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

MICHAEL JONES,	)	
	)	
Plaintiff,	)	Case No. 23-cv-04975
	)	
v.	)	
	)	Joan Gottschall, District Court Judge
CITY OF CHICAGO, et al.,	)	
	)	Jeffrey Cole, Magistrate Judge
Defendants.	)	

DEFENDANT CITY OF CHICAGO'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

The City of Chicago (the "City"), by and through its attorneys, Nathan & Kamionski LLP, Special Assistant Corporation Counsel for the City of Chicago, hereby submits its motion to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6). In support of its motion, the City states as follows:

PARTIES' UNOPPOSED BRIEFING SCHEDULE
FOR DEFENDANTS' MOTION TO DISMISS

The City of Chicago (the "City"), by and through its attorneys, Nathan & Kamionski LLP, Special Assistant Corporation Counsel for the City of Chicago, hereby submits the parties' unopposed briefing schedule for Defendants' motion to dismiss and respectfully moves this Honorable Court to enter an order with the following briefing schedule:

1. On September 29, 2023, the Court granted the City's motion for an extension of time to file its motion to dismiss and instructed the parties "to confer and include an agreed proposed briefing schedule on the first page of any motions to dismiss the complaint." *See* Dkt. #20.

2. On October 20, 2023, counsel for the City conferred with counsel for Plaintiff via email, and agreed on the following briefing schedule:

   a. Plaintiff is to file a response to Defendants' motion to dismiss by November 27, 2023; and

   b. Defendants are to file a reply by January 12, 2024.

3. Plaintiff's counsel requested the November 27th filing date due to November travel plans and the Thanksgiving holiday.

4. Defendants requested the January 12th date due to the Christmas and New Year holidays, and to ensure time for its client to conduct an internal review.

WHEREFORE, the City respectfully requests this Honorable Court to enter an order granting Plaintiff until November 27, 2023, to file a response to Defendants' motion to dismiss and until January 12, 2024 for Defendants to file a reply.

Dated: October 20, 2023

Respectfully submitted,

/s/ Breana Brill
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INTRODUCTION

This case arises from Plaintiff's arrest that occurred in the vicinity of West Roosevelt Road and South Springfield Avenue in Chicago, Illinois, on March 31, 2015, for possession of "drugs." (*See* Complaint ("Compl."), Dkt. #1, ¶¶ 5, 8). Plaintiff asserts that his arrest must be wrongful because it allegedly occurred within 15 minutes of the arrest of another man, Elgin Jordan. (*Id.* at ¶¶ 10-12). He further claims that "officer defendants" did not have a warrant for Plaintiff's arrest, believe there was a warrant for arrest, observe Plaintiff commit any offense; or receive information from any source that Plaintiff had committed an offense. (*Id. at* ¶ 6). Then, without detail, he states that "one or more of the officer defendants" prepared police reports with a false story; that "one or more of the officer defendants" attested to the false story through the official reports; and that "one or more of the officer defendants" communicated the false story to prosecutors, and that the other Defendants failed to intervene in all these actions. (*Id.* at ¶ 9). The false story Plaintiff alleges is that Officers saw Plaintiff selling drugs, he dropped the drugs and fled from the officers when they approached him, and that he admitted to selling drugs when he was caught. (*Id.* at ¶ 8).

Other than identifying the officers by name, Bryan Cox, Peter Theodore, David Salgado, and Rocco Pruger ("Defendant Officers"), Plaintiff makes no specific allegations against any individual except to state that Defendants Cox and Salgado testified that they arrested Elgin Jordan at 9:45 am on March 31, 2015. (*Id.* at ¶¶ 10-11). Plaintiff challenges his arrest, which he claims the officers reported as occurring at 10:00 a.m., and argues that the time of his arrest relative to the arrest of Jordan means that his arrest could not have occurred as it was reported. (*Id.*). Plaintiff, however, provides no details as to Theodore and Pruger and how they are bound – if at all – by the testimony of Salgado and Cox. After Plaintiff's arrest, he was charged and convicted for possession of a controlled substance, an offense he pled guilty to on July 23, 2015. (*Id.* at ¶¶ 13-15); (*see* Criminal Division, Case

Summary, attached hereto as Exhibit A)[1]. On August 26, 2022, Plaintiff's conviction was reversed and the underlying criminal case against him was dismissed. (Compl. at ¶ 19).

Although Plaintiff's Complaint does not delineate his claims into separate counts, he appears to be asserting claims against Defendant Officers for false arrest under the Fourth Amendment, unlawful detention without probable cause under the Fourth Amendment, fabrication of evidence under the Fourteenth Amendment, and derivative claims of conspiracy and failure to intervene. Furthermore, Plaintiff alleges a state-law malicious prosecution claim against the City and attempts to allege a *Monell* claim against the City.

