

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MADELINE MENDOZA,)	
)	Case No. 23-cv-2441
Plaintiff,)	
)	Hon. Thomas M. Durkin
v.)	
)	
CITY OF CHICAGO, et al.,)	JURY DEMAND
)	
Defendants.)	

**DEFENDANT CITY OF CHICAGO’S
ANSWER TO PLAINTIFF’S AMENDED COMPLAINT, AFFIRMATIVE DEFENSES,
AND JURY DEMAND**

Defendant, City of Chicago (“City”), by its attorney Rock Fusco and Connelly, LLC, and in response to Plaintiff’s Amended Complaint states as follows:

INTRODUCTION

1. This is a civil action arising under 42 U.S.C § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C § § 1343 and 1367.

ANSWER: The City admits that Plaintiff purports to bring some counts of this action under 42 U.S.C. § 1983 and Illinois law. The City further admits that this Court had jurisdiction under 28 U.S.C. §§ 1343 and 1367. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1.

2. When she was just 16 years old, plaintiff Madeline Mendoza was framed for murder by notorious Chicago Police detectives Reynaldo Guevara and Ernest Halvorsen.

ANSWER: Upon information and belief, the City admits that Plaintiff was 16 years old when she was arrested in connection with the murders of Jimmy Cruz and Hector Reyes. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.

3. Mendoza served more than seventeen years of wrongful imprisonment, an injury from which she continues to suffer.

ANSWER: Upon information and belief, the City admits that the Mendoza served 17 years in prison. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 3.

4. The Chicago Police Department's official policies and customs of failing to discipline, supervise, and control its officers, as well as its code of silence, caused the misconduct of Guevara and Halvorsen.

ANSWER: The City denies the allegations contained in Paragraph 4.

5. Based on the powerful evidence that has come to light about Guevara and Halvorsen's repeated wrongdoing and evidence of plaintiff's innocence, the Circuit Court of Cook County vacated plaintiff's conviction.

ANSWER: Upon information and belief, the City admits Plaintiff had her conviction vacated. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 5.

6. Plaintiff brings this lawsuit to secure a remedy for the grievous harms she suffered from her wrongful imprisonment.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6.

I. Parties

7. Plaintiff Madeline Mendoza is a resident of the Northern District of Illinois.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7.

8. Defendant City of Chicago is an Illinois municipal corporation.

ANSWER: The City admits that the City of Chicago is an Illinois municipal corporation.

9. Defendants Reynaldo Guevara, Stephen Gawrys, and Anthony Riccio were, at all relevant times, acting under color of their offices as Chicago police officers. Plaintiff sues these defendants in their individual capacities only.

ANSWER: Upon information and belief, Defendants Reynaldo Guevara, Stephen Gawrys and Anthony Riccio were acting under the color of law and within the scope of their employment as Chicago Police officers with respect to their roles investigating the murders of Jimmy Cruz and Hector Reyes. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 9.

10. Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Ernest Halvorsen, as successor in interest and to defend this action on behalf of Ernest Halvorsen.

ANSWER: The City admits that Geri Lynn Yannow has been appointed by the court to serve as Special Representative for this litigation for the purpose of defending this lawsuit. The City, upon information and belief, denies the remaining allegations contained in paragraph 10.

11. Ernest Halvorsen was, at all relevant times, acting under color of his office as a Chicago police officer.

ANSWER: Upon information and belief, Defendant Ernest Halvorsen were acting under the color of law and within the scope of his employment as a Chicago Police officer with respect to his role investigating the murders of Jimmy Cruz and Hector Reyes. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 11.

12. Plaintiff refers to Ernest Halvorsen, Reynaldo Guevara, Stephen Gawrys, and Anthony Riccio as the “individual officer defendants”.

ANSWER: Based upon information and belief, the City admits the allegations in Paragraph 12.

II. False Arrest and Unreasonable Prosecution of Plaintiff

13. On May, 1992, Jacqueline Montanez shot and killed Jimmy Cruz and Hector Reyes in Humboldt Park on the West Side of Chicago.

ANSWER: Based upon records from the Chicago Police Department, the City admits on May 12, 1992, Jimmy Cruz and Hector Reyes were shot and killed in Humboldt Park in Chicago and that Montanez shot and killed Hector Reyes. Based upon records from the Chicago Police Department, the City denies the Montanez shot and killed Jimmy Cruz. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 13.

