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

MICHAEL JONES,	)	
	)	
Plaintiff,	)	Case No. 2023-cv-04975
	)	
v.	)	
	)	Joan Gottschall, District Court Judge
CITY OF CHICAGO, et al.,	)	
	)	Jeffrey Cole, Magistrate Judge
Defendants.	)	

DEFENDANTS' JOINT REPLY IN FURTHER SUPPORT
OF THE 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, Querrey & Harrow, Ltd, Special Assistant Corporation Counsel for Individual Defendants Cox, Theodore, and Pruger, as well as, Borkan & Scahill, Ltd, Special Assistant Corporation Counsel for Individual Defendant Salgado, hereby submits the following joint reply in further support of the motion to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6).[1] In further support of its motion, the Defendants states as follows:

[1] Individual Defendant Officers previously joined/adopted the City's Motion to Dismiss and therefore this Reply is filed jointly.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Supreme Courts

Appellate Courts

District Courts

Rules

INTRODUCTION

The parties agree that this lawsuit arises from the nearly identical allegations as this Court dismissed in part in a case styled *Jordan v. City of Chi.*, 2021 WL 1962385 (N.D. Ill. May 17, 2021). Consistent with the Court's ruling in *Jordan*, the *Monell* claim here should be dismissed for failure to state a claim and the false arrest claim should be dismissed as time barred. Although the Court determined that the *Jordan* allegations satisfied Rule 8(a) notwithstanding plaintiff's use of group pleading, here, as described below, the allegations are too vague to plausibly suggest that each officer personally participated in the alleged conduct Plaintiff complains. This pleading deficiency is even more acutely problematic in the context of Plaintiff's failure to intervene and conspiracy allegations which would require multiple layers of unsupported inference. As such, and as further explained below, Plaintiff's Complaint should be dismissed.

ARGUMENT

I. PLAINTIFF'S FALSE ARREST CLAIM IS TIME-BARRED AND HIS PLEADING OF OTHER CLAIMS IS DEFICIENT.

Defendants moved to bar Plaintiff's Fourth Amendment claim to the extent Plaintiff was raising any false-arrest claim because such a claim is time-barred. ("City's Motion to Dismiss", Dkt. #23, pp. 6-7). In Plaintiff's Response, Plaintiff states "Defendants also refer to a false arrest claim. Plaintiff's counsel is well aware of *Wallace v. Kato*, 549 U.S. 384 (2007) and **does** seek to raise a time-barred claim." (Plaintiff's Memorandum in Opposition to the City's Motion to Dismiss ("Response"), Dkt. #31, p. 9)) (citations omitted, emphasis added). Given the context, Defendants believe that Plaintiff's counsel made a typo and meant to state "does **[not]** seek to raise a time-barred claim." It would be illogical for Plaintiff to admit a claim was time-barred and then seek to raise it. But if it was not a scrivener's error, Plaintiff also failed to provide any argument that a false-arrest claim should proceed, and therefore any such argument is waived. *Chow v. Aegis Mortgage Corp.*, 185 F. Supp. 2d 914,

916 (N.D. Ill. 2002) (treating a concession in a motion to dismiss as a judicial admission); *Keller v. U.S.*, 58 F.3d 1194, 1198 n. 8 (7th Cir. 1995) ("Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them. They may not be controverted at trial.").

To reiterate, the holding in *Wallace* requires dismissal of the false arrest claim. *Wallace*, 549 U.S. at 397 (The Supreme Court holding "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."); *Jordan*, 2021 WL 1962385, at *3 (dismissing false arrest claim as time-barred pursuant to the holding in *Wallace*). Plaintiff's arrest occurred on March 31, 2015, and as such, he had until March 31, 2017, to file a false arrest claim. *Wallace*, 549 U.S. at 397; *see also Dominguez v. Hendley*, 545 F.3d 585, 588 (7th Cir. 2008). Plaintiff did not file this Complaint until July 31, 2023; thus any claim of false arrest is time-barred and should be dismissed. *See Jordan*, 2021 WL 1962385, at *3.

In Plaintiff's Complaint, the only reference to what type of constitutional violations he was asserting was in paragraph 41, where he stated "[a]s a result of the foregoing, plaintiff was deprived of rights secured by the Fourth and Fourteenth Amendments to the Constitution." But preceding that were many allegations that as Defendants argued in the motion were group pleading that did not give notice to them. In his Response, Plaintiff now states he "brings claims against these officers under the Fourth Amendment for causing his unreasonable seizure before trial and under the Due Process Clause for causing his deprivation of liberty after conviction." (Response, Dkt. #31, p. 8) But that does not overcome his pleading obligation to give notice to Defendant Officers as to what Plaintiff asserts is their misconduct.

