

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

KENT MAYNARD, JR.,

Plaintiff,

V.

THE CITY OF CHICAGO, a municipal corporation, and Chicago Police Officer CARMEN MOSTEK (Star 8664);

Defendants.

Case No.: No. 24-cv-03612

Judge Elaine E. Bucklo

Mag. Judge Young B. Kimm

FIRST AMENDED VERIFIED COMPLAINT

Plaintiff Kent Maynard, Jr., by and through his attorney, James D. Benak Attorney LLC,
complains and alleges as follows against Defendants THE CITY OF CHICAGO and Chicago
Police Officer CARMEN MOSTEK (Star 8664), named as an agent of the City of Chicago and
in her individual capacity:

NATURE OF THE CASE

1. Plaintiff brings this civil rights action to recover damages under 42 U.S.C. §1983.
2. The City of Chicago and Carmen Mostek violated Plaintiff's Fourth Amendment right to be secure in his person and property by using and/or promoting through deliberately indifferent acts, omissions, and policies the use of excessive and deadly force.
3. Plaintiff also seeks relief for state law claims, as set forth hereinbelow.

JURISDICTION AND VENUE

4. This Court has jurisdiction over federal questions pursuant to 28 U.S.C. §1331 and jurisdiction over civil rights cases pursuant to 28 U.S.C. §1343.
5. This Court also has supplemental jurisdiction over state law claims pursuant to

28 U.S.C. §1367.

6. Venue is proper in this District under Title 28 of the United States Code, §1931(b) because all incidents, events, and occurrences giving rise to this action occurred in the Northern District of Illinois, Eastern Division, and all parties reside in this District.

PARTIES

7. Plaintiff is a natural person who was, at times relevant hereto, a citizen of Illinois, residing in Chicago's Bridgeport neighborhood at 522 W. 29th Street #2, Chicago, IL 60602.

8. Defendant Chicago Police Department ("CPD") Officer Carmen Mostek (Star 8664) ("Mostek") is a natural person who was, at times relevant hereto, a citizen of Illinois residing in Chicago's Bridgeport neighborhood next door to Plaintiff at 520 W. 29th Street #2, Chicago, IL 60602.

9. Mostek is sued in her individual capacity and as an agent of the City of Chicago.

10. Defendant City of Chicago is a municipality duly incorporated under the laws of the State of Illinois and the employer of Chicago Police Officer Mostek.

ALLEGATIONS OF FACT

11. Plaintiff and Mostek have lived within a one-block radius of each other in Bridgeport for years and became next-door neighbors on West 29th Street in the Bridgeport neighborhood last October 2023.

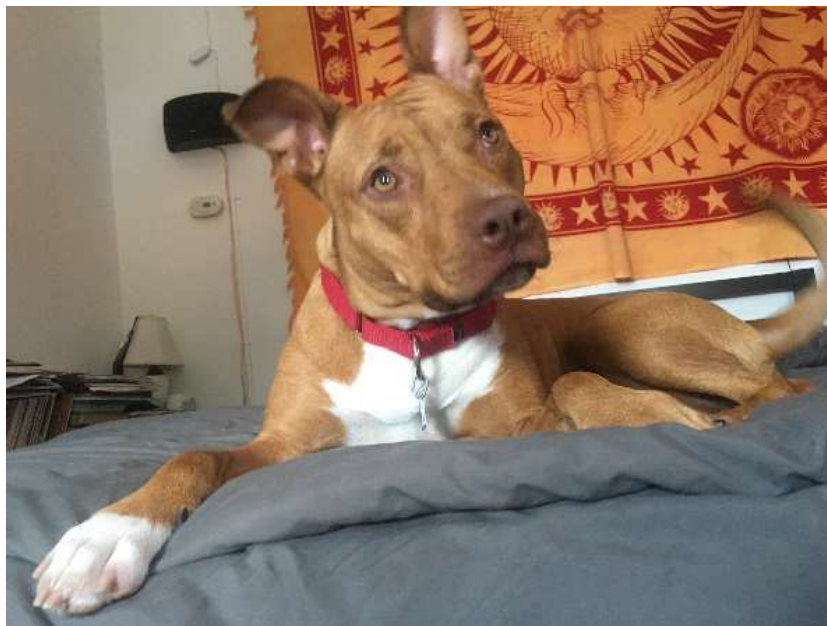
12. Before April 22, 2024, Plaintiff, a 68-year-old semi-retired man, lived with his dog Agatha, known as "Aggie," in the rear unit of the two-unit, one-story home next door to Mostek at 522 West 29th Street.

13. From February 2021 until April 2024, Plaintiff kept Aggie, a "rescue" dog, as a house pet.

14. As such, Aggie was never a guard dog confined to an outside yard and never trained or encouraged to be aggressive or intimidating.

15. As with most rescue dogs, Aggie is a mixed-breed dog.

16. Here is a true and correct photograph of Aggie as she appeared at times pertinent to the instant complaint:



17. Since October 2023, as next-door neighbors, Mostek and Plaintiff occasionally encountered each other with their respective dogs, as Mostek occasionally walked her dog, a “Corgi,” in a fenced backyard behind Plaintiff’s apartment.

18. Defendant Mostek and Plaintiff saw that Aggie seemed to perceive the Corgi’s presence in the backyard as an intrusion into Aggie’s territory.

19. A first attempt to introduce the two dogs to each other to establish comity did not succeed, so it was continued to an unspecified future date.

20. On that and other occasions, Plaintiff and Mostek made the sort of small talk that neighbors often do.

21. As a result of these casual interactions, Plaintiff knew that Mostek was a police officer with the CPD months before April 2024.

22. In any event, at all times pertinent hereto, the two dogs and their respective owners were neighbors, not strangers.

MAN'S BEST FRIEND

23. Aggie was Plaintiff's constant companion and best friend.

24. Plaintiff walked Aggie throughout Bridgeport between 26th Street and 35th Street two or three times a day, every day, covering at least three miles.

25. During that time, Bridgeport residents (and their dogs) between 26th Street and 35th Street became accustomed to seeing Aggie and Plaintiff walking together, and the two made many fast friends.

26. Aggie's affectionate and outgoing nature was a potent ice-breaker.

27. Aggie frequently visited her favorite human and canine friends, particularly her two favorite dog friends, Dexter and Patrick, who lived with their respective families on Parnell south of 31st Street.

A SHOOTING ON A SUNDAY MORNING

28. At approximately 11:29 a.m. on Sunday, April 21, 2024, Mostek, off-duty and armed with her holstered service weapon, was walking her Corgi east on 29th Street, just west of Normal Avenue and the entrance to her second-floor apartment overlooking the northwest corner of 29th Street and Normal Avenue ("the Corner").

29. At 11:30 a.m., as Mostek and her Corgi passed in front of Plaintiff's residence at 522 W 29th Street, Aggie slipped between Plaintiff's legs, exited the home, and ran south toward 29th Street with Plaintiff in hot pursuit. *See* video at <https://youtu.be/kfaernDUgCU>.

30. At 29th Street, Aggie turned left and headed east for the Corner.

31. The entrance to Plaintiff's apartment is approximately eighty feet from the Corner.



32. Aggie traversed the eighty feet from her door to the Corner in seconds.

33. By contrast, it took Plaintiff about ten seconds to arrive.

34. Less than ten seconds later, Aggie was lying dead in a pool of blood after Mostek “had” to shoot her.

35. After shooting Aggie, Mostek ran from the scene and cloistered herself in her apartment.

MOSTEK’S 911 CALL

36. After Mostek and her uninjured dog ran up to Mostek’s apartment, she immediately called 911.

37. The recorded call can be heard at <https://soundcloud.com/ipra-455127423/log-2024-0003540-911-call-1>.

38. Mostek told the 911 operator, “I’m an off-duty PO . . . there was a dog attacking my dog, and I had to shoot it.”

39. As a police officer, Mostek must have known it was critical immediately to emphasize the distinction between an “off-duty PO” and private citizen because she knew that if she were a private citizen, she could be taken into custody, interrogated, and subject to prosecution for reckless conduct under 720 ILCS 5/12-5, a Class 4 Misdemeanor punishable by up to a year in prison.