14. At the time of the killings, plaintiff was with Montanez, Cruz, Reyes, and another woman, Marilyn Mulero.

ANSWER: Based upon records from the Chicago Police Department, the City admits on the allegations in Paragraph 14.

15. Plaintiff did not have any prior knowledge of any plan to kill Cruz or Reyes and she did not in any way aid, abet, facilitate, or participate in the homicides.

ANSWER: Based upon records from the Chicago Police Department, the City denies that plaintiff did not have any prior knowledge of any plan to kill Cruz or Reyes and denies that Plaintiff did not “in any way aid, abet, facilitate or participate in the homicides.” The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 15.

16. Defendants Guevara and Halvorsen were assigned to investigate the murders.

ANSWER: Based upon records from the Chicago Police Department, the City admits that Defendants Guevara and Halvorsen were assigned to the investigation of the murders of Reyes and Cruz. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 16.

17. Defendants Guevara and Halvorsen conspired, confederated, and agreed to fabricate a false story that plaintiff had participated in the murders.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

18. Defendants Guevara and Halvorsen concocted the false story that Montanez shot Reyes, she then gave the gun to Mulero, and then Mulero shot Cruz after plaintiff signaled Mulero to shoot.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 18.

19. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff include the following:

- a. They caused Montanez to make a statement falsely implicating plaintiff in the murder
- b. They caused Mulero to make a statement falsely implicating plaintiff in the murders;
- c. They caused Yvette Rodrigues to provide a false statement that she had heard plaintiff, Montanez, and Mulero each bragging about the shootings;
- d. They caused Jackie Serrano to provide a false statement that she had witnessed plaintiff participate in the shooting of Cruz from her apartment; and
- e. They caused Joan Roberts, a jailhouse informant, to provide a false statement that plaintiff had admitted to participating in the murders.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19, including all subparts.

20. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff also include the following:

- a. They prepared police reports containing the false story;
- b. They attested to the false story through the official police reports; and
- c. They communicated the false story to prosecutors.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20, including all subparts.

21. Defendants Gawrys and Riccio either participated in the above-described acts or knew of them and failed to intervene to prevent the violation of plaintiff's rights.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.

22. The individual officer defendants committed the above-described wrongful acts knowing that the acts would cause plaintiff to be held in custody and wrongly prosecuted.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22.

23. Plaintiff was charged with murder because of the wrongful acts of the individual officer defendants.

ANSWER: The City admits Plaintiff was charged with the murder of Jimmy Cruz and conspiracy to murder Hector Reyes. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 23.

24. Plaintiff knew that it would be impossible to prove that the individual officers had concocted the evidence against her.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24.

25. Accordingly, even though plaintiff was innocent, she pleaded guilty to the murder of Cruz and to conspiracy to commit the murder of Reyes on September 22, 1993, and she was sentenced to 35 years for murder concurrent to 7 years for conspiracy.

ANSWER: Upon information and belief, the City admits Plaintiff pleaded guilty to the murder of Cruz and the conspiracy to murder Reyes on September 22, 1993, and was sentenced to 35 years. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25.

26. Plaintiff served her sentence and was released from prison in 2009.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.

27. Plaintiff was deprived of liberty because of the above-described wrongful acts of the individual officer defendants.

ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.

III. Plaintiff's Exoneration

28. Plaintiff challenged the above-described wrongful conviction after learning that lawyers for other wrongfully convicted individuals had discovered repeated misconduct by Guevara and Halvorsen

ANSWER: Upon information and belief, the City admits Plaintiff challenged her conviction of the murder of Jimmy Cruz and conspiracy to murder Hector Reyes. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 28.

29. On January 3, 2023, the Circuit Court of Cook County vacated plaintiff's convictions and granted the State's request *to nolle prosequi* the case.

ANSWER: Upon information and belief, the City admits the allegations contained in Paragraph 29.

IV. Official Policies and Customs of the Chicago Police Department Were the Moving Force for Defendants' Misconduct

30. At all relevant times, the Chicago Police Department maintained official policies and customs that facilitated, encouraged, and condoned the misconduct of the individual officer defendants.

ANSWER: The City denies the allegations contained in Paragraph 30.

