settlement amount is made wholly irrespective of actual length of detention.

Further evidence of bad faith is the fact that Plaintiffs' attorney, Loevy & Loevy, has simultaneously settled eight separate reversed-conviction cases involving Defendant Guevara with Cook County and various

former Assistant Cook County State's Attorneys, including this one, each for the exact same amount – $3,100,000, with 3,000,000 allocated to each respective plaintiff's pretrial detention damages attendant to Fourth Amendment malicious prosecution claims and $100,000 to attorneys' fees and costs. *Compare* Dkt. 145, at ¶ 3, *Abrego v. Guevara, et al.*, No. 23-cv-1740 (N.D. Ill. Nov. 4, 2024); Dkt. 398, at ¶ 2, *Bouto v. Guevara, et al.*, No. 19-cv-2441 (N.D. Ill. Oct. 30, 2024); Dkt. 181, at ¶ 2, *Gecht v. Guevara, et al.,* No. 23-cv-1742 (N.D. Ill. Oct. 30, 2024); Dkt. 106, at ¶ 2, *Kwil v. Guevara, et al.*, No. 23-cv-4279 (N.D. Ill. Oct. 30, 2024); Dkt. 215, at ¶ 2, *Rodriguez v. Guevara, et al.*, No. 22-cv-6141 (N.D. Ill. Oct. 30, 2024); Dkt. 209, at ¶ 2, *Gonzalez v. Guevara, et al.*, No. 22-cv-6496 (N.D. Ill. Oct. 30, 2024); *with* Dkt. 198, at ¶ 2, *Martinez v. Guevara, et al.*, No. 23-cv-1741 (N.D. Ill. Oct. 23, 2024); and Dkt. 74, at ¶ 2, *Kelly v. Guevara, et al.*, No. 24-cv-5354 (N.D. Ill. Nov. 4, 2024). The settlement amount of $3,100,000 to each individual plaintiff for their time in pretrial custody was wholly unrelated to their actual time in pretrial custody, as illustrated below:

Eruby Abrego	2,009 days in pretrial detention
Robert Bouto	1,175 days in pretrial detention
David Gecht	387 days in pretrial detention
Richard Kwil	7 days in pretrial detention[3]
Alfredo Gonzalez	585 days in pretrial detention
John Martinez	912 days in pretrial detention
Thomas Kelly	912 days in pretrial detention
Daniel Rodriguez	287 days in pretrial detention

And, of course, in each of these cases, the County Defendants were alleged to have been culpable in the same way that ASA Rubinstein was alleged to have been culpable here—through each of their alleged roles in the coercion of each plaintiff's confession and/or a witness statement—and so they are every bit as

[3] Kwil's suit alleges he was wrongfully convicted of a murder, which he was arrested for on March 1, 1999, and convicted of on March 24, 2000, for a total of 389 days in pretrial detention. However, 7 days after being taken into custody on the murder charge, Kwil was arrested on March 8, 1999, for an unrelated armed robbery/home invasion to which he plead guilty on October 6, 2000. Thus, Kwil's actual recoverable pretrial detention damages should be limited to the 7 days he was held before being arrested for the robbery/home invasion.

responsible for each plaintiff's post imprisonment as they were for each plaintiff's pretrial detention. *See* Dkt. 166, at ¶¶ 183-185, *Abrego*, No. 23-cv-1740 ("Prosecutor Defendant…forced Plaintiff to make false statements involuntarily and against his will, which incriminated him and which were used against him in criminal proceedings," "used physical violence and extreme psychological coercion," "fabricated a confession, which was attributed to Plaintiff and used against Plaintiff in his criminal proceedings, in violation of Plaintiff's right to a fair trial protected by the Fourteenth Amendment."); Dkt. 256, at ¶ 18, *Bouto*, No. 19-cv-2441 (Prosecutor Defendant "conspired with the Defendant Officers, prior to the existence of probable cause to believe Plaintiff had committed a crime, and while acting in an investigatory capacity, to conceal and fabricate evidence, manipulate witness testimony, and maliciously prosecute Plaintiff")[4]; Dkt. 95, at ¶¶ 158-160, *Gecht,* No. 23-cv-1742 ("Prosecutor Defendants…forced Plaintiff to make false statements involuntarily and against his will, which incriminated him and which were used against him in criminal proceedings," "used physical violence and extreme psychological coercion," "fabricated a confession, which was attributed to Plaintiff and used against Plaintiff in his criminal proceedings, in violation of Plaintiff's right to a fair trial protected by the Fourteenth Amendment."); Dkt. 50, at ¶¶ 147-149, *Kwil*, No. 23-cv-4279 ("Prosecutor Defendants…forced Plaintiff to make false statements involuntarily and against his will, which incriminated him and which were used against him in criminal proceedings," "used physical violence and extreme psychological coercion," "fabricated a confession, which was attributed to Plaintiff and used against Plaintiff in his criminal proceedings, in violation of Plaintiff's right to a fair trial protected by the Fourteenth Amendment."); Dkt. 99, at ¶ 159, *Rodriguez,* No. 22-cv-6141 ("Prosecutor Defendants … individually, jointly, and in conspiracy with one another, … forced Plaintiff to make false statements involuntarily and against his will, which incriminated him and which were used against him in criminal proceedings, in violation of his rights secured by the Fifth and Fourteenth Amendments"); and Dkt. 107, at ¶¶ 222-224,

[4] Moreover, on September 30, 2024, Defendants' motion to dismiss Plaintiff Bouto's wrongful detention claim was dismissed with prejudice. (Dkt. 386, at 20-21). Thus, the "claim" settled with the County Defendants no longer exists.

Gonzalez, No. 22-cv-6496 ("Prosecutor Defendant…forced Plaintiff to make false statements involuntarily and against his will, which incriminated him and which were used against him in criminal proceedings," "used physical violence and extreme psychological coercion," "fabricated a confession, which was attributed to Plaintiff and used against Plaintiff in his criminal proceedings, in violation of Plaintiff's right to a fair trial protected by the Fourteenth Amendment.").

The simultaneous settlement of eight separate reversed-conviction cases for the exact same amounts with the exact same allocations, irrespective of the lengths of detention and despite allegations that the prosecutor defendants' conduct not only allegedly caused each plaintiff's convictions and alleged wrongful incarcerations, demonstrates that the Settling Parties crafted the allocation not as a meaningful reflection of the harms and losses inflicted but rather as a purposeful mechanism to prevent the City Defendants from obtaining any setoff. For all these reasons, the Settling Parties' Amended Joint Motion for Finding of Good Faith Settlement should be denied.

DATED: December 5, 2024

Respectfully Submitted,

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