40. As a police officer, Mostek understood that she needed to emphasize two ideas to avoid any negative consequences from shooting Aggie: first, Mostek discharged her service weapon “under color of law” as a sworn peace officer, and second, the actions she took under color of law were also legal, objectively reasonable and in conformity with all applicable laws and regulations.

41. Mostek told the 911 operator her neighbor “was freaking out” and said “he needed help calming down,” without mentioning that “the neighbor” had been in the line of fire when Aggie was shot.

42. When Mostek spoke to the fire department about an ambulance for “the neighbor,” she told them she was “*an off-duty who got into a shooting.*”

43. Mostek did not say that she *chose* to shoot Aggie.

44. Because she was a sworn peace officer, sworn to keep the peace, Mostek “had” to shoot Aggie because Mostek had sworn to exercise her lawful authority to keep the peace, even if that meant using deadly force.

45. In sum, Mostek's conduct after the shooting was intended to promote two conclusions: first, that whatever Mostek had done was done under color of law, in her capacity as "an off-duty PO," and second, that Mostek's use of deadly force was objectively reasonable, a narrative that was incorporated into subsequent CPD reports, and reported by the news media.

THE ONE-INTERVIEW INVESTIGATION

46. Many police officers responded to the scene after the shooting, dutifully putting crime scene tape around Aggies' body where she lay in a pool of blood at the Corner and aggressively shouting orders to those standing by.

47. Before arriving, there had been reports that a man was shot instead of a dog because Plaintiff had been just inches from Aggie when the shot was fired.

48. After learning that no human being was shot, the CPD officers limited their "investigation" to one interview of one person: Mostek, whom they visited privately in her apartment, away from public view.

49. Based on this one interview, the "investigation" confirmed that Mostek had acted under color of law and adopted the narrative that she used objectively reasonable force when she fired her gun.

OFFICER PRONEK'S OFFICIAL INCIDENT REPORT

50. An official Case Incident Report was signed by Officer Nicholas Pronek, in his capacity as the "Reporting Officer" of record, and stated that he was first to arrive on the scene at 11:36 am, or about five minutes after Mostek's 911 call, and interviewed Mostek. *See Exhibit 1.*

51. Pronek's Incident Report contains the following Narrative:

ev#05414 In summary, R/o responded to person shot at the above location. Upon arrival ***R/o was informed that a dog was shot and not a person.*** After securing the scene R/o ***spoke with the caller, [V] MOSTEK, CARMEN, off duty police officer,*** who stated to R/o that she was walking her leashed dog on 29th street and Normal

when a pitbull, that escaped from her neighbors [sic] yard, ran up to her dog and started to bite its neck. [V] MOSTEK, CARMEN recalled hearing someone yell “Ag[g]ie, Ag[g]ie!” while her dog was being attacked. At that point [V] MOSTEK, CARMEN attempted to get the pitbull off of her dog fearing that her dog would suffer great or deadly harm with negative results. While struggling with the pitbull, her neighbor and owner of the pitbull, attempted to help with negative results and at that point [V] MOSTEK, **CARMEN drew her service weapon** and fired one shot striking the pitbull in the head **stopping the attack**. While conducting and [sic] investigation R/o approached the neighbor who refused to give R/o any of his information at the time. A second attempt to get the neighbors information¹ resulted in the neighbor stating “I don’t have to give you and [sic] of my information and you can call me “[redacted].” Ambulance on scene and medical attention was denied by all parties. E.T arrived on scene at 1315 hours. The pitbull was released to its owner to dispose of the remains. BWC recorded event. Date: 21-APR-2024, Time: 13:15

52. Pronek’s narrative identifies “the caller” as “MOSTEK, CARMEN, *off duty police officer*,” not a private citizen going about purely private matters. *Id.*

53. Pronek states that Mostek “drew her service weapon” and used deadly force “to stop[] the attack” thus nullifying a threat to herself, her dog, and the general public.

54. As such, the official Incident Report describes Mostek’s conduct as undertaken by an “off-duty PO,” *i.e.*, under pretense of lawful authority and objectively reasonable to keep the peace.

THE NEWS MEDIA DISSEMINATES THE OFFICIAL STORY

55. The evening of April 21, 2024, various media outlets echoed the official line – promulgated by Mostek and Pronek -- that the Incident was a justified use of deadly force by an off-duty police officer acting reasonably to stop a deadly attack.

56. The following is typical of the media coverage:

¹ The so-called request “for information” was a request that Plaintiff produce an ID, not recite how the shooting occurred or why Aggie was lying dead in the street with a bullet to the head.

CHICAGO (WLS) -- An off-duty Chicago police officer fatally shot a dog Sunday on the South Side. The shooting happened in the 500 block of West 29th Street, in the Bridgeport neighborhood, Chicago police said. A 30-year-old woman was walking her dog on a leash when an unleashed pit bull dog left a yard. The pit bull began to bite the neck of the woman's dog, police said. The owners of the two dogs were unable to separate them. ***The woman produced a firearm and shot the pit bull to stop the attack, police said.*** A source told ABC7 the 30-year-old woman was an off-duty Chicago police officer. The remains of the pit bull were returned to the owner. No citations were issued, Chicago police said. No further information was immediately available.

CAPTAIN POPPISH'S TACTICAL RESPONSE REPORT

57. Six days later, on April 27, 2024, a "Tactical Response Report" ("TRR") was signed by Captain Michael Poppish regarding the Incident. *See* Exhibit 2.

58. The TRR seems to rely heavily on the narrative in Pronek's Incident Report, falling in line with the notion that Mostek was "an off-duty PO" acting under pretense of law who used reasonable force to stop a vicious attack.

59. The TRR recites an attack "near [the] dog's neck with biting and mauling aggressively and at a fast speed."

60. The "subject" (Aggie) was an appropriate object of deadly force because of a "physical attack" involving "mouth/teeth/spit," "grab/hold/restrain," and "us[ing] force likely to cause death or great bodily harm."

61. The type of "activity" that prompted Mostek's use of deadly force was "ambush – no warning."

62. Significantly, the TRR refers to Mostek as an "involved member ***performing a police function,***" reflecting the fact that neutralizing an ambush involving force likely to cause death or great bodily harm commenced with no warning is an act closely related to a police officer's official duties and squarely within the scope of her employment.

63. The variously stated reasons in the TRR for Mostek's "response" are "Defense of Self," "Overcome Resistance or Aggression," and "defense of dog/pet," subject to Mostek's conclusion that "[she] was [] *forced* to shoot Aggy [sic] in order to save [her] dog Buddy and *prevent injury to [her]self*."

64. Significantly, the Incident Commander reports that "BASED ON THE PRELIMINARY INFORMATION THAT I HAVE REVIEWED AND THAT WAS AVAILABLE AT THE TIME OF THIS REPORT, [MOSTEK'S] USE OF FORCE RESPONSE APPEARS TO BE IN COMPLIANCE WITH DEPARTMENT POLICY AND DIRECTIVES."

65. The TRR's "investigation comments" conclude, "[i]t was determined that [Mostek] be placed in the Traumatic Incident Stress Management Program after checking on her wellbeing."

66. As such, CPD took responsibility for the psychological trauma that Mostek suffered in the Incident, presumably because the trauma was suffered while Mostek was performing her official duties as a peace officer (*i.e.*, acting under color of law), and using objectively reasonable force.

THE "INVESTIGATION" IN NAME ONLY

67. The TRR reported that "R/SGT [(Pronek)] RESPONDED TO THE SCENE. R/SGT WAS UNABLE TO IDENTIFY ANY WITNESSES ON SCENE."

68. By contrast, before the multiple responding officers had left the scene, Plaintiff had openly collected contact information for multiple eyewitnesses who expressed a willingness to talk, and by the time the TRR was written, COPA had already identified and interviewed at least three eyewitnesses.

69. Following their time-honored tradition, the officers responding to the Incident did not ask any civilian what had occurred.

