

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

MADLINE MENDOZA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.: 2023 CV 02441
	)	
CITY OF CHICAGO, REYNALDO	)	Honorable Thomas M. Durkin
GUEVARA, JOANN HALVORSEN, as	)	
Special Representative for ERNEST	)	
HALVORSEN, STEPHEN GAWRYS, and	)	
ANTHONY RICCIO,	)	
	)	
Defendants.	)	

**DEFENDANTS’ JOINT MOTION FOR CONSOLIDATION**

Defendants, through their respective undersigned counsel, move pursuant to Fed. R. Civ. P. 42 to consolidate the above-captioned case through discovery and for trial with *Mulero v. Reynaldo Guevara, et al.*, 23-CV-04795 (herein “*Mulero*”), currently pending in this District before Judge Nancy L. Maldonado. In support of their motion, Defendants state the following:

**INTRODUCTION**

This case and *Mulero* arise from the investigation and corresponding arrest, trial, and conviction of both Plaintiffs for the May 12, 1992 murder of Jimmy Cruz and Hector Reyes. The lawsuits level nearly identical allegations, involve the same witnesses, implicate the same defendants, and will involve resolution of the same issues of fact and law. Plaintiff Mendoza and Plaintiff Mulero both confessed to their involvement in Mr. Cruz’s death. Both Plaintiffs also admit that a third individual, Jacqueline Montanez, was present but both Plaintiffs now claim Ms. Montanez was the only person responsible for the murder of Mr. Cruz and Mr. Reyes. Both Plaintiffs claim in these lawsuits that Defendants coerced them to confess as well as allege nearly identical theories of liability against both the individual

defendants and the City. Consolidation of these matters is appropriate, if not necessary, because it promotes efficiency and protects against inconsistent findings in these cases. Pursuant to Rule 42(a), this case should be consolidated for all purposes with *Mulero*. Defendants conferred with Plaintiffs' counsel in both matters by telephone on August 23, 2023, and Plaintiffs previously communicated they oppose this motion and do not agree consolidation is warranted in these two lawsuits. On September 21, 2023, when discussing the proposed briefing schedule on this Motion, counsel for Ms. Mulero has now indicated Plaintiffs would like time to "evaluate" and respond to Defendants' Motion.

### **RELEVANT ALLEGATIONS**

This case and *Mulero* are nearly identical lawsuits pending before separate judges. (Ex. 1, Mendoza Complaint; Ex. 2, Mulero Complaint). Plaintiff Marilyn Mulero highlights the similarities between the two cases in her Complaint. (*Mulero* Compl., Ex. 2, at ¶ 23 ("Marilyn Mendoza was present at Humboldt Park when Montanez shot and killed Jimmy Cruz and Hector Reyes. Like Mulero, Mendoza was tormented by Guevara and Halvorsen and coerced into confessing to murders she did not commit...")). Both Madeline Mendoza and Marilyn Mulero admit that on May 12, 1992, they were together with Jacqueline Montanez on the west side of Chicago. (*Mendoza* Compl., Ex. 1 at ¶¶ 13-14; *Mulero* Compl., Ex. 2 at ¶ 32). Both allege Jacqueline Montanez committed the murders. (*Mendoza* Compl., Ex. 1 at ¶ 13; *Mulero* Compl., Ex. 2 at ¶ 33). Plaintiffs now deny participating in the murders. (*Mendoza* Compl., Ex. 1; *Mulero* Compl., Ex. 2, at ¶ 34).

Plaintiffs identify Yvette Rodriguez, Jackie Serrano, and Joan Roberts as witnesses in this matter. (*Mendoza* Compl., Ex. 1, at ¶ 19; *Mulero* Compl., Ex. 2, at ¶¶ 26-29). Two additional witnesses in Ms. Mulero's Complaint, Rhonda Riley and Marilyn Serrano, will likely be witnesses Ms. Mendoza will disclose given that they provided statements and/or testimony about Ms. Mendoza's involvement in the murders. (*Mulero* Compl., Ex. 2, at ¶¶ 26-29). Plaintiffs both allege Defendants coerced Yvette

Rodriguez, Jackie Serrano, and Joan Roberts into giving false statements and testimony. (*Mendoza* Compl., Ex. 1, at ¶19; *Mulero* Compl., Ex. 2, at ¶¶ 62, 66).