As made clear in Defendants' Motion, Plaintiff's Complaint groups the Defendant Officers together without differentiation or explanation of any specific conduct taken by any Defendant

Officer as to *how* and/or *when* they took such actions to deprive Plaintiff of his constitutional rights. (City's Motion to Dismiss, Dkt. #23, p. 4). In addition to making it difficult for any individual Defendant to discern which allegations align with which specific Defendant Officers as well as which specific conduct by such Defendant Officer; Plaintiff's convoluted Complaint *also* makes it difficult to discern how one claim relates to another, if at all.

The only timely Fourth Amendment pretrial detention claim would be one *Thompson v. Clark*, 142 S. Ct. 1332 (2022), which is a claim that there was a wrongful seizure due to the initiation of legal proceedings to the conviction and does not incorporate the time from arrest to initiation of charges. *Id.* at 1337-1338. However, the Complaint the lacks the elements of such a claim. After *Thompson*, a plaintiff seeking to attach liability to a police officer for allegedly causing unlawful pretrial detention in violation of the Fourth Amendment, as Plaintiff here professes to be, must allege the defendant in question caused a seizure pursuant to legal process, the absence of probable cause to initiate the post-process seizure, and favorable termination of the proceeding. *Id.*; *see also Rose v. Collins*, No. 3:19-CV-293-DPM, 2022 WL 1251007, at *1 (E.D. Ark. Apr. 27, 2022) ("The Supreme Court recently clarified that [a plaintiff's] pretrial detention claim is one under the Fourth Amendment for malicious prosecution.").

Here, Plaintiff's Complaint, other than general allegations sounding in a claim for false arrest, is devoid of allegations relating to the initiation of process (how, by who, and in what context), and how and when Plaintiff was seized following the initiation of process and why that proceeding lacked probable cause other than his claim the arrest lacked probable cause. This is insufficient to state a claim and the Court should dismiss the Complaint as drafted or command Plaintiff to submit an amended complaint rectifying the deficiencies identified in Defendants' motion.

Lastly, Plaintiff argument now that the Fourteenth Amendment claim is for a post-conviction deprivation of liberty does not cure the deficiency of his pleading. The Complaint fails to allege,

beyond speculation, how the officers actually deprived him of the due process afforded at trial because he opted to plead guilty. (Pl. Complt. ¶ 14 (Plaintiff alleges he pleaded guilty because "he knew that a jury was likely to believe the false police story."). These allegations are particularly insufficient given Plaintiff's tactic of group pleading as discussed in Defendants' motion and section II herein.

II. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED FOR ITS FAILURE TO STATE ITS CLAIMS AGAINST DEFENDANT OFFICERS DUE TO IMPROPER GROUP PLEADING.

Plaintiff's Complaint impermissibly groups allegations related to Defendant Officers together. Consequently, this Court should grant Defendants' Motion because Plaintiff fails to plead any facts that would provide Defendant Officers with fair and adequate notice of the claims being brought against them.

Rather than demonstrating that his pleading identifies what each officer allegedly did wrong, Plaintiff merely cites case law for the dubious proposition that vague and ambiguous group pleading can sometimes survive a motion to dismiss. (Response, pp. 8-9). However, the case law Plaintiff cites supports the City's position that group pleading is inappropriate in this case. First, Plaintiff relies on the decision in *Jordan*, 2021 WL 1962385. In *Jordan*, the defendants similarly brought a motion to dismiss against the plaintiff for utilizing 'group pleading' tactics when the plaintiff failed to adequately plead how each defendant officer was personally involved in the alleged constitutional violations. *Id.* at *2. In evaluating this argument, the *Jordan* Court held that the plaintiff's complaint was sufficiently coherent because the "basis of his claims is easily understood" despite its reliance on group pleading *Id.* In reaching this decision, the *Jordan* Court relied on case law that permitted plaintiffs to employ limited group pleading in § 1983 suits where the plaintiff cannot identify which defendant committed which parts of alleged misconduct. *Id.* (citing *Kuri v. City of Chi.*, 2014 WL 114283, at *7 (N.D. Ill. Jan. 10, 2014)). However, unlike the *Jordan* plaintiff, in the case at bar, Plaintiff is not as ignorant to the alleged actions by Defendant Officers as he so claims. (Response, p. 10).

