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

Michael Jones,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 23-cv-4975
	)	
City of Chicago, Bryan Cox, Peter Theodore, David Salgado, and Rocco Pruger,	)	*(Judge Alexakis)*
	)	
Defendants.	)	

MEMORANDUM IN OPPOSITION TO SECOND MOTION TO DISMISS

The Court granted defendant City of Chicago's first motion to dismiss plaintiff's *Monell* claim because it concluded that the complaint did not include sufficient allegations to "allow the court to reasonably infer a custom or practice of evidence fabrication and Fourth and Fourteenth Amendment injuries akin to plaintiff's." (ECF No. 49 at 16.)

Plaintiff, while respectfully disagreeing with the Court's ruling, filed an amended complaint that includes allegations about ten individuals who were harmed by the same practice of evidence fabrication experienced by plaintiff. (ECF No. 50 at 9-10, Amended Complaint ¶ 38(a)-(j).) The City has again moved to dismiss plaintiff's *Monell* claim. (ECF No. 59.) The Court should deny the motion for the reasons set out below.

I. Plaintiff has Alleged a Widespread Practice of Fabricating Evidence

As the Court recognized in its ruling on the first motion to dismiss, "plaintiff alleges that the City's widespread custom of a 'code of silence' encouraged officers to fabricate evidence, leading to the deprivation of his Fourth and Fourteenth Amendment rights." (ECF No. 49 at 13.) The Court concluded, however, that plaintiff had not alleged a sufficient pattern of similar deprivations "to reasonably infer a custom or practice of evidence fabrication and Fourth and Fourteenth Amendment injuries akin to plaintiff's." (*Id.* at 16.)

Pursuant to leave of Court, plaintiff filed an amended complaint which alleges ten incidents during the seven years preceding his arrest in which Chicago police officers caused a wrongful prosecution by fabricating evidence. The new allegations are as follows:

a. In April of 2007, Chicago police officers caused Alvin Waddy to be falsely prosecuted for a drug offense based on fabricated evidence;

b. In August of 2008, Chicago police officers caused Marcel Brown to be falsely prosecuted for murder based on fabricated evidence;

c. In July of 2009, Chicago police officers caused Anthony Kuri to be falsely prosecuted for murder based on fabricated evidence;

d. In November of 2010, Chicago police officers caused Paul Myvett to be falsely prosecuted for a shooting based on fabricated evidence;

e. In September of 2011, Chicago police officers caused Omar Williams to be falsely prosecuted for murder based on fabricated evidence;

f. In December of 2011, Chicago police officers caused Renard Jackson to be falsely prosecuted for gun possession based on fabricated evidence;

g. In June of 2012, Chicago police officers caused Ramiro Bahena to be falsely prosecuted for murder based on fabricated evidence;

h. In March of 2013, Chicago police officers caused Shaquille Gillespie to be falsely prosecuted for aggravated battery based on fabricated evidence;

i. In February of 2014, Chicago police officers caused Anthony Tucker to be falsely prosecuted for armed robbery and murder based on fabricated evidence;

j. In October of 2014, Chicago police officers caused Sean McClendon to be falsely prosecuted for gun possession based on fabricated evidence.

(ECF No. 50 at 9-10, Amended Complaint ¶¶ 38(a)-(j).)

These additional allegations satisfy the standard that the Court applied in its ruling, as district court judges found in *Williams v. City of Chicago*, 315 F.

Supp. 3d 1060, 1079 (N.D. Ill. 2018) and *Arquero v. Dart*, 587 F. Supp. 3d 721 (N.D. Ill. 2022), two cases on which the Court relied.

The *Monell* claim in *Williams* challenged the City of Chicago's

> [A]lleged policies, practices, and customs of conducting coercive interrogations to obtain confessions and false implications, producing false reports and giving false statements and testimony, continuing to pursue investigations based on statements obtained through unlawful interrogations, and failing to disclose potentially exculpatory evidence.