As to the allegations against Defendants, Ms. Mulero and Ms. Mendoza both allege Defendants Guevara and Halvorsen conspired against them and fabricated the evidence against them. (*Mendoza* Compl., Ex. 1, at ¶¶ 17-18; *Mulero* Compl., Ex. 2, at ¶¶ 41, 50, 60). Plaintiffs allege Defendants coerced them into falsely confessing to the murders. (*Mendoza* Compl., Ex. 1, at ¶ 19; *Mulero* Compl., Ex. 2, at ¶¶ 53, 57). Plaintiffs' claims are also nearly identical, alleging violations of the Fourth and Fourteenth Amendments and state law malicious prosecution claims, and *Monell* claims against Defendant City of Chicago. (*Mendoza* Compl., Ex. 1, at ¶¶ 49-50; *Mulero* Compl., Ex. 2, at Counts I and II (Fourteenth Amendment), Count III (Fourth and Fourteenth Amendment), and Count IV (*Monell* claim)). While Plaintiff Mulero includes additional claims against Defendants, they arise from the same set of facts and circumstances as Plaintiff Mendoza's lawsuit. The Defendants in both actions are also nearly identical: Reynaldo Guevara, Geri Lynn Yanow as Special Representative for Ernest Halvorsen, deceased, Stephen Gawrys, Anthony Riccio, and the City of Chicago. (*Mendoza* Compl., Ex. 1; *Mulero* Compl., Ex. 2). Robert Biebel is the only Defendant named in Ms. Mulero's Complaint that has not been named in Ms. Mendoza's Complaint, but he consents to consolidating the two matters.

### **PROCEDURAL POSTURE**

Plaintiffs' lawsuits are in identical stages: Defendant City and Guevara's responsive pleadings to both Complaints are due on or about September 25, 2023. (*See* Dckt. No. 40; *Mulero v. Reynaldo Guevara*, 23-CV-04795, Dckt. Nos. 12, 20). In *Mulero*, the other individual defendants have not yet been served. The Parties have not issued any discovery, issued subpoenas, or taken any depositions in either case.

### LEGAL STANDARD

Consolidation of civil cases is governed by Fed. R. Civ. P. 42. *See* Fed. R. Civ. P. 42. Rule 42(a) provides, in pertinent part:

If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

Fed. R. Civ. P. 42(a).

This court possesses “broad discretion” in deciding whether to consolidate cases for discovery and trial. *See Am. Photocopy Equip. Co. v. Fair (Inc.)*, 35 F.R.D. 236, 237 (N.D. Ill. 1963). Rule 42(a) allows courts to consolidate cases if the actions involve a common question of law or fact, a procedure born from the need for judicial economy and efficiency that is followed by the Seventh Circuit. *See Blair v. Equifax Check Servs.*, 181 F.3d 832, 839 (7th Cir. 1999) (“By far the best means of avoiding wasteful overlap when related suits are pending in the same court is to consolidate all before a single Judge.”). Rule 42(a) is “designed to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties.” *Id.* at 6. “In exercising that discretion, a court should consider whether the proposed consolidation would promote convenience and judicial economy, and whether it would cause prejudice to any party.” *Sylverne, v. Data Search N.Y. Inc.*, 2008 WL 4686163, \* 1 (N.D. Ill. 2008). Consolidation can also be ordered when there is a risk of inconsistent rulings. *Westfield Ins. Co. v. Indem. Ins. Co. of N. Am.*, 2017 WL 7803676, \* 2 (C.D. Ill. 2017).

### **ARGUMENT**

#### **I. Consolidation is proper because this case and *Mulero* share common questions of law and fact that predominate both cases.**

There is nearly complete commonality between the alleged facts in Ms. Mendoza’s lawsuit and *Mulero*. As stated, both admit to being present at the time of the murders, witnessing Ms. Montanez

commit the shooting. Plaintiffs also admit the other was present at the time of the murder, i.e., Ms. Mendoza states Ms. Mulero was present, and Ms. Mulero states Ms. Mendoza was present. (*Mendoza* Compl., Ex. 1, at ¶ 14; *Mulero* Compl., Ex. 2, at ¶ 32). Both Plaintiffs allege they were coerced into confessing to Mr. Cruz and Mr. Reyes' murders. Discovery will involve nearly identical fact witnesses to the murders. As to Defendants' investigation, both Plaintiffs claim Defendants intentionally fabricated evidence with the goal of framing both Plaintiffs for the murders. (*Mendoza* Compl., Ex. 1, at ¶¶ 18-19; *Mulero* Compl., Ex. 2, at ¶ 41).

The questions of law are also nearly identical. Both allege various Defendants should be liable for fabricating evidence, coercing a false confession, conspiring against Plaintiffs, withholding exculpatory evidence, and falsely arresting Plaintiffs. (*Mendoza* Compl., Ex. 1, at ¶¶ 18-20, 49-50; *Mulero* Compl., Ex. 2, at Counts I through Count IV and Count VII). Plaintiffs also seek liability for malicious prosecution, albeit Ms. Mendoza seeks liability against Defendant City and Ms. Mulero seeks liability against Defendant Officers. (*Mendoza* Compl., Ex. 1, at ¶ 50; *Mulero* Compl., Ex. 2, at Count VII). Plaintiffs also allege various Defendant Officers failed to intervene in their co-Defendants' actions. (*Mendoza* Compl., Ex. 1, at ¶ 21; *Mulero* Compl. Ex. 2, at Count V). Lastly, Plaintiffs seek liability against the City of Chicago based on *Monell*. (*Mendoza* Compl., Ex. 1, at ¶ 30; *Mulero* Compl. Ex. 2, at Count VI). While Ms. Mulero also seeks liability against Defendants for failure to intervene, intentional infliction of emotional distress, and willful and wanton conduct, those claims will not alter the discovery necessary to resolve the underlying facts giving rise to those theories of liability. (*Mulero* Compl. Ex. 2, at Counts V, IX, and X).

