IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RICKEY DALE WYATT	§	
	§	
Plaintiff	§	
	§	
v.	§	
	§	
CITY OF DALLAS, DALLAS COUNTY,	§	
DALLAS POLICE OFFICERS	§	**CIVIL ACTION NO. 3:14-cv-01717-B**
J.J. COUGHLIN, CURTIS WATTS,	§	
MACDONALD, J.H. CAWTHON, AND	§	
SARAH B. WILLIAMS A/K/A	§	
SALLY WILLIAMS	§	
	§	**JURY DEMAND**
	§	
Defendants	§	

PLAINTIFF RICKEY DALE WYATT'S RESPONSE TO DEFENDANT CITY OF DALLAS'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

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TO THE HONORABLE COURT:

Plaintiff Rickey Dale Wyatt files this Response to Defendant City of Dallas's ("City") Motion to Dismiss Pursuant to Rule 12(b)(6) and would show as follows:

I.
INTRODUCTION

Defendants wrongfully arrested, charged, and prosecuted Rickey Dale Wyatt for a rape he did not commit. To effectuate his false conviction, they conducted unduly suggestive witness lineups, committed perjury, and concealed evidence that would have exonerated him. For 31 years – through an appeal and six writs of habeas corpus – they hid this evidence while Mr. Wyatt suffered in prison. He has been exonerated and now seeks justice.

On May 8, 2014, Mr. Wyatt filed his Original Complaint, describing each allegation against the City in detail. The City responded by moving to dismiss Mr. Wyatt's complaint on four grounds: (1) The City's final policymaker was not identified; (2) The offending custom or policy was not identified; (3) A reasonable inference of deliberate indifference by City officials was not pled; and (4) Mr. Wyatt did not supply facts to support a reasonable inference that the City's policies deprived him of his federal rights.

Mr. Wyatt's 101 paragraph Original Complaint contained a well-pleaded and documented 42 U.S.C. § 1983 case which more than satisfied federal notice pleading requirements as to each element of his claim. Though the law does not require it, Mr. Wyatt has filed a First Amended Complaint pursuant to Rule 15(a)(1)(B) which even more vigorously pleads facts supporting his claim. In this amended pleading, the City is confronted with the skeletons of its past, including a litany of unlawful customs, policies, and practices which created a culture of injustice. This amended complaint tells the story – in the words of *Texas Monthly* –

of "cops gone berserk" and the policymakers who encouraged them. Mr. Wyatt's First Amended complaint more than satisfies each concern raised in the City's Motion to Dismiss. Accordingly, the City's Motion should be denied.

II.
ARGUMENT

A. Legal Standard

When a defendant files a motion to dismiss under Rule 12(b), a court must accept all well-pleaded facts as true and view them in the light most favorable to plaintiff. *Johnson v. Johnson,* 385 F.3d 504, 529 (5th Cir.2004). To defeat the motion, plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Plaintiff's "factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." A court may not dismiss a claim that fails to meet the pleading requirements until first granting leave to amend, "unless the defect is simply incurable or the plaintiff has failed to plead with particularity after repeated opportunities to do so." *Hart v. Bayer Corp.,* 199 F.3d 239, 248 n. 6 (5th Cir.2000). This is consistent with Federal Rule of Civil Procedure 8(e), which states the overriding principle that "[p]leadings must be construed so as to do justice."

B. Mr. Wyatt's Complaint States a Claim for Relief for Municipal Liability under 42 U.S.C. § 1983.

The City of Dallas falsely arrested and charged Mr. Wyatt for raping and sexually assaulting three women. Mr. Wyatt looked nothing like the attacker, and the victims failed to identify him. Through a series of suggestive line-ups, the Dallas Police convinced one of the

victims that Mr. Wyatt (who was 5'6" and weighed 130 pounds) was the 170 - 200 pound, nearly six-foot tall attacker.

