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

MADELINE MENDOZA,	)	
	)	
Plaintiff,	)	
	)	No. 23-cv-2441
-vs-	)	
	)	*(Judge Durkin)*
REYNALDO GUEVARA, *et al.*,	)	
	)	*(Magistrate Judge Kim)*
Defendants.	)	
MARILYN MULERO,	)	
	)	
Plaintiff,	)	
	)	No. 23-cv-4795
-vs-	)	
	)	*(Judge Durkin)*
REYNALDO GUEVARA, *et al.*,	)	
	)	*(Magistrate Judge Kim)*
Defendants.	)	

PLAINTIFFS' CONSOLIDATED RESPONSE TO DEFENDANT CITY OF CHICAGO'S OBJECTIONS TO PLAINTIFFS' *MONELL* DISCOVERY

In accordance with this Court's orders (Dkts. 122, 136), Plaintiffs hereby respond to Defendant City of Chicago's objections to Plaintiffs' amended *Monell* Interrogatories, Requests for Document Production, and Rule 30(b)(6) deposition notice:

As an initial matter, the Court should order defendant to immediately make partial responses to the requests. Under the Federal Rules, a party making a partial objection to a discovery request must comply with the portion of the request to which the party does not object. FED. R. CIV P. 33(b)(3) (interrogatories); FED. R. CIV P. 34(b)(C) (requests for production). In response after response, the City states that it does not object to making partial responses, but neglects to make any such partial response. Plaintiffs address defendant's specific objections below.

INTERROGATORIES

I. "Overbroad and Unduly Burdensome" Objections

A. Interrogatories 1 through 12

Defendant City of Chicago raises the same "overbroad and unduly burdensome" objection to Plaintiffs' interrogatories 1 through 12, arguing that Plaintiffs' proposed timeframe is too broad, that use of the word "relating" makes the interrogatories "excessive," that the requests are insufficient to obtain the necessary discovery to prove plaintiffs' *Monell* theories, and that defendant's offer to designate Rule 30(b)(6) deposition testimony from other cases relieves defendant of the obligation to answer these interrogatories. Plaintiffs respond as follows:

The City offers no support for its arbitrary proposal to limit the relevant time period to 4 years. This proposed time period is too short to provide plaintiffs with a full and fair opportunity to prove their *Monell* claims. As the City has stated throughout its various objections, Plaintiffs' burden is to establish a "widespread practice" within the City of Chicago. Key to Plaintiffs' theories are the trainings and practices within the City, including throughout the time that Detective Guevara was employed as a CPD officer, hence Plaintiffs' proposed time period. In the interest of compromise, Plaintiffs would agree to the seven-year period of 1985-1992. This time period will provide plaintiffs with a reasonable opportunity to prove a "widespread practice" while Detective Guevara was a CPD officer.

Plaintiffs disagree that their use and definition of "relating" makes the interrogatory "excessive." The Court should overrule this boilerplate objection.

Plaintiffs disagree that their requests are insufficient to obtain the necessary discovery to prove their *Monell* theories. In any event, defendant's argument is one for summary judgment. It is not a valid basis to object to discovery.

Defendant's position that "no other discovery related to this topic of this interrogatory is warranted" because Defendant has unilaterally offered to designate Rule 30(b)(6) testimony from other cases is without merit. Defendant is apparently proposing to limit written discovery by insisting that plaintiffs rely on Rule 30(b)(6) deposition testimony from other cases. Defendants are unable to identify any precedential support this proposal, which the Court should reject because Plaintiffs are entitled to conduct discovery in their case.

B. Interrogatories 13 through 15

Defendant raises the same "overbroad and unduly burdensome" objection to Plaintiffs' interrogatories 13 through 15 by pointing to the number of cases referenced in Plaintiffs' list, the fact that the list includes post-1992 investigations, and that the City of Chicago is not a defendant in one of the cases. The Court should overrule these objections (with one exception).[1]

As discussed in the parties' Rule 37.2 conferences, Plaintiffs agreed to refrain from issuing broad *Monell* discovery requests that would have required the City to run system wide searches for various categories of documents and information. Instead, Plaintiffs issued targeted discovery, limited to specific cases of which the Plaintiffs are aware. Plaintiffs submit that the targeted discovery they propounded on a limited set of cases is not burdensome and is far more efficient than the alternative.