A. Failure to Discipline

31. At all relevant times, the Chicago Police Department maintained a policy or custom of failing to discipline, supervise, and control its officers. By maintaining this policy or custom, the City caused its officers to believe that they could engage in misconduct with impunity because their actions would never be thoroughly scrutinized.

ANSWER: The City denies the allegations contained in Paragraph 31.

32. Before plaintiff's arrest, policymakers for the City of Chicago knew that the Chicago Police Department's policies or customs for disciplining, supervising, and controlling its officers were inadequate and caused police misconduct

ANSWER: The City denies the allegations contained in Paragraph 32.

33. Despite their knowledge of the City's failed policies and customs for disciplining, supervising, and controlling its officers, the policymakers failed to take action to remedy these problems.

ANSWER: The City denies the allegations in Paragraph 33.

34. As a direct and proximate result of the Chicago Police Department's inadequate policies or customs for disciplining, supervising, and controlling its officers and the policymakers' failure to address these problem the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

ANSWER: The City denies the allegations contained in Paragraph 34.

B. Code of Silence

35. At all relevant times, the Chicago Police Department maintained a "code of silence" that required police officers to remain silent about police misconduct. An officer who violated the code of silence would be penalized by the Department.

ANSWER: The City denies the allegations contained in Paragraph 35.

36. At all relevant times, police officers were trained at the Chicago Police Academy not to break the code of silence. Officers were instructed that "Blue is Blue. You stick together. If something occurs on the street that you don't think is proper, you go with the flow. And after that situation, if you have an issue with that officer or what happened, you can confront them. If you don't feel comfortable working with them anymore, you can go to the watch commander and request a new partner. But you never break the code of silence."

ANSWER: The City denies the allegations contained in Paragraph 36.

37. This “code of silence” facilitated, encouraged, and enabled the individual officer defendants to engage in egregious misconduct for many years, knowing that their fellow officers would cover for them and help conceal their widespread wrongdoing.

ANSWER: The City denies the allegations contained in Paragraph 37.

38. In the case of *Obrycka v. City of Chicago et al.*, No. 07-cv-2372 (N.D. Ill.), a federal jury found that, as of February 2007, “the City [of Chicago] had a widespread custom and/or practice of failing to investigate and/or discipline its officers and/or code of silence.”

ANSWER: The City admits that in the case of *Obrycka v. City of Chicago*, No. 07-cv-2372, the jury returned a verdict in favor of Plaintiff and against the City of Chicago, but states that the District Court in *Obrycka* subsequently noted the basis for the jury’s verdict was “unclear and was “based on the unique facts of [that] case.” The City denies the *Obrycka* verdict provides precedential value for this case or that it is applicable to the facts and circumstances alleged in this Complaint. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 38.

39. In December 2015, Chicago Mayor Rahm Emanuel acknowledged the continued existence of the code of silence within the Chicago Police Department; Emanuel, speaking in his capacity as Mayor, admitted that the code of silence leads to a culture where extreme acts of abuse are tolerated.

ANSWER: The City admits that on December 9, 2015, Mayor Rahm Emanuel stated, in part, the following: “This problem is sometimes referred to as the Thin Blue Line. Other times it is referred to as the code of silence. It is the tendency to ignore, deny or in some cases cover-up the bad actions of a colleague or colleagues.” The City denies that any code of silence within the Chicago Police Department is pervasive, widespread or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. The City further states that any purported “code of silence” is directly contrary to the official written rules and policies of the Chicago Police Department. The City denies the remaining allegations contained in Paragraph 39.

40. In April 2016, the City’s Police Accountability Task Force found that the code of silence “is institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City.”

ANSWER: The City admits the existence of the April 2016 Report issued by the Police Accountability Task Force (“PATF Report”), and that the the language quoted in this paragraph is included at page 70 of the PATF Report. The City states that quoting and paraphrasing snippets of text taken from the PATF Report is an oversimplification and imprecise representation of that report. The City further states that any “code of silence” as described in this complaint is directly contrary to the rules, policies, and training of the Chicago Police

Department. The City further denies that a “code of silence” within the Chicago Police Department is pervasive, widespread or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. The City denies the remaining allegations contained in Paragraph 40.

41. In an official government report issued in January 2017, the United States Department of Justice found that “a code of silence exists, and officers and community members know it.”