Plaintiff's Complaint contains boilerplate, vague allegations without establishing a clear, causal connection to Plaintiff's alleged injuries in the instant case. These allegations, as addressed below, must be dismissed for their failure to state a proper claim. In addition, as described below, this Court should dismiss the *Monell* claim just as it did in a nearly identical complaint in *Jordan v. City of Chi.*, 2021 WL 1962385, at *5 (N.D. Ill. May 17, 2021) (Gottschall, J.).

LEGAL STANDARD

To survive a Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its fact.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The claim must be "a short and plain statement … showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Further, the short and plain statement is required, under

[1] Defendant City asks that the Court take judicial notice of the Criminal Division Case Summary as it is entitled to without converting the Rule 12(b)(6) motion into a motion for summary judgment. *Twin City Fire Ins. Co. v. Law Office of John S. Xydakis, P.C.*, No. 18-cv-6387, 2019 WL 4412756, at *3 (N.D. Ill. Sept. 16, 2019) (court takes judicial notice of documents filed with the state court in cases that formed the basis for the claims) (citing *Collins v. Village of Palatine*, 875 F.3d 839, 842 (7th Cir. 2017) ("judicial notice of public court documents is appropriate when ruling on a Rule 12(b)(6) motion to dismiss")). Further, the Court may take judicial notice of matters of public record without converting a 12(b)(6) motion into a motion for summary judgment. *Clark & Leland Condominium, L.L.C. v. Northside Community Bank*, 110 F. Supp. 3d 866, 868 (N.D. Ill. 2015).

Fed. R. Civ. P. 8(a)(2), to "'give the defendant fair notice of what . . . the claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 545 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Offering nothing more than "labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678. Only factual allegations can form the basis of liability; mere conclusory statements and regurgitated legal elements are disregarded. *McCauley v. City of Chi.*, 671 F.3d 611, 616 (7th Cir. 2011); *see Taha v. Int'l Brotherhood of Teamsters, Local 781*, 947 F.3d 464, 469 (7th Cir. 2020) ("Only sheer speculation, bald assertions, and unsupported conclusory statements are rejected.") (internal quotations omitted). In other words, if the factual detail is "so sketchy that the complaint does not provide the type of notice to which the defendant is entitled to under Rule 8" it is subject to dismissal. *Airborne Beepers & Video, Inc. v. AT&T Mobility, LLC*, 449 F.3d 663, 667 (7th Cir. 2007).

ARGUMENT

As a threshold matter, Plaintiff's Complaint completely runs afoul of Rule 8. *See* Fed. R. Civ. P. 8(a). Rule 8(a) requires a party to make their pleadings straight forward so that judges and adverse parties need not "try to fish a gold coin from a bucket of mud." *United States ex rel. Garst v. Lockhead-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003). In other words, a complaint must be presented with intelligibility for a court or an opposing party to understand whether a valid claim is alleged, and if so, what. *Vicom v. Harbridge Merch. Servs., Inc.*, 20 F.3d 771, 775 (7th Cir. 1994).

Here, Plaintiff fails to provide reasonable notice of the allegations against Defendant Officers. Further, to the extent Plaintiff is asserting a false arrest claim, it is untimely. Also, any claim against the City based upon *Monell* or state-law malicious prosecution theories should be dismissed because the Complaint fails satisfy the most basic pleading standards. Last, Plaintiff's state-law malicious prosecution claim based upon the *respondeat superior* doctrine should be dismissed because Plaintiff failed to allege any facts in his Complaint that a City employee is liable for malicious prosecution.

I. The Complaint Fails to Provide Defendant Officers With Fair Notice of the Allegations Against Them.

The "notice pleading" standard of Fed. R. Civ. P. 8(a) is liberally construed, but Plaintiff fails to allege any facts that the Defendant Officers were personally involved in any constitutional violation. *See Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003). Section 1983 creates a cause of action based on personal liability and is based in fault, and therefore, "to be liable under § 1983, an individual defendant must have caused or participated in a constitutional deprivation." *Pepper v. Village of Oak Park*, 430 F.3d 809, 810 (7th Cir. 2005).

Here, other than noting that two officers provided testimony, Plaintiff's Complaint inappropriately groups the "officer defendants" together without differentiation or explanation as to what each person did or did not do, how they were involved in the purported actions giving rise to civil liability, or what they are being thrust into this suit to defend against. (Compl. at ¶ 11). Defendants are thus unable to parse and evaluate the allegations against them. On this point, Plaintiff does designate one claim specifically, a state court malicious prosecution claim against the City, but he fails to state what employee, presumably a Defendant, took any actions sufficient to substantiate this claim beyond alleging only one element: that they lacked probable cause. (*Id.* at 42). *Mohammed v. Jenner & Block, LLP,* No. 21 CV 3261, 2022 WL 595734, at *2 (N.D. Ill. Feb. 28, 2022) (Absence of any element bars a malicious prosecution claim; the elements are "(1) the commencement or continuance by the defendant of an original judicial proceeding against the plaintiff; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) malice; and (5) damages.") (citations omitted). Moreover, if no individual is identified as having committed a malicious prosecution violation there can be no liability that attaches to the City. *See* 745 ILCS 10/2-109 (Under the Illinois Tort Immunity Act, "[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.").

