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

DANIEL TAYLOR.,	)	
	)	
Plaintiff,	)	No. 14 C 737
	)	
v.	)	Judge John Z. Lee
	)	
CITY OF CHICAGO, *et al.*,	)	JURY TRIAL DEMANDED
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT CITY OF CHICAGO'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Plaintiff DANIEL TAYLOR, by his attorneys, the RODERICK AND SOLANGE MACARTHUR JUSTICE CENTER, and LOEVY & LOEVY, responding in opposition to the motion for summary judgment filed by Defendant City of Chicago [Dkt. 488] as follows:

Discussion

The City seeks summary judgment based on two of Plaintiff's state-law claims, but not as to Plaintiff's *Monell* claim against the City, which remains pending. Dkt. 488 (City Mot.) at 2 n.1 In particular, the City seeks summary judgment on Plaintiff's claims of *respondeat superior* and indemnification to the extent the Officer Defendants prevail on their motion for summary judgment. The City also seeks judgment in its favor as to the unidentified individual officers named in Plaintiff's Complaint. The City's motion should be denied.[1]

A significant problem with the motion is that it rests on the misplaced notion that the City's liability on theories of *respondeat superior* and indemnification is completely co-terminus with the liability of the Defendant Officers. *Id.* at 2 ("[P]laintiff seeks to recover against the City *solely* based

[1] Plaintiff does not dispute the City's Statement of Facts, Dkt. No. 489. However, the City's facts are immaterial to the motion because the City has misunderstood or ignored the relevant material facts that illustrate its motion fails.

on the alleged liability of the Defendant Police Officers.") (emphasis added). Indeed, the City suggests that even partial summary judgment on "any" claims in favor of the Officer Defendants would leave no "remaining basis" to impose vicarious liability on the City through respondeat superior or indemnification. The City is mistaken.

As it relates to *respondeat superior*, the City's liability would come through Plaintiff's state law claims, malicious prosecution and civil conspiracy, and not Plaintiff's federal claims. *Cf. Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 691 (1978) ("[A] municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory."). But, the Defendant Officers have not moved for summary judgement on any of Plaintiff's state law claims.[2] *See generally* Dkt. 487. Accordingly, these claims shall be tried, and therefore no basis to find that the City is entitled to judgment as a matter of law on the *respondeat superior* claim at this juncture.

Second, as it relates to indemnification, the City's argument is also flawed. Under the applicable statute, "the City is required to indemnify Defendant Officers for any compensatory damages awarded against them." *Ackerman v. Allen*, 2017 WL 1536447, at *7 (N.D. Ill. Apr. 27, 2017) (citing 745 ILCS 10/2-301). And, City must indemnify officers for liability on state law claims and federal law claims alike so long as the act was committed within the scope of their employment—a proposition the City does not contest here. The Defendant Officers have not challenged all of

[2] The Defendant Officers motion for summary judgment does not address Plaintiff's confession-related claims, part of Plaintiff's due process claim for the fabrication of evidence, or any of Plaintiff's state-law claims. It is a partial motion for summary judgment in substance. At the same time, the Defendant Officers re-raised their extreme request for unwarranted sanctions, including dismissal of this suit. Dkt 487, at 8-10. This request was already denied. Dkt. 462. In addition from being a re-gurgitation of a request that was already denied, the sanctions issue—which focuses on the inconsistent testimony of Plaintiff and the reciprocal inconsistent testimony of Defendant Glisnki—is not something that is proper for summary judgment as a matter of law, particularly because significance of the facts around the issue are disputed and involve "weighing" evidence and making credibility determinations, anathema to summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Plaintiff's federal claims, including his coerced confession and his due process claim related to the fabrication of evidence. Dkt. 487. As a consequence, with state-law and federal law claims not substantively challenged at summary judgment , the City cannot possibly meet its burden of showing that there is no way, as a matter of law, the result of this suit will fail to trigger its obligation to indemnify a City employee, as required. *See* Fed. R. Civ. P. 56(a). The facts cited by the City in their Rule 56.1 statement do not even attempt to make this showing and, as a consequence, the City's burden has not and cannot be met.