ANSWER: The City admits that page 75 of the 2017 Department of Justice Report states in part, “current officers and former high-level CPD officials interviewed during our investigation” shared the opinion that a “code of silence” existed within CPD. The City denies that any “code of silence” within the Chicago Police Department is pervasive, widespread or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. The City further states that any purported “code of silence” is directly contrary to the rules, policies, and training of the Chicago Police Department. The City denies the remaining allegations contained in Paragraph 41.

42. On March 29, 2019, then-Chicago Police Superintendent Eddie Johnson publicly acknowledged the code of silence, stating that some Chicago police officers “look the other way” when they observe misconduct by other Chicago police officers.

ANSWER: The City admits, on information and belief, that former Chicago Police Superintendent Eddie Johnson was interviewed for a newspaper article in March 2019, and in response to a question, was quoted as stating, “Do I think there might be officers that look the other way? Yeah, I do.” The City states that Mr. Johnson was further quoted as stating he was “not going to indict the entire department for the acts of certain individuals.” The City denies that any “code of silence” within the CPD is pervasive, widespread, or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. Further responding, the City states that any “code of silence” is directly contrary to the rules, policies, and training of the CPD. The City denies the remaining allegations contained in Paragraph 42.

43. In October 2020, then-Chicago Police Superintendent David Brown acknowledged in public comments that the “code of silence” continues to exist.

ANSWER: The City objects that this Paragraph 43 is vague and ambiguous in that it does not identify any particular speech or public statement purportedly made by former Chicago Police Superintendent David Brown, such that the City could admit or deny the allegations. Subject to and without waiving these objections, the City denies that any “code of silence” within the Chicago Police Department is pervasive, widespread or a well-settled custom or practice to

which the City’s final policymakers have been deliberately indifferent. The City further states that any purported “code of silence” is directly contrary to the rules, policies, and training of the Chicago Police Department. The City denies the remaining allegations contained in Paragraph 43.

44. The same code of silence in place during the time period at issue in the *Obrycka* case and recognized by the Mayor, Superintendent Johnson, Superintendent Brown, the Task Force, and the Department of Justice was also in place when plaintiff suffered the wrongful arrest, detention, and prosecution described above.

ANSWER: The City denies the allegations contained in Paragraph 44.

45. As a direct and proximate result of the City’s code of silence, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

ANSWER: The City denies the allegations contained in Paragraph 45.

C. The City’s Policies and Customs Have Caused Numerous Other Wrongful Convictions

46. Chicago Police Officers, including the individual officer defendants, acting pursuant to defendant City of Chicago’s “code of silence” and defective discipline policy have concocted false stories and fabricated evidence in numerous other cases.

ANSWER: To the extent the allegations in this paragraph are directed against the City, the City denies these allegations. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 46.

47. In each case, the officers concocted false stories and fabricated evidence because they knew that there would be no consequences for their misconduct because of defendant City of Chicago’s “code of silence” and defective discipline policy.

ANSWER: The City denies the allegations contained in Paragraph 47.

48. These numerous cases include, but are not limited to, the following:

- a. In August of 1988, defendant Guevara caused Jacques Rivera to be falsely convicted of murder by coercing a witness to falsely identify Rivera;
- b. In September of 1989, defendant Guevara caused Juan Johnson to be falsely convicted of murder by coercing a witness to falsely identify Johnson;
- c. In August of 1990, defendant Guevara caused Jose Maysonet to be falsely convicted of murder by coercing him into falsely confessing;

d. In January of 1991, defendant Guevara caused Xavier Arcos to be falsely convicted of murder by coercing a witness to falsely identify Arcos;

e. In May of 1993, defendants Guevara and Halvorsen caused Armando Serrano and Jose Montanez to be falsely convicted of murder by coercing a witness to falsely testify that Serrano and Montanez admitted to committing the murder.

f. In May of 1993, defendants Guevara and Halvorsen caused Robert Bouto to be falsely convicted of murder by coercing two jailhouse informants to falsely testify that Bouto admitted to committing the murder;

g. In June of 1993, defendant Guevara caused Gabriel Iglesias to be falsely convicted of murder by coercing two witnesses to falsely identify Iglesias and by coercing a jailhouse informant to falsely testify that Iglesias admitted to committing the murder;

h. In September of 1994, defendant Guevara caused Roberto Almodovar and William Negron to be falsely convicted of murder by coercing a witness to falsely identify Almodovar and Negron;

i. In May of 1995, defendants Guevara and Halvorsen caused Thomas Sierra to be falsely convicted of murder by coercing false testimony from two witnesses; and

j. In April of 1998, defendant Guevara caused Gabriel Solache and Arturo Reyes to be falsely convicted of murder and kidnapping by coercing them to give false confessions.