Here, Plaintiff claims that at the time of his arrest, Defendant Officers lacked probable cause to believe he had committed any arrestable offense and thus conspired to fabricate evidence to justify his unlawful arrest, which in turn, deprived him of his liberty. (Pl. Complt. ¶¶ 6-7). In his Response, Plaintiff claims to not have been present when Defendant Officers committed their alleged wrongful acts and as such, cannot specifically identify the specific conduct of each Defendant Officer. (Response, p. 10). This contention defies logic as Plaintiff was clearly present for his arrest and should be able to identify which officers arrested him. Further, because of his presence, Plaintiff should also be able to recall any conversations had with the Defendant Officers at that time of his arrest, or, at bare minimum, be able to specifically identify which Defendant Officers informed him of the charges against him and any other information related to his arrest. Moreover, Plaintiff points to (and appears to heavily rely on) testimony provided by Defendant Officers Cox and Salgado in relation to the arrest of Elgin Jordan, as a basis for his claims against Defendant Officers in the case at bar. (Pl. Complt. ¶¶ 10-11; Response, p. 3). Additionally, Plaintiff also admits to being in possession of testimony by Defendant Officers Cox and Salgado regarding the events and circumstances leading to the arrest of Elgin Jordan, testimony Plaintiff asserts contradicts his arrest reports lending to his theory that Defendant Officers conspired against him. (Pl. Complt. ¶11). Surely Plaintiff, by process of elimination in conjunction with his knowledge of events surrounding his arrest, can identify *some* conduct by *some* Defendant Officers.[2] Yet, Plaintiff fails to identify any specific conduct by Defendant Officers at the time of his arrest, even in light of being privy to his entire criminal and post-conviction case files. (Response, pp. 3-4).

Therefore, unlike the *Jordan* plaintiff, Plaintiff, here, should be able to connect some instances of misconduct to some Defendant Officers, but has simply chosen not to running afoul of well-

[2] It is of note that counsel of record for Plaintiff in the case at bar, was also counsel of record for Elgin Jordan when his Complaint was filed on July 8, 2020, more than three years before the Complaint at issue in this case. *See Jordan v. City of Chicago*, 20 cv 4012, Dkt. #1.

established precent requiring him to do so. *Bruce v. City of Chicago*, 2010 WL 3527629, *2 (N.D. Ill., 2010) (district court dismissed plaintiff's complaint because plaintiff is not permitted to simply name a defendant and then "engage in a court-sanctioned fishing expedition to see if that defendant did anything wrong.").

Plaintiff's reliance on *Colbert v. City of Chi.*, 851 F. 3d 649 (7th Cir. 2017), for the proposition that group pleading is allowed is also misplaced. (Response, p. 10). In *Colbert*, the plaintiff sued four of ten defendant officers who participated in searching his house and had allegedly caused property damage during the search. *Id.* at 657. The plaintiff admitted he was unable to identify which of the ten searching officers had caused the alleged property damage because he was not allowed in the rooms while the officers conducted their search. *Id.* However, *Colbert* is distinguishable because it involved a situation where the plaintiff was not present with the officers while they allegedly committed unconstitutional acts and thus the court did not require plaintiff to identify the specific wrongs committed by each officer at the pleading stage. That is distinctly different from the situation here, where Plaintiff was physically present for the duration and the processing of his arrest. *Id.* at 652-53.

Further, Plaintiff admits in his Complaint to being privy to his arrest reports. (Pl. Complt. ¶ 10). Generally, arrest reports provide all information necessary for a plaintiff to attribute certain actions to specific officers. Further, Plaintiff apparently knew "the story" as he claims he pled guilty because he did not know about Elgin Jordan and "he knew that a jury was likely to believe the false police story." (Pl. Complt. ¶ 14). Accordingly, the circumstances surrounding Plaintiff's Complaint do not fall within the scope of protections afford by *Jordan* or *Colbert*, Plaintiff in this case should be required to allege what each officer did wrong. *See Hildebrandt v. Illinois Dept. of Natural Resources*, 347 F. 3d 1014, 1039 (7th Cir. 2003) (to properly allege a claim under § 1983, a plaintiff must plead that a defendant "participated directly in the constitutional violation.").

Plaintiff further argues in his Response that the Court should ignore the pleading defects in his Complaint because discovery will flesh out how each Defendant Officer was involved. (Response, pp. 10-11). However, this puts the cart before the horse because "[i]n order to reach the discovery stage, the plaintiff must allege enough facts that raise a reasonable expectation that the discovery will reveal evidence supporting the plaintiff's allegations." *Bruce*, 2010 WL 3527629 at *2 (district court dismissed plaintiff's complaint because plaintiff is not permitted to simply name a defendant and then "engage in a court-sanctioned fishing expedition to see if that defendant did anything wrong."); *see also Robinson v. Midlane Club Inc.*, 1995 WL 453057, *8 (N.D. Ill., 1995) ("Federal Rules only require a 'short plain statement of the claim,' they do not authorize parties to embark on 'fishing expeditions' in search of possible causes of action.").