In short, each officer defendant is left to wonder as to what allegations he is facing. Group pleading of this type, is not acceptable as plaintiff provides no clues as to whether each defendant actually engaged in the alleged conduct, without making clear that the allegations are against all the defendants. *See, e.g., Atkins v. Hasan*, No. 15 C 203, 2015 WL 3862724, at *3 (N.D. Ill. June 22, 2015) (citing *Brooks v. Ross*, 578 F.3d 574, 580 (7th Cir. 2009) (noting complaints stating "one or more of the Defendants" has engaged in certain conduct "does not adequately connect specific defendants to illegal acts")). This pleading style has also been rejected by other courts of this district. *See Smith v. Vill. of Dolton*, No. 09 C 6351, 2010 WL 744313, at *2 (N.D. Ill. Feb. 25, 2010) (dismissing an action for failing to intervene finding an allegation that "one or more of the defendant offers" failed to intervene failed to put any of the defendants on notice as to whether they are the target of plaintiff's allegations), comparing *Choyce v. Friar*, No. 08 C 202, 2008 WL 2567037, at *3 (N.D.Ill. June 24, 2008) (finding that "the identities of the actual officers that were plausibly involved in [plaintiff's] claims is a necessary fact that must be pled in order to properly put these individual Defendants on notice of the claims brought against them").

Group pleading fails not only because of the applicable pleading standards, but also because Plaintiff's federal claims are brought pursuant to Section 1983. It is well-established that liability under Section 1983 does not attach unless an individual defendant caused or participated in a constitutional deprivation. *Hildebrandt v. Ill. Dep't of Natural Resources*, 347 F.3d 1014, 1039 (7th Cir. 2003). In other words, a defendant is only liable under Section 1983 if he or she was personally involved in the alleged constitutional violation. *Alejo v. Heller*, 328 F.3d 930, 936 (7th Cir. 2003); *see also WolfLillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) ("Section 1983 creates a cause of action based upon personal liability and predicated upon fault."); *Rascon v. Hardiman*, 803 F.2d 269, 273 (7th Cir. 1986) ("an individual cannot be held liable in a Section 1983 action unless he caused or participated in an alleged constitutional deprivation") (internal quotation marks omitted). "Liability is personal" and "each

defendant is entitled to know what he or she did that is asserted to be wrongful." *Bank of America, N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013).

Other than noting that Defendants Cox and Salgado testified at some point in time at a hearing associated with Elgin Jordan, Plaintiff has failed to allege how each Defendant was personally involved in the alleged wrongdoing against him. (Compl. at ¶ 11).[2] Indeed, a "[v]ague reference to a group of defendants' without specific allegations tying the individual defendants to the alleged unconstitutional misconduct, does not raise a genuine material fact with respect to those defendants." *Brooks,* 578 F.3d at 582; *see also Grieveson v. Anderson,* 538 F.3d 763, 778 (7th Cir. 2008). The complaint fully fails to account for why the testimony of two officers in another proceeding applies to all the officers here. Accordingly, Plaintiff's failure to provide basic factual allegations as to what each officer did or failed to do requires dismissal.

II. To the Extent the Complaint Asserts a Claim for False Arrest, it Should Be Dismissed as Time Barred.

To the extent Plaintiff is making a false arrest claim it must be dismissed as untimely. The Supreme Court held "that the statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process." *Wallace v. Kato,* 549 U.S. 384, 397 (2007). If Plaintiff has a basis for a false arrest claim, such a claim accrued when he was arrested on March 31, 2015, yet his complaint was not filed until July 31, 2023. (*Id.*); *see also Dominguez v. Hendley*, 545 F.3d 585, 588 (7th Cir. 2008). Therefore, any false arrest claim is time-barred

[2] While it is not clear from Plaintiff's Complaint if he is alleging any misconduct related to this or other testimony, Defendants enjoy absolute immunity from liability for testimony given in a criminal proceeding. *See Briscoe v. LaHue*, 460 U.S. 325, 332 (1983) (a police officer who gave perjured testimony at a plaintiff's criminal trial was absolutely immune from subsequent damages liability under Section 1983 "even if the witness knew the statements were false and made them with malice"); *Kincaid v. Eberle*, 712 F.2d 1023, 1023-24 (7th Cir. 1983) (police officers testifying before a grand jury have absolute immunity from Section 1983 liability for giving false testimony).

and should be dismissed. *Jordan*, 2021 WL 1962385 at *3 (dismissing as time barred under *Wallace* in related case).