70. Instead of conducting an investigation, they set the stage for a coverup that would permit CPD officers to control the narrative, just as they did in the infamous case of Laquan McDonald.

71. To preserve their willful ignorance of Mostek's conduct, no CPD officer asked if anyone had seen what happened; conducted an interview or took down contact information from the multiple witnesses who were present and expressed a willingness to talk; or asked the Plaintiff who was easily identified, what had happened.

72. As in the case of Laquan McDonald, Mostek and her fellow members seem to have assumed CPD could control the narrative because there was no video record of what had actually transpired on the Corner.

AFTER MOSTEK AND THE CPD REPORTED THAT HER USE OF DEADLY FORCE WAS REASONABLE, A VIDEO SURFACES

73. Not long after the cover-up seemed complete, a surveillance video came to light. See <https://vimeo.com/949971398>, "the Video."

74. The Video shows Mostek acting openly and under color of law because, since 1945, it has been clear that "under color of law" does not mean "lawfully" or "not in violation of law," but rather that an act was committed under "the pretense of lawful authority," whether lawful or not.

75. The Video shows that Mostek's description of the Incident – which was incorporated into CPD's official reports of the Incident -- is a lie.

76. It is beyond dispute that Mostek's sudden and explosive use of deadly force, start-to-finish in less than a minute, was not only objectively unreasonable but also rash, reckless, indifferent to human life, heartless, and depraved.

77. The Video shows the west side of Normal Avenue and begins seconds after Aggie arrives at the Corner.

78. There, Aggie encounters Mostek's Corgi, and a skirmish ensues, which Mostek observes without attempting to separate the dogs.

79. Indeed, the Video shows that Mostek did not at any time try to separate the dogs.

80. Instead, no more than one or two seconds after the dogs first engaged, Mostek drew her service weapon.

81. Approximately three seconds into the Video, Plaintiff arrived on the scene, running from his apartment.

82. By then, unbeknownst to Plaintiff, Mostek was brandishing her service weapon and moving closer to Aggie to get a better shot at her.

83. A second or two later, Plaintiff and Mostek converged at a point just west of the two dogs in the street, just east of the curb.

84. Plaintiff was approaching Aggie to immobilize her; Mostek was moving closer to shoot her.

85. As Plaintiff seemed about to reach down and grab Aggie, Mostek shouldered him to the right, away from his dog.

86. Mostek continued to push her right shoulder against Plaintiff as he attempted to reach Aggie.

87. The Video shows Mostek continuing to exert pressure against Plaintiff until he falls to the pavement.

88. By this time, the Video had shown the two dogs closely engaged for about three seconds.

89. The Video shows that while falling to the pavement, Plaintiff nonetheless managed to throw himself on top of Aggie and wrap his arms around her, pulling her to his chest.

90. As such, the only part of Aggie's anatomy that was not covered by Plaintiff's body was her head, which was just inches from Plaintiff's head, as the two lay in the street at Mostek's feet, side-by-side.

91. By this time, as the Video shows, Mostek's dog had disengaged and was uninjured and moving away from where Plaintiff and Aggie lay on the pavement.

92. Mostek, in an unstable position after pushing Plaintiff to the ground, lurched forward, out of balance, and then seemed to be stepping back, still struggling to regain her balance.

93. While still moving and out of balance, Mostek, holding her pistol loosely in one hand, fired one shot at the place where Aggie and Plaintiff were lying side by side on the ground.

94. The bullet struck Aggie in her left ear, just inches from Plaintiff's face.

95. The bullet killed Aggie instantly.

96. After the shot rang out, Plaintiff felt Aggie go limp beneath him and looked down and saw her eyes were lifeless and that blood was draining from her mouth.

97. Plaintiff, enveloped in the smoke from Mostek's gun, looked up toward the curb, where he saw Mostek standing, holding the pistol still pointed down at him, her uninjured dog behind and to the right of her on the sidewalk.

98. As the video shows, Plaintiff asked, in shock and disbelief, "Did you just shoot my dog?" to which Mostek calmly and matter-of-factly replied, "She attacked my dog."

99. Those were the only words that Mostek uttered before she turned, walked, picked up her dog's leash from the sidewalk, and then ran north on Normal Avenue towards the entrance of her apartment, the Corgi running beside her.

100. Seconds after the shooting, an eyewitness in a second-floor apartment on the south side of 29th Street placed a 911 call to report that Mostek had shot a man who was lying on the ground. Available at https://soundcloud.com/ipra-455127423/log-2024-0003540-911-call2?utm_source=www.chicagocopa.org&utm_campaign=wtshare&utm_medium=widget&utm_content=https%253A%252F%252Fsoundcloud.com%252Fipra-455127423%252Flog-2024-0003540-911-call2.

101. That is because Plaintiff and Aggie were so close together when Mostek fired that the shot that killed Aggie appeared to be intended for Plaintiff.

102. In any event, here is a true and accurate photograph of Aggie shortly after Mostek shot her:



103. Whatever her motivation, the Video showed that Mostek brutally killed Aggie by discharging her service weapon on a public sidewalk in a densely populated residential neighborhood about midday on a sunny Sunday *while pointing the gun at Plaintiff*, who was lying

on the ground, in the line of fire, holding Aggie, at a time when Aggie was no threat to Mostek, her dog, or anyone else.

104. While staggering out of control and out of balance, Mostek discharged her service weapon, and the bullet she fired missed Plaintiff's face by a matter of inches.

105. Mostek seemed to have fixated on shooting Aggie the instant the skirmish began when she unholstered her weapon.

106. Thereafter, Mostek did not let anything—not even Plaintiff's presence in the line of fire—deter her from that course of action.

107. As such, Mostek's first and only response to the dogfight was to unholster her service weapon and use deadly force – even when it jeopardized a human life.

108. Regardless of where she intended to shoot, Mostek fired a round that could have very easily killed Plaintiff directly or by ricochet – at a time when there was no threat to Mostek, her dog, or anyone else.

109. The Video showed that actions taken by Mostek under color of law were unlawful in that they were objectively unreasonable and failed to conform with the written policies, practices, and procedures of the CPD, which promote de-escalation and the use of deadly force as a last resort, with due regard for the sanctity of life.

110. Instead, Mostek's conduct followed the real (as distinct from the written) CPD policies, practices, and procedures, the ones that embrace excessive force and treating people “as animals or subhuman.”

111. CPD requires an investigation and report whenever a member discharges a firearm.

112. Following the time-honored customs and practices that CPD officers have always used to hide their misconduct, Carmen fabricated a clichéd story about a vicious pit bull running

at large that was in the process of killing her dog, its jaws locked around her dog's neck, forcing her heroically to intervene and save her dog's life.

113. The Video showed that this was a lie.

114. For example, the Video did not show Mostek and Plaintiff trying to pull Aggie off of Mostek's dog as it was being bitten in the neck, just a "split moment" from death.

115. Indeed, Mostek's dog suffered not so much as a scratch in the Incident.

116. The Video showed a brutal and senseless killing of a dog, *and very nearly of Plaintiff*, carried out by an "off-duty PO" who assumed the role of judge, jury, and executioner to kill a dog less than one minute after it exited its home.

MOSTEK PROVIDED A FALSE NARRATIVE FOR THE INCIDENT REPORT

117. It is a violation of CPD policies and the law to submit a false report to the police.

118. In Mostek's story, Mostek's use of deadly force was justified as necessary and reasonable – but the Video made it clear that her use of deadly force was, in fact, not needed to protect anything at all and had put Plaintiff's life – a human being's life -- in grave peril.

119. Officer Pronek and Captain Poppish passively and unquestioningly accepted Mostek's false narrative without any attempt to verify its accuracy.

120. CPD did not identify or interview a single witness other than Mostek.

121. Even a cursory investigation by CPD would have revealed that which the Video showed: Mostek shot a house pet as it was held in her owner's arms, not a pit bull that was mauling a dog.

122. Even if it were true (it is not), Mostek's exculpatory narrative would not justify her conduct as a matter of law because there is no license to use deadly force against a human being to protect a dog.