The City also objects that Plaintiffs have requested information about post-1992 investigations, but there is no rule that so limits evidence in support of a *Monell* claim. On the contrary, "on a *Monell* claim, post-event evidence is admissible if it sufficiently relates to the central occurrence." *Rivera v. Guevara*, 319 F. Supp. 3d 1004, 1070 n.23 (N.D. Ill. 2018) (cleaned up.) Such evidence is also relevant under Federal Rule of Evidence 404(b).

[1] Plaintiffs withdraw their requests related to Chritopher Abernathy. That case was included in error.

II. Proportionality Objections

A. Interrogatories 1 though 6

Defendant City of Chicago raises the same proportionality objections to Plaintiffs' interrogatories 1 through 6, arguing that because the defendant officers were "detectives" at the time of the acts alleged in the complaint, trainings for CPD "trainees" and "officers" are irrelevant. The Court should reject this argument.

Trainings for CPD trainees and officers are relevant to Plaintiffs' *Monell* theories because: (1) as the City has stated throughout their objections, Plaintiffs' burden is to establish a "widespread practice" within the City of Chicago. Key to Plaintiffs' theory are the trainings and widespread practices throughout the CPD, including trainings provided to trainees, officers, and detectives; and (2) CPD detectives are not solely trained as "detectives." Rather, they receive trainee, officer, and detective training. Thus, though the Defendant Officers in this case were detectives when they investigated the subject homicides, all training they received is relevant, including the training they would have received as trainees and officers.

B. Interrogatories 7 though 12

Defendant City of Chicago raises the same proportionality objections to Plaintiffs' interrogatories 7 through 12, arguing that Plaintiffs' interrogatories are duplicative of their corresponding requests for documents and disproportional as to Plaintiffs' referenced time frame. The Court should reject these objections.

First, this interrogatory is not duplicative of the corresponding requests for documents. The document requests demand the production of written documents. The corresponding interrogatories require that the Defendant identify information related to the documents, such as the policy's author and the date of its effectiveness.

As to the City's position of what "time limit is appropriately narrow[]," the extent to which the City's written directives changed over time, and the extent to which CPD trained its officer on such changes are relevant to the Plaintiffs' *Monell* theories. Plaintiffs' ability to analyze this issue would be severely hampered without being able to cross reference the training materials with the actual written policies. As such, the same time-period for which trainings are being produced should apply to the City's written policies.

C. Interrogatories 13 though 15

Defendant City of Chicago raises the same proportionality objections to Plaintiffs' interrogatories 13 through 15, taking issue with post-1992 investigations and the extent to which discovery into Plaintiffs' identified Guevara and non-Guevara cases could be used to prove Plaintiffs' *Monell* theories. These objections are without merit.

Defendant contends the interrogatories are too narrow because they only request information that relates to Detective Guevara. Defendant acknowledges, however, that Plaintiffs have identified at least nine non-Guevara cases that fit Defendant's unilaterally defined relevant time-period. Defendant nonetheless refuses to respond because it has unilaterally decided that those nine cases are insufficient to satisfy Plaintiffs' burden to prove their *Monell* claim. This argument is wrong on the law. Moreover, it is a summary judgment argument, and not a legitimate discovery objection

Further, Plaintiffs' interrogatories are not limited to whether the list of Plaintiffs filed CRs. Plaintiffs are requesting the date that the City became aware of the relevant allegations, not merely the date CRs may have been filed.

Regarding the City's objection to Plaintiffs' inclusion of post-1992 cases, as explained above, there is no rule that so limits evidence in support of a *Monell* claim. On the contrary, "on a *Monell* claim, post-event evidence is admissible if it sufficiently relates to the central occurrence." *Rivera v.*

Guevara, 319 F. Supp. 3d 1004, 1070 n.23 (N.D. Ill. 2018) (cleaned up.) Such evidence is also relevant under Federal Rule of Evidence 404(b).

III. "Vague and Ambiguous" Objections

A. Interrogatories 2 and 8

Defendant City of Chicago objects to Plaintiffs' use of the phrase "jailhouse informant" as vague and ambiguous, and objects that these interrogatories may overlap with other interrogatories that relate to a broader set of "witnesses." These are meritless objections.