III. The Failure to Intervene and Conspiracy Claims Should Be Dismissed.

Section 1983 failure to intervene claims have no basis in the Constitution because they are rooted in vicarious liability as they seek to hold liable officers who merely stood by and were not directly involved when other officers were engaged in certain conduct. *Mwangangi v. Nielson*, 48 F.4th 816, 834 (7th Cir. 2022) (Easterbrook, J., concurring); *White v. City of Chi.*, 2023 WL 2349602, at *11 n. 17 (N.D. Ill. Mar. 3, 2023). Alternatively, absent an underlying constitutional violation, there can be no independent claim for failure to intervene. *Harper v. Albert*, 400 F.3d 1052, 1064 (7th Cir. 2005). Consequently, this Court should dismiss any claims of failure to intervene.

Similarly, the conspiracy claim should be dismissed if the underlying claims are not actionable. *See Coleman v. City of Peoria*, 925 F.3d 336, 351 (7th Cir. 2019); *Reynolds v. Jamison,* 488 F.3d 756,764 (7th Cir. 2007) (Section 1983 conspiracy claim depends upon the viability of the underlying constitutional claim); see also *Indianapolis Minority Contractors Ass'n, Inc. v. Wiley,* 187 F.3d 743, 754 (7th Cir. 1999) (Section 1985 conspiracy claim cannot be maintained without an underlying violation of constitutional rights); *Siegel v. Shell Oil Co.*, 656 F. Supp. 2d 825, 836 (N.D. Ill. 2009) ("Under Illinois law, . . . civil conspiracy is not an independent tort. Instead, there must be an independent cause of action underlying a plaintiff's conspiracy claim") (internal citation omitted) *aff'd*, 612 F.3d 932 (7th Cir. 2010); *Indeck North American Power Fund, L.P. v. Norweb, P.L.C.*, 316 Ill. App. 3d 416, 432 (1st Dist. 2000) ("Where, as here, a plaintiff fails to state an independent cause of action underlying its conspiracy allegations, the claim for a conspiracy also fails"). An actual denial of a civil right is necessary before a cause of action for conspiracy arises. *Goldschmidt v. Patchett*, 686 F.2d 582, 585 (7th Cir. 1982); *Boothe v. Sherman*, 66 F. Supp. 3d 1069, 1077 (N.D. Ill. 2014); *see Ingram v. Jones,* 1996 WL 35365, at *2 (N.D. Ill. 1996).

To the extent that the Complaint is asserting derivative claims of conspiracy and failure to intervene, these claims should be dismissed because Plaintiff failed to state a valid underlying claim. *Ingram*, 1996 WL 35365 at *2 ("Section 1983 does not punish conspiracy alone"); *Cefalu v. Vill. of Elk Grove,* 211 F.3d 416, 423 (7th Cir. 2000); *Niehus v. Liberio,* 973 F.2d 526, 531-32 (7th Cir. 1992). As such, "[i]f a plaintiff fails to prove an underlying constitutional injury, any attendant conspiracy claim necessarily fails." *Hill v. City of Chic.*, 2009 WL 174994, at *9 (N.D. Ill. 2009). Consequently, as Plaintiff has no viable Constitutional claim, any conspiracy claim cannot survive. *See Pluciennik v. Vandenberg*, 2018 IL App (3d) 160726, ¶ 22 (dismissing civil conspiracy claim because plaintiff "failed to allege a separate cause of action" underlying the conspiracy); *Daugherty v. Page*, 906 F.3d 606, 612 (7th Cir. 2018) (quoting *Hurt v. Wise*, 880 F.3d 831, 842 (7th Cir. 2018) (Plaintiff "must 'show an underlying constitutional violation' and 'demonstrate that the defendants agreed to inflict the constitutional harm.'")).

IV. Any *Monell* Claim Against The City Should Be Dismissed Because Plaintiff Failed to Allege a Valid Underlying Constitutional Violation.

