

U.S. DISTRICT COURT  
CLERK  
IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

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JOSEPH LOPEZ,

Plaintiff,

v.

Judge Der-Yeghiayan

CITY OF CHICAGO, et al.,

**DOCKETED**

01 C 1823

Defendants.

OCT 06 2004

NOTICE OF MOTION

**FILED**

SEP 29 2004

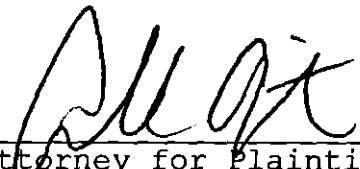
TO:

Jason Winchester  
Jones Day  
77 West Wacker  
Chicago, Illinois 60601

Allan Duarte  
Ancel Glink Diamond Bush DiCianni  
& Rolek  
140 South Dearborn, Suite 600  
Chicago, IL 60603

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

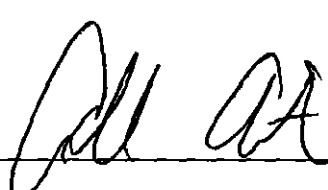
Please take notice that on October 5, 2004, at 9:00 a.m. I will appear before Judge Der-Yeghiayan in the court room usually occupied by him at 219 South Dearborn, Chicago, Illinois and then and there present Plaintiff's attached Motion.

  
Attorney for Plaintiff

Russell Ainsworth  
LOEVY & LOEVY  
312 N. May St.  
Chicago, IL 60607

CERTIFICATE OF SERVICE

I, Russell Ainsworth, an attorney, certify that on September 29, 2004, I served by fax a copy of the attached Motion on the above-named parties of record.

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U.S. DISTRICT COURT  
CLERK  
IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

**DOCKETED**  
OCT 06 2004

JOSEPH LOPEZ,

Plaintiff,

v.

CITY OF CHICAGO, et al.

Defendants. **SEP 29 2004**

**MICHAEL W. DOBBINS**  
**CLERK, U.S. DISTRICT COURT**

**UNOPPOSED MOTION FOR LEAVE TO FILE**  
**PLAINTIFF'S THIRD AMENDED COMPLAINT**

NOW COMES Plaintiff, JOSEPH LOPEZ, by his attorneys,  
LOEVY & LOEVY, and seeks leave to file a Third Amended Complaint.  
In support, Plaintiff states as follows:

1. Attached hereto as Exhibit A is a copy of the  
Third Amended Complaint Plaintiff would like to file.

2. The purpose of this motion is to facilitate the  
progress of this case by deleting the class allegations  
previously withdrawn on Plaintiff's *Motion to Withdraw his Motion*  
*for Class Certification*, which was permitted by the Court on May  
20, 2004 (Dkt. No. 141).

3. Under the terms of the stipulation attached hereto  
as Exhibit B, the Defendants have no objection to the filing of  
Plaintiff's Third Amended Complaint.

RESPECTFULLY SUBMITTED,

  
Attorneys for Plaintiff

Arthur Loevy  
Michael Kanovitz  
Jon Loevy  
Russell Ainsworth  
LOEVY & LOEVY  
312 N. May St., Ste. 100  
Chicago, IL 60607  
(312) 243-5900

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

JOSEPH LOPEZ,	)	
Plaintiff,	)	
	)	
v.	)	Judge Der-Yeghiayan
	)	
CITY OF CHICAGO, DETECTIVE JAMES	)	01 C 1823
DELAFONT, DETECTIVE JENNIFER DeLUCIA,	)	
DETECTIVE HECTOR VERGARA, OFFICER JOSE	)	
GOMEZ, and DANIEL JACOBS,	)	
	)	
Defendants.	)	JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT

NOW COMES Plaintiff, JOSEPH LOPEZ, by counsel, and complaining of Defendants DETECTIVE JAMES DELAFONT, DETECTIVE JENNIFER DeLUCIA, DETECTIVE HECTOR VERGARA, and DANIEL JACOBS (collectively, "Defendant Detectives"), OFFICER JOSE GOMEZ, and CITY OF CHICAGO, states as follows:

**Introduction**

1. This is an action pursuant to 42 U.S.C. Section 1983.
2. Plaintiff brings this action to redress injuries he suffered as a result of an unconstitutional practice and procedure known as the "hold past court call" procedure. At all times relevant, this procedure allowed officers of the Chicago Police Department ("CPD") to hold suspects indefinitely without affording them a judicial hearing to determine whether there is probable cause to deprive them of their freedom. CPD officers use these incommunicado detentions to interrogate the suspects

EXHIBIT

A

for extended periods and to attempt to obtain confessions under coercive circumstances. Detentions under such circumstances are unreasonable and in violation of the Fourth Amendment.