To conceal its actions, the Dallas Police Department destroyed records from at least one line up (on January 24, 1981) where a victim failed to identify Mr. Wyatt and created a false report on January 31, 1981, claiming two victims identified Mr. Wyatt's photo in a line-up. To compensate for the vast discrepancy between Mr. Wyatt's appearance and that of the attacker, the Dallas Police Department presented perjured testimony from one of its officers that Mr. Wyatt had lost 30 pounds in 10 days. This elaborate scheme was not the act of one or two officers, but at least 12 Dallas police officers and supervisors. These events occurred as part of a larger policy, custom, and practice of violating citizens' rights to secure convictions and close cases at all costs. These facts were pled in great detail in Mr. Wyatt's Original Complaint.

Under the United States Supreme Court decision of *Monell v. Department of Social Services of City of New York,* 436 U.S. 658, 98 S.Ct. 2018, 56 L. Ed. 2d 611 (1978), municipalities are liable when their employees violate the Constitutional rights of citizens through any oral or written policy or formal or informal practice or custom. The policy does not have to be promulgated, condoned, or even known by municipal policymakers. It simply has to be widespread and tolerated.

The City bases its Motion on four alleged pleading omissions: (1) The identity of the City's final policymaker responsible for the misconduct of its employees; (2) Facts to support the inference of a widespread city custom leading to Mr. Wyatt's wrongful arrest and prosecution; (3) Facts to support a reasonable inference of deliberate indifference by the City's policymakers; and (4) Facts to support a reasonable inference of legal causation. (Motion, p. 7). As discussed,

infra, each of these alleged omissions are either not required at this stage of litigation or have been more than abundantly pled in Mr. Wyatt's First Amended Complaint.

1. Mr. Wyatt is not required to identify the City's final policymakers at this stage of litigation, but does so out of an abundance of caution.

The City incorrectly alleges Mr. Wyatt's complaint must be dismissed because he fails to state the name of the City's final policymaker responsible for creating the customs, policies, and practices leading to Mr. Wyatt's damages. (Motion, p. 7 - 9). The City cites a single, unpublished case, *Davenport v. City of Garland*, 2010 WL 1779620, for the proposition that a final policymaker's name must be listed in the complaint.

The law does not require that a policymaker be listed by name in a complaint, and the identity of a municipality's final policymaker is often not available until discovery has taken place. The only requirement is that a plaintiff must state enough facts so the final policymaker can later be determined. The City's own quote from *Davenport* states, "Again, Plaintiff makes complaints against the City's policies but fails to name the final policymaker **or state any facts which would allow the Court to make that determination.**" [emphasis added].

In this case, Mr. Wyatt clearly pled the Dallas Police Department was responsible for implementing the customs, policies, and practices at issue in this case, and it is readily determinable that the Dallas Police Chief is the final policymaker for the Dallas Police Department.[1]

To eliminate any doubt about this issue, the First Amended Complaint identifies – by name – not only the final policymaker for the Dallas Police Department at the time of Mr.

[1] Though Texas state law confers policymaking authority on city councils, it has been held that a city's police chief is considered a city policymaker for purposes of imposing municipal liability under 42 U.S.C. § 1983. *Backe v. City of Galveston, Tex.*, S.D.Tex 2014, 2014 WL 868223.

Wyatt's wrongful arrest, but also the names of his predecessors and successors who also implemented the customs, policies, and practices which led to Mr. Wyatt's damages:

> 82. Upon information and belief, the Dallas Police Chief and/or his deputies were appointed by the City of Dallas as the chief policymakers for the Dallas Police Department during the relevant time. Dallas's police chiefs during this era promoted the customs, policies, and practices described in this complaint by their hiring, promotion, and training practices, their supervision of employees, oral and written policies, and public and private comments. These policymakers knew of the policies, customs, and practices described herein and implemented them with knowledge or deliberate indifference to the likelihood that wrongful convictions would result from them. These patterns and practices were so widespread as to practically have the force of law.
>
> 83. Don Byrd was Dallas Police Chief between 1973 and 1979. Chief Byrd had final policymaking authority over the hiring and training of many of the officers involved in Mr. Wyatt's wrongful arrest and prosecution, including Officer Coughlin in 1976. Chief Byrd was the chief policymaker when Mr. Adams was wrongfully convicted and maintained the customs, policies, and practices described in this complaint. Specifically, Chief Byrd allowed or encouraged his officers to conduct constitutionally impermissible identification procedures, manufacture evidence, engage in unconstitutionally selective identification line-ups, fail to keep or maintain adequate records, manipulate witness recollections, and fail to disclose material exculpatory and impeachment evidence to prosecutors and defense counsel.
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> 84. Glen King served as Dallas police chief between 1979 and 1982 and was the chief policymaker most directly responsible for Mr. Wyatt's wrongful arrest and conviction. Chief King maintained the customs, policies, and practices described in this complaint, which were widely commented upon in the community. Specifically, Chief King allowed or encouraged his officers to conduct constitutionally impermissible identification procedures, manufacture evidence, engage in unconstitutionally selective identification line-ups, fail to keep or maintain adequate records, manipulate witness recollections, and fail to disclose material exculpatory and impeachment evidence to prosecutors and defense counsel.
>
> 85. In 1982, Billy Prince was appointed Dallas police chief. He maintained the customs, policies, and practices described in this complaint, which were widely commented upon in the community. For example, in 1983, Dallas led the nation in the rate of police shootings, prompting the May, 1984 issue of *Texas Monthly* to openly criticize the Department's culture, policies, and procedures and editorialize, "the cops have gone berserk." (p. 230).

