

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

DOROTHY HOLMES, on her own )  
behalf and as Special Administrator of the )  
Estate of RONALD JOHNSON III, )  
deceased, )

Plaintiff, )

v. )

OFFICER GEORGE HERNANDEZ )  
(#16231), individually, and the CITY OF )  
CHICAGO, )

Defendants. )

**Case No. 14 CV 8536**

Judge Chang

JURY DEMAND

**DEFENDANT CITY’S ANSWER TO PLAINTIFF’S THIRD AMENDED  
COMPLAINT, AFFIRMATIVE DEFENSES  
AND JURY DEMAND**

Defendant, City of Chicago, by its attorney, Stephen R. Patton, Corporation Counsel of the City of Chicago, hereby submits its answer to Plaintiff’s Third Amended Complaint, affirmative defenses, and jury demand as follows:

**INTRODUCTION**

- 1) This action, arising out of the death of Ronald Johnson III (“Decedent”), is brought pursuant to 42 U.S.C. §1983 to address deprivations of Decedent’s rights under the Constitution of the United States.

**ANSWER:** The City admits that Plaintiff brings this lawsuit pursuant to 42 U.S.C. § 1983 to address the alleged deprivations of decedent’s rights under the U.S. Constitution and that this action arises out of the death of Ronald Johnson III. The City denies, upon information and belief, any wrongful or illegal conduct.

**JURISDICTION**

- 2) The jurisdiction of this Court is invoked pursuant to the Civil Rights Act, 42 U.S.C. §§ 1983 and 1985; the Judicial Code 28 U.S.C. §§ 1331 and 1343(a); the Constitution of the United States; and pendent jurisdiction as provided under U.S.C. § 1367(a).

**ANSWER:** The City admits that jurisdiction is proper.

**VENUE**

- 3) Venue is proper under 28 U.S.C. Section 1391 (b). All of the parties reside in this judicial district and the events described herein all occurred within this district.

**ANSWER:** The City admits that venue is proper.

**THE PARTIES**

- 4) The Plaintiff, Dorothy Holmes, is the mother of the Decedent and a resident of Chicago, Illinois.

**ANSWER:** The City admits, upon information and belief, the allegations contained in this paragraph.

- 5) The Defendant, Officer Hernandez, was at all relevant times a duly appointed police officer of the City of Chicago and at all relevant times was acting within his scope of employment and under color of law.

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

**FACTUAL SUMMARY**

**THE FATAL SHOOTING OF RONALD JOHNSON**

- 6) On or about October 12, 2014, Johnson was in the area of the 5300 block of South King Drive in Chicago, Illinois.

**ANSWER:** The City admits, upon information and belief, the allegations contained in this paragraph.

7) Johnson was unarmed and was not committing any crime.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

8) Thereafter, without lawful justification or excuse, Defendant Hernandez fired at the Decedent, striking and killing Johnson.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

9) Defendant Hernandez fired at Johnson as Johnson had his back to Hernandez and was moving away from him.

**ANSWER:** The City denies, upon information and belief, that plaintiff has fully or accurately set forth the circumstances relating to the shooting of Ronald Johnson III and, therefore, denies, upon information and belief, the allegations set forth in this paragraph.

10) Johnson was multiple feet away from Defendant Hernandez when Hernandez began firing his weapon.

**ANSWER:** The City denies, upon information and belief, that plaintiff has fully or accurately set forth the circumstances relating to the shooting of Ronald Johnson III and, therefore, denies, upon information and belief, the allegations set forth in this paragraph.

11) Said actions of Defendant Hernandez were intentional, willful and wanton and/or committed with reckless indifference and disregard for Decedent's rights.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

12) Said actions of Defendant Hernandez were objectively unreasonable under the circumstances.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

- 13) The Cook County Medical Examiner's Office determined Johnson was shot a total of 2 times, with one shot entering at the posterior right shoulder and another shot entering his right posterior thigh.

**ANSWER:** The City denies, upon information and belief, that Plaintiff has fully or accurately set forth the findings of the Cook County Medical Examiner with respect to the examination of Ronald Johnson. Answering further, the City admits, upon information and belief, that the Cook County Medical Examiner found a gunshot wound of entrance on Ronald Johnson's "posterior, inferior right shoulder" and a gunshot wound of entrance on Ronald Johnson's "right distal, posterior thigh."

- 14) The entire shooting was captured on a dash cam video of a responding unit.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

**CODE OF SILENCE: CHICAGO POLICE ATTEMPTED TO COVER UP THE  
FATAL SHOOTING OF RONALD JOHNSON**

*City of Chicago Allows False and Misleading Information to be Disseminated to the Public*

- 15) Within an hour of the shooting, Defendant City of Chicago allowed false and misleading information to be disseminated to the media, through the Chicago Police Department's Office of News Affairs as well as Pat Camden, a spokesman for the Fraternal Order of Police (F.O.P.).

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

- 16) A statement released by the Chicago Police Department's Office of News Affairs stated that "a foot pursuit ensued during which time the offender pointed his weapon in the direction of the pursuing officers" and that "as a result of this action, an officer discharged his weapon striking the offender."

**ANSWER:** The City admits that an October 13, 2014 article in the Chicago Tribune contained said quotation from a preliminary statement from the Chicago Police Department's Office of News Affairs.

- 17) Camden announced to the media that a weapon belonging to Johnson was recovered at the scene.

