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

IMMANUEL CAMPBELL, RUBIN CARTER, MARKEES SHARKEY, DEONTE BECKWITH, CHANTE LINWOOD, RACHEL JACKSON, BLACK LIVES MATTER CHICAGO, BLOCKS TOGETHER, BRIGHTON PARK NEIGHBORHOOD COUNCIL, JUSTICE FOR FAMILIES – BLACK LIVES MATTER CHICAGO, NETWORK 49, WOMEN'S ALL POINTS BULLETIN, and 411 MOVEMENT FOR PIERRE LOURY, on behalf of themselves and a class of similarly situated persons, Plaintiffs, v. CITY OF CHICAGO, and CHICAGO POLICE OFFICERS MIGUEL VILLANUEVA (#17423), JOSUE A. ORTIZ (#15448), DOROTHY CADE (#7814), RICHARD BOLIN (#14590), PETER JONAS (#5069), BRETT POLSON (#5612), ANGEL PENA (#7135), WAUKEESHA MORRIS (#8255), JAEHO JUNG (#13387), JOHN CORIELL (#14274), CHAD BOYLAN (#8200), THOMAS MCGUIRE (#1337), ANTHONY OSTROWSKI (#15324), LAWRENCE GADE JR. (#1841), and JOHN LAVORATA (#8464), in their individual capacities, Defendants.	Case No. 17cv 4467 (Class Action)

DEFENDANT THE CITY OF CHICAGO'S MOTION TO STRIKE
ALLEGATIONS FROM AMENDED COMPLAINT

Defendant City of Chicago ("City" or "Defendant"), by and through its undersigned attorneys, moves pursuant to Federal Rule of Civil Procedure 12(f) to strike certain allegations from the Amended Complaint, and in support, states as follows:

INTRODUCTION

Plaintiffs' First Amended Class Action Complaint ("Amended Complaint") is a thirteen count complaint alleging three class counts for violation of the Fourth and Fourteenth Amendments to the United States Constitution and the Illinois Civil Rights Act of 2003, and ten separate counts against individual officers on behalf of six individual plaintiffs. Plaintiff's Am. Compl., ECF No. 71. The Amended Complaint alleges that the violations were caused by a pattern or practice by the Chicago Police Department ("CPD") of using excessive force, failing to train and supervise its officers, and perpetuating a "code of silence." *Id.*, pp. 2-7, 61-83.

In the course of the 137-page Amended Complaint, Plaintiffs set forth voluminous allegations, many of which are inflammatory and unnecessary to provide the short plain statement of their cause of action that is required by Federal Rule of Civil Procedure ("FRCP") 8. Indeed, the individual claims involve only five incidents of alleged police misconduct. Am. Compl., pp. 94-114. The bulk of the factual allegations related to those incidents amount to approximately twenty pages. *See id.* More than three times that space is dedicated to a wide-ranging, historical account of CPD's alleged policing practices and policies. *Id.* at pp. 20-93.

Plaintiffs provide allegations describing a panoply of events, settlements, and lawsuits in CPD's history, spanning back to the 1968 Democratic National Convention. Many of these allegations are redundant, immaterial, and incendiary, and provide no additional value in illustrating the causes of action alleged. Indeed, many of the allegations simply regurgitate public news stories, the April 2016 Police Accountability Task Force Report ("Task Force Report"), and the January 13, 2017 U.S. Department of Justice's Findings Report ("DOJ Findings Report"). In addition to including summary statements from those reports, the Amended Complaint sets forth discrete events, individual interviews, specific disciplinary outcomes, community member stories, and other highly fact-specific incidents. Requiring

Defendant to answer these allegations in good faith will impose on Defendant an immense burden while doing nothing to forward Plaintiffs' claims. Accordingly, Defendant moves pursuant to FRCP 12(f) to strike the allegations identified below and in Exhibit A hereto, and request a stay in answering these specified paragraphs while the parties brief this motion.[1]

LEGAL STANDARD

Federal Rule of Civil Procedure 12(f) provides that a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12 (f). Although district courts have wide discretion in deciding whether to strike portions of a pleading, *Talbot v. Roberts Matthews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992), a FRCP 12(f) motion to strike should be granted where it properly results in the removal of unnecessary clutter and expedites a case. *Heller Fin., Inc. v. Midwhey Powder Co.*, 883 F.2d 1286, 1294 (7th Cir. 1989); *Wei Liang v. Frontline Asset Strategies, LLC*, No. 15 C 09054, 2017 WL 1365604 (N.D. Ill. Apr. 14, 2017).

