

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

JOSE TINAJERO,	)	
	)	
	)	
<i>Plaintiff,</i>	)	Case No. 24 C 1598
	)	
<i>v.</i>	)	Hon. Judge Kness
	)	
REYNALDO GUEVARA, <i>et al.</i> ,	)	<b>JURY TRIAL DEMANDED</b>
	)	
<i>Defendants.</i>	)	

**DEFENDANT CITY OF CHICAGO'S  
ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendant, City of Chicago ("City"), by its undersigned attorneys, and in answering Plaintiff's First Amended Complaint, states:

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. §§ 1343 and 1367.

**ANSWER: The City admits that Plaintiff purports to bring some counts of this action under 42 U.S.C. § 1983 and that this Court has jurisdiction pursuant to 28 U.S.C. §§ 1343 and 1367.**

2. When he was just 21 years old, plaintiff Jose Tinajero was framed for murder by notorious Chicago police detective Reynaldo Guevara and other officers.

**ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.**

3. Plaintiff served twenty-five years of wrongful imprisonment before he was exonerated and released from custody in 2024.

**ANSWER: Upon information and belief, the City admits that Plaintiff's was released from custody in 2024. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3.**

4. The Chicago Police Department's official policies and customs of failing to discipline, supervise, and control its officers, as well as its code of silence, caused the misconduct of Guevara and the other officers.

**ANSWER:** The City denies the allegations contained in paragraph 4.

5. Based on the powerful evidence that has come to light about Guevara's repeated wrongdoing and evidence of plaintiff's innocence, the Circuit Court of Cook County vacated plaintiff's conviction on January 31, 2024.

**ANSWER:** Upon information and belief, the City admits that Plaintiff's conviction was vacated on January 31, 2024. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.

6. Plaintiff brings this lawsuit to secure a remedy for the grievous harms he suffered from his wrongful imprisonment.

**ANSWER:** The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

## **I. Parties<sup>1</sup>**

7. Plaintiff Jose Tinajero is a resident of the Northern District of Illinois.

**ANSWER:** The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Defendants Reynaldo Guevara, Hector Vergara, Randy Troche, and Edward Mingey were, at all relevant times, acting under color of their offices as Chicago police officers. Plaintiff sues these defendants in their individual capacity only.

**ANSWER:** Upon information and belief, the City admits that Defendant Reynaldo Guevara, Hector Vergara, Randy Troche, and Edward Mingey were employed by the Chicago Police Department. Upon information and belief, the City admits that Defendants Reynaldo Guevara, Hector Vergara, Randy Troche, and Edward Mingey were acting under color of their offices as Chicago police officers during the murder investigation of Daniel Garcia. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8.

9. Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Ernest Halvorsen, as successor in interest and to defend this action on behalf of Ernest Halvorsen.

**ANSWER:** The City admits that Geri Lynn Yanow has been appointed by the court to serve as Special Representative of Ernest Halvorsen for this litigation for the purpose of defending this action on behalf of Ernest Halvorsen.

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<sup>1</sup> The City makes no answer in response to the "headers" or "sub-headers" utilized by Plaintiff throughout his Complaint as they do not appear to contain any allegations. Rather, these headers appear to be utilized by Plaintiff to break up his Complaint.

**The City, upon information and belief, denies the remaining allegations contained in paragraph 9.**

10. Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Joseph Mohan as successor in interest and to defend this action on behalf of Joseph Mohan.

**ANSWER: The City admits that Geri Lynn Yanow has been appointed by the court to serve as Special Representative of Joseph Mohan for this litigation for the purpose of defending this action on behalf of Joseph Mohan. The City, upon information and belief, denies the remaining allegations contained in paragraph 10.**

11. Defendant Kevin Rogers is sued in his capacity as Special Representative of Francis Cappitelli as successor in interest and to defend this action on behalf of Francis Cappitelli.

**ANSWER: The City admits that Kevin Rogers has been appointed as Special Representative of Francis Cappitelli for this litigation for the purpose of defending this action on behalf of Francis Cappitelli. The City, upon information and belief, denies the remaining allegations contained in paragraph 11.**

12. Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli were, at all relevant times, acting under color of their offices as Chicago police officers.

