

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

Madeline Mendoza,)
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Plaintiff,)
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-vs-) No. 23-cv-2441
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City of Chicago, et al.) (Judge Durkin)
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Defendants.)

**MEMORANDUM IN RESPONSE TO DEFENDANTS'
"JOINT MOTION FOR CONSOLIDATION"**

Plaintiff in this case and Marilyn Mulero, the plaintiff in *Mulero v. Guevara*, 23-cv-4795, file this joint memorandum in response to the motion for consolidation, ECF No. 41, to show:

- It is premature to consolidate the cases for rulings on the impending motions to dismiss.¹ Until defendants file their motions to dismiss, it cannot be said that consolidation will serve judicial economy rather than facilitating forum shopping.
- It is also premature to consolidate the two cases for trial.
- The appropriate case management technique at this stage of the proceedings is a “coordinated pretrial proceeding” to allow discovery in both cases to be coordinated and supervised by a single judicial official pursuant to Internal Operating Procedure 13(e).

¹ Defendants have made it more difficult to consider consolidation by ignoring Local Rule 40.4(c) and not filing their “answer or motions in lieu of answer” before requesting consolidation.

I. THE TWO CASES SHOULD BE COORDINATED FOR DISCOVERY

Former Chicago Police officers Reynaldo Guevara and Ernest Halvorsen framed plaintiffs Madeline Mendoza and Marilyn Mulero for the murder of Jimmy Cruz, causing Mendoza to be incarcerated for 17 years and Mulero for 28 years, including 5 years on death row. Plaintiffs expect substantial overlap in discovery on liability issues. Plaintiffs therefore agree that discovery should be coordinated pursuant to Internal Operating Procedure 13(e), which provides as follows:

(e) **Coordinated Pretrials in Complex Cases Not Involving Multi-District Litigation.** The Executive Committee may determine that it would be in the best interests of efficient judicial administration to hold a coordinated pretrial proceeding in a group of cases which either (1) are not related within the meaning of LR40.4(a) or (2) are related within the meaning of LR40.4(a) but reassignment is not appropriate under LR40.4(b). Where such a determination is made, the Committee will designate a judge to hold such a proceeding. The cases shall remain on the calendars of the judges to whom they were assigned at the start of the coordinated proceeding and only matters specified in the order of coordination shall be brought before the designated judge. All judges affected by such a coordinated pretrial proceeding shall be notified by the clerk.

On June 29, 2023 (before plaintiff Mulero filed her lawsuit on July 24, 2023), the Court set the following discovery schedule in this case:

Defendants to respond to complaint	8/25/23
Non-Monell written discovery to be issued	9/8/23
First phase of discovery to be closed	5/31/24
Amended pleadings, if any, to be filed by	2/12/24

Defendants' response to the complaint in this case is now due two weeks after the Court rules on the motion to consolidate; the response in *Mulero* is due three weeks after that ruling. Plaintiffs suggest that the Court adopt the timing of the original discovery schedule, e.g., non-*Monell* written discovery to be issued 2 weeks after defendants respond to the complaint, amended pleadings (if any) to be filed 5 months after defendants respond to the complaint, and the first phase of discovery to be closed 8 months after defendants respond to the complaint.

II. CONSOLIDATION IS PREMATURE

Defendants identify six cases brought by persons who were framed by defendant Guevara. (ECF No. 41 at 6.) In each case, the district judge granted a motion for relatedness under Local Rule 40.4, rather than ordering consolidation under Rule 41 of the Federal Rules of Civil Procedure as Defendants request here. Moreover, in *none* of these cases did defendants achieve the result they seek here: an early consolidation of two cases for all purposes, including trial.

In *Serrano v. Guevara*, No. 17-cv-2869, the district judge granted defendants' motion for reassignment based on relatedness and ordered that *Serrano* and *Montanez v. Guevara*, No. 17-cv-4560, would be "consolidated for all pretrial proceedings." (ECF No. 48, 17-cv-2869, August 20, 2017.) The

plaintiffs in both cases did not oppose this limited consolidation. (ECF No. 47, 17-cv-2869.) The two cases recently settled.

Almodovar v. Guevara, No. 18-cv-2341, and *Negron v. Guevara*, No. 18-cv-2701, had each been randomly assigned to the same district judge. Acting on an “unopposed motion for reassignment based on relatedness.” (ECF No. 20, 18-cv-2341, August 2, 2018), the district judge consolidated the two cases “for all pretrial proceedings.” *Almodovar*, No. 18-cv-2341, ECF No. 17. The cases are now pending on a motion for summary judgment filed by one defendant (Chicago Police Officer Mark Olszewski, who is not a party in these cases).

