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

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

DEFENDANTS' REPLY IN SUPPORT
OF THEIR JOINT MOTION FOR CONSOLIDATION

Defendants, through their respective undersigned counsel, hereby submit this Reply in support of their Joint Motion for Consolidation pursuant to Fed. R. Civ. P. 42. In support thereof, Defendants state the following:

Plaintiffs concede that these two lawsuits are virtually identical, will involve the same legal issues, and necessitate the same discovery (including testimony from the key witnesses and analysis of the same documents). Defendants' motion made clear that the facts alleged and legal issues presented warranted consolidation under Rule 42. Plaintiffs' response does not meaningfully rebut any part of Defendants' motion and does not address Defendants' arguments for consolidation under Rule 42. Instead, Plaintiffs argue that the motion is premature and suggest that these cases should only be reassigned for relatedness or coordinated for discovery. That proposition is far more complicated than the obvious solution: consolidating two nearly identical matters before this Court to promote

efficiency and ensure consistent outcomes.[1] Plaintiffs offer no logical reason why these two matters, which Plaintiffs admit will have a "substantial overlap in discovery," should not be consolidated. *See Dckt. No.* 46 at p. 2. Rather than acknowledge the sensible approach Defendants seek in their motion, Plaintiffs argue *Mendoza's* Complaint is shorter than *Mulero's* Complaint, and, as such, Defendants might present different issues in a partial motion to dismiss, and one trial may require less time than another. This argument is nonsense. The standard under Fed. R. Civ. P. 42 is whether the cases involve a common question of law or fact and these cases are virtually identical. Both level the same theories of liability in relation to the investigation into the murders of Cruz and Reyes and aim to prove substantially the same allegations against largely the same defendants. Defendants' motion should be granted.

I. Plaintiffs Concede this Court Should Oversee Both Matters in Discovery, Which Supports the Necessity to Consolidate *Mulero* With *Mendoza*.

Plaintiffs' recognition that one judge should be involved in overseeing discovery in this matter is necessary but not sufficient to promote the efficient resolution of this matter. *See Dckt. No.* 46 at p. 2. That concession, that this Court should oversee discovery, is an admission on Plaintiffs' part that these cases are of such similar nature that it is in the best interest of judicial economy to have both cases proceed before one tribunal.

Despite admitting the cases are essentially the same, Plaintiffs assert that coordination of discovery, short of consolidation, is the most appropriate avenue, still allowing the *Mulero* matter to remain with Honorable Judge Maldonado, and the *Mendoza* matter to remain with this Court. *Id.* Why?

[1] While Plaintiffs do not explicitly request reassignment based on relatedness under Local Rule 40.4, Plaintiffs argue Defendants should have followed the requirements of the Local Rule by filing a responsive pleading with a "request for consolidation." *See Dckt. No.* 46 at p. 1. Plaintiffs either misunderstand the differences between a motion for consolidation under Fed. R. Civ. P. 42 and a motion for reassignment based on relatedness under L.R. 40.4, or Plaintiffs are suggesting reassignment is more appropriate than consolidation. Either way, Plaintiffs are incorrect and the appropriate remedy here is consolidation given the commonality between the law and facts at issue in these two matters.

Plaintiffs do not meet the prerequisites of Internal Operating Procedure ("IOP") 13(e), nor are they seeking a remedy that the Executive Committee allows. Specifically, IOP 13(e) holds that coordination of pretrial proceedings is appropriate for cases that either "(1) are not related within the meaning of L.R. 40.4(a) or (2) are related within the meaning of L.R. 40.4(a) but reassignment is not appropriate under L.R. 40.4(b)." *See* I.O.P. 13(e). Plaintiffs have not established that these matters do not qualify for reassignment under L.R. 40.4(a) or (b). While Defendants do not argue in favor of reassignment over consolidation, Plaintiffs cannot simply declare that these cases are not qualified for reassignment, without providing proof of that declaration, and jump to requesting coordination of discovery. The IOP does not allow a party to satisfy only part of a procedure. In any event, it does not matter, consolidation is provided for in the federal rules for precisely the types of cases that Plaintiffs bring. *See* Fed. R. Civ. P. 42(a)(2); *Blair v. Equifax Check Servs., Inc.*, 43 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. Rules of the Northern District permit just such a process.")

Further confusing the issues, Plaintiffs suggests that this Honorable Court should designate itself and make the determination on the extent of the coordination it will oversee. *See Dckt. No.* 46 at p. 3 (suggesting the appropriate discovery schedule the Court should adopt). But IOP 13 does not provide for this type of relief, even if Plaintiffs moved for it. IOP 13(e) specifically provides that the Executive Committee "will designate a judge to hold such a proceeding" and does not allow the Court to self-appoint itself as the appropriate judge to monitor discovery. *See In Re Tepezza Mktg., Sales Pracs., and Prod. Liab. Litig.*, 2023 WL 3829248, at *2 (U.S. Jud. Pan. Mult. Lit. June 2, 2023)(Panel, upon motion by plaintiff, transferring multiple cases to this Honorable Court for coordinated or consolidated proceedings); *see also Martinez v. Haleas*, 2010 WL 1337555, at *4 (N.D. Ill. Mar. 30, 2010)(recognizing coordination of discovery under IOP 13(e) may be appropriate for cases dealing with different witnesses and testimony to support each plaintiff's separate claims but similar *Monell*

allegations). In the end, Plaintiffs' suggestions on how this Court should manage discovery in these two cases is not a meaningful reason to deny the Defendants' motion to consolidate but does underscore the value in consolidating these matters before one judge.