**ANSWER: Upon information and belief, the City admits that Defendant Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli were employed by the Chicago Police Department. Upon information and belief, the City admits Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli were acting under color of their offices as Chicago police officers during the murder investigation of Daniel Garcia.**

13. Plaintiff refers to Reynaldo Guevara, Hector Vergara, Randy Troche, Edward Mingey, Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli as the “individual officer defendants.”

**ANSWER: The City admits Plaintiff refers to the individuals identified in this paragraph as “individual officer defendants” in this amended complaint. Answering Defendants deny the remaining allegations set forth in this paragraph.**

14. Defendant City of Chicago is an Illinois municipal corporation and was at all relevant time [sic.] the employer of the individual officer defendants. Plaintiff asserts federal and state law claims against defendant City of Chicago and sues the City as the potential indemnitor of the individual officer defendants.

**ANSWER: The City admits that the City of Chicago is an Illinois municipal corporation, and, upon information and belief, was the employer of the**

**individual officer defendants during the murder investigation of Daniel Garcia. The allegation that the City is the potential indemnitor of the individual officer defendants is a legal conclusion for which no answer is required. To the extent an answer is required, the City denies that the allegations pertaining to the City's potential as an indemnitor is a complete and accurate statement of law. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14.**

15. Defendant Jacob Rubinstein was, at all relevant times, an Assistant Cook County State's Attorney. Plaintiff sues Rubinstein in his individual capacity only.

**ANSWER: Upon information and belief, the City admits the allegations contained in paragraph 15.**

16. Defendant Cook County is a governmental entity within the State of Illinois and was at all relevant times the employer of Rubinstein. Plaintiff asserts a state law claim against defendant Cook County, sues the County as the potential indemnitor of Rubinstein, and does not assert any federal claim against the County.

**ANSWER: The City admits, upon information and belief, that Cook County is a governmental entity within the State of Illinois, and that Plaintiff does not assert any federal claims against Cook County, but purports to bring a state law claim against Defendant Cook County and is suing Cook County as the potential indemnitor of Defendant Rubenstein. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 16.**

## **II. False Arrest and Unreasonable Prosecution of Plaintiff**

17. On October 12, 1998, Daniel Garcia received a fatal beating in a Chicago alley near Whipple Street and Armitage Avenue.

**ANSWER: Based on records from the Chicago Police Department, the City admits on October 12, 1998, Daniel Garcia was a victim to aggravated battery, near Whipple Street and Armitage Avenue, which resulted in Garcia's death.**

18. Plaintiff did not have any involvement in the beating.

**ANSWER: Based on records from the Chicago Police Department, the City denies the allegations in paragraph 18.**

19. Defendants Guevara and Halvorsen investigated the murder of Daniel Garcia.

**ANSWER: Based on records from the Chicago Police Department, the City admits that Guevara and Halvorsen took part in the murder investigation of Daniel Garcia. The City lacks knowledge or information sufficient to**

**form a belief as to the truth of the remaining allegations in paragraph 19.**

20. Defendants Guevara and Halvorsen conspired, confederated, and agreed to fabricate a false story that plaintiff, John Martinez, and Thomas Kelly had jointly beaten and robbed Garcia.

**ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.**

21. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff include the following:

- a. They caused Margarita Casiano to make a false statement implicating plaintiff in the murder;
- b. They caused Melloney Parker to sign a false statement implicating plaintiff in the murder;
- c. They caused plaintiff to make a false confession implicating himself in the murder;
- d. They caused Martinez to make a false confession implicating himself and plaintiff in the murder;
- e. They caused Kelly to make a false confession implicating himself and plaintiff in the murder; and
- f. They caused Melloney Parker, Esteban Rodgriguez, and Jesus Fuentes to make false eyewitness identifications implicating plaintiff in the murder.

**ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, including each subparagraph.**

22. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff also include the following:

- a. They prepared police reports containing the false story;
- b. They attested to the false story through the official police reports; and
- c. They communicated the false story to prosecutors.

**ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, including each subparagraph.**

23. Defendants Vergara, Mohan, Troche, Cappitelli, and Mingey either participated in the above-described acts or knew of those acts and failed to intervene to prevent the violation of plaintiff's rights.

**ANSWER: The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23.**

24. Defendant Rubinstein, acting in an investigatory capacity, participated in fabricating the false statements signed by Parker, Martinez, and Kelly.

**ANSWER:** **The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24.**

25. The individual officer defendants and defendant Rubinstein committed the above-described wrongful acts knowing that their acts would cause plaintiff to be held in custody and wrongfully prosecuted.

**ANSWER:** **The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25.**

26. Plaintiff was charged with murder because of the wrongful acts of the individual officer defendants and Rubinstein.

**ANSWER:** **The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.**

27. The prosecution relied at trial on the false story, including plaintiff's coerced confession.

**ANSWER:** **The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.**

28. On September 27, 2001, a jury found plaintiff guilty of first-degree murder and robbery, and the Circuit Court of Cook County sentenced plaintiff to concurrent sentences of 30 years for murder and 10 years for robbery.

**ANSWER:** **Upon information and belief, the City denies that Plaintiff was found guilty on September 27, 2001, but admits that a jury found Plaintiff guilty of first-degree murder and robbery on July 16, 2001 and that Plaintiff was subsequently sentenced on September 27, 2001, to concurrent sentences of 30 years for murder and 10 years for robbery.**

29. Martinez and Kelly were also convicted of murder.

**ANSWER:** **Upon information and belief, the City admits to the allegations in paragraph 29.**

30. Plaintiff was deprived of liberty because of the above-described wrongful acts of the individual officer defendants and defendant Rubinstein.

**ANSWER:** **The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30.**

### **III. Plaintiff's Exoneration**

31. Plaintiff challenged the above-described wrongful conviction after learning that lawyers for other wrongfully convicted individuals had discovered repeated misconduct by

Guevara.

**ANSWER:** **The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31.**

32. On January 31, 2024, the Circuit Court of Cook County vacated plaintiff's convictions and granted the State's request to dismiss the case.

**ANSWER:** **Upon information and belief, the City admits to the allegations in paragraph 32.**

33. Kelly's conviction was also vacated on January 31, 2024, and Martinez's conviction had been vacated on January 17, 2023.

**ANSWER:** **Upon information and belief, the City admits to the allegations in paragraph 33.**

34. Petitioner was released from prison the day after his exoneration; he had been continuously incarcerated for 25 years.

**ANSWER:** **The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34.**

#### **IV. Official Policies and Customs of the Chicago Police Department Were the Moving Force for the Misconduct of the Individual Officer Defendants**

35. At all relevant times, the Chicago Police Department maintained official policies and customs that facilitated, encouraged, and condoned the misconduct of the individual officer defendants.

**ANSWER:** **The City denies the allegations contained in paragraph 35.**

##### **A. Failure to Discipline**

36. At all relevant times, the Chicago Police Department maintained a policy or custom of failing to discipline, supervise, and control its officers. By maintaining this policy or custom, the City caused its officers to believe that they could engage in misconduct with impunity because their actions would never be thoroughly scrutinized.

**ANSWER:** **The City denies the allegations contained in paragraph 36.**

37. Before plaintiff's arrest, policymakers for the City of Chicago knew that the Chicago Police Department's policies or customs for disciplining, supervising, and controlling its officers were inadequate and caused police misconduct.

**ANSWER:** **The City denies the allegations contained in paragraph 37.**

38. Despite their knowledge of the City's failed policies and customs for disciplining, supervising, and controlling its officers, the policymakers failed to take action to remedy these problems.

**ANSWER:** The City denies the allegations contained in paragraph 38.

39. As a direct and proximate result of the Chicago Police Department's inadequate policies or customs for disciplining, supervising, and controlling its officers and the policymakers' failure to address these problems, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

**ANSWER:** The City denies the allegations contained in paragraph 39.

## **B. Code of Silence**

40. At all relevant times, the Chicago Police Department maintained a "code of silence" that required police officers to remain silent about police misconduct. An officer who violated the code of silence would be penalized by the Department.