> 86. In August, 1988, Mack Vines was appointed Dallas police chief. He also maintained the customs, policies, and practices described in this complaint. Two years after being hired, he was arrested and charged with perjury for lying under oath to a panel investigating the fatal shooting of a civilian by one of his officers. The Dallas Police Department's internal affairs investigation of the incident was forged, and Assistant Police Chief Greg Holliday accused Vines of instructing him to be mislead investigators. Vines was later hired as police chief of St. Petersburg, Florida. Seventy-four days into that job, he was fired.

Mr. Wyatt's First amended Complaint goes far beyond the City's demand that he "identify" the City's final policymakers. It identifies the names and includes a short dossier of the chief policymakers during the era in which these customs, policies, and procedures were most prevalent.

2. Mr. Wyatt pled facts that create more than a reasonable inference of offending City customs, practices, and policies.

Next, the City alleges Mr. Wyatt did not adequately plead what customs, policies, or practices led to his damages. (Motion, pp. 9 - 12). Federal courts have held that a wide variety of alleged customs, policies, and practices are sufficient to state a claim for a municipality's violation of federal rights.

In *Gregory v. City of Louisville*, 444 F.3d 725, 754, 755, (6th Cir. 2006), the Sixth Circuit Court of Appeals considered a case strikingly similar to this one. In 1993, four women were assaulted. One of the victims described the attacker as a black male, 30 - 40 years old, 5'6", with a stocky build and long hair. Another described him as 35 - 40 years old, 5'8", muscular, with short hair. A third described him as 35 - 40 years old, 5'9", and skinny. William Thomas Gregory was 44 years old, stood taller than 5'11", had a potbelly, and wore a full beard continually for 10 years.

The Louisville Police showed the victims a photo lineup which included Mr. Gregory. The victims did not initially identify him, however, after an unduly suggestive show-up

identification, he was identified and convicted of rape, attempted rape, and burglary. At trial, the Louisville Police failed to disclose that one of the victims initially identified someone else from a photo line-up. The Sixth Circuit held the failure of the City to properly train its police officers in the disclosure of exculpatory materials and the risks of using suggestive identification techniques constitutes an offending custom, practice, and policy sufficient for liability under § 1983:

> Plaintiff can survive summary judgment under this standard by showing that officer training failed to address the handling of exculpatory materials and that such failure has the 'highly predictable consequence' of constitutional violations of the sort Plaintiff suffered. . . . Widespread officer ignorance on the proper handling of exculpatory materials would have the 'highly predictable consequence' of due process violations.

Id. at 753.

Other courts have held municipalities can be liable under § 1983 for a sheriff's failure to establish a proper procedure for identifying arrestees, *Rivas v. Freeman*, 940 F.2d 1491 (11th Cir. 1991) and a police department's widespread pattern of suspicionless and race-based stops. *Floyd v. City of New York*, 813 F. Supp. 2d 417, 456 (S.D. N.Y. 2011), on reconsideration, 813 F. Supp. 2d 456 (S.D. N.Y. 2011).