Plaintiff's Response disregards the purpose of a Fed. R. P. 12(b)(6) motion, which is to test whether Plaintiff's Complaint states a plausible claim for relief by sufficiently alleging specific facts. *See Richards v. Mitcheff*, 696 F. 3d 635, 637 (7th Cir. 2012). For example, in *Harrison v. Wexford Health Sources Inc.*, the court dismissed plaintiff's complaint where the plaintiff utilized group pleading and failed to allege specific facts showing the personal involvement by each defendant. 2018 WL 659862, *2-3 (C.D. Ill. Feb. 1, 2018). The court in *Harrison* recognized that Fed. R. P. 8(a) "is not so rigid that it requires a plaintiff, without the benefit of discovery" to specify each officer involved in every allegation of misconduct. *Id.* at *3. However, the *Harrison* court went on to hold:

> Plaintiff's amended complaint does not contain allegations showing the identity of the specific officers who allegedly used excessive force against the decedent or who failed to intervene to prevent harm to the decedent…These allegations do not satisfy Rule 8 because such allegations do not provide specifically *which* officers are accused of *what* illegal conduct.

Id. at *7.

As in *Harrison*, Plaintiff here should be required to identify the alleged wrongdoing committed by each officer defendant particularly where he was present for his arrest and the processing of his

arrest. Merely grouping all the Defendant Officers in each of his allegations fails to put each individual officer on fair notice of the claims being brought against him and warrants dismissal at the motion to dismiss stage. *Brooks*, 578 F.3d at 580; *Carter v. Dolan*, 2009 WL 1809917, at *3 (N.D. Ill. 2009) (dismissing amended complaint against nine police officers because plaintiff failed to identify the individual conduct of each defendant officer). As such, due to the Complaint's lack of specificity and impermissible group-pleading, it should be dismissed in its entirety.

III. THE FAILURE TO INTERVENE AND CONSPIRACY CLAIMS SUFFER FROM ADDITIONAL SPECULATION AND SHOULD ALSO BE DISMISSED.

Plaintiff's failure to intervene and conspiracy claims should be dismissed because they are supported by vague and conclusory underlying constitutional claims.

Plaintiff's failure to intervene and conspiracy allegations suffer from even worse defects than the illegal seizure and fabrication allegations because they require multiple, unwarranted assumptions. First, these contingent claims assume that a particular officer participated in an underlying constitutional violation. Second, these claims must build upon that speculative inference and assume that an unspecified officer had a realistic opportunity to intervene and participated in a conspiracy. This is the sort of speculative pleading that must be dismissed under *Bell Atl. Corp. v. Twombly* as impermissibly vague and conclusory. 550 U.S. 544, 555 (2007) (A plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level.").

It is blackletter law under § 1983 that a police officer must be personally involved in the wrongdoing alleged before any liability is imposed. *Mitchell v. Kallas*, 895 F.3d 492, 498 (7th Cir. 2018); *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) ("An individual cannot be held liable in a §1983 action unless he caused or participated in an alleged constitutional deprivation."). Judge Easterbrook's concurrence in *Mwangangi v. Nielson*, 48 F.4th 816 (7th Cir. 2022) questioned whether this leaves any room for a failure to intervene theory since § 1983 does not permit vicarious liability. *See id.*; *White v.*

City of Chi., 2023 WL 2349602, at *11 n. 17 (N.D. Ill. Mar. 3, 2023) (questioning the continued viability of a failure to intervene theory and granting summary judgment on other grounds).

Plaintiff attempts to erect as straw man and characterizes the City's argument as asking the Court to overturn Seventh Circuit law. (Response, p. 8). Not so. According to *existing* Seventh Circuit law, Plaintiff must establish that the inaction of an individual defendant itself constitutes unconstitutional conduct separate and apart from some underlying unconstitutional action taken by another. *Gill v. City of Milwaukee*, 850 F.3d 335, 342 (7th Cir. 2017) (failure to intervene liability requires personal culpability such that the defendant knew of the constitutional violation and had a reasonable opportunity to prevent it). While Judge Easterbrook's concurrence questions whether this high standard could ever be satisfied, the basic application of *existing* Seventh Circuit law leaves the Court with the inescapable conclusion that Plaintiff failed to plead facts to support a failure to intervene claim. Plaintiff's Response identifies no factual basis from the Complaint that would permit him to proceed on a failure to intervene theory as an independent claim. Thus, the failure to intervene claim should be dismissed.

Similarly, Plaintiff's Response fails to explain how the vague Complaint could support a free-standing conspiracy claim. *Coleman v. City of Peoria*, 925 F. 3d 336, 351 (7th Cir. 2019) (a claim of conspiracy must have a valid underlying constitutional violation claim); *Harrison,* 2018 WL 659862, *5-6 (dismissing § 1983 deliberate indifference claims as vague where the "allegations do not allege how each individual officer failed to timely or appropriately respond."); *Reynolds v. Jamison,* 488 F. 3d 756, 764 (7th Cir. 2007) (§ 1983 conspiracy claim depends upon the viability of the underlying constitutional claim); *Harper v. Albert*, 400 F. 3d 1052, 1064 (7th Cir. 2005) (absent an underlying constitutional violation, there can be no independent claim for failure to intervene); *Indianapolis Minority Contractors Ass'n, Inc. v. Wiley,* 187 F. 3d 743, 754 (7th Cir. 1999) (§ 1983 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) ("[T]here must be an independent cause of action underlying a plaintiff's conspiracy claim." (citations omitted)).