**ANSWER:** The City denies the allegations contained in paragraph 40.

41. At all relevant times, police officers were trained at the Chicago Police Academy not to break the code of silence. Officers were instructed that "Blue is Blue. You stick together. If something occurs on the street that you don't think is proper, you go with the flow. And after that situation, if you have an issue with that officer or what happened, you can confront them. If you don't feel comfortable working with them anymore, you can go to the watch commander and request a new partner. But you never break the code of silence."

**ANSWER:** The City denies the allegations contained in paragraph 41.

42. This "code of silence" facilitated, encouraged, and enabled the individual officer defendants to engage in egregious misconduct for many years, knowing that their fellow officers would cover for them and help conceal their widespread wrongdoing.

**ANSWER:** The City denies the allegations contained in paragraph 42.

43. In the case of *Obrycka v. City of Chicago et al.*, No. 07-cv-2372 (N.D. Ill.), a federal jury found that, as of February 2007, "the City [of Chicago] had a widespread custom and/or practice of failing to investigate and/or discipline its officers and/or code of silence."

**ANSWER:** The City admits that in the case *Obrycka v. City of Chicago et al.*, Case No. 07 CV 2372, the jury returned a verdict in favor of plaintiff and against the City of Chicago, but states that the District Court in *Obrycka* subsequently noted the basis for the jury's verdict was "unclear" and was "based on the unique facts of [that] case." The City denies the *Obrycka* verdict provides precedential value for this case or that it is applicable to the facts and circumstances alleged in this Complaint. The City lacks

**knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 43.**

44. In December 2015, Chicago Mayor Rahm Emanuel acknowledged the continued existence of the code of silence within the Chicago Police Department; Emanuel, speaking in his capacity as Mayor, admitted that the code of silence leads to a culture where extreme acts of abuse are tolerated.

**ANSWER:** The City admits that on December 9, 2015, former Mayor Rahm Emanuel stated, in part, the following: “This problem is sometimes referred to as the Thin Blue Line. Other times it is referred to as the code of silence. It is the tendency to ignore, deny or in some cases cover-up the bad actions of a colleague or colleagues.” The City denies that any code of silence within the Chicago Police department is pervasive, widespread or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. The City further states that any purposed “code of silence” is directly contrary to the official written rules and policies of the Chicago Police Department. The City denies the remaining allegations contained in Paragraph 44.

45. In April 2016, the City’s Police Accountability Task Force found that the code of silence “is institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City.”

**ANSWER:** The City admits the existence of the April 2016 Report issued by the Police Accountability Task Force (“PATF Report”), and that the language quoted in this paragraph is included at page 70 of the PATF Report. The City states that quoting and paraphrasing snippets of text taken from the PATF Report is an oversimplification and imprecise representation of that report. The City further states that any “code of silence” as described in this Complaint is directly contrary to the rules, policies, and training of the Chicago Police Department. The City further denies that a “code of silence” within the Chicago Police Department is pervasive, widespread or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. The City denies the remaining allegation contained in paragraph 45.

46. In an official government report issued in January 2017, the United States Department of Justice found that “a code of silence exists, and officers and community members know it.”

**ANSWER:** The City admits that page 75 of the 2017 Department of Justice Report states in part, “current officers and former high-level CPD officials interviewed during our investigation” shared the opinion that a “code of silence” existed within CPD. The City denies that any “code of silence” within the Chicago Police Department is pervasive, widespread or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. The City further states that any “code of

silence” as described in this Complaint is directly contrary to the rules, policies, and training of the Chicago Police Department. The City denies the remaining allegations contained in paragraph 46.

47. On March 29, 2019, then-Chicago Police Superintendent Eddie Johnson publicly acknowledged the code of silence, stating that some Chicago police officers “look the other way” when they observe misconduct by other Chicago police officers.