Any *Monell* claim arguably asserted against the City in this case should be dismissed because the Complaint did not sufficiently allege an underlying constitutional claim against Defendant Officers. For Plaintiff to move forward with a *Monell* claim against a municipality, "plaintiff must begin by showing an underlying constitutional violation[.]" *Cozzi v. Village of Melrose Park*, 592 F. Supp. 3d 701, 710 (N.D. Ill. Mar. 21, 2022) (citing *Schor v. City of Chi.*, 576 F.3d 775, 779 (7th Cir. 2009); *see also First Midwest Bank Guardian of Estate of LaPorta v. City of Chi.*, 988 F.3d 978, 987 (7th Cir. 2021)); *Veal v. Kachiroubas*, 2014 WL 321708, at *3 (N.D. Ill. Jan. 29, 2014) ("[E]ven if the absence of policy may be the source of the violation of civil rights, there is no injury to [plaintiff] without officer misconduct."); *Carr v. City of N. Chi.*, 908 F.Supp.2d 926, 929 (N.D. Ill. 2012) ("Where a plaintiff brings a *Monell* claim against a municipality based on the specific conduct of a municipality employee, the plaintiff cannot prevail on that *Monell* claim without first showing that the employee violated the

plaintiff's constitutional rights."); *Castillo v. City of Chi.*, 2012 WL 1658350, at *4 (N.D. Ill. May 11, 2012) ("Municipal liability arising in the context of an arrest depends on a determination that one or more municipal employees violated the plaintiff's constitutional rights[.]") (citations omitted).[3]

While the Seventh Circuit recognized in *Thomas v. Cook Cty. Sheriff's Dep't*, 604 F.3d 293, 304 (7th Cir. 2010) a narrow exception where *Monell* liability could exist independent of individual officer liability, such an exception is inapplicable here because Plaintiff alleges deliberate, intentional conduct. *Monell* liability against the City necessarily hinges on the finding that the Defendant Officers knowingly violated Plaintiff's rights. Thus, if the underlying claims against Defendant Officers are dismissed, Plaintiff's *Monell* claim against the City should also be dismissed.

V. Alternatively, Plaintiff's *Monell* Claim Should Be Dismissed on Its Merits Because the Complaint Fails to State Such a Claim.

Plaintiff's Complaint is devoid of facts pled with specificity to state a proper *Monell* claim and, as such, Plaintiff's *Monell* claim should be dismissed.

A municipality may only be held liable for its own constitutional violations, as distinguished from the misconduct of its employees. *LaPorta*, 988 F.3d at 986 (citing *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690-91 (1978)); *see Bd. of Cnty. Comm'rs of Bryan County, Okla. v. Brown*, 520 U.S. 397, 403 (1997) (*Monell* liability only attaches where a plaintiff can "identify a municipal 'policy'

[3] This also extends to constitutional claims of false arrest, pretrial detentions, discrimination, and fabrication of evidence. *See Gonzalez v. McHenry County, Illinois*, 40 F.4th 824, 829-30 (7th Cir. 2022) (requiring a finding of an underlying constitutional claim for plaintiff's *Monell* claim based upon unlawful pretrial detentions); *Fuery v. City of Chi.*, 2015 WL 715281, at *2-3 (N.D. Ill. Feb. 17, 2015) (Plaintiff's alleged constitutional injuries of excessive force, false arrest, and discrimination, were not independently caused by City policies, thus the City could only be liable under *Monell* where the individual defendants were found liable); *Taylor v. Kachiroubas*, 2013 WL 6050492 at *4 (N.D. Ill. Nov. 15, 2013) ("Here, however, the actions of the individual officers in collecting and fabricating evidence against [the plaintiffs] are the source of the alleged harm to the plaintiffs, and any 'policy' exerted harm through those actions, not independently of them.").

or 'custom' that caused the plaintiff's injury.").[4] To establish municipal liability under a Section 1983 *Monell* claim, a plaintiff "must prove that: (1) he suffered a deprivation of a federal right; (2) as a result of either an express municipal policy, widespread custom, or deliberate act of a decision-maker with final policy-making authority for the City; which (3) was the proximate cause of his injury." *Ienco v. City of Chi.*, 286 F.3d 994, 998 (7th Cir. 2002) (internal quotations omitted). Here, Plaintiff does not allege an express policy or policy decision caused his alleged harms. Instead, Plaintiff's Complaint attempts to procced under a "widespread practice" *Monell* claim.

To plead a "widespread practice" *Monell* claim, Plaintiff must allege sufficient facts that: "(1) that [the City] had the above-listed widespread customs or practices; (2) that [the City] was deliberately indifferent as to the known or obvious consequences of the customs or practices; and (3) that [the City's] customs or practices were the moving force behind the constitutional violation." *Washington v. City of Chi. et. al*, 2022 WL 4599708, at *16 (N.D. Ill. Sept. 30, 2022) (internal quotation marks omitted). Plaintiff's *Monell* claim should be dismissed because it relies on boilerplate and conclusory allegations that fails to meet the pleading standard set in *Twombly*. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570).

A. Plaintiff's Complaint Is Devoid of Well-Pled Factual Allegations Identifying A Widespread Practice of Constitutional Violations by the City.