First, the phrase "jailhouse informant" is not ambiguous. *See, e.g., Kansas v. Ventris*, 556 U.S. 586, 588 (2009). To the extent clarification is necessary, Plaintiffs are referring to the situation where an individual who is in custody, and/or incarcerated, provides information to authorities, and/or agrees to testify, against another suspect. To the extent these interrogatories may overlap with Plaintiffs' other interrogatories calling for information relating to a broader set of witnesses, Plaintiffs are entitled to information that may specifically relate to "jailhouse informants."

B. Interrogatories 3 and 9

Defendant City of Chicago objects to Plaintiffs' use of the phrase "witnesses in custody about matters unrelated to the allegations against the witness" as vague and ambiguous, and the extent the interrogatories may overlap with other interrogatories that relate to a broader set of "witnesses." The Court should overrule this objection.

Again, there is no merit to the City's boilerplate objection to this understandable phrase. To the extent clarification is necessary, Plaintiffs note that Defendant's "assumption" set forth in their response to the requests regarding the alleged "vague and ambiguous" language is correct. To the extent these interrogatories may overlap with Plaintiffs' other interrogatories calling for information relating to a broader set of witnesses, Plaintiffs are entitled to information that may specifically relate to "witnesses in custody about matters unrelated to the allegations against the witness."

C. Interrogatories 13 through 15

In response to Interrogatory 13, Defendant City of Chicago objects to Plaintiffs' use of the phrase "CPD and/or City of Chicago," "aware," and "allegations" as vague and ambiguous. In response to Interrogatory 14, Defendant objects to Plaintiffs' use of the phrases "any other entities," "investigated," and "allegations" as vague and ambiguous. In response to Interrogatory 15, Defendant objects to Plaintiffs' use of the phrases"any other entities," "disciplined," and "allegations" as vague and ambiguous. The Court should overrule these objections.

All of the words and phrases at issues are easily understood. Plaintiffs disagree that the City is required to speculate about "what allegations Plaintiffs are referring." Plaintiffs are requesting that Defendant identify when they became aware of the allegations of misconduct set forth in the referenced cases.

To the extent the City is confused about Plaintiffs' verbiage, Plaintiffs would be happy to meet and confer on the issue. Moreover, yes, Plaintiffs are targeting reports like that of Sidley & Austin, and any other similar materials by any other entities retained by the City or CPD. To the extent Interrogatory 14 calls for privileged materials, Defendant should provide a privilege log pursuant to Federal Rule of Civil Procedure 26(b)(5)(A)(ii). Finally, in an effort to clarify Interrogatory 15, Plaintiffs are not merely requesting related CR information. Defendant is to identify whether any CPD officers were disciplined in any fashion as it relates to the allegations of misconduct set forth in the above referenced cases

REQUESTS FOR PRODUCTION OF DOCUMENTS

I. "Overbroad and Unduly Burdensome" Objections

A. Requests 1 and 2

Defendant City of Chicago raises the same "overbroad and unduly burdensome" objections to Plaintiffs' requests 1 and 2, pointing to the number of cases identified by Plaintiffs and the nature of the requested documents. The Court should overrule these objections (with one exception).[2]

As set forth below, in Plaintiffs' response to Defendant's vague and ambiguous objections, (see Sec. III), Defendant misunderstands the breadth of Plaintiffs' requests. Plaintiffs' clarification should alleviate Defendant's concern.

Moreover, as discussed in the parties' Rule 37.2 conferences, Plaintiffs agreed to refrain from issuing broad *Monell* discovery requests that would have required the City to run system wide searches for various categories of documents and information. Instead, Plaintiffs issued targeted discovery, limited to specific cases of which the Plaintiffs are aware. Plaintiffs submit that the targeted discovery they propounded on a limited set of cases is not burdensome and is far more efficient than the alternative.

Plaintiffs note that the categories of documents Plaintiffs are requesting should be immediately available to the City, as the majority of the identified cases are in active litigation. Plaintiffs submit that producing complaints, answers to complaints, written discovery responses, and transcripts for production, when all of these documents are already in Defense counsel's possession is not *unduly* burdensome.

