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

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

DEFENDANT CITY'S REPLY IN FURTHER SUPPORT
OF ITS MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

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

INTRODUCTION

Plaintiff's Response asks the Court to ignore the fatal deficiencies of the Amended Complaint but fails to address the arguments made by the City which require dismissal of the *Monell* claim. Rather than explaining how the cases cited in the Amended Complaint plausibly show that the City had a widespread unconstitutional policy that caused his alleged injuries, Plaintiff falls back on notice pleading. 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.*

Here, the *Monell* claim must be dismissed because it does not plausibly suggest a widespread unconstitutional practice by the City, does not show that Plaintiff's alleged injuries were caused by the City itself, and fails to demonstrate deliberate indifference by a final policymaker of the City. Accordingly, the re-filed *Monell* claim must be dismissed with prejudice. *Common v. City of Chicago,* No. 21 C 5198, 2022 WL 3594636, at *4 (N.D. Ill. Aug. 23, 2022) (Dismissing a *Monell* claim with prejudice after the plaintiff's amended complaint failed to cure the deficiencies in her original complaint.) citing *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 519 (7th Cir. 2015).

I. Plaintiff Fails to Cure the Generalized Allegations in his Complaint That Fail to Plausibly State a Widespread "Code of Silence" or Other Unconstitutional Pattern or Practice.

Plaintiff failed to plausibly allege that the City in 2015 had a widespread pattern or practice of conducting unconstitutional drug arrests caused by an alleged code of silence or otherwise. 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).

A. Plaintiff fails to address the City's arguments regarding the dissimilarities of the other cited lawsuits with his case.

Hoping to save his *Monell* claim, Plaintiff names a few other civil lawsuits against the City in his Amended Complaint but does not explain how this amounts to a *Monell* claim. Indeed, the City explained in its opening brief that each of the lawsuits Plaintiff relies upon in paragraph 38 of the Amended Complaint either do not involve drug arrests similar to Plaintiff or are temporally so remote as to have no utility. Plaintiff does not argue against the City's analysis of the newly pled allegations

relating to other lawsuits. Only one of those cases, Waddy, involved a drug related arrest, but that case was not close enough in time to be related. *Taylor v. City of Chi.*, 2021 WL 4523203, at *3 (N.D. Ill. Oct. 4, 2021). Temporal remoteness plagues six of the other lawsuits (*Brown*, *Kuri*, *Myvett*, *Williams*, *Jackson*, and *Bahena*). (See the City's Motion to Dismiss Plaintiff's Amended Complaint, Dkt. 59, pp. 7-8). While some lawsuits include incidents that were closer in time to Plaintiff's 2015 arrest, none of those cases were similar to the claims before this Court (*Gillespie*, *Tucker*, *McClendon*). (*Id.* at pp. 8-9). Plaintiff cannot draw a connection with these cases and his response completely ignores these arguments.

Instead, Plaintiff argues that this Court should disregard the public records the City cited to because this case is at the pleading stage. This is a red herring. He points to a case where the court refused to review an interrogation video from the underlying arrest, a piece of evidence not publicly available. *Jackson v. Curry*, 888 F.3d 259, 263 (7th Cir. 2018). *Jackson* says nothing regarding public records, nor does it stand for the proposition that a plaintiff can incorporate other lawsuits without being challenged. *Id.* Courts routinely take judicial notice of other cases and their filings assuming that the fact is not subject to reasonable dispute. *Tobey v. Chibucos*, 890 F.3d 634, 647-48 (7th Cir. 2018). Here, the City embraces the claims as pled and details how dissimilar they are from plaintiff's claim.[1]

This fact also undercuts Plaintiff's argument regarding pleading standards for third-party lawsuits. Plaintiff's argument is erroneous because the City never made such an argument. The City does not dispute that the third-parties made these allegations and incorporates the facts as claimed by those individuals that lay bare how those lawsuits are not similar enough to substantiate his claim. On this alone his *Monell* claim should be dismissed.

B. Plaintiff's own allegations are still insufficient to carry his *Monell* claim.

[1] The City here does not concede the allegations in the third-party lawsuits or their sufficiency, but rather as made clear in its motion, assumes their truth for the sake of argument.

Plaintiff concedes that the cases in paragraph 38 are dissimilar and abandons his bare amendment to his *Monell* claim. In an attempt to salvage his claim, Plaintiff argues his own allegations should alone be sufficient to state a *Monell* claim. If this were so, he would have argued that during briefing on the first motion to dismiss and did not. (Dkt. #31 p. 12-13). Nonetheless, *Aguaro v. Dart*, 587 F. Supp. 3d 721 (N.D. Ill. 2022) and *Williams v. City of Chicago*, 315 F. Supp. 3d 1060 (N.D. Ill. 2018), lay bare the shortcomings of Plaintiff's pleading rather than the opposite. Both cases are instances where the underlying allegations were detailed and specific, and then that specificity carried over to the related *Monell* claims.

In *Aguaro*, the plaintiff put forward one narrow claim that while on bond his home monitoring equipment malfunctioned and he was improperly arrested by sheriff's officers for violating bond conditions due to the malfunction. 587 F. Supp. 3d at 723-24. He also sued regarding two days he was held in jail past his ordered release date. *Id.* He included a companion Monell claims on those issues – but only one survived defendants' motion to dismiss. *Id.* at 725. Plaintiff cites to the surviving claim where plaintiff's claims, that detailed the criminal court's finding that there were half a dozen instances of equipment malfunctions, as well as his supplementary information regarding at least seven other individuals who experienced the same faulty equipment leading to their arrests was sufficient. *Id.* 729-30. Plaintiff's claims here do not detail multiple instances of the same misconduct combined with others who experienced the same.