3. In addition to causing unlawful detentions, the "hold" procedure as implemented in the CPD also violates arrestees' rights to constitutionally appropriate conditions of confinement. During the "hold" period, the very detectives who are charged with obtaining a confession are permitted to keep the suspects for indefinite periods in interrogation rooms where they are deprived of meaningful sleep during the interrogation. The CPD maintains no sleeping facilities for these suspects nor any policy requiring that the detectives ensure meaningful sleep for those they are interrogating. Moreover, during the detention, the suspects' access to food, water, the bathroom and other necessary facilities are all controlled by the interrogating detectives. These conditions further violate the suspects' constitutional rights.

4. At all times relevant, these practices have been prevalent throughout the CPD and the policymakers of the City of Chicago have been deliberately indifferent to them.

#### **Jurisdiction and Venue**

5. This Court has jurisdiction of the action pursuant to 28 U.S.C. §§ 1331, 1367. Venue is proper under 28 U.S.C. § 1391(b). On information and belief, all parties reside in this

judicial district and the events giving rise to the claims asserted herein all occurred within district.

#### **Facts**

6. At all times relevant, CPD policy, custom and procedure has prevented felony arrestees from receiving a probable cause hearing until the State's Attorney's Office ("SAO") approves the charges being sought by the CPD. The CPD refers to this as the "Felony Review Process". Under the Felony Review Process, if the evidence at the time of the arrest is insufficient in the SAO's opinion to bring felony charges, CPD officers are permitted to continue detaining the arrestee while they develop more evidence to support the charges. This procedure is called "hold past court call," "continued investigation" or "CI". Detentions for this purpose routinely last in excess of 48 hours and are unconstitutional.

7. CPD custom and practice is to detain arrestees in unconstitutional conditions of confinement during this period. Specifically, the CPD does not maintain any facilities designed to house arrestees in its custody. It furnishes them no bed or cot, no bedding, and provides them wholly inadequate food, water and access to sanitary facilities if at all.

8. Rather, for much if not all of the detention, the arrestee is kept in a small interrogation room (an "interview room" in CPD parlance) which is not designed for housing

prisoners and which furnishes them no facility for sleeping, for relieving themselves or even for access to water.

9. The CPD maintains no sleeping facilities because, absent a "hold," arrestees are routinely transferred to the custody of the Cook County Department of Corrections which maintains a jail for housing prisoners, including bunks for sleeping and access to bathrooms and running water.

10. By contrast, the interrogation rooms contain no amenities. The sole furnishing is a small metal bench four feet in length and ten inches in width. No mattresses, no blankets and no pillows are furnished by the CPD to those in its custody.

11. As a result, arrestees detained under the hold past court call procedure are routinely subjected to conditions of confinement which are torturous and unconstitutional.

12. This very CPD procedure has already been declared unconstitutional as violating the Fourth Amendment in the case of Robinson v. Chicago, 638 F.Supp. 186 (N.D.Ill. 1986), rev'd on other grounds, 868 F.2d 959 (7<sup>th</sup> Cir. 1989). In appealing, that decision, Defendant City of Chicago represented to the Seventh Circuit that it had abolished the hold past court call procedure. However, at all relevant times, the procedure remained in use throughout the CPD.

13. In July of 2000, Plaintiff became a victim of these unconstitutional procedures when he was arrested by the CPD.

14. Shortly before Plaintiff's arrest, 27-year-old Miguel Figueroa stood in the sunroof of a moving Pontiac Bonneville and fired shots from a .38-caliber weapon at rival gang members.

15. A stray bullet struck a nearby 12-year old boy ("M.D."), killing him.

16. Approximately one week later, Miguel Figueroa confessed to the murder on videotape. He presently faces the death penalty for his crime.

17. At the time of the shooting Plaintiff, Joseph Lopez, was an 18-year-old resident of the Humbolt Park neighborhood.

18. The day following the shooting, Plaintiff was talking to a friend on the street when the two of them were approached by several Chicago police officers.