**ANSWER:** The City admits, upon information and belief, that an October 13, 2014 article in the Chicago Tribune claims that Pat Camden of the Fraternal Order of Police made a statement with words to that effect. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

- 18) Each of the foregoing statements to the media by the Chicago Police Department's Office of News Affairs and Camden was either misleading or outright false. The false and misleading statements were an attempt to misinform the community regarding the true facts and circumstances surrounding the fatal shooting of Johnson, in an effort to portray the fatal shooting as "justified."

**ANSWER:** The City denies, upon information and belief, the allegations in this paragraph as they pertain to the City. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they pertain to statements made by Pat Camden.

- 19) As seen in a dash cam video, Johnson was never an imminent threat to the police, he certainly never turned and pointed a weapon at any officer, and was in fact *moving away* from Defendant Hernandez with his back to Hernandez when he was shot.

**ANSWER:** The City denies, upon information and belief, that plaintiff has fully or accurately set forth the circumstances relating to the shooting of Ronald Johnson III and, therefore, denies, upon information and belief, the allegations set forth in this paragraph.

- 20) On information and belief, dash cam video from squad car(s) at the scene of the shooting was recovered by Chicago police within hours of the shooting and viewed within a short period of time following the shooting.

**ANSWER:** The City admits, upon information and belief, that dash cam video from squad cars at the scene of the shooting was recovered by the Chicago police and viewed at some point after the shooting. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

- 21) Accordingly, within hours of the fatal shooting of Johnson, Defendant City of Chicago, through its agency, the Chicago Police Department, knew that stating that Johnson “pointed his weapon in the direction of the pursuing officers” and “as a result of this action, an officer discharged his weapon striking the offender” were completely misleading and false descriptions of this fatal police shooting. Yet, Defendant City of Chicago, through its agency, the Chicago Police Department, never issued a statement correcting the false and misleading information disseminated to the media by the F.O.P. on October 12, 2014.

**ANSWER:** The City denies, upon information and belief, that Plaintiff has fully or accurately set forth the circumstances of the underlying incident. The City further denies, upon information and belief, that it disseminated false or misleading information to the media and therefore denies, upon information and belief, that it had to correct the above-referenced statement that it issued.

***Chicago Police Officers Provide False Statements and Conspire to Have Hernandez’ Shooting be Deemed Justified***

- 22) The post-shooting investigation of Johnson resulted in a multi-page report which contained false and fabricated statements regarding Johnson having a gun by Defendant Hernandez as well as other officers on scene.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

- 23) Defendant Hernandez conspired with investigating detectives to provide a false account of the incident so that his shooting of the Decedent would be deemed justified.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

- 24) Investigating detectives conspired with various officers on the scene, including Officers Gonzalez, Leano, Hooper, Monte, Liss, Jones, Gilliana, Costello, and Thompson to obtain false statements from these officers in support of Hernandez' account of the shooting.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

- 25) On information and belief, one or more of the officers on scene, including without limitation the Defendant officer, can be heard on OEMC recordings requesting that communications pertaining to this incident be made off-air and that officers instead be contacted on their cell phones.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

- 26) On information and belief, one or more of the officers on scene, including without limitation the Defendant officer, took photographs of the crime scene and/or the decedent's body on the scene. On information and belief, said photographs have been concealed and/or destroyed.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

- 27) The misconduct of the officers as outlined above was the result of a custom, practice and *de facto* policy of the City of Chicago to intentionally mislead the public and cover up an unjustified fatal shooting by an officer, otherwise known as a code of silence.

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

**COUNT I—EXCESSIVE FORCE (Section 1983)**  
**(Defendant Hernandez)**

28) Plaintiff hereby incorporates all previous paragraphs as though fully set forth herein.

**ANSWER:** The City restates and incorporates herein its answers to paragraphs 1 through 27.

29) The actions of Defendant Hernandez as set forth hereto constitute excessive force against Decedent, thus violating his rights under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. Section 1983.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

30) As a direct and proximate consequence of Defendant Hernandez' conduct, the Decedent suffered damages, including without limitation violations of his constitutional rights, emotional anxiety, fear, pain and suffering, and monetary expense.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

**COUNT II- BATTERY (state law claim)**  
**(Defendant Hernandez)**

31) Plaintiff hereby incorporates all previous paragraphs as though fully set forth herein.

**ANSWER:** The City restates and incorporates herein its answers to paragraphs 1 through 30.

32) The conduct of Defendant Hernandez resulted in offensive physical contact with the Decedent made without his consent, thus constituting battery under Illinois law.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.



33) Defendant Hernandez' actions proximately caused the Decedent to suffer injuries, including without limitation great bodily harm and death as well as pain and suffering.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

**COUNT III—WRONGFUL DEATH (state law claim)**  
**(Defendant Hernandez)**

34) Plaintiff hereby incorporates all previous paragraphs as though fully set forth herein.

**ANSWER:** The City restates and incorporates herein its answers to paragraphs 1 through 33.

35) The actions of Defendant Hernandez as set forth hereto caused the wrongful death of the Decedent, in violation of ILCS 740 180/1 et seq.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

36) Defendant Hernandez' actions proximately caused the Decedent to suffer injuries, including without limitation great bodily harm and death as well as pain and suffering.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

37) As a result of Defendant Hernandez' conduct, the Estate has suffered injury, including without limitation incurring medical and/or funeral expense and the loss of society and companionship.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

**COUNT IV—SURVIVAL ACTION (state law claim)**  
**(Defendant Hernandez)**

38) Plaintiff hereby incorporates all previous paragraphs as though fully set forth herein.

**ANSWER:** The City restates and incorporates herein its answers to paragraphs 1 through 37.

39) After the Decedent was shot, he survived for a period of time during which he experienced conscious pain and suffering.