Finally, Plaintiff does not actually dispute that the failure to intervene and conspiracy claims should be dismissed if the underlying claims are dismissed. (Response, p. 8) ("Defendants are correct that plaintiff's failure to intervene theory, like his conspiracy theory, is only actionable if the underling claims are actionable."). Therefore, the failure to intervene and conspiracy claims should be dismissed if the other federal claims are dismissed. *Harper*, 400 F. 3d at 1064; *Daugherty v. Page*, 906 F.3d 606, 612 (7th Cir. 2018). Plaintiff's failure to intervene and conspiracy claims are intrinsically linked to Plaintiff's false arrest claim, which runs afoul of the two-year statute of limitations for a § 1983 claim. As such, these claims are time barred as well.

IV. PLAINTIFF'S RESPONSE ONLY HIGHLIGHTS WHY HIS *MONELL* CLAIM SHOULD BE DISMISSED FOR ITS FAILURE TO STATE A CLAIM.

Plaintiff's *Monell* claim should be dismissed because the allegations in the Complaint fail to plausibly suggest that a City policy or practice was the moving force that caused Plaintiff's alleged constitutional injuries. (*See* City's Motion to Dismiss, Dkt. #23, pp. 9-10). Rather, for *Monell* liability to attach, the complaint must contain sufficient allegations that leads to a plausible inference that a City policy or practice, was the moving force behind a plaintiff's injuries. *First Midwest Bank Guardian of Estate of LaPorta v. City of Chi.*, 988 F.3d 978, 986 (7th Cir. 2021); *Rossi v. City of Chi.*, 790 F.3d 729, 737 (7th Cir. 2015); *Sigle v. City of Chi.*, 2013 WL 1787579, at *8 (N.D. Ill. Mar. 10, 2011); *Bd. Of Cnty. Comm'rs Bryan Country, Okla. V. Brown*, 520 U.S. 397, 403 (1997). Courts must strictly apply this standard so that *Monell* liability does not slip into *respondeat superior* liability. *Id.*

Plaintiff's Response makes clear that he believes a few additional boiler plate allegations, such as "code of silence", the DOJ Report, and the PATF Report, cures any all deficiencies as compared to the complaint in *Jordan*, 2021 WL 1962385. ("Response", Dkt. #31 at p. 14). But referencing these concepts in conclusory fashion is not a talisman that permits Plaintiff to avoid the typical scrutiny

required of his pleading. In the end, the Complaint suffers from same deficiencies as the *Jordan* pleading, as well as deficiencies beyond those addressed in the *Jordan* briefing and therefore never ruled on by this Court. Plaintiff does not adequately allege how a City policy *caused* his alleged constitutional injuries. Plaintiff's *Monell* claim should be dismissed.

A. Plaintiff misapprehends pleadings standards and fails to cure the generalized allegations in his Complaint that fail to plausibly state a widespread pattern or practice of constitutional violations stemming from an alleged code of silence.

Plaintiff failed to plausibly allege that the City had a widespread pattern or practice of constitutional violations stemming from an alleged code of silence. Plaintiff is utilizing a § 1983 *Monell* claim to hold the City liable for alleged isolated acts of its employees, however, it is well-established that "[a]llegations of isolated acts of unconstitutional conduct committed by non-policymakers generally fail to demonstrate a widespread practice or custom." *Sigle*, 2013 WL 1787579 at *8. A plaintiff must plead sufficient facts that allege "a pattern of **similar** constitutional violations" to plausibly infer that plaintiff's allegations are not merely "a random event" but "a true municipal policy at issue." *Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005). Plaintiff fails to plead a widespread pattern properly instead listing unrelated alleged shortcomings against the City; his Response is unable to cure these issues. Plaintiff's entire Response is summarized as stating this type of pleading was accepted by this Court in *Jordan* – so this should be accepted now. But that oversimplifies *Jordan*, there the *Monell* claim was dismissed, and overlooks the ample caselaw and arguments cited by the City, showing that this type of pleading is routinely rejected.