123. The Video shows that in shooting Aggie in cold blood, Mostek showed complete disregard for the sanctity of human life and used grossly disproportionate force against Plaintiff when neither he nor Aggie presented any threat to Mostek – or her dog.

124. Before her unreasonable use of excessive force, Mostek did not seek to de-escalate the situation.

125. She did not direct Plaintiff to step away from Aggie, nor did she warn Plaintiff, as she held her pistol pointed at him, that she was about to fire.

THE COVER-UP IS STILL ONGOING AS CPD STONEWALLS FOIA REQUESTS AND FAILS TO CORRECT THE INCIDENT REPORT

126. CPD has not amended or modified the obviously inaccurate reports of the Incident, nor has it responded to FOIA requests served on them and now weeks past due.

127. As far as the official CPD record is concerned, the Video does not exist.

128. The Video has had no impact on CPD because it came as no surprise that Mostek used excessive force as part of a widespread practice promoted, tolerated, and condoned by a culture of over-aggressive policing in the Chicago Police Department that has persisted for years because of the deliberate indifference of senior policymakers.

129. Mostek's brutal overreaction in conformity with CPD's unwritten policy on excessive force placed Plaintiff's life in jeopardy and deprived Plaintiff of security in his person and property without due process of law.

130. Mostek and the responding officers, purportedly on the scene to investigate what happened, automatically engaged in a cover-up in accordance with CPD's well-established pattern and practice of allowing CPD officers to engage in deadly misconduct with impunity.

131. Mostek's conduct on April 21, 2024, shows that even though neither she nor her dog was subject to any imminent threat of harm, she was unwilling or unable to determine a

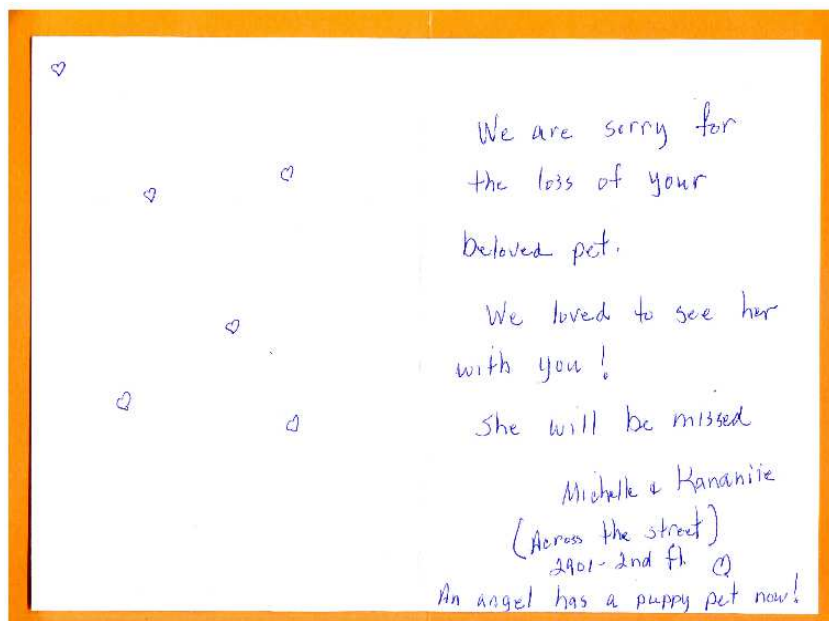
necessary, reasonable, and proportional use of deadly force.

132. The instant action is necessary to redress Mostek's outrageous conduct, carried out under pretense of the lawful authority conferred on a peace officer because, long after a Department of Justice report lambasting CPD, CPD has still not made a good-faith effort to investigate and enforce its written rules for using deadly force and cannot be relied upon to do so.

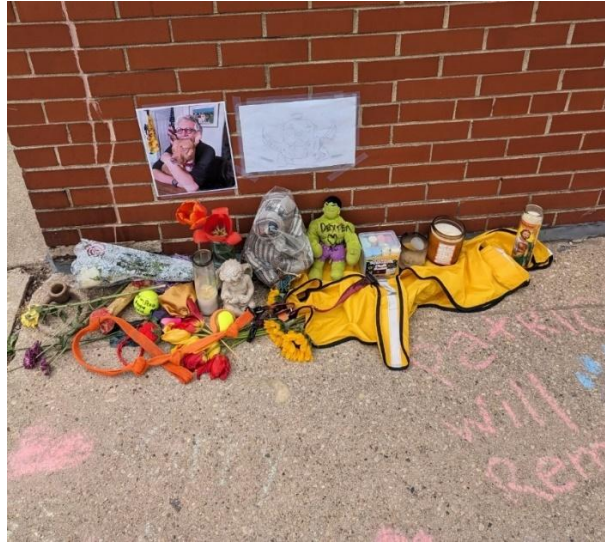
MOSTEK ORCHESTRATED A CAMPAIGN OF HARASSMENT AND INTIMIDATION AGAINST PLAINTIFF AND OTHER NEIGHBORS TO PROCURE THEIR SILENCE

133. In the days after the incident, some of the many people Aggie had befriended on her daily walks showered Plaintiff with condolences.

134. One such condolence that is representative of many others is as follows:



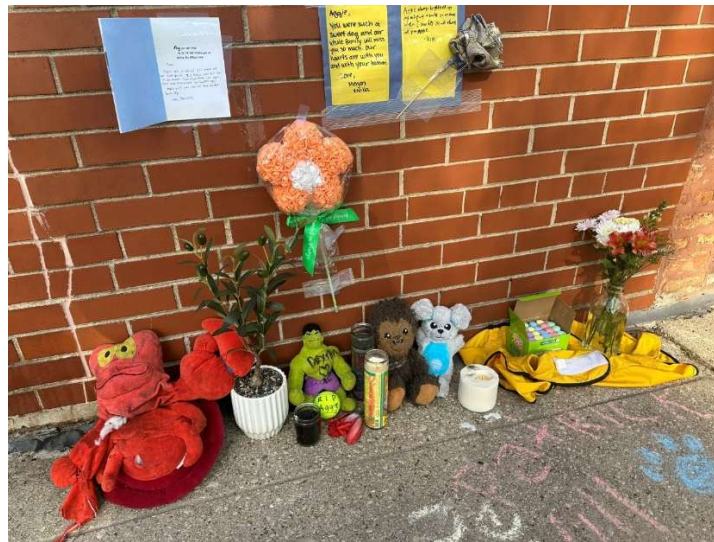
135. The neighborhood also spontaneously created a memorial to Aggie, including, among other things, Aggie's collar and leash, thus:



136. Within 48 hours, someone took the memorial down during the night.

137. On information and belief, that “someone” was Mostek, who threw many of the objects in the memorial into the garbage cans behind her apartment.

138. Aggie’s friends in the community immediately rebuilt the memorial to look like this:



139. Within a day, the memorial was again taken down, with all the objects and messages thrown in a garbage can behind Mostek’s apartment.

140. Significantly, Plaintiff’s apartment and Carmen’s next-door apartment share a

common owner.

141. In the week after the shooting, Plaintiff heard rumors that Carmen was “working the phones” to dispel -- by telling lies and slandering Plaintiff -- the appearance that she was a trigger-happy sociopath who presented a clear and present danger to the community.

142. On Sunday, April 28, 2024, one week from the date of Aggie’s execution, Plaintiff was advised that, because of false and defamatory statements made by Mostek, his Landlord was giving him two weeks to quit his apartment.

143. On information and belief, Mostek told Landlord that Mostek had killed Aggie because she was a vicious pit bull and a danger to the community and that Plaintiff was an irresponsible scofflaw who could not be trusted to ensure that his dog did not harm others.

144. Based on Mostek’s lies, Landlord purported orally to terminate Plaintiff’s leasehold such that he, a 68-year-old man, is now subject to mid-term eviction if Mostek’s lies are given full effect.

145. Mostek’s first wrongful act was the excessive use of deadly force that endangered a Plaintiff’s life without any justification.