Plaintiff's *Monell* claim must show "a *widespread practice* that permeates a critical mass of an institutional body[,]" rather than mere individual conduct of an employee. *Rossi v. City of Chi.*, 790 F.3d 729, 737 (7th Cir. 2015) (emphasis in original) ("In other words, *Monell* claims focus on institutional behavior; for this reason, misbehavior by one or a group of officials is only relevant where it can be

[4] A *Monell* claim is not a substitute for a claim under the doctrine *respondeat superior*. *Walker v. City of Chi.*, 596 F. Supp. 3d 1064, 1073 (N.D. Ill. Mar. 31, 2022) (citing *Howell v. Wexford Health Sources, Inc.*, 987 F.3d 647, 654 (7th Cir. 2021)). In fact, the Supreme Court in *Monell* explicitly rejected holding a municipality "vicariously liable for the constitutional torts of their employees or agents." *Stockton v. Milwaukee Cnty.*, 44 F.4th 605, 616-17 (7th Cir. 2022) (citing *Monell*, 436 U.S. at 691-94).

tied to the policy, customs, or practices of the institution as a whole."); *Sigle v. City of Chi.*, 2013 WL 1787579, at *8 (N.D. Ill. Apr. 25, 2013) ("Allegations of isolated acts of unconstitutional conduct committed by non-policymakers generally fail to demonstrate a widespread practice or custom.") (quoting *Richardson v. City of Chi.*, 2011 WL 862249, at *13 (N.D. Ill. Mar. 10, 2011)). Mere generalized allegations that the City has faced criticism in the past is insufficient to state a *Monell* claim. Plaintiff must be able to set "forth a pattern of **similar** constitutional violations ... to show that the City had notice of the widespread practice that would, in turn, give the City an opportunity to remedy the situation." *Fix v. City of Chi.*, 2022 WL 93503, at *2 (N.D. Ill. Jan. 10, 2022) (emphasis added) (citing *Fields v. City of Chi.*, 981 F.3d 534, 562 (7th Cir. 2020)); *Hamilton v. Oswego Cmty. Unit Sch. Dist. 308*, 2021 WL 767619, at *10 (N.D. Ill. Feb. 26, 2021) ("A plaintiff needs to come forward with more than a handful of incidents."); *Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005) ("[W]hat is needed is evidence that there is a true municipal policy at issue, not a random event."). Furthermore, the pattern of "other incidents need to be similar to the situation at hand[.]" *Id.* While the other incidents do not have to be identical to plaintiff's allegations, "[t]he greater the dissimilarity, the greater the skepticism that there is a single actionable municipal practice or custom." *Id.*

The Complaint is devoid of sufficient factual allegations to establish that the alleged actions taken by Defendant Officers were more than mere isolated acts, rather than acts taken as part of a widespread policy or practice perpetuated by the City. The Complaint abstractly alleges that CPD "maintained official policies, practices, and customs that facilitated, encouraged, and condoned the officer defendants' misconduct," but the allegations relating to this claim are insufficient. (*See* Compl. at ¶ 21).

In support of this supposed widespread practice Plaintiff asserts: (1) that officers are trained in the "code of silence" and if they violate it would be severely penalized by the Department, without any specific examples; (2) that the City has been sued in the past; (3) that various former City

employees have made statements about an alleged "code of silence"; (4) that there are findings from the Police Accountability Task Force that related to an officer involved shooting and a "code of silence"; (5) the Department of Justice investigation findings regarding "code of silence"; and (6) the fact that citizens have previously complained about the conduct of Defendant Officers. (*See* Compl. at ¶¶ 22-33). These types of generalized and conclusory allegations are routinely rejected at the motion to dismiss stage. *See Black v. City of Chi.*, 2022 WL 425586, at *9 (N.D. Ill. Feb. 11, 2022) (citing *Boone v. City of Chi.*, 2018 WL 1014509, at *1-2 (N.D. Ill. 2018) (dismissing plaintiffs' *Monell* claim for their failure to provide specific allegations about the subject matter of the complaints). Further, generalized allegations that the City had "code of silence" does not establish beyond a speculative level that the City allegedly had an unconstitutional yet widespread practice of permitting its officers to fabricate drug charges against citizens along the lines of Plaintiff's allegations in this case.

Similarly, the Complaint's reference to the *Obrycka v. City of Chi., et al*, No. 07-cv-2372, 2012 WL 601810 (N.D. Feb. 23, 2012) case does not establish that the City had a widespread practice of fabricating drug charges. (Compl. at ¶ 25). In *Obrycka*, plaintiff, while working her bartending job, was attacked by an intoxicated off-duty Chicago police officer who had been drinking at the bar; the lawsuit did not allege any false arrest claims against the defendant officer. 2012 WL 601810 at *1. Plaintiff fails to allege how the off-duty misconduct alleged in *Obrycka* is similar enough to Plaintiff's allegations to establish a widespread pattern. As such, this vague and conclusory allegation should be ignored as irrelevant. *See Black*, 2022 WL 425586 at *6 ("A defendant cannot get to trial on the *Monell* claim simply by showing that the City of Chicago gets sued a lot."); *Hamilton*, 2021 WL 767619 at *11 ("The existence of another lawsuit is not enough to state a claim that a defendant maintains a widespread practice."); *Thomas v. City of Markham*, 2017 WL 4341082, at *4 (N.D. Ill. 2017) ("[A]llegations of general past misconduct or allegations of dissimilar incidents are not sufficient to allege a pervasive practice and a defendant's deliberate indifference to its consequences.").