19. One of the officers was Officer Gomez, an officer known in Plaintiff's neighborhood as a dangerous and violent man.

20. The officers handcuffed Plaintiff and placed him in their squad car.



21. The officers drove Plaintiff to a nearby alley. Following a brief interrogation, Officer Gomez punched Plaintiff in the face.

22. The officers told Plaintiff they believed he was a witness to the shooting. Plaintiff was then taken to the police station.

23. Upon his arrival at the police station, Plaintiff was placed in a small interview in the "Area 5" detective division and shackled to the wall with handcuffs.

24. Plaintiff Lopez was kept in this room for approximately five days. He was provided with little food and drink and, even then, only sporadically.

25. The room contained no bed, cot or bedding, no running water and no toilet. The room contained only a small metal bench of four feet in length and ten inches in width. At no time was Plaintiff furnished a mattress, blanket or pillow.

26. At no time during this approximately five day did Plaintiff receive a judicial probable cause hearing. Rather, the Plaintiff was kept from court pursuant to CPD policy which prevents felony arrestees from receiving a probable cause hearing or being transferred to the Cook County Jail facility until the SAO approves charges against them.

27. During virtually this entire period, Plaintiff remained in the interview room with his wrist handcuffed to a

ring on the wall. The only human contact permitted Plaintiff was when he was interrogated by various Defendant Police Officers who attempted to coerce him into confessing to the murder.

28. Under these conditions of confinement, Plaintiff was unable to obtain proper sleep.

29. During this approximately five day period, the Defendant Detectives and the CPD continued to attempt to develop evidence linking Mr. Lopez with the shooting.

30. During this time, the Defendant Detectives also denied Plaintiff access to an attorney despite his requests to speak with an attorney.

31. Plaintiff's faculties were overcome by sleep deprivation and the unconstitutional and torturous tactics being used on him. Plaintiff at one point made an inculpatory statement indicating that he shot M.D. However, the facts of the statement conflicted with the true facts of the shooting. Upon being confronted that his statement did not jibe with the actual shooting, Plaintiff recanted his statement.

32. After five days, the SAO approved the charge of first degree murder against Mr. Lopez. Mr. Lopez, then only 18 years old, was informed that the death penalty would be sought against him. The CPD also announced to the public media that Plaintiff was the murderer.

33. Approximately one hour after prosecutors stated they were seeking the death penalty against Plaintiff, police arrested Miguel Figueroa for the crime Plaintiff allegedly committed.

34. Thereafter, Figueroa gave a video-taped confession to the Chicago Police regarding the shooting.

35. Thereafter, Plaintiff was released and the wrongful charges against him were dismissed.

36. Notwithstanding the decision to initiate and pursue Plaintiff's prosecution, the Defendant Detectives had actual knowledge that Plaintiff was not the killer.

37. Some of the eye-witnesses to the shooting told the CPD that Lopez was not the man who shot M.D. The shooter had a different complexion than Plaintiff and longer hair. Plaintiff's head was shaved at the time.

38. The Defendant Detectives intentionally and without justification ignored these eyewitnesses who attested to Plaintiff's innocence, and instead claimed to have relied upon the purported identification of Plaintiff by several gang members hostile to Plaintiff.

39. This line-up conducted by the Defendant Detectives, supposedly resulting in the positive identification of Plaintiff who was bald and ten years younger than the longer-haired shooter, was deeply flawed. The Defendant Detectives

intentionally chose to ignore the eyewitnesses who claimed Plaintiff was innocent and instead only attempted line-up identifications from gang members hostile to Plaintiff.

40. The Defendant Detectives' actions referenced above were all taken intentionally to frame Plaintiff for a murder he did not commit.

**COUNT I - 42 U.S.C. § 1983: Excessive Force**

41. Plaintiff realleges each of the forgoing paragraphs as if fully stated herein.

42. As a result of Officer Gomez's unjustified and excessive use of force, Plaintiff suffered pain and injury, as well as emotional distress.

43. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff's constitutional rights.

44. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

45. The misconduct described in this Count was undertaken pursuant to the policy and practice of the Chicago Police Department in that:

a. As a matter of both policy and practice, the Chicago Police Department directly encourages, and is thereby the moving force behind, the very type of excessive force 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 Chicago Police Department facilitates the very type of excessive force at issue here by failing to adequately punish and discipline prior instances of 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 affecting Plaintiff;

c. Generally, as a matter of widespread practice so prevalent as to comprise municipal policy, officers of the Chicago Police Department use excessive force against citizens in a manner similar to that alleged by Plaintiff in this Count on a frequent basis, yet the Chicago Police Department makes findings of wrongdoing in a disproportionately small number of cases;

d. Municipal policy-makers are aware of (and condone 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; and

e. The City of Chicago has failed to act to remedy the patterns of abuse describe in the preceding sub-paragraphs, despite actual knowledge of the same, thereby causing the types

of injuries alleged here.