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

**COUNT V—FAMILY EXPENSE ACT (State Law Claim)**  
**(Defendant Hernandez)**

40) Plaintiff hereby incorporates all previous paragraphs as though fully set forth herein.

**ANSWER:** The City restates and incorporates herein its answers to paragraphs 1 through 39.

41) As a direct and proximate cause of Defendant Hernandez' actions which caused the death of the Decedent, Plaintiff Dorothy Holmes, as mother of the deceased, Ronald Johnson III, has been obligated to incur financial expenses including without limitation funeral and burial costs.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

**COUNT VI—MONELL**  
**(City of Chicago)**

42) Plaintiff hereby incorporates all previous paragraphs as though fully set forth herein.

**ANSWER:** The City restates and incorporates herein its answers to paragraphs 1 through 41.

43) The Chicago Police Department (the "Department") is a subsidiary division of Defendant City of Chicago. The City maintains and exercises exclusive control over

the Department, its policies and procedures, as well as the conduct of all of its employees, including Defendant Hernandez, fellow officers, and his supervisors.

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

- 44) Defendant City of Chicago, through its subsidiaries the Chicago Police Department and the Independent Police Review Authority (“IPRA”), has established certain *de facto* policies, practices, and/or customs which were adopted and promulgated through the actions and inactions of senior and intermediate supervising employees of the Chicago Police Department and/or IPRA, and were thereby ratified by the City.

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

- 45) The actions of Defendant Hernandez were done pursuant to one or more of the following *de facto* policies, practices and/or customs of the City that are so pervasive that they carry the force and effect of law.

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

- 46) The Defendant City of Chicago maintains a *de facto* policy, practice, and custom of failing to adequately train, supervise, discipline, and control its police officers. As a matter of both policy and practice, Defendant City of Chicago facilitates the very type of misconduct at issue here by failing to adequately investigate, punish and discipline prior instances of similar misconduct, thereby leading Chicago Police Officers to believe their actions will not be properly scrutinized or result in any significant consequences, and in that way, directly encouraging future abuses such as those that resulted in the death of the Decedent.

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

- 47) Specifically, Chicago Police Officers accused of excessive force are aware of and can be confident that: police officers that receive frequent citizen complaints remain employed with the Department; that IPRA will not investigate those accusations in earnest, refusing to find complaints with merit justified or recommend discipline even where the officer has engaged in excessive force; that IPRA aims to exonerate officers involved in shootings; and that the City’s response to citizen complaints of police misconduct is to bestow honors on officers for their conduct and/or defend/settle civil suits as opposed to disciplining or terminating problem officers.
- a. On information and belief, Officer John Fitzgerald shot Aaron Harrison in 2007 after garnering 25 misconduct complaints between 2001 and 2006. Fitzgerald was awarded the Superintendent's Award of Valor in 2010 for the incident. IPRA ruled the shooting justified, based largely on Fitzgerald's account that Harrison

was attempting to shoot him while running away and a gun recovered on the scene. However, multiple witnesses asserted Harrison was unarmed. In 2013, the City settled the civil suit filed by Harrison's family for \$8.5 million.

- b. On information and belief, in 2005, Officer Rick Caballero shot and killed Ben Romaine, who was driving away from Caballero. Despite a court order ordering that Romaine's vehicle be preserved for evidence, the Chicago Police Department destroyed the vehicle. The City also altered dispatch evidence. In his original conversation with the radio dispatcher, Caballero's dialogue was noted in an initial transcript as "He just, he just uh, he just ran so I took a shot at him." Later, after a deposition in which Caballero allegedly claimed his words were "he just rammed us," not "he just ran," an investigator for the Office of Professional Standards changed the record of the dispatch call to "he just, he just uh, he just [unintelligible] so I took a shot at him." Caballero was later awarded the Superintendent Award for Valor for the incident. The City settled the civil suit brought by the family.
- c. On information and belief, in 2009, Officer Darren Wright shot and killed Corey Harris in the back. The City settled the civil suit for \$1.2 million.
- d. On information and belief, Officer Michael St. Clair shot William Hope multiple times in the chest in broad daylight while Hope was in his car. In 2012, a federal jury found against the officers and awarded the family \$4.6 million.
- e. On information and belief, in 2015, after officers shot Laquan McDonald sixteen times and killed him, the City settled the case for \$5 million without any lawsuit being filed. Nine of the shots hit McDonald in the back. Chicago police officers went in a Burger King restaurant located fewer than 100 yards from where 17-year old Laquan McDonald was shot and killed and 86 minutes of surveillance footage (encompassing the time McDonald was shot and killed) were deleted, according to the restaurant's manager and McDonald's attorney.

**ANSWER:** The City denies that "Chicago Police Officers accused of excessive force are aware of and can be confident that: police officers that receive frequent citizen complaints remain employed with the Department; that IPRA will not investigate those accusations in earnest, refusing to find complaints with merit justified or recommend discipline even where the officer has engaged in excessive force; that IPRA aims to exonerate officers involved in shootings; and that the City's response to citizen complaints of police misconduct is to bestow honors on officers for their conduct and/or defend/settle civil suits as opposed to disciplining or

terminating problem officers.” The City further denies that sub-parts (a) through (e) are evidence of the alleged deficient policies and practices of the City described in this paragraph. Therefore, the City denies the allegations contained in this paragraph.

48) On information and belief, former IPRA investigator Lorenzo Davis was terminated from his employment in 2015 because he determined that several police shootings were unjustified. Davis’ team of investigators for IPRA found as many as six incidents where the officer was not justified in shooting the civilian victim. Davis’ supervisor at IPRA directed him to change his finding and determine that each shooting was justified. Davis was told that if he did not change his finding, he was insubordinate and would face discipline.