In particular, redundant allegations are those that amount to unnecessary repetition of other averments in the pleading. *In re Asbestos Cases,* 1990 WL 36790, *4 (N.D. Ill. 1990) (citing 5 Wright & Miller, Federal Practice and Procedure § 1382 (1969)). Redundant historical allegations are properly the subject of a motion to strike. *Brown v. ABM Industries, Inc.*, No. 15 C 6729, 2015 WL 7731946, at *2 (N.D. Ill. Dec 1, 2015); *see also Wilkerson v. Butler*, 229 F.R.D. 166 (E.D. Cal. 2005). Immaterial or impertinent allegations are allegations that have no relationship to the cause of action or bear no possible relationship to issues at trial. *VPHI, Inc. v.*

[1] The Mandatory Initial Discovery Pilot Project Standing Order does not address how filing a FRCP 12(f) Motion to Strike will affect a defendant's obligation to answer. However, the policy underlying FRCP 12(f) is to remove unnecessary or burdensome allegations to potentially expedite litigation; a stay of the City's obligation to answer the allegations subject to this motion would be consistent with that goal. By contrast, ordering the City to answer these allegations before the Court rules upon this motion would negate the purpose of FRCP 12(f).

Nat'l Educ. Training Grp., Inc., No. 94 C 5559, 1995 WL 51405, at *3 (N.D. Ill. Jan. 20, 1995) (citing *Capitol Indemnity Corporation v. Tranel Developments, Inc.*, 144 F.R.D. 346, 347 (N.D. Ill., 1992); *In re Asbestos Cases*, 1990 WL 36790, *4. These allegations should be struck if they are so unrelated to the claims at issue that they are void of merit and unworthy of consideration. *Cumis Ins. Soc., Inc.*, 983 F. Supp. at 798. Finally, in addition to showing that the challenged allegations are "redundant, immaterial, impertinent, or scandalous," the moving party typically must also show that prejudice will result if it is required to answer certain allegations. *In re Asbestos Cases*, 1990 WL 36790, *3 (N.D. Ill. 1990). Prejudice results when the allegations have the effect of confusing the issues or are so lengthy and complex that they create an undue burden on the responding party. *Cumis Ins. Soc., Inc. v. Peters*, 983 F. Supp. 787, 798 (N.D. Ill. 1997).

ARGUMENT

The City has a strong legal basis for seeking to strike the entirety of the Complaint pursuant to Rules 12(f) and 8 as courts have stricken far more "simple, concise and direct" complaints than Plaintiffs'. *See, e.g., Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 775 (7th Cir. 1993); *Mutuelle Generale Francaise Vie v. Life Assurance Co.*, 688 F. Supp. 386 (N.D. Ill. 1988) (striking 42 page, 162 paragraph complaint); *Coop v. Durbin*, 2015 WL 7176371 (S.D. Ind. 2015) (striking 47 page, 206 paragraph complaint for failure to comply with Rule 8); *Hardin v. American Electric Power*, 188 F.R.D. 509, 510-11 (S.D. Ind. 1999) (striking 31 page, 145 paragraph complaint).

However, to expedite the Court's resolution of this Motion and to conserve judicial resources, the City is requesting limited relief, namely that the Court strike specific identified paragraphs from the 374-paragraph Amended Complaint in accordance with Rule 12(f) and for failure to comply with Rule 8. For example:

- "In 1968, Chicago Police confronted protestors outside the Democratic National Convention. Officers had been given orders to shoot to kill if protests escalated and many officers took this as a blank check for violence. A CBS reporter observed: "Now they're moving in, the cops are moving and they are really belting these characters. They're grabbing them, sticks are flailing. People are laying on the ground. I can see them, colored people. Cops are just belting them; cops are just laying it in. There's piles of bodies on the street. There's no question about it. You can hear the screams, and there's a guy they're just dragging along the street and they don't care. I don't think… I don't know if he's alive or dead. Holy Jesus, look at him. Five of them are belting him, really, oh, this man will never get up." Am. Compl., ¶ 44.