WHEREFORE, Plaintiff, JOSEPH LOPEZ, respectfully requests that the Court enter judgment in his favor and against Defendants, CITY OF CHICAGO and OFFICER JOSE GOMEZ, awarding compensatory damages, costs and attorneys' fees against CITY OF CHICAGO, and compensatory damages, costs and attorneys' fees against along with punitive damages against Defendant OFFICER JOSE GOMEZ in this individual capacity, and any other relief this Court deems just.

**COUNT II - State Law Claim: Assault and Battery**

46. Plaintiff realleges each of the forgoing paragraphs as if fully stated herein.

47. As described more fully in the preceding paragraphs, Plaintiff was attacked by Defendant Officer Gomez without justification or provocation.

48. The actions of Defendant Officer Gomez constituted an offensive physical contact, undertaken willfully and wantonly, proximately causing Plaintiff's injuries.

49. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

50. As a result of the offensive touching, Plaintiff sustained bodily injuries, including but not limited to a reasonable apprehension of great bodily harm.

WHEREFORE, Plaintiff, JOSEPH LOPEZ, respectfully requests that the Court enter judgment in his favor and against Defendant, OFFICER JOSE GOMEZ, awarding compensatory damages and punitive damages, as well as any other relief this Court deems just and appropriate under the circumstances.

**COUNT III - State Law Claim:  
Intentional Infliction of Emotional Distress**

51. Plaintiff realleges each of the forgoing paragraphs as if fully stated herein.

52. As described more fully in the preceding paragraphs, the Defendant Detectives engaged in extreme and outrageous conduct with respect to Plaintiff, using violence, torture and unlawful methods to attempt to coerce Plaintiff into confessing to a murder he did not commit.

53. The misconduct described in this Count was undertaken with intent, knowledge or callous disregard for the fact that there was a high probability that the conduct would inflict severe emotional distress on Plaintiff.

54. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

55. As a proximate result of this misconduct, Plaintiff suffered severe emotional distress and anguish.

WHEREFORE, Plaintiff, JOSEPH LOPEZ, respectfully requests that the Court enter judgment in his favor and against

the DETECTIVE JAMES DELAFONT, DETECTIVE JENNIFER DeLUCIA, DETECTIVE HECTOR VERGARA, and DETECTIVE DANIEL JACOBS awarding compensatory damages, punitive damages, and any other relief this Court deems just and appropriate under the circumstances.

**Count IV - 42 U.S.C. § 1983: Unlawful Detention**

56. Plaintiff realleges each of the forgoing paragraphs as if fully stated herein.

57. As described more fully above, Plaintiff was detained without being afforded a prompt post-arrest probable cause hearing, all in a manner which violates the Fourth Amendment of the United States Constitution. This deprivation of was effectuated under color of law, and Plaintiff has been damages as a result.

58. Defendants DELAFONT, DeLUCIA, VERGARA, and JACOBS acting under color of law and within the scope of their employment caused this detention.

59. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

60. The City of Chicago also caused this detention and is liable for Plaintiff's damages, *inter alia*, because:

a. At all times relevant, the City of Chicago has maintained an unjustified and unconstitutional policy preventing arrestees from obtaining a probable cause hearing until the SAO



has completed a felony review process regardless of how long the process may take;

b. The City of Chicago fails to adequately train its officers on the constitutional requirements for affording prompt probable cause hearings, fails to supervise and control its officers' activities in this area, and is thereby the moving force behind the very type of misconduct at issue here, and its failure to do so manifests deliberate indifference;

c. As a matter of both policy and practice, the Chicago Police Department 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 affecting Plaintiff;

d. The policymakers of the City of Chicago have been deliberately indifferent to the need for appropriate policies to prevent the Fourth Amendment violations alleged herein; and

e. The City of Chicago has failed to act to remedy the patterns of misconduct described in the preceding sub-paragraphs, despite actual knowledge of the same, thereby causing the types of injuries alleged here.