Here, Plaintiff's Complaint lacks any allegations pleading a widespread pattern or practice of a code of silence that caused officers to fabricate drug charges against citizens. Just as this Court held in *Jordan*, vaguely pleading conclusory allegations such as that the City and CPD "maintained official policies, practices, and customs that facilitated, encouraged, and condoned the officer defendants' misconduct," cannot support a *Monell* claim past the motion to dismiss stage. (Pl. Complt. ¶ 21); *Jordan*,

2021 WL 1962385 at *5. Plaintiff erroneously asserts in his Response that because he included generic allegations regarding an alleged widespread practice of a code of silence, that those allegations alone sufficiently fixed the *Monell* claim pleading deficiencies found in the *Jordan* complaint. 2021 WL 1962385 at *5; (Response, pp. 12-13).

Plaintiff also vaguely alleges that past citizen complaints made against Defendant Officers regarding their conduct supports his *Monell* claim. (Pl. Complt. ¶ 33). Yet, both Plaintiff's Complaint and Response failed to provide any sort of factual context to support an inference that past citizen complaints filed against the Defendant Officers plausibly show that the City had a widespread practice of permitting its officers to falsely charge citizens with drug crimes because they knew they would not face serious discipline. He fails to allege how the Defendant Officers' citizen complaints relate to the allegations he makes here, nor does he provide any discussion of specific complaints made against the Defendant Officers generally, leaving the City to wonder as to how they relate to the allegations made by Plaintiff. Plaintiff also summarily claims there was no *sufficient* discipline – tacitly acknowledging the officers were disciplined -making his claims even more tenuous. These details do not hold the weight Plaintiff claims. These complaints are isolated incidents and Plaintiff fails to plead otherwise, even though Plaintiff clearly has access to these past citizen complaints as he knew the number of complaints filed against each Defendant Officer. (Pl. Complt. ¶ 33); *see also Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 524 (7th Cir. 2023); *Gill*, 850 F.3d at 344; *Flores v. City of South Bend*, 997 F.3d 725, 733 (7th Cir. 2021) (allegations of "a few sporadic examples of an improper behavior" will not suffice concluding that a complaint offering three examples of one officer speeding did not plausibly suggest that a city had a widespread practice of allowing officers to speed).

Plaintiff's Response is also silent to the City's other challenges against his generalized and conclusory allegations. Plaintiff's failure to address them in any meaningful way should be fatal. Specifically the City challenged: (1) the Complaint's reference to a past city lawsuit, *Obrycka v. City of*

Chi., et al., 2012 WL 601810 (N.D. Ill. Feb. 23, 2012) and its failure to establish any sort of widespread practice of officers fabricating drug charges; (2) Plaintiff failing to connect his vague allegations about the PATF investigation to a widespread unconstitutional policy that was the moving force behind Plaintiff's alleged injuries; and (3) Plaintiff failing to plausibly allege any sort of causal connection between the DOJ report and Plaintiff's allegations. (City's Motion to Dismiss, pp. 11-15). Instead, Plaintiff falls back on these conclusory allegations – none of which have anything to do with fabricating drug charges - without providing any further context and focuses on comparing his Complaint to the *Jordan* complaint to insist that the pleading issues present in *Jordan* were remedied. (Response, p. 14). Courts in this district at the motion to dismiss stage have rejected the type of generalized and conclusory allegations Plaintiff is relying upon for his *Monell* claim. *Alan v. Miller Brewing Co.*, 709 F.3d 662, 665-66 (7th Cir. 2013); *Page*, 2021 WL 365610 at *3; *Thomas v. City of Markham*, 2017 WL 4340182, at *3-4 (N.D. Ill. 2017). As such, Plaintiff's *Monell* claim must be dismissed on this basis.

B. Merely adding deficient generalized and conclusory allegations is not enough to plausibly plead that an alleged widespread practice perpetuated by the City caused Plaintiff's alleged injuries.

The allegations presented in this case, just as this Court found in *Jordan*, are, at most, merely "*consistent* with causation by the code of silence" and as such, are not enough to survive the motion to dismiss stage. 2021 WL 1962385 at *5; *see also Twombly*, 550 U.S. at 557 (conclusory allegations "stops short of the line between possibility and plausibility of entitlement to relief."); *McCauley v. City of Chi.*, 671 F.3d 611, 617-18 (7th Cir. 2011) (complaint's conclusory allegations "are not factual allegations" and "contribute nothing to the plausibility analysis" of a *Monell* claim). A *Monell* claim's causation standard is "rigorous" and requires "a direct causal link between the challenged municipal action and the violation of [plaintiff's] constitutional rights." *Stockton v. Milwaukee Cnty.*, 44 F.4th 605, 617 (7th Cir. 2022) (internal quotations omitted). Plaintiff fails to allege, as he must at this stage, enough specific

factual allegations to plausibly infer that the City "was the moving force behind the constitutional violations he suffered[.]" *Jordan*, 2021 WL 1962385, at *5. Plaintiff claims these additional conclusory allegations cures the deficiencies addressed previously in *Jordan,* but he again fails to meet the direct causal link needed to survive a motion to dismiss.