- "Burge and his midnight crew are just some of many examples of Chicago police officers who have engaged in patterns of abuse. Detective Richard Zuley was the subject of investigations into his use of torture in the 1990s and early 2000s. Detective Reynaldo Guevara is accused of abusing and framing at least 51 people for murder, most of them Black or Latinx. Former Chicago Police Sergeant Ronald Watts and his tactical team engaged in robbery, extortion, evidence fabrication, and excessive force in the Ida B. Wells Homes in Chicago throughout the 2000s. Commander Glenn Evans was implicated in at least 45 excessive force complaints between 1988 and 2008—more than any other CPD officer during those decades. The City of Chicago was on notice about the criminal activities of these and many other abusive officers, but failed to take action to stop them." *Id.*, ¶ 49.

- "In 1999, a Chicago gang loitering ordinance was found to be unconstitutional by the Supreme Court in City of Chicago v. Morales, 527 U.S. 41 (1999). The ordinance had been used by police to engage in street sweeps, arresting about 45,000 people over three years. Most of the people targeted were Black and Latinx, many of whom were not gang members. The ordinance had no discernible impact on the crime rate. In striking it down, the Supreme Court held that the ordinance created a 'potential for arbitrary enforcement,' *id*. at 56, because it 'afford[ed] too much discretion to the police,' *id*. at 64, and 'reach[ed] a substantial amount of innocent conduct,' *id*. at 60." *Id.*, ¶ 54.

These allegations and the reasons for requesting that they be stricken are identified in Exhibit A along with the other paragraphs Defendant seeks to strike.

I. The Court Should Strike Certain Allegations from the Amended Complaint that are Racially Charged and Unnecessary for a Short Plain Statement of the Case.

The Amended Complaint contains racially charged allegations that are immaterial, redundant and/or scandalous and, therefore, should be stricken pursuant to FRCP 12(f). Racially charged, redundant, and inflammatory language in a complaint is appropriate for striking, even in

cases claiming racial discrimination. *Bd. of Educ. of Thornton Twp. High Sch. Dist. 205 v. Bd. of Educ. of Argo Cmty. High Sch. Dist. 217*, No. CIV A. 06 C 2005, 2006 WL 1896068, at *2 (N.D. Ill. July 10, 2006). In *Thorton Township*, the plaintiff alleged a Section 1983 claim after two new school conferences were formed, resulting in racially segregated student populations. *Id.* at *1. Even though there was a race discrimination claim, the court found that the highly charged and inflammatory racial allegations (describing school policy as "apartheid" or using language such as "white flight" and "racial Mason-Dixon line") were inappropriate hyperbole. The Court further struck long racially charged quotes from a school board member because they were redundant of other "short and plain" allegations and "served no purpose other than scandalizing defendants conduct." *Id.* at 3. Similarly, in the present case, Plaintiffs make allegations that have no purpose other than to scandalize the conduct of all CPD officers, despite Plaintiffs' admission that only a small fraction of officers are responsible for a disproportionate share of the alleged use of excessive force.[2] These allegations and the reasons for requesting that they be stricken are identified in the first section of Exhibit A.

II. The Allegations that Relate to Historical Lawsuits, Settlements, and Underlying Investigative Records Should be Stricken As Redundant, Immaterial and Prejudicial.

As stated above, redundant allegations are those that amount to unnecessary repetition of other averments already set forth in the pleading. *In re Asbestos Cases*, 1990 WL 36790, *4 (N.D. Ill. 1990) (citing 5 Wright & Miller, Federal Practice and Procedure § 1382 (1969)). Superfluous or redundant historical allegations are properly the subject of a motion to strike. *Brown v. ABM Industries, Inc.*, No. 15 C 6729, 2015 WL 7731946, at *2 (N.D. Ill. Dec 1, 2015); *see also Wilkerson v. Butler*, 229 F.R.D. 166 (E.D. Cal. 2005).

[2] Plaintiffs' Amended Complaint admits, "A small percentage of CPD officers are responsible for a disproportionate share of police brutality…." Am. Compl., p. 39, ¶ 62.