But more importantly, the *Arquero* plaintiff's other *Monell* claim was dismissed because the court found that citing to other lawsuits with the same allegations was insufficient. Unlike Plaintiff's cited lawsuits, the lawsuits in *Arquero* were factually identically. Specifically the court noted, "First, the existence of other lawsuits, without more, does not shed much light on the underlying facts. A lawsuit is an allegation. So pointing to other lawsuits simply establishes that other people have made accusations against Cook County." *Id.* at 730 (internal citations omitted). It is "necessarily more

difficult" to only point to a plaintiff's own experience to substantiate a *Monell* claim, and this plaintiff's one experience coupled with other lawsuits was insufficient. *Id.* Here, Plaintiff's allegations relating to third party lawsuits disparate from his claims is likewise insufficient.

In *Williams*, the plaintiff alleged multiple acts of misconduct in the context of a homicide investigation as well as a companion *Monell* claim. 315 F. Supp. 3d at 1066-69. But the underlying claim by the *Williams* plaintiff was far more specific than Plaintiff's claims here; for example, he detailed how a key witness was interviewed and the report reflecting that interview was lost or destroyed; and then this happened again for two other witnesses, one of whom was interviewed twice. *Id.* at 1066-67. Specific statements from witnesses were omitted from other reports. *Id* at 1067. The *Williams* plaintiff also laid out a theory that the lost or missing reports were in a "street file" that officers used in his case and others to hide evidence. *Id.* at 1078–79. This pattern through the complex steps of a homicide investigation is a far cry from a generalized theory that an on view arrest was fabricated by officers. But the sufficiency of the *Monell* pleading was not the focus of the court's order; it was only addressed briefly. *Id.* at 79. Instead the Court delved into a lengthy analysis of the City's bifurcation arguments and ultimately granted bifurcation of the *Monell* claim. *Id.* at 79-84. This effectively mooted any discovery issues that would follow from such a *Monell* claim. Here, Plaintiff alleges one interaction in support of his fabrication claim, unlike the *Williams* plaintiff who pointed to multiple missing reports and investigation deficiencies and linked these claims to a specific practice of keeping a "street file."

C. Plaintiff fails to address the deficiencies in his other allegations.

Plaintiff 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. Instead, Plaintiff leaves the Court to engage in rank speculation as to how the various officer complaints relate to the allegations made by Plaintiff. This sort of speculation cannot raise the *Monell* claim above the plausibility threshold. 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. (See Pl.'s Resp., Dkt. #70 p. 9) ("[N]one of the complaints resulted in discipline sufficient to deter[.]"). The disciplinary complaints against Defendant Officers 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. (Am. Compl. ¶ 39); *see also Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 524 (7th Cir. 2023); *Gill v. City of Milwaukee*, 850 F.3d 335, 344 (7th Cir. 2017); *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 again silent as 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 on alleged excessive force and Plaintiff's allegations that he was wrongfully detained on drug charges. (City's Motion to Dismiss, Dkt. 59, pp. 10-11). Plaintiff's claim that these allegations sufficiently establish a code of silence ignores that there must be "a pattern of **similar** constitutional violations" to substantiate this claim. *Calhoun*, 408 F.3d at 380. While Plaintiff urges the Court to reconsider that a "code of silence" in excessive force cases should be meaningful here, he does nothing to address the similarity other than summarily saying officers were emboldened to commit any misconduct.

This Court and other courts in this district 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 v. City of Chi.*, 2021 WL 365610, at *3 (N.D. Ill. Feb. 3, 2021); *Thomas v. City of Markham*, 2017 WL 4340182, at *3-4 (N.D. Ill. 2017). This is not a heightened pleading standard; rather, these are the minimal elements of a *Monell* claim. Plaintiff's paragraph 38 does not cure these issues that have already been addressed. As such, Plaintiff's *Monell* claim must be dismissed.

II. Plaintiff Cannot Establish Causation; A Necessary Element To Move Forward With A *Monell* Claim.

Plaintiff reasserts that the scant information in his Amended Complaint is also sufficient to establish causation. But again, 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, sufficient 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 states that the Defendant Officers' citizen complaints coupled with a generalized allegation that a "code of silence" exists is enough to show the Defendant Officers knew they could act with impunity. (Response at pp. 8-9). 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*, 2021 WL 365610 at *3 (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.").

Further, Plaintiff presents a faulty argument in his Response that his *Monell* claim's causation element is proven by his allegations that the formal complaints coupled with the code of silence led the officers to believe they could act with impunity. Again Plaintiff points to three cases that are readily distinguishable. 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, and the amendment is insufficient as addressed above. 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 – Plaintiff fails to tailor his arguments on this issue, so the City reasserts its reply. 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, 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. (Am. Compl. ¶¶ 43, 45). Plaintiff's Amended Complaint remains silent—as does 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 Amended 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. 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.

III. Plaintiff Ignores the City's Arguments On Deliberate Indifference.

Again, Plaintiff's Amended Complaint cannot stand on this element; and Plaintiff's Response fails to address it in any meaningful way. 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 collapses the distinct elements of causation and deliberate indifference. The latter is 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). Plaintiff's sidestep is fatal.

Plaintiff's Amended Complaint and his Response are devoid of any specific action or deliberate inaction attributable to the City that amounts to deliberate indifference. Plaintiff's general references to the PATF and DOJ investigations which involved use of force matters do not support the inference that the City was deliberately indifferent to the type of drug arrest that is at issue here. 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.

CONCLUSION

For the foregoing reasons, the City respectfully requests this Honorable Court to dismiss Plaintiff's Amended *Monell* claim with prejudice.

Dated: March 14, 2025

Respectfully submitted,

/s/ Helen O'Shaughnessy

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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/ Helen O'Shaughnessy