ANSWER: The City objects to the allegations in this paragraph, and all ten subparts which cannot be answered concisely. To the extent an answer is required, the City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48, including all its subparts.

V. Claims

49. As a result of the foregoing, defendants caused plaintiff to be deprived of rights secured by the Fourth and Fourteenth Amendments

ANSWER: The City incorporates its answers to each of the foregoing paragraphs as fully set forth herein. To the extent the allegations in this paragraph are directed against the City, the City denies such allegations. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 49.

50. As a supplemental state law claim against defendant City of Chicago only: as a result of the foregoing, plaintiff was subjected to a malicious prosecution under Illinois law

ANSWER: The City incorporates its answers to each of the foregoing paragraphs as fully set forth herein. The City denies the allegations contained in Paragraph 50.

51. Plaintiff hereby demands trial by jury.

ANSWER: The City objects to the allegations in this paragraph as it states a conclusion to which no answer is required. To the extent an answer is required, the City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51.

WHEREFORE, the City of Chicago respectfully requests that this Honorable Court enter judgement in its favor and against Plaintiff, as well as any other relief this Court deems just and proper.

AFFIRMATIVE DEFENSES

1. The City is not liable to plaintiff if its employees or agents are not liable to plaintiff. 745 ILCS 10/2-109.

2. Plaintiff has a duty to mitigate his damages, and any damages awarded to Plaintiff would be required to be reduced by any amount by which the damages could have been lessened by Plaintiff's failure to take reasonable action to minimize those damages.

3. To the extent any injuries or damages claimed by Plaintiff were proximately caused, in whole or in part, by any wrongful conduct on the part of Plaintiff, any verdict or judgment obtained by Plaintiff based on any finding of "reckless" willful and wanton behavior, as opposed to "intentional" willful and wanton behavior, must be reduced by application of the principles of comparative fault, by an amount commensurate with the degree of fault attributed to Plaintiff by the jury in this case. See *Poole v. City of Rolling Meadows*, 167 Ill.2d 41, 656 N.E.2d 768, 212 Ill.Dec. 171 (1995).

4. Under Illinois law, the City is not liable for the conduct committed by employees not by employees not acting within the scope of their employment. *Wright v. City of Danville*, 174 Ill.2d 392, 221 Ill.Dec. 203, 675 N.E.2d 110 (1996).

5. The City is immune from the imposition of punitive damages under both state and federal law. Punitive damages cannot be imposed against a municipality in a section 1983 action. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). Moreover, under Illinois law, the City cannot be required to indemnify an employee for punitive or exemplary damages, nor may it pay judgment for punitive damages on behalf of an employee. 745 ILCS 10/2-102.

6. To the extent Plaintiff's claims rely upon criminal trial court rulings, those claims may be barred or limited by the applications of the doctrines of waiver, res judicata, collateral estoppel, and/or judicial estoppel.

7. Plaintiff's failure to intervene claim has no basis in the Constitution as "[f]ailure to intervene sounds like vicarious liability," which would of course be untenable, as "[t]he Supreme Court has held many times that Section 1983 supports only direct, and not vicarious, liability." *Mwangangi v. Nielsen*, 48 F.4th 816, 834 (7th Cir. 2022)(Easterbrook, J., concurring).

8. Plaintiff's claims as alleged in his Complaint are barred in whole or in part by the applicable statute of limitations.

JURY DEMAND

The City demands a trial by jury.

DATED: May 6, 2024

Respectfully Submitted,

By: /s/ Catherine M. Barber
*Special Assistant Corporation Counsel
for Defendant City of Chicago*

Eileen E. Rosen
Austin G. Rahe
Jessica L. Zehner
Catherine M. Barber
Theresa B. Carney
Lauren M. Ferrise
Andrew J. Grill
ROCK FUSCO & CONNELLY, LLC
333 W. Wacker, 19th Floor
Chicago, IL 60606
(312) 494-1000
erosen@rfclaw.com
arahe@rfclaw.com
jzehner@rfclaw.com
cbarber@rfclaw.com