**ANSWER:** The City admits that former IPRA investigator Lorenzo Davis was terminated from his employment at IPRA. The City denies that Plaintiff has fully and accurately alleged the circumstances of Lorenzo Davis’s termination and therefore denies the remaining allegations contained in this paragraph.

49) The City of Chicago has a de facto policy, practice and/or custom of concealing and/or suppressing officer misconduct, including the use of unlawful force. The concealment and suppression of the existence of misconduct includes, but is not limited to: failure to sufficiently and timely investigate allegations of misconduct; delaying investigations of police involved shootings; failure to accept complaints from citizens against police officers; failure to promptly record witness statements or preserve evidence; failure to promptly interview the suspected officer, *including* in such circumstances where it would be plausible to suspect misconduct on the part of the officer; failure to properly and sufficiently discipline an officer, even where the evidence of misconduct is clear and convincing, and even where the citizen complaint is either: corroborated by other evidence, or sustained; fabrication of exculpatory evidence or destruction of evidence; failure to prohibit the fabrication of exculpatory evidence or destruction of incriminating evidence of police misconduct; and, failure to initiate prompt disciplinary procedures related to the alleged misconduct, even when the allegation of misconduct is supported by corroborating evidence.

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

50) Per a Chicago Police Department Member Bill of Rights directive, IPRA provides police officers accused of misconduct with the names of the complaining parties, the opportunity to review any previous statements prior to questioning, as well as a period of 24 hours after the shooting of civilians before any questioning occurs. The directive states in relevant part: “[P]rior to interrogation ... the member will be informed in

writing of the nature of the complaint and the names of all complainants ... the member shall be provided with a copy of the portion of any official report that purportedly summarized their prior statement ... the shooting member(s) will be required to give their statement ... no earlier than 24 hours after the shooting incident ... when a shooting member advances a claim that they are unable to provide a statement within the time period specified ... IPRA will handle these claims ... accepting at face value all good faith claims of a member's inability to provide a statement." IPRA's own Annual Report 2010– 2012 suggests that this waiting period in interviewing the suspected officer "delays a crucial component" of the IPRA investigation. Regardless, the City continues to afford officers these accommodations despite the awareness that doing so critically impedes investigations.

**ANSWER:** The City admits that the IPRA 2010-2012 Annual Report states the following:

"IPRA may now compel any witness officers to provide a complete statement regarding the incident within 2 hours, but is required to wait 24-36 hours before taking a complete statement from a shooting officer. This delays a crucial component of the IPRA investigation." The City denies that Plaintiff has fully and accurately alleged the contents of the Chicago Police Department Member Bill of Rights directive as she has summarized many portions of said directive and therefore denies the allegations contained in this paragraph regarding said directive. The City denies the remaining allegations contained in this paragraph.

51) According to its quarterly reports, from 2012 to 2014, IPRA referred 72 percent of its entire log to the Bureau of Internal Affairs in the Chicago Police Department. Internal Affairs investigated just 22 percent of IPRA referrals it received - or 16 percent of the total logged by IPRA - in 2012 and 2013, with the remainder cited as "administratively closed." Of the minority of its log retained after the referrals, IPRA assigned only 30 percent - or 8 percent of its total log - for investigation.

**ANSWER:** The City admits, upon information and belief, that according to IPRA's quarterly reports from 2012 to 2014, IPRA referred approximately 72 percent of investigations to the Bureau of Internal Affairs. The City denies, upon information and belief, the remaining allegations contained in this paragraph for they are vague and incomplete.

- 52) On information and belief, of 10 fatal police shootings that occurred from 2012-2014 with cases closed by IPRA, all were deemed "justified." The investigations took an average of 16 months -10 months more than the time limit recommended by the US Department of Justice in its publication, *Standards and Guidelines for Internal Affairs*.

**ANSWER:** The City denies that of 10 fatal police shootings that occurred from 2012-2014 with cases closed by IPRA, all were deemed "justified." The City states that the remaining allegations are a vague, inaccurate, and incomplete characterization of both the investigations and the publication *Standards and Guidelines for Internal Affairs*, and therefore denies them.

- 53) On information and belief, as of November 9, 2013, the number of open shooting cases went back over 6 years to 2007 (4 cases) and included numbers of open investigations from 2008 (8 cases), 2009 (41 cases), 2010 (40 cases), and 2011 (48 cases).

**ANSWER:** The City denies that the allegations contained in this paragraph are a complete and accurate statement regarding open shooting investigations as of November 9, 2013 and therefore denies them.

- 54) On information and belief, of the 10 fatal police shootings that occurred from 2012-2014 with cases closed by IPRA deeming them all justified, six victims were shot in the back and three were unarmed. In one instance, an alleged weapon was never recovered. The investigations were deficient in various respects:

- a. *The fatal police shooting of Antowyn Johnson, deemed justified by IPRA* – On information and belief, Mr. Johnson emerged from a van being followed by police and ran. The police account was that Johnson fell. Officers interviewed by IPRA contended that he was shot in the back while face down on the ground because he pointed a weapon at the squad car while prone. IPRA's 12-month investigation summary includes no mention of attempts to view surveillance video along the six blocks of the incident route. The vehicle passed a Police Observation Device (POD), recorded by Google Maps both before and after the shooting. A public school was located along the incident route, of relevance considering the 4,500 Chicago Public Schools cameras linked to the city's Office of Emergency Management and Communication system. IPRA's investigation makes no mention of attempts to research or obtain footage from either video recording system. At the shooting site, a POD a half block away from the shooting "did not capture any images of evidentiary value," IPRA's investigation notes. This is despite the fact

that Chicago Police literature describes the devices as "equipped with night vision capability" able to "operate 24 hours a day in all weather conditions ... equipped with technology to detect gunfire." Johnson's alleged weapon was found "several feet away" from his body - without fingerprints and without a magazine clip. Additional abnormalities in the investigation include a discrepancy made by one of the involved officers in identifying his weapon; an update to one of the involved officer's statement weeks later; the lack of an interview with the officer who allegedly found the magazine of bullets matching Johnson's alleged gun one block away; and the description of a "large injury" to Johnson's hand as a "graze wound."