Williams, 315 F. Supp. 3d at 1078. Judge Kendall concluded that the complaint fairly alleged municipal liability because the plaintiff

> [A]lleged that no less than three GPRs were destroyed or lost and that multiple reports were falsified by the Officers (or numerous reports selectively omitted exculpatory information gained in witness interviews). Based on these allegations, Williams has sufficiently pled that the City has a policy or custom that violates the Constitution.

Id. at 1079.

The plaintiff in *Arquero v. Dart*, 587 F. Supp. 3d 721 (N.D. Ill. 2022) brought a "*Monell* claim about a widespread practice of reincarcerating pretrial detainees based on faulty equipment." *Id.* at 729. Judge Seeger denied a motion to dismiss that claim on far fewer factual allegations than plaintiff presents in this case. The facts held to be sufficient to state a claim in *Arquero* were the following:

> He points to his own experience. And he contends that more than half a dozen people experienced the same thing. Based on that sample, a reasonable inference is that there might be a lot more cases of faulty equipment.

Id.

Under the standard of these cases, plaintiff's allegations of ten other individuals who were subjected to the same alleged practice is sufficient to allege *Monell* liability. Plaintiff has "allege[d] a pattern of constitutional violations similar to those he suffered." (ECF No. 49 at 14.) And the comparators identified in Paragraph 38 of plaintiff's amended complaint are "similar enough to show a widespread practice." (*Id.*)

Defendant responds to plaintiff's additional allegations with the non sequitur that plaintiff "merely states the allegations set forth in each instance." (ECF No. 59 at 6.) But stating the allegations is all that a complaint is required to do, and the Court must assume the truth of plaintiff's allegations. *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 195 (2024). Defendant does not support its demand for more details about each allegation and is unable to answer the question the Seventh Circuit framed in *Doe v. Smith*, 429 F.3d 706 (7th Cir. 2005):

> Any district judge (for that matter, any defendant) tempted to write "this complaint is deficient because it does not contain …" should stop and think: What rule of law requires a complaint to contain that allegation?

Id. at 708.

Defendant also attempts to inject its own view of the details of each allegation (ECF No. 59 at 8-10), but this type of argument is improper on a motion to dismiss. Subject to certain exceptions not applicable here, "a district court cannot consider evidence outside the pleadings to decide a motion to dismiss

without converting it into a motion for summary judgment." *Jackson v. Curry*, 888 F.3d 259, 263 (7th Cir. 2018).

Defendant's view of these details is also irrelevant. Plaintiff's allegations of ten instances in which Chicago police officers caused a wrongful prosecution based on fabricated evidence are sufficient to support plaintiff's *Monell* allegation. At the motion to dismiss stage, there is no basis for the Court to consider minute factual details like the types of evidence the officers fabricated, the types of offenses falsely charged against each victim of the officers' fabrications, or the outcomes of civil lawsuits filed by each victim. Such an inquiry must wait for summary judgment, as in *Black v. City of Chi*cago, 2022 WL 425586, at *6 (N.D. Ill. Feb. 11, 2022), a case on which defendant's mistakenly seek to rely. (ECF No. 59 at 7.)

Accordingly, pursuant to the reasoning of the Court's previous ruling, plaintiff has presented sufficiently detailed factual allegations of a code of silence in fabrication of evidence cases. Even if plaintiff's original allegations of a widespread code of silence are properly limited to incidents involving excessive force, plaintiff's additional allegations provide the necessary connection to incidents, like plaintiff's, involving the fabrication of evidence.

Plaintiff's position, however, is that the original allegations were not so limited. Defendant City does not support its request that the Court assume that the police code of silence is limited to excessive force cases. (ECF No. 49 at 9-

12.) The request is inappropriate on a motion to dismiss where the Court must "draw all reasonable inferences in the plaintiff's favor." *Shiran Canel, Plaintiff, v. Art Inst. of Chicago, Defendant.*, No. 23 CV 17064, 2025 WL 564504, at *1 (N.D. Ill. Feb. 20, 2025).