Plaintiff attempts to support his *Monell* claim with conclusory and unrelated allegations relating to a "code of silence" addressed above. (Pl. Complt. ¶¶ 22-23). However, these allegations fail to plausibly allege a *Monell* claim because they are conclusory and lack specificity such as specific examples of officers practicing a "code of silence" that caused constitutional harms and of officers breaking the "code of silence" and being punished. These are the types of allegations that are necessary to make Plaintiff's *Monell* claim *plausible* rather than *possible*. *Twombly*, 550 U.S. at 557; *McCauley*, 671 F.3d at 617-18; *see also Page v. City of Chi.*, 2021 WL 365610, at *3 (N.D. Ill. Feb. 3, 2021) (dismissing *Monell* claim where 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 Complaint fails to sufficiently allege causation. For example, the Complaint lacks any allegations of other similar instances of misconduct for the Court to plausibly infer that the City was the moving force behind Plaintiff's alleged injuries, rather than Plaintiff's incident being an isolated incident. Instead, Plaintiff generally pleads allegations about the DOJ report (which focuses on use of force allegations), the PATF report (also focused on use of force allegations), and various statements by public officials. (City's Motion to Dismiss, p. 15). Yet, Plaintiff's Complaint and Response are silent on how these allegations are causally linked to Plaintiff's claims of fabrication of drug charges. *See Carmona v. City of Chi.*, 2018 WL 1468995, at *4 (N.D. Ill. Mar. 26, 2018); *Smith v. City of Chi.*, 2019 WL 95164, at *6-7 (N.D. Ill. Jan. 3, 2019) (plaintiff failed to plausibly allege a causal link between a widespread practice of a code of silence and his alleged constitutional injuries); *Jordan*, 2021 WL 1962385, at *5 (holding that mere allegations stating a "code of silence" caused the Defendant

Officers to constitutionally injure plaintiff does not lead to the plausible inference of a causal link between plaintiff's *Monell* claim and his alleged injuries).

Plaintiff presents a faulty argument in his Response that his *Monell* claim's causation element is proven by his allegations that "[t]he officers were the subject of numerous formal complaints of official misconduct; because of the code of silence, however, none resulted in discipline sufficient to deter the officers' wrongdoing." (Response, p. 14). This Court, however, should reject Plaintiff's argument because he fails to explain in his Response and plead in his Complaint how a "code of silence" links to insufficient discipline and was the moving force behind the officer's actions.

Plaintiff points to three cases to support his contention, however none of these cases stand up to scrutiny. First, in *Johnson v. City of Chi.*, causation was found to be sufficient only after the court accepted an expansion of allegations made by the plaintiff in his response; there is no such expansion made here. No. 20 C 7222, 2021 WL 4438414, at *6 (N.D. Ill. Sept. 28, 2021). Similarly *Fix v. City of Chi.,* an excessive force case relating to a peaceful protest following the murder of George Floyd, is not helpful to Plaintiff. No. 21-CV-2843, 2022 WL 93503, at *2-3 (N.D. Ill. Jan. 10, 2022). The *Fix* plaintiffs included numerous specific allegations relating to excessive force issues in protest situations, generally and specific to the defendant officers in multiple other protests, as well as detailed allegations regarding the City's insufficiencies in discipline relating to excessive force at protests. *Id.* Here, there is no such detailed discussion relating to the Plaintiff's claims relating to his arrest, nor are there any specifics regarding the supposed insufficient discipline as it relates to similar cases, or similar instances like Plaintiff's underlying claims. *Id.*

This trend continues. In the case *Ferguson v. Cook Cnty., Illinois*, the plaintiff included detailed information relating to the individual officer's disciplinary background, noting that he had several investigations for off-duty conduct – tying the disciplinary issues directly to the underlying facts that related to off-duty conduct. No. 20-CV-4046, 2021 WL 3115207, at *3 (N.D. Ill. July 22, 2021).

Further, the *Ferguson* pleadings included detailed allegations relating to a disciplinary allegation for domestic violence that should have resulted in separation of the defendant officer that tied directly to the claim that City fails to investigate, discipline, and/or terminate officers who engage in misconduct. *Id.* Plaintiff's reliance on these cases and the detailed pleadings therein only goes to further highlight his own deficient pleadings here as laid out by the City.

Unlike the cases Plaintiff cites to, Plaintiff's conclusory allegations that the code of silence gave officers "comfort and a sense that they could violate plaintiff's rights" and that it "emboldened" and "encouraged" Defendant Officers fail to demonstrate municipal liability. (Pl. Complt. ¶¶ 37; 39). Plaintiff's Complaint is silent – as is his Response - on exactly what part the City played in his alleged injuries and how the City was the moving force behind this alleged widespread practice of a "code of silence." At most, Plaintiff's Complaint alleges that isolated or individual action by a group of police officers (which he fails to differentiate between) framed him for a drug crime that he pled guilty to committing; this is not enough to establish municipal liability. *LaPorta*, 988 F.3d at 986; *Rossi*, 790 F.3d at 737; *Sigle*, 2013 WL 1787579 at *8; *Brown*, 520 U.S. at 403 (1997). As this Court held in *Jordan*, merely pleading allegations that are consistent with liability is not enough to plausibly infer liability. 2021 WL 1962385, at *5. As such, Plaintiff's *Monell* claim should be dismissed.

