

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

DANIEL TAYLOR,)	
)	
Plaintiff,)	
)	Case No. 14 C 0737
v.)	
)	Judge John Z. Lee
CITY OF CHICAGO, et al.,)	
)	Magistrate Judge Sheila M. Finnegan
Defendants.)	

CITY OF CHICAGO’S MOTION FOR SUMMARY JUDGMENT (CORRECTED)

Defendant, the City of Chicago (“City”), by its attorneys, pursuant to Federal Rule of Civil Procedure 56, hereby moves this Court for summary judgment in its favor. In support thereof, the City states:

1. This lawsuit arises out of plaintiff’s arrest and prosecution for the November 16, 1992 murders of Jeffrey Lassiter and Sharon Haugabook at 910 W. Agatite Street in the City of Chicago. Plaintiff has filed a complaint against the City, former and current Chicago police officers Anthony Villardita, Thomas Johnson, Brian Killacky, Terry O’Connor, Rick Abreu, Sean Glinski, Robert Delaney, and Michael Berti, (the “Defendant Police Officers”), and against “Unidentified Employees” of the City. (Dkt. 1). Plaintiff’s complaint included the following counts:

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| Count I | §1983 Fifth and Fourteenth Amendments |
| Count II | §1983 Violation of Due Process |
| Count III | §1983 Failure to Intervene |
| Count IV | §1983 Conspiracy to Deprive Constitutional Rights |
| Count V | § 1983 <i>Monell</i> Policy Claim |
| Count VI | State Law Malicious Prosecution |

Count VII	State Law Intentional Infliction of Emotional Distress
Count VIII	State Law Civil Conspiracy
Count IX	State Law <i>Respondeat Superior</i>
Count X	State Law Indemnification and Ill. Rev. Stat. 10/9-102

On February 19, 2015, this Court dismissed counts II, III, and IV to the extent those counts were based on an alleged due process violation resulting from defendants' alleged coercion of his co-defendants and Grimes. (Dkt. 163). This court also dismissed Count VII (intentional infliction of emotional distress) with prejudice. *Id.* at 17. The remaining portions of the motion to dismiss were denied. *Id.*

2. With respect to the claims against the Defendant Police Officers, they are separately moving for summary judgment on all remaining federal and state claims pending against them. As against the City, plaintiff asserts vicarious theories of recovery in Count IX (*respondeat superior*) and Count X (indemnity) of the complaint. In these derivative claims, plaintiff seeks to recover against the City solely based on the alleged liability of the Defendant Police Officers. Accordingly, the City joins and adopts the motion for summary judgment filed by the Defendant Officers.¹ To the extent summary judgment is entered in favor of the Defendant Police Officers on any of plaintiff's claims, there would be no remaining basis to

¹ With respect to Count V (*Monell*), on November 25, 2014, this Court ruled that the City's motion to bifurcate section 1983 claims and to stay discovery and trial on those claims was granted in part and denied in part. (Dkt. 122). This Court ordered that "Discovery as to the *Monell* claim is stayed, pending discovery with respect to the claims against the individual defendants. Once the discovery is complete, the court will entertain a motion to continue the stay pending resolution of any motions for summary judgment with respect to the individual defendants. The motion is denied in all other respects." (Dkt. 122). On November 29, 2017, after briefing and argument, Magistrate Judge Finnegan denied plaintiff's motion to commence policy and practice discovery. (Dkt. 404). Accordingly, the City does not separately move for summary judgement on the *Monell* claim at this time.

impose vicarious liability on the City for those claims through Count IX and/or Count X, and summary judgment should likewise be entered in favor of the City.

3. Separately, plaintiff's complaint makes reference to "unidentified employees" of the City of Chicago in its caption and introductory paragraph. However, plaintiff does not otherwise identify those unknown persons or indicate what they allegedly did. (Dkt. 1). Any claims against these "unidentified employees" should now be dismissed in their entirety. As the Seventh Circuit has explained, summary judgment "is the 'put up or shut up' moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Schacht v. Wisconsin Dep't of Corr.*, 175 F.3d 497, 504 (7th Cir. 1999); *see also Johnson v. Cambridge Industries, Inc.*, 325 F.3d 892, 901 (7th Cir. 2003). Inferences that are supported by only speculation or conjecture will not defeat a summary judgment motion. *McCoy v. Harrison*, 341 F.3d 600, 604 (7th Cir.2003). Plaintiff cannot maintain claims against unidentified individuals where they have failed to identify any individual alleged to be a City employee who committed an allegedly wrongful act.

4. Under Seventh Circuit precedent, dismissal of the so-called "unidentified" defendants is warranted where the plaintiff fails during the discovery period to identify the unknown or unnamed parties referenced in his complaint. *See Williams v. Rodriguez*, 509 F.3d 391, 402 (7th Cir. 2007) (Discovery is a plaintiff's opportunity to identify unknown and unnamed defendants; the failure to do so before the close of discovery warranted dismissal of unknown and unnamed defendants from the case); *Strauss v. City of Chicago*, 760 F.2d 765, 770 n. 6 (7th Cir. 1985) (dismissal of "John Doe" defendant proper where plaintiff did not identify that unknown defendant, because plaintiff has the responsibility of taking the steps necessary to identify the officer responsible for his injuries); *Wudtke v. Davel*, 128 F.3d 1057, 1060 (7th Cir.

1997) (pointless to include lists of anonymous defendants in federal court). Plaintiff here has not taken the necessary steps to identify any “unnamed” officer responsible for any injuries. *Strauss*, 760 F.2d at 770 n. 6. He has failed to identify any unknown or unnamed City employee who allegedly caused him injury through wrongful conduct. As a result, plaintiff’s claims against the so-called “unidentified employees” of the City should be dismissed.

5. Additionally, with respect to the Illinois state law claims, the statute of limitations is one year. *See* 745 ILCS 10/8-101, Local Government and Governmental Employees Tort Immunity Act; *Hernandez v. Kirksey*, 306 Ill. App. 3d 912, 715 N.E.2d 669, 672 (1st Dist. 1999). Plaintiff has not taken any steps or sought leave to amend his pleadings to identify unnamed or unknown employees. The latest possible trigger date for the limitations period on the state law claims was 2013, when plaintiff’s criminal conviction was vacated. (Dkt. 1 at para. 40). It is now well past the one year statutory period for filing state law claims. Thus, it would be futile at this late date to add a named defendant to this action. Such an attempt would be untimely based on the Illinois statute of limitations and improper based on plaintiff’s failure to identify the unidentified employees during the discovery period. Any claims against “unidentified employees” of the City should now be dismissed with prejudice.

WHEREFORE, the City requests: that summary judgment be entered in its favor and against plaintiff on Counts IX and X of plaintiff’s complaint for the reasons stated above and for the reasons set forth in the motion for summary judgment filed by the Defendant Police Officers; that plaintiff’s claims against “unidentified employees” of the City be dismissed with prejudice; and, any other relief this Court deems appropriate, including costs.

Respectfully submitted,

THE CITY OF CHICAGO

By: s/ Daniel M. Noland

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CERTIFICATE OF SERVICE

I hereby certify that on **September 14, 2018**, I electronically filed the foregoing **Defendant City of Chicago's Motion for Summary Judgment (*Corrected*)** with the Clerk of the Court using the ECF system, which sent electronic notification of the filing on the same day to:

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