In *Gecht v. Guevara*, No. 23-cv-1742, the plaintiffs moved for a finding of relatedness with *Kwil v. Guevara*, No. 23-cv-4279. (*Gecht*, ECF No. 87.) Thereafter, the defendants moved to consolidate the two cases. (*Gecht*, ECF No. 100.) The district court granted plaintiffs’ motion for relatedness and “granted in part and denied in part” the defense motion for consolidation. (ECF No. 109, 23-cv-1742, September 14, 2023.) The two cases were consolidated for discovery and dispositive motion practice; the district judge denied the defense request to consolidate the cases for trial, leaving for a “later date” whether there should be a joint trial. *Id.*

III. IT IS PREMATURE TO CONSOLIDATE THE CASES FOR RULING ON THE IMPENDING MOTIONS TO DISMISS

Defendants have announced that they will file “a partial motion to dismiss certain claims in Plaintiffs’ complaints.” (ECF No. 43, ¶ 6.) The vast disparities between the two complaints make it improbable that defendants will raise the same objections in each case. There would be little, if any, time savings if a single judge decided the two motions. Other than potential forum shopping, there is no justification for a single judge to decide both motions.

Plaintiff Mendoza filed her 12-page complaint on April 19, 2023. (ECF No. 1.) Plaintiff amended her complaint on June 27, 2023 to correct the identity of the special representative for Ernest Halvorsen, deceased. (ECF No. 24.) In addition to the City of Chicago, Mendoza brings claims against Reynaldo Guevara, the Estate of Ernest Halvorsen, and Chicago Police Officers Stephen Gawrys and Anthony Riccio. Mendoza summarized in her complaint the facts giving rise to her claim against the individual defendants and her state law malicious prosecution claim against the City of Chicago. (ECF No. 24 at 3-5) Mendoza also pleads a *Monell* claim against the City of Chicago. (*Id.* at 6-11.)

Plaintiff Mulero filed her 55-page complaint on July 24, 2023, asserting 7 federal and 5 state-law claims in 12 separately numbered counts. In

addition to the defendants named by Mendoza, Mulero sues Chicago Police supervisor Robert Biebel.

Mulero identifies her claims as follows:

1	42 U.S.C. § 1983: False Confession and Fabrication of Evidence Due Process Clause of Fifth and Fourteenth Amendments Against Individual Police Officer Defendants and Supervisor Defendants
2	42 U.S.C. § 1983: Brady Violation Due Process Clause of Fifth and Fourteenth Amendment A against Individual Police Officer Defendants and Supervisor Defendants
3	42 U.S.C. § 1983: Unlawful Detention Fourth and Fourteenth Amendments Against Individual Police Officer Defendants and Supervisor Defendants
4	42 U.S.C. § 1983: Conspiracy to Violate Constitutional Rights Against Individual Police Officer Defendants and Supervisor Defendants
5	42 U.S.C. § 1983, 1986: Failure to Intervene Against Individual Police Officer Defendants and Supervisor Defendants
6	42 U.S.C. § 1983: <i>Monell</i> Claim Against City of Chicago
7	State Law: Malicious Prosecution
8	OMITTED
9	State Law: Intentional Infliction of Emotional Distress Against Individual Police Officer Defendants and Supervisor Defendants
10	State Law: Willful and Wanton Conduct Against Individual Police Officer Defendants and Supervisor Defendants
11	State Law: Civil Conspiracy Against Individual Police Officer Defendants and Supervisor Defendants
12	State Law: Respondeat Superior Against City of Chicago
13	State Law: Indemnification Against City of Chicago

Until the Court can review the grounds defendants will advance in their forthcoming motions to dismiss, it is impossible to rule out the possibility that the request for consolidation is an attempt to “depart[] from the norm in this District—assignment of cases by lot.” *Brieger v. Tellabs, Inc.*, 434 F. Supp. 2d 567, 570 (N.D. Ill. 2006). As in *Trading Techs. Intern., Inc.*

v. eSpeed, Inc., No. 04 C 5312, 2005 WL 2139404, at *1 (N.D. Ill. May 5, 2005), “[t]here is lurking here a possible forum-shopping aspect to the whole thing.” The Court should therefore decline to consolidate the two cases for ruling on the forthcoming motions to dismiss.

**IV. IT IS PREMATURE TO RULE ON CONSOLIDATION
FOR DISPOSITIVE MOTIONS (IF ANY) AND TRIAL**

Defendants have not disclosed whether they will file different affirmative defenses against plaintiffs Mendoza and Mulero. And it is impossible at this stage in the litigation to predict the issues (if any) that will be the subject of dispositive motions. Nor are the plaintiffs in a position to rule out the possibility that one plaintiff will be able to complete her case-in-chief in one week, while the other plaintiff requires a two-month trial. These issues control whether there would be any efficiency in consolidating the cases for dispositive motions and for trial. The Court should therefore defer any ruling on consolidation for dispositive motions (if any) and trial.

Respectfully submitted,

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