- b. *The fatal police shooting of Derrick Suttle, deemed justified by IPRA* - On information and belief, Suttle was shot multiple times by an off-duty officer in uniform. The officer confronted Suttle in an alley where Suttle was driving a van and then shot him. The officer claimed that he was in fear for his life after Suttle maneuvered his vehicle, causing the officer to fall. IPRA's 19-month investigation makes no reference to: any attempts made by the agency to interview witnesses beyond the shooting officer's spouse and a blind man present, no mention of contacting neighbors (one of whom called 911 the night of the shooting to relate an account in which the officer is described as yelling at Suttle and then shooting him), and there was a delay of more than eight hours before the mandatory Breathalyzer test was administered to the officer. According to IPRA's investigation, the lag in time involved transport to the hospital and treatment for the officer's bruised leg and a "small laceration" on one hand.
- c. *The fatal police shooting of Divonte Young, deemed justified by IPRA* - On information and belief, Young was shot in the back by an undercover narcotics officer and found dead, face down in an alley, by paramedics. The police account alleged that Young had fired at other civilians and pointed a gun at the officer. However, Young's weapon was not recovered. IPRA's 18-month investigation includes a Preliminary Summary Report, written the day of the shooting, which does not state Young pointed a weapon at the officer *prior* to the officer's shooting. The investigation goes on to also cite a statement given by the officer later, which claims Young fired on nearby civilians and pointed a gun at him twice. IPRA's investigation mentions no residual evidence of weapon discharge on Young's hands in the autopsy report. As proof of Young's assault, IPRA cites police departmental reports, which "show that Officer A was assaulted by Subject 1." In calling the shooting justified, IPRA noted, "No weapon was found on or near the Subject so it was surmised that a civilian had removed the gun."
- d. *The fatal police shooting of Tywon Jones, deemed justified by IPRA* - On information and belief, according to an eyewitness, Jones was engaged in a shooting with neighborhood rivals. Police officers in an unmarked car then pulled up behind the teen, whereupon one officer shot Jones five times in the back. One eyewitness reported to media, "He was still in the car and shot him and got out the car and stood over him and shot him again ... Yeah, I was sitting right here."



However, IPRA's investigation reports negative results in finding eyewitnesses to the police shooting. The involved officers mentioned do not claim to have ever announced their office before firing at Jones. The police officers claimed Jones shot at them while riding his bike in the opposite direction. There is no reference to any attempts to obtain Police Observation Device footage or other video.

- e. *The fatal police shooting of Jamaal Moore, deemed justified by IPRA* – On information and belief, an unarmed Moore was shot in the back at close range while attempting to flee. The killing was captured on video and an IPRA investigator who closed the case after 11 months stated that the video “clearly depicts images of the incident as described in Chicago Police Reports.” However, both a district judge and a City of Chicago lawyer drew attention to contradictions between the police account and the video while presiding over a \$1.25 million settlement in the civil suit filed by Moore's family.

**ANSWER:** The City denies that its investigations were and/or are deficient and further denies that the allegations contained in this paragraph are demonstrate that its investigations were and/or are deficient. Therefore, the City denies the allegations contained in this paragraph.

- 55) The City has a *de facto* policy, practice and/or custom in which a “code of silence” is pervasive within all aspects of the Department. Pursuant to this code of silence, officers and investigators withhold information, refuse to gather it, fail to implicate fellow officers in wrongdoing, and/or fabricate evidence, falsify reports, and provide false statements to justify an officer’s misconduct. This code is manifest as a universal practice among sworn members of the Department. There is an express or implicit understanding and agreement among Chicago police officers which results in a refusal or failure by Chicago police officers to intervene to prevent or stop the unnecessary and often gratuitous abuse of citizens through the use of excessive force. The code also causes officers to refuse or fail to report or testify against fellow officers regarding instances of misconduct of which they are aware, despite their obligation to do so as sworn peace officers, as they are aware they will face significant intimidation and retaliation for doing so. In *Obrycka v. City of Chicago et al.*, 913 F.Supp.2d 598 (N.D. Ill. 2012), a federal jury found that the City of Chicago had a widespread police code of silence and/or the moving force behind former officer Anthony Abbate’s conduct in physically attacking Ms. Obrycka.

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

56) Officers Shannon Spalding and Daniel Echeverria were part of a 2012 investigation which led to charges against Sgt. Ronald Watts and police officer Kallatt Mohammed, both of whom were accused of stealing proceeds from drug dealers. On information and belief, the investigation was halted before at least a half a dozen more officers were caught. Officers Spalding and Echeverria were told the investigation was too big and were prohibited from investigating allegations against several other officers, including supervisors. Because Spalding and Echeverria refused to adhere to the code of silence, their role in the undercover investigation was intentionally leaked within the Chicago Police department, leading to ostracism and intimidation from fellow officers and supervisors. The two officers were also retaliated against and reassigned multiple times to various undesirable assignments. Commander O'Grady and Lt. Pascua referred to them as "rats" or "TAD rats". Spalding and Echeverria's team members were ordered by supervisors, including without limitation Sgt. Barnes, to ignore and fail to respond for calls for backup should t call for assistance.