146. Mostek’s second wrongful act was making a false police report based on a story that she knew was false.

147. Mostek’s third wrongful act was the orchestration of a campaign to harass, intimidate, and defame Plaintiff into silence and force him out of his home.

**CPD’S CONDUCT FOLLOWED A LONG-ESTABLISHED PATTERN:
EXPLOIT THE CODE OF SILENCE TO LIE AND HIDE THE TRUTH**

148. Since 2019, CPD has been operating under a court-imposed consent decree because of its stubbornly persistent pattern and practice of using excessive force.

149. This widespread pattern and practice is not due to a lack of written policies: CPD has strict written rules about using deadly force.

150. However, written rules have no impact unless they are respected and followed in practice.

151. CPD disregards its written rules and follows a custom and practice of brutality and excessive force anchored in the notion that CPD officers are above the law and protected by a code of silence.

152. Given the CPD's longstanding pattern and practice of over-aggressive and violent responses to civilian encounters, even in the absence of any crime, it is not surprising that the CPD officers who responded to Aggie's execution did not want to learn the truth about what happened.

MOSTEK'S USE OF DEADLY FORCE VIOLATED CPD'S WRITTEN POLICIES

153. Chicago Police Department General Order G03-02 ("the General Order") governs the use of deadly force by police officers in the field.

154. General Order Article II, sections A. and B., state as follows:

A. Sanctity of Human Life. The Department's highest priority is the sanctity of human life. In all aspects of their conduct, Department members will act with the foremost regard for the preservation of human life and the safety of all persons involved.

B. Public Cooperation. A strong partnership with the public is essential for effective law enforcement. Inappropriate or excessive uses of force damage that partnership and diminish the public trust that is a cornerstone of policing in a free society.

155. Article III of the General Order provides that police officers may only use force that is objectively reasonable, necessary, and proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape.

156. Factors that may be considered in determining whether force was objectively reasonable include whether the subject poses an imminent threat to the officer or others, the risk of harm, the level of threat or resistance presented by the subject, and the subject's proximity or access to weapons.

157. Article III B 4 provides that police will use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so "based on the totality of the circumstances[, including] continually assessing the situation and modifying the use of force as circumstances change and in ways that are consistent with officer safety."

158. Article III B 5 states, "[t]he use of excessive force, unwarranted physical force, or unprofessional conduct by a Department member is prohibited and will not be tolerated" and that "Force used as punishment or retaliation is prohibited."

159. According to the General Order, deadly force includes both pointing and discharging a firearm in the direction of a person.

160. An "imminent threat" must exist to justify using deadly force.

161. An "imminent threat" exists when it is objectively reasonable to believe three *conjunctive* elements, namely: the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken, and the subject has the means or instruments to cause death or great bodily harm, and the subject has the opportunity and ability to cause death or great bodily harm.

162. The General Order, distilled to its essence, provides that deadly force is a last resort that can only be used directly to address an imminent threat *to a human being, not a dog*.

163. Imagined threats of imminent harm to a dog are not included in the definition of "imminent threat."

164. Significantly, the General Order does not permit using deadly force against a human being to nullify a threat of harm to a dog, even if that had occurred here (it did not; Mostek's dog was unharmed).

165. Article Five of the Rules and Regulations of the Chicago Police Department sets forth various prohibited acts, including:

Rule 8: Disrespect to or maltreatment of any person *while on or off duty*.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

COMMENT: Rules 8 and 9 ***prohibit the use of any excessive force by any member.***

These rules prohibit all brutality, and physical or verbal maltreatment of any citizen *while on or off duty*, including any unjustified altercation of any kind.

Rule 15: Making a false report, written or oral;

Rule 38: ***Unlawful or unnecessary use or display of a weapon;***

166. As stated, the foregoing written rules are observed only in the breach.

167. In violation of CPD's written policies and applicable law, Mostek and other police officers routinely apply their customary use of excessive force without fear of being held to account because violations are routinely covered up or explained away, especially where the police have executed the only witness who can reveal the truth.

**THE CITY IS RESPONSIBLE FOR MOSTEK'S USE OF EXCESSIVE FORCE
BECAUSE SHE ACTED IN CONFORMITY WITH THE CPD'S WIDESPREAD
AND WELL-ESTABLISHED CULTURE OF EXCESSIVE FORCE AND ITS
CODE OF SILENCE**

168. At all times pertinent hereto, Mostek was acting under color of state law and within the scope of her employment with the City of Chicago as a sworn police officer and is sued here in her individual capacity and as an agent of the City of Chicago.

169. While a peace officer is expected to protect persons and property, using deadly force that jeopardizes human life is not permitted to protect a dog.

170. Chicago is responsible for CPD's written and customary policies, practices, and customs, including those applicable to the use of deadly force.

171. The City is also responsible for enforcing its written policies, practices, and customs in the field.

172. As alleged with particularity herein, Defendants violated rights secured to Plaintiff by the due process Clause of the Fourth Amendment to the United States Constitution by promoting a culture that promotes violence over de-escalation.

173. Plaintiff has been damaged and will continue to be damaged by Defendants' actions and is entitled to monetary damages.

174. The instant suit seeks relief for Defendants' violation of the due process Clause of the Fourth Amendment to the United States Constitution, which violation is actionable under 42 U.S.C.A. §1983.

175. Defendants are "persons" under 42 U.S. C. A. §1983.

176. Defendants acted "under color of state law" for purposes of 42 U.S.C.A. §1983.

177. Mostek drew and fired her City-issued service firearm because, as an "off-duty PO," "she had to."

178. The CPD custom and practice of shooting first and asking questions later was the moving force behind Mostek's conduct.

179. Defendants acted with deliberate indifference to Plaintiff's right to be secure in his person and property because policymakers' tacit endorsement of excessive violence has caused shocking incidents of excessive force and will foreseeably continue to endanger lives.

CPD HAS A LONG AND STUBBORN PATTERN AND PRACTICE OF EXCESSIVE DEADLY FORCE

180. In December 2015, after Laquan McDonald was gunned down by a police officer who claimed to be reasonably exercising deadly force, the U.S. Attorney General launched a broad civil rights investigation into CPD's corrupt policing practices.

181. In January 2017, the U.S. Department of Justice (DOJ) released the results of its investigation, finding a longstanding, pervasive “pattern or practice” of civil rights abuses by the CPD, including excessive use of deadly force. *See* Exhibit 3, *passim*.

182. The DOJ report concluded, in sum and substance, that Chicago police use excessive force and often treat people “as animals or subhuman.” *Id.*

183. In August 2017, the Office of the Illinois Attorney General (OAG) sued the City of Chicago in federal court, seeking a Consent Decree to address the DOJ’s findings and recommendations.

184. Judge Dow presided over the OAG suit against Chicago.

185. In that proceeding, OAG negotiated a Consent Decree with the City.

186. In March 2018, the Parties to the Consent Decree—the OAG and the City—also entered into a Memorandum of Agreement with certain community organizations committed to monitoring, enforcing, and educating the community about the Consent Decree.

187. The OAG and the City sought proposals for an Independent Monitoring Team for the Consent Decree (“IMT”).

188. Judge Dow approved and signed the Consent Decree on January 31, 2019.

189. An independent monitor was named on March 1, 2019, the effective date of the Consent Decree.

**CPD CONTINUES UNCONSTITUTIONALLY TO USE DEADLY FORCE
DESPITE THE DOJ INVESTIGATION, THE OAG SUIT, THE CONSENT
DECREE, THE IMT, AND THE PATF**

190. Even after the establishment of the IMT and the so-called Police Accountability Task Force (“PATF”), the pattern and practice of hyper-aggressive policing has been perpetuated

by cover-ups whenever necessary to protect a fellow officer from scrutiny and consequences. *See Id.*

191. Mostek used excessive and unconstitutional force on April 21, 2024, because she knew that such conduct was condoned by CPD's most senior policymakers, knew that she would never be called to account for her conduct, and knew that her fellow officers could be relied upon to accept and parrot whatever exculpatory nonsense she fed them.