In addition, plaintiff respectfully requests that the Court reconsider its ruling that allegations of a widespread code of silence in cases involving excessive force do not provide the plausibility required by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

A "code of silence" discourages "employees from reporting fraudulent behavior." *Murray v. UBS Securities, LLC*, 601 U.S. 23, 27 (2024) (cleaned up). In a street gang, the code "includes a pledge not to cooperate with law enforcement" and promises punishment to those who flout the rule. *United States v. Nieves*, 58 F.4th 623, 627 (7th Cir. 2023). In a police department, the code is "induced by peer pressure among the rank-and-file officers and among some police supervisors." *Brandon v. Holt*, 469 U.S. 464, 467 n.6 (1985).

One result of a code of silence is "making the officers believe their actions would never be scrutinized." *Sledd v. Lindsay*, 102 F.3d 282, 289 (7th Cir. 1996). Evidence of a code of silence when officers use excessive force makes it plausible that the code of silence is also in effect when officers fabricate evidence to frame innocent victims.

As shown above, however, even if the Court adheres to its previous ruling, plaintiff's added allegations satisfy that ruling. Plaintiff explains below that none of defendant's remaining arguments justify a departure from the rule established by the Supreme Court in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164 (1993) that there is no "heightened pleading standard" for *Monell* claims.

II. Defendant's Other Arguments Are Meritless

Defendant again raises the deliberate indifference and causation arguments it asserted in its original motion to dismiss. (ECF No. 59 at 12-15.) On a motion to dismiss, plaintiff's allegations that City policymakers have known of and encouraged a "code of silence" among its police officers combined with allegations of the many ways that policymakers have acknowledged the "code of silence" are sufficient to allege deliberate indifference. (ECF No. 50 at 5-10, Amended Complaint ¶¶ 25-38.)

In support of its causation argument, defendant seeks to rely on Judge Gottschall's ruling in *Jordan v. Chicago*, No. 20-cv-4012, 2021 WL 1962385 (N.D. Ill. May 17, 2021), but defendant fails to acknowledge that the complaint in this case contains allegations about causation that were absent from *Jordan*. The plaintiff's original complaint in *Jordan* contained only a single paragraph about causation. *Jordan*, 2021 WL 1962385, at *5. In contrast, the plaintiff in this case has alleged in multiple paragraphs how the code of silence emboldened the

defendant officers to commit misconduct. (ECF No. 50 at 10-11, Amended Complaint ¶¶ 39-46.) The plaintiff in Jordan added similar allegations (Case Number 20-cv-4012, ECF No. 46 ¶¶ 26-27), and the case settled shortly after the amended complaint was filed. (Case Number 20-cv-4012, ECF No. 47.)

Plaintiff alleges that the defendant officers were the subject of numerous formal complaints of official misconduct; because of the code of silence, however, none of the complaints resulted in discipline sufficient to deter the officers' wrongdoing. (ECF No. 50 at 10-11, Amended Complaint ¶¶ 39-40.) These and plaintiff's other allegations about causation (*id.* ¶¶ 41-46) support the inference that "the City caused its officers to believe that they could engage in misconduct with impunity because their actions would never be scrutinized, thereby emboldening the Officers to fabricate evidence and cover up a false arrest in this case." *Johnson v. City of Chicago*, No. 20 C 7222, 2021 WL 4438414, at *6 (N.D. Ill. Sept. 28, 2021). The district court in *Johnson* found that a plaintiff who made such allegations "sufficiently alleged that the code of silence was the moving force behind the constitutional violations he suffered." *Id.*

The district court's ruling in *Fix v. City of Chicago*, No. 21-cv-2843, 2022 WL 93503 (N.D. Ill. Jan. 10, 2022) is in accord:

> Construing the facts in plaintiffs' favor, because they have plausibly alleged that the widespread practice allows the officers to engage in excessive force with impunity, they have sufficiently alleged that the practice was the moving force behind the constitutional violations they suffered.

Id. at *4; *see also Ferguson v. Cook County*, No. 20-cv-4046, 2021 WL 3115207, at *12 (N.D. Ill. July 22, 2021) (collecting cases).

III. Conclusion

The Court should therefore deny defendant's motion to dismiss.

Respectfully submitted,

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