**ANSWER:** The City admits, upon information and belief, that Shannon Spalding and Daniel Echeverria filed a lawsuit in 2012 making such allegations and that the allegations made by those plaintiffs in that lawsuit are spelled out in that lawsuit. The City denies the existence of a "code of silence."

57) This *de facto* policy applies to Chicago police officers who remain silent or give false or misleading information during official investigations and sworn testimony in criminal cases and in related civil litigation involving allegations of misconduct against a fellow officer, in order to protect themselves or their fellow officers from discipline, criminal prosecution, or to shield them from civil liability.

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

58) Individually and collectively, the above described *de facto* policies, practices and/or customs of the City proximately result in the pervasive culture and widespread attitude among members of the Chicago Police Department, including Defendant Hernandez that he may engage in misconduct against the citizenry with impunity, and without fear of official consequence. In every sense of the term, Chicago police officers consider themselves "above the law."

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

59) Municipal policymakers have long been aware of the City of Chicago's policy and practice of failing to properly train, monitor, and discipline its police officers:

- a. Following two high profile, unjustified police shootings in 1999, the City Council held public hearings. On September 28, 1999, then Superintendent of the Chicago

Police Department Terry Hillard gave a speech highlighting the problems with the City of Chicago's policies and practices relating to the use of force. Superintendent Hillard specifically noted the need for (1) better in-service training on the use of force; (2) early detection of potential problem officers, and (3) officer accountability for the use of force.

- b. In a review commissioned by the Superintendent, John Marshall Law School found that although the City of Chicago's policies on the use of force were in compliance with the law, more training of police officers was necessary.
- c. Moreover, in January 2000, the Chairman of the Committee on Police and Fire of the Chicago City Council submitted an official resolution recognizing that "[Chicago] police officers who do not carry out their responsibilities in a professional manner have ample reason to believe that they will not be held accountable, even in instances of egregious misconduct."
- d. A study performed a year later by the Justice Coalition of Greater Chicago ("JCGC"), a coalition of more than a hundred community groups, confirmed that resolution. Specifically, the JCGC study concluded that the Chicago Police Department lacked many of the basic tools necessary to identify, monitor, punish and prevent police misconduct and brutality. The JCGC findings were presented to then-Mayor Daley, Superintendent Hillard and the Chicago Police Board.
- e. Two years later, *Garcia v. City of Chicago*, 2003 WL 22175618, \*2 (N.D. Ill. Sept. 19, 2003) affirmed that the City's police misconduct investigations were systematically "incomplete, inconsistent, delayed, and slanted in favor of the officers" and as a result, fostered a culture of impunity within the Chicago Police Department. Moreover, evidence at the *Garcia* trial further showed that the Chicago Police Department's handling of allegations of officer violence was "defective" and "insufficient" in that "investigations were incomplete, inconsistent, delayed, and slanted in favor of the officers; investigative leads were not pursued; incidents were covered-up; evidence was destroyed; officers were not arrested; and private citizens were discouraged from filing complaints about police officer misconduct." *Id.*
- f. By its own accounting, in 2004 the City of Chicago sustained only four percent of the complaints brought against police officers for use of excessive force. An even smaller percentage of officers were actually disciplined for such conduct.
- g. IPRA has investigated nearly 400 police shootings of subjects since 2007 and found only one to be unjustified.
- h. Between 2012 and 2014, the City of Chicago Department of Law requested payment of \$192 million in settlements, verdicts and fees attributed to the Chicago Police Department. \$61 million was paid to settle wrongful

convictions, and another \$43 million went toward cases charging excessive force.

- i. Over four years ending in mid-December 2014, investigators sustained a little fewer than 800 of the approximately 17,700 complaints, just over 4 percent. In the relatively few cases in which officers are found at fault, about 45 percent were given a reprimand or what's called a "violation noted," neither of which results in any docked time for the officer. Another 37 percent of the officers were suspended, but three-fourths of them were docked only one to five days off work. Almost 15 percent resigned before punishment could be imposed, the analysis found. And only a dozen officers were dismissed over complaints filed during the four-year period - .00068% of complaints therefore resulted in dismissal.
- j. Over the four years ending in mid-December 2014, the 11 officers with the most complaints were responsible for a combined 253 complaints, including for allegations such as excessive force or illegal searches. Yet just one officer was punished, receiving only a five day suspension for neglecting his duties.
- k. Most officers found at fault were disciplined for more minor or technical offenses. Officers were most frequently cited for "neglect of duty/conduct unbecoming" — about 150 of the nearly 800 sustained complaints. Other common sustained complaints included failure to provide adequate service, misuse of department equipment and other personnel violations.

**ANSWER:** The City denies that it has a policy and practice of failing to properly train, monitor, and discipline its police officers and further denies that municipal policymakers have long been aware of an alleged policy and practice of failing to properly train, monitor, and discipline its police officers. The City further denies that the allegations contained in subparts (a) through (k) of this paragraph support Plaintiff's allegation that municipal policymakers have long been aware of the City of Chicago's policy and practice of failing to properly train, monitor, and discipline its police officers, and therefore denies the remaining allegations contained in this paragraph.

- 60) The aforementioned *de facto* policies, practices and/or customs of the City, individually and collectively, have been maintained and/or implemented with utter indifference by the City which has encouraged and/or motivated Defendant Hernandez to commit the aforesaid wrongful facts against Johnson and, therefore, *de facto*

policies, practices and/or customs of the City are a direct and proximate cause of the injuries sustained by Johnson.