C. The Complaint is devoid of allegations that the City was aware of a widespread, unconstitutional practice and was deliberately indifferent.

Again, Plaintiff's Complaint cannot stand on this element; Plaintiff failed to plausibly allege that the City was deliberately indifferent to a widespread, unconstitutional practice of its officers fabricating drug charges against its citizens. Plaintiff asserts in his Response that if this Court finds the allegations in his Complaint sufficient to plausibly allege a widespread pattern or practice, then the same facts also sufficiently allege the deliberate indifference element of a *Monell* claim. (Response, p. 13). Plaintiff essentially asks this Court to eradicate an entire element of a *Monell* claim. Plaintiff should

be held to plausibly allege sufficient facts to prove each element of a claim, especially the deliberate indifference element of a *Monell* claim which has a high bar, "higher than negligence or gross negligence." *Brown*, 633 F.Supp.3d at 1174-78. Even if a plaintiff proves the existence of a widespread practice, he must then "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 (emphasis added).

He also summarily states that the ruling in *Jordan* "also requires that the Court reject defendant's argument that plaintiff does not sufficiently allege deliberate indifference on the part of City policymakers." (Response, p. 10). This is untrue. This Court never reached the deliberate indifference element in its ruling because causation was deficient. *Jordan*, 2021 WL 1962385 at *4-5. Again, Plaintiff has failed to meaningfully respond to the arguments and law cited by the City; his oversight should be fatal.

Plaintiff's Complaint and his Response are devoid of any specific action attributable to the City that amounts to deliberate indifference and Plaintiff's general allegations regarding the PATF and DOJ investigations do not support the inference that the City was deliberately indifferent. Further, Plaintiff acknowledges Defendant Officers were disciplined, but simply claims it was insufficient with no detail or information as to what was insufficient and how the City was able to discipline but was also deliberately indifferent.

Plaintiff cites to *King v. City of Chi.*, 2023 WL 4473017 (N.D. Ill. July 11, 2023), but *King* is distinguishable and again only highlights the flaws in Plaintiff's pleadings. In *King*, the plaintiff in his complaint utilized published studies that specifically support his theory that the City of Chicago maintained and consciously disregarded a widespread practice of its officers pretextually stopping black motorists more than non-black motorists and arresting them. *Id.* at *5-6. The *King* plaintiff's numerous and detailed allegations plausibly permitted the inference that the City maintained such a

policy. *Id.* Further, the *King* court found that it could plausibly infer that plaintiff's alleged widespread practice directly harmed him because he was black, and was unlawfully stopped, searched, arrested, and detained allegedly solely on the basis of race. *Id.* at *5-7. Plaintiff's complaint here is not at all similar to the plaintiff in *King*. Unlike plaintiff in *King*, Plaintiff fails to allege information that would allow this Court to plausibly infer any sort of deliberate indifference on behalf of the City. Plaintiff relies upon generalized and conclusory allegations that fail to meet the type of pleadings present in *King*. As such, Plaintiff's *Monell* claim fails too on this final element.

V. PLAINTIFF'S *MONELL* CLAIM FAILS IF THE UNDERLYING CONSTITUTIONAL CLAIMS ARE DISMISSED.

Last, if the underlying constitutional claims are dismissed, Plaintiff's *Monell* claim should also be dismissed. *See Cozzi v. Village of Melrose Park*, 592 F.Supp.3d 701, 710 (N.D. Ill. Mar. 21, 2022); *LaPorta*, 988 F.3d at 987. Plaintiff's Complaint alleges deliberate and intentional conduct on behalf of Defendant Officers, therefore any finding of *Monell* liability against the City relies on a finding of liability against Defendant Officers for Plaintiff's underlying constitutional claims. *See Veal v. Kachiroubas*, 2014 WL 321708, at *3 (N.D. Ill. Jan. 29, 2014); *Carr v. City of N. Chi.*, 908 F.Supp.2d 926, 929 (N.D. Ill. 2012); *Castillo v. City of Chi.*, 2012 WL 1658350, at *4 (N.D. Ill. May 11, 2012). Plaintiff concedes this argument in his Response. As such, Plaintiff's *Monell* claim should be dismissed if the underlying constitutional claims are dismissed.

CONCLUSION

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

Dated: January 12, 2024

Respectfully submitted,

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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