**ANSWER:** The City admits, on information and belief, that former Chicago Police Superintendent Eddie Johnson was interviewed for a newspaper article in March 2019, and in response to a question, was quoted as stating, “Do I think there might be officers that look the other way? Yea, I do” The City states that Mr. Johnson was further quoted as stating he was “not going to indict the entire department for the acts of certain individuals.” The City denies that any “code of silence” within the Chicago Police Department is pervasive, widespread or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. The City further states that any “code of silence” as described in this Complaint is directly contrary to the rules, policies, and training of the Chicago Police Department. The City denies the remaining allegations contained in paragraph 47.

48. In October 2020, then-Chicago Police Superintendent David Brown acknowledged in public comments that the “code of silence” continues to exist.

**ANSWER:** The City objects that this paragraph is vague and ambiguous in that it does not identify any particular speech or public statement purportedly made by former Chicago Police Superintendent David Brown, such that the City could admit or deny the allegations. Subject to and without waiving these objections, the City denies that any “code of silence” within the Chicago Police Department is pervasive, widespread or a well-settled custom or practice to which the City’s final policymakers have been deliberately indifferent. The City further states that any “code of silence” as described in this Complaint is directly contrary to the rules, policies, and training of the Chicago Police Department. The City denies the remaining allegations contained in paragraph 48.

49. The same code of silence in place during the time period at issue in the *Obrycka* case and recognized by the Mayor, Superintendent Johnson, Superintendent Brown, the Task Force, and the Department of Justice was also in place when plaintiff suffered the wrongful arrest, detention, and prosecution described above.

**ANSWER:** The City denies the allegations contained in paragraph 49.

50. As a direct and proximate result of the City’s code of silence, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

**ANSWER:** The City denies the allegations contained in paragraph 50.

**C. The City's Policies and Customs Have Caused Numerous Other Wrongful Convictions**

51. Chicago Police Officers, including the individual officer defendants, acting pursuant to defendant City of Chicago's "code of silence" and defective discipline policy have concocted false stories, fabricated evidence, and caused wrongful convictions in many cases.

**ANSWER:** To the extent the allegations in this paragraph are directed against the City, the City denies these allegations. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 51.

52. In each case, the officers concocted false stories and fabricated evidence because they knew that there would be no consequences for their misconduct because of defendant City of Chicago's "code of silence" and defective discipline policy.

**ANSWER:** The City denies the allegations contained in paragraph 52.

53. These numerous cases include, but are not limited to, the following:

- a. In August of 1988, defendant Guevara caused Jacques Rivera to be falsely convicted of murder by coercing a witness to falsely identify Rivera;
- b. In September of 1989, defendant Guevara caused Juan Johnson to be falsely convicted of murder by coercing a witness to falsely identify Johnson;
- c. In August of 1990, defendant Guevara caused Jose Maysonet to be falsely convicted of murder by coercing him into falsely confessing;
- d. In January of 1991, defendant Guevara caused Xavier Arcos to be falsely convicted of murder by coercing a witness to falsely identify Arcos;
- e. In May of 1993, defendants Guevara and Halvorsen caused Armando Serrano and Jose Montanez to be falsely convicted of murder by coercing a witness to falsely testify that Serrano and Montanez admitted to committing the murder;
- f. In May of 1993, defendants Guevara and Halvorsen caused Robert Boutu to be falsely convicted of murder by coercing two jailhouse informants to falsely testify that Boutu admitted to committing the murder;
- g. In June of 1993, defendant Guevara caused Gabriel Iglesias to be falsely convicted of murder by coercing two witnesses to falsely identify Iglesias and by coercing a jailhouse informant to falsely testify that Iglesias admitted to committing the murder;
- h. In September of 1994, defendant Guevara caused Roberto Almodovar and William Negron to be falsely convicted of murder by coercing a witness to falsely identify Almodovar and Negron;
- i. In May of 1995, defendants Guevara and Halvorsen caused Thomas Sierra to be falsely convicted of murder by coercing false testimony from two witnesses; and

- j. In April of 1998, defendant Guevara caused Gabriel Solache and Arturo Reyes to be falsely convicted of murder and kidnapping by coercing them to give false confessions.