Mr. Wyatt's Original Complaint identified several offending City policies, customs, and practices resulting in violations of his federal rights. Specifically, Paragraph 80 stated:

> 80. As a routine practice, the City of Dallas failed to adequately train and supervise police officers with respect to fundamental investigative techniques and duties, and allowed or encouraged them to conduct constitutionally impermissible identification procedures, manufacture evidence, engage in unconstitutionally selective identification line-ups, fail to keep or maintain adequate records, manipulate witness recollections, and fail to disclose material exculpatory and impeachment evidence to prosecutors and defense counsel. As a routine practice, the City of Dallas failed to adequately train and supervise police officers with respect to proper methods of securing evidence, locating suspects, and pursing known and exculpatory leads.

Mr. Wyatt specifically identified how the Dallas Police Department – as a matter of custom, practice, or policy – encouraged its officers to routinely: (1) conduct constitutionally impermissible identification procedures such as the one to which Mr. Wyatt was subjected; (2) manufacture evidence, such as the false testimony by Officer Coughlin that Mr. Wyatt lost 30 pounds in 10 days; (3) engage in unconstitutionally selective identification line-ups, such as the one in which Mr. Wyatt was identified; (4) fail to keep or maintain adequate records, such as the lost records of the January 24, 1981 line-up of Mr. Wyatt; (5) manipulate witness recollections, such as coaching Cynthia B. to testify against Mr. Wyatt based on an unduly suggestive line-up; (6) fail to disclose material exculpatory and impeachment evidence to prosecutors and defense counsel, such as the January 24, 1981 line-up in which Mr. Wyatt was not identified, a May 20, 1980 photo and fingerprint card documenting Mr. Wyatt's weight at 135 pounds, and the police report of Paula M., in which she estimated her attacker weighed 200 pounds; and (7) fail to adequately train and supervise police officers with respect to proper methods of securing evidence, locating suspects, and pursuing known and exculpatory leads.

This was not – as the City suggests – an "abstraction" or "generality untethered to any factual foundation." Mr. Wyatt pled facts to precisely support the existence of offending policies, customs, and procedures and how they impacted him. Each of these specific customs, policies, and practices violate federal rights.

The City claims Mr. Wyatt cannot allege a custom, policy, or practice without showing the City engaged in this conduct on other occasions. To the contrary, a single incident that violates a citizen's Constitutional rights may constitute a "policy" or "custom," and a plaintiff does not necessarily need to prove a long-standing practice. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986); *Owen v. City of Independence, Mo.*, 445

U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673 (1980); *Brown v. Bryan County, OK*, 219 F.3d 450, 458-60 (5th Cir. 2000). However, when a plaintiff is only able to prove a single incident of an unconstitutional practice, he must prove by some independent evidence the existence of the policy or custom which caused the incident or show the incident was caused by a policymaker's actions. *See, Ruvalcaba v. City of Los Angeles*, 167 F.3d 514, 523 (9th Cir. 1999). Though Mr. Wyatt is not required to plead more, he has done so. Mr. Wyatt's First Amended Complaint provides:

> 72. In the 1970s and 1980s, the City of Dallas maintained a policy, custom, and practice of operating a substandard police department that routinely violated the rights of citizens and failed to follow established law. More specifically, the City of Dallas failed to adequately train and supervise police officers with respect to fundamental investigative techniques and duties and allowed or encouraged them to conduct constitutionally impermissible identification procedures, manufacture evidence, engage in unconstitutionally selective identification line-ups, fail to keep or maintain adequate records, manipulate witness recollections, and fail to disclose material exculpatory and impeachment evidence to prosecutors and defense counsel. The practices, customs, and policies described herein were widespread and so common and well-settled as to fairly represent municipal policy.
>
> 73. These customs, practices, and policies were exacerbated by the fact that the City of Dallas pressured its officers to close cases at all costs, even though its officers were not adequately trained or supervised in the proper methods of securing evidence, locating suspects, and pursing known and exculpatory leads. The officers were rewarded for convictions and suffered no consequences for convicting the wrong person. As a result, they were pressured into framing innocent citizens.

As discussed, *infra*, Mr. Wyatt's First Amended Complaint further elaborates on these facts and explains how the City's final policymakers had actual or constructive knowledge of them. This is more than sufficient to establish a policy, custom, or practice.