Next, Plaintiff's reference to the Police Accountability Task Force ("PATF") is similarly lacking. The PATF was formed in response to the Laquan McDonald Shooting and its report was issued in April 2016.[5] However, Plaintiff fails to connect his vague allegations about an officer-involved shooting incident somehow translates into a widespread unconstitutional policy by the City that caused Plaintiff to be falsely charged with a drug crime. The Complaint's vague reference to the PATF report does not plausibly support an inference that the City had a widespread practice of permitting its officers to falsely charge citizens such as Plaintiff. *Twombly,* 550 U.S. at 555.

Similarly, Plaintiff's allegation relating to the DOJ report is untethered to any alleged unconstitutional policy applicable to the present case. In other words, Plaintiff's attempt to connect the DOJ Report to his arrest is a red herring. The DOJ investigation focused on police involved shootings, use of force oversight, and race relations - matters that are not at issue here. The DOJ Report explicitly states, "[o]ur investigation assessed CPD's use of force, including deadly force, and addressed CPD policies, training, reporting, investigation, and review related to officer use of force." (DOJ Report at p. 1) (available at https://www.justice.gov/opa/file/925846/download).[6] In the case at bar, Plaintiff's allegations concern his March 2015 arrest for narcotics; not use of force. Any reference to the DOJ report in connection with Plaintiff's *Monell* allegations of a widespread practice against the City is irrelevant and inapplicable.

Finally, Plaintiff's generalized claims of citizen complaints against the Defendant Officers – without any factual context does nothing to support a plausible inference that the City had a widespread practice of permitting its officers to falsely charge citizens with drug crimes. The Complaint asserts that Defendant Officers had been the subject of "numerous formal complaints of

[5] PATF Report, https://igchicago.org/wp-content/uploads/2017/01/PATF_Final_Report_4_13_16-1.pdf (last visited October 13, 2023).

[6] As above, Court may take judicial notice of this fact even on a motion brought under Fed. R. Civ. P. 12(b)(6) because it is contained within a document referenced in the complaint. *See*, *e.g.*, *General Elec. Capital v. Lease Resolution*, 128 F.3d 1074, 1081 (7th Cir. 1997).

official misconduct." (Compl. at ¶ 33). However, the Complaint is devoid as to the nature of the complaints, the timeframes, whether these complaints were investigated, the outcomes of any such investigations, and whether the investigation of these complaints deviated from accepted national law enforcement standards. These types of conclusory statements are explicitly disallowed in pleadings. *Alam v. Miller Brewing Co.,* 709 F.3d at 665-66 (internal citations omitted). Further, Plaintiff has failed to connect any unspecified misconduct *allegations* to Plaintiff's claims.

B. Plaintiff Failed to Plead More Than Mere Speculative Allegations That A City Policy or Action Was the Moving Force Behind Plaintiff's Alleged Constitutional Injuries.

The allegations in Plaintiff's Complaint further fail to allege a causal link between his alleged constitutional injuries and an action attributable to the City.

This Court held in held *Jordan v. City of Chi.*, 2021 WL 1962385, at *5 (N.D. Ill. May 17, 2021) (Gottschall, J.), that an almost identical complaint filed by the same counsel against the same defendants was insufficient to establish a *Monell* claim because plaintiff failed to "plead enough facts to raise the inference that the code of silence was the moving force behind the constitutional violations he suffered above the speculative level." *Id.* To establish a causal connection for a *Monell* claim, Plaintiff must allege plausible factual allegations that the City directly caused his alleged constitutional injury. The causation standard for *Monell* claims is "a 'rigorous' causation standard demanding a 'direct causal link between the challenged municipal action and the violation of [plaintiff's] constitutional rights.'" *Stockton*, 44 F.4th at 617 (quoting *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021) (internal quotation marks omitted)); *LaPorta*, 988 F.3d at 989 ("[T]his rigorous causation standard guards against backsliding in respondent superior liability"). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotations omitted); *see McCauley v. City of Chicago*, 671 F.3d 611, 617–18 (7th Cir. 2011) (disregarding complaint's

conclusory allegations supporting *Monell* claim). These "[t]hreadbare recitals" of causation "supported by mere conclusory statements, do not suffice" to plead a plausible claim. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