In response to Defendant's objection regarding whether some of the materials are generally maintained by the City, Plaintiffs submit this is immaterial. The issue is whether the City, or its

[2] Plaintiffs withdraw their requests related to Chritopher Abernathy. That case was included in error.

representative, is currently in possession of the requested material. If they are, the materials should be produced.

The City also objects that Plaintiffs have requested information about post-1992 investigations, but there is no rule that so limits evidence in support of a *Monell* claim. On the contrary, "on a *Monell* claim, post-event evidence is admissible if it sufficiently relates to the central occurrence." *Rivera v. Guevara*, 319 F. Supp. 3d 1004, 1070 n.23 (N.D. Ill. 2018) (cleaned up.) Such evidence is also relevant under Federal Rule of Evidence 404(b).

B. Requests 3 through 8

Defendant City of Chicago raises the same "overbroad and unduly burdensome" to Plaintiffs' requests 3 through 8, arguing that Plaintiffs' proposed timeframe is too broad, and that their requests are insufficient to obtain the necessary discovery to prove their *Monell* theories. The Court should overrule these objections.

The City offers no support for its arbitrary proposal to limit the relevant time period to 4 years. This proposed time period is too short to provide plaintiffs with a full and fair opportunity to prove their *Monell* claims. As the City has stated throughout its various objections, Plaintiffs' burden is to establish a "widespread practice" within the City of Chicago. Key to Plaintiffs' theories are the trainings and practices within the City, including throughout the time that Detective Guevara was employed as a CPD officer, hence Plaintiffs' proposed time period. In the interest of compromise, Plaintiffs would agree to the seven-year period of 1985-1992. This time period will provide plaintiffs with a reasonable opportunity to prove a "widespread practice" while Detective Guevara was a CPD officer.

C. Requests 9 through 14

Defendant City of Chicago raises the same "overbroad and unduly burdensome" to Plaintiffs' requests 9 through 14, again arguing that Plaintiffs' proposed timeframe is too broad, and that the request is irrelevant to Plaintiffs' *Monell* theories. The Court should overrule these objections.

The City offers no support for its arbitrary proposal to limit the relevant time period to 1 year. Rather, the extent to which the City's written directives changed over time, and the extent to which CPD trained its officer on such changes are relevant to the Plaintiffs' Monell theories. Plaintiffs' ability to analyze this issue would be severely hampered without being able to cross reference the training materials with the actual written policies. As such, the same time-period for which training materials are being produced should apply to the City's written policies.

D. Request 15

Defendants misunderstand Plaintiffs' request. Plaintiffs are not seeking CR files related to the five categories of misconduct. Plaintiffs are seeking general reports and investigatory materials related to the pervasiveness of the five types of misconduct within the CPD, generally – not individual CPD files – including general reports by Internal Affairs, OPS, IPRA, or an outside agency retained by the city of Chicago.

II. Proportionality Objections

A. Request 1

Defendant City of Chicago takes issue with post-1992 investigations and the extent to which discovery into Plaintiffs' identified Guevara and non-Guevara cases could be used to prove Plaintiffs' *Monell* theories. The Court should overrule these objections.

Defendant's proportionality objections are without merit. Defendant contends the requests are too narrow because they only request information relating to Detective Guevara. Defendant acknowledges, however, that Plaintiffs have identified at least nine non-Guevara cases that fit

Defendant's unilaterally defined relevant time period. Defendant nonetheless refuses to respond because it has unilaterally decided that those nine cases are insufficient to satisfy Plaintiffs' burden under *Monell*. This argument is wrong on the law. Moreover, it is a summary judgment argument, and not a legitimate discovery objection.

Regarding the City's objection to Plaintiffs' identified post-1992 cases, as explained above, there is no rule that so limits evidence in support of a *Monell* claim. On the contrary, "on a *Monell* claim, post-event evidence is admissible if it sufficiently relates to the central occurrence." *Rivera v. Guevara*, 319 F. Supp. 3d 1004, 1070 n.23 (N.D. Ill. 2018) (cleaned up.) Such evidence is also relevant under Federal Rule of Evidence 404(b).

B. Request 2

Defendant City of Chicago objects to Plaintiffs' request 2 under the assumption that Plaintiffs are requesting every document possibly related to the identified cases, as well as arguing that Plaintiffs' requested discovery could not possibly prove their *Monell* theories. The Court should overrule these objections.