61. As a result of this misconduct, Plaintiff sustained damages.

WHEREFORE, Plaintiff, JOSEPH LOPEZ, respectfully requests that the Court enter judgment in his favor and (1) against Defendant CITY OF CHICAGO, awarding compensatory damages, costs and attorneys' fees, (2) against JAMES DELAFONT, JENNIFER DeLUCIA, HECTOR VERGARA, and DANIEL JACOBS in their individual capacities, awarding compensatory damages, punitive damages, costs and attorneys fees, and (3) any other relief this Court deems just and appropriate under the circumstances.

**Count V - 42 U.S.C. § 1983: Police Torture**

62. Plaintiff realleges each of the forgoing paragraphs as if fully stated herein.

63. In attempting unlawfully to coerce Plaintiff to confess to a murder he did not commit, the Defendant Detectives employed such inhuman methods as shackling Plaintiff's wrist to the wall for excessive amounts of hours and intentionally depriving Plaintiff of sleep, sustenance and access to restroom facilities. The deprivations Plaintiff suffered were effectuated under color of law, and Plaintiff has been damaged as a result.

64. Defendants DELAFONT, DeLUCIA, VERGARA, and JACOBS acting under color of law and within the scope of their employment caused these violations on Plaintiff's constitutional rights.

65. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

66. The City of Chicago also caused these constitutional violations and is liable for Plaintiff's damages, *inter alia*, because:

a. The City of Chicago maintains an unjustified and unconstitutional policy discussed above which prevents arrestees from being transferred to the Cook County jail for extended periods of time in order to prevent them from being transported to court for a probable cause hearing. This policy causes arrestees to remain in CPD custody for extended periods of time, but yet the City of Chicago fails to provide any facility designed for housing arrestees for such duration and in particular for affording them minimally appropriate facilities for sleeping. The need for appropriate sleeping facilities while being detained for extended periods by the CPD is so obvious that the failure to provide them while continuing to maintain this policy manifests deliberate indifference;

b. The City of Chicago maintains no policies regarding furnishing proper sleeping facilities to arrestees, nor does it maintain any policies regarding the maximum duration for which an arrestee may be kept in an interview room, nor providing for arrestees' needs while in the rooms. The failure to maintain

such policies is likely to result in the unconstitutional use of such rooms to house arrestees that it manifests deliberate indifference;

c. The City of Chicago fails to adequately train its officers on the constitutional requirements for affording proper care for persons detained in its custody for extended periods, and fails to supervise and control its officers activities regarding care for arrestees needs during such detentions, and is thereby the moving force behind, the very type of misconduct at issue here, and its failure to do so manifests deliberate indifference;

d. As a matter of both policy and practice, the Chicago Police Department facilitates the very type of deprivation at issue here by failing to adequately punish and discipline officers involved in prior instances of similar deprivations, thereby leading Chicago Police Officers to believe their actions will never be scrutinized and, in that way, directly encourages abuses such as those affecting Plaintiff; and

e. The City of Chicago has failed to act to remedy the patterns of deprivation described in the preceding sub-paragraphs, despite actual knowledge of the same, thereby causing the types of injuries alleged here.

WHEREFORE, Plaintiff, JOSEPH LOPEZ, respectfully requests that the Court enter judgment in his favor and (1) against Defendant CITY OF CHICAGO, awarding compensatory damages, costs and attorneys' fees, (2) against DETECTIVE JAMES DELAFONT, DETECTIVE JENNIFER DeLUCIA, DETECTIVE HECTOR VERGARA, and OFFICER DANIEL JACOBS in their individual capacities, awarding compensatory damages, punitive damages, costs and attorneys fees, and (3) any other relief this Court deems just and appropriate under the circumstances.

**Count VI - State Law Claim: Respondeat Superior**

67. Plaintiff realleges each of the forgoing paragraphs as if fully stated herein.

68. In committing the acts alleged in the preceding paragraphs, the individual Defendants were members of, and agents of, the Chicago Police Department acting at all relevant times within the scope of their employment.

69. Defendant CITY OF CHICAGO is liable as principal for all torts committed by its agent.

WHEREFORE, Plaintiff, JOSEPH LOPEZ, respectfully requests that the Court enter judgment in his favor and against Defendant, CITY OF CHICAGO, in an amount equal to any award against the Defendant Police Officers, as well as any other relief this Court deems just and appropriate under the circumstances.