II. Defendants Have Consistently Taken the Approach that Related Matters Against These and Other Defendants Should be Consolidated and Defendants are Not Forum Shopping.

Despite Plaintiffs reviewing the many court findings on these similar motions to consolidate, Plaintiffs suggest Defendants are "forum shopping" by presenting this Motion before Defendants file their motion to dismiss. *See Dckt. No.* 46 at 6-7. This argument is specious. Rule 42(a) is fully satisfied, and the relief sought is appropriate. *See* Fed. R. Civ. P. 42(a); *Gonzalez v. City of Chicago*, 2014 WL 8272288, at *1 (N.D. Ill. Apr. 7, 2014)("Cases may be joined for trial when they involve a common question of law or fact. The decision whether to consolidate is within the Court's discretion, whether the parties desire or object to consolidation.") As established in *Serrano*, *Montanez*, *Negron*, *Almodovar*, and recently in *Gecht*, when defending matters involving multiple plaintiffs arising out of the same investigation, defendants routinely moving for consolidation regardless of the potential judicial officer who will oversee the matter after consolidation. *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; *Gecht v. Guevara*, No. 23 CV 1742.[2] Plaintiffs do not in any way substantiate their "forum shopping" accusation. Further, Plaintiffs ignore the motion's arguments for consolidation for efficiency and consistency through discovery and trial and fail to acknowledge the many cases Plaintiffs themselves

[2] The City of Chicago and individual officers have also regularly moved to consolidate cases not involving these Defendants, including Defendant Guevara, when the cases involve similar questions of law or fact. *See Washington v. Boudreau,* 2023 WL 184239, at *7 (N.D. Ill. Jan. 13, 2023)(granting the City of Chicago and individual defendants' motion to consolidate for trial); *Gonzalez*, 2014 WL 8272288, at *2 (granting the City of Chicago's motion to consolidate for trial); *Blocker v. City of Chicago*, 2011 WL 1004137, at *1 (N.D. Ill. Mar. 16, 2014)(granting parties' joint motion to consolidate for discovery and trial).

cite wherein the courts granted, at least in part, Defendants' motions to consolidate. *See Dckt. No.* 46 at p. 3-4 (summarizing court rulings granting motions to consolidate for pretrial proceedings).

III. Defendants' Anticipated Partial Motion to Dismiss Will Be Filed Against Both Plaintiffs Presenting Largely the Same Issues.

Plaintiffs speculate that there is a possibility Defendants will present two partial motions to dismiss on different grounds and ask this Court to deny Defendants' Motion to Consolidate as premature. *Id.* at p. 6-7. If *Mulero* is consolidated with *Mendoza*, Defendants intend to present one motion to dismiss presenting largely the same issue. To the extent there are additional arguments set forth addressing each Plaintiff's individual claims, if there are, Fed. R. Civ. P. 42 has no requirement that the responsive pleadings be uniform throughout to qualify for consolidation.

IV. Speculation and Conjecture Should Not Preclude Consolidation.

As argued in Defendants' Motion, Plaintiffs allege they were present when Jimmy Cruz and Hector Reyes were shot and killed. *See Dckt. No.* 41 at p. 2. Both claim Defendants coerced them into confessing to the murders and coerced witnesses into giving false statements and testimony. *Id.* at p. 2-3. Plaintiffs allege violations of the Fourth and Fourteenth Amendments and state law claims against Defendants. *Id.* at p. 3. Defendants recognize that the *Mulero* Complaint included additional claims against Defendants, and one additional Defendant, but those additional theories of liability do not change the reality that these matters both involve common questions of law *and* fact. *See* Fed. R. Civ. P. 42(a) (consolidation is appropriate when the actions involve a common question of law *or* fact); *see Dckt. No.* 41 at p. 3.

Plaintiffs, however, oppose consolidation based purely on conjecture that *Mendoza* and *Mulero* may present different issues at some point. What issues Plaintiffs allude to in this argument are entirely unexplained. Plaintiffs do not argue any difference in the underlying facts of their case. *See Dckt. No.* 46 at p. 2 (succinctly summarizing that their lawsuits allege Defendants framed Plaintiffs for the murder of Jimmy Cruz, causing each to be incarcerated). Nor do they provide any support for their

speculation that one matter may result in a two-month jury trial, while the other may only require a one-week trial. *Id.* p. 7 ("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."). Instead, Plaintiffs speculate that Defendants might file different motions to dismiss, might assert different affirmative defenses, and might argue different subjects in a dispositive motion. *Id.* at p. 6-7. Plaintiffs' guesswork, without any concrete basis for those conjectures, should not preclude consolidation. As argued in Defendants' Motion, consolidation is proper because *Mendoza* and *Mulero* share common questions of law and fact that predominate both cases and consolidation promotes convenience and judicial economy.

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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