Third, the City's contention that Plaintiff's claims are entirely derivative of the Defendant Officers' liability is also misguided given the outstanding *Monell* claim. Plaintiff alleges that individuals working in the scope of their employment for City are responsible for the violation of his constitutional rights, particularly with respect to the withholding of material evidence from his criminal defense. For example, Plaintiff's defense attorneys sent a subpoena to the 23rd District, but nothing was returned. PSOF, ¶ 115. And, what should have been returned was a wealth of materially exculpatory and impeachment evidence. *Id.* ¶¶ 72-112. As explained in Plaintiff's Response to the Defendant Officers' motion, a reasonable jury can easily find the Defendant Officers were liable for this *Brady* violation.

However, a reasonable jury need not find that these named officers were individually at fault in order to find that the City—through its practices, customs, and polices—is nonetheless liable for the deprivation of Plaintiff's rights. *See Thomas v. Cook County Sheriff's Department,* 604 F.3d 293, 305 (7th Cir. 2010) ("a municipality can be held liable under *Monell*, even when its officers are not, unless such a finding would create an *inconsistent* verdict[.]"). Since Plaintiff's *Monell* claims (including relating to the City's street file practice and practice of coercing confessions) have not been decided, and are not raised in this round of briefing, the City remains on the hook in this lawsuit, regardless of the Officer Defendants' success on their motion for summary judgment.

In such a scenario, unidentified employees of the City of Chicago, implementing the municipal policy, practice or custom, would be the people who violated Plaintiff's due process rights. Given this, it is inappropriate to dismiss the named unidentified officers at this juncture, since the City has successfully persuaded this Court to bifurcate "*Monell*-only" discovery. Having done that, the City cannot now turn around and argue that Plaintiff should not be allowed to later identify, for *Monell* purposes, potential people responsible for the violation of Plaintiff's due process rights. In fact, the authority cited by the City, *Williams v. Rodriguez*, 509 F.3d 391, 402 (7th Cir. 2007) supports this conclusion: discovery is the time for plaintiff to identify known defendants. The City sought to prevent Plaintiff from engaging in such discovery, and its motion was granted in 2014, before any statute of limitations would have run on a federal claim, given the 2-year statute of limitations. Dkt. 113. Then, even after years of litigation, when Plaintiff sought again to conduct *Monell* discovery early in 2017, *see* Dkt. 217, and continuing in even narrower fashion months later, *see* Dkt. 384, the City successfully persuaded the Magistrate Judge to prevent Plaintiff from engaging in *Monell* discovery just last year.*See* Dkt. 404. At the City's request, Plaintiff has not conducted *Monell* discovery in which unknown defendants responsible for carrying out the City's policies may be implicated, it is clearly premature to dismiss these entities.

Finally, whether the City could raise a statute of limitations defense to Plaintiff's later naming of currently-unknown employees who may be identified in *Monell* discovery, which the City has thus far deferred, is a question that cannot be answered at this time. Given the procedural posture, the outlook favors Plaintiff. For one, Plaintiff would argue that estoppel should stop the City from raising such a defense, given its success in getting the Court to accept its position and due to the fact that the City would "'derive an unfair advantage if not judicially estopped.'" *Janusz v. City of Chicago*, 832 F.3d 770, 776 (7th Cir. 2016) (quoting *Wells v. Coker*, 707 F.3d 756, 760 (7th Cir. 2013)). In addition, keeping in mind City would bear the burden on an affirmative defense, *Laouini v. CLM*

Freight Lines, Inc., 586 F.3d 473, 475 (7th Cir. 2009), should a witness be discovered there will also be a question about whether that person should have been discovered earlier as it relates to the statute of limitations. That is a fact question for the jury as a general matter, and cannot be resolved on summary judgment here. *See, e.g.*, *Richardson ex rel. Estate of Dalen v. Kubiesa*, 2004 WL 728203, at *3 (N.D. Ill. Mar. 30, 2004) ("The time at which a party has the requisite knowledge under the discovery rule to maintain a cause of action is ordinarily a question of fact for the jury.").

In sum, the City has not met its burden of showing an entitlement to judgment as a matter of law at this juncture and even if the Defendant Officers prevail on the substance of their motion for summary judgment.

WHEREFORE, Plaintiff respectfully requests that the City's motion be denied.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, David B. Owens, an attorney, hereby certify that on December 7, 2018, I filed the foregoing Plaintiff's Response to the City's Motion for Summary Judgment using the Court's CM/ECF system, which effected service on all counsel of record listed below.

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