As set forth below, in Plaintiffs' response to Defendant's vague and ambiguous objections, (see Sec. III below), Defendant misunderstands the breadth of Plaintiffs' requests. Plaintiffs' clarification should alleviate Defendant's concern. To the extent the City is objecting to the discovery as insufficient to satisfy their burden under *Monell,* Plaintiffs disagree. In any event, defendant's argument is one for summary judgment; it is not a proper objection to written discovery.

C. Requests 3 through 8

Defendant City of Chicago raises the same proportionality objections to Plaintiffs' request 3 through 8, arguing that because the defendant officers were "detectives" at the time, trainings for CPD "trainees" and "officers" are irrelevant. The Court should overrule these objections.

Trainings for CPD trainees and officers are relevant to Plaintiffs' Monell theories because: (1) as the City has stated throughout their objections, Plaintiffs' burden is to establish a "widespread practice" within the City of Chicago. Key to Plaintiffs' theory are the trainings and widespread practices throughout the CPD, including trainings provided to trainees, officers, and detectives; and (2) CPD detectives are not solely trained as "detectives." Rather, they receive trainee, officer, and detective training. Thus, though the Defendant Officers in this case were detectives when they investigated the subject homicides, all training they received is relevant, including the training they would have received as trainees and officers.

In the interest of compromise, Plaintiffs would agree to a seven-year period of 1985-1992.

D. Request 15

Given the clarification in Sec. I(D) above, Plaintiffs do not agree that this request is disproportional.

E. Request 16

Defendant City of Chicago objects based on the lack of an identified time frame. The Court should overrule this objection.

The request is necessarily limited in time given that the request is limited to reports and investigatory material that is related to the named defendants. Plaintiffs further state that this request is not limited to CR files. Rather, Plaintiffs are seeking general reports and investigatory materials related to the named defendants, by Internal Affairs, OPS, IPRA, or an outside agency retained by the city of Chicago. Reports like reports like that of Sidley & Austin are certainly responsive to the request, but the request is not limited to that specific report.

III. "Vague and Ambiguous" Objections

A. Request 1

Defendant City of Chicago objects to Plaintiffs' use of the phrase "complaint," "answers to complaint," "answers to written discovery," "and final judgments" as vague and ambiguous. These objections are meritless.

Plaintiffs disagree that this request is unclear, but to clarify, the City's assumptions are correct, Plaintiffs are requesting, all complaint, answers to complaints, answers to written discovery, and final judgments from their respective civil lawsuits.

Regarding Plaintiffs' request for "answers to complaints," Plaintiffs are seeking all defendants' answers to complaints – not just the City's.

Regarding Plaintiffs' request for "answers to written discovery," Plaintiffs are not seeking all document productions or subpoena responses, just the written answers to written discovery.

Regarding Plaintiffs' request for "final judgments," Plaintiffs are seeking final court orders referencing resolution of any of the identified cases.

B. Request 2

Defendant City of Chicago objects to Plaintiffs' use of the phrase "reports," "investigatory material," other agency . . . retained by the City of Chicago," or "relating to … the allegations" in the above referenced cases, as vague and ambiguous. The Court should overrule these objections.

There is no merit to the City's boilerplate objection to these understandable phrases, but to clarify, Plaintiffs are requesting any internal reports or investigative materials related to the above cases, including similar reports by any other entity retained by the City of Chicago to investigate the any of the allegations raised in the above cases. To the extent the City is still confused about Plaintiffs' verbiage, Plaintiffs would be happy to meet and confer on the issue.

C. Requests 3, 4, and 10

Defendant City of Chicago objects to Plaintiffs' use of the phrase "jailhouse informant" as vague and ambiguous. This Court should overrule this objection.

First, the phrase "jailhouse informant" is not ambiguous. *See, e.g., Kansas v. Ventris*, 556 U.S. 586, 588 (2009). To the extent clarification is necessary, Plaintiffs are referring to the situation where an individual who is in custody, and/or incarcerated, provides information to authorities, and/or agrees to testify, against another suspect. To the extent these requests may overlap with Plaintiffs' other requests calling for information relating to a broader set of witnesses, Plaintiffs are entitled to information that may specifically relate to "witnesses in custody about matters unrelated to the allegations against the witness."