In *Brown v. ABM Industries, Inc.*, the plaintiffs filed a putative class action on behalf of janitors who were required to write down their time in handwritten time sheets for their scheduled work hours only and to exclude any pre-shift work. No. 15 C 6729, 2015 WL 7731946, at *2 (N.D. Ill. Dec 1, 2015). Time sheets were prepared prior to the start of their shift. *Id.* The plaintiff, individually and on behalf of others similarly situated, filed an action claiming this practice violated the Fair Labor Standards Act and the Illinois Minimum Wage Law. *Id.* at *1. In the complaint, the plaintiff included several allegations involving "minutiae of similar lawsuits" against the defendant employer. *Id.* at *6. On a FRCP 12(f) motion to strike, the court found these allegations to be unnecessary clutter, and struck them to expedite the litigation. *Id.*

Similar to the complaint in *ABM Industries*, the allegations identified in Exhibit A of the Amended Complaint describe acts by CPD and/or CPD officers that allegedly occurred between 1968 and 2014. Am. Compl., pp. 22-27, ¶¶ 44-56. Plaintiffs describe the alleged facts underlying eighteen settled lawsuits and complaints in which officers were alleged to have used excessive force. Am. Compl., pp. 27-39, ¶¶ 57-62. For example, Paragraph 45 of the Amended Complaint alleges police action against the Black Panther Party:

> 45. In 1969, the CPD executed Black Panther leader and activist Fred Hampton as he slept beside his pregnant girlfriend. Mark Clark, another activist in the apartment raided by the police, was also killed. The six survivors, several of whom were seriously wounded, were beaten by police and arrested. A later investigation revealed that the police fired 82 to 99 shots at Hampton and the others in the apartment. In 1982, the City agreed to settle a civil suit filed on behalf of the survivors and relatives of Hampton for $1.85 million.

Am. Compl., p. 23. Allegations about events like these – occurring decades ago, and involving officers who have most certainly since retired and policies that are most likely outdated – are irrelevant to CPD's current patterns and practices of policing. Moreover, requiring the City to go

to the trouble of undertaking the factual investigation to respond to allegations regarding these long-ago events would be unduly prejudicial.

Similarly, the Amended Complaint alleges specific facts from ongoing litigation, such as Paragraph 62:

> b. *Brooks v. Wisz*, 1:17-cv-02851: On August 18, 2015, the plaintiff, a Black man, was driving through Chicago from where he lived in Iowa. He had a valid permit to carry a gun. CPD officers pulled him over at Augusta Boulevard and Central Park Avenue while he was traveling with three passengers in his car. The officers approached the car with guns drawn and began yelling at the passengers to exit the vehicle. The plaintiff showed the police his weapon permit but the officers responded that they would arrest him anyway. The officers then forcefully removed him from the car. When the plaintiff asked why he was being stopped, the officers told him that the car was carrying too many Black passengers and that, since one out of every three Black people are "dirty," someone in the car must have been doing something illegal. The plaintiff was then arrested and charged with aggravated unlawful use of a weapon.

Am. Compl., p. 30. The Amended Complaint also alleges specific facts from numerous lawsuits that have been settled, such as Paragraph 61:[3]

> a. *Price v. City of Chicago et al*, 1:16-cv-01946: On May 31, 2015, the plaintiff, a Black man and Navy veteran, was involved in a minor car accident behind his home on Congress Parkway. A CPD officer arrived on the scene following the accident. The plaintiff exited the car and began recording the encounter on his cell phone. The officer ordered the plaintiff to put his hands on the hood of his vehicle and the plaintiff complied. The officer then punched the plaintiff in the face and threw him to the ground. The officer placed his knee on the plaintiff's back and slammed his head against the pavement multiple times. A few minutes later, other officers arrived on the scene and kicked the plaintiff. One officer was still on top of the plaintiff when another deployed pepper spray. Yet another officer then deployed his Taser on the plaintiff while he was still on the ground. The officers then handcuffed the plaintiff.

[3] The Amended Complaint includes a typographical error in numbering. After Paragraph 62, the Amended Complaint restarts numbering at Paragraph 61 instead of continuing to Paragraph 63. Thus, Paragraph 61 and 62 appear twice in the Amended Complaint. The page citation will avoid any confusion as to which paragraph is cited.

Am. Compl., pp. 34-35. These allegations (along with other, similar allegations identified in Exhibit A) are likewise precisely the type of historical allegations that, consistent with Rule 12(f) and *ABM Industries, Inc.*, should be stricken. Such "minutiae of similar lawsuits" add nothing to Plaintiffs' claims, unnecessarily clutter the case, and foist on Defendant an unwarrantedly burdensome factual investigation.