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

- 61) Although the City of Chicago has long been aware that its supervision, training, and discipline of police officers is entirely inadequate, it has not enacted appropriate measures to address that failure.

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

- 62) In 1996, the City of Chicago intentionally abandoned a program designed to track police officers repeatedly acting in an abusive manner because of opposition by the Fraternal Order of Police. The City promptly deleted all data contained in the program, including the list of problem officers.

**ANSWER:** The City denies the allegations contained in this paragraph for they are vague and incomplete.

- 63) In 2000 and 2001, the City continued to refuse to implement a system allowing for detection of repeat police officer offenders, despite the fact that the Commission on Accreditation for Law Enforcement Agencies adopted a standard mandating such a detection system for large agencies such as Chicago.

**ANSWER:** The City denies the allegations contained in this paragraph for they are vague and incomplete.

- 64) In 2003, although the City of Chicago and the Fraternal Order of Police negotiated a new contract allowing the Chicago Police Department to use unsustained OPS cases to identify patterns of suspected misconduct about which the public and regulatory agencies are so intensely and legitimately concerned," no such pattern analysis has ever been implemented. Indeed, pursuant to that contract, OPS/IPRA records are only kept for seven years, precluding any meaningful long-term analysis of an officer's misconduct.

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

- 65) Of the officers on the force from 2001-2006, 662 police officers had at least 10 misconduct complaints. From 2001-2006, more than three dozen police officers had 29 or more misconduct complaints on their records.

**ANSWER:** The City admits that a list compiled in May 2006 listed 662 police offices to have at least 10 misconduct complaints. The City denies the remaining allegations contained in this paragraph for they are vague and incomplete.

66) In 2011, Chicago Police Superintendent Garry McCarthy confirmed the department did not maintain any internal system to track officers involved in multiple shootings. In the span of six months that same year, Officer Gildardo Sierra shot three people – killing two of them, including Flint Farmer. Sierra shot Farmer seven times, firing the last three shots at close range while Farmer lay face down, as captured on dash cam video. It was Sierra's eighth shooting. Sierra has been on paid desk duty for nearly four years. The city settled a federal lawsuit brought by Farmer's estate for \$4.1 million.

**ANSWER:** The City denies that Chicago Police Superintendent Garry McCarthy confirmed the department did not maintain any internal system to track officers involved in multiple shootings. The City admits, upon information and belief, that Officer Gildardo Sierra shot Flint Farmer, but denies, upon information and belief, that Officer Sierra shot three people, killing two of them. The City further admits, upon information and belief, that Flint Farmer was shot seven times and that a portion of the shooting was recorded by a dash cam video. The City denies, upon information and belief, that Sierra fired that last three shots at close range while Farmer lay face down. The City admits that Officer Sierra had discharged his weapon in prior incidents, but avers that only one person was fatally shot by Officer Sierra in these incidents. The City admits that Officer Sierra was placed on administrative duty following the shooting incident and admits that the City settled a federal lawsuit brought by Farmer's estate for \$4.1 million.

67) In 2014, the Chicago Mayor's Office, the Chicago Police Board and the City of Chicago Independent Police Review Authority responded to public information requests by John Conroy, director of investigations at the DePaul Legal Clinic, for records related to the frequency of police shooting, stating that no such records existed, while the Chicago Police Department turned over a cursory two-page document that contained little information.

**ANSWER:** The City admits that in 2014, John Conroy submitted public information requests to the Chicago Mayor's Office, the Chicago Police Board, and the Chicago Police Department. The City further admits that the Chicago Police Department responded to said request by turning over a two-page document, but denies the characterization of it being " cursory" and containing little information. The City denies that the Chicago Mayor's Office and the Chicago Police Board responded by stating that "no such records existed." The City admits, upon information and belief, that Mr. Conroy submitted multiple public information requests to the Independent Police Review Authority, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph.

68) Finally, the City's training of its officers has not changed since 1999, despite repeated promises by the City and City policymakers for a more comprehensive training program. In Chicago, officers undergo between approximately 900 and 1,000 hours of deadly force role-play training before placement on the streets. However, the Department of Justice publication, *Principles of Good Policing*, quotes a report of the International Association of Chiefs of Police, *Balance of Forces*, that warns of the approach as of 1982: "In-service crisis intervention training as opposed to pre-service training was associated with a low justifiable homicide rate by police...Agencies with simulator, stress, and physical exertion firearms training experience a higher justifiable homicide rate by police than agencies without such training."

**ANSWER:** The City admits that the *Principles of Good Policing* referenced by Plaintiff in this paragraph contains the material quoted by Plaintiff in this paragraph. The City denies the remaining allegations contained in this paragraph.

69) Plaintiff's injuries were proximately caused by the policies and practices on the part of Defendant City of Chicago for failing to adequately train, supervise, discipline, and control its police officers. Indeed, the Defendant Officer's misconduct was undertaken pursuant to the City's policy and practice in that:

- a. As a matter of both policy and practice, the City directly encourages and is thereby the moving force behind the very type of misconduct at issue here by failing to adequately train, supervise, and control its officers, such that its failure to do so manifests deliberate indifference;
- b. As a matter of both policy and practice, the City facilitates the very type of misconduct at issue here by failing to adequately punish and discipline prior instances of similar misconduct, thereby leading Chicago Police Officers to believe their actions will never be scrutinized and, in that way, directly encouraging future abuses such as those that resulted in the death of the Decedent; specifically, Chicago Police Officers accused of excessive force can be confident that IPRA will not investigate those accusations in earnest and will refuse to recommend discipline even where the officer has engaged in excessive force;
- c. Generally, as a matter of widespread practice so prevalent as to comprise municipal policy, officers of the Chicago Police Department abuse citizens in a manner similar to that alleged by Plaintiff on a frequent basis, yet the Chicago Police Department and IPRA make findings of wrongdoing in a disproportionately small number of cases;
- d. Where citizens complain to the Chicago Police Department that they have been subjected to criminal violations by Chicago Police Officers, the Department's policy and practice is to affirmatively discourage those persons from pursuing criminal charges against the offending police officers; the City's training in that regard is equally deficient. This policy and practice and lack of adequate training encourages Chicago Police Officers, such as the Defendant in this case, to use violence without fear of legal consequences.
- e. Municipal policymakers are aware of, and conduct and facilitate by their inaction, a "code of silence" in the Chicago Police Department, by which officers fail to report misconduct committed by other officers, such as the misconduct at issue in this case;
- f. The City and the relevant policy makers have failed to act to remedy the patterns of abuse described herein, despite actual knowledge of the same, thereby causing the types of injuries.

**ANSWER:** The City denies the allegations contained in this paragraph, including its subparts (a) through (f).



**COUNT VII—INDEMNIFICATION**

70) Plaintiff hereby incorporates all previous paragraphs as though fully set forth herein.

**ANSWER:** The City restates and incorporates herein its answers to paragraphs 1 through 69.

71) At all relevant times, Defendant City of Chicago was the employer of the Defendant officers.

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

72) The Defendant officers committed the acts alleged above under the color of law and in the scope of their employment as employees of the City of Chicago.

**ANSWER:** The City admits that Officer Hernandez was, at all relevant times, acting under color of law and within the scope of his employment as an employee of the City of Chicago. The City denies, upon information and belief, any wrongful or illegal conduct.

73) In Illinois, public entities are directed to pay for any tort judgment for compensatory damages for which employees are liable within the scope of their employment activities.

**ANSWER:** The City admits that under certain circumstances and to the extent provided by Illinois law, public entities are directed to pay compensatory damages on tort judgments against an employee acting within the scope of his or her employment. The City denies that Plaintiff has completely and accurately stated the law. The City states that the allegations of this paragraph that suggest, allege, or otherwise imply that the City is liable as principal for all torts committed by its agents contain a vague, incomplete, and/or inaccurate statement of the nature of the City's liability under Illinois law, and therefore such allegations are denied.

74) As a proximate cause of the Defendant officers' unlawful acts, which occurred within the scope of their employment, Plaintiff was injured.

**ANSWER:** The City denies, upon information and belief, the allegations contained in this paragraph.

**COUNT VIII—RESPONDEAT SUPERIOR**

75) Each of the paragraphs above is incorporated by reference as though fully stated herein.

**ANSWER:** The City restates and incorporates herein its answers to paragraphs 1 through 74.

76) In committing the acts alleged in the preceding paragraphs, the Defendant officers were agents of the City of Chicago and were acting at all relevant times within the scope of their employment and under color of law.

**ANSWER:** The City admits that Officer Hernandez was acting under color of law and within the scope of his employment and as an agent of the City at all times relevant to this complaint. The City denies, upon information and belief, that Plaintiff has fully and accurately alleged the circumstances of the shooting of Ronald Johnson and therefore denies, upon information and belief, the remaining allegations contained in this paragraph.

77) Defendant City of Chicago is liable as principal for all torts committed by its agents.

**ANSWER:** The City admits that under certain circumstances and to the extent provided by Illinois law, public entities are liable for torts committed by their agents. The City denies that Plaintiff has completely and accurately stated the law. The City states that the allegations of this paragraph that suggest, allege, or otherwise imply that the City is liable as principal for all torts committed by its agents contain a vague, incomplete, and/or inaccurate statement of the nature of the City's liability under Illinois law, and therefore such allegations are denied.

**AFFIRMATIVE DEFENSES**

1. The City is not liable to plaintiff for any state law claims for which its employees or agents are not liable to plaintiff. 745 ILCS 10/2-109 (2012).
2. The City is not liable to plaintiff for any federal claim for which its employees or agents are not liable to plaintiff. See City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986).
3. Plaintiff has a duty to mitigate her damages, and 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 the plaintiff's failure to take reasonable action to minimize those damages.
4. Plaintiff is not entitled to attorney's fees for her state law claims. See Pennsylvania Truck Lines, Inc. v. Solar Equity Corp., 882 F.2d 221, 227 (7th Cir. 1989); Kerns v. Engelke, 76 Ill.2d 154, 166, 390 N.E.2d 859, 865 (1979); Miller v. Pollution Control Board, 267 Ill. App.3d 160, 171, 642 N.E.2d 475, 485 (4th Dist. 1994).
5. Under the Tort Immunity Act, the City is not required to pay punitive or exemplary damages in any action brought directly or indirectly against an employee by the injured party or a third party. 745 ILCS 10/2-102 (2012).

**JURY DEMAND**

The City demands trial by jury for all issues so triable.

**CONCLUSION**

**WHEREFORE**, Defendant City of Chicago requests this Court enter judgment in its favor on all counts and against Plaintiff and enter any other relief in its favor and against Plaintiff that this Court deems just and proper.

Respectfully submitted,

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BY: /s/ Marion C. Moore  
Marion C. Moore  
Assistant Corporation Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the attached document by causing it to be delivered by electronic means via the CM/ECF System to all counsel of record this 19th day of October 2015.

/s/ Marion C. Moore  
Assistant Corporation Counsel