**ANSWER:** The City objects to the allegations in this paragraph, and all ten subparts, and therefore, cannot be answered concisely. To the extent an answer is required, the City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53, including all its subparts.

## **V. Claims**

54. As a result of the foregoing, the individual officer defendants, the City of Chicago, and defendant Rubinstein caused plaintiff to be deprived of rights secured by the Fourth, Fifth, and Fourteenth Amendments.

**ANSWER:** The City incorporates its answers to each of the foregoing paragraphs as fully set forth herein. To the extent the allegations in this paragraph are directed against the City, the City denies these allegations. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 54.

55. As a supplemental state law claim against defendant City of Chicago and defendant Cook County: as a result of the foregoing, plaintiff was subjected to a malicious prosecution under Illinois law.

**ANSWER:** The City incorporates its answers to each of the foregoing paragraphs as fully set forth herein. The City denies the allegations contained in paragraph 55.

56. Plaintiff hereby demands trial by jury.

**ANSWER:** The City objects to the allegations in this paragraph as it states a conclusion to which no answer is required. To the extent an answer is required, the City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56.

WHEREFORE, the City of Chicago respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, as well as any other relief this Court deems just and proper.

## **AFFIRMATIVE DEFENSES**

1. The City is not liable to plaintiff if its employees or agents are not liable to plaintiff. 745 ILCS 10/2-109.

2. Plaintiff has a duty to mitigate his damages, and any damages awarded to Plaintiff would be required to be reduced by any amount by which the damages could have been lessened by Plaintiff's failure to take reasonable action to minimize those damages.

3. To the extent any injuries or damages claimed by Plaintiff were proximately caused, in whole or in part, by any wrongful conduct on the part of Plaintiff, any verdict or judgment obtained by Plaintiff based on any finding of "reckless" willful and wanton behavior, as opposed to "intentional" willful and wanton behavior, must be reduced by application of the principles of comparative fault, by an amount commensurate with the degree of fault attributed to Plaintiff by the jury in this case. *See Poole v. City of Rolling Meadows*, 167 Ill.2d 41, 656 N.E.2d 768, 212 Ill.Dec. 171 (1995).

4. Under Illinois law, the City is not liable for the conduct committed by employees not by employees not acting within the scope of their employment. *Wright v. City of Danville*, 174 Ill.2d 392, 221 Ill.Dec. 203, 675 N.E.2d 110 (1996).

5. The City is immune from the imposition of punitive damages under both state and federal law. Punitive damages cannot be imposed against a municipality in a section 1983 action. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). Moreover, under Illinois law, the City cannot be required to indemnify an employee for punitive or exemplary damages, nor may it pay judgment for punitive damages on behalf of an employee. 745 ILCS 10/2-102.

6. To the extent Plaintiff's claims rely upon criminal trial court rulings, those claims may be barred or limited by the applications of the doctrines of waiver, *res judicata*, collateral estoppel, and/or judicial estoppel.

7. Plaintiff's failure to intervene claim has no basis in the Constitution as "[f]ailure to intervene sounds like vicarious liability," which would of course be untenable,

as “[t]he Supreme Court has held many times that Section 1983 supports only direct, and not vicarious, liability.” *Mwangangi v. Nielsen*, 48 F.4th 816, 834 (7th Cir. 2022) (Easterbrook, J., concurring).

8. Plaintiff’s claims as alleged in his Complaint are barred in whole or in part by the applicable statute of limitations.

9. If the City or any of the individual Defendant Officers are found liable to Plaintiff, they are entitled to a set-off against any judgment against them equal to the amount of money received by Plaintiff from Cook County pursuant to Settlement or Judgment.

**JURY DEMAND**

Defendant City demands trial by jury.

Dated: June 26, 2024

Respectfully submitted,

By: /s/ Austin G. Rahe  
Special Assistant Corporation Counsel  
*One of the attorneys for Defendant City of Chicago*

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