192. Mostek was following CPD's longstanding policy and practice of encouraging officers to point guns at community members without justification when she pointed her gun at the Plaintiff and fired.

193. In disregard of written policies, Chicago police officers routinely point their guns at people at the first instance of uncertainty rather than as a last resort.

194. According to CPD's own data, Chicago police officers point guns at people an average of nearly ten times a day.

195. Police officers pointed their guns at over 3,500 adults *and children* in 2022.

196. According to CPD's own data, CPD documented uses of gun-related force have risen significantly over the past several years.

197. From 2022 to 2023, CPD officers were on track to increase instances of gun pointing by 19%.

198. From 2022 to 2021, there was also a 22% increase.

199. Mostek's conduct on April 21, 2024, directly results from CPD's failure to enforce its written policies on using deadly force.

200. CPD has failed to comply with the existing Consent Decree requirements for curbing the excessive use of guns.

201. CPD has failed to promulgate policies, procedures, and practices sufficient to prevent officers from unreasonably and unlawfully pointing guns at community members.

202. CPD, as a matter of pattern and practice, relies upon overly aggressive tactics that unnecessarily escalate encounters with individuals, increase tensions, and lead to excessive force.

203. In encounters with individuals that begin consensually, or in cases in which officers stop individuals purportedly for low-level violations, officers repeatedly use the most intrusive forms of police response possible-including guns.

204. They do so even where, as here, individuals do not present a threat to the officers or other bystanders.

205. Even where some use of force may be justified, CPD officers, as a matter of practice and despite written regulations, use a higher level of force than is objectively reasonable.

206. The DOJ observed this trend of escalation in shootings, finding CPD officers regularly engaged in “unnecessarily escalating confrontations,” which resulted in “avoidable uses of force and resulting harm, including deaths.”

207. PATF similarly found “many examples of CPD encounters with citizens in routine situations that have gone tragically wrong.”

208. The Task Force acknowledged widespread reports from Chicagoans that officers approach routine situations with over-aggressiveness and hostility.

209. The Consent Decree contains several provisions crafted to end CPD’s unlawful use of excessive force and violence.

210. However, CPD has failed to comply with the Consent Decree.

211. Paragraph 153 provides that CPD's use of force policies must comply with relevant law and require "officers apply de-escalation techniques to prevent or reduce the need for force whenever safe and feasible."

212. CPD does not comply with this provision because it has not completed related training.

213. Paragraph 155 provides that CPD policy should "reduce the circumstances in which using force is necessary, and to ensure accountability when CPD officers use force that is not objectively reasonable, necessary, and proportional under the totality of the circumstances."

214. CPD has failed to comply with this provision and, indeed, perpetuates the code of silence to hide its disregard for its written rules.

215. Paragraph 156 provides that CPD's policies, training, supervision, and accountability systems will ensure, among other things, that CPD officers "act at all times in a manner consistent with the sanctity of human life; act at all times with a high degree of ethics, professionalism, and respect for the public; use de-escalation techniques to prevent or reduce the need for force whenever safe and feasible."

216. CPD has not complied with this provision because its policies related to "training, supervision, and accountability" systems remained incomplete.

217. The IMT states, "We urge the CPD to pay additional attention to its Use of Force supervision and accountability requirements and systems"

218. The IMT further documents that "the current implementation of systems does not promote supervision and accountability."

219. Paragraph 161 provides that "CPD officers must use de-escalation techniques to prevent or reduce the need for force whenever safe and feasible."

220. The IMT notes, “public perception of the CPD’s de-escalation skills is heading in the wrong direction. In response to the question, ‘Over the past 12 months, how good of a job do you think the Chicago Police in your neighborhood are doing on . . . de-escalating tense situations,’ a higher percentage of respondents in 2022 as compared to 2020 answered ‘very poor’ or ‘poor’ (21.8% to 18.9%), and a lower percentage answered ‘good’ or ‘very good’ (39.9% to 49%).”

221. Paragraph 192 states, “A designated unit at the CPD headquarters level will routinely review and audit documentation and information collected from all investigatory stop and arrest occurrences in which a CPD officer pointed a firearm at a person in the course of effecting a seizure.”

222. CPD has failed to comply with this provision because it has failed sufficiently to staff the use of force review unit. As a result, CPD officers’ uses of force are not promptly reviewed.

223. As a result of the foregoing failures related to escalatory conduct and the use of force, hundreds of people experience unlawful violence and other forms of misconduct at the hands of CPD officers *despite the Consent Decree’s existence*.

224. In 2021, the Civilian Office of Policy Accountability (“COPA”) sustained 732 allegations that CPD officers engaged in a range of misconduct, including excessive force and unnecessarily displaying a weapon.

225. In 2022, COPA sustained 905 allegations against CPD officers.

226. In 2023, COPA sustained 758 allegations.

227. These findings show the stubborn persistence of CPD’s tradition of unlawful violence.

228. The foregoing failures are the direct cause of Mostek's misconduct because, among other things, Mostek's hair-trigger use of a firearm was consistent with the real, as distinct from the written guidelines and policies followed by the City and CPD.

229. Notwithstanding its written regulations, CPD maintains a policy, practice, and custom of encouraging officers to use excessive force.

230. When Mostek subjected Plaintiff to unreasonable and unlawful violence, she did so in conformity with the CPD's *real* policies, not the words on a sheet of paper.

CPD SYSTEMATICALLY FAILS TO HOLD ACCOUNTABLE OFFICERS WHO LIE OR REMAIN SILENT ABOUT POLICE MISCONDUCT, INCLUDING ESPECIALLY THE RAMPANT USE OF EXCESSIVE FORCE.

231. CPD has maintained a widespread practice of failing to discipline and hold accountable Chicago police officers who lie or remain silent about police misconduct -- including discriminatory policing, excessive force, and Fourth Amendment violations.

232. CPD trains its officers to disregard written rules and follow a "code of silence" in their policing, a practice that significantly hampers investigations and discipline.

233. One officer testified to being told repeatedly at the academy that "[W]e do not break the code of silence. Blue is Blue. You stick together. If something occurs on the street that you don't think is proper, you go with the flow. And after that situation, if you have an issue with that officer or what happened, you can confront them. If you don't feel comfortable working with them anymore, you can go to the watch commander and request a new partner. But you never break the code of silence."

234. In the case of *Obrycka v. City of Chicago*, 07-CV-2372 (N.D. Ill.), a federal jury's verdict in February 2007 revealed the City's 'widespread custom and/or practice of failing to

investigate and/or discipline its officers and/or code of silence.’ This has had a profound impact on the community.

235. In a 2015 speech, Mayor Emanuel acknowledged that CPD uses a “code of silence” to conceal abuses and wrongdoing.

236. The City’s longstanding deliberate indifference to the rights of citizens to be free from police brutality is also apparent in the April 2016 PATF-issued report with “recommendations for reform.” *See* Exhibit 4.

237. PATF reported that the code of silence is “institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City.”

238. The DOJ investigation confirmed that a code of silence pervades CPD

239. One CPD sergeant informed DOJ investigators that “if someone comes forward as a whistleblower in the Department, they are dead on the street.”

240. As the DOJ found, the code of silence extends to sergeants and other supervisors who, as they did in the instant case, take affirmative actions to cover up their subordinates’ misconduct, thereby betraying the trust placed in them.

241. The DOJ determined the code is “strong enough to incite officers to lie even when they have little to lose by telling the truth.” This is because “officers do not believe there is much to lose by lying.”

242. Given the systematic lack of discipline, CPD officers are allowed to amass dozens of complaints without any consequences.

243. Although several Consent Decree provisions aim to eliminate the code of silence and improve officer accountability, CPD has failed to comply with most of these terms. Indeed,

the City has failed to reach preliminary compliance with the vast majority of accountability provisions.

244. Recently, there has been much concern about whether instances of police violence will interfere with the Democratic Convention. *See* Exhibit 5.

245. CPD's long and sad history of failed reform relates directly to Mostek's actions.

246. CPD maintains a policy, practice, and custom of failing to discipline, supervise, monitor, and control its officers, including Mostek.