3. Mr. Wyatt pled facts that create more than a reasonable inference the City's final policymakers were aware of these customs and deliberately indifferent to a known or obvious risk they could cause Mr. Wyatt harm.

The City next claims Mr. Wyatt's complaint does not create more than a reasonable inference the City's final policymakers were aware of these customs and deliberately indifferent to the known or obvious risk that they could cause Mr. Wyatt harm. (Motion, pp. 12 - 13). Where plaintiff has demonstrated the existence of a widespread practice so well-settled as to constitute a custom or usage with the force of law, liability should be imposed whether or not official policymakers had actual knowledge of the practice. *Baron v. Suffolk County Sheriff's Dept.*, 402 F.3d 225, 242 (1st Cir. 2005) ("Although [Sheriff] Rouse may not have had actual knowledge of the custom, however, municipal liability can also be based on a policymaker's constructive knowledge – that is, if the custom is so widespread that municipal policymakers should have known of it.")

Mr. Wyatt establishes constructive knowledge through a statistical analysis. One way to establish a policymaker's constructive knowledge of municipal custom is through a statistical analysis. *See, Hall v. City of Chicago,* 2012 WL 6727511, *6, *7 (N.D. Ill, 2012) (Plaintiffs' use of "statistical data in their Complaint which claims 'that unreasonable stops, warrant checks, and questionable justifications for reasonable suspicion have been occurring throughout the City on a regular basis for at least a decade' was sufficient to establish that the practice was widespread enough to impute constructive knowledge to the City.") Mr. Wyatt conducted such an analysis. Three paragraphs in the First Amended Complaint analyze the National Registry of Exonerations and concludes Dallas County has the highest rate of exonerations in the nation. These wrongful convictions were based on official misconduct,

mistaken witness identification, or perjury or false accusation – the very factors which led to Mr. Wyatt's wrongful conviction:

> 74. The effects of these policies are staggering. The University of Michigan's National Registry of Exonerations reveals that Dallas is one of the nation's worst offenders for wrongfully convicting innocent citizens. The Registry identifies 49 innocent men and women proven to have been wrongfully convicted in Dallas in the last 37 years.[2] This database does not yet include the July 25, 2014 exoneration of Mr. Michael Phillips, a disabled man wrongfully convicted of rape in Dallas only nine years after Mr. Wyatt's conviction. Mr. Phillips had given up trying to clear his name and simply accepted his fate when he was exonerated by happenstance when his DNA was tested 24 years into his sentence.
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> 75. Dallas's deplorable record of framing its citizens has resulted in it having an exoneration rate **456%** higher than the national average[3] and more DNA exonerations than any other county or parish in the United States. Moreover, the unlawful customs, policies, and practices which led to Mr. Wyatt's wrongful conviction peaked at the time of his arrest. A staggering 47 of Dallas's 50 documented exonerations occurred within 16 years of Mr. Wyatt's trial. Twenty-eight of these 50 exonerations – **56 percent** – occurred within only **six years** of Mr. Wyatt's arrest.
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> 76. As Exhibit 2 establishes, nearly every wrongful conviction in Dallas County occurred for the same reason – "official misconduct," "mistaken witness ID," or "perjury or false accusation." Not coincidentally, these are the exact factors leading to Mr. Wyatt's wrongful conviction. Such abnormal and widespread "misconduct" does not occur by accident. The City and County of Dallas created an epidemic of injustice that its final policymakers knew about and encouraged through deliberate customs, policies, and practices, as discussed, *infra.*

Mr. Wyatt establishes constructive knowledge through an analysis of similar cases. Mr. Wyatt further establishes constructive knowledge of the offending customs, patterns, and policies by analyzing the frequency and brazenness of conduct by the police in individual cases during this era:

[2] The complaint also contains a printout of the National Registry of Exonerations list of citizens known to have been wrongfully convicted in Dallas County, Texas.