Plaintiffs may argue their experiences as a result of their arrest and prosecution differ and will impact discovery, but that should not impact this Court's evaluation. Indeed, Fed. R. Civ. P. 42(a) does not require the actions be *identical* questions of law or fact. Instead, the standard is whether there are *common* questions of law or fact. Here, there is certainly common questions of both law and fact

and consolidation is appropriate. See *Brunner v. Jimmy John's LLC*, 2016 WL 7232560, \* 1 (N.D. Ill. 2016) (finding consolidation warranted in case involving FLSA claims for unpaid overtime “based on highly similar allegations.”); *Washington v. Boudreau*, 2023 WL 184239, \* 3 (N.D. Ill. 2023) (finding consolidation for trial was warranted given the considerable overlap in facts between both cases, and the significant benefits to be gained by scheduling one trial.). Several of the matters involving Defendant Guevara have also been consolidated when the plaintiffs are associated criminal defendants in the same crime. See *Serrano v. Guevara*, No. 17 CV 2869; *Montanez v. Guevara*, No. 17 CV 4560; *Negron v. Guevara*, No. 18 CV 2701; *Almodovar v. Guevara*, No. 18 CV 2341. Indeed, recently, Judge Maldonado consolidated two cases involving Defendant Guevara for discovery and motion practice, and permitted defendants to seek leave to consolidate the matters for trial upon completion of discovery. See *Gecht v. Guevara*, No. 23 CV 1742 at Dkct. No. 109.

## **II. Consolidation is warranted to promote convenience and judicial economy.**

Efficiency interests provide the most important basis for consolidation for all purposes and outweigh any alleged prejudice to Plaintiffs. “These efficiency benefits include[e] ‘calling the common witness to testify only once, impaneling one jury; consistent jury instructions, evidentiary rulings and trial conditions; [and] no arguments regarding issue preclusion.’” See *Washington*, 2023 WL 184239, at \*3. Here, consolidation will promote judicial efficiency given that the discovery in the case will be nearly the same, the witnesses called to testify will be largely identical, and the legal issues will have the same considerations and arguments.

Consolidation will also prevent duplicative discovery, avoid unnecessary taxation on the Court’s and Parties’ time by addressing identical and overlapping factual issues and motions in one proceeding, avoid excessive expenses and costs to the parties, and avoid inconsistent results. As both cases involve identical parties, witnesses, the same questions of law and fact, stand in the same procedural posture and have progressed at the same rate, and are susceptible of disposition in a single

proceeding, neither Plaintiff can show undue prejudice here. There is simply no basis not to consolidate both actions for all purposes.

Indeed, the opposite is true. Without consolidation, the cases would proceed separately and on their own tracks with respect to applicable deadlines. Discovery would proceed piecemeal with the potential for duplicative or redundant depositions. Summary judgment and discovery rulings would be addressed separately or at different times leading to the possibility of inconsistent rulings or duplicative work by the court and Parties. And, of course, separate trials would result in the strong possibility of inconsistent judgment or findings by the ultimate trier of fact. Simply stated, there is little to be gained by reassigning these cases to this Court if the cases are not consolidated under Rule 42(a) for all purposes. As referenced above, this track is historically almost always the ultimate procedural disposition of cases such as this where two plaintiffs sue the same set of defendants relating to the same criminal incident and set of prosecutions. This Court should follow suit so that the parties can litigate these two cases in the most efficient and consistent manner possible.

In sum, consolidation is proper and warranted under Fed. R. Civ. Pro. 42(a) and comports with Rule 1 of the Federal Rules of Civil Procedure, which directs litigants to “secure the just, speedy and inexpensive determination of every action and proceeding.”

### **III. Proposed Briefing Schedule**

Defendants conferred with Plaintiffs’ counsel in both matters by telephone on August 23, 2023, and Plaintiffs communicated they oppose this motion and also asked to see Defendants’ Motion so they could consider their position. On September 21, 2023, Defendants provided a copy of this Motion and counsel for Ms. Mulero has now indicated Plaintiff would like twenty-one days to “evaluate” and respond to Defendants’ Motion. Defendants bring this Motion so as not to cause undue delay in the litigation.

WHEREFORE, Defendants respectfully requests that *Marilyn Mulero v. Guevara, et al.*, 23 CV 4795 be consolidated with this case and for any other relief this Court deems appropriate or just.

Respectfully submitted,

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