247. Consequently, the City allows its officers to believe they can abuse and violate individuals' rights without consequence.

248. These policies, practices, and customs are the same as those that allowed Jason Van Dyke and multiple fellow officers to believe they could cover up Van Dyke's actions in the McDonald case and, more recently, to violate Dexter Reed's rights with impunity.

249. The culture of excess force shows no signs of abating. *See* Exhibit 6.

250. The taxpayers of the City continue to pay huge sums to settle claims against violent police, while the police seem to suffer no consequences for their misconduct. *See* Exhibit 7.

251. As such, the City of Chicago is responsible for i) the violent and unconstitutional acts of Mostek alleged herein, committed, ironically, in a grotesquely distorted attempt to keep the peace; ii) the cover-up in the context of the code of silence; and iii) the campaign of harassment, defamation, and witness intimidation that followed.

COUNT I
VIOLATION OF FOURTH AMENDMENT
EXCESSIVE USE OF FORCE
(AGAINST OFFICER MOSTEK)

252. Plaintiff incorporates the allegations set forth in the preceding paragraphs as though stated herein.

253. At all relevant times, Plaintiff had a constitutional right to be free from excessive force under the Fourth Amendment to the United States Constitution.

254. Defendant Officer Mostek violated Plaintiff's Fourth Amendment rights when acting under color of law (i.e., acting as a PO), she recklessly and unreasonably fired her gun at Plaintiff without legal justification.

255. Police officers are prohibited from discharging firearms at community members unless objectively reasonable under the totality of the circumstances.

256. At the moment Mostek first pointed her gun at Plaintiff, no reasonable officer could have considered Plaintiff (or his dog) a threat.

257. As such, Mostek's conduct under color of law was objectively unreasonable and violated Plaintiff's civil rights.

Wherefore, Plaintiff prays for judgment against Defendant Chicago Police Department Officer Carmen Mostek for compensatory damages, costs, attorney's fees, interest, and any other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.

COUNT II
42 U.S.C. §1983 MONELL
PATTERN AND PRACTICE OF USING EXCESS FORCE
(AGAINST CITY OF CHICAGO)

258. Plaintiff incorporates the allegations set forth in the preceding paragraphs as though stated herein.

259. As part of its employment of Officer Mostek, the City issued Mostek a service firearm, which she was trained and authorized to use both on and off-duty.

260. At all times pertinent hereto, Mostek followed deliberately indifferent CPD policies, practices, and procedures that prescribe and are the moving force behind the widespread

use of excessive force and deceit in lieu of the CPD's written policies, practices, and procedures, which, by contrast to the real policies, promote de-escalation, respect for the sanctity of life, and transparency.

261. At all times pertinent hereto, Mostek acted under color of law and within the scope of her employment as a peace officer, and, as such, all of her conduct alleged herein is fairly attributable to the City.

262. As alleged herein, Mostek was following i) an express policy of using excessive force that caused the constitutional deprivation here and has repeatedly caused in the past constitutional deprivations when enforced; ii) a widespread practice of using excessive force that is so permanent and well-established that it constitutes a custom and practice; and iii) a policy favoring excessive force that has been condoned and tacitly promoted by CPD policymakers despite the constitutional injuries it has caused.

263. The City of Chicago is responsible for Mostek's conduct and the Chicago Police Department's policies, practices, and customs, both written or unwritten.

264. The City of Chicago has a long-standing pattern and practice of using excessive force, including excessive deadly force.

265. This pattern and practice had been in place for years before the shooting alleged herein, as evidenced by the allegations above. Specifically, in 2017, the DOJ documented that CPD members routinely use violent, aggressive practices and that CPD has failed to take any meaningful action to address such unlawful violence.

266. The City of Chicago has been aware of these patterns and practices and their unlawfulness but has failed to implement reasonable and necessary means to address and resolve the pattern and practice of the unlawful use of excessive force that has persisted for years.

267. The deeply entrenched and widespread pattern and practice of excessive force described above and throughout this Complaint was the moving force behind the shooting that violated Plaintiff's rights.

268. As a direct and proximate result of the widespread pattern and practice described above and throughout this Complaint, Plaintiff's rights were violated when his dog was shot and killed, and Plaintiff was very nearly shot in the face by the same bullet.

269. CPD's deliberate conduct and inaction were the "moving force" behind Mostek's shocking conduct because CPD's culture encourages gun violence and promotes impunity by tolerating and even rewarding cover-ups.

270. Even here, CPD has not taken any action to correct the record in the wake of the Video coming to light or use the Incident as a "teachable moment."

271. As a consequence of that inexplicably excessive conduct, Plaintiff has suffered pain and injury, including emotional anguish, fear, anxiety, and the loss of property and liberty, as is more fully described throughout this Complaint.

272. The allegations herein permit a reasonable inference that the practice of using excessive force and gun violence is widespread and that the specific violations complained of were not isolated incidents," or "allegations of a few sporadic examples."

273. The 2018 case of Ricardo Hayes involving a trigger-happy off-duty officer who shot an unarmed developmentally disabled teenager, the more recent case of Dexter Reed, and the huge settlements paid by CPD each year to settle excessive force lawsuits cannot be denied.

274. It's business as usual when it comes to excessive force at the CPD.

Wherefore, Plaintiff prays for judgment against Defendant City of Chicago for compensatory damages, costs, interest, and any other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.

COUNT III
42 U.S.C. §1983 – MONELL
FAILURE TO TRAIN, SUPERVISE AND DISCIPLINE
(AGAINST CITY OF CHICAGO)

275. Plaintiffs incorporate the allegations set forth in all preceding paragraphs as though fully stated herein.

276. The instant action does not seek to hold CPD liable solely for the actions of one officer.

277. Mostek's conduct must be viewed against the backdrop of countless other incidents of excessive force identified in the DOJ Report and continuing unabated to the present day, as evidenced by the huge payments made by the City each year to settle civil rights claims.

278. A municipality's failure to train supports §1983 liability where such failure is the product of deliberate indifference to the constitutional rights of the municipality's inhabitants. *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989).

279. CPD's final policymaking authorities cannot deny that they have long known of and acquiesced to a culture of excessive gun violence and arrogance, as evidenced by the Laquan McDonald case, the DOJ Report, the Ricky Hayes case (*Neumann v City of Chicago*; NDIL Case No. 18-cv-05515) and the more recent case of Dexter Reed, shot by a volley of over 90 bullets fired in less than one minute.

280. CPD has long promoted excessive force and the code of silence despite almost daily reports that excessive force and the code of silence have led to constitutional violations – violations that CPD has consciously disregarded.

281. The same is true when a municipality fails to hold officers accountable for their actions such that officers believe they can act with impunity.

282. The City of Chicago has a long history of its Police Officers using unreasonable force, including deadly force, so the City knew that increased and improved training in areas such as the proper use of force, especially deadly force, was necessary.

283. Notwithstanding that knowledge and cries for reform, the City of Chicago's indifference has persisted, as exemplified by its continuing failure to provide adequate and appropriate training, supervision, and discipline to its Police Officers on the use of force, such as determining the appropriate level of force used in response to a dogfight.

284. Because adequate policies and reforms are not promulgated and implemented, City of Chicago Police Officers are not trained, supervised, and disciplined appropriately.

285. The City of Chicago's failure to act shows deliberate indifference to the constitutional rights of its inhabitants -- as was plain in the recent case of Dexter Reed -- because the City knew that such reforms and training were necessary.

286. As a direct and proximate result of the City of Chicago's deliberate indifference to training and accountability, particularly in the context of the use of excessive force, Plaintiff suffered injuries including, but not limited to, pain, suffering, fear, and mental anguish.

Wherefore, Plaintiff prays for judgment against Defendant City of Chicago for compensatory damages, costs, interest, and other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.

COUNT IV
WILLFUL AND WANTON MISCONDUCT
(AGAINST MOSEK)

287. Plaintiff incorporates by reference all preceding paragraphs.

288. As set forth herein, there is abundant evidence that Mostek was acting under color of law when she followed the CPD policy of excessive force.

