

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

Jaime De Avila,)	
)	
Plaintiff,)	No. 24-cv-400
)	
-vs-)	Judge Manish S. Shah
)	
Timothy Murphy and City of)	Judge Beth W. Jantz
Chicago,)	
)	
Defendants.)	

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

Defendant City of Chicago ("the City), by and through one of its attorneys, Raoul Vertick Mowatt, Assistant Corporation Counsel Supervisor, for its answer to Plaintiff's Second Amended Complaint, Affirmative Defenses, and Jury Demand, states as follows

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1333.

ANSWER: The City admits that Plaintiff is suing pursuant to §1983 and that jurisdiction is proper, but denies any wrongdoing by it or Defendant Murphy.

2. Plaintiff Jaime De Avila is a resident of the Northern District of Illinois.

ANSWER: Upon information and belief, the City admits the allegations contained in this paragraph.

3. Defendant Timothy Murphy was, at all relevant times, acting under color of his office as a Chicago police detective.

ANSWER: The City admits the allegations contained in this paragraph.

4. Defendant City of Chicago is an Illinois municipal corporation. Plaintiff sues defendant City of Chicago as the potential indemnitor of defendant Murphy; plaintiff does not assert a Monell claim against the City.

ANSWER: The City admits the allegations contained in this paragraph. The City denies any wrongdoing by Defendant Murphy.

5. On June 2, 2021, defendant Murphy was working in a one-person unmarked police vehicle when he pursued and arrested plaintiff for allegedly failing to stop at a red light.

ANSWER: The City admits the allegations contained in this paragraph, other than to aver that the date of Plaintiff's arrest was June 3, 2021.

6. Defendant Murphy arrested plaintiff on the 3700 block of South Pulaski Road in Chicago.

ANSWER: The City admits the allegations contained in this paragraph.

7. In the course of arresting plaintiff, defendant Murphy notified the Chicago police dispatcher that he required assistance immediately.

ANSWER: The City admits on information and belief the allegations contained in this paragraph.

8. At all relevant times, a radio call that an officer needs immediate assistance is a high priority message and results in other officers putting aside their obligations to travel as quickly as possible to the location of the call.

ANSWER: The City admits that in general, officers respond quickly to a radio call for immediate assistance.

9. Five or more police cars responded to Murphy's message that he required immediate assistance.

ANSWER: The City admits the allegations contained in this paragraph.

10. The officers who responded to Murphy's call for immediate assistance parked in the roadway, blocking and disrupting the orderly flow of traffic.

ANSWER: The City admits that responding officers parked in the roadway, but deny the remaining allegations contained in this paragraph.

11. After arriving at the scene, the officers who responded to Murphy's call for immediate assistance learned that the only assistance he required was for an officer to provide him with a ticket book to write a traffic citation for the alleged red-light violation.

ANSWER: The City denies the allegations contained in this paragraph.

12. Calling for immediate assistance when the only assistance required was to obtain a ticket book is a vast departure from the standard operating procedure of the Chicago police department and, if made the subject of a complaint, could result in the imposition of discipline on the officer who violated procedure.

ANSWER: The City denies the allegations contained in this paragraph.

13. To cover up his overreaction to the alleged traffic violation and avoid disciplinary proceedings, or for another improper reason presently unknown to plaintiff, defendant Murphy claimed that he discovered a bag of drugs in plaintiff's vehicle.

ANSWER: The City denies the allegations contained in this paragraph.

14. This claim is false: Plaintiff did not have any drugs in his vehicle and any drugs found in plaintiff's vehicle were planted by defendant Murphy.

ANSWER: The City denies the allegations contained in this paragraph.

15. Defendant Murphy prepared official police reports containing his false claim, attested to the false claim through the official police reports and an official charging document, and communicated the false claim to prosecutors.

ANSWER: The City denies the allegations contained in this paragraph.

16. As a result of Murphy's above-described wrongful acts, plaintiff was charged with drug possession, deprived of liberty before trial, and he suffered other injuries from being wrongfully prosecuted.

ANSWER: The City denies the allegations contained in this paragraph.

17. The prosecution ended without a conviction when the prosecutor dismissed the charges against plaintiff on April 27, 2022.

ANSWER: The City admits the allegations contained in this paragraph.