Like the Complaint here, the complaint in *Jordan* failed plead any other similar instances of misconduct and failed to do more than merely "plead that the city had a code of silence." *Id.* at *5. The Court in *Jordan* observed that while the complaint may have pled facts that were "consistent with a defendant's liability, it stop[ed] short of the line between possibility and plausibility of entitlement to relief." *Id.* (internal quotations omitted). As such, the Court dismissed the plaintiff's *Monell* claim. *Id.* Just like the complaint in *Jordan*, Plaintiff's Complaint in this case is full of allegations that may appear to be consistent with Defendant Officers and the City's liability but are merely conclusory and implausible allegations. *See Jordan*, 2021 WL 1962385 at *5.

The facts alleged in Plaintiff's Complaint are not specific enough to establish any sort of causal link between Plaintiff's alleged constitutional harms and an action or policy attributable to the City. While Plaintiff here tries to beef up his *Monell* allegations with references to the DOJ Report, PATF Report, and various statements by public officials, it still fails to plead any allegation showing that this supposed widespread policy proximately caused Plaintiff's alleged constitutionally injured. *See Carmona v. City of Chi.*, No. 15-CV-00462, 2018 WL 1468995, at *4 (N.D. Ill. Mar. 26, 2018) (The DOJ report is not "a master key to unlock discovery's door for any *Monell* claim against the City, no matter how scantily the plaintiff connects his claims to the report's findings."); *see also Joshua Page v. City of Chi.*, No. 19-cv-07431, 2021 WL 365610, at *3 (N.D. Ill. Feb. 3, 2021) (Coleman, J.) (holding that plaintiff "failed to adequately allege facts showing the requisite causal connection to allow the Court to plausibly infer that the 'code of silence' was the moving force behind his injury."). Plaintiff's allegations relating to causation for his *Monell* claim are, at most, boilerplate and as such must be dismissed.

C. The Complaint Lacks Sufficient Factual Allegations Of A City Action That Amounted to Deliberate Indifference.

Furthermore, the *Monell* claim fails because it does not adequately allege that the City was deliberately indifferent to widespread fabrication of evidence on the part of its police officers to such a grave extent that it became constitutionally culpable. The burden to prove that a municipality was constitutionally culpable through deliberate indifference is a high bar, "higher than negligence or gross negligence." *Brown*, 633 F.Supp.3d at 1174-78 (finding that even if plaintiff's evidence of deliberate indifference amounted to "gross negligence" that still does not meet the "even higher bar" of deliberate indifference) (citing *Bryan County*, 520 U.S. at 407)). "A plaintiff must prove that it was obvious that the municipality's action would lead to constitutional violations and that the municipality consciously disregarded those consequences." *LaPorta*, 988 F.3d at 987; *Fix*, 2022 WL 93503 at *3 ("To show deliberate indifference, a municipality must be "aware of the risk created" by the unlawful widespread custom or practice and fail to take appropriate steps [to] protect plaintiffs.") (citing *Thomas*, 604 F.3d at 303).

Here, Plaintiff's Complaint is devoid of any plausible, factual allegations pled with specificity establishing any sort of "conscious disregard" attributable to the City. As discussed *infra*, the *Monell* related allegations are scant and conclusory; in turn, they do not rise do the level of deliberate indifference by the City. Nor does the Complaint identify a specific action attributable to the City that amounted to deliberate indifference. Plaintiff attempts to generally allege through his Complaint that comments made by past public officials regarding an alleged "code of silence" support a finding that the City was deliberately indifferent to such a practice. (*See* Compl. at ¶¶ 26, 30-32). Not so. If anything, these allegations suggest that municipal actors took affirmative steps to ensure constitutional policing. Rather than providing evidence of deliberate indifference, the City's cooperation with the DOJ report and the PATF suggests a genuine commitment by the City to provide police oversight and constitutional policing. *See Carmona*, 2018 WL 1468995, at *4. At a minimum, the Complaint provides

insufficient context for the public statements and reports it relies upon in order to infer without speculation that the City was deliberately indifferent to an alleged widespread practice of evidence fabrication. Therefore, the *Monell* claim against the City should be dismissed. *See Black*, 2022 WL 425586 at *9; *Thomas*, 2017 WL 4341082 at *4; *Strauss*, 760 F.2d at 769.

CONCLUSION

For the foregoing reasons, the City respectfully requests this Honorable Court to dismiss Plaintiff's Complaint with prejudice.

Dated: October 20, 2023

Respectfully submitted,

/s/ Breana Brill
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CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that I filed the foregoing document with the Court's CM/ECF system on the date stamped on the above margin, which simultaneously send electronic notice to all counsel of record.

/s/ Breana Brill