[3] The complaint provides a footnote explaining this methodology and citing another study in which former Dallas County prosecutor Edward Grey concluded **Dallas County's exoneration rate is ten times the national average.**

77. This pattern, custom, and practice of the police coercing witnesses to testify falsely against innocent citizens was well-known in the Dallas community in the 1970s and 1980s. For example, in 1977, Randall Adams was sentenced to death for the murder of Dallas Police Officer Robert Wood. His conviction was based on the testimony of Emily Miller. Miller saw the killer (a black man) and did not identify Mr. Adams (who is white) in a line-up. The Dallas Police Department then instructed Miller to falsely identify Mr. Adams and perjure herself by testifying against him at trial. In exchange for this perjured testimony, the Dallas Police Department dismissed unrelated charges against Miller's daughter. . . .

79. There are many similar cases from this era. On August 25, 1981, a shirtless man attacked and raped a woman who was riding her bicycle. The victim described her attacker as a black man in his 20s. She did not identify anyone from two photo lineups. A year later, the Dallas Police mailed a new photo lineup to her. Of the six photos, two were unduly suggestive images of shirtless men. The Dallas Police Department made no effort to conduct the lineup in a controlled environment despite numerous United States Supreme Court cases establishing clear guidelines to the contrary. *See, Stovall v. Denno,* 388 U.S. 293, 302, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967) and *United States v. Wade,* 388 U.S. 218 (1967). ("A major factor contributing to the high incidence of miscarriage of justice from mistaken identification has been the degree of suggestion inherent in the manner in which the prosecution presents the suspect to witnesses for pretrial identification. A commentator has observed that '[t]he influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor – perhaps it is responsible for more such errors than all other factors combined.'")

80. As a result of this undue suggestion, the victim falsely identified Johnnie Lindsey (one of the two shirtless men in the photos) as her attacker. He was sentenced to life in prison and served 26 years until his exoneration by DNA evidence in 2009. Mr. Lindsey received $2,069,321 in compensation because the Dallas Police Department's unduly suggestive identification procedures led to his wrongful conviction.

81. On August 1, 1982, three men raped a Dallas woman. The victim knew one of the attackers – Stanley Bryant – and identified a photo of him the day of the attack. She described the other two attackers, who were approximately 19 years old. The Dallas Police Department arrested James Curtis Giles, who was 10 years older than the attackers and had two prominent gold teeth (unlike the attackers). Despite his having no physical resemblance to the real attacker, the Dallas Police Department pursued the case against Mr. Giles. In 1984, Bryant pled guilty, identified the other two attackers, and signed an affidavit stating Mr. Giles had nothing to do with the attack. Nevertheless, Mr. Giles served 25 years of a 30 year sentence before his exoneration by DNA evidence in 2007. Mr. Giles received $1,316,878 in compensation because the Dallas Police

> Department's unduly suggestive identification procedures led to his wrongful conviction. These examples are not comprehensive – they merely illustrate the custom, pattern, and practice of the Dallas Police Department in the 1970s and 1980s.

Mr. Wyatt establishes constructive knowledge based on the scale of officers involved in these customs, policies, and practices. Mr. Wyatt also establishes policymakers' constructive knowledge of customs, policies, and practices described in his Complaint by showing the vast number of officers and supervisors who were involved in the conduct leading to his wrongful conviction:

> 90. These customs, practices, and policies were systemic and in full force when Mr. Wyatt was charged. According to the Dallas Police Department's arrest and prosecution records, as many as 12 officers and supervisors assisted in Mr. Wyatt's wrongful arrest and/or prosecution. These include: (1) Officer J. Coughlin, badge number 3809; (2) Officer D.A. Watts, badge number 2786; (3) an investigator whose name cannot be deciphered; (4) a supervisor, whose name cannot be deciphered but held badge number 2067; (5) Supervisor Lt. B.G. Maroney; (6) Officer Curtis Watts, badge number 3763; (7) Officer Brian Varker, badge number 4346; (8) Officer B.T. Beddingfield, badge number 1513; (9) Officer J.H. Cawthon, badge number 2174; (10) Officer C. Epperson, badge number 4133; (11) Officer A. Anderson, badge number 4039; and (12) Officer D.J. MacDonald, badge number 2447. Several reports have illegible signatures of possibly more officers and supervisors.