**COUNT VII - State Law Claim: Indemnification**

70. Plaintiff realleges each of the forgoing paragraphs as if fully stated herein.

71. Illinois law, 735 ILCS 10/9-102, provides that public entities are directed to pay any tort judgment for compensatory damages for which employees are liable within the scope of their employment activities.

72. The individual Defendants are or were employees of the City of Chicago who acted within the scope of their employment in committing the misconduct described herein.

WHEREFORE, Plaintiff, JOSEPH LOPEZ, respectfully requests that the Court enter judgment in his favor and against Defendant CITY OF CHICAGO in the amounts awarded to Plaintiffs against Defendant Police Officers as compensatory damages, attorneys' fees, punitive damages, and any other relief this Court deems just and appropriate under the circumstances.

**JURY DEMAND**

Plaintiff, JOSEPH LOPEZ, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

RESPECTFULLY SUBMITTED,

Attorneys for Plaintiff

Arthur Loevy  
Michael Kanovitz  
Jon Loevy  
Jon Rosenblatt  
LOEVY & LOEVY  
312 North May St.  
Suite 100  
Chicago, IL 60607  
(312) 243-5900

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

JOSEPH LOPEZ,

Plaintiff,

vs.

CITY OF CHICAGO, DETECTIVE JAMES  
DELAFONT, DETECTIVE JENNIFER  
DeLUCIA, DETECTIVE HECTOR  
VERGARA, OFFICER JOSE GOMEZ,  
OFFICER DANIEL JACOBS and OFFICER  
ROBERT MYERS,

Defendants.

Case No. 01 C 1823

Judge Der-Yeghiayan

**STIPULATION REGARDING PLAINTIFF'S THIRD AMENDED COMPLAINT**

The parties, by their undersigned counsel, agree and stipulate as follows:

1. On November 12, 2002, Plaintiff Joseph Lopez filed his Second Amended Complaint, asserting claims both individually and on behalf of a putative class of others similarly situated.
2. On October 16, 2003, Plaintiff filed his motion for class certification pursuant to Fed. R. Civ. P. 23(b)(3).
3. On May 20, 2004, Plaintiff filed a *Motion to Withdraw His Motion for Class Certification and to Set a Trial Date for His Individual Claims*, stating that "[t]o avoid any further delay on the trial of his individual claims, Mr. Lopez wishes to withdraw his motion for class certification and to proceed to trial solely on behalf of himself." This motion was allowed by the Court on May 20, 2004 without appearance (Dkt. No. 141). As of that date, the Court had not yet ruled on whether a class should be certified in this matter.

**EXHIBIT**

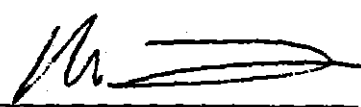
**B**




4. In open court on June 21, 2004, the City suggested that, in light of Plaintiff's withdrawal of his motion for class certification, it would be appropriate for him to institute a Third Amended Complaint clarifying in the complaint itself that he was proceeding in this action solely on his individual claims, and was no longer asserting claims on behalf of any putative class. The Court agreed.

5. The parties have conferred about the issue, and the Defendants agree that the attached Third Amended Complaint may be filed of record pursuant to Fed. R. Civ. P. 15(a). By agreeing to the filing of the Third Amended Complaint, the Defendants do not agree to any allegation contained in the Third Amended Complaint and expressly reserve all rights to assert appropriate defenses to Plaintiff's allegations.


6. The parties further agree that the filing of the Third Amended Complaint (which contains no allegations against Robert Myers) will not be deemed as a relinquishment or waiver of Plaintiff's right to appeal this Court's April 6, 2004 decision granting summary judgment in favor of Mr. Myers as to all claims asserted against him in Plaintiff's Second Amended Complaint.

  
Michael Kanovitz  
LOEVY & LOEVY  
312 N. May St., Suite 100  
Chicago, IL 60607

Attorney for Plaintiff

  
June K. Ghezzi  
Jason G. Winchester  
JONES DAY  
77 W. Wacker Dr., Suite 3500  
Chicago, IL 60601

Attorneys for City of Chicago

  
Darcy Proctor  
Allen Duarte  
ANCEL GLINK  
140 S. Dearborn St., 6<sup>th</sup> Fl.  
Chicago, IL 60603

Attorneys for James Delafont,  
Jennifer Delucia, Hector  
Vergara, Jose Gomez, Daniel  
Jacobs, and Robert Myers