D. Requests 5 and 11

Defendant City of Chicago objects to Plaintiffs' use of the phrase "witnesses in custody about matters unrelated to the allegations against the witness" as vague and ambiguous, and the extent the request may overlap with other requests that relate to a broader set of "witnesses." The Court should overrule this objection

Again, there is no merit to the City's boilerplate objection to this understandable phrase. To the extent clarification is necessary, Plaintiffs are referring to situations such as when a suspect may be in custody, for example, an armed robbery, but CPD interrogates them about any knowledge they might have related to another crime such as an unrelated murder. To the extent these requests may overlap with Plaintiffs' other requests calling for information relating to a broader set of witnesses, Plaintiffs are entitled to information that may specifically relate to "witnesses in custody about matters unrelated to the allegations against the witness."

E. Request 15 through 16

Defendant City of Chicago objects to Plaintiffs' use of the phrase "documents, reports, and investigatory material," "investigations or audits, "other agency . . . retained by the City of Chicago," and "identify, investigate, or prevent" in the above referenced cases, as vague and ambiguous. The Court should overrule these objection

Again, these words are easily understood. To the extent the City is confused about Plaintiffs' verbiage, Plaintiffs would be happy to meet and confer on the issue. Moreover, yes, Plaintiffs are targeting reports like that of Sidley & Austin, and any other similar materials by any other entities retained by the City or CPD. To the extent this request calls for privileged materials, then Defendant should provide a privilege log pursuant to Federal Rule of Civil Procedure 26(b)(5)(A)(ii).

RULE 30(b)(6) DEPOSITION NOTICE

Plaintiffs respond to Defendant City of Chicago objections to Plaintiffs' Rule 30(b)(6) deposition notice as follows:

As The City has stated throughout their objections to Plaintiffs' *Monell* written discovery, Plaintiffs' burden is to establish a "widespread practice" within the City of Chicago. Key to Plaintiffs' theory are the City's policies, practices, and customs, including throughout the time that Detective Guevara was employed as a CPD officer, hence Plaintiffs' proposed time-period. In the interest of compromise however, Plaintiffs will agree to the same seven year period of 1985-1992 referenced above.

The Court should reject defendant's argument that plaintiffs are barred from eliciting any testimony under Rule 30(b)(6) because representatives of defendant may have testified about similar matters in other cases that did not involve Plaintiffs or their counsel. Defendant does not cite any precedent that would support this argument. Plaintiffs and their counsel are entitled to elicit testimony that will be used at trial in their own cases.

The Court should also reject the City's attempt to paint Plaintiffs as unreasonable because they have "not accepted" the City's proposal to designate testimony from other cases here. The City neglects to provide the necessary context of the parties' discussions about the City's proposal. First, counsel for Plaintiff Mulero was not involved or a party to any such agreement in any of the other referenced cases. Further, counsel for both Plaintiffs have been requesting for weeks that the City provide the testimony they propose designating to allow Plaintiffs to properly consider the proposal. The City failed to provide any such testimony for Plaintiffs to consider until Tuesday, June 17, and Plaintiffs' counsel has not had sufficient opportunity to consider the import of the four separate transcripts, totaling approximately 875 pages of testimony, on Plaintiffs cases. The City has not provided any citations as to exactly what testimony they propose designating for any specific topic. In addition, the city is apparently proposing that Plaintiffs agree to designate testimony that has not even been taken yet (in response to topics 6, 7, 8.) The City's proposal is that counsel forfeit their right to ask any questions of The City's designated witness on behalf of their clients. Plaintiffs cannot accept this proposal.

Plaintiffs disagree that either "jailhouse informants" or "witnesses in custody about matters unrelated to the allegations against the witness," are vague and ambiguous. Plaintiffs showed above why the Court should overrule these obejctions. Plaintiffs set forth the same clarifications contained in their corresponding responses above. To the extent the City claims these topics are "not sufficiently dissimilar to other topics" in which the City proposes designating Rule 30(b)(6) testimony here, Plaintiffs disagree with the City's characterization and cannot agree to the City's blanket proposal.

Respectfully submitted,

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