Mr. Wyatt establishes constructive knowledge based upon the Department's promotions of the worst offenders. Mr. Wyatt also establishes policymakers' constructive knowledge of customs, policies, and practices described in his Complaint by showing that offending officers were promoted:

> 91. Dallas Police Department officers who engaged in the conduct described herein were promoted so they could perpetuate these customs, practices, and policies. For example, Officer Coughlin, who falsely testified against Mr. Wyatt, was later promoted to the Dallas Public Integrity Unit and tasked with investigating misconduct by other officers. This assured the Dallas Police Department could continue framing innocent citizens and perpetuate these customs, practices, and policies.

Mr. Wyatt establishes actual knowledge based upon the final policy makers' retaliation against whistleblowers. Mr. Wyatt's First Amended Complaint also establishes that Dallas's policymakers were told by their own police officers that a lawless culture existed within the Department. This culture included filing false reports, hiding exculpatory evidence, and manufacturing inculpatory evidence and charges against citizens. When policymakers were directly made aware of these customs, they swept them under the rug and retaliated against honest cops:

> 87. Individual police officers confirmed that the customs, policies, and procedures described in this complaint were rampant during the 1970s and 1980s and well known to the City's final policymakers. In the June, 1987 issue of *D Magazine*, rookie Dallas Police Officer Rodney Clark stated that in the 1980s, the Dallas Police Department trained its officers to shun nonviolent problem solving and see the City as a "war zone where danger lurked in every encounter." Clark's supervisor, Officer Gary Blair, was "bitter" and had a "siege mentality" in which he "antagonized civilians," beat them up until they were hospitalized, charged them with bogus crimes, and changed arrest reports. When Clark expressed concern to supervisors, they ignored him and tried to intimidate him into silence. When another officer, Lt. Johnnie Sullivan, forwarded Clark's complaint to Assistant Police Chief Leslie Sweet, he was twice told to file it away.
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> 88. Eventually, Officer Blair was killed after provoking a gunfight with a civilian. The Dallas Police Department falsely charged the civilian with murder. When Officer Clark was subpoenaed to testify about Blair's personality and openly stated he would testify truthfully, his fellow officers took a vote on whether to back him up if he was in trouble on the streets.
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> 89. The civilian was acquitted, and the Dallas Police Department retaliated against Officer Clark. He was placed on administrative leave, and his fellow officers adorned the station with cartoons and poems mocking him. In his interview with *D Magazine*, Clark stated, "I was angry that my superiors permitted the peer pressure to continue. It was like they were condoning it." Dishonesty was part of the Dallas police culture in the 1970s and 1980s. Only the "rogue" cops told the truth.

Mr. Wyatt establishes actual knowledge based upon the chief policy maker's participation in the custom, policies, and practices described herein. As pleaded in Paragraphs 85 and 86, at least two police chiefs during this era had actual knowledge of the

offending customs, policies, and procedures through public news reports. One chief personally participated in this culture by allegedly committing perjury and pressuring his assistant to do the same:

> 85. In 1982, Billy Prince was appointed Dallas police chief. He maintained the customs, policies, and practices described in this complaint, which were widely commented upon in the community. For example, in 1983, Dallas led the nation in the rate of police shootings, prompting the May, 1984 issue of *Texas Monthly* to openly criticize the Department's culture, policies, and procedures and editorialize, "the cops have gone berserk." (p. 230).
>
> 86. In August, 1988, Mack Vines was appointed Dallas police chief. He also maintained the customs, policies, and practices described in this complaint. Two years after being hired, he was arrested and charged with perjury for lying under oath to a panel investigating the fatal shooting of a civilian by one of his officers. The Dallas Police Department's internal affairs investigation of the incident was forged, and Assistant Police Chief Greg Holliday accused Vines of instructing him to be mislead investigators. Vines was later hired as police chief of St. Petersburg, Florida. Seventy-four days into that job, he was fired.

Mr. Wyatt establishes constructive knowledge based upon the general public's knowledge of these custom, policies, and practices. Finally, it is difficult to argue that policymakers of this era were not aware of the customs, policies, and practices of their department when they were the subject of ongoing commentary in the local news media and an internationally-acclaimed documentary:

> 78. In 1988, Errol Morris produced a documentary called *The Thin Blue Line* about the Dallas Police Department's patterns, customs, and practices leading to Mr. Adams's [1977] misidentification and wrongful conviction. The film was the 95th highest grossing documentary released since 1982, and Gene Siskel named it the seventh best film of 1988.