18. As a result of the foregoing, plaintiff was deprived of rights secured by the Fourth Amendment to the Constitution of the United States, as recognized by the United States Supreme Court in *Thompson v. Clark*, 596 U.S. 36 (2022) and *Manuel v. Joliet*, 580 U.S. 357 (2017).

ANSWER: The City denies the allegations contained in this paragraph.

19. Plaintiff also brings a claim for his wrongful prosecution under the Fourteenth Amendment's Due Process Claim. The Seventh Circuit rejected this claim in *Lewis v. City of Chicago.*, 914 F.3d 472, 478 (7th Cir. 2019), but this area of law is rapidly evolving. See, e.g., Timothy Tymkovich and Hayley Stillwell, *Malicious Prosecution as Undue Process: A Fourteenth Amendment Theory of Malicious Prosecution*, 20 GEO. J.L. & PUB. POL'Y 225 (2022). Plaintiff includes this claim to preserve this issue for appellate review.

ANSWER: The City admits that Plaintiff includes a claim for wrongful prosecution under the Fourteenth Amendment's Due Process Clause, that the Seventh Circuit rejected this claim, and that Plaintiff includes this claim to preserve the issue. The City denies that Defendant Murphy committed any wrongdoing.

20. Plaintiff does not bring a claim for false arrest or unreasonable search. Nor does plaintiff bring a claim for unreasonable post-arrest detention, other than as subsumed in the Fourth Amendment claim recognized by *Thompson* and *Manuel*.

ANSWER: The City admits the allegations contained in this paragraph.

21. Plaintiff does not bring a state law malicious prosecution claim.

ANSWER: The City admits the allegations contained in this paragraph.

22. Plaintiff hereby demands trial by jury.

ANSWER: The City makes no answer to this paragraph.

JURY DEMAND

The City demands trial by jury on all claims so triable.

AFFIRMATIVE DEFENSES

1. The City cannot be held liable in any Section 1983 action brought against it by Plaintiff on a *respondeat superior* theory of liability. *See Monell v. Dep't of Social Servs. of City of N.Y.*, 436 U.S. 658, 691 (1978).

2. To the extent that Plaintiff may be bringing any non-malicious prosecution claims under state law, such claims would be barred by the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/8-101 *et seq.*

3. The City cannot be held liable for any of Plaintiff's federal claims or Illinois state law claims for which its employee, Defendant Murphy, is not liable to Plaintiff. *See City of L.A. v. Heller*, 475 U.S. 796, 799 (1986); 745 ILCS 10/2-109.

4. The City cannot be held liable for punitive damages on Plaintiff's federal claims or Illinois state law claims. *See City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981); 745 ILCS 10/2-102.

5. Any award of damages against the City shall be reduced in proportion to the comparative fault of Plaintiff's own acts or omissions, including but not limited to, Plaintiff's own negligent, intentional, or willful and wanton conduct that proximately caused Plaintiff's claimed injuries and damages.

6. Plaintiff has a duty to mitigate his damages; therefore, any damages awarded to Plaintiff would be required to be reduced by any amount by which the damages could have been lessened but were not due to Plaintiff's failure to take reasonable action to minimize such damages.

Respectfully submitted,

/s/ Raoul Vertick Mowatt
Raoul Vertick Mowatt
Assistant Corporation Counsel Supervisor

Cheryl Friedman, Assistant Corporation Counsel
City of Chicago Department of Law
2 N. LaSalle Street, Suite 420
Chicago, Illinois 60602
(312) 744-3283 (Mowatt)
Raoul.mowatt@cityofchicago.org

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

Jaime De Avila,)
)
 Plaintiff,)
)
 -vs-) No. 24-cv-400
)
)
 Timothy Murphy and City of) Judge Shah
 Chicago,)
)
 Defendants.)

NOTICE OF FILING AND CERTIFICATE OF SERVICE

Joel A. Flaxman
Kenneth N. Flaxman
200 S Michigan Ave Ste 201
Chicago, IL 60604-2430
(312) 427-3200

PLEASE TAKE NOTICE that on this third day of June, 2024, I have caused to be e-filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division **DEFENDANT CITY OF CHICAGO'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT, JURY DEMAND AND AFFIRMATIVE DEFENSES**, a copy of which is herewith served upon you.

I hereby certify that I have served this notice and the attached document by causing it to be delivered by electronic means to the person named above at the address shown this third day of June, 2024.

/s/ Raoul Vertick Mowatt
Raoul Vertick Mowatt
Assistant Corporation Counsel Supervisor