III. Relief Requested by Plaintiffs That Is Unrelated to CPD's Use of Force Policies Should be Stricken as Irrelevant and Incapable of Redressing the Injuries Alleged in the Amended Complaint.

Lastly, Plaintiffs' prayer for relief seeks injunctive relief that is wholly unrelated to remedying the central allegations in Plaintiffs' complaint – CPD's alleged practice of using excessive force against minorities. Indeed, Plaintiffs are transparent in their efforts to involve this court in the overhaul and oversight of nearly all aspects of CPD policy: they seek "an order from this Court designed to fundamentally transform the CPD operations related to use of force policies and practices, accountability, supervision, discriminatory policing, training, data collection, and transparency, and ensure the CPD provides officers with the comprehensive training and supportive resources that they need to eliminate excessive and discriminatory uses of force." Am. Compl., p. 134, (c) (iv).

But Plaintiffs are not entitled to relief completely untethered from the allegations of their complaint. *See Geinko v. KPMG LLP*, No. 00 C 5070, 2002 WL 31867708, at *3 (N.D. Ill. Dec. 20, 2002) (granting motion to strike prayer for relief requesting punitive damages when not supported by facts and law); *Seidel v. Chicago Sav. & Loan Ass'n*, 544 F. Supp. 508, 510 (N.D. Ill. 1982) (striking request for injunctive relief when plaintiff did not establish class). In particular, sections (e) and (f) of Plaintiffs' prayer for relief serve no role in remedying future incidences of excessive force. Sections (e) and (f) request:

> e) DATA AND TRANSPARENCY: The development and implementation of a system of public dissemination of all data and information pertaining to officer misconduct, including but not limited to: (i) judicial findings that an officer is not credible, (ii) civil lawsuits pertaining to all uses of force and the attendant investigations, whether conducted by BIA or COPA, including complainant allegations and, (iii) the release of video and other information in police misconduct and shooting investigations within 48 hours of the incident/receipt of the video. All public data used in the preparation of any reports should be made available as machine-readable data through a publicly accessible portal;
>
> f) SUPPORTIVE SERVICES FOR SURVIVORS OF POLICE VIOLENCE: The provision of comprehensive, community based, trauma-informed support services for individuals who are victims of excessive force and other forms of police misconduct.

Am. Compl., p. 136. The City is unaware of any legal authority supporting such relief. No basis exists for these requests because they are not directed at preventing the recurrence of future injuries of the alleged class members. Nor is there any causation alleged between these systems and the harms that Plaintiffs allege. Whether the public has access to machine readable data and searchable systems with access to information on lawsuits, disciplinary actions, video and audio recordings, and administrative proceedings will have no effect on how officers approach a potential force event and will use their training. Similarly, support services for victims of excessive force will not ensure policing that uses more measured and constitutional use of force tactics. Accordingly, the requests for relief set forth in Sections (e) and (f) should be stricken.

CONCLUSION

This motion seeks to narrow the focus of this action to relevant allegations and corresponding relief; it also seeks to avoid re-litigating settled and pending lawsuits, and to remove redundant, immaterial, or impertinent matter. By striking the portions of the Amended Complaint identified by the City, the Court will properly limit the litigation and allow it to proceed on a manageable basis.

WHEREFORE, Defendant the City of Chicago respectfully requests that this Court grant its Motion to Strike Allegations from the Amended Complaint; stay the City's obligation to answer the allegations set forth in Exhibit A to the Motion until this Motion is resolved; and grant any other relief this Court deems just and proper.

Dated: August 21, 2017

Respectfully submitted,

CITY OF CHICAGO

By: /s/ Heather A. Jackson
One of its Attorneys

Allan T. Slagel (ARDC #6198470)
aslagel@taftlaw.com
Heather A. Jackson (ARDC #6243164)
hjackson@taftlaw.com
Jeffrey M. Schieber (ARDC #6300779)
jschieber@taftlaw.com
TAFT STETTINIUS & HOLLISTER LLP
111 East Wacker Drive
Suite 2800
Chicago, Illinois 60601
Telephone: (312) 527-4000
Facsimile: (312) 527-4011
21150290.3