The City also demands that Mr. Wyatt plead facts showing its policymakers knew there was a risk citizens might be wrongfully convicted when police officers persuade witnesses to improperly identify suspects as criminals, hide exculpatory evidence, and fabricate evidence. That is self-evident. The purpose of conducting witness line-ups is to assure the proper defendant

is arrested. No policymaker in a major police department in the United States in 1981 could have been unaware of this basic principle.

Since at least the mid-1960s, the United States Supreme Court has warned police departments to be particularly careful about the risk of witness misidentification, and police departments and policymakers knew to take precautions to avoid tainting witness memories. *See, Stovall v. Denno*, 388 U.S. 293, 302, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967) and *United States v. Wade*, 388 U.S. 218 (1967). ("A major factor contributing to the high incidence of miscarriage of justice from mistaken identification has been the degree of suggestion inherent in the manner in which the prosecution presents the suspect to witnesses for pretrial identification. A commentator has observed that '[t]he influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor – perhaps it is responsible for more such errors than all other factors combined.'")

The Fifth Circuit held that by 1967, a police officer or other public official's concealment of exculpatory evidence was a constitutional violation in this circuit, thus giving rise to liability under § 1983. The Sixth Circuit has held:

> In their investigative capacities, police officers regularly uncover exculpatory materials. The Supreme Court has laid down very specific obligations of police officers on the disclosure of exculpatory materials. *See Brady*, 373 U.S. at 87, 83 S.Ct. 1194. Widespread officer ignorance on the proper handling of exculpatory materials would have the "highly predictable consequence" of due process violations.

Gregory v. City of Louisville, 444 F.3d 725, 753 (6th Cir. 2006).

Despite clear warnings from the United States Supreme Court, experts of the era, and uniform police manuals which established standard line-up procedures, the City's policymakers made no apparent effort to train or supervise its officers in proper witness identification. This is more than a reasonable inference of an offending custom, policy, or procedure. It is damning

evidence of a police department spiraling out of control. The City's final policymakers knew about these policies and procedures. In fact, the entire community knew.

4. Mr. Wyatt pled facts more than sufficient to allow a reasonable inference that City policies caused a deprivation of his federal rights.

Finally, the City alleges Mr. Wyatt did not plead facts sufficient to allow a reasonable inference that the City's policies caused a deprivation of his federal rights. (Motion, p. 14). First, as noted, it is well established that concealing exculpatory evidence and engaging in suggestive witness identification is a violation of federal rights.

Second, Paragraph 5 of the Original and First Amended Complaint directly addresses the impact of these violations on Mr. Wyatt – he was wrongfully imprisoned for 31 years. His innocence, and defendants' culpability, have already been established by the State of Texas:

> 5. After 31 years, the Dallas County District Attorney's Office finally admitted Mr. Wyatt was wrongfully convicted. On January 4, 2012, the Honorable John Creuzot, Judge for the Dallas County District Court No. 4, signed an "Agreed Findings of Fact and Conclusions of Law on Applicant's Writ of Habeas Corpus." In that 32-page document, the Court concluded (and the Dallas County District Attorney's Office agreed) that Mr. Wyatt's writ of habeas corpus should be granted for a litany of reasons, including the failure to produce exculpatory evidence, and other due process violations. *See,* Exhibit 1. Defendants caused the wrongful conviction of Mr. Wyatt.

III.
CONCLUSION

Mr. Wyatt served more time in a Texas prison than any other innocent man. He was convicted based upon false testimony, suggestive witness identification, hidden exculpatory evidence, and bogus lab results during one of the most corrupt eras in the Dallas Police Department. During this time, police were rewarded for closing cases at all costs and punished for engaging in methodical investigations. They were trained to alter and destroy records and perjure themselves to make their sloppy detective work seem plausible. When all else failed,

they pressured victims into testifying against innocent people. Good cops were retaliated against and bad ones were promoted.

As a result of this culture, the Dallas Police Department has become the nation's epicenter of wrongful convictions. Mr. Wyatt was the victim of one of those convictions. His Original Complaint satisfied all pleading requirements under 42 U.S.C. § 1983. His First Amended Complaint goes far beyond what is required. The City's Motion should be denied.

Dated: August 5, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

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