289. That same evidence is conclusive as to scope of employment.

290. The fact that Mostek's conduct violated the written policies of the CPD does not change the fact that, as the "investigation" confirmed, *she was doing exactly what the CPD expects from its officers.*

291. Mostek's discharge of a firearm is an act commonly done by police officer employees; the time, place, and purpose of Mostek's act (to kill an allegedly vicious dog) are not aberrant in any way, given the steady drumbeat of reports of excessive violence, CPD had many reasons to expect that its officers would draw their weapons to stop a dogfight and shoot without regard for life; Mostek's act was similar to the authorized use of a firearm – except that it occurred less one minute after the problem arose and put a human being in danger of being shot in the face, with the pistol that CPD furnished to Mostek.

292. Mostek was responding, she said, to a perceived emergency, which is not materially different from a 911 call.

293. The fact that Mostek, while trying to do her job, did so badly does not mean her employer is immunized from liability based on the notion that any wrongful act is necessarily outside the scope of employment.

294. Mostek took action to stop an assault or "ambush without warning" that involved the use of deadly force (a crime).

295. Acting to stop a crime in progress, Mostek acted within the scope of her employment.

296. The City of Chicago and its agent, Officer Carmen Mostek (Star 8664), engaged in willful and wanton misconduct.

297. Mostek pointed her gun at Plaintiff and discharged it, causing the bullet to strike inches from Plaintiff's head.

298. Defendants, at all relevant times, owed Plaintiff a duty not to act in a manner that Defendant knew or should have known would cause damages to Plaintiff's physical and emotional well-being.

299. Defendant's acts were willful, wanton, and deliberately indifferent to the safety of Plaintiff's life.

300. As a direct and proximate result of willful and wanton conduct by the City of Chicago and its Agent, Chicago Police Department Officer Carmen Mostek, Plaintiff suffered grievous harm and emotional distress.

301. Defendant's acts constitute willful and wanton misconduct committed under circumstances exhibiting a reckless disregard for the safety of others.

Wherefore, Plaintiff prays for judgment against Chicago Police Department Officer Mostek for compensatory damages, costs, interest, and any other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.

COUNT V
ASSAULT
(AGAINST MOSTEK)

302. Plaintiff incorporates by reference all preceding paragraphs.

303. The City of Chicago and its agents, the Chicago Police Department, and Officer Carmen Mostek, Star No. 8664, engaged in willful and wanton misconduct.

304. As alleged above, Chicago Police Department Officer Mostek, acting under color of law within the scope of her employment, engaged in offensive conduct and thereby placed Plaintiff in fear of imminent threat to his life, safety, and security without justification.

305. Mostek's actions were undertaken intentionally, willfully and wantonly, or recklessly.

306. The misconduct described in this Count was objectively unreasonable and was undertaken with intentional disregard for Plaintiff's rights.

307. Mostek's exculpatory fiction is meritless on its face: There is no qualified privilege to threaten a human being with imminent death or serious harm to protect a dog – especially when no dog or person is under threat.

308. As a result of the misconduct of Mostek, Plaintiff suffered pain and injury, including emotional anguish, fear, anxiety, and loss of life and liberty.

Wherefore, Plaintiff prays for judgment against Chicago Police Department Officer Mostek for compensatory damages, costs, interest, and any other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.

COUNT VI
DEFAMATION
(AGAINST MOSTEK)

309. Plaintiff incorporates by reference all preceding paragraphs.

310. After the shooting, to cover up her misconduct and intimidate Plaintiff into silence, Mostek made multiple false statements about Plaintiff.

311. Mostek intentionally and maliciously sought to punish Plaintiff for being a troublesome victim of her misconduct by telling the parties' mutual landlord that Plaintiff's dog was a dangerous and vicious pit bull that Plaintiff allowed to run amok in the Bridgeport neighborhood.

312. The statement was false, and Mostek knew it was false.

313. To interfere with Plaintiff's tenancy in his apartment and damage his reputation in the community, Mostek published false and defamatory statements about Plaintiff to the parties' mutual landlord, intending that landlord terminate Plaintiff's tenancy for cause.

314. On April 28, 2024, the Plaintiff advised that the Landlord was moved by Mostek's false statements and wanted the Plaintiff to quit his apartment within two days.

315. As such, Mostek's malicious publication of a falsehood intended to whitewash her misconduct has harmed Plaintiff and subjected him to unbearable stress, just as he was grieving and trying to come to grips with nearly being killed when Mostek killed his dog.

316. Plaintiff has suffered and will continue to suffer damages as a result of Mostek's false statements.

Wherefore, Plaintiff prays for judgment against Chicago Police Department Officer Mostek for compensatory damages, costs, interest, and any other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.

COUNT VII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST MOSTEK)

317. Plaintiff incorporates by reference all preceding paragraphs.

318. Mostek pointed and discharged a gun at Plaintiff.

319. The shot Mostek fired killed Plaintiff's dog, but it could have just as easily killed Plaintiff.

320. Plaintiff lost a beloved pet and came within inches of losing his life.

321. Mostek's conduct was extreme and outrageous.

322. Mostek intended to cause or recklessly disregarded the probability of causing emotional distress to Plaintiff.

323. Plaintiff suffered and continues to suffer severe emotional distress because Mostek's conduct at once killed a beloved companion and placed him in fear of being shot in the face and killed.

324. Mostek's outrageous and excessive use of deadly force proximately caused Plaintiff's emotional distress.

Wherefore, Plaintiff prays for judgment against Chicago Police Department Officer Mostek for compensatory damages, costs, interest, and any other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.

COUNT VIII
RESPONDEAT SUPERIOR
(AGAINST CITY OF CHICAGO)

325. Plaintiff incorporates by reference all preceding paragraphs.

326. At all times relevant hereto, the City of Chicago was the employer of Officer Mostek.

327. At all times relevant, Officer Mostek was, as she sought to keep the peace, acting under color of law and in the scope of her employment by the City of Chicago.

328. The City of Chicago is vicariously liable for the acts and omissions of Chicago Police Department Officer Mostek.

Wherefore, Plaintiff prays for judgment against the City of Chicago for compensatory damages, costs, interest, and other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.

COUNT IX
INDEMNIFICATION UNDER 745 ILCS 10/9-102
(AGAINST CITY OF CHICAGO)

329. Plaintiff incorporates by reference all preceding paragraphs.

330. At all times relevant hereto, the City of Chicago has been the employer of Chicago Police Department Officer Mostek.

331. Mostek was acting in the course and scope of her employment by the City of Chicago and acting under the color of law when she used her City-issued firearm to prevent property damage.

332. Pursuant to 745 ILCS 10/9-102, the City Of Chicago is liable for any judgment for compensatory damages, attorneys' fees, and costs for the acts and omissions of Chicago Police Department Officers, including Officer Mostek.

Wherefore, Plaintiff prays for judgment against the City of Chicago for compensatory damages, costs, interest, and any other relief the Court deems fit, including, without limitation, punitive damages where permitted by law.


JURY DEMAND

Plaintiff demands trial by jury on all claims and all issues.

Dated this 11th day of July 2024.

Respectfully submitted,

Kent Maynard, Jr.

By: 
James D. Benak
His Attorney

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VERIFICATION

I, Kent Maynard, Jr., declare as follows:

I am the Plaintiff named in the foregoing Complaint.

I have personal knowledge of Officer Carmen Mostek's use of deadly force against me on April 21, 2024.

I have personal knowledge of the other facts alleged in the foregoing Complaint, and if called upon to testify, I would competently testify as to the matters stated therein.


I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint are true and correct.

Executed on July 11, 2024.

/s/ Kent Maynard, Jr.
Kent Maynard, Jr.

CERTIFICATE OF SERVICE

In accordance with Rule 5.5 of the Local Rules of the United States District Court for the Northern District of Illinois, I hereby certify that a true and correct copy of the foregoing document has this 11th day of July 2024 been filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record and parties by operation of the Court's